

FEBRUARY 14, 1979

1. PRESIDING OFFICER: (SENATOR DONNEWALD)

2. Will the guests in our galleries please rise. Prayer by
3. Reverend Anthony G. Tzortzis, Saint Anthony's Hellenic Orthodox
4. Church, Springfield, Illinois.

5. REVEREND TZORTZIS:

6. (Prayer by Reverend Tzortzis)

7. PRESIDING OFFICER: (SENATOR DONNEWALD)

8. Reading of the Journal.

9. SECRETARY:

10. Tuesday, February the 6th, 1979 and Wednesday, February
11. the 7th, 1979.

12. PRESIDING OFFICER: (SENATOR DONNEWALD)

13. Senator Johns.

14. SENATOR JOHNS:

15. Thank you, Mr. President. I move that the Journals just
16. read by the Secretary be approved unless some Senator has
17. additions or corrections to offer.

18. PRESIDING OFFICER: (SENATOR DONNEWALD)

19. You've heard the motion. Those in favor indicate by
20. saying Aye. Those opposed. The Ayes have it. The motion
21. carries. Committee Reports.

22. SECRETARY:

23. Senator Donnewald, Chairman of the Committee on Assign-
24. ment of Bills assigns the following bills to committee:
25. Appropriations I, Senate Bill 95; Appropriations II, Senate
26. Bills 90 and 92; Elementary and Secondary Education, Senate
27. Bills 96, 100 and 101; Elections and Reapportionment, Senate
28. Bills 99 and 104; Insurance and Licensed Activities, Senate
29. Bill 102; Judiciary I, Senate Bill 86 and 94; Judiciary II,
30. Senate Bills 87, 88 and 89; Local Government, Senate Bill 93;
31. Public Health, Welfare and Corrections, Senate Bills 91 and
32. 107; Revenue, Senate Bill 106; Transportation, Senate Bills
33. 97, 98, 103, 105 and 108.

Abstract
on Rule 6
2-14-79

1. PRESIDING OFFICER: (SENATOR DONNEWALD)
2. Do we have leave for still photographs? Leave is granted.
3. The Senate will stand at ease momentarily. The Senate will come
4. to order. Will the members please be in their seats. As...
5. previously announced the Senate will consider changes in
6. Temporary Rules 5 and 6 at today's Session. In order to
7. expedite the consideration of changes in Rule 6 relating to
8. the ratification of a proposed amendment to the United
9. States Constitution the following agreements have been reached.
10. The Senate will resolve itself into a Committee of the Whole and
11. will hear from both proponents and opponents relative to changing
12. the vote requirements for ratification. Each side will be allowed
13. forty-five minutes to make its presentation. Following the
14. forty-five minute presentation the Senators will be allowed
15. to question the witnesses. The Committee of the Whole will
16. not make any recommendation as to a rule change but will only
17. hear testimony. After the Committee of the Whole has arisen
18. the Floor will be open for any amendments by members to Rule
19. 6. During the course of today's Session of the Committee of
20. the Whole Temporary Rule 2 will be strictly enforced. The
21. Chair will not allow any person on the Floor who is not
22. specifically designated by Temporary Rule 2. The Chair asks
23. the cooperation of the membership in enforcing this rule and
24. requires that all, and I repeat all, conversations be taken
25. off the Floor. The Chair will call any Senator to order who
26. violates this rule. For those who have not heard, several of
27. our members and that includes quite a few, I might add, includ-
28. ing the President, Philip Rock, have some difficulty in...
29. journeying from Chicago to Springfield today because of the
30. weather. For the convenience of those witnesses who have come
31. here from out of town, we will have the testimony as scheduled.
32. In deference to our colleagues who are on their way to Spring-
33. field, no vote will be taken on any rule changes...until their

1. arrival. I would hope so. The question is...Senator Knuppel
2. moves that the Senate resolve itself into a Committee of the
3. Whole. Senator Joyce so moves. Those in favor indicate by
4. saying Aye. Those opposed. The motion carries. Will the
5. Senate members please be in their seats. The Senate will be
6. at ease. The Chair recognizes Senator Netsch. Will the members
7. please be in their seats. Senator Netsch.

8. SENATOR NETSCH:

9. Thank you, Mr. President. As I think everyone in the
10. Chamber understands there's been a great deal of confusion
11. today because of weather problems, which is hardly anything
12. new to us in the State of Illinois this Winter. As a result
13. of that many members of the Senate are not here and as it
14. turns out a number of the witnesses also have not arrived. I
15. would specifically mention that a representative of the Depart-
16. ment of Justice who had some legal materials to bring to us
17. and to share with us is on the ground in St. Louis, as I
18. understand and I'm sure there are others who are stranded
19. somewhere in between there and Chicago and Springfield.
20. Nevertheless, as Senator Donnewald indicated, we will go ahead
21. and hear those witnesses who are present and have testimony to
22. give on both sides of the question. The question, basically,
23. is by what vote should a...a proposed amendment to the
24. Constitution of the United States be ratified. The present
25. rule...the present Temporary Rules of the Illinois Senate
26. require that ratification have a three-fifths affirmative
27. vote of the members of the Senate. That has not always been
28. the rule of the Senate. Up until March, 1975 the required
29. vote was a majority vote and at least at one time in our past
30. history, apparently it was just a simple majority of those
31. present and voting. Since 1975, March 1975, by an amendment
32. from the Floor the Temporary Rules under which we have been
33. operating since that time have provided for a three-fifths vote.

1. The motion that I present and in a sense present on behalf
2. of myself and Senator Rock would change the required vote
3. for ratification from three-fifths to a majority of the
4. members elected or what we call a Constitutional majority.
5. That is the substance of the motion that will be presented
6. when we eventually resolve ourselves from Committee of the
7. Whole and...begin to act on the rules. The witnesses who are
8. here and have some comments on the question of the vote by
9. which ratification should take place have signed witnesses...
10. witness slips and I will call them in the following order.
11. Professor Rotunda of the University of Illinois. Is...is
12. that agreeable, Mr. President?

13. PRESIDING OFFICER: (SENATOR DONNEWALD)

14. It is agreeable.

15. SENATOR NETSCH:

16. Thank you.

17. PRESIDING OFFICER: (SENATOR DONNEWALD)

18. Professor Rotunda, would you please step up to the podium.

19. PROFESSOR ROTUNDA:

20. My name is Ronald G. Rotunda, Professor of Law at the
21. University of Illinois College of Law. I've taught Constitutional
22. Law there for a number of years. Coauthored a treatise on the
23. subject and former assistant counsel to Sam Dash when he was
24. chief counsel of the Senate Watergate Committee. I'm honored
25. to receive the invitation to...to appear before this Body today.
26. To get right down to the point, the leading case most directly
27. relevant to the question the Senate faces and deals with the
28. facts we are dealing with today is Dyer v. Blair, a three judge
29. district court, a judge now Justice Stevens wrote the unanimous
30. opinion. The plaintiffs in that case sought a declaration at
31. the Illinois Constitutional Provision relating to amending the
32. U.S. Constitution in requiring a three-fifths voice...a three-
33. fifths vote of each House of the State Legislature and certain

1. other similar internal legislative rules violated the Fifth
2. Article of the U.S. Constitution. I will not belabor the
3. court's reasoning. I'm sure all the members are familiar
4. with the opinion, but I think the conclusion should be
5. reemphasized. First, the court held that an extraordinary
6. majority is not required by present Federal Statutory Law.
7. Second, the court said a Constitutional majority, that is a
8. majority of the elective legislators or simple majority. A
9. majority of the quorum of each House of the State Legislature
10. is permissible under the State Constitution. Third, the court
11. held that the State Constitution violates the Federal Constitution
12. to the extent that the State Constitution requires a three-fifths
13. majority, otherwise inhibits the Legislatures ratification
14. power and then, perhaps the most importantly for present
15. purposes the court finally held that under the U.S. Constitution
16. the Illinois House and Senate may validly either accept or
17. reject the three-fifths requirement. Because...the court thought
18. that both Houses had a three-fifths internal rule, the court had
19. no need to enter any order against the defendants and its further
20. opinion that...applying that the provision of the State Constitution
21. as to a three-fifths majority vote was...was, perhaps, only
22. precatory and not mandatory. In a nutshell, either House of
23. this...of this State Legislature can constitutionally adopt a
24. simple majority, a constitutional majority or some extraordinary
25. majority, be it three-fifths, two-thirds, three-quarters or what-
26. ever. The choice is really up to each House and the choice
27. whatever it is, is constitutional. Thus, the real question before
28. the House is not whether it can change its rules of procedure
29. but whether it should. A reasonable man and women can differ
30. on analysis of the competing policy considerations. My own
31. study has led me to favor a majority requirement, either a
32. constitution or...constitution or a simple majority. We know it's
33. already extraordinarily difficult to amend the U.S. Constitution.

1. Two-thirds of both the U.S. House of Representative and two-
2. thirds of the Senate must uphold the amendment and then it
3. must be ratified by the Legislatures of three-quarters of
4. the states. Given such super majority safeguards against
5. too many amendments, there does not seem to be any pressing
6. need for a super majority requirement of each House of the
7. State Legislature. I think making it too difficult to amend
8. the Constitution makes it too difficult to correct present or
9. future errors in Supreme Court decisions. Perhaps, it was
10. because of existing safeguards that the Supreme Court ruled
11. in 1798 that the President of the United States need not sign
12. nor may he veto a proposed amendment, notwithstanding the
13. language of Article I, Section 7, clause 3 of the Constitution
14. which seems to require such a signature. On the Federal level
15. we know that two-thirds requirement is rare even when that
16. requirement is spelled out, as it is in the Article V, two-
17. thirds of rule, that only applies to the decision to send the
18. amendment to the states. Other matters related to the amendment
19. process on the Federal level, even very important ones are
20. governed by simple majority vote, thus amendments to a proposed
21. amendment, Statutes regulating the amendment process, even the
22. Congressional finding that the amendment has, in fact, been
23. ratified are all accomplished by simple majorities on the part
24. of the U.S. House and Senate. Of course, either House of this
25. State Legislature may seek to impose upon itself a super majority
26. requirement but the great majority of other states have decided
27. that a majority rule is the best rule. Finally, I know we're
28. talking...about an abstract rule of three-fifths majority require-
29. ment. We are talking about it in the context of the proposed
30. Equal Rights Amendment. I have...not dealt with the merits of
31. ERA and I'm sure all the members are well aware of the arguments
32. for and against it. I simply want to add that whether the ERA
33. be voted up or down, I think it ought to be voted up or down

1. on the basis of the merits and not on the basis of a procedural
2. technicality. As Thomas Jefferson once phrased, a basic tenet
3. of democracy, "It is the voice of the majority that decides."
4. That is the law of all counsels...elections except where other-
5. wise expressly provided. Here, there's no valid constitutional
6. or statutory requirement, otherwise expressly provided. Thank
7. you very much.

8. PRESIDING OFFICER: (SENATOR DONNEWALD)

9. Senator Netsch, I believe you...desired that William R.
10. Wallin be the next witness.

11. SENATOR NETSCH:

12. Yes. You want to hold any questions until after everyone
13. has testified.

14. PRESIDING OFFICER: (SENATOR DONNEWALD)

15. There will be no questions of the witnesses until the
16. testimony...

17. SENATOR NETSCH:

18. Right.

19. PRESIDING OFFICER: (SENATOR DONNEWALD)

20. ...on each side is completed.

21. SENATOR NETSCH:

22. Yes. Then a representative of the Illinois Attorney
23. General's Office, Mr. Wallin.

24. PRESIDING OFFICER: (SENATOR DONNEWALD)

25. Just a moment, Sir. I...I would appreciate and the
26. members of the Body would appreciate that all members be
27. in their seats. All unauthorized personnel remove themselves.
28. Could we remove all conferences from the Floor or eliminate
29. them? Would you proceed?

30. MR. WALLIN:

31. Yes, I am William Wallin, from the...an assistant Attorney
32. General. I have been asked to testify as to the Attorney
33. General's opinions in regard to this matter. In 1972 the

1. Attorney General issued two opinions in which he advised that
2. the provisions in the Illinois Constitution regarding
3. ratification of amendments to the U.S. Constitution were
4. unconstitutional. He said in that opinion that the...the
5. General Assembly in carrying out its duties to ratify or
6. not to ratify amendments to the Constitution...they are
7. acting as a Federal Body and are not subject to the
8. restrictions placed upon them in the Illinois Constitution.
9. That was his opinion in '72 and that is still his opinion
10. today and this opinion has been...has been affirmed by the
11. case of Dyer v. Blair, which Mr. Rotunda discussed. I have
12. no quarrel with anything that Mr. Rotunda said with regard
13. to the legal position that he stated. That's all.

14. PRESIDING OFFICER: (SENATOR DONNEWALD)

15. Senator Netsch.

16. SENATOR NETSCH:

17. Reverend Dickerson.

18. PRESIDING OFFICER: (SENATOR DONNEWALD)

19. Would Reverend Evelyn J. Dickerson please come to the
20. podium?

21. REVEREND DICKERSON:

22. I am Reverend Evelyn Dickerson and I'm coming to you as a
23. representative of the Illinois Conference of the United Church
24. of Christ. And I have the position of staff coordinator for
25. Women's Concerns in Society in the church. I am reading a
26. statement passed by the assembled delegates of the Illinois
27. Conference of the United Church of Christ, a State organization
28. of three hundred and sixty local congregations and one hundred
29. and forty thousand members at their annual meeting last June.
30. I quote, "be it resolved that the Illinois Conference, United
31. Church of Christ reaffirm its support of the Equal Rights
32. Amendment and urge its reconsideration and passage by the
33. State Legislature of the State of Illinois." And that the

1. General Synod in 1975, our National gathering of delegates
2. of the United Church of Christ representing six thousand
3. five hundred and twelve congregations and the membership
4. of a million seven hundred and eight-five thousand six
5. hundred and fifty-two. The following resolution was passed.
6. "The General Synod supports the Equal Rights Amendment and
7. urges local churches, conferences and associations of those
8. states which have yet to vote favorably on the amendment to
9. actively work for the ratification of the Equal Rights Amend-
10. ment.

11. PRESIDING OFFICER: (SENATOR DONNEWALD)

12. Just...just a moment. May I interrupt? Senator
13. Berning, for what purpose do you arise?

14. SENATOR BERNING:

15. Point of order, Mr. President. I...

16. PRESIDING OFFICER: (SENATOR DONNEWALD)

17. State your point.

18. SENATOR BERNING:

19. ...I think the witness is not addressing herself to the
20. question before the House. She is addressing herself to the
21. substantive issue, which will be discussed if and when the
22. rules are changed.

23. PRESIDING OFFICER: (SENATOR DONNEWALD)

24. The...you may comment, but the purpose of the meeting is
25. to discuss the change of...of the rules.

26. REVEREND DICKERSON:

27. And I wanted to comment that the change of the rules is
28. a very important aspect of this whole procedure and that in
29. the State of Illinois we find ourselves in, what I consider,
30. an embarrassing position where we are allowing a minority
31. of the people to rule the majority. I think that we here in
32. Illinois must take a very real look at what we are doing,
33. not just for our state but for our nation and for the world.

1. We say we affirm human rights. Now is our opportunity to act
2. upon that in the way in which you address technicalities is
3. going to have a very real effect upon the lives of many people.
4. Is that all right?

5. PRESIDING OFFICER: (SENATOR DONNEWALD)

6. You may proceed.

7. REVEREND DICKERSON:

8. Every minister of the United Church of Christ and as
9. an appointed Illinois Conference staff coordinator of Women's
10. Concerns in Society as well as in the church, I'm here to
11. testify to the importance of recognizing the pain and
12. suffering that occurs to women who are not equally protected
13. under the law. I am a mother of four adult children and a
14. grandmother of two. I have been fortunate in my personal
15. experiences and have always operated under the assumption
16. that I and all women were treated fairly in this country in
17. which all men are created equal.

18. PRESIDING OFFICER: (SENATOR DONNEWALD)

19. Just...just a moment. Senator Berning.

20. SENATOR BERNING:

21. I repeat my point, Mr. President. The witness is not
22. addressing herself to the question before the Body. She
23. is expressing her feelings regarding the substantive issue,
24. which is not before us.

25. PRESIDING OFFICER: (SENATOR DONNEWALD)

26. Well, the purpose of the Chair as stated earlier...the
27. purpose of the meeting is to discuss the change of the rule.
28. Senator Netsch.

29. SENATOR NETSCH:

30. Mr. President, I think the witness made it quite clear
31. why there is a very close connection between the substance of
32. the Equal Rights Amendment and the precise issue that we are
33. involved with today, which is the rules change. She made a

1. very clear, straightforward, concise tie between the...the two.

2. I think she should be permitted to continue.

3. PRESIDING OFFICER: (SENATOR DONNEWALD)

4. She may proceed.

5. REVEREND DICKERSON:

6. While I am not an authority on Constitutional Law and do
7. not presume to understand all the technicalities related to it,
8. I urge you in your deliberations to recognize that the rules
9. you adopt will have real consequences in the lives of many
10. people. Women want and should have the right to be treated
11. equally under the law. Not all women want to work outside
12. of the home and when that is their free choice I applaud it,
13. but as long as there are any women who are hampered by not
14. having equal treatment under the law and are therefore unable
15. to support themselves and often their children it is incumbent
16. upon us as a state and a nation to be supportive of their
17. endeavors. Illinois in its own Constitution affirms equal
18. treatment of all people. Why then, are we allowing technicalities
19. to keep us from extending this right to the rest of our country?
20. The eyes of the nation, indeed the world are upon Illinois whose
21. action will determine whether or not we, as a nation, really
22. believe in human rights. I hope soon to be proud of Illinois
23. as a state that supports the rights of all people.

24. PRESIDING OFFICER: (SENATOR DONNEWALD)

25. Thank you very much. Senator Netsch.

26. SENATOR NETSCH:

27. Thank you very much, Reverend Dickerson. Mary Jane Collins
28. is the next witness, please. Is she there?

29. PRESIDING OFFICER: (SENATOR DONNEWALD)

30. Would Miss Mary Jean Collins come to the rostrum? You
31. may proceed.

32. MISS COLLINS:

33. My name is Mary Jean Collins. I'm the President of the

1: Chicago Chapter of the National Organization for Women. I'm
2: appearing this morning because our national president was unable
3: to get out of the Chicago area. I want to testify in favor
4: of eliminating the super majority that is required of...
5: to ratify Federal Constitutional amendments in the State of
6: Illinois at this time. The historic origins of the three-
7: fifths rule lie with the new 1970 Illinois Constitution. Article
8: XIV of the new Constitution made three-fifths the requirement
9: for ratification of Federal amendments. But in addition, it
10: stated and I quote, "the requirements of this Section shall
11: govern to the extent that they are not inconsistent with the
12: requirements established by the United States." Since then
13: three times the Illinois Attorney General has expressed the
14: opinion that an understanding of Article V of the Federal
15: Constitution must invalidate the Illinois Constitutional
16: requirement of a favorable vote by a three-fifths majority.
17: In March of 1975 a three judge Federal District Court ruled
18: on this question in Dyer et al versus Blair. They said and I quote,
19: "the Attorney General's analysis is consistent with ours.
20: The function of a state Legislature in ratifying a proposed
21: amendment to the Federal Constitution like the function of
22: Congress in proposing the amendment is a Federal function
23: derived from the Federal Constitution and it transcends any
24: limitation sought to be imposed by the people of a state.
25: We do not believe that delegated Federal power may be inhibited
26: by a state Constitutional provision, which in practical effect
27: determines whether votes of Legislators opposing an amendment
28: shall be given greater, lesser or the same weight as the
29: votes of Legislators who favor the proposal." The decision
30: is...in its...in its further reading is ambiguous as to
31: whether or not we believe it is ambiguous as to whether or not
32: it is simply the power of the Legislature to determine whether
33: or not...what the requirement will be for the majority. There

1. was some ambiguity as indicated by this quote from the decision.
2. There is moreover, some evidence that when Article V of the
3. Federal Constitution was drafted the framers assumed that
4. state legislators would act by majority vote. You all have
5. been presented to you today testimony from Lawrence Tribe
6. from Harvard University. His position and ours is that, in fact,
7. it is unconstitutional to require the super majority. Professor
8. Rotunda has...has testified this morning that...that he believes
9. that it is the right of this Body to determine their own rules
10. but that, indeed, the three-fifths requirement now in the 1970
11. Constitution is not binding on this group. I think there are
12. ...there are two points here. Whether unconstitutional or not, and
13. we believe that it is...unconstitutional and that if tested,
14. that...that position will be upheld. It is clearly for this
15. group to decide...this Body to decide whether or not they, in
16. fact, will require a super majority, as has been required in
17. the last seven years. I would like to point out what I think
18. is a gross deficiency of that position. If amendments to the
19. Federal Constitution had required a three-fifths majority, we
20. would still have slavery in this country. I presume that most
21. of the people in this room assume that those who founded this
22. country made an error when they counted black people as three-
23. fifths of a person and made an error when they counted women
24. as no-fifths of a person in the United States Constitution.
25. I assume then that the framers of the Constitution, the
26. founding fathers and they were fathers, provided a way to
27. amend the Constitution because even they understood that they
28. could make mistakes and I beg of you, those of you who have
29. voted against the simple majority in the past to reconsider
30. your position in the light of the fact, that A, we would
31. not be sitting as Americans. The Constitution of the United
32. States would not have been passed if the three-fifths majority
33. had been required by all states. Some of us could not be voting.

1. I could not have the right of franchise. The black people in
2. this room could not have the right of franchise or the right
3. of citizenship if a three-fifths majority had been required of
4. every state in this Union in order to amend the Federal
5. Constitution. We believe that the framers of the Constitution
6. provided appropriate safeguards by requiring the two-thirds
7. of the Congress and three-fourths of the individual states
8. would be necessary in order to ratify amendments. I beg of
9. you this is the week of Abraham Lincoln's Birthday. Tomorrow
10. is the anniversary of Susan B. Anthony's Birthday. None of
11. those persons lives would have made a difference in this
12. country if the three-fifths majority had been required. I
13. beg of you to look in your hearts, to look into the faces of
14. your sisters and daughters and mothers. I beg of you to change
15. to a simple majority, which I believe is...is the fair thing
16. under the American system. I believe it's required by the
17. United States Constitution and I believe we have an opportunity
18. to do...to do something historic ourselves this morning and I
19. think we must rise to the occasion and I beg of you to grant to
20. the women of this country the same rights that you were born
21. with. Thank you.

22. PRESIDING OFFICER: (SENATOR DONNEWALD)

23. Thank you. Senator Netsch.

24. SENATOR NETSCH:

25. Thank you, Miss Collins. Mr. President, there was one
26. other person who spoke to me just as we were beginning the
27. hearings who asked if she could testify as a witness in favor
28. of the majority vote and since we do still have ample time left
29. I think it would be appropriate. I would ask her to keep her
30. comments relatively brief, if you would. Would you please
31. proceed and would you identify yourself?

32. PRESIDING OFFICER: (SENATOR DONNEWALD)

33. The witness is Miss Dorothy I. Hagele. You may proceed.

1. MRS. HAGELE:

2. I am a homemaker, a mother and a grandmother. I have no
3. profession and I have no particular qualifications to address
4. you.

5. PRESIDING OFFICER: (SENATOR DONNEWALD)

6. You may proceed.

7. MRS. HAGELE:

8. I am a mother, a homemaker, a grandmother. I have no
9. particular qualifications. I have no profession, but I come
10. before this Body because I dearly love my country and because
11. I feel that our democracy is at stake here. I want for my
12. children and for their children what my brothers fought to
13. provide for me and my forefathers fought to provide for me
14. and what my husband fought to provide for his family and his
15. heirs. The U.S. Constitution is an inspired document that has
16. not only served this nation well for two hundred years but it
17. is the hope of the world. People throughout the world yearn
18. and hunger for the machinery that we have to make democracy
19. work and I implore you to not let the Land of Lincoln be
20. the tool to start demolishing that machinery that is the hope
21. of the world. It's much bigger than any single issue. If the...
22. if the Constitutional amendment process can be twisted for
23. special interest groups on one issue, can you tell me where
24. it will stop? And how it will stop? You set a great precedent
25. here and who knows when another issue comes up, an even more
26. powerful, privileged class can step forth and say let's just
27. put a seven-eighths requirement on this. Do you realize what
28. you're doing here? The hope of the world is in this room and
29. I implore you for your children, for my children to protect
30. what generations fought and died to leave for us. Thank you.

31. PRESIDING OFFICER: (SENATOR DONNEWALD)

32. Thank you very much. Senator Netsch.

33. SENATOR NETSCH:

1. Yes. Now as I understand, Mr. President, what you would
2. like to do at this point is to make the witnesses who have
3. testified in favor of the rule change available for questions
4. from any members of the Senate...

5. PRESIDING OFFICER: (SENATOR DONNEWALD)

6. That was...

7. SENATOR NETSCH:

8. ...and then proceed to the other witnesses.

9. PRESIDING OFFICER: (SENATOR DONNEWALD)

10. That is correct. That was the intention of the Chair.
11. The witnesses are available for questioning by the members
12. of this Body. Senator Shapiro.

13. SENATOR SHAPIRO:

14. Mr. President...Mr. President and Ladies and Gentlemen
15. of the Senate. I would like to question the first witness,
16. whose name I did not catch.

17. SENATOR NETSCH:

18. Professor...

19. SENATOR SHAPIRO:

20. ...Constitutional expert.

21. PRESIDING OFFICER: (SENATOR DONNEWALD)

22. That was...

23. SENATOR NETSCH:

24. Professor Ronald Rotunda, Senator Shapiro.

25. SENATOR SHAPIRO:

26. Professor, does the Federal Government have any powers
27. delegated to it that are above and beyond the...what the
28. Constitution provides for?

29. PROFESSOR ROTUNDA:

30. Of course not.

31. SENATOR SHAPIRO:

32. Fine. What does Article V of the Federal Constitution
33. actually say about the vote requirements as far as the Legislatures

1. are concerned in ratifying a...an amendment to the Federal
2. Constitution?

3. PROFESSOR ROTUNDA:

4. Nothing explicitly. Dyer v. Blair held really nothing
5. implicitly except that a simple majority would be consistent
6. with Article V.

7. SENATOR SHAPIRO:

8. Now would you say that from that court decision that
9. those states who require less than a majority vote, are they
10. in...are those requirements embodied in their state Constitution?
11. Are those also unconstitutional according to your thinking?

12. PROFESSOR ROTUNDA:

13. No state requires less than a majority vote for ratifying
14. a Constitutional amendment. I don't understand your question.

15. SENATOR SHAPIRO:

16. Well, let's take the State of Kentucky...

17. PROFESSOR ROTUNDA:

18. Yeah.

19. SENATOR SHAPIRO:

20. ...which requires the...the numbers required to pass an
21. amendment are two-fifths of those elected for a quorum and a
22. majority of those voting on the question.

23. PROFESSOR ROTUNDA:

24. ...That's a simple...

25. SENATOR SHAPIRO:

26. Now is that...

27. PROFESSOR ROTUNDA:

28. ...a simple majority.

29. SENATOR SHAPIRO:

30. That is a simple majority but it is a less than a majority
31. that was elected.

32. PROFESSOR ROTUNDA:

33. Well, whenever we have a simple majority and only a quorum

1. shows up, it's possible that a simple majority will be less
2. than half the Body. Dyer v. Blair specifically held that
3. not only were the constitutional majority consistent with
4. Article V but also simple majority. Kentucky has a simple
5. majority rule.

6. SENATOR SHAPIRO:

7. Okay. If that's the...the question then the...the argument
8. that I think we have both presented is that any requirement
9. that...this Legislature chooses to make as far as the voting
10. requirement is concerned is valid.

11. PROFESSOR ROTUNDA:

12. It is a...it is a policy...excuse me, it is a policy
13. argument, that is correct.

14. SENATOR SHAPIRO:

15. In that court case and I'm not familiar with it, was there
16. any consideration given to Amendment No. 10 of the Federal
17. Constitution in regards to Article V?

18. PROFESSOR ROTUNDA:

19. No, the court never mentioned the 10th Amendment. They
20. are a series of Supreme Court cases which say that it is to the
21. 10th Amendment is a redundancy. That is by definition a govern-
22. ment of delegated power only has those powers which are delegated
23. and the 10th Amendment says that if it's not delegated to the
24. Federal Government it is reserved to the states or people.

25. SENATOR SHAPIRO:

26. Yeah. Okay. The...I think it was you that originally
27. raised the question about the minority thwarting the will of
28. the majority in having a extraordinary majority required for
29. passing amendments to the Federal Constitution.

30. PROFESSOR ROTUNDA:

31. It's...unusual in our Constitutional system both on the
32. state and Federal level to require super majorities. Yes.

33. SENATOR SHAPIRO:

1. Okay. Now the...the...evidently the benevolence of the
2. people of the state was prevailed when this Constitution was
3. adopted and they very readily gave the minority that choice.
4. In other words what I'm saying is that the will of the people
5. of the State of Illinois has prevailed in stating that a
6. minority can thwart and...and the adoption of a constitutional
7. amendment here in Illinois to a State Constitution or a
8. Federal Constitution?

9. PROFESSOR ROTUNDA:

10. In Hawk v. Smith the Supreme Court was...was...answered
11. the following question that was brought before it. A state
12. required...the State Constitution required that before the
13. state Legislature ratify the amendment there be a referendum
14. of the people. A plebiscite, approving it. The Supreme Court
15. held that under Article V...this I think is fairly clear from
16. the language to extent anything in the Constitution is clear,
17. it is the state Legislature that decides whether to ratify or
18. not and they struck as unconstitutional the state referendum
19. or plebiscite process. In Dyer v. Blair then Judge Stevens
20. held that while this Legislative Body can impose on itself
21. whatever rule it sees fit that it cannot be inhibited in imposing
22. those rules by a state constitutional provision. He's...his
23. language, I think and his reasoning strikes not only the
24. provision of the Illinois Constitution requiring the three-
25. fifths majority but the provision of the Illinois Constitution...
26. I believe it says that this...a Legislative Body can't ratify
27. an amendment until a majority of the members have been elected
28. after the amendment has been proposed. He says that was similarly
29. ...they cannot be inhibited by that. The state Legislature if
30. it desires can ask for a plebiscite and decide to follow it or
31. not but they cannot be inhibited by these extra Legislative rules.

32. SENATOR SHAPIRO:

33. I thought that my understanding of the reading of that

1. particular point was that unless the Federal resolution to...
2. to an amendment to the Federal Constitution that was put out
3. to the states...unless it's specified, a plebiscite and I
4. understand that they...they did specify one in the repeal...
5. the...the Prohibition Amendment.

6. PROFESSOR ROTUNDA:

7. Never. No never a plebiscite. They've sometimes used
8. the convention. I think it was only in the repeal of prohibition
9. they used the convention method rather than the Legislative
10. method of ratification. But...we've never had plebiscites
11. generally in this country and certainly not any Constitutional
12. Amendment.

13. SENATOR SHAPIRO:

14. So in other words what they really have done when it comes
15. down to the point, is left it up to the state Legislatures.

16. PROFESSOR ROTUNDA:

17. Right. The state Legislature should exercise its sound
18. discretion and...in exercising that discretion ought not to
19. feel bound by the invalid provision of the Illinois Constitution.
20. The Constitutional Convention certainly meant well in that
21. particular provision if Dyer v. Blair is the law. It says that
22. that provision at best is precatory and certainly not...cannot
23. validly bind the Legislature. I presented I think some reasons
24. why, as a general matter, in amending the Constitution a majority
25. of rules should...should affectuate even on the Federal level.
26. The U.S. Congress only uses a majority...only uses a two-thirds
27. requirement on the final act of sending the amendment out to
28. the states and uses the majority vote everywhere else. The
29. general rule is that...unless there is a...a special reason
30. to require a super majority we use simple majority. Now what
31. would be the special reason as to a constitutional amendment?
32. Is it to make it very difficult to amend the Constitution.
33. Our Constitution is already very difficult to amend? No one

1. seems to propose any particular reason why the majority ought
2. to be...thwarted, given particularly the safeguard that it
3. has to be a majority of the Legislatures of three-quarters...
4. of both Houses of the Legislatures of three-quarters of the
5. states.

6. SENATOR SHAPIRO:

7. Well, it appears to me though that the people of this
8. state have given us...have said the minority can thwart the
9. majority in this particular case and...

10. PROFESSOR ROTUNDA:

11. They certainly said that and Judge...now Justice Stevens
12. said that was unconstitutional for them to say what they
13. want. But you try to impose that on the Legislature.

14. SENATOR SHAPIRO:

15. Was his words...did his words actually use the word
16. unconstitutional?

17. PROFESSOR ROTUNDA:

18. Yes. As a matter of fact, I...if I may quote, page 1308
19. of volume 390 Fed Sup. "The Supreme Court has held that a
20. state may not inhibit its Legislatures Federal power to
21. ratify a proposed amendment to the U.S. Constitution. It
22. seems equally clear that a State Constitution may not require
23. that a new Legislature be elected before the proposal may be
24. considered. The Illinois Attorney General has on three
25. occasions expressed the opinion that it do regard for the
26. Federal character of the Legislatures ratifying function
27. must invalidate the Illinois Constitutional requirement
28. of a favorable vote by a three-fifths majority. The Attorney
29. General's analysis is consistent with ours."

30. SENATOR SHAPIRO:

31. But he also upheld the power of the Legislature to
32. determine their own voting requirements.

33. PROFESSOR ROTUNDA:

1. I said that in the very beginning. Yes.

2. SENATOR SHAPIRO:

3. Okay.

4. PROFESSOR ROTUNDA:

5. I think I...it is as clear as an opinion could...Judges
6. never write opinions, I guess, as clearly as we like, but
7. as clear as one can be written and this seems to say that
8. the Illinois provision is unconstitutional. The Legislature
9. if it wants can impose on itself a nine-tenths rule or a simple
10. majority rule. There's...there's nothing in Federal policy
11. or state Constitution or Federal Constitution which prohibits
12. the simple majority. Since simple majority is the normal rule,
13. the question before the House and Senate is, is there special
14. reasons to require super majority for all amendments or just
15. for the ERA? For this amendment and I'm sure the opponents
16. of the resolution will present their arguments. I've simply
17. presented my policy arguments on why this Legislature should
18. decide to only impose a simple majority or Constitutional
19. majority requirement on itself.

20. PRESIDING OFFICER: (SENATOR DONNEWALD)-

21. Senator Rhoads.

22. SENATOR RHOADS:

23. Thank you, Mr. President. Of the same witness and also
24. the Assistant Attorney General, if he's still here. Professor
25. Rotunda, the...quotation you just read from Justice Stevens,
26. was that in dicta or was that in the law of the case?

27. PROFESSOR ROTUNDA:

28. I thought it was...excuse me, I thought it was holding
29. and he said...

30. SENATOR RHOADS:

31. It was holding?

32. PROFESSOR ROTUNDA:

33. ...holding. He said...he said it several times and didn't

1. enter an order declaring the provision unconstitutional because
2. he also says that it may be precatory. That is if it's
3. mandatory it's unconstitutional. If it's precatory, like the
4. Preamble to our own Federal Constitution it's not unconstitutional.

5. SENATOR RHOADS:

6. I'm not sure you've answered my question. I was not part
7. of the decision. Correct?

8. PROFESSOR ROTUNDA:

9. I thought it was. Yes. It was a part of the holding of
10. the case. It wasn't part of the order, the written piece of
11. paper that he sent out because at the time he wrote that opinion
12. both Houses had by internal rule, I guess, ruling from the Chair
13. had...held that they would follow a three-fifths rule and part
14. of the holding was not only that the State Legislature may not
15. inhibit though the...the state Constitution not inhibit the
16. Legislative function...

17. SENATOR RHOADS:

18. Okay. I follow you...

19. PROFESSOR ROTUNDA:

20. ...but the Legislature itself can inhibit its own function.

21. SENATOR RHOADS:

22. All right. I follow what you're saying. What...what is
23. the...

24. PROFESSOR ROTUNDA:

25. Okay.

26. SENATOR RHOADS:

27. ...what is the other mode of ratification provided for in
28. Article V of the U.S. Constitution?

29. PROFESSOR ROTUNDA:

30. Convention.

31. SENATOR RHOADS:

32. Convention. Have you read the motion before this Body?

33. PROFESSOR ROTUNDA:

1. There are various motions. Which one...

2. SENATOR RHOADS:

3. The motion offered by Senator Netsch.

4. PROFESSOR ROTUNDA:

5. I guess not recently. No. Why is there some language

6. that's relevant?

7. SENATOR RHOADS:

8. Well, it...it only deals with the ratification process by

9. the Legislature. It does not deal with the convention route.

10. Now if I understand your testimony, if you're saying that we

11. sit as a Federal Body rather than a State Body, wouldn't it

12. be logical to include the call of the State Constitutional

13. Convention or for that matter, the initiative for a call for

14. a National Constitutional Convention?

15. PROFESSOR ROTUNDA:

16. No. The Supreme Court has already held that the decision

17. whether the ratification process be by convention or by state

18. Legislature is a decision of the Federal Government and the

19. only amendment in which it's required conventions was as your

20. colleague pointed out the prohibition...the amendment repealing

21. the Prohibition Amendment.

22. SENATOR RHOADS:

23. Well, it's...Professor...

24. PROFESSOR ROTUNDA:

25. No. I...I would agree with you though...

26. SENATOR RHOADS:

27. Yeah, it does seem that you want to have your cake and eat

28. it, too. Article V provides that it...it's either ratified by

29. three-fourths of the Legislatures or by conventions of three-

30. fourths thereof.

31. PROFESSOR ROTUNDA:

32. That's right.

33. SENATOR RHOADS:

1. The same provision of our state Constitution which mandates
2. the three-fifths rule for ratification also deals with the state
3. convention...

4. PROFESSOR ROTUNDA:

5. It...also ought to be simple majority or constitutional
6. majority.

7. SENATOR RHOADS:

8. That isn't what the motion is before the Body.

9. PROFESSOR ROTUNDA:

10. Well, perhaps it should be. Are you...are you asking an
11. amendment to include also the State Constitution?

12. SENATOR RHOADS:

13. I'm simply pointing out that is not the...the motion before
14. the Body.

15. PROFESSOR ROTUNDA:

16. That has nothing to do with the merits of...

17. SENATOR RHOADS:

18. Okay, but I think the members should...should be aware
19. that's not the motion before the Body.

20. PROFESSOR ROTUNDA:

21. No.

22. SENATOR RHOADS:

23. Let's...let's read what's before us. Now, next question.
24. Would the State Legislature exist were it not for a State
25. Constitution? Would we be sitting here at all if we didn't
26. have a State Constitution?

27. PROFESSOR ROTUNDA:

28. If you did, you'd be sitting without, I guess, any authority
29. from the people...

30. SENATOR RHOADS:

31. So, constitutionally the Legislature is not a creature of
32. the Federal Constitution, is it?

33. PROFESSOR ROTUNDA:

1. It's limited by the Federal Constitution. It's a creature
2. like the Federal Constitution. It's a creature of the state...
3. of the people of the United States.

4. SENATOR RHOADS:

5. That's right. Delegated by the...by the primacy clause.
6. So the...the issue before us is...well, I mean, ask you one
7. more question before we get to that. Do you agree with the
8. opinion of the Attorney General that when we sit in the
9. ratification process we sit as a Federal and not a state Body?

10. PROFESSOR ROTUNDA:

11. I think that's right. Yes.

12. SENATOR RHOADS:

13. Okay. Now what do you mean by that? What...what's the
14. definition of the word Federalism?

15. PROFESSOR ROTUNDA:

16. It means that it is any restriction...any restrictions
17. imposed on that Body are imposed by the Federal Government...

18. SENATOR RHOADS:

19. No...no...no. I asked you the definition of the word
20. Federalism. What does Federalism mean?

21. PROFESSOR ROTUNDA:

22. What does Federalism mean?

23. SENATOR RHOADS:

24. Yeah.

25. PROFESSOR ROTUNDA:

26. It means...

27. SENATOR RHOADS:

28. What does the word mean?

29. PROFESSOR ROTUNDA:

30. A group of state governments that delegate or the people
31. of the state governments get together and delegate certain
32. powers to the Federal Government that would...

33. SENATOR RHOADS:

1. What?

2. PROFESSOR ROTUNDA:

3. ...within the sphere...

4. SENATOR RHOADS:

5. Wait...wait. Say that again. I'd like to hear that...

6. that definition again. I think some political science professors

7. would love to hear that. Let's hear it again.

8. PROFESSOR ROTUNDA:

9. Oh you...

10. SENATOR RHOADS:

11. State Governments delegating power to the Federal Government.

12. PROFESSOR ROTUNDA:

13. ...the people of the United States have in the U.S.

14. Constitution delegated certain powers to the Federal Government.

15. They formed the State Constitution to delegate certain powers

16. to the State Governments within the Federal sphere...the Federal

17. Government is supreme within the State's sphere, the State

18. Government is supreme. I didn't think...

19. SENATOR RHOADS:

20. State Government deriving its authority from what?

21. PROFESSOR ROTUNDA:

22. From the people limited by the Federal Constitution.

23. SENATOR RHOADS:

24. Expressed by what document?

25. PROFESSOR ROTUNDA:

26. The State Constitution modified by...

27. SENATOR RHOADS:

28. ...by the State Constitution.

29. PROFESSOR ROTUNDA:

30. ...the Federal Constitution and the Federal Statutes.

31. SENATOR RHOADS:

32. Okay. So we've got two eschleons of Government. Two levels

33. exercising authority over the same geographic territory. That's

1. what Federalism is defined by the dictionary. All right, so
2. the only place...
3. PROFESSOR ROTUNDA:
4. There's a different place...
5. SENATOR RHOADS:
6. ...they interface is in Article V.
7. PROFESSOR ROTUNDA:
8. Well, they interface in the First Amendment and the rest
9. of the Constitution as well.
10. SENATOR RHOADS:
11. As a practical matter in terms...
12. PROFESSOR ROTUNDA:
13. In this particular case...
14. SENATOR RHOADS:
15. ...of the Constitutional revision. Okay.
16. PROFESSOR ROTUNDA:
17. ...interface in Article V. Yes.
18. SENATOR RHOADS:
19. Now, if we are a Federal Body and not a State Body, would
20. you say that the Illinois House of Representatives qualifies
21. under the one person, one vote guidelines laid down by the
22. Federal Government?
23. PROFESSOR ROTUNDA:
24. I don't understand the question.
25. SENATOR RHOADS:
26. Well, if the Federal Government...
27. PROFESSOR ROTUNDA:
28. ...Well if the persons are elected by one person, one vote.
29. SENATOR RHOADS:
30. No they're not. Not the cumulative vote system in...in a
31. multi-member district. That would never hold up.
32. PROFESSOR ROTUNDA:
33. Yeah, the Supreme Court has held that cumulative voting

1. is constitutional unless it is instituted for some kind of
2. racial purpose.

3. SENATOR RHODES:

4. Not...for Federal bodies, they haven't. You just said
5. we're a Federal Body.

6. PROFESSOR ROTUNDA:

7. I certainly did. I certainly did.

8. SENATOR RHODES:

9. For cumulative voting for a Federal Body. There's been
10. all kinds of reapportionment cases which have held...we must
11. have one person, one vote in Federal Bodies. Now if we're
12. a Federal Body...

13. PROFESSOR ROTUNDA:

14. We have never had a case in which there's been cumulative
15. voting to elect a state or excuse me a U.S. Congressman or
16. Senator. But the Supreme Court has held that state bodies
17. even if they're acting as a...a ratifying a convention...
18. a constitutional ratifying process can be elected with
19. cumulative voting or that there need not be one...one
20. representative, one district. There could be multi-member
21. districts. The Supreme Court said that several times.

22. SENATOR RHODES:

23. All right. Professor, then now...

24. PROFESSOR ROTUNDA:

25. There's one thing, by the way, I should add, that
26. historically there's no...there's not only nothing in the
27. Constitution which requires that a U.S. Representatives to
28. be elected by district but it's only been a...a Statute
29. historically. There have been situations where they have
30. been elected in...en masse. In fact, this...the U.S. Representatives
31. some years ago, I guess, were from some of the states were elected
32. en masse. Congress then enacted a law requiring districts because
33. they didn't want a majority of the people of the state to stifle

1. ...to have a bloc vote to make some states more powerful.
2. SENATOR RHOADS:
3. Are you familiar with the Equal Protection clause of the
4. 14th Amendment?
5. PROFESSOR ROTUNDA:
6. I've heard of it. Yes.
7. SENATOR RHOADS:
8. All right. I didn't mean to be sarcastic. I was...
9. PROFESSOR ROTUNDA:
10. Yeah.
11. SENATOR RHOADS:
12. If we are a Federal Body, forty-nine states afford their
13. citizens the protection of a bicameral ratification process...
14. PROFESSOR ROTUNDA:
15. Yeah.
16. SENATOR RHOADS:
17. ...according to your theory. One state, Nebraska, affords
18. their citizens only the unicameral ratification process. Is
19. that equal protection?
20. PROFESSOR ROTUNDA:
21. Equal protection doesn't apply to the states, it applies to
22. persons.
23. SENATOR RHOADS:
24. But you just said we're a Federal Body. Now are we not then
25. subject to Federal rules?
26. PROFESSOR ROTUNDA:
27. Equal Protection Clause provides that nor shall...nor shall
28. any state...
29. SENATOR RHOADS:
30. Nor shall any person be denied the equal protection thereof.
31. That's what it says.
32. PROFESSOR ROTUNDA:
33. It...it provides...

1. PRESIDING OFFICER: (SENATOR DONNEWALD)
2. Just a moment. For what purpose...
3. PROFESSOR ROTUNDA:
4. No...no state shall deprive any person of life, liberty,
5. or property without due process of law, nor deny any person
6. within its jurisdiction equal protection of the laws. Now
7. what in the world...a bicameral or unicameral Legislature has
8. to do with Equal Protection Clause is unclear to me.
9. SENATOR RHOADS:
10. Well, again, you...
11. PROFESSOR ROTUNDA:
12. There's no constitutional requirement for either.
13. SENATOR RHOADS:
14. The whole...
15. PROFESSOR ROTUNDA:
16. There could be tricameral if the states want it...
17. SENATOR RHOADS:
18. The whole purpose of this meeting is to decide whether
19. we can adopt Senator Netsch's motion in...in noncompliance, I
20. think that's a neutral word that she would agree to, noncompliance
21. with our State Constitution. In other words...
22. PROFESSOR ROTUNDA:
23. That's right.
24. SENATOR RHOADS:
25. ...do we have the authority to...to set aside our State
26. Constitution with respect to this particular rule...
27. PROFESSOR ROTUNDA:
28. That's right.
29. SENATOR RHOADS:
30. ...and what I'm...what you have testified is and the...the
31. Assistant Attorney General has testified that the premise for
32. your opinion is that we was...when we sit in this ratification
33. we become a Federal Body. That we are no longer a State Body

1. and therefore, can ignore the State Constitution.

2. PROFESSOR ROTUNDA:

3. Yeah.

4. SENATOR RHOADS:

5. Now what I'm saying is in your lexicon I assume a

6. Federal Body is one that is an appendage of the...of the

7. National Government in Washington. If we are a Federal

8. Body are we not bound by Federal rules? Do our electors not

9. become Federal electors?

10. PROFESSOR ROTUNDA:

11. The State Legislature and the State officers in all

12. states are bound by Federal rules no matter what capacity

13. they act in...

14. SENATOR RHOADS:

15. Well, we're not...

16. PROFESSOR ROTUNDA:

17. ...a Federal Statute...

18. SENATOR RHOADS:

19. ...I am...my campaign fund is not bound by...by laws which

20. govern the Federal Campaign Disclosure Act, but if we're a

21. Federal Body, then...then by heaven, we ought to.

22. PROFESSOR ROTUNDA:

23. Only because of Federal Statute doesn't extend that far,

24. but constitutionally...

25. SENATOR RHOADS:

26. Does it have any jurisdiction to extend that far, does it?

27. PROFESSOR ROTUNDA:

28. I'd certainly think it would.

29. SENATOR RHOADS:

30. How?

31. PROFESSOR ROTUNDA:

32. How?

33. SENATOR RHOADS:

1. Yes, how can Congress pass a law affecting our campaign
2. disclosure laws here in Illinois for members of the General
3. Assembly?
4. PROFESSOR ROTUNDA:
5. It could require that all contributions in the stream
6. of interstate commerce or affecting interstate commerce...
7. SENATOR RHOADS:
8. Ah, glad... glad you mentioned interstate commerce.
9. PROFESSOR ROTUNDA:
10. Oh, okay.
11. SENATOR RHOADS:
12. We have three-fifths rule for bonding...
13. PROFESSOR ROTUNDA:
14. I'm glad you agree.
15. SENATOR RHOADS:
16. ...authority in this state, do we not?
17. PROFESSOR ROTUNDA:
18. I'm sorry. What did you say?
19. SENATOR RHOADS:
20. Three-fifths rule for bonding authority.
21. PROFESSOR ROTUNDA:
22. Yeah.
23. SENATOR RHOADS:
24. Which bonds might be used for highways. Which highways
25. may aid in the traffic of interstate commerce. Is that excuse
26. of enough for a Federal Judge to come over and...
27. PROFESSOR ROTUNDA:
28. For a Federal Statute.
29. SENATOR RHOADS:
30. Well, there are Federal... you know... interstate commerce is
31. involved.
32. PROFESSOR ROTUNDA:
33. Simply because there's interstate commerce one normally still

1. means the Statute. It would certainly be authority for the
2. Federal Government to tell this state what its speed limit should
3. be...

4. SENATOR RHOADS:
5. Okay.

6. PROFESSOR ROTUNDA:
7. ...or withhold funds.

8. SENATOR RHOADS:
9. Professor, one final question. I don't mean to...

10. PROFESSOR ROTUNDA:
11. I mean a Federal judge won't do that but a Federal
12. Statute can.

13. SENATOR RHOADS:
14. Yeah. One final question. I don't mean to badger you, but
15. you...the...your premise again is that we're a Federal Body. Now
16. we appropriate Federal Funds, ninety-nine percent of the Federal
17. Funds coming into the State of Illinois are appropriated by this
18. General Assembly. The Governor vetoes an appropriation bill. We
19. need a three-fifths vote to override his veto but Federal Funds
20. are involved. Can a Federal Judge use that as an excuse to set
21. aside the three-fifths rule with respect...

22. PROFESSOR ROTUNDA:
23. Yes, if he's interpreting the Federal Statute, which...which
24. sets limits on the use of Federal Funds, he certainly can. There
25. can be all kinds...

26. SENATOR RHOADS:
27. He can.

28. PROFESSOR ROTUNDA:
29. ...of strings on Federal...there can be strings on Federal
30. Funds imposed by the Federal Legislature or by the U.S. Constitution...

31. SENATOR RHOADS:
32. Your answer is yes, a Federal Judge can set aside our three-
33. fifths rule to override his veto if Federal Funds are involved in

1. the Appropriation Bill...

2. PROFESSOR ROTUNDA:

3. And if it violates either the U.S. Constitution or Federal
4. law.

5. SENATOR RHOADS:

6. Thank you.

7. PROFESSOR ROTUNDA:

8. I...I just...I do want to clear up something. Whether this
9. Body is Federal, state or whatever is really a highly metaphysical
10. conceptual thing and I think it's beside the point. The point
11. is, is the State Constitutional provision valid. Is it
12. constitutional in light of the U.S. Constitution? Dyer v. Blair
13. said it was invalid under Article V. There can be no inhibitions
14. on a state Legislature's decisions. Similarly the U.S. Supreme
15. Court struck down the referendum or plebiscite requirement
16. of another state. Now that's what the court held. That's what
17. the U.S. Supreme Court held, the general rule. That being the
18. case, I don't know...you can call yourself bananas or you can
19. call yourself a state Body, a Federal Body or a metaphysical
20. Body, the U.S. Constitution...still applies...and it gives this
21. Body freedom to ignore the State Constitution and specifically
22. under Dyer v. Blair precludes this Body from being bound by
23. the State Constitution. I mean if you...if you want a three-
24. fifths requirement don't blame it on the State Constitution,
25. that's your own judgment. Don't tell the voters back home that
26. ...that I would love to vote for the majority but I can't. You
27. can do whatever you darn well please in this matter and be
28. constitutional.

29. PRESIDING OFFICER: (SENATOR DONNEWALD)

30. Senator DeAngelis.

31.

32.

(END OF REEL)

33.

1. SENATOR DeANGELIS:

2. Professor Rotunda.

3. PROFESSOR ROTUNDA:

4. Yes, Sir.

5. SENATOR DeANGELIS:

6. You said you were going to address your comments not on the
7. merits of ERA but on the merits of this particular rule and...

8. PROFESSOR ROTUNDA:

9. That's right and I think and I think a Senator...

10. SENATOR DeANGELIS:

11. I think you've stuck with that.

12. PROFESSOR ROTUNDA:

13. Yes, that's fine with me.

14. SENATOR DeANGELIS:

15. However, in reality, I think the two for this particular
16. Session are interwoven. My question is simply can...is there any way
17. that this rule can be amended without this process or beyond this
18. Body and if so, do you consider that a preferred way of changing that
19. rule?

20. PRESIDING OFFICER: (SENATOR DONNEWALD)

21. Just a moment. Professor Rotunda.

22. PROFESSOR ROTUNDA:

23. Yes, thank you. As I read the dictum on some Supreme Court
24. cases, I think the U.S. Congress might have or probably would have
25. ...I'm not certain about this, probably would have the power to
26. impose a majority requirement on the states under its power to
27. govern the ratification process. So, I suppose...Congress could
28. mandate a majority rule or three-fifths rule in all the states.
29. I think as a preferred matter, it's better for the State of Illinois
30. to govern itself and not force the U.S. Congress to intrude on
31. functions which...which normally, I think, should be left to this
32. Body. But that would be the only way I could see the rule being
33. changed is by a Federal Statute.

1. PRESIDING OFFICER: (SENATOR DONNEWALD)

2. Senator Berning.

3. SENATOR BERNING:

4. Mr. Rotunda, I don't profess to question you on the
5. constitutional provisions, but I'd like to refresh your mind that
6. we are considering rule changes and the request for a rule change, and
7. consequently, would like your comment on the rule change which
8. Congress took. It was my understanding that the original
9. constitutional amendment that was sent to the State had a seven
10. year limitation. That was the rule. Now, there has been a...
11. practically a four year extension, a change in the rule.
12. Would you care to comment on that, does that seem to be
13. appropriate or is there any relationship between Congress ability
14. to change the rules to suit itself and our ability to
15. change or protect the rules to suit ourselves?

16. PRESIDING OFFICER: (SENATOR DONNEWALD)

17. Professor Rotunda.

18. PROFESSOR ROTUNDA:

19. Thank you. I testified before the U.S. Senate Judiciary
20. Committee...on the constitutionality of extension and I told them
21. that as I read Coleman v. Miller and I'll go into that case if you
22. want me to, the court seemed to say it was a political question
23. to control the time of an amendment, notwithstanding if that...
24. if that case is still law and I think it is, if I'm reading it
25. correctly, Congress would have the constitutional power. I then told
26. the Judiciary Committee that while I thought it had the power, I
27. thought it was unwise and appeared unfair to enact an extension and
28. on the merits, I...I guess you might say I oppose the extension,
29. thought I recognize their constitutional power to do it, on the merits
30. here, I recognize your constitutional power to thwart the will of the
31. majority or...or to impose a three-fifths rule. Simply, on the merits
32. I don't think you ought to. I...I think I'm being fairly objective
33. in all...as to what the law is and what my own policy views are
and...and while one can disagree with my policy views, I...I do think

1. my reading of the law is, while not infallible, to be sure, is a
2. fair and objective reading of the law. And I think the U.S.
3. Congress in extending the amendment process, acted unwisely.
4. But, not unconstitutionally or at least the Supreme Court
5. would not rule it unconstitutional, it would rule it as a matter
6. beyond judicial cognizance as they do in some matters, for
7. example, the ratification of the Panama Treaty. Some
8. Senators went in to Federal Court and tried to prevent the President
9. from signing the Panama Canal Treaty and the court held...the lower
10. courts...it never got to the Supreme Court. The political
11. question...they wouldn't touch it. That doesn't say the President
12. is right or wrong. It simply means it's not unconstitutional.

13. PRESIDING OFFICER: (SENATOR DONNEWALD)

14. Are there further questions of this witness? Senator
15. Geo-Karis.

16. SENATOR GEO-KARIS:

17. Mr. President and Mr. Rotunda. Can you give us...since
18. the question has been opened by my colleague on this side on the
19. extension of time for amendments, do you have the...can you recall
20. any examples where time was extended on other amendments besides this
21. one that's been in controversy.

22. PROFESSOR ROTUNDA:

23. The only...example...

24. PRESIDING OFFICER: (SENATOR DONNEWALD)

25. Professor Rotunda.

26. PROFESSOR ROTUNDA:

27. Sorry. Thank you. The only analogous example and it's only
28. by analogy, is in the fourteenth amendment situation where
29. a majority of states enacted the...or ratified the fourteenth
30. amendment and then several withdrew, rescinded the ratification
31. so that there was no longer a majority that ratified the amendment.
32. The Congress determined to accept those votes as ratified anyway.
33. It was never tested in court in Coleman against Miller by way of
dictum. They point to that historical example and say it's...

1. it's really kind of up to Congress. As whether Congress
2. specifically has ever extended the time limits, it hasn't and with
3. respect to some amendments such as the Child Labor Amendment, there's
4. no time limit on it and it's still out there, though nobody knows
5. what the status is. But they've never done exactly what they've
6. done this time. Can't...I can't hear you. I'm sorry.

7. PRESIDING OFFICER: (SENATOR DONNEWALD)

8. Senator Geo-Karis.

9. SENATOR GEO-KARIS:

10. Thank you, Sir. Do you know of any time that this question of
11. extension of amendments has been rejected by law Mr. Rotunda?

12. PRESIDING OFFICER: (SENATOR DONNEWALD)

13. Just a moment. For what purpose do you arise, Senator Netsch?

14. SENATOR NETSCH:

15. Not so much for my own sake, but for some of the others.
16. I think we probably ought to confine ourselves, as Senator Berning
17. would say, to the subject of what is before us right now.

18. I agree that is a fascinating question and Senator Geo-Karis...
19. and I personally have no objection to the witness responding to
20. it, but it is not what we are about today.

21. PRESIDING OFFICER: (SENATOR DONNEWALD)

22. Well, the Chair certainly does agree with that. We've gone
23. somewhat afield and I...I would hopefully request that the membership
24. stick to the issue at hand. Proceed.

25. SENATOR GEO-KARIS:

26. Well, rather than take the time of this august Body and
27. since I'm reminded by the Senator from the other side about the
28. item...however I brought it up inasmuch as it was brought
29. forth by Senator Berning, but I won't go further in it. I will ask
30. you one thing. Under Article VI of the Federal Constitution, there
31. is a statement that says "this Constitution and the laws of the
32. United States which shall be made in pursuance thereof,
33. and all treaties made or which shall be made under the authority

1. of the United States shall be the supreme law of the land and the
2. judges in every state shall be bound thereby anything the
3. Constitution or laws of any state to the contrary notwithstanding."
4. Now, in Article XIV, Section 4 of the Illinois Constitution,
5. the first part says we need an affirmative vote of three-fifths of
6. the members elected to each House to pass a Federal amendment.
7. However, there is a statement at the end of the same section that
8. says, "the requirements of this section shall govern to the extent
9. that they are not, and I repeat, they are not inconsistent
10. with requirements established by the United States." Are you
11. of the opinion under the Hawk versus Smith doctrine, the Coleman
12. case, all United States Supreme Court cases, in one other case, the
13. lesser case, are you of the opinion, then, the...based on
14. what you know about Article XIV, Section 4 in its entirety
15. in the Illinois Constitution and based on Article VI in the
16. Federal Constitution, are you of the opinion that Article IV
17. covers itself and...by this last sentence, Article XIV of the
18. Illinois Constitution, Section 4, covers itself in its last
19. sentence in case it should be contrary to the Federal Constitution
20. when it says "the requirements of this Section shall govern
21. to the extent that they are not inconsistent with the requirements
22. established by the United States." Mr. Rotunda.

23. PRESIDING OFFICER: (SENATOR DONNEWALD)

24. Professor Rotunda.

25. PROFESSOR ROTUNDA:

26. I don't mean to play a game. What do you mean covers itself?

27. PRESIDING OFFICER: (SENATOR DONNEWALD)

28. Senator Geo-Karis.

29. SENATOR GEO-KARIS:

30. There is verbatim...from the verbatim minutes of the Sixth
31. Constitutional Convention which passed the 1970 Constitution which
32. we are abiding by today, stating that they had some misgivings about
33. that whole Section 4 on the three-fifths requirement and also
requiring new members to vote on the current Federal amendment.

1. These questions...because they had some question in their own
2. minds, they put that subsequent last sentence in there to protect
3. the rest of the Constitution so if any part of it was found
4. unconstitutional Federally, in the Federal courts, that the rest of
5. it would not be stricken. Am I correct on that?

6. PRESIDING OFFICER: (SENATOR DONNEWALD)

7. Professor Rotunda.

8. PROFESSOR ROTUNDA:

9. Yes, I...it...that is the constitutional provisions
10. are...I think I understand what you are saying now. The
11. constitutional provisions are severable if that portion of the
12. State Constitution really means to...everything except the last
13. sentence really means to inhibit the State Legislature. Dyer
14. v. Blair says that's unconstitutional under Article V,
15. and that the State Legislature cannot be inhibited. That whole
16. ball of wax, if you will, is unconstitutional, but then Judge...
17. now Justice Stevens, goes on to say that the language may be
18. what...nonselfenforcing, nonexecuting, he uses the word
19. precatory. And so that if it binds this Body, it's
20. unconstitutional. If it doesn't bind the Body, it is
21. ...it is constitutional, but it doesn't bind the Body in either
22. event.

23. PRESIDING OFFICER: (SENATOR DONNEWALD)

24. Senator Geo-Karis.

25. SENATOR GEO-KARIS:

26. And that's because we have the right to set our own rules, is
27. that right?

28. PRESIDING OFFICER: (SENATOR DONNEWALD)

29. Professor...Professor Rotunda.

30. PROFESSOR ROTUNDA:

31. Unless they're...unless they're inconsistent with Article
32. V or some other provision of the Constitution...the Federal
33. Constitution, right.

1. PRESIDING OFFICER: (SENATOR DONNEWALD)

2. Are there further questions of this witness? Are
3. there further questions of any other witnesses on the proponent
4. side? Senator Netsch, have you concluded your...

5. SENATOR NETSCH:

6. Yes, that concludes the presentation. I assume that the
7. additional argument will be withheld until a later time when
8. we are actually debating the proposal on its merits.
9. In other words, I won't give my testimony right now.

10. PRESIDING OFFICER: (SENATOR DONNEWALD)

11. On the Floor, Senator, when we're in full Session. The
12. Chair now recognizes Mrs. Phyllis Schlafly as an opponent to the
13. rule change. Mrs. Schlafly.

14. MRS. SCHLAFLY:

15. Mr. President and Senators. My name is Phyllis Schlafly.
16. I live in Alton, Illinois. I am national chairman of Stop
17. ERA and a very recent graduate of Washington University Law
18. School. I speak in favor of retention of the Illinois Senate's
19. three-fifths majority rule for ratification of Federal
20. Constitutional amendments. Those of us opposed to the Equal
21. Rights Amendment did not invent the three-fifths rule. It was
22. adopted in November, 1970, by passage of our new modern
23. Illinois Constitution. That was long before ERA became a
24. controversy in our State. The proceedings in the Illinois
25. Constitutional Convention do not reveal a single dissenting
26. word or vote against the inclusion of the three-fifths rule.
27. So, it is clear that the three-fifths rule represents the best
28. thinking of our State leaders on the proper procedure for
29. ratification of constitutional amendments. The referendum on the
30. Illinois Constitution in November, 1970, also makes it clear that
31. the three-fifths rule was approved by the voters and represents the
32. wishes of the citizens of Illinois. To change the rule now in the
33. midst of the debate on ERA would be perceived by the voters as
playing politics with our Constitution and as changing the rules

1. for the benefit of one special interest group. It would impair
2. the faith of our people in constitutional integrity and in the
3. fairness of governmental institutions and procedure. Laws are
4. passed by simple majorities but constitutions are deliberately
5. made more difficult of amendment. This is as it should be. We
6. would not want, for example, to allow a simple majority to be
7. able to change the freedoms of religion, speech and press
8. guaranteed in the first amendment to the United States
9. Constitution. In the Federalist Papers, the founding fathers
10. stressed the need to protect ourselves against "the superior
11. force of an interested and overbearing majority." The concept
12. of the super majority has made an essential part of the amending
13. process by Article V of the U.S. Constitution. Article
14. V specifies that the Constitution can be amended only by a
15. consensus of two-thirds of each House of Congress and three-fourths
16. of the State Legislatures. Now, the proponents tell you that
17. that's enough super majority to have built into the amending
18. process but they are trying to get their amendment into the
19. U.S. Constitution even without complying with those rules.
20. Last...last fall, they persuaded Congress to pass an unprecedented
21. ERA time extension and they declared it passed even though it
22. did not get in either House the two-thirds majority vote
23. that Article V of the U.S. Constitution requires. The ERA
24. proponents know that they can never get the support of three-
25. fourths of the states. So, they openly say they intend to use
26. the full power of the Federal Government to count four states,
27. Nebraska, Tennessee, Idaho, and Kentucky as voting in the
28. Yes column even though their legislatures have rescinded and given
29. official notice that they want to be counted in the No column.
30. The unprecedented and unfair and I believe illegal bypassing
31. of the clear super majority requirements in the U.S. Constitution
32. make it all the more important that we not allow the same people to
33. bypass the sixty percent requirement in the Illinois Constitution.
We hope there will be enough legislators who will care enough:

1. about the sanctity of our U.S. and Illinois Constitutions
2. so that they will not permit this type of rule chicanery
3. in our State. If all states allowed ratifications of constitutional
4. amendments by a simple majority, our U.S. Constitution could be
5. changed far too easily. If all states had a simple majority
6. requirement, then fifty-one percent of the legislators in three-
7. fourths of the states or only 38.25 percent of all legislators
8. would be able to change our U.S. Constitution. A mere 38.25
9. percent of all State legislators should not have the power to
10. change the supreme law of our land. In addition to that is
11. Senator Shapiro's fine point when you add in the fact that many
12. states can pass a constitutional amendment even without a simple
13. majority by having a requirement of only a simple majority of those
14. present and voting, then you get down to a ridiculously
15. small percentage that would be able to change the supreme law
16. of our land. A pro ERA...the pro ERA rules changers tried to say
17. that there's something invalid about the Illinois three-fifths
18. rule. The fact is that five other States have a two-thirds rule
19. for ratification of Federal Constitutional Amendments and two-
20. thirds is a larger requirement than our three-fifths requirement.
21. Those states are Arkansas, Colorado, Georgia, Idaho, and Kansas
22. and three of those five states ratified ERA with their two-
23. thirds rule, so it's obvious that our three-fifths rule
24. is not only valid but eminently reasonable. The pro ERA rules
25. changers have been making some very inaccurate claims about the
26. Federal court decision on our three-fifths rule. Let's set the
27. record straight on the court cases. The ERA proponents took their
28. arguments against the three-fifths rule into Federal court
29. in the cases of Dyer versus Blair and Netsch versus Harris and they
30. lost. They had summary judgment entered against them. The Federal
31. court ruled "finally having determined that plaintiffs Dyer and
32. Netsch are not entitled to injunctive relief, we order that summary
33. judgment be entered for defendants in both cases." The issue in
that case was the constitutional right of the Illinois Legislature

1. to require a three-fifths majority for ratification of
2. constitutional amendments. The Federal court held that the
3. Illinois General Assembly does have this right. The court upheld
4. the three-fifths rule as wholly constitutional. The court said
5. "we can find no principal reason for holding that a simple
6. majority rather than any of the other super majority
7. hybrids that have emerged since Article V was adopted is the
8. one mandated by the U.S. Constitution." The opinion in that
9. case was written by Judge Stevens of Chicago who has
10. since become Justice Stevens of the U.S. Supreme Court.
11. The court decision in this case completely disposes of all the
12. fallacious arguments made by the ERA proponents in which they
13. speculate about what attitudes the founding fathers might have
14. had or what might have happened if there had been a different
15. procedure for adoption of the U.S. Constitution. The Federal
16. court in Dyer versus Blair discussed that question
17. and concluded that the founding fathers intended to and did
18. leave the ratification procedure to the individual states.
19. The court listed some of the many different rules required by the
20. various state legislatures and said the various rules are
21. all perfectly valid. The court concluded "the fact that the
22. several states have actually adopted a wide variety of ratification
23. requirements demonstrates that no one voting percentage or
24. procedure is manifestly preferable to all others. Moreover, this
25. history manifests a common understanding that there is no
26. Federal objection to the state legislatures independent
27. determination of their own voting requirements." It is clear,
28. therefore, that the U.S. Constitution and the founding fathers
29. intended to leave the rules about the ratification process
30. to the individual states. The effort by the ERA proponents
31. to take this power away from the states and to make us submit
32. to some type of Federal rule is just one more attempt to shift
33. powers from the states to the Federal Government.

On this point, some of the circulars that have been distributed at

1. Capitol by the ERA proponents have contained a shocking
2. misquotation from the Dyer versus Blair case. It was used by one
3. of the witnesses before the House Rules Committee last week and it
4. was used today by one of the witnesses for the other side.
5. They claim that Dyer versus Blair said there is moreover some
6. evidence that when Article V of the U.S. Constitution was drafted
7. the framers assumed that state legislatures would ask...would act
8. by majority vote. Now, the truth is that that sentence was
9. completely taken out of context and the omitted part of the
10. paragraph gives a wholly contrary opinion. Here's the rest of the
11. paragraph that they didn't quote. Here it is, "that evidence,,
12. like the text of Article V itself, is equally consistent with
13. requirements for larger majorities and also with the view that the
14. framers did not intend to impose either of those alternatives upon
15. the state legislators but instead, intended to leave that choice
16. to the ratifying assemblies. This last view seems most plausible
17. to us. If the framers had intended to require the state legislators
18. to act by simple majority, we think they would have said so
19. explicitly." And as you know, of course, they didn't say so
20. explicitly in Article V or anywhere else. The Constitution does not
21. set rules for the state legislatures and there should not be any
22. Federal rule for state legislatures. Under our system of
23. government, the powers not granted to the Federal Government in the
24. Constitution are reserved to the states under the tenth amendment
25. and the setting of the rules for our General Assembly as one of the
26. powers that are clearly reserved to the states. Another very
27. inaccurate statement distributed by the ERA proponents is the
28. claim that the Federal court in Dyer versus Blair decided that
29. Article XIV Section 4 of the Illinois Constitution is unconstitutional.
30. That claim is false and I respectfully and completely disagree
31. with what Professor Rotunda said on this point. What he quoted
32. was dicta which means it was absolutely not binding and is not
33. part of the court decision and has no binding effect. The court
specifically refused to declare Article XIV Section 4 of our

1. Constitution invalid saying that the court has no power to do this.
2. And here are the words of the court when they got to the holding
3. of the case, "since the ultimate decision of the controversy
4. between the parties is controlled by the Legislature's
5. procedural rules, and in final analysis would be ineffective
6. by the entry of a declaratory judgment declaring Article XIV
7. Section 4 of the Illinois Constitution invalid, such a judgment
8. would be merely advisory in character and therefore, beyond our
9. power to enter." So, Article XIV Section 4 of our Illinois
10. Constitution was not declared unconstitutional by the courts and
11. of course, it cannot be declared unconstitutional by our Attorney
12. General. In other passages of the opinion, the court said that the
13. three-fifths rule to the Illinois Constitution is precatory.
14. That means that the people of Illinois, through their referendum
15. on the Illinois Constitution in 1970 are beseeching and imploring
16. our General Assembly to require the three-fifths rule.
17. It is our duty to respect the wishes of the people of Illinois
18. and to support and defend the Illinois Constitution. The ERA
19. proponents make the argument that if Illinois had always had the
20. three-fifths rule, we would not have ratified some other
21. constitutional amendments and in their literature they mention
22. the Eighteenth Amendment and the Child Labor Amendment.
23. Well, this argument just proves the wisdom of the three-fifths
24. rule. The Eighteenth Amendment, the Prohibition Amendment,
25. was a mistake and had to be repealed later by the Twenty-first
26. Amendment. The Child Labor Amendment never went into the U.S.
27. Constitution at all because like ERA, it only got about thirty
28. state ratifications and then it ran out of steam. The Child
29. Labor Amendment did not have enough support to become part of the
30. Constitution because like ERA, it was rigid and absolute and
31. would even have forbidden the child labor of newspaper boys.
32. If we had had the three-fifths rule earlier in our history, Illinois
33. would have been saved from the embarrassment of ratifying
amendments that were unwanted by so many Americans. Our Illinois

1. three-fifths requirement is completely consistent with the U.S.
2. Constitution which requires a two-thirds majority in four
3. different places for passage of constitutional amendments,
4. ratification of treaties, passing bills over the President's
5. veto, and conviction after impeachment. The U.S. Supreme Court
6. has repeatedly upheld super majority requirements. In the case of
7. Gordon versus Lance in 1971, the Supreme Court upheld the
8. requirement in the West Virginia Constitution for a three-fifths
9. majority to incur bonded indebtedness. The court stated there is
10. nothing in the language of the Constitution, our history or our
11. cases that requires a majority shall prevail on every issue.
12. In the case of Brenner versus School District of Kansas City in
13. 1971 again, the U.S. Supreme Court upheld a requirement
14. of the Missouri Constitution for a two-thirds majority for
15. school bond issues. Roberts Rules of Order, Senate and House
16. Rules and other similar rules governing parliamentary bodies,
17. set forth many different motions that require a super majority
18. such as overruling the Chair or discharging a bill from committee.
19. Surely, ratification of an amendment to the Constitution
20. should require as much careful deliberation as any of those
21. issues. It is clear that our Illinois three-fifths rule is completely
22. constitutional and in harmony with the United States Constitution
23. and many Federal court decisions. It is clear that the decision
24. as to whether or not to have a three-fifths rule is for the
25. individual states to make, not the Federal Government and not
26. the courts. It is clear that the Federal Court in Dyer
27. versus Blair specifically upheld our right to have the three-fifths
28. rule. But above and beyond the constitutionality of the three-fifths
29. rule, the Illinois Legislature should, as a matter of policy,
30. obey the wishes of Illinois citizens as expressed by their
31. adoption in 1970 of the State Constitution. The Supreme Court
32. case of Kimbal versus Swackhammer provides impressive support
33. for the policy of the legislature seeking direction from the
vote of the people in regard to ratification of constitutional

1. amendments. The issue in that case was the constitutionality
2. of the advisory referendum on the Equal Rights Amendment which was
3. ordered by the Nevada Legislature last November, 1978.
4. The ERA proponents litigated for months to try to get the courts
5. to throw the advisory referendum off the ballot. After they
6. lost in the Nevada Supreme Court, they took their argument to the
7. U.S. Supreme Court where Justice Rendquist denied their petition
8. and allowed the advisory referendum to proceed. Although the
9. referendum was not binding on the legislature, the Supreme
10. Court held it perfectly proper and constitutional for the
11. legislature to seek advice from the vote of the people in regard
12. to ratification of a Federal constitutional amendment. On the
13. matter of the three-fifths rule, the citizens of Illinois gave their
14. advice in the Illinois Constitution. As a matter of policy,
15. this Legislature should follow that advice. Any change in the
16. three-fifths rule for the purpose of passing one constitutional
17. amendment will be generally considered as grievously unfair
18. and as a tampering with the constitutional process. The
19. people of Illinois will thank you for standing up for principle
20. and constitutional integrity. Thank you, Mr. President.

21. PRESIDING OFFICER: (SENATOR DONNEWALD)

22. Thank you, very much. Mr. Robert N. Pomeroy.
23. Come to the podium.

24. MR. POMEROY:

25. Mr. President, members of the Illinois Senate. My name is
26. Robert Pomeroy. I am...don't pretend to be a constitutional
27. authority other than my interest and love for the Constitution
28. has led me to study it. I am a practicing attorney, as I said,
29. in Chicago, and I am here before you today to support
30. Mrs. Schlafly's position that she has so eloquently and fully
31. put forth to you. I would like to add to it briefly. The
32. general provisions regarding the amendment of the United States
33. Constitution are set forth in Article V of the Constitution.

1. Article V clearly contemplates that there will be state input
2. of a significant nature in the amending process. The very
3. Constitution itself was drafted by state delegations
4. and was ratified by state delegations and formed a government
5. made up of separate states. The cases which have been cited
6. here this afternoon, contending basically that this August
7. Body acts as a Federal agency or Body in voting to ratify or reject
8. the proposed amendment are based primarily on cases quoted
9. in Blair. A close review of these cases will show that
10. the conclusion that this Body is a Federal agency when it so votes
11. may be somewhat premature. Those cases involved the ratification
12. of a proposed amendment, the Nineteenth Amendment, the Women
13. Suffrage Amendment, although certain provisions of the state...
14. of their respective state Constitutions forbid such ratification.
15. It is my contention and I believe that it is a reasonable
16. contention that when the court said that these state Constitutions
17. could not forbid what the Article V of the Constitution
18. and what Congress permitted them to do or directed that they do,
19. it was simply holding that very thing, not that the state
20. legislatures were Federal agents...Federal agencies when they
21. voted, but simply that Article VI of the Constitution required
22. that a state constitutional provision not prohibit that which was
23. required by the Congress and by Article V. I submit to you that
24. the issue before you today is a federalism issue. The question is
25. whether or not states will have any substantial input into
26. the ratifying process. I urge you in the strongest possible terms,
27. to stick by your guns, to obey your Constitution. I echo
28. the sentiments of the last witness for the other side who came before
29. you and expressed her feelings that the Constitution was a sacred
30. document and I urge you to stick by your guns and to follow
31. the three-fifths rule and not change it. I...I believe and I submit
32. to you that my belief is correct, that the three-fifths rule is
33. validly required by the Illinois Constitution.

1. PRESIDING OFFICER: (SENATOR DONNEWALD)

2. Are there questions of either of the witness...Senator Rhoads,
3. for what purpose do you arise?

4. SENATOR RHOADS:

5. I do have a question, but first on a point of personal
6. privilege.

7. PRESIDING OFFICER: (SENATOR DONNEWALD)

8. State your point.

9. SENATOR RHOADS:

10. It was suggested to me by a colleague on the other side of the
11. aisle that perhaps I was less than courteous in my questioning of
12. Professor Rotunda and I want to apologize to him. It was not
13. my intention to badger him, but merely to ask probing questions.
14. I do have one of those questions I'd like to ask for either of the
15. opposition witnesses.

16. PRESIDING OFFICER: (SENATOR DONNEWALD)

17. Which do you prefer?

18. SENATOR RHOADS:

19. Mrs. Schlafly.

20. PRESIDING OFFICER: (SENATOR DONNEWALD)

21. Schlafly. Proceed.

22. SENATOR RHOADS:

23. Mrs. Schlafly, it's, in my opinion, the opinion of one
24. legislator, the question before the Body is not the merits
25. of ERA nor even the merits of the three-fifths rule. But whether
26. or not Dyer versus Blair affords us the opportunity or excuse,
27. depending on how you look at it, of ignoring a section of our
28. State Constitution. The premise of the Attorney General's
29. opinion and the premise of those who urged this rule change
30. is that we sit in a Federal capacity rather than a State capacity
31. and I...I think I tried to explore with Professor Rotunda what they
32. mean by that. What is your impression of what our status is when
33. we sit as a legislature to consider ratification?

PRESIDING OFFICER: (SENATOR DONNEWALD)

1. Mrs. Schlafly.

2. MRS. SCHLAFLY:

3. Mr. President, I don't agree with that type of thinking that
4. we sit as a...that you sit as a Federal Body in the ratification
5. process. Now, there is some language that can be brought forth
6. to support that view, but I don't know where that gets you unless
7. you're trying to make this Body submit to a Federal
8. rule and the issue in this case is there isn't any Federal rule
9. about what type of majority you must require. So, regardless of what
10. the answer is to that question, I do feel that this Legislature
11. should assert its right to set and make its rules without any
12. Federal interference. I think you have absolutely that
13. constitutional right and should and the issue in the Dyer versus
14. Blair case was your...the constitutionality of your setting the
15. three-fifths rule and that was upheld. You have every right
16. to do that. It is perfectly proper. It's in harmony with Article
17. V, the wishes of the founding fathers, the U.S. Constitution.
18. It's a procedure that's different in every state and you...it's
19. part of your state prerogative to set the rule you want.

20. PRESIDING OFFICER: (SENATOR DONNEWALD)

21. Senator Martin.

22. SENATOR MARTIN:

23. Yes, Mrs. Schlafly over here. The other side. I hide in
24. the corner.

25. PRESIDING OFFICER: (SENATOR DONNEWALD)

26. On the left side of the President, on the right side of those
27. looking in from the door. Senator Martin.

28. SENATOR MARTIN:

29. You spoke of the sanctity of the Illinois Constitution.
30. Would this mean that regardless of the amendment that was going
31. to be eventually discussed, you would either be here or in
32. support of retaining the three-fifths?

33. PRESIDING OFFICER: (SENATOR DONNEWALD)

1. Mrs. Schlafly.

2. MRS. SCHLAFLY:

3. Mr. President, yes, I would be here in support of
4. the three-fifths regardless of what amendment was being discussed,
5. even if it were, for example, in regard to an amendment that
6. I might favor.

7. PRESIDING OFFICER: (SENATOR DONNEWALD)

8. Senator Martin.

9. SENATOR MARTIN:

10. Additionally, with the sanctity and the importance of the
11. Illinois Constitution, and your feeling, as I believe you said
12. that it reflected the wishes of the people of Illinois,
13. did you work for the passage of this Constitution?

14. PRESIDING OFFICER: (SENATOR DONNEWALD)

15. Mrs. Schlafly.

16. MRS. SCHLAFLY:

17. Mr. President, I supported the passage of the Illinois
18. Constitution in 1970.

19. PRESIDING OFFICER: (SENATOR DONNEWALD)

20. Senator Mitchler.

21. SENATOR MITCHLER:

22. Mr. President, I have a question of the present witness,
23. Mrs. Schlafly.

24. PRESIDING OFFICER: (SENATOR DONNEWALD)

25. Proceed.

26. SENATOR MITCHLER:

27. Mrs. Schlafly, can you tell me, is there any court
28. decision that specifically declares Section 4 Article XIV
29. of the Illinois State Constitution of 1970 to be unconstitutional?

30. PRESIDING OFFICER: (SENATOR DONNEWALD)

31. Mrs. Schlafly.

32. MRS. SCHLAFLY:

33. Mr. President, no. There is...there is no such holding. That

1. was not the holding in Dyer versus Blair. I quoted to you
2. the passage in the holding that said that that was beyond their
3. power to declare in that case.

4. PRESIDING OFFICER: (SENATOR DONNEWADD)

5. Senator Mitchler.

6. SENATOR MITCHLER:

7. The reason I give that question is because I have heard
8. alluded to many of the opinions and positions of people of the
9. courts and attorneys with regard to the question, but now you've
10. clarified to me in your opinion, at least, that there is not
11. any court decision that specifically declares this Section 4
12. of Article XIV of the Illinois State Constitution of 1970
13. as being unconstitutional as relation to the Federal or our
14. own Constitution. I noted in your opening remarks, Mrs.
15. Schlafly, that you referred to the proceedings of the Illinois
16. Constitutional Convention that out of which came the new
17. modern Illinois Constitution that was ratified by the people in
18. December 1970. You alluded to the fact that the proceedings of the
19. Illinois Constitutional Convention did not reveal a single dissenting
20. word or vote against inclusion of the three-fifths rule.
21. And from that you interpreted that this was a clear representation
22. of the thinking of the delegates to that Constitutional Convention.
23. Did I understand you correctly on that statement?

24. PRESIDING OFFICER: (SENATOR DONNEWALD)

25. Mrs. Schlafly.

26. MRS. SCHLAFLY:

27. Mr. President, yes, when they put it in the document...of course,
28. even if they had just put it in by majority vote and had a debate
29. on it, it still would represent the thinking but the...I have
30. read the proceedings and the proceedings reveal that nobody spoke
31. against it, or voted against it.

32. PRESIDING OFFICER: (SENATOR DONNEWALD)

33. Senator Mitchler.

1. SENATOR MITCHLER:

2. I think that is an important point that at least in my opinion
3. it's brought out because the deliberation on the new 1970
4. Constitution of the State of Illinois was before the question of the
5. proposed Equal Rights Amendment to the United States Constitution
6. was before this Body which did not come until March 22nd, 1972
7. and of course, in the votes that have been cast in both the House
8. and Senate since that time, I don't think that the three-fifths
9. rule is provided for in our Constitution at present has been
10. challenged to the degree that it has been now with the almost
11. exhausting of the time limit for ratification of the proposed
12. ERA by this Body. Thank you.

13. PRESIDING OFFICER: (SENATOR DONNEWALD)

14. Senator Geo-Karis.

15. SENATOR GEO-KARIS:

16. Mrs. Schlafly, do I understand you correctly, then,
17. that you have no quarrel with the part of the Illinois Constitution
18. which allows the membership of the Senate and the membership
19. of the House to set its own majorities?

20. PRESIDING OFFICER: (SENATOR DONNEWALD)

21. Mrs. Schlafly.

22. MRS. SCHLAFLY:

23. The...Mr. President, the House and the Senate certainly have
24. the right to set their own rules, that is correct.

25. PRESIDING OFFICER: (SENATOR DONNEWALD)

26. Senator Geo-Karis.

27. SENATOR GEO-KARIS:

28. Are you aware of the fact and since 1972...in 1972
29. that the Senate of this august State set as its rules for
30. passing constitutional amendments of the United States Constitution
31. a simple majority vote?

32. PRESIDING OFFICER: (SENATOR DONNEWALD)

33. Mrs. Schlafly.

1. MRS. SCHLAFLY:

2. Mr. President, I believe that that was only a ruling of the

3. Chair which a lot of people did not think was a correct ruling.

4. PRESIDING OFFICER: (SENATOR DONNEWALD)

5. Senator Geo-Karis.

6. SENATOR GEO-KARIS:

7. Are you aware that that ruling of the Chair was never

8. appealed by any member of this Senate, Mrs. Schlafly, at that

9. time?

10. PRESIDING OFFICER: (SENATOR DONNEWALD)

11. Mrs. Schlafly.

12. MRS. SCHLAFLY:

13. Well, I accept your statement. I...I...

14. PRESIDING OFFICER: ((SENATOR DONNEWALD)

15. Senator Geo-Karis.

16. SENATOR GEO-KARIS:

17. Thank you, Mr. President. Well, it was not. Now, the

18. rules of the Senate were not changed until 1975 that the rules

19. in existence in this Body were a simple majority vote for the

20. Federal amendments. Now, Mrs. Schlafly, you quote very liberally

21. from Dyer versus Blair. I'm not so sure I agree with that

22. particular decision either, in many points. However, the decision

23. of Dyer versus Blair on page 3 at 1307 simply stated that

24. the...the...the court could find no principal reason for holding

25. that either procedure of simple majority or majority of those

26. entitled to vote, which is a constitutional majority, rather than

27. any of the super majority hybrids that have emerged since

28. Article V was adopted, is the one mandated by the Constitution.

29. In other words, actually what that decision said, they really left

30. it up to this State's ruling bodies, the Senate and the House, to

31. decide by their rules, what rule to adopt as far as which majority

32. to take, three-fifths or simple. Isn't that correct?

33. Isn't that the decision, Mrs. Schlafly?

1. PRESIDING OFFICER: (SENATOR DONNEWALD)

2. Mrs. Schlafly.

3. MRS. SCHLAFLY:

4. Mr. President. Yes. The bottom line of Dyer versus Blair
5. is the state legislature can set its rules. You have every right
6. to...to have the three-fifths rule. It's in complete harmony
7. with the U.S. Constitution and everything else. You have the
8. right. That is the bottom line holding of Dyer versus Blair.

9. PRESIDING OFFICER: (SENATOR DONNEWALD)

10. Senator Geo-Karis.

11. SENATOR GEO-KARIS:

12. And the Congress would be true, Mrs. Schlafly, that if they
13. had said if they want...if...if it were at that time, a simple
14. majority under the rules, then the...the Congress would have
15. been correct too, would it not, Mrs. Schlafly?

16. PRESIDING OFFICER: (SENATOR DONNEWALD)

17. Mrs. Schlafly.

18. MRS. SCHLAFLY:

19. Mr. President, the court...the court did not hold that
20. and that view was consistent with Dyer versus Blair, but I think it
21. is also to...consistent that if it had been litigated and decided
22. under the Illinois Constitution, we might have had a different
23. result.

24. PRESIDING OFFICER: (SENATOR DONNEWALD)

25. Senator Geo-Karis.

26. SENATOR GEO-KARIS:

27. Mrs. Schlafly, you didn't quite answer my question. The
28. truth of the matter is if...if it had been a simple majority that
29. was appealed in this court, the court's reasoning would have been
30. the same because they...the bottom line, as you said, was that
31. the State of Illinois, through each of its bodies, has a right
32. to set up its rules of procedure. Correct?

33. PRESIDING OFFICER: (SENATOR DONNEWALD)

Mrs. Schlafly.

1. MRS. SCHLAFLY:

2. Mr. President, that is what the court held. The court
3. holding did not invalidate the...the Illinois Constitution.
4. Okay. Yes.

5. PRESIDING OFFICER: (SENATOR DONNEWALD)

6. Senator Geo-Karis.

7. SENATOR GEO-KARIS:

8. I didn't say that. Phyllis, you and I have known each other
9. for a long time. Now, the other point that I'm very interested
10. in is that inasmuch...now we're talking about the Equal Rights
11. Amendment. I'm looking at this situation strictly as a lawyer.
12. I happen to believe that we need a balanced budget in the
13. Federal Congress. The residents of my county and my district
14. are crying for something like that and I believe that Congress
15. should not spend more than it takes in. There is movement afoot
16. by Senator Lugar to pass a constitutional amendment limiting
17. the expenditures of Congress to its income. Do you agree with that
18. kind of a movement?

19. PRESIDING OFFICER: (SENATOR DONNEWALD)

20. Well, may the Chair interrupt? We...we are digressing somewhat,
21. Senator.

22. SENATOR GEO-KARIS:

23. May I qualify that? I will answer it if she will answer me.
24. I...I promise you.

25. PRESIDING OFFICER: (SENATOR DONNEWALD)

26. Well, if...

27. SENATOR GEO-KARIS:

28. I'd like to be...I'd like to finish, if I may.

29. PRESIDING OFFICER: (SENATOR DONNEWALD)

30. Well, if...we'll...

31. SENATOR GEO-KARIS:

32. I realize...

33. PRESIDING OFFICER: (SENATOR DONNEWALD)

...let you finish, but we...we...let's not digress.

1. SENATOR GEO-KARIS:
2. I realize I'm a junior...
3. PRESIDING OFFICER: (SENATOR DONNEWALD)
4. Proceed.
5. SENATOR GEO-KARIS:
6. ...member and probably not as well informed as some...my very
7. well respected colleagues on this side and that but I think
8. the people here are entitled to know something. Now, I happen to
9. believe in that balanced budget.
10. PRESIDING OFFICER: (SENATOR DONNEWALD)
11. Just...just a moment.
12. SENATOR GEO-KARIS:
13. Therefore, I...
14. PRESIDING OFFICER: (SENATOR DONNEWALD)
15. Just a moment, Senator. Senator Graham, for what purpose do
16. you arise?
17. SENATOR GRAHAM:
18. Mr. President, I, too, favor a balanced budget, but we didn't
19. have this meeting today for a...for a balanced budget and I
20. respectfully submit that the Senator from Waukegan is out of order.
21. PRESIDING OFFICER: (SENATOR DONNEWALD)
22. That...that is...that is proper. The meeting was called
23. for debate on the change of the rules. Senator Geo-Karis, you
24. may proceed.
25. SENATOR GEO-KARIS:
26. I am speaking simply of the change of the rules.
27. If we prevail in a three-fifths majority of each House to
28. pass a Federal amendment such as balancing the budget
29. in the Federal Congress, then the taxpayers of this State and
30. this country will not be heard as quickly or as well as they
31. would be under simple majority because then very possibly a
32. balanced budget amendment would not pass cause of the extremely
33. rigorous three-fifths amendment. Isn't that right...a majority.
Wouldn't that be right?

1. PRESIDING OFFICER: (SENATOR DONNEWALD)

2. Mrs. Schlafly. Just a moment. Senator Graham.

3. SENATOR GRAHAM:

4. Mr. President, that question...to the witness is not
5. dealing with the reason for the meeting of this Senate today and
6. I respectfully again disagree with the Senator from Waukegan
7. to the extent that she is out of order and talking about a subject
8. we can debate later.

9. PRESIDING OFFICER: (SENATOR DONNEWALD)

10. Now, just a moment. Just a moment. We'll have order.
11. Senator Geo-Karis, would you please confine your remarks to the
12. issue at hand.

13. SENATOR GEO-KARIS:

14. Mr. President, I submit that I am confining my remarks to the
15. issue at hand, whether or not this Body changes its rules
16. of procedure to adopt Federal constitutional amendments by simple
17. majority or by a three-fifths majority. Now, in the same
18. Constitution which I swore to uphold, the Illinois Constitution
19. and the Federal Constitution, as you may have heard me earlier,
20. I pointed out that there is a sentence to Article XIV Section 4,
21. the last line of it which said the requirements of the Section shall
22. govern to the extent that they are not inconsistent with
23. requirements established by the United States. That is also
24. part of the Illinois Constitution, is it not, Mrs. Schlafly?

25. PRESIDING OFFICER: (SENATOR DONNEWALD)

26. Mrs. Schlafly.

27. MRS. SCHLAFLY:

28. Mr. President, it certainly is and there is absolutely nothing
29. inconsistent about the three-fifths rule with the United States
30. Constitution. The United States Constitution is absolutely
31. silent on that and the Federal court has upheld the constitutionality
32. of the three-fifths rule so that sentence is absolutely irrelevant
33. to this issue.

1. PRESIDING OFFICER:(SENATOR DONNEWALD)
2. Senator Geo-Karis.
3. SENATOR GEO-KARIS:
4. Mr. President, I said I wouldn't speak much in this Body
5. for a whole month. I guess my month is up and here I am.
6. Mr. President and Mrs. Schlafly, it is not irrelevant because it
7. is part of the same Illinois Constitution. That's point number one.
8. Number two, are you saying then, the Supreme Court decisions
9. of the United States Supreme Court are to be ignored?
10. PRESIDING OFFICER: (SENATOR DONNEWALD)
11. Mrs. Schlafly.
12. MRS. SCHLAFLY:
13. Mr. President, of course, I am not saying that but the U.S.
14. Supreme Court has never ruled on this issue and the lower Federal
15. court that did rule in it said that our three-fifths rule was
16. completely constitutional and consistent with the U.S.
17. Constitution.
18. PRESIDING OFFICER: (SENATOR DONNEWALD)
19. Senator Geo-Karis.
20. SENATOR GEO-KARIS:
21. And based on the right in the Constitution of Illinois for each
22. House to set its own rules. Now, Mrs. Schlafly, you brought up
23. the referendum that was found to be legal by the United States
24. Supreme Court from the State of Nevada. I...as you will recall, in
25. that referendum, it was an advisory referendum and that's why
26. Supreme Court Judge Rendquist of the U.S. Supreme Court said
27. that the people of Nevada could have an advisory referendum,
28. is that correct?
29. PRESIDING OFFICER: (SENATOR DONNEWALD)
30. Mrs. Schlafly.
31. MRS. SCHLAFLY:
32. Mr. President, that is correct, as I stated in my statement.
33. PRESIDING OFFICER: (SENATOR DONNEWALD)

1. Senator Geo-Karis.

2. SENATOR GEO-KARIS:

3. However, in the case of Hawk versus Smith the U.S. Supreme
4. Court case where there was an attempt to have a referendum through
5. the Constitution of the state involved, on issues relative to
6. Federal amendments, the Supreme Court of the United States said
7. that amendatory referendum cannot be binding by a state on
8. a Federal amendment, isn't that correct, Mrs. Schlafly?

9. PRESIDING OFFICER: (SENATOR DONNEWALD)

10. Mrs. Schlafly.

11. MRS. SCHLAFLY:

12. Mr. President, that is correct and I think that is completely
13. pertinent to this point because even though, even if the
14. Illinois Constitution is not binding, which I believe is still
15. debatable, it nevertheless is proper as advisory and the people of this
16. State have given their advice and we hope the Legislature
17. will take it.

18. PRESIDING OFFICER: (SENATOR DONNEWALD)

19. Senator Geo-Karis.

20. SENATOR GEO-KARIS:

21. And the reason I bring up the point in Nevada, the reason
22. the U.S. Supreme Court decided it was an advisory referendum
23. was alright, it never set aside the Supreme Court decision of
24. Hawk versus Smith which said you cannot have a binding referendum
25. on a Federal amendment's acceptance. Now, one more point,
26. as far as bonds go, you cited two cases here that the Supreme Court's
27. have held that two-thirds majority in order for the sale...of
28. bonds is correct. I have not quarrel with that because that is
29. relative to the internal structure of a state. Mrs. Schlafly, when
30. the 1970 Constitution was proposed, didn't you take an active part
31. against its adoption?

32. PRESIDING OFFICER: (SENATOR DONNEWALD)

33. Mrs. Schlafly.

1. MRS. SCHLAFLY:
2. Mr. President, no, I supported the Constitution.
3. PRESIDING OFFICER: (SENATOR DONNEWALD)
4. Mrs...Senator Geo-Karis.
5. SENATOR GEO-KARIS:
6. You are aware of the fact that the rule...the Federal
7. amendment, are you not, Mrs. Schlafly, to give the eighteen year
8. old citizens the right to vote and whether you agree with that
9. amendment or not?
10. PRESIDING OFFICER: (SENATOR DONNEWALD)
11. Well now, just...just a moment. Now, just...
12. SENATOR GEO-KARIS:
13. ...was passed by majority...simple...rules of simple majority
14. in this House, Sir.
15. PRESIDING OFFICER: (SENATOR DONNEWALD)
16. Just a moment. I think we're going afield. As I stated earlier,
17. the Chair is going to insist that the members stick to the issue
18. at hand. And that is out of order.
19. SENATOR GEO-KARIS:
20. ...may I relate to the rules, Sir?
21. PRESIDING OFFICER: (SENATOR DONNEWALD)
22. Please do.
23. SENATOR GEO-KARIS:
24. The rules established by this House in the '71-'72 Session
25. where a simple majority to approve the Federal amendment giving
26. the eighteen year old citizens the right to vote, are you aware
27. of that?
28. PRESIDING OFFICER: (SENATOR DONNEWALD)
29. Are you addressing the Chair? Mrs. Schlafly.
30. MRS. SCHLAFLY:
31. Mr. President, it's my understanding that that vote was
32. taken before the Illinois Constitution actually went into effect and
33. in any event...so the Illinois Constitution would not have been
- held binding under any theory at that time and in any event, that

1. amendment went through with such a big majority, that it made
2. no difference.

3. SENATOR GEO-KARIS:

4. Last question Mr...Mr. President.

5. PRESIDING OFFICER: (SENATOR DONNEWALD)

6. Well, you may proceed. Senator...

7. SENATOR GEO-KARIS:

8. Very true, but the rules in effect were still in effect
9. of simple majority in this House all the way till 1975
10. in the acceptance in approval of Federal amendments, that
11. you will agree.

12. PRESIDING OFFICER: (SENATOR DONNEWALD)

13. Mrs. Schlafly.

14. MRS. SCHLAFLY:

15. Mr. President, I don't think they were in the rules, Senator.
16. I think it was the ruling of the Chair on the day of that
17. particular vote.

18. PRESIDING OFFICER: (SENATOR DONNEWALD)

19. Are there further questions? That was your last question,
20. Senator. One more and that's it.

21. SENATOR GEO-KARIS:

22. Oh, I just want to rebut, Mrs. Schlafly, because I have
23. a copy of the rules of the Senate for 1971-'72, '73 and '74
24. in which there are...it is stated that a simple majority is
25. only necessary to approve of a Federal amendment to the Constitution
26. of the United States.

27. PRESIDING OFFICER: (SENATOR DONNEWALD)

28. Are there further questions...are there further questions?
29. You may respond. Mrs. Schlafly.

30. MRS. SCHLAFLY.

31. Mr. President, I'm looking at the rules of the Legislature and I
32. believe that rule refers to proposing amendments rather than
33. ratification.

1. PRESIDING OFFICER: (SENATOR DONNEWALD)
2. There will be no demonstrations from the gallery.
3. Senator Geo-Karis. Senator Geo-Karis, do you wish...
4. SENATOR GEO-KARIS:
5. Yes, where are you looking at, Mrs. Schlafly? I have from the...
6. PRESIDING OFFICER: (SENATOR DONNEWALD)
7. Just a moment, she is going to...
8. SENATOR GEO-KARIS:
9. What year is that? What year? '75?
10. PRESIDING OFFICER: (SENATOR DONNEWALD)
11. Mrs. Schlafly.
12. SENATOR GEO-KARIS:
13. Are you looking at the House rules or the Senate rules?
14. PRESIDING OFFICER: (SENATOR DONNEWALD)
15. This is the 78th General Assembly in which she quotes.
16. SENATOR GEO-KARIS:
17. The 78th General Assembly she's quoting. Well, that's not the
18. rule I'm talking about.
19. PRESIDING OFFICER: (SENATOR DONNEWALD)
20. Well, I think...are there further questions? Senator Rhoads.
21.
22.
23.
24. End of reel.
25.
26.
27.
28.
29.
30.
31.
32.
33.

1. SENATOR RHOADS:

2. Just one brief comment, Mr. Chairman, to set the committee
3. record straight with respect to the eighteen year old amend-
4. ment. That took place in June, 1971, the Constitution of 1870
5. was then in effect. Lieutenant Governor Simon ruled a simple
6. majority in...and he was the presiding officer. He ruled a
7. simple majority in compliance with that Constitution. Ohio was
8. the thirty-eighth state that...ratified on June the 30th, 1971
9. about two hours before our new Constitution went into effect.

10. PRESIDING OFFICER: (SENATOR DONNEWALD)

11. Senator Sangmeister.

12. SENATOR SANGMEISTER:

13. Mrs. Schefley or is it Schlafly? I certainly want to use...

14. PRESIDING OFFICER: (SENATOR DONNEWALD)

15. Schlafly..it's Schlafly?

16. SENATOR SANGMEISTER:

17. You'd think she was a constituent from your district or
18. something, that you understand it that well.

19. PRESIDING OFFICER: (SENATOR DONNEWALD)

20. (Foreign phrase)

21. SENATOR SANGMEISTER:

22. I have one question that I would like to ask. I have been
23. told and I would like to verify it because I do think you have
24. the facts that there is only one other State Senate in the
25. United States and that's the State of Idaho, I'm talking about
26. the State Senate only, that requires more than a simple majority
27. to ratify a Federal Constitution Amendment. Is that correct
28. or is that inaccurate?

29. PRESIDING OFFICER: (SENATOR DONNEWALD)

30. Mrs. Schlafly.

31. MRS. SCHLAFLY:

32. Mr. President, I believe that is incorrect. I have a
33. survey made by the Congressional Research Service of the Library

2/14
Rule 6
Siv. 10 mark

1. of Congress that shows that the...the five states that I
2. mentioned have a two-thirds requirement in each House. And
3. they are, the ones I named in my testimony, Georgia, Idaho,
4. whatever they are, there are five...there are five of them. In
5. addition to that there's one other state that has a three-fifths
6. requirement in one House. So there are at least six that have
7. super majority requirements.

8. PRESIDING OFFICER: (SENATOR DONNEWALD)

9. Senator Sangmeister.

10. SENATOR SANGMEISTER:

11. Well, that was not my understanding of it, however that
12. will send me back to also verify the facts. I was told that
13. just Idaho was the only other State Senate that required more
14. than a simple majority. I know the House requirements are...
15. are different, but I thought we were the only one outside of
16. Idaho, but...thank you.

17. PRESIDING OFFICER: (SENATOR DONNEWALD)

18. Are there further questions? Senator Johns moves that
19. the Committee of the Whole arise. Those in favor indicate
20. by saying Aye. Those opposed. The Senate will stand at ease
21. while we clear the Floor of all unauthorized personnel. Will
22. Sergeant-at-Arms clear all unauthorized personnel. The Senate
23. will come to order. On the Order of Motions.

24. SECRETARY:

25. Motion in Writing - I move to amend Rule 6 as follows:

26. (D) Federal Constitution Amendment and Constitutional
27. Conventions. All resolutions proposing amendments to the
28. United States Constitution or a Constitutional Convention to
29. propose amendments to the U. S. Constitution may be passed
30. only on roll call by a majority of Senators elected. The
31. affirmative vote of three-fifths of the members elected to
32. the Senate shall be required to request Congress to call a
33. Federal Constitutional Convention or to call a State Convention

1. to ratify proposed amendment to the Constitution, Constitution
2. of the United States. The affirmative vote of a majority of the
3. members elected to the Senate shall be required to ratify proposed
4. amendment to the Constitution of the United States. Signed,
5. Senator Dawn Clark Netsch.

6. PRESIDING OFFICER: (SENATOR DONNEWALD)

7. Senator Netsch.

8. SENATOR NETSCH:

9. Senator Rock is a cosponsor of the motion and that should
10. have been shown. I offered it initially in the Committee of the
11. Whole because he was not present to sign it.

12. PRESIDING OFFICER: (SENATOR DONNEWALD)

13. The record will so show. Senator Netsch.

14. SENATOR NETSCH:

15. The motion, I think, is well understood. It changes the...
16. and I will get back to that word change...the required vote to
17. ratify a Federal Constitution from what is in the current temporary
18. rules of the Senate, which is a three-fifths affirmative vote of
19. the members elected to a majority vote of the members elected,
20. not of those present and voting, but of the members elected. I
21. would like to make several points that have come up, I think,
22. during the course of the committee hearings this morning, but
23. a number of members were not here. One, I would like to just
24. review briefly, the history of what vote, in fact, has been
25. required to ratify a Federal Constitutional Amendment in the
26. State of Illinois. Those of us who are proponents of the majority
27. vote have, in a sense, lead...let ourselves be put in the position
28. of talking about our position as a change of position and I think
29. that really is not in accordance with the facts, at least if
30. one has a sense of history about the facts. It has not been
31. possible to...to get every copy of the Senate rules all the way
32. back to the beginning of time of this State, which was 1818,
33. but I think there are several rather important points
34. that could be made. The first positive identifi-

1. cation of the vote required to ratify a Constitutional Amendment
2. took place in this State, that I have been able to find, took
3. place by enactment of a statute in 1963 which specifically said,
4. the General Assembly...shall ratify only by the vote of a
5. majority of members elected to each House. That is to say, majority
6. vote became a part of the Statutes of the State of Illinois in
7. 1963. That can be found in Chapter seven and a half, Section
8. twelve. That statute is still on the books and it has never
9. been repealed. We have never taken any action to wipe it off
10. the books. In 1969, the rules of both the House and the Senate,
11. not a ruling of the Chair, but the rules of both the House and
12. the Senate, provided for majority vote for, they used the
13. expression, proposing amendments to the Constitution or calling
14. a convention. Now I assume that that was bad draftsmanship on
15. the part of the Senate and the House because the Illinois General
16. Assembly has no power to propose amendments to the Federal
17. Constitution. They have, and if you look at the sentence in
18. context, it clearly was referring to the ratification process
19. because it distinguishes that from the process of going into or
20. calling a convention for purposes of a...amending the Federal
21. Constitution. That then was in the rules of the Senate in
22. 1969 and in the rules of the House. It was readopted as the
23. operating rules of the Senate every Session thereafter and
24. including during the period of time following the effective
25. date of the Illinois Constitution of 1970. In other words,
26. the only rule that we ever had in the Illinois State Senate
27. up until March, 1975, was majority vote for ratification. The
28. first time that the three-fifths vote appeared in the rules of
29. the Senate was on March 5, 1975 by some odd coincidence exactly
30. one month after a three judge federal court in Chicago ruled,
31. ruled, I repeat, that we are not bound by the provision in the
32. Illinois Constitution which specifies a three-fifths vote. The
33. opinion in that case, Dyer versus Blair, I fully agree, did not

1. say that a majority vote was unconstitutional. It did not say
2. that a three-fifths vote was unconstitutional. What it said
3. is that the act of ratification is a Legislative act. Only
4. you, the General Assembly, may decide the procedures by which
5. you will ratify a proposed amendment. And the three-fifths
6. language in the Constitution is simply not binding on you,
7. it is precatory. You can observe it, you can ignore it, you
8. can do anything you want with it, but you are not bound by
9. it. At that...one month after that decision, which for the
10. first time opened it up to the Senate and the House as Legislative
11. Bodies to adopt whatever rule they chose, undaunted by the then
12. provision in the Illinois Constitution, at that point, Senator
13. Harris moved that the rules of the Senate be amended to require
14. a three-fifths vote and that prevailed by a vote of thirty-one
15. to twenty-six. It was not until March 1975 that the procedures
16. of this Senate required a three-fifths vote. So I submit that
17. we are not changing the rules, we are going back to what the
18. rules were for some hundred and twenty odd years up until
19. March 1975. And I would point out specifically that there are,
20. indeed, at least seven amendments to the United States Constitu-
21. tion that would not have been ratified had we imposed a three-
22. fifths rule. The first, the Thirteenth Amendment abolishing
23. slavery. The House vote was 51.8 percent of the members elected.
24. We would not have ratified the amendment abolishing slavery.
25. The Sixteenth Amendment authorizing an income tax. This one
26. may have some...advantages and disadvantages, as a matter of fact.
27. The House vote was 54.2 percent of the members elected. Just think
28. of it, we would not have ratified the amendment authoring an
29. income tax if we had required a three-fifths vote. The Seventeenth
30. Amendment for direct election of the United States Senate the
31. Senate vote was 43.1 percent of the members elected, not even a
32. constitutional majority. The Eighteenth Amendment, prohibition,
33. the Senate vote was 58.8 percent, the House vote 54.9 percent

1. of the members elected. The Twentieth Amendment providing for
2. terms of office of the President and certain provisions with
3. respect to presidential succession was adopted by voice vote,
4. as a matter of fact. The Twenty-Second Amendment, limiting
5. the president to two terms. The House vote was 53.6 percent
6. of the members elected and the Twenty-Fourth Amendment prohibiting
7. a poll tax, the Senate vote was exactly 50 percent of the members
8. elected. It is quite clear that this State would have declined
9. to ratify seven pretty important amendments, I would certainly
10. start with the Thirteenth Amendment, abolishing slave... (Machine
11. cut off)

12. PRESIDING OFFICER: (SENATOR DONNEWALD)

13. Have you concluded, Senator?

14. SENATOR NETSCH:

15. I have not concluded.

16. PRESIDING OFFICER: (SENATOR DONNEWALD)

17. Oh, I'm sorry.

18. SENATOR NETSCH:

19. Are you...are you cutting me off, Mr. President?

20. PRESIDING OFFICER: (SENATOR DONNEWALD)

21. I would never cut you off, Senator Netsch.

22. SENATOR NETSCH:

23. All right, thank you.

24. PRESIDING OFFICER: (SENATOR DONNEWALD)

25. From...from the microphone.

26. PRESIDING OFFICER: (SENATOR DONNEWALD)

27. You may proceed.

28. SENATOR NETSCH:

29. Thank you. I might add that if you adopt the rule I'm
30. going to propose later, you would have a right, after a few more
31. minutes to cut me off, but we haven't adopted it yet. Now, let
32. me make two other very simple points and then I will be happy
33. to answer questions about it. The current status of the require-

1. ment in the Illinois Constitution that does specify a three-
2. fifths vote. You can do whatever you want to with that last
3. paragraph in Dyer versus Blair. It is absolutely clear and
4. it was repeated over and over and over again by the three
5. judge Federal Court, opinion by Judge, now Mr. Justice Stevens,
6. that the Illinois Legislature is not bound by that provision.
7. It is precatory, we can observe it if we want to, but we do
8. not have to. That is the reason why the declaratory judgment
9. and the injunction were not entered. They were unnecessary
10. as the court read that provision. But it is also clear that
11. we, as a Legislature, are not and cannot be bound by that
12. provision. There are some people who do believe that the
13. three-fifths requirement is challengeable on constitutional
14. grounds. I am not taking that position. All I am saying is
15. that we are free to impose whatever provision we choose on
16. ourselves and that, in fact, the proper position is a majority
17. vote. And the reasons which have been pointed out many, many
18. times before are very simple. One, they are primarily, the
19. whole point of requiring any kind of extraordinary majority
20. is to slow down a process to make sure that it has a wide
21. base of support, to make sure that we do not amend basic
22. documents in a frivolous or fast or unthoughtful fashion.
23. I think nobody would suggest that the amendment, which, in fact,
24. is the subject also of this hearing, has not been fully debated
25. over a long period of time. The...the provisions in the ratifi-
26. cation procedure, do themselves, make sure that we do not frivolously
27. amend the United States' Constitution and the obvious result,
28. of course, is that we have seldom amended it. It requires a
29. two-thirds vote in each House of Congress. It requires ratifi-
30. cation by at least a majority of the members of three-fourths
31. of the State Legislators. There is no way an unacceptable
32. frivolous, unthoughtout, unacceptable amendment to a majority
33. of the people in this country is going to be adopted under

1. that set of conditions. All we are now doing by requiring a
2. three-fifths vote is putting not just a caution that we don't
3. go into the amending process without thought, but what we are
4. saying is that we want an obstacle, a barrier, to make absolutely
5. sure that at least one amendment will never be ratified by the
6. State of Illinois and in the minds of those who take that position,
7. hopefully not ratified at all in this country. We are, in fact,
8. talking about a rules change, but we are also talking about the
9. Equal Rights Amendment and no one should forget that.

10. PRESIDING OFFICER: (SENATOR DONNEWALD)

11. Senator Lemke. Senator Rhoads.

12. SENATOR RHOADS:

13. Thank you, Mr. President and members of the Senate. I
14. rise in opposition to the move to amend Senate Rule 6 for
15. the following reasons. To begin with, the sponsor, principal
16. sponsor of the motion, has made a very persuasive case against
17. the three-fifths rule. Perhaps if she had argued so vigorously
18. and eloquently when she was a member of the Constitutional
19. Convention that rule would not now be part of our Constitution.
20. But at the time I think there was expressed some concern over
21. the impending passage of the Dirksen Amendment which some members
22. of the Constitutional Convention felt it would be desirable
23. to throw up road blocks against. I can recall very vividly
24. Senator...the aides rather, Senator Dirksen had passed on at
25. that time, but Mr. John Goman commenting on the irony of that
26. particular situation. The motion before us, frankly, is defective
27. on its face. If you read Article V of the United States Consti-
28. tution, two clauses of the same sentence deal with ratification
29. by three-fourths of the Legislatures of the several states, or by
30. conventions in three-fourths, thereof. The sponsor argues against
31. three-fifths. The sponsor further tells us that we are free to
32. absolve ourselves from any oath of allegiance to the State
33. Constitution because a Federal judge in opinion has told us

1. that we might do so. Yet the motion before us splits the
2. issue. The motion before us deals merely with ratification
3. in the normal legislative process, it deletes the part about
4. a State Convention called to ratify and it also deletes the
5. part about the State initiative for a Federal Constitutional
6. Convention. My question is very simply, why? Why split the
7. issue? If three-fifths is wrong, then it's wrong for all
8. three steps of the Constitutional ratification process, not
9. just for one. Frankly, the issue comes down again to one
10. point and one point only, it's not a debate on ERA, it's not
11. a debate on the Three-Fifths Rule. It's a debate on whether
12. or not we sit as a Federal Body when we ratify a Constitutional
13. amendment. Article V of the Constitution is plain enough for
14. anyone to read. Our provisions do not conflict with Article V,
15. it's not stated in Article V, it is not implied in Article V,
16. Judge Stevens said as much in his decision. We are bound by
17. the State Constitution, that's the issue before us, Senator,
18. and that's the only issue before us. Thank you.

19. PRESIDING OFFICER: (SENATOR DONNEWALD)

20. Senator Graham.

21. SENATOR GRAHAM:

22. Mr. President and members of the Senate. I listened very
23. carefully to some of the witnesses this morning, this afternoon,
24. rather. Frankly I think I'm going to go back to my Saint Paul
25. United Church of Christ in Barrington and...and reassess their
26. opinion. If I call the roll, I know which side they'll be
27. on, they'll be on my side on this issue. So, the lady who
28. spoke for the churches and as in many other organizations are
29. speaking for some little group of people that get together, their
30. so-called executive committee or something and do not speak for
31. their entire congregation or their people, I'm sure. But what
32. are we really talking about here today. The lawyers get in all
33. kinds of arguments and bring up all sorts of court cases. A...

1. young lawyer from DuPage County, Mark Rhoads has done an
2. exceptional job today, I didn't...I don't know when he got his
3. degree. Well...where are we, Ladies and Gentlemen. The ERA
4. could not be ratified under the present rules so the people
5. that were the proponents of ERA said we don't like this kind
6. of a game and we'll pick up our marbles and go home for awhile.
7. So they started out at Normal, Illinois reconstructing their
8. marble game, then they went down to Houston and embraced some
9. more people to help them and that backfired. So they lost
10. a couple wheels off their buggy in...in the meantime. Then
11. they went to Washington, D. C. and convinced sufficient number
12. of the Congress to forget what they were sent to Washington
13. for and they got them to extend the thing. So we're running
14. head-on into coercing the General Assembly in the State of
15. Illinois to do something that should never be done. One of
16. the witnesses said this democracy is at stake today, I hope
17. it is. So was this republic, that's the way it started out
18. to be. When we talk about the will of the majority and the
19. will of the minority and they quoted Abraham Lincoln freely
20. right after his birthday. Abraham Lincoln in one of his
21. races for Congress one time said, "I fear not the destruction
22. of our country from without, but I fear it from within."
23. And if ever in our history a will of the minority can thwart
24. the will of a majority, on the one hand you have tyranny and
25. on the other hand you have mobocracy.. Now we have attempted
26. as we've gone through this terrific veil of tears to hear the
27. bleeding hearts and everybody else say that Ladies and Gentlemen
28. of the Illinois Senate, you should do this for us. This is what
29. we really want you to do. We want you to make it easier to
30. ratify ERA, we want you to tell your constituency that we have
31. given up our...our right to protect this State as a part of our
32. republic. And we're going to say to them, now we want the
33. destiny, the future destiny of our families, in our own lives,

1. to rest in the hands of a liberal Congress and a group of old
2. men in black robes up in Washington, D. C. So we take a look
3. at the Miranda decision and a few of the other things that
4. they've been able to hand down to us and if it gets me a
5. little bit scared. I say that there is no room. If we are
6. going to protect this great republic, to let it be done by
7. Congress and the Supreme Court, even though they're trying
8. every day. This is only a step toward them. Ladies and
9. Gentlemen, we can't afford it, our country can't afford it,
10. and if the eyes of the nation are on Illinois today, sobeit.
11. Because I predict that the members of the Illinois Senate
12. today will indicate to the rest of the nation and to the
13. world, if you please, if they are all looking, and I hope
14. Iran is, maybe they'll learn something, that we are not
15. going to succumb to the blackmail of certain individual
16. groups in the United States Congress. That we protect our
17. rights to govern our own lives, that we want to protect our
18. own rights to govern our divorces, we want to protect our
19. own rights to raise our children, we want to protect our
20. own rights to go our way as provided in the Constitution of
21. the United States and not to let any civil majority change
22. it. Don't do it, don't do it, if you do you do it without
23. remembering what...what Benjamin Franklin said when he came
24. out from that meeting where they signed all these very
25. valuable papers at the possible expense of being hanged. Some-
26. body said to Mister Franklin, I'm sorry, Ben Franklin, "Mr.
27. Franklin, what do we have?" He said, "my good friend, we've
28. got a republic if you can keep it." That's our challenge
29. today, we have a republic and Illinois is expected to keep
30. it.

31. PRESIDING OFFICER: (SENATOR DONNEWALD)

32. Senator Berman.

33.

Berman's
Remarks
2/14/79

SENATOR BERMAN:

1. Thank you, Mr. President, Ladies and Gentlemen of the
2. Senate. I rise in support of the motion. First I want to
3. comment regarding Senator Rhoads' question as to the framing
4. of the motion. I think the framing of the motion is clear
5. and concise and avoids debate on issues which are not
6. exactly relevant to what we are debating today. We are not,
7. under the way that this motion is now framed, we do not have
8. to get into debate as to the power or the number of votes
9. to call for State or Federal Conventions, it merely relates
10. to the question of the number of votes necessary to ratify
11. a proposed amendment to the Constitution of the United States.
12. I think that that makes the issue exact and specific. I'm
13. not sure that I understand what all of the negative reaction
14. is to this vote. As many of you may know, I have been a
15. consistent supporter of the Equal Rights Amendment proposal,
16. but I think that if I were an opponent of it, I don't think
17. that I would be as afraid of its consequences as apparently
18. many of the opponents are. I think ERA is important, I think
19. we already have it in our Illinois Constitution, but I would
20. say that every day that we are in Session, this Body, votes
21. on substantive bills of equal importance. ERA espouses what
22. I think is an important principle, but by a Constitutional
23. majority vote, every day this Body votes on things which affect
24. the people of the State of Illinois just as much, if not more
25. so, than the passage of the Equal Rights Amendment. We vote
26. by a Constitutional majority on life and death issues. We
27. decided the death penalty in Illinois by a Constitutional
28. majority. We appropriate and set the guidelines for the
29. entire Public Health System of the State of Illinois, by
30. which all of our citizens are born and hopefully live in
31. a healthful environment. We determine by a Constitutional
32. majority the income levels, the jobs, the welfare if there
33. is no job levels of every member of the State, of every

1. citizen of the State of Illinois. We determine by Constitutional
2. majorities the level of appropriations and the quality of education
3. of every person, man, woman and child in the State of Illinois.
4. These are issues of life and death, they are no less important
5. than the Equal Rights Amendment and from day to day they may even
6. be more important. I certainly think that if we can determine
7. those issues, as we do by a Constitutional majority, then we
8. certainly should be able to indicate our support of an important
9. principle of avoiding discrimination based upon sex by that same
10. type of Constitutional majority.

11. PRESIDING OFFICER: (SENATOR DONNEWALD)

12. Senator Geo-Karis.

13. SENATOR GEO-KARIS:

14. Mr. President and Ladies and Gentlemen of the Senate.
15. First I want to thank you for your courtesy in the earlier
16. questioning and answering. This time I note that many
17. arguments are...have been pro and con in this issue. I'm
18. not speaking on this issue because Equal Rights Amendment
19. is involved. It is involved, no doubt, but there are other
20. issues as Senator Berman said. There is the issue of a
21. balanced budget which is being proposed right now by Senator
22. Richard Lugar of Indiana in the Federal Congress which
23. we need very desperately in this nation. In that Federal
24. budget amendment would restrict the spending of Congress
25. to its...the income from...to Congress. When I took my oath
26. as Senator and also as...House Member six years before, I
27. promised to uphold the Constitution of Illinois and the
28. Constitution of the United States. And in the Constitution
29. of the United States, there is a section called the Judicial
30. Amendments and the Judiciary Section. And the Supreme Court
31. of the United States is the law of the land. I'd like to
32. quote to you, if I may, from a Supreme Court decision of
33. the United States of Hawk versus Smith, 253 United States,

1. Supreme Court 221. And that is the case arising from the State
2. of Ohio. In Ohio, the State of Ohio had amended its constitu-
3. tion in 1918 to provide as follows, "The people also reserve
4. to themselves the legislative power of the referendum on the
5. action of the General Assembly ratifying any proposed amend-
6. ment to the Constitution of the United States." In 1919 the
7. House and Senate of Ohio had adopted a resolution ratifying
8. the nine...the Eighteenth Amendment of the United States
9. Constitution and the illegal issue that was presented to the
10. Ohio courts was whether or not the Ohio Court by submitting
11. this...this issue to a referendum was in conflict with
12. Article V of the United States Constitution. The Ohio court
13. said no, it's not and ordered the referendum and there was
14. an appeal to the United States Supreme Court. The Supreme
15. Court through Mr. Justice Day held that the Ohio Constitution
16. did conflict with Article V of the Federal Constitution. And
17. I quote, "The Constitution of the United States was ordained
18. by the people and when duly ratified it became the Constitution
19. of the people of the United States." And it says, it quotes
20. the case of McCullough versus Maryland, an old, old case
21. of the United States Supreme Court. The State surrendered
22. to the general government the power specifically conferred
23. upon the nation, the Constitution, the laws of the United
24. States are the supreme law of the land. Our Attorney General,
25. William Scott, who is considered one of the finest Attorney
26. Generals in the country has issued two opinions. An opinion
27. dated April 2, 1973, numbers S-571 and opinion number S-456
28. dated May 11, 1972. In both of those opinions he cited the
29. Hawk case and the Hawk case is the leading law on the subject.
30. And that is why I question Mrs. Schlafly about the advisory
31. referendum of the State of Nevada because it was simply an
32. advisory referendem and I feel that Justice Rendquist of the
33. Supreme Court of the United States was right in saying that

1. the State could have an advisory referendum. But the issue
2. of amendatory referendum on a Constitutional amendment was
3. never overturned. In the Hawk versus Smith case, they said
4. very specifically that even amandatory referendum on a
5. Constitutional amendment could not be used and it could not
6. be binding by the State. I think the popular thing for me
7. to do today when some, probably the majority of the House
8. here, Senators, I mean, thank you. Remember I'm just a
9. freshman. I believe the popular view, I suppose, would
10. be to say three-fifths, but then I would be ignoring, very
11. definitely, the last line of Section 4, Article XIV of the
12. Illinois Constitution, which relates back to three-fifths
13. and says, the requirements of the Section relating to three-
14. fifths shall be...shall govern to the extent that they are
15. not inconsistent with requirements established in the
16. United States. I have to go back and look at Article VI
17. of the Federal Constitution which says in the second paragraph,
18. and I quote, "This Constitution, the laws of the United States,
19. shall be made in persuance thereof and all treaties made or
20. which shall be made under the authority of the United States
21. shall be the supreme law of the land and the judges in every
22. State shall be bound thereby, anything in the Constitution
23. or laws of any state to the contrary, notwithstanding." I
24. am very concerned because I know that the rules of the House
25. and the Senate and the rules of the Senate in 1971, '72,
26. permitted...stated in effect that all we needed was a majority
27. vote in the Senate to pass a Constitutional amendment to
28. the U. S. Constitution. That was done under the old Constitution
29. for the right of the...eighteen year old citizens to vote. However,
30. in 1972 on May 24, Senate Joint Resolution 62, which happened to
31. be on Equal Rights Amendment, passed the Senate on a majority
32. vote of thirty to twenty-one. And at that time the rules enforced
33. in the Senate was a simple majority vote for the rules of procedure

1. of the Senate. I agree that the Senate and the House have
2. the right to set the rules of procedure. I also agree that
3. I have to uphold the United States Constitution and the Illinois
4. Constitution. And if I agree with Mrs. Schlafly and say only
5. three-fifths is possible, then the Balanced Budget Amendment
6. from the Federal Congress which people are crying for because
7. they're tired being taxed beyond endurance, would have an
8. excellent chance of failing. I think that the dicta and
9. also the...the opinion given by Attorney General Scott in
10. both of his opinions is absolutely right. We have the right
11. to set our rules, but the same time we also have the obligation
12. to uphold the laws of the Constitution of the United States.
13. No matter what I say, it will not change anyone's opinion on
14. how they're going to vote. But I've done a lot of soul studying
15. and a lot of soul searching and some of my constituents would
16. be very unhappy with me if I voted for a simple majority vote.
17. But I also know my constituents well...well enough to know
18. that I'm going to vote by the courage of my convictions based
19. on my research in law based upon my oath to uphold the
20. U. S. Constitution and the Illinois Constitution, not just parts
21. of it that are conveniently quoted against a simply majority
22. rule and omit some of the others. And therefore, Mr. President
23. and Ladies and Gentlemen of the Senate, I support the simple
24. majority rule.

25. PRESIDING OFFICER: (SENATOR DONNEWALD)

26. Senator Ozinga.

27. SENATOR OZINGA:

28. I fully realize your capability of being real kind to all
29. of these people that want to talk. This thing as it started years
30. ago when I was in the Executive Committee, needs to come to an
31. end somewhere and therefore I would move the previous question.

32. PRESIDING OFFICER: (SENATOR DONNEWALD)

33. Well, Senator, there are Senator Washington, Senator

1. Nimrod, Senator Shapiro and Senator Rock wish to speak. As
2. soon as they've concluded why I think that would be in order.
3. We have Senator Nimrod.
4. SENATOR NIMROD:
5. Yes, Mr. President and Ladies and Gentlemen of the Senate.
6. I support the present rules of three-fifths. And I think that
7. what we must all do is put this in proper perspective and since
8. all the testimony both since the hearing has been concluded and
9. ...and now before us, we all agree that there is nothing un-
10. constitutional about the present three-fifths provision. One
11. thing else I think we ought to keep in mind is that we hear
12. ...keep references being made constantly to a Constitutional
13. majority. I would submit then that a Constitutional majority
14. as it is right now, is presently a three-fifths vote. So a
15. Constitutional majority as far as our...our particular Senate
16. is concerned according to our rules is, in fact, three-fifths.
17. I also have learned that the last vote that we have taken...in
18. this particular Senate was concerning the Twenty-Sixth Amend-
19. ment which dealt with the eighteen year old vote. And that
20. ratification, of course, took place in June of 1971 with a
21. vote of thirty-seven to eighteen. And the provision then, of
22. course, under our own Constitution was a majority of those
23. elected. I submit to you that I've been unable to find that
24. there's ever been a vote since that time. So until...took
25. place on March 5th of 1975 for ratification, and that there
26. was no reason for the rules to ever have been...have been
27. challenged or have been questioned according to our new Consti-
28. tution and the first time that it came up that, in fact, the
29. ruling was that, in fact, it took a three-fifths majority
30. to be Constitutional. So I find that there is nothing inconsistent
31. in the actions of this Senate since the time that the Constitution
32. has been adopted and since that vote has been taken. I would say
33. that in reply to covering two other items, I would say that the

1. seven amendments which have been presented with Senator Netsch
2. and referred to, saying that they would never have passed had they
3. been required an extraordinary majority. You and I know that when
4. the votes are taken on the Floor the first questions are how
5. many votes does it take. And the votes are cast accordingly
6. so that the few people that can get on an issue on one side
7. or another depending on what their Constitution...what their
8. feelings are, are more important that they are voting their
9. constituents. So I don't think that that becomes a basis
10. for that particular statement. And finally I would like to
11. remind us that as this motion is prepared and those questions
12. that are before us today, that it seems to me that this motion
13. has been written in a certain way to reach a certain effect.
14. That, in fact, that this particular motion and if the rules
15. change would have no effect on the present proposals facing
16. the...have been presented to us that affect the Human Life
17. Amendment, they would have no affect, in fact, because on
18. the balanced Federal budget. However, it seems that the
19. only ones that they would effect would be ERA and the proposal
20. for a Washington, D. C., amendment to the Constitution. I think
21. in order for us to be consistent and to maintain a consistency
22. I see nothing indifferent and nothing unconstitutional in
23. proposing that we maintain and keep our three-fifths provision
24. in our rules. Thank you.

25. PRESIDING OFFICER: (SENATOR DONNEWALD)

26. Senator Washington.

27. SENATOR WASHINGTON:

28. Very briefly, Mr. President. Two things, two factors, one
29. legal and one statistical dictate my support of this motion.
30. Clearly it's agreed that we do have the right in this General
31. Assembly to determine by what majority we will ratify Federal
32. Constitution. The statistical fact is this, that of the fifty
33. states, only six of those states or is it four, provide for

1. an extraordinary majority in a ratification of a Federal
2. Constitution, only four of fifty. It bears on Senator
3. Berman's point. It simply makes no sense for us to depart
4. from that ~~overwhelming~~ majority of states who have made
5. up their minds in their own wisdom, that ratification of
6. Federal Constitutional Amendments has enough safeguards
7. within it along the passage of ultimate fruition for
8. it not to be worried about having extraordinary majorities
9. within any State Legislative Body. To me that's an
10. astounding statistic, to me the logic evidence is over-
11. whelming and I can think of no earthly reason why Illinois
12. and this General Assembly should depart from that overwhelming
13. statistical fact. So I support this motion.

14. PRESIDING OFFICER: (SENATOR SHAPIRO)

15. Well, Mr. President and Ladies and Gentlemen of the
16. Senate. I think we've heard a...several compelling arguments
17. maybe on both sides of the question today. I honestly feel
18. that most of us have our minds pretty well made up on how
19. we're going to vote. But I do want to point out some...some
20. things to you that may have been glossed over or overlooked
21. by those who participated in the debate. I don't think there's
22. any question that Senator Netsch, the chief proponent of the
23. amendment to the rule, made a very excellent presentation
24. reviewing the history of the voting records of this Body
25. and the House and the Article that's in the...on our State
26. statutes. It almost seems to me though that her presentation
27. was so good that more than likely she had this information
28. when she was a delegate to the Constitutional Convention.
29. And in view of the fact that at that particular time, there
30. was a State statute that required a simple majority vote
31. and that the House and Senate rules both required a simple
32. majority vote, yet that Constitutional Convention, the
33. delegates to it, overwhelmingly adopted the three-fifths vote.

1. And evenly...even considering the fact that they addressed
2. themselves specifically to Sections 1, 2 and 4. In Sections
3. 4 is the Article that we are concerned with of Article XIV
4. there was not one dissenting vote. In that...those three
5. Articles were adopted a hundred and three to zero with one
6. pass. And the delegate who voted pass did it for other reasons
7. than that. Later on when the entire Article XIV was adopted,
8. the vote was ninety-four to zero. None of the sitting members
9. of this Senate who are members of that Constitutional Convention
10. raised one dissenting word against the adoption of the three-
11. fifths. And from the very onset of the debate of this Article
12. there was a general consensus that the three-fifths vote was
13. valid and was reasonable. And it almost seemed to me in her
14. excellent presentation that she was telling us to adhere to
15. a State Statute requiring a...just a general simple majority
16. and to ignore our State Constitution which calls for a three-
17. fifths vote. And I can hardly believe that that was her intent
18. of the presentation. It's obvious to me that the court case
19. that was recited the most often today by both sides of the
20. argument that those of us who are not attorneys can reach
21. any conclusion that we choose. But the one point that everyone
22. agrees upon is that this Body can make its own rules. And if
23. you look at the Federal Constitution, nowhere, not even by the
24. slightest whim of anyone's imagination does it say anything
25. about what...what vote we...what vote requirement we shall
26. have when it comes to amending the Federal Constitution.
27. But all that aside, it just appears to me that the most important
28. thing that we should consider is that the Constitutional Conven-
29. tion as recently as 1970 adopted, as an Article, a three-fifths
30. vote requirement for...resolutions amending the Federal Consti-
31. tution. And that vote was put to the people of this State and
32. the people of this State told us by majority vote that they
33. wanted a three-fifths vote and that they respected the rights

*Include
in volume 14
by [unclear]
10/3/55*

1. of a minority to thwart the will of a majority when it came
2. to amending the Federal Constitution and to me that is the
3. most important thing. We have a State Constitution that
4. requires a three-fifths vote that's just as valid as those
5. states who have a...a simple requirement or a requirement
6. of those voting...present and voting. So I say to you
7. that our State Constitution is still binding and that we
8. make the rules and we should retain the three-fifths
9. requirement. Thank you.

10. PRESIDING OFFICER: (SENATOR DONNEWALD)

11. Senator Rock.

12. SENATOR ROCK:

13. Thank you, Mr. President, Ladies and Gentlemen of
14. the Senate. I rise in support of the motion proffered by
15. Senator Netsch, which motion I have as she indicated, cosponsored.
16. And I would like to indicate that due to the weather, Mr. Michael
17. Kline representing the United Auto Workers was unable to be with
18. us to appear as a witness in favor of this change and there are
19. two members on this side of the aisle who are still stranded
20. at the airport awaiting a plane to bring them to Springfield.
21. At least one of whom has indicated to me as late as last night,
22. his affirmative support of this...proposed rule change. There
23. has been some request or discussion with respect to whether
24. or not we should or I should call for a delay of this vote.
25. While I am not unsympathetic and certainly I'm sympathetic
26. to the fact that two of the members who wish to be recorded,
27. it appears will not get here on time. I think however, in
28. fairness to this Body and its membership, we should vote. Now,
29. neither Senator Netsch or I like to lose, but I think that
30. everybody has had advance notice. We have all been subjected to
31. discussion and cajoling by our constituents and I think the
32. hour is now. We should vote and I am not therefore going to
33. call for a delay. But let me just make a couple of points.

1. It appears to me that the framers of our Constitution of 1970
2. had this question in mind or at least had the foresight to have
3. the Constitution at least be in a position to relate to a
4. question such as this when they said in Section 4 of that
5. part of the Constitution which is under discussion here, of
6. Article XIV, that the requirements of this Section, namely
7. the three-fifths ratification requirement, shall govern to
8. the extent that they are not inconsistent with requirements
9. established by the United States. It has been adequately,
10. and I think ably pointed out that that provision is, in
11. fact, in conflict with the Constitution of the United States
12. and therefore should not in any way prevail. It's well settled,
13. I think, that the power of State Legislature...that the...State
14. Legislatures do, in fact, have the power to ratify Constitutional
15. amendments proposed by Congress and that they may not be restricted
16. by one's State Constitution. Further, I don't think it has yet
17. been...authoritatively settled one way or the other whether
18. or not a State Legislature may itself require a super majority
19. for ratification and thereby frustrate the desire of a majority
20. of its elected members. That's the question before us. And
21. I would also point out, and I think it has been alluded to, but
22. certainly not directly said, that for those of us who support
23. ERA, the hour is now and for those of you who purport to support
24. ERA, the hour is now. It seems to me that you cannot hide nor
25. can you equivocate if you are in favor of ERA you will vote Aye
26. on this motion and I urge an affirmative vote.

27. PRESIDING OFFICER: (SENATOR DONNEWALD)

28. Senator Netsch may close. All right, the question is shall
29. the Motion in Writing to Amend Rule 6 in the manner and form
30. as presented by Senator Netsch pass. Those in favor vote Aye.
31. Those opposed Nay. The voting is open. Have all those voted
32. who wish? Have all those voted who wish? Take the record.
33. On that question the Ayes are 24, the Nays are 31, 1 Voting

1. Present. The motion fails. Senator Shapiro, for what purpose
2. do you arise?
3. SENATOR SHAPIRO:
4. ...voting on the prevailing side, I now move that the
5. question be reconsidered.
6. PRESIDING OFFICER: (SENATOR DONNEWALD)
7. Heard the motion. Senator Rhoads moves that lie on the
8. Table. All those in favor indicate by saying Aye. All those
9. opposed Nay. The Ayes have it. The motion carries. Senator
10. Rock.
11. SENATOR ROCK:
12. Thank you, Mr. President, Ladies and Gentlemen of the
13. Senate. We are scheduled of course to go to the Committee
14. on Executive Appointments at the hour of 3:00 o'clock to
15. consider the Governor's proposed Cabinet Officers. Prior
16. to our leaving for that, I would ask the Pages to distribute
17. a copy of the proposed deadlines so that tomorrow in our Session
18. we can take up at least this matter. Additionally, I have
19. spoken with Senator Shapiro and I am now announcing that the
20. Rules Committee will meet at nine o'clock tomorrow morning
21. in the President's Office and we will receive the report of
22. the subcommittee and have a proposed draft of permanent
23. rules available to all the members tomorrow and we will delay
24. the vote on the entire Body of Rules until March 1st so that
25. the membership will have an opportunity to study the rules.
26. PRESIDING OFFICER: (SENATOR DONNEWALD)
27. Senator Vadalabene.
28. SENATOR VADALABENE:
29. Yes, thank you Mr. President and members of the Senate.
30. As President Rock has alluded to the meeting of the Executive
31. on Appointments and Administration in Room 212, immediately
32. upon adjournment. We'd like to get started right away so
33. that we can get out of there, there's people who have to travel

1. all over the State of Illinois, the roads are kinda bad so let's
2. get in there and show the courtesy of these nominees so that
3. we can get out of there.
4. PRESIDING OFFICER: (SENATOR DONNEWALD)
5. Senator Rock.
6. SENATOR ROCK:
7. Thank you, Mr. President, Ladies and Gentlemen of the
8. Senate. Again, given the weather conditions, I think it's
9. in our best interests if we can try to conclude our
10. business early tomorrow. So for that reason, I think we
11. ought to...there are committees scheduled, we ought to
12. adjourn until the hour of 11:00 o'clock tomorrow morning
13. and hopefully we can wrap up and wind up and be out of
14. here by the hour of noon.
15. PRESIDING OFFICER: (SENATOR DONNEWALD)
16. Are there further announcements?
17. SENATOR ROCK:
18. So, I would move that we stand adjourned until 11:00
19. o'clock.
20. PRESIDING OFFICER: (SENATOR DONNEWALD)
21. Senator Rock moves that we adjourn until 11:00 o'clock,
22. March...strike that...move that we adjourn until February 15th,
23. 11:00 o'clock a. m. The Senate stands adjourned.
- 24.
- 25.
- 26.
- 27.
- 28.
- 29.
- 30.
- 31.
- 32.
- 33.