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The Equal Rights Amendment and the Case of the Rescinding States: A Comparative
Historical Analysis

A Thesis submitted in partial satisfaction of the requirements for the degree of Master of
Arts

in

Social Sciences

by

Veronica Monique Lerma

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ABSTRACT OF THE THESIS

The Equal Rights Amendment and the Case of the Rescinding States: A Comparative Historical Analysis

by

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Master of Arts in Social Sciences

University of California, Merced, 2015

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Studies of the Equal Rights Amendment (ERA) and its eventual defeat are by no means in short supply. However, the scholarly research in this area has paid little attention to the five states that initially ratified the amendment but later rescinded their votes, choosing instead to count them amongst the 35 states that officially ratified the amendment. This simplistic “ratified/non-ratified” approach runs the risk of masking crucial decisions and patterns that are unique to the five rescinding states, and which may have helped shape the eventual defeat of the amendment. In this comparative historical study, I examine the factors that explain why and how Idaho, Nebraska, South Dakota, Kentucky, and Tennessee rescinded their initial votes for ERA ratification. I employ content analysis of primary and secondary sources from each rescinding state from the period between 1972 through 1982. The data presented here consist of historical documents from state-level chapters of three pro-ERA organizations, legislative documents, and newspapers. Drawing on multiple social movement perspectives, I find the decision to rescind reflects a retrenchment of pro-feminist ideology followed by a backlash of the conservative gendered order. In this paper I demonstrate how the opposition, through a process I call *constructed confusion*, or the social manufacturing of confusion, exploited uncertainty and propagated misinformation to reframe rescission as a moral and social corrective. Aided by the slow and ineffectual response by proponents to combat these efforts, rescission was used to maintain inequality by preserving the very power structures that legitimized it. Ultimately, the decision to rescind is a story of hegemonic power and its reproduction.

INTRODUCTION

It has been more than 30 years since the legislative defeat of the Equal Rights Amendment and yet, as the policy that refuses to die, it has come back to life, in one shape or another, every year since. To this day, aside from the 19th amendment, which granted women the right to vote in 1920, the United States Constitution makes no explicit affirmations for women. Designed simply to guarantee equal rights for all women, the ERA is seen by proponents as the constitutional bedrock from which women's rights are based. Although legislatively women have made important gains through landmark federal cases and legislative statutes such as the Equal Pay Act, the Pregnancy Discrimination Act, and Title VII and IX of the Civil Rights Act, without the ERA these legal gains are vulnerable to weak implementation, poor regulation, and even reversal.

Although to some the 1982 legislative defeat of the ERA is viewed as a national failure, in many ways the ERA was a state-level success (Soule and Olzak 2004); after all, 38 states ratified the amendment. State-level analyses of the ERA ratification process are fundamental to understanding how gendered federal laws are passed and how inequality is maintained through law, or in its absence. Although previous research has neglected to examine the five states that first ratified and then rescinded the ERA, rescinding states are a unique focal point because they provide a rare window of opportunity to examine the processes by which shifts in legislative support and opposition occur. This research highlights the rescinding states as a necessary focal point and is guided by the question: What factors or underlying mechanisms explain why and how Idaho, Nebraska, South Dakota, Tennessee, and Kentucky rescinded their initial votes for ratification of the Equal Rights Amendment? In this comparative historical analysis of these five states, I demonstrate the decisive role played by a phenomenon I call *constructed confusion*, or the social manufacturing of confusion, whereby doubt and uncertainty are created to mask inequality and then exploited to reinforce the power structures that legitimize it. I argue rescission was made possible through constructed confusion, in which the opposition capitalized on uncertainty by propagating misinformation to frame rescission as a moral and social corrective. Aided by the slow and ineffectual response by proponents, which was prompted by a false sense of security, to combat these efforts, rescission was used to maintain inequality by preserving the conservative gendered order.

BACKGROUND

The Equal Rights Amendment: A Brief Overview

The Equal Rights Amendment proposed both simply and forthrightly, “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex” (Mansbridge 1986:1). Originally written by suffragist Alice Paul, the ERA was first introduced to Congress in 1923. It was not until 1972, however, nearly 50 years later, that the ERA was debated in Congress where it passed in both houses and was sent to the 50 states for ratification (Soule and King 2006). Within the first year, 22 states ratified the amendment. Over the course of the next five years 13 more ratified, for

a total of 35 states. As the initial ratification deadline (1979) quickly approached, Congress voted to extend the deadline to June of 1982. The extended deadline, however, did not alter the outcome, since no state ratified after 1977. On June 30, 1982 the Equal Rights Amendment was defeated, just three votes shy of amendment. It thus became “the first Constitutional Amendment in U.S. history to be defeated” (Marshall 1985:355).

LITERATURE REVIEW

Scholarly research examining the legislative processes of the Equal Rights Amendment has tended to focus on states that either ratified or did not, paying little attention to states that initially ratified the amendment but later rescinded their votes (Brady and Tedin 1976; Wohlenberg 1980; Deutchman and Prince-Emburg 1982; Boles 1982; Meyer and Menaghan 1986; Daniels and Darcy 1985; Nice 1986; Mathews and De Hart 1990; Soule and Olzak 2004; Soule and King 2006). One reason these states are often overlooked is because although they repealed their votes, rescinding states are still counted amongst the 35 states that officially ratified the amendment (Soule and Olzak 2004). A second reason is that regardless of whether these states are counted as ratified or not, the ERA would have still fallen short of the required 38 votes necessary to enact the ERA into law. Finally, a third methodological explanation suggests that for consistency and comparability, newer studies retain the coding schema of older studies thereby preserving this “ratified/non-ratified” approach. Nevertheless, these states deserve special attention. Although their rescinded ratifications had no official legal ramifications, this political move certainly made a difference in un-ratified states by changing regional pro-feminist discourses (Mansbridge 1986), and this change marked a shift in state-level opposition toward the amendment.

Social Movement Theory and the Equal Rights Amendment

Over the past two decades, social movement theories have dominated studies seeking to explain the 1982 legislative defeat of the Equal Rights Amendment. In general, it has been well documented that social movements shape legislative processes (Gamson 1990; Cress and Snow 2000; Earl 2000). Specifically, social movement theorists have suggested the strength and organizational structure of the movement has a direct impact on policy outcomes at the local, state, and national level (Skocpol et al. 1993; Andrews 2001; Minkoff 1997, 1999; Soule et al 1999, 2004, 2006). In order to generate a successful movement capable of influencing legislative policy, social movement actors must find allies in political elites and state legislators (Cress and Snow 2000). For the most part, and with regard to the ERA, social movement scholars have focused on three aspects of social movement theory: opportunities, movement and countermovement dynamics, and political framing. Although these approaches have made important contributions to understanding the defeat of the ERA, the studies that have applied these perspectives have not taken rescinding states into account. In order to bring about a more systematic and comprehensive framework, I engage with these existing frameworks to ascertain their applicability to rescinding states. As my results

indicate, the theoretical implications and empirical assumptions of previous research are not entirely generalizable to the five rescinding states.

Opportunities

A number of empirical social movement models have been extended to the case of the ERA; perhaps most prominent is the “political opportunity structure” (POS) (Tilly 1982). Defined as the dimensions of the political environment that provide incentives for people to engage in collective action based on expectations of success or failure, the political opportunity structure has proven useful in providing a set of clues for when a movement and/or legislative policy is likely to succeed (Tarrow 1994). Although instrumental in placing contextual forces at the center of social movement analyses, this framework, with its singular focus on the state, has been criticized for being too narrowly defined (McCammon et al 2001, Evans, Rueschemeyer, and Skocpol 1985). McCammon and colleagues (2001), for instance, argue that scholars need to move beyond political opportunity structure exclusivity, for other opportunity models exist. They find that with regard to the suffrage movement, a “gendered opportunity structure” helped foster success for the movement. According to the researchers, a broader set of gendered opportunities was present alongside political opportunities. Further, changing attitudes toward women and traditional gender roles aided in the suffrage movement’s success by influencing policy-makers’ decisions and generating widespread public support for women’s suffrage. Thus, the “gendered opportunity model” re-conceptualizes “opportunity” as narrowly defined by the political opportunity perspective in which the target of the movement is not merely the state but also culture and society itself.

Gendered opportunities, marked by a transformation in gender roles and shifting attitudes toward women, aid in the political success of a movement and/or gendered legislation. However, it is not clear whether gendered opportunities aid in the political *failure* of a movement and/or gendered legislation. In other words, do gendered opportunities exist for counter social movements? Can countermovements capitalize on gendered opportunities to defeat legislative policies? If so, is the process of legislative defeat comparable to the process of legislative success? Soule and Olzak (2004) extend the gender opportunity structure model to the case of the ERA and demonstrate that as women increasingly engaged in ERA politics, public opinion shifted in favor of the amendment at the national level. However, the researchers do not account for shifts in public opinion at the state-level. More salient for this research, Soule and Olzak (2004) drop the five rescinding states from their analysis the year each state rescinded, effectively counting them among the states that officially ratified the amendment. As it stands, gendered opportunities, as presently conceived, are inadequate in explaining legislative failure and do not account for states in which the gendered legislation was initially successful but was later defeated. In other words, it is unclear what exactly the opportunities were for rescinding states and who actually benefited from them.

Movement/Countermovement Dynamics

Social movement theorists have highlighted countermovements as powerful determinants of policy outcomes (Meyer and Staggenborg 1996; Soule and Olzak 2004).

If a social movement is defined as collective challenges by people with common interests in sustained interaction with elites, opponents, and authorities (Tarrow 1994), a countermovement, then, may be defined as a movement that makes contrary claims to those of the original movement at the same time in order to thwart the advances of their opposition (Meyer and Staggenborg 1996).

According to Meyer and Staggenborg (1996), any movement capable of political success will generate an oppositional movement. With regard to the ERA, scholars have focused on pro-ERA and anti-ERA organizations to illustrate this case in point. Most notably, attention has centered upon pro-ERA organizations such as the National Organization for Women (NOW) and anti-ERA forces in the form of Phyllis Schlafly's STOP-ERA campaign (Mansbridge 1986; Mueller and Dimieri 1982; Burris 1983; Hoff-Wilson 1986; Wohlenberg 1980; Deutchman and Prince-Emburg 1982). This tradition often draws upon resource mobilization theory, which maintains the "importance of economic and organizational resources for successful collective action" (Okamoto and Ebert 2010:532), to explain movement/countermovement dynamics and the 1982 legislative defeat of the Equal Rights Amendment. According to this body of research, the early success of state-level ERA ratification is attributed to the highly mobilized, organized, and resource-rich pro-ERA movement, while its eventual defeat is linked to the strengthening of the anti-ERA movement alongside the rise of the New Right, a religious conservative right-wing countermovement.

Resources, however, do not fully explain movement success (Soule and Olzak 2004); the tactics a movement employs are also important predictors. Stephanie Gilmore (2003) suggests there are two general strategies employed by women's movements: liberal and radical. Liberal feminist organizations operate within the existing political system and view the legislative process as the most effective mode to impact change. Radical feminist groups, on the other hand, operate outside of the political system and employ more "in-your-face" tactics in order to undermine the system (Gilmore 2003). In Gilmore's (2003) study on the Memphis, Tennessee chapter of NOW, the author identifies Memphis NOW as a liberal feminist organization whose liberal feminist strategies during the ERA campaign (mostly letter writing) proved ineffective in combating the radical rescission efforts of the opposition. Although Gilmore's study is limited to one organization and rescission is not the focus of her study, for my purposes, this scholarship is noteworthy in that it is the only scholarly article published on an ERA-rescinding state. However, because Gilmore's research is limited to a single city within a single rescinding state, it is not known whether other rescinding-state chapters of pro-ERA organizations employed similar liberal feminist strategies. In other words, it is not clear whether the strategies employed by this Tennessee chapter of NOW are unique or common among all rescinding states. Further, if all of the rescinding states employed liberal feminist tactics, which Gilmore (2003) claims were inadequate, could this be a key factor explaining rescission success?

Moreover, Susan E. Marshall (1985), in her work on anti-feminists movements, lends support to the liberal/radical tactics employed by pro- and anti-ERA organizations through her finding that ERA opponents employed more radical strategies compared to ERA proponents. Importantly, according to Marshall, the ERA countermovement was actively engaged in radical rescission efforts. It is not clear, however, whether these "radical rescission efforts" were successful since Marshall does not delineate in which

states the opposition employed these tactics or if this was merely a national effort on the part of the opposition. Further, we do not know what these rescission efforts looked like on the ground. It is crucial to understand the context and dynamics of rescission to gain a more comprehensive viewpoint on the defeat of the ERA.

Framing

Finally, social movement scholars have enlisted political framing to explain the defeat of the ERA. According to this line of research, social movement leaders and activists “frame, or assign meaning to and interpret relevant events and conditions in ways that are intended to mobilize potential adherents and constituents, to garner bystander support, and to demobilize antagonists” (Snow and Benford 1988:198). Framing, in other words, conceptualizes the generalization of grievances that defines “us” versus “them” (Tarrow 1998). In this way, challengers define their enemies by their real or imagined attributions of evil. What is more, rhetoric serves an important function in the framing process. According to Marshall (1985), rhetoric “crystallizes discontent, diagnoses the problem, and articulates solutions and means of achieving them” (p. 350).

Jane Mansbridge, in her groundbreaking work, *Why We Lost the ERA* (1986), best illustrates the political framing of the ERA in the period between 1972 through 1982. According to Mansbridge, because the ERA offered no immediate tangible benefits, both pro- and anti-ERA movements exaggerated the positive and negative effects of the amendment. Put differently, both groups relied on exaggerated substantive changes the ERA would provide rather than the abstract democratic principles embedded in the amendment. For example, pro-ERA activists began to frame the ERA issue as a matter of wages. They claimed the ERA would offer women “equal pay for equal work.” Anti-ERA activists, on the other hand, incited political frames of fear to mobilize resistance to the ERA. They claimed the ERA would require women to be drafted into the military, integrate gender specific restrooms, and eliminate economic protective legislation for dependent housewives. Although the ERA would have done none of this, the anti-ERA movement, according to Mansbridge (1986), was more successful in framing the ERA issue in order to garner bystander support.

Moreover, Marshall (1985) asserts that countermovements, by virtue of their counterclaims, must overcome the challenge of being “trapped by their negative rhetoric” since they must define themselves in opposition to the original movement. In the case of the ERA, opponents risked being cast as anti-woman by virtue of their stance against the proposed amendment. In order to overcome this obstacle, according to Marshall, opponents had to recast themselves as not “anti-women’s rights,” but rather as defenders of “true womanhood.” To do this, the opposition relied on rhetorical strategies to frame the ERA not as a law that would give women more rights, but rather, as a law that would take away existing ones. In this way, opponents successfully reversed the images of antifeminism and women’s liberation, converting opponents into seeming proponents of women’s rights (p. 356). Like the frameworks previously discussed, the literature on framing does not take rescinding states into consideration. We do not know, for example, how the issue of rescission was framed within these five states. We also do not know if ERA opponents enlisted these same rhetorical strategies and if they presented themselves also as “true defenders of womanhood.”

In sum, social movement scholars have contributed the most to our current understandings of the Equal Rights Amendment. However, because these studies have focused exclusively on states that either ratified or did not ratify, we do not know whether or how these theories are applicable to rescinding states. In their present conceptualizations, these social movement theories are not entirely generalizable to rescinding states. For instance, the literature on opportunities does not take rescission into consideration. It is not clear for whom the opportunities existed. It is also not clear if opportunities can be harnessed to defeat legislative policies. Likewise, we know very little about movement/countermovement dynamics within rescinding states. We do not know whether pro- and anti-ERA organizations utilized the same rhetorical strategies enlisted in ratified and non-ratified states and we know virtually nothing about how rescission was framed. What is missing from the aforementioned social movement theories is a comprehensive framework that addresses the states that rescinded their initial votes for ERA ratification. Until such a framework can address this oversight, a scholarly chasm will remain. The question addressed in this research aims to fill this chasm and seeks to move the literature closer to a more comprehensive framework.

THEORETICAL FRAMEWORK

The theoretical framework for this study is grounded in social movement theory. This research extends the literature that incorporates social movement theory and political sociology perspectives to the case of the ERA and state-level ratification. This framework suggests that no single-factor explanation can explain the defeat of the ERA, but rather multiple interrelated factors are likely the cause (Soule and Olzak 2004; Soule and King 2006). Specifically, I draw on and adapt the literature on gendered opportunities, movement/countermovement dynamics, and political framing. I find that when extended to the case of ERA-rescinding states, these frameworks remain useful, however, in their present conceptualizations, these perspectives are not entirely generalizable to them.

Gendered opportunities, for example, existed but they aided the opposition and not proponents. Recall, gendered opportunities are marked by a transformation in gender roles and shifting attitudes toward women, which then aid in the political success of a movement and/or gendered legislation. However, in rescinding states, the opportunity seized by the opposition was not shifting views toward women, at least not initially. The opposition capitalized on a unique occurrence I call *constructed confusion*, or the social manufacturing of confusion, a rhetorical strategy that opened the doors to a conservative gendered backlash in attitudes toward women and the ERA in rescinding states. In this way, constructed confusion was the opportunity that facilitated a shift in attitudes towards women, culminating in the defeat of the gendered legislation.

This gendered opportunity, however, would not have existed had it not been for *gendered threats*. A second theoretical contribution this paper makes is extending the social movement literature on threats to the ERA. Threats have largely been ignored in studies of the ERA, however, I maintain the applicability of threats offers unique insights to the case of the ERA and helps explain why the opposition in rescinding states enlisted the particular strategies and framing tactics they did. Charles Tilly (1978) once argued

that political threats are just as important as political opportunities. Paul Almeida (2003) disentangles opportunities from threat by conceiving opportunities as enhancing or extending existing benefits if a collective were to mobilize, whereas threats occur when existing benefits will be taken away if a collective does not mobilize.

Moreover, threats not only help contextualize the gendered opportunities that existed, they also help explain movement/countermovement dynamics. Nella Van Dyke and Sarah Soule (2002) discuss threats in terms of reactive mobilization and reactive social movements. Drawing from Tilly (1978), the researchers note reactive mobilization occurs in response to perceived loss of power and/or resources. Reactive social movements, then, involve “attempts by a group to reassert claims to political and/or economic resources that they have lost (or perceive they have lost)” (Van Dyke & Soule 2002:499). In this way, we may think of the anti-ERA movement in rescinding states as a reactive social movement; the opposition was reacting to a perceived threat to the conservative gendered order. Threats also shed light on the rhetorical strategies enlisted by the opposition to frame rescission as a moral and social corrective because threats influence framing. Van Dyke (2003) asserts, “enemies or threats will only inspire mobilization if movement organizers and participants define them as threatening” (p. 2).

Finally, I introduce a new theoretical concept I call *constructed confusion*. Constructed confusion refers to the social manufacturing of confusion. I borrow the basis of this concept from Auyero and Swistun’s (2009) term, “labor of confusion.” In their book *Flammable: Environmental Suffering in an Argentine Shantytown*, the authors find that confusion, uncertainty, and powerlessness each contributed to collective inaction. What is more, this doubt and uncertainty was politically and socially constructed and reproduced through multiple influential actors. Rumors also play a significant role in the labor of confusion and in the framing of the issue. According to Auyero and Swistun (2009), “these frames are, in other words, structured and structuring: they shape what people see, what they don’t see, what they know, what they don’t know, and what they would like to know, what they do and what they don’t do” (p. 145).

Although the authors highlight uncertainty and shared misunderstandings, their focus is not necessarily on the construction of confusion per se, but rather the construction of submission and collective inaction. This is where my concept, constructed confusion, departs from Auyero and Swistun’s (2009) conception. Constructed confusion refers directly to the social construction of confusion, in which doubt and uncertainty are created to mask inequality and then capitalized upon to reinforce the power structures that legitimize it. I agree with Auyero and Swistun (2009) that domination is a byproduct of uncertainty; however, whereas they argue a labor of confusion has a “decisive effect on shared (mis)understandings” (p. 10), I argue shared misunderstandings have a decisive effect on constructed confusion.

What does this look like in practical terms? A series of events laid the foundation for constructed confusion to take place, most notably, uncertainty surrounding the implications of the ERA and questioning the legality of rescission. Both pro and anti-ERA forces contributed to the construction of confusion, but it was the opposition that capitalized upon it. In this paper, it is argued that constructed confusion rendered gender inequality invisible and rescission became a mechanism to perpetuate inequality by reinforcing the power structures that legitimized it.

METHOD

Data

This comparative historical analysis uses content analysis of historical documents from each of the five rescinding states from 1972 through 1982. These historical documents consist of newspaper articles, legislative documents, such as Congressional roll calls, and documents produced by rescinding-state chapters of three pro-ERA organizations. Comparative historical analysis is an appropriate methodology for this particular research project because my aim is to identify the underlying processes or factors that influenced state decisions of rescission. Generally, comparative historical studies are concerned with causal analysis, processes over time, and systematic comparisons (Mahoney and Rueschemeyer 2003). Additionally, because most of the sociological scholarship on the ERA is quantitative, employing a comparative historical methodology has the capability of revealing contextualized decisions and systematic patterns that quantitative studies may have overlooked.

Data Collection

The data enlisted in this study consists of both primary and secondary sources (see Appendix for list of sources). First, I collected archival data produced by rescinding state-level chapters of the National Organization for Women (NOW), The American Association of University Women (AAUW), and the League of Women Voters (LWV) from 1972 through 1982. Organizational documents collected from NOW, AAUW, and the LWV consists of minutes of meetings, bylaws, newsletters, publications, campaign planning, and correspondence. These archival materials come from three separate collections housed at Boise State University, the University of South Dakota, and the Nebraska State Historical Society Archive. I gained access to these materials by contacting the archives directly. Materials were sent electronically through email and through the United States Postal Office. Next, I collected legislative documents in the form of Congressional roll calls, minutes of Congressional hearings, and court decisions from the online academic archival site, LexisNexis.

Lastly, data were collected from newspaper articles published in each rescinding state from 1972 through 1982. These newspaper articles come from multiple online newspaper sources, which include: Newspapers.com, Newsbank.com, ProQuest Historical Newspaper database, and Google News archive. I collected 75 newspaper articles for each rescinding state, focusing primarily on articles pertaining to rescission and “Letters to the Editor.” Although I sampled across each year during this ten-year period, I focused especially on articles published between the time of ratification to the time of rescission. Utilizing newspapers as sources of data has been widely criticized in the social sciences generally and in studies of collective action specifically. Much of this criticism centers upon issues of selection bias, or which events get covered, and description bias, how accurate the news coverage is (Earl, Martin, McCarthy, and Soule 2004). Similarly, some scholars have pointed to a self-selection bias when analyzing letters to the editor (Doering 2014).

While I am fully aware of these limitations and analyzed material accordingly, newspaper articles, especially “Letters to the Editor,” can also offer invaluable information serving, as Page (1996) noted, “as a documentary by-product of everyday civic life.” Likewise Sigelman and Walkosz (1992), in their study on attitudes and opinions in Arizona concerning the Martin Luther King, Jr. holiday, found that letters to the editor accurately reflected general public opinion (Perrin and Vaisey 2008). In keeping with these previous studies, this research uses published letters to the editor to serve as a proxy for general public opinion surrounding the ERA.¹

Data Analysis

The content analysis for this study was conducted using the qualitative software program, NVivo 10 (see Table 2 in the Appendix). First, I divided the data into three sections based upon the source of data (i.e., newspapers, organizational documents, and legislative documents). Second, I began the analysis by employing an open coding system (Corbin and Strauss 2008), whereby all sources of material were coded line-by-line in order to identify key patterns (Morgan 2013). During this initial phase, I coded all content relevant to the Equal Rights Amendment and rescission. Third, I developed more focused codes and recoded data once more utilizing a selective coding method (Corbin and Strauss 2008; Glaser 2008; Lofland et. al 2006) in which individual yet related codes were grouped together under a more general concept or category. Fourth, throughout the coding process I maintained theoretical memos (Glaser 1998) to record initial thoughts and reactions, as well as emerging ideas regarding theoretical relationships between codes. These theoretic memos proved useful in facilitating constant comparisons both within and across the different sources of data.

Analysis of multiple sources of data uncovered three major themes, which I categorize as the construction of confusion, oppositional strategies, and proponents’ responses. These general themes were then further subdivided into smaller, more focused topics. The general thematic code, “the construction of confusion,” for example, is comprised of three sub-codes: uncertainty concerning the implications of the ERA, questioning the legality of rescission, and direct and indirect organizational tactics. First, questions concerning the implications or unintended consequences of the ERA were coded. These queries were grouped into three speculative claims: social, economic, and moral. For instance, claims that the ERA would integrate gender-specific institutions such as the military, public restrooms, and prisons were coded under social-based claims. Second, claims that the ERA would eliminate economic protections for women were coded under economic-based claims. Lastly, claims that the ERA was an assault on the Church and family were coded as moral-based claims. Next, questions concerning the legality of rescission were coded under the general construction of confusion thematic code. This code was subdivided into arguments that rescission was legal and arguments that rescission was illegal. Third, organizational tactics contributed to the construction of confusion and were coded under this guiding theme. Opponents contributed *directly* by propagating misinformation and distrust, whereas ERA proponents contributed *indirectly* by doing virtually nothing to combat the opposition’s dissemination of misinformation.

¹ Public opinion polls in each rescinding state could not be located.

Next, the general thematic code “oppositional strategies” consists of rhetorical strategies enlisted by ERA opponents. Rhetorical strategies were subdivided into two primary tactics. First, opponents capitalized on confusion by exploiting the mounting misgivings concerning the ERA. As noted above, the opposition did this by propagating misinformation and distrust in ERA proponents. The basis for this propagation is rooted in three central threats that I categorize as threats to gender, threats to the family, and threats to morality. The second rhetorical strategy coded under the oppositional thematic code is “framing.” Opponents attempted to frame rescission as a moral and social corrective to the supposed harmful ramifications of the ERA. Opponents relied on three rhetorical discourses to frame rescission as a social and moral corrective: justification, contradiction, and fairness. First, opponents attempted to justify their support of rescission by stating they were unaware of what they were really voting for when they initially voted for ratification. Second, opponents contradicted themselves by claiming the ERA was unnecessary because women were already equal to men but then claimed women did not really want to be equal. Third, opponents often relied on a rhetoric of fairness to defend their rescission efforts. Legislative opponents, for example, claimed that if extension of the ERA was permitted then it was only fair rescission be permitted as well.

Finally, the thematic code “proponents’ response” captured all action (or inaction) taken by ERA proponents with regard to rescission efforts. This code is divided into three sub-codes: passivity, liberal feminist strategies, and slow/ineffective strategies. First, proponents took a passive approach to early rescission efforts. Organizational documents were coded under the “passivity” code in every instance rescission measures were dismissed with laughter and/or disbelief or simply ignored as observed in organizational meeting minutes. Next, letter-writing campaigns directed toward rescinding-state legislators were coded under “liberal feminist strategies.” Lastly, when proponents began taking rescission efforts seriously, the strategies they employed were coded as “slow/ineffective.” These strategies consist of what I call “damage control strategies” and were grouped into two primary tactics. First, every instance in which proponents distanced themselves from the abortion issue and radical feminist stereotypes was coded under “strategic distancing.” Next, I coded the proponents’ strategy of appealing to men and housewives under damage control strategies. Taken together, these codes reveal contextualized factors that help explain why and how these states rescinded their votes for ERA ratification.

FINDINGS

Despite being relegated to, at best, a footnote in history, rescission was a controversial, divisive, and hotly contested issue. Rescission hearings generally drew media attention and crowds of thousands on both sides of the debate. Rescinding states not only became battlegrounds for which the war for equal rights was waged but also sites of resistance in which hegemonic notions concerning gender and the family were simultaneously challenged and reaffirmed. In what follows, I present three key findings to demonstrate how rescission was developed and used in the five rescinding states to maintain inequality by preserving the very power structures that legitimized it. First,

uncertainty concerning the implications of the ERA and the legality of rescission produced a general climate of confusion, which laid the foundation for constructed confusion. Second, through rhetorical strategies the opposition exploited this confusion by propagating misinformation to frame rescission as a moral and social corrective in a process I call constructed confusion. Third, because they were initially successful in their ratification efforts, proponents developed a false sense of security, which influenced their passive responses to early rescission efforts and the ineffective strategies they would later employ to combat these efforts. In this way, proponents contributed indirectly to the construction of confusion by doing virtually nothing to combat the efforts of the opposition. In short, constructed confusion facilitated rescission, which was then used to preserve the power structures that render gender inequality invisible.

Moreover, I find that most of the strategies implemented by pro-ERA organizations in rescinding states mirrored those of more national pro-ERA movements. Thus, the “liberal feminist strategies” utilized by rescinding-state organizations corroborate the findings of previous research on pro-ERA organizations in non-rescinding states. However, my findings also show that the strategies enlisted by the opposition are unique to rescinding states and mark a departure from the strategies utilized by opponents in non-rescinding states. It is argued that these unique strategies were essential to rejecting the ERA in rescinding states. Although ERA proponents challenged rescission efforts, initially ratification was so taken for granted that by the time proponents began utilizing organizational tactics, such as strategic distancing and damage control strategies, it was too late. It would not be long before many would come to see the ERA as not a long overdue law of equality, as it was initially regarded, but rather as a threat to the family, womanhood, and morality. In short, the ERA came to be seen as a threat to the conservative gendered order. In this way, rescission efforts changed the ideological tide by creating a climate of confusion. It was in this context that we see the ideological retrenchment of pro-feminist views accompanied by a backlash of the conservative gendered order.

Laying the Foundation for Constructed Confusion

By the beginning of 1973, a type of ambiguity surrounding the ERA began to take form and for Nebraska, Tennessee, Idaho, South Dakota, and Kentucky, this ambiguity would provide the impetus for rescission efforts. This ambiguity was characterized by an ideological shift taking place within rescinding states in which the ERA went from being seen as a clear and accepted corrective to discrimination to an unclear and controversial law in which the unintended consequences were afforded more weight than the democratic principles embedded in the amendment. It was in this atmosphere of ambiguity that rescission was facilitated through *constructed confusion*. Two conditions laid the foundation for constructed confusion to occur. First, initial ambivalence was generated by uncertainty concerning the social, economic, and moral implications of the ERA. Second, questions concerning the legality of rescission added further uncertainty to the climate of doubt surrounding the ERA.

Questioning the Unintended Consequences of the Equal Rights Amendment

Certain claims made by the opposition concerning the supposed consequences of the ERA were necessary to the construction of confusion within rescinding states. Through analysis of newspaper articles and transcripts of Congressional hearings, these speculative claims can be grouped into three interrelated categories: social, economic, and moral. The social claims made by the opposition were arguably the most far-reaching. By far the most common reason for opposing the ERA was the claim that the ERA would legislate the mandatory conscription of women into the United States' armed forces. One oppositional letter writer, for example, summed up this position in *The Daily Republic*, a South Dakota newspaper, when she wrote, "The ERA will force women to register for the draft. Because under the ERA men and women will become equals, women will have to fight on the front lines in WAR! According to the ERA, equality means our mothers and daughters will be ripped from their families, given guns, and told to kill or be killed." Although today this may seem like an exaggerated and outlandish claim, one must keep in mind that this is on the heels of the Vietnam War when the draft was a very real threat. In fact, 94 percent of all newspaper articles cited the draft of women into the U.S. military as a reason they opposed the ERA. To a lesser extent, the claim that the ERA would integrate gender-specific restrooms was cited in 48 percent of all oppositional letters to the editor. Lastly, claims of the gendered integration of prisons and college dormitories were cited the least often, at 11 and 8 percent, respectively. Claims of the gendered integration of all social institutions were generally rooted in the argument that the ERA would lead to the complete collapse of civil society. For instance, in his opposing letter to the editor, one Kentucky resident captured this position by stating, "The ERA will cause chaos in our laws, schools, economy, military defense, and social customs." Likewise, a female letter writer in a Nebraska newspaper claimed, "The ERA will wreak havoc in this country. It will cause a social and moral catastrophe so great only Martial Law will be able to restore order."

Next, economic-based claims were often utilized to express opposition to the amendment. These claims usually centered upon the supposed elimination of economic protection for dependent housewives and were enlisted in 72 percent of all oppositional letters to the editor. Interestingly, men and women evoked this claim equally. For instance, one male letter writer in the *Idaho State Journal* claimed, "The ERA will abolish all economic protections for women... A law like the ERA will only encourage men to walk away from their financial responsibilities to their families." Although economic-based claims were frequently cited, none of the letter writers stated exactly what specific law legislated the economic protection of housewives. Indeed, ERA proponents often challenged their opponents to cite the law requiring men to provide for their wives. Moreover, economic-based claims drew from arguments regarding property taxes, credit, and social security benefits. For instance, in Tennessee, opponents often referred to retirement requirements and the observation that at the time women could retire at the age of 62 whereas men could retire at the age of 65. This claim was often stretched to "prove" that the ERA would "wreak havoc on the economy."

Finally, morality-based claims challenged the merits of the ERA and assisted in the growing confusion surrounding the amendment. Increasingly, the ERA came to be seen as fundamentally immoral by the opposition. These moral arguments typically centered upon religious doctrine and heteronormative notions concerning the family. Opponents often enlisted the Bible, for instance, to demonstrate that God created men

and women to be different and therefore should not be treated the same. Shelley, for example, a self-proclaimed “proud housewife” from Lincoln, Nebraska wrote, “Ephesians 5:22 specifically states, ‘Wives, submit to your husbands as to the Lord.’ God never intended for man and woman to be treated the same! Real God-fearing Christian women do not want equal rights!” Although this example implicates religion, it is worth noting that my analysis reveals that religion should not be treated as a blanket statement of opposition. For example, the Mormon Church officially opposed the ERA but in every rescinding state pro-ERA organizations formed coalitions with Catholic-based organizations such as the Council of Women Religious Arch Diocese and the Catholics for Free Choice in Omaha. Likewise, the United Methodist Church for the Equal Rights Amendment formed a close alliance with the Boise chapter of NOW.

Although numerous religious-based organizations supported the ERA, moral claims still presented strong challenges to the amendment. Perhaps the strongest argument against the ERA was its supposed “assault” on the family. The claims against the ERA by way of the family were often rooted in heteronormativity and blatant homophobia. Opponents claimed that because the ERA would allow same-sex marriage, thus the adoption of children by same sex couples, as well as the conscription of mothers into the U.S. military or their forced employment outside the home, this would surely lead to the complete destruction of the traditional family unit. One oppositional letter writer in the *Lexington Herald-Leader* even went so far as to say, “You can surely bet a bunch of homosexuals will be molesting your children in the ERA’s unisex restrooms.” Part of the reason moral-based challenges against the ERA were so successful is because of the widespread demonization of women’s liberation occurring at the national level. This demonization combined with the moral-based claims that the ERA is an assault on womanhood and the family played a significant role in contributing to the general climate of confusion surrounding the ERA.

Questions Concerning the Legality of Rescission

The second condition that laid the foundation for constructed confusion was the uncertainty concerning the legality of rescission. From the first rescission efforts beginning with Nebraska in 1973 until the eventual defeat of the ERA in June of 1982, the legality of rescission was constantly questioned and contested. These contestations would eventually be taken up in the courts. Even then, however, the legality of rescission would not be settled. Despite legal precedent demonstrating that the Supreme Court does not acknowledge rescission of constitutional amendment ratifications, Senator Richard Proud of Nebraska was the first to lead rescission efforts. These efforts were met first with shock and then confusion within the legislature. Unsure of the legality of these efforts, legislators looked to legal analysts for guidance. Analysis of rescission hearing testimonies, however, indicates the legal analysts themselves could not agree on the legality of rescission. Although legislative proponents maintained rescission would not be officially recognized in the federal courts, legislators in Nebraska’s unicameral government voted 31-17 on March 15, 1973 in favor of rescission, making Nebraska the first state to rescind the Equal Rights Amendment. A year later Tennessee followed suit and rescinded their 1972 ratification of the ERA on April 23, 1974. It was not until

rescission efforts were underway in Idaho, however, that the matter would be brought to the courts.

In *Idaho v. Freeman* four Idaho legislators, alongside legislators from Arizona and the District of Columbia, filed a lawsuit with the United States District Court for the District of Idaho claiming that rescission should be recognized by the federal court and contesting the recent three-year extension of the ERA granted by Congress. The defendants, the U.S. Justice Department, the General Services Administration, and the National Organization for Women (later added to the case as amicus curiae, or friend of the court), countered that the case be dismissed on the grounds that it was a political matter not a state matter, and therefore is in the jurisdiction of Congress not the courts.

Presiding Judge Marion Callister, a high-ranking official in the Church of Jesus Christ of Latter-day Saints, added further controversy to the case. Although NOW filed a motion to have Judge Callister dismissed as presiding judge on the grounds that he could not be impartial because of his high-ranking position in the LDS Church (recall the Mormon Church officially opposed the ERA); the motion was dismissed. *Idaho v. Freeman* was a high-profile case that garnered as much media attention as it did public controversy. Indeed, historical records show other rescinding states looked to this case for an official ruling on the legality of rescission. Stories of the lawsuit covered in Idaho and other rescinding-state newspapers such as the *Jefferson Reporter* in Kentucky, the *Lincoln Star* in Nebraska, and the *Knoxville Daily Sun* in Tennessee, often referred to the case as “life or death for the ERA.” On December 23, 1981, Judge Callister ruled that Congress does *not* have the authority to extend the ratification deadline of the Equal Rights Amendment and states *can* rescind constitutional amendment ratifications. Further, Judge Callister ruled that his decision applies to the other four rescinding states as well.

Although a judgment was reached in *Idaho v. Freeman*, the legality of rescission would still be contested and debated in the courts. Further, the confusion regarding rescission remained, in part, because of Judge Callister’s contradictory ruling. For example, Judge Callister ruled extension was unconstitutional because Congress passed the bill by a simple majority, instead of a two-thirds majority, but ruled that rescissions are valid even though these states rescinded on a simple majority when their initial votes for ratification required a two-thirds majority. NOW and the U.S. Justice Department appealed the ruling to the Supreme Court. The Supreme Court, however, would never rule on the issue of rescission. Officially, the Court did not uphold or overturn Judge Callister’s ruling but decided to “stay,” or block any legal effect of his ruling until the June 30th deadline. Essentially, the Court was waiting to see if the ERA would actually receive the 38 required ratifications by the extended deadline; but because this never happened, the Supreme Court never ruled on the legality of rescission.

Today, rescinding states are not officially recognized as rescinding but are counted amongst the ratifying states. The ramifications of Judge Callister’s ruling, however, were significant. In the month following the decision in *Idaho v. Freeman*, Oklahoma and Georgia officially rejected the ERA; one month later Illinois and Virginia would do the same. Moreover, after Judge Callister issued his ruling, newspapers in each of the rescinding states began speaking of the ERA as “dead” and “defeated.” Because the uncertainty regarding the legality of rescission were never settled, rescission became yet another source of confusion for Nebraska, Idaho, South Dakota, Tennessee, and

Kentucky. In sum, through questioning the implications of the ERA and the legality of rescission, a type of ambiguity began to take shape in the rescinding states. This ambiguity laid the foundation for constructed confusion, which, as discussed below, would then be exploited by the opposition.

Oppositional Strategies and the Construction of Confusion

Rhetorical Strategies

Through rhetorical strategies, the opposition manufactured constructed confusion to carry out rescission efforts. These rhetorical strategies can be divided into two primary tactics: capitalizing on confusion through the dissemination of misinformation and framing rescission as a social and moral corrective. As noted above, the opposition assisted directly in the construction of confusion by adding even more confusion to an already precarious environment in rescinding states. This set the stage for the successful framing of rescission as a moral and social corrective. Constructed confusion is crucial to the story of rescission for it is through this phenomenon that the opponents were able to gain the upper hand in the battle for equal rights thereby preserving the very power structures used to legitimize inequality.

Capitalizing on Confusion: The Rhetorical Strategy of Misinformation

Combined with the ambiguity already surrounding the ERA, the added precariousness of rescission made for a unique climate of general confusion in rescinding states that the opposition would then capitalize on. By capitalizing on the mounting misgivings surrounding the ERA and propagating misinformation and distrust of ERA proponents, oppositional forces in rescinding states successfully constructed the confusion that would later facilitate rescission. Constructed confusion created an opportunity for the opposition to gain the upper hand in shifting the ideological tide. This shift in ideological discourse was marked by the retrenchment of a pro-feminist ideology and followed by a backlash of the conservative gendered order. In this context, oppositional claims that were initially regarded as outlandish became very real threats.

One way the opposition exploited doubt and uncertainty was by enlisting fear tactics in order to plant seeds of misinformation and distrust. The bases of these fear tactics, I argue, were all rooted in the perceived threats embedded in the ERA. Although the opposition utilized a number of fear tactics, the basis of these tactics can all be reduced to one single threat: a threat to the conservative gendered order. In short, at the heart of the rescission debate is a debate over gender. The ERA did not only pose a threat to femininity, as some have argued (Gilmore 2002), it also posed a threat to masculinity, for men too have a stake in the oppression of women. For the opposition, the ERA was an assault on the social structures that legitimize gender inequality, namely the church, the family, the work place, and the law.

The opposition argued the ERA was fundamentally immoral because it was an assault on the Church. The Mormon Church was perhaps the most vocal in its opposition to the ERA. In oppositional letters to the editor, members of the Mormon Church claimed, “Women’s libbers are using the ERA to carry out their attack on the Church and

God's natural order." Through the demonization of "women's libbers," "oppositional forces purposefully created fear and confusion over the effects of the ERA as a way to depopularize and eventually kill it" (Schneider 2009:72-73). Likewise, because the opposition conflated the ERA with the issue of abortion, opponents claimed the ERA was an assault on the family. They used the recent Supreme Court decision in *Roe v. Wade* to further this misunderstanding. As one particularly emotional letter to the editor in the *Chattanooga Times* proclaimed, "They hate children, they advocate killing them, and now they want to come after yours too!" According to opponents, the ERA and *Roe v. Wade* symbolized the encroachment of the federal government into the family. Accordingly, these federal encroachments sought to dismantle the traditional family unit. Next, the ERA was seen as an attack on the economy by way of the workplace. Opponents claimed the ERA would wreak havoc on the economy and lead to an "economic crisis" that was often compared to the Great Depression. Finally, the ERA threatened to delegitimize gender inequality through the law once and for all. One letter writer, for instance, who claimed to be obtaining her law degree at Boise State University, stated rather matter-of-factly in the *Idaho Free Press*, "The ERA won't give women more rights, all it will do is abolish laws that exist to protect women. If that's equality, I don't want it!" With an overarching constitutional amendment, the ERA, it was feared, would eradicate existing legislation that relegated women to second-class citizenship.

The Framing of Rescission as a Social and Moral Corrective

A second strategy the opposition utilized that proved successful in getting these five states to rescind their initial ratifications of the ERA was the framing of rescission as a social and moral corrective by legislative opponents. Specifically, rescission was used as a corrective to prevent the presumed social and moral disarray the ERA was said to cause. To a certain extent, legislators who initially voted for the ERA but later supported rescission efforts employed their own damage control strategies. These damage control tactics were composed of three rhetorical strategies: justification, contradiction, and discourses of fairness.

One common way legislators justified rescission was by saying they did not know what they were actually voting for when they initially voted in favor of ratification. All pro-rescission legislators claimed they supported the equal rights of women but that the ERA was not the correct method to achieve this. They blamed their initial votes of ratification on the fervor and emotionalism surrounding the ERA by stating they were "caught up in the moment" and that their votes were a "hasty act rooted in emotionalism." Nebraska Senator Richard Proud, for example, stated, "We were so consumed with being the first state to ratify, that we failed to understand the true consequences of this [amendment]." Further, it was not until after more information regarding the implications of the ERA surfaced, oppositional legislators claimed, that they decided to change their decisions. Most oppositional legislators claimed they were misguided by the false hopes and empty promises of the ERA in order to justify their support of rescission. This sort of back peddling often drew on religious and family discourses. Representative Les Klevin (R-Sturgis), who led the rescission efforts in South

Dakota, testified in a rescission hearing that the “ERA will jeopardize the status of the Church and family and will surely lead to moral decay.”

Second, oppositional legislators often relied on discourses of contradiction to justify their decision to rescind. Legislators frequently invoked previous legislation such as the 14th Amendment, the Equal Pay Act of 1963, and Title VII of the Civil Rights Act to proclaim that women were already equal under the law, thus the Equal Rights Amendment was unnecessary. However, reasoning that women were already equal to men under the law was often followed by male legislative claims that women do not actually want to be treated as equal. These contradictory claims were often rooted in paternalism. Male legislators claimed women needed added protection and an amendment like the ERA would terminate existing legislative protections women currently enjoy. For instance, Senator Proud once stated, “My rescission efforts are for women. I am doing them a favor.” Male legislators also relied on religious and biological reasoning that contradicted their initial claims that women were already equal. For instance, male legislators asserted that men and women are fundamentally and biologically different and God did not intend for men and women to be treated the same. Lastly, towards the latter end of the 1970s legislators began enlisting meritocratic tropes that contradicted their earlier claims that women were already equal. Legislators claimed that if women worked hard enough an amendment like the ERA would not be needed.

Moreover, legislators’ claim that their changed votes were prompted by hometown pressure was also often contradictory, and in some cases simply untrue. The fact that each rescinding state initially ratified the Equal Rights Amendment within the first year following congressional approval is quite telling. Legislative and organizational documents as well as newspaper articles lend support to the notion that in rescinding states, at least initially, the merits of the ERA were largely unchallenged and adopted wholesale by both legislators and rescinding-state residents. In fact, analysis of 375 newspaper articles reveals no opposition to the amendment expressed in letters to the editor existed prior to January 1973. The first letters of dissent come from Nebraska newspapers, however these are few and far between. Moreover, these letters of opposition exhibit a strikingly similar structure and in some cases the same exact verbiage word for word. That the earliest letters of opposition come from Nebraska is no surprise as this was the first state to rescind. The timing of these letters, however, is quite suspect since this was the same time Senator Richard Proud announced his plans for a rescission resolution. In January 1973, Senator Proud claimed he had been receiving “massive” amounts of mail from angry Nebraskans pleading for the legislature to repeal its 1972 ratification of the ERA. Proof that these letters ever existed, however, cannot be substantiated as Proud never produced these letters as evidence in rescission hearings and had not saved them for archival purposes. Further, a poll conducted in 1973 on Nebraska residents found: 47 percent opposed rescission; 29 percent favored rescission; 24 percent were undecided. Similarly, another Nebraska poll, whose findings were reproduced in the Lincoln NOW meetings minutes, found that of the 538 cities surveyed only 6 percent of Nebraska residents opposed ERA. It was perhaps no coincidence then that substantial opposition did not appear until *after* the proposal of Nebraska’s rescission resolution and what would later prompt Phyllis Schlafly to proclaim, “The defeat of the ERA in Nebraska was the first major victory in the fight against liberalism” (Schneider 2009:2).

Third, opposing legislators relied on a rhetoric of fairness to defend their support of rescission. Since rescission and extension were almost always discussed together, one common rhetorical strategy was to argue that if extension is permitted, so too then should be rescission. Opposing legislators often deflected attention away from their own rescission efforts by highlighting the extension efforts of proponents. This deflection was noted in the Lincoln NOW meeting minutes: “Opponents have been using the deadline as a weapon, shifting the dialogue from the merits of the ERA to the time limit itself.” Similarly, male opposing legislators commonly drew from sports analogies to defend their support for rescission and opposition to extension. For instance, relating extension to baseball, legislators protested that it was “not fair to change the rules in the middle of the game just because you are losing.” Legislators also reasoned that if a state can vote “no” multiple times on a bill and then change their vote to “yes,” it was only fair that the opposite be true as well.

In sum, the ambiguity surrounding the ERA and rescission allowed the opposition to exploit uncertainty and manufacture what I call *constructed confusion*. Constructed confusion provided the impetus for *successful* rescission efforts and offered the opposition an opportunity to gain the upper hand in the battle for equal rights, which I argue, was essentially a battle over gender. By capitalizing on the mounting misgivings and perceived threats surrounding the ERA at the national level and propagating misinformation and distrust at the rescinding-state level, the opposition was able to change the ideological tide which was marked by the retrenchment of pro-feminist views and followed by a backlash of the conservative gendered order. In this way, through constructed confusion, seemingly outlandish claims become very real threats. Likewise, constructed confusion facilitated the framing of rescission as a social and moral correction by legislative opponents. Opposing legislators relied on rhetorical strategies of justification, contradiction, and discourses of fairness in order to defend their rescission efforts. According to legislators, rescission was the only route possible to counter the harmful consequences of the ERA. By doing so, these legislators sought to preserve existing power structures that legitimize gender inequality. In this way, rescission was a mechanism by which inequality could be maintained through the absence of law. The strategies of the opposition were not the only factors at work in the construction of confusion, however. As I demonstrate below, the passive response and ineffective strategies of proponents contributed indirectly to constructed confusion.

Proponents’ Response

Ineffective Strategies Prompted by a False Sense of Security

A final reason why rescission efforts were successful in these states is because proponents, prompted by a false sense of security, took ratification for granted. Because they initially succeeded in their ratification efforts, organizational proponents took a passive approach to early rescission efforts. As mentioned above, this may be because proponents were under the assumption that rescission was unconstitutional and such a move would not be officially recognized. Likewise, pro-ERA advocates may have taken ratification for granted because these five states were among the first to ratify the amendment, a move that could have easily produced a strong sense of security. Recall,

proponents also contributed to the construction of confusion, albeit indirectly, by doing virtually nothing to counter the misinformation propagated by rescission backers. Analysis of organizational documents produced by rescinding-state level chapters of the NOW, the AAUW, and the League of Women Voters reveals early rescission efforts were often dismissed and not taken very seriously. Indeed, the idea that the ERA would not succeed was inconceivable if not laughable (Gilmore 2003). Although ERA proponents challenged rescission efforts, initially ratification was so taken for granted that by the time proponents began utilizing strategic distancing and damage control strategies, it was too late.

Looking to the organizational documents produced by pro-ERA organizations is instructive and lends credence to the notion that proponents took ratification for granted and dismissed early rescission efforts. For instance, when the topic is brought up for the first time in Vermillion, a South Dakota chapter of NOW, meetings minutes reveal that the opposition's claim to have rescission efforts underway in 17 ratified states was dismissed with laughter and disregard. The topic is hardly discussed and ends with a member's claim that this could not be true since Idaho recently defeated its own rescission efforts (Idaho rescinded shortly after). In addition, rescission is not even discussed by the Louisville Kentucky chapter of NOW until 1976, meanwhile rescission efforts had been underway in the state as early as 1973. Moreover, although Idaho legislators tried multiple times to rescind, meeting minutes from the Boise chapter of NOW indicate that the chapter was initially concerned more with ratification efforts in other states and not by the rescission efforts in their own.

Next, legislative documents from rescinding states also support the notion that ratification was taken for granted. Congressional records indicate that, for the most part, legislative proponents were largely surprised by initial rescission efforts in their states. In fact, because it had been the goal of legislators in Nebraska to become the first state to ratify the ERA (they were second), any effort to rescind less than a year later was virtually inconceivable. As will be discussed in more detail below, legislators were mostly taken aback by initial rescission efforts because, up until that point, there had been little substantial evidence of public disapproval to the amendment in their respective states.

Finally, analysis of support for the ERA in letters to the editor attests that proponents initially took a passive and dismissive approach to early rescission efforts. For example, discussion of rescission or the "outlandish" claims made by the opposition, such as the draft or unisex restrooms, were dismissed as "nonsense" and "ludicrous." Likewise, prior to rescission, supporting letter writers often addressed rescission as a waste of time and taxpayer dollars. There was a general view that legislators should be concerned with more pressing state matters such as the growing "rape epidemic" in Tennessee or the racially contentious issue of busing in Idaho. Prompted by a false sense of security, the taken for granted assumptions regarding ratification as the end all be all, combined with the general dismissal of early rescission efforts by supporting organizations, legislators, and residents had significant implications for the strategies pro-ERA organizations would employ, which, as discussed below, were largely ineffective and too little too late.

Ineffective Strategies: Too little too late

Pro-ERA organizations operating in each of the five rescinding states employed much of the same tactics: letter-writing campaigns. Essentially, the tactics used to promote ratification were the same tactics enlisted to combat later rescission efforts. The tactics utilized by rescinding state-level NOW chapters reflect, for the most part, the strategies employed by National (NOW). In other words, rescinding-state chapters of NOW took a very hands-off approach by employing “liberal feminist strategies.” This finding is in line with Stephanie Gilmore’s research on the Memphis chapter of NOW. According to Gilmore, liberal feminist organizations are identified by their bureaucratic system of local, state, regional and national chapters and operate within the existing political system to sway political elites (2003). Moreover, the author asserts,

“Memphis NOW’s response to the rescission measure reveals national NOW’s early sentiments toward efforts to rescind and the seemingly laughable notion that the ERA would not succeed. Members of Memphis NOW waged a letter writing campaign to their state representatives in support of the ERA... When individual representatives debated the rescission measure in their home communities, Memphis NOW participated in these town meetings, but their contribution did little more than replicate national NOW’s attitude that the ERA was a foregone conclusion” (p. 101).

Newspaper articles, furthermore, also point to the ineffectiveness of these strategies as well as the pro-ERA organizations unwillingness to change tactics. Newspaper journalists argued that if proponents were to successfully combat the efforts of the opposition, they would have to employ more radical strategies than letter writing campaigns. For example, one newspaper columnist in Kentucky’s *Richmond Reporter* wrote, “the strategy of NOW and other pro-ERA organizations of Congressional lobbying, economic boycotts, and getting Democrats elected to office is what has led to the disastrous state of the ERA... Only mass demonstrations can change the tide.” Although NOW members participated in some public demonstrations, these were, for the most part, in other states and could not be seen by residents in their own states and communities. Meanwhile, rescinding-state oppositional forces performed numerous public demonstrations such as the staging of a dramatic 15-minute long skit on the Tennessee House floor starring a former Miss America Tennessee native lobbying for rescission. A poll conducted by the Lincoln NOW chapter of Nebraska is also enlightening to the relative ineffectiveness of these strategies. When asked what the chapter’s greatest weakness was, every single member in attendance said, “lack of organization, initiative, and follow-through.” Liberal feminist strategies were not the only ineffective measure taken by pro-ERA organizational proponents, however. The most common organizational tactics employed by these organizations may be classified into what I call, *damage control strategies*. Though hardly ineffective in and of themselves, these tactics were employed far too late.

Damage Control

Damage control strategies were strategies utilized by proponents in order to thwart the efforts of the opposition. The two most common damage control strategies

were strategic distancing and appealing to men and housewives. Through strategic distancing, rescinding-state organizational chapters tactically distanced themselves and the ERA from the controversial abortion issue as well as the recent Supreme Court ruling in *Roe v. Wade*. NOW-chapter meeting minutes specifically outline this calculated strategy. Interestingly, the strategic distancing from the abortion issue marked a departure from national NOW's campaign strategies, which at this time fought for *both* the ERA and abortion rights. This was an important strategy to combat the opposition's efforts to conflate the ERA with abortion. Although proponents went to careful lengths to distance themselves from the abortion issue, many newspaper columnists thought this was too little too late. For instance, one South Dakota journalist in *The Daily Plainsman* reported, "Even though they are consciously disassociating themselves from [abortion] now, they were so vocal about it in the beginning that many have come to believe they do not care about children or the family." Similarly, a Kentucky columnist noted, "Women's Libbers seem to have forgotten they supported abortion rights not too long ago, but we didn't."

Furthermore, organizational proponents consciously distanced themselves from the harmful stereotypes of "women's libbers" and more radical organizations such as the Women's International Terrorist Conspiracy from Hell, or WITCH, and the Redstockings. One way proponents tried to dismantle these harmful stereotypes was by presenting themselves not as feminists per se but as wives, mothers, Christians, and members of the community. In this way, they used religion to their advantage. A common biblical appeal came from Ephesians 5:25, in which the apostle Paul stated, "Husbands love your wives as Christ loved the Church." Religious appeals were obvious attempts at becoming relatable to those on the fence and were also duly noted by conservative newspapers, such as South Dakota's *Sioux Falls Argus-Leader* newspaper headline, "Libbers Trade Broomsticks for Bibles."

The most common appeals, however, were made specifically to men and housewives. Organizational documents demonstrate this to be a key calculated strategy. For instance, proponents often claimed that housewives have the most to gain from the ERA. As one Omaha NOW member put it her letter to the editor, "As it stands, homemakers are penalized by the law. No one stands to gain more from the ERA than American homemakers" or the ad taken out in the *Tennessee Tribune* by the Memphis chapter of NOW proclaiming, "The ERA will strengthen the important role of homemakers, and the Kentucky NOW slogan, "Housewives can support the ERA too!" Likewise, newspaper articles show how proponents appealed to men in order to gain support for the ERA. By appealing to men, proponents argued that men also have a stake in the ERA for they too are discriminated against under the law because of their sex. For example, proponents often enlisted widower benefits and child custody claims in order to appeal to husbands and fathers. However, like the strategic distancing tactics, appealing to housewives and men was relatively unsuccessful because proponents employed the tactic far too late. One Kentucky columnist in the *Sentinel-News* attributed the growing backlash against the ERA directly to the organizational strategies of Kentucky NOW stating, "Women's libbers themselves came on too strong a few years ago as man-hating, housewife-despising radicals. Fairly or unfairly, that image became fixed in the minds of the public, and a latter playing down of the 'male chauvinist-pig approach' has not been able to erase it."

Lastly, for much of the 1970s proponents were not addressing the fear tactics of the opposition. Proponents often stated in newspaper articles that the claims of the opposition were misguided and misinformed, but initially they had not addressed how they were wrong and what the ERA actually would do. As noted above, because proponents did not take early rescission efforts seriously, they simply had done very little to correct the misinformation disseminated by the opposition. In this way, proponents aided indirectly to the construction of confusion by doing little to correct the confusion. By the time rescinding states began planning workshops and opening information centers in 1976 to “correct the misguided claims of ERA foes” too much time had passed and the threats and fear propagated by anti-ERA forces were already deeply ingrained in the ideological discourses surrounding the ERA. Like the damage control strategies of strategic distancing and appealing to men and housewives, addressing the threatening claims of the opposition occurred too slowly. By not implementing these damage control tactics early on, the opposition was able to create and capitalize on a climate of confusion so great there was little proponents could do to change the tide. Thus, the passive, slow, and ineffective strategies of proponents, prompted by their false sense of security, proved detrimental in the end.

CONCLUSION

It has been more than thirty years since the legislative defeat of the Equal Rights Amendment, and yet studies of the ERA are as relevant today as they were 33 years ago. Although there is no dearth of social science scholarship on the ERA, the scholarly research in this area has paid virtually no attention to the five states that initially ratified the amendment but later rescinded their votes. Previous studies, for the most part, focus on states that either ratified the amendment or did not, however, this simplistic “ratified/non-ratified” approach runs the risk of masking crucial decisions and patterns that are unique to the five rescinding states, and which may have helped shape the eventual defeat of the amendment. The research presented here aims to fill this gap by highlighting the rescinding states as a necessary focal point.

This research demonstrates that despite scholarly neglect, rescission did in fact become a controversial, divisive, and hotly contested issue. Examining the factors that explain why and how five states rescinded their initial votes for ratification, I find the decision to rescind reflects a unique ideological retrenchment of pro-feminist attitudes within these states. In this paper, I demonstrate how through a phenomenon I call *constructed confusion*, or the social manufacturing of confusion, whereby doubt and uncertainty are harnessed to mask inequality and then exploited to reinforce the power structures that legitimize it, played a decisive role in these five states. I argue rescission was made possible through constructed confusion, in which the opposition capitalized on uncertainty by propagating misinformation and framing rescission as a moral and social corrective. Aided, in part, by the slow and ineffectual response of proponents to combat these efforts, rescission became a tool to maintain gender inequality within these rescinding states by rendering it invisible.

Moreover, this research engages with multiple social movement frameworks including gendered opportunities, movement/countermovement dynamics, and political

framing. I find current conceptualizations of these frameworks are not entirely generalizable to rescinding states, however, through slight re-conceptualizations and extending the social movement literature on threats to the case of the ERA generally, and rescinding states specifically, these frameworks remain useful and add unique explanatory power to ERA scholarship. Threats, for example, contextualize rescission efforts and shed light on the rhetorical strategies of the opposition. At the heart of the rescission debate is a debate over gender. The opposition viewed the ERA as a threat to the conservative gendered order and this *gendered threat* would later prompt the opposition to exploit doubt and uncertainty, which I conceive of as the gendered opportunity. In this way, constructed confusion was the gendered opportunity that facilitated a shift in attitudes towards women and resulted in the defeat of the gendered legislation.

The findings presented in this study offer opportunities for future research. For example, because these five states were among the first to ratify both the ERA and the 19th amendment, which granted women the right to vote, future research could examine the historical legacies of rescinding states, examining points of similarity and difference across these two historical time periods. Next, because this research focused on the five states that *succeeded* in their rescission efforts, future research should examine the states that *failed* in their rescission efforts, drawing systematic comparisons between the two groups. Finally, my concept of constructed confusion has the potential to open up further possibilities for future research. For example, constructed confusion could be extended to other state-level analyses to investigate whether the same phenomenon occurred in other state-level rescission efforts. Investigating other instances of state rescission can be informative to theory building and testing. This paper has sought to problematize existing ERA scholarship by demonstrating the ways in which rescission perpetuates inequality. Ultimately, the decision to rescind is a story of power and rescission became one mechanism by which these states could maintain gender inequality through law, or the absence of it.

Appendix

Table 1: Rescinding States

Rescinding State	Ratified	Rescinded
Nebraska	March 29, 1972	March 15, 1973
Tennessee	April 4, 1972	April 23, 1974
Idaho	March 24, 1972	February 8, 1977
Kentucky	June 26, 1972	March 17, 1978
South Dakota	February 5, 1973	March 1, 1979

Table 2: Thematic Codes

Themes	Subcodes
Constructed Confusion	Uncertainty concerning ERA implications Social Economic Moral Uncertainty concerning legality of rescission Legal Illegal Organizational Tactics Opposition: directly Proponent: indirectly
Oppositional Strategies	Rhetorical Strategies Capitalizing on confusion Propagating misinformation Framing of rescission Moral corrective Social corrective
Proponents' Response	Passivity Dismissal of rescission efforts Liberal feminist strategies Letter-writing campaigns Campaigning for political elites Slow/Ineffective strategies Damage control strategies Strategic distancing Appealing to men and housewives

Table 3: Data Sources

Rescinding State	Newspapers	Legislative Documents	Organizational Documents
Nebraska	<i>The Lincoln Star</i> <i>Lincoln Evening Journal</i> <i>The Columbus Telegram</i> <i>Sunday Journal & Star</i> <i>Beatrice Daily Sun</i> <i>Gateway Newspaper</i>	Congressional Roll Calls Congressional Hearings Court Decisions	Minutes of Meetings Bylaws Newsletters Publications Campaign Planning Correspondence
Tennessee	<i>Kingsport Times</i> <i>Kingsport News</i> <i>Memphis Daily News</i> <i>Tennessean</i> <i>Tennessee Tribune</i> <i>Chattanooga Times</i> <i>Herald News</i> <i>Knoxville Daily Sun</i> <i>Tennessee Star Journal</i>	Congressional Roll Calls Congressional Hearings Court Decisions	Minutes of Meetings
Idaho	<i>Idaho State Journal</i> <i>Idaho Statesman</i> <i>The Post-Register</i> <i>Lewiston Morning Tribune</i> <i>Idaho Free Press</i>	Congressional Roll Calls Congressional Hearings Court Decisions	Minutes of Meetings Bylaws Newsletters Publications Campaign Planning Correspondence Newsletters
Kentucky	<i>The Jefferson Reporter</i> <i>Herald Journal</i> <i>The Corbin Times Tribune</i> <i>Jeffersonian</i> <i>Worker's Power</i> <i>Lexington Herald-Leader</i> <i>Courier Journal</i> <i>Tribune Courier</i> <i>Richmond Reporter</i> <i>Sentinel-News</i>	Congressional Roll Calls Congressional Hearings	Minutes of Meetings Correspondence
South Dakota	<i>Sioux Falls Argus-Leader</i> <i>Vermillion Plain Talk</i> <i>The Daily Republic</i> <i>The Daily Plainsman</i> <i>Rome News Tribune</i>	Congressional Roll Calls Congressional Hearings	Minutes of Meetings Bylaws Newsletters Campaign Planning Correspondence

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