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THE EQUAL RIGHTS AMENDMENT

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THE EQUAL RIGHTS AMENDMENT

In March of 1972, the U.S. Senate passed the equal rights amendment and sent it to the states for ratification. The amendment, which would become the 27th Amendment to the Constitution, is worded as follows:

Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex. Congress and the several states shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation.

As of May, 1972, 13 states had ratified the amendment and 3 had rejected it. A total of 38 states must ratify within 7 years, and the amendment becomes effective within 2 years of ratification.

The idea of such an amendment is not new. The first equal rights amendment was introduced in Congress in 1923, and in every Congress after that. In 1940, both major political parties included an endorsement of the objectives of the amendment in their national platforms. Such an endorsement has been in every platform since.

As the position of women in American society has changed, the pressure to pass an equal rights amendment has increased. Better educational opportunities for women, improved methods of birth control, greater number of child care facilities, etc., have brought women "into the job market and out of the kitchen" in ever growing numbers. These women are anxious to ensure equal treatment

in employment as well as other areas. Proponents of the equal rights amendment want to nullify state and federal laws and practices which treat women (and men) unequally in such matters as employment, divorce, property, pensions, and inheritance. Opponents say that some of the existing distinctions are necessary and that unfair laws and practices should be eliminated by law and not by constitutional amendment.

Some examples of the kinds of laws and practices meant to be stopped by the equal rights amendment are:*

1. State laws placing special restrictions on women with respect to hours of work and weight-lifting on the job.

2. Dual pay schedules for men and women public school teachers.

3. State laws providing for alimony to be awarded, under certain circumstances, to ex-wives, but not ex-husbands.

4. State laws placing special restrictions on the legal capacity of married women or on their right to establish a legal domicile.

5. State laws that require married women but not married men to go through a formal procedure and obtain court approval before they may engage in an independent business.

*Numbers 1-8 are taken from "The Proposed Equal Rights Amendment to the United States Constitution," Citizens Advisory Council on the Status of Women.

6. Social security and other social benefits legislation which give greater benefits to one sex than to the other.

7. Special sex-based exemptions for women in selection of state juries.

8. Heavier criminal penalties for female offenders than for male offenders committing the same crime.

9. Discriminatory preferences, based on sex, in child custody cases.

10. Exclusion of women from the requirements of military selective service.

11. Discrimination in employment by state and local governments.

Many opponents of this amendment are concerned about the widespread effects it may have in the areas of domestic relations, criminal law, the military, labor law, etc. It is true that the amendment will have far-reaching implications, but it does not seem that it would have much practical effect on many existing situations. For example, though the law would permit a woman to hold a job requiring the lifting of heavy objects, it would not require women to accept such jobs. It is doubtful that many women would desire such work, or be capable of it. But a woman who is capable would not be forbidden to do such work.

The following is a list of some of the effects of the equal rights amendment, as foreseen by the Citizens' Advisory

Council on the Status of Women and a 1971 Yale Law Journal article about the amendment.

1. The amendment would restrict only governmental action, and would not apply to purely private action. What constitutes "state action" would be the same as under the 14th Amendment and as developed in 14th Amendment litigation on other subjects.

2. Special restrictions on property rights of married women would be unconstitutional; married women could engage in business as freely as a member of the male sex; inheritance rights of widows would be the same as for widowers.

3. Women would be equally subject to jury service and to military service, but women would not be required to serve in the armed forces where they are not fitted any more than men are required to so serve.

4. Restrictive work laws for women only would be unconstitutional, (e.g., maximum hours, night work, and weightlifting restrictions on women).

5. Alimony laws would not favor women solely because of their sex, but a divorce decree would award support to a mother if she was granted custody of the children. Matters concerning custody and support of children would be determined in accordance with the welfare of the children and without favoring either parent because of sex.

6. Prostitution statutes would be unconstitutional in those states where male prostitutes are not included; and they might be jeopardized unless the customer is also subject to penalty.

7. Rape would continue to be punishable insofar as it is defined as forcible penetration, because such a definition involves a physical characteristic unique to one sex and, thus, does not deny equal rights to the other sex.

8. The constitutionally protected right to privacy would protect such practices as maintaining separate rest rooms and sleeping facilities.

9. Women could not be eliminated from certain jobs because of the possibility of pregnancy. Enforced maternity leaves would be allowed, but their length would vary according to the nature of the work. If a couple decided that the man would take responsibility for rearing young children, he could obtain a leave for that purpose.

The controversy over the need for or desirability of the equal rights amendment seems to center around a concern that the legal, social, economic and cultural status of women will be changed to the detriment of society and of women themselves. The following pro - con discussion clarifies some of these concerns.

Judicial Process v. Constitutional Amendment

Con

The protection of the 14th Amendment (the equal protection amendment) makes the equal rights amendment unnecessary. For example, in 1971 the Supreme Court for the first time invalidated an Idaho law because it discriminated against women. The decision was based on the equal protection clause.

Pro

The amendment is still needed in order to remove sex discrimination more swiftly than the judicial process, in which discrimination must be challenged on a case-by-case basis. The courts have only just begun to recognize the validity of many claims of sex discrimination.

"Protection" for Women v. "Non-Protection"

Con

Protective labor laws for women only (maximum hours of work, no night work, rest periods, etc.) will be eliminated if the amendment is passed.

Pro

These "protective" laws have operated in the past to keep women out of higher-paying jobs. Senator Birch Bayh has said, "For it is under the guise of 'rights and benefits' that women have often been deprived of rights which are available to men." For example, limitations on number of hours women can work often preclude women from occupying supervisor jobs requiring overtime.

Con

Women will be subject to the draft, and, thus, will be subject to combat duty and other duties in combat zones.

Pro

Congress could set sex-neutral exemptions rather than those that apply to one sex, such as exemptions for either parent rather than for fathers or mothers only. Physical requirements would probably exempt most women from combat duty. Also, restriction of military service mostly to men has denied women equal access to such benefits as GI education aid, GI loans, and life insurance and veterans preference employment. Husbands of women military personnel presently are denied benefits accorded to wives of military personnel.

Con

The equal rights amendment would eliminate laws which impose upon husbands the primary responsibility to provide for their wives and children and make them criminally responsible to society and civilly responsible to their wives if they fail to perform this primary responsibility.

Pro

Women would incur more financial responsibility if the amendment passed. But, they would also have more financial rights. And in the case of a divorce, the parent most able to provide support would be required to do so, which is only fair.

Traditional Family Structure v. Equal Rights and Responsibilities

Con

This amendment would eliminate protections from military service, jury duty, financial responsibility, etc., which protect women in their roles as homemakers and mothers.

Pro

It is not right to assume that a woman's role is restricted to that of a mother and homemaker. And certain protections might be extended to men rather than be eliminated; such as exempting parents (not just mothers) from the draft.

Con

More women will seek outside employment and will ignore family responsibilities, to the detriment of their children.

Pro

The reality is that many women are already working today and they should get equal pay for equal work, as well as have better job opportunities. Also, child care facilities are growing in number as well as quality.

Pro

The amendment will benefit men as well as women. It would correct the failure under the social security laws to give survivorship benefits to a husband and the discrimination and statutory practice in most states of giving automatic preference to the female in child custody proceedings.