

EQUAL RIGHTS AMENDMENT (PROPOSED)

ISSUE BRIEF NUMBER IB74122

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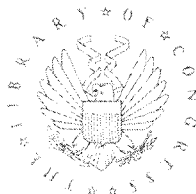
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ISSUE DEFINITION

The proposed Equal Rights Amendment to the U.S. Constitution was first introduced in 1923, and was passed by the Congress in 1972. If it receives approval in the form of ratification by 38 States before Mar. 22, 1979, the measure will become the 27th Amendment to the Constitution, and will require equal treatment under Federal and State laws and practices for all persons, regardless of sex. While some Americans would welcome a constitutional guarantee of equal rights and responsibilities for persons of both sexes, others view the proposed amendment as a potential threat to family life and to the traditional roles of men and women.

BACKGROUND AND POLICY ANALYSIS

The proposed Equal Rights Amendment (ERA) to the U.S. Constitution was first introduced 3 years after the 19th Amendment to provide women's suffrage was ratified. After being introduced in various forms in nearly every Congress since 1923, the ERA was approved by the 92nd Congress in 1972. The proposed amendment provides that:

- Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.
- Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
- Section 3. This amendment shall take effect two years after the date of ratification.

The Judiciary Committees of both Houses of Congress had held hearings on the measure and had reported the amendment to the full House and Senate prior to its passage by the 92nd Congress. The Senate previously had passed the amendment twice: in the 81st Congress on Jan. 25, 1950, and in the 83rd Congress on July 16, 1953. On both occasions, the measure included what was known as the "Hayden rider," which provided that "the provisions of this article shall not be construed to impair any rights, benefits, or exemptions now or hereafter conferred by law upon persons of the female sex." Proponents of the measure consistently resisted attempts to amend the ERA.

The House of Representatives passed the Equal Rights Amendment in the 91st Congress on Aug. 10, 1970, after the discharge procedure was used to free the proposal from the Judiciary Committee. There had been no committee action on the ERA for 22 years prior to this action.

When the Senate considered the measure in October 1970, it adopted two amendments: to exempt women from the draft and to permit recitation of nondenominational prayers in public schools and other public buildings. Supporters of the ERA were again unhappy with an amended version, and on Nov. 19, 1970, by unanimous consent, the Senate laid aside the proposed ERA, and took no further action in the 91st Congress.

The House passed the ERA (H.J.Res. 208) in the 92nd Congress on Oct. 12, 1971, rejecting two committee amendments which would have: (1) added the words "of any person" to Section 1, and (2) added a section allowing the exemption of women from the draft and holding that the ERA would not impair the validity of any law which "reasonably promotes the health and safety of the people." The Senate approved H.J.Res. 208 on Mar. 22, 1972, clearing it for ratification by the States.

Three-fourths (38) of the States must ratify the ERA within 7 years, or before Mar. 22, 1979; it would take effect 2 years after full ratification. The first State to ratify, Hawaii, did so within hours of final Congressional approval. To date, 34 States have ratified the measure, including Nebraska and Tennessee which later voted to rescind ratification (see Chronology for dates of State ratification and rescission).

There is some controversy over whether or not a State may rescind ratification of a proposed amendment to the Constitution, but the prevailing scholarly legal opinion, neither tested in the courts nor otherwise firmly established in law, is that once a State legislature has voted to ratify, and has certified ratification, it may not later change its mind and rescind that ratification. It is possible that Nebraska or Tennessee may test that opinion in court should full ratification be completed with their votes counting toward the requisite 38 States' approval.

Controversy over the proposed amendment relates to: (1) interpretations of its probable effects in some areas, (2) whether there should be room in the law for "reasonable" distinctions in the treatment of men and women, and (3) whether a constitutional amendment is the proper vehicle for improving the legal status of women in our nation.

There is little disagreement about the general intent of the proposed Equal Rights Amendment. Legislative intent in this regard is clearly seen in the Senate debate on the measure in March 1972, the House and Senate Judiciary Committee reports on the measure, and Congressional hearings held in 1970-1971 (see Reports and Hearings). As stated in the Senate Judiciary Committee report on the measure, "The basic principle on which the Amendment rests may be stated shortly: sex should not be a factor in determining the legal rights of men or women.... The Amendment will affect only governmental action; the private actions and the private relationships of men and women are unaffected."

Thus every Federal or State law making any distinction between men and women would be invalid under the Equal Rights Amendment, which requires that governments treat each person, male or female, as a citizen and individual under the law. Both proponents and opponents of the amendment agree that proper interpretation of the ERA would result in the elimination of the use of sex as the sole factor in determining, for example, who would be subject to the military draft, if one were reinstated; who in a divorce action would be awarded custody of a child; who would have responsibility for family support; or who would be subject to jury duty. Public schools could not require higher admissions standards for persons of one sex than the other; military academies could not bar the admission of a person based solely on sex; courts could not impose longer jail sentences on convicted criminals of one sex. Thus certain responsibilities and protections now extended to members of one sex, but not to members of the other sex, would have to be either extended to everyone or eliminated entirely.

Although there is general agreement on the intent of the amendment, there

is one major issue of interpretation on which opinions still are divided: whether the existence of separate restrooms, prisons, and dormitories for males and females would be permissible under provisions of the proposed Equal Rights Amendment. One point of view is that the constitutional right of privacy established by the Supreme Court in Griswold v. Connecticut, 381 U.S. 479 (1965), would permit a separation of the sexes with respect to such places as public restrooms and sleeping quarters. The opposing view is that the most recent constitutional amendment takes precedence over all other sections of the constitution with which it is inconsistent, and to allow separate facilities would be to revive the "separate but equal" doctrine.

A second area of disagreement arises over the basic issue of whether it is in the interest of the nation, or of the women of the nation, to establish absolute, unequivocal equality of treatment for men and women under the law. There are some who believe that because of unique characteristics or traditional societal roles, women should receive different legal treatment than men. The opposing view is that all citizens should share equally the rights and responsibilities of citizenship under the law.

This basic conflict leads to the third major area of disagreement: whether the process of constitutional amendment is the best means to improve the legal status of women in the United States. One point of view is that a constitutional amendment is unnecessary because the equal protection clause of the 14th Amendment, if properly interpreted, would nullify every law lacking a rational basis which makes distinctions based on sex. This idea is closely allied with the view that men and women should not always receive absolutely equal legal treatment. The approach of relying on the 14th Amendment appears to offer more flexibility of interpretation than does the proposed Equal Rights Amendment, which forbids any sex-based classification. Those who hold this view also point to the Supreme Court decision in Reed v. Reed, 40 U.S. 4013 (1971), as a strong indication that the Court would find sex-based discrimination to be in violation of the equal protection clause of the 14th Amendment. In the Reed case, the Supreme Court ruled as unconstitutional an Idaho statute requiring preference of male relatives over female relatives as administrators of estates. The Reed decision, handed down in 1971, represented the first time the Supreme Court had struck down a law that discriminated against women. Supporters of a constitutional amendment argue that in the Reed decision, the Court did not hold sex discrimination to be "suspect" under the equal protection clause of the 14th Amendment, thus leaving the burden of proof on a complaining woman that a sex-based classification is "unreasonable," and, further, that the case indicated no substantial change in judicial attitude. Therefore, they hold that the proposed Equal Rights Amendment is needed to establish, once and for all, the full legal equality of men and women in the United States.

LEGISLATION

H.J. Res. 208, 92d Congress (Griffiths)

Constitutional Amendment. Provides that equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Having received final approval by the Congress on Mar. 22, 1972, the amendment must be ratified by three-fourths (38) of the States within 7 years (see Chronology).

HEARINGS

- U.S. Congress. House. Committee on the Judiciary. Subcommittee No. 4. Equal rights for men and women, 1971. Hearings, 92d Congress, 1st session, on H.J.Res. 35, 208, and related bills; and H.R. 916 and related bills. Mar. 24, 25, and 31; Apr. 1, 2, and 5, 1971. Washington, U.S. Govt. Print. Off., 1971. 724 p.
- U.S. Congress. Senate. Committee on the Judiciary. Equal rights, 1970. Hearings, 91st Congress, 2d session, on S.J.Res. 61 and S.J.Res. 231. Sept. 9, 10, 11, and 15, 1970. Washington, U.S. Govt. Print. Off., 1970. 433 p.
- U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Constitutional Amendments. The "equal rights" amendment. Hearings, 91st Congress, 2d session, on S.J.Res. 61. May 5, 6 and 7, 1970. Washington, U.S. Govt. Print. Off., 1970. 793 p.

REPORTS AND CONGRESSIONAL DOCUMENTS

- U.S. Congress. House. Committee on the Judiciary. Equal rights for men and women; report together with individual views to accompany H.J.Res. 208. Washington, Govt. Print. Off., 1971. 16 p. (92d Congress, 1st session. House. Report no. 92-359)
- U.S. Congress. Senate. Committee on the Judiciary. Equal rights for men and women; report together with individual views to accompany S.J.Res. 9, and H.J.Res. 208. Washington, U.S. Govt. Print. Off., 1972. 52 p. (92d Congress, 2d session. Senate. Report no. 92-699)

OTHER CONGRESSIONAL ACTION

N/A

CHRONOLOGY OF EVENTS

- 06/17/75 -- Illinois Senate voted 30-28 not to discharge the Equal Rights Amendment from committee, postponing further action until the State legislature reconvenes in October.
- 06/11/75 -- Louisiana House Judiciary B Committee voted 8-7 not to report out ERA to the House with a recommendation to pass.
- 06/02/75 -- Missouri Senate defeated the Equal Rights Amendment, 14-20.
- 05/13/75 -- Illinois Senate Executive Committee voted 11-8 to not send the Equal Rights Amendment to the floor.
- 05/01/75 -- Illinois House of Representatives approved the Equal Rights Amendment, 113-62.
- 04/25/75 -- Florida Senate rejected the Equal Rights Amendment, 21-17.

- 04/16/75 -- North Carolina House of Representatives rejected the Equal Rights Amendment, 62-57.
- 04/10/75 -- Florida House of Representatives approved the Equal Rights Amendment by a 3-vote margin.
- 03/27/75 -- South Carolina House of Representatives voted 46-43 to table action on ERA, thus defeating the measure in terms of ratification this year.
- 03/05/75 -- Illinois Senate voted to retain a rule to require a three-fifths vote to ratify a constitutional amendment.
- 02/19/75 -- Nevada Senate rejected the Equal Rights Amendment, 12-8.
- 02/18/75 -- Utah House of Representatives defeated ERA, 54-21.
- 02/17/75 -- Georgia Senate voted 33-22 against the Equal Rights Amendment.
- 02/13/75 -- Arizona Senate voted 16-14 against the proposed Equal Rights Amendment.
- 02/13/75 -- Indiana Senate Committee voted against ERA, 8-5.
- 02/07/75 -- Missouri House of Representatives voted 82 to 75 to approve the proposed Equal Rights Amendment.
- 01/24/75 -- Indiana House of Representatives approved ERA, 61-39.
- 01/23/75 -- Virginia Senate Committee on Privileges and Elections voted 8-7 against the proposed Equal Rights Amendment.
- 01/22/75 -- Louisiana Senate approved an amended version of the ERA, 21-16, thus rejecting the ERA in terms of ratification. The amended version would have called for a referendum on the issue, but was returned to the calendar.
- 01/21/75 -- Oklahoma House of Representatives rejected a "do pass" motion on the ERA, 45-51. Rejected, 44-51, a "report progress" motion to save the resolution for future consideration. Approved a "do not pass" motion, 50-43. Under house rules, the measure cannot be considered again until 1977.
Virginia Senate voted 21-19 to return the ERA resolution to committee.
- 01/17/75 -- Virginia Senate Committee on Privileges and Elections voted 6-5 to send the ERA resolution to the floor.
- 10/22/73 -- The AFI-CIO reversed its position and endorsed a resolution at its annual convention calling for passage of the proposed Equal Rights Amendment.
- 03/22/72 -- The Senate voted (84-8) to approve the proposed Equal Rights Amendment, thus clearing the measure for ratification by the States.
- 10/12/71 -- The House approved (354-23) the proposed Equal Rights

Amendment.

The following 34 State legislatures have ratified the Equal Rights Amendment:

02/03/75 -- North Dakota
 02/07/74 -- Ohio
 01/21/74 -- Montana
 01/18/74 -- Maine
 03/22/73 -- Washington
 03/15/73 -- Connecticut
 02/21/73 -- Vermont
 02/12/73 -- New Mexico
 02/08/73 -- Minnesota
 02/08/73 -- Oregon
 02/02/73 -- South Dakota
 01/24/73 -- Wyoming
 11/13/72 -- California
 09/20/72 -- Pennsylvania
 06/21/72 -- Massachusetts
 06/15/72 -- Kentucky
 05/26/72 -- Maryland
 05/22/72 -- Michigan
 05/03/72 -- New York
 04/22/72 -- West Virginia
 04/21/72 -- Colorado
 04/20/72 -- Wisconsin
 04/17/72 -- New Jersey
 04/14/72 -- Rhode Island
 04/05/72 -- Alaska
 04/04/72 -- Tennessee (voted to rescind 04/23/74)
 03/30/72 -- Texas
 03/28/72 -- Kansas
 03/24/72 -- Idaho
 03/24/72 -- Iowa
 03/23/72 -- Delaware
 03/23/72 -- Nebraska (voted to rescind 03/15/73)
 03/23/72 -- New Hampshire
 03/22/72 -- Hawaii

The following 16 State legislatures have not ratified the Equal Rights Amendment:

Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Indiana, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

ADDITIONAL REFERENCE SOURCES

- Brown, Barbara A., Thomas I. Emerson, Gail Falk, and Ann E. Freedman. The Equal Rights Amendment: a constitutional basis for equal rights for women. Yale law journal, v. 80, no. 5, April 1971: 871-986.
- U.S. Library of Congress. Congressional Research Service. Equal Rights Amendment: selected floor debate and votes [by] Morrigene Holcomb. [Washington] 1974. 43 p.
- The proposed equal rights amendment [by] Morrigene Holcomb. Jan. 15, 1971; rev. Mar. 24, 1972. [Washington, 1972] 19 p. Multilith 72-105 GGP
- Ratification status of the proposed Equal Rights Amendment; a summary report, by Morrigene Holcomb. [Washington] 1974. 5 p.

- State by State analysis: equal rights amendment ratification status in the unratified states, by Morigene Holcomb. [Washington] 1974. 2 p.
- Withdrawal of ratification of constitutional amendment, by Johnny H. Killian. [Washington] 1973. 5 p.