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CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN

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The Equal Rights Amendment - What It Will and Won't Do

The Equal Rights Amendment. The proposed Equal Rights Amendment to the Constitution reads 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. (emphasis supplied)

General Effect on Federal and State Laws and Official Practices. The Equal Rights Amendment would not nullify all laws distinguishing on the basis of sex, but would require that the law treat men and women equally. Equal treatment can be accomplished either by extending the law which applies only to one sex to the other sex, or by rendering the law unconstitutional as denying equality of rights to one sex. The consideration of the ratification of the Equal Rights Amendment by the individual States will give ample opportunity and time for States to decide on modifications to adjust their laws to the Amendment where needed. Any modifications could be made so long as no distinctions are based on sex.

In interpreting the Equal Rights Amendment, the Courts will consider the intent of Congress, particularly the views expressed by the proponents of the Amendment. The following is a summary of effects the proposed amendment would have, as reflected in the House debate on the Amendment and in Senate reports in previous years.

Alimony, Child Support, and Custody Laws. Present laws will not be invalidated. In those States where alimony is limited to women, men will become eligible under the same circumstances as women. The welfare of the child will be the criterion for child custody as it is in most States now. Provisions of law giving mothers (or fathers) preference will be inoperative.

The National Commissioners on Uniform State Laws recently adopted a Uniform Marriage and Divorce Act, the terms of which are in accord with the Equal Rights Amendment. It provides for alimony for either spouse (called "maintenance"), child support obligations for both spouses in accordance with their means, and custody of children based on the welfare of the child.

It should be kept in mind that the great majority of divorce arrangements covering these areas are agreed to by the parties without litigation.

Dower Rights. Dower laws will not be nullified. Dower rights will be extended to men in those few States where men do not have a right in their wives' estates.

Property Rights of Married Women. Special restrictions on property rights of married women would be invalidated; married women could engage in business as freely as men and manage their separate property such as inheritances and earnings.

Status of Homemaker. Congresswoman Dwyer of New Jersey said on August 10 in the debate in the House of Representatives on the Equal Rights Amendment: "It would not take women out of the home. It would not downgrade the roles of mother and housewife. Indeed, it would give new dignity to these important roles. By confirming women's equality under the law, by upholding women's right to choose her place in society, the equal rights amendment can only enhance the status of traditional women's occupations. For these would become positions accepted by women as equals, not roles imposed on them as inferiors." (116 Cong. Record, H. 7952)

State "Protective" Labor Laws Now Applying Only to Women. Minimum wage laws and rest period and lunch period laws will be extended to men. Laws prohibiting hours of work beyond a specified number, night work, employment in particular occupations, and weightlifting laws will be invalidated. There will probably not be any of the prohibitory laws in effect by the time the Equal Rights Amendment is ratified, as a result of Title VII of the Civil Rights Act of 1964. Leading court decisions, changes by State legislatures, rulings by State Attorneys General, and guidelines of the Equal Employment Opportunity Commission all clearly point in this direction.

The Equal Rights Amendment would not prohibit special maternity benefits. Furthermore, only Puerto Rico gives any special benefit and its terms may discourage employers from hiring women. In fact, laws in several States prohibit employment of women during specified periods before and after childbirth but do not require reemployment or even require employers to give any of the benefits given for other forms of temporary disability. Two States have temporary disability insurance plans **that** include benefits for loss of employment due to childbirth along with other types of temporary disability, but this is not a special benefit.

Employment. The Equal Rights Amendment would restrict only governmental action and would not apply to purely private action. It would not affect private employment; it would prohibit discrimination by Government as an employer-- Federal, State, County, and City, including school boards. One of the largest group of employees affected are teachers, professors, and other employees of public schools and State institutions of higher education. It would require equal pay for equal work only for employees of Government. The coverage of private employees under present equal pay laws would not be extended or otherwise modified.

Education. The Equal Rights Amendment would prohibit restriction of public schools to one sex and it would prohibit public institutions from requiring higher admission standards for women (or men in case any exist).

Federal Social Security. The Equal Rights Amendment would extend to widowers of covered women workers the benefits now provided only to widows of covered men workers. For example, widowers with minor children would receive a benefit based on their deceased wife's employment under the same circumstances a widow with minor children would receive.

A man retiring at age 62 would have his benefit computed under the same formula as a woman retiring at 62. (This particular inequity would be corrected by the Social Security Act Amendments that passed the House of Representatives this session and are now pending in the Senate.)

Other Governmental Pension and Retirement Plans. Any preference in treatment given to one sex or to survivors of one sex would be extended to the other sex. The Equal Rights Amendment would have no bearing on private pension and retirement plans. Many are now covered by Title VII of the Civil Rights Act of 1964.

Military Service and Jury Service. Women would be subject to jury service and military service under the same conditions as men. Women with children in their personal care could be excused from either obligation just as men could be under the same circumstances. Being subject to military service would not necessarily mean they would have to serve in all assignments any more than all men serve in all assignments. Women volunteers would have to be admitted under the same standards as men; they now have to meet higher standards. During World War II many thousands of women served, many of them in dangerous assignments. This Administration is making every effort to move to a volunteer service; the issue of the draft may, therefore, be moot by the time the Amendment is ratified.

Criminal Law. The Equal Rights Amendment would invalidate laws prescribing longer prison sentences for women than for men for the same offense (or vice versa, if such exist), different ages for treatment as adults for purposes of criminal law, and laws permitting imprisonment of women who have not committed any offense. It would require equal opportunity for rehabilitation, including access to treatment for drug addiction and alcoholism. It would not affect laws relating to rape.

Psychological and Social. The Equal Rights Amendment will directly affect only women's legal rights. It will not affect the social relationships between the sexes.

There are, however, intangible psychological benefits already accruing to women. The fight for the Equal Rights Amendment is forging a new solidarity among women that fosters self-confidence and the courage to use rights already theirs but not claimed because of fears.

Women of all ages and political persuasion, all occupations, black and white, union women and business women, housewives and working women, have worked together with men to secure passage of the Equal Rights Amendment in the House of Representatives.

Sources:

Congressional Record, August 10, 1970, Debate on Equal Rights Amendment, beginning page # 7947, Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, 36¢ per copy.

Citizens' Advisory Council on the Status of Women, Memorandum on Equal Rights Amendment, Washington, D.C. 20210. Single copies free.

Hearings on Equal Rights Amendment before Subcommittee on Constitutional Amendments of the Senate Judiciary Committee, May 5, 6, and 7, 1970. Not yet published; write Subcommittee, U.S. Senate, Washington, D.C. 20510.

Susan Deller Ross, "Sex Discrimination and 'Protective' Labor Legislation," single copies available from Citizens' Advisory Council on the Status of Women.

The Report of the President's Task Force on Women's Rights and Responsibilities, A Matter of Simple Justice, April 1970. Single copies available from the Citizens' Advisory Council on the Status of Women.

National Conference of Commissioners on Uniform State Laws, "Uniform Marriage and Divorce Act", 1155 East 60th Street, Chicago, Illinois 60637, August 14, 1970.

Speech by Senator Marlow Cook on August 25, 1970, in the Senate, Vol. 116, No. 148, Cong. Rec. p. S 14213.

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