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EQUAL RIGHTS FIGHT

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EQUAL RIGHTS FIGHT

THE STRUGGLE to ratify the Equal Rights Amendment (ERA) is beginning to resemble the ordeal of Tantalus — the mythical Greek king who was condemned to perpetual hunger and thirst, with food and water lying just beyond reach. So far, 35 state legislatures have ratified the proposed amendment to prohibit discrimination on the basis of sex *(see box, p. 929)*. Only three more must do so before it becomes part of the Constitution. But it is entirely possible that the ERA will die inches short of its goal. Organized resistance remains strong in all 15 of the remaining states — some of which have defeated the amendment over and over — and no consensus exists on which three states, if any, might raise the total to the required 38.

Congress in October approved a resolution extending the deadline for ratification from March 22, 1979, to June 30, 1982. Passage of the resolution capped a year-long lobbying effort by backers of the amendment and marked the first time Congress had extended the ratification period for a constitutional amendment since it began setting time limits in 1917. Women's rights advocates hope the extension will give momentum to the stalled equal rights drive.

The last state to ratify the ERA was Indiana, which did so in January 1977. Since then the amendment has suffered a string of defeats. In the last two years resolutions to approve the amendment were defeated in Alabama, Arizona, Florida, Illinois, Missouri, Nevada, North Carolina, South Carolina and Virginia. In the other eight unratified states *(see map)*, ERA resolutions did not come up for a vote in 1977 or 1978. Furthermore, legislatures in three states — Tennessee, Nebraska and Idaho — voted to rescind earlier ratifications, although there is a legal question as to whether the rescissions will be permitted to stand *(see p. 942)*.

ERA supporters received a double setback in the November elections when voters in Florida and Nevada — two key states in the ratification drive — decisively rejected proposals which were viewed as test votes on the amendment. Florida voters rejected an amendment to the state Bill of Rights that would have forbidden discrimination against women. In Nevada, an advisory referendum asked voters if they favored passage of the amendment; over half of those going to the polls said no.

ERA proponents are by no means resigned to defeat. They point to public opinion polls which have consistently shown widespread support for the amendment. A poll conducted by the Gallup organization in June 1978 indicated that 58 percent of the respondents favored ratification. A Louis Harris poll conducted the same month found 55 percent in favor of the amendment. Support appears to have increased in the past year after a two-year period of decline. Earlier Harris polls indicated that between 1976 and 1977 the number of Americans favoring passage had dropped from 65 to 56 percent. By February 1978 the number supporting the ERA had dropped to 51 percent.

ERA supporters contend that the results of last month's elections bolstered their chances for winning approval of the amendment. "We are very, very pleased at the strong showing by candidates who support ratification," Mildred Jeffrey, head of the National Women's Political Caucus, said Nov. 9. She said that candidates which the caucus endorsed won 35 of 47 state senate races and 71 of 96 state house races. But opponents of the amendment also saw cause for optimism in the election results. "We feel we gained in every legislature," said Phyllis Schlafly, a leader of the anti-ERA forces.

Growing Resistance to Women's Movement

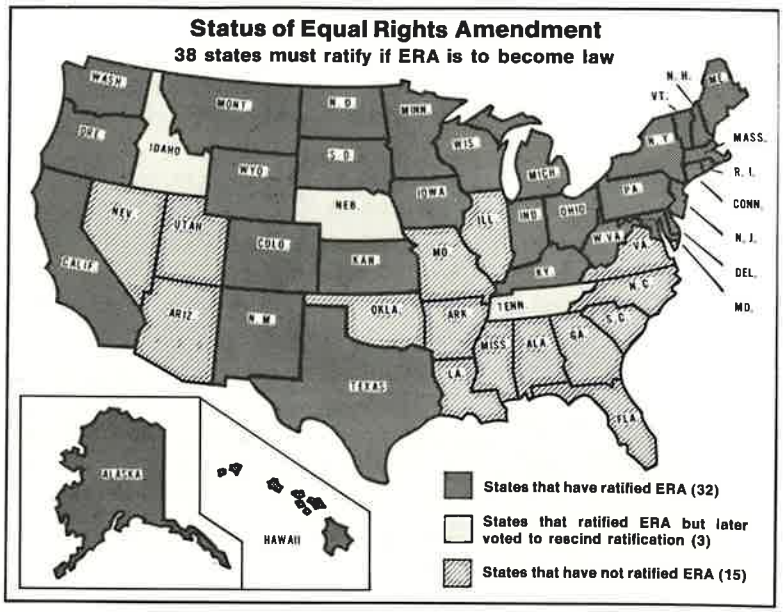
The extent of the opposition to the Equal Rights Amendment surprised many feminists. When Congress finally passed the amendment on March 22, 1972 — after a 50-year struggle *(see p. 934)* — it seemed like an idea whose time had come. Supporters predicted that it would be ratified well before the original 1979 deadline. Early reaction seemed to promise quick ratification. In the first two years after Congress approved it, 32 states ratified the amendment. But only three more have done so in the four years since then. "Success came too easily and we were not prepared," Dr. Jo Freeman, a political scientist, said recently. "There's always a backlash to social movements, and we were caught sleeping."[1]

Feminists believe that the struggle to ratify the Equal Rights Amendment provides further evidence that Americans remain deeply divided over the role of women in society. Over 50 percent of all adult American women now are in the labor force.[2] Yet a nationwide survey conducted in 1976[3] found that the overwhelming majority of American parents — including three-fourths of the working mothers interviewed — believed that

[1] Quoted in *The Christian Science Monitor,* Oct. 19, 1978.

[2] Figures, released by the Department of Labor in October 1978, include women looking for work as well as those actually working.

[3] By Yankelovich, Skelly and White for the General Mills Consumer Center. Results published in "The General Mills American Family Report 1976-77: Raising Children in a Changing Society," 1977.



women with small children should not work outside the home unless the money is really needed. Nearly 70 percent of the parents said that children were better off when their mothers did not work.

Women's rights groups generally acknowledge that divisions within their ranks over tactics and priorities hampered the ratification effort. They also admit that at first they tended to underestimate the determination and political savvy of the opposition. But most believe that the chief obstacle to ratification has been what they consider unfair tactics on the part of ERA opponents. Legislators in unratified states have been flooded with literature linking the Equal Rights Amendment with lesbianism and the disruption of family life.

Anti-ERA groups argue that the amendment's passage would end alimony and child support, require military conscription of mothers, ban separate washrooms for men and women, and permit homosexual marriages. Feminists dismiss such arguments as ridiculous and charge opponents with deliberately misinterpreting the effects of the amendment. But they concede that such charges have put them on the defensive. "We've found ourselves arguing about women being drafted and losing custody of their children, instead of discussing discrimination in housing, insurance and credit," said New York lawyer Brenda Feigen Fasteau. "We cannot spend all our time telling our opponents how wrong they are and not go after the votes of grass-roots politicians."[4]

[4] Quoted in *Newsweek,* July 25, 1977, p. 35.

Text of the Proposed Equal Rights Amendment

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.

Those who oppose the Equal Rights Amendment do so for a variety of reasons. A common thread linking most of the opponents is the fear that the amendment would somehow overturn the traditional role of women in society. This, they believe, would be detrimental to the family, the church and the nation. In the minds of many opponents, the amendment is invariably linked with other issues they oppose — abortion, government-sponsored day care, sex education, gay rights.

Some opponents concede that women have been discriminated against. But they argue that specific legislation, such as equal-pay and equal-credit laws, are a better remedy than a sweeping constitutional amendment. Some admit that they personally have benefitted from improved opportunities for women in recent years. But they do not want to be associated with the "militant women-libbers" who, they say, are pushing the Equal Rights Amendment.

In most states conservative political groups and fundamentalist churches have led the opposition. Mormons, for example, have been instrumental in preventing ratification in Utah, Nevada and Arizona. The hierarchy of the Catholic Church has shown strong opposition to the amendment. A major committee of the National Conference of Catholic Bishops last May refused to endorse the amendment on the ground that it would, as one spokesman said, "pave the way for more abortions." On the other hand, many priests, nuns and lay members of the Church have indicated support for the amendment.

The nation's leading foe of the Equal Rights Amendment is Phyllis Schlafly of Alton, Ill. Long active in conservative Republican politics and a three-time unsuccessful candidate for Congress, Mrs. Schlafly publishes a monthly newsletter called the *Phyllis Schlafly Report* and has written eight books, the best known of which is *A Choice Not an Echo,* which boosted the 1964 presidential candidacy of Barry M. Goldwater. It was in the February 1972 issue of the *Phyllis Schlafly Report* that Mrs. Schlafly first publicly attacked the Equal Rights Amendment, then pending in Congress. To help in her anti-ERA campaign, she set up an organization called Stop-ERA, and it has chapters

across the country. Later she established a second group, the Eagle Forum, which she called her answer to "women's lib" and it, too, joined the fight against the proposed amendment.

Since 1972 Schlafly has campaigned tirelessly against the ERA, which she calls the "extra responsibility amendment." In her view it would give women no new rights and it would take away some old ones while adding new responsibilities. "The claim that American women are downtrodden and unfairly treated is the fraud of the century," she once said. "The truth is that American women have never had it so good. Why should we lower ourselves to 'equal rights' when we already have the status of special privilege."[5]

Mrs. Schlafly has concentrated her opposition to the Equal Rights Amendment primarily around the issues of military service and financial support laws. In her latest book, *The Power of the Positive Woman* (1977), she contends that the amendment would "require mothers to be drafted" and "invalidate all the state laws that require the husband to support his wife and family and provide them with a home."[6]

Reaction of Supporters to Recent Setbacks

Women's rights activists have reacted to the backlash with a mixture of rage and frustration. But the success of the opposition has forced them to reassess their strategies. "ERA proponents, armed with what they regarded as the righteousness of their cause . . . neglected the political tactics by which any cause must be advanced," Roger M. Williams observed in 1977.[7] Williams also criticized ERA proponents for placing most of their state campaigns in the hands of feminist activists and female legislators.

"While [these women] may 'deserve' to direct the battle," he wrote, "they are seldom the best people for the job — the former because their ideological commitment is ill-suited to a political arena, the latter because they are vastly outnumbered, relatively inexperienced and, on this issue, seldom willing to make the routine trade-offs that would improve the chances of success." While some feminists might regard Williams' remarks as sexist, few could deny that in many of the unratified states ERA supporters were outmaneuvered by opponents who skillfully lobbied state legislators.

Feminists have made a concerted effort in recent years to broaden their appeal. The National Organization for Women, the largest of the women's rights groups, has doubled its mem-

[5] Quoted by Lisa Cronin Wohl in "Phyllis Schlafly: The Sweetheart of the Silent Majority," *Ms.*, March 1974, pp. 55-56.

[6] Phyllis Schlafly, *The Power of the Positive Woman* (1977), pp. 72, 99.

[7] Roger M. Williams, "Women Against Women," *Saturday Review,* June 25, 1977, p. 13.

bership in the past 18 months. Much of the credit is given to NOW's president, Eleanor Smeal, who identifies herself as a Pittsbugh housewife. "By assuring women that the movement is not trying to force them out of their homes, she has projected a new image of the organization and expanded its constituency," a recent article in the *Christian Science Monitor* noted.[8]

Concentration of Lobbying in Four States

Amendment backers are concentrating their lobbying efforts in four states — Florida, Illinois, North Carolina and Oklahoma. Florida long has been considered a must-win state by the amendment's supporters. They were stunned when the Florida Senate narrowly defeated the amendment in April 1977. State Sen. Lori Wilson, who sponsored the resolution, attributed that defeat to the "good ole boy" tradition in southern life.

So far this year the ERA resolution has not been brought up in the Florida legislature. The legislature is not scheduled to convene again until April 2, 1979. Gov. Reubin Askew, who is leaving office in January, had indicated that he might take up the issue at a special session of the legislature in December. But because proponents could not assure him that they had the votes for ratification, ERA was left off the agenda. ERA's prospects in Florida also were hurt when the state's voters in November rejected an amendment to the state's constitution that would have banned discrimination on the basis of sex.

Illinois, the only northern industrial state that has not ratified the amendment, has been a special source of frustration for ERA proponents. To pass in Illinois, the amendment must be approved by a three-fifths vote of each house. Last June the Illinois House of Representatives twice rejected the amendment, despite a personal appeal from President Carter, the support of Republican Gov. James R. Thompson and a massive lobbying effort by the League of Women Voters.[9]

ERA has been the subject of repeated votes in the Illinois legislature during the past six years. Before the two June ballots, the House had voted on the amendment six times and the Senate five times. In 1975 the amendment passed with 113 votes in the House, only to be bottled up in a Senate committee. ERA supporters still insist they can win in Illinois, but a spokesman for ERA-America, a coalition of some 200 groups supporting the amendment, recently said that the outlook was "quite iffy." In North Carolina, the amendment appears to have lost ground, according to an analysis of the November election results by *The New York Times.*[10]

[8] *Christian Science Monitor,* Oct. 19, 1978. At its annual meeting in Washington, D.C., on Oct. 8, NOW voted to focus most of its resources during the next year on the ERA ratification drive.

[9] The second vote, on June 22, was 105 to 71, just two votes short of the number needed for approval. The first vote, on June 7, fell six short of ratification; five black legislators who had been considered supporters of the amendment abstained because of a dispute with the House leadership.

Supporters believe that there now are just 21 solid "yes" votes in the state Senate, five short of the 26 needed for ratification. They are afraid that anti-ERA forces will seek a Senate vote on the amendment shortly after the legislature convenes Jan. 10, in the hope that it will fail. ERA backers also face an uphill battle in Oklahoma, where the amendment has failed three times in the House but passed once in the Senate. The amendment has the support of Oklahoma Gov.-elect George Nigh.

Prospects for the amendment in the other 11 unratified states are not good, at least not next year. Many of the remaining states are in the South *(see map),* where support for the amendment is lowest. Supporters thought they had a chance last year in Virginia, where the amendment had the support of the state's labor unions. But their efforts failed when the House Privilege and Elections Committee refused to bring the question to the floor for a vote.

Debate Over Impact of Economic Boycott

Virginia and the 14 other ERA holdouts are paying a price for their opposition. Over 50 business, political and professional associations have agreed not to hold their conventions in states that have not ratified the amendment. The list includes the Democratic National Committee, the League of Women Voters, the National Council of Churches, the National Education Association, the American Psychological Association and the United Auto Workers union.

The boycott, which is backed by the National Organization for Women, has had considerable impact on such big convention cities as Atlanta, New Orleans, Chicago and Miami Beach. There are no exact figures on overall losses incurred in these and other cities, but estimates run into the millions. The Chicago Convention and Tourism Bureau estimated that as of September 1977 the city had lost $15 million. As a result, the bureau passed a resolution supporting the ERA and urging state legislators to ratify it.

Missouri officials have estimated that the ERA boycott has caused the loss of at least $1.1 million in convention business in the Kansas City area alone. The estimate was included in an antitrust suit filed by the state against the National Organization for Women last February. The suit alleges that the boycott constitutes an illegal restraint of trade. Representatives of several national organizations testified in U.S. District Court in Kansas City Nov. 7 that NOW did not influence their decisions

[10] *The New York Times,* Nov. 27, 1978.

to move their conventions out of unratified states. U.S. District Court Judge Elmo B. Hunter indicated that he will not issue a ruling in the case until early next year.

Some persons worry that the boycott could intensify opposition to the amendment. The tactic has been criticized even by some ERA supporters. Morris B. Abram, a New York lawyer, wrote last year: "As long as the equal protection clause of the Constitution stands, as long as free speech lasts, as long as women have the right to vote...there is no dire emergency that requires or justifies the holding of the people of whole states hostages on a campaign to enact a constitutional amendment."[11] Despite such criticism, ERA proponents are pressing ahead with the boycott. In fact, some are convinced that the amendment already would be law if the boycott had been initiated sooner.

Long Struggle for ERA Passage

THE EQUAL RIGHTS AMENDMENT has been a source of controversy since it first was proposed in the early 1920s. Endorsed by one wing of the suffrage movement and opposed by the other, the amendment "embroiled the woman's movement in bitter strife and as much as anything else prevented the development of a united feminist appeal," William Henry Chafe wrote in 1972.[12]

The conflict over the Equal Rights Amendment can be traced back to the split between the more militant and conservative suffragettes. The militants, led by Alice Paul, founder of the National Woman's Party, turned to picketing, hunger strikes and other radical tactics when their lobbying efforts failed to persuade more congressmen to give woman the vote. The more conservative suffragettes, led by the National American Woman Suffrage Association (NAWSA), thought such actions would antagonize the people who would be needed for the suffrage movement to succeed.

The split between the two wings of the suffrage movement widened after the Nineteenth Amendment was ratified in 1920, giving women the right to vote. The conservatives felt their mission was accomplished, and turned their attention to an array of social reforms, including wage-hour laws, child-labor bans, social security and welfare measures, provisions for maternal-child health and other public health programs.

[11] Writing in *The New York Times*, Dec. 29, 1977.

[12] William Henry Chafe, *The American Woman: Her Changing Social, Economic and Political Roles, 1920-1970* (1972), p. 113.

The more radical suffragettes, on the other hand, viewed the vote as only an intermediate step on the road to full sexual equality. Only by inscribing the principle of female equality in the basic law of the land, they maintained, could women achieve true parity with men. The National Woman's Party in 1921 embarked on a campaign for an Equal Rights Amendment. Such a proposal first was introduced in Congress in 1923 by two Kansas Republicans, Sen. Charles Curtis and Rep. Daniel R. Anthony Jr. "The Woman's Party wished to eliminate in one blow all remaining laws which distinguished between men and women," William Henry Chafe wrote. "To campaign in each state for piecemeal reform, the feminists reasoned, would take years of effort. Consequently they relied on a blanket amendment which would outlaw all discriminatory legislation throughout the country."[13]

Continued Opposition to ERA During 1940s

Congress showed little interest in the Equal Rights Amendment from 1923 to 1940, safely burying the measure in committee year after year. The Woman's Party, the National Federation of Business and Professional Women and other early supporters continued to lobby for it, arguing that only a constitutional guarantee could eliminate continuing discrimination against women. In 1940, 11 states provided that a wife could not hold her own earnings without her husband's consent; 16 states denied a married woman the right to make contracts; seven states favored the father in custody cases; over 20 states prohibited women from serving on juries. Early supporters of the Equal Rights Amendment were particularly concerned about laws fixing the conditions under which women could be employed. In the mid-1940s, 43 states limited the daily and weekly hours a woman could work outside the home; 15 states prohibited night work for women.

Many states in the 1940s restricted the types of jobs women could hold. In Pennsylvania, for example, women were prohibited from working as crane operators, welders, truckers, meter readers, or on railroad tracks or in boiler rooms. At least 17 states prohibited women from working in the mines. Ohio had the longest list of occupational restrictions. Women were banned from bowling alleys, pool rooms and shoe-shine parlors; they could not handle freight or baggage, operate freight elevators, guard railroad crossings, or operate vehicles for hire.[14]

Opposition to the Equal Rights Amendment remained strong during the 1940s. Among the organizations which were prominent in the campaign against the amendment were the National

[13] *Ibid.*, p. 116.

[14] "Summary of State Labor Laws for Women," Women's Bureau, Department of Labor, August 1944.

League of Women Voters, the National Women's Trade Union League, and the American Association of University Women. In 1944 a "National Committee to Defeat the Un-Equal Rights Amendment" was organized. It included representatives from 42 organizations, among them the American Federation of Labor (AFL), the Congress of Industrial Organizations (CIO), American Civil Liberties Union, National Farmers Union, American Federation of Teachers, Young Women's Christian Association, and the National Councils of Catholic Women, of Jewish Women and of Negro Women.

The amendment was opposed by Frances Perkins, President Roosevelt's Secretary of Labor, and by the director of the Labor Department's Women's Bureau, Mary Anderson. Anderson denounced the amendment as "vicious," "doctrinaire"and "a kind of hysterial feminism with a slogan for a program." She also said it would be meaningless "because most of the real discriminations against women were a matter of custom and prejudice and would not be affected by a constitutional amendment."[15]

Attempt to Preserve Protective Legislation

What bothered Anderson and the other opponents of the amendment the most, especially organized labor, was its potentially destructive effect on protective legislation for women. The amendment, they feared, would endanger wage and hour laws for women, undermine support laws for wives and children, and terminate special penalties in the law for rape and sexual offenses against women. Secretary Perkins, testifying before the Senate Judiciary Committee in 1945, said that special labor laws for women represented a realistic recognition of biological differences which no constitutional amendment could alter. Their effect, she said, had been to lessen inequalities between men and women in industry.

ERA supporters argued that the position of working women could be improved by the removal of protective legislation based on sex. Many of the conditions originally cited to justify special laws, they pointed out, had improved by the 1940s. The only purpose of protective legislation, Maud Younger wrote in 1934, was "to lower women's economic status, keep them in the ranks with little chance for advancement...and perpetuate the psychology that they are cheap labor and inferior to other adult workers."[16]

Most ERA supporters insisted that they were not advocating the removal of all protective legislation, but merely the removal

[15] Mary Anderson, *Women at Work* (1951), pp. 163, 168.

[16] Maud Younger, "The NRA and Protective Laws for Women," *Literary Digest*, June 2, 1934, p. 27.

of the sex basis in most protective laws. "Protective legislation," said Alice Paul of the National Woman's Party, "should be made to apply to everyone alike so that industrial conditions may be definitely improved."[17]

Public and Congressional Support in 1970s

While women's groups argued among themselves about the ramifications of an Equal Rights Amendment, the fight for approval continued in Congress. From the late 1940s to 1970 the proposed amendment remained buried in the House, but it was favorably reported out of Senate committees or subcommittees at least ten times.[18] The first time the amendment was voted on by the full Senate was 1946 and it was defeated. The Senate in 1950 and 1953 passed resolutions to place the amendment before the states for ratification, but both times with a rider which supporters of the amendment said would have made it meaningless. The rider, introduced by Sen. Carl Hayden, D-Ariz., stated that the amendment "shall not be construed to impair any rights, benefits or exemptions now or hereafter conferred by law upon members of the female sex."

Support for the amendment picked up in the 1960s and early 1970s. Among its staunchest advocates during this period was the National Organization for Women, founded in 1966 by Betty Friedan, author of *The Feminine Mystique*.[19] Interest in the amendment also spread to civil libertarian groups, such as the American Civil Liberties Union (ACLU), and to government agencies. The Department of Labor, which for decades had opposed the ERA, switched its position in 1969 when Elizabeth Duncan Koontz became director of the department's Women's Bureau. The Citizens Advisory Council on the Status of Women[20] endorsed the amendment for the first time in February 1972. The council's Feb. 12 bulletin stated that "ratification. . . is the most effective and expeditous method of securing equal protection of the laws for women, who lag 40 years behind minority groups in achieving constitutional protection."

Among those who changed their position on the amendment during this period was Rep. Edith Green, D-Ore. She told her House colleagues on Oct. 12, 1971: "In the past I rejected the idea of an Equal Rights Amendment, arguing . . . that wrongs

[17] Quoted by June Sochen in *Movers and Shakers: American Women Thinkers and Activists, 1900-1970* (1973), pp. 118-119.

[18] See Mary A. Delsman, *Everything You Need to Know about ERA* (1975), p. 30, and "Equal Rights Amendment," *E.R.R.*, 1946 Vol. I, pp. 217-236.

[19] In *The Feminine Mystique* (1963), often referred to as the bible of feminism, Friedan denounced the forces in society that depicted women as sexpots or idealized them as perfect housewives and mothers.

[20] The council was established by executive order of the president in 1963 to advise government agencies on the status of women.

could be righted, and more quickly, through the legislative process and through the courts. But through the years I have watched the legislative actions on both the national and state levels and I have come to the conclusion that I was wrong . . . and that the groups who supported the Equal Rights Amendment were correct."

Increased public support for the amendment was translated into increased support in Congress. In July 1970, Rep. Martha W. Griffiths, D-Mich., succeeded in extracting the proposal from the House Judiciary Committee, a burial ground for the measure in years past, by getting the required 218 signatures of members on a discharge petition. The measure then went to the floor for debate. Less than a month later, on Aug. 10, 1970, the House approved the equal rights measure by a 350-15 vote.

The House-passed measure was placed directly on the Senate calendar, without approval by the Senate Judiciary Committee. After three days of debate in October, senators added two amendments to the ERA resolution — one upholding existing laws exempting women from the military draft and another guaranteeing the right of non-denominational prayers in public schools. Passage of the amendments was tantamount to defeat of the bill because it meant that a House-Senate conference would have been required to resolve differences between the two versions. The leader of the House conferees would have been Emanuel Celler, D-N.Y., chairman of the House Judiciary Committee, who for 20 years had refused to hold hearings on the Equal Rights Amendment in the House. The Senate adjourned without taking a final vote on the ERA resolution and the measure died at the end of the 91st Congress.[21]

The House approved the measure again in October 1971, after stripping it of a provision which the House Judiciary Committee had added, stating: "This article shall not impair the validity of any law of the United States which exempts a person from compulsory military service or any other law of the United States or of any state which reasonably promotes the health and safety of the people." Women's rights advocates argued that the effect of the additional language would be to undermine ERA's usefulness. In the Senate, a companion measure was introduced by Birch Bayh, D-Ind. But Senate action was postponed until 1972, partly due to the illness of Bayh's wife, Marvella, who was recovering from a cancer operation.

The chief Senate opponent of the Equal Rights Amendment was Sam J. Ervin Jr., D-N.C. Ervin asserted that the amendment, which he called the unisex amendment, would "have a

[21] See *1970 CQ Almanac*, p. 706.

most serious impact upon the social structure of America and for that reason, in my opinion, would constitute evil."[22] He said if the amendment were ratified, women would be conscripted into the armed services "and sent into battle to have their fair forms blasted into fragments by the bombs and shells of the enemy." He agreed that the "traditional customs and usages of society undoubtedly subject women to many discriminations." But he went on to say that since these discriminations "are not created by law, they cannot be abolished by law. They can be altered only by changed attitudes in the society which imposes them." Amending the Constituton to correct harm done by outmoded state laws, Ervin concluded, "would be about as wise as using an atomic bomb to exterminate a few mice."

Despite Ervin's opposition, the Senate finally approved the Equal Rights Amendment on March 22, 1972, and sent it to the states for ratification. Less than two hours later, Hawaii became the first state to ratify it. By the end of 1972, 21 other states had followed suit. But the problems which were to plague the ratification drive quickly became apparent. By January 1973, *The New York Times* was reporting that ratification of the Equal Rights Amendment no longer looked like a sure thing.

Future of the Ratification Drive

HAVING STRUGGLED so long and so hard to get the Equal Rights Amendment through Congress, many feminists find it difficult to accept the possibility that the amendment might not be ratified by the requisite 38 states. If the ERA is blocked, Betty Friedan said last spring, "it will be politically disastrous . . . . We will be set back 50 years." NOW President Eleanor Smeal concurred. Defeat of the amendment, she said, "might give a false message to the courts and state legislatures that the country does not want to have a policy against sex discrimination. The unthinkable risk is that we might go backward in the gains for women."[23]

Some feminists worry about the effect that defeat would have on the morale of the women's movement. But Gloria Steinem, the found of *Ms.* magazine, insists that the feminist drive will persist even if the amendment fails to be ratified. "Some people would be very discouraged and bitter for six months, and I'm sure a few would never come back," she said. "But there's no

[22] Senate floor debate March 20, 1972.

[23] Both Friedan and Smeal were quoted in *The New York Times*, May 31, 1978.

turning back. No matter how discouraged we get, looking at where we've come from is more than enough to keep us moving ahead."[24]

Since The Equal Rights Amendment resolution was passed by Congress in 1972, new federal and state legislation and court decisions have provided women equal credit, educational and employment opportunities and moved to eliminate inequities in Social Security benefits.[25] But Steinem and other women's rights advocates stress that there still are thousands of laws on the books that discriminate against women. In a title by title review of the U.S. Code released in April 1977, the U.S. Commission on Civil Rights found hundreds of federal statutes that contained "unwarranted sex-based differentials."[26]

The cumulative effect of the sex-bias in the U.S. Code, the commission stated in a later report, "was to assign to women, solely on the basis of their sex, a subordinate or dependent role."[27] A report on the employment prospects of professional women and minorities released in November 1978 by the Department of Labor found that women with college degrees earned substantially less in 1976 than white male high school dropouts. According to Betty M. Vetter, co-author of the report, white men who dropped out of high school earned an average of $9,379 in 1976; white women with college degrees averaged $7,176.

Attempts to Determine Amendment's Effects

Whether or not the Equal Rights Amendment is ratified, there undoubtedly will be plenty of lawsuits over sex discrimination for years to come. If the amendment is adopted, the lack of specifics in its language leaves lots of room for interpretation by the courts. "The language of the ERA is written in the same grand manner in which many constitutional guarantees have been written," UCLA Law Professor Kenneth L. Karst said last year. "That's an advantage to courts in the long run. But in the near future . . . lots of litigation will be required."[28]

If the courts are called on to interpret the Equal Rights Amendment, they will rely to a large degree on its legislative history as contained in the Senate Judiciary Committee's 1972 report recommending its approval.[29] The report states, in part:

[24] Quoted in *The New York Times,* May 31, 1978.

[25] See "Reverse Discrimination," *E.R.R.,* 1976, Vol. II, pp. 561-580; "Women in the Work Force," *E.R.R.,* 1977 Vol. I, pp. 121-142; and "Burger Court's Tenth Year," *E.R.R.,* 1978 Vol. II, pp. 681-700.

[26] "Sex Bias in the U.S. Code," U.S. Commission on Civil Rights, April 1977.

[27] "The State of Civil Rights: 1977," U.S. Commission on Civil Rights, February 1978, p. 23.

[28] Quoted in the *Los Angeles Times,* Nov. 21, 1977.

[29] "Equal Rights for Men and Women," Senate Judiciary Committee, 92nd Congress, 2nd session (1972).

> Essentially, the amendment requires that the federal government and all state and local governments treat each person, male and female, as an individual. It does not require that any level of government establish quotas for men or for women in any of its activities; rather, it simply prohibits discrimination on the basis of a person's sex. The amendment applies only to government action; it does not affect private action or the purely social relationships between men and women.

Most experts agree that the amendment would require that qualified women, as well as men, be subject to the draft and that the full range of military activities, including combat duty, be open to women. It would ban sexually segregated public schools and require that the obligations of spouses toward one another and of parents toward their children be defined in sexually neutral terms. But as the legislative history makes clear, there would be some key limitations to the general rule of sexual equality under the law. These exceptions occur for (1) situations which relate to the individual's constitutional right to personal privacy and (2) situations which relate to a unique physical characteristic of one sex. Thus the Equal Rights Amendment would not require both sexes to share restrooms or that colleges, prisons and the military services put men and women in the same barracks or dormitories.

Perhaps the best evidence of what the Equal Rights Amendment would mean comes from the 16 states that have written equal rights amendments into their own constitutions.[30] "The general trend, both in terms of common-law doctrines and statutory law, has been for courts in ERA jurisdictions to strike down outdated or unreasonable restrictions on one sex and to extend important rights, benefits and obligations to members of both sexes."[31] In Illinois, for example, a court ruled that under the state's equal rights amendment, a mother may not automatically be preferred over the father in deciding child custody after divorce. A state university in Texas was told that the state amendment required it to provide on-campus housing for men as well as women and to allow women as well as men to live off campus.

The state Supreme Court in Washington ruled that husbands as well as wives should not be denied unemployment benefits for leaving work to follow their spouses to a new location under

[30] In nine of the states — Colorado, Hawaii, Maryland, Massachusetts, New Hampshire, New Mexico, Pennsylvania, Texas and Washington —— the equal rights provisions closely resemble the federal amendment. In the other seven states — Alaska, Connecticut, Illinois, Montana, Utah, Virginia and Wyoming — the state provisions vary, but most are less inclusive than the federal proposal.

[31] Barbara A. Brown, Ann E. Freedman, Harriet N. Katz and Alice M. Price, *Women's Rights and the Law: The Impact of the ERA on State Laws* (1977), p. 32.

appropriate circumstances. The Pennsylvania Supreme Court ruled that a husband may no longer be presumed to be the sole owner of property acquired during the marriage, even if he paid for most of it.

Expected Challenges to Rescission Attempts

The future of the Equal Rights Amendment is clouded by several unresolved issues. Opponents of the measure, led by Phyllis Schlafly, have promised to challenge in the courts the resolution extending the ratification deadline to 1982. The courts will be asked to decide whether Congress had the power to extend the deadline and whether an extension would require a simple majority vote of the House and Senate, as was the case, or whether it would require a two-thirds vote.

Although Article V of the Constitution specifies how many states must ratify an amendment before it becomes law, it is silent on the question of how long the process may take. The Supreme Court ruled in 1921 *(Dillon v. Gloss)* that ratification should come "within some reasonable time after the proposal." On the question of what constitutes a "reasonable limit of time for ratification," the court held in 1939 *(Coleman v. Miller)* that it is a political matter which Congress is empowered to determine.

Until 1919 Congress set no time limits on the passage of constitutional amendments. The Eighteenth Amendment (Prohibition) was the first to specify a deadline for ratification. Three subsequent amendments contained a deadline in their texts. Since 1951, the time limitation has been included in resolutions proposing amendments rather than in the amendments. Traditionally, seven years has been the maximum time allowed.

Another unanswered question in ERA's future is whether the states can rescind ratification. In recent years the legislatures of four states — Nebraska, Tennessee, Idaho and Kentucky — have voted to rescind earlier approval of the Equal Rights Amendment. But in Kentucky, the rescission bill was vetoed by Lt. Gov. Thelma Stovall who was acting governor while Gov. Julian Carroll was out of the state. During the debate over extension of the ratification deadline, opponents argued that it would be unfair to allow the states more time to approve the Equal Rights Amendment without giving those states that had ratified it a chance to change their minds. In approving the extension bill, however, the Senate rejected a rescission amendment sponsored by Jake Garn, R-Utah.

The constitutionality of rescission never has been tested. The Department of Justice takes the position that once a state has

Amending the Constitution

Article V of the U.S. Constitution provides two methods for amending the Constitution — (1) via a convention called by Congress at the request of the legislatures of two-thirds of the states or (2) by a two-thirds majority vote of each house of Congress. Of the two methods only the latter has been used. An amendment that is proposed by Congress or by a Constitutional convention does not become part of the Constitution until after it is approved, or ratified, by the legislatures of three-fourths of the states or by constitutional conventions in three-fourths of the states. Congress determines which form of ratification will be employed. The president has no formal authority over constitutional amendments (his veto power does not extend to them); nor can governors veto legislative approval of amendments.

ratified a proposed amendment it cannot reverse the decision. Assistant Attorney General John M. Harmon told the House Judiciary Subcommittee on Civil and Constitutional Rights in November 1977 that Article V of the Constitution "gives the states the power to ratify a proposed amendment, but not the power to reject." ERA opponents disagree. They point out that although the Constitution only gives Congress the power to make laws, no one questions the authority of Congress to repeal laws.

Many legal experts, including Harvard Law Professor Laurence H. Tribe, contend that the final determination on rescission will rest with Congress. Before the amendment becomes law, Congress must certify that 38 states properly ratified it. At that time Congress will decide whether a state that rescinded its ratification should be included among the 38 ratifiers. The only historical precedent for this occurred when Congress ignored rescission attempts by Ohio and New Jersey in the ratification of the Fourteenth Amendment. Although the courts are likely to defer to Congress' judgment on rescission, Tribe added that "in a very close case, the courts might agree to review the congressional decision."[32]

Whatever the fate of the Equal Rights Amendment, the battle over ratification has had important side effects. It has prompted legislative reform aimed at eliminating sex discrimination from state and federal statutes. It has been at least partly responsible for the dramatic shift in judicial treatment of sex discrimination cases. And, according to Robert O'Leary of Common Cause, it "has served to pump people into the political process in the states more than any other issue."[33] But these achievements will be small comfort to women's rights advocates if the Equal Rights Amendment is not ratified.

[32] Quoted by Robert Shrum in "ERA Extension: All's Fair," *New Times*, Nov. 13, 1978, p. 7.

[33] Quoted by Jeff Mullican in "ERA: Beginning of the End?" *State Legislatures*, March-April 1978, p. 6.

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