

MEMORANDUM

May 23, 1984

TO: Betsey

FROM: Tina *mj*

SUBJECT: Constitution Subcommittee Hearing on the Impact  
of the ERA Upon Homosexual Rights

Marriage is a right, not a status, now it's a contract right.

Framers of ERA invite new, less traditional concepts of marriage. Rejection of ancient generalizations of sex and sex roles. Rejects canards of sex roles. Foreclosing possibility of mandated marriage between two people of the same sex.

No consensus on the ERA. Effects on homosexual rights. Impact on this. Era will have effect on laws limiting homosexual behavior; laws against homosexual rights have been consistently upheld by courts. Homosexuals are considered suspect as a class under ERA. Marriage defined by courts as union between man and woman increasingly viewed as a civil right, to an individual right of association. Important legal right.

Government - legalizing marriage between homosexuals would undermine current laws against homosexuality. Law denying marriage to homosexuals is clearly discriminatory against homosexuals. Homosexuality is no longer a cause for dismissal from jobs nor in custody cases involving children. ERA ratification would call into question all laws concerning homosexuals.

Did ERA framers ever consider what effect it would have on laws concerning homosexuals? No.

Right of privacy leans towards recognizing the right of homosexuals to marry. State recognizes right of sterile people to marry.

Hatch - if ERA ratified and applied to homosexuals, then all attendant benefits - property, insurance, etc. would accrue to them. Constitution does not grant group rights, but individual rights.

Hatch - Homosexual marriage would have to be explicitly outlawed if ERA passes. Denial of homosexual marriages is discrimination on account of sexual preference, not sex.

Can state prohibit sexual relations between unmarried homosexuals as it does for unmarried heterosexuals? Constitution not interpreted literally, but in an evolutionary manner.

Judges can interpret ERA individually. The problem is that too many people feel it's up to the courts to interpret the ERA - Congress needs to bear some responsibility for changes in the laws which would occur if the ERA amendment is passed.

Hatch - ERA passage - what rights would homosexuals have to work in high risk security jobs? Government would have to prove a compelling interest in prohibiting their employment.