SJR 113-P.L.

Mrs. Forbes

From National Woman's Party, 144 Constitution Ave. N.E., Washington 2, D. C.

A MEMORANDUM ON SENATE JOINT RES. 111

Introduced in the Senate August 3, 1953, as a compromise measure to replace The Equal Rights Amendment

January 1, 1954

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I. TEXT OF S. J. RES. 111

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each house concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

Article __

"Sec. 1. Whenever in this Constitution the term 'person,' 'persons,' 'people' or any personal pronoun is used the same shall be taken to include both sexes.

"Sec. 2. All Federal and State laws inconsistent herewith shall be deemed amended to conform hereto when this article shall take effect; and the Congress and the several States shall have concurrent power, within their respective jurisdictions, to enforce this article by appropriate legislation."

II. HISTORY OF S. J. RES. 111

Introduced - - - - in Senate August 3, 1953, by Senator Lester C. Hunt, Wyoming.
Referred - - - - - to Senate Judiciary Committee
Present status - - before Senate Judiciary Committee.

III. POSITION OF NATIONAL WOMAN'S PARTY ON S. J. RES. 111

The National Council of the National Woman's Party voted, unanimously, November 15, 1953, not to support S. J. Res. 111 but to continue the campaign for the original Equal Rights Amendment, popularly known as the Lucretia Mott Amendment in tribute to one of the honored founders and one of the greatest leaders of the movement for equality of rights for women. The Lucretia Mott Equal Rights Amendment reads:

> "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

IV. SOME REASONS FOR NOT SUPPORTING S. J. RES. 111

1. It would not give equality of rights under the law to women. From its wording, it is clear that S. J. Res. 111 —

would not affect the inferior position of women still remaining at the basis of our legal system, as an inheritance from the English common law;
would not affect existing legislation discriminating against women;
would not prevent such discriminatory legislation in the future;
would not prevent the courts from rendering decisions discriminating against women.

What then would be the use of such an amendment to the Constitution?

2. Even the advocates of S. J. Res. 111 concede that it would not establish equality of rights for women.

Material circulated in support of S. J. Res. 111 states:

> "The questions: What about States Rights? Support and Alimony? Community Property? etc. do not apply to this new amendment."

If the above statement means that discrimination against women could continue in the States under S. J. Res. 111, what would be the use of such an amendment? Further, if S. J. Res. 111 would not require equality in support and alimony laws and in community property laws, what reason is there to think it would bring equality in any laws?

3. S. J. Res. 111 would add nothing to the present meaning of "person," "persons," "people" or "any personal pronoun" as used in the Constitution.

As an example, let us take Article I of the Federal Constitution, which deals with the Federal legislative powers, the House of Representatives, the Senate

and limitations of the powers of the States. This Article contains the words "people," "person," "persons," "he," "him," referred to in S. J. Res. 111. But no amendment to the Constitution is required to make these words apply to women. They are already understood, at the present time, as applying to women as well as to men. Women are today sitting in Congress and no attempt has ever been made to bar them from exercising Federal legislative powers on the ground that the words "people," "person," "persons," "he," "him," of Article I refer only to men.

In the same way, we could go through the entire Constitution and we would find that in every case the words referred to in S. J. Res. 111 are already "taken to include both sexes."

To add an amendment to the Constitution merely re-stating what is now in the Constitution would be a useless expenditure of time, money and energy. Such an amendment would also be a useless cluttering up of the Constitution.

4. S. J. Res. 111 would have little or no effect upon court decisions affecting the status of women.

There have been many court decisions rejecting the claims of women to various rights under the Federal Constitution -- the right to vote, to practice law, to jury service, to employment upon the same terms as men -- but these adverse decisions have not been based on an interpretation of the words "person," "persons," "people," or any personal pronoun referred to in S. J. Res. 111. These decisions have been based on the English common law as it existed in the Colonies at the time of the adoption of the Constitution, or on the intent of the framers of the Constitution and its amendments, or on the right of the State, under its police power, to enact legislation for the health and safety of its members and of the race. Two well known cases are given below, as examples:

In an early case before the Supreme Court, Minor v. Happersett, decided in 1874, which involved the right of women to vote under the 14th Amendment, Mr. Chief Justice Waite, in giving the opinion of the Court, said:

"There is no doubt that women may be citizens. They are persons...."

The Court then denied the claim of women to the right to vote under the 14th Amendment on the ground --

"-- that the Constitution of the United States does not confer the right of suffrage upon anyone, and that the Constitution and laws of the several States which commit that important trust to men alone are not necessarily void..." (Minor v.Happersett, 21 Wall 162, 22 L. Ed. 627).

In a later case, Muller v. Oregon, decided in 1908, the Supreme Court rejected the claim that women were entitled, under the 14th Amendment, to contract for employment on the same terms as men with regard to hours of employment -- but again the decision was not based on the words "person," "persons," "people," and the "personal pronoun." These words were not once referred to in the Court's decision. The decision was based on the theory that physical differences between men and women justify a difference in legislation. Justice Brewer, in delivering the opinion of the Court, said:

> "Still again, history discloses the fact that woman has always been dependent upon man.... Though limitations upon personal and contractural rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right... Differentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained even when like legislation is not necessary for men, and could not be sustained... The two sexes differ in structure of body, in the capacity for long continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation."(Muller v. Oregon, 208 U.S. 412, 28 Sup. Ct. 324, 52 L. Ed. 551, 13 Ann. Cas. 957).

Therefore, since the courts do not deny that women are "persons" and "people" as these words are used in the Constitution, and do not deny that the "personal pronoun" as used in the Constitution applies to women, there would seem to be no justification for an amendment to the Constitution merely defining these words. Furthermore, even if S. J. Res. 111 were adopted, the courts could continue to render decisions discriminating against women since S. J. Res. 111 does not touch any of the

grounds on which such discriminatory decisions have been based. The courts could still use the common law basis of our legal system, the intent of the framers of the Constitution and its amendments, and the police power of the State, as in the past, to uphold special legislation applying to women but not to men.

5. The experience of the State of New Jersey with an article in its Constitution similar to that proposed in S. J. Res. 111 is a further argument against S. J. Res. 111.

The New Jersey Constitution, which came into effect Jan. 1, 1948, contains an article (Art. X, Sec. 4) which is identical with the wording in S. J. Res. 111. The article reads:

> "Whenever in this Constitution the term 'person,' 'persons,' 'people,' or any personal pronoun is used, the same shall be taken to include both sexes."

But in spite of the fact that the New Jersey Constitution has contained this so-called equality article since January 1948, the New Jersey labor laws applying to women but not to men are still being enforced, according to the New Jersey Department of Labor and Industry. Furthermore, the Woman's Bureau in Washington states that all other New Jersey laws differentiating in their treatment of men and women that were in force before the adoption of Art. X, Sec. 4, are still in force today.

Since Art. X, Sec. 4, of the New Jersey Constitution has now been in operation for 6 years and has not yet given equality of rights to New Jersey women, why seek to put an identical article in the National Constitution?

6. New Jersey lawyers advise against using the equality article of the New Jersey Constitution as a pattern for an amendment to the Federal Constitution, as proposed in S. J. Res. 111.

Two opinions on S. J. Res. 111 by New Jersey lawyers are given below:

Judge Libby Sachar writes:

> "Plainfield, N.J.
> December 7, 1953
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> "I am thoroughly convinced that S. J. Res. 111 would in no way solve the problem even if adopted as an amendment to the Constitution and would mean that we would have to start all over again to secure an equal rights amendment. There can be no compromise because you either do have equality or you do not have it, and the path is too tortuous to follow through with half measures.
>
> (signed) Libby E. Sachar."

The firm of Vickers and Castelli has sent the following opinion:

> "Jersey City, N.J.
> November 10, 1953.
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> "Regarding your inquiry as to the effect of Congressional Resolution known as S. J. Res. 111 introduced August 3, 1953, insofar as the same, if passed and the Constitution accordingly amended, would be on existing laws governing, controlling or limiting the activities of women in those fields which said laws affect, it is my opinion that the resolution in question would have no effect at all insofar as said laws and statutes are concerned.
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> "If it is the purpose of the resolution and proposed amendment to give women complete and full equal rights, then I have no hesitancy in saying that it falls far short of its objective.
>
> (signed) Felice Castelli"

7. A parallel amendment to the Suffrage Amendment, covering equality of rights under the law is needed in order to establish complete equal rights for women, but S. J. Res. 111 would not be such a parallel amendment.

Women have only one right that is guaranteed to them, as women, by the Constitution — the right to vote. This right was established by the 19th Amendment, which became a part of the Constitution in 1920. It reads:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

As a result of the Suffrage Amendment, the right of women to vote cannot be argued about by the States or by the Federal Government, or by the courts. The question has been taken out of the area where there is room for discretion or

opinion. A similar amendment is urgently needed to take the question of equality of rights under the law away from the field where the States, the Federal Government and the courts can decide matters according to their own judgment.

The Lucretia Mott Equal Rights Amendment is patterned on the Suffrage Amendment and is identical in wording excepting that the words "the right of citizens of the United States to vote" are replaced by the words "equality of rights under the law." This amendment would settle the question of equal rights for women under the law just as the Suffrage Amendment settled the question of the right of women to vote. The two amendments together would make a complete whole, covering the entire status of women as affected by government.

S. J. Res. 111, on the other hand, would have only a psychological value, at best, and if adopted would leave women just as they are today -- with only one right, the right to vote, guaranteed by the Constitution.

8. S. J. Res. 111 would give much less than women have been demanding during the past hundred years.

To accept S. J. Res. 111 as a substitute for the pending Lucretia Mott Equal Rights Amendment would be to retreat from the demands made by women at the first Equal Rights Convention, held at Seneca Falls, New York, in 1848 when resolutions were adopted demanding for women complete equality of rights. The famous "Declaration" drawn up in 1848 has been the basis of the Equal Rights program in this country from 1848 to the present day. The goal of complete equality seemed far away in 1848. Most women thought it unattainable. Now, when the goal seems close at hand, it would be unthinkable for women to accept a half-way measure that would not give the equality for which women have been struggling unceasingly ever since that first Equal Rights Convention of 1848.

9. In view of the strength obtained in Congress by the Lucretia Mott Equal Rights Amendment, it would seem unwise to start afresh with a new amendment.

The Lucretia Mott Equal Rights Amendment, introduced in the present Congress by Senator John Marshall Butler and Representative Katharine St. George, has 24 official sponsors in the present Senate and 123 official sponsors in the present House. This amendment has received a favorable report from every Senate Judiciary Committee since 1942. It has received two favorable reports from the House Judiciary Committee. In the present Senate, the amendment has the support of the President of the Senate, of the President pro-tem, of the Majority Leader, of the Chairman of the Senate Policy Committee, of the Chairman of the Senate Judiciary Committee, and of the one woman Member of the Senate. In the present House of Representatives, it has the support of the Speaker, of the Majority Leader, of the Chairman of the House Judiciary Committee, of all women Members of the House.

Why cast aside all of this strength and begin over again with S. J. Res. 111?

10. In the same way, the strength obtained over the country by the Lucretia Mott Equal Rights Amendment makes it unwise to start afresh with a new amendment.

The Lucretia Mott Equal Rights Amendment has gradually won the endorsement of one woman's organization after another, until it now has an enormous and widespread strength. At the Hearing on the Equal Rights Amendment following its original introduction in Congress in 1923, there was only one organization, the National Woman's Party, that spoke for the Equal Rights Amendment, but at the last Congressional Hearing there were more than thirty organizations that appeared in its support.

Again, why cast aside this strength and begin over again with S. J. Res. 111?

11. S. J. Res. 111 constitutes a danger to the equality movement because it threatens to divide the equal rights forces in Congress and outside of Congress.

S. J. Res. 111 is an added problem for those who are seeking the adoption of a real equality amendment to the Constitution because the proposed compromise offers a way of escape for half-hearted supporters and for opponents, and may even draw away some real supporters. Outside of Congress, it constitutes a threat to the Unity of the Equal Rights movement which up to the present has been solidly back of one measure.

12. If S. J. Res. 111 were adopted, it would be difficult to obtain a second amendment giving real equality of rights.

While S. J. Res. 111 is innocuous in itself, it constitutes a danger to the equality movement because if it were adopted it would be difficult to obtain a real Equal Rights Amendment. The reaction undoubtedly would be: "Why a second Equal Rights Amendment? One has just been adopted."

13. S. J. Res. 11 should not be accepted as a compromise simply because of difficulties in the way of the adoption of a real Equal Rights Amendment.

Material circulated in support of S. J. Res. 111 states with regard to the Lucretia Mott Equal Rights Amendment:

> "A futile pattern of 20 years of failure should be changed to what appears in the Constitutional Status Amendment (S. J. Res. 111) to have all the possibilities of success."

But the movement for equality of rights for women should not turn back from the goal of complete equality just because the road is long and difficult. The campaign for the Suffrage Amendment took 51 years before victory was attained. That amendment was first introduced in Congress in 1869, but it was not until 1920, 51 years later, that the amendment became a part of the Constitution. Women became discouraged then, just as today, but they persisted to the end -- and as a result, American women are voting today.

Also, during the Suffrage campaign, a substitute amendment was offered in Congress, just as today. It was known as the Shafroth-Palmer Amendment, and was a half-way measure that would not have given the vote to a single American woman. Yet for nearly two years, during 1914 and 1915, almost the entire organized suffrage movement supported this compromise. In 1914 the Secretary of the National American Woman Suffrage Association, which included nearly all suffragists in the country, wrote to the state presidents of the association as follows:

> "We find that quite a number of the members of our association have gotten the impression that the introduction of the Shafroth Amendment means the abandoning of the old amendment which has been introduced into Congress for forty years or more... Both amendments are before Congress, but only one stands any chance of being acted upon before adjournment. We stand by the old one as a matter of principle; we push for the new one as a matter of immediate practical politics and to further the passage of the old one."

This letter was written just five years before the original Suffrage Amendment was finally passed by Congress. The substitute, which this officer of the Suffrage Association stated was the only amendment that had any chance of immediate passage, was never passed, and today it is forgotten. But during the two years that it was before Congress, it divided the suffrage forces in Congress and split the suffrage movement outside of Congress, thereby delaying the final victory, just as S. J. Res. 111 threatens to do today.

14. S.J.Res. 111 is unworthy of a place among the great documents of freedom.

The Equal Rights Amendment will constitute, when adopted, an historic step in the long march toward ever greater human freedom. In a recent inspiring survey of the famous documents of human freedom, William Draper Lewis, the distinguished jurist, begins his survey with Magna Carta, the Petition of Rights and the Bill of Rights, and ends as follows:

> "It is a comment on the immaturity of civilization that the recognition of woman's political equality with man did not come in the United States until 1920. The fight to gain for her full legal recognition as a human being has neared its culmination in the presentation to Congress of the Equal Rights Amendment." (quoted from the Annals of the American Academy of Political and Social Science, Philadelphia, Pa., January, 1946).

An Amendment putting the recognition of the principle of equality of rights for women in the United States Constitution would be worthy, undoubtedly, of a place beside the other time-honored documents of human freedom, but the compromise proposed in S.J.Res. 111 would most certainly not be worthy of inclusion in such a company. William Draper Lewis had in mind the original Lucretia Mott Equal Rights Amendment when he placed the Equal Rights Amendment in his list of documents of human freedom.

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