

MEMORANDUM

DATE: MAY 9, 1984

TO: AKS

FROM: MARIANNE

RE: SENSENBRENNER AMENDMENT TO THE EQUAL RIGHTS AMENDMENT

Read + Respond
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6/9/84

We have a letter or two which urges you to oppose the ERA unless the Sensenbrenner amendment -- or language similar to it -- is added to insure that the ERA amendment is "abortion-neutral".

The Sensenbrenner amendment states that nothing in the ERA "shall be construed to grant or secure any right relating to abortion or the funding thereof". The National Right-to-Life organization -- and other anti-abortion groups -- have indicated opposition to the ERA based -- solely they claim -- on the fact that the ERA may be used to insure that abortion remain legal since to ban it would be discriminatory to women based on their sex.

I discussed this matter with Betsey Greenwood, who, of course, is working on the ERA for you. We agreed that it would be best to emphasize in your response that the issue is whether the simple language of the ERA Constitutional amendment should be modified -- rather than focus on the anti-abortion intent of the Sensenbrenner amendment itself. We both assumed that you would probably not favor Sensenbrenner language should it be offered in the Senate, and agreed that the response should focus on the ERA and not on the abortion issue. Betsey had no objections to the attached letter.

Attached is a draft for your view. Thank you for looking at this. . . .

Marianne

May 7, 1984

Dear :

I appreciated your letter regarding the amendment to the Equal Rights Amendment proposed by Representative F. James Sensenbrenner last year in the House of Representatives. Representative Sensenbrenner's amendment states that nothing in the Equal Rights Amendment "shall be construed to grant or secure any right relating to abortion or the funding thereof". Thank you for this opportunity to share with you my thoughts on this matter.

The question of amending the Constitution of the United States is not a matter which I take lightly. Certainly it is not a frivolous undertaking. The issue involved with the Equal Rights Amendment -- as it has been introduced in this Congress -- is whether the good of the nation as a whole -- all of its citizens -- would be well served by amending the Constitution to ensure that equality of rights under the law should not be denied on account of sex. That does not seem to me to be an offensive requirement, it does not seem to duplicate the rather precise language of the 14th Amendment, and I shall be supportive of the ERA during its consideration by the United States Senate.

One of the most difficult judgments faced by both the House and Senate Judiciary Committees during the debate on the ERA is whether amendments to its very simple statement that "Equality of rights under the law shall not be denied or abridged by the U.S. or by any state on account of sex" should be added. It has been argued that amendments to the ERA may be able to address some of the concerns which persons raised about the actual intent of the amendment during the long ratification process which failed or to provide clarification of its intent.

In an effort to insure that the members of the Senate Judiciary Committee -- on which I serve -- have the most complete and extensive testimony possible on this serious subject, the Chairman of the Senate Subcommittee on Constitution, Senator Orrin Hatch, has been conducting a series of hearings on all aspects of the Equal Rights Amendment. That hearing record will be very important to further Senate debate on the ERA.

I intend to carefully weight the arguments presented in favor of and in opposition to adding clarifying language to the ERA prior to full Judiciary Committee consideration of the proposal. During the Senate floor debate on the ERA in 1972, a wide range of amendments were offered to the bill and they were soundly defeated. Historically, amendments to the Constitution have been fairly simple and direct. It may again be determined that the Equal Rights Amendment should be subject to the ratification process by the states in its original form -- without amendments or modifications such as the one proposed by Representative Sensenbrenner. That is a determination upon which I will withhold judgment until the Senate hearing record on the Equal Rights Amendment is completed.

Again, it is most helpful for me to have your thoughts on this difficult question. I urge you to continue to keep me advised of your interests and concerns.

With kind regards,

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