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WOMEN'S RIGHTS

- I. First drive for women's equality ended in 1920 with the ratification of the 19th amendment.
- II. Another 40 years before the U.S. government again formally addressed itself to the 'woman question' and even somewhat longer before another women's movement emerged.
- III. By 1960 the assumption that woman, by nature, was destined to be a full-time homemaker and mother was so widely believed that very few people questioned the assumption.
  - A. Many women fully believed that their destiny was indeed the home.
  - B. Facts indicate that there were millions of women working but the prevailing social ethic indicated that women were only marking time until they would marry and "settle down".
    1. By 1960, women made up 1/3 of labor force.
    2. 54% of working women were married.
    3. 33% of working women were mothers.
- IV. Only a handful of activists believed that the low status of woman workers to be a result of discrimination. They did marshal enough support to have an ERA introduced into every session of Congress since 1923 and a recommendation for the amendment into political party platforms from 1940-1960.
- V. President's Commission on the Status of Women
  - A. John F. Kennedy signed Executive Order on December 14, 1961, establishing the President's Commission on the Status of Women.
  - B. Charge--examine and recommend remedies to combat the prejudices and outmoded customs that act as barriers to the full utilization of women's basic rights
  - C. American Women, report released on October 11, 1963.
  - D. No doubt that Commission created atmosphere and engendered momentum for feminist's challenges of today.
  - E. First official body to examine status of women in the United States--idea for a Commission was not a new one.
    1. 1946 and 1961, Rep Celler, chairman of house judiciary, made a similar proposal--he wanted Commission established to kill ERA amendment once and for all.
    2. 1957--National Manpower Council, as result of study Womanpower, recommended such a Commission.
    3. Esther Peterson--member of campaign staff and labor lobbyist--appointed by Kennedy to head Women's Bureau--she suggested idea of Commission to Kennedy.
      - a. allow Kennedy to discharge political obligations to women.
      - b. result in a political block to campaign in future elections.
      - c. get administration off the hook on ERA--Commission to marshal those facts for anti-ERA.
  - F. Commission given virtually unlimited authority-Eleanor Roosevelt headed Commission until her death in 1962 but Esther Peterson (appointed Commission executive vice-chairman) did most of the work.
  - G. Members included 13 women and 11 men from public and private life.
  - H. Report based upon in-depth analysis and recommendations of seven Committees.
  - I. Recommendations:
    1. Report moderate in tone and limited itself to compilation of data and concrete recommendations.
    2. Often charts and data were left to stand alone without being put in framework of sociological and psychological analysis--Committee recommendations

were often more strongly worded than Commission report. By having report moderate in tone it pacified administration policy makers but Committee reports were released and so shrewd Commission members were able to have the best of two worlds.

3. Recommended passage of an Executive Order embodying principle of equal employment opportunity--but Order would have left enforcement to voluntary compliance.
4. Commission refused to add "sex" to existing order that barred racial discrimination by federal contractors--saw women as an under-utilized resource rather than a class.
5. In two cases of equal opportunity the Commission's recommendations were enacted before the body disbanded: 1962 Presidential directive reversing the long-held interpretation of an 1870 law used to bar women from high-level federal employment; and in 1963 the Equal Pay Act was passed.
6. Commission endorsed protective state legislation--endorsement of these laws is a step against ERA.
7. Commission recommended that laws be removed to prevent women from serving on juries (then 3 states).
8. Recommended that legal restrictions be removed which prohibited women from owning property, entering into business, contracting, controlling their own earnings, etc.
9. Suggested that homemaking and child rearing be viewed as financial contribution to the marriage.
10. Constitutional recognition of women's rights became the most controversial issues--Commission argued that principle of 5th and 14th Amendments already embodied principle: Marguerite Rawalt--coup--inserted, at last minute, 'we conclude that a constitutional amendment need not now be sought in order to establish this principle'
11. Urged imaginative counseling for girls be available.
12. Urged availability of day care centers and tax deduction for child care.
- J. Greatest impact was not the report but the fact that the Commission existed.
- K. Commission disbanded in 1963--by then a number of individual state Commissions already established. By 1957 all states had a women's commission.

#### VI. Citizen's Advisory Council on Status of Women

- A. Report received on October 11, 1963--President immediately took two actions.
  1. November 1--established Interdepartmental Committee on the Status of Women--composed of Secretaries of those Departments concerned with women's interests.
  2. Appointed the Citizens Advisory Council--twenty private citizens appointed by President.
  3. By end of 1971 these two groups had co-sponsored four national conferences of State Commissions on Status of Women and co-published a series of up-dated progress reports on status of women.
- B. Most original work and most "radical" analysis has been done consistently by the Council on its own.
  1. First project--preparation of a policy paper on the section of Title VII of the 1964 Civil Rights Act dealing with Sex discrimination. Under Margaret Hickey a Johnson appointment. Paper presented on October 1, 1965, to the Equal Employment Opportunity Commission (EEOC), administrator of Title VII; and recommended a narrow interpretation of the title which would allow exceptions to the general rule that all jobs be open to both men and women. Council argued that exceptions should not be allowed on basis of: stereotypes of characteristics of sex; preference of employer or co-workers, clients, or customers; or assumptions about general characteristics of women in general. Commission accepted Council's recommendation but rejected Council's additional suggestion that sex-segregated want ads be outlawed. Want-ad controversy later developed into a major women's rights issue.
  2. Hickey resigned in 1966 and Johnson appointed former Senator Maurine

- Neuberger. Council expanded its paid staff and established Task Forces to update four areas from Commission Report: Health and Welfare; Social Security and Taxes; Labor Standards; and Family Law and Policy. Recommendations of first three Task Forces, when released in April, 1968, were basically the same as the Commissions. The last Task Force (Family Law and Policy) included lawyers Marguerite Rawalt and Mary Eastwood and Sociologist Alice Rossi. Presented a radical and extremely feminist position for a government-sponsored study. Argued that the right of a woman to control her own reproductive life was a basic civil right and called for repeal of all laws which make abortion a criminal offense and all laws which restrict access to contraceptive devices and information.
3. Under Hickey, further developed Commission's idea that marriage is an economic partnership. Recommended that support and alimony laws be based upon need and ability to pay, not on the sex of the spouse, and that married women have the same property rights as their husbands. Also recommended that illegitimate children should be accorded the same legal rights as legitimate children.
  4. Under Nixon, new Council members appointed with exception of staff executive secretary--Catherine East. Nixon waited until August, 1969, to select Council. Rumored that he would not have appointed Council at all had it not been for pressure from women activists. New chairman, Jacqueline Gutwillig, retired lieutenant colonel of WAC.
    - a. first policy paper under Gutwillig endorsed ERA (March, 1970) but administration did not address itself to issue.
    - b. issued a second position paper on job-related maternity benefits. First time maternity leave was defined as a temporary disability.
  5. Many people feel that a "civilian status" Council can present issues and position papers that cannot come from a governmental agency such as the Women's Bureau. Activists are well aware, however, that Council exists only by Executive Order.

#### VII. 1963 Equal Pay Act

- A. Signed on June 10, 1963 by Kennedy, to become effective June 11, 1964.
- B. First piece of federal legislation prohibiting discrimination on the basis of sex.
- C. Remains only federal law that deals only with sex.
- D. Law amended Fair Labor Standards Act of 1938 to require that men and women receive equal pay for equal work performed under equal conditions.
- E. Culminated a drive that had begun during World War I.
- F. Original proposed Equal Pay Bill did not exempt executive, professional or administrative employees nor were these exemptions introduced at any time during legislative history. However, when bill passed as an amendment to Fair Labor Standards Act, exemptions written into that original Act were automatically extended to Equal Pay provisions. Several subsequent bills have been introduced to remove the executive, professional and administrative exemptions--women graduating from college in 1970 in six technical and professional fields were being offered from 3% to 10% less than were men in same fields. In 1966 entire Act extended to cover some employees in state hospitals, transportation systems, schools and universities. Pressure being brought by women's groups to broaden act to include such fields as agriculture and domestic labor--in which majority are women.
- G. Equal Pay Act administered and enforced by the Wage and Hour and Public Contracts Divisions of the U.S. Dept. of Labor. Regional offices, and routine compliance investigations made continually--over 70,000 every year. If violation found, local compliance officer can require settlement without waiting for complaint to be filed on behalf of employees discriminated against. If independent complaint filed, and settlement cannot be reached, the Wage and Hour Division has authority to bring suit, taking that burden off aggrieved employee.

In 1965 there were complaints against 351 establishments; and in 1970, well over 700 establishments. By end of 1970 fiscal year, three years after establishment of Equal Pay Act, more than 17 million dollars of back pay had been awarded to 50,000 employees, nearly all of whom were women.

### VIII. Title VII--1964 Civil Rights Act

- A. The Equal Employment Opportunity section of the 1964 Civil Rights Act (effective July 2, 1965) prohibits discrimination based on race, color, religion, national origin or sex by private employers, employment agencies and unions. Exempted from the Act's coverage are federal, state and local governments (except for U.S. Employment Service and state and local employment services receiving federal assistance), and education institutions (teachers and administrative personnel).
- B. Title VII was allegedly not intended to cover sex discrimination. After two weeks of debate in the House, Rep. Howard Smith (D-VA.) an opponent of the Civil Rights Bill offered an amendment to add sex as a prohibited basis for discrimination in employment. Observers in Washington felt that this maneuver was designed to do a great deal of harm to the bill and to bring so much controversy so as to kill it--however, the sex amendment was added and the bill passed that afternoon and was enacted by Congress that year.
- C. Equal Employment Opportunity Commission composed of five members appointed by the President was established to administer Title VII. EEOC given no enforcement powers and many view it as nothing more than a pronouncement of policy.
  - 1. Commission can investigate charges brought to EEOC.
  - 2. Can issue statement as to whether reasonable cause exists.
  - 3. If discrimination does exist--EEOC to attempt conciliation. Does not have cease and desist power.
  - 4. If cannot get voluntary compliance it can recommend that attorney general institute a lawsuit on behalf of aggrieved party or individual party institutes legal proceedings.
- D. Bona fide occupational qualifications.
  - 1. Title VII does recognize sex differences and does permit an employer to hire only one sex when it is considered reasonably necessary to the functioning of a particular business enterprise, i.e. actresses and attendants for women's restrooms.
  - 2. Exactly what is a bona fide occupational qualification became and still remains the major point of contention until the sex provisions of Title VII.

### IX. State Protective Legislation

- A. Late 19th and early 20th centuries many states passed laws restricting women to certain occupations, establishing maximum hours, minimum wages, maximum weights to be lifted.
- B. Designed to protect women and were only labor laws on the books for men or women.
- C. In 1920 the Women's Bureau was established and became central in the continuing drive for protective laws and worked in concert with organized labor
- D. Originally the laws were enacted to protect all workers--men and women. The Supreme Court, early in the century, considered their constitutionality, and according to the court they could not be imposed upon men because they violated men's constitutional rights of personal liberty and the liberty of contract; this was not held to be true of women.

Muller v. Oregon 1908

"history discloses the fact that woman has always been dependent upon men. He established his control at the outset by superior physical strength, and this control in various forms, with diminishing intensity, has continued to the present. As minors, though not to the same extent, she has been looked upon in the courts as needing special care that her



rights may be preserved...Though limitations upon personal and contractual 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...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.

- E. Women workers opposing these laws today:
  - 1. Unrealistic to place a limit of 30 pounds (often less) on the weight a female may lift--a child often lifts this much and mothers lift them often.
  - 2. Discriminatory to establish maximum hours and minimum wage laws because such laws keep women from applying for certain jobs, earning overtime pay, and competing with men in the job market.
- F. Women workers supporting these laws today:
  - 1. Agree that some laws are discriminatory but feel they should be dealt with on a case-by-case basis.
  - 2. Women play a double role in our society--if they are to continue to function as mothers, wives, and workers they cannot be forced to work overtime, long hours, and lift weights.
- G. Some agreement that laws which truly protect workers from exploitation should be extended to both sexes.

#### X. Title VII and State Protective Legislation

- A. Title VII expressly prohibits discrimination in employment on the basis of sex. State protective legislation expressly establishes legal distinctions on the basis of sex.
- B. Question of whether states' legal distinctions constitute discrimination which is prohibited or whether a valid exception based upon "bona fide occupational qualifications".
- C. Various sets of EEOC Guidelines issued between 1965 and 1969 reveal how the Commission wavered in its attempts to deal with the sex provision.
  - 1. December 2, 1965: State laws could be interpreted as bona fide occupational qualifications provided that the employer acted in good faith and that laws effectively protected women rather than discriminating against them.
  - 2. August 19, 1966: Disclaimed authority to determine whether or not Title VII superseded state laws, and stated that courts would have to resolve conflict.
  - 3. May, 1967 (Public Hearings): Both sides of issue aired.
  - 4. February 21, 1968: New guidelines issued, which stated that EEOC itself would determine on a case-by-case basis whether state legislation appeared to be discriminatory rather than protective.
  - 5. August 19, 1969: EEOC issued revised guidelines on "Discrimination Because of Sex" which stated that "state laws and regulations, although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or to the expanding role of the female worker in our economy." The Commission concluded that such laws and regulations were in conflict with and therefore superseded by Title VII, and did not qualify under the bona fide occupational qualification exception section of the Act.
- D. Court Cases
  - 1. As a mid-1971 there was no one authoritative resolution of the conflict between Title VII and state protective legislation.
  - 2. Court cases indicate a strong court trend toward the invalidation of state protective legislation.
  - 3. Substantial assistance (financial and legal) to enable women to appeal lower court decisions provided by NOW and Human Rights for Women.

#### XI. Title VII--Revised, April 5, 1972

- A. Amended to include educational institutions.
- B. Applies to both public and private institutions with 15 or more employees.

## XII. Executive Order 11375

- A. Divided into two sections
  - 1. One concerns federal contractors and subcontractors.
  - 2. One concerns federal employment.
- B. Federal Contractors and Subcontractors.
  - 1. Signed by Johnson on September 24, 1965.
  - 2. Executive Order 11246 prohibits discrimination by federal contractors and subcontractors because of race, color, religion, and national origin. Executive Order 11375 or Executive Order 11246, as amended, prohibits sex discrimination was signed October 13, 1967, and went into effect one year later.
  - 3. Order is administered under the Department of Labor by the Office of Federal Contract Compliance. Office issues rules and regulations to guide employers in compliance as well as actual enforcement of compliance. Routine checks are carried out by such governmental agencies as Department of Defense and HEW.
  - 4. Set of proposed guidelines issued by OFCC in January, 1969 and public hearing were held in August, 1969. Women's groups argued that strict guidelines were needed such as those already issued to combat racial discrimination. Little heard after public hearing because of the hostility engendered by them in the business and industrial communities.
  - 5. One year late, February 5, 1970, the Labor Department issued Order No. 4. This order outlined requirements for affirmative action programs for all federal contractors and subcontractors and called for racial analysis but not sex analysis. Disagreement as to whether Order No. 4 applied to women--although not specially stated it was generally agreed that it did not. Women's groups mounted a campaign to have Order No. 4 officially extended to include women.

On June 9, 1970, nearly seventeen months after the proposed guidelines were first issued, the Department of Labor finally made public an official set of sex discrimination guidelines. Considerably weaker than the proposed set: major weakness was the continued lack of mention of specific goals and timetables applicable to women. In July, 1970, Secretary of Labor made his famous remark, "he had no intention of applying literally exactly the same approach for women in carrying out the Executive Order as had been applied to eliminate discrimination against minority groups". On July 31st he revised his stand and said that amended guidelines containing some kind of goals and timetables would be issued. He stated that he would set up an advisory committee and the committee was established in February, 1971.

- 6. Even without guidelines, women's groups were filing sex discrimination charges against recipients of federal funds. Greatest activity has been in areas of education. Colleges and Universities receive over \$3 billion in federal funds each year, and in January, 1970, the first formal sex discrimination complaint was filed against the University of Maryland by WEAL. Since that time more than 300 complaints have been filed (over 10% of national total of institutions. HEW is the compliance agency for complaints in area of education.
- C. Federal Employment
    - 1. Discrimination in federal employment--administered by the Civil Service Commission.
    - 2. Civil Service Commission created the Federal Women's Program to coordinate enforcement effort. Coordinator of Federal Women's Program is in each federal agency and is charged with enforcing the ban against sex discrimination (Title VII) and with recruiting and promotion of women. (Accused of being little more than "lip service").

XIII. Executive Order 11375--Revised Order No. 4

- A. Revised December 3, 1971.
- B. Required to analyze factors of sex discrimination and state specific goals and timetables.

XIV. President's Task Force on Women's Rights and Responsibilities

- A. Pressure on Nixon to elevate status of women began after inauguration.
- B. January, 1969, Rep. Florence Dwyer proposed that he establish, in the Executive Branch, a new organizational structure to deal solely with the elimination of sex discrimination.
- C. February, 1969, at a press conference, columnist Vera Glaser asked Nixon directly why he had not appointed more women to policy making positions.
- D. Six months later--no action--three Republican women representatives drew up a memorandum detailing the problems and making recommendations for solution.
- E. August, 1969, Nixon appointed new members of the Citizens' Advisory Council on the Status of Women.
- F. Made up on ten women and 2 men and Chaired by Virginia Allan.
- G. Report, A Matter of Simple Justice, transmitted to White House on December 15, 1969. None of recommendations nor the subject of women mentioned in state of union address.  
Report not released and much speculation. Miami Herald printed a bootleg copy on April 22, 1970 and other papers followed suit.
- H. Finally released on June 9, 1970 along with sex discrimination guidelines for federal contractors--50th anniversary of Women's Bureau.
- I. Breaks no new ground but language and tone are considerably stronger than previous reports. Recommendations include:
  - 1. establishment of an Office of Women's Rights and Responsibilities reporting directly to the President.
  - 2. White House Conference on women's rights to be called by the President in 1970.
  - 3. Presidential message to Congress proposing legislation to combat sex discrimination.
  - 4. initiation, by Attorney General, of legal cases under Title VII.
  - 5. appointment of more women to high level positions.
  - 6. passage of ERA.
  - 7. immediate issuance by Secretary of Labor of guidelines to implement Executive Order 11375.

XV. Women's Bureau

- A. One significant change in Nixon administration.
- B. Previously oriented to working women in industry.
- C. Attitude shifted when Title VII interpreted to supersede most state protective legislation.
- D. Dramatic shift when Elizabeth Koontz appointed to head Bureau.
- E. Sponsored 1970 Conference, supported Task Force recommendations, revised its traditional opposition to ERA.

XVI. Equal Rights Amendment

- A. First introduced in 1923 by Sen. Charles Curtis and Rep. Daniel Anthony (Susan B. Anthony's nephew).
- B. Idea suggested earlier in 1923 by National Women's Party.
- C. Amendment introduced in both houses in every session of Congress.
- D. In 1950 and 1953 the amendment passed the Senate but with the Hayden rider attached--floor amendment which kept intact all the state protective legislation. Rider accomplished purpose of killing bill.
- E. House Judiciary held hearing once in 1948 and not again until 1971 because

- Rep. Cellar refused to schedule them.
- F. Most noteworthy development between 1923 occurred in the House in 1970 when Martha Griffiths introduced the rarely used tactic of the discharge petition to force the Amendment out of the House Judiciary Committee. House passed Amendment but Senate defeated. Passed in 1972.
  - G. One question to be considered: Is it valid for legal distinctions to be made on the basis of sex; and if they are made on that basis, is the principle of equality under the law being subverted.

XVII. Constitution and Women

- A. When Constitution written, a Negro man was considered 3/5 of a person and no woman was legally considered any fraction of a person. Only men wrote the Constitution; women were expressly excluded in intent and content.
- B. 14th Amendment has been interpreted to give "equal protection" to many groups but in cases involving alleged sex discrimination the Supreme Court has never handed down a decision that found sex as a legal classification to be unreasonable, and therefore unconstitutional.
- C. By keeping women's rights within the meaning of the 5th and 14th Amendments, it would still be possible for sex to remain a reasonable legal classification under certain circumstances--labor laws, family and draft laws.

Outline taken from: Hale, Judith and Levine, Ellen. Rebirth of Feminism, New York: Quadrangle Books, 1971.

