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Section 2 of the Equal Rights Amendment

The seldom-mentioned Section 2 of the Equal Rights Amendment provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." This simple sentence constitutes a gigantic grab for power at the Federal level. Section 2 will transfer jurisdiction over women's rights, domestic relations, and criminal law and property law pertaining to women, out of the hands of the State Legislatures and into the hands of the Federal Government: the Congress, the executive branch, and the Federal courts.

The State Legislatures, individually and collectively, constitute that part of our governmental system which is closest to the will of the people. Members of the State Legislatures are known personally to most of their constituents. No democratic or beneficial purpose can be served by transferring power and discretion out of their hands to the Federal bureaucrats, and ultimately to the Federal courts, which is the body of our Government least responsive to the will of the people.

The immediate and dramatic effect of ratification of ERA would be a grab of substantial power by the Federal Government over matters that heretofore have been generally acknowledged to be the primary and, in some cases, the exclusive legislative responsibility of the States. These would include family law, divorce, child custody, alimony, minimum marriageable age limits, dower rights, inheritance, survivor's benefits, insurance rates, welfare, prison regulations, and protective labor legislation. All state and local laws, policies and regulations involving *any* difference of treatment between the sexes will be overridden by Federal legislation, which means, ultimately, administrative regulation. Every aspect of civil and criminal law which specifies men or women will be subject to challenge in the Federal courts, as a constitutional issue, and ultimately by the U.S. Supreme Court. For example, the women's liberationists are already demanding revision of primary school textbooks which, they claim, are "sexist" because they perpetuate the "stereotype" of women as mothers and homemakers.

"Affirmative Action" for Quotas

If past experience in other "rights" areas is any guide, it is probable that ratification of the Equal Rights Amendment will be quickly followed by Federal administrative regulations requiring "affirmative action" to achieve quotas of women in political, industrial, academic and other areas. The sweeping settlement recently enforced on AT&T by the Equal Employment Opportunity Commission, which required money payments to women for jobs for which they had never even applied, shows the broad scope of legislation already on the books.

ERA would give officious Federal bureaucrats the constitutional excuse to order "affirmative action" to reach mandatory quotas -- in other words, to require employers to go out and seek women workers even when they are not looking for employment. A portent of things to come is seen in the way Federal officials forced Columbia University to submit an "affirmative action" plan for hiring women and minorities, or face the loss of $13.8 million in Government contracts.

Women's liberationists are already arguing that, since women comprise 53 percent of the population, they are entitled to 53 percent of Congress and State Legislatures. Are our gentlemen members of those bodies ready to rise and give their seats to the libbers?

Section 2 in Other Amendments

In testifying before the State Legislative hearings, the ERA proponents rarely mention Section 2. They pretend it doesn't exist. In answer to questions raised by the Legislators, the ERA proponents have one stock reply. They say, "Don't worry about Section 2 because many other constitutional amendments have a similar Section 2, and it is just customary enabling language." Let us examine this argument.

There are seven constitutional amendments which have a similar Section giving Congress the power to enforce by appropriate legislation. A study of these amendments makes clear that every one did, indeed, transfer power *from* the State Legislatures *to* the Federal Government.

Five of these constitutional amendments pertain to voting rights: the 15th Amendment giving the blacks the right to vote, the 19th Amendment giving women the right to vote, the 23rd Amendment giving a vote in the electoral college to the District of Columbia, the 24th Amendment guaranteeing the right to vote without a poll tax, and the 26th Amendment giving 18-year olds the right to vote. It is obvious that every one of these amendments did, indeed, constitute a transferral of power to the Federal level. For example, prior to the 19th and 26th Amendments, many states had given the vote to women or to those under 21 years of age. After the 19th and 26th Amendments were ratified, the states no longer could exercise any legislative option because the decision in this area had moved to the Federal level. In the case of the 14th

Amendment, the Section giving Congress the power to legislate has opened the door to endless litigation and extensions of Federal power never dreamed of by its authors.

There is one constitutional amendment, however, which does not have a Section 2: the 16th Amendment which gave Congress the power to levy an income tax. It is abundantly clear that, in the absence of a Section 2, the individual states retained their power, too. As everyone knows, the power to levy an income tax is exercised separately and concurrently both by Congress *and* the separate states in their respective jurisdictions.

The dramatic difference between those constitutional amendments which have a Section 2 and those which do *not* proves that State Legislatures will be voting away their own powers if they ratify ERA.

The Original Version of Section 2

Section 2 of the Equal Rights Amendment originally read: "Congress and the several states shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation." The words "and the several states . . . within their respective jurisdictions" were deleted before passage by Congress.

A recent research paper by the Congressional Research Service of the Library of Congress states that those words were deleted because of an opinion presented by ERA proponent Louis H. Pollak, Dean of the Yale Law School. He predicted that those words would be a "dangerous illusion" because "the Federal courts might read this provision as requiring the same degree of judicial deference to state statutes purporting to implement the Amendment as would normally be given to Federal statutes implementing the Amendment: this could mean that the parochial (and, as might often be the case, mutually inconsistent) statutes of State Legislatures would assume an unprecedented degree of apparent dignity and consequent unreviewability merely because they were denominated implementations of this Amendment."

Executive Interference

The Founding Fathers, in their wisdom, gave no part of the amendment process to the executive branch of the Government. The President cannot sign or veto a constitutional amendment. It is simply outside of his jurisdiction. The amending process is one aspect of our Government which is exclusively a legislative function: Congress proposes and the State Legislatures dispose.

The strenuous activity of the executive branch of the Federal Government in behalf of ratification of the Equal Rights Amendment *proves* that Section 2 of ERA is a grab for power at the Federal level. It reveals that the Federal bureaucrats can hardly wait to Federalize all laws and regulations pertaining to women in order that their own power and perquisites will be extended. Professor Charles E. Rice of the Notre Dame Law School told the Illinois General Assembly on March 19, 1973:

"The President has no Constitutional role in the process of amending the Constitution. If the President is actively promoting the adoption of the Amendment, it is fair to surmise that his activity in the area and the activity of Congress will be substantial if Congress and he, as the executor of the laws, are vested with actual enforcement authority by adoption of the Amendment."

The White House activity in behalf of ERA includes both political intimidation and improper use of the taxpayers' money. Presidential adviser Anne Armstrong, operating out of the White House, has been sending letters, phone calls, and personal representatives to State Legislators urging ratification of ERA. A message from "the White House" always carries with it the implication that it speaks for the President and is a means of intimidation.

Mrs. Armstrong admitted to reporter Vera Glaser that she has been making long-distance telephone calls to states where ERA is in trouble and intended to go on the road to mobilize support in State Legislatures. Washington reporter David Broder recently described Mrs. Armstrong's $30,000 job like this: "She's been given a variety of assignments and keeps a staff of six professionals busy working on projects ranging from lobbying for the ratification of the Equal Rights Amendment to providing White House liaison with the Bicentennial Commission."

Another White House aide, Mrs. Jill Ruckelshaus, has personally traveled to State Legislatures and appeared on television in support of ERA, presenting herself as a spokesman for the White House. Republican National Chairman George Bush, also a spokesman for the White House, has been sending telegrams to State Legislators urging ratification of ERA.

Meanwhile, the employees of the Citizens' Advisory Council on the Status of Women are lobbying for ERA ratification at the taxpayers' expense. Mrs. Catherine East, Executive Secretary, and fulltime employee of the Department of Labor, testified for ERA at hearings in Illinois and West Virginia. This Citizens' Council, which has an $80,000 budget, has published and distributed thousands of copies of several expensive booklets at the taxpayers' expense promoting ratification of ERA. The Council even published an uncalled for and untrue pamphlet attacking Senator Sam Ervin's Minority Report against ERA.

Tax-Funded Lobbyists

In addition to using the taxpayers' money for the salaries of Federal employees in the White House and in the Department of Labor and for printing and mailing expensive Government booklets, the ERA proponents have devised another secret scheme to fund ERA lobbyists at State Capitols. This is done through the various Governor's Councils on the Status of Women. While the Council members themselves are non-salaried, in some states they have hired a fulltime professional and arranged for her salary to be paid from a little-known Federal fund available in the Department of Labor called "Emergency Unemployment" grants.

These fulltime professionals function in practice as paid lobbyists for ERA. Activities of these professional tax-funded lobbyists vary from state to state and include testifying at hearings, coordinating pro-ERA efforts, and sometimes directly confronting State Legislators and threatening them with defeat if they vote no. In some states, there are Mayor's Councils as well as Governor's Councils to sponsor a tax-paid ERA lobbyist. Such political activity by persons funded by "Emergency Unemployment" grants is clearly illegal.

It is time to put a stop to the shocking way that our State Legislators are being lobbied and our citizens are being politically propagandized at the taxpayers' expense. This is a complete subversion of the democratic process and a harbinger of what is in store for us in the future by way of Federal enforcement of the Equal Rights Amendment through the enabling clause called Section 2.

In South Carolina, a lawsuit has been filed to halt the improper and illegal lobbying for ERA by a tax-funded professional hired by the State Commission on the Status of Women. It offers an excellent example of how other states can take action.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF
) COMMON PLEAS
Theresa Hicks in behalf of herself and others too numerous to mention as a class,

Petitioners,

-vs- PETITION

The Commission on the Status of Women, and Honorable Grady L. Patterson, Jr. as Treasurer of the State of South Carolina, and the South Carolina Commission on Human Affairs,

Respondents.

PETITIONER WOULD SHOW UNTO THIS HONORABLE COURT:

No. 1 That Petitioner is a citizen and resident of Richland County, South Carolina and brings this action in behalf of herself and all others similarly situated, as a class too numerous to mention; that such class is composed of citizens opposed to the enactment of what is commonly known as the Equal Rights Amendment, (ERA).

No. 2 That Respondent, Commission on the Status of Women, is a Commission created by the State of South Carolina (and an adjunct thereof (Acts 1970 (56) 2321) codified under Title 9, Secs. 451, et seq. of the South Carolina Code of Laws, 1962, as amended, and the Respondent South Carolina Commission on Human Affairs is a Commission, adjunct of the State of South Carolina, created by it (Act 1457 (1972) and Honorable Grady L. Patterson is the duly qualified and Acting Treasurer of South Carolina.

No. 3 That the Commission on the Status of Women was appointed to study the status of women and make periodic reports to the Governor, with its recommendations concerning: educational needs and opportunities, social insurance and tax laws, Federal and State labor laws dealing with hours and wages, differing legal treatment of men and women in regard to political, social, civil, proprietary rights and family relations, new and expanded services that may be required for women as wives, mothers and workers, including education, counseling, training, home service and arrangements for care of children during the working day, the employment policies and practices of the State of South Carolina with reference to additional affirmative steps which should be taken through legislation, executive or administrative action to assure nondiscrimination on the basis of sex and to enhance constructive employment opportunities for women; and the South Carolina Commission on Human Affairs, that the South Carolina Commission on Human Affairs was created to prevent discrimination because of race, creed, color, sex, age or national origin and to foster mutual understanding and respect among all people in this State with its principal offices in the City of Columbia, County and State aforesaid.

No. 4 To such end the members of the South Carolina Commission on Human Affairs were provided with pay, per diem, mileage and subsistence from the general tax funds of the State.

No. 5 That while drawing such remuneration and enjoying such funding such Commissions have been and/or are permitting their number to act ultra-vires and in violation of their charters, and in further violation of the rights of Petitioners in one or more of the following particulars:

(1) Petitioners have historically and constitutionally enjoyed certain rights, privileges and immunities peculiar to their status and station in life with reference to the ownership and devolution of property, including dower rights and inheritance.

(2) Special provisions in respect to places where females are employed, including rest places, rest times and other facilities all as set forth under Title 40, Secs. 256, et seq. of the Said Code of Laws.

(3) Special provisions with reference to penalogy of women and young girls all according to Title 55, Sec. 151, et seq. of said Code of Laws.

(4) Codified as well as common law and/or precedent rights with reference to abortions (see Title 16, Sec. 82, et seq. of said Code, and recent Supreme Court decisions); whereas such rights, under circumstances Respondents would have, would be available to men as well as women.

(5) Special treatment in freedom from civil arrest (under the protection of Title 10, Sec. 803 of said statutory provisions).

(6) Lower insurance rates afforded under Title 37, Sec. 148.1.

(7) Separate facilities at jails provided under Title 55, Sec. 425.

(8) Special jury exemptions provided under Title 38, Sec. 104, and amendments thereto.

(9) Labor provisions contained under Title 40, Secs. 81, et seq.

(10) Rights to be free from molestation and obscene telephone calls.

(11) The ages of consent to sex and marriage; and freedom from seduction.

(12) The rights to support and a domestic competence from their husbands backed by criminal sanctions should he fail to so provide.

(13) The rights to Social Security dependency benefits.

(14) Rights pertaining only to females under disorderly conduct, rape and other statutes in such cases made and provided.

(15) Rights of freedom from military service and conscription.

(16) The rights to make special recovery in civil proceedings for disfigurement.

(17) The right to recover for the loss of consortium.

(18) Encroachments in the field of religious guarantees under State and Federal Constitutions as such pertain in belief and application to the special status of women, widows and orphans.

(19) The right to alimony, suit money, counsel fees and special provisions of law pertaining to divorce, separation and annulment.

(20) Right to suits for slander and libel for imputation of want of chastity, and

(21) In various particulars involving rights, privileges and immunities construed under the 5th and 14th Amendments of the Federal Constitution and Article 1, Sec. 5 of the Constitution of the State of South Carolina.

No. 6 That said Commissions charged with making objective reports and acting for the good of all, rather than acting objectively as charges have taken up a cause commonly known as "women's lib" and in so doing totally ignored the needs and rights of those like Petitioners who see the overall situation in a different constitutional, legal and historical perspective and they have weighted their reports and taken a popular one-sided view, and abandoned their duties and are waging and/or are permitting a member or members of their number to wage an all-out campaign or crusade to destroy the traditional mores, customs and laws, all of which pose a serious and present threat to break down the social fabric of our State and nation and destroy the family as the cornerstone of society; that they have sent communication and/or are permitting a member or members of their number to send to members of the State Legislature (without employing a proper lobby for such purposes) to vote the views they so espouse or suffer the consequences, and, in so doing, they are unlawfully and improperly using Petitioners' tax moneys against them as well as the General Assembly which created them as an adjunct of the State with limited objectives.

No. 7 That Respondents have been actively carrying on such crusade in the press and via other public media and have employed persons to carry on private propaganda through the mails and by other means supressing the idea that while certain groups (as Petitioners) enjoying a classification or discrimination based on reasonable distinctions possess rights, privileges and immunities, they would, if their efforts succeed, impose on all in such classes the same duties and status without distinction and thereby deprive Petitioners of such rights, privileges and immunities they now enjoy; that such campaign is being unfairly waged with the public funds resulting in Petitioners having their own tax funds used against them, against their will, and without due process of law under a disguise or banner which only on the surface proclaims that women should be given equal pay as men for the same work (a proposition to which all reasonable persons agree) (and for which ample statutory authority and legal precedent is already present) that while members of Respondent Commission should have a right to their own personal, individual political views, having accepted such offices, the use of such offices for personal purposes is a breach of good faith, and, if while espousing such goals only on their own time, they cannot accept pay for accomplishing a public purpose while privately destroying that for which they have accepted public trust and pay.

No. 8 That unless Respondents are restrained and enjoined from so abusing their offices and accepting the public funds entrusted to them, it is probable Petitioners will suffer and they are suffering irreparable damages and being forced to finance political ends at odds with their personal consciences and views; that no person shall be required to support or defend that which is against his own conscience.

No. 9 That while the South Carolina Commission on Human Affairs is charged with creating and recognizing advisory agencies and conciliation councils composed of all representative citizens, Petitioners have been unable to discover an agency or council recognized by them as sharing Petitioners' views, and, in fact the members and counsel for such Commission are going about as disciples of the National Organization of Women (NOW) and promoting disharmony rather than seeking the legitimate concern of the State as expressed in the Act to promote harmony and the betterment of human affairs.

No. 10 That such acts and doings by such Commission are per se discriminatory to Petitioners based on their sex and mala fides.

WHEREFORE: Petitioner prays this Honorable Court do inquire herein and restrain and enjoin Respondents from such ultra-vires and unlawful acts *pendente lite* and grant temporary and permanent injunctions against the State Treasurer from disbursing the public funds to Respondents until the further Order of this Court and until Respondents are acting within the purview of the Act for which they were created and that this Court do issue its writ of Mandamus requiring Respondents to carry out their responsibilities as announced in such Act and that they be restrained and enjoined from acting ultra-vires thereunder and they be required to act within the narrow corridors so provided and for such other and further relief as may be meet and just.

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