



The Phyllis Schlafly Report

VOL. 20, NO. 2, SECTION 1

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SEPTEMBER, 1986

A Short History of E.R.A.

The Equal Rights Amendment, a proposed amendment to the United States Constitution, was born in the era of the women's suffrage amendment and first introduced into Congress in 1923. For nearly 50 years, all those Congresses had the good judgment to leave ERA buried in Committee. Almost no one of importance or prominence in either political party supported it.

During most of those years, ERA had attached to it the Hayden Clause which read: "Nothing in this Amendment will be construed to deprive persons of the female sex of any of the rights, benefits, and exemptions now conferred by law on persons of the female sex." Then, as now, the advocates were unwilling to compromise for anything less than a doctrinaire equality, and so ERA went nowhere.

In 1971, when feminism first rushed onto the scene in the United States, a little band of women stormed the corridors of Congress and demanded the discharge from committee of the long-dormant Equal Rights Amendment. The House passed ERA on October 12, 1971, after rejecting the Wiggins Amendment which would have exempted women from "compulsory military service" and which also would have preserved other laws "which reasonably promote the health and safety of the people." Only 23 Congressmen voted no, of whom one was the senior female member, Representative Leonor Sullivan (D-MO), who made a strong speech opposing ERA because it would harm the family.

In the Senate, Senator Sam J. Ervin, Jr., (D-NC) proposed nine separate amendments to ERA to protect the traditional rights of women. Every one was defeated on a roll-call vote on March 21 and 22, 1972. These nine amendments established the legislative history that ERA was intended to do exactly what the Ervin Amendments would have prevented ERA from doing.

The Ervin amendments would have exempted women from compulsory military service and from combat duty; they would have protected the traditional rights of wives, mothers and widows, and preserved the responsibility of fathers to support their children; they would have preserved laws that secure privacy to males and females; they would have continued the laws that make sexual offenses punishable as crimes. All these modifying clauses were defeated. When ERA was passed in strict, absolute language, only nine Senators voted "no."

Congress sent ERA out to the states on March 22, 1972. Within twelve months, 30 states had ratified ERA. Then the disillusionment set in. In the next six years, only five more states ratified ERA, but five of the 30 states rescinded their previous ratifications of ERA, leaving a net score of zero for six years of lobbying for ERA. The five states that rescinded their previous ratifications were:

Nebraska	3/15/73
Tennessee	4/23/74
Idaho	2/08/77
Kentucky	3/16/78
South Dakota	3/01/79

The following 15 states never ratified ERA:

Alabama	Illinois	North Carolina
Arizona	Louisiana	Oklahoma
Arkansas	Mississippi	South Carolina
Florida	Missouri	Utah
Georgia	Nevada	Virginia

Most of the 15 states which never ratified ERA were forced by the ERA advocates to vote on ERA again and again. The Illinois Legislature voted on ERA every year from 1972 through 1982, the Florida Legislature nearly every year, the North Carolina and Oklahoma Legislatures every two years. Most of these votes were highly controversial, intensely debated, with much media coverage and many spectators present.

During the ratification period, ERA was enthusiastically supported by 99 percent of the media, the Gerald Ford and Jimmy Carter Administrations, most public officials at every level of government, and many wealthy national organizations. ERA enjoyed the political momentum of what appeared to be inevitable victory.

A small group of women in 1972, under the name "Stop ERA," took on what seemed to be an impossible task. In 1975, they founded "Eagle Forum" — the genesis of the pro-family movement, a coming together of believers of all faiths who, for the first time, worked together toward a shared political goal. Eagle Forum volunteers persevered through the years and led the movement to final victory over ERA.

The last state to ratify ERA was Indiana in January 1977. There have been perhaps 25 different votes on ERA since that time (in legislatures, committees, referenda, and Congress), but Indiana was ERA's last success.

The Debates About ERA

The Equal Rights Amendment was presented to the American public as something that would benefit women, "put women in the U.S. Constitution," and lift women out of their so-called "second-class citizenship." However, in thousands of debates, the ERA advocates were unable to show any way that ERA would benefit women or end any discrimination against them. The fact is that women already enjoy every constitutional right that men enjoy and have enjoyed equal employment opportunity since 1964.

In the short term, clever advertising and packaging can sell a worthless product; but, in the long term, the American people cannot be fooled. ERA's biggest defect was that it had nothing to offer American women.

The opponents of ERA, on the other hand, were able to show many harms that ERA would cause.

1. ERA would take away legal rights that women possessed—not confer any new rights on women.

a) ERA would take away women's traditional exemption from military conscription and also from military combat duty. The classic "sex discriminatory" laws are those which say that "male citizens of age 18" must register for the draft and those which exempt women from military combat assignment. The ERAers tried to get around this argument by asking the Supreme Court to hold that the 14th Amendment already requires women to be drafted, but they lost in 1981 in *Rostker v. Goldberg* when the Supreme Court upheld the traditional exemption of women from the draft under our present Constitution.

b) ERA would take away the traditional benefits in the law for wives, widows and mothers. ERA would make unconstitutional the laws, which then existed in every state, that impose on a husband the obligation to support his wife.

2. ERA would take away important rights and powers of the states and confer these on other branches of government which are farther removed from the people.

a) ERA would give enormous power to the Federal courts to decide the definitions of the words in ERA, "sex" and "equality of rights." It is irresponsible to leave it to the courts to decide such sensitive, emotional and important issues as whether or not the language applies to abortion or homosexual rights.

b) Section II of ERA would give enormous new powers to the Federal Government that now belong to the states. ERA would give Congress the power to legislate on all those areas of law which include traditional differences of treatment on account of sex: marriage, property laws, divorce and alimony, child custody, adoptions, abortion, homosexual laws, sex crimes, private and public schools, prison regulations, and insurance. ERA would thus result in the massive redistribution of powers in our Federal system.

3. ERA's impact on education would take away rights from women students, upset many customs and practices, and bring government intrusion into private schools.

a) ERA would force all schools and colleges, and all the programs and athletics they conduct, to be fully coeducational and sex-integrated. ERA would make unconstitutional all the current exceptions in Title IX which allow for single-sex schools and colleges and for separate treatment of the sexes

for certain activities. ERA would mean the end of single-sex colleges. ERA would force the sex integration of fraternities, sororities, Boy Scouts, Girl Scouts, YMCA, YWCA, Boys State and Girls State conducted by the American Legion, and mother-daughter and father-son school events.

b) ERA would risk the income tax exemption of all private schools and colleges that make any difference of treatment between males and females, even though no public monies are involved. ERA is a statement of public policy that would apply the same rules to sex that we now observe on race, and it is clear that no school that makes any racial distinctions may enjoy tax exemption.

4. ERA would put abortion rights into the U.S. Constitution, and make abortion funding a new constitutional right. *Roe v. Wade* in 1973 legalized abortion, but the fight to make abortion funding a constitutional right was lost in *Harris v. McRae* in 1980. The abortionists then looked to ERA to force taxpayer funding. The American Civil Liberties Union filed briefs in abortion cases in Hawaii, Massachusetts, Pennsylvania and Connecticut arguing that, since abortion is a medical procedure performed only on women, it is "sex discrimination" within the meaning of the state's ERA to deny tax funding for abortions. In the most recent decision, the Connecticut Superior Court ruled on April 19, 1986 that the state ERA requires abortion funding. Those who oppose tax funding of abortions demand that ERA be amended to prevent this effect, but ERA advocates want ERA *only* so long as it includes abortion funding.

5. ERA would put "gay rights" into the U.S. Constitution, because the word in the Amendment is "sex" not women. Eminent authorities have stated that ERA would legalize the granting of marriage licenses to homosexuals and generally implement the "gay rights" and lesbian agenda. These authorities include the *Yale Law Journal*, the leading textbook on sex discrimination used in U.S. law schools, Harvard Law Professor Paul Freund, and Senator Sam J. Ervin, Jr. Other lawyers have disputed this effect, but no one can guarantee that the courts would not define the word "sex" to include "preference" just as they have defined "sex" to include pregnancy.

6. In the final years of the ERA battle, two new arguments appeared. Both were advanced by the ERA advocates, but they quickly became arguments in the hands of the ERA opponents.

a) ERA would require "unisex insurance," that is, would prohibit insurance companies from charging lower rates for women, even though actuarial data clearly show that women, as a group, are entitled to lower rates both for automobile accident insurance and life insurance. This is because women drivers have fewer accidents and women live longer than men. Most people found it a peculiar argument that "women's rights" should include the "right" to pay *higher* insurance rates.

b) ERA would eliminate veterans' preference. This rests on the same type of legal argument as the abortion funding argument: since most veterans are men, it is claimed that it is "sex discriminatory" to give them benefits. Naturally, this argument was not acceptable to the veterans, and their national organizations lobbied hard against ERA.

The Houston Debacle

Realizing that the seven-year time period allowed for ratification was running out, the ERA advocates in 1977 persuaded Congress to give them \$5 million, supposedly to celebrate International Women's Year. An IWY conference was held in each of the 50 states, culminating with a national convention in Houston in November 1977. Every feminist of any fame was a participant in this Conference, including Gloria Steinem, Betty Friedan, Eleanor Smeal, and Bella Abzug, who was the chairman.

The conferences were all run as forums promoting ERA and the feminist agenda. Only pro-ERA speakers were permitted on the platforms of the 50 state conferences and the Houston national conference. The media coverage was immense, and the Houston platform was graced by three First Ladies: Rosalynn Carter, Betty Ford, and Ladybird Johnson.

At the IWY event in Houston, the ERAers, the abortionists, and the lesbians made the decision to march in unison for their common goals. The conference enthusiastically passed what the media called the "hot button" issues: ERA, abortion and abortion funding, and lesbian and gay rights. The IWY Conference doomed ERA because it showed the television audience that ERA and the feminist movement were outside the mainstream of America. ERA never passed anywhere in the post-IWY period.

ERA Referenda

The ERA advocates tried to blame the defeat of ERA on a few men in several state legislatures. But when ERA was submitted to a vote of the people it nearly always lost. The voters in the following seven states rejected ERA in statewide referenda. (Nevada was an advisory referendum on the Federal ERA; the others were State ERA referenda.)

Wisconsin	11/73	(60,000 majority against)
New York	11/75	(420,000 majority against)
New Jersey	11/75	(52% against)
Nevada	11/78	(66% against)
Florida	11/78	(60% against)
Iowa	11/80	(55% against)
Maine	11/84	(64% against)

ERA Time Extension

The original ERA resolution which passed Congress on March 22, 1972 included the following preamble preceding the three sections of the text of ERA:

"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 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 within seven years from the date of its submission by the Congress:

"Section 1: Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"Section 2: The Congress shall have the power to

enforce, by appropriate legislation, the provisions of this article.

"Section 3: This amendment shall take effect two years after the date of ratification."

When the end of the seven years approached and it became clear that three-fourths of the states (38 states) would not ratify ERA, Congress passed an ERA Time Extension resolution to change "within seven years" to 10 years, 3 months, 8 days, 7 hours and 35 minutes, so that the time limit was extended to June 30, 1982 (instead of expiring on March 22, 1979).

In an additional piece of chicanery, Congress passed the ERA Time Extension by only a simple majority vote instead of by the two-thirds majority vote required by Article V of the U.S. Constitution for all constitutional amendments.

The ERA advocates' strategy of a Time Extension was to lock in all those states which had ratified in 1972 and 1973, while money and media were concentrated on ratification efforts in the non-ratified states where they thought ERA had the best chance (in this order): Illinois, Florida, North Carolina, Oklahoma, Georgia, and Virginia. This ratification effort was assisted by a boycott of all states that had not ratified ERA, designed particularly to cause economic harm to the convention cities in the unratified states.

The American people were so turned off by the unfairness of the Time Extension — and the refusal of the ERA proponents to recognize the legality of the rescissions — that not a single state ratified ERA after the Time Extension was passed by Congress in 1978.

After a two-and-a-half-year lawsuit, the U.S. District Court ruled on December 23, 1981 in *Idaho v. Freeman* that the ERA Time Extension voted by Congress was unconstitutional and that the rescissions of ERA were constitutional. The U.S. Supreme Court did not decide the appeal of this case until after the expiration of ERA on June 30, 1982, at which time the Supreme Court ruled that the case was moot and no longer needed to be decided.

Despite the Time Extension, the ERA opponents held a big dinner in Washington, D.C., called "The End of an ERA," on March 22, 1979, to celebrate the constitutional termination of ERA. This was the end of the seven-year time limit set by Congress when ERA was sent to the states in 1972.

As a practical matter, March 22, 1979 was not the end of ERA—since the unfair Time Extension forced three more years of emotional battles in many state legislatures. But March 22, 1979 was truly "the end of an era" — the end of the era of conservative defeats.

Up until that time, conservatives had lost so many battles that they had a defeatist attitude. The proclaimed victory over ERA showed the conservatives and pro-family activists that they *could* win an important political battle — despite overwhelming odds and the opposition of nearly all the media and most elected officials at every level of government. Since 1979, the conservatives and pro-family movement have had an unbroken series of victories, highlighted by the election and landslide reelection of Ronald Reagan.

On June 30, 1982, the ERA opponents held a second "burial" of the ERA at a large dinner in Washington called "The Rainbow Dinner." On that day, no one could deny the fact that the proposed federal ERA was truly dead.

ERA Tries in Congress Again

In January 1983, the ERA advocates re-introduced ERA into the U.S. Congress with the full support of Speaker Tip O'Neill. After a year of intensive lobbying, ERA came to a vote in the House on November 15, 1983, and 147 Congressmen voted no. That was six votes short of the two-thirds majority required to send ERA out to the states again.

What killed ERA in 1983 was the House Judiciary "markup" on November 9, an all-day session with 5-1/2 hours of calm and rational debate. No television lights were on, so no one was posturing for the media. Nine amendments to ERA were offered in that Committee. Although all nine were defeated, each of the nine amendments received 12 or 13 "yes" votes. It is well known in Washington that the Judiciary Committee is so liberal that any motion which gets a dozen "yes" votes there is sure to win on the House floor.

Rep. James Sensenbrenner's (R-WI) amendment would have made ERA abortion-neutral. On October 20, 1983, the Congressional Research Service had issued "a legal analysis of the potential impact of ERA on abortion" and concluded on page 61 that "ERA would reach abortion and abortion-funding situations." That would mean that ERA would invalidate the Hyde Amendment and mandate taxpayer-funding of abortions. The ERA advocates could not deny this effect, but they were unwilling to separate the ERA and abortion questions by voting for the Sensenbrenner amendment.

Rep. Sam Hall's (D-TX) amendment would have prevented ERA from drafting women. The opponents of the Hall amendment admitted that ERA would draft women just like men, but argued that women want this kind of equality.

Rep. Clay Shaw (R-FL) offered an amendment to prevent ERA from requiring women to serve in military combat just like men. Rep. Patricia Schroeder (D-CO) argued that women deserve their career opportunities to serve in combat just like men.

Rep. George Gekas (R-PA) offered an amendment to prevent ERA from wiping out veterans' preference. At the House Judiciary Committee hearing on September 14, 1983, League of Women Voters president Dorothy S. Ridings had testified that ERA would outlaw veterans' preference by overturning the 1979 Supreme Court case of *Massachusetts v. Feeney*. Both the Veterans of Foreign Wars and the American Legion objected to this effect.

Rep. Harold Sawyer (R-MI) offered an amendment to prevent ERA from wiping out the ability of insurance companies to charge *lower* insurance rates to women for automobile accident and life insurance policies. The ERA advocates admit that one of their goals is to force all insurance to be "unisex" regardless of accident and actuarial tables.

Rep. Tom Kindness (R-OH) offered an amendment to put the seven-year time limit on ERA in the *text* of the Amendment instead of in the preamble (in order to prevent another constitutional dispute about a time extension). Then he offered another amendment to give the *states* concurrent enforcement power, as well as the Federal Government. The ERA advocates opposed both purposes.

The biggest surprise of the day was the amendment offered by Rep. Dan Lungren (R-CA) to exempt religious schools from the effect of ERA. This amendment was made necessary by the 1983 Supreme Court decision in *Bob Jones*

University v. United States, which ruled that the Internal Revenue Service can withdraw tax exemption from any school operated by a church which has any regulation contrary to public policy.

If ERA means anything at all, it means a "public policy" against sex discrimination. So, if the ruling of the *Bob Jones* case were applied under ERA, the result almost certainly would be that all religious schools run by churches and synagogues that do not ordain women, or which treat men and women differently, would lose their tax exemption. Thus, ERA would put at risk the tax exemption of thousands of Catholic, Protestant, and Jewish schools all over the country. Most Congressmen are not willing to tell their constituents that religious schools will lose their tax exemption.

At the end of the day, the diehard ERAers went crying to Speaker O'Neill, imploring him to devise a way to *prevent* these nine amendments from being offered on the House floor.

So, Speaker O'Neill brought ERA to a vote of the House on November 15, 1983 under a procedure called "suspension of the rules." This meant that no amendments of any kind could be offered. In a dramatic roll call, ERA lost by a six-vote margin.

This vote made it clear that Congress will never pass ERA. Politically, it is as dead as the Prohibition Amendment.

The Effort for State ERAs

At the same time that the ERA advocates were trying again in Congress in 1983, they sought to rebuild their momentum through a series of state ERAs.

In Wisconsin, the state legislators tried to assist this project by adding to the text of the proposed state ERA some additional language that would prevent it from being used to mandate abortion funding or gay rights. To the amazement of those legislators, the leading ERA advocates (including the National Organization for Women, the League of Women Voters, and the American Civil Liberties Union) publicly opposed ERA in this form, and so the Wisconsin ERA died. This experience makes it clear that the ERA advocates want ERA primarily, and perhaps solely, to achieve abortion funding and gay rights.

A similar scenario took place in Minnesota. After a state ERA was proposed in the spring of 1983, a committee added a section to make it abortion-neutral. The next day the ERA sponsor withdrew ERA. The ERA advocates obviously do not want ERA unless it includes their hidden agenda.

ERA advocates then chose Maine as the most advantageous state to "start the ball rolling" for ERA again. They had the full support of the media, all public officials of both parties, and a cooperative legislature which passed ERA without the encumbrance of any additional language. The referendum to add a state ERA to Maine's constitution took place on November 6, 1984. When the votes were counted, 64 percent of the people had voted "no."

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Box 618, Alton, Illinois 62002
ISSN0556-0152

Published monthly by The Eagle Trust Fund, Box 618, Alton, Illinois 62002.

Second Class Postage Paid at Alton, Illinois.

Subscription Price: \$10 per year. Extra copies available: 50 cents each; 4 copies \$1; 30 copies \$5; 100 copies \$10.