



The Phyllis Schlafly Report



VOL. 6, NO. 4

Box 618, ALTON, ILLINOIS 62002

NOVEMBER, 1972

The Right To Be A Woman

Women's magazines, the women's pages of newspapers, and television and radio talk shows have been filled for months with a strident advocacy of the "rights" of women to be treated on an equal basis with men in all walks of life. But what about the rights of the woman who doesn't want to compete on an equal basis with men? Does she have the right to be treated as a woman — by her family, by society, and by the law? Surely the right to be a woman should be as sacred as the right to be treated like a man.

The laws of every one of our 50 states now guarantee the right to be a woman — protected and provided for in her career as a woman, wife and mother. The proposed Equal Rights Amendment will wipe out all our laws which — through rights, benefits and exemptions — guarantee this right to be a woman. ERA will replace these present laws with a doctrinaire equality under which women must be treated exactly the same as men. This Equal Rights Amendment has already been passed by the U.S. Congress and ratified by 21 states. If it is ratified by 38 states, it will become part of the United States Constitution. Is this what American women want? Is this what American men want?

The laws of every one of the 50 states now require the *husband* to support his wife and children — and to provide a home for them to live in. In other words, the law protects a woman's right to be a full-time wife and mother, her right *not* to take a job outside the home, her right to care for her own baby in her own home while being financially supported by her husband. The Equal Rights Amendment will remove this sole obligation from the husband, and make the wife *equally* responsible to provide a home for her family, and to provide 50 percent of the financial support of her family.

Some of the advocates of the Equal Rights Amendment have tried to deny that the Equal Rights Amendment will wipe out the husband's present obligation to support his wife and children and to provide them with a home. Therefore, it has become necessary to prove these truisms to the uneducated. When the courts adjudicate cases which will arise under the Equal Rights Amendment if it is passed, they will refer to standard law books and to the opinions of eminent constitutional lawyers. Let us look at what they say.

What Is The Present Law?

The most comprehensive modern text statement of American law is probably contained in the legal reference work entitled *American Jurisprudence*, 2d.

Volume 41 of this authoritative series, under the heading "Husband and Wife," states clearly and emphatically:

Section 329: "One of the most fundamental duties imposed by the law of domestic relations is that which requires a man to support his wife and family. In some jurisdictions, the duty of support is imposed on the husband by statute. . . . But it exists apart from statute, as a duty arising out of the marital relationship. . . ."

Section 330: "The duty of a husband to support his wife arises out of the marital relationship and continues during the existence of that relationship. This duty of support is consistent with the husband's financial ability, and in accordance with the station in life to which he has accustomed his family. . . ."

Section 331: "The husband's obligation of support requires him to provide his wife with a place of abode that will be deemed a suitable home when considered in the light of modern standards of civilization pertaining to the health, comfort, welfare, and normal living of persons, the particular estate, social rank, and condition of the husband and wife, and the means and earning power of the husband. . . . Assuming that the means and earning power of the husband permit, he must provide a home the control of which she [the wife] need not relinquish or share with others, but a home in which she is the mistress. . . ."

Section 332: "The duty of a husband to support his wife and family, arising out of the marriage relationship, exists without reference to the wife's separate estate or independent means, and the husband has no right to resort to her separate estate or means, as a general rule, to support her or the family. A husband's duty to support his wife also exists without reference to what she can earn by her own labor, and he has no right to demand that she earn all that she can in order to contribute to her support. . . ."

Section 334: "At common law, as between husband and wife, the duty of providing support for the household is on the husband. The wife is under no duty to support the husband and there is no ground on which he may require her to do so. The same view prevails generally in equity. Although the law does not prohibit a wife from using her separate means for the maintenance of the household, as a general rule the husband has no right to resort to her separate property in order to obtain support for her and their family. A wife is under no obligation to furnish her husband with a home, even if she has one and he does not . . ."

Of course, there are extenuating circumstances which may require modification of the above rules, such as the illness or incapacity of the husband. But such cases are exceptions to the general rules of the wife's rights and the husband's obligations, which are thus clearly stated in *American Jurisprudence, 2d*.

These are the wife's rights — and the husband's obligations — which will be wiped out by the Equal Rights Amendment. The Equal Rights Amendment will impose a doctrinaire equality on the sexes and prohibit the law from imposing any obligations on one sex which it does not impose equally on the other sex.

Professor Paul Freund's Statement

Now, let us look at what eminent constitutional authorities say about the Equal Rights Amendment. Probably *the* leading expert in the United States on the subject of the Equal Rights Amendment is Professor Paul A. Freund of the Harvard Law School. One of the most distinguished constitutional lawyers in America, he is a liberal scholar with the highest credentials who has often been suggested for appointment to the U.S. Supreme Court. His study of the Equal Rights Amendment covers 25 years, and his recent research has convinced him that the case *against* ERA is stronger now than ever before.

Professor Freund's most recent views on ERA are contained in his article called "The Equal Rights Amendment is Not the Way", which was published in the March 1971 issue of the respected journal called the *Harvard Civil Rights-Civil Liberties Law Review*. This article is so important and so authoritative that it is worth examining in considerable detail.

Professor Freund writes that if we want to help women in business, professional, domestic and political relationships, in law firms, in the medical profession, in the Cabinet, "we must turn elsewhere than to the proposed Amendment."

Professor Freund says that the choice between the Equal Rights Amendment and specific legislation to accomplish desirable goals is like the choice "in medicine between a *single broad-spectrum drug with uncertain and unwanted side-effects* and a selection of specific pills for specific ills."

Professor Freund points out that "the literature of its main sponsors insists on an *absolute* meaning." He states: "A doctrinaire equality, then, is apparently the theme of the Amendment. And so women must be admitted to West Point on a parity with men; women must be conscripted for military service equally with men; . . . girls must be eligible for the same athletic teams as boys in the public schools and state universities; . . . and life insurance commissioners may not continue to approve lower life insurance premiums for women (based on greater life expectancy) — all by command of the Federal Constitution."

Thus, the Equal Rights Amendment will positively make women subject to the draft and for combat duty on an equal basis with men. Most women's libbers admit that this is what they want. Others sidestep the issue by arguing that there will be no more wars or no draft in the future. We can all hope for utopia on earth, but meanwhile, ERA will draft women. Such a radical requirement is opposed by the overwhelming majority of Americans, both men and women.

Professor Freund makes the point that, if Congress really intended to draft women into the army and admit women to West Point, they could have done these things by a simple majority vote; there was absolutely no reason to go the route of a constitutional amendment which required a 2/3 vote in Congress, and then a mandate from 3/4 of the State Legislatures.

So Professor Freund asks himself the question, why in the world did Congress submit this constitutional amendment to the states? He comes to what he, in his scholarly and objective way, calls his "irreverent" conclusion, namely, that "either not every member of Congress has been adequately briefed on the Amendment's implications or not every member takes seriously the possibility of ratification."

In other words, the Congressmen either did not understand the "unwanted side effects" of ERA — or else they simply passed the buck to the State Legislators, expecting them to have more common sense and more courage.

Professor Freund makes it clear that the most important and radical effect of the Equal Rights Amendment is what it will do to the complex relationships of marital duties, parental responsibilities, and family law.

He points out that "Every state makes a husband liable for the support of his wife, without regard to the ability of the wife to support herself." The wife usually has a duty to support her husband only if he is unable to support himself.

Professor Freund states clearly that the Equal Rights Amendment, by enforcing equality in the matter of family support, *would "dictate" a completely new principle of family support which "would be contrary to the law of every state."* In other words, the Equal Rights Amendment would invalidate the state laws which now place the primary responsibility on a husband to support his wife and children.

Professor Freund points out that some members of the "Task Force on Family Law and Policy of the Citizens' Advisory Council of the Status of Women" came up with this interpretation of the effect of the Equal Rights Amendment: "A husband should only be liable for the support of a wife who is unable to support herself due to physical handicap, acute state of family responsibility or unemployability on other grounds." This is apparently the interpretation favored by ERA supporters. Professor Freund shows the legal implications of this interpretation. It means that, *if child care centers are available*, "a wife with small children would no longer be 'unable' to support herself through employment, and so under the constitutional rule of reciprocity would lose the right of support from her husband."

ERA's Effect on Wives

In other words, as Professor Freund makes manifestly clear, if the Equal Rights Amendment is passed, *every wife and mother will lose her right to be supported by her husband unless she has pre-school children, and she even loses the right to be supported by her husband while she has preschool children if child care centers are available.* No more radical piece of legislation could have been devised to force women outside of the home.

This conclusion is the sober conviction of the most distinguished authority on constitutional law in the United States today, a Harvard Law School professor who has made a thorough study of ERA, and whose published articles will surely be considered and cited by the Courts in interpreting ERA.

It is obvious that the Equal Rights Amendment would likewise cause massive dislocations in the entire fabric of family relationships, and deprive women of other privileges they now possess such as the presumption of custody of their children in case of divorce.

Professor Freund asks a very important question when he says: "*What will be the reaction of wives to*

the Equal Rights Amendment when husbands procure judicial decisions in its name relieving them of the duty of support because an equal duty is not imposed on their wives?" Yes, indeed, what will be the reaction of the wives when they discover that this Amendment deprives them of their most important rights as a woman?

Professor Freund then goes into detail in comparing the matter of sex discrimination with race discrimination. He shows that there is no logical or legal basis for the court deciding differently in the matter of sex from their decisions in the matter of race. Here are some of the examples he gives.

We find it repugnant to hold separate athletic competitions for whites and blacks. Are we now going to say that under ERA it is equally repugnant to hold separate athletic competitions for men and women?

Professor Freund also warns that "presumably the [ERA] Amendment would" reduce the present "higher Social Security retirement benefits for women." The present Social Security Act pays higher benefits to women because it "provides for the computation of a female wage earner's average monthly wage on the basis of three years less than that computation for a male. 42 U.S. Code 415(b)(3)(A) and (C). This eliminates years of lower earnings and increases the average monthly wage and the primary insurance amount for the female." Giving women "equal rights" under ERA means that they will lose the higher Social Security retirement benefits they now enjoy.

The courts have held that racial equality does not permit the individual to have the freedom of choice between all-white schools, all-black schools, and mixed schools. Are we now going to say that equality of the sexes does not permit us to have freedom of choice between boys' schools, girls' schools and coed schools?

Professor Freund points out that one of the prime targets of the equal-rights movement has been the color-segregated rest rooms. He indicates that we must assume that rest rooms segregated by sex would be prohibited by the courts just as the courts prohibit color-segregated rest rooms. In a very scholarly way, he demolishes the argument that we could maintain separate rest rooms on the principle of the "right of privacy."

He points out the effects the Equal Rights Amendment would have on separate physical education classes in public schools for girls and boys, and on separate prison cells for men and women, etc.

Professor Freund concludes that "the real issue is not the legal status of women. *The issue is the integrity and responsibility of the law-making process itself.*"

Professor Kurland's Statement

Another distinguished constitutional authority on the Equal Rights Amendment is Professor Philip B. Kurland of the University of Chicago Law School. He also wrote an article for the same issue of the *Harvard Civil Rights-Civil Liberties Law Review*.

In this article, Professor Kurland explains one of the most important aspects of the current ERA controversy. He showed that the Equal Rights Amendment originally had attached to it what was known as the "Hayden modification" (named after Senator Hayden) which stated:

"The provisions of this article shall not be construed to impair any rights, benefits or exemptions conferred by law upon persons of the female sex."

The women's libbers, however, successfully agitated until the Hayden modification was removed from the Equal Rights Amendment. It is *not* in the

Equal Rights Amendment as passed by the Congress and, under our constitutional process, there is no way to put it back in.

This removal of the Hayden modification reveals the motivation of the proponents of the Equal Rights Amendment. It makes clear that they deliberately and purposefully want to eliminate the "rights, benefits and exemptions" conferred by law upon women. The removal of the Hayden modification shows that the ERA was purposefully designed to wipe out the right to be a woman and replace it with the right to be treated like a man. As Professor Kurland stated forcefully:

"The refusal by some protagonists to accept the qualification was probably not, however, inadvertent; it was calculated. It represented a deliberate choice between two different objectives, either but not both of which the proposed Amendment might fully serve."

When the Equal Rights Amendment was being debated before the Illinois Legislature, on June 5, 1972 Professor Kurland sent a telegram reinforcing his position as expressed in his Law Review article. His telegram read: "Regret inability to appear before your Committee on so-called Equal Rights Amendment because I think that it is largely misrepresented as a women's rights amendment when in fact the primary beneficiary will be men. I am opposed to its approval."

Are Women Discriminated Against?

Are women discriminated against in employment? They certainly have been. When I started to work at the age of 18, I discovered within a few days that I was doing exactly the same work for \$105 per month for which men were being paid \$125 per month.

The reason the Equal Rights Amendment has gotten so far is that Americans have been led to believe that it means "equal pay for equal work." This is a good slogan, a desirable objective, and is supported by practically everyone. The trouble is that there is nothing the Equal Rights Amendment can "give" women which they do not already have, or have a way of getting.

"Equal pay for equal work" is guaranteed by the Civil Rights Act of 1964, Subchapter VI: Equal Employment Opportunities (42 U.S. Code 2000e-2) and by the Equal Employment Opportunity Act of 1972 (Public Law 92-261) which forbids discrimination in every aspect of employment, including hiring, pay and promotions. Even executive, professional and administrative positions are covered. (See *U.S. News & World Report*, August 14, 1972, page 69.) If any woman is discriminated against in employment, she can file a claim with the Equal Employment Opportunity Commission, and it will pay the costs of processing the claim and filing suit for back pay.

Complete protection against discrimination is provided by these two laws. There is absolutely nothing the Equal Rights Amendment can add in terms of fair employment practices for women.

Are Women Exploited by Men?

Are women exploited by men? Yes, some women are, and we should wipe out such exploitation. We should demand strong enforcement of the laws against procurers, the Mann Act, and the laws against statutory rape. These laws are some of the safeguards which are good and necessary to protect women, especially young girls, against exploitation by men. But these laws will be wiped out by the Equal Rights Amendment in the phony name of "equality."

The whole subject of pornography is an area of exploitation of women by men which should be eradicated from our society. When Marvin Miller paid

\$1,000 to a girl to pose for pictures for his obscene book called *Intercourse*, and then grossed \$2,500,000 in sales in one year, he was certainly exploiting women in the basest way for his own financial gain. When the Earl Warren Supreme Court ruled in favor of the sadistic pornographers who produce the "bondage" books and magazines (materials which portray and describe the whipping, chaining and mistreatment of women in connection with sexual assault), it was opening the floodgates to a type of exploitation of women never before condoned in a civilized society.

Anyone who is truly interested in the liberation of women from male exploiters should go after the pornographers who have made fortunes out of the bodies of women. Pornography can be accurately defined as the degradation and exploitation of women.

Another group of men who exploit women is the Parisian male couturiers. For years, women's fashions have been practically dominated by unmarried men who do not understand or like women. Now that Coco Chanel has died and Schiaparelli has closed shop, women's clothes are completely dominated by these Parisian women-haters. Shortly before she died, Coco tried to alert women to the facts of life about women's clothes, saying: "High fashion is losing its influence because it is in the hands of men who do not like women and whose only aim is to make them look ridiculous." Others are less charitable in describing the morals and motives of the queer breed of men who dominate the designing of women's fashions.

So, there is plenty of work for those who want to eliminate the real exploitation of women, but they are 100 percent wrong when they blame husbands and the institution of marriage.

Who is Promoting ERA?

There are two very different types of women lobbying for the Equal Rights Amendment. One group is the women's liberationists. Their motive is totally radical. They hate men, marriage, and children. They are out to destroy morality and the family. They look upon husbands as the exploiters, children as an evil to be avoided (by abortion if necessary), and the family as an institution which keeps women in "second-class citizenship" or even "slavery."

Anyone who doubts the radical objectives and tactics of the women's liberationists should read their own literature, such as the magazine *Ms.* It is all rather plainly stated. A New York *Times* News Service article of September 26, 1972 frankly described the ultimate objectives of the women's liberation movement in these words:

"To give women full participation in society, they say, it is necessary to overthrow the structures on which the system is based. The first things to go would be the political institutions that perpetuate the system, such as institutional marriage, which they assert, enslaves women for economic reasons. . . . Probably the most important and most emotional issue that unites the reformers with the radicals is the proposed repeal of all abortion laws."

The most thorough analysis of the more than 400 books, hundreds of magazine articles and stacks of newsletters which make up the literature of the women's liberation movement was made by Midge Decter who is currently the literary editor of *World Magazine*, and formerly was executive editor of *Harper's Magazine*. In her recent book called *The New Chastity and Other Arguments Against Women's Liberation* she concludes that the women's lib literature is totally radical and nihilistic.

The women's liberationists have found some willing allies among certain male politicians who are

quite cognizant of the radical changes they are promoting. For example, Senator Tunney put in the *Congressional Record* of September 7, 1972 a copy of his own speech in which he flatly rejects the role of the man as the protector of women. Urging that women be "subject to the draft on the same basis as men," he argued that "the fact that women have been excluded from the draft has contributed disproportionately to the perpetuation of the stereotype of the male as protector."

Stating his own position, Senator Tunney said: "As a male, I accept the responsibility of protecting those who need protection, but I shun any preconceived notion which would prevent women from sharing this responsibility."

This male rejection of marital responsibilities and chivalry toward women is, fortunately, not the view of the overwhelming majority of men and women. Women want and need protection. Any male who is a man — or a gentleman — will accept the responsibility of protecting women.

There is another type of women supporting the Equal Rights Amendment from the most sincere motives. It is easy to see why the business and professional women are supporting the Equal Rights Amendment — many of them have felt the keen edge of discrimination in their employment. Many have been in a situation where the woman does most of the work, and some man gets the bigger salary and the credit.

To these business and professional women, we say:

1) We support you in your efforts to eliminate all injustices, and we believe this can be done through the Civil Rights Act and the Equal Employment Opportunity Act.

2) If the Hayden modification had remained in the Equal Rights Amendment, we would have supported it.

3) Without the Hayden modification, the Equal Rights Amendment won't give you anything — but it will *take away* fundamental rights and benefits from the rest of women. You have every right to lobby for the extension of *your* rights — but not at the expense of the rights of *other* women.

Please urge your State Legislators to vote NO on the Equal Rights Amendment. It will take away from young girls their exemption from the draft and their legal protection against predatory males. It will take away from wives and mothers their right to be provided with a home and financial support by their husbands. It will take away from senior women their extra social security benefits. It will take away a woman's present *freedom of choice* to take a job — or to be a full-time wife and mother. In short, it will take away the right to be a woman.

Phyllis Schlafly is the mother of six children and the author of five best-selling books. An Honors graduate of Washington University and of Harvard University, she is currently the news director of a series of interviews with scholars and scientists aired on 70 television and 50 radio stations.

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Box 618, Alton, Illinois 62002

Published monthly by Phyllis Schlafly, Fairmount, Alton, Illinois 62002.

Second Class Postage Paid at Alton, Illinois.

Subscription Price: For donors to the Eagle Trust Fund — \$5 yearly (included in annual contribution). Extra copies available: 15 cents each; 8 copies \$1; 50 copies \$4; 100 copies \$8.