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The Legislative History of ERA

If the Equal Rights Amendment is ever ratified by 38 state legislatures, what will be the meaning of Section 1 which states:

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

Nobody knows for sure, because the decision-making power to interpret Section 1 will be in the hands of the U.S. Supreme Court. This is because Section 2 of ERA federalizes its enforcement. Section 2 states:

"The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

Whenever Congress has the power to legislate, this means that the Federal agencies will write the regulations and the Federal courts will adjudicate all disputes.

No one knows for sure how the Supreme Court will interpret ERA, but it is possible that the "legislative history" will influence the Court's decisions. If the Supreme Court follows the legislative history, the application of ERA will be strict, absolute, and total. ERA will admit *no* exceptions even for the most necessary of purposes or when wanted by the most reasonable Americans.

The legislative history of the Equal Rights Amendment offers decisive proof that the Congress wanted ERA to wipe out any and all distinctions between men and women, no matter how much such distinctions or separations might be desired by the majority of our citizens.

The most important legislative history is the actual action which the House and the Senate took on the Equal Rights Amendment. It makes clear beyond a shadow of a doubt the tremendous changes in our laws and customs that ERA will require, and the massive changes ERA will mandate in order to shift us to a "gender-free" society.

The Wiggins Amendment

ERA was brought to the House on October 12, 1971 from the House Judiciary Committee, which had held the hearings and given careful study to the Amendment. This Committee recommended the addition of the Wiggins Amendment, which read:

"This article shall not impair the validity of any law of the United States which exempts a person from compulsory military service or any other law of the United States or of any State which reasonably promotes the health and safety of the people."

This Wiggins Amendment was defeated: 87 yeas, 265 nays, 78 not voting. (pages H9361-H9390).

The legislative history thus shows that ERA will void all our laws which exempt women from the draft and all laws which are designed to give women benefits in the military, in factories, in other physical labor, or in the family unit.

Having made sure that ERA will permit no exceptions, the House then passed the Equal Rights Amendment in its absolute form: 354 yeas, 23 nays, 52 not voting. (page H9392).

The Ervin Military Amendments

The Equal Rights Amendment reached the U.S. Senate on March 21, 1972. There, the dean of constitutional lawyers in the Senate, Sam J. Ervin, Jr., proposed nine amendments to ERA. The debate on these nine amendments, all of which were defeated, took a substantial part of two days in the Senate: March 21 and 22, 1976. They constitute a stunning legislative history of what ERA was intended to accomplish.

Amendment 1065: **"This article shall not impair, however, the validity of any laws of the United States or any State which exempt women from compulsory military service."** Defeated: 18 ayes, 73 nays, 8 not voting. (March 21, pages S9317-S9337).

Amendment 1066: **"This article shall not impair the validity, however, of any laws of the United States or any State which exempt women from service in combat units of the Armed Forces."** Defeated: 18 ayes, 71 nays, 10 not voting. (March 21, pages S9337-S9351).

The defeat of these two Ervin Amendments clearly shows that ERA will make unconstitutional all existing laws that exempt women from the draft and from combat service. The militant women who lobbied for ERA told the Senators that they *want* to be drafted and sent into combat, and that they do not want any exemptions for women whatsoever. The Congressmen took them at their word and incorporated this absolute mandate for equality into ERA.

The Ervin Amendment to Protect Factory Women

The next amendment proposed by Senator Ervin was to safeguard protective labor legislation, so important to the women who work in factories. This legislation protects women from compulsory overtime and from compulsory heavy weight-lifting, and gives factory women special benefits in regard to rest periods and restrooms.

Amendment 1067: **"This article shall not impair the validity, however, of any laws of the United States or any State which extend protections or exemptions to women."** Defeated: 11 ayes, 75 nays, 14 not voting. (March 21, pages S9351-S9370).

The defeat of this Ervin Amendment clearly shows that ERA will wipe out every piece of protective labor legislation on the statute books of the various states, legislation which women worked long and hard to achieve over several generations.

The Ervin Amendments to Protect the Family

The next two amendments proposed by Senator Ervin were designed to safeguard the family as the basic unit of our society. We have many Federal and state laws whose purpose is to keep the family together. These laws are based on the obvious physical facts that women have babies and men do not have babies, that most wives outlive their husbands, and are based also on our desire to grant the wife and mother her legal right to be a fulltime homemaker. All these laws would immediately become unconstitutional if we are required to treat men and women absolutely the same under every Federal and state law. Senator Ervin tried to prevent this from happening.

Amendment 1068: **"This article shall not impair the validity, however, of any laws of the United States or any State which extend protections or exemptions to wives, mothers, or widows."** Defeated: 14 ayes, 77 nays, 9 not voting. (March 21, page S9372; March 22, pages S9517-S9523).

Amendment 1069: **"This article shall not impair the validity, however, of any laws of the United States or any State which impose upon fathers responsibility for the support of their children."** Defeated: 17 ayes, 72 nays, 11 not voting. (March 22, pages S9524-S9528).

The defeat of these Ervin Amendments clearly shows that ERA will specifically invalidate all laws "which extend protections or exemptions to wives, mothers, or widows" or "which impose upon fathers responsibility for the support of their children."

No wonder Senator Sam Ervin called ERA "the most destructive piece of legislation to ever pass Congress."

The most destructive aspect of ERA is its ripoff of the legal rights of the homemaker. The defeat of these two Ervin Amendments clearly proves this. The militant women's libbers who are pushing ERA want to deprive the homemaker of her existing right to be supported by her husband, to be provided with a home by her husband, to have her minor children supported by her husband, and to enjoy the superior inheritance and financial rights granted to widows.

That is why the anti-homemakers fought and defeated these two Ervin Amendments. This legislative history proves that ERA was designed to wipe out all legislation protecting wives, mothers, and widows.

The Ervin Amendment to Protect Privacy

The next amendment proposed by Senator Ervin was designed to prevent ERA from being used by the extremists to require coed restrooms (especially in public schools), coed hospital rooms, coed college dormitories, coed public accommodations, and other coed facilities where sex-integration would offend personal privacy and community standards.

Amendment 1070: **"This article shall not impair the validity, however, of any laws of the United States or any State which secure privacy to men or women, or boys or girls."** Defeated: 11 ayes, 79 nays, 10 not voting. (March 22, S9529-S9531).

The defeat of this Ervin Amendment provides clear legislative history that Congress and the ERA proponents intend for ERA to eliminate privacy and intend for ERA to require sex-integrated restrooms and other accommodations that are financed in whole or in part by public funds.

The Ervin Amendment on Sexual Crimes

Next Senator Ervin proposed an amendment to prevent the use of ERA to invalidate the statutes which protect women from sexual crimes.

Amendment 1071: **"This article shall not impair the validity, however, of any laws of the United States or any State which make punishable as crimes sexual offenses."** Defeated: 17 ayes, 71 nays, 12 not voting. (March 22, page S9531-S9537).

Again, the defeat of this Ervin Amendment clearly shows the total nature of ERA. It proves that ERA was designed to wipe off our statute books all laws that impose criminal penalties for crimes against women only.

The Ervin General Amendments

Finally, Senator Ervin proposed two amendments incorporating all the exceptions that he and other reasonable Congressmen believed should be made in ERA in order to safeguard the women of America from the militant extremists.

Amendment 472: **"Neither the United States nor any State shall make any legal distinction between the rights and responsibilities of male and female persons unless such distinction is based on physiological or functional differences between them."** Defeated: 12 ayes, 78 nays, 10 not voting. (March 22, pages S9537-S9538).

Amendment 1044: **"The provisions of this article shall not impair the validity, however, of any laws of the United States or any State which exempt women from compulsory military service, or from service in combat units of the Armed Forces; or extend protections or exemptions to wives, mothers, or widows; or impose upon fathers responsibility for the support of children; or secure privacy to men or women, or boys or girls; or make punishable as crimes rape, seduction, or other sexual offenses."** Defeated: 9 ayes, 82 nays, 9 not voting. (March 22, pages S9538-S9540).

After all these nine Ervin Amendments were so decisively defeated, the Equal Rights Amendment was passed on March 22, 1972 by a big majority: 84 ayes, 9 nays, 7 not voting. The vote was greeted by loud and noisy demonstrations of joy from the militant women's libbers in the galleries.

As legislative history, the defeat of these amendments would obviously take precedence over the opin-

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The Effect of Section 2

by

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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."

Those three sections constitute the full wording of the proposed 27th Amendment to the Constitution.

This year we celebrate the Bicentennial Anniversary of the United States, a constitutional republic. The original 13 states have grown to 50. These states are separate, sovereign entities banded together as stated in the Preamble to the Constitution:

> ". . . in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity . . ."

Our nation has prospered and grown powerful. Our people have more personal freedom coupled with more economic opportunities than any people have had in all history. Because we so cherish our own liberty we have used our power to help people in other lands secure theirs. This treasuring of freedom is our heritage, handed down by our forefathers, who knew what it meant not to have liberty.

Our nation's founders shrewdly devised a Constitution designed to preserve the freedom from tyranny for which they had fought. They set up three branches of government, each with separately defined powers -- thus providing a system of checks and balances that would allow each branch to operate autonomously without being dominated by the other two. But even with this protection written into the Constitution the Founding Fathers wouldn't accept the instrument until further guarantees of liberty were added in the form of the Bill of Rights, the first 10 amendments to the Constitution.

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ion of any individual Congressman or even committee reports, because those amendments were defeated by the big majority of Congressmen.

These ten amendments -- one in the House and nine in the Senate -- constitute the authentic legislative history of the Equal Rights Amendment. They prove conclusively that Congress intended ERA to be total and absolute, to wipe out all existing superior rights of women in regard to the family, the military, manual labor, crimes, and privacy.

The 10th Amendment in this Bill of Rights provides that:

> "The powers not delegated to the United States by the Constitution, nor prohibited to it by the states, are reserved to the states respectively or to the people."

This means that the states *may* give power, through the Congress, to the Federal Government. But if the states did not grant to the Federal Government any more power, the Federal Government could not, on its own, assume more power.

Outright Grant of Power

ERA's Section 2 is an outright grant of power to the Federal Government, allowing it to exercise more control over our personal lives. Section 2 allows state legislatures to hand over to Congress the power to pass all laws relating to the sexes and the relationship between the sexes. This includes laws concerning divorce, inheritance, sex crimes and even building codes. Hidden within this seemingly beneficent little amendment is a rip-off of state's rights -- a sellout of a part of our liberty.

United States Senator Sam Ervin of North Carolina is one of the most respected constitutional lawyers in America. He has said that the effect of Section 2 of this amendment is that ". . . it will come near to abolishing the states of this union as viable governmental bodies . .. it will virtually reduce the states of this union to meaningless zeroes on the Nation's map . . . It will transfer virtually all the legislative power of government from the states to Congress . . . Not only that, the Federal system which contemplates an indestructible union composed of indestructible states, as it is now established by all the provisions of the Constitution, will be substantially destroyed. . . ."

A great majority of informed lawyers agree with him. They see the Amendment as another step toward losing their liberty; as another step toward the establishment of more Federal bureaus, more Federal courts, more Federal police, and more Federal taxes.

Thoughtful persons are taking steps to stop the ratification of this amendment because they cherish their American Heritage; because they fear the abolishment of the states and the establishing of one all-powerful, centralized Federal Government in Washington, D.C.

They believe that the best government is that government which is closest to the people, and in which the legislative representatives are in close contact with their constituents. It is not only the best government, but is the government most likely to preserve the liberty of the people.

It Was Planned That Way

It is no accident that Section 2 of the ERA takes the

power to enforce the Amendment by appropriate legislation away from the states and gives it to the Federal Government -- it was planned that way. The Amendment was sent out to the states for approval by Congress. (You will notice that I did not say "approved by Congress" because many Congressmen who voted to send the Amendment to the states for approval said at the time that they did not think it was necessary, or said they disagreed with it, but they wanted to get the lobbyists for the Amendment "off their backs" in order to turn their attention to other matters).

Until 1970, Section 2 of the Amendment had provided that,

> "Congress *and the States* should have the power to enforce by appropriate legislation the provisions of this article."

However, certain persons who desired change in the form of our government and wanted more power placed in the hands of the Federal government, had Section 2 of the Amendment changed to eliminate any question that the states would have any right to enforce the Amendment. They saw that by changing the wording, the ERA could be used as a vehicle to grab more power for the Federal Government. They saw that ERA could help turn the government of the United States into a centralized, Federal form of government with little or no governmental powers remaining to the individual states.

The individuals and the women's groups that had been pushing for ratification of ERA in one form or another for 47 years were so grateful for assistance in their battle, they did not question the motives of the persons who helped get ERA out of Congress. They did not ask who changed the wording of Section 2, why it was so changed, or what the effect of the change would be. Naively accepting the help, they believed that they had achieved a victory in getting the ERA out of committees and onto the floor of Congress within a matter of a few days, and then out to the states for approval. They did not realize they were being used as unwitting dupes by those persons who believe that, in essense, the state legislatures should be abolished and all legislative power placed in Congress. Such persons want to convert our form of government into a centralized government.

Katzenbach v. Morgan

Some persons see no harm in handing over to the Federal courts, by way of Amendments to the Constitution, the power to establish the public policy through interpretation of the effect of the provisions of any amendment added to the Constitution.

To cite a precedent to prove this, consider: Section 5 of the 14th Amendment to the Constitution contains the *exact* same language of Section 2 of the ERA.

We don't have to guess what the effect of Section 2 will be because the courts already have said that these words are an outright grant of power to Congress to pass all laws to enforce the Amendment - and even if the states have passed legislation to enforce it, state legislation means nothing if Congress passes other laws. See *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

Worse yet, laws passed by Congress may be nullified by the Federal courts because once a Constitutional question is involved, the courts, and not Congress, determine what the law should be. We have seen the courts determine what public policy should be when they interpreted civil rights under the 14th Amendment. In applying the effect of this Amendment, the courts have assumed jurisdiction to declare that there should be no school-prescribed prayers, that the courts shall set local school district limits, that students should be bused away from schools which their parents have expended extra tax money to provide for them, and that abortion should be legalized (despite state laws). This authority over grass-roots matters is given to the Federal courts and the Supreme Court of the United States because of the broad grant of power in Section 5 of the 14th Amendment (which has language identical to Section 2 of ERA). When a constitutional question is involved, judges not legislators decide what the law should be and what the public policy should be.

Virginia Task Force Report

Because of all the emotional arguments which proponents (and some opponents) of ERA were making before the Virginia Legislature, and because of the confusion in the minds of the legislators as to what part of the arguments were fact, what part of the arguments were fiction, and what part of the arguments were pure emotion, the Virginia Legislature authorized a study to be made over a period of time by a committee composed of some of the most prominent lawyers in Virginia.

For the most part, the lawyers, when appointed to the committee were in favor of the Amendment. However, after months of study and research, the Committee reported back to the Virginia Legislature their findings as to the effect of this Amendment, including Section 2. As a result, the Virginia Legislature refused to ratify the Amendment. Since that time, the Amendment was again offered to the Virginia Legislature for consideration this year, and again, the Virginia Legislature (along with 15 other states) refused to approve it. To my knowledge, the study by the Virginia Task Force is the only independent, objective study by a group of lawyers commissioned for that purpose. For this reason, it is very important and should carry much weight.

Even if the ERA would solve all of the many problems which sincere, but uninformed, proponents of the ERA mistakenly believe it would solve; even if it had all of the virtues claimed for it, it also is cursed with Section 2 which is designed to change our American form of government.

The two parts of the Amendment are inseparable -- it must be accepted by the states in exactly the same form in which it was passed on to the states by Congress -- there is no taking of the good and eliminating the bad -- *it is all or nothing at all.* It is for this reason that educated and informed state legislators are turning "thumbs down" on the ERA. It is for this reason that I ask you to turn "thumbs down" on the ERA.

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