

SENATOR PAUL E. TSONGAS
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SENATE JOINT RESOLUTION
A CONSTITUTIONAL AMENDMENT TO GUARANTEE EQUAL RIGHTS FOR WOMEN AND MEN

Mr. President, the march toward equal rights for women in this country must continue. Two weeks ago, the deadline for ratification of the 1972 Equal Rights Amendment passed. Though 35 states ratified the Amendment, the total fell three short of the number required to make the ERA part of our Constitution. Millions of Americans have dedicated themselves to the cause of equal rights for women in this country. Their efforts have not been in vain. We have come a long way in the journey toward passage of the ERA. The journey may be long, but it will end. And it will end successfully.

Today I am reintroducing, along with Senator Packwood and 49 colleagues the Equal Rights Amendment. The Amendment is simple and straight-forward, a mere 52 words in length. In essence, it prohibits the denial of the equality of rights on the basis of sex.

In the House, the same measure is being introduced by Representative Pat Schroeder, Representative Margaret Heckler, and Representative Don Edwards, and 192 other members of the House.

The struggle to secure equal rights for women in this country has never been an easy one. In 1920, nearly a century and a half after the birth of this nation, women finally won the right to vote upon passage of the 19th Amendment. Three years later, the Equal Rights Amendment was first introduced in Congress. It was then introduced in Congress every year until 1972, when it finally passed both Houses. In 1978, Congress approved an extension of the ERA which expired on June 30, 1982.

The need for ERA was great in 1923, when it was first introduced in Congress. The need for great in 1972, when Congress first approved it. The need in 1982 is still just as great. Equality of rights without regard to sex must, like other basic civil rights, be a constitutional right. The women of this nation deserve no less than a secure, constitutional guarantee of full citizenship and equality under the law.

EQUAL RIGHTS AMENDMENT

The Equal Rights Amendment I am introducing today seeks to eliminate sex as a factor in determining the legal rights of women or men. It requires that government treat each person, female or male, as a citizen under the law without regard to gender. The amendment thus recognizes the fundamental dignity and individuality of each human being.

From the beginning of the debate over the ERA, controversy has centered on the same questions: whether there should be room in the law for reasonable distinctions in the treatment of men and women; whether a constitutional amendment is the proper vehicle for improving the legal status of women; and how the ERA might affect such areas as privacy, military service, domestic relations, criminal law, employment and education. I would like to address these issues and discuss how each will be affected by the ERA.

The amendment I am introducing today is identical to the one passed by the Congress in 1972. It reads:

- Sec. 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.
- Sec. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
- Sec. 3. This Amendment shall take effect two years after the date of ratification.

I believe the ERA is essential because it would, for the first time, grant women full status as equal citizens under the Constitution and establish a standard for eliminating discrimination based on sex. Only a constitutional amendment can adequately assure equal rights to the women and men of this nation. It is the only insurance that women will have fair and equal opportunities in employment, education, benefit and retirement plans, marriage and divorce.

A statute-by-statute, piecemeal approach to ending sex discrimination, whether at the Federal or state level, has not worked. Title VII of the Civil Rights Act, Title IX of the Education Amendments and the Equal Pay Act are the laws most often cited as providing equal opportunities for women. The experience of the past 21 years has shown, unfortunately, that these statutes have not resulted in desired changes in the patterns and practices of discrimination. The current laws are simply not enough. Moreover, equal employment laws can be repealed at any time.

Further, the U.S. Civil Rights Commission has identified over 800 sections of federal laws which set sex based standards. Thousands more such examples exist in state laws.

It is also clear that existing constitutional guarantees will not mandate the changes that are needed. Judicial interpretation has allowed sex bias to survive. For example, those challenging sex discrimination in the courts have found the Fifth and Fourteenth Amendments unreliable and inadequate as a remedy for sex discrimination. Further, the U.S. Supreme Court has failed to apply the same strict standard in sex discrimination cases that it has mandated for weighing racial discrimination.

NEED FOR EQUAL RIGHTS AMENDMENT

ERA is needed more today than ever if women are to achieve permanent economic equity. More women are working today than ever before. According to the U.S. Department of Labor, 52 percent are in the job force compared to 39 percent in 1965. This figure is expected to jump as high as 65 percent by 1995. Yet, as workers, women are paid only 64 cents to every dollar paid to men. This is the same ratio that was paid to women a quarter century ago. Women with a college education earn less on the average than a man with an eighth grade education. And while women account for more than 40 percent of all white collar jobs, they hold only one in 10 managerial positions, and one in seven professional jobs.

As wives, women are still subject to laws that deny them equal partnership in marriage. Despite their significant contribution to the home and family, many homemakers have no legal or economic status and little or no protection upon retirement or disability. In many states, support laws, property laws, divorce laws, and inheritance laws, discriminate against the homemaker.

Despite the passage of equal credit laws, many women are still denied credit because of their sex.

As students, women are often steered away from the education that could pierce the barrier to better paying jobs. And despite federal and state laws prohibiting sex discrimination in educational institutions and programs many discriminatory patterns still persist.

In the field of criminal law, women endure a criminal justice system that too often judges them by their sex and not by the acts they commit or by which they are victimized.

The reality today is all too obvious: women have not achieved equality under the law.

Recent Administration proposals are actually moving women backward in equal employment, education, credit, and other economic and social issues. For example, the Administration has proposed regulations reducing enforcement of equal opportunity laws and has proposed significant changes in women's educational rights.

Without the foundation of a constitutional amendment, equality of rights for women under the law is a mirage.

EFFECT OF THE EQUAL RIGHTS AMENDMENT

The ERA would have the effect of requiring the government to treat females and males equally as citizens and individuals under the law. It would not require that any level of government establish quotas for women or men in any of its activities; rather, it would simply prohibit discrimination on the basis of a person's sex. The Amendment would apply only to governmental action; it would not affect private action or the purely social relationships between women and men.

The adoption of the ERA would result in the elimination of the use of sex as the sole factor in determining, for example, who would be subject to the military draft, if it were reinstated; who in a divorce action would be awarded custody of a child; who would have responsibility

for family support; or who would be subject to jury duty. Moreover, public schools could not require higher admission standards for persons of one sex than the other, and courts could not impose longer jail sentences on convicted offenders of one sex. In essence, the Amendment would eliminate from the law sex-based classifications that specifically deny equality of rights or violate the principle of nondiscrimination with regard to sex.

Questions have been raised regarding the effects of the ERA in the areas of privacy, military service, marriage and the family, protective labor laws, and criminal laws relating to sexual offenders. Let me speak to these concerns.

RIGHT OF PRIVACY

Opponents of the ERA have expressed concern that, with the adoption of the ERA, separate restrooms, prisons, and dormitories for males and females would be prohibited. However, the legislative history of the Amendment and the adoption by 16 states of state equal rights amendments discount these concerns. The 1972 report of the Senate Judiciary Committee states that two legal principles are especially significant in this regard:

One principle involves the traditional power of the State to regulate cohabitation and sexual activity by unmarried persons. This principle would permit the State to require segregation of the sexes for these regulatory purposes with respect to such facilities as sleeping quarters at coeducational colleges, prison dormitories, and military barracks.

Another collateral legal principle flows from the constitutional right of privacy established by the Supreme Court in Griswold v. Connecticut, 381 U.S. 479 (1965).

This right would likewise permit a separation of the sexes with respect to such places as public toilets, as well as sleeping quarters of public institutions.

Put simply, the state's traditional regulatory powers and the constitutional right of privacy would permit a separation of the sexes with respect to public restrooms, sleeping quarters in public institutions, and prisons.

MILITARY SERVICE

A critical question concerning the ERA relates to women and military service. As I view the Amendment, women would be allowed to volunteer for military service, including combat duty, on the same basis as men. But this duty would not be arbitrary. Women would not have to serve in any capacity to which they were not fit just as men are not required to serve where they are not fit.

The ERA would require Congress to treat women and men equally with respect to the draft, if a draft were reinstated. This would mean that both women and men who met physical and other requirements, and who are not exempt or deferred by the law, would be subject to conscription.

It is important to note what will not be required by the ERA. ERA will not require that all women must serve in the military any more than all men must serve. Women who are conscientious objectors, who are unqualified for medical reasons, who have dependents, or who are mothers

with children would not automatically be subject to the draft any more than men with particular exemptions would be.

In its effect the ERA would mean a more efficient and capable military. Further, women in the military and as veterans would receive the same benefits.

DOMESTIC RELATIONS

The ERA would affect state domestic relations laws that make distinctions based on sex. For example, the Amendment would bar a state from imposing a greater liability on one spouse than on the other merely because of sex. Child support required of each spouse would be defined in terms of functions based, for example, on each spouse's earning power, current resources and nonmonetary contributions to the family welfare. Divorce laws would have to be sex-neutral so that factors other than gender would determine the payment of alimony and the custody of children.

And contrary to the fears raised by opponents of ERA, the ERA would not destroy the family. It would not force women out of the home or downgrade the roles of mother and homemaker. On the contrary, the status of the homemaker would be strengthened. The Amendment would guarantee a "partnership" in which marital property belongs to both husband and wife. And it would ensure that outdated laws which discriminate against women be deleted from federal and state codes.

LABOR LEGISLATION

Many states have labor laws which bar women, whether qualified or not, from certain jobs -- jobs which are open to men. Other states have weight-lifting laws applicable only to women. Still others have laws limiting the hours women can work. Title VII of the Civil Rights Act prohibits sex discrimination in employment in certain instances where sex is not a "bona fide occupational qualification." Court decisions have invalidated many state laws based on Title VII which prohibit or limit employment of women in certain occupations. But many state laws of this kind are still on the books.

Ratification of the ERA would result in equal treatment for women and men with respect to state labor laws. State statutes which bar women entirely from certain occupations would be invalid. However, laws which offer a real benefit could be extended to protect both women and men. For example, the ERA would ensure that laws providing rest periods for workers or minimum wage benefits or health and safety protections would cover both sexes.

CRIMINAL LAW

As for the criminal law, the Amendment would prohibit a state from providing for different punishments for women and men who commit the same crime. Laws which are limited to one sex would have to be extended to both, or such laws would become invalid. For example, many prostitution laws make only the acts of women criminal and not those of men. Under the ERA, these laws could be extended to cover both prostitutes and patrons.

SUMMARY

Mr. President, we renew today the drive toward equal rights for women and men in this country. As we do so, support for the ERA is broad and deep across the nation. Public opinion polls show that a majority of Americans favor passage of the Amendment.

Supporters are as diverse as they are numerous. The list of organizations supporting the ERA include major labor unions, church and civil rights groups, legal, educational and medical associations and all major women's organizations.

The extent of popular support is not alone a rationale for amending the Constitution. But the arguments for the ERA are in themselves compelling.

In the Senate, I urge all my colleagues to join me and Senator Packwood and a majority of the members of this body in cosponsoring the Equal Rights Amendment.

The tide of public support behind the Amendment indicates that it is an idea whose time has come. I am confident that it is only a matter of time before the ERA becomes the law of the land. I hope the day will come soon for the benefit not only for the women of this country, but for all Americans.