

NEVADA LEGISLATIVE COUNSEL BUREAU
OFFICE OF RESEARCH BACKGROUND PAPER

1975 No. 1

EQUAL RIGHTS AMENDMENT

Equal Rights for Men and Women

"Article--

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

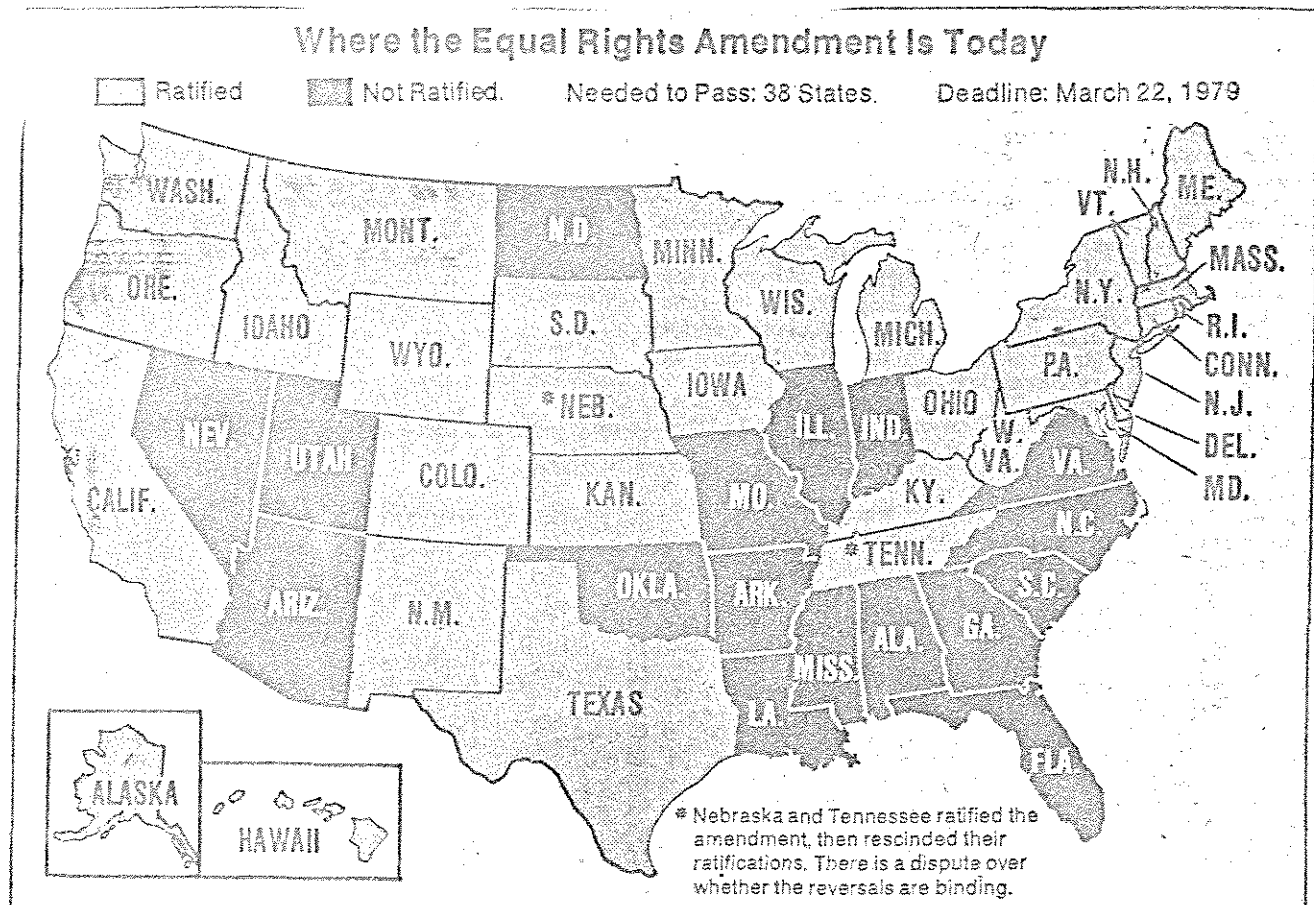
The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3

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

Since 1923 equal rights amendments have been introduced into every session of Congress. On March 22, 1972, the United States Congress adopted a resolution to amend the Constitution to provide equal rights for men and women. The 1972 Senate vote on HJR 208 was 84 to 8; the House had already approved of the resolution in 1971 by a vote of 354 to 24. In order for the proposed 27th amendment to become part of our constitution, three-fourths of the states (38) must ratify it by 1979. If ratified, ERA would not go into effect until 2 years after adoption to give states time to adjust relevant state code provisions. At the close of 1974, 33 states had ratified the amendment, thereby bringing it within five states of the necessary approval. Two states (Nebraska and Tennessee) which adopted resolutions ratifying the amendment later passed resolutions rescinding their action. The legality of rescission is questionable since states which rescinded ratification of the 14th and 15th amendments were counted as ratifying by Congress.

Nevada is one of the 17 states which has not yet ratified the Equal Rights Amendment. In 1973 the Nevada Senate defeated a resolution to ratify, and the Assembly resolution died in committee.



Proponents of ERA feel that an equal rights amendment to the constitution is needed because discrimination on the basis of sex is firmly embedded in our legal system. It is their position that any system of dual rights and responsibilities leads to one group's dominance. In particular, they feel that sex is not a permissible factor in determining human rights, that such classification denies individual rights. ERA proponents state that, at the present time, state and federal legislation has not eliminated sexual discrimination in many aspects of life; a constitutional amendment would provide the necessary mandate for legislation and litigation to eradicate legal inequality between sexes.

Opponents of ERA take the position that the Equal Rights Amendment will take away rights and privileges which are important to women and substitute additional unwanted responsibilities. In their opinion, passage of ERA will deny women their present superior position in the home and family and remove legislation which protects women. Furthermore, anti ERA forces point out that laws and constitutional provisions already exist sufficient to abolish unreasonable sex discrimination. Opponents of ERA

cite the 5th and 14th amendments, the 1963 Equal Pay Act, the 1964 Civil Rights Act and the 1972 Equal Opportunity Act as examples of legal tools already available to counteract unfair treatment on the basis of sex. Another point of view presented by groups opposing the ERA is that a constitutional amendment will lead to federal usurpation of state and local power.

Until and unless the ERA becomes part of the U.S. Constitution and therefore subject to judicial review, speculation about its impact on federal and state law is just that. Nevertheless, there are four major areas of law which both proponents and opponents of ERA agree will be subject to considerable scrutiny and alteration should ERA be ratified. Undoubtedly, protective labor law, domestic relations law, criminal law and law pertaining to military service will be seriously affected by the proposed 27th amendment.

Protective labor legislation which applies solely to women would either have to be extended to men or abolished. Domestic relations legislation, such as alimony and child support which apply only to one sex's liability, would probably be invalidated and then altered to reflect functional distinctions such as wage earner versus home worker rather than sexual differences. Criminal laws such as those referring to sex offenses by one sex only or prison sentencing which considers the sex of the offender could be struck down and replaced by laws referring to specific crimes and specific sentences without reference to the sex of the offender or victim. Finally, if ERA were adopted, law pertaining to military service would have to reflect the legal equality of women and not automatically defer them from the draft (should it be reinstated) on the basis of their sex.

Opponents of ERA view the aforementioned implications of the amendment in terms of a drastic step which will overturn labor laws which protect women from unscrupulous employers, which will threaten obligatory payments of alimony and child support to the wife, which will wipe out laws protecting women from sex crimes and which will require women to serve in the armed forces when the draft is in effect.

ERA supporters envision the amendment in terms of an enlightened move to eliminate protective labor laws which apply to women only and in reality serve to keep women in lower paying jobs, in terms of legal marriage rights and duties based on the functions performed rather than on sex and in terms of equal rights with regard to property and credit.

ERA proponents believe that enactment of the amendment will not affect most criminal law which treats men and women alike, but will require changes in law where sex differentiation is made, such as laws on prostitution directed solely at women. Finally, advocates of the 27th amendment admit that ERA will affect law pertaining to military service. Their position is that if the draft is reenacted, to insure full, responsible citizenship for men and women, no citizen should be deferred solely on the basis of sexual classification.

SUGGESTED READING

(Available in the Research Library)

Bellamy, Blank, Goodman, Kelly, Ross, and Stanley;
The Proposed Equal Rights Amendment: A Brief in Support
of Its Ratification, reprinted by the League of Women
Voters of Nevada.

Brown, Barbara, Thomas I. Emerson, Gail Falk, and E.
Freedman; "The Equal Rights Amendment: A Constitutional
Basis for Equal Rights for Women," Yale Law Journal,
Vol. 80.

Finnegan, Catherine, "Women and the Law in Nevada,"
Bureau of Governmental Research Newsletter, University of
Nevada, Reno, March, 1974.

Freund, Paul A.; "The Equal Rights Amendment is Not the
Way," Harvard Civil Rights and Civil Liberties Law Review,
Vol. 6, 1971

Kurland, Philip B.; "The Equal Rights Amendment: Some
Problems of Construction"; Ibid.

U.S. News and World Report; "Equal Rights for Women: ABC's
of the Big Fight"; March 26, 1973, pp 34-36.

MLL/jd