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Written by **Lisa Shaw** on March 23, 2020

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Insight Into the ERA

Banging at the constitutional door once again are the advocates of a proposed amendment that has been lurking in the shadows in one form or another for nearly a century. That proposed amendment is the Equal Rights Amendment (ERA), which was first introduced in Congress in 1923, promising to end discrimination based on sex. According to the ERA website:

The Equal Rights Amendment is a proposed amendment to the United States Constitution designed to guarantee equal legal rights for all American citizens regardless of sex. It seeks to end the legal distinctions between men and women in terms of divorce, property, employment, and other matters.

Now, almost 100 years later, one wonders how the same archaic message finds a place in a much-changed society fueled by "women's empowerment." After all, is there a rational human being alive who still thinks that women don't already have equal rights? A look at the history of the ERA, along with its agenda, may give a little more insight.

First introduced in Congress in December 1923, the ERA was initially written by Alice Paul and Crystal Eastman, stating, "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction." Paul was a suffragist and the leader of the National Woman's Party (NWP), formed in 1916 in order to "secure an amendment to the United States Constitution enfranchising women," according to Wikipedia. This early version of the ERA failed to gain support in Congress, but the 19th Amendment, passed in 1920, removed the sex barrier, allowing women the full right to vote.

Eastman was a member of the NWP, co-founder of the American Civil Liberties Union (ACLU), and a known socialist. Both Paul and Eastman believed women to be oppressed and exploited, similar to slaves, and made it their goal to be self-appointed liberators. In the words of Paul at her introduction of the ERA in Seneca Falls, New York, "We shall not be safe until the principle of equal rights is written into the framework of our government."

The early history of the ERA saw a great divide among women. One separation was between women's groups, such as the NWP, made up of those from the middle class, and the League of Women Voters (LWV), comprised of the working class. Though both groups claimed to represent women's interests, those of the working class opposed the amendment, claiming it would do more harm than good. While the NWP wanted to abolish sex-based labor legislation, which provided special protection for women working in potentially dangerous circumstances, the LWV argued in defense of the labor legislation, stating that women who worked needed protective laws regarding working conditions and hours.

Another group of women divided by the early ERA debate were homemakers. Some, looking to the ERA to restructure marriage, were part of a group formed as the Homemakers' for the Equal Rights Amendment (HERA). This group pushed for full and equal partnership in marriage, with both partners sharing rights and responsibilities. Opposing the HERA homemakers were those women who were not only content with a woman's role in the traditional structure of marriage, but in favor of it and her station in life. She was not "oppressed" as a wife and mother, they claimed, but free. She proudly embodied the words given by Secretary of Labor James Davis in his 1926 speech opposing sex-based labor legislation, "The place fixed for women by God and Nature is a great place," and "wherever we see women at work we must see them in terms of motherhood." He believed the great threat of the age was the "increasing loss of the distinction between manliness and true femininity."

Davis' speech was a timely one, as the goal of the ERA and its proponents was more than just giving men and women "equal rights," it strove to abolish the natural distinctions between men and women and create an unnatural sameness. It endeavored to mar the beauty of womanhood by devaluing the woman's worth in the home and family, which is — correctly understood — untouchable, thus beginning a chiseling away at the foundation of society.

These divisions within the women's movement hindered the support for the ERA, as well as the women's movement itself. However, both began to gain ground in the 1960s, and in 1971, a new and improved version of the ERA was introduced by Representative Martha Griffiths (D-Mich). It was approved by the House of Representatives, and later the Senate in 1972. Meeting the requirements of Article V of the U.S. Constitution, it passed both houses with a super-majority vote. It then was submitted to the state legislatures for ratification, with Congress imposing a deadline set for March 22, 1979. Inclusion in the Constitution — according to Article V — requires that an amendment be ratified by three-fourths of the states. This can be done by the state legislatures or by special conventions in the states.

The text of the ERA reads:

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.

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.

The entire proposed amendment is comprised of 58 simple words. But the devil — as per usual — is in the details. In this case, the details are rife with ambiguity.

The real agenda of those in favor of the ERA can be seen by the way any alterations of it to clarify how it would apply were rejected by its proponents. While still in the Senate, amendments were proposed for the ERA by Senator Sam Ervin (D-N.C.), who was concerned about the impact of the amendment. As John F. McManus pointed out in his February 24, 1983 article for *The Birch Log*, "Revolutionary E.R.A. Back Again," penned when the ERA was again being debated, some of Ervin's proposed amendments included:

Photo: AP Images

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> Allow women an exemption "from compulsory military service."
>
> Allow women in the military an exemption "from service in combat units of the Armed Forces."
>
> Maintain any laws "which extend protections or exemptions to women."
>
> Maintain any laws "which impose upon fathers responsibility for the support of their children."
>
> Maintain any laws "which secure privacy to men or women, or boys or girls."
>
> Maintain any laws "which make punishable as crimes sexual offenses."

As mentioned above, Senator Ervin's amendments, however, were all rejected by those who claimed to be advocating for the rights of the very women those amendments would have protected.

It is plain to see that Ervin's amendments would not have negated the "rights" being demanded for women, but would have increased them, giving women the option and ability to choose protection for themselves, or not. Ervin's dogged call for protecting the value of women stands in sharp contrast to the "rights" the ERA proposes. As McManus asserted in the article cited previously, there is much more to the Equal Rights Amendment than meets the eye:

> During debate over these proposals, careful mention was made of the fact that failure to pass them would, if the Equal Rights Amendment were ratified, result in a requirement that as many women as men be drafted in any future draft, that women would be required to face the possibility of combat and of becoming P.O.W.s, that separate prisons and even separate cells for men and women prisoners would become illegal, and the laws of the past hundred years designed to protect women from exploitation would also be negated. Yet, each of the Ervin amendments was soundly defeated.

By the 1970s, the ERA had gained acceptance and wide support, including that of both political parties. Activists such as Gloria Steinem and Betty Friedan had become the new Alice Paul and Crystal Eastman, pushing for the same contrived leveling of the sexes. Both were co-founders of the National Women's Political Caucus. Steinem delivered a speech entitled "Address to the Women of America" in 1973, in which she declared:

> This is no simple reform. It really is a revolution. Sex and race because they are easy and visible differences have been the primary ways of organizing human beings into superior and inferior groups and into the cheap labor on which this system still depends. We are talking about a society in which there will be no roles other than those chosen or those earned. We are really talking about humanism.

In direct opposition to this "revolution" stood another group. These conservative women, led by Phyllis Schlafly, began the "STOP ERA" campaign. STOP was an acronym for "Stop Taking Our Privileges." Schlafly, a lawyer, editor, speaker, and political activist, was also a full-time wife and mother. She believed and argued that the ERA would erase privileges designed specifically for, and appreciated by, women. These included exemption from Selective Service (the military draft), "dependent wife" benefits under Social Security, and separate restrooms for males and females. Schlafly began her campaign against the ERA in 1972 and had a prominent role in its defeat.

The John Birch Society also played a prominent role in defeating the ERA, through educating activists and state legislators about the dangers of the seemingly harmless act.

Requiring ratification by 38 states, the ERA only gained 35. And to complicate matters, four of those

states — Nebraska, Tennessee, Idaho, and Kentucky — rescinded their approval before the original ratification deadline of March 22, 1979, and a fifth state (South Dakota) sunsetted its ratification as of the original deadline.

Schlafly was not alone in her dire predictions. In 1974, political commentator and former FBI agent Dan Smoot wrote that if the ERA were made part of the Constitution:

> It will not be legal to have separate but equal toilet facilities for boys and girls in public schools (or in private schools that receive any kind of public assistance); boys and girls will be forced to us the same facilities. Similarly, girls and women will be forced to share dormitory facilities with boys and men (where such facilities are provided), in schools, colleges, the military services, reformatories, prisons.

In retrospect, Smoot almost appears to have been something akin to a prophet. (See his article on page 37.) In reality, he was simply projecting the lines. Because here we are, in 2020, with the transgender lobby demanding exactly those things — even without the ERA being part of the Constitution.

Things began getting convoluted, however, when in October 1978, Congress extended — by a simple majority in both houses — the amendment's deadline to June 30, 1982. There was much debate over Congress' ability to do this, but in the end those arguments were considered largely academic, since the required number of states for ratification was not met even by the new (and hotly contested) deadline.

Once the new deadline had come and gone, the ERA was considered dead.

But that was then; this is now.

In a move that ignores both logic and basic reading comprehension skills, the House of Representatives passed a resolution on February 13 to pretend that the 1982 deadline for ratification of the Equal Rights Amendment never existed. That simple majority vote — 232 to 183 — was almost completely along partisan lines. The only exceptions were five GOP House members who sided with Democrats.

And prior to the February vote, additional state legislatures had already ignored the bygone ERA deadline and "ratified" the ERA. In 2017, Nevada voted to approve the ERA, followed by Illinois in 2018. Then in January of this year, the Virginia General Assembly approved the ERA by a 59-to-41 vote in the House of Delegates and 28-to-12 vote in the Senate. Advocates claimed that got them to the necessary 38 states (or three-fourths) for the ERA to become the law of the land. Of course, to arrive at that conclusion they have to overlook not only the fact that three states approved the ERA *after* the 1982 deadline (let alone the 1979 deadline), but also the fact that (as mentioned above) five states had rescinded their prior approval as of or before the original deadline.

Even Supreme Court Justice Ruth Bader Ginsburg, who, as a feminist lawyer in the 1970s, cut her teeth as a champion for the ERA, says that it is not possible to count those states. In an address at Georgetown University in February of this year, she stated, "I would like to see a new beginning. I'd like it to start over." Her remarks were given in response to a question from a journalist during the event. She went further, pointing out that there is a hypocritical duplicity on the side of Democrats on this issue, asking the question, "If you count a late comer on the plus side, how can you disregard states that said we've changed our minds?"

Considering that the Senate shows no interest in following the House's lead on the ERA, it may be all dressed up with no place to go. Even if the Senate were to take it up, it would almost certainly wind up

in the Supreme Court. Once there, it would likely fail without Ginsburg's support.

Photo: AP Images

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