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June 29, 1978

TO: The Honorable [REDACTED]  
Attn: [REDACTED]

FROM: Karen Keesling, Analyst  
Government Division

SUBJECT: Equal Rights Amendment and the Proposed Extension  
of the ERA Ratification Deadline

This memorandum has been prepared in response to your request for a one or two page identification of questions which may be asked in your home district about ERA and ERA extension. In addition, you have asked for a brief statement - pro and con - on which a response could be based.

1. Would ERA require unisex restrooms?

Pro: According to the Senate Judiciary Committee, the ERA would not change present constitutional protections to the right of privacy as outlined by the Supreme Court in Griswold v. Connecticut, therefore, not requiring unisex restrooms.

Con: Opponents argue that if ERA is construed strictly, it will take precedent over the other sections of the constitution with which it is inconsistent, thus providing no exception for sexual segregation between men and women on the basis of privacy.

2. Would persons of the same sex have a right to marry each other if ERA is ratified?

Con: Yes, because any State law which prevents such marriages would violate equal treatment under the law.

Pro: No, since ERA is based on providing equal rights to both sexes. It does not apply to rights of one person versus another within the same sex. The only way it could be applicable is if the State legislature treats one sex differently than the other.

3. Will ERA require women to be drafted and serve in combat positions?

Con: Amendments to the ERA were proposed to guarantee that passage of the ERA would not affect Congress' right to exclude women from combat and the draft and were defeated. Thus, women will be drafted and assigned to direct combat roles in the field in the same manner and in the same number as men.

Pro: ERA would require equal treatment and therefore, women would be drafted along with men. Some proponents argue that the armed forces would have the authority to assign men and women according to their individual capabilities. If women were excluded from combat it is argued that the Courts might defer to the military because of the doctrine of military necessity, thus not requiring women to serve in combat.

4. Would ERA do away with alimony and child support?

Pro: Alimony and child support would still be legal under ERA but they would have to be awarded based on the financial need of the husband or wife.

Con: Women would lose their right to alimony and child support under ERA, and in fact may have to pay them to a former husband.

5. Is ERA necessary with all the laws now guaranteeing women equal opportunity in employment, education, credit, etc.?

Con: No, ERA is not necessary because the Equal Pay Act, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Equal Credit Act already prohibit sex discrimination in employment, education and credit.

Pro: The Supreme Court has not interpreted the 14th Amendment as making sex a protected class in the same way race is. Proponents argue therefore that an amendment is necessary to make it clear that discrimination based on sex is prohibited in all programs.

6. Since the States have been given seven years to ratify, isn't that a reasonable time and why, therefore, do we need an extension?

Pro: Proponents maintain that a time limit in terms of human equality should not be set at all and that ERA has not been fully heard in some States. They point to one State (Mississippi) where the amendment has never been voted on in either body.

Con: The trend is against ERA. Every State legislature has considered ERA and expressed its will. In the 15 unratified States, 24 committee votes and 59 floor votes have taken place since the Amendment was proposed.

7. Does Congress have the authority to extend the deadline for ratification?

Con: Opponents maintain that once Congress has proposed an amendment, with a time limit for ratification, a subsequent Congress cannot change the time limit.

Pro: Proponents say that since the Court held that a subsequent Congress can determine the reasonableness of the time within which a sufficient number of States must act when no time limit is set (Coleman v. Miller), then a subsequent Congress can also determine the validity of the reasonableness of a time limit set by a proposing Congress.

Additional material has already been provided your office regarding the ERA pro and con and the ERA extension pro and con. These materials include a Multilith and an Issue Brief on the Proposed Equal Rights Amendment. If I can be of further assistance in this area, please don't hesitate to contact me at 426-5827.

KK/mhs