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Equal rights... —
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EQUAL RIGHTS AMENDMENT



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NATIONAL CATHOLIC WELFARE CONFERENCE

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EQUAL RIGHTS AMENDMENT

State Versus Federal System

As reported to the United States Senate by the Judiciary Committee the Amendment reads:

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

Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation.

This Amendment shall take effect five years after the date of ratification.

Under Article V of the Constitution of the United States, Congress has authority to propose an amendment to the Constitution "whenever two-thirds of both Houses shall deem it necessary." Article V of the Constitution is as follows:

The Amending Process. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section

of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

In the Congress there is evidence of increasing interest in the general proposal that in rights concerning employment in industry or trade and in civil life generally there should be no discrimination on account of sex. It does not, however, seem likely that Congress, with the necessary two-thirds majority, will deem necessary an amendment to the Federal Constitution as far reaching and as indefinite in its implications as that now before the United States Senate.

Exercising the jurisdiction they have under the Constitution, State Legislatures are responsive to the will of the people of the State and satisfactory progress has been made and continues to be made in eliminating from the laws every unfair or undesirable discrimination between men and women on the basis of sex. At the same time there are rights for the just defense of which the law must differentiate between the sexes. The defense of such social interests as these has wisely been entrusted to the local community and to the State. That defense is properly a responsibility of the Federal Government only within the limited jurisdiction given to the Federal Government by the Constitution.

In drafting the Amendment, the Judiciary Committee does make an effort to respect the sovereign jurisdiction of the States. At best, it is a feeble effort. The fact remains that it has not been found possible to draft an equal rights amendment

which would not require the abdication by the State of an essential part of its sovereign power to perform the general duties and powers of government which under the Constitution are reserved to the State and its people.

Under the Amendment, social and welfare legislation would come within the jurisdiction of the Federal Courts. The gradual imposition, through Federal Court action, of uniformity of standards among the States in this legislation probably would be promoted. Progress would not be encouraged. Standards would be stabilized at a level low enough to satisfy the majority on the Federal basis, not on the State basis as at present.

The demand for an equal rights amendment now voiced by a relatively small minority is predicated on the basis of facts which call not for the abdication by the States of their sovereign power, but rather for the reassertion and the reestablishment of that power and the use of greater wisdom and diligence by States in the exercise of the sovereign power they have now under the Constitution.

The Federal organization needs to be freed of responsibility in these matters so that it can concentrate on the exercise of those responsibilities now assigned to it under the Constitution.

The wisdom of our system of a Federal republic has been sustained by a century and a half of orderly national growth. The distinction between Federal business and State business must be preserved.

In the population of the United States there are

comprised many elements who have arrived sometimes in groups, sometimes as individuals. They have come from the far corners of the world. They have brought with them deep rooted traditions and resentments. They represent many conflicting customs and legal systems.

Subjecting themselves to the subtle influence of liberty under law at the State level, these diverse, not infrequently hostile elements, have been remoulded socially, economically and politically until today nowhere on earth is national unity stronger than it is in the United States.

This unity is the product not of any brutalizing "egalitarian" process. It is no regimentation under a totalitarian despotism. It is the natural product of liberty based on full recognition of the natural rights with which every man is endowed by God, his Creator, under a system of law that has recognized the natural differences which separate individuals not as inferior and superior, but as human persons, male and female, with a right to equal protection under the law.

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CATHOLIC POINT OF VIEW

In the Encyclical on Marriage, Pope Pius XI discussed at some length the proposal that the rights of man and woman should be equal. He says:

"The same false teachers who try to dim the lustre of conjugal faith and purity do not scruple to do away with the honorable and trusting obedience which the woman owes to man.

"Many of them go even further and assert that

such a subjection of one party to the other is unworthy of human dignity, that the rights of husband and wife are equal; wherefore, they boldly proclaim, the emancipation of women has been or ought to be effected.

"This emancipation in ideas, they hold, must be threefold, in the ruling of the domestic society, in the administration of family affairs and in the rearing of the children.

"It must be social, economic, physiological; *Physiological*, that is to say, the woman is to be freed at her own good pleasure from the burdensome duties properly belonging to a wife as companion and mother. (We have already said that this is not emancipation but a crime); *Social*, inasmuch as the wife being freed from the cares of children and family, should, to the neglect of these, be able to follow her own bent and devote herself to business and even public affairs; finally *Economic*, whereby the woman even without the knowledge and against the wish of her husband may be at liberty to conduct and administer her own affairs, giving her attention chiefly to these rather than to children, husband and family.

"This, however, is not the true emancipation of woman, nor that rational and exalted liberty which belongs to the noble office of a Christian woman and wife; it is rather the debasing of the womanly character and the dignity of motherhood, and indeed of the whole family, as a result of which the husband suffers the loss of his wife, the children of their mother and the home and the whole family of an ever watchful guardian.

"More than this, the false liberty and unnatural equality with the husband is to the detriment of the woman herself, for if the woman descends from her truly regal throne to which she has been raised within the walls of the home by means of the Gospel, she will soon be reduced to the old state of slavery (if not in appearance, certainly in reality) and become as among the pagans the mere instrument of man.

“This equality of rights which is so much exaggerated and distorted, must indeed be recognized in those rights which belong to the dignity of the human soul and which are proper to the marriage contract and inseparately bound up with wedlock. In such things undoubtedly both parties enjoy the same rights and are bound by the same obligations; in other things there must be a certain inequality and due accommodation, which is demanded by the good of the family and the right ordering and unity and stability of home life.”

CHANGING SOCIAL AND ECONOMIC CONDITIONS

“As, however, the social and economic conditions of the married woman must in some way be altered on account of the changes in social intercourse it is part of the office of the public authority to adopt the civil rights of the wife to modern needs and requirements, keeping in view what the natural disposition and temperament of the female sex, good morality, and the welfare of the family demand, and provided always that the essential order of the domestic society remain intact, founded as it is on something higher than human authority and wisdom, namely on the authority and wisdom of God, and so not changeable by public laws or at the pleasure of private individuals.”

Justice is served by equality before the law. Equality before the law is a basic principle of justice. Human beings, men and women, are endowed by their Creator with the same equal inalienable rights to attain their end and to employ the means necessary thereto. Christianity always has recognized and defended this equality holding all men to be equal before Divine justice.

This basic equality cannot be considered apart from apparent inequalities. Men are unequal in physical and mental powers. Men are marked one from another by unmistakable differences. These

differences do not determine the superiority of one over another.

In dignity men are equal.

As individuals men are different.

Among the differences which distinguish human beings, the most profound is that which distinguishes the man from the woman. Both are human beings. Each has all the dignity of the other.

Woman has the same right to develop her personality that man has to develop his personality. Yet by nature she is different and by nature she develops her personality under other conditions.

Woman has not only an equal right with man to the fullest development of her being; she has an equal right to develop herself in a different way.

To give to woman the same status that is given to man is to violate her right based on the undisputable fact that she is different from man.

The Catholic Church has never failed to proclaim the equality of the sexes. The Church rescued woman from the low level to which paganism had reduced her and enthroned her as queen of the Christian home.

LAWS WHICH RECOGNIZE SEX

The Amendment would deny to lawmakers, Federal and State, the right they now have to enact and to State governments the power to enforce any law that differentiates between the sexes. The adoption of the Amendment, therefore, would be an abdication by the States of the right they now have to enact or enforce any law for the special

protection of women in trade or industry, in the family, etc.

At present, unfair discriminations based on sex are not demanded by women and are disappearing.

The need for wise and just laws for the safety and comfort of employed women is recognized and sometimes such laws must differentiate between man and woman, recognizing rights on the basis of sex in the higher interest of public morals.

The Amendment would result in innumerable controversies and suits.

At present, Federal legislation grants to man and woman equal rights to take nationality, to change nationality by marriage, to transmit nationality to children, but the law distinguishes between husband and wife with regard to the right to recover United States nationality and with regard to immigration.

Men and women do not have equal rights in all the states in the following cases:

Men and women have the right to hold public office, Federal, State or local, in forty-four States, the District of Columbia, the Territories and the Insular Possessions, except the Philippine Islands. The law distinguishes between men and women in four States with respect to the right to hold certain offices as follows:

In Mississippi the Superintendent of Banks must be a "man of good character."

In Oklahoma, the State constitution provides that the Governor, the Lieutenant Governor, the Secretary of State, the State Auditor, the Attorney General, the State Treasurer, the Superintendent of Public Instruction, State Examiners, State Inspectors, must be *male* citizens.

In Rhode Island, the medical examiners for counties and the directors of State institutions must be *men*; the Superintendent of the Reformatory for Women must be a woman.

In Wisconsin, women may not serve as clerk to a legislative committee or in any other capacity as an employee of the State Legislature.

<i>Right</i>	Number of Jurisdictions*	
	Equal	Unequal
Jury Service	23	27
To pay taxes	36	20†
To serve as witness	all jurisdictions	no jurisdiction
To act as legal guardian	52	3
To vote	all	none
To hold public office	50	4
To serve on juries	10	43‡
To act as executor	41	13
To enter professions	all	none
To be employed	26	27
To protective legislation	none	43

* Includes D. C., territories and insular possessions.

† In the unequal jurisdictions women do not pay the poll tax, otherwise there is equality.

‡ In fourteen jurisdictions jury service for women is optional.

There is some distinction on the basis of sex with regard to hours in every jurisdiction.

Minimum wage Federal law provides equal right. In other jurisdictions there is differentiation in stated employment.

In the rights and duties of husband and wife there is differentiation on the basis of sex, applied differently in different jurisdictions.

BRIEF SUMMARY OF LEGISLATION AFFECTING DOMESTIC RELATIONS

SOME OF ITS EFFECTS ON THE FAMILY

The Amendment would require that, within the

limitations of its jurisdiction neither the Federal government nor any State government, by law, deny or abridge equality of rights on account of sex.

What, if any, would be the effect of the adoption of this amendment on the family?

1. *Property Rights*

A. Acquisition and Ownership of Property

B. Management and Disposition of Property

A. Acquisition and Ownership

There is no denial or abridgment of equal rights under law. The following exceptions are noted:

In Connecticut equality of right applies only in a marriage contracted after April 20, 1877.

In Georgia the wife's earnings are not her own unless her husband agrees to allow her to have them or if she is living separate from him.

In Vermont the wife does not hold as her separate property gifts of personal property from her husband.

In Arizona and California the earnings of a wife living separate and apart from her husband are her separate property, as are also the earnings of her minor children living with her.

Exceptions like these in law would not be possible under the amendment.

The holding of the family property in community by husband and wife is obligatory in a few States and permitted under law in all jurisdictions.

B. Management and Disposition of Property

In twenty-seven States and the Virgin Islands the law makes no distinction between husband and wife with regard to the management and power of disposition of his or her property.

In ten jurisdictions the husband cannot under

law convey his real property with the effect of excluding his wife's interest after his death unless she joins him in conveying her rights. In these same jurisdictions the wife can dispose of her real property with the effect of depriving him of his interest after her death.

In five States the wife cannot dispose of her real property without the consent of her husband. The husband can dispose of his property without the consent of the wife.

In one State, Florida, the husband has the care and management of the wife's property and must join in conveying or mortgaging the wife's real property. The husband can convey his land.

In six States, Puerto Rico, Canal Zone and Guam, the husband or wife each manages and controls his or her separate property and may dispose of it freely. The husband alone has management of all the community property.

In one State, Texas, the wife may deal as she wishes with some of her property, but she may not convey or mortgage her real property, nor convey her stocks or bonds unless her husband joins her, or the court gives her permission.

In this State the wife has no control over the community property unless her husband has disappeared. The husband can dispose of all his separate property and also of the community property except that he may not convey or mortgage the homestead without the wife's consent.

Estates by entireties are a peculiar form of ownership under which property is held jointly by husband and wife and ownership cannot be destroyed

by the act of one alone. This form of ownership is possible in all jurisdictions.

RIGHT TO CONTRACT

Husband and wife have equal rights to contract in twenty-seven States, the District of Columbia, Alaska and the Virgin Islands. In other jurisdictions the right to contract is restricted particularly with regard to commitments affecting the interest of the wife or husband not party to the contract generally in connection with conveyance of property.

Under this heading the adoption of the Amendment would give rise to great confusion and would run contrary to long-established social customs and standards.

DOMICILE

The law distinguishes between husband and wife with regard to the right to establish a legal residence or domicile.

In all jurisdictions the husband has the right to fix his domicile for all purposes.

In all but one he has the right to fix his wife's domicile excepting for certain purposes such as:

1. Bringing suit for divorce or separating in forty-six jurisdictions.
2. Voting, holding office and serving on a jury in eight states.

AGE OF ABILITY TO CONSENT TO MARRIAGE

In only six States is there equality of rights under law between men and women with respect to the minimum age for contracting marriage.

In forty-two States, the District of Columbia, Guam, the Canal Zone, Alaska and Hawaii there is inequality of rights.

The laws of the great majority of jurisdictions express in these provisions of law the fact that there are natural differences between individuals based on sex, and equality would be contrary to the natural right of man and woman to be different on the basis of sex.

THE RIGHT TO SUE AND BE SUED

In forty-one States, the District of Columbia, Alaska, Hawaii, the Canal Zone, the Virgin Islands and Guam, husband and wife have general equality under law to sue and to be sued.

In nine jurisdictions husband and wife have unequal rights in this respect. The laws are not the same in these jurisdictions. The difference in most instances consists of a restriction which prohibits independent action by the wife in specific matters.

In forty-nine jurisdictions the husband or wife alone is responsible for injuries he or she has caused.

In five States no specific law makes the wife alone liable for her wrongful acts but the law gives the right to sue her in connection with her separate property as it would if she were not married.

SUPPORT

According to common law it is the duty of the husband to support his wife from his own property. There is no liability on the part of the wife to support her husband. Exigencies, however, often make the practice different from the law.

WHEN LIVING TOGETHER

In forty-one jurisdictions the law distinguishes between husband and wife with regard to the duty to furnish each other support.

In twenty-seven States, the District of Columbia, Alaska and Hawaii, the husband is obliged to support his wife out of his own property. In these jurisdictions the wife is not obliged to support her husband unless she agrees to do so.

In seven States, the Philippine Islands, Puerto Rico, Guam, the Canal Zone, the community property to which both husband and wife contribute, is primarily liable for the expense of the family, but the husband's separate property also is liable. When these are insufficient the wife's separate property is liable.

In fourteen States and the Virgin Islands, the husband and wife are jointly or separately liable for the expenses of the family.

WHEN LIVING APART

In thirty-seven States, the District of Columbia, the Territories, the Philippine Islands and the Canal Zone, when living apart without a legal separation, the husband may be required to support his wife who has asked for separate maintenance for cause. The wife cannot be required to support her husband who may wish to live apart from her.

In six States, Puerto Rico and Guam the husband and the wife have equal rights and may be equally required to support the other who has asked for separate maintenance for cause.

In three States neither husband nor wife can ask

for separate maintenance without an action for divorce or legal separation.

In thirty-five jurisdictions the law provides for the support of the surviving widow from the estate of the deceased husband for an indicated time, generally one year or less.

In ten jurisdictions the law provides for the support of the surviving husband or wife out of the estate of the deceased spouse for a stated period, generally one year or less.

In ten States and the District of Columbia there is no statutory provision for the support of the surviving spouse out of the estate of the deceased spouse. Some of these States by special statute provide for the "widow's allowance."

LEGAL SEPARATION

The law distinguishes between husband and wife:

1. In four States the wife may obtain legal separation on several grounds. The husband cannot obtain legal separation on any ground.

2. In eleven States and Hawaii the wife may obtain legal separation for failure of her husband to support her; the husband cannot on this ground obtain legal separation from his wife.

3. In one State the wife may secure legal separation for the hopeless insanity of her husband; the husband cannot on this ground secure legal separation from his wife.

4. In four States the wife, but not the husband, can secure legal separation because of cruel and inhuman treatment.

5. In one State the husband may secure a legal

separation for his wife's unchaste behavior, without actual proof of an act of adultery. The wife, in this State, cannot secure a legal separation unless there is actual proof of adultery.

6. Husband and wife have equal rights to ask for legal separation in ten States and the District of Columbia.

SUPPORT AFTER LEGAL SEPARATION

The law distinguishes between husband and wife with regard to support from each other after legal separation in nineteen States and the District of Columbia. The law makes no distinction in seven States.

DIVORCE

In eighteen States, the District of Columbia and the Virgin Islands husband and wife may obtain divorce on the same grounds.

In the remaining jurisdictions the law distinguishes between husband and wife in regard to grounds for divorce.

In forty States, the District of Columbia, the Territories and the Insular Possessions, the husband may be ordered by the court to support the wife during an action for divorce; the wife cannot be so ordered.

In eighteen States, the District of Columbia, the Canal Zone, the husband may be required to contribute to the support of his former wife whether the divorce was granted for his fault or for the wife's fault. The wife is not required to contribute to the support of her former husband.

The law distinguishes between husband and wife with regard to the support of the divorced spouse in nineteen other jurisdictions.

In sixteen States, the Territories and the Virgin Islands, the law makes no distinction between husband and wife with regard to the right to receive support from each other after having been divorced.

ANNULMENT

In ten States husband and wife have equal rights. In all other jurisdictions there is distinction between husband and wife with regard to grounds for the annulment of marriage.

REMARRIAGE

In twenty-seven jurisdictions there is no restriction on remarriage after final decree of divorce.

