Shirley Chisholm

For the Equal Rights Amendment

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Mr. Speaker, House Joint Resolution 264, before us today, which provides for equality under the law for both men and women, represents one of the most clear-cut opportunities we are likely to have to declare our faith in the principles that shaped our Constitution. It provides a legal basis for attack on the most subtle, most pervasive, and most institutionalized form of prejudice that exists. Discrimination against women, solely on the basis of their sex, is so widespread that is seems to many persons normal, natural and right.

Legal expression of prejudice on the grounds of religious or political belief has become a minor problem in our society. Prejudice on the basis of race is, at least, under systematic attack. There is reason for optimism that it will start to die with the present, older generation.

It is time we act to assure full equality of opportunity to those citizens who, although in a majority, suffer the restrictions that are commonly imposed on minorities, to women.

The argument that this amendment will not solve the problem of sex discrimination is not relevant. If the argument were used against a civil rights bill -- as it has been used in the past -- the prejudice that lies behind it would be embarrassing. Of course laws will not eliminate prejudice from the hearts of human beings. But that is no reason to allow prejudice to continue to be enshrined in our laws -- to perpetuate injustice through inaction.

The amendment is necessary to clarify countless ambiguities and inconsistencies in our legal system. For instance, the Constitution guarantees due process of law, in the 5th and 14th amendments. But the applicability of due process of sex distinctions is not clear: Women are excluded from some State colleges and universities. In some States, restrictions are placed on a married woman who engages in an independent business. Women may not be chosen for some juries. Women even receive heavier criminal penalties than men who commit the same crime.

What would the legal effects of the equal rights amendment really be?

The equal rights amendment would govern only the relationship between the State and its citizens -- not relationships between private citizens. The amendment would be largely self-executing, that is, and Federal or State laws in conflict would be ineffective one year after date of ratification without further action by the Congress or State legislatures.

Opponents of the amendment claim its ratification would throw the law into a state of confusion and would result in much litigation to establish its meaning. This objection overlooks the influence of legislative history in determining intent and the recent activities of many groups preparing for legislative changes in this direction.

State labor laws applying only to women, such as those limiting hours of work and weights to be lifted would become inoperative unless the legislature amended them to apply to men. As of early 1970, most States would have some laws that would be affected. However, changes are being made so rapidly as a result of Title VII of the Civil Rights Act of 1964, it is likely that by the time the Equal Rights Amendment would become effective, no conflicting State laws would remain.

In any event, there has for years been great controversy as to the usefulness to women of these State labor laws. There has never been any doubt that they worked a hardship on women who need or want to work overtime and on women who need or want better paying jobs; and there has been no persuasive evidence as to how many women benefit from the archaic policy of the laws. After the Delaware hours law was repealed in 1966, there were no complaints from women to any of the State agencies that might have been approached.

Jury service laws not making women equally liable for jury service would have been revised.

The selective service law would have to include women, but women would not be required to serve in the Armed Forces where they are not fitted any more than men are required to serve. Military service, while a great responsibility, is not without benefits, particularly for young men with limited education or training. Since October 1966, 246,000 young men who did not meet the normal mental or physical requirements have been given opportunities for training and correcting physical problems. This opportunity is not open to their sisters. Only girls who have completed high school and meet high standards on the educational test can volunteer. Ratification of the amendment would not permit application of higher standards to women.

Survivorship benefits would be available to husbands of female workers on the same basis as to wives of male workers. The Social Security Act and the civil service and military service retirement acts are in conflict. Public schools and universities could not be limited to one sex and could not apply different admission standards to men and women. Laws requiring longer prison sentences for women than men would be invalid, and equal opportunities for rehabilitation and vocational training would have to be provided in public correctional institutions. Different ages of majority based on sex would have to be harmonized. Federal, State, and other governmental bodies would be obligated to follow nondiscriminatory practices in all aspects of employment, including public school teachers and State university and college faculties.

What would be the economic effects of the Equal Rights Amendment?

Direct economic effects would be minor. If any labor laws applying only to women still remained, their amendment or repeal would provide opportunity for women in better-paying jobs in manufacturing. More opportunities in public vocational and graduate schools for women would also tend to open up opportunities in better jobs for women.

Indirect effects could be much greater. The focusing of public attention on the gross legal, economic, and social discrimination against women by hearings and debates in the Federal and State legislatures would result in changes in attitude of parents, educators, and employers that would bring about substantial economic changes in the long run. Sex prejudice cuts both ways. Men are oppressed by the requirements of the Selective Service Act, by enforced legal guardianship of minors, and by alimony laws. Each sex, I believe, should be liable when necessary to serve and defend this country. Each has a responsibility for the support of children.

There are objections raised to wiping out laws protecting women workers. No one would condone exploitation. But what does sex have to do with it. Working conditions and hours that are harmful to women are harmful to men; wages that are unfair for women are unfair for men. Laws setting employment limitations on the basis of sex are irrational, and the proof of this is their inconsistency from State to State. The physical characteristics of men and women are not fixed, but cover two wide spans that have a great deal of overlap. It is obvious, I think, that a robust woman could be more fit for physical labor than a weak man. The choice of occupation would be determined by individual capabilities, and the rewards for equal works should be equal.

This is what it comes down to: artificial distinctions between persons must be wiped out of the law. Legal discrimination between the sexes is, in almost every instance, founded on outmoded views of society and the pre-scientific beliefs about psychology and physiology. It is time to sweep away these relics of the past and set future generations free of them.

Federal agencies and institutions responsible for the enforcement of equal opportunity laws need the authority of a Constitutional amendment.

The 1964 Civil Rights Act and the 1963 Equal Pay Act are not enough; they are limited in their coverage -- for instance, one excludes teachers, and the other leaves out administrative and professional women. The Equal Employment Opportunity Commission has not proven to be an adequate device, with its power limited to investigation, conciliation, and recommendation to the Justice Department. In its cases involving sexual discrimination, it has failed in more than one-half.

The Justice Department has been even less effective. It has intervened in only one case involving discrimination on the basis of sex, and this was on a procedural point. In a second case, in which both sexual and racial discrimination were alleged, the racial bias charge was given far greater weight.

Evidence of discrimination on the basis of sex should hardly have to be cited here. It is in the Labor Department's employment and salary figures for anyone who is still in doubt. Its elimination will involve so many changes in our State and Federal laws that, without the authority and impetus of this proposed amendment, it will perhaps take another 194 years. We cannot be parties to continuing a delay.

The time is clearly now to put this House on record for the fullest expression of that equality of opportunity which our Founding Fathers professed. They professed it, but they did not assure it to their daughters, as they tried to do for their sons. The Constitution they wrote was designed to protect the rights of white, male citizens. As there were no black Founding Fathers, there were no founding mothers -- a great pity, on both counts. It is not too late to complete the work they left undone. Today, here, we should start to do so.

In closing, I would like to make one point: Social and psychological effects will be initially more important than legal or economic results. As Leo Kanowitz has pointed out:

> *Rules of law that treat of the sexes per se [inevitably] produce far-reaching effects upon social, psychological and economic aspects of male-female relations beyond the limited confines of legislative chambers and courtrooms. As long as organized legal systems, at once the most respected and most feared of social institutions, continue to differentiate sharply, in treatment or in words, between men and women on the basis of irrelevant and artificially created distinctions, the likelihood of men and women coming to regard one another primarily as fellow human beings and only secondarily as representatives of another sex will continue to be remote. When men and women are prevented from recognizing one another's essential humanity by sexual prejudices, nourished by legal as well as social institutions, society as a whole remains less than it could otherwise become.*[1]

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[1] Kanowitz, L. (1969). *Women and the Law: The unfinished revolution.* Albuquerque: University of New Mexico Press,

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Transcription Note: The revised text version above reflects several alterations to the Congressional Record's version in the areas of editorial style (e.g., "5th" for "fifth", oxford commas, points of punctuation) and paragraph organization. These modifications were implemented chiefly to enhance reading clarity and rhetorical force. All originally recorded content from the Congressional Record has been preserved in substance.