

property. Naturally, the ERA would invalidate this arrangement and give each spouse equal managerial control.

Forty-two states including Oregon have some modified version of common law ownership of property, in which each spouse is allowed private ownership and control of her or his separate property, excepting qualifications on the right to inherit.

Those states like Oregon who give surviving husbands the same rights as surviving wives will not be affected by the ERA in this area. Those states which still offer the wife protection not given the husband will have to either nullify their discriminatory laws or extend their protection to men.

Support

Author of the 1964 campaign book for Barry Goldwater, A Choice Not an Echo, Phyllis Schlafly of Alton, Ill., is one of the most important opponents of the ERA. She has reportedly organized opposition to the Amendment in 26 states.

One of the major reasons she gives for opposing the ERA is that it will "take away the right of a woman to be a full-time wife and mother. A woman would be obligated to go out and earn 50 per cent of her children's support because it would be unconstitutional to oblige one sex to do something and not the other."

Virtually all the law review reports consulted in preparation for this analysis denied that the ERA would

have such an effect. The ERA would simply mean that responsibility in marriage would be individually determined, instead of assigned on the basis of sex.

Titus hoped that passage of the ERA would be an eventual impetus towards a governmental subsidy of houseworkers.

"One of the ways society has discriminated against the female is in determining that the work that she does isn't worth money," he said. "So, this is the major domestic implication of the 27th Amendment. Why aren't women paid for the work they do in the home? Such a subsidy would stimulate the economy."

Divorce

Under the ERA, grounds for divorce would be the same for men as they are for women. This is already the case in Oregon.

The ERA would not eliminate alimony, it would merely guarantee that a divorced party's needs be viewed individually, instead of by sex. Again the law in Oregon is already written in these terms.

In child care, both husband and wife would be equally responsible. Both spouses would also receive equal consideration in child custody awards, at least under law (hidden prejudices of judges would still, of course, be a factor). This equal custody consideration and equal support responsibility demanded by the ERA would

necessitate no changes in Oregon's present statutes.

Employment — protective legislation

In 1970, on the U.S. House floor, arch-opponent of the ERA, Rep. Emmanuel Celler, warned: "At one fell swoop this Amendment would wipe out all those protective laws that we, after arduous toil, sought to put on the statute books."

On the other hand, proponent and prime-mover behind the ERA in the House, Rep. Griffiths, questioned whether legitimately beneficial protections granted women should be restricted to them.

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"Some people," Griffiths said, "have suggested to me that labor opposes the ERA because they feel that through the years protective legislation has been built up to safeguard the health of women. Some legislation was to safeguard the health of women, but it should have safeguarded the health of men, also."

Protective legislation comes in three general categories: (1) Laws which confer benefits to women (such as minimum wages, a meal or a rest period, provision of chairs for rest periods), (2) laws which exclude women from certain jobs (like bartending, mining, and, in Oregon, wrestling), and (3) laws restricting women's employment under certain conditions (such as at night, for more than a certain number of hours, or in jobs requiring the lifting of certain weights.)

Advocates of the ERA say the essential problem with protective legislation is that it views women as a class, which is unfair to the many women who do not fit the female stereotype that the laws are designed to protect.

What kind of protection, say advocates, prevents a 180-pound, five-foot, 10-inch tall woman from lifting 25 pounds, and assumes a 130-pound five-foot, four-inch man can lift 100 pounds? And what kind of protection is it which

earn less than Black men with eight years of education.

"More than half of all families headed by Black women are in poverty. More than a quarter of all families headed by White women are in poverty. Less than a quarter of those families headed by Black males are in poverty. And seven per cent of those headed by White males are in poverty."

A recent report from President Nixon's Council of Economic Advisers shows that this gap between the earnings of men and women has increased between the years 1965 to 1969.

A California Supreme Court case, *Sail'er Inn, Inc. v. Kirby*, 485 P2d 529

(1971), went further than the Supreme Court has been willing to go in guaranteeing equal employment rights.

The California Court held that "Laws which disable women from full participation in the political, business and economic arenas are often characterized as 'protective' and beneficial."

"These same laws applied to racial or ethnic minorities would readily be recognized as invidious and impermissible. The pedestal upon which women have often been placed has too often, upon closer inspection, been revealed as a cage."

Whether the pedestal of protective legislation is a cage or a saving fortress is now largely an academic question. There is real irony in the position of those, such as the AFL-CIO, which oppose the ERA because it would invalidate protective legislation.

Citing Title VII of the 1964 Civil Rights Act, the courts have struck down many laws which are merely restrictive of women and have extended to men statutes which are beneficial. Ratification of the ERA would be a hearty confirmation of the direction in which the courts are now moving. It would also prevent any backsliding into sex-based qualifying restrictions.

Privacy

Because of the fundamental principle behind the ERA (the law must deal with

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insists women have chairs during rest periods (required in 45 states) and provide no child-bearing and pregnancy complication benefits under company temporary disability insurance? (Only New Jersey and Rhode Island require these benefits.)

Provisions which seem purely advantageous to women often work against them, probably contrary to the good faith intentions of the early 20th Century drafters of these laws.

In a series on the ERA in the Seattle Post-Intelligencer, reporter Susan Paynter cited the case of a woman in Oregon who was denied a job as a press operator. The job went to a man with less experience because the union contract required that women be allowed two 10-minute rest breaks.

Finally, advocates of the ERA ask how all this protection has served to advance the position of the ever increasing number of women who are in the work force.

President Nixon's Task Force, relying on figures provided by the Bureau of the Census and the Bureau of Labor Statistics, reported that "sex bias takes a greater economic toll than racial bias."

"The median earnings of White men," the report continued, "employed year-round, full-time are \$7,396, of Black men \$4,777, of White women \$4,279 and of Black women, \$3,194."

"Women with some college education

the unique characteristics of individuals and not with a classification based on sex), some people seem to be afraid that men and women are soon to be sharing public restrooms and undressing together in barracks and public beach houses.

A petition drawn up by the Committee for the Preservation of Womanhood warned that the ERA "would wipe out women's right to privacy," in just these most private areas.

When asked if the ERA might involve this kind of integration, Aldave sighed and answered, "The question is ridiculous. The courts have clearly interpreted a constitutional right of privacy."

"They aren't going to sanction this parade of horrors," Aldave said. "It won't even get to the viewing stand. Anyone who brings this question up is using the worst sort of scare tactics."

Sen. Birch Bayh, an ERA supporter, agreed that the Amendment would not violate a person's right to privacy, which he said would extend into "military barracks and restrooms."

The Constitution does not actually guarantee a "right of privacy" on its face, though the Court has clearly interpreted such a right in the penumbra, or shadow, of the first, third, fourth, fifth, ninth and 14th Amendments.

In *Griswold v. State of Connecticut*, 381 U.S. 479 (1965), the Court held that a Connecticut law forbidding the use of

