

The High Cost of Sexual Equality



By Jeff Greenfield

In little more than a year, the deadline for adopting the Equal Rights Amendment will expire. Unless three more states ratify the amendment or Congress extends the deadline, the ERA will become the first amendment in more than 50 years to have been rejected by the states.

Why is this happening? Why, in the face of support from the last six presidents, both major parties, national committees, business and labor groups, and ratification by 30 states within a year of its submission, are prospects for final adoption so bleak?

One of the explanations, voiced by important forces in the women's movement, lies in a massive, well-financed lobbying campaign by the right wing. Phyllis Schlafly's STOP ERA group, the John Birch Society, the Ku Klux Klan, the Mormon Church have been identified as elements in this campaign. This is, in a perverse sense, a comforting explanation for the ERA's difficulties, since it invests a great deal of power in a malevolent force with ties to some of the least appetizing political forces in the land. But it has certain unconvincing qualities, such as the 1975 rejection of proposed state ERAs in New York and New Jersey, hardly bastions of right-wing political thought.

I want to suggest here another explanation for the troubles of the ERA. It is not a comforting one. But it may suggest not only a prescription for an important legal and political fight but a partial remedy for what ails much progressive thinking in our time. It focuses not on the activity of ERA opponents but on the claims of its supporters. And it rests on a simple premise: The advocates of the Equal Rights Amendment have not been telling the whole truth about what this amendment will do.

Consider the proposed National Plan of Action from last November's National Women's Conference at Houston. In its background discussion of the Equal Rights Amendment, the plan offers eight reassuring statements about what the ERA will *not* do. Five of these statements are either flatly false or are, at best, serious evasions of potential consequences.

(1) The ERA will not "give the U.S. Congress or the U.S. Supreme Court any powers that they do not now have." Of course it will. It's *supposed* to. The Congress will be given the power to enforce the amendment "by appropriate legislation," and the Court will be interpreting a new, needed, broad limit on the state's ability to make legal distinctions based on sex.

(2) The ERA will not "take away from state legislatures the right to legislate in any subject areas where they now have that power." Maybe not *subject* areas, but the ERA will, and should, sharply limit what the states can do within those subject areas (such as divorce law, work rules, child custody).

(3) The ERA will not "require that there be as many women as men in combat roles in the military service." This is Newspeak. What it *will* do, if the draft is revived, is subject women equally to military conscription and forbid sex from being used as *the reason* to exempt women from military service in combat roles. A strong woman will be carrying a gun and digging foxholes, a weak man will either be washed out or put behind a desk.

(4) The ERA will not "require mixed teams in contact sports in public schools." More Newspeak. Since the whole purpose of the ERA is to make sex a suspect classification, schools will no longer be able to keep a muscular woman off the football team simply because she's a woman. If Garo Yepremian can play football, why shouldn't a woman?

(5) The ERA will not "require the states to permit homosexual marriages." This fear is usually either brushed aside as absurd, or answered, as did NOW President Smeal on a *Meet the Press* interview, by showing that state courts interpreting state ERAs haven't required same-sex marriages to be legalized. Legally, the matter is a lot more complicated once federal courts begin to interpret a new constitutional provision making sex a "suspect classification." In 1961, when the Supreme Court considered laws banning interracial marriages, some states tried to argue that since these laws affected blacks and whites equally there was no denial of equal protection. The Supreme Court unanimously threw out these laws, holding that the 14th Amendment made race a "suspect classification." In plain English, when any public policy makes race a factor, the presumption is that the policy's unconstitutional.

With an Equal Rights Amendment in the federal Constitution, a same-sex lover has a very powerful case. "The only reason I can't marry this woman (man) is because I'm a woman (man). If I were of the opposite sex, I could marry. It's my gender—now a suspect classification—that forbids marriage." Maybe the Court will not accept this argument. Maybe the Congress will permit states to ban same-sex marriages, and maybe the example of Colorado, where homosexual marriages are now legal, will lessen the fears of same-sex marriages.

The point is that the ERA advocates know full well that the amendment would be less politically palatable if they conceded the uncertainty of its application.

But the difficulty of the argument is no reason to ignore it. The purpose of the ERA, after all, is to give constitutional meaning to one of the radical social upheavals of our time: the shattering of traditional boundaries surrounding the lives of women and men. This is a liberating upheaval, one which will make life for millions of women, including my daughter, better. But, like any upheaval, it has and will produce problems: the breaking of boundaries can produce pain and torment as well as joy. No one told southern whites that integration or the political emancipation of blacks would be an unalloyed joy. It was a trauma for them to have blacks in their classrooms, restaurants, and hotels, and it was a direct, forceful break in the federalist tradition for the federal government to put blacks on the voting rolls, much less call out troops to enforce desegregation orders.

Yet the argument for the Equal Rights Amendment seems at times to deny the obvious fact that centuries of patterns do not change without pain. It seems to imply that politics is a "plus-sum" game, that power can somehow be shifted toward one group without displacing any other group, that a social revolution can occur without radically upsetting lives built on pre-revolutionary rules. Curiously, we have little difficulty understanding the uncertainty in personal issues. The literature of today is filled with emotional storms sur-



PHOTOS BY JANIE EISENBERG

rounding decisions to become more assertive, to leave our families, to remain monogamous, to declare our sexual preferences. Why, then, do we pretend that there is some painless method of altering the balance of political power? What is the compulsion to sugar-coat the fact that when we change a deeply rooted idea about sex roles and power, we are going to upset a great many assumptions and therefore a great many people?

Part of it, as I suggested earlier, lies in a simple political calculation: that people are more likely to support the Equal Rights Amendment if we do not "confuse" them with reality. If we tell women that the ERA means an end to exemption from the draft or jury service, as well as increased legal rights, we may find some of them will not support the idea.

The more fundamental explanation, I think, lies less in the direction of deluding others and more in the direction of deluding ourselves. Politics is an awfully wearisome business, in part because causes never seem to stand still. It is at least an understandable defense mechanism to deny the complex, and to assert that *this* fight, *this* movement, is unambiguously good. It's painful to admit that causes we believe in might have results we did foresee and do not want. (Is it clear, for example, that effectively ending all-women colleges, which the ERA *might* require, is a "good thing" for women? If men could enter women's golf and tennis tournaments, which the ERA *might* require, would this help develop role-models for young girls?) The point is not to raise a "parade of horrors" to frighten away support from the Equal Rights Amendment, but to acknowledge what most people know anyway: that political change is a complicated process where the white hats and black hats aren't always neatly divided along correct lines.

I don't know that an honest accounting of the ERA by its supporters would improve the chances of ratification; maybe if people had an honest portrayal of its results, there would be less chance of victory. Maybe the reassuring half-truths will be more effective. But we will lose as much by sneaking a legal revolution into our Constitution. The breaking of sexual role limits is indeed a radical change in the way we live; the ERA is the political recognition of that change. That recognition will have costs, and it will do no good to pretend otherwise. Either the United States is prepared to write sexual equality into its basic character, or it is not. I don't think we're going to win this fight by patting Americans on the back, telling them that they won't feel a thing. They will. That's what the shouting's all about. ■