United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

Vol. 124 WASHINGTON, WEDNESDAY, JULY 19, 1978 No. 109

RATIFICATION OF EQUAL RIGHTS AMENDMENT

● Mr. EMERY. Mr. Speaker, yesterday the House Committee on the Judiciary considered the House Joint Resolution 638, a measure designed to extend the ratification period during which States may ratify the Equal Rights Amendment.

House Joint Resolution 638 in its original form would have doubled the original ratification period of 7 years. It was clear that such a lengthy extension would not be approved in committee. My colleague from Maine, BILL COHEN, engineered an effective compromise amendment which provided an extension until June 30, 1982. This compromise amendment was accepted by the House Judiciary Committee yesterday afternooon, and early last night House Joint Resolution 638, as amended, was favorably reported to the full House by a vote of 19 to 15.

In light of the fact that the extension issue continues to be a controversial subject and will shortly be considered by the full House, I request that BILL COHEN'S excellent statement in support of the compromise resolution be inserted in the RECORD at this point. BILL'S thoughtful and persuasive comments, in my judgment, are worthy of the attention of all Members and citizens who are committed to the important goal of realizing equal rights for all of our citizens.

The Cohen statement follows:

STATEMENT OF HON. WILLIAM S. COHEN

It is clear from the debate today that we are negotiating our way up a path that is not fully cut, and one that is only partially lighted. The lack of clarity in the law is compounded by the intensity of emotion generated by advocates and opponents of the matter before this committee.

There are essentially two questions before us—one of power, one of policy.

According to the Justice Department, Congress has the power to determine a reasonable period of time for the ratification of a constitutional amendment when initially passed by Congress, and the power to determine what is reasonable when no time limit is specified—and according to the Justice Department, it has the power to extend a time period when it is not a substantive part of the amendment itself, but in the resolving clause as is the case of the equal rights amendment.

I believe Congress has the power to extend and the critical question, the one that I and the other members of the committee have been struggling with, is the one of policy—of fairness, of equity—what is the appropriate course of action to follow taking into account the importance of the question, the viability of the debate, the contemporaneity of the issue, and whether events and circumstances have so changed that the amendment is no longer relevant to current events or to the conception that inspired its original passage?

Since this is a congressional question rather than a judicial one, I think we should place this issue in a larger time frame of our history as a Nation.

In one of Abigail Adams' letters to her husband, John, she encouraged him to modify the British laws and customs that dictated the near total subordination of a woman's status and identity to that of the man. She asked him to "remember the ladies."

Well, something happened on the way to the convention—neither Adams, nor Jefferson, nor Madison, nor Hamilton seemed to remember the ladies—they were not included in the Constitution, and women have been struggling for nearly 200 years to secure the basic rights that are guaranteed to men, ones that we accept as self-evident truths.

One of the principal arguments against the equal rights amendment and any extension is that the amendment is unnecessary—that many, if not most of the rights have been granted or are being granted by statute or judicial decision or could be achieved through an expanded interpretation of the 14th amendment. In other words, this amendment will simply clutter up the Constitution.

It is written in the Declaration of Independence that we hold these truths to be self-evident—that all men are created equal. Well, we have learned through the painful experiences of history, including a bloody Civil War, that not all men were created equal in the eyes of the law and it took the 13th and 14th amendments to clutter up the Constitution and declare that the color of one's skin was not a rational or fair determination of one's rights.

Today, we have many laws that seek to eliminate an irrational or prejudicial bias against women. There are many more that remain. I submit that the 27th amendment to the Constitution will be no more redundant for women than the 13th and 14th amendments were for ethnic or racial minorities. I maintain this is much more than a symbolic gesture, but if it were only symbolic it would be no less important. Our lives, our values, our social conscience are strongly influenced by symbols. "The flag is a bit of bunting that men have opened their veins for" because it is a symbol of those virtues and those values without which life is not worth living.

The thrust of the amendment is to allow each person to achieve the highest level of his or her potential. Nothing could be more fundamental than allowing each individual the opportunity to reach as high as his or her talent will allow.

Opportunity for achievement should not be based upon quotas or upon race or religious beliefs or upon gender—but upon merit and qualification—upon ability.

Justice Holmes once noted: "The hell of the old world's literature was when people were taxed beyond their powers; but there is a deeper abyss of intellectual asphyxia—when powers conscious of themselves are denied their chance."

This is at the heart of the matter. That not just for years, not just for generations, but for centuries, women have been regarded as being less than deserving of full and equal rights and responsibilities in our societies. That powers conscious of themselves have been denied their chance.

By sheer accident of birth, by an uncalculated fusion of chromosomes, a majority of the citizens in our society, regardless of physical ability, regardless of intellectual capacity, regardless of their potential for social contribution, are granted different rights, enjoy greater preferences, and suffer greater prejudices.

Let me just say a word about responsibilities, for that is the corollary to rights. I not only want to remember the ladies, I want to remember the men. When I was practicing law, I handled my share of domestic cases. Nothing was more frustrating to me or struck me as being unfair than the rule that the mother was automatically entitled to an award of custody—irrespective of the facts, as to the love, the care or the devotion of the father, the closeness of his relationship to his children. He was presumed by law to be inferior in his capacity to care for his children.

That is not fair or equal treatment to the men in our society, but it is the inevitable result when we insist upon following a rule of thumb instead of a rule of reason, when we insist upon the mechanical application of rules that are rooted in the past, or sunk in the mire of prejudice.

The issue, we are told, is not the substance of the equal rights amendment, not the merits, but the process and the procedure.

I mentioned at the outset that it is my belief that Congress has the power to consider whether or not to extend the time frame of a proposed constitutional amendment, and that the critical issue is one of policy.

And so in weighing the equity of a policy that we are given the choice of pursuing or foreclosing, I believe we must consider the centuries of discriminatory policies which over the years have denied women a separate legal existence if they were married, denied their right to own or sell property, denied them the right to vote and to the present day has denied them the right to equal participation and responsibility in our society.

I conclude that in fairness, as a matter of equity, a period of extension should be granted—to allow a continuation of the debate in a rational and informed fashion.

And for these reasons I urge the adoption of the amendment.