**The Equal Rights Amendment –**

**Why the Lag?**

The Equal Rights Amendment is an amendment to the U. S. Constitution first proposed in 1923 as what was then thought by many to be the logical rejoinder of the passage of the Nineteenth Amendment of 1920, which granted women the right to vote. eventually buried in committee in both Houses of Congress, it finally came up for a vote in 1946 when it was narrowly defeated in the full senate, 38-35. Four years later, a version of it did pass in the Senate, but with a rider attached nullifying its legal protection aspects. In 1971, it passed a House vote with no limiting stipulations, 354-24, with the Senate following through in 1972, approving it 84-8.

Requiring ratification by three-quarters, or 38 of the state legislatures, by 1979 it had earned the approval of 35 states before failure to gain any more before the ratification procedure had reached its expiration date. Afterward, Congress extended the expiration date to 1982 but then failed to persuade any new states to go along. In the meantime, 5 of the original 35 states had declared rescissions of their ratifications, although those efforts have been widely understood as constitutionally invalid.

Throughout the 80’s into the early 90’s, unsuccessful attempts were made to reinitiate the amendment on the floor of Congress.

In a separate development, a three-state strategy was developed by members of Congress led by Representative Robert Andrews (D-NJ) in 1994, according to which the remaining non-ratifying states would be appealed to ratify the amendment until three more ratifications were gained , at which time Congress would appeal for another extension of the amendment’s ratification period to include the new ratifications and up the number to the required 38, thus setting the stage for Congress to promulgate the amendment as the Twenty-Eighth Amendment. This strategy gained little traction until a surge in support for it after the 2016 presidential election led to its eventually garnering three more ratifications – Nevada, Illinois, and Virginia – had achieved the first phase of the strategy. What remains is for Congress to move to extend the expiration date to include the ratifications and also fend off any eventual claims as to the validity of the five states whose legislatures later claimed to have rescinded their ratifications.

Precedence favors the denial of those claims since the Constitution does not accord to states the authority to rescind.

It is an open question whether Congress has the right to extend the expiration dates of amendment ratification processes it has previously set. In the first place, there is no constitutional requirement to set time limits for the process. Moreover, if a time limit is included in the text of the proposed amendment itself, it would be off limits to Congress to extend it short of reinitiating the entire process. In this case, as in some others, the time limits were set not in the text of the amendment, but only in the description of the ratification process. It is thought by many that this makes extension legally plausible. The latest attempt by Congress to extend the deadline in order to enact the ERA was blocked by the Senate on April 27th, 2023.

The main and most successful resistance to the ERA movement came from Attorney Phyllis Schlafly (1924-2016), a fellow of The American Enterprise Institute, a covert member of the John Burch Society, and commonly described as a paleo-conservative Christian nationalist. By her efforts, the Republican party removed support for the ERA movement from their 1980 presidential Convention platform, even while the Republican former First Lady Betty Ford had been a prominent spokesperson for the movement, openly supported by Gerald Ford and Richard Nixon as well during their presidencies. Probably due to Schlafly’s efforts, Republican presidential nominee Ronald Reagan campaigned against the ERA, even though he had supported it during his tenure as governor of California.

Schlafly’s outward tack was to appeal to disaffected suburban housewives based on the fear of the loss of certain privileges women now enjoyed that some were insinuating would disappear if the ERA passed, such as the exemption of women from required military service, the favoring of mother’s parental rights in divorce, special restrooms and privacy accommodations for women in public places, and advent of a gender-neutral culture where femininity itself would be suppressed and motherhood genericized.

Notwithstanding the fact that there was earlier progressive opposition to the ERA in the forties which included some unions and even Eleanor Roosevelt herself, (an opposition she eventually withdrew in 1946), I dismiss the purported reasons of Schlafly on account of the fact that she spent her life as a generic hired gun for conservative causes of all kinds, even racist ones. In fact, she was quite successful in manipulating the electorate in this case, helping Reagan to outcompete Carter for the female vote in 1980.

The more important question, however, is what reason there really is, was, or has ever been, to oppose the Equal Rights Amendment. It is a simple amendment composed of one single, elegant sentence:

***“Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”***

Keep in mind that this sentence refers to more than half of all the people in our country. Why would it not be an easy decision to guarantee equal rights for them under the law? Some say that, born in 2023 just after women’s suffrage had been gained, its time had come and gone and was no longer either relevant or necessary; or that the Equal Protection Clause of the Fourteenth Amendment renders it redundant. But just as the Equal Protection Clause extends protection to all persons, not citizens alone, during a time when former slaves were still not granted citizenship, thus serving as an added hedge against racist application of the law as well as racist legislation, the ERA would serve as an added hedge against sexist application of the law as well as sexist legislation.

The two most commonly cited groups still opposing the Equal Rights Amendment are the United States Conference of Catholic Bishops and “corporate America”. Both of these cases are puzzling for reasons of their own.

Regarding the first, Catholic doctrine fully and openly endorses the equality of male and female human beings as rational peers equally expressive of God’s own image:

God created mankind in his own image;
    in the image of God he created them;
male and female he created them. (Genesis, 1:27)

The Bishops acknowledge this and therefore brook no opposition to the denotative meaning of the ERA clause itself. What they fear is certain pragmatic repercussions which prompt them to oppose the ERA for reasons unrelated to its denotative meaning: the weakening of the family, the proliferation of demand for abortion, the unbridled advocacy of surgical and hormonal methods for treating gender dysphoria, and the redefining of sexual discrimination to legal extremes..

In theological matters, Catholic Bishops as priests are well-trained to attend primarily to the truth-value of scripture as bearing its primary and most sacred value in accordance with the words of Jesus:

God is spirit; those who worship God should worship him in spirit and in truth. (John, 4:24)

I take that to suggest to Bishops that Catholic worship, teaching, and social guidance should be according to direct truth-oriented dialog primarily dependent upon denotatively transparent truth-claims rather than behind-the-scenes wranglings based on institutional convenience, in which the truth is brushed aside as irrelevant.

In this secular matter, the Bishops evidently appear to be unconcerned with the truth of the claim they are evaluating and treating it as some sort of Pandora’s Box or Trojan Horse. Evidently, they fear the inconvenience of it, and I sympathize with their concerns mentioned above, although I don’t see how such fears would be justifiably associable with a simple declaration of the equality of women under the law. In particular, defense of the equality of women should more easily be seen as promoting family life than denigrating it, leading to a culture of greater mutual respect between the sexes as coequal collaborators.

In regard to the second charge that the opposition to the ERA is backed by “corporate America”, whereas it is difficult to find direct acknowledgment of this, one may easily imagine that one of the main effects of enactment of the ERA would be a more rapid remediation of the male-female pay gap, which will cost corporate money. But it should also in the same vein promote more corporate support for pregnant women as well as young parents, both mothers and fathers. As fundamental to investment in human resources. Which, in the longer run, would come back to benefit corporations themselves.

To be sure, it is hard to know what kinds of new legal activity will emerge from the passing of the ERA. But this is true of the passing of any new legislation without exception and is no reason to put the brakes on affirming in law a claim we know to be right and just, a claim based in truth most fundamental to what it is to be human.