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LEGISLATIVE PLATFORM

Alaska Commission on the Status of Women

February 1983

Introduction

The Alaska Commission on the Status of Women commits itself to **legislative action** and **advocacy** to secure equal opportunity, equal access, and equal treatment for women in all areas. Women's issues are no longer secondary concerns to be shunted aside when state and national leaders develop and implement public policy. The **economy, education, housing, jobs, criminal justice**, and **peace** are all women's issues, as well as the traditional areas of equal rights, reproductive rights, health, and the elimination of poverty and hunger. The following statements represent the Commission's principles for action on state and national legislative issues. Implied in each statement is support for effective administration, citizen participation, and adequate budget appropriations to secure these objectives.

The positions are based on Commission study and testimony provided by women throughout the state at conferences, meetings, and teleconference hearings.

Advocacy

The work of advocating for women's issues must continue. The majority of those who have addressed their concerns to this Commission have testified to the importance of having a voice for women in Alaska. Consequently, the Alaska Commission on the Status of Women formally proposes and supports the continuation of a women's commission in this state beyond the current termination date of June 30, 1983.

Equity

The Commission is committed to equity for women in all areas. In keeping with this position it supports:

- passage of the Equal Rights Amendment;
- an end to discrimination on the basis of parenthood, marital status, or sexual preference;
- curtailment of veterans' preferences which result in discrimination against women and obstruct equal access to employment, housing, credit, or other essential services and opportunities; and
- legislative reform at the national and state level to prohibit discrimination on the basis of sex or marital status in insurance access, rates, benefits, or coverage.

The Commission opposes budget cuts at the state or federal level which impoverish social programs that have proven effective in assisting women to escape poverty.

Women in Public Life

Women can and must assume the responsibility of leadership roles in the public policy and judicial positions of our state and nation. The Commission therefore supports:

- appointment of more women and minorities to judgeships and policy-making positions throughout the public sector;
- appointment of officials who have an understanding of and a demonstrated commitment to improving the status of women;
- encouragement, recruitment, and training of women as candidates for elected and appointed positions; and
- recognition of women's accomplishments through declaration of Women's History Month at the national level.

Children and Youth

The Commission supports a national and statewide policy on child care, with accompanying legislation and adequate appropriations to address the vital need for quality, affordable, accessible care for children of employed parents and for respite care for developmentally disabled and handicapped children. The Commission supports legislation and policy directives which would:

- address the pressing Alaskan problem of insufficient and inadequate child care facilities and child care programs, and fund an adequate administrative capacity at the state level to review and monitor both;
- establish meaningful state licensing standards for child care facilities and caregivers;
- provide continuing training for caregivers;
- establish an ongoing state office to address the needs of children and youth; and,
- provide for child care facilities in state office buildings.

In addition to the above the Commission urges the introduction of legislation or directives to:

- require withholding of wages by employers under direction of the Child Support Enforcement Agency, and withholding of tax refunds by the Internal Revenue Service for child support payments;
- permit granting of sick leave for parents when children are ill;
- permit granting of leave to new parents for childrearing purposes without loss of seniority or benefits;
- permit state board and commission members to pay for child care as a per diem type expense; and
- require public and private agencies to supply medical information regarding genetic disorders and diseases to prospective adoptive parents, to physicians, and to the individual who is the offspring of an incestuous union.

The Commission supports the use of public funds for child care programs, tax incentives for employers who provide child care as a benefit, and encouragement of the development of private, non-profit child care programs.

The Commission also supports development of adequate programs to deal with runaway youths.

Health

The Commission will continue its efforts to focus attention on health needs of women, and on health education in the schools. In addition the Commission will continue to support:

- protection of women's rights to privacy and freedom of choice regardless of age;
- state funding for abortion for low income women;
- increased funding for reproductive health services including family planning, pre- and postnatal care, abortion, alternative birthing centers, and community health clinics;
- comprehensive sex education programs;
- legislation to license social workers;
- legislation to establish health and welfare safeguards related to the workplace, such as protection for operators of video display terminals (VDTs);
- protection of health programs jeopardized by federal cutbacks and policy changes; and
- establishment of a state health insurance program to provide for the health needs of residents who have no access to other insurance coverage.

Minority and Rural Women

Minority and rural women face unique circumstances in Alaska. Cultural and geographical conditions require special sensitivity and awareness on the part of policy makers. Through the sponsoring of regional women's conferences, the Commission has attempted to assist rural and minority women to identify their needs and strengths, and to communicate their concerns to policy makers and administrators. The Commission will continue its efforts to ensure employment of women, especially rural, Native, and other minority women on major Alaskan projects. In addition it supports:

- protection of the subsistence lifestyle and the fish and game resources necessary to support it;
- increased communication between Native and non-Native women to promote an understanding of each other's lifestyles;
- networking among women's groups of diverse backgrounds and perspectives; and
- protection and strengthening of culturally sensitive programs for all minority groups.

Homemakers

The Commission continues to support:

- full funding of displaced homemakers programs, other education and training programs for displaced homemakers, and Women's Resource and Crisis Centers;
- economic security for a spouse who chooses to work solely in the home; and
- national, state, and local laws and policies which protect and reflect the contribution of the homemaker.

Employment

The Commission is committed to increasing women's employment opportunities, to fighting discrimination in employment and training, and to full funding of child care assistance to enable parents to support their families or to seek employment. The Commission specifically supports improvement of the state's own personnel record in the following areas:

- increasing access for women to higher paying positions in state government;
- developing career ladders for women to enable them to move out of dead end jobs;
- requiring the use of the "5+5" personnel procedure (This procedure allows a manager to select from not only the top five scorers in a class, but from the top five qualified women and minorities as well. Because the veterans' preference of adding five points to their score has aided primarily white men, this procedure opens up access to employment for qualified women and minorities.) in departments where woman and minorities are underutilized;
- assuming a leadership role in raising and addressing the issues of pay equity and comparable worth; and
- increasing women's access to training opportunities within departments.

The Commission is committed to making employment arenas free of sex bias and discrimination. In accordance with this it will continue its efforts to ensure employment of women, especially rural, Native, and other minority women, on major Alaskan projects and in major Alaskan industries. The Commission supports:

- the use of written affirmative action programs, with goals and time-tables for hiring and promotion of women and minorities;
- the elimination of job segregation and the establishment of the principle of equal pay for work for comparable value; and
- federal, state, and local laws prohibiting sexual harrassment.

The Commission will continue to support employment training and vocational education programs which:

- provide training for traditional and non-traditional employment with a special emphasis on better paying jobs for women;
- mandate the elimination of sex stereotyping and sex discrimination in access to training and placement; and
- provide participant stipends, transportation, child care, and other support services needed by trainees.

Education

All legislation, regulatory reform, and enforcement activity relating to sex equity in education are of primary importance to the Commission. Working in concert with other women's rights and educational organizations the Commission supports:

- vigorous implementation and enforcement of the Alaska statute prohibiting sex discrimination in education (AS 14.18). (Particular concern has been expresed about non-compliance at the University level.);
- increased availability of higher educational opportunities in rural Alaska which are geared to the needs and interests of the community. Courses and programs should not be altered without input from the community; and
- efforts of the Alaska Native Women's Statewide Organization to make bilingual classes mandatory where desired by the parents.

Criminal Justice

The Commission supports full funding of domestic violence and sexual assault programs. It supports adequate funding for rehabilitation programs for perpetrators of violence. The Commission supports more training for judges, attorneys, and other criminal justice system personnel in matters relating to domestic violence and sexual assault. This is especially critical in areas of rural Alaska.

The Commission supports:

- legislation to provide for mandatory participation in treatment and rehabilitation programs as part of sentencing for convicted sex offenders. Such treatment should be in addition to and not in lieu of time to be served;
- legislation to repeal limitations on awarding compensation to victims of violent crimes when the perpetrator is a relative or member of the same household; and
- funding of legal assistance for low income women, particularly through adequate funding of the Alaska Legal Services Corporation.

The Commission also supports a review of state laws which affect victims of violent crimes to determine if they are adequate to protect the victims' constitutional rights. Particular concern has been expressed by the Alaska Native Women's Statewide Organization about implementation and enforcement of AS 12.25.030(B).

Finally, the Commission supports development of an Alaskan correctional system which is adequate to house and rehabilitate persons convicted of violent crimes, and which provides appropriate, equal, and adequate provision for women as well as for men.

Peace

As representatives of women we are keenly aware that no issue is or has ever been more important to women than concern for life. We are also concerned that military spending increases are continually made at the cost of social programs. As women constitute a disproportionate share of the poor, the elderly, and the vocationally untrained, they are unduly affected by such decisions.

For these reasons the Commission:

- urges the Alaska Legislature to establish a ballot initiative calling for bilateral nuclear freeze; and
- supports the concept of a National Peace Academy.

Economics

The Commission supports:

- aggressive efforts to ensure equal access for women to consumer and commercial credit;
- increased availability of loan programs for women starting or running their own businesses;
- enforcement of government regulations designed to increase federal, state, and local procurement efforts with women-owned firms; and
- improvements in public and private pension systems necessary to ensure that women reach retirement age with economic security.

Commission Members

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Barbara Dale, vice chair, Juneau
Evalee Azar, Anchorage
Pat Berkley, Anchorage
Dorothy Jones, Eagle River
Roxane Lee, Petersburg
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"No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin."
Article I, Section 3
of the Alaska Constitution

ADDRESS CORRECTION REQUESTED

February 3, 1983

REPORT OF THE SENATE COMMITTEE ON HEALTH, EDUCATION AND SOCIAL SERVICES RE SJR 1.

Mr. President:

The Committee on Health, Education and Social Services has had under consideration SJR 1, by Senator Vic Fischer and other senators. The majority of the Committee recommends that SJR 1 do pass.

Recently, the Committee has received hundreds of messages and has heard public testimony, pro and con, for approximately two and one-half hours.

While testimony before the Committee was divided, messages of support were delivered on behalf of numerous organizations with large Alaska memberships, including NEA-Alaska, the American Association of University Women (Alaska Chapter), the League of Women Voters, and Alaska components of the National Organization of Women (NOW).

ERA is not a new issue in Alaska, despite the recent rush of public input. This legislature was one of our nation's first to ratify the originally submitted ERA. And, in 1972, Alaska voters approved our "little ERA" -- the alaska constitutional amendment which prohibits discrimination on the basis of sex.

As noted in SJR 1, the daily lives of Alaskans show no evidence of ills or evils, attributable to the people's approval of the State constitutional ban on sex-based discrimination, which ERA opponents foresee for the nation if ERA becomes part of the national Constitution.

Some opponents of SJR 1 say that further consideration of the issue would be "a waste of time and money."

Your Committee respectfully disagrees with that view. Any assumption that legislative inaction on ERA would quell further consideration of this vital issue is false. This issue is not going away; it should not go away. In the Congress, over 200 representatives have co-sponsored a House joint resolution providing for the resubmittal of a national ERA to the state legislatures for ratification. Across the country, ERA proponents are redoubling their efforts. They see a changed legislative landscape -- a landscape which finds new faces in state legislatures following the defeat or retirement of many key legislators who opposed ERA in the past.

Opponents argue that the goal of equal rights for women, however laudatory, can be attained through other means, e.g., through a piece-by-piece modification of state and federal laws and regulations which discriminate, or permit discrimination, against women. Your Committee finds that such attempts, piece-by-piece, to ameliorate the problem of sex-based discrimination are bound to be unsatisfactory.

In the words of a leading treatise on ERA:

> Over the years, some proponents of women's rights have thought that discrimination could be ended most effectively if legislatures prepared men and women gradually for equality by a series of step-by-step reforms. . . However such suggestions unrealistically assume a delicacy and precision in the legislative process which has no relationship to actual legislative capability. More importantly, the process is unlikely to be completed within the lifetime of any woman now alive. Such a method requires multiple actions by fifty legislatures and the federal congress, by the courts and executive agencies in each one of these jurisdictions, and by similar government authorities in numerous political subdivisions as well. The government machinery would have to be mobilized to repeal or modify the statutes and practices in scores of different areas where unequal treatment now prevails. To be comprehensive such efforts would require a tremendously expensive, sophisticated, and sustained political organization, both nationally and within every state and locality. Campaigns to change the laws one by one could drag on for many years, and perhaps in some areas never be finished. "The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women", by Barbara A. Brown, Thomas I. Emerson, Gail Falk, and Ann E. Freedman, 80 Yale Law Journal 871, 833 (1972).

The authors of the quoted treatise went on to point out the "need for a single coherent theory of women's equality before the law, and for a consistent nationwide application of this theory", and found that "(t)his is scarcely possible through legislative change alone." Ibid.

We Americans have inherited from our nation's founders the federal constitutional amending process. It provides for the

incorporation, into our national Charter, of changes in the basic governing assumptions of our country. The use of this process to record and symbolize such changes, and to help make those changes tangible in the lives of our people, is well understood insofar as the right of every American to be free from discrimination on the basis of race, color, religion or national origin is concerned. The use of the same process in the case of sex-based discrimination thus fits comfortably into our American constitutional tradition.

In our judgment, some opponents of ERA and SJR 1 grossly overstate their case and adopt an alarmist tone not supported by reason or experience.

For example, they have asserted that ERA will deprive people of privacy in the performance of personal bodily functions.

However, under the federal and state constitutions, an independent right of privacy has been recognized. At the federal level, the right of privacy was recognized by the Supreme Court of the United States in Griswold v. Connecticut and other decisions. The federal right of privacy is derived from a combination of various more specific rights in the First, Third, Fourth, Fifth and Ninth Amendments. In Alaska, the right of privacy rests upon an explicit State constitutional amendment approved directly by vote of the people.

The independent privacy right permits the separation of sexes in public rest rooms, in the sleeping quarters of prisons or other public institutions, and in other situations which involve disrobing, sleeping or the performance of personal bodily functions. Police practices by which a search involving the removal of clothing could only be performed by a police officer of the same sex would remain permissible.

ERA opponents have also made exaggerated claims that ERA will cause husbands to stop supporting their wives, or compel women who choose to be homemakers to change their lifestyles, or eliminate any right to alimony in divorce decrees, or the right to child support.

Again, neither reason nor history supports these claims. For example, nothing in ERA would prohibit an award of alimony to a spouse of either sex who has been out of the labor force for a long time in order to make a non-compensated contribution to the well-being of the family unit. Nothing in ERA would prohibit a court from ordering child support to the spouse having custody of a dependent child.

ERA speaks only to discrimination under state or federal law; it does not speak, or purport to regulate, voluntary practices of individuals in their familial relationships. Indeed, in the realm of marriage and the family, the greatest

influences upon actual behavior are the social customs, economic realities, religious traditions and practices, and individual preferences and economic status of the people involved. ERA would not regulate such voluntary behavior of individuals in their private lives. The Alaska experience since 1972 proves this.

In summary, both the research and the history of the State amendment since 1972 make manifest that opponents have exaggerated alarmingly the claims of ERA's effect in areas traditionally protected through the constitutional concept of privacy or with regard to personal lifestyle choices of free Americans.

If one compares the history of ERA with the long struggle for women's suffrage, or the longer struggle -- still in progress -- against race-based discrimination, the ERA movement is relatively young. Resubmission by the Congress of ERA, for consideration by state legislatures, would be appropriate. This issue is not fading away; if anything, momentum for the amendment appears to be growing. Legislatures in the '80s should have an opportunity to consider this vital issue, without being restricted by a few adverse decisions in certain states in the past. As a leader in the efforts to bring sex-based discrimination to an end, Alaska can cite its own experience and memorialize the Congress to give state legislatures a new opportunity to ratify ERA.

Respectfully submitted,

Joe P. Josephson, Chairman

Victor Fischer, Vice-Chairman

H. "Pappy" Moss

MINORITY REPORT OF THE SENATE COMMITTEE ON HEALTH, EDUCATON AND SOCIAL SERVICES RE SJR 1

Dear Mr. President:

The undersigned Senators who are members of the Senate Committee on Health, Education and Social Services have carefully considered the implications of SJR 1 to the state of Alaska and its citizens and submit this minority report recommending that SJR 1 does not pass.

Even though Alaska was among the first states to ratify the first Equal Rights Amendment, we believe that events since that time demand that this body re-examine carefully the implications of that amendment to Alaska, the legislature and Alaskan citizens. We submit that the law has changed substantially since the article cited by the majority report was published in 1972, the same year that the amendment was passed out of the Congress and ratified by Alaska.

As correctly noted in the majority report, Alaska in 1972 amended its state constitution to specifically prohibit discrimination on the basis of sex. Therefore, clearly Alaskans do not need the additional protection of the Equal Rights Amendment in the federal constitution. And while as the majority report states, no particular problems have developed from this addition to our state constitution, it cannot be analogized to the federal constitution as will become evident in the following discussion.

The Equal Rights Amendment is unnecessary. Since 1971, the United States Supreme Court has routinely applied the protections of the 5th and the 14th Amendments to women and to gender based discrimination to invalidate many state and federal actions.[1] For example, the United States Supreme Court recently invalidated a Louisiana law that gave a husband exclusive control over the disposition of property owned by both spouses during the marriage

[1] Reed v. Reed, 404 U.S. 71 (1971). Frontiero v. Richardson, 411 U.S. 677 (1973). Board of Education v. La Fleur, 414 U.S. 632 (1974). Stanton v. Stanton, 421 U.S. 7 (1975). Taylor v. Louisiana, 419 U.S. 522 (1975). Weinberger v. Wiesenfeld, 420 U.S. 636 (1975). Turner v. Department of Employment Security, 423 U.S. 44 (1975). Craig v. Boren, 429 U.S. 190 (1976). Califano v. Goldfarb, 430 U.S. 199 (1977). National Gas Co. v. Satty, 434 U.S. 136 (1977). Caban v. Mohammed, 441 U.S. 380 (1979). Davis v. Passman, 442 U.S. 228 (1979). Orr v. Orr, 440 U.S 268 (1979). Califano v. Westcott, 433 U.S. 76 (1979). Wengler v. Druggists Mutual Insurance Co., 100 S.Ct. 1540 (1980). Michael M. v. Superior Court of Sonoma County, 101 S.Ct. 1200 (1981). Kirchberg v. Feenstra, 101 S.Ct. 1195 (1981). There are several other lower court decisions which are not listed.

on the basis that it violated the Equal Protection Clause of the 14th Amendment.[2] It held that gender-based discrimination is unconstitutional absent a showing that the classification furthers an important governmental interest. To more fully understand this standard, the Court's ruling in Michael M. v. Superior Court of Sonoma County,[3] is important. This case involved an appeal by a young man who had been convicted of statuatory rape. He argued that the statute unlawfully discriminated against him on the basis of gender since men alone were liable. The Court said that where gender classifications realistically reflected the fact that the sexes were not similarly situated, such laws do not violate the Constitution.

In addition to the direct Consctitutional protections, the courts have also applied the protections of the Title VII of the Civil Rights Act of 1964 to prevent sex discrimination.[4] Title VII states that it is unlawful to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, sex, or national origin. Congress was able to apply its provisions to state actions by relying on its authority guaranteed by the 14th Amendment. There are other important laws which currently guarantee women's rights.

Title IX of the Civil Rights Act of 1964 which applies to all public education requires it to be free from discrimination based upon sex. The Equal Employment Opportunity Act of 1972 likewise prohibits sex discrimination and applies to all employers of at least 15 employees who are engaged in businesses affecting interstate commerce. States are prohibited from denying equal educational opportunities on the basis of sex by the Equal Educational Opportunities Act of 1974. The Equal Pay Act of 1963 applies to all federal and state employers, as well as to employers engaged in interstate commerce. The Equal Credit Opportunity Act of 1974 applies to all creditors and prevents discriminatory credit practices. For these federal laws to be enforceable against states and employers engaged in interstate commerce, the Congress must have Constitutional authority to enact them. In all of these cases, the courts have uniformly upheld Congress' authority.

This becomes important to our position, because even if the Equal Rights Amendment was to be ratified, the laws implementing it would still need to be enacted by Congress. It is difficult to imagine what other areas important to the majority of Alaskans would become law as a result of the Equal Rights Amendment.

2 Kirchberg v. Feenstra, 101 S.Ct. 1195 (1981).
3 101 S.Ct. 1200 (1981).
4 Fitzpatrick v. Bitzer, 427 U.S. 445 (1976). Dothard v. Rawlinson, 433 U.S. 321 (1977). City of Los Angeles Dept. of Water and Power v. Manhart, 435 U.S. 702 (1978).

For the past ten years, there has been tremendous conflict over what the Equal Rights Amendment will accomplish. As evident in the Senate and House hearings and in a Harvard Civil Rights - Civil Liberties Law Review, Constitutional scholars cannot agree on the standard of review that would apply to sex discrimination cases under the Equal Rights Amendment. Some proponents of the amendment assert that it would not invalidate laws concerning homosexual relations, intersexual occupancy of sleeping facilities in public institutions, or women in combat, while others disagree.[5] Opponents to the amendment are equally convinced that it will.

In our opinion, these arguments miss the point. The fact that recognized authorities of the Constitution and the United States Supreme Court can entertain such diametrically opposing views of the same language demonstrates that it is impossible to give a confident interpretation until the amendment's ratification and subsequent judicial interpretations. Such judicial pronouncements may take literally hundreds of years.[6]

One important consequence that cannot be ignored is that the judiciary makes mistakes. If mistakes are made at the level of the Congress or the state legislatures, they can be rectified by the appropriate body. Where, however, mistakes are made in a judicial interpretation of a Constitutional provision the effects are drastic. Such mistakes can only be corrected by the death, the retirement, or change of mind of the Supreme Court justices, or by constitutional amendment. It is highly unlikely that any of these might occur.

Two remaining areas concern us and are the strongest

[5] The authors of the article relied upon by the majority report states:

"The Equal Rights Amendment will have a substantial and pervasive impact upon military practices and institutions. As now formulated, the Amendment permits no exceptions for the military. Neither the right to privacy nor any unique physical characteristic justifies different treatment for the sexes with respect to voluntary or involuntary service, and pregnancy justifies only slightly different conditions of service for women. . . . Women will serve in all kinds of [military] units, and they will be elgible for combat duty."

Brown, Emerson, Falk, & Freedman, The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, 80 Yale L.J. 871, 969, 978 (1972). Note, The Legality of Homosexual Marriage, 82 Yale L.J. 573 (1973).

[6] The 14th Amendment was designed to correct the injustices of an earlier United States Supreme Court decision holding that a black man was not entitled to constitutional protections even if he had been born a free man. Nothing really was accomplished until the civil rights movement of the 1960's. Decisions regarding racial discrimination are still being decided.

arguments against supporting SJR 1 and the Equal Rights Amendment; shifting legislative power to the federal judiciary and shifting states' rights to the federal government.

Passage of the Equal Rights Amendment would further erode the checks and balances originally built into the United States Constitution. Our founders established 3 branches of government and created a system of checks and balances to prevent the executive, the legislature or the judiciary from becoming too powerful. In recent years, the judiciary has usurped the authority of the legislature.[7] By definition, a constitutional amendment which limits what government can do places limitations on the legislature, because normally it is the legislature that has policy making authority. But constitutional amendments can only be interpreted by the judiciary. We believe that our constituency would find us more responsive to them than a small group of lawyers who are appointed to lifetime positions.

More importantly to us as Alaskans is that not only would the governmental power shift from the legislature to the judiciary, but it would also shift from the state to the federal government. This would be accomplished by section 2 of the amendment. The basic premise of the Constitution is to ensure that the people have as direct a say in the government as possible. It is our view that this can be best accomplished by leaving the most authority possible within the state legislature.

As elected state senators, we are particularly concerned over the amendment's encroachment on our legislative authority and on the shifting of governmental power from the states to the federal government and judiciary. While politically it is hard to oppose the Equal Rights Amendment, we do not believe that we can betray the trust that our constituency placed in us to be mindful of federal intrusions upon our authority. We believe that the protections sought by the majority of people are already included in the federal constitution, as evidenced by the recent United States Supreme Court decisions discussed briefly above and in the numerous laws already enacted by the Congress and applicable to the states. We further believe that any additional protection that our constituency identifies as necessary can be best addressed at the state level.

[7] Even the Alaska Supreme Court has decided issues that many believe belong to the legislature by deciding, for example, that Alaskans have the right to marijuana for personal use. If citizens are unhappy with that decision, there is literally nothing they can do, because the court has decided that this activity is protected by the Alaska Constitution. Whereas, if the decision had been made by the legislature, the citizens could speak on the issue. In a sense, this means that rather than Alaskans being governed by themselves, they are governed by an elite few.

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ERA speaks only to discrimination under state or federal law; it does not speak, or purport to regulate, voluntary practices of individuals in their familial relationships. Indeed, in the realm of marriage and the family, the greatest

influences upon actual behavior are the social customs, economic realities, religious traditions and practices, and individual preferences and economic status of the people involved. ERA would not regulate such voluntary behavior of individuals in their private lives. The Alaska experience since 1972 proves this.

In summary, both the research and the history of the State amendment since 1972 make manifest that opponents have exaggerated alarmingly the claims of ERA's effect in areas traditionally protected through the constitutional concept of privacy or with regard to personal lifestyle choices of free Americans.

If one compares the history of ERA with the long struggle for women's suffrage, or the longer struggle -- still in progress -- against race-based discrimination, the ERA movement is relatively young. Resubmission by the Congress of ERA, for consideration by state legislatures, would be appropriate. This issue is not fading away; if anything, momentum for the amendment appears to be growing. Legislatures in the '80s should have an opportunity to consider this vital issue, without being restricted by a few adverse decisions in certain states in the past. As a leader in the efforts to bring sex-based discrimination to an end, Alaska can cite its own experience and memorialize the Congress to give state legislatures a new opportunity to ratify ERA.

Respectfully submitted,

Joe P. Josephson, Chairman

Victor Fischer, Vice-Chairman

H. "Pappy" Moss

MINORITY REPORT OF THE SENATE COMMITTEE ON HEALTH, EDUCATON AND SOCIAL SERVICES RE SJR 1

Dear Mr. President:

The undersigned Senators who are members of the Senate Committee on Health, Education and Social Services have carefully considered the implications of SJR 1 to the state of Alaska and its citizens and submit this minority report recommending that SJR 1 does not pass.

Even though Alaska was among the first states to ratify the first Equal Rights Amendment, we believe that events since that time demand that this body re-examine carefully the implications of that amendment to Alaska, the legislature and Alaskan citizens. We submit that the law has changed substantially since the article cited by the majority report was published in 1972, the same year that the amendment was passed out of the Congress and ratified by Alaska.

As correctly noted in the majority report, Alaska in 1972 amended its state constitution to specifically prohibit discrimination on the basis of sex. Therefore, clearly Alaskans do not need the additional protection of the Equal Rights Amendment in the federal constitution. And while as the majority report states, no particular problems have developed from this addition to our state constitution, it cannot be analogized to the federal constitution as will become evident in the following discussion.

The Equal Rights Amendment is unnecessary. Since 1971, the United States Supreme Court has routinely applied the protections of the 5th and the 14th Amendments to women and to gender based discrimination to invalidate many state and federal actions.[1] For example, the United States Supreme Court recently invalidated a Louisiana law that gave a husband exclusive control over the disposition of property owned by both spouses during the marriage

[1] Reed v. Reed, 404 U.S. 71 (1971). Frontiero v. Richardson, 411 U.S. 677 (1973). Board of Education v. La Fleur, 414 U.S. 632 (1974). Stanton v. Stanton, 421 U.S. 7 (1975). Taylor v. Louisiana, 419 U.S. 522 (1975). Weinberger v. Wiesenfeld, 420 U.S. 636 (1975). Turner v. Department of Employment Security, 423 U.S. 44 (1975). Craig v. Boren, 429 U.S. 190 (1976). Califano v. Goldfarb, 430 U.S. 199 (1977). National Gas Co. v. Satty, 434 U.S. 136 (1977). Caban v. Mohammed, 441 U.S. 380 (1979). Davis v. Passman, 442 U.S. 228 (1979). Orr v. Orr, 440 U.S 268 (1979). Califano v. Westcott, 433 U.S. 76 (1979). Wengler v. Druggists Mutual Insurance Co., 100 S.Ct. 1540 (1980). Michael M. v. Superior Court of Sonoma County, 101 S.Ct. 1200 (1981). Kirchberg v. Feenstra, 101 S.Ct. 1195 (1981). There are several other lower court decisions which are not listed.

on the basis that it violated the Equal Protection Clause of the 14th Amendment.[2] It held that gender-based discrimination is unconstitutional absent a showing that the classification furthers an important governmental interest. To more fully understand this standard, the Court's ruling in Michael M. v. Superior Court of Sonoma County,[3] is important. This case involved an appeal by a young man who had been convicted of statuatory rape. He argued that the statute unlawfully discriminated against him on the basis of gender since men alone were liable. The Court said that where gender classifications realistically reflected the fact that the sexes were not similarly situated, such laws do not violate the Constitution.

In addition to the direct Constitutional protections, the courts have also applied the protections of the Title VII of the Civil Rights Act of 1964 to prevent sex discrimination.[4] Title VII states that it is unlawful to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, sex, or national origin. Congress was able to apply its provisions to state actions by relying on its authority guaranteed by the 14th Amendment. There are other important laws which currently guarantee women's rights.

Title IX of the Civil Rights Act of 1964 which applies to all public education requires it to be free from discrimination based upon sex. The Equal Employment Opportunity Act of 1972 likewise prohibits sex discrimination and applies to all employers of at least 15 employees who are engaged in businesses affecting interstate commerce. States are prohibited from denying equal educational opportunities on the basis of sex by the Equal Educational Opportunities Act of 1974. The Equal Pay Act of 1963 applies to all federal and state employers, as well as to employers engaged in interstate commerce. The Equal Credit Opportunity Act of 1974 applies to all creditors and prevents discriminatory credit practices. For these federal laws to be enforceable against states and employers engaged in interstate commerce, the Congress must have Constitutional authority to enact them. In all of these cases, the courts have uniformly upheld Congress' authority.

This becomes important to our position, because even if the Equal Rights Amendment was to be ratified, the laws implementing it would still need to be enacted by Congress. It is difficult to imagine what other areas important to the majority of Alaskans would become law as a result of the Equal Rights Amendment.

2 Kirchberg v. Feenstra, 101 S.Ct. 1195 (1981).
3 101 S.Ct. 1200 (1981).
4 Fitzpatrick v. Bitzer, 427 U.S. 445 (1976). Dothard v. Rawlinson, 433 U.S. 321 (1977). City of Los Angeles Dept. of Water and Power v. Manhart, 435 U.S. 702 (1978).

For the past ten years, there has been tremendous conflict over what the Equal Rights Amendment will accomplish. As evident in the Senate and House hearings and in a Harvard Civil Rights - Civil Liberties Law Review, Constitutional scholars cannot agree on the standard of review that would apply to sex discrimination cases under the Equal Rights Amendment. Some proponents of the amendment assert that it would not invalidate laws concerning homosexual relations, intersexual occupancy of sleeping facilities in public institutions, or women in combat, while others disagree.[5] Opponents to the amendment are equally convinced that it will.

In our opinion, these arguments miss the point. The fact that recognized authorities of the Constitution and the United States Supreme Court can entertain such diametrically opposing views of the same language demonstrates that it is impossible to give a confident interpretation until the amendment's ratification and subsequent judicial interpretations. Such judicial pronouncements may take literally hundreds of years.[6]

One important consequence that cannot be ignored is that the judiciary makes mistakes. If mistakes are made at the level of the Congress or the state legislatures, they can be rectified by the appropriate body. Where, however, mistakes are made in a judicial interpretation of a Constitutional provision the effects are drastic. Such mistakes can only be corrected by the death, the retirement, or change of mind of the Supreme Court justices, or by constitutional amendment. It is highly unlikely that any of these might occur.

Two remaining areas concern us and are the strongest

[5] The authors of the article relied upon by the majority report states:

"The Equal Rights Amendment will have a substantial and pervasive impact upon military practices and institutions. As now formulated, the Amendment permits no exceptions for the military. Neither the right to privacy nor any unique physical characteristic justifies different treatment for the sexes with respect to voluntary or involuntary service, and pregnancy justifies only slightly different conditions of service for women. . . . Women will serve in all kinds of [military] units, and they will be elgible for combat duty."

Brown, Emerson, Falk, & Freedman, The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, 80 Yale L.J. 871, 969, 978 (1972). Note, The Legality of Homosexual Marriage, 82 Yale L.J. 573 (1973).

[6] The 14th Amendment was designed to correct the injustices of an earlier United States Supreme Court decision holding that a black man was not entitled to constitutional protections even if he had been born a free man. Nothing really was accomplished until the civil rights movement of the 1960's. Decisions regarding racial discrimination are still being decided.

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arguments against supporting SJR 1 and the Equal Rights Amendment; shifting legislative power to the federal judiciary and shifting states' rights to the federal government.

Passage of the Equal Rights Amendment would further erode the checks and balances originally built into the United States Constitution. Our founders established 3 branches of government and created a system of checks and balances to prevent the executive, the legislature or the judiciary from becoming too powerful. In recent years, the judiciary has usurped the authority of the legislature.[7] By definition, a constitutional amendment which limits what government can do places limitations on the legislature, because normally it is the legislature that has policy making authority. But constitutional amendments can only be interpreted by the judiciary. We believe that our constituency would find us more responsive to them than a small group of lawyers who are appointed to lifetime positions.

More importantly to us as Alaskans is that not only would the governmental power shift from the legislature to the judiciary, but it would also shift from the state to the federal government. This would be accomplished by section 2 of the amendment. The basic premise of the Constitution is to ensure that the people have as direct a say in the government as possible. It is our view that this can be best accomplished by leaving the most authority possible within the state legislature.

As elected state senators, we are particularly concerned over the amendment's encroachment on our legislative authority and on the shifting of governmental power from the states to the federal government and judiciary. While politically it is hard to oppose the Equal Rights Amendment, we do not believe that we can betray the trust that our constituency placed in us to be mindful of federal intrusions upon our authority. We believe that the protections sought by the majority of people are already included in the federal constitution, as evidenced by the recent United States Supreme Court decisions discussed briefly above and in the numerous laws already enacted by the Congress and applicable to the states. We further believe that any additional protection that our constituency identifies as necessary can be best addressed at the state level.

[7] Even the Alaska Supreme Court has decided issues that many believe belong to the legislature by deciding, for example, that Alaskans have the right to marijuana for personal use. If citizens are unhappy with that decision, there is literally nothing they can do, because the court has decided that this activity is protected by the Alaska Constitution. Whereas, if the decision had been made by the legislature, the citizens could speak on the issue. In a sense, this means that rather than Alaskans being governed by themselves, they are governed by an elite few.

In summary, we ask that the Senate carefully weigh the true import of SJR 1 and not pass it.

Respectfully submitted,

Paul Fischer