

# Report on Equal Rights Amendment

Equal rights for women has received considerable discussion in our society in recent years. The Lutheran Church—Missouri Synod, recognizing the importance of this issue, adopted a resolution in 1973 which supports “the goal of giving women equal rights before the law” and which calls for “our people to inform themselves concerning the Equal Rights Amendment.” 1973 Resolution 9-11, “To Work Toward Equal Rights for Women,” reads as follows:

Whereas, We recognize that women have not always been accorded equal rights in our society; and

Whereas, The Equal Rights Amendment is under consideration in many states, having been accepted by some and rejected by others; therefore be it

Resolved, That we urge all of our people to inform themselves concerning the Equal Rights Amendment and that we work toward the goal of giving women equal rights before the law; and be it further

Resolved, That we ask the CTCR and the Commission on Social Concerns to study the issues involved.

In response to the request that the CTCR and the Commission on Social Concerns study the issues involved, the CTCR adopted the “Report on Equal Rights Amendment,” as prepared by its Social Concerns Committee. This report was published in the Feb. 1, 1976, issue of *The Lutheran Witness*.

Because the issue of equal rights for women, and more specifically, the Equal Rights Amendment, continues to be a subject of public debate, the CTCR once again is making available its 1976 “Report on Equal Rights Amendment,” with the hope that it will assist the members of the Synod in their study of this sensitive question.

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One of the issues of current concern now pending before the states is the proposed Equal Rights Amendment (ERA) to the Constitution of the United States of America. The Equal Rights Amendment reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." At this writing it has not been ratified by the requisite three-fourths (38) of the states, and advocates of the measure are now increasing their efforts to achieve the full complement of ratifications necessary to its adoption. In response to a specific request from The Lutheran Church—Missouri Synod "to study the issues involved" and to understand Synod's directive to "work toward the goal of giving women equal rights before the law" (1973 Convention Resolution 9-11), the Committee on Social Concerns herewith offers the following report on the Equal Rights Amendment.

Citizens of every shade of political opinion, and, for additional reasons, citizens of every religious persuasion, are to be found among both the advocates and opponents of the measure. The dilemma is compounded by two circumstances:

1. The declared purpose of the proposal is to erase, in one dramatic stroke, all the surviving distinctions based on sex, which are now lodged in federal, state, and local laws or legally sanctioned practices;

2. The effect of the amendment will be to strike down all measures or provisions which (on presumed grounds that legitimate differences in condition, roles, or functions had prompted their enactment) distinguish between the sexes with a view to protecting, restraining, or providing remedies to one or the other of them.

It is not possible in a brief position paper to argue all of the issues raised by the controversy over the amendment, nor is it necessary, if the central issue is understood. The issue is not the simple one of removing unjust and unfair discriminations from society's present usages. Partisans on both sides of the ERA debate are committed to fair dealing and justice for all. But a major portion of the case for the amendment rests on the affirmation of its proponents to the effect that there are no significant differences at all between the sexes that justify differential treatment of males and females. It is, in short, the *absolute* character of the amendment, its implicit premise that *any* distinction is necessarily qualitative and hierarchical (and therefore the product of male sexual arrogance and presumed superiority) that gives us pause. As Christians devoted to the Scriptures, we believe that God created us male and female (Gen. 1:27-28), that the two sexes have in some senses their

peculiar roles (1 Peter 3:5-7), and that they complement each other without arrogation or condescension (Eph. 5:22-33).

Behind the arguments set forth on behalf of ERA there lies the assumption that equality, in its absolute sense, will promote the general welfare. This presupposition must be evaluated, however, in light of the Biblical insistence that *unity*, in and under God, rather than *social equality* is the intended goal of God's redemptive activity (1 Cor. 15:28: "... and thus God will be all in all"). Life within the church is to foreshadow the relationships and structures to be consummated with the return of the Lord. Within the assembly of believers, with all their respective differences, the Gospel is proclaimed to transcend and negate, even now, everything that separates persons from each other (Gal. 3:28 "... for you are all *one* in Christ Jesus").

The Gospel recalls fallen mankind to the recognition that such unity is exhibited where Christians serve one another, each one in his or her respective role. In the proper ordering of life and its structures all desires for self-aggrandizement, by either male or female, must be sublimated under the general principle of mutual service (Eph. 5:21). Such concern for the needs of another calls for the kind of ranking oneself under others which even God's own Son will assume when once His task of subduing the enemies of God has been accomplished. "When all things are subjected to Him, then the Son Himself will also be subjected to Him who put all things under Him" (1 Cor. 15:28).

It should be noted that the term "subjection" as used of Jesus Christ in this passage is the same one used of the church's relationship to Christ and of the attitude of wives to their husbands (Eph. 5:24). It is, therefore, not a word to connote inferiority or degradation but rather a relationship which belongs to God's intended order of things.

Until the moment of Christ's final triumph, fallen creation is called upon to apply the art of interdependence in the sense of mutual service. This necessarily requires the existence and exercise of various roles and relationships. Because Scripture itself defines these roles and relationships, ample latitude must be reserved, also in the secular order, for the accommodation of these differences.

That latitude is provided by existing law—federal, state, and local—in constitutions, statutes, and the common law. There is, moreover, adequate power in governments to accommodate these differences at all levels, stoutly buttressed by federal and state bills of rights, and especially by the Fourteenth Amendment's Equal Protection and Due Process clauses as well as the Due Process of the

Fifth Amendment, the Interstate Commerce clause, and a large body of statutes that have flowed from these constitutional guarantees.

Constitutional absolutes are dangerous in a free society. This is an axiom of which well-meaning Christians, conscientiously committed to fairness and justice for all, are often innocently unaware, to their own and their neighbor's peril. Even the most categorical guarantees in the United States Constitution, for example, are subject to prudential restraints, a point that found classic expression in Justice Holmes' pithy observations that "My freedom to swing my arm ends where the other fellow's nose begins," and that "Freedom of speech does not include the right to shout 'Fire!' in a crowded theater." The Christian as a member of the social order recognizes that even a person's Christian freedom is not to be exercised absolutely and without regard to his own or his brother's need (1 Cor. 6:12; Rom. 14:14).

Paradoxically enough, constitutional absolutism is not the only nemesis of free constitutional government. There is the further hard reality that it is sometimes necessary to discriminate in order to equalize: one need only point to such examples as the graduated income tax; the tuition differential between resident and out-of-state students at state universities; the requirement that doctors be licensed, while farmers need not be; the provision of ramps for the physically handicapped, and special handrails for the blind. Where distinctions are based on real and reasonable differences for the purpose of allocating more equitably the benefits and burdens of the free society, they have uniformly been held by the courts to be not only permitted, but actually required, by considerations of due process and equal protection.

We dissent from the implication that such differential treatment proceeds from patronizing and paternalistic indulgence. It proceeds, rather, from an appreciation—at once hardheaded and tenderhearted—of realities (Gal. 6:2). It cannot be too strongly emphasized that the ERA contemplates the abolition of all distinctions, however humane their intention and effect, because the amendment proceeds from the assumption that a particular solicitude for women is inherently an insult to their humanity. Christians especially reject this insinuation, and they are joined in this view by many others who object to it on purely pragmatic and secular, humanitarian grounds.

The ERA has been introduced in every Congress, without exception, since 1923. It has been rejected every year for more than

half a century. It has been earnestly, almost frantically, resisted by some of the country's most distinguished constitutional lawyers, legal philosophers, and law school deans and professors, chiefly on the ground of its *absolutist* character and its intention to strip away all existing laws, executive orders, judicial determinations, and administrative procedures which afford protections, exemptions, remedies, or concessions of any sort whatsoever, on the basis of sex.

It is difficult to escape the conclusion that it will have this effect if one reads the 114 page article (written incidentally in the measure's defense!) by four legal scholars in one of the country's leading law reviews. Pertinent excerpts follow:

The basic principle of the Equal Rights Amendment is that sex is not a permissible factor in determining the legal rights of women, or of men. . . . To achieve the values of group equality and individual self-fulfillment, the principle of the amendment must be applied comprehensively and without exceptions.

Second, the Equal Rights Amendment embodies the moral and practical judgment that the prohibition against the use of sex as a basis for differential treatment applies to all areas of legal rights. To the extent that any exception is made, the values sought by the amendment are undercut; women as a group are thrust into a subordinate status and women as individuals are denied the basic right to be considered in terms of their own capacities and experience.

A third, equally decisive consideration leads to the same conclusion. There is no objective basis available to courts or legislatures upon which differential treatment of men and women could be evaluated.

Fourth . . . only an unequivocal ban against taking sex into account supplies a rule adequate to achieve the objectives of the amendment. From this analysis it follows that the constitutional mandate must be absolute. . . . Equality of rights means that sex is not a factor. This at least is the premise of the Equal Rights Amendment. And this premise should be clearly expressed as the intention of Congress in submitting the amendment to the states for ratification. (Barbara A. Brown, Thomas I. Emerson, Gail Falk, and Ann E. Freedman, "The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women," *Yale Law Review* 80 (April 1971), 872-985.

In summary, The Lutheran Church—Missouri Synod encourages all of our people to "work toward the goal of giving women equal rights before the law" (1973 Convention Resolution 9-11). As Christians, we should do all that we can and support all who are in positions to do more to enhance freedom and achieve justice for all

people. We support the principle of equal rights and justice under law.

As it reads the Equal Rights Amendment affirms a noble goal. However, existing constitutional, legislative, and administrative procedures, if conscientiously applied, will accomplish the task of enlarging the area of justice for women without at the same time dismantling reasonable protections for them. To force equality could destroy protections, particularly if some of the most articulate supporters of the amendment have their way. We have major reservations about absolutist legal prescriptions, however well intentioned, which fail to recognize generic differences inherent in the created order and also affirmed by the Holy Scriptures.

Whether or not an individual Christian favors an amendment to the Constitution, it goes without saying that principles of Christian relationships remain constant.