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THE POSSIBLE LEGAL EFFECTS OF THE PROPOSED "EQUAL RIGHTS" AMENDMENT IN THE AREA OF DOMESTIC RELATIONS

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Introduction

This report undertakes to consider the possible legal effects of the proposed "Equal Rights" Amendment in the general area of domestic relations--e.g. divorce, separation, alimony, support, custody of minor children and related matters.

It does not purport to include such aspects of the over-all problem as equal employment opportunity, contractual capacity, age of majority for marriage and other purposes, each one of which could also give rise to a variety of conflicting opinions.

By way of general background, particularly as reflecting the views of some authorities who believe that the proposed Amendment would create more problems than it might solve, we have appended (1) pertinent excerpts from a recent work, Women and the Law (University of New Mexico Press, Alburquerque, 1969), by Professor Leo Kanowitz of the University of New Mexico School of Law, who has written extensively on this subject; (2) the statement by Professor Paul Freund of the Harvard Law School as it appeared in the Congressional Record (96 Cong. Rec. 865 (1950)) on the occasion of the Congressional debate on the subject in 1950 and (3) remarks at the same time by Senators Lehman and Russell (96 Cong. Rec. 861, et seq. (1950)).

So far as we can ascertain, no definitive legal analysis has ever been undertaken which purports to examine in detail any of the ramifications of these problems; and since no state has adopted a Constitutional amendment of similar purpose, no court decision precedents exist which might provide some basis for prediction. This report therefore can do no more than to express our views, in the form of what we believe is at best only reasonable speculation, as to some of the more significant aspects of domestic relations law, statutory and case law, which might be subject to reevaluation in the light of a possible "Equal Rights" Amendment.

I. Brief History of the Proposed Amendment

The first proposed "Equal Rights" Amendment was introduced in Congress in 1923. Similar resolutions have been introduced in every Congress since then. Its earlier versions read:

> Men and Women shall have equal rights throughout the United States and every place subject to its jurisdiction. Congress shall have the power to enforce this article by appropriate legislation.

The current wording (essentially the same used since the Amendment was rewritten in the Senate Judiciary Subcommittee in 1943) is:

> Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation.

The only other substantial change in language appeared in the so-called "Hayden Amendment" which was added by the Senate in 1953. The Hayden Amendment sought to preserve to women any benefits then existing in the law through the insertion of the following sentence:

> The provisions of this article shall not be construed to impair any rights, benefits, or exemptions now or hereafter conferred by law upon persons of the female sex.

Activity on the proposal has been sporadic. It was reported favorably by three subcommittees between 1924 and 1938, but was not reported out of a full committee until 1938. The proposal has been reported to the Senate ten times and to the House two times since 1938. The Senate passed the proposal on two occasions--January 25, 1950 and July 16, 1953. (96 Cong. Rec. 872; 99 Cong. Rec. 8974). The House has never passed any such proposal. Since the passage of the Amendment by the Senate in 1953, there has been little action on it.

Support for the Amendment has generally come from those who believe that women will benefit in economic status in the areas of employment and of property rights. The basis of opposition has generally been that adoption of the Amendment would at the very least create confusion in a number of areas of the law, including that of labor, property, and domestic relations, and perhaps eliminate all protective legislation. Indeed, some of those who support the Amendment agree

that a result of its adoption would be the loss of certain privileges under the law. Their support for the Amendment, however is a desire for this result--a goal of "real" equality, with no privilege for or discrimination against women.

Two primary objections to the Amendment have been raised by legal scholars. One voiced by Professor Paul Freund of The Harvard Law School and subscribed to by numerous other legal scholars is that the Amendment would create a turmoil of litigation. (96 Cong. Rec. 865 (1950)). According to him, every provision of law concerning women would raise a constitutional issue which would have to be resolved in the courts.

Another objection is raised by Professor Leo Kanowitz of the University of New Mexico School of Law, who has written extensively on the legal rights of women. Professor Kanowitz believes that adoption of the Amendment would not substantially change women's constitutional rights. The Kanowitz argument is that women presently have the same constitutional protection under the Fifth and Fourteenth Amendments that they would have upon adoption of the Equal Rights Amendment. The current status of constitutional law regarding the application of the Fifth and Fourteenth Amendments to women seems to be that there is a valid ground for different treatment of men and women on a functional basis. In other words, that since the biological differences between men and women cannot be legislated away, the application of any statute

affected by the Amendment would have to take these differences into account and thus it would not effect any change in the statuts of women.

Kanowitz expresses his opinion of the activities of the proponents of the Equal Rights Amendment thusly:

> If adoption of the equal rights amendment would have little impact upon existing constitutional law doctrine in the area of sex discrimination, proponents of equality of legal treatment for men and women will find that, as a tactical matter, their energies will be better spent in other activities directed toward this goal. Women and the Law, Leo Kanowitz (1969), p. 196.

One other preliminary observation of general relevance is that although the Courts have heretofore sustained legislation of this kind particularly in the labor area, on the basis of a "reasonable classification" -- one which recognizes the general physical (functional) differences between the sexes as a class -- the proposed Amendment might require the elimination of any such class-based distinctions. Would it still be permissible to disregard the individual capacities or characteristics of particular women? The proponents reject the view, for example, that since most women cannot perform heavy weight-lifting jobs, all women might therefore reasonably be excluded from such employment. Considerations of this kind might of course be pertinent in the area of domestic relations.[1]

[1] It may be noted that in the regulations of the Equal Employment Opportunity Commission issued pursuant to title VII of the Civil Rights Act of 1964 ("Guidelines on Discrimination Because of Sex"), the Commission ruled that State laws such as those which forbid or limit the occupation of females as a class in certain occupations (or in excess of prescribed hours, etc.) are in conflict with the Act because they "do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect" (29 C.F.R. 1604.1(b)(1)).

II. The Possible Impact of the Amendment in the Area of Domestic Relations

Most of the support for the Amendment has been based upon contentions of "discrimination" against women in respect of their status and opportunities in the labor market; and the proposed Amendment, it is asserted, is intended primarily to eliminate these disadvantages. It should be noted, in this regard, that the future implementation of the "equal pay for equal work" provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) and of the similar prohibition against discrimination "because of ... sex" in the Civil Rights Act of 1964 (42 U.S.C. 2000(e)) is also calculated to alleviate these problems.

Reference is made at this time to these employment-related matters because so much of our general domestic relations law, statutory and common law, has been and is still largely predicated upon what has been believed to be the relative disadvantages of women as wage earners. And it is at least arguable that to the extent that the Amendment may be of substantial benefit to women, in this respect, a significant change in attitude, by legislatures and the courts, in relation to such matters as alimony, child support, etc., might well develop. These possibilities will be further explored hereafter.

It seems desirable also to emphasize at this point that while the Amendment is generally thought of solely in terms of "equal rights for women", its scope is by no means so limited. The "equality

of rights" so secured would also be available to men. "Discrimination" against men would also be proscribed; so that any law which operates solely to the benefit of women could be attacked by a man as unconstitutional and void. If, as has been contended, the implementation of the proposed Amendment would require the wiping out of virtually every facet of the law which treats men and women differently with regard to their legal rights and obligations, it would seem that its greatest practical impact might be in the area of domestic relations. For it is here that men, it might be asserted, have been most often "discriminated" against in favor of women or--stated otherwise--where women as a class have been treated more favorably than men.

The laws in the several states vary widely in such matters. It seemed to us sufficient, for present purposes at least, to take a sampling of some of the more significant and typical aspects of these matters in a representative number of states, those which should reflect a reasonably good cross-section. The states so selected were: Alabama, Alaska, California, Colorado, District of Columbia, Hawaii, Illinois, Massachusetts, Nevada, New York, Pennsylvania, and Texas.

To provide concrete illustrations, we have appended to this report excerpts from the statutes of each of these states dealing with the indicated areas of domestic relations of law (divorce, separation, alimony, custody, etc.) and have underlined those provisions which reflect a difference in treatment as between men and women.

The following undertakes to indicate briefly and in summary fashion the possible impact of the proposed Amendment on only some of these matters, emphasizing again that all that can fairly be done at this time, in this as yet completely uncharted field, is to indulge in pure speculation as to what some courts might conceivably do in the light of any such Amendment.

1. Divorce

Two widely-recognized grounds for divorce may feel the greatest effect of the Equal Rights Amendment: that granting the wife a divorce for the husband's failure to provide support, and that granting the husband a divorce for the wife's desertion, arising from her refusal to accompany the husband when he exercises his common law or statutory right as head of the household to change the family domicile.

Of the 12 states surveyed, five specified as a ground for divorce the failure of the husband to provide the wife with the reasonable necessities of life, over a statutory period of time ranging from 60 days in Hawaii to two years in Alabama. While these statutes stipulate that the husband either "have the ability to do so," or be "in good bodily health," or be "of sufficient ability," none provides for any consideration of the corresponding ability of the wife to contribute to her own support. The amendment may require changes in the traditional roles of the husband as breadwinner and the wife as householder, but the manner in which it will do this leaves room for speculation. Any of several results may occur. First, failure to support may disappear as a ground for divorce.

If the duty to support remains viable in domestic relations law, it may at least spread to both spouses equally, and as a result the courts will have to consider in each case the relative ability of each spouse to contribute his or her income to the support of the family. Thus, the duty to support may evolve into the duty to contribute, and failure of either spouse to contribute to a reasonable extent of his or her ability will either directly provide grounds for divorce to the other spouse, or result in a "constructive desertion," which would accomplish the same effect indirectly.

The other area of divorce grounds which may feel the most effect of the Equal Rights Amendment is that which emerges from the husband's now generally acknowledged role as head of the household. In California, his role is expressed by statute; in Alaska, Colorado, and the District of Columbia, it is reflected by court decisions. Because the husband is head of the household, he has the right to choose and change the marital domicile, and refusal of the wife, without reasonable grounds, to accompany the husband makes her guilty of desertion. The courts may take either of two distinct tacks in dealing with this problem. First, they may overturn the cases and statutes recognizing the husband as head of the household, and thereby allocate the role in each marriage before them, or second, they may do away entirely with the concept of head of the household. In either

case, the courts may become involved in new considerations of unprecedented complexity. In the one instance, the courts will have to decide, on the basis of such considerations as comparative income and family responsibility, which spouse actually deserves the title of head of the household. In the other instance, the courts will have to assess the same considerations to determine who is deserting whom when one spouse desires to move the family domicile in pursuit of a different or better job, or a more healthful climate, and the other spouse refuses to move because of his or her own job, or own health.

2. Alimony

Since alimony for a husband is not grounded in common law, statutory authority is necessary to award alimony to the husband. Of the twelve states examined, Alaska, California, Illinois, and Massachusetts specifically allow alimony to be paid to either the wife or the husband. Colorado's alimony statute does not mention for whom alimony is authorized but simply allows the divorce court to grant "alimony." It is questionable whether, under the present law, this wording would be sufficient to allow alimony for the husband. The case law of Colorado does not indicate that husbands have been granted alimony under the statute. Of the remaining seven states, Alabama, District of Columbia, Hawaii, Nevada, New York, and Pennsylvania specifically allow alimony for the wife. Texas provides no alimony for either.

Temporary alimony is treated somewhat differently in that some states which allow permanent alimony for either party (Alaska and Massachusetts) allow temporary alimony only for the wife. Temporary alimony (or temporary "support") and, in some instances, suit expenses are specifically allowed either spouse in California, Illinois, Pennsylvania, and Texas. The remaining states grant temporary alimony and expenses solely to the wife. (Colorado's statute is unclear as to whether it applies to the wife only.)

An equal rights amendment may have the effect of invalidating the provision of any law that granted alimony or temporary alimony only to the wife. As a practical matter, the trial court would still have to examine factors of need and financial status of the parties but the husband could at least seek alimony.

3. Support of the Spouse

The general duty of support (arising out of the common law duty of support) is expressed by statute in a number of states. It should be remembered that the duty to support the husband did not exist at common law, so for the duty to exist, it must be based on statutory authority.

California, Nevada, New York, and Texas have statutes creating for the wife a general duty of support of the husband. All of these statutes contain a difference in wording between the expression of the husband's duty to support the wife and the wife's duty to support the husband. The provisions creating the wife's duty are limited by the condition that the wife's duty arises when the husband is unable to support himself. No such condition is expressed with regard to the husband's duty to support the wife.

The effect of the adoption of an equal rights amendment may be to create a duty of support of the husband whether statutorily expressed or not and to place men and women on an equal footing as to actions based on that duty.

4. Child Support

The duty of child support exists in both parents as does the right of parents to custody. How these duties and rights have been applied is a different matter. Either parent has a right by statute to the custody of a child in all of the states examined. However, since the law of child custody has evolved around the principle of the paramount welfare of the child, the trial courts have the discretion to decide what constitutes the best interest of the child. In a dispute over custody, the mother's claim will generally prevail over the father's. This state of the law is reflected in the case law of such states as Alabama, Alaska, Illinois, New York, Pennsylvania, and Texas.

Custody would perhaps be affected very little if at all by the adoption of an equal rights amendment. So much discretion in such matters resides in the trial court that the only apparent change might be the elimination of any presumption in favor of the mother.

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DIVORCE

Alabama:

Tit. 34

§ 22. (7409) (3795) (1487) (2324) (2687) (2353) (1963) **To either party in case of cruelty; to wife in case of nonsupport.**—In favor of either party to the marriage when the other has committed actual violence on his or her person, attended with danger to life or health, or when from his or her conduct there is reasonable apprehension of such violence. In favor of the wife when the wife has lived, or shall have lived separate and apart from the bed and board of the husband for two years and without support from him for two years next preceding the filing of the bill; and she has bona fide resided in this state during said period. (1919, p. 878; 1933, Ex. Sess., p. 142; 1947, p. 336, appvd. Sept. 30, 1947.)

Alaska:

Sec. 09.55.110. Grounds for divorce. A divorce may be granted for any of the following grounds:

(1) impotency existing at the time of the marriage and continuing at the commencement of the action;

(2) adultery;

(3) conviction of a felony;

(4) wilful desertion for a period of one year;

(5) either (A) cruel and inhuman treatment calculated to impair health or endanger life, or (B) personal indignities rendering life burdensome, or (C) incompatibility of temperament;

(6) habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the action;

(7) wilful neglect of the husband for a period of 12 months to provide for his wife the common necessities of life, he having the ability to do so, or his failure to do so by reason of idleness, profligacy, or dissipation;

Alaska cont'd.

(8) incurable mental illness when the spouse has been confined to an institution for a period of at least 18 months immediately preceding the commencement of the action; the status as to the support and maintenance of the mentally ill person is not altered in any way by the granting of the divorce;

(9) addiction of either party, subsequent to the marriage, to the habitual use of opium, morphine, cocaine, or a similar drug. (§ 12.05 ch 101 SLA 1962)

Husband must provide home and wife must reside there.—It is elementary that the duty devolves upon the husband to provide and furnish the home, and that it is the duty of the wife to occupy the home and to reside there unless the husband acquiesces or consents to her residence elsewhere or unless her husband's mistreatment justifies her in leaving and remaining away from the home. Ellis v. Ellis, 8 Alaska 373.

California:

Supp. §4506

§ 4506. Grounds for divorce

A court may decree a dissolution of the marriage or legal separation on either of the following grounds, which shall be pleaded generally:

(1) Irreconcilable differences, which have caused the irremediable breakdown of the marriage.

(2) Incurable insanity.

(Added by Stats.1969, c. 1608, p. —, § 8, operative Jan. 1, 1970.)

Colorado:

46-1-1. Grounds for divorce.—(1) (a) Any marriage may be dissolved and divorce granted for any one or more of the reasons set forth in this section and for no other cause:

Colorado cont'd.

(b) That the spouse from whom the divorce is sought was impotent at the time of the marriage, or became impotent through immoral conduct committed after marriage;
(c) That the spouse from whom a divorce is sought has committed adultery since the marriage;
(d) That the spouse from whom a divorce is sought has wilfully deserted the other spouse, without reasonable cause, for a period of one year, or more, immediately preceding the beginning of the action for divorce;
(e) That the spouse from whom a divorce is sought has been extremely and repeatedly cruel toward the other spouse; and such cruelty may consist of the infliction of mental suffering or bodily violence;
(f) That the husband, being in good bodily health, has failed to make reasonable provisions for the support of his family for a period of one year, or more, next prior to the beginning of the action for divorce;
(g) That the spouse from whom a divorce is sought has been an habitual drunkard or drug addict for a period of one year or more, next prior to the beginning of the action for divorce;

(h) That the spouse from whom a divorce is sought, has been convicted of a felony in a court of record in any state, territory, federal district, or United States possession since marriage;
(i) That one spouse has been adjudicated an insane, mentally ill, or mentally deficient person, or a mental incompetent, not less than three years prior to the commencement of the action and has not, prior to the entry of decree of divorce, been adjudicated restored to reason or competency. No husband who secures a divorce on such ground, however, shall be relieved thereby from the duty of the support of the wife from whom he is thus divorced, unless she has sufficient property or means to support herself;
(j) That the parties have lived separate and apart for a period of three consecutive years, or more, next prior to the commencement of the action for divorce, by force of decree of a court of record in any state, territory, or United States possession or district.
(2) A divorce shall not in anywise affect the legitimacy of any child of a marriage, nor its right to inherit the property of its father or mother.

Source: L. 17, p. 178, § 1; C. L. § 5593; L. 29, p. 327, § 1; CSA, C. 56, §§ 1, 2; CRS 53, § 46-1-1; L. 58, p. 220, § 2.

A wife located and employed in Pennsylvania, who repeatedly refused over a series of years to accompany her husband, a military serviceman engaged for several years in various states, who had finally determined to live in Colorado where he was so employed, is guilty of desertion. Mulhollen v. Mulhollen (1961) 145 C. 479, 358 P.2d 887.

District of Columbia:

§ 16-904. Grounds for divorce, legal separation and annulment

(a) A divorce from the bond of marriage or a legal separation from bed and board may be granted for adultery, actual or constructive desertion for one year, voluntary separation from bed and board for one year without cohabitation, or final conviction of a felony and sentence for not less than two years to a penal institution which is served in whole or in part. A legal separation from bed and board also may be granted for cruelty.

(b) A judgment of legal separation from bed and board may be enlarged into a judgment of divorce from the bond of marriage upon application of the innocent party, a copy of which shall be duly served upon the adverse party, after the separation of the parties has been continuous for one year next before the making of the application.

(c) Marriage contracts may be declared void in the following cases:

First. Where such marriage was contracted while either of the parties thereto had a former wife or husband living, unless the former marriage had been lawfully dissolved.

Second. Where such marriage was contracted during the lunacy of either party (unless there has been voluntary cohabitation after the discovery of the lunacy).

Third. Where such marriage was procured by fraud or coercion.

Fourth. Where either party was matrimonially incapacitated at the time of marriage and has continued so.

Fifth. Where either of the parties had not arrived at the age of legal consent to the contract of marriage (unless there has been voluntary cohabitation after coming to legal age), but in such cases only at the suit of the party not capable of consenting. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 2.)

Husband has right to choose domicile; unjustified refusal of wife to follow is desertion, grounds for divorce. Snyder v. Snyder, 134 A 2d 587, D.C. Mun. App. (1957).

Hawaii:

§580-41 Grounds for divorce. Divorces from the bond of matrimony shall be granted for the causes hereinafter set forth and no other:

(1) For adultery in either party;

(2) For wilful and utter desertion for the term of six months;

(3) When either party is sentenced to imprisonment for life or for seven years or more; and after divorce for such cause no pardon granted to a party so sentenced shall affect the divorce;

(4) For insanity of either party, where the same has existed for three years or more next preceding the filing of the complaint;

(5) For extreme cruelty;

(6) For habitual drunkenness or the habitual excessive use of opium, morphine, or any other like drug, continued for a period of not less than one year;

(7) When one party to the marriage, whether intentionally, studiedly, wilfully, deliberately, or not, inflicts grievous mental suffering upon the other, continued over a course of not less than sixty days, as to render the life of the other burdensome and intolerable and their further living together insupportable;

(8) When the husband, being of sufficient ability to provide suitable maintenance for his wife, neglects or refuses to do so for a continuous period of not less than sixty days;

(9) Upon application of either party, when the parties have lived separate and apart under a decree of separation from bed and board entered by any court of competent jurisdiction, the term of separation has expired, and no reconciliation has been effected;

(10) Upon the application of either party, when the parties have lived separate and apart under a decree of separate maintenance entered by any court of competent jurisdiction for a period of more than two years, and no reconciliation has been effected.

(11) Upon the application of either party, when the parties have lived separate and apart for a continuous period of more than three years immediately preceding the application, there is no reasonable likelihood that cohabitation will be resumed, and the court is satisfied that, in the particular circumstances of the case, it would not be harsh and oppressive to the defendant or contrary to the public interest to grant a divorce on this ground on the complaint of the plaintiff.

If the party applying for divorce does not insist upon a divorce from the bond of matrimony, a divorce only from bed and board shall be granted, and the relations of the parties after such divorce shall be regulated by the laws concerning separation. [L 1870, c 16, §1; am L 1903, c 22, §2; am L 1909, c 25, §1; am L 1915, c 56, §1 and c 192, §1; am L 1919, c 10, §1; RL 1925, §2965; am L 1931, c 196, §1; RL 1935, §4460; am L 1935, c 27, §1; RL 1945, §12210; am L 1949, c 53, §29 and c 174, §1; am L 1951, c 287, §1; RL 1955, §324-20; am L 1957, c 72, §2; am L 1965, c 52, § 3; am L 1966, c 22, §6; am L 1967, c 76, §1]

Massachusetts:

Ch. 208 §1

§ 1. General provisions

A divorce from the bond of matrimony may be decreed for adultery, impotency, utter desertion continued for two consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication caused by the voluntary and excessive use of intoxicating liquor, opium or other drugs, cruel and abusive treatment or, on the libel of the wife, if the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her.
As amended St.1967, c. 585, § 1.

Separation -

§ 20. Continuance of libel; temporary separation. The court may, without entering a decree of divorce, order the libel continued upon the docket from time to time, and during such continuance may make orders and decrees relative to a temporary separation of the parties, the separate maintenance of the wife and the custody and support of minor children. Such orders and decrees may be changed or annulled as the court may determine, and shall, while they are in force, supersede any order or decree of the probate court under section thirty-two of chapter two hundred and nine and may suspend the right of said court to act under said section.

Nevada:

125.190 Action by wife for permanent support and maintenance: Grounds. When the wife has any cause of action for divorce against her husband, or when she has been deserted by him and such desertion has continued for the space of 90 days, she may, without applying for a divorce, maintain in the district court an action against her husband for permanent support and maintenance of herself, or of herself and of her child or children.
[1:97:1913; 1919 RL p. 3365; NCL § 9468]

New York:

Dom. Rel.

§ 200. Action for separation

An action may be maintained by a husband or wife against the other party to the marriage to procure a judgment separating the parties from bed and board, forever, or for a limited time, for any of the following causes:

1. The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.
2. The abandonment of the plaintiff by the defendant.
3. Where the wife is plaintiff, the neglect or refusal of the defendant to provide for her.
4. The commission of an act of adultery by the defendant; except where such offense is committed by the procurement or with the connivance of the plaintiff or where there is voluntary cohabitation of the parties with the knowledge of the offense or where action was not commenced within five years after the discovery by the plaintiff of the offense charged or where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce, provided that adultery for the purposes of this subdivision is hereby defined as the commission of an act of sexual or deviate sexual intercourse, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Deviate sexual intercourse includes, but not limited to, sexual conduct as defined in subdivision two of Section 130.00 and subdivision three of Section 130.20 of the penal law.
5. The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.

As amended L.1966, c. 254, § 5; L.1968, c. 702, eff. June 16, 1968.

Pennsylvania:

Ch. 23

§ 11. Grounds for Divorce from Bed and Board

Upon complaint, and due proof thereof, it shall be lawful for a wife to obtain a divorce from bed and board, whenever it shall be judged, in the manner hereinafter provided in cases of divorce, that her husband has:

(a) Maliciously abandoned his family; or

(b) Maliciously turned her out of doors; or

(c) By cruel and barbarous treatment endangered her life; or

(d) Offered such indignities to her person as to render her condition intolerable and life burdensome; or

(e) Committed adultery. 1929, May 2, P.L. 1237, § 11.

Alimony

Alabama:

Ch. 34

§ 30. (7417) (3803) (1495) (2331) (2694) (2360) (1970) **Allowance to wife pending suit.**—Pending a suit for divorce, the court may make an allowance for the support of the wife out of the estate of the husband, suitable to his estate and the condition in life of the parties for a period of time not longer than necessary for the prosecution of her bill for divorce. (1939, p. 52.)

§ 31. (7418) (3804) (1496) (2332) (2695) (2361) (1971) **Allowance to wife on decree of divorce.**—If the wife has no separate estate, or if it be insufficient for her maintenance, the judge, upon granting a divorce at his discretion may decree to the wife an allowance out of the estate of the husband, taking into consideration the value thereof and the condition of his family. (1933. Ex. Sess., p. 119.)

§ 32. (7419) (3805) (1497) (2333) (2696) (2362) (1972) **Allowance when decree in favor of wife.**—If the divorce is in favor of the wife for the misconduct of the husband, the judge trying the case shall have the right to make an allowance to the wife out of the husband's estate, or not make her an allowance as the circumstances of the case may justify, and if an allowance is made it must be as liberal as the estate of the husband will permit, regard being had to the condition of his family and to all the circumstances of the case. (1933, Ex. Sess., p. 118.)

§ 33. (7420) (3806) (1498) (2334) (2697) (2363) (1973) **Allowance when against wife.**—If in favor of the husband for the misconduct of the wife, if the judge in his discretion deems the wife entitled to an allowance, the allowance must be regulated by the ability of the husband and the nature of the misconduct of the wife. (1933, Ex. Sess., p. 119.)

Alaska:

Sec. 09.55.200. Orders during action. (a) During the pendency of the action, the court may provide by order

(1) that the husband pay an amount of money as may be necessary to enable the wife to prosecute or defend the action;

Alaska cont'd.

(2) for the care, custody, and maintenance of the minor children of the marriage during the pendency of the action;

(3) for the freedom of the wife from the control of the husband during the pendency of the action.

(b) The court may restrain either or both parties from disposing of the property of either party during the pendency of the action. (§ 12.13 ch 101 SLA 1962)

Sec. 09.55.210. Judgment. In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide

(1) for the care and custody of the minor children of the marriage as it considers just and proper, having due regard to the age and sex of the children, and, unless otherwise manifestly improper, giving the preference to the party not in fault;

(2) for the payment from the party in fault, not allowed the care and custody of the children, an amount of money, in gross or installments, as may be just and proper for that party to contribute toward the nurture and education of the children;

(3) for the recovery from the party in fault an amount of money, in gross or in installments, as may be just and proper for the party to contribute to the maintenance of the other;

(4) for the delivery to the wife of her personal property in the possession or control of the husband at the time of giving the judgment;

(5) for the appointment of one or more trustees to collect, receive, expend, manage, or invest, in the manner the court directs, any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;

(6) for the division between the parties of their joint property or the separate property of each, in the manner as may be just, and without regard as to which of the parties is the owner of the property; and to accomplish this end the judgment may require one of the parties to assign, deliver, or convey any of his or her real or personal property to the other party;

(7) to change the name of the wife. (§ 12.14 ch 101 SLA 1962)

California:

§ 4516. Alimony pendente lite; modification; revocation

During the pendency of any proceeding under Title 3 (commencing with Section 4500) or Title 4 (commencing with Section 4600) of this part, the superior court may order the husband or wife, or father or mother, as the case may be, to pay any amount that is necessary for the support and maintenance of the wife or husband and for the support, maintenance, and education of the children, as the case may be. An order made pursuant to this section shall not prejudice the rights of the parties or children with respect to any subsequent order which may be made. Any such order may be modified or revoked at any time except as to any amount that may have accrued prior to the date of filing of the notice of motion or order to show cause to modify or revoke.

(Added by Stats.1969, c. 1608, p. —, § 8, operative Jan. 1, 1970.)

Annulment, similar provision, see § 4455.
Operative date and application of Stats. 1969, cc. 1608, 1609, pp. —, see note under section 25.

Derivation: Former section 137.2.

Colorado:

§46-1-5. Alimony—custody of children—property division.—(1) (a) At all times after the filing of a complaint, whether before or after the issuance of a divorce decree, the court may make such orders, if any, as the circumstances of the case may warrant for:

(b) Custody of minor children;

(c) Care and support of children dependent upon the parent or parents for support;

(d) Alimony;

(e) Suit money, court costs, and attorney fees; and

(f) Any other matters (except division of property) in controversy between the parties.

(2) At the time of the issuance of a divorce decree, or at some reasonable time thereafter as may be set by the court at the time of the issuance of said divorce decree, on application of either party, the court may make such orders, if any, as the circumstances of the case may warrant relative to division of property, in such proportions as may be fair and equitable.

(3) The court shall have the power to require security to be given to insure enforcement of its orders, in addition to other methods of enforcing court orders now or hereafter prescribed by statute or by rules of civil procedure.

(4) The court shall retain jurisdiction of the action for the purpose of such later revisions of its orders pertaining to subsections (1)(b), (1)(c), (1)(d), (1)(e), (1)(f), and subsection (3) of this section as changing circumstances may require, and for the purpose of hearing any matters recited in subsections (1), (2) and (3) of this section which it was unable to determine at earlier hearings for lack of personal jurisdiction over one of the parties, or for lack of knowledge or information, or because of fraud, misrepresentation, or concealment.

Colorado cont'd.

(5) The remarriage of a party entitled to alimony, though such marriage be void or voidable, shall relieve the other party from further payments of said alimony; but nothing in this section shall preclude the parties from providing otherwise by written agreement or stipulation.

(6) Any written agreement or stipulation by the parties as to any of the above matters, when incorporated in an order or decree or when filed in the action and referred to and approved and adopted in any order or decree, shall become a part of such order or decree.

District of Columbia:

§ 16-911. Alimony pendente lite; suit money; enforcement; custody of children

During the pendency of an action for divorce, or an action by the husband to declare the marriage null and void, where the nullity is denied by the wife, the court may:

(1) require the husband to pay alimony to the wife for the maintenance of herself and their minor children committed to her care, and suit money, including counsel fees, to enable her to conduct her case, whether she is the plaintiff or the defendant, and enforce any order relating thereto by attachment and imprisonment for disobedience;

(2) enjoin any disposition of the husband's property to avoid the collection of the allowances so required;

(3) if the husband fails or refuses to pay the alimony or suit money, sequestrate his property and apply the income thereof to such objects; and

(4) determine who shall have the care and custody of infant children pending the proceedings. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1, eff. Jan. 1, 1964.)

§ 16-912. Permanent alimony; enforcement; retention of dower

When a divorce is granted to the wife, the court may decree her permanent alimony sufficient for her support and that of any minor children whom the court assigns to her care, and secure and enforce the payment of the alimony in the manner prescribed by section 16-911, and may, if it seems appropriate, retain to the wife her right of dower in the husband's estate; and the court may, in similar circumstances, retain to the husband his right of dower in the wife's estate. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1, eff. Jan. 1, 1964.)

District of Columbia cont'd.

§ 16-913. Alimony when divorce is granted on husband's application

When a divorce is granted on the application of the husband, the court may require him to pay alimony to the wife, if it seems just and proper. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1, eff. Jan. 1, 1964.)

Hawaii:

§580-9 Temporary support, etc. After the filing of a complaint for divorce or separation the judge may make such orders relative to the personal liberty and support of the wife pending the complaint as he may deem fair and reasonable and may enforce the orders by summary process. The judge may also compel the husband to advance reasonable amounts for the compensation of witnesses and other expenses of the trial, including attorney's fees, to be incurred by the wife and may from time to time amend and revise the orders. [L 1870, c 16, §10; L

§580-24 Allowance for woman and family. Every woman who is deceived into contracting an illegal marriage with a man having another wife living, under the belief that he was an unmarried man, shall be entitled to a just allowance for the support of herself and family out of his property, which she may obtain at any time after action commenced upon application to any circuit judge having jurisdiction; provided, that the allowance shall not exceed one-third of his real and personal estate. In addition to the allowance, the judge may also compel the defendant to advance reasonable amounts for the compensation of witnesses and other reasonable expenses of trial to be incurred by the plaintiff. [CC 1859, §1316; am L 1903, c 22, §3; am L 1919, c 43, §1; RL 1925, §2958; RL 1935, §4453; RL 1945, §12204; RL 1955, §324-4; am L 1966, c 22, §6]

§580-50 Alimony upon divorce after living separate and apart. Where separation from bed and board or separate maintenance was decreed upon a showing by the wife that the husband was at fault, the circuit judge sitting in divorce may, in his discretion, even if divorce proceedings are brought by the husband, decree the payment to the wife of alimony [L 1965, c 52, §4; Supp, §324-37.5]

Hawaii cont'd.

§580-74 Support of wife and children. Upon decreeing a separation, the judge may make such further decree for the support and maintenance of the wife and her children, by the husband, or out of his property, as may appear just and proper. [CC 1859, §1338; am L 1903, c 22, §2; RL 1925, §2989; RL 1935, §4486; RL 1945, §12238; RL 1955, §324-63]

Illinois:

Ch. 40

§ 16. Temporary alimony—Suit money—Attorney's fees—Enforcement

In all cases of divorce the court at any time after service of summons and proper notice to the husband or wife may require the husband to pay to the wife or pay into the court for her use or may require the wife to pay to the husband or pay into the court for his use during the pendency of the suit such sum or sums of money as may enable her or him to maintain or defend the suit; and in every suit for a divorce the wife or the husband when it is just and equitable, shall be entitled to alimony during the pendency of the suit, provided that no order or decree for alimony shall be entered until the court has determined from evidence the condition in life of the parties and their circumstances. The court may, in its discretion reserve the question of the allowance of attorney's fees and suit money until the final hearing of the case and may then make such order with reference thereto as may seem just and equitable, regardless of the disposition of the case. In case of appeal by the husband or wife, the court in which the decree or order is rendered may grant and enforce the payment of such money for her or his defense and such equitable alimony during the pendency of the appeal as to such court shall seem reasonable and proper. Provided, that in divorce proceedings in which either spouse petitions for alimony during the pendency of the suit, or for attorney's fees or suit money before the case has been finally adjudicated, and a complaint or counter-claim has been filed in such divorce suit by the party not so petitioning, making charges which, if sustained by proof, would entitle the respondent to such petition for alimony to a decree of divorce, the court shall have discretion to allow such temporary alimony or attorney's fees or suit money, but upon application of the respondent shall conduct forthwith a preliminary hearing to ascertain whether it is probable that the respondent can sustain such charges; and if the court finds that it is probable that the respondent can sustain such charges, then such temporary alimony or attorney's fees or suit money may, within the discretion of the court, be granted or denied, or reserved until the final hearing of the case.

In all actions for divorce in which the court grants to the wife or husband, as the case may be, attorney's fees in the prosecution or defense of the action, as the case may be, such fees may, in the discretion of the court, be made payable in whole or in part, to the attorney entitled thereto, and judgment may be entered and execution levied accordingly.

Whoever wilfully refuses to comply with the court's order to pay alimony during the pendency of the suit or attorney's fees and suit money, may be declared by the court in contempt of the court and punished therefor, provided, that no alimony shall accrue during the period in which a party is imprisoned for failure to comply with the court's order. As amended 1965, Aug. 24, Laws 1965, p. 3466, § 1.

Illinois cont'd.

§ 19. Alimony and maintenance—Custody and support of children—Settlement in lieu of alimony—Security—Modification of decree

When a divorce is decreed, the court may make such order touching the alimony and maintenance of the wife or husband, the care, custody and support of the children, or any of them as, from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just and, in all cases, including default cases, the court shall make inquiry with respect to the children of the parties, if any, and shall make such order touching the care, custody, support and education of the minor children of the parties or any of them, as shall be deemed proper and for the benefit of the children. The court may order the husband or wife, as the case may be, to pay to the other party such sum of money, or convey to the party such real or personal property, payable or to be conveyed either in gross or by installments as settlement in lieu of alimony, as the court deems equitable.

If alimony, child support, or both, is awarded to persons who are recipients of aid under "The Illinois Public Aid Code", approved April 11, 1967, as amended,[1] the court shall direct the husband or wife, as the case may be, to make the payments to (1) the Illinois Department of Public Aid if the persons are recipients under Articles III, IV, or V of the Code,[2] or (2) the local governmental unit responsible for their support if they are recipients under Articles VI or VII of the Code.[3] The order shall permit the Illinois Department of Public Aid or the local governmental unit, as the case may be, to direct that subsequent payments be made directly to the former spouse, the children, or both, or to some person or agency in their behalf, upon removal of the former spouse or children from the public aid rolls; and upon such direction and removal of the recipients from the public aid rolls, the Illinois Department or local governmental unit, as the case requires, shall give written notice of such action to the court.

Irrespective of whether the court has or has not in its decree made an order for the payment of alimony or support it may at any time after the entry of a decree for divorce, upon obtaining jurisdiction of the person of the defendant by service of summons or proper notice, make such order for alimony and maintenance of the spouse and the care and support of the children as, from the evidence and nature of the case, shall be fit, reasonable and just, but no such order subsequent to the decree may be made in any case in which the decree recites that there has been an express waiver of alimony or a money or property settlement in lieu of alimony or where the court by its decree has denied alimony.

In any order entered pursuant to this Section, the court may order the defendant to give reasonable security for such alimony and maintenance or such money or property settlement, or may enforce the payment of such alimony and maintenance or such money or property settlement in any other manner consistent with the rules and practices of the court, where a party willfully refuses to comply with the court's order to pay alimony and maintenance or to perform such money or property settlement, or has shown himself unworthy of trust. No alimony or separate maintenance shall accrue during the period in which a party is imprisoned for failure to comply with the court's order. A party shall not be entitled to alimony and maintenance after remarriage; but, regardless of remarriage by such party or death of either party, such party shall be entitled to receive the unpaid installments of any settlement in lieu of alimony ordered to be paid or conveyed in the decree.

Illinois cont'd.

The court may, on application, from time to time, make such alterations in the allowance of alimony and maintenance, and the care, education, custody and support of the children, as shall appear reasonable and proper. However, after the children have attained majority age, the court has jurisdiction to order payments for their support for educational purposes only.
Amended by 1967, Aug. 14, Laws 1967, p. 2979, § 1; 1967, Aug. 31, Laws 1967, p. 3445, § 1; 1968, Sept. 12, Laws 1968, p. 554, § 1, eff. July 1, 1969; P.A. 76-1037, § 1, eff. Aug. 26, 1969.

§ 19. Allmony and maintenance—Custody and support of children—Settlement in lieu of alimony—Security—Modification of decree

When a divorce shall be decreed, the court may make such order touching the alimony and maintenance of the wife or husband, the care, custody and support of the children, or any of them as, from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just and, in all cases, including default cases, the court shall make inquiry with respect to the children of the parties, if any, and shall make such order touching the care, custody, support and education of the minor children of the parties or any of them, as shall be deemed proper and for the benefit of the children. The court may order the husband or wife, as the case may be, to pay to the other party such sum of money, or convey to the party such real or personal property, payable or to be conveyed either in gross or by installments as settlement in lieu of alimony, as the court deems equitable. Irrespective of whether the court has or has not in its decree made an order for the payment of alimony or support it may at any time after the entry of a decree for divorce, upon obtaining jurisdiction of the person of the defendant by service of summons or proper notice, make such order for alimony and maintenance of the spouse and the care and support of the children as, from the evidence and nature of the case, shall be fit, reasonable and just, but no such order subsequent to the decree may be made in any case in which the decree recites that there has been an express waiver of alimony or a money or property settlement in lieu of alimony or where the court by its decree has denied alimony. In any order entered pursuant to this Section, the court may order the defendant to give reasonable security for such alimony and maintenance or such money or property settlement, or may enforce the payment of such alimony and maintenance or such money or property settlement in any other manner consistent with the rules and practices of the court, where a party wilfully refuses to comply with the court's order to pay alimony and maintenance or to perform such money or property settlement, or has shown himself unworthy of trust. No alimony or separate maintenance shall accrue during the period in which a party is imprisoned for failure to comply with the court's order. A party shall not be entitled to alimony and maintenance after remarriage; but, regardless of remarriage by such party or death of either party, such party shall be entitled to receive the unpaid installments of any settlement in lieu of alimony ordered to be paid or conveyed in the decree. The court may, on application, from time to time, terminate or make such alterations in the allowance of alimony and maintenance and the care, education, custody and support of the children, as shall appear reasonable and proper and the court has jurisdiction after such children have attained majority age to order payments for their support for educational purposes only.
Amended by 1967, Aug. 14, Laws 1967, p. 2979, § 1; 1967, Aug. 31, Laws 1967, p. 3445, § 1; 1968, Sept. 12, Laws 1968, p. 554, § 1, eff. July 1, 1969; P.A. 76-1210, § 1, eff. Sept. 11, 1969.

Massachusetts:

Ch. 208

§ 17. Pendency of libel; allowance; alimony. The court may require the husband to pay into court for the use of the wife during the pendency of the libel an amount to enable her to maintain or defend the libel, and to pay to the wife alimony during the pendency of the libel.

§ 34. Alimony; decree. Upon a divorce, or upon petition at any time after a divorce, the court may decree alimony to the wife, or a part of her estate, in the nature of alimony, to the husband.

Alimony means an allowance to the wife; Brown v. Brown, 111 NE 42, 222 Mass. 415 (1916).

The wife can recover alimony even when divorce is granted to husband for wife's fault. Graves v. Graves, 108 Mass. 314 (1871).

Nevada:

125.040 Allowances and suit money for wife during pendency of action. In any suit for divorce now pending, or which may hereafter be commenced, the court, or judge, may, in its discretion, upon application, of which due notice shall have been given to the attorney for the husband if he has an attorney, or to the husband if he has no attorney, at any time after the filing of the complaint, require the husband to pay such sums as may be necessary to enable the wife to carry on or defend such suit, and for her support and for the support of the children of the parties during the pendency of such suit. A court or judge may direct the application of specific property of the husband to such object, and may also direct the payment to the wife for such purpose of any sum or sums that may be due and owing the husband from any quarter, and may enforce all orders made in this behalf as provided in NRS 125.060.

[Part 27:33:1861; A 1865, 99; 1915, 324; 1939, 18; 1931 NCL § 9465]—(NRS A 1963, 8)

125.150 Alimony and adjudication of property rights; award of attorney's fee; subsequent modification by court on stipulation of parties.

1. In granting a divorce, the court may award such alimony to the wife and shall make such disposition of the community property of the parties as shall appear just and equitable, having regard to the respective merits of the parties and to the condition in which they will be left by

Nevada cont'd.

such divorce, and to the party through whom the property was acquired, and to the burdens, if any, imposed upon it, for the benefit of the children.

2. Whether or not application for suit money has been made under the provisions of NRS 125.040, the court may award a reasonable attorney's fee to either party to an action for divorce if attorneys' fees are in issue under the pleadings.

3. The court may also set apart such portion of the husband's property for the wife's support and the support of their children as shall be deemed just and equitable.

4. In the event of the death of either party or the subsequent remarriage of the wife, all alimony awarded by the decree shall cease, unless it shall have been otherwise ordered by the court.

5. In the event alimony has been awarded to the wife, or the court otherwise adjudicates the property rights of the parties, or an agreement by the parties settling their property rights has been approved by the court, whether or not the court has retained jurisdiction to modify the same, such alimony so awarded, such adjudication of property rights, and such agreements settling property rights, may nevertheless at any time thereafter be modified by the court upon written stipulation duly signed and acknowledged by the parties to such action, and in accordance with the terms thereof.

[Part 25:33:1861; A 1939, 18; 1943, 117; 1949, 54; 1943 NCL § 9463]—(NRS A 1961, 401)

New York:

§ 236. Alimony, temporary and permanent

Dom. Rel.

In any action or proceeding brought (1) during the lifetime of both parties to the marriage to annul a marriage or declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, the court may direct the husband to provide suitably for the support of the wife as, in the court's discretion, justice requires, having regard to the length of time of the marriage, the ability of the wife to be self supporting, the circumstances of the case and of the respective parties. Such direction may require the payment of a sum or sums of money either directly to the wife or to third persons for real and personal property and services furnished to the wife, or for the rental of or mortgage amortization or interest payments, insurance, taxes, repairs or other carrying charges on premises occupied by the wife, or for both payments to the wife and to such third persons. Such direction may be made in the final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be

New York cont'd.

made notwithstanding that the parties continue to reside in the same abode and notwithstanding that the court refuses to grant the relief requested by the wife (1) by reason of a finding by the court that a divorce, annulment or judgment declaring the marriage a nullity had previously been granted to the husband in an action in which jurisdiction over the person of the wife was not obtained, or (2) by reason of the misconduct of the wife, unless such misconduct would itself constitute grounds for separation or divorce, or (3) by reason of a failure of proof of the grounds of the wife's action or counterclaim. Any order or judgment made as in this section provided may combine in one lump sum any amount payable to the wife under this section with any amount payable to the wife under section two hundred forty of the domestic relations law. Upon the application of either the husband or the wife, upon such notice to the other party and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or by final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or declaring the nullity of a void marriage rendered on or after September first, nineteen hundred forty or any judgment of separation or divorce whenever rendered, amend the judgment by inserting such direction. Subject to the provisions of section two hundred forty-four of the domestic relations law the authority granted by the preceding sentence shall extend to unpaid sums or installments accrued prior to the application as well as to sums or installments to become due thereafter.

As amended L.1968, c. 699, eff. June 16, 1968.

§ 237. Counsel fees and expenses

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to declare the validity or nullity of a judgment of divorce rendered against the wife who was the defendant in any action outside the State of New York and did not appear therein where the wife asserts the nullity of such foreign judgment, or (5) by a wife to enjoin the prosecution in any other jurisdiction of an action for a divorce, or (6) upon any application to annul or modify an order for counsel fees and expenses made pursuant to this subdivision provided, the court may direct the husband, or where an action for annulment is maintained after the death of the husband may direct the person or persons maintaining the action, to pay such sum or sums of money to enable the wife to carry on or defend the action or proceeding as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. Such direction must be made in the final judgment in such action or proceeding, or by one or more orders from time to time before final judgment, or by both such order or orders and the final judgment. Upon application of

New York cont'd.

the husband or the wife or the person or persons maintaining an action for annulment after the death of the husband, upon such notice to the other party and given in such manner as the court shall direct, the court may, in or before final judgment, annul or modify any such direction. Subject to the provisions of section two hundred forty-four of the domestic relations law the authority granted by the preceding sentence shall extend to unpaid sums or installments accrued prior to the application as well as to sums or installments to become due thereafter.

(b) Upon any application to annul or modify an order or judgment for alimony or for custody, visitation, or maintenance of a child, made as in section two hundred thirty-six or section two hundred forty provided, or upon any application by writ of habeas corpus or by petition and order to show cause concerning custody, visitation or maintenance of a child, the court may direct the husband or father to pay such sum or sums of money for the prosecution or the defense of the application or proceeding by the wife or mother as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. With respect to any such application or proceeding, such direction may only be made in the order or judgment by which the particular application or proceeding is finally determined. Added L.1962, c. 313, § 10; amended L.1963, c. 341; L.1963, c. 685, § 7, all eff. Sept. 1, 1963.

Pennsylvania:

Ch. 23

§ 45. Permanent Alimony Where Respondent Insane

In case of the application of a husband for divorce from an insane wife, the court, or the judge thereof to whom the application is made, shall have power to decree alimony for the support of such insane wife during the term of her natural life, by requiring the libellant to file a bond, with surety or sureties if necessary, in such sum as he or it may direct, conditioned as aforesaid, before granting the divorce.

If the wife be the petitioner, and have sufficient means, the court, or the judge, may provide for the support of the insane husband, as provided in this section for an insane wife, if the insane husband has not sufficient estate in his own right for his support. 1929, May 2, P.L. 1237, § 45.

Pennsylvania cont'd.

§ 46. Alimony pendente lite, counsel fees and expenses

In case of divorce from the bonds of matrimony or bed and board, the court may, upon petition, in proper cases, allow a wife reasonable alimony pendente lite and reasonable counsel fees and expenses. 1929, May 2, P.L. 1237, § 46; 1933, May 25, P.L. 1020, § 1.

§ 47. Alimony in Divorce From Bed and Board

Allowance; continuance; suspension, annulment, revival and enforcement of decree.—In cases of divorce from bed and board, the court may allow the wife such alimony as her husband's circumstances will admit of, but the same shall not exceed the third part of the annual profit or income of his estate, or of his occupation and labor, which allowance shall continue until a reconciliation shall take place, or until the husband shall, by his petition or libel, offer to receive and cohabit with her again and to use her as a good husband ought to do; and then in such case the court may either suspend the aforesaid decree, or, in case of her refusal to return and cohabit under the protection of the court, discharge and annul the same according to its discretion; and, if he fail in performing his said offers and engagements, the former sentence or decree may be revived and enforced, and the arrears of the alimony ordered to be paid.

Divorce makes no provision otherwise for permanent alimony. Hooks v. Hooks, 187 A 245; 123 Pa. Super. 507 (1936).

Texas:

Family Code

§ 3.59. Temporary Support

After a petition for divorce or annulment is filed, the judge, after due notice may order payments for the support of the wife, or for the support of the husband if he is unable to support himself, until a final decree is entered.

Support

Alabama:

Tit. 34

§ **90.** (4480) **Husband or parent failing to provide for dependent wife or children.**—Any husband who shall, without just cause, desert or wilfully neglect or refuse or fail to provide for the support and maintenance of his wife; or any parent who shall without lawful excuse desert or wilfully neglect or refuse or fail to provide for the support and maintenance of his, or her, child, or children, under the age of eighteen years, whether such parent have custody of such child, or children, or not, she or they being then and there in destitute or necessitous circumstances, shall be guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine of not exceeding one hundred dollars, or be sentenced to a term in the county jail, or at hard labor for the county for a period of not more than twelve months, or the fine may be in addition to either the sentence to jail or to hard labor. (1919, p. 176.)

California:

§ 5130. Support of wife; necessaries

If the husband neglects to make adequate provision for the support of his wife, except in the case mentioned in Section 5131, any other person may in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.
(Added by Stats.1969, c. 1608, p. —, § 8, operative Jan. 1, 1970.)

Mutual obligation of support, see § 5100.
Operative date and application of Stats. 1969, cc. 1608, 1609, pp. —, see note under § 25.

Derivation: Former section 174.

§ 5131. Support of wife; separation by agreement

A husband is not liable for his wife's support when she is living separate from him by agreement unless such support is stipulated in the agreement.
(Added by Stats.1969, c. 1608, p. —, § 8, operative Jan. 1, 1970.)

Mutual obligation of support, see § 5100.
Operative date and application of Stats. 1969, cc. 1608, 1609, pp. —, see note under § 25.

Derivation: Former section 175, amended by Stats.1955, c. 526, p. 999, § 1.

§ 5132. Support of husband

The wife must support the husband while they are living together out of her separate property when he has no separate property, and there is no community property or quasi-community property and he is unable, from infirmity, to support himself.

For the purposes of this section, the terms "quasi-community property" and "separate property" have the meanings given those terms by Sections 4803 and 4804.
(Added by Stats.1969, c. 1608, p. —, § 8, operative Jan. 1, 1970.)

Mutual obligation of support, see § 5100.
Operative date and application of Stats. 1969, cc. 1608, 1609, pp. —, see note under § 25.

Derivation: Former section 176, amended by Stats.1961, c. 636, p. 1841, § 10.

District of Columbia:

§ 16-916. Maintenance of wife and minor children; maintenance of former wife; enforcement

(a) Whenever any husband shall fail or refuse to maintain his wife, minor children, or both, although able to do so, or whenever any father shall fail or refuse to maintain his children by a marriage since dissolved, although able to do so, the court, upon proper application, may decree, pendente lite and permanently, that he shall pay reasonable sums periodically for the support of such wife and children, or such children, as the case may be, and the court may decree that he pay suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(b) Whenever a former husband has obtained a foreign ex parte divorce, the court thereafter, on application of the former wife and with personal service of process upon the former husband in the District of Columbia, may decree that he shall pay her reasonable sums periodically for her maintenance and for suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(c) The Court may enforce any decree entered under this section in the same manner as is provided in section 16-911. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 3.)

Massachusetts:

Tit. 223

§ 1. Desertion and nonsupport; failure to provide care and guidance; conditions damaging to character; decree establishing wife's rights as prima facie evidence. Any husband or father who without just cause deserts his wife or minor child, whether by going into another town in the commonwealth or into another state, and leaves them or any or either of them without making reasonable provision for their support, and any husband or father who unreasonably neglects or refuses to provide for the support and maintenance of his wife, whether living with him or living apart from him for justifiable cause, or of his minor child, and any husband or father who abandons or leaves his wife or minor child in danger of becoming a burden upon the public, and any mother who deserts or wilfully neglects or refuses to provide for the support and maintenance of her child under the age of sixteen, and any parent of a minor child, or any guardian with

Massachusetts cont'd.

care and custody of a minor child, or any custodian of a minor child, who wilfully fails to provide necessary and proper physical, educational or moral care and guidance, or who permits said child to grow up under conditions or circumstances damaging to the child's sound character development, or who fails to provide proper attention for said child, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years, or both. No civil proceeding in any court shall be held to be a bar to a prosecution hereunder for desertion or non-support. In a prosecution hereunder for desertion or non-support against a husband, a decree or judgment of a probate court in a proceeding in which the husband appeared or was personally served with process, establishing the right of the wife to live apart, or her freedom to convey and deal with her property, or the right to the custody of the children, shall be admissible and shall be prima facie evidence of such right. **As amended St.1939, c. 177, § 1; St.1954, c. 539; St.1957, c. 49.**

Nevada:

123.090 Necessaries provided wife when husband neglects to provide: recovery of value. If the husband neglects to make adequate provision for the support of his wife, any other person may in good faith supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.
[22:119:1873; B § 172; BH § 520; C § 531; RL § 2176; NCL § 3376]

123.100 Husband not liable for support when wife abandons him. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct in abandoning him.

123.110 When wife must support husband. The wife must support the husband out of her separate property when he has no separate property and they have no community property and he, from infirmity, is not able or competent to support himself.
[24:119:1873; B § 174; BH § 522; C § 533; RL § 2178; NCL § 3378]

New York:

Dom. Rel.

§ 32. Persons legally liable for support of dependents

For the purpose of this article, the following persons in one state are declared to be liable for the support of dependents residing or found in the same state or in another state having substantially similar or reciprocal laws, and, if possessed of sufficient means or able to earn such means, may be required to pay for such support a fair and reasonable sum, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this article:

1. Husband liable for support of his wife;

2. Father liable for support of his child or children under twenty-one years of age;

3. Mother liable for support of her child or children under twenty-one years of age whenever the father of such child or children is dead, or cannot be found, or is incapable of supporting such child or children;

4. Parents severally liable for support of each son or daughter twenty-one years of age or older whenever such son or daughter is unable to maintain himself or herself and is or is likely to become a public charge;

5. Wife liable for support of her husband if he is incapable of supporting himself and is or is likely to become a public charge;

6. Adult person liable for support of each of his or her parents who is unable to maintain himself or herself and is or is likely to become a public charge;

7. Grandparent liable for support of each of his or her grandchildren who is unable to maintain himself or herself and is or is likely to become a public charge. Added L.1958, c. 146, § 1, eff. July 1, 1958.

Pennsylvania:

Tit. 48

§ 131. Right of action; jurisdiction; spouses competent witnesses

If any man shall separate himself from his wife or children without reasonable cause, and, being of sufficient ability, shall neglect or refuse to provide suitable maintenance for his said wife or children, action may be brought, at law or in equity, against such husband for maintenance of said wife or children, in the court of common pleas of the county where service may be had on the husband as in other actions at law or in equity or in the county where the desertion occurred, or where the wife or children are domiciled, and the said court shall have power to entertain a bill in equity in such action, and shall make and enforce such orders and decrees as the equities of the case demand, and in such action, at law or in equity, the husband and wife shall be fully competent witnesses. 1907, May 23, P.L. 227, § 1; 1909, April 27, P.L. 182, § 1(1); 1955, Dec. 15, P.L. 878, § 1.

Texas:

Family Code

§ 4.02. Duty to Support

Each spouse has the duty to support his or her minor children. The husband has the duty to support the wife, and the wife has the duty to support the husband when he is unable to support himself. A spouse who fails to discharge a duty of support is liable to any person who provides necessaries to those to whom support is owed.

Custody

Alabama:

Ch. 34

§ 35. (7422) (3808) (1501) (2338) (2701) (2367) (1977) Custody of children on decree of divorce. --Upon granting a divorce, the court may give the custody and education of the children of the marriage to either father or mother, as may seem right and proper, having regard to the moral character and prudence of the parents, the age

Alabama cont'd.

and sex of the children; and pending the suit may make such orders in respect to the custody of the children as their safety and well-being may require. But in cases of abandonment of the husband by the wife, he shall have the custody of the children after they are seven years of age, if he is a suitable person to have such charge.

Presumption that a child of tender years will fare better in custody of mother.—Child of very tender years will be presumed to fare better in care of mother, even though she be not wholly free of fault in matter of her separation from father, under this section. McLellan v. McLellan, 220 Ala. 376, 125 So. 225.

Alaska:

§ 09.55.205. Judgments for custody. In an action for divorce or for legal separation the court may, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of any child of the marriage, make an order for the custody of or visitation with the minor child which may seem necessary or proper and may at any time modify or vacate the order. In awarding custody the court is to be guided by the following considerations:
(1) by what appears to be for the best interests of the child and if the child is of a sufficient age and intelligence to form a preference, the court may consider that preference in determining the question;
(2) as between parents adversely claiming the custody neither parent is entitled to it as of right. (§ 1 ch 160 SLA 1968)

As a general rule, child custody is awarded to mother. Barr v. Barr, 437 F. 2d 324 (1968).

California:

§ 4600. Custody order; preferences; findings; allegations; exclusion of public

In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding, or at any time thereafter, make such order for the custody of such child during his minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to his wishes in making an award of custody or modification thereof. Custody should be awarded in the following order of preference:

(a) To either parent according to the best interests of the child, but, other things being equal, custody shall be given to the mother if the child is of tender years.

(b) To the person or persons in whose home the child has been living in a wholesome and stable environment.

(c) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

Colorado:

46-2-4. Custody—support—maintenance—property division.—(1) (a) At all times after the filing of a complaint, whether before or after the granting of a separate maintenance decree, the court may make such orders, if any, as the circumstances of the case may warrant for:

(b) Custody of minor children;

(c) Care and support of children dependent upon the parent or parents for support;

(d) Maintenance;

(e) Suit money, court costs and attorney fees; and

(f) Any other matters (except division of property) in controversy between the parties.

(2) At the time of the issuance of a separate maintenance decree or at some reasonable time thereafter as may be set by the court at the time of the issuance of said decree, on application of either party the court may make such orders, if any, as the circumstances of the case may warrant relative to division of property, in such proportions as may be fair and equitable. If a property division shall be ordered, neither party shall thereafter have any rights to participate or share in the estate of the other except by will subsequently executed.

(3) The court shall have the power to require security to be given to insure enforcement of its orders, in addition to other methods of enforcing court orders now or hereafter prescribed by statute or by rules of civil procedure.

(4) The court shall retain jurisdiction of the action for the purpose of such later revisions of its orders pertaining to subsections (1)(b), (1)(c), (1)(d), (1)(e), (1)(f), and subsection (3) of this section as changing circumstances may require, and for the purpose of hearing any matters in subsections (1), (2) and (3) of this section which it was unable to determine at earlier hearings for lack of personal jurisdiction over one of the parties, or for lack of knowledge or information, or because of fraud, misrepresentation, or concealment.

(5) Any written agreement or stipulation by the parties as to any of the above matters, when incorporated in an order or decree or when filed in the action and referred to and approved and adopted in any order or decree, shall become a part of such order or decree.

Hawaii:

§571-46 Criteria and procedure in awarding custody. In actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court may, during the pendency of the action, at the final hearing or any time during the minority of the child, make such order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court is to be guided by the following standards, considerations and procedures:

(1) Custody should be awarded to either parent according to the best interests of the child.

(2) Custody may be awarded to persons other than the father or mother whenever such award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall prima facie be entitled to an award of custody.

(3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, his wishes as to custody shall be considered and be given due weight by the court.

(4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court shall make investigations and reports which shall be made available to all interested parties and counsel before hearing, and such reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence provided the person or persons responsible for the report are available for cross-examination as to any matter which has been investigated.

(5) The court may hear the testimony of any person or expert produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that his testimony is relevant to a just and reasonable determination of what is to the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue.

(6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award.

(7) Reasonable visitation rights shall be awarded to parents and to any person interested in the welfare of the child in the discretion of the court, unless it is shown that such rights of visitation are detrimental to the best interests of the child.

Hawaii cont'd.

(8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify. [L 1965, c 83, §1; Supp, §333-23.5; am L 1967, c 56, §4]

§580-11 Care, custody, education, and maintenance of children pendente lite. During the pendency of any suit for divorce or separation the judge may make such orders concerning the care, custody, education, and maintenance of the minor children of the parties to the suit as law and justice may require and may enforce the orders by summary process. The judge may revise and amend the orders from time to time. [L 1931, c 49, §1; RL 1935, §4474; RL 1945, §12225; RL 1955, §324-36]

Illinois:

Ch. 40

§ 14. Custody, etc., of children pending suit—Reference

The court may, on the application of either party, make such order concerning the custody and care of the minor children of the parties during the pendency of the suit as may be deemed expedient and for the benefit of the children, and may award the custody of the minor child or children of the marriage to either party as the interests of the child or children require, and may make such provision for the education and maintenance of the child or children, whether of minor or majority age, out of the property of either or both of its parents as equity may require and whether application made therefor before or after such child has, or children have, attained majority age. The court may grant leave, before or after decree, to any party having custody of the minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. When such removal is permitted, the court may require the party removing such child or children from Illinois to give reasonable security guaranteeing the return of such child or children should the court decide that return is in the best interests of such child or children.

As amended 1959, July 10, Laws 1959, p. 872, § 1; 1965, Aug. 24, Laws 1965, p. 3466, § 1; 1967, Aug. 31, Laws 1967, p. 3445, § 1.

Generally the best interests are served by awarding custody of minor child to divorced mother unless there is compelling evidence proving that the mother is unfit or unless there is positive showing that the denial of custody to mother would be in child's best interest. *Akin* v. *Akin*, 248 N.E. 2d 829, (Ill. 1969).

New York:

Dom. Rel.

§ 240. Custody and maintenance of children

In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court must give such direction, between the parties, for the custody, care, education and maintenance of any child of the parties, as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interest of the child. In all cases there shall be no prima facie right to the custody of the child in either parent.

Absent clearest presentation that child's welfare would be grievously impaired, law favors awarding custody of immature infant to mother. Weiss v. Weiss, 278 N.Y.S. 2d 61 (1967).

Pennsylvania:

Ch. 48

§ 92. Judges to decide disputes as to children's custody

In all cases of dispute between the father and mother of such minor child, as to which parent shall be entitled to its custody or services, the judges of the courts shall decide, in their sound discretion, as to which parent, if either, the custody of such minor child shall be committed, and shall remand such child accordingly, regard first being had to the fitness of such parent and the best interest and permanent welfare of said child. 1895, June 26, P.L. 316, § 2.

Unless compelling reasons appear to contrary, custody of child of tender years should be committed to mother, by whom needs of child are ordinarily best served. Com. ex. rel. Hickey v. Hickey, 247 A 2d 806, 213 Pa. Super. 349 (1968).

Texas:

Art. 4639. [4636-41] Children

A divorce shall not in anywise affect the legitimacy of the children of the parents so divorced. The court shall have power, in all divorce suits, to give the custody and education of the children to either father or mother, as the court shall deem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the children, to be determined and decided on the petition of either party; and in the meantime to issue any injunction or make any order that the safety and well-being of any such children may require. P.D. 3461.

Art. 4639a

The court may by judgment order either parent to make periodical payments for the benefit of such child or children, until same have reached the age of eighteen (18) years, or, said court may enter a judgment in a fixed amount for the support of such child or children, and such court shall have full power and authority to enforce said judgments by civil contempt proceedings after ten (10) days notice to such parent of his or her failure or refusal to carry out the terms thereof, and for the purpose of ascertaining the ability of the parents of such child or children to contribute to the support of same, they may be compelled to testify fully in regard thereto, under penalty of contempt of court, as in other cases.

Custody of minor children particularly those of tender years, should be awarded to mother in divorce action unless court is convinced that she is unfit. *Meyer* v. *Meyer*, 361 S.W. 2d 935 (Tex. Civ. App. 1963); error dism.

EQUAL RIGHTS FOR MEN AND WOMEN—PROPOSED AMENDMENT TO THE CONSTITUTION

The Senate resumed the consideration of the resolution (S. J. Res. 25) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

The VICE PRESIDENT. As the Chair has stated, the time from now until 1:30 o'clock is equally divided between the proponents and opponents of the joint resolution and controlled, respectively, by the Senator from Iowa [Mr. GILLETTE] and the Senator from Georgia [Mr. RUSSELL].

Mr. GILLETTE. Mr. President, I yield 3 minutes to the Senator from Wisconsin [Mr. WILEY].

The VICE PRESIDENT. The Senator from Wisconsin is recognized for 3 minutes.

Mr. WILEY. Mr. President, I should like to say a word on the subject of the equal rights amendment, Senate Joint Resolution 25, now pending before the Senate. As a long-time cosponsor of this proposal it has been my firm conviction that the time is overdue for the submittal to the respective States of this proposed constitutional amendment in order that they in turn may come to a decision on this long-debated theme.

I call the attention of my colleagues to the fact that the amendment does not of itself have the force of law even following a two-thirds vote of both Houses. Rather, its validation is dependent upon ratification by three-fourths of the States.

I congratulate all the many alert women of our Nation banded together in organizations which have fought the good fight for a full century in order to assure fair and equal treatment for the members of their sex. They secured a partial victory when the nineteenth amendment was ratified in 1920, assuring both male and female citizens equal political rights as voters. However, that amendment did not assure them equal legal rights and from that flaw has stemmed the demand for enactment of the current amendment.

During the Eightieth Congress, it was my pleasure to serve as chairman of the Senate Committee on the Judiciary which favorably reported the amendment to the Senate. However, that was but one occasion in the 27 consecutive years in which the proposed amendment, in one form or another, has been before the Congress. Since 1923, as cited yesterday by my able colleague from Iowa [Mr. GILLETTE], 26 different hearings have been held on it.

I call the attention of my colleagues to the fact that both major party platforms have endorsed the amendment. I believe, Mr. President, that a promise is a promise, that a platform pledge should not be broken, and that it is altogether fitting and proper that we keep the faith with the women of the Nation and submit the amendment to the States for ratification. Surely that is in keeping with the spirit of democracy.

We all recognize that some of the leading legal minds in the land have given different analyses of the effect of the amendment. However, it is a fact that the respective State legislatures are more than competent to evaluate those legal analyses and come to their own decision. Surely the judgment of such outstanding organizations as the National Women's Party, the General Federation of Women's Clubs, the National Federation of Business and Professional Women's Clubs, and many other outstanding groups which have endorsed the amendment cannot lightly be dismissed.

The amendment does not require uniformity of laws among the 48 States. It grants no new rights. It merely declares that no law passed by either the Congress or by any State legislature shall be constitutional if such law denies equality of rights on account of sex.

It is my hope, therefore, and I believe it is the hope of the women of Wisconsin, that the Congress will pass the pending joint resolution and refer the amendment to the States for their own judgment. Our action will mark another forward step in the progress of womankind.

Mr. President, I will vote against all pending amendments offered from the floor, because I feel that it is rather inappropriate for the Senate to decide in a few moments on entirely new amendments which have never been submitted before but which should more appropriately have been presented for debate long before this. With all due respect to my able colleague from Arizona, I feel that the Hayden amendment is particularly unjustified, because it offers in one breath a constitutional change and in the next embodies a direct contradiction of that change. In one paragraph it would grant women equality and in a second wipe out that equality by granting special benefits and exemptions. The confusion that would result from the Hayden amendment would becloud all possible action in the States. I feel that out of respect for the 30 national women's organizations with a membership of approximately 40,000,000, we in the Senate should adopt the original amendment as offered by the Senator from Iowa [Mr. GILLETTE] and cosponsors.

Mr. GILLETTE. Mr. President, I now yield 10 minutes to the junior Senator from Wyoming [Mr. HUNT].

The VICE PRESIDENT. The Senator from Wyoming is recognized for 10 minutes.

Mr. HUNT. Mr. President, the junior Senator from Wyoming is proud to have the privilege of sponsoring, together with some 30 other Members of this distinguished body, the equal-rights amendment. In doing so I am carrying on a tradition which has been in vogue in the State of Wyoming for some 81 years, for it was in the year 1869 that the first territorial legislature of my State convened, and it passed a women's suffrage act which was not only the first of its kind to be adopted in this Nation, but, I am advised, the first in all the world.

Again, Mr. President, in the Wyoming constitutional convention of 1889 proposition No. 25, providing for equal suffrage for women, was written into the State constitution. So I am pleased to support in the Senate of the United States a theory which has been in vogue in my own State so long and from which the State of Wyoming takes its name as the Equality State.

It is strange to relate, however, Mr. President, that it was only last year, 1949, or 80 years later, that the Equality State finally, by an act of the legislature, permitted women to serve on juries in the district courts of the State. It is to obviate such situations or such injustices at this time that I have lent my wholehearted support to the passage of Senate Joint Resolution 25.

Mr. President, in passing I might say that in the original act of 1869 in the Wyoming Legislature crippling amendments were submitted. It would be very interesting, I think, if I were to comment briefly on some of those amendments. The original bill referred to the fair sex as "ladies." An amendment was submitted, the purpose of which was to delete the word "ladies" and insert the words "squaws and colored women."

Another crippling amendment, as I remember from reading Wyoming history, was submitted, the purpose of which was to lay the bill on the table until July 4, 100 years hence.

Mr. President, the enactment of the nineteenth amendment was thought to give women full equality with men. Actually, however, all it accomplished was simply to provide all women who were citizens of the United States with the unquestionable right to vote. It was then necessary for them, through efforts exerted in the legislatures of the several States, to attempt to get the other discriminatory statutes written off the books. In this effort they have been partially successful, but many States still maintain and enforce laws which are discriminatory against both married women and employed women.

I cannot help but feel, and in this I know thousands of men and women in

all walks of life join me, that it is unfair with one hand to give to a woman the right to vote in a democratic system of government and with the other hand make it impossible for her to follow her chosen line of work, which may be the only work in which she is trained or which she is capable of doing, by allowing, as I have said, discriminatory wage-and-hour legislation to be written into State laws. Nor is it fair and equitable for an individual State to determine that a woman citizen of the State cannot bring a tort action for injury received to her own person unless her husband joins in the action, or cannot deed her own property without having her husband as a cograntor, or that a woman must have a court order or her husband's consent before she can establish a business or keep the profits from such business. Laws such as these make one gasp by their outmodedness and discrimination, but they exist in some States. In the States where they do exist, by the enactment of Senate Joint Resolution 25, we shall make it possible for a constitutional amendment on the subject subsequently to be adopted, thus removing any such discriminations.

Mr. President, our Constitution does not specifically differentiate between men and women, nor do the constitutions of the States having laws such as those just cited. But our courts, following the old English law, have interpreted the constitutions to apply only to men, thus making it necessary to specifically provide for the women of this country.

Mr. President, during the recent war, many of the barriers against women were dropped entirely or partially relaxed through necessity, and we found that the women of the United States willingly accepted the burdens cast upon them in military service and in war production; they joined shoulder-to-shoulder with the men of the Nation in our gigantic effort. Let us, therefore, before these barricades become inalterably entrenched again, amend our Constitution to provide "equal justice under law"—the motto which we have caused to be carved on our Supreme Court Building. The one and only way of assuring this equal justice is by passage of Senate Joint Resolution 25 by this body, and then by untiring work to secure the ratification of the amendment by the necessary number of States.

Mr. President, in the event this body, the distinguished United States Senate, should deem it necessary to withhold equal rights from one-half of our population, I contend that they should not be withheld from the better half.

The VICE PRESIDENT. The Senator from Iowa yielded 10 minutes to the Senator from Wyoming, and 2 minutes of that time remain. Does the Senator from Iowa wish to use further time at this point?

Mr. GILLETTE. No, Mr. President; I am glad to have the opponents now use some of their time.

Mr. RUSSELL. Mr. President, how much time remains to those on our side of the question?

The VICE PRESIDENT. Thirty-seven minutes.

Mr. RUSSELL. I yield to the junior Senator from New York [Mr. LEHMAN] 7 minutes, or as much thereof as he wishes to use.

The VICE PRESIDENT. The junior Senator from New York is recognized for 7 minutes.

Mr. LEHMAN. Mr. President, I rise for the second time in the last 2 days to oppose the passage of Senate Joint Resolution 25. I do so because I believe the joint resolution, far from conferring additional rights on women, may greatly curtail or destroy the rights they have today.

For 40 years, both before I entered public life and since then, I have been working in behalf of the safeguarding and protection of the rights of women. Women have made tremendous progress in the rights they have obtained in the various States of the Union. In the State of New York, which I have the honor in part to represent, and I am sure in all the other States of the Union, there has developed during those 40 years a great mass of social and labor legislation in protection of women. Moreover, there have grown up important legal traditions and court decisions. Today, in most States, women are being protected in connection with conditions of work, minimum wages, maximum hours, domestic relations, divorce and alimony proceedings, in support of the family and in many other ways. I am convinced that all these protections will be placed in great jeopardy if Senate Joint Resolution 25 is enacted. No judge or responsible lawyer has told me that there can possibly be any assurance that the great mass of legislative enactments and legal traditions and decisions which have been built up over many decades will be safeguarded if the pending joint resolution is passed. I doubt very much whether they will be safeguarded even if the amendment which has been offered by the distinguished Senator from Arizona [Mr. HAYDEN] is adopted, since I believe there will always be a legal question with regard to whether a law now on the statute books or to be passed at a later date will be construed to impair any of the rights, benefits, or exemptions which may be conferred by law upon persons of the female sex, or whether such enactments are contrary to the body of the joint resolution and the subsequent amendment proposed to be incorporated into the Constitution of the United States.

Mr. PEPPER. Mr. President, will the distinguished Senator object to yielding for an inquiry?

Mr. LEHMAN. Certainly.

Mr. PEPPER. I do not wish to interrupt the Senator.

Mr. LEHMAN. I should prefer to continue, and then I shall be glad to yield.

Mr. PEPPER. Certainly.

Mr. LEHMAN. Mr. President, what is to be gained by the passage of this joint resolution? I know of no State in the Union in which women suffer political disabilities at the present time. They can run for office, whether it be that of President of the United States or Vice President or Member of the Senate or Member of the House of Representatives, or officer in any unit of governm[ent] within the United States. Wom[en] c[an] hold any office, either in public or in pr[i]vate life. There are today virtually n[o] limitations on the employment of wom[en]. The only one I know of in the State o[f] New York is a prohibition against permitting women to work in the mines o[f] the State.

Mr. President, in my opinion this joi[nt] resolution confers absolutely no additional rights of any kind upon wom[en]. It seeks to correct some of the disabilities which exist because of prejudice o[r] because of custom. But the propos[ed] constitutional amendment will not serv[e] that purpose. If a man wishes to employ a man doctor, he is not going t[o] employ a woman doctor simply becau[se] of the amendment which it is propos[ed] to have incorporated in the Constitution. If a man wishes to employ a ma[n] lawyer, he is not going to be forced in[to] employing a woman lawyer. If a ma[n] wishes to promote someone in his off[ice] or give employment to someone, he [is] not going to be compelled by the passa[ge] of this joint resolution or any othe[r] measure or by any provision in the Constitution of the United States to act contrary to his judgment.

Mr. President, I think the risk involved in passing this joint resolution i[s] far too great. Undoubtedly if th[e] amendment to the Constitution shal[l] finally be adopted, we shall jeopardiz[e] the great mass of protective, social, an[d] labor legislation which has been built up; we shall risk and shall place in jeopardy the court decisions and the legal traditions which have been established. Certainly at best there cannot possibly be any doubt in the mind of anyone tha[t] the passage of the joint resolution wi[ll] place in great jeopardy all the enactments I have enumerated, and hundred[s] in addition thereto.

I think the joint resolution, if passed will do a great disservice to the women of the country. I deeply hope it will be defeated in the Senate of the United States.

Mr. PEPPER. Mr. President——

The VICE PRESIDENT. The Senator from New York has half a minute remaining.

Mr. PEPPER. I beg the Senator's pardon; I did not know he was speaking under a limitation of time.

I was going to ask the able Senator what type of legislation favorable to women, now upon the statute books, does he believe would be impaired or invalidated if the proposed constitutional amendment were adopted.

Mr. LEHMAN. In my State, I think the statute covering minimum wages for women, inasmuch as under the State constitution no minimum wage is permitted for men, would certainly be declared unconstitutional. I believe the limitation on hours of work of women would be declared unconstitutional, because in our State there is no limitation upon the hours of work of men. I believe the question of support of children and alimony would certainly be placed in very great jeopardy. These are only a few of our statutes which might be destroyed.

The VICE PRESIDENT. The time of the Senator from New York has expired.

Mr. GILLETTE. Mr. President, I yield 5 minutes to the senior Senator from New York [Mr. IVES].

Mr. IVES. Mr. President, yesterday and again today in this debate on the proposed constitutional amendment aimed to provide equal rights for women, a strong case has been made against the amendment itself. Amendments to the amendment are being offered, and it would appear that on the basis of the intrinsic merit of the proposed constitutional amendment alone, as it stands and of itself, it might not receive sufficient support in the Senate to permit its approval.

I listened yesterday with much interest, as I have again today, to the remarks of my distinguished colleague from New York [Mr. LEHMAN], in which he gave a partial outline of the many legislative enactments in our State which, over the years, have been provided for the special protection of women. As he so generously indicated in his remarks, I also contributed in substantial degree in promoting many of these legislative enactments. I concur with many of his observations regarding the merit of the proposed constitutional amendment itself, although I feel that the situation which it provokes is one open to broad and searching debate and probable court determination.

I am not speaking in favor of the proposed constitutional amendment. I am speaking on what I consider to be the primary question before the Senate—the matter of the submission of this amendment to the States for ratification or rejection.

As has been pointed out so frequently in this debate, this question has been before the Congress for 27 years. During this same period the submission of the amendment to the States for ratification has frequently been advocated in platform planks of both major political parties. It has been a constantly recurring question. It is one which cannot be ignored.

Neither do I believe that it can be resolved satisfactorily by the alternative proposal in the form of the substitute amendment, meritorious though such a proposal may be in and of itself and apart from the main question of the proposed constitutional amendment. It seems to me that this proposed constitutional amendment is so vital and so far-reaching in its implications and potential consequences that it should be submitted for the individual consideration of the several States.

Affecting the fundamental rights of the States themselves to so great degree as does this proposed constitutional amendment, the States in turn by direct action should be required to make the decision. Each State knows far better than can we in the Congress how the proposed amendment might affect it.

Furthermore, this is a very basic matter in our society which would have a direct and powerful effect upon the well-being of at least half of our population. Probably no amendment to the Constitution having a greater effect upon more people in the United States has ever been proposed. Here again it seems to me to be of the utmost importance that the States themselves should be called upon to make direct and individual determination.

At the same time, two of the amendments which have been proposed, the one by the Senator from Georgia [Mr. RUSSELL], which would place a time limitation for ratification, and the one offered by the Senator from Arizona [Mr. HAYDEN], which is aimed to prevent any impairment of "any rights, benefits, or exemptions conferred by law upon persons of the female sex," seems to be most desirable.

As a former member of the legislature of my State for many years, I long ago became convinced of the ever present need for a time limit for the ratification of amendments to the Constitution of the United States, and I long ago reached the personal decision that I would not support any proposed constitutional amendment, no matter how meritorious, unless it carried with it such a time limitation provision.

For the reasons I have briefly indicated, I expect to vote in favor of Senate Joint Resolution 25, if either the amendment to it offered by the Senator from Georgia [Mr. RUSSELL] or one of a similar nature is adopted. In so voting, however, I do not wish my action to be construed in any sense as an endorsement of the proposed constitutional amendment itself.

I thank the Senator from Iowa.

Mr. RUSSELL. Mr. President, I yield myself 15 minutes.

The VICE PRESIDENT. The Senator from Georgia is recognized for 15 minutes.

Mr. RUSSELL. Mr. President, I am unable to treat lightly any proposal to change or alter the organic law of our country. In my opinion any measure seeking to change or repeal any provision of the Constitution of the United States or to insert a new section should be weighed most carefully by the Members of the Congress before it is passed to the States with our approval. The mere fact that the amendment has been pending in one form or other before the Congress for a number of years is, to me, of itself no endorsement. Believing that it is neither necessary nor desirable, I shall vote against the submission of the amendment to the States.

Mr. President, the amendment is a Pandora's box. If it is opened, no living human being can possibly estimate the consequences that will flow from such action. It will cause confusion unspeakable. It will strike down any number of salutary statutes enacted by the legislatures of the 48 States for the protection or for the benefit of women. It will likewise jeopardize or eliminate any number of ordinances approved by the governing bodies of the municipalities of the Nation dealing with the same subject. It will be a blow at the philosophy of local self-government, in which I firmly believe. Approval in its present form will be more dire in its consequences than any man can possibly predict at this juncture. It bears a euphonious title, the title of "Equal Rights." Of late, Mr. President, we have frequently seen legislation submitted to the Congress that had little to commend it other than the euphony of the title of the proposed act. We should not enact legislation merely because it is given an attractive label.

I have made no study of this subject in detail, but I know that in my own State the adoption of the amendment would take away rights which are absolutely vital to the women of my State. We have provisions in the laws of my State under which any woman and her minor children may obtain a year's support from the estate of a decedent husband, even prior to many claims of creditors which may be involved. What would be the effect of the amendment? Would it be to deny the women of the States which have the year's support law or similar statutes, the right to a year's support, or would it confer a year's support upon the husband in case of the death of a wife who owned property?

In my own State we have statutes which entitle women to alimony and to support, and even criminal statutes, under which a husband can be punished for failure to support his family. What would be the effect of the amendment upon those statutes? Would it deny those rights to all married women or would it create for all husbands the right of alimony and the right of support from the wife.

I could proceed almost without end to recite various laws which exist in practically all the States, and which are very beneficial to the women of the country, and, more than that, to the children for whose care they are especially charged. We have a rule of law in my own State, and I am sure it obtains in a great many other States, that, unless there is some overriding reason to the contrary, based upon the bad character of the wife, she is entitled, in case of separation, to have the custody of minor children. What effect would the amendment have upon those laws? No man can safely predict. We have statutes which have been enacted to protect women who are now engaged in earning their livelihood in my State, and in nearly all others. Would the amendment strike down those statutes, or would it give the same rights and privileges to men, and thereby stop the operations of hundreds of industries which are compelled to perform certain types of work which women cannot do under laws for their protection.

Mr. President, I cannot conceive of a more mischievous proposition than the one now pending before the Senate. It would take away from city councils and city aldermanic boards the right to pass any regulation or ordinance for the benefit of women, unless it applied equally to men. It would deny to the legislatures of the 48 States the right to legislate for the protection of women in any degree, unless the same rights were conferred upon men. It would deny to the Congress of the United States the right to enact legislation for the benefit and protection of women, unless the same rights were accorded to men.

Mr. President, my objections to the amendment are many. There is another fundamental objection to the proposal. It not only denies to the State legislative bodies, the municipal law-making agencies, and the Congress the right to enact laws in this field, but it transfers law-making power in the fields of descent and distribution, domestic relations and the protection of women in industry, from all the State legislative bodies, who are elected by the people for that purpose, to the Supreme Court of the United States. In the last analysis, if the amendment be approved, that is where the laws will be written in those fields. Almost every question that can be conceived of, dealing with these subjects will become immediately a constitutional question in the Federal courts of the land, and it will give to the Supreme Court a tremendous legislative power in the field of policy, which I do not think should be vested in that Court.

Indeed, Mr. President, the Court has shown a disposition, particularly of late years, to invade the legislative field, and to legislate in areas where it claims to find a vacuum, or no law. If we strike down the great mass of these laws, which either stem from the common law or have been enacted over a period of 200 years, it will be an invitation to the Supreme Court of the United States to legislate and declare policy in detail in the field of domestic relations, laws of descent and distribution, and laws that pertain to the protection of women in industry. I cannot conceive of a more grievous blow to the right of local self-government in this country, with the centralization of power over the lives of our people in one building here in Washington, than would result if the amendment were adopted.

Mr. President, I have often inquired of those who have approached me and have sought to enlist my support of the amendment as to just what rights they were seeking. I knew a great many rights which would be taken from women, but I have asked as to the rights which would be conferred upon them if the amendment were adopted. I have had a number of answers to the question, but the most substantial one has been that it would confer the right to serve upon juries in every State. I am not too sure of that, as a matter of law, because there is a grave question as to whether service on a jury is a duty or a right. I do not know whether the proposed constitutional amendment would even confer that as a right, but if it did, it is absolutely unnecessary, for the Congress to take this drastic step in other fields, in order to assure the right to serve upon juries. Mr. President, I make the statement, without fear of successful contradiction, that when any considerable number of women in any State of the 48 States desire to serve upon juries, all that it is necessary for them to do is to go to the State capital of their State and they will be granted the right immediately by the State legislatures. The State legislatures seek the votes of women, just as we seek them when we are candidates for Federal office, and the political power of women in the several States would be as great or greater than it would be here to secure the right to serve upon juries, if they so desire. I, for one, Mr. President, am not in favor of forcing the women who might not choose to serve on juries to do so through a constitutional amendment, particularly in view of the unrelated evil consequences which would flow from adding this unnecessary language to the Constitution of the United States.

Mr. President, I do not believe any considerable number of women in this Nation desire this constitutional amendment. It is claimed that there is a great body of sentiment in favor of it, but, in my opinion, the fact that resolutions of this character have been presented from year to year is the clearest illustration of the danger in which the country stands of succumbing to the clamor of minority groups who are vocal and who constantly press their claims upon the Congress and upon the other organizations which contribute to the operations of our Government.

That declarations in favor of such an amendment have appeared frequently in the platforms of both political parties, in my opinion, is due to the fact there have been a few good women, who, in their mistaken zeal, have appeared before the platform committees in political conventions and have insisted upon the inclusion of this subject in the catch-all platforms of the political parties. I do not believe that there is any ground swell from the masses of women of the Nation in favor of any such legislation. On the contrary, I am confident that if the effect of the proposition were fully explained to all of the women of the United States, they would bitterly oppose it. A great many women's organizations are already fighting against its adoption and it is unlikely that a majority of the women favor it now, even with its attractive title.

It so happens that the women who are engaged most actively in rearing families or in industry sometimes do not have the means of expression through organizations such as are possessed by other groups. It is no commendation of the merits of the issue that it has been contained in party platforms and has been pressed from year to year. To me it is only an indication of the unwholesome effect of the power of pressure groups and organizations which is made manifest in many other ways than in this proposed amendment to the Constitution.

Mr. President, I have proposed an amendment to the resolution providing that if enacted, the proposed constitutional change may be permitted to pend before the State legislatures for only 5 years. I have discussed the time limit with a number of Senators favoring the resolution, and I think there is very general agreement that it is unwise not to adopt some time limitation on the constitutional amendment if it be proposed to the States. The most recent amendment provided for a period of 7 years, and my amendment, as modified now, provides for a period of 7 years for the proposal to be before the legislatures of the several States.

Mr. President, I ask at this stage to have printed in the RECORD a letter which I received this morning from Mr. William Green, of the American Federation of Labor, in opposition to the joint resolution; a letter from Mr. Nathan E. Cowan, director, legislative department, Congress of Industrial Organizations, opposing the adoption of the joint resolution, and a statement signed by a number of eminent jurists and lawyers, and deans of law schools, pointing out a few of the evil consequences which will flow from the adoption of the resolution.

There being no objection, the letters and statement were ordered to be printed in the RECORD, as follows:

AMERICAN FEDERATION OF LABOR,
Washington, D. C., January 24, 1950.

MY DEAR SENATOR: The American Federation of Labor firmly opposes the enactment of the equal-rights amendment now under consideration by the Senate, and supports the women's status bill. The American Federation of Labor believes in actual equal rights for men and women which will protect the status of all women and not merely wealthy women. Furthermore, being especially interested in the home and the well-being of the child, it is seriously alarmed because the equal-rights amendment will destroy all laws which recognize a specific responsibility for the support of minor children.

We believe in specific legislation through which to wipe out specific inequalities which work to the detriment of women. The proposed equal-rights amendment would destroy all existing legislation which recognizes different but not lesser responsibilities of women. We quote the late Mr. Justice Hughes who stated, in upholding a minimum wage law for women, "You cannot change the sex of a person by a mere stroke of the pen." We recognize not only the different physical capacities of women and hence the need for different standards of employment in certain cases, but we recognize also the actual fact that until women have reached a period of organization through which they may bargain effectively along with men, that it is necessary to give them a base below which no employer may place them in regard to wages, hours, and other working conditions.

While we realize that in time each State would no doubt enact laws which would protect the well-being of the child, we submit that until such laws are enacted the wiping out of present support laws would work a tremendous harm to thousands of our children.

We, therefore, will continue to urge specific laws to repeal specific inequalities, and oppose blanket legislation as contained in the equal-rights amendment through which much more harm than good would be accomplished.

We urge that you support and vote in accordance with our position regarding this proposal as set forth above.

Very truly yours,

W. GREEN,
President, American Federation of Labor.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D. C., January 21, 1950.

DEAR SENATOR: On behalf of the Congress of Industrial Organizations, I am writing you to once more state our opposition to the so-called equal-rights amendment, Senate Joint Resolution 25.

The CIO has consistently opposed this proposed amendment on the basis that it strikes down all State and Federal labor laws enacted for the benefit of women. Utter chaos would result in this field were the amendment to be adopted.

Mr. Philip Murray, president of the Congress of Industrial Organizations, has previously pointed out that the proposal "actually conceals the means of robbing women of the rights and protections that have been won for them."

Mr. Murray has further stated: "It would not secure equality of treatment for women, except at the heavy cost of abandoning the great body of laws that protect women workers from exploitation.

"Laws limiting the hours women may be required to work, regulating health and other working conditions, securing minimum-wage rates in traditionally low-paid industries, and the like, would cease to be effective if this amendment were to become part of our Constitution.

"In addition, laws and other beneficial provisions such as maternity aid, widows' pensions, aid for dependent children, and other social-security protective measures that apply 'unequally' to women would also be abolished.

"We submit that this would not mean 'equal rights,' but would return women workers to conditions that they and the organized labor movement, together with Congress, have long sought to eliminate."

For these reasons we urgently request you to vote against Senate Joint Resolution 25 when it comes before you for consideration.

Sincerely yours,

NATHAN E. COWAN,
Director, CIO Legislative Department.

These lawyers and legal scholars—regardless of party, and regardless of political or economic views—oppose the so-called equal-rights amendment and endorse the statement set forth herein, on the legal implication of the proposed amendment, prepared by Prof. Paul Freund, of the Harvard Law School.

Clarence Manion, dean of the College of Law, University of Notre Dame, Indiana.

Silas Strawn, former president, American Bar Association.

Charles Warren, constitutional lawyer and author of "The Supreme Court in United States History," Washington, D. C.

George Maurice Morris, former president, American Bar Association, Washington, D. C.

Marion J. Harron, judge, Tax Court of the United States.

Walter Gellhorn, professor of law, Columbia University Law School.

Glenn A. McCleary, dean of the law school, University of Missouri.

Dorothy Straus, lawyer, New York City.

D. W. Woodbridge, acting dean, department of jurisprudence, College of William and Mary, Williamsburg, Va.

Marvin C. Harrison, lawyer, Cleveland, Ohio.

M. R. Kirkwood, professor of law, Stanford University Law School, California.

Joseph Padway, general counsel for the A. F. of L., Washington, D. C.

Leon Green, dean of the law school, Northwestern University, Evanston, Ill.

Dorothy Kenyon, lawyer and former judge of municipal court, New York City.

E. Blythe Stason, dean of the law school, University of Michigan.

Morris Ernst, lawyer, New York City.

William Draper Lewis, former dean, University of Pennsylvania Law School, Philadelphia.

Charles C. Burlingham, lawyer, New York City.

Patrick O'Brien, probate judge of Wayne County, Detroit, Mich.

Godfrey Schmidt, professor of law, Fordham University, New York City.

Robert H. Wettach, dean of the school of law, University of North Carolina.

Isabel Simons, lawyer, Highland Park, Ill.

Patrick Nertney, lawyer, and chairman, Detroit Chapter, National Lawyers Guild, Detroit, Mich.

Walter Frank, lawyer, New York City.

Harry R. Trusler, dean of the college of law, University of Florida.

Douglas B. Maggs, professor of law, Duke University School of Law, and former solicitor, United States Department of Labor.

George Burke, former general counsel, OPA, Ann Arbor, Mich.

Gerard Reilly, lawyer, and member National Labor Relations Board.

William H. Holly, United States district judge, Chicago.

Roscoe Pound, former dean, Harvard Law School.

Everett Fraser, dean of the law school, University of Minnesota.

Monte M. Lemann, lawyer, New Orleans, La.

Albert J. Harno, dean of the college of law, University of Illinois.

Lowell Turrentine, acting dean, school of law, Stanford University, California.

Willard Hurst, professor of law, University of Wisconsin Law School.

Francis Swietlik, dean of Marquette University Law School, Milwaukee, Wis.

N. Ruth Wood, lawyer, St. Louis, Mo.

Henry B. Witham, dean of the law school, Indiana University.

C. M. Finfrock, dean of the school of law, Western Reserve University, Cleveland, Ohio.

Sayre MacNeil, dean of the school of law, Loyola University, Los Angeles.

Frank Donner, counsel for the CIO, Washington, D. C.

E. Merrick Dodd, professor, law, Harvard Law School.

Harry Shulman, professor of law, Yale University Law School.

NATIONAL COMMITTEE ON THE STATUS OF WOMEN IN THE UNITED STATES,
Washington, D. C.

The following statement on legal implications of proposed Federal equal-rights amendment has been endorsed by deans and professors of 21 leading law schools and by eminent attorneys, jurists, and constitutional lawyers, including former presidents of the American Bar Association and the general counsel for the two great labor organizations.

"The proposed amendment to the Constitution reads as follows:

"'That equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation.

"'This amendment shall take effect 3 years after the date of ratification.'

"If anything about this proposed amendment is clear, it is that it would transform every provision of law concerning women into a constitutional issue to be ultimately resolved by the Supreme Court of the United States. Every statutory and common-law provision dealing with the manifold relation of women in society would be forced to run the gauntlet of attack on constitutional grounds. The range of such potential litigation is too great to be readily foreseen, but it would certainly embrace such diverse legal provisions as those relating to a widow's allowance, the obligation of family support and grounds for divorce, the age of majority, and the [illegible] annulment of marriages, and the [illegible] hours of labor for women in protected industries.

"Not only is the range of the amendment of indefinite extent but, even more important, the fate of all this varied legislation would be left highly uncertain in the face of judicial review. Presumably the amendment would set up a constitutional yardstick of absolute equality between men and women in all legal relationships. A more flexible view, permitting reasonable differentiation, can hardly be regarded as the object of the proposal, since the fourteenth amendment has long provided that no State shall deny to any person the equal protection of the laws, and that amendment permits reasonable classifications while prohibiting arbitrary legal discrimination. If it were intended to give the courts the authority to pass upon the propriety of distinctions, benefits, and duties as between men and women, no new guidance is given to the courts, and this entire subject, one of unusual complexity, would be left to the unpredictable judgments of courts in the form of constitutional decisions.

"Such decisions could not be changed by act of the legislature. Such a responsibility upon the courts would be doubtless as unwelcome to them as it would be inappropriate. As has been stated, however, the proposal evidently contemplates no flexibility in construction, but rather a rule of rigid equality. This branch of the dilemma is as repelling as the other. It appears to be accepted by what is currently the most authoritative statement on this amendment—the report of the House Judiciary Committee, House Report 907, Seventy-ninth Congress, first session, on House Joint Resolution 49, dated July 12, 1945. The majority of the committee appears to recognize that, under the amendment, the many laws protecting the safety and welfare of women in industry would necessarily fall. The committee states: 'To say the least of the matter, many of the large organizations of women represented in hearings before the committee have expressed a sincere desire to waive the so-called preferential benefits now accorded to women by various laws so as to permit them to follow economic activities from which they are now excluded.'

"It would not be feasible to attempt to enumerate the wide variety of laws and rules of the common law which would fall under the impact of the amendment. Some conception of their scope may, however, be given by recalling the variety of relationships in which women stand in the community. These relationships may be summarized as (a) wage earner, (b) member of a family, (c) citizen, (d) individual. The law has recognized and attempted to deal with these relationships in a concrete way. Doubtless there are difficulties and anachronisms in the law which should be remedied. But the method adopted by the amendment is to ignore the basis for all that has been at the foundation of these measures, and to substitute an abstract rule of thumb. The practical effect of such a course can be suggested by referring briefly to each of the four categories mentioned above.

"(a) As wage earners: One of the most familiar forms of legislation is that which confers special protection on women in industry, through the prohibition of employment in hazardous occupations and through regulation of night work and maximum hours of labor. Presumably the long struggle to place these protective measures on the statute books would be set at naught by the adoption of the amendment. Specifically, such statutes would apparently have to be held invalid as denying to women the equal right to work or as denying to men the equal right of protection under the law, for, it is to be noted, the amendment requires equality of rights under the law, permitting either men or women to claim exact equality. How the problem would be met can only be left to conjecture. If a State legislature failed to revise the laws giving special protection to women in certain industries, it is left uncertain whether the entire pattern of industrial legislation would be torn apart by judicial decision or whether a court would undertake to legislate by raising the same protection for men. Surely the work

of generations ought not to be left to this blind hazard.

"(b) As members of the family: Legislation in the latter part of the nineteenth and early part of the twentieth century, commonly known as married women's acts, fairly universally, in this country removed the disabilities which the common law had placed upon married women with respect to the right to sue and be sued, the right to own separate property, and the right to engage in commercial transactions. It is true that in some States certain remnants of these disabilities have persisted. In a few States, for example, a married woman may not become a surety for her husband's debts, on the theory that she might otherwise be imposed upon; if the reason which has led some States to retain this disability is not a sufficient one, the disability should, of course, be removed by further legislation.

"Similarly, in a few States a married woman's earnings, while belonging to her if they result from work outside the home, are held to inure to the husband if they are produced by working inside the home. Whether this is a fair adjustment in view of the husband's primary duty to support the family may be a fairly debatable question, which again can be resolved by further legislation if further reform is thought desirable. The proposed amendment would leave no room for legislative experiment along these lines, but would impose a requirement of absolute equality in the property rights of husband and wife.

"More seriously, it would presumably abolish the common rule whereby a husband has the primary duty of support toward his family, and whereby in many jurisdictions failure to render such support is a ground for separation or divorce. Precisely how the law of support is to be transformed as a result of the amendment is by no means clear. The concept of a primary duty does not lend itself to a rule of equality.

"The very least that can be said is that the complex and delicate field of marital relationships and divorce, into which Congress has sedulously declined to enter in the past, would now be gravely affected by the tangential force of a constitutional amendment, which would not even rest on a study of the manifold problems involved.

"It is worthy of note that the community-property systems of eight Western States, which have evolved differently from the common-law systems and which, in general, have recognized for a longer period the coordinate status of husband and wife, nevertheless contain inequalities which would doubtless be rendered invalid under the amendment. Thus the husband is generally regarded as a kind of managing partner with special powers not possessed by the wife in respect of community property. Legislation would doubtless be required to produce conformity with the dictates of the amendment, and the ramifications of such legislation, particularly with respect to the special tax status of persons owning community property, cannot be predicted with certainty.

"(c) As citizens: While the suffrage amendment and other legislation have generally guaranteed to women an equality of civil and political rights, there remain some gaps which it is undoubtedly one purpose of the amendment to close. One of these is the distinction drawn in some States between the obligation of men and that of women for jury service. But whether the amendment would in fact require a change in this field is itself uncertain, since it is fairly arguable that jury service is not a right but a duty and hence not within the scope of the amendment. Indeed, the amendment opens up a whole field of potential controversy turning on distinction between rights and duties.

"(d) As individuals. A common legislative difference in the treatment of men and women concerns the age of majority, which is generally lower for the latter. This difference has long been accepted as reflecting physical realities. Presumably the distinction would no longer be valid. But if a legislature failed to change the law, the outcome would present something of a legal puzzle. If the age of majority for men is 18 and women 16, it can hardly be foretold whether equality would require a lowering of the former or a raising of the latter. If the standard be that of the greater right, it could be asserted that the lower age for women provides a greater right to marry but at the same time a more restricted right to annul on the ground of minority. How a court would solve the conundrum is, like most problems created by the proposed amendment, a matter purely of speculation.

"The basic fallacy in the proposed amendment is that it attempts to deal with complicated and highly concrete problems arising out of a diversity of human relationships in terms of a single and simple abstraction. This abstraction is undoubtedly a worthy ideal for mobilizing legislative forces in order to remedy particular deficiencies in the law. But as a constitutional standard, it is hopelessly inept. That the proposed equal-rights amendment would open up an era of regrettable consequences for the legal status of women in this country is highly probable. That it would open up a period of extreme confusion in constitutional law is a certainty.

"PAUL FREUND,
"Professor of Law, Harvard Law School."

Mr. RUSSELL. Mr. President, in my opinion, no rights which are substantial in nature would be conferred on the women of America by the submission and approval of this proposed constitutional amendment. To the contrary, it would result in the deprivation of substantial rights to which the women of the Nation are entitled and which they today enjoy.

Mr. President, I hope the Senate will reject the joint resolution.

Mr. HAYDEN. Mr. President, will the Senator yield?

Mr. RUSSELL. I yield.

Mr. HAYDEN. Has the Senator from Georgia offered his amendment changing the time from 5 to 7 years?

Mr. RUSSELL. Mr. President, I offer the amendment at this time.

The VICE PRESIDENT. The clerk will state the amendment offered by the Senator from Georgia.

The CHIEF CLERK. On page 2, it is proposed to strike out lines 6 and 7, and insert in lieu thereof the following:

> This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within 7 years from the date of its submission to the States by the Congress; and, if so ratified, shall take effect upon the expiration of 1 year after the date of such ratification.

Mr. GILLETTE. Mr. President, having consulted with some of the leaders on our side of the controversy, I will say that we shall be glad to accept the amendment as modified.

Mr. President, I yield 9 minutes to the senior Senator from North Dakota.

Mr. LANGER. Mr. President, I shall take only 5 minutes, and I ask that the Senator from Iowa yield the remainder of the time to the eloquent senior Senator from Florida [Mr. PEPPER].

Mr. President, the truth of the situation is that American women today have only two rights which cannot be taken away from them by their respective States. One is the right to vote, which has been granted to them by the nineteenth amendment. The other is the right to choose their citizenship if they marry aliens, which is a right granted as a result of an international treaty.

My distinguished friend from Georgia stated a while ago that if only the women of the country were informed, how differently they would feel about the matter. Let me tell my distinguished friend that for nine long years hearings after hearings were held by the Judiciary Committee, notices of which were given——

Mr. RUSSELL. Mr. President, will the Senator yield?

Mr. LANGER. I refuse to yield. I have only 5 minutes.

Let me say to my distinguished friend, the junior Senator from New York [Mr. LEHMAN], that women belonging to labor unions from the State of New York appeared before the committee and testified at the very time that the Senator was Governor of New York, that they were unable to receive salaries which they earned as foremen on union jobs, because when inspectors came around the women were shoved aside, and men were put in their place temporarily, so that the inspectors would not know that women were earning the money or were doing the work.

That is not all, Mr. President.

Mr. LEHMAN. Mr. President, will the Senator yield?

Mr. LANGER. Mr. President, I refuse to yield.

I wish to say, further, Mr. President, that it is strange that the women folk, who rear the families, were not permitted to be on a single draft board during World War I and World War II. It is all right for them to rear the families, but when the Government stepped in and said, "We are going to take your boy and use him for cannon fodder," not a woman was allowed to be on a draft board anywhere in the United States of America. The Government said that the reason for their exclusion was that they were only subcitizens. More recently the Comptroller ruled that women were not persons. Since women were not persons but "females" it took a special statute to enable them to serve their country as physicians.

Why did not the Senators who are opposed to the resolution come before the Judiciary Committee, which considered this measure for nine long years? The arguments that some Senators have made today were never made before that committee at all. I remember very well that when the question of woman suffrage was being considered some years ago a girl from my State, Beulah Amidon, was nearly put in jail in Washington for picketing the White House in favor of woman's suffrage.

The Committee on the Judiciary has studied this subject for 9 years. I, as one of the sponsors of this measure, together with the junior Senator from North Dakota [Mr. YOUNG], am proud of the fact that the women of North Dakota and, I believe, of the Nation, have shown in medicine, in the arts and sciences, and, yes, even in the operation of farms that they are on an equality with men; and I am not at all worried at

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As will be recalled, it was a belief in the eventual revision of the Supreme Court's approach to the question of sex discrimination in the law that led the President's Commission to withhold any recommendation with respect to the proposed "equal rights" amendment.[184] That amendment has for many years attracted a substantial number of proponents, however, and there are undoubtedly many persons who, even today, believe that its adoption is a necessary step toward achieving full legal equality between the sexes. Whether such a belief is warranted is the subject of the present section.

The crucial language of the proposed equal rights amendment to the United States Constitution states that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Proposals of this sort have been introduced in each Congress since 1923,[185] and are currently before the 90th Congress.[186]

In 1950 and 1953 the Senate approved the proposed amendment, but with the "Hayden rider" added on the floor.[187] That "rider" provided that the amendment "shall not be construed to impair any rights, benefits, or exemptions now or hereafter conferred by law, upon persons of female sex."

In evaluating the amendment and rider, therefore, there are three possible results. One is to recommend adoption of the amendment alone, another is to recommend adoption of the amendment together with the rider, and the third is to recommend, if not the rejection of the amendment and/or rider, at least an abatement of any efforts to secure their adoption.

For reasons to be explained below, it is this final alternative that is urged herein.

Given the premises and outlook that have been expressed throughout this volume, it is abundantly clear that the amendment with the rider attached can, in no event, be acceptable. To qualify the amendment's requirement of equality with the command that certain special legal privileges enjoyed by women "now or hereafter" shall not be impaired is not to require equality at all. It is of course one thing to say that *some* of these existing legal privileges and benefits may continue to be held valid under the various evolving standards for testing differences in treatment of various identifiable social and human groups. It is quite another

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thing to say that any privilege previously conferred or to be conferred in the future upon women only is to be automatically validated. Rather than expressing the principle of equality, the amendment with the rider would in effect create a situation in which women would be "more equal" than men. Indeed, if as has been suggested in this chapter, certain existing legal benefits and privileges accorded to women only may, unless extended to men also, violate existing constitutional provisions, then the adoption of the amendment with the rider would raise a serious question as to its validity in the light of the existing Fifth and Fourteenth Amendments to the United States Constitution.[188]

If the principal villain in this area is, as has been suggested, the status of "otherness" that a male dominated society has imposed on women, the adoption of the amendment with the rider would constitute the granting of a blank check to the legislatures to perpetuate if not aggravate existing inequalities.

Of course, the comments that have just been made have been addressed to the potential effects of the amendment with the rider, and are by no means intended to impugn the motives of its sponsor or of those senators who have supported the rider. In all likelihood, support of the rider has been motivated principally by a fear that the adoption of the amendment without the rider would lead to the abrogation of useful social legislaion, such as the minimum wage and maximum hours laws for women only.[189] But, as has been demonstrated in this chapter, the principle of equality of treament without regard to sex can be implemented without sacrificing these important social gains of the past. This can be done by the device of extending, wherever feasible, such laws to men also. As has been shown, the court can do this alone—although legislatures, provided they wanted to take the initiative to do so, could subsequently repeal such laws, a not too likely event in the light of our social and political history.

What, then, of the amendment alone, that is, without the rider? At first blush there is a certain beguiling panacea-like quality about the amendment for those who are dedicated to the quest for equal dignity between the sexes. It would seem that, were the amendment adopted, it would be capable of achieving this goal in one fell swoop. Indeed, there occasionally have been intimations in some judicial opinions that sex discrimination in the law

could not be constitutionally invalidated "unless prohibited in express terms in the Constitution. . . ."[150]

But it is submitted that were the amendment adopted, it would have little or no effect upon existing constitutional doctrine in the area of sex discrimination. Then, as now, the crucial factor will continue to be the responsiveness of the judiciary to the social impulse toward equality of treatment without regard to sex. For example, pursuant to a functional analysis, a court could hold, even after the adoption of the proposed amendment, that a law exempting women from strenuous military service is not one that denies or abridges any right (of men) on account of sex, but is rather one that is reasonably based upon the general physical (functional) differences between the sexes. Similar results could also be obtained in many other areas in which men and women are presently accorded different legal treatment.

Many proponents of the amendment appear to be motivated by a belief that the United States Supreme Court and lower state and federal courts have in the past held existing provisions of the United States Constitution, in particular the Fifth and Fourteenth Amendments, inapplicable to women. The fact is, however, that the courts have not done this at all. Instead, they have generally held that the existing constitutional provisions do apply to women, but that within the limits of those provisions, women in many situations constitute a class that can reasonably be subjected to separate treatment. It is submitted that the adoption of the equal rights amendment would not fundamentally change the picture. While the proposed amendment states that equality of rights shall not be abridged on account of sex, sex classifications could continue if it can be demonstrated that though they are expressed in terms of sex, they are in reality based upon function. On the other hand, under existing constitutional provisions, particular classifications of men and women that cannot be shown to be based upon function, are vulnerable to attack—as has already been demonstrated in some lower state and federal courts with respect to discriminatory laws in the realm of jury service, differences in punishment for identical crimes, right to sue for loss of consortium, and the like.

Of course, the presence of the amendment in the Constitution would not be entirely without special effects. In order to achieve

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the results suggested in the preceding paragraphs, the judiciary would have to overcome the specific language of the amendment. But the point that must be stressed is not only that this would not be impossible of achievement, but that judges could in fact do this very easily, adopting the analytical approach (functional analysis) mentioned earlier.

If adoption of the equal rights amendment would have little impact upon existing constitutional law doctrine in the area of sex discrimination, proponents of equality of legal treatment for men and women will find that, as a tactical matter, their energies will be better spent in other activities directed toward this goal. Every day spent in working for the amendment is a day that is taken away from informing the American public of the continued areas of unequal treatment, or from participating in the presently growing number of challenges to such treatment based on existing constitutional provisions.

Given the recent developments in the area of sex discrimination, there is every indication that great changes are in the offing, and that, in the tradition of the common law, such changes will take place with respect to specific, discrete situations, rather than with a potentially destructive and self-defeating blunderbuss approach. The need is for greater numbers of people of both sexes, lawyers and non-lawyers alike, to begin turning their attention to the legal problems in this area and toward devising new approaches, only a few of which have been suggested herein, to the solution of those problems.

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