

CONGRESSIONAL RECORD -- OCTOBER 1, 1982

STATEMENT OF SENATOR ROBERT DOLE

MR. PRESIDENT. TODAY I AM INTRODUCING OMNIBUS LEGISLATION TO CLEANSE THE FEDERAL CODE OF SOME 100 GENDER BASED DISTINCTIONS. THIS BILL IS AIMED SOLELY AT STATUTES WHICH DISCRIMINATE ON THEIR FACE AND THEREFORE IS LIMITED IN SCOPE. I THINK WE CAN ALL AGREE THAT WITH FEW EXCEPTIONS, STATUTES WHICH EXPLICITLY PROVIDE FOR INEQUALITY OF TREATMENT ON THE BASIS OF SEX HAVE NO PLACE IN OUR NATION'S LAWS. I THINK WE CAN ALSO ALL RECOGNIZE THAT WHILE A BILL OF THIS NATURE IS ONLY A SMALL STEP, IT IS AN IMPORTANT AND NECESSARY STEP, IN OUR CONTINUING EFFORTS TO ACHIEVE EQUALITY FOR WOMEN UNDER THE LAW.

BACKGROUND

SEX BIAS IN THE U.S. CODE HAS BEEN THE SUBJECT OF THREE COMPREHENSIVE STUDIES OVER THE PAST SEVERAL YEARS: THE FIRST, "SEX BIAS IN THE U.S. CODE" WAS RELEASED BY THE U.S. COMMISSION ON CIVIL RIGHTS IN 1977; A SECOND, MORE COMPREHENSIVE REPORT WAS COMPLETED BY THE DEPARTMENT OF JUSTICE'S TASK FORCE ON SEX DISCRIMINATION IN 1978, THE MOST RECENT WAS COMPLETED LAST JUNE BY PRESIDENT REAGAN'S TASK FORCE ON LEGAL EQUITY FOR WOMEN. THE JUNE REPORT PROVIDED AN EXTENSIVE LISTING OF DISCRIMINATORY STATUTES WHICH HAVE BEEN CURED IN RECENT YEARS AND THOSE STILL REMAINING ON THE BOOKS, A LISTING WHICH LED TO THE DEVELOPMENT OF THIS LEGISLATION.

WHAT THE BILL WOULD NOT DO

THIS BILL WOULD NOT CURE ALL OF THE SEX-BIASED STATUTES WHICH HAVE BEEN IDENTIFIED BY THESE VARIOUS STUDIES. FOR INSTANCE, BECAUSE ITS FOCUS IS AIMED AT ERADICATING SUBSTANTIVE DISCRIMINATION, IT WOULD NOT CURE ALL THE SEX-BIASED TERMINOLOGY IN THE CODE. IT WOULD ALSO NOT AMEND SEVERAL CONTROVERSIAL CODE SECTIONS, SUCH AS THE COMBAT LIMITATIONS AND SELECTIVE SERVICE PROVISIONS IN TITLE 10, AND A FEW SECTIONS OF THE SOCIAL SECURITY ACT AND CRIMINAL CODE. ANY AMENDMENT WHICH MIGHT BE OF A CONTROVERSIAL NATURE WAS PURPOSEFULLY OMITTED, SO THAT ITS SENSITIVE NATURE WOULD NOT IMPERIL THE FATE OF THE REMAINDER OF THE BILL.

WHAT THE BILL WOULD DO

THIS BILL WOULD AMEND THE VAST MAJORITY OF IDENTIFIED CODE SECTIONS WHICH STILL EXPLICITLY PROVIDE FOR SUBSTANTIVE SEX DISCRIMINATION. MOST OF THESE REMAINING PROVISIONS ARE OF NARROW APPLICATION; SOME HAVE ALREADY BEEN HELD UNCONSTITUTIONAL, AND THEREFORE ARE NO LONGER FOLLOWED. A FEW OF THE AMENDMENTS WOULD HAVE SOME REAL IMPACT. FOR INSTANCE, THE BILL WOULD CURE CERTAIN PROVISIONS OF THE SOCIAL SECURITY ACT AND RAILROAD RETIREMENT ACT WHICH, IN VERY TECHNICAL AREAS, STILL DISCRIMINATE IN THE DETERMINATION OF BENEFITS. BUT MOST OF THE AMENDMENTS CAN PROPERLY BE CHARACTERIZED AS "HOUSECLEANING". FOR INSTANCE UNDER CURRENT LAW, "WIDOWS" BUT NOT "WIDOWERS" OF DECEASED MILITARY PERSONNEL MAY USE COMMISSARIES. THE BILL WOULD CURE THIS DISTINCTION.

IN EMPHASIZING THE LIMITATIONS OF THIS LEGISLATION, I DO NOT MEAN TO TRIVIALIZE ITS IMPORTANCE. IN MY OPINION, SEX DISCRIMINATION, NO MATTER HOW LIMITED IN APPLICATION, HAS NO PLACE IN OUR STATUTES, UNLESS NECESSARY TO FURTHER SOME COMPELLING GOVERNMENTAL INTEREST. BUT I ALSO WANT IT TO BE UNDERSTOOD THAT ELIMINATION OF FACIAL GENDER BIAS IS JUST ONE SMALL STEP IN A LONG JOURNEY, AND CAN NOT BE EQUATED WITH THE TRUE ACHIEVEMENT OF FULL EQUALITY UNDER THE LAW.

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TO TRULY ACHIEVE FULL EQUALITY, OF COURSE, IT IS NECESSARY TO AMEND THOSE LAWS WHICH FACIALLY DISCRIMINATE, BUT ALSO ADDRESS THOSE LAWS WHICH, THOUGH NEUTRAL ON THEIR FACE, NEVERTHELESS ALLOW FOR THE DISCRIMINATORY TREATMENT OF WOMEN. LAWS, WHICH IN PARTICULAR, RELATE TO ECONOMIC EQUITY -- PAY EQUITY, INSURANCE DISCRIMINATION, AND PENSION REFORM -- ENCOMPASS THE MORE BURNING ISSUES OF THE DAY. WITH OLDER WOMEN COMPRISING THE FASTEST GROWING POVERTY GROUP IN AMERICAN SOCIETY, I BELIEVE THAT PENSION REFORM, SPECIFICALLY, REQUIRES PRIORITY ATTENTION. I HAVE INSTRUCTED MY STAFF TO EXPLORE POSSIBLE REFORMS IN OUR LAWS DEALING WITH BOTH PUBLIC AND PRIVATE PENSION PLANS, AS WELL AS SOCIAL SECURITY BENEFITS, AND HAVE RESOLVED THAT THIS WILL BE AN ISSUE BEFORE THE FINANCE COMMITTEE NEXT CONGRESS. I DO NOT EXPECT COMPREHENSIVE REFORMS TO TAKE PLACE OVERNIGHT, BUT THERE ARE NEEDED CHANGES WHICH WE CAN REALISTICALLY BEGIN TO IMPLEMENT. FOR INSTANCE, THE RECENTLY ENACTED TAX BILL EFFECTED ONE CHANGE OF SIGNIFICANT BENEFIT TO WOMEN, BY REDUCING THE VESTING REQUIREMENTS FOR TOP HEAVY PLANS. BUT, I BELIEVE MUCH MORE CAN BE DONE TO HELP WOMEN IN THE OVERALL PENSION AREA.

PRESIDENT'S SUPPORT

I AM HAPPY TO REPORT THAT PRESIDENT REAGAN HAS WRITTEN ME OF HIS SUPPORT FOR THIS EFFORT TO CLEANSE THE CODE OF MOST REMAINING, SUBSTANTIVE GENDER BIAS. AS I HAVE PREVIOUSLY MENTIONED, THE PRESIDENT'S TASK FORCE ON LEGAL EQUITY FOR WOMEN HAS DONE MUCH WORK IN THIS AREA, AND THE PRESIDENT HAS WELCOMED THIS LEGISLATION AS A COMPLEMENT TO THE TASK FORCE'S EFFORTS. BUT THE PRESIDENT ALSO SHARES THE FEELINGS WHICH I HAVE EXPRESSED TODAY ABOUT THE SCOPE OF THIS LEGISLATION. SPECIFICALLY, HE STATES IN HIS LETTER THAT "AS IMPORTANT AS THIS IS, ALL OF US REALIZE THAT IT IS ONLY ONE STEP THAT MUST BE FOLLOWED BY MANY OTHERS. BUT IN THE END, I HOPE WE WILL BE ABLE TO SAY THAT FULL EQUALITY BEFORE THE LAW IS NOT JUST AN IDEAL, BUT A PRACTICAL REALITY".

CONCLUSION

I DO NOT EXPECT, OF COURSE, THAT CONGRESS WILL BE ABLE TO ACT ON THIS BILL IN THIS CONGRESS. RATHER, I HOPE THAT OVER THE NEXT FEW MONTHS, ALL INTERESTED PARTIES WILL REVIEW THIS LEGISLATION, PROVIDE ME WITH THEIR COMMENTS, IF ANY, AND THUS ENABLE ME TO BE IN A POSITION TO PUSH FOR SWIFT ACTION ON THE BILL EITHER IN THE LAME DUCK SESSION, OR EARLY NEXT YEAR. I RE-EMPHASIZE THAT I CONSIDER THIS BILL TO BE PRIMARILY HOUSECLEANING--AN IMPORTANT AND NECESSARY, BUT MODEST STEP, WHICH WE CAN QUICKLY PUT BEHIND US.

CREDITS

BEFORE CONCLUDING, I WOULD LIKE TO GIVE CREDIT TO THOSE IN THE SENATE WHO HAVE INTRODUCED LEGISLATION IN THIS CONGRESS CONTAINING PROPOSALS SIMILAR TO THOSE IN THIS OMNIBUS PACKAGE. FIRST, CREDIT SHOULD GO TO SENATORS DURENBERGER, PACKWOOD AND HATFIELD, THE THREE KEY SPONSORS OF THE ECONOMIC EQUITY ACT. IN THIS AND PAST CONGRESSES, THE ECONOMIC EQUITY ACT HAS CONTAINED AMENDMENTS WHICH WOULD CURE THE GENDER-BASED DISTINCTIONS IN THE NAVAL AND MARINE RESERVE PROMOTION SYSTEM, AND IN THE PRIORITY LISTS USED TO DISTRIBUTE THE EFFECTS OF CERTAIN DECEASED MILITARY PERSONNEL: AMENDMENTS WHICH ARE INCORPORATED INTO THIS BILL. CREDIT SHOULD ALSO GO TO SENATOR METZENBAUM, WHO HAS INTRODUCED A BILL TO REMOVE GENDER-BASED REFERENCES FROM THE SOCIAL SECURITY ACT, SOME OF WHICH ARE SIMILAR TO THOSE CONTAINED IN THIS LEGISLATION. I COMMEND THESE SENATORS FOR THEIR EFFORTS AND THANK THEM FOR THEIR COOPERATION.