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Divorce - Pendente Lite Awards - Counsel Fees - Costs - Alimony - Effect of Equal Rights Amendment; Wiegand v. Wiegand

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CONSTITUTIONAL LAW—DIVORCE—PENDENTE LITE AWARDS—COUNSEL FEES—COSTS—ALIMONY—EFFECT OF EQUAL RIGHTS AMENDMENT

Wiegand v. Wiegand, 226 Pa. Super. 278, 310 A.2d 426 (1973).

THE PENNSYLVANIA SUPERIOR COURT, in *Wiegand v. Wiegand*,[1] struck out at one of the true bastions of sex discrimination incorporated into the Anglo-American legal system. The legislated discrimination of the Pennsylvania Divorce Law was the object of the court's scrutiny. Appellee Sara Wiegand had filed a complaint in divorce *a mensa et thora*,[2] a petition for alimony, and an initial petition for alimony pendente lite, counsel fees, and expenses. On August 14, 1967, the Court of Common Pleas, Allegheny County, ordered appellant Myron Wiegand to pay $875 per month alimony pendente lite and $250 preliminary counsel fees. Subsequently, appellee filed additional petitions for counsel fees and costs for continued or increased alimony pendente lite. Appellant submitted answers to these pleadings and a counter-claim seeking divorce *a vinculo matrimonii*.[3] The court ordered appellant to pay $5,000 counsel fees and $82.50 court costs.[4] On appeal to the Superior Court the husband limited his assignment of errors to two related issues. The first was whether the amount for counsel fees was excessive; the second whether the court below erred in refusing to permit cross-examination of appellee as to how she had dispersed the money previously paid over to her.[5]

Neither of these issues was given consideration by the Superior Court in reaching its decision.[6] Instead, the court *sua sponte* took judicial notice of the conflict existing between those segments of the

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1 226 Pa. Super. 278, 310 A.2d 426 (1973).

2 PA. STAT. ANN. tit. 23, § 11 (1955) (A divorce from bed and board.) "A divorce from bed and board is merely legal permission for a wife to live apart from her husband while still remaining married without being guilty of desertion." Messarosh v. Messarosh, 67 Lack. Jur. 29 (1966); Rutherford v. Rutherford, 152 Pa. Super. 517, 32 A.2d 921 (1943).

3 PA. STAT. ANN. tit. 23, § 10 (1955) (A divorce from the bond of matrimony).

4 Wiegand v. Wiegand, C.P. Allegheny Cty., Family Div., No. 439 (Oct. 1967).

5 Appellee had apparently received about $50,000 in alimony pendente lite from the date of the initial order to March 10, 1972. She also admitted to having received approximately $100,000 as "gift" money. Wiegand v. Wiegand, 310 A.2d 426, 427 (1973).

6 *Id.* at 427.

Pennsylvania Divorce Law, upon which the wife's action was initiated,[7] and the recently enacted Equality of Rights Amendment (ERA) of the Pennsylvania Constitution.[8] The court addressed itself specifically to the constitutionality of sections 11 and 46 of the Pennsylvania Divorce Law, which provide respectively that *wives,* but not husbands, may obtain divorces from bed and board, and that *wives* may be permitted reasonable alimony pendente lite, counsel fees, and costs in a divorce action. The Superior Court reasoned that since sections 11 and 46 grant rights exclusively to females, the rights of males in Pennsylvania are abridged by these provisions solely on the basis of sex.[9] Narrowing the impact of its decision, the court concluded that legislation providing for divorce from bed and board, or for counsel fees and alimony pendente lite would be acceptable as long as such rights and remedies were made reciprocal.[10]

Although the majority concurred in the purpose espoused for the Divorce Law providing alimony pendente lite and counsel fees, *i.e.,* to enable the wife to maintain her action either as the complainant or defendant,[11] it concluded that such a right could not be arbitrarily denied to the husband on the sole factor of his sex.[12] In reaching their conclusion, the majority relied primarily upon the rationale expressed by the dissent in the prior case of *Henderson v. Henderson.*[13] The minority in *Henderson* stated their position as follows:

Were such a reciprocal arrangement (as exists for support) established

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[7] These sections provide as follows: PA. STAT. ANN. tit. 23, § 11 (1955):

> 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 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.

PA. STAT. ANN. tit. 23, § 46 (1955) (in part): "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." (Emphasis added.)

[8] PA. CONST. art. I, § 27, which reads as follows: "Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual."

[9] Wiegand v. Wiegand, 310 A.2d 426, 428 (1973).

[10] *Id. See* Commonwealth *ex rel.* Lukens v. Lukens, 224 Pa. Super. 227, 303 A.2d 522 (1973), in which the court sustained the constitutionality of the Pennsylvania support laws since there existed a reciprocal arrangement for support.

[11] *See* Hendel v. Hendel, 109 P.L.J. 199 (1962); Wargo v. Wargo, 184 Pa. Super. 587, 136 A.2d 163 (1957); Albrecht v. Albrecht, 175 Pa. Super. 650, 107 A.2d 209, 210 (1954).

[12] Wiegand v. Wiegand, 310 A.2d 426, 429 (1973); *see also* Corso v. Corso, 59 Pa. D. & C. 2d 546, 120 P.L.J. 183 (1972); Kehl v. Kehl, 57 Pa. D. & C. 2d 164, 120 P.L.J. 296 (1972); Rogan v. Rogan, 63 Luz. L. Reg. 123 (C.P. 1973). *Contra,* Henderson v. Henderson, 224 Pa. Super. 182, 303 A.2d 843 (1973) (per curiam); Murphy v. Murphy, 224 Pa. Super. 460, 303 A.2d 838 (1973) (per curiam); Cooper v. Cooper, 224 Pa. Super. 344, 307 A.2d 310 (1973) (per curiam); DeRosa v. DeRosa, 60 Pa. D. & C. 2d 71 (1972); Frank v. Frank, 14 Lebanon 215 (C.P. 1973).

[13] 224 Pa. Super. 182, 303 A.2d 843 (1973).

> by section 46, allocating the responsibility to advance pendente lite costs on the basis of need and ability, the Act would pass constitutional muster. . . . It is precisely the unilateral benefit to women, but not men, which violates the Equal Rights Amendment.[14]

It is worthwhile to note at this juncture that section 47 of the Pennsylvania Divorce Law additionally permits the award of permanent alimony exclusively to the wife in a divorce from bed and board.[15] The Pennsylvania Divorce Laws make no comparable provision for the husband.

The rationale attached to granting the unilateral award of permanent alimony in the case of a bed and board divorce (partial divorce), but not for an absolute divorce, is significant. It is purported that the basis for the distinction is that the husband's obligation to provide support for his wife has not been terminated, since the bond of marriage remains intact in a divorce from bed and board.[16] Such a rationale appears to be precipitated from the established rule that the primary obligation to provide financial support to the family rests upon the husband.[17] The legislatures typically project this unilateral obligation into the area of divorce law.[18]

In *Davis v. Davis*,[19] for example, the Supreme Court of Alabama expressed the general rule that in the absence of a statutory provision there is no authority for awarding alimony against the wife in the husband's favor.[20] It seems certain that the adoption of an ERA would obviate such a legislative or judicial presumption,[21] for as long as the principal obligation of support is laid upon the husband's shoulders, then the requirement of "equality of rights under the law" has not been met.[22]

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[14] *Id.* 303 A.2d at 847.

[15] PA. STAT. ANN. tit. 23, § 47 (1955), provides in part: "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. . . ."

[16] *See* Commissioner v. Rankin, 270 F.2d 160 (3rd Cir. 1959); Appleton v. Appleton, 191 Pa. Super. 95, 155 A.2d 394 (1959).

[17] *See* L. KANOWITZ, WOMEN AND THE LAW 69 (1st ed. 1969); Younger, *Community Property, Women and the Law School Curriculum*, 48 N.Y.L.R. 211, 246 (1973).

[18] For a collection of case law regarding the husband's right of alimony, *see* Annot., 66 A.L.R. 2d 875 (1959); *see also* Davis v. Davis, 279 Ala. 643, 189 So. 2d 158 (1958); Kerr v. Kerr, 182 Cal. App. 2d 12, 5 Cal. Rptr. 630 (1960); Barnes v. McKendry, 260 Cal. App. 2d 671, 67 Cal. Rptr. 336 (1968).

[19] 279 Ala. 643, 189 So. 2d 158 (1958).

[20] *Id.* at 644, 189 So. 2d at 160.

[21] *See* Behles, *Equal Rights in Divorce and Separation*, 3 N.M. REV. 118, 125 (1973); THE COUNCIL OF STATE GOVERNMENTS, ALL ARE CREATED EQUAL (Dec. 1972); *See also* C. TAYLOR AND S. HERZOG, IMPACT STUDY OF THE EQUAL RIGHTS AMENDMENT (2nd printing 1973).

[22] *See* Comment, *The Support Law and the Equal Rights Amendment in Pennsylvania*, 77 DICK. L. REV. 254, 276 (1973), which suggests the use of the Uniform Marriage and Divorce Act as a guide in revising the Pa. Divorce Laws in order to satisfy the requirements of the ERA.

These antiquated and artificial assumptions by law[23] concerning the roles and duties "naturally" befitting to women and men are not peculiar to Pennsylvania. In reporting on their analysis of the New Mexico Divorce Law, Jeannie and Daniel Behles concluded:

> Clearly an Equal Rights Amendment would require that our laws be changed to reflect the mutuality of obligation given lip service in section 57-2-1 [New Mexico Statutes] by making each spouse equally responsible for the support of the other, and by making each one liable for alimony in appropriate cases.[24]

Although the holding in the principal case was a first for a Pennsylvania Appellate Court, there existed support for this position in the opinions rendered by a number of county courts.[25] In *Corso v. Corso*,[26] for example, the majority therein ruled unconstitutional 23 Pennsylvania Statutes section 11, which limits the commencement of an action for bed and board divorce to a wife. This same court found unconstitutional 23 Pennsylvania Statutes section 46 in the case of *Kehl v. Kehl*.[27] The common factor in the above decisions was that the particular sections of the Pennsylvania Divorce Law at issue discriminated against the husband arbitrarily on the basis of sexual stereotypes[28] having no foundation in law.[29]

Excluding the recent flux of such cases in Pennsylvania, there exists

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[23] *See* Pokrandt v. Pokrandt, 67 Schuylkill L. Rec. 82 (1971), wherein the Court stated:

> ... a child of tender years should be committed to the care and custody of its mother, by whom the needs of the child are ordinarily best served. One of the strongest presumptions in our law is that a mother has a prima facie right to her children over any other person [quoting from Logue v. Logue, 194 Pa. Super. 210, 166 A.2d 60 (1960)]. These principles being established by logic and history and confirmed by long repetition in the appellate courts are viewed as fixed and settled law.

[24] Behles, *supra* n. 21, at 125. *See* THE COUNCIL OF STATE GOVERNMENTS, ALL ARE CREATED EQUAL (Dec. 1972), containing its analysis of the proposed ERA to the U.S. Constitution, in which it concluded: "The general rule or guiding principle enunciated ... is that when the legislation restricts or limits the opportunities of a sex, it would be invalidated; when the legislation confers a benefit or privilege [to only one sex], such legislation would be extended to the opposite sex."

[25] Corso v. Corso, 59 Pa. D. & C. 2d 546, 120 P.L.J. 183 (1972); Kehl v. Kehl, 57 Pa. D. & C. 2d 164, 120 P.L.J. 296 (1972); Rogan v. Rogan, 63 Luz. L. Reg. 123 (Pa. C.P. 1973). (This issue has not yet been reached by the bench of the Pennsylvania Supreme Court.)

[26] 59 Pa. D. & C. 2d 546, 120 P.L.J. 183 (1972).

[27] 57 Pa. D. & C. 2d 164, 120 P.L.J. 296 (1972).

[28] *See* SENATE COMM. ON THE JUDICIARY, EQUAL RIGHTS FOR MEN AND WOMEN, S. REP. NO. 92-689, 92d Cong., 2d Sess. (1972): "This will mean [i.e. passage of the ERA] that State domestic relations laws will have to be based on individual circumstances and needs, and not on sexual stereotypes."

[29] The rationale for the *Corso* and *Kehl* decisions was partially developed from an article appearing in the Yale Law Journal: Brown, Emerson, Falk and Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 YALE L.J. 871, 889 (1971), submitting in part: "The basic principle of the Equal Rights Amendment is that sex is not a permissible factor in determining the legal rights of women, or of men."

a noticeable scarcity of judicial controversy on the validity of sex-based distinctions in divorce laws. That case law which has emerged has been supportive of the traditional, ingrained distinctions[30] made between men and women. An example is *Barrington v. Barrington*,[31] wherein the majority ruled permissible the admitted discrimination drafted into the Alabama Divorce Laws. The court explained that by giving the wife the right of divorce in certain circumstances, and at the same time withholding that right from the husband, the legislature was exercising a permissible discretion "operating upon the moral, social, economical and physical differences which distinguish the sexes and divide them into natural classes."[32] The majority believed that these factors have always justified the various inequalities in legislative treatment, and therefore the statute in question did not violate the appellant's fourteenth amendment rights.

Further attempts within the Federal Court structure to bring sex discrimination into the purview of the equal protection clause of the fourteenth amendment have generally, as in *Barrington*, proved to be unsatisfactory.[33] Unlike those of race, alienage, or national origin, classifications based on sex have failed to be designated by a consensus of the Supreme Court[34] as "suspect." Strict scrutiny standards under the fourteenth amendment have, therefore, not been applied to dissolve the strands of a "double standard" legal system which confronts women and men daily.

Although a number of federal cases[35] have declared laws granting benefits to one sex and not to the other unconstitutional, a serious problem arises in that the courts, including the United States Supreme Court, have performed inconsistently in their approach to controversies involving sexual discrimination.[36] In *Stanley v. Illinois*,[37] the Supreme

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[30] *See* Frontiero v. Richardson, 411 U.S. 677, 684 (1973), in which the Court stated: "There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage." For examples of "romantic paternalism," *see* Goesaert v. Cleary, 335 U.S. 464 (1948); Muller v. Oregon, 208 U.S. 412 (1908); Bradwell v. Illinois, 83 U.S. 130 at 140-142 (1972).

[31] 206 Ala. 192, 89 So. 512 (1921).

[32] *Id.* at 194, 89 So. at 514.

[33] For a collection of Supreme Court cases concerning sex discrimination *see* Annot., 27 L. Ed. 2d 935 (1971); *see also* Alexander v. Louisiana, 405 U.S. 625 (1972); Forbush v. Wallace, 341 F. Supp. 217 (M.D. Ala. 1971), *aff'd*, 405 U.S. 970 (1972).

[34] In Frontiero v. Richardson, 411 U.S. 677 (1973), four of the Justices (Brennan, Douglas, White and Marshall) opinioned that classifications based on sex are inherently suspect. However, the remaining members of the Court failed to concur in this position.

[35] *See* Frontiero v. Richardson, 411 U.S. 677 (1973); Stanley v. Illinois, 405 U.S. 645 (1972); Reed v. Reed, 404 U.S. 71 (1971); *see also* United States *ex rel.* Robinson v. York, 281 F. Supp. 8 (D. Conn. 1968); Karczewski v. Baltimore & O.R.R., 274 F. Supp. 169 (N.D. Ill. 1967).

[36] *Compare* cases cited in note 33 *supra*, with those cited in note 35 *supra*.

[37] 405 U.S. 645 (1972).

Court found constitutionally repugnant an Illinois law which made the presumption that an unmarried father is unsuitable as a parent, thereby allowing removal of his children from his custody without a hearing. The Court stated:

> ... all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody. It follows that denying such a hearing to Stanley, and those like him, while granting it to other Illinois parents is inescapably contrary to the Equal Protection Clause.[38]

Confronted with reversed sex discrimination circumstances from those in *Stanley*, the Supreme Court in *Frontiero v. Richardson*[39] declared violative of the due process clause of the fifth amendment the difference in treatment between servicewomen and servicemen under statutes governing the claiming of a spouse as a "dependent." Although the Court was able to reach a consensus on the judgment, it split when it reached the issue of whether or not sex was to be considered a "suspect classification."[40]

By way of contrast, the Supreme Court, in a memorandum decision, recently affirmed the ruling of a Federal District Court which upheld a state law that required women to assume their husbands' surname upon marriage.[41] The highest Court of the land has placed its stamp of approval upon this instance of legislated discrimination without so much as an opinion explaining its position, even though such a unilateral restriction clearly tends to impinge upon the fundamental personal rights of a married woman. Against this backdrop of inconsistency, it is little wonder that the call for a national ERA has become so vocal.

Even with the inception of the ERA in Pennsylvania, the Commonwealth Courts have in a few cases managed to avert what appears to be an explicit mandate for sexual equality under the law. The most comprehensive of these is *DeRosa v. DeRosa*.[42] Again the issue before the court was the constitutionality of 23 Pennsylvania Statutes section 46. The majority upheld the constitutionality of this section on the basis that the ERA alone does not nullify alimony pendente lite, counsel fees or costs. According to the court, the legislature enacted the ERA with full knowledge of the existing law relating to alimony pedente lite, but made no provision to repeal the existing law. The court therefore reasoned that such laws must be deemed valid.[43] This position is wholly

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38 405 U.S. 645, 658 (1972). It should be noted that the Court did not label this as a sex discrimination case.

39 411 U.S. 677 (1973).

40 *Id.* at 687. *See* note 34 *supra.*

41 Forbush v. Wallace, 405 U.S. 970 (1972), *aff'g mem.*, 341 F. Supp. 217 (M.D. Ala. 1971).

42 60 Pa. D. & C. 2d 71 (1972).

43 *Id.* at 77, 78.

unacceptable since under such a rationale the court would be denied its power of judicial review.

In *Frank v. Frank,*[44] the court, though confronted with the issue of the constitutionality of 23 Pennsylvania Statutes section 11, did not decide the case on that basis. Rather, the court upheld the validity of 23 Pennsylvania Statutes section 11 on the theory that the husband waived his equal protection rights by reason of the contract of marriage.[45] It seems implausible that this reasoning could withstand strict scrutiny[46] by the higher courts. A "waiver" of one's rights under these circumstances could scarcely be considered voluntary and made intentionally with full knowledge of the consequences.[47]

With the exception of *DeRosa,* and perhaps *Frank,* the remaining cases[48] which have upheld the various sections of the Pennsylvania Divorce Laws have summarily rejected the issue of constitutionality without discussing the foundation of their position. In two of these cases, however, *Murphy v. Murphy*[49] *and Cooper v. Cooper,*[50] there existed strong dissents supportive of the dissent in *Henderson.*

The Superior Court of Pennsylvania has rendered yet another opinion construing the ERA, which would support the "mutuality of rights" criteria of the *Wiegand* decision. In *Hopkins v. Blanko,*[51] the Superior Court considered the issue of whether Pennsylvania's refusal to grant women the right to consortium[52] violated the Pennsylvania ERA.

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[44] 14 Lebanon 215 (Pa. C.P. 1973).

[45] *Id.* at 221, the court saying, in part:

> Whenever, by oath, you gain the privileges of matrimony, you also accept the legal obligations incident to it. As between spouses, an effective waiver of the Equal Rights Amendment is accomplished by agreement. In this way the traditional institution of marriage and the integrity of the family unit are preserved. At the same time a citizen spouse enjoys the benefits of the Equal Rights Amendment as against all other citizens and in all other legal matters where sexual discrimination exists.

[46] The following cases have dealt with the issue of sex as a "suspect classification" requiring strict scrutiny: Frontiero v. Richardson, 411 U.S. 677, 688 (1973); Reed v. Reed, 404 U.S. 71, 75 (1971) (by implication); United States *ex rel* Robinson v. York, 281 F. Supp. 8, 14 (D. Conn. 1968); Sail'er Inn v. Kirby, 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971).

[47] *See e.g.* Moore v. Michigan, 355 U.S. 155 (1957), wherein the Supreme Court held that the waiver of right to counsel must be made "intelligently and understandingly" to be effective.

[48] Cooper v. Cooper, 224 Pa. Super. 344, 307 A.2d 310 (1973); Henderson v. Henderson, 224 Pa. Super. 182, 303 A.2d 843 (1973); Murphy v. Murphy, 224 Pa. Super. 460, 303 A.2d 838 (1973). (All three of the preceding decisions were rendered *per curiam*).

[49] 224 Pa. Super. 460, 303 A.2d 838 (1973).

[50] 224 Pa. Super. 344, 307 A.2d 310 (1973).

[51] 224 Pa. Super. 116, 302 A.2d 855 (1973).

[52] Pennsylvania courts prior to this decision had refused to extend the right to consortium to women. *See* Brown v. Glenside Lumber and Coal Co., 429 Pa. 601, 240 A.2d 822 (1968); Neuberg v. Bobowicz, 401 Pa. 146, 162 A.2d 662 (1960).

The majority concluded that in order to achieve the constitutional requirement of equal treatment for women and men, it must either abolish the husband's right to consortium or extend this right to the wife.[53] Accordingly, the court found that since consortium was a valuable right, it should not be extinguished but should be extended to the wife.[54]

An assimilation of the foregoing case law indicates that the more cogent constitutional reasoning rests with the rationale expounded by the *Wiegand* majority. The time is long overdue for extending "equal protection under law" to both sexes. In light of the Pennsylvania ERA, there exists no rational basis for sanctioning legislation which impinges upon fundamental personal rights on the sole basis of sex.

CONCLUSION

To date only 13[55] states have enacted an ERA into their respective state constitutions. Because of the recentness of their adoption, relatively little case law has come forth which would indicate to the practitioner the overall effect the ERA may have in his or her particular state.[56] The primary implication of the *Wiegand* decision is not the effect it is bound to have on Pennsylvania Divorce Law, but the thrust it has given to the direction of the ERA in Pennsylvania.[57] If the *Wiegand* majority is followed with any degree of consistency, it appears that Pennsylvania's ERA, unlike the fourteenth amendment, will provide a potent mechanism for extinguishing discrimination based on sex.

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[53] 302 A.2d at 857 (1973); *accord,* Karczewski v. Baltimore & O.R.R., 274 F. Supp. 169 (1967).

[54] 302 A.2d at 858 (1973). *See also* THE COUNSEL OF STATE GOVERNMENTS, ALL ARE CREATED EQUAL (Dec. 1972).

[55] ALASKA CONST. art. I, § 3; COLO. CONST. art. II, § 29; HAWAII CONST. art. I, § 4; ILL. CONST. art. I, § 18; MD. CONST. art. 46; MONT. CONST. art. II, § 4; N.M. CONST. art. II, § 18; PA. CONST. art. I, § 27; TEX. CONST. art. I, § 3a; UTAH CONST. art. IV, § 1; VA. CONST. art. I, § 11; WASH. CONST. art. XXXI, § 1; WYO. CONST. art. VI, § 1.

[56] Those cases rendered pursuant to a question of constitutionality under an adopted Equal Rights Amendment, include in part: People v. Green, 514 P.2d 769 (Cal. Super Ct. 1973); Maryland Bd. of Barber Examiners v. Kuhn, 370 Md. 496, 312 A.2d 216 (1973); Slavis v. Slavis, 12 Ill. App. 3d 467, 299 N.E.2d 413 (1973); People v. Ellis, 10 Ill. App. 3d 216, 293 N.E.2d 189 (1973); Scanlon v. Crim, 500 S.W.2d 554 (Tex. Ct. Civ. App. 1973); *and* Minner v. Minner, 19 Md. App. 154, 310 A.2d 208 (1973), in which the court, confronted with the identical issue that faced the *Wiegand* Court, avoided the constitutional question by determining that the appellant lacked standing.

[57] For predictions on the effect upon the legal relationships of women and men as a result of an ERA, *see generally* Behles, *supra* n. 21; Brown, *et. al., supra* n. 29; Dorsen and Ross, *The Necessity of a Constitutional Amendment,* 6 HARV. CIV. RIGHTS—CIV. LIB. L. REV. 216 (1971); Kurland, *The Equal Rights Amendment: Some Problems of Construction,* 6 HARV. CIV. RIGHTS—CIV. LIB. L. REV. 243 (1971).

The ERA to the United States Constitution[58] has not yet been ratified by the required number of state legislatures to permit its adoption.[59] However, the *Wiegand* decision indicates that once adopted, the Federal ERA will accelerate the long overdue changes necessary to eliminate the areas of existing sexual discrimination affecting female and male alike. Simply put, the ERA, once enacted, will force the federal courts to accomplish what was required, but neglected, under the fourteenth amendment.

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[58] The proposed ERA to the United States Constitution reads as follows: "Section 1. Equality of rights under law shall not be denied or abridged by the United States or any state on account of sex. Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." H.R.J. RES. 208, 92d Cong., 1st Sess. (1971); S.J. RES. 8, 92d Cong., 1st Sess. (1972).

[59] To become part of the Constitution, the ERA must be ratified by 38 states within seven years after congressional approval. To date, 33 states have ratified it. (On Mar. 15, 1973, the Nebraska Legislature voted to rescind its ratification of the ERA. However, the legality of a recission of a constitutional amendment remains in question.)