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## Inform - A Quarterly Newsletter for Maine Women (Oct-Nov 1984)

The Maine Commission for Women Staff

*The Maine Commission for Women*

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Staff, The Maine Commission for Women, "Inform - A Quarterly Newsletter for Maine Women (Oct-Nov 1984)" (1984). *Maine Women's Publications - All*. 399.

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Oct-Nov  
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# Inform

Published by The Maine Commission for Women

## GENDER GAP

The Maine Commission for Women has traditionally encouraged women to participate actively in the political process. Registration and voting are the first crucial steps. We attempt in this article to illustrate how important the women's vote is. The article on gender gap was written to inform, to inspire hope and to foster the realization that women united possess tremendous power.

"Femininity expresses the idea that there are things worth living for. Masculinity expresses the idea that there are things worth dying for."  
[from **Touched With Fire** by John Wheeler.]

**GENDER GAP:** The measurable difference in the way men and women vote for candidates and in the way they view political issues.

A 1937 poll was the first to register the gender gap. The question asked was "Was our entry into World War I a mistake?" Women responded "yes" 5% more often than men. So, while the gender gap is not new, never before has the American public been as aware of its presence. Never before have politicians been as aware of its power! Until recently, state and federal government has been a government of men, by men and for men. People who ruled the states and nation have not had to worry about being held accountable to women whose needs have been inadequately met. Women now comprise 54% of the electorate, and the illusion of voter powerlessness for women is gradually being replaced by the reality of majority standing in the political arena.

In 1980, there were 55.6 million women and 49.3 million men registered to vote. In 1982 an additional 700,000 women and 400,000 men registered. According to **Why and How Women Will Elect the Next President** (Eleanor Smeal,

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## MAINE COMMISSION FOR WOMEN REAFFIRMS SUPPORT FOR ERA

**"Equality of rights under the law shall not be denied or abridged in this state because of the sex of the individual."**

In August of 1982, The Maine Commission for Women made passage of a State Equal Rights Amendment its top priority. The Commission was active in establishing a steering committee which ushered LD #59 (an act to add an Equal Rights Amendment to the Maine State Constitution) successfully through the 111th Legislature. In August 1983, the Maine Commission for Women was instrumental in establishing the campaign committee "ERA for Me."

The MCW considers passage of a State ERA to be of primary importance to women of Maine.

There exists considerable misunderstanding about what impact a State ERA will have on the lives of Maine citizens. Opponents of the ERA have indicated that its passage will force people into life situations not of their own choosing (deprive women of court-ordered child support, force women into the workforce, etc.).

Another emotional red herring is the linking of an ERA and the donation of blood by victims of AIDS. The opposition asserts that under a State ERA, the Red Cross would be unable to deny AIDS victims the right to donate blood. **Any** person with a known disease can be prohibited from donating blood. Obviously, any individual who has an undetected disease can transmit that disease through a blood donation, hepatitis being one such example.

Family life, marriage, alimony, child custody and support are other areas where the anti-ERA organizations prophesy doom and gloom. Actually, family life only stands to be enhanced if a woman can bring home a fair day's pay for a fair day's work. There is potential for recogni-

tion of work done in the home by social security and pension plans under an ERA, thus providing some economic security for the person who chooses full-time homemaking. Court-ordered alimony, child support and custody will continue to be the responsibility of the person most appropriately prepared, regardless of gender. (Current laws regarding alimony, child custody or support will remain unchanged according to the February 1983 report of the Maine Attorney General).

### SO WHAT WILL AN ERA DO FOR MAINE?

While Maine has made significant progress in its efforts to make sex discrimination both illegal and unacceptable, there is still a critical need for a **constitutional guarantee** that will serve as a **permanent and consistent** foundation for ensuring basic human rights under Maine law. Without the protection of a federal Equal Rights Amendment, the women and men of Maine need an equal rights guarantee under our state constitution to include areas such as employment, family law, pensions, property ownership, and insurance that will not be subject to interpretation by future government administrators and judicial appointees.

The adoption of a State ERA will not make immediate large scale differences in an

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1984] "Today a higher percentage of women than men are registered to vote. (64.4% vs. 63.7%). Since 1976, the percentage of women registered has actually been increasing while the percentage of men has been decreasing."

Some areas in which the gender gap is most prominent are the traditional issues of women's equality, reproductive freedom and child care. There are other areas, considered less traditional, where voting patterns vary significantly (a percentage spread of 8 points or more). Women tend to favor increased spending in such areas as education and protection of the environment. As evident in the 1937 poll previously mentioned, women have historically and consistently voted against acts of aggression or any increase in military funding. Women believe inflation less under control; have grave concern about their restricted earning power; and are very pessimistic about the future of the nation's economy.

Political issues on which men and women tend to agree (point spread of 7 or less) are:

- opposition to a constitutional ban on abortion;
- opposition to a federal "Squeal Law." (Federal law that would forbid clinics from giving birth control assistance to teens without informing parents.);
- opposition to current foreign policy, and
- in support of affirmative action.

The gender gap is not dependent on any one group or cause. It exists across all political, socio-economic, religious and racial/ethnic groupings. It exists, not because all women think alike, but because women experience life differently than men. Economic recession affects women, who are already at the bottom of the economic scale, differently than men. Women have been socialized to negotiate and compromise; therefore, they regard acts of aggression as more abhorrent than men and successful compromise as more realistic. Additionally, with the labor force deluged with women entering and re-entering the work force, uniquely female issues of pay disparity and sexual harassment are increasingly more evident.

The gender gap is a powerful force. "The New York Times analysis of the 1982 elections showed a male/female voting difference in 73 of 85 statewide races for governor and the U.S. Senate. The women's vote decided the winners of several closely contested governor's races in 1982, including...New York, Texas and Michigan, three of the largest states." [Smeal, p.4]

#### A GENDER GAP PRIMER

Points to remember:

- Women can and do vote differently from men.
- This gender gap in voting appears among all

subgroupings of men and women, and transcends differences in age, race, income, education and party preference.

—The gender gap is making the women's vote visible by providing a means of measuring it.

—The gender gap is increasing the political clout of women, their political viewpoints and values.

—Women represent enough votes to be the margin of difference and provide victory for state legislative and congressional candidates, and will elect the next president of the United States.

—The gender gap is widest when issues of concern to women are highly visible and polarized—especially when candidates publicly take opposite positions on issues of key interest to women.

—By reaching out to women's interests, a candidate does not risk losing men's votes. Frequently when the gap has narrowed, it is because men have moved in the direction of women's positions on issues and candidates—which shows that women can and do lead in the political arena.

—The gender gap is causing political leaders to have more interest in women's views, concerns, and programs. It is already leading to women's political appointments, especially in visible positions.

—The causes of the gender gap are primarily the real differences in the experiences of women and men [Smeal, p. 8].

#### Commission Reaffirms Support con't from pg. 1

individual's day to day life. We will not have coed bathrooms, homosexual marriages or women being drafted. The impact of an ERA will be most evident in the State Legislature and in the court system.

In 1976 the Maine Legislature revised most Maine statutes to be gender-neutral and facially nondiscriminatory. Without an Equal Rights Amendment to the Maine State Constitution, these statutes remain subject to prevailing legislative attitudes. Legislators, thus approach issues in a piecemeal fashion without consistent regard to provisions of equality. An ERA would serve as a permanent basis upon which future legislation could be developed. With a constitutional amendment guaranteeing equality, any action to undermine or reverse these laws would require significant effort and would suffer probable failure.

ERA opponents claim that Maine citizens are protected from gender discrimination by the Equal Protection Clause of the State and Federal Constitution; Title VII of the Civil Rights Act; and the Maine Human Rights Act. According to the following observations of the Attorney General, in his memo of February 1983, "While there are current state and federal laws that prohibit gender-based discrimination, there are still complications, loopholes and unprotected areas which allow discrimination to exist without restraint.

The Equal Protection Clause generally cannot be applied to strike down a facially neutral statute

which has, in fact, a disparate impact upon a particular class. See, e.g., *Washington v. Davis*, 426 U.S. 229, 243 (1976). For example, it is difficult to strike down a statute under the Equal Protection Clause that does not on its face distinguish or discriminate between the sexes." This means that if the language of a law is gender-neutral, and there is no formal intent to discriminate, a law can be upheld under the Equal Protection Clause even if the practical impact on one sex is discriminatory.

In the same memo of February 1983, the Attorney General further states "Unlike either the Equal Protection Clause or the ERA, Title VII applies to private action. Specifically, Title VII prohibits gender-based discrimination only in the area of employment. (42 U.S.C. ss 2000e2.) Because the ERA applies only to state action, it is unnecessary to examine closely the voluminous materials that are available concerning Title VII. Because Title VII is limited to employment, it does not by itself obviate the need for ERA. Unlike the Equal Protection Clause, Title VII can be used to prohibit discrimination resulting from facially neutral programs which have a disparate impact upon the different sexes. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). In addition to its limitation to the subject of employment, there are certain procedural road blocks to obtaining an effective remedy under Title VII. An individual must report the instance of discrimination within 180 days of its occurrence, exhaust the available administrative remedies, and not receive an adverse decision in a state court about the sub-

ject matter of his claim. Accordingly, because of its scope and procedural implications, Title VII should not eliminate a need for an ERA.

Title IX prohibits discrimination in education for activities receiving federal financial assistance. 20 U.S.C. ss 1681 (a). Although Title IX includes all education programs that receive federal financial assistance, including public and private schools, it is, of course, limited to education. It has recently been extended to employment in education, see *North Haven Board of Education v. Bell*, 102 S.Ct. 1912 (1982), but because of its limited scope, it, by itself, does not obviate the need for an ERA.

The Maine Human Rights Act ("MHRA") was amended in 1973 to prevent gender-based discrimination in employment, housing, and access to public accommodations. 5 M.R.S.A. ss 4452 (1979), amended by P.L. 1973 Ch. 347, Section 6. As noted above, the Law Court looks to the federal law to determine the scope and applicability of the MHRA. See *Maine Human Rights Commission v. City of Auburn*, 408 A.2d at 1261. Like the federal law, an individual must file a claim within six months of the alleged discrimination. 5 M.R.S.A. ss 4611 (1979). The MHRA only prohibits discrimination in the areas of employment, housing and accommodations and does not reach actions that discriminate on the basis of sex in other areas."

# TO PICK A CANDIDATE

The following are excerpts taken directly from a brochure published by the League of Women Voters. For a copy of the full brochure, order from:

The League of Women Voters  
of the United States  
1730 M Street, NW  
Washington, DC 20036  
(publication #259, 10/\$1.50-minimum order)

A major political campaign, with all its excitement, activity and extensive news coverage can bombard you with images and impressions, and yet leave you with very little real information about candidates and their stands on issues. This voter's guide will help you to follow the campaigns, listen to the candidates, and sort out what you need to know to pick a candidate when you go to the polls.

## CAMPAIGN INFORMATION

**Television and radio commercials:** When you see or hear a paid political ad, ask yourself some questions. What did you learn about the candidate from the ad? Did you find out anything about issues or qualifications? Or was the ad designed only to affect feelings or attitudes about the candidate?

**Direct mail:** If you are aware that you must read between the lines to get the full story, the direct mail letter can help you understand the candidates' stands on issues. Recognize that the letter is a campaign tactic and try to see what can be learned from it.

**Pamphlets and flyers:** That leaflet slid under your door or handed to you at the store may contain valid substantive information or it may be full of lies, distortions or evasions. Read it critically!

## DISTORTION TACTICS

**Name calling:** Aside from the ignorant and the absurd, inflammatory statements that distort truth can be damaging. Don't be sidetracked by attacks on a candidate based on family, ethnicity, gender, race or personal characteristics that don't make a difference in performance.

**Rumor mongering:** Watch for the unsubstantiated statement or innuendo. Legal, perhaps, but dirty campaigning. Such "dark hints" can sway an election, if voters are unwary, long before a fair-campaign investigation or a slander suit can put a stop to them.

**Loaded statements:** "I oppose wasteful spending" doesn't say much—and it implies that the candidate's opponent favors it. If a candidate gets away with claims like that, he or she may never be held to account for identifying which expenses are necessary and which are just fat.

**Guilt by association:** Look carefully at criticism of a candidate based on that candidate's supporters—Every candidate needs support from a wide range of people and groups who may or may not represent the candidate's own views on all the issues.

## PHONY ISSUES

**Passing the blame:** When one candidate accuses another candidate or party of being the cause of a major problem such as unemployment or inflation, check it out. The incumbent or the party in power is often accused of causing all the woes of the world!

**Promising the sky:** There are promises that no one in an elective office can fulfill and problems that are beyond the reach of political solutions. Voters shouldn't expect miracles and candidates shouldn't promise them.

**Evading real issues:** Many candidates work very hard to avoid giving direct answers to direct questions. The candidate who claims to have a secret, easy plan to solve a tough problem is often just copping out.

## BIG ISSUES

Pinpoint the issues that are important to you. Decide what changes you feel that your community, state and country need most. What do you want to keep the same? Which of your interest are served by the programs each candidate is proposing? As you ponder, weigh alternatives. Listen to people on both sides of an issue. Look at cause and effect. Consider what you have to trade off to get what you want.

Find out where the candidates stand on your "top priorities." Which candidate most closely shares your views on important matters.

...THEN VOTE

# SOURCES & RESOURCES

**Why and How Women Will Elect the Next President**, by Eleanor Smeal (Harper and Row, \$6.95). Smeal, the former President of the National Organization for Women, tells you everything voters and candidates need to know—not only about the power of the women's vote but why women vote differently from men. Extensive information on P.A.C.'s, pollsters and direct mail.

**Gender Gap: Bella Abzug's Guide to Political Power for American Women** by Bella Abzug with Mim Kelber (Houghton Mifflin, \$6.95). This book dramatizes the origins of the women's movement and the struggle for the ERA. Abzug details the plight of millions of women who live on welfare or work at low-paying jobs with no future.

**Women and Politics: The Visible Majority** by Sandra Baxter and Marjorie Lansing (University of Michigan Press, \$10.95). More about the gender gap. Is there a gender gap? Complete with voting statistics from the 1980 and 1982 elections.

**Women and Politics** by Vicky Randall (St. Martin's Press, \$11.95). A review of recent feminist writing and women's involvement in mainstream politics.

**Maine State N.O.W. political analysis of the 1984 candidates for Maine State Legislature.** Order from: Christine Torraca, State Coordinator, N.O.W., P.O. Box 5195, Station A, Portland, Maine 04101.

**Women's Spirit: A Guide To Women's Wisdom** by Hallie Iglehart (Harper & Row, \$6.95). Calls for the synthesis of feminism and spirituality as a way for women to effect change.

**Job Search Guide**, second edition. In this workbook you will find ways to go about preparing for work, deciding on the right work for you, and looking for work and getting the job. Available from the Maine Commission for Women, State House Station #93, Augusta, ME 04333.

**Women's Lives on Film**—A brochure listing available films which depict a wide variety of lifestyles of women. Contact: Maine State Library, Film Service, Station #64, Augusta, ME 04333 or 289-2009.

## MAINE STATE ERA AND SCHOOL SPORTS

### Q. Will the State ERA prohibit school sports teams that are only for boys or only for girls?

A. No. Sixteen other states have ERAs and none prohibit single-sex sports teams. Under current federal and state law, there must be equivalent sports activities in publicly supported schools. A State ERA would affirm that equal opportunity to sports activities.

Title IX (the Federal Statute relating to sex discrimination in publicly funded schools) has some appropriate exemptions (military schools, Boy's/Girl's State, father-son/mother-daughter activities, so long as opportunities for "reasonably comparable" activities are offered, fraternities/sororities, etc.)

However, the recent U.S. Supreme Court case regarding Grove City College has weakened the application of Title IX to educational institutions receiving federal dollars. Title IX now applies **only** to those programs directly receiving the federal dollars, **not** the entire institution. A good example of the impact is: if federal dollars are supplied to a college financial aid office, athletic departments can use that money for athletic scholarships for **men only**. Title IX would only apply to the financial aid office (the official recipient of the federal dollars) and the financial aid office is not the one that is discriminating. Although there are federal attempts to restore Title IX to Congressional intent, passage is not guaranteed. A State ERA would restore that public policy for Maine that the Federal Title IX had provided since 1972.

An amendment, adopted on 8/20/84, to the Maine Human Rights Act mandates that girls be given an opportunity to compete for all school teams except boxing and wrestling. Acceptance on the team is still to be determined by level of ability.

Locker room facilities will remain separate.

## MAINE STATE ERA AND INSURANCE RATES

### Q. Will women have to pay higher auto insurance rates under a State ERA?

A. Not necessarily. Basing any type of insurance rates on gender is merely a tradition. There are other, more accurate predictors of risk for auto insurances: years of experience; number of miles driven annually and drinking habits.

States which have outlawed gender-based discrimination in setting auto-insurance rates have found methods to implement the more accurate indicators, thus creating a system where the people who pay the highest premiums are those individuals who are higher risks. Women's rates have not increased significantly in these states. In North Carolina auto-insurance rates actually declined for "good risk"

drivers both male and female. These "gender-neutral" states are: North Carolina, Massachusetts (ERA-State), Michigan and Pennsylvania (ERA-State).

## MAINE STATE ERA APPLICATION

### Q. Will the State ERA apply to actions taken by government?

A. Yes. ERA will not apply to private action. Every court that has been asked to consider whether a State ERA applies only to government action has concluded that this limitation does apply. It generally is referred to as the "state action requirement."

Six state ERAs expressly apply only to instances where government action is involved. For example, the Hawaii provision states that "(e) quality of rights under the law shall not be denied or abridged by the State on account of sex." This is similar to the language of the proposed federal ERA, which prohibits denial of rights "by the United States or by any State." Only one state, Montana, expressly prohibits discrimination not only by the state, but also by "any person, firm, corporation or institution." Regardless of the language, however, every court that has been asked to consider whether a state ERA applies only to government action has concluded that this limitation does apply.

In its clearest form, this requirement means that state law, and actions taken directly by the government (e.g., as an employer) are covered by the state's ERA. However, sometimes seemingly private action may be so identified or infused with governmental involvement that it is considered to be state action. For example, an interscholastic athletic association's rules have been held to be state action because the association is "controlled and supported by [public] school membership and cooperation necessarily involving the use of public funds..."

## MILITARY

### Q. Will the State ERA force the elimination of veteran's preference?

A. No. The U.S. Supreme Court, in its 1979 **Feeney** decision\*, put the matter to rest by holding that even the most extreme form of veterans' preference law in state employment, the kind in which preference for any veteran with a passing score is absolute and in which the preferences last a lifetime, was not unconstitutional.

There have been a series of cases at state and Federal court levels that substantiate the fact that an ERA or even an equal protection clause would have no effect on a state's ability to use veterans' preference.

The first reported case in this category was

**Feinerman v. Jones**, 356 F. Supp. 252 (M.D. Pa. 1973), a case decided by a federal district court in Pennsylvania in 1973. The plaintiffs had made a case that since a very small percentage of veterans are women, any veterans' preference employment practices would be illegal. The concept behind that claim is the idea of "disparate impact." That means that even though the law may not be discriminatory on its face, it has a negative impact on a certain class of people, e.g., women in this case. But the court stated that a prima facie case had not been made and that even if it had, the final result would have been the same, since the statute creating veterans' preference was "neutral" and since there was no intentional sex discrimination.

There were a number of other cases in several other states between this first one in Pennsylvania and the Supreme Court case of 1979. In addition to Pennsylvania, other states like Illinois and Massachusetts (the **Feeney** case was originally brought in Massachusetts) have found similarly. **All three cases were tested after each one of those states had passed a state ERA.**

### Q. Will a State ERA allow women to be drafted into the National Guard?

A. No. The Governor of the State of Maine does not have the power to "draft" anyone into the National Guard. The Maine National Guard (Army and Air) are Federal entities. The Governor has only the authority to call them into action in case of an emergency. Any conscription of women, during peacetime or war, would have to be as a result of an act of Congress. The Governor cannot change the nature/composition of the Guard organizations.

\*Personnel Administration of Massachusetts v. Feeney, 99 S. Ct., 2282 (1979).

## PRIVACY

### Q. Will a State ERA force coed/unisex bathrooms in public facilities?

A. No. From the Attorney General's report of February 11, 1983:

"Opponents of the ERA have contended that the ERA would eliminate an individual's right to privacy and require all public facilities to provide coed bathrooms and showers. There are no cases to support this conclusion in any state which has passed the ERA, and legal commentators have dismissed this issue out-of-hand. Harvard Law School Professor Lawrence Tribe explains why this is not an issue:

Opponents of the ERA have also expressed the fear that ratification would compel such consequences as sexually-common use of public toilets and other currently separated facilities. However, this concern fails to take into account what the Supreme Court has recognized

# ERA & MAINE ISSUES

as the independent constitutional right of privacy. It seems clear that, whatever the precise perimeter of such a right, it would protect values of personal modesty in situations involving undressing, sleeping, or performing bodily functions in the presence of the other sex."

## FAMILY / MARRIAGE / DIVORCE

### Q. Is the ERA anti-family?

A. No. The ERA will, in fact, help the homemaker by recognizing contributions to the family and it will help women who work outside the home by requiring that she be paid fairly for her work.

The reality of Maine in 1984 is that over half of the women in this State are in the labor force, most supporting or helping to support their families. They want to be paid fairly for their work. Currently women are not rewarded by our pension and social security systems for the very major contributions that they make to their families social and economic well-being. The status of the homemaker will, in fact, increase rather than decrease if the ERA is ratified in Maine this fall.

State ERA's are being interpreted to support the view that marriage is an economic, as well as a social and emotional partnership. As a result, married women, especially homemakers, have acquired new rights.

### Q. Will an ERA cause more divorces?

A. No. The ERA does not cause divorce. In fact Massachusetts and Utah, which have state ERA's, have lower divorce rates than their neighbors, New York and Nevada, who do not. When divorce occurs, if a state has an ERA, division of the couple's property is more equitable, child support is more likely to be paid by the partner who can afford it and the children will reside with the parent who can best take care of them.

Before Pennsylvania adopted a state ERA, for example, a married woman who was legally separated from her husband could not obtain financial support from him greater than one-third of his net income. When a Pennsylvania husband sought to enforce this income limit against his wife, who had been a full-time homemaker throughout their thirty year marriage, the court rejected the rule as inconsistent with the Pennsylvania Equal Rights Amendment. The husband was ordered to pay his wife the full amount her budget showed she needed (which the court found he could afford).

The court observed that the old rule reflected "an ingrained sexist philosophy whereby a man's labor for money was somehow thought to be more valuable than a woman's work as a homemaker."

State ERAs have resulted in the recognition of marriage as a partnership in other ways as well. Courts in Washington, Texas, Pennsylvania and Alaska have interpreted their state ERAs to grant a married woman the right to claim damages from a person who injures her husband. Under the common law, a wife was viewed as her husband's property. Therefore, only the husband could sue for loss of his wife's companionship, care and services (in legal terms, for the loss of "consortium"). Since, under common law, wives were not legally entitled to consortium they could not sue for its loss.

### Q. Will the Maine State ERA affect child support and alimony in Maine?

A. No. All statutes in Maine relating to child support and alimony are gender-neutral. There is one statute affecting the support of a spouse that is not sex-neutral. It says that a husband must support a wife, but a wife must support a husband only if he is "in need." But in Maine courts, the practice has been that neither the husband nor the wife must support the spouse unless he or she is "in need." The Attorney General's report (February 1983) states that "In light of the court's ruling in *Beal v. Beal*, 391 A2d 58 (Me. 1978), the court may, under either the [existing state] Equal Protection Clause or an ERA apply the support provisions equally to men and women.

What does equal application mean? It means that Maine courts would (as they do anyway now) treat men and women equally—that if a man must only support his wife when "in need," then the same must apply for women or if the courts decide that men must support their wives regardless of need, then so must women support their husbands. Obviously, the court's practice has been and most certainly would be to apply the "in need" standard to both husband and wife.

Court interpretations of State ERAs also have established the principle of mutual parental responsibility for children. This mutual responsibility rule does not, however, require both parents to contribute financially to the care of the children, or that such financial support be equal in amount.

**A custodial parent who devotes full-time to child rearing is not required by the ERA to obtain employment in the paid labor force to support her/his child.** (*Wasiolek v. Wasiolek*, 380 A.2d 400 Pennsylvania Superior Court, 1977). A Pennsylvania court rejected one father's claim that the ERA required his former wife to return to work to help support their three children, who were in her custody. The court explained that, "Once custody of a very young child is awarded, the custodial parent, father or mother, must decide whether the child's welfare is better served by the parent's presence in the home or by the parent's full-time employment. Hence, permitting the nurturing parent to remain

at home until a child matures does not run afoul of the ERA..." Courts in Texas have reached similar conclusions applying the Texas state ERA. *Krempp v. Krempp*, 590 S. W2d. 229, 230 (Tex. Civ. App., 1979).

## HOMOSEXUAL MARRIAGES

### Q. Will the State ERA require the legitimization of homosexual marriages?

A. No. There is no state, including the sixteen states that have ERA's (two of which, Utah and Wyoming, date back to 1896 and 1890) that legally recognizes homosexual marriages. The Maine ERA would prohibit discrimination on the basis of sex, not sexual preference.

State ERAs do not apply when a law does not expressly classify by sex and when it affects men and women equally. Thus, Washington State's ban on homosexual marriages was upheld under the State ERA since the court found that it was not a sex-based classification. The restraint on such marriages applied to **both** women and men who sought to marry someone of their own sex.

From the February 11, 1983 Attorney General's report on ERA:

"Homosexual marriages. Although not expressly prohibited by Maine law, **see generally** 19 M.R.S.A. ss.31, **et seq.** (1981), homosexual marriages are not recognized in Maine. They likewise are not recognized in other states, **including** the 16 states that have a state ERA. When litigated, either under the Equal Protection Clause or a state ERA, the courts have concluded that discrimination on the basis of sexual preference is permitted, even if discrimination on the basis of sex is prohibited. **See, e.g., Singer v. Hara**, 522, p.2d 1187 (Wash. 1974). **Cf. DeSantis v. Pacific Tel. & Tel. Co.**, 608 F. 2d 327 (9th Cir. 1979) (employment discrimination unsuccessfully challenged under Title VII). It is unlikely that Maine Courts, confronted with this issue, would reach a different conclusion."

## MAINE STATE ERA AND ABORTION

### Q. Will passage of a State ERA force State funding of abortions in Maine?

A. No. Passage of a State ERA will not have any effect on abortion funding in Maine. Much has been said about the recent decision of a Pennsylvania court regarding the so-called "ERA-abortion connection." The Maine ERA Impact Coalition, at its press conference of May 16, 1984 stated "There is now clear, decisive and undeniable evidence that a State ERA would mandate the medicaid funding of abortions in Maine." Maine Right to Life at the same press conference stated, "...the Commonwealth Court of Pennsylvania struck down two Pennsylvania laws restricting the funding of abortions on the

basis of the state's ERA. Pennsylvania is thus **forced** (emphasis in original) to fund abortions."

Pennsylvania has had state funded abortions since 1966. (The Pennsylvania state ERA was not adopted until 1971). In 1980, the Pennsylvania General Assembly amended the Public Welfare Code by adding a section which restricted the use of state or federal funds for abortions. This amendment was challenged as unconstitutional.

In March 1984, Judge MacPhail filed his opinion that the restrictive laws were discriminatory. His opinion was based on the Pennsylvania Constitution's Equal Protection Clause. Once that decision was made, Judge MacPhail then **BRIEFLY CONSIDERED** the impact of the state ERA. Judge MacPhail's opinion states "Although we have now decided that the statutes before us do offend the equal protection clauses of our state constitution, we deem it necessary to **briefly** consider the constitutional challenge based upon Pennsylvania's Equal Rights Amendment, because we believe that on appellate review it may be helpful for the reviewing court to have our opinion with respect to each of the constitutional challenges before us." Of the ERA, MacPhail further states, "We are of the opinion that while petitioners' argument under the ERA is not as strong as their equal protection argument, it is meritorious and sufficient in and of itself to invalidate the statutes before us in that those statutes do unlawfully discriminate against women with respect to a physical condition unique to women. In summary we hold that the state may not constitutionally deny medical assistance funds to indigent pregnant women who seek **medically necessary abortions**." Judge MacPhail's opinion was a lower court decision and is currently under appeal. State funding of medically necessary abortions will continue pending the final decision.

The Maine State Constitution contains an Equal Protection Clause similar to the Pennsylvania clause, upon which Judge MacPhail based his opinion. At this time, without regard to a State ERA, Maine citizens have available to them the very same legal avenue by which they could pursue State funding of abortions. (Oregon, California, New Jersey and Massachusetts courts also have held that the equal protection and due process clauses of their state constitutions forbid discrimination by state funding programs against patients requesting medically necessary abortions).

### Q. Would a State ERA invalidate Maine's "conscience laws?"

A. No. State law prohibits discrimination against organizations or individuals who refuse to perform abortions. There is absolutely **no** record of **any** state invalidating "conscience laws" as they relate to abortion.



# STATE BOARD & COMMISSION OPENINGS

## OCTOBER, NOVEMBER & DECEMBER 1984

### Month of Vacancy/ # of Openings

Oct.      Nov.      Dec.

State Board of Funeral Service	1		
State Board of Registration for Land Surveyors	1		
Maine Criminal Justice Planning & Assistance Agency	1	1	
Advisory Council (Inland Fisheries & Wildlife)	1		
Panel of Mediators (Dept. of Labor)	1		
Maine Correctional Advisory Commission	4		
Maine Committee on Aging	5		
Advisory Board to the Maine State Housing Authority	5		
Board of Commercial Driver Education		1	
State Board of Registration for Professional Foresters		1	
Manufactured Housing Board		1	
State Board of Examiners of Psychologists		1	
Maine Library Commission		2	
Maine State Museum Commission		1	
Maine Historic Preservation Commission		1	
Board of Commissioners of the Profession of Pharmacy		1	
Maine Advisory Council on Vocational Education		1	
Educational Leave Advisory Board		1	
Maine Health and Higher Educational Facilities Authority		2	
Maine Committee on Problems of the Mentally Retarded		1	
Advisory Board to the Maine State Housing Authority		1	
State Board of Cosmetology			1
Governor's Small Business Advisory Council			2
Board of Dental Examiners			1
Commission on Uniform State Laws			1
State Board of Assessment Review			5
State Board of Licensure of Administrators of Medical Care Facilities other than Hospitals			1
Community Services Advisory Board			1

Appointments are frequently filled after the "vacancy date" has passed. Therefore, we encourage you to pursue appointment even if the "vacancy date" has expired.

For further information regarding appointment to any of these Boards/Commissions, contact the agency directly or contact Maine Commission for Women, 289-3417.

For exact details (i.e., some of the vacancies require specific qualifications) or to actually request appointment, write to the Governor's Office, Attn. Jane Lincoln, State House Station #01, Augusta, ME 04333. If requesting appointment, enclose a copy of your resume.

It is often helpful to contact local political leaders, party officials or your elected representatives as references who might also contact the Governor's Office on your behalf.

## A WOMAN ON THE TICKET

When President Woodrow Wilson fell ill during his administration, his wife, Edith Wilson, acted as liaison between the President and other dignitaries and government officials. In 1919, Senator Albert Fall of New Mexico, was said to have cried out in despair, "Mrs. Wilson is President! We have petticoat government!"—a distant cry from the 1984 announcement of Walter Mondale, "This is an exciting choice!"

It is exciting indeed to have a woman vice-presidential candidate. Opinion polls showed a significant increase in the popularity of Walter Mondale upon disclosure of his choice of Geraldine Ferraro as a running mate. The long-term effect and how Ms. Ferraro will influence the outcome of the election is still unknown; however, a New York Times/CBS poll in May of this year found that advantages and disadvantages of including a woman on the ticket cancelled each other out. The poll also revealed that a female Democratic candidate could pick up votes among younger women and Republican women but might lose votes among older men and men from suburban areas. An article in the June 4, 1984 issue of Time magazine reported an unnamed poll of registered voters supported the idea of a woman candidate for vice-president by a margin of 45% to 37%.

Whatever the outcome, the addition of a female vice-presidential candidate has certainly gained the intense interest of the general public. Mondale's "exciting choice" changes forever the complexion of presidential campaigns. In fact, it broadens the horizons of women everywhere. The following quote by Roger Rosenblatt, senior writer for Time magazine, expresses clearly some of the changes.

"The selection of Ferraro will affect not only the woman in the voting booth, it will be equally felt by the man who—today, next month, next year—stares across his desk, dining room table, or bed sheets and sees someone as if for the first time. There is no analogue to lean on, no sentimentalization to rely on, nothing Americans can do now but work the matter out for themselves...the world's most powerful nation may be ready to be led by a woman, and any woman at all may prepare herself to lead it. This is an exciting choice!"



# MAKING SURE ONE WOMAN EQUALS ONE VOTE

Women are hoping to fulfill the promise of Geraldine Ferraro's nomination this month by registering potential new voters before the deadline (October 9 in many states). "The possibility of a woman Vice President makes reaching our goal of 1.5 million new voters a piece of cake," says Joanne Howes, director of the Women's Vote Project, a coalition of 75 groups working to tap women's voting power.

One of the broadest-based coalitions since the suffragists, the effort draws from organizations as diverse as the Soroptimists, the American Dental Hygienists, the National Conference of Puerto Rican Women, and such old hands at registering as the League of Women Voters. The Women's Vote Project plugs into other get-out-the-vote projects, including: Project Vote, a loose coalition of women and advocates of low-income people that expects to register 750,000 new voters; and Operation Big Vote, which focuses on black voters and, as part of a coalition, is aiming for 2 million registrants.

The all-out voter registration movement is using some ingenious tactics. In Oklahoma City, Pam Fleishaker of Planned Parenthood is coordinating a woman's vote project covering two counties and involving both parties and the NAACP and NOW, among others. A radio and TV blitz at the end of October will advertise a phone number for unregistered voters to call to find out where they can register.

In the District of Columbia, Esther Peterson, doyenne of consumer advocates, persuaded Giant Foods, her former employer, to set up registration booths in its Washington area stores and, starting September 22, to print voter registration slogans on its milk cartons. This month the League of Women Voters launches a media campaign on RKO radio stations in eight major metropolitan areas designed to reach the 18- to 34-year-old group, which has one of the lowest voter registration records.

Some women, new to the voter registration field, have been surprised to find unusual voting

registration rules, which vary between states and even between some counties. "There are technicalities like only allowing certain people to be deputized," says Nancy Lazerow, vote project coordinator for the American Association of University Women. In Cobb County, Georgia, all AAUW members have become deputized in order to register more voters on the spot.

Project Vote registers citizens standing in line for unemployment, food stamps, and other social services. A number of states have tried to prohibit this tactic. "The grounds vary—security problems, disruption," says Sandy Newman, executive director of Project Vote. So far the group has successfully gone to court five times to defend their methods. Newman charges that the governors who have tried to stop Project Vote efforts "fear an America where every one has equal access to the ballot." About 70 percent of the people registered by Project Vote are women, Newman estimates, and feminists working with the project say they are registering the gender gap at its widest.

Through another project, Human SERVE, social service workers attempting to register clients as they apply for benefits have also met with obstacles. However, governors in Ohio, Texas, New York, Minnesota, and New Mexico have passed decrees to authorize agency-based registration. Alice Cohan, political and legislative director of the National Association of Social Workers, explains that many NASW members now view registration as an extension of their profession, "to help people help themselves."

Political activists who cut their teeth on the civil rights movement of the 1960's in the South welcome the involvement of women's groups. "It's important that the groups come together," says Gracia M. Hillman, executive director of the National Coalition on Black Voter participation, which organized Operation Big Vote. However, Hillman notes that many newcomers in their zeal to sign up numbers overlook some of the complex motivations behind the statistics. "If you think you want to register people in a public housing project, don't come in your silk blouse and linen slacks."

Jesse Jackson inspired thousands of blacks to register to vote for the first time. "He's been very important because he has raised issues important to black people," says Hillman. "But black voter turnout doesn't depend solely on Jesse Jackson," she adds.

Judith Goldsmith, president of the National Organization for Women, thinks the Mondale/Ferraro ticket will attract all voters, "committed to common sense human values." She added that, "unprecedented numbers" of workers will campaign "with an energy and a dedication that will invigorate the electoral process."—Lavinia Edmunds

+ + Maine Project Vote, Director, Mat Howe, 761-4400

SEPTEMBER 1984 MS. 23

## ERA FOR MAINE COMMITTEE

### CAMPAIGN HEADQUARTERS

The ERA for Maine Committee has moved into its office at 45 Casco Street in Portland (on the corner of Cumberland and Casco). The office phone number is (207) 761-0071 and it's open 8:30 a.m. to 12:30 p.m., Monday through Friday, for now. Office hours will be expanded as the campaign gets into full swing.

### CAMPAIGN STAFF

Marilyn Kirby has been hired as the ERA for Maine campaign organizer, and is enthusiastically coordinating efforts for the State ERA campaign.

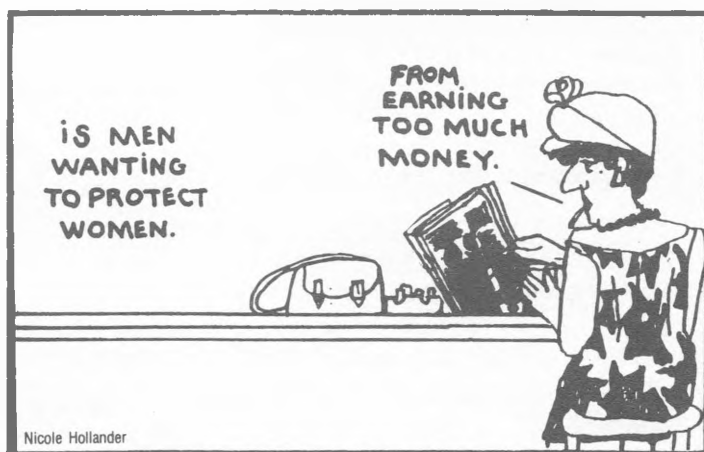
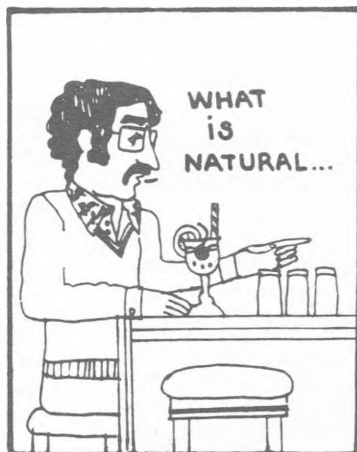
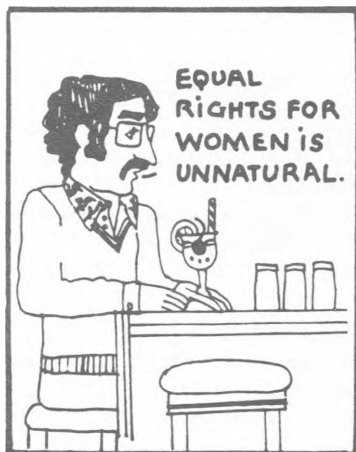
Cara Guerrieri of Portland is working as part-time administrative staff for the ERA.

### CAMPAIGN FUND RAISING

Maine N.O.W. members should have just received a mailing from Marge Clark on behalf of the ERA for Maine Committee. Marge has been an active member of the ERA Steering Committee since its inception. We hope we can count on all N.O.W. members in Maine to work towards passage of the ERA referendum that we will be voting on this November. Please read your letter from Marge and respond to us with whatever support you can offer!

### AREAS ORGANIZED FOR ERA

As individuals and chapters, you can get involved in the ERA campaign on a local level—invite friends over to discuss the issues, incorporate the ERA in efforts to register voters, and work with your local ERA for Maine Committee. Local committees are now operating in the following communities: Presque Isle, Fort Kent, Dover-Foxcroft, Bangor/Brewer, Unity, Waterville, Augusta, Lewiston/Auburn, Bridgeton, Brunswick, and Greater Portland.



Nicole Hollander

# MEMBERS OF THE MAINE COMMISSION FOR WOMEN

F. Celeste Branham, Lewiston  
Joann Clarey, Brunswick  
Caroline Gentile, Presque Isle  
Kristina Caraganis Gordon, Brunswick  
Evelyn Greenlaw, Lewiston  
Barbara Hamaluk, Portland  
Stephanie Irvine, Blue Hill  
Ruth Joseph, Waterville  
Wendy Kindred, Fort Kent  
Brenda Maliska, Portland  
Denise Mitchell, Old Town  
Julie Motherwell, Falmouth  
Carolyn Ridge, Portland  
Charlotte Sewall, Newcastle  
Fran Wills, Searsmont

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## ATTENTION

A "mailing list law," (MRSA Title 1, Section 505) requires that mailing lists be updated for all items printed at State expense.

Beginning with the next issue of INFORM, the Maine Commission for Women's entire mailing list of over 5,000 INFORM readers will be computerized.

As a result of computerization, updating of the list can be carried out much more efficiently and effectively. We will, however, require your help in notifying the Commission as to any change of address or name you may have. If you **do** have a change of address or name, please check the appropriate box below, include both your old and new addresses and mail to: Maine Commission for Women, State House Station #93, Augusta, Maine 04333.

- ☐ Change of address/name.
- ☐ I would like to contribute articles.
- ☐ I would like to volunteer to help with Commission projects.
- ☐ I would like to be included in mailing lists. (If you received this by mail, you ARE on our mailing list.)
- ☐ A topic I would like to see Inform address is:
- ☐ PLEASE SEND INFORM TO PERSON LISTED BELOW

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Town ..... State ..... Zip .....

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