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Women Activists, Southern Conservatives, and the Prohibition of Sex Discrimination in Title VII of the 1964 Civil Rights Act

By Carl M. Brauer

Title VII of the 1964 Civil Rights Act prohibited discrimination in employment on the basis of sex as well as on the bases of race, color, religion, and national origin. This prohibition was added to the civil rights bill through an amendment on the floor of the House of Representatives by Howard Worth Smith of Virginia, an ardent opponent of the legislation as a whole. Because his motives in proposing the amendment were questionable, because of the occasionally facetious tone of the debate on the amendment, and because women's rights were generally not taken seriously then, the prohibition of sex discrimination originally tended to be lightly regarded, even after it became law. The Equal Employment Opportunity Commission (EEOC), established by Title VII to administer the law against employment discrimination, initially treated the ban on sex discrimination as something of a joke. Others, however, did not. In the first two years of enforcement, over four thousand charges of sex discrimination were lodged, representing roughly one-quarter of all complaints. EEOC's languid record of enforcement precipitated formation of the National Organization for Women in 1966, an important institutional development in the birth of the women's rights movement. Pressure from this and other groups and individuals, along with a changing consciousness about sex roles, led in time to more rigorous enforcement and generally sympathetic court rulings. By 1975 legal experts on women's rights could aptly characterize Title VII "the most comprehensive and important of all federal and state laws prohibiting employment discrimination."1


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Although the sex amendment eventually developed legal and practical significance that few, including its sponsor, seemed to anticipate in 1964, some people who played a critical, though generally unrecognized, role in its enactment relished the outcome. They were women—members of the National Woman's party (NWP) or members of Congress. Their advocacy of women's rights in 1963 and 1964 both foreshadowed the new women's rights movement and provided it with its most important legal tool to date. Able and committed though these pioneers were, they lacked numbers and power. Without a social movement behind them, they had to work for women's rights from marginal, rather than central, positions in politics, riding the forces unleashed by the powerful social movement of the time, the movement for black civil rights.1

The campaigns for civil rights for blacks and for women in America have long been intertwined, sometimes complementing one another, at other times clashing.2 The fascinating story of the sex amendment's inclusion in the 1964 Civil Rights Act reflects a modern version of a historic ambiguity. In this recent instance the civil rights movement opened the door for women's rights, but it was the opponents, not the supporters, of federally mandated civil rights for blacks who escorted them across the threshold. Women's rights advocates requested and welcomed this act of chivalry; they


2 Financial assistance for this article came from the National Endowment for the Humanities, the Charles Warren Center for Studies in American History, and the University of Virginia.


were pragmatic, taking whatever assistance they could get. In doing so, they created an important legal basis for women in the future to claim equal rights with men, allowing them to become less dependent both upon men and chivalry.

With the burgeoning of the civil rights movement in the late 1950s and early 1960s some veteran women’s rights advocates from the National Woman’s party early saw a connection that might be forged between the rights of blacks and the rights of women. When Congress considered civil rights legislation in the late 1950s Alice Paul, the key figure in the National Woman’s party since its founding in 1913, unsuccessfully promoted the idea of including women’s rights. Shortly after President John Fitzgerald Kennedy asked Congress to enact sweeping new civil rights legislation in June 1963 some members of NWP again thought of connecting the two issues. “So much of the racial discussion, even that on the most elevated and inspired level,” Mary F. Anderson wrote Alice Paul, “seems to assume that everybody but the Negro in this country has full equality.” She hoped to see two birds, the “woman problem” and the “Negro problem,” killed with one stone. An NWP loyalist from Richmond likewise was thrilled to hear Fulton Lewis, Jr., a conservative radio commentator, criticize Kennedy’s omission of sex discrimination from his legislative proposals on civil rights.4

At this time most of the NWP’s several hundred active members were elderly, middle- or upper-class women, many of them either former suffragists or relatives of suffragists. Very few NWP members came from working-class backgrounds, and the party accepted no men. Often party members were lawyers, businesswomen, or other professionals. Typically, they revered their leader Alice Paul, who had as a young woman led some of America’s most militant suffragist demonstrations. The historic Alva Belmont House in Washington served as headquarters, gathering place, and hotel for NWP members. Although other women’s organizations, such as the National Federation of Business and Professional Women’s Clubs, supported women’s rights, NWP members alone and with pride called themselves feminists. NWP had one overriding objective—passage of the Equal Rights Amendment (ERA) to the federal Constitution. In that objective and in its embrace of feminism NWP served as a link between the women’s rights movement that preceded World War I and the one that came into being in the mid-

1960s. In other respects, however, NWP tended to look backward rather than forward. Its overwhelmingly and perhaps exclusively white membership evinced little concern for racial or economic equality. More of its members appeared to be politically conservative or reactionary than liberal or radical. Yet their friendships with conservative politicians proved invaluable in 1964.1

The rise of the civil rights movement and the existence of a feminist organization with ties to conservative politicians constituted two essential ingredients in the story of the 1964 sex amendment, but the immediate precipitant came from the division that had existed among women activists over the Equal Rights Amendment ever since the National Woman’s party had begun to promote it in the early 1920s. Proponents of ERA believed that it would eliminate all legally based barriers to women’s advancement. Opponents feared its blanket effect. Though it would do some good, in their view, it would also do great harm by eliminating laws that favored women, such as those that set minimum wages and maximum hours, which they believed aided working-class women in particular. The debate over ERA had distinctly class, interest-group, and ideological overtones, pitting affluent, business-oriented, and politically conservative women against poor, union-oriented, and politically liberal women. The sources of congressional support for and opposition to ERA from the 1920s through the mid-1960s have not been systematically studied, but it is probably safe to say that most prounion congressmen were anti-ERA and most antiunion congressmen were pro-ERA.6

The long-standing division among women over ERA accounted in part for the creation of the President’s Commission on the Status of Women in 1961. Like other presidential candidates before him, Kennedy endorsed ERA during his campaign. This troubled Esther

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6 Lemons, The Woman Citizen, 182–204; Catherine East, author’s interviews, August 6, 1979, and August 29, 1979; Esther Peterson, author’s interview, July 30, 1979; Caruthers G. Berger, author’s interview, November 10, 1979. These and all other author’s interviews were conducted by telephone; in the case of several interviews “conversation” would probably be a more suitable description. Notes of these interviews are in the author’s possession. East is a former vice-president of the National Woman’s party; she was a friend of both Alice Paul and Esther Peterson. For thirteen years she was executive secretary of the Interdepartmental Committee on the Status of Women and the Citizens’ Advisory Council on the Status of Women. Peterson was assistant secretary of labor in the Kennedy and Johnson administrations. Caruthers G. Berger was an attorney in the Labor Department and a member of the National Woman’s party.
Peterson, an early Kennedy partisan and labor advocate, whom he appointed director of the Women’s Bureau and assistant secretary of labor, and who was the most influential woman in his administration. Although she opposed ERA because it would void protective labor laws, Peterson had long advocated equal economic opportunities for women. For that reason she wanted a national commission to educate the public and promote legitimate change in this area. She hoped, too, that such a commission would focus attention on important, attainable objectives and divert it from agitation for ERA, which she regarded as misguided and futile.  

Peterson largely determined the composition of the President’s Commission on the Status of Women, which Eleanor Roosevelt chaired until her death in 1962. Seeking a viable compromise between supporters and opponents of ERA, the commission declared that equality of rights under law was already embodied in the Fifth and Fourteenth amendments and urged appropriate test cases to vindicate this principle. The commission, therefore, concluded in its report on October 11, 1963, that “a constitutional amendment need not now be sought in order to establish this principle.” Although the inclusion of the word “now” represented something of a concession, NWP’s leaders were enraged. “Esther Peterson loaded the Commission against equality,” Emma Guffey Miller, the eighty-nine-year-old president of NWP and a prominent Democrat, wrote an ally. “But instead of informing the public that some members were for the Equal Rights Amendment they issued what they term a compromise, but it is really what [Walter] Reuther and Peterson wanted.”  

Had the commission endorsed ERA, Paul and the National Woman’s party would probably have been content, at least for the moment, but the commission’s refusal to do so angered and frustrated them, for what was the most prestigious national panel ever to report on the status of women had rejected their primary objective of the previous forty years. Including women in the coverage of the civil rights bill then pending thus presented a logical and available alternative. Perhaps, too, it was NWP’s revenge. According to Paul’s lieutenants, in her scheme to have sex added to the civil rights bill Paul hatched the idea either alone or in consultation with Emma Guffey Miller. The earliest documentary evidence are letters from her lieutenants to Howard W. Smith proposing the idea. On December 10, 1963, Butler Franklin wrote Smith that “This single word

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8 Ibid., 638–41 (first quotation, p. 640); Margaret Hickey, author’s interview, August 6, 1979 (Hickey was a member of the commission); Catherine East, author’s interview, November 21, 1978; Miller to Jane Grant, November 22, 1963, NWP, reel 108.
‘sex’ would divert some of the high pressure which is being used to force this Bill through without proper attention to all of the effects of it.” Five days later Nina Horton Avery wrote Smith in similar terms.9

Paul called upon Franklin and Avery because they both knew Smith. Franklin, a constituent of Smith’s, had worked successfully with him in establishing a national park in Fredericksburg, her hometown. The widow of a diplomat, Franklin had been encouraged by Paul to organize the wives of retired diplomats to lobby for improved widows’ pensions. Avery, a former president of the Virginia Federation of Women’s Business and Professional Clubs and a longtime member of NWP, had graduated from the University of North Carolina in 1917. Forty years later, after a career with a railroad where she encountered rank sexual discrimination, she became a lawyer. Both women were devoted to Paul, and neither appears to have had much sympathy for the civil rights bill. In the case of Avery one letter reveals blatant hostility to it. Paul herself, it should be noted, was probably not unsympathetic to black civil rights. Her Quaker background and her friendships with successful black women at least would so imply. Paul’s only prejudice, one friend has noted, was the one she held against anyone opposed to ERA.10

The choice of Smith as sponsor made sense for several reasons. He was chairman of the House Committee on Rules, which was preparing to consider the civil rights bill for clearance to the floor. Even more important, he was one of the most influential southern conservatives and had a background of support and friendship for NWP, for Alice Paul herself, and for the Equal Rights Amendment. As far back as 1945 he had served as a sponsor of ERA. Probably not coincidentally, he had a long record of opposition to labor unions. Butler Franklin has also recalled that Paul fully expected Smith to welcome the opportunity to subject the civil rights bill to ridicule by adding sex to it.11

The National Woman’s party did not confine its lobbying to

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9 Butler Franklin, author’s interview, January 8, 1979; Nina Horton Avery, author’s interview, January 31, 1979; Caruthers G. Berger, author’s interview; Mrs. Lynn B. Franklin to Smith, December 10, 1963; Smith to Avery, December 26, 1963, NWP, reel 108. Butler Franklin’s full name was Butler-Brayne Thornton Robinson Franklin. A letter in the papers of the National Woman’s party (Frances Honour to Alice Paul, January 15, 1964, NWP, reel 108) attributes the idea to Butler Franklin and the letter’s author, Frances Honour. Both Butler Franklin and Nina Horton Avery, however, dispute this attribution. Franklin explains that Honour only wrote as she did in order to please Alice Paul, who was, she says, extremely self-effacing. Unfortunately, Honour could not be located.

10 Franklin, author’s interview; Avery, author’s interview; Catherine East, author’s interview, August 29, 1979. East was the friend mentioned in the text.

11 Catherine East, author’s interview, October 31, 1979; Congressional Record, 79 Cong., 1 sess., 30–31 (January 3, 1945); Butler Franklin, author’s interview.
Smith, however, nor did it refrain from framing its appeal in implicitly racist, anti-Semitic, and xenophobic terms. On December 16 NWP unanimously adopted a resolution calling for inclusion of sex in the civil rights bill. "... the Civil Rights Bill would not even give protection against discrimination because of 'race, color, religion, or national origins,' to a White Woman, a Woman of the Christian Religion, or a Woman of United States Origin, according to the construction that appears to have been placed on the words ... in Orders and Statements by Government officials," the resolution declared.\textsuperscript{12}

Privately, NWP members sometimes used stronger language. Nina Horton Avery wrote a Virginia congressman that the addition of sex to the civil rights bill was "from the standpoint of [the] National Woman's Party ... merely a tool of strategy to take the pressure off the passage of any Civil Rights Bill albeit realistically we shall have to accept a Civil Rights Bill ultimately ..." She hoped, however, that provisions could be deleted from it which she believed to be unconstitutional and unacceptable to the American public. "Thank God for the Members of Congress who are from the South and for those Members from the East, North and West," she prayed, "who will use their brains and energies to prevent a mongrel race in the United States and who will fight for the rights of white citizens in order that discrimination against them may be stopped." In writing individual members of Congress Emma Guffey Miller did not speak of a "mongrel race," but she emphasized perceived threats to white, native-born Christian women in the civil rights bill.\textsuperscript{13}

Smith did not adopt NWP's idea immediately, coming to it gradually instead. He wrote Avery in December that the Rules Committee did not have the privilege of amending a bill. He expected that an effort would be made to include sex when the bill reached the floor, but he did not promise to support it himself. On January 9, during the Rules Committee hearings, Smith noted that he had received a letter from the National Woman's party and asked Emanuel Celler, chairman of the Committee on the Judiciary, which had approved the civil rights bill, why sex was not included in it. Katharine Price Collier St. George, a Republican member of the Rules Committee from New York and an ally of NWP, interjected, referring to an earlier comment by Celler: "If I may be facetious, is that another dim memory, Mr. Celler?" Celler responded with an

\textsuperscript{12} Resolution adopted by National Woman's party, December 16, 1963, NWP, reel 108. There is a copy of the resolution in Box 107, Howard W. Smith Papers (Alderman Library, University of Virginia, Charlottesville, Va.).

\textsuperscript{13} Avery to J. Vaughan Gary, January 8, 1964, NWP, reel 108; and, for example, Miller to Julia Butler Hansen, January 20, 1964, \textit{ibid.}
ethnic joke about presumed French sexual obsessiveness, which led Smith to observe that Celler had not answered the question. "This is a civil rights bill," Celler replied. "Don't women have civil rights?" Smith inquired. "They have lots of them," Celler answered. "They are supermen," alluding to George Bernard Shaw's play. In responding to a further question from Smith, Celler revealed that the Judiciary Committee had never considered adding sex to the bill. Dissatisfied, Smith said he still did not understand why it had not been added. "Do you want to put it in, Mr Chairman?" Celler asked, and Smith replied, "I think I will offer an amendment. The National Women's [sic] Party were serious about it."[14]

Several weeks later Smith made a rare appearance on a televised interview show, "Meet the Press," where one of his interrogators was Elisabeth May Craig, a veteran reporter from Maine and a member of NWP. "Judge," she addressed Smith, as was customary, "it was brought out before your Committee that the bill does not provide that women shall have equal rights. Would you try to get them for us in the bill?" "Would you like me to?" he asked. "Yes, sir," she responded. "Well, maybe I would. I am always strong for women, you know," "An amendment on the floor?" she wondered. "I might do that," he answered. Alice Paul promptly cabled her congratulations and appreciation to both Smith and Craig. Butler Franklin also expressed her thanks to Smith through his assistant on behalf of a "group of prominent women in Fredericksburg."[15]

The evidence on Smith's motives for deciding to offer a sex amendment is conflicting. On the one hand, he was adamantly opposed to the civil rights legislation and was a wily legislator. "I am a conservative and I have been scrambling and scratching around here for 32 years now," Smith told a reporter around this time, "and I have always found that when you are doing that you grasp any snickersnee you can get hold of and fight the best way you can." That the sex amendment was merely such a weapon in Smith's

[14] Smith to Avery, December 26, 1963, ibid.; Smith to Miller, January 6, 1963, Box 107, Smith Papers; Civil Rights: Hearings Before the Committee on Rules, House of Representatives, Eighty-eighth Congress, Second Session (Washington, 1964), 123. The Katharine Price Collier St. George Papers (Department of Manuscripts, University Archives, Cornell University Library, Ithaca, N. Y.) apparently contain no documentation on this legislative episode. Kathleen Jacklin to the author, July 5, 1979. The ethnic joke Celler told was as follows: "Mr. Chairman, it reminds me of the Frenchman who was going up the Empire State Building in New York. Somebody said, 'How do you like it?' He said, 'Well, it reminds me of sex.' Reminds you of sex? Why is that?" The answer was, 'Everything reminds me of sex.'"

hand was implied by the light tone of his comments on the House floor. Martha Wright Griffiths, who defended Smith's amendment in the floor debate, has recalled Smith's explicitly telling her that the amendment was a joke.14

On the other hand, Smith repeatedly claimed, during the debate and afterward, that he was sincere. Two of his former assistants have agreed, asserting that Smith fully expected the civil rights bill to become law and insisting that he simply did not sponsor or vote for things in which he did not believe. In an oral-history interview in 1973 Alice Paul recalled Smith's cautioning her that were he to sponsor the sex amendment, it would be handicapped since people would question his motives. Although no one will ever be able to say for sure, it is probably safe to guess that Smith's motives were mixed. He saw an opportunity to take a swipe at the civil rights bill, but as a chivalrous old southern gentleman he also believed that it was only fair that women, specifically white women, be granted the same legal protections that the government was preparing to afford black men.17

Several days after Smith's appearance on "Meet the Press" May Craig asked President Lyndon Baines Johnson whether he would support a sex amendment. In doing so, Craig quoted from the Democratic party's platform, which promised support for legislation guaranteeing to women equal rights under law. Johnson stood by his party, acknowledged the fact of discrimination against women in employment, and expressed his hope that substantial progress could soon be made in this area. But as Craig told Howard Smith, "The President could have said: 'Yes,' to me, if he really meant it." "We are not going to make much time with President Johnson on the principle of equal rights for women," Craig wrote an ally. "He evaded an answer to my question, just like all Presidents have."18

In fact, the Johnson administration did more than evade an answer; it opposed a sex amendment. It is probably impossible to

17 Miller, "Sex Discrimination and Title VII," 883; Mary Spencer, author's interview, November 9, 1978; Calvin Haley, author's interview, November 9, 1978; "Conversations with Alice Paul," 623–24; Phineas Indritz, author's interview, January 12, 1978. Spencer and Haley worked for Smith and knew him well. Phineas Indritz, a lawyer and close associate of Martha Griffiths, who was present during the debate, believes that chivalry was an important factor. The standard source on Smith is Bruce J. Dierenfeld, "Congressman Howard W. Smith: A Political Biography" (unpublished Ph.D. dissertation, University of Virginia, 1981).
determine whether Johnson himself made this decision, but the reasons for it are fairly clear. From the day President Kennedy first proposed the legislation the strategy had been to hammer out a bill acceptable to a bipartisan majority of the House Judiciary Committee and to stick to that bill, not allowing the introduction on the House floor of amendments that might unravel the majority in favor of the legislation. In the past, opponents of civil rights legislation had used the amending process to kill or weaken legislation. The fact that no less a conservative leader than Howard Smith was taking an interest in a sex amendment made the administration all the more wary. Accordingly, the administration dissuaded Edith Green, a veteran Democratic congresswoman from Oregon, a member of the President's Commission on the Status of Women and the principal sponsor of recent legislation to require that women be given equal pay for equal work, from proposing her own sex amendments and even convinced her to oppose Smith's version.  

According to Nicholas deB. Katzenbach, deputy attorney general and the administration's principal manager of the legislation, the administration "believed, wrongly, that including sex might overburden the legislation." Although she was concerned about a sex amendment's possible effect on protective labor laws, Esther Peterson opposed an amendment primarily because she was worried that it might impede passage of the legislation. She believed that blacks, not women, faced the greatest discrimination, and she distrusted the amendment's proponents, Smith and the National Woman's party. Consequently, she wrote a letter to Emanuel Celler opposing any sex amendments, citing the recent report of the President's Commission on the Status of Women which had recommended against including "sex" in an executive order on discrimination in federal employment. "... discrimination based on sex, the Commission believes," Peterson quoted, "involves problems sufficiently different from discrimination based on the other factors listed to make separate treatment preferable."  

Although the administration succeeded in persuading Edith Green of its case, it failed to win over Martha Griffiths. A Democrat from East Lansing, Michigan, Griffiths was a shrewd, effective legislator and the first woman member of the powerful Ways and


20 Katzenbach to the author, January 17, 1979; Cong. Record, 88 Cong., 2 Sess., 2577 (February 8, 1964); Esther Peterson, author's interview; Margaret Hickey, author's interview; Peterson to Dorothy McDiarmid, January 9, 1973, Esther Peterson Papers (Schlesinger Library, Radcliffe College, Cambridge, Mass.).
Means Committee. Long aware of discrimination against women, Griffiths joined the National Woman's party in 1955 but came to regard it as an ineffectual organization on Capitol Hill. Contrary to an assertion by Alice Paul, Griffiths insists that she planned to introduce a sex amendment to the civil rights bill on the floor of the House if Smith did not. She has recalled that she deferred to Smith simply because he would command many more votes, probably over a hundred more than she could. In addition to being knowledgeable on the Hill, Griffiths was a skilled debater and was not reluctant to speak her mind. Interestingly, she was also attuned quite early to the white backlash against civil rights that was developing in the North. Just prior to the 1962 election her sharp warnings helped persuade President Kennedy to delay issuing his executive order against discrimination in federally assisted housing until after the election.\(^{21}\)

Griffiths later recalled that prior to the floor debate she spoke of her plans only to Leonor Kretzer Sullivan and Edna Flannery Kelly, both friends and Democratic representatives. Women's networks have interested sociologists and historians of women, but if there was a women's network on Capitol Hill in 1964, it was of the loosest sort. There seems to have been relatively little communication among the women members of Congress. Yet, at the same time there was also a high consciousness of sex discrimination among them, irrespective of political party or ideology. Indeed, like the women of NWP, these professional politicians proved to be in the vanguard of the approaching women's movement. During and after the floor debate on the civil rights bill these elected women played a more important role than NWP, whose contribution to the passage of the bill had been to enlist Smith and other conservatives. For example, Emma Guffey Miller failed to get an appointment with the President to discuss the bill. NWP just did not possess enough influence or power.\(^{22}\)

Having persuaded Edith Green not to introduce sex amendments

\(^{21}\) Martha Griffiths, author's interview; Catherine East, author's interview, November 21, 1978; "Conversations with Alice Paul," 622-23; unsigned notes on sex amendment and notes by Hattie Milam Cook, February 1964, NWP, reel 108; Griffiths, "Women and Legislation," in Mary Lou Thompson, ed., Voices of the New Feminism (Boston, 1970), 103-14; Peggy Lamson, Few Are Chosen: American Women in Political Life Today (Boston, 1968), 88-98; Brauer, John F. Kennedy and the Second Reconstruction, 206-207. Griffiths' papers at the Bentley Historical Library in the Michigan Historical Collections, University of Michigan, are incomplete and revealed nothing about this legislative episode.

\(^{22}\) Martha Griffiths, author's interview; Edna Kelley, author's interview, January 24, 1979; Paul to Elizabeth Carpenter, February 4, 1964, NWP, reel 108, "Conversations with Alice Paul," 621-22. The previous summer the National Woman's party had failed to get an appointment with President Kennedy to discuss ERA. See Nina Horton Avery to Emma Guffey Miller, July 13, 1963, NWP, reel 108.
and having alerted its forces, the administration apparently was not worried about Smith's amendment. Possibly, it was lulled by the defeat on February 5 and 6 of a series of amendments adding sex to different sections of the civil rights bill. Sponsored by John Vernard Dowdy, a Texas Democrat who opposed the bill as a whole, these amendments stimulated little debate and were defeated by hefty majorities. Late on February 8, however, a much more powerful sponsor rose, the venerable Howard Smith. Rather than attempt to amend the legislation in all places, he restricted his efforts to Title VII, the highly controversial employment section. His amendment, moreover, was vociferously defended by Martha Griffiths and four other women representatives.\footnote{Cong. Record, 88 Cong., 2 Sess., 1978–79, 2264–65, 2280–81, 2297, 2577 (February 5, 6, 8, 1964).}

In his initial remarks Smith provoked considerable laughter on the floor by reading from a letter he had received from a woman in Omaha, Nebraska. She had facetiously proposed that he also offer an amendment correcting the imbalance between the number of men and women in the United States. "Just why the Creator would set up such an imbalance of spinsters, shutting off the 'right' of every female to have a husband of her own, is, of course, known only to nature. But I am sure you will agree that this is a grave injustice," Smith read to general amusement. Several times Smith insisted that he was serious about his amendment, but his comments appear to have been aimed at satirizing the logic behind the civil rights bill, which, in the view of Smith and many conservatives, was attempting to defy human nature. Smith did not dispute the perception of mock seriousness by presenting substantive arguments on behalf of his amendment. He did not, for example, cite data provided by the NWP of discrimination against women in employment.\footnote{Ibid., 2577 (February 8, 1964); Martha Griffiths, author's interview; Phineas Indritz, author's interview; Lella G. Whitney to Smith, January 26, 1964, Box 63, Smith Papers; "Employment Discrimination Omitted from the Civil Rights Bill and Fair Employment Practices Bill," January 1964, NWP, reel 108.}

Emanuel Celler argued against his amendment in somewhat the same fashion. He protested that women were not in the minority in his own house, that although during nearly fifty years of happy marriage he usually had the last two words, those words were "Yes, dear." He quoted from Esther Peterson's letter and then questioned the notion of establishing blanket legal equality between the sexes. Celler, who long kept the Equal Rights Amendment bottled up in his committee, directed most of his fire at ERA, not against Smith's much more limited proposal: "Would male citizens be
justified in insisting that women share with them the burdens of compulsory military service? What would become of traditional family relationships? What about alimony? Who would have the obligation of supporting whom? Would fathers rank equally with mothers in the right of custody to children? What would become of the crimes of rape and statutory rape? Would the Mann Act be invalidated? Would the many State and local provisions regulating working conditions and hours of employment for women be struck down?" Celler apparently regarded Smith’s amendment merely as the entering wedge toward adoption of the Equal Rights Amendment.15

The two elderly chairmen then exchanged expressions of good-humored dismay at the other’s position on the amendment and the bill, and they were soon joined by John Dowdy, Frances Payne Bolton of Ohio, a Republican and the senior woman in the House, and Ross Bass, a Democrat from Tennessee. They supported Smith’s amendment, but in a light vein. The mood shifted, however, when Martha Griffiths spoke. “... I presume that if there had been any necessity to have pointed out that women were a second-class sex, the laughter would have proved it,” she pointedly observed. “... I rise in support of the amendment,” she declared, “primarily because I feel as a white woman when this bill has passed this House and the Senate and has been signed by the President that white women will be last at the hiring gate.”16

Griffiths questioned Celler sharply, posing hypothetical cases to try to show that colored women would be protected by the legislation as written but that white women would not. In the abstract, it was a weak contention that Celler might have exposed through a hypothetical case of his own, such as one where a large trucking company that employed only white male drivers was sued for a job first by a qualified black man and then by an equally qualified black woman. If the company agreed to hire the black man but refused to hire the black woman it could have argued reasonably that it was not discriminating against her on the basis of race but on the basis of sex. Griffiths stood on firmer ground when she defended Smith’s amendment on the practical grounds that without it black women would at least have some legal recourse, whereas white women would have none. Seeking victory, however, neither side confined its arguments to reason and practicality: Celler had raised the specter of the disintegration of the family and a revolution in sex roles. Griffiths now appealed to the emotions of opponents of the

15 Cong. Record., 88 Cong., 2 Sess., 2577-78 (February 8, 1964); quotations on p. 2577.
16 Ibid., 2578.
legislation as a whole. "... a vote against this amendment today by a white man is a vote against his wife, or his widow, or his daughter, or his sister," she warned."

Three other congresswomen defended Smith's amendment, Katharine St. George, a Republican from New York, Catherine Dean May, a Republican from Washington, and Edna Kelly, a Democrat from Brooklyn. They emphasized the facts of job discrimination against women, called for equal treatment of women, and argued that the amendment would not rescind protective labor laws in the states. Nine southern men, including Smith, supported their cause on grounds of chivalry, equity, practicality, and emotion. Faced with a choice between hiring a white woman and a black woman of equal qualifications, Smith maintained, employers would choose the "colored woman" to prevent the government from suing them. "Some men in some areas of the country might support legislation which would discriminate against women," said James Russell Tuten of Georgia, "but never let it be said that a southern gentleman would vote for such legislation." "It is incredible to me that the authors of this monstrosity," Lucius Mendel Rivers, a senior South Carolinian, declared, "... would deprive the white woman of mostly Anglo-Saxon or Christian heritage equal opportunity before the employer."28

Edith Green led opposition to the amendment, questioning the motives of its southern defenders. She did not know whether she would be called an "uncle Tom" or an "aunt Jane" for her stand; in self-defense, she cited her past record as an advocate of women's rights. "For every discrimination that has been made against a woman in this country," she asserted, "there has been 10 times as much discrimination against the Negro of this country." The amendment, she said, would "clutter up the bill and it may later—very well—be used to help destroy this section of the bill by some of the very people who today support it," she warned. She also read a letter opposing the amendment from the legislative representative of the American Association of University Women. Green's position was supported by four leading members of the bipartisan coalition working for the civil rights bill, Frank Thompson, Jr., a Democrat from New Jersey, James Roosevelt, a Democrat from California, John Vliet Lindsay, a Republican from New York, and Charles McCurdy Mathias, Jr., a Republican from Maryland.29

11 Ibid., 2578–80; quotation on p. 2580.
14 Ibid., 2580–84; quotations on p. 2583.
24 Ibid., 2581–84; quotations on p. 2581.
When the vote was taken Martha Griffiths demanded tellers, and
the amendment was approved 168 to 133. Reportedly, a woman in
the gallery, which held a large representation from the NWP,
cheered and was escorted out of the chamber. Unfortunately, no
roll call was demanded, but Griffiths, who along with Celler was a
teller, has recalled that most of the amendment’s supporters were
southerners and Republicans. Most nonsouthern Democrats voted
against it. The amendment proved to be the only substantive change
in the employment title made on the House floor. Interestingly,
Smith’s amendment inadvertently failed to insert “sex” in several
places in Title VII, so two days later Frances Bolton offered a
correcting amendment that the House accepted without objection,
though Edith Green pointed out that the mistake illustrated that the
original amendment had been ill-considered. Finally, Congressman
Robert Paul Griffin, a Republican from Michigan, introduced an
amendment that would have required that an individual filing a
charge of sex discrimination certify that his or her spouse was
unemployed and was unemployed at the time of the discriminatory
act. This amendment provoked no debate and was defeated by a
wide margin.10

The National Woman’s party rejoiced in the victory, sealed on
February 10 when the House approved the civil rights bill, and
claimed sole credit for itself. The press gave the amendment only
light-hearted treatment, if any at all. “Finally, the Southerners were
wearing down—but not that other compulsively rhetorical segment
of U. S. society: The Women,” reported Newsweek, sarcastically
noting the approval of the “May Craig Amendment (named for the
frilly-bonneted Maine reporter seen so often on TV) . . . .” The
result, the Washington Post commented lightly in an editorial,
demonstrated “who’s head of the house up there on the Hill.”11

Some of the amendment’s opponents, on the other hand, were
dismayed. Griffiths has recalled that Jack Thomas Conway, a high-
ranking official of the United Auto Workers, was furious at her.
Esther Peterson reportedly said the amendment “might jeopardize
the Civil Rights bill” and also had some harsh words for Griffiths,
according to Griffiths. “This is the apples-and-bananas fallacy,”
Alexander Mordecai Bickel, the eminent constitutional lawyer from
Yale, commented in the New Republic. “It is burdening with the

10 Ibid., 2584; Martha Griffiths, author’s interview; New York Times, February 9, 1964,
Sec. 1, pp. 1, 52; Cong. Record, 88 Cong., 2 Sess., 2718, 2720-21, 2728 (February 10, 1964);
Legislative History and Scope of H.R. 7152, Title VII, Box 28, Burke Marshall Papers (John
F. Kennedy Library, Boston, Mass.); Congressional Quarterly Almanac, XX, 348.
11 Emma Guffey Miller to Fellow Members, February 14, 1964, NWP, reel 108;
Newsweek, LXIII (February 17, 1964), 15; clipping, Washington Post, February 11, 1964;
Scrapbook 8, Smith Papers.
regulation of bananas an agency already sufficiently overwhelmed with the problem of apples. That isn't the way to ensure adequate regulation of bananas; it is a way only to ensure less effective regulation of apples."

Approval by the House was, of course, only the first of two critical steps the amendment needed to take, so the women who had fought for it in the House continued their efforts in the Senate. Martha Griffiths has written that she called Elizabeth Sutherland ("Liz") Carpenter, an assistant to President and Mrs. Johnson, "and asked her to tell the President that if that amendment came out of that bill, I would send my speech door to door in every member's district who had voted against it, and in my opinion, those who voted against it would never return to Congress." Members of NWP lobbied in the Senate, with both opponents and supporters of the civil rights bill as a whole. Emma Guffey Miller tried unsuccessfully to persuade James Oliver Eastland of Mississippi, chairman of the Committee on the Judiciary and a prominent opponent of the legislation, whom she regarded as "a great friend of Equal Rights for Women," to propose sex amendments to other parts of the civil rights bill.

Liz Carpenter has no recollection of Griffiths' threat, but she has recalled that Johnson was always sympathetic to women's rights and that he had high regard for the women legislators with whom he had served. She has also said that at this point Esther Peterson lobbied hard for the amendment's retention. Peterson herself has explained her reversal simply by reflecting that once the amendment had cleared the House she could see no harm in leaving it in. Peterson's papers provide no additional evidence of her change in position, but Margaret A. Hickey, who knew Peterson well and who was head of the Citizens' Advisory Council on the Status of Women, has explained that Peterson believed in using every means available to help women. Peterson and Hickey opposed ERA because it threatened protective legislation, but it was unclear that adding sex to Title VII would also threaten protective legislation, contrary to Emanuel Celler's argument.

14 Liz Carpenter, author's interview, June 21, 1979; Esther Peterson, author's interview; Margaret Hickey, author's interview; Catherine East, author's interview, August 6, 1979. East did not know that Peterson had reversed herself, though she imagined that she was in favor of the amendment.
Hobart Taylor, Jr., a black assistant to Johnson and a friend of Martha Griffiths', has recalled Johnson's asking him about the sex amendment and his recommending that it be retained. Johnson also received pleas from a number of women activists from his home state of Texas and elsewhere asking him to support women's rights in the civil rights bill. Responding to these petitioners on his behalf on March 27, Peterson wrote that it was not practical to add further amendments to the bill, implying that Johnson would not seek the elimination of the present one. A month later Johnson himself signed a letter explicitly accepting Title VII as amended.

Given the positive support for the amendment as well as the lack of significant opposition to it, Johnson's decision to accept the work of the House is understandable, especially in light of the larger legislative struggle. The House bill was the strongest one Johnson might hope to have enacted. Most important, if the Senate approved a bill substantially the same as the House version, it would remove the necessity of sending the legislation to conference. A conference might well have effectively postponed action until the next Congress convened in 1965. Much of Johnson's efforts, therefore, as well as the efforts of his allies in the upper chamber, were directed at getting the Senate to keep the House bill substantially intact. They fully expected it to be subjected to an onslaught of weakening amendments there and did not want to encourage that process. In their eyes the sex amendment must have failed to warrant a potentially damaging fight. The prudent course was simply to let it be. When an aide to Hubert Horatio Humphrey, Jr., floor manager of the bill in the Senate, briefed him before an appearance on "Meet the Press" in early March, he noted that May Craig, who was "responsible for the women's equal rights provision . . . may ask about that." He suggested that Humphrey say, as he had said before, "I'm all for women," which is what Humphrey did. Peterson's reversal is, of course, also understandable in view of the larger legislative strategy. Thus, much as opposition to the civil rights bill proved decisive in adding the sex amendment in the House, the forces favoring the bill proved decisive in retaining the amendment in the Senate.

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One man stood in the way, though. Everett McKinley Dirksen of Illinois, the leader of the Republican minority in the Senate, held most of the cards on the civil rights bill. As the leader of a group of moderate and conservative Republicans, largely from the Midwest, he would decide whether cloture would be invoked and the southern filibuster broken. Hence, he had the power to extract some changes in the House bill and potentially to upset Johnson's legislative strategy. One of the changes he contemplated was the elimination of the sex amendment. In a working paper prepared in late February he questioned whether it would be wise to threaten the laws which protected women from the "heavy manual labor of the sort that falls to the lot of some men." "I suggest, therefore," he wrote, "that we look at this problem with compassion and care. We do not want women to be discriminated against, but we do not want, through inadvertence, to remove the protection which is appropriate." Although no documentary evidence has turned up in Dirksen's papers, it is possible, given his long record of support for business interests, that he was actually responding to the views of large employers of women, such as telephone companies, who worried about the sex amendment's financial implications. According to Esther Peterson, the telephone industry lobbied against the amendment in the Senate.\(^\text{17}\)

Once again the National Woman's party and a woman legislator, particularly the latter, played critical roles. NWP alerted Republican senators whom they considered favorable to women's rights to the views of Dirksen. In Margaret Chase Smith of Maine, a highly respected middle-of-the-road veteran and one of only two women in the Senate (the other was Maureen Brown Neuberger, a Democrat from Oregon), it had a formidable ally. Smith, it should be noted, was a candidate for her party's presidential nomination in 1964. Although her candidacy attracted little support, primarily because most people would not take a woman's presidential candidacy seriously, it did suggest that Smith herself would not accept traditional notions of woman's place. It also provides another graphic example of a woman politician anticipating the women's rights movement by several years. Smith has recalled that Dirksen was quite irritated with her opposition to his position on the sex amendment but that she was supported in the Republican Conference by

\(^{17}\) Working papers, Title VII, ca. February 26, 1964, f. 256, Everett M. Dirksen Papers (Dirksen Research Center, Peoria, Ill.); Congressional Quarterly Almanac, XX, 354-59; Esther Peterson, author's interview, July 30, 1979. I have encountered only one piece of documentary evidence of lobbying by the telephone industry. Herbert H. Butler to Eugene J. McCarthy, March 3, 1964, Box 121, Eugene McCarthy Papers (Minnesota Historical Society).
Clifford Philip Case of New Jersey, George David Aiken of Vermont (who had been a member of the President's Commission on the Status of Women), Gordon Llewellyn Allott of Colorado, and one other man whose name she could not recall. Several times the conference considered Dirksen's proposal that the sex amendment be deleted, but he repeatedly failed to obtain a majority and finally gave up, announcing that he did so "in order to avoid the wrath of the women."  

With the threat from Dirksen overcome, the sex amendment faced no further barriers, though the civil rights bill did. Private negotiations between Dirksen and the bill's sponsors, which resulted in largely minor changes (or at least changes that the House accepted without requiring a conference), however, eventually smoothed the way for breaking the southern filibuster on June 10, 1964. Before that occurred several southerners proposed sex amendments to other parts of the bill, but this time there was no Howard Smith and no Martha Griffiths. More important, though, the southern strategy was to filibuster, an all-or-nothing strategy, which, once Dirksen and the administration reached agreement, gave the southerners nothing. After the filibuster was broken, the Senate approved an amendment by Wallace Foster Bennett, a Republican from Utah, providing for employers to continue to differentiate in the payment of wages on the basis of sex if such differentiation was allowed under the Fair Labor Standards Act as amended by the Equal Pay Act. Soon thereafter, Ruth Gage-Colby, a liberal member of NWP, advised Alice Paul that "we had best not press too hard for a complete inclusion lest we lose the splendid gains we've made." In the end the 1964 Civil Rights Act prohibited discrimination on the basis of sex only in the area of employment.

After President Johnson signed the legislation in July, Alice Paul wrote a comrade that it "would help us if you could get publicity . . . giving some credit to the National Woman's Party. We bore the entire burden of this battle and with absolutely no help of any kind from other women's organizations."  

Although it was true

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19 Anita Pollitzer to Margaret Chase Smith, April 2, 1964; Miriam G. Holden to Alice Paul, April 8, 1964; Holden et al. to Kenneth Keating, April 8, 1964; Smith to Pollitzer, April 9, 1964; Emma Guffey Miller to Mary Kennedy, April 15, 1964; unsigned draft to Mary C. Kennedy [June 1964] (for Dirksen quotation), all in NWP, reel 109; Margaret Chase Smith to the author, December 20, 1978. Unfortunately, the Margaret Chase Smith Papers, which will be housed in a library bearing her name in Skowhegan, Maine, are not open for research.

19 Gage-Colby to Paul, June 15, 1964; "Secretary" of National Woman's party to Anita Pollitzer, May 21, 1964, NWP, reel 109; Congressional Quarterly Almanac, XX, 354-76; Cong. Record, 88 Cong., 2 Sess., 12925 (June 8, 1964; an example of a sex amendment that died on the vine); ibid., 13647 (June 12, 1964).

19 Paul to unidentified [possibly May Craig or Mary Kennedy], July 10, 1964, NWP, reel 109.
that no other women’s organizations had helped, certainly individual women politicians had, most especially Martha Griffiths, Margaret Chase Smith, and finally, even Esther Peterson.

The prohibition of sexual discrimination in employment, therefore, represented a convergence of conflicting, unrelated, and sometimes inherently ambiguous aims. It came about in the first place because of the rise of the civil rights movement, which led Presidents Kennedy and Johnson to seek legislation banning racially discriminatory practices. The ban on sex discrimination was merely an amendment to that legislation. Secondly, it resulted from the efforts of women activists, from both the feminist National Woman’s party and from women in Congress, who sought the ban on its merits and who made the most out of the limited means they had available to them. Thirdly, it went through the House because of the support it received from southern opponents of the legislation as a whole, most notably from Howard Smith. Their motives are the hardest to determine precisely, but appear to have involved a combination of a desire to thwart or at least ridicule the legislation and a feeling of chivalry toward white women. Finally, the amendment also survived in the Senate because of legislative strategy, but this time the strategy of the legislation’s supporters who wanted to get it approved as quickly and surely as possible, though here again women activists played an important role. Thus, the ban on sex discrimination came about because of both opposition to and support for the goals of the civil rights movement and because of the determination and skill of a relatively small number of women activists who anticipated the women’s rights movement by several years.