CONGRESSIONAL POWER TO EFFECT SEX EQUALITY

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From its passage by Congress in 1972 to its ratification failure in 1982, the Equal Rights Amendment (“ERA”) pivotally shaped sex equality discourse. While historians and legal scholars have examined and analyzed its demise, its failure has been deemed inconsequential for constitutional doctrine—conventional wisdom submits that a “de facto ERA” was achieved through judicial action. This Article argues that this dominant narrative has obscured the other half of the equation—the role of Congress in implementing the “de facto ERA.” Through original archival and legislative research, this Article offers a new account of congressional action aimed at entrenching the substantive guarantees of the sex equality principle. This Article introduces the Economic Equity Act to the sex equality narrative.

* Research Fellow, Stanford Law School. For helpful comments and conversations at various stages of this project, I am grateful to Afra Afsharipour, Catherine Albiston, Caroline Mala Corbin, Michael Dorf, Ariela Dubler, Elizabeth Emens, Cary Franklin, Michael Graetz, Meredith Harbach, Angela Harris, Margaret Johnson, Olaf Johnson, Gwen Jordan, Alice Kessler-Harris, Gillian Lester, Jessica Lowe, Melissa Murray, Serena Mayeri, Carol Sanger, Diego Valderrama, Rose Villazor, John Witt, Noah Zatz, and Saul Zipkin. I also thank participants at numerous conferences and workshops for their helpful comments, including at the Annual Meeting of the Law & Society Association, the Inter-school Junior Faculty Workshop on Poverty Law at American University Washington College of Law, the Feminism & Legal Theory Project and New Legal Realism Project’s Conference on Empirical Perspectives on the Place of Law in Women’s Work & Family Lives at the University of Wisconsin-Madison, the Association for the Study of Law, Culture & the Humanities Conference, Stanford Law School, Columbia Law School, Indiana University School of Law, FIU Law, SUNY Buffalo School of Law, and UC Davis School of Law. I also thank the staff at Arthur W. Diamond Law Library at Columbia Law School, as well as Aslihan Bulut and Karin Johnsrud, for their invaluable research assistance. I am tremendously grateful to Mary Elizabeth Brown at the Marymount Manhattan College Library Archives for generous assistance with the Geraldine Ferraro Papers, Ellen Shea at the Schlesinger Library, David Hayes for assistance with the Patricia Schroeder papers, and Cindy Hall at Women’s Policy Inc. Columbia Law School provided generous research support through the Program on Careers in Law Teaching and the Associates in Law Program.

I am especially indebted to Sarah Jeong for excellent editorial assistance, as well as Megan Woodford, Lauren Herman, and the editors and staff of the Harvard Journal of Law & Gender for hosting an event dedicated to the history of the Economic Equity Act as explored in this Article and its implications for future progress towards gender equity. I am grateful to the event organizers, Amy Chmielewski, co-Editor-in-Chief, and Lindsay Reimschussel, Executive Technical Editor, as well as the participants in the event, many of whom are still being confirmed at time of print. The Journal is also graciously publishing in print and online several response pieces to this Article. I am grateful to Olati Johnson, Serena Mayeri, and Suzanne Kahn for taking the opportunity to engage with the issues raised in this Article through their responses.
Originally conceived as enforcement legislation for the ERA, this Article shows how congressional lawmakers used the omnibus Economic Equity Act for over a decade to articulate and advance their substantive vision of equality for women. Lawmakers introduced successive versions of the Act from 1981 to 1996, passing over thirty enactments. This Article argues that through the provisions of the Economic Equity Act, the women’s movement, lawmakers, and their constituents staked claims to the emerging meaning of sex equality and the terms of women’s economic citizenship—a critical chapter that has been written out of the histories of sex equality.

This Article argues that this account rewrites our history of sex equality in three important ways. First, this Article contends that the Economic Equity Act constituted a decisive turning point in congressional activity—away from legislation effecting “equality in theory” through facial prohibitions on sex discrimination, to legislation aimed at achieving substantive equality or “equality in fact.” Second, this account redresses a fundamental gap in the sex equality literature by showing how lawmakers advanced the Economic Equity Act in an effort to revise New Deal-era federal law and policy premised on the norm of the male breadwinner and female homemaker. Finally, this Article reveals the Economic Equity Act as a foundational chapter for understanding the historical and contemporary role of Congress in effecting sex equality. At stake for lawmakers advancing the Economic Equity Act were the terms on which the benefits and privileges of economic citizenship under federal law would be conferred in the wake of the societal changes precipitated by the modern women’s movement.
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The second women’s rights movement in the United States achieved monumental changes in law and society in the latter half of the twentieth century. Though the Equal Rights Amendment fell short of ratification, constitutional law scholars credit the Supreme Court’s interpretation of the Equal Protection Clause—coined the “de facto ERA”—with accomplishing the same ends.¹ In the private sector, the Equal Pay Act, Title VII’s prohibition on sex discrimination in employment, Title IX’s prohibition on sex discrimination in education, and the Pregnancy Discrimination Act are similarly heralded as doing a prodigious amount of work for sex equality.² Nonetheless, in the context of the modern women’s movement, the progress made toward equality at the federal level involved more than this Supreme Court doctrine in lieu of the ERA and the statutory prohibitions on discrimination in the private sector that dominate the typical sex equality narrative.³ Absent from these accounts is acknowledgment that even if the ERA had passed, its mandate, as borne out in equal protection doctrine, could not have compelled the proactive revision of law and reconstruction of the legal order that a substantive vision of sex equality ultimately demands.⁴

Yet, in 1981, as the fate of the ERA was still unfolding, congressional lawmakers proceeded with just such an agenda—to revise and reconstruct

¹ See, e.g., Reva B. Siegel, Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA, 94 CALIF. L. REV. 1323, 1334 (2006) [hereinafter Siegel, Constitutional Culture] (summarizing this “emergent understanding”). But see Bruce Ackerman, Interpreting the Women’s Movement, 94 CALIF. L. REV. 1421, 1436 (2006) (“To be sure, the Court’s performance converged . . . with the positions developed by ERA advocates in the ratification debates. Nevertheless, it is easy to underestimate the loss suffered when the Supreme Court substituted its ‘de facto ERA’ for the genuine article. Although a few legal cognoscenti will take a different view, ordinary people will continue to think that the ERA was a loser, not a winner . . . .”).

² See infra notes 24, 25, 27, 28. These statutes are often referred to as the core prohibitions on sex discrimination in the private sector. See, e.g., Deborah L. Brake, What Counts as “Discrimination” in Ledbetter and the Implications for Sex Equality Law, 59 S.C. L. REV. 657, 658 (2008) (describing these enactments as “[t]he major federal statutes proscribing discrimination based on sex”).

³ Another fundamental objective of the women’s movement is securing reproductive freedom. See, e.g., Susan Estrich, Politics and the Limits of Law: A Musing for Dean Sullivan, 90 CALIF. L. REV. 813, 813 (2002) (discussing a “woman’s right to choose, without which equality is unattainable” in conjunction with equal protection and Title VII).

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the federal legal order in the name of sex equality. The centerpiece of this agenda was an omnibus bill called the Economic Equity Act (or “Equity Act”). The Act itself was originally intended to be “implementing legislation for the Equal Rights Amendment,” just as the Reconstruction Amendments were followed by enforcement legislation. But in the absence of an ERA, lawmakers forged ahead with the Equity Act for more than a decade.

Until now, despite being a principal part of the federal legislative agenda of the second women’s movement in the post-ERA period, the Economic Equity Act has gone virtually unnoticed in legal scholarship and is remarkably absent from contemporary sex equality narratives. To be sure, the Economic Equity Act is recognized by political scientists as an integral part of the story of the rise of women in Congress in the 1980s. But the Equity Act also reshapes the standard account of feminist legal reforms in the 1980s. From a legal perspective, the familiar sex equality narrative for the 1980s centers on the robust activity in the Supreme Court on behalf of women’s equality and reproductive rights, as well as on the continuation of state law reforms in areas such as no-fault divorce, spousal rape, rape shield laws, and domestic violence laws. While not incorrect, this Article claims...
that this historical encapsulation is incomplete because it lacks any meaningful account of congressional action during this time period. Instead, the Equal Pay Act of 1963, Title VII and its progeny in the 1960s and 1970s, and the Pregnancy Discrimination Act of 1978 constitute the familiar congressional landmarks in the march towards women’s equality, which are then followed by the substantially more recent Family and Medical Leave Act of 1993 (“FMLA”) and the Violence Against Women Act of 1994 (“VAWA”). The Economic Equity Act, introduced in successive iterations from 1981 to 1996, presents an important bridge between these two phases of congressional activity in the area of sex equality.

As this Article reveals, the women’s movement did not forego congressional advocacy in the 1980s as the traditional narrative suggests. Moreover, that advocacy went far beyond efforts to pass another ERA and family leave legislation. Rather, the women’s movement, in concert with congressional lawmakers, forged ahead with a long-term and far-reaching agenda to advance women’s economic equality through the legal reforms advanced in the omnibus Economic Equity Act. Led by Senator David Durenberger in the Senate and the Congressional Caucus for Women’s Issues in the House, these lawmakers first introduced the Equity Act during the 97th Congress in 1981. A version of the Act was introduced in each successive Congress through the 104th Congress in 1996. Each provision of the Act had a counterpart in a separate bill to facilitate passage of individual parts. As parts of the Act were enacted in correlating bills, new measures were added to the Equity Act for the next Congress. Likely overlooked because of the Act’s omnibus nature, in fact, a wide variety of measures advanced through the Economic Equity Act agenda were enacted. Altogether, the progressive versions of the Equity Act comprise a rare perspective into a concerted fifteen-year span of lawmaking activity in the name of women’s equality.

By uncovering the path of the Equity Act, this Article makes several contributions to the legal literature. As an initial matter, this Article forms the foundation for further study of this pivotal period of congressional activity. Each provision of the Equity Act had a counterpart in another piece of legislation; this counterpart legislation is where these provisions were tracked in congressional records. For the first time in a series of attached
Tables, this Article puts the provisions of the Act into plain view.\footnote{See infra Tables 1–4. For an explanation of the methodology I employed to produce these Tables, see infra Appendix.} Through legislative and archival research, I have matched these provisions with their corresponding bill and public law numbers. This research and analysis reveals a deliberate and coordinated effort in the name of sex equality that has been previously unrecognized. As this Article argues, through the provisions of the Equity Act, the women’s movement, lawmakers, and their constituents staked claims to the emerging meaning of sex equality and to the terms of women’s economic citizenship—a critical chapter that has been virtually written out of the histories of sex equality despite having profound implications for contemporary law and policy dilemmas.

This account rewrites our historical understanding of sex equality in three important ways. First, the Equity Act reveals a decisive turning point in legislative activity. From its inception, lawmakers proceeded with the Economic Equity Act as a way to move beyond “equality in theory” as embodied by the formal equality pronouncements of the ERA and the facial prohibitions of the antidiscrimination legislation of the 1960s and 1970s, to a concerted effort to achieve substantive equality or “equality in fact.”\footnote{See Mayeri, \textit{A New E.R.A.}, supra note 4, at 1243–70.} The conventional narrative of the second women’s movement centers on Title VII and the Equal Rights Amendment—and, in its absence, the “de facto ERA”—as the linchpins of women’s contemporary economic equality.\footnote{For the history of women’s economic status generally, see, e.g., \textsc{Claudia Goldin}, \textit{Understanding the Gender Gap: An Economic History of American Women} (1990) (showing that the present economic status of women evolved gradually over the last two centuries and that past conceptions of women workers persist); \textsc{Alice Kessler-Harris}, \textit{In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America} (2003) (tracing changing ideals of fairness from the 1920s to the 1970s to show how a deeply embedded set of beliefs, or “gendered imagination” shaped seemingly neutral social legislation to limit the freedom and equality of women) [hereinafter Kessler-Harris, \textit{In Pursuit of Equity}].} But the Economic Equity Act makes plain that, in addition to these measures, legal reformers also were concerned with the way in which the law shaped women’s financial lives beyond the question of access to jobs, workplace advancement, and formal political equality. Using the Equity Act, these reformers hoped to make incremental changes in non-employment laws (e.g., tax, pension, Social Security, insurance, and credit), all of which in the aggregate substantially affected the financial circumstances of women in the United States.\footnote{See infra Table 3.}

Second, this account redresses a fundamental gap in the sex equality literature by showing how lawmakers advanced the Economic Equity Act in an effort to revise New Deal-era federal law and policy premised on the norm of the male breadwinner and female homemaker. While the ways in which the separate spheres ideology permeate the post-New Deal state and
reverberate through modern federal law and policy are well-documented,\textsuperscript{21} the deliberate and coordinated agenda of lawmakers to revise and reconstruct this legal order has not been similarly documented. This Article fills this void by uncovering the complex legislative process of the Economic Equity Act, revealing a sustained congressional effort deliberately aimed at dismantling the gendered constructs within federal law and policy, through the measures advanced in the Equity Act and related legislation.

Third, this Article claims that the Economic Equity Act is a foundational chapter for understanding the historical and contemporary role of Congress in effecting sex equality. Lawmakers first introduced the Equity Act during the intense period of mobilization for women’s rights just prior to the June 30, 1982 deadline for ratification of the Equal Rights Amendment. But even after the failure of the ERA, lawmakers continued to advance the Economic Equity Act. For more than a decade, through a dynamic process in which congressional lawmakers responded directly to their constituents’ demands by enacting legislation aimed at solving the problems that women were facing in their everyday lives, Congress embraced its representative role in realizing its constituents’ expectations for sex equality. This Article argues that, by doing so, Congress sought to shape both the meaning of sex equality and the contours of congressional power to effect sex equality. By situating this intense period of congressional activity into the constitutional sex equality narrative, this Article offers new insights for contemporary debates about the sources of constitutional meaning and the dynamics of con-

\textsuperscript{21} For an extensive historical account of the ways in which the family wage model of the male breadwinner and female homemaker shaped New Deal-era federal law and policy, see generally Kessler-Harris, In Pursuit of Equity, supra note 19. See also Suzanne Mettler, Dividing Citizens: Gender and Federalism in New Deal Public Policy (1998) (discussing the ways in which New Deal-era federal law and policy institutionalized gender politically, most clearly by incorporating men, particularly white men, into nationally administered policies and consigning women to more variable state-run programs). For historical accounts with respect to particular federal programs, see, e.g., Alice Kessler-Harris, Designing Women and Old Fools: The Construction of the Social Security Amendments of 1939, in U.S. History as Women’s History: New Feminist Essays 87 (Linda K. Kerber, Alice Kessler-Harris & Kathryn Kish Sklar eds., 1995) (discussing gendered assumptions with respect to Social Security) [hereinafter Kessler-Harris, Designing Women]; Melissa E. Murray, Whatever Happened to G.I. Jane?: Citizenship, Gender, and Social Policy in the Postwar Era, 9 Mich. J. Gender & L. 91 (2002) (discussing gendered assumptions with respect to the G.I. Bill).

There is also an extensive literature regarding reform proposals aimed at addressing the gendered underpinnings of federal law and policy. See, e.g., Anne L. Alstott, Tax Policy and Feminism: Competing Goals and Institutional Choices, 96 Colum. L. Rev. 2001, 2004 (1996) (suggesting that “tax law changes, particularly in combination with other legal reforms, could improve the economic well-being of families with children or help ease women’s labor-force participation”); Goodwin Liu, Social Security and the Treatment of Marriage: Spousal Benefits, Earnings Sharing, and the Challenge of Reform, 1999 Wis. L. Rev. 1, 4 (1999) (arguing that “[e]liminating Social Security’s bias in favor of wage over non-wage work” requires as a first step “assign[ing] independent economic value to non-wage work”).
stitional change, as well as the role of Congress and the bounds of federal legislative power.22

Ultimately, this Article contends that the post-ERA period presented multiple possibilities for providing economic security for women. At that moment in time, a powerful coalition of bipartisan lawmakers presented a comprehensive plan for providing economic security for women, including some measure of economic value for care work. But while feminist lawmakers sought to bolster economic security for families of all kinds, they faced mounting obstacles in a political climate increasingly skeptical of new demands on the public fisc. As lawmakers and the women’s movement struggled to define the role of government in the pursuit of equality for women in the wake of the ERA’s defeat, changing social and political conditions brought to the forefront this greater ideological struggle over the role of government in, and the basis for, conferring the benefits and privileges of citizenship.

While the Economic Equity Act animated the battles over sex equality itself, it ultimately suffered from the ideological conflicts of the post-ERA period. The failure of the ERA, the coalescence of enduring resistance to the post-New Deal welfare state, and the continued support for marriage as a means of privatizing family economic support through a male provider were factors that undermined the original goals of the Economic Equity Act, even as societal changes called for restructuring the federal system. The conflict and compromise related to the Economic Equity Act reveal the centrality of competing visions of the ideal family to the reconfiguration of economic citizenship that took place in the late twentieth century.

This Article proceeds in three parts. Beginning in Part I, this Article explores the social, political, and legislative conditions that coalesced in the 1960s and 1970s to set the stage for the advancement of the Economic Equity Act in Congress. Despite the many victories for the women’s movement during this period, ratification of the ERA remained elusive. This Part explores the precursors to the Economic Equity Act, particularly the Women’s Equality Act of 1971, as well as the series of congressional hearings that followed on the economic condition of women. At the same time, the women’s movement moved from grassroots advocacy to an increasing capacity to advocate from within the legislative process. Accordingly, Part I also describes the establishment of the Women’s Caucus, which constituted the first formal coalition of women in Congress.

Part II then examines the progression of the Economic Equity Act as lawmakers consciously shifted their focus from an initial emphasis on “displaced homemakers” to laws enabling women to enter the workforce. I argue that this careful exploration of the Equity Act exposes the ways in which the historic divisions between work and family life shadowed lawmaking about other women’s economic issues at the end of the twentieth century.

22 See infra Part III.C.
Like its more famous cousins, the ERA and Title VII, the Equity Act signified a shift in thinking about women’s proper place and their suitability for paid work. However, the Equity Act went beyond Title VII and the ERA by highlighting ways in which economic inequality stems from more than simply restrictions on employment or gendered workplace conditions. The Equity Act made clear that the vestiges of the separate spheres ideology would have to be remedied—in the home, in the workplace, and in the state at large—if women were to achieve economic equality. Part II concludes with the final chapters of the Equity Act. Lawmakers proceeded with the Equity Act, setting the stage for sweeping legislative enactments in the 103rd Congress. Immediately thereafter, the election of 1994 swept in a Republican Congress that stripped funding for Legislative Service Organizations including the Women’s Caucus. While the Caucus later reemerged as a congressional members organization with outside organizational support, the political will for continuation of the Equity Act had been lost.

Part III discusses the implications of this sustained period of legislative activity. I argue that the story of the Economic Equity Act underscores the proposition that equality is dependent not only on facial prohibitions and interpretation of those prohibitions, but also on the specific and targeted deconstruction of a complex legal order predating the civil rights and women’s rights movements of the latter half of the twentieth century. This Part also suggests, however, that while the Equity Act agenda was an integral part of the women’s equality movement, it was not without its limitations. Accordingly, this Part explores the costs of the approach utilized by the Act’s framers and the compromises regarding women, work, family, and the welfare state that defined the renewed terms of economic citizenship as forged in the late-twentieth century. Finally, Part III then turns to the theoretical and practical implications of this sustained period of lawmaking by addressing the questions raised for contemporary debates about the dynamics of constitutional change and the bounds of legislative power, as well as the consequences of this period of lawmaking for federal law and policy.


A. The Equal Rights Amendment and the Women’s Equality Act of 1971

For the women’s movement and for women’s lives, the 1960s and 1970s were transformative.\(^\text{23}\) During this time, Congress enacted an array of legis-

\(^{23}\) For excellent historical discussions of this period, see generally Sara M. Evans, TIDAL WAVE: HOW WOMEN CHANGED AMERICA AT CENTURY’S END (2004); Estelle Freedman, NO TURNING BACK: THE HISTORY OF FEMINISM AND THE FUTURE OF WOMEN (2002); Ruth Rosen, THE WORLD SPLIT OPEN: HOW THE MODERN WOMEN’S MOVEMENT CHANGED AMERICA (2000).
The Equal Pay Act of 1963 required equal pay for equal work regardless of sex.\textsuperscript{24} Title VII of the Civil Rights Act of 1964 prohibited, inter alia, sex discrimination in employment.\textsuperscript{25} In 1967, President Lyndon Johnson issued Executive Order No. 11375, which prohibited sex discrimination in employment by federal contractors.\textsuperscript{26} A series of similar prohibitions on sex discrimination followed these groundbreaking enactments.\textsuperscript{27} Congress also enacted the Pregnancy Discrimination Act of 1978 as an amendment to Title VII to prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions in employment.\textsuperscript{28}

Furthermore, the Supreme Court issued a number of landmark decisions in the 1970s regarding sex-based classifications and reproductive rights. In 1971, in \textit{Reed v. Reed},\textsuperscript{29} the Supreme Court extended Equal Protection Clause scrutiny to sex-based classifications. Two years later, in \textit{Frontiero v. Richardson},\textsuperscript{30} the Supreme Court went a step further by calling for a heightened standard of review for sex-based classifications under the Equal Protection Clause. Also in 1973, the Supreme Court established a woman’s right to choose an abortion in \textit{Roe v. Wade}.\textsuperscript{31} In 1976, in \textit{Craig v. Boren},\textsuperscript{32} the Supreme Court extended “intermediate” scrutiny under the Equal Protection Clause to sex-based classifications.

Even with these legislative and judicial accomplishments, the women’s movement during the twentieth century still sought the Equal Rights Amendment to the Constitution as the fundamental prohibition on sex discrimination. Legislators introduced various forms of an Equal Rights Amendment into Congress starting in 1923.\textsuperscript{33} The 92nd Congress finally adopted the ERA and presented it to the states for ratification in 1972. As introduced into Congress in 1972, it stated:

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{28} See Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k) (2006)).
\item \textsuperscript{29} 404 U.S. 71 (1971).
\item \textsuperscript{30} 411 U.S. 677 (1973) (plurality opinion).
\item \textsuperscript{31} 410 U.S. 113 (1973).
\item \textsuperscript{32} 429 U.S. 190, 218 (1976).
\item \textsuperscript{33} H.R.J. Res. 75, 68th Cong. (1923).
\end{itemize}
\end{footnotesize}
Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.
Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
Section 3. This amendment shall take effect two years after the date of ratification.

During the same Congress, the Women’s Equality Act of 1971—considered an early version of the Economic Equity Act—was pending. The ERA and the Women’s Equality Act were intended to go hand-in-hand. Indeed, Rep. Abner Mikva, the principal sponsor of the Women’s Equality Act, proposed it as a supplement to the ERA. The Women’s Equality Act reflected the recommendations of President Richard Nixon’s Presidential Task Force on Women’s Rights and Responsibilities, and included a wide range of provisions seeking to address sex-based inequality. As described by Senator Edmund Muskie, the Women’s Equality Act “would remedy inequities in specific laws”—not as a “substitute for the ERA”—but rather as “an initial response” to the “much broader demand for a change in the status of women.” The two were considered integrally related, as demonstrated by the House Judiciary Subcommittee’s consideration of the ERA (House Joint Resolution 208) and the Women’s Equality Act (House Bill 916) together in joint hearings.

Historically, framers of the ERA envisioned accompanying legislation to effect post-ERA change. From the very beginning, Section 2 of the ERA stated, “Congress shall have the power to enforce this article by appropriate legislation.” Though the wording of Section 2 of the ERA changed slightly between 1923 and 1972, the intent was the same—to authorize Congress to enact legislation to enforce the amendment. Executing a constitutional amendment through implementing legislation was not without precedent.

35 H.R. 916, 92d Cong. (1st Sess. 1971). See also Steiner, supra note 8, at 84 (describing the Women’s Equality Act as an “earlier version” of the Economic Equity Act).
37 Id. at 84–85, 87.
38 See President’s Task Force on Women’s Rights & Responsibilities, A Matter of Simple Justice (1970) (evaluating the status of women and recommending legal reforms to further advance opportunities for women); Post & Siegel, Legislative Constitutionalism, supra note 4, at 2002–03 n.178 (citing Equal Rights for Men and Women, supra note 36, at 96) (summarizing the provisions of House Bill 916).
41 S.J. Res. 21, 68th Cong. (1923); H.R.J. Res. 75, 68th Cong. (1923).
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The Reconstruction Amendments, for example, were followed by implementing legislation.42

Indeed, the movement advocating for the ERA “argued that ratifying the ERA was not itself enough to secure equal citizenship for women, just as enforcing Title VII was not itself enough to secure equal employment opportunity for women.”43 For example, the Women’s Strike for Equality held on August 26, 1970—the fiftieth anniversary of the ratification of the Nineteenth Amendment—“embraced such a demanding vision of equal citizenship that not even the Equal Rights Amendment, whose ratification the movement now sought, could satisfy it.”44

Despite these efforts to couple the ERA with implementing legislation, Rep. Martha Griffiths sidelined the Women’s Equality Act, as a strategic matter, in favor of advancing the ERA.45 As political scientist Gilbert Steiner explained, “Martha Griffiths knew better than to try” to “[s]imultaneous[ly] advance[] in Congress . . . as compelling a matter as a constitutional amendment and as complex a matter as an economic equity act.”46 At the time, opponents of the ERA were pitting the two against each other, arguing that the ERA was unnecessary because similar changes could be achieved through the Women’s Equality Act instead.47 Historically, one of the persistent issues with the ERA had been the concern that it would eliminate protective legislation for women.48 Therefore, many ERA opponents advocated for “specific bills for specific ills” instead of an ERA.49 Consequently, it may have been necessary to downgrade the Women’s Equality Act in order to avoid a showdown between the Act and the ERA. By focusing solely on the ERA, Rep. Griffiths was successful in maneuvering the ERA to a floor vote in the House after it had languished in committee for decades.50 With a vote of 354 to 24 in the House and 84 to 8 in the

42 See supra note 6. Section 5 of the Fourteenth Amendment, which gives Congress the power to enforce the same amendment through “appropriate legislation,” U.S. Const. amend. XIV, § 5, continues to be invoked as the basis for Congress’s power to enact certain legislation, such as the Americans with Disabilities Act and the Family and Medical Leave Act. Post & Siegel, Legislative Constitutionalism, supra note 4, at 2031.

43 Post & Siegel, Legislative Constitutionalism, supra note 4, at 1991–92.

44 Id. at 1990. This vision included three primary claims: “(1) free abortion on demand, (2) free 24-hour childcare centers, and (3) equal opportunity in jobs and education.” Id. at 1989 (quoting Judy Klemesrud, A Herstory Making Event, N. Y. Times, Aug. 23, 1970, § 6 (Magazine), at 6).

45 STEINER, supra note 8, at 84 (citing Equal Rights for Men and Women, supra note 36, at 42).

46 Id.

47 Post & Siegel, Legislative Constitutionalism, supra note 4, at 2001–02.


49 Id. at 18–19.

Senate, Congress presented the ERA to the state legislatures for ratification with a seven-year deadline.51

B. Formulating “A Comprehensive Economic Policy Which Includes Women as First Class Citizens”

Despite formally separating the Women’s Equality Act from the Equal Rights Amendment in order to maneuver the ERA to the House floor for its historic vote in 1972, Rep. Martha Griffiths continued to pursue economic equity reforms in Congress. Although she did not reintroduce the Women’s Equality Act, Rep. Griffiths sought to lay the foundation for legislation of its kind. In 1973, she chaired hearings sponsored by Congress’s Joint Economic Committee on the Economic Problems of Women.52 Over the course of seven days, Representative Griffiths heard testimony from experts on the economic problems facing women in a host of areas regulated by federal law including “credit, insurance, taxes, transfer payments, Social Security and private pensions, earnings, and employment.”53

In these hearings, Representative Griffiths began to teasing out through testimony what has since been extensively documented by legal and historical scholars: the role that the family wage model of a male breadwinner and a female homemaker played in the structuring of federal law and policy, particularly in the New Deal era. In recent years, legal and historical scholars have documented the ways in which this separate spheres ideology—in which men were delegated to the public sphere of wage work, while women were relegated to the private sphere of home and care work—permeated the New Deal state and continued to reverberate through modern federal law and policy.54 As Alice Kessler-Harris has shown, New Deal legislation and its progeny created a gendered construction of privileges and benefits of citizenship in the United States, an “economic citizenship” in which the cultural division of labor among the white middle class that assigned caregiving to women and paid work to men became the foundation on which the law and social policy of work, family, and welfare were built.55

This robust literature argues that “early welfare state programs such as the workmen’s compensation statutes and, later, the Social Security Act inscribed the family wage system into law by providing workingmen with claims of right on the state, while providing mothers with discretionary aid

51 117 CONG. REC. 35,815 (1971); 118 CONG. REC. 9,598 (1972).
53 Id. at 1.
54 See supra note 21.
programs such as mothers’ pension statutes that reinforced dependency.\(^{56}\)

Barbara Nelson has characterized this disparity in entitlements as the “two-channel welfare state” in which men’s wage work and women’s non-wage work garner different judgments regarding their social value.\(^{57}\) The result was to create what Suzanne Mettler has termed “divided citizens”—citizens divided by gender into two tracks of privileges and benefits under the federal system.\(^{58}\)

In 1973, the operation of gender as a “core rationale for important distributional decisions” in federal law and social policy, while yet to be analyzed by legal and historical scholars, was “no longer invisible.”\(^{59}\) Accordingly, these hearings laid out an extensive record of the economic problems faced by women under federal law based on a sophisticated under-

\(^{56}\) John Fabian Witt, From Loss of Services to Loss of Support: The Wrongful Death Statutes, the Origins of Modern Tort Law, and the Making of the Nineteenth-Century Family, 25 LAW & SOC. INQUIRY 717, 719 (2000) (citing LINDA GORDON, PITTIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE, 1890–1935 145 (1994) (discussing the history of state regulation of single mothers in which a two-track system of public aid emerged with single mothers receiving “welfare” while other groups, such as the aged and the unemployed, received “entitlements”)). See also GWENDOLYN MINK, THE WAGES OF MOTHERHOOD: INEQUALITY IN THE WELFARE STATE, 1917–1942, at vii (1995) (examining “the racial and cultural regulation of women in welfare policy and politics between the two World Wars”); THEEDA SKOCPOL, PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES 7–11 (1992) (asserting that pensions for Civil War veterans and for widowed mothers in the early twentieth century were influential to the New Deal era reforms); Martha L. A. Fineman, Masking Dependency: The Political Role of Family Rheticic, 81 VA. L. REV. 2181, 2181 (1995) (arguing that “continued adherence to an unrealistic and unrepresentative set of assumptions about the family affects the way we perceive and attempt to solve persistent problems of poverty and social welfare”); KESSLER-HARRIS, DESIGNING WOMEN, supra note 21, at 89 (showing how the 1939 Social Security amendments were infused with “generalizations about male/female behavior”); Barbara J. Nelson, The Origins of the Two-Channel Welfare State: Workmen’s Compensation and Mothers’ Aid, in WOMEN, THE STATE, AND WELFARE 123, 124 (Linda Gordon ed., 1990) (arguing that the U.S. welfare state can be viewed “as fundamentally divided into two channels, one originally designed for white industrial workers and the other designed for impoverished, white, working class widows with young children”); CAROLE PATEMAN, The Patriarchal Welfare State, in THE DISORDER OF WOMEN: DEMOCRACY, FEMINISM, AND POLITICAL THEORY 179, 179 (Carol Pateman ed., 1989) (calling for recognition of the “patriarchal structure of the welfare state” in which “women and men have been incorporated as citizens” in very different ways).


\(^{58}\) METTLER, supra note 21, at 212 (arguing that the “New Deal established divided citizenship, separating the governance of men and women between two sovereignties [federal and state, respectively], each with its own particular ideological, institutional, and administrative character”).

\(^{59}\) KESSLER-HARRIS, IN PURSUIT OF EQUITY, supra note 19, at 293.
standing of the operation of gender, including some references to the common language through which this dynamic would be described today.60

In one exchange, James Dwight, an Administrator of Social and Rehabilitation Service in the Department of Health, Education, and Welfare, while setting out the two forms of Aid to Families with Dependent Children (AFDC and AFDC-U), described the difference between the two as one being distinctly for female and the other being distinctly for male recipients.61 In response, Representative Griffiths quipped, “[F]irst, I would like to remind you that breadwinner and father are not synonymous,” after which laughter is noted in the testimony.62 She went on to illustrate her depth of understanding of the gendered underpinnings of these federal programs, saying, “The laws have been written on the theory that the father is the breadwinner, which is not necessarily true. And that is really the thing that has caused all of the[se] problem[s].”63

In another portion of the testimony, Wilma Scott Heide, then-President of the National Organization for Women (“NOW”), addressed a federal Labor Department policy that included “30 days paternity leave for the co-equal parent” for employees of the Labor Department.64 In her testimony, Heide praised this policy because in her opinion it would “help eliminate the most basic of sex role stereotyping, i.e. the mother as the only or primary child care person.”65

But even though experts testifying at the 1973 hearing established the myriad ways women were financially disadvantaged as a result of a particular federal law or program predicated on the family wage model, at that time “not everyone thought anything could or should be done.”66 Nevertheless, these hearings ultimately formed the blueprint for a package of legislation to

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60 For example, there were numerous references to the terms “breadwinner” and “homemaker” throughout the testimony from the 1973 economic hearings. See Hearings on the Economic Problems of Women, supra note 52, at 221, 265, 273, 289, 291, 316, 340, 351, 354, 390, 397, 415, 421, 440, 445, 560.
61 Id. at 421.
62 Id.
63 Id.
64 Id. at 560.
65 Id. Also, at this time, Ruth Bader Ginsburg was advancing a sex-stereotyping theory in her campaign of sex discrimination cases. Cary Franklin, The Anti-Stereotyping Principle in Constitutional Sex Discrimination Law, 85 N.Y.U. L. Rev. 83, 88 (2010) (arguing that “Ginsburg pressed the claims of male plaintiffs in order to promote a new theory of equal protection founded on an anti-stereotyping principle” premised on the theory that “the state could not act in ways that reflected or reinforced traditional conceptions of men’s and women’s roles”). See also Ruth Bader Ginsburg, Remarks for the Celebration of 75 Years of Women’s Enrollment at Columbia Law School October 19, 2002, 102 Colum. L. Rev. 1441, 1443 (2002) (describing how her campaign in the courts took aim at “the long-prevailing ‘separate-spheres’ mentality, the notion that it was man’s lot, because of his nature, to be the breadwinner, the head of household, the representative of the family outside the home; and it was woman’s lot, because of her nature, to bear and alone raise children and keep the house in order”).
66 KESSLER-HARRIS, IN PURSUIT OF EQUITY, supra note 19, at 293.
revise federal law and policy to address the economic problems of women. For Representative Griffiths, the information gathered from these hearings was intended “to help Congress formulate ‘a comprehensive economic policy which includes women as first class citizens.’” Representative Griffiths retired from Congress the following year. But in 1981, ten years after introduction of the Women’s Equality Act in 1971, a coalition of lawmakers—led by the Congressional Caucus for Women’s Issues in the House and Senator David Durenberger in the Senate—heeded her call by introducing a package of comprehensive federal economic reforms on behalf of women reflecting many recommendations from these hearings, titled the “Economic Equity Act of 1981.”

C. The Rise of Women in Congress and the Establishment of the Women’s Caucus

But before the introduction of the Economic Equity Act in 1981, a group of women legislators in Congress decided to form a caucus organization to advance legislation pertaining to women. Established in 1977, the Congresswoman’s Caucus, later renamed the Congressional Caucus for Women’s Issues (“Women’s Caucus”), came to play a key part in the story of the Equity Act, consistently spearheading the legislation in the House over the years.

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67 To be sure, these hearings were not the only blueprint. See, e.g., Moritz v. Comm’r, 469 F.2d 466 (10th Cir. 1972) (Appendix E), cert. denied, 412 U.S. 906 (1973); Hearings on the Economic Problems of Women, supra note 52, at 351 (referencing various presidential committees and commissions examining the status of women under federal law and policy); see also Ginsburg, supra note 65, at 1442 (describing Appendix E in Moritz as a “treasure trove” that could be used to “press for curative legislation and, at the same time, bring to courts contests capable of accelerating the pace of change.”). The Moritz Appendix E was a Department of Defense computer printout that listed, title by title, provisions of the U.S. Code containing differentials based upon sex-related criteria, which was included with a petition for certiorari to the Supreme Court submitted by then Solicitor General Erwin Griswold in 1973. Ginsburg, supra note 65, at 1442. Appendix E was most likely the starting point for the 1977 U.S. Commission on Civil Rights report on sex bias in federal law, developed by Ginsburg and Brenda Feigen-Fasteau. The report was intended to be a guide for Congress, the President, and the Justice Department for “erasing sex-based references and sex bias from our most basic laws.” U.S. COMM’N ON CIVIL RIGHTS, SEX BIAS IN THE US CODE iii (1977). The Commission’s report reviewed “800 sections of the [U.S.] Code which contained either substantive sex-based differentials or terminology inconsistent with a national commitment to equal rights, responsibilities, and opportunities (the equal rights principle).” Id. at 13. Later the Commission’s report would influence Ralph Neas, a member of Senator Durenberger’s staff, while he drafted the Economic Equity Act. See Lavinia Edmunds & Judith Paterson, A Hard Act To Follow, SAVVY, Feb. 1983, at 23.

68 KESSLER-HARRIS, IN PURSUIT OF EQUITY, supra note 19, at 292 (quoting Hearings on the Economic Problems of Women, supra note 52, at 1).


71 GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at xii–xiii.
The formation of the Women’s Caucus in 1977 was a culminating event after years of developing a voice for women in Congress.72 Many women in the House in the late 1940s, the 1950s, and the 1960s “avoided identification with what were generally considered to be ‘women’s issues’” because “[t]hey believed too close association with such issues would subvert their reputation as serious valuable legislators.”73 Rather, “most legislative proposals directly affecting women were introduced by male lawmakers.”74 This gradually changed, so that “[b]y the mid-1960s, female representatives had all but abandoned the reservations of their predecessors, introducing scores of bills crafted to help women.”75 Women representatives no longer had “compunctions about placing women’s issues at the top of their agendas.”76

In 1977, Elizabeth Holtzman, a Democrat from Brooklyn, and Margaret Heckler, a moderate Republican, led the effort to organize a caucus and served as initial co-chairs of the Caucus—providing a bipartisan orientation that was important for recruitment.77 They formed the Executive Committee of the Caucus along with three at-large members and a treasurer.78 Shirley Chisholm and Barbara Mikulski—both chosen as at-large members—also played key roles at its inception. Representative Chisholm “took an early interest in forming a congresswomen’s group and participated actively in preliminary discussions of its structure and purpose.”79 Further, “her involvement assured observers in and out of Congress that the group’s attention would not be confined to the interests of middle-class, white women”—an enduring criticism of the second women’s rights movement.80 Mikulski played a key role as “an important link to outside interest groups,”81 as she

72 For thorough accounts of the formation of the Women’s Caucus and its activities throughout the 1980s and 1990s, see generally GERTZOG, CONGRESSIONAL WOMEN, supra note 8; GERTZOG, WOMEN & POWER, supra note 8.
73 GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 10.
74 Id. at 145. The ERA legislation was no different. Though the ERA had been introduced in the House as early as 1923, congresswomen did not support the ERA until the 1940s. Id. at 152–53.
75 Id. at 145. Of course, the types of issues in these bills were not novel; “[o]n the contrary, many [of these issues] had been raised [already] by nineteenth century feminists”—[w]hat had changed was their newfound political saliency.” Id.
76 Id. at 10.
77 Id. at 183–84. The Caucus was steadfastly bipartisan, but many of its Republican women found themselves at odds with party leaders on many women’s issues. See, e.g., Marjorie Hunter, Woman in the News; Reagan’s Choice for Health Chief: Margaret Mary Heckler, N.Y. TIMES, Jan. 13, 1983, at D22 (“Mrs. Heckler is an ardent supporter of equal rights for women, at times breaking with leaders of her own Republican Party to push such issues as the proposed Federal equal rights amendment and equity for women in Social Security benefits and access to credit.”).
78 GERTZOG, WOMEN & POWER, supra note 8, at 10.
79 GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 182.
80 Id. See also Serena Mayeri, Constitutional Choices: Legal Feminism and the Historical Dynamics of Change, 92 CALIF. L. REV. 755, 824–25 (2004) [hereinafter Mayeri, Constitutional Choices] (noting “feminism’s persistent image as dominated by the interests of white, middle-class women”).
81 GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 184.
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had developed an “excellent rapport with leaders of prominent women’s organizations.” These organizations, including the National Organization for Women, the National Women’s Political Caucus, and the Business and Professional Women’s Clubs had been pressing for years for women in Congress to “organize a group to which they could communicate their objections and through which they could make their goals part of the national agenda.”

Yvonne Braithewaite Burke—who had just ended her term as chair of the Congressional Black Caucus—and Shirley Pettis were also chosen for the Executive Committee as treasurer and at-large member, respectively. Fifteen women lawmakers in the House (of eighteen total) formed the Caucus in 1977.

The Caucus’s first significant undertaking and achievement was gaining a three-year extension of the deadline for ratification of the Equal Rights Amendment from 1979 to 1982. Failing to receive the necessary ratification by three-fourths of the states, and in anticipation of the deadline expiration in 1979, Congress extended the deadline to June 30, 1982.

In the same year, the Caucus also contributed to the passage of the Pregnancy Discrimination Act of 1978 through its lobbying efforts. These and other such lobbying efforts began to lay the groundwork for the shift in gender perceptions that would be required for the success of many Equity Act provisions.

D. The Women’s Caucus, the Equal Rights Amendment, and an Agenda for Legislative Change

Leading up to the ratification deadline, the Equal Rights Amendment was the primary focus of the women’s movement and many women’s organi-
However, for the Women’s Caucus, the Economic Equity Act was also taking center stage, as the Caucus began to look beyond the ratification deadline of the ERA. The Equity Act, rather than superseding the ERA, was presented as the natural extension of the ERA—whether or not the ERA gained ratification.

To be sure, the Caucus continued to press for ratification of the ERA. The ERA remained a focal point, and the Caucus was unequivocal in its stance that any federal legislative agenda should not be perceived as diminishing their support of state ratification of the ERA. At the outset, the Caucus made clear in its bulletin its position that the Act was not “a substitute for the Equal Rights Amendment.”

Underscoring their support of the ERA, the Caucus sent letters in the spring of 1982—as the June 30, 1982 ratification deadline was rapidly approaching—to “key state legislatures which ha[d] not yet passed the ERA, urging ratification of the ERA . . . .”

However, the need to remain proactive as members of Congress, particularly in light of the uncertainty surrounding passage of the ERA, echoed as a driving force in bringing about legislative action. With ratification dependent on the states and out of the hands of Congress, women in Congress made a concerted effort to declare that “Congress is not waiting for passage and ratification of the ERA to proceed with an agenda for legislative change”—an agenda that viewed the Economic Equity Act as a piece of

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92 Rep. Geraldine Ferraro, Speech to the Women’s Committee of Local 372, New York City Board of Education Employees affiliated with Local 37, AFSCME 2 (June 1982) (transcript available in the Marymount Manhattan College Archives, Collection 3 Box 48) (“For the past three years especially . . . all the major women’s organizations, including NOW, and the National Women’s Political Caucus, the League of Women Voters, as well as our friends in the labor movement, have concentrated their resources . . . on the passage of [the] ERA.”).

93 Id. (“But even if the ERA is not ratified, the fact remains that life—and the fight for women’s rights and for political power—will go on after June 30.”).


96 Historical accounts suggest that “[s]upport was eroding instead of increasing in the final stages of the [ERA ratification] campaign.” BERRY, supra note 8, at 3. See also JANE J. MANSBRIDGE, WHY WE LOST THE ERA 2 (1986) (claiming that “[c]ontrary to widespread belief, public support for the ERA did not increase in the course of the ten-year struggle. In key wavering states where the ERA was most debated, public support actually declined”).
legislation of the same order of magnitude as previous enactments such as Title VII, Title IX, and the Equal Pay Act.97 Accordingly, while emphasizing that the “fight for the ERA [wa]s the single most important issue for women,”98 members of the Caucus such as Rep. Geraldine Ferraro began to set the stage for the legislative battles the Caucus planned to wage:

[T]he ERA, as important as it is, has deflected attention from other important women’s issues. Toward that end, the Members of the Congresswomen’s Caucus have concluded that to have the greatest impact politically and legislatively, we need to focus our efforts on practical, effective solutions to the everyday problems facing American women today. . . . For that reason, the Caucus has introduced a comprehensive piece of legislation called the ‘Women’s Economic Equity Act’ . . . . to address specific economic discrimination problems that affect women.99

The Equity Act represented “the first time such a package has been put together to deal with women’s economic problems”100 and was proffered as “an enormously significant advance in eliminating the economic inequities borne by women . . . .”101 The Act was not “an exhaustive list of women’s economic needs,”102 Rather, according to the Women’s Equity Action League, the Act was “intended to be the beginning of a Congressional commitment to eliminate the economic inequities facing American women at home, at work, or in retirement.”103 While reiterating that “the Economic Equity Act is in no way a legislative attempt to supplant ratification of the Equal Rights Amendment,” Rep. Lindy Boggs, another co-sponsor of the Economic Equity Act, explained that the Caucus “must be realistic, and reform existing inequities through legislation wherever possible.”104

For many Caucus members, the connection between the Equity Act and the ERA was central to the Act’s importance. For instance, Rep. Barbara Mikulski stressed the economic aspect of the ERA in conjunction with the Equity Act: “ERA is an economic issue . . . We are trying to rectify eco-

97 Ferraro, The Amendment, supra note 5, at 12.
98 Ferraro, Local 372 Speech, supra note 92, at 2–3.
99 Id. at 9.
100 Id. at 10.
101 Id. at 10.
103 Id. Contrary to this sentiment, however, one of the co-sponsors of the Senate version of the Act presented the Economic Equity Act as “an alternative” to the ERA. Berry, supra note 8, at 76.
nomic exploitation and injustice to women.” As the ERA ratification deadline rapidly approached, NOW issued a variety of pamphlets on the amendment’s impact. These pamphlets demonstrate what proponents hoped to gain from the ratification of the ERA, but these hopes bore striking resemblances to the provisions contained in the Equity Act. For example, a 1981 pamphlet on the ERA and Social Security published by NOW stated: “Under ERA, a homemaker will be recognized for her economic contribution, requiring changes to aspects of Social Security, pension plans, retirement benefits and inheritance laws and providing fair and equitable treatment under the law.” In fact, the Equity Act contained provisions addressing pension equity and Social Security reforms for homemakers, child support enforcement, discrimination in insurance, and inequality in the workplace—each of which proponents of the ERA believed the amendment would fix.

The similarities between ERA advocacy and the provisions of the Economic Equity Act underscore not only the aspirations of the post-ERA legislative agenda, but also the intentions of congressional lawmakers to proceed with an agenda aimed at enforcing—or implementing—the ERA. Representative Ferraro openly told supporters that the “the Equity Act was originally conceived as implementing legislation for the Equal Rights Amendment.” Rep. Lindy Boggs even proclaimed that the “enactment of the Economic Equity Act was critical if we wished to guarantee equal rights for women under the U.S. Constitution.” Sen. David Durenberger, the primary sponsor of the Act in the Senate, called the Economic Equity Act “the instrument by which we will write the next chapter of equality.”

105 Caucus Vows, supra note 95, at 15. See also Equal Rights Amendment Update, Update (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), Sept. 30, 1983, at 5, 5 (“The ERA is an economic issue, not a lifestyle issue”). According to the Caucus, hearings on the reintroduction of the ERA after the failed ratification efforts in 1982 “call[ed] for the ERA to rectify entrenched [sic] economic discrimination, underscoring such issues as sex discrimination in insurance, and inequities in the Social Security System.” Id.


107 See Table 3 (97th Cong.—99th Cong.) (listing the provisions of the Economic Equity Act addressing these issues).


109 Ferraro, The Amendment, supra note 5, at 12.

110 Boggs, supra note 104, at 37.

111 Judy Mann, A Chance to Improve Women’s Economic State, Wash. Post, Apr. 8, 1981, at C1 [hereinafter Mann, A Chance to Improve]; see also Judy Mann, Equal Bene-
1. The Economic Equity Act: A Primer

First introduced into the 97th Congress on April 7, 1981, the first version of the Equity Act was assembled by a bipartisan group of House Representatives and Senators and introduced jointly in the House and the Senate. The legislators assembled the 1981 bill “with the advice and assistance of a variety of women’s groups, including the League of Women Voters, National Federation of Business and Professional Women, the National Women’s Political Caucus, Older Women’s League, the National Council of Jewish Women, the National Council of Negro Women, and several others.” Twelve major national women’s organizations endorsed the bill.

A version of the Act was introduced in each successive Congress through the 104th Congress in 1996. Table 1 summarizes the bill numbers in each Congress and the date of introduction of each bill.

The Economic Equity Act did not function as a typical bill. Rather, the Equity Act was an omnibus bill consolidating a wide variety of standalone bills into a single legislative package for advocacy and tracking purposes. Accordingly, each provision of the Economic Equity Act had a counterpart in a separate bill. This “dual method of introduction” was meant to "em-
phasize the interrelationship between economic and equity issues, while at the same time possibly facilitating passage of individual parts of [the Act].” As parts of the Equity Act package were enacted into law by one Congress, new provisions were added to the version introduced in the next Congress. As a result, there were eight different versions of the Equity Act reflecting the changing goals of the Women’s Caucus over time, each with a different set of enactments. These enactments are summarized in Table 2. A full summary of each version of the Equity Act is contained in Table 3, along with bill numbers for correlating bills and public law numbers for corresponding enactments. Table 4 contains a list of major corresponding bills to the Economic Equity Act, which is intended as a reference to illustrate the variety and character of the bills advanced through the omnibus Economic Equity Act over time. A summary of the methodology used to determine correlating bill numbers and enactments originating from the Economic Equity Act is set forth in the Appendix.

Across its multiple iterations, the Equity Act addressed many areas affecting women including pension and retirement security, tax reform, discrimination in insurance, inheritance, dependent care, education, health care, credit and lending, women in business, and even employment and pay equity (despite gains achieved through Title VII and the Equal Pay Act). Most of these provisions were fairly specific in order to remedy particular and immediate economic hardships that women were facing in these areas. Each version of the Act had its own unique character, demonstrating a shift not only in legislative priorities, but also in the political will of the legislators and their constituencies to imagine and support the various economic spheres inhabited by women.

2. Understanding the Absence of the Equity Act from Conventional Legal Narratives

From a legislative and methodological perspective, the Economic Equity Act was not without its limitations. As an omnibus bill, with measures passed in corresponding bills, the Economic Equity Act served as an effective advocacy and organizational tool within Congress and for coordinating with outside women’s organizations and meeting demands of constituents. However, even though it was consistently at the top of the Caucus’s agenda in each Congress, as well as among the leading agenda items for stalwart women’s organizations such as NOW, few outside of Congress fully understood its operative effect. The Equity Act never passed as a whole; only

119 See supra notes 24, 25.
120 See infra Part II.B.4.
121 It was also a major agenda item for NOW Legal Defense and Education Fund. See NOW Legal Agency Looks Back on Its Bests, Worsts for 1986, Chi. Trib., Dec. 26, 1986,
parts of it passed in each Congress as counterpart, standalone legislation.\footnote{122 See infra Table 2.} Furthermore, because the content of the Economic Equity Act varied widely from Congress to Congress, it was a confusing piece of legislation for anyone not versed in its methodology. For example, the Buffalo News reported in 1993 that the Equity Act “has been stalled in Congress for more than a decade.”\footnote{123 Pat Swift, A Chance to Speak on Economic Bias Suffered by Women, BUFFALO NEWS, May 8, 1993, at 5.} Though this report later explained that the Equity Act was “an umbrella for several bills designed to improve the economic health of women, some of which have passed,” these reports did not do service to the dynamic and sustained legislative process embodied in the Equity Act, the wide-range of proposals advanced through the Equity Act, or the far-reaching impact that enacted provisions had on the economic circumstances of women.\footnote{124 Id. In another example, the Boston Globe declared in 1987, “Caucus for Women’s Issues Unveils Plan to Lesson Economic Hardship,” as if it were the first time this Act had been introduced into Congress, when in fact it was its fourth iteration. Yvonne Brooks, Caucus for Women’s Issues Unveils Plan to Lessen Economic Hardship, Bos. GLOBE, June 3, 1987, at 6.}

As a result, although the Equity Act received a fair amount of media attention, it did not enter the popular vernacular in the way that Title VII, Title IX, or the FMLA did, and certainly in no way comparable to the Equal Rights Amendment. The most accurate and sustained reporting appeared in the New York Times and the Washington Post, but even that proved insufficient to raise the profile of the Equity Act. In 1983, the New York Times described the mobilization in connection with the Act as “an offensive on women’s issues” that was “gathering, quietly but steadily, in the capital.”\footnote{125 David Shribman, Women Try New Paths on Rights, N.Y. TIMES, Aug. 14, 1983, § 4, at 5.} The Times noted that in Congress, “the focus is not only the beginning of a new effort to pass an equal rights amendment, but a broadening of attention on women’s issues from the social to the economic.”\footnote{126 Id.} Yet, despite early predictions by Judy Mann of the Washington Post that it would become “a major legislative trophy,”\footnote{127 Mann, Equal Benefit, supra note 111, at C1.} the Equity Act is now best understood by political scientists in connection with their study of women in Congress. Political scientist Irwin Gertzog, an expert on women in Congress and the Women’s Caucus, characterized the Economic Equity Act as “the most comprehensive effort to compensate women for the socioeconomic limitations imposed upon them.”\footnote{128 GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 158.} But despite this characterization, political science and ERA scholars have accorded it little historical significance, which likely contributed to the failure of the Economic Equity Act to appear on the radar of

\footnote{at C30 (listing the Equity Act enactments as one of the top ten advances for women in 1986).}
other disciplines, receiving only scant mention from feminist and other legal scholars.\textsuperscript{129}

Despite its scant attention, from a legal perspective, the Economic Equity Act has powerful implications for understanding the legal construction of the twenty-first century family, particularly from an economic perspective, as well as for understanding the underpinnings of the contemporary relationship between the individual, the family, the market, and the state. Its primary significance, however, lies in its long-term agenda, the comprehensive nature of the legislative proposals over the years, and the deliberate goals of the coalition of lawmakers advancing the Economic Equity Act.

\section{The Economic Equity Act, 1981–1996}

\subsection{From Equality in Theory to Equality in Fact: Addressing Women’s Realities (97th Congress, 1981–82)}

\subsubsection{Recognizing the Economic Value of Women’s Traditional Roles by Assisting Mothers, Divorcees, and Widows}

Initially, the Act was weighted towards solving economic inequities faced by divorcees, widows, and working mothers. For example, as part of the first Economic Equity Act introduced in the 97th Congress, sections were enacted to establish a right to pension benefits by former spouses of military personnel, to amend the tax code to provide a dependent care tax credit, and to eliminate interspousal gift and estate taxes.\textsuperscript{130} Other provisions that were not enacted still focused on mothers, divorcees, and widows including tax credits to employers for hiring displaced homemakers and a wide range of Social Security and additional pension reforms. These unenacted provisions were carried forward to subsequent versions of the Equity Act.\textsuperscript{131}

These reforms stemmed largely from concerns regarding the economic security of the substantial number of women who engaged in full-time home and care work—particularly in cases of divorce or death of a spouse.\textsuperscript{132} Poll-

\textsuperscript{129} See supra notes 7–8.
\textsuperscript{131} See infra Table 3. For example, provisions such as the Displaced Homemaker Tax Credit and the Non-Discrimination in Insurance provision were carried forward from the version of the Economic Equity Act introduced into the 97th Congress to the version introduced in the 98th Congress.
\textsuperscript{132} Historically, displaced homemakers and destitute widows have featured prominently in the language and structure of the state’s conferral of benefits to women and families. As shown by Ariela Dubler, the conferral of government benefits in the United States has historically been in large part dependent on a woman’s marital status and has been animated through the lens of women’s dependency. See Ariela Dubler, In the Shadow of Marriage: Single Women and the Legal Construction of the Family and the State, \textit{112} \textsc{Yale L.J.} 1641, 1686 (2003) [hereinafter Dubler, In the Shadow of Marriage]. Mothers’ pensions in the early twentieth century offer an illustrative example. See, e.g., \textsc{Linda Gordon}, \textsc{Pitied But Not Entitled: Single Mothers and the History of Wel-
ster Lou Harris reported in a congressional hearing on the pension equity proposals that “while 70% of adult women are working for pay or plan to by the end of the decade, 24% want to be full-time home-makers.”\textsuperscript{133} The Women’s Caucus’s publication \textit{Update} quoted Rep. Olympia Snowe as saying, “‘society claims to recognize and value the woman’s work at home but leaves them (economically) vulnerable’ in retirement.”\textsuperscript{134} In other testimony on the child support enforcement provisions of the Act, Rep. Michael Bilirakis stated: “How can we say that homemaking is a valuable and viable choice for women when our laws are telling these women that the 10 or 15 or 20 years they put in as wife and mother in the home count toward nothing in the way of economic security? Those of us who feel strongly about the value of traditional women’s roles should put our money where our mouths are.”\textsuperscript{135}

To be sure, the focus on mothers, divorcees, and widows risked reinforcing and entrenched traditional home-based gender roles and the status of those roles.\textsuperscript{136} But the Caucus viewed it as necessary in order to begin the process of recognizing the economic value of women’s labor in the home.
and in the marketplace. For example, in connection with the spousal IRA proposal, the Caucus explained:

Why is it so important to achieve new benefits for homemakers at a time when fewer and fewer women are spending their lives as homemakers? Because the pervasive undervaluation of the work women do—as teachers, nurses, secretaries, clerks—begins with the public perception that the work done by homemakers is without economic value. This is simply not true—but we can only prove that by attaching a real value to the work women do in the home. That is one of the goals of the Economic Equity Act.137

In its national newsletter, NOW echoed this sentiment and addressed the long-term implications of devaluing women’s work in the home: “[Society] must value the work at home as much as it does the work that produces paychecks. If it doesn’t, then working women will be doomed to the burden of two jobs—in the market place, and at home.”138 Accordingly, the Economic Equity Act proponents advanced legislative reforms aimed not only at enabling women to work, but protecting the economic security of women that have spent their lives as homemakers.139

These reforms played an important role in connection with state law reforms in the area of divorce, which the women’s movement was simultaneously advancing.140 For example, through several provisions of the Economic Equity Act (enacted in the Department of Defense Reauthorization Act of 1983) Congress amended the law to allow military pension benefits to be assigned in divorce decrees to ex-spouses, as well as established their entitlement to survivor benefits and health insurance in certain circumstances.141 These reforms were enacted in response to the outcry over the Supreme

137 Rep. Geraldine Ferraro, Speech to the Fifth Annual Women in Crisis Conference 2 (Feb. 27, 1984) (transcript available in the Marymount Manhattan College Archives, Collection 3 Box 49) [hereinafter Ferraro, Women in Crisis Speech].
139 These tensions were long-standing. Indeed, homemakers often served as political footbballs during ERA debates. See BERRY, supra note 8, at 98–112 (examining the role of homemakers in ERA politics); see also Mary Ziegler, The Bonds that Tie: The Politics of Motherhood and the Future of Abortion Rights, 21 TEX. J. WOMEN & L. 47, 59–61 (2011) (describing how both opponents and proponents of the ERA sought to appeal to homemakers).
140 See generally Herma Hill Kay, Beyond No-Fault: New Directions in Divorce Reform, in DIVORCE REFORMS AT THE CROSSROADS 6 (Herma H. Kay & Stephen Sugarman eds., 1990) (summarizing legal changes in divorce law during the 1970s and 1980s); Deborah Rhode & Martha Minow, Reforming the Questions, Questioning the Reforms: Feminist Perspectives on Divorce Law, in DIVORCE REFORMS AT THE CROSSROADS 191 (Herma H. Kay & Stephen Sugarman eds., 1990) (arguing that law should provide specific substantive norms for property division and spousal and child support instead of judicial discretion).
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Court’s declaration in *McCarty v. McCarty*, 142 that federal law precluded a state court from dividing military retired pay pursuant to state community property laws. While the Court was sympathetic to the plight of military ex-spouses, it determined that the decision to amend the law was “for Congress alone.” 143 Congress’s legislative response was widely hailed for treating “marriage as an economic partnership,” thus performing an important generative role in defining the sex equality norm. 144

2. On Neutral Laws and Differing Experiences

This shift in lawmaking also brought with it a different focus with respect to pursuing equality for women. Overall, the Act was “designed to address some specific problems women face in our economy, due to both innate and overt discrimination.” 145 The Act aimed to address areas in which women were economically disadvantaged, either because a current, sex-neutral law resulted in a gender disparity or because law altogether failed to address an economic disparity experienced by women. Representative Ferraro discussed this approach at a conference on women in business: “You know, there is not some big man up in the sky—or even in Washington—sitting there and telling women what we can’t do—find adequate child care, obtain finance capital, purchase insurance at reasonable rates, make as much money as men.” 146 Instead, Representative Ferraro argued, we have “a series of laws, regulations and federal budgets—neutral on their face—which in fact cause women to be discriminated against in the American economy.” 147 Representative Ferraro was not alone in her observations. In a Congressional hearing four years later, Sen. David Durenberger pointed out:

There have been 1,722 senators since the beginning of our Republic; only 12 have been women. The result has been a pattern of policies that seem neutral on their faces, but when applied to real world situations create deep disparities between the opportunities available to men and those available to women. 148

The legislative approach embodied in the Economic Equity Act sought not just equality in law, but in fact. The focus was no longer primarily de-

143 *McCarty*, 453 U.S. at 236. For a more extensive discussion of this directive of legislative power in connection with the sex equality norm, see infra Part III.B.
144 Mann, *A Chance to Improve, supra* note 111, at C1.
147 Id.
voted to laws that differentiated between the sexes or to stamping out overt sex discrimination through facial prohibitions, but was shifting to an examination of neutral laws that were having a disparate impact on women and to proposals for how to revise those laws to produce more equal outcomes. To be sure, the elimination of overt discrimination was not abandoned as a project. The first version of the Equity Act sought to prohibit discrimination in all types of insurance on the basis of race, color, religion, sex, or national origin—a quintessential facial prohibition on discrimination modeled after Title VII’s prohibition on discrimination in employment. In another provision, the Act sought to “[e]liminate gender-based distinction in the U.S. Code provisions relating to military service, promotion, appointment, separation, and retirement.” The initial Act even took aim at the administrative state in order to promote sex neutrality in the federal regulatory regime.

But while the 1960s and 1970s saw a number of sweeping legislative successes in connection with sex discrimination, the limits of across-the-board legislation to effect substantive equality were becoming apparent. Legislative experience with facial prohibitions against discrimination, such as the Equal Pay Act, illustrated the need for further action. Equal pay for equal work (a compromise over equal pay for comparable work) was in reality not that meaningful in a heavily sex-segregated job market. Title VII’s potential as a prohibition against sex discrimination in employment took time to realize in part because of initial inaction by the Equal Employment Opportunity Commission.

Further, vital parts of Title VII doctrine, such as sexual harassment law, only came about through advocacy in the courts. With the advent of the Economic Equity Act, the project of advancing women’s equality moved forward with a significant shift in methodology—

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150 Id. at 12–13. The Caucus specifically noted that the provision did not address women in combat, an issue which remained deeply contested, particularly in connection with the ERA. Id. See also Steven V. Roberts, Congress Seeks Fast Compromise on Fiscal Bills, N.Y. TIMES, Nov. 15, 1983, at A25 (“Probably the most popular potential alteration would stipulate that the [equal rights] amendment could not require the assignment of women to combat.”).
151 In particular, the bill included a section to “codify a Presidential Directive of August 26, 1977, requiring all Executive departments and agencies to identify ‘regulations, guidelines, programs, and policies which result in unequal treatment based on sex’ and to develop proposals to eliminate any resultant sex-based discrimination.” Special Report: Economic Equity Act, supra note 94, at 13.
154 The theoretical work of Catharine MacKinnon established the foundation for this advocacy. See generally CATHARINE MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION (1979) (arguing that sexual harassment is a form of employment discrimination and proposing a legal framework for addressing sexual harassment within the workplace).
away from a predominant focus on sweeping prohibitions on sex discrimination to a series of specific bills aimed at revising existing sex-neutral laws and implementing new programs to eradicate economic inequalities for women. Caucus sponsors such as Representative Ferraro—in crafting even the earliest versions of the Equity Act—realized that, “[a]s women’s role in our nation’s economy has changed, it has become increasingly clear that . . . [neutral] laws are simply not working for women [the] same way they work for men.” Rep. Jim Oberstar made similar observations when advocating for proposed Social Security reforms in the Economic Equity Act of 1985: “The Social Security Act, on its face, no longer discriminates on the basis of gender. Yet, in application, many provisions of the law result in lower benefits to women, not only because of fewer years in the work force and lower wages, but also because provisions placed in the law years ago have not been reviewed and updated.”

The Retirement Equity Act of 1984, also part of the Economic Equity Act, is one example of a hands-on approach taken to revising neutral laws. In this case, the Retirement Equity Act revised sex-neutral laws that Congress passed in the Employee Retirement Income Security Act of 1974 (ERISA) to protect workers covered by pension and welfare benefit programs offered by their employers. As noted by Rep. Edward Roybal, when speaking in favor of the Retirement Equity Act’s amendments to ERISA, “while the passage of [ERISA] represented a tremendous step in securing pensions for our workers, it is clear that the next step is at hand, that the inequities against women permitted under the present law must be removed.”

There was nothing explicitly sex-based in the pension laws: rather, neutral provisions in ERISA were changed by the Retirement Equity Act to remedy their disparate impact on women. The minimum age for pension participation was reduced to twenty-one from twenty-five, which permitted women to accrue pension benefits earlier, offsetting lost time in the workforce later for many women due to childbirth and childrearing. Another provision was put in
place to protect spouses of pension-earning workers. This provision requires “the written consent of both the participant and the spouse to waive the survivor annuity option,” thus protecting the surviving spouse from unilateral waiver of a survivor benefit that would accrue to them under their deceased spouse’s pension. This waiver was exercised by more than sixty percent of retirees. These enactments predominantly impacted women, protecting their access to their husbands’ pensions upon their husbands’ deaths.

The sponsors of the Equity Act were concerned with how women of different races, classes, and ages would be impacted economically by sex-neutral laws (both on the books and in proposed reforms). However, the Equity Act still came under fire for its tax, retirement, and small business provisions, which garnered criticism for being likely to impact only upper middle-class women, thus failing to take into account the needs of poor women and women of color. For instance, spousal individual retirement accounts were criticized as “mink coat legislation” because the enactment was expected to help only upper middle-class women. However, relying on statistics regarding the impoverished state of many women after a divorce or death of a spouse, the Caucus concluded that these proposals were worthy of its attention and support. The Equity Act not only aimed to address the

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160 Id. at 8. Under many pension plans, waiving the survivor benefit entitles the pension-earning spouse to a larger pension payment. Id.

161 Id.

162 For example, in a 1983 speech Representative Ferraro discussed how neutral laws can mask unequal outcomes between men and women, as well as among women of different races or ages: “What is happening to women in our economy today very often gets hidden behind the apparent neutrality of . . . issues like the federal budget . . . When we in Congress receive the President’s budget . . . [i]t doesn’t break down programs by sex or age . . . But [i]t is going to have a different effect on a black single mother in Harlem than it will have on an elderly Italian-American widow who lives in my district in Queens. And [i]t will have a different effect on these women than it will have on a man living in New York City.” Rep. Geraldine Ferraro, Speech on the Feminization of Poverty at the Assoc. for a Better New York Breakfast 1 (Dec. 14, 1983) (transcript available in the Marymount Manhattan College Archives, Collection 3 Box 49).


164 Ferraro, Women in Crisis Speech, supra note 137, at 2.

165 Id. The Caucus was particularly concerned about women in the workforce who were either single heads of households or primary breadwinners. In 1981, the Caucus requested a Joint Economic Committee hearing on the economic status of women: “Citing statistics which demonstrate that 2/3 of all women in the paid labor force are single, widowed, divorced, separated or living with husbands whose incomes are less than $10,000 per year, the Congresswomen’s Caucus asked the Joint Economic Committee to examine the factors which maintain the majority of American women in low paying occupations.” Joint Economic Committee to Hold Hearings on Economic Status of Women, UPDATE (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), Feb. 1, 1982, at 1, 11.
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economic needs of women in poverty, but also sought to keep women from falling into poverty.166

B. From the Equal Rights Amendment to the Economic Equity Act: A Shift in Priorities (98th Congress, 1983–84)

1. The Economic Equity Act in the Post-ERA Era

The 98th Congress witnessed not only the second iteration of the Economic Equity Act, but also the reintroduction of the ERA itself—coined “ERA II.”167 On June 30, 1982, ERA I was ultimately defeated: despite extension of the deadline, no further states ratified the proposed amendment.168 During the 98th Congress, the Equal Rights Amendment was reintroduced and “both chambers held extensive hearings before and after the House narrowly rejected ‘ERA II.”’169 But just as earlier debates on the Equal Rights Amendment had influenced initial versions of the Economic Equity Act,170 ERA II advocacy also influenced successive versions of the Equity Act. Pol-

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169 For an extensive discussion of the reintroduction of the ERA and its implications, see Mayeri, A New E.R.A., supra note 4, at 1224–25.

170 See supra Part.I.D.
icy reforms deliberated in connection with ERA II were later reflected in the Equity Act and other legislative pursuits of the Women’s Caucus. For example, the difficult question of “how Congress could bring the Social Security system into compliance with the ERA” presented ERA II proponents with “a choice between proposing very controversial solutions—such as a homemaker’s tax or ‘earnings sharing’—or declining to specify what solution Congress should adopt.”171 Proponents chose the latter route in ERA II hearings, “insisting that Congress would have discretion to choose whichever less discriminatory alternative legislators thought best.”172 In the next version of the Equity Act—in the 99th Congress—lawmakers incorporated “earnings sharing” and other Social Security provisions envisioned by ERA II proponents into the Act.173

The similarities between ERA advocacy (I and II) and the provisions of Economic Equity Act made plain the intentions of congressional lawmakers to proceed with an agenda aimed at giving substantive effect to the ERA.174 Though ratification of the ERA did not come to pass, Congressional lawmakers nevertheless had constitutional foundations for their agenda—the “de facto ERA” that the Supreme Court enunciated in a series of opinions leading up to the first introduction of the Economic Equity Act in Congress.175 Lawmakers in Congress proceeded with the Economic Equity Act as its interpretation of the ERA’s mandate, and began to exercise its legislative power to effect sex equality.

By the time ERA II was introduced, however, many feminists agreed that “the ERA’s time had come and gone,”176 and that a shift toward further legislative pursuits in the name of sex equality was warranted. As described by legal commentator Wendy Williams in 1983, “to the extent that the law of the public world must be reconstructed to reflect the needs and values of both sexes, change must be sought from legislatures rather than the courts.”177 In the same year, Deborah Rhode similarly suggested that feminists move away from the ERA, which she described as “an increasingly divisive constitutional symbol,” and focus on more concrete responses to structural inequities.178 With growing consensus that the women’s movement ought to focus on legislative means to pursue a more robust vision of equality, the Caucus and other congressional lawmakers proceeded with an expanded version of the Equity Act.

172 Id. at 1262.
173 See infra Table 3 (99th Congress). The proposal for earnings sharing in Social Security would “allocate half of a couple’s combined earnings during marriage to each spouse for purposes of calculating Social Security benefits.” Liu, supra note 21, at 3.
174 See supra Part I.D and infra Part III.B.
175 See supra notes 29–30, 32.
176 Mayeri, A New E.R.A., supra note 4, at 1291.
178 Deborah Rhode, Equal Rights in Retrospect, 1 LAW & INEQ. 1, 72 (1982).

The second introduction of the Economic Equity Act benefited from political pressure stemming from the gender gap in President Ronald Reagan’s approval ratings, with polls that showed women’s ratings as lower.\footnote{Judy Mann, Gender Gap, Wash. Post, Jan. 21, 1983, at B1; Ferraro, Local 372 Speech, supra note 92, at 3.} Many members of Congress who were not sympathetic to women’s issues in the past were suddenly falling over themselves to throw their support behind gender-related legislation and causes.\footnote{Dorothy Gilliam, Reaching Out, Wash. Post, June 11, 1983, at B1 (“[T]he Republicans are trying hard to woo women. . . . Many Republicans support the new Economic Equity Act.”). Organizations with large Republican memberships, such as the National and International Federations of Business and Professional Women, were also pressing the Reagan Administration to support the Economic Equity Act. Judy Mann, Bad Dream, Wash. Post, Aug. 5, 1983, at B1.} While the rush to support women’s issues had not been sufficient to garner adequate support for passage of ERA II in the House, it was sufficient to garner support for more limited proposals in Congress.\footnote{Women’s organizations noticed a difference in the receptivity of lawmakers to women’s issues. For example, Sally Laird, a lobbyist with the League of Women Voters, professed to a “new attitude” among many lawmakers: “They really want to look very closely at how legislation affects women. They start the conversation. We don’t have to. And we love it.” Stephen V. Roberts, Slowly, A New Awareness of Women, N.Y. Times, Mar. 3, 1983, at A22 [hereinafter Roberts, A New Awareness]. See also generally The Politics of the Gender Gap: The Social Construction of Political Influence (Carol M. Mueller, ed., 1988) (explaining the origins of the gender gap; its use by women’s organizations, the media and political parties; and its implications for the election of women).} Members of Congress “scrambled to hold hearings” on the reintroduced Equity Act.\footnote{Rep. Geraldine Ferraro, Address to N.Y. Council of Pioneer Women, 8 (Oct. 31, 1983) (transcript available in the Marymount Manhattan College Archives, Collection 3 Box 49).} Thus, in 1983, congressional hearings were held on every part of the Economic Equity Act, attention that far outstripped that given to the previous iteration.

Though the Reagan Administration never formally endorsed the Economic Equity Act, it introduced a private pension reform bill six months after the pension equity provisions of the Equity Act were reintroduced.\footnote{See Administration Introduces Private Pension Reform Bill, Update (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington D.C.), Sept. 30, 1983, at 1, 1.} According to the Caucus, this move “indirectly demonstrat[ed the Reagan Administration’s] concern over the gender gap.”\footnote{Id.} Though proposals differed from the Equity Act provisions, Representative Snowe nonetheless hailed the Administration’s response as “welcomed by those of us who had spent many hours seeking to address this problem with the White House.”\footnote{Id.}
One of the provisions of the Equity Act that was omitted from the Reagan Administration’s pension bill—involving survivor protection for spouses of beneficiaries—was “not included due to its estimated cost.”186 During the Reagan years, the persistent problem faced by Equity Act proponents was the differing views of the role of the state in providing social assistance. As described by the Caucus: “The parts of the Equity Act making the most progress are the parts which cost the least money. We are up against an Administration which thinks it can balance the federal budget by cutting programs women and children depend on the most.”187 Indeed, President Reagan had already unveiled his economic program (popularly coined “Reaganomics”) in 1981, which advanced a reduction in government spending on social programs as one of its central tenets.188 Accordingly, the parts of the Economic Equity Act that were most popular with the Reagan Administration were those that served to privatize the costs of women’s dependency by capitalizing on a current or former marital relationship and concomitant claims to income such as child support, alimony, and even public and private pension benefits, which were enacted despite the cost concerns initially raised by the Reagan Administration.189

Though the Reagan Administration threw support towards some measures such as pension equity, the overall message remained that neither the Equity Act nor the ERA was necessary based on the premise that sex discrimination could be remedied simply by removing gender-specific language in existing laws and regulations.190 First, on December 21, 1981, President Reagan created a Task Force on Legal Equity for Women to review “[f]ederal laws, regulations, policies and practices for language which is discriminatory.”191 The Administration advanced a bill (S. 501) “designed to remove language from the U.S. Code which ‘unjustifiably differentiates’ between men and women”192 as “its alternative to the Equal Rights Amend-

186 Id. at 8.
187 Ferraro, Women’s Studies Speech, supra note 155, at 5.
188 See DONALD RUTHERFORD, ROUTLEDGE DICTIONARY OF ECONOMICS 469 (2d. ed. 2002); Isabel V. Sawhill, Reaganomics in Retrospect, in Perspectives on the Reagan Years, in PERSPECTIVES ON THE REAGAN YEARS 91, 96 (John L. Palmer ed., 1986).
189 See Table 2 (98th Congress) infra; see also Dubler, In the Shadow of Marriage, supra note 132, at 1644 (“Good husbands, therefore, would play a mediating role between women’s material needs and the state’s limited economic resources by privatizing wives’ needs within the family.”).
ment (ERA) and the Economic Equity Act (EEA)." 193 This bill was generally supported by proponents of the ERA because—as noted by then NOW President Judy Goldsmith—“any attempt to reduce sex discrimination [is] worthwhile.” 194 However, the Caucus highlighted the qualified view expressed by Kathy Wilson, Chair of the National Women’s Political Caucus, at congressional hearings on the ERA; she argued that “while discriminatory language should be eliminated, ‘it is an insult to assume that language changes are enough.’” 195

The Reagan era also forced the Caucus to reconsider its membership and its role in Congress. While the Caucus originally included only women members of Congress, the Caucus expanded its membership to include men in the latter part of 1981. 196 At this time, only twenty members of Congress were women, which was emphasized by Caucus co-chair Rep. Patricia Schroeder at the time of the change: “Simple math will tell you that 20 women out of 435 Members of Congress cannot change the multitude of discriminatory and inequitable laws.” 197 Furthermore, not all women were members of the Caucus; though Caucus leaders sought membership of four newly elected Congresswomen in the 97th Congress, these Congresswomen declined in part due to “fear that affiliation with the Caucus would place them at odds with the Reagan Administration.” 198

The decision to admit men to the ranks of the Caucus was made in part to accommodate new congressional rules for Legislative Service Organizations prohibiting outside funding. To compensate for this lost funding, the Caucus decided to admit male Representatives to its membership. 199 According to Caucus co-chair Patricia Schroeder: “We’ve known for some time that we had to broaden our base of support . . . . We need partnership with men in the women’s movement.” 200 Not long after opening the membership of the Caucus, male membership reached 100, including House Speaker Tip O’Neill. 201 Male members paid reduced dues, but also had a smaller role within the Caucus; their names would appear on Caucus correspondence and press releases, but they would be excluded from holding Caucus office, holding Executive Committee positions, or voting for Caucus officers or policy. 202

193 Senate Marks Up Gender Bias Laws, supra note 192, at 7. See also Marjorie Hunter, Reagan Proposes Sex Bias Changes, N.Y. Times, Sept. 9, 1983, at A20.
194 Senate Marks Up Gender Bias Laws, supra note 192, at 7.
195 Id. at 8.
197 Id.
198 Gertzog, Congressional Woman, supra note 8, at 204.
199 Id. at 210.
200 Id. at 211 (quoting Marjorie Hunter, Congresswomen Admit 46 Men To Their Caucus, N.Y. Times, Dec. 14, 1981, at D10).
201 Id. at 211.
202 Id.
By “organiz[ing] their resources so as to improve the chances their voices [would] be heard” the Caucus “developed and articulated distinctive policy orientations which past House members, women as well as men, tended to ignore” with respect to “how national laws and their implementation affect women.”203 In terms of issues, the Caucus continued to take “no official position on abortion, [but] it supported family planning and efforts to prevent unwanted pregnancies.”204 “Proposals for new projects came from many sources—including the [Caucus] co-chairs, other Caucus members, women’s interest groups, and staff members,” but only the Executive Committee could approve matters for endorsement by the Caucus.205 With this orientation, the Caucus pressed ahead with its agenda for economic equality.

3. Some Early Successes and Long-Term Challenges of the Equity Act Agenda

In the 98th Congress, sections of the Economic Equity Act were enacted to improve child support enforcement programs to increase collection of court-ordered payments, to permit former spouses of federal employees to receive survivor benefits, and to amend private pension laws to increase benefit eligibility for younger workers, widows, and surviving spouses.206

The Child Support Enforcement Amendments of 1984 were a particularly significant victory for the Women’s Caucus.207 Census Bureau statistics showed that “[o]nly 35 percent of the 8.4 million women bringing up children with an absent father received any child support payment in 1981, and only 22 percent received full payment.”208 In 1982, “almost $4 billion in court-ordered child support went unpaid.”209 To be sure, the ultimate passage of these Amendments in the cost-cutting climate of the Reagan era was undoubtedly aided by the fact that child support operated to privatize the costs

203 Id. at 8. Several women in Congress at that time discussed their ignorance prior to their election to Congress of how laws—neutral on their face—biased women. Steven V. Roberts, 6 Republican Women and a Special Constituency, N. Y. TIMES, Aug. 3, 1983, at A14.
204 Gertzog, CONGRESSIONAL WOMEN, supra note 8, at 219.
205 Id. at 217.
209 BERRY, supra note 8, at 109.
of childrearing within the family. But after many decades dominated by
the family wage model, in which women were reliant on marriage for eco-
nomic support and were not guaranteed support upon divorce or death of a
spouse, the Child Support Enforcement Amendments established that not
only marriage was an economic partnership in which women had claims to
the family wage, but also that the costs of childrearing should be shared
regardless of the relationship of the parents, and the federal government
would impose this norm by bolstering the enforcement of state court child
support orders.

In “a rare show” of unity, the House and the Senate voted unani-
mously to enact the Child Support Enforcement Amendments, which were
originally introduced by Rep. Barbara Kennelly as part of the Equity Act. Yet
the passage of the bill had been far from inevitable. The New York Times
attributed the success of the bill to “the growing influence of women
lawmakers on Capitol Hill,” naming in particular the Women’s Caucus and Rep. Barbara Kennelly of Connecticut, who “won a seat . . . on the Ways
and Means Committee and used her position to turn its attention to the child-
support issue.”

The pension provisions of the Equity Act—enacted in the Retirement
Equity Act of 1984 and the Civil Service Spouse Retirement Equity Act of
1984—also had a significant impact on the economic circumstances of wo-
men. Just four years after the implementation of Equity Act legislation
establishing a woman’s right to survivor benefits from her husband’s pension,
the General Accounting Office estimated that the survivor benefit cov-
erage rate for wives of private-pension retirees had already increased by
fifteen percent.

But again, there remained many provisions that were not enacted. Ac-
cording to the Caucus, the “disappointments of the Economic Equity Act in
the 98th Congress include[d] defeat of the nondiscrimination in insurance
bill in the House Energy and Commerce Committee and the failure of any of
the major tax reform proposals to progress from the committee level.”

210 See supra note 189 and accompanying text.
211 See, e.g., supra notes 54–56 and accompanying text.
212 Mann, Child Support, supra note 208, at C1.
213 Steven V. Roberts, Congress Stages a Pre-emptive Strike on the Gender Gap,
214 Id. See also Editorial, Victory for Child Support, WASH. POST, May 12, 1984, at
A14 (concluding that credit for the Child Support Enforcement Amendments had to be
“given to the female legislators of both parties and the women in high office in the
administration whose advocacy, determination and hard work brought about passage”).
216 U.S. GEN. ACCOUNTING OFFICE, GAO/HRD-92-49, PENSION PLANS: SURVIVOR
BENEFIT COVERAGE FOR WIVES INCREASED AFTER 1984 PENSION LAW 7 (1992).
217 The Economic Equity Act: Past, Present, and Future, UPDATE (Cong. Caucus for
40 Harvard Journal of Law & Gender [Vol. 36

After two rounds of advancing the Equity Act agenda in Congress, the perils of a piecemeal approach were already becoming apparent both within Congress and in the women’s movement at large. For example, Sen. Paul Tsongas, a co-sponsor of the first Economic Equity Act in 1981, noted the limits of legislative approaches in advocating for the reintroduction of the ERA in 1983: “[A] statute-by-statute, piecemeal approach to ending sex discrimination, whether at the Federal or State level, has not worked.” Further, activists in the women’s movement knew that while many in Congress were nominally throwing their support behind the Economic Equity Act and other economic measures, “such expressions of sympathy and concern [would] be difficult to translate into legislative achievements,” particularly on costly legislative proposals.

Though NOW professed publicly that the achievements of the Economic Equity Act in the 98th Congress showed the “[p]romise of Economic Equity,” in later years NOW also publicly bemoaned the drawbacks of a statute-by-statute approach: “We’re never going to see equality for women in the basic economic arena if we continue to have to go law by law, program by program, statute by statute. It’s imperative that we keep pushing for a total solution.” Nevertheless, in support of its endorsement of the Economic Equity Act in 1983, NOW noted that it was “fortunate” that the Equity Act was being pushed forward along with reintroduction of the ERA. However, efforts to pass the reintroduced ERA stalled in the 98th Congress. As a result, the Economic Equity Act became the chief vehicle for advocating for women’s rights in Congress.

4. The Lawmaking Process of the Economic Equity Act

By the end of 1984, the Caucus considered the Economic Equity Act “an institution in the U.S. Congress.” Put another way, the process of developing the Economic Equity Act agenda and advancing it in Congress year after year had become a tradition, with legislators committed to carrying the agenda forward in each Congress. The agenda in each Congress was jointly developed by legislators and their staff in both the House and the

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219 Roberts, A New Awareness, supra note 181, at A22.
220 Two Successes Show Promise of Economic Equity, supra note 207, at 6.
221 Congress Makes ERA Number One, NAT'L NOW TIMES (Nat'l Org. for Women, Washington, D.C.), Winter 1987, at 1, 5.
224 Id. at 5.
225 See The Economic Equity Act: Past, Present, and Future, supra note 217, at 6 ("The Economic Equity Act will be back in the 99th Congress proposing further reforms for equitable treatment of women in the areas of dependent care, pensions, insurance, and tax reform.")
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2013] Senate in consultation with major women’s organizations. As described in the Washington Post, the Economic Equity Act was considered at the time to be an inventive way of advancing the goals of women’s organizations: “The genius of the new plan lay in the decision to create a megabill that would dramatize the economy’s systematic discrimination against women and focus the fragmented lobbying efforts of a variety of women’s interest groups.” Members of Congress were also influenced by their constituencies. Single parents, including divorced and widowed women, sent piles of letters—often with pictures of their children attached—pleading with lawmakers to help with their dire financial circumstances. These economic problems weighed on the minds of feminist lawmakers, who were inundated with stories of economic disaster resulting from divorce or death of a spouse, or simply from the difficulties of raising children as a single parent. Rep. Patricia Schroeder described the circumstances outlined in constituent letters that she and other Caucus members were receiving: “Women who write horror stories to Members of Congress are not writing about abstract injustices. . . . They are mothers who cannot collect child support, widows with no pensions, homemakers flung into the job market with no skills, pregnant women cracking under the strain of job and home.” In another example, Rep. Marge Roukema recalled in an interview “an incident on the campaign trail, when a woman approached her to complain about a lack of child support from her former husband”—in response, she became a lead sponsor of the child support enforcement legislation.

These letters and campaign trail pleas directly influenced the provisions the lawmakers included in the Equity Act. Rep. Patricia Schroeder explained: “After years of urging, this Congress responded to the call for bread and butter economic reforms.” As described in a Caucus newsletter, “[o]ver 300 bills were introduced on women’s issues ranging from disallowing business tax deductions for expenses incurred at private clubs that discriminate to increasing education and child care support for AFDC mothers.”

With so many disparate bills forming the Equity Act agenda, the Caucus also developed a consistent, recurring process for moving the agenda through Congress. As described by then-Rep. Olympia Snowe: “We sit down and develop strategies and priorities to get as many of the statutes through Congress as possible. . . . We’ve tried to develop a network among ourselves. We divide up the committees in question, we have vote counters,

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226 See id. at 5; Ferraro, Women’s Studies Speech, supra note 155, at 3.
227 See Edmunds & Paterson, supra note 67, at 23.
229 Id.
230 Roberts, supra note 203, at A14. Representative Roukema further recalled: “I couldn’t do anything for her [at the time], but I never forgot that.” Id.
231 Wrap-Up of the 98th Congress, supra note 206, at 1.
232 Id.
Democrats lobby Democrats, Republicans lobby Republicans, and we try to keep everyone abreast of when they should be on the floor fighting for votes.\textsuperscript{233} But, as reported in the same article, “[t]he Federal legislative process moves slowly, and victories are few and far between. Some bills are introduced year after year before passage.”\textsuperscript{234} The Caucus, however, seemed well aware of the sustained efforts that would be required to follow through with such a long-term and expansive agenda.\textsuperscript{235}

C. The Economic Equity Act and the Family Economic Model

1. Economic Equity and Family Leave (99th Congress, 1985–86)

The Caucus defined its agenda for the 99th Congress with the Economic Equity Act as one part of a “two-pronged” attack: “first, to end overt discrimination through enactment of the Civil Rights Restoration Act and the Equal Rights Amendment; and second, to promote economic equality through the introduction and active support of the Economic Equity Act of 1985.”\textsuperscript{236} Though the Civil Rights Restoration Act would top the legislative agenda of the Caucus in the 99th Congress due to the “immediacy of [the] problem” created by “the damage done to the civil rights statutes by the Grove City decision,”\textsuperscript{237} the Caucus placed the Equity Act among its top initiatives.\textsuperscript{238} Twenty-seven organizations endorsed the 1985 Economic Equity Act.\textsuperscript{239} The Equity Act “continue[d] as the blueprint for improving wo-

\textsuperscript{233} Barbara Gamarekian, Women’s Caucus: Eight Years of Progress, N.Y. TIMES, May 27, 1985, §1, at 20.

\textsuperscript{234} Id.

\textsuperscript{235} Id. (“Each of the bills will be introduced separately, and members of the caucus will be fighting for them at each step along the way.”). In a Caucus newsletter summarizing the 98th Congress, the Caucus lauded the Economic Equity Act as “achieving some modest victories in the 97th Congress, attracting a great deal of attention and making some major strides for women in the 98th, and being looked to as a guidepost for the women’s agenda in the 99th.” The Economic Equity Act: Past, Present, and Future, supra note 217, at 5.

\textsuperscript{236} Id. See also Grove City Coll. v. Bell, 465 U.S. 555 (1984) (finding that Title IX protection extends only to specific programs receiving funding rather than to the institutions that benefit from that funding).

\textsuperscript{237} Agenda for the 99th Congress, UPDATE (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), Feb. 27, 1987, at 1, 15.

\textsuperscript{238} See Members Speak on the Economic Equity Act, supra note 156, at 12.
men’s economic standing” and its introduction into Congress received national media coverage.

The Caucus also advanced standalone legislation involving small businesses and, for the first time, the parental leave legislation that would later be enacted as the Family and Medical Leave Act (“FMLA”). Though the FMLA was not enacted until 1993, the hearings provided the Caucus with an opportunity to begin to shape the debate surrounding the legislation and lobby for its passage. In a 1985 House hearing on parental leave, Rep. Patricia Schroeder declared that it was “unacceptable that the United States is the only industrialized nation that does not have a national policy guaranteeing some type of parental leave.” In another hearing in 1986, she proclaimed: “It’s time we drag ourselves into the 1980s and update our personnel policies to make work and family more compatible.”

In the 99th Congress, the Caucus successfully raised awareness of the law’s outdated assumptions about women, work, and family. For example, in formulating tax policy, “[a]dministration officials conceded that their data on the impact of tax reform on middle-income families was based solely on a ‘traditional’ family model.” Caucus co-chair Rep. Patricia Schroeder urged the House Ways and Means Committee “to formulate tax policy with a wider view of American families” stating that “‘traditional’ families—where the husband is the wage-earner and the wife stays home to raise the children—make up only 10.7% of all families.” The Caucus’s lobbying began to bear fruit when “in response to the criticism from [m]embers of Congress, the Administration . . . announced its willingness to work to develop a ‘technical solution’ to the plan’s problem of equity for the two-earner family.” Ultimately, Equity Act gains in the tax arena during this period were embodied in the Tax Reform Act of 1986 and included closing a gap in

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240 Agenda for the 99th Congress, supra note 236, at 1.
244 Parental Leave Bill Clears Committees, UPDATE (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), June 30, 1986, at 1, 1.
245 Caucus Co-Chairs Advocate Tax Equity for Families, UPDATE (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), June 28, 1985, at 1, 1.
246 Id.
247 Id. However, the Caucus was not satisfied with the President’s proposals. In congressional hearings, the policies espoused in the Equity Act were ultimately pitted against the President’s proposals. Id.
the standard deduction and increasing the earned income tax credit.\footnote{See Congress Gives Final Approval to Tax Bill, Update (Cong. Caucus for Women's Issues (formerly Congresswomen's Caucus), Washington, D.C.), Oct. 20, 1986, at 1, 12–13.} But, as with many Equity Act proposals, these gains in tax policy were just part of the Caucus's more extensive tax reform package.\footnote{See Caucus Co-Chairs Advocate Tax Equity for Families, supra note 245, at 1.}

In a report on the accomplishments of the 99th Congress, the Caucus lauded the efforts of its members leading to the enactment of six Equity Act provisions, including “many of the 'nuts and bolts' issues for women, such as private pension reform, health insurance, and tax reform.”\footnote{Wrap-Up of 99th Congress, Update (Cong. Caucus for Women's Issues (formerly Congresswomen's Caucus), Washington, D.C.), Oct. 20, 1986, at 1, 1.} These reforms included the Tax Reform Act of 1986, which increased the standard deduction for single heads of household and increased the earned income tax credit for low-income taxpayers. Other bills strengthened spousal rights to military pensions upon divorce or death of a spouse, established funding for on-site daycare for low-income college students, and established COBRA health insurance coverage requiring the continuation of employment-based health insurance coverage for three years for widows and divorced spouses, and for 18 months for workers who have been laid off, terminated, or had their hours reduced, and their dependent children.\footnote{See infra Table 2 (99th Congress).}


In 1987, the Economic Equity Act was once again declared “[t]he centerpiece of the Caucus agenda” for the 100th Congress.\footnote{Caucus Sets Agenda for 100th Congress, supra note 238, at 14.} This version was “more streamlined . . . contain[ing] just two titles—Work and Family—but . . . [it] address[ed] a broad spectrum of equity issues.”\footnote{Id.} This version of the Equity Act signaled a pronounced shift towards merging the separate spheres, including a section for “issues such as pay equity, equal credit opportunity, and social security and pension reforms,” as well as a section addressing “the need for quality, affordable dependent care, welfare reform, and nondiscrimination in insurance.”\footnote{See id.} The Caucus also proffered the ERA, family leave legislation, and the Civil Rights Restoration Act, as well as a number of new initiatives in its 1987 agenda: namely, “welfare reform, child care, and women’s health care.”\footnote{See id. at 1.}

In 1987, at a press conference announcing the newest version of the Act, there was a clear shift towards a focus on enabling women to work.\footnote{The health care initiatives steered clear of family planning or abortion-related legislation. The Caucus’s focus on women’s health involved issues such as “spousal impoverishment, office health hazards, adolescent pregnancy, breast cancer, and diseases particular to women.” Id. at 15.}
Representative Schroeder stated: “Changing demographics in the work force and the family demand that government come up with policies that shore up families’ economic support systems. We are taking a step toward meeting this demand today with the introduction of the Economic Equity Act of 1987.”

The focus of this version of the bill was to improve the economic circumstances of “women by providing greater employment opportunities and child care options.” In relation to proposed child-care legislation, Representative Schroeder further emphasized these concerns: “America has become a society in which everyone is expected to work—including women with young children . . . . Unfortunately, many of society’s institutions are out of sync with today’s reality and were designed during an era when it was thought that men were the breadwinners and women the homemakers.”

As the Caucus pressed forward with the Equity Act, another battle raged in the 100th Congress: the overhaul of the nation’s welfare system. “Concern [was] expressed by both the Administration and Congress over the shape of the current system, and various proposals [were] put forth to establish a new network of programs designed to propel welfare recipients into self-sufficiency.” The Caucus supported welfare reform, but was still concerned with maintaining support for women and children living in poverty: “The Caucus will sponsor several welfare reform bills which provide welfare recipients with not only the education and skills necessary to find employment, but which go further and address particular needs of women with children living in poverty.” But the Caucus’s aims were met with some opposition. At a House subcommittee meeting marking up the bill, “[p]anel Republicans specifically objected to provisions in the legislation that would increase the federal share of benefits, extend benefits to two-parent families, and raise the minimum benefit level.”

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257 Id.
259 For a discussion of the long history of welfare reform efforts, see generally WHOSE WELFARE? (Gwendolyn Mink ed., 1999).
261 Caucus Sets Agenda for 100th Congress, supra note 238, at 14–15.
Not only were partisan battles emerging in Congress over welfare reform, but the Caucus found themselves out of step with a frequent ally, the National Organization for Women. NOW opposed the reforms proposed by both parties, suggesting that all of the proposals “do little more than exchange the non-working poor for the working poor.” In particular, NOW singled out Democrats for proposing a bill that the organization considered to be deeply flawed. NOW lost this battle with the enactment of the Family Support Act of 1988, which cemented work requirements into the welfare system. Specifically, this Act was considered “a comprehensive restructuring of the welfare system to reduce long-term dependency on welfare programs” by making full aid to Families with Dependent Children (AFDC) grants contingent on participation in Job Opportunities and Basic Skills Training (JOBS) for many AFDC recipients—essentially requiring these recipients to participate in educational activities, training programs, or job activities. Even though the Economic Equity Act contained many structural support proposals, like daycare, that the Caucus considered to be “an important component in any legislation regarding welfare reform,” only parts of the Equity Act’s daycare proposal passed despite the wholesale restructuring of welfare assistance.

The Caucus also struggled with other initiatives. For example, another concern that influenced the Equity Act in 1987 was the predominance of women in part-time and temporary jobs without any employment-related benefits. The Part-Time and Temporary Workers Protection Act, part of the Equity Act, was discussed by Representative Schroeder in the Caucus newsletter: “I am disturbed by the trend I see that is creating a second-tier of employees that is largely made up of women. Women... account for two-thirds of part-time workers and three-fifths of all temporary workers.”

264 See id. at 1, 10 (describing “sharp philosophical elements” throughout party-line voting in committee meeting).


266 Id. (“Yet liberal Democratic Senators—seemingly oblivious to the direct connections between poverty and their often cited concerns of homelessness and hunger—have signed on as co-sponsors of the enormously flawed Moynihan Family Security Act.”).


270 See infra Table 3 (100th Cong.).

271 Subcommittee Holds Hearings on Part-Time and Temporary Workers, Update (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), May 31, 1988, at 5, 5. See also Patricia Schroeder, Does the Growth in the Contingent Work Force Demand a Change in Federal Policy?, 52 WASH. & LEE. L. REV. 731, 733 (1995) (noting that “two out of every three temporary workers are women”) (internal citation omitted).
employees working part-time” so long as their employer offered “health and pension plan coverage to employees working full-time.”

Though the Caucus advocated for this legislation in several iterations of the Equity Act, Congress did not enact these proposed reforms.

However, the Caucus did score a tremendous victory in the 100th Congress in connection with small business lending to women. In 1988, Congress held hearings on the barriers faced by women business owners, examining “issues ranging from problems women face in acquiring capital and technical assistance to flaws and inconsistencies built into the federal procurement system.” As demonstrated in the hearings, even small business proposals were fraught with gendered overtones. For example, Rep. Jan Meyers noted that at the hearings it became clear that “programs for women business owners are often thought of as social programs.” Nevertheless, the Caucus managed to secure enactment of many of the Equity Act provisions concerning women-owned small businesses in the Women’s Business Ownership Act of 1988. The Women’s Business Ownership Act was a landmark—but also overlooked—intervention into the landscape of small business lending to women. Significantly, it extended the prohibition on sex discrimination in consumer lending to commercial lending as well, and also created the Small Business Administration’s Office of Women’s Business Ownership and its Women’s Business Center program.


The Caucus agenda for the 101st Congress remained similar to the agenda of the previous Congress. The Economic Equity Act remained a priority in the Caucus’s agenda, with provisions related to “pay equity, Social Security earnings sharing, pension reforms, increased child care services, and benefits for part-time and temporary workers.” In addition, the Economic Equity Act included new legislation to provide prenatal care to low-income women, assist displaced homemakers, and expand assistance to victims of family violence. The Caucus also continued to advocate for family

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272 Subcommittee Holds Hearings on Part-Time and Temporary Workers, supra note 271, at 5, 5. These reforms, however, were controversial; critics argued that it would encourage part-time work over full-time work and be too costly for employers. See Gillian Lester, Careers and Contingency, 51 Stan. L. Rev. 73, 117–18 (1998) (summarizing proposed reforms to part-time and temporary worker legislation).
274 Id.
276 Id.; see infra Table 2 (100th Congress).
278 Id.
leave legislation. Furthermore, this Congress witnessed the first introduction of the Violence Against Women Act.

At a press conference introducing the Economic Equity Act of 1989, the Caucus continued to hail the Equity Act as the driving force behind legislation for women. Representative Snowe summarized this state of affairs: "Throughout the 1980s, the EEA was the engine driving legislation for women and families, and for good reason . . . sharp economic disparities, and the burdens they imposed, were a sad fact of life for women in America." Sen. Alan Cranston concurred: "In past Congresses, the EEA has served as a blueprint and an agenda for Congressional action to eliminate economic inequities facing millions of American women and their families." But he continued, "[m]uch has been accomplished, but much remains to be done." Rep. Constance Morella called for Congress to "step up the pressure to ensure true parity" in the "economic and social status of women."

In this Congress, the Caucus succeeded in securing enactment of Equity Act legislation that increased rights for foreigners who were victims of abuse by their American spouses. The two-year waiting period of "conditional" residency was waived for such cases. Several other Equity Act enactments continued the steady stream of legislative reforms, including job training and housing assistance for "displaced homemakers" and prenatal, maternal, and child health-related initiatives.

### 4. Modeling the Equity Act (102nd Congress, 1991–92)

In the 102nd Congress, the Caucus continued to expand the proposals included in the Economic Equity Act, particularly with respect to women’s participation in employment and small business. Although family considerations still played a strong role in the discussions, economic obstacles to

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279 Mixed Results for Women as First Session of 101st Congress Ends, UPDATE (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), Nov. 30, 1989, at 1, 1.


282 Id.

283 Id.

284 Id.


286 See infra Table 2 (101st Congress).

287 Caucus co-chair Patricia Schroeder observed that Congress was “now beginning to focus . . . on the tremendous inequalities that women have in the workplace in any number of ways.” Caucus Introduces Economic Equity Act, UPDATE (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), Oct. 31, 1991, at 1, 1 (on file with author).
the participation of women in the marketplace became a more substantial concern: “Each year more and more women enter the workforce out of necessity. In many cases, women are raising children alone and are responsible for caring for elderly parents as well. To these women, and many others, a paycheck cannot be called a luxury—it is an absolute necessity.”

The Act, as described by the Caucus, included provisions to “expand nontraditional job training for women, provide educational and professional opportunities for women in science and mathematics, increase procurement opportunities for women business owners, and establish a commission to investigate ways to break the ‘glass ceiling’ and allow women to advance through the management ranks.” It also included “expand[ed] job benefits for part-time workers” and provisions ensuring that “the Social Security system does not penalize women who take time off from the workforce to care for dependent family members.”

Ultimately, several Equity Act initiatives were enacted, including provisions assisting women entering nontraditional job sectors, extending Federal Pell Grants for less than half-time students, and bolstering small business lending and technical support.

Furthermore, the Equity Act inspired two additional omnibus bills functioning in the same manner—the Women’s Health Equity Act and the Gender Equity in Education Act. In particular, the Health Equity Act, building on health equity-related components of the Economic Equity Act, led to the establishment of the Office on Women’s Health in the Department of Health and Human Services and the eventual requirement (passed in the National Institute of Health (“NIH”) Revitalization Act of 1993) that women and minorities must be included in NIH clinical trials, where appropriate.

D. Politics, Ideology, and the Economic Equity Act

1. A Coalescence of Political Will (103rd Congress, 1993–94)

From 1983 to 1992, there were hundreds of legislative proposals championed by the Caucus. While the Caucus secured many notable enactments in areas such as retirement and pension equity, child support enforcement, small business lending, and more, the Caucus was unable to secure enact-

288 Id. at 18 (quoting Rep. Marilyn Lloyd).
289 Id.
290 See infra Table 2 (102nd Congress).
292 Gender Equity in Education Act of 1993, H.R. 1793, 103rd Cong. (1st Sess. 1993); This bill, sponsored by Rep. Patricia Schroeder, died in committee.
ment of a majority of proposals advanced by the Equity Act agenda. Further, even when proposals passed, "some went unfunded, which meant their reintroduction in the next Congress." Others were merely the "reclaiming of gains nullified by hostile Republican administrations." During the Reagan Administration, for example, private pension reform and improvements to child support enforcement—while imperative for women with pension-earning husbands or for women that were owed child support payments—nonetheless served to privatize the costs of dependency. Indeed, "when measures designed to help women did succeed during the Reagan years, most were symbolic, inexpensive or both." Despite these limitations, together these enactments constituted a considerable change in the treatment of women under federal law and policy. Congress took women’s economic insecurity seriously, particularly in the event of divorce or death of a spouse, allowing claims to pensions (military, public, and private) and Social Security, and substantially improving child support enforcement, among other enactments.

In the Bush Administration years that followed, the Equity Act provisions that were enacted helped women—particularly low-income women—train for, enter, and advance in the workforce and business arena. But these reforms were passed on the heels of the enactment of the Family Support Act of 1988, which imposed the first round of work requirements in the welfare system. President Bush did sign some legislation aimed at assisting low-income women in making the required transition from welfare to work. However, these reforms fell far short of the reforms ultimately sought by the Caucus to avoid—in the words of NOW—merely exchanging the poor for the working poor. Further, President Bush twice vetoed the Family and Medical Leave Act. Nevertheless, the "period also witnessed a few legislative innovations." Just as important, however, was the fact that "[t]hese years also saw the groundwork laid for policies and programs that would bloom one day in a more favorable political climate."

With the election of President Bill Clinton in 1992, accompanied by a surge in the number of women in the House, the time for significant progress in connection with the legislative agenda of the Caucus had arrived. In particular, the Caucus in the 103rd Congress was a formidable force, contrib-

295 GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 215 ("Most [proposals] were not enacted, but several were.").
296 Id. at 158.
297 See supra Part II.B.2.
298 GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 219.
300 See Jackman, supra note 265.
301 Id. at 221.
302 Id. at 215.
303 Id.
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ing to 1992 being declared the “Year of the Woman.” President Clinton’s first term in office put in stark relief just how quickly the political tides can change in either direction, as well as how these changes can immediately impact the momentum of a social movement’s legislative agenda. During the first two years of the Clinton Administration, a record number of laws with the aim of benefitting women were enacted. These enactments included major portions of two omnibus bills on women’s health and education equity that were inspired by—the Economic Equity Act. President Clinton signed into law the landmark Family and Medical Leave Act of 1993 within weeks of inauguration—a bill that had been twice vetoed by President Bush. Before the next election, President Clinton also signed into law the watershed Violence Against Women Act of 1994. As a result of these legislative triumphs, Rep. Patricia Schroeder declared the 103rd Congress as quite possibly “the most productive ever for women.”

Other Caucus members stated that the Caucus had graduated from being “an effective catalyst and advocate for feminist goals” to an “agenda setter.” According to Representative Schroeder, “[i]ssues of concern to women and families truly came of age during the first session of the 103rd Congress. We have never come so far so quickly. If we follow our present pace, the 103rd Congress will go down in history as the most productive ever for women.”

[305] First Session Sees Historic Gains for Women, UPDATE (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), Nov. 30, 1993, at 1, 1 (on file with author). As aptly described by Irwin Gertzog, “notwithstanding the appeal of catchy phrases, the so called ‘Year of the Woman’ was only one important act in a far grander scenario of political change” and “its attachment to a single year minimized unjustifiably the successful political efforts women had been making routinely over time.” GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 5.

[306] GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 7.

[307] Id. at 222.

[308] Id. at 223–24.

[309] See First Session Sees Historic Gains for Women, supra note 305, at 1.

[310] Id.

[311] The Violence Against Women Act was passed as Title IV § 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994 H.R. 3355, 103rd Cong. and signed as Pub. L. No. 103-322.

[312] GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 226. According to Representative Schroeder, “[i]ssues of concern to women and families truly came of age during the first session of the 103rd Congress. We have never come so far so quickly. If we follow our present pace, the 103rd Congress will go down in history as the most productive ever for women.” Id. at 226 (quoting First Session Sees Historic Gains for Women, UPDATE (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), Nov. 30, 1993, at 1, 1).

nist legislative discourse were given a legitimacy that until 1993 they had lacked.\footnote{314 GERTZOG, WOMEN & POWER, supra note 8, at 50.}

Ultimately, the Equity Act gained its highest profile ever both in and out of Congress—it garnered endorsements from twenty-five national organizations, as well as an administrative action plan in an effort to boost its effectiveness.\footnote{315 Economic Equity Act of 1993 Introduced, UPDATE (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), Aug. 6, 1993 at 1, 21.} Overall, in the 103rd Congress the Caucus collectively championed sixty-six enactments (including numerous Economic Equity Act measures, as well as the watershed enactments of the FMLA and VAWA)—all designed to improve the lives of women and their families, exceeding the number passed by any previous Congress.\footnote{316 103rd Congress Enacts Record Number of Measures for Women, UPDATE (Cong. Caucus for Women’s Issues (formerly Congresswomen’s Caucus), Washington, D.C.), Sept./Oct. 1994 at 1, 1.}

2. The End of a Legislative Era (104th Congress, 1995–96)

After the 103rd Congress, however, the political climate underwent an about-face. The 1994 elections—characterized by Newt Gingrich’s “Contract with America”—resulted in Republican majorities in both houses of Congress for the first time in almost half a century.\footnote{317 Phil Gailey, Newtered, N.Y. TIMES, June 2, 1996, at 16 (describing how the 1994 Congressional elections swept in “a new Republican majority in the House and the Senate, the first in four decades, promis[ing] nothing less than a revolution” based on its “Contract With America”).}

Newly elected Republican leaders eliminated funding for House Legislative Service Organizations such as the Caucus.\footnote{318 Id. at 70.} “Black, Hispanic, and women House members interpreted the decision as an assault on diversity in Congress.”\footnote{319 Id. at 67.} Representative Schroeder decried this initiative as “abolish[ing] the one organization that exists to give women a stronger voice in the policy process.”\footnote{320 Id.}

Aside from eliminating funding for Caucus organizations, the new Republican leadership came into power on the platform of their “Contract with America.” Most devastating to the previous agenda of the Women’s Caucus was the deliberate omission of many social and other proposals that the Caucus had been trying to build support for among lawmakers.\footnote{321 Id. at 74.} Many of the Caucus’s social program victories over the last decade were the first to face the threat of cuts in the new Congress.\footnote{322 Id. at 75.}

The prior success of the Caucus had been attributed in part to a commitment to bipartisanship. Though the Caucus tended towards liberal causes, the omnibus Economic Equity Act flourished under the guardianship of the Cau-
cus precisely because of that commitment to bipartisanship. The omnibus bills “were ideal vehicles for promoting collective, even if not fully integrated goals,” encouraging members “to attach one or more provisions to a catchall bill and then articulate support for the entire measure even though it contained sections about which they were unenthusiastic.” Bipartisanship was credited with achieving “family leave, the Women’s Health Equity Act and Economic Equity” as well as “moving forward on Title IX.”

But after the 1994 elections, proposed welfare legislation “inflamed partisan divisions.” The bipartisanship among women lawmakers was quickly deteriorating. The Personal Responsibility and Work Opportunity Act of 1996 was enacted amid bitter debates among congressional women. According to Gertzog, a moderate Republican congresswoman in the Caucus felt that “the differences between women in the two parties rested on a fundamental disagreement about the role government should play in addressing feminist concerns.”

As described by this congresswoman: “I think Republican women feel a greater responsibility to attend to the issues of economic opportunity for women. The Democratic women tended to look at social services for women. That’s important, but if these social services end up disempowering women, then they are a negative in their lives.” As in the early 1980s, the division over the methods for addressing the economic challenges of women—and the state’s role in providing assistance—was at the forefront of these debates.

The increasing partisanship and the debate over welfare reform in turn put increasing pressure on Republican women and other Republican Caucus members. Even if Republicans supported many Equity Act provisions individually, it was increasingly difficult for these members to toe the party line of less government spending and simultaneously support the omnibus Equity Act—even as an agenda setting vehicle—because of its enormous price tag in the aggregate.

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323 See supra note 77.
324 Id. at 30.
325 GERTZOG, WOMEN & POWER, supra note 8 at 88 (quoting an anonymous member of the Congressional Caucus for Women’s Issues).
326 Id. at 111–12. The welfare legislation also triggered disputes among Democrats generally. Id.
327 See id. at 111 (stating that “[s]ix of the seven new Republican women not only refused to join the caucus but worked actively to undermine its credibility”).
328 Pub. L. No. 104-93, 110 Stat. 2105 (codified in scattered sections of 7, 8, 20, 21, 25, and 42 U.S.C.); see also NOW Calls for End to War on Poor Women, NAT’L NOW TIMES (Nat’l Org. for Women, Washington, D.C.), May/June 1995, at 6, 6 (“The Personal Responsibility Act is part of the Republican Contract ON America and would radically change the country’s welfare system in a punitive direction.”).
329 GERTZOG, WOMEN & POWER, supra note 8, at 85.
330 Id. at 85.
331 For example, in 1987, the Boston Globe reported that the version of the Equity Act introduced into Congress in 1987 had a price tag of $2 billion. Brooks, supra note 124, at 6.
When the Congressional Caucus for Women’s Issues, along with all other Caucus organizations, lost congressional funding in 1996, the Economic Equity Act lost impetus. The Act was introduced for the last time in the 104th Congress by Rep. Constance Morella; it was not reciprocally introduced into the Senate.332

III. THE ECONOMIC EQUITY ACT AND CONGRESSIONAL POWER TO EFFECT SEX EQUALITY

A. From the New Deal Era to the Post-Welfare State

During the course of the fifteen-year span of the Economic Equity Act from 1981 to 1996, lawmakers articulated a capacious vision of what equality in fact at the federal level would entail. Through the deliberate and far-reaching range of legal reforms encompassed within the successive versions of the Economic Equity Act, lawmakers embarked on a wholesale revision and reconstruction of a federal system grounded in gendered notions of women’s role in society. Through specific and targeted—albeit piecemeal and incremental—structural enactments, legislators sought to revise a complex legal order pre-dating the civil rights and women’s rights movements of the latter half of the twentieth century. This endeavor extended well beyond what is traditionally viewed as classical antidiscrimination law—the facial prohibitions on discrimination—to a reevaluation of inequities existing in the legal order. This Article has consolidated a wide array of seemingly scattered enactments to show how—under the umbrella of the omnibus Economic Equity Act—these enactments formed part of a coordinated and deliberate agenda to achieve structural equality in the form of equal economic citizenship for women in the late twentieth century.

Through the Equity Act, lawmakers took aim at the gendered construction of law and society,333 which was shaped by the traditional family model of a male wage earner and female homemaker that was entrenched in federal law and policy by the New Deal.334 Legal and historical scholars have documented the ways in which the separate spheres ideology permeated the New Deal state and continue to reverberate through modern federal law and policy.335 Twentieth-century New Deal era legislation entrenched the status quo

333 See generally KESSLER-HARRIS, IN PURSUIT OF EQUITY, supra note 19; Mettler, supra note 21; Kessler-Harris, Designing Women, supra note 21. See also Keller, supra note 21, at 145; Murray, supra note 21, at 94.
335 See sources cited supra note 21.
of the day from the perspective of the lawmakers that crafted it, creating a
gendered construction of privileges and benefits of citizenship in the United
States: “The cultural division of labor among the white middle class that
assigned caregiving to women and paid work to men became the foundation
on which the law and social policy of work, family, and welfare were built.”336

The Economic Equity Act embodied a deliberate process to take this
system to task by moving beyond facial prohibitions on discrimination to a
more complex undertaking: the incremental and piecemeal—but deliberate
and steadfast—effort to revise laws having disparate effects on women and
to enact targeted structural equity provisions advancing women’s equality.337
As described in this Article, lawmakers were quite explicit about their inten-
tions to shift from the pursuit of formal equality to the pursuit of substantive
equality, as well as their intentions to restructure the gendered ordering of
federal law and policy that assigned benefits based on a model of a male
breadwinner and female dependent. Just as ERA advocacy moved from a
focus on formal equality during the battle for ERA I from 1972–82 to a
focus on substantive equality—or equality in fact—during the introduction
of ERA II in 1983,338 the Economic Equity Act embodied the legislative arm
of this shift in feminist goals toward substantive equality.

This project largely entailed revising existing laws based on a legal order
that was substantially constructed at a time when the family wage model
of a male breadwinner and female dependent animated lawmaking.339 As a
result of the lobbying efforts in relation to the Economic Equity Act and
related legislation aimed at women’s equality, Caucus lawmakers reshaped the
conceptions held by lawmakers in Congress about women’s roles in the
home, in the workplace, and in society at large. As described by Gertzog,
who has comprehensively studied the Women’s Caucus, “Caucus activities
have helped call attention to neglected and ‘invisible’ issues affecting wo-
men, and they have altered the frame of reference within which these issues
have been understood.”340 From Gertzog’s point of view, the Caucus suc-
cessfully worked to uncover “patterns of behavior resulting in discrimina-
tion not immediately identifiable as gender-based,” to create “legislative
remedies that speak to problems most citizens believe have nothing to do
with gender,” and to explain these remedies to constituents by “[couching
them] in terms they can understand, accept, and support.”341

336 Fisk, supra note 55, at 415 (summarizing arguments from KESSLER-HARRIS, IN
Pursuit of Equity, supra note 19, at 4, 6).
337 GERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 149–59 (describing efforts of
the Caucus as it shifted from egalitarian measures to affirmative measures).
338 Mayeri, A New E.R.A., supra note 4, at 1243–44.
339 KESSLER-HARRIS, IN Pursuit of Equity, supra note 19, at 4–6.
340 GEERTZOG, CONGRESSIONAL WOMEN, supra note 8, at 237.
341 Id.
In this way, the Economic Equity Act and the other legislative initiatives of the Caucus challenged the boundaries of what historian Alice Kessler-Harris calls the “gendered imagination.” Kessler-Harris attributes the gendered construction of the New Deal state to a “gendered imagination” centered on the male breadwinner and female dependent that informed legislators, courts, and policymakers, as well as the general polity. The 1960s and 1970s were a period during which the “gendered imagination” began to shift—it was becoming imaginable that (white, middle-class) women would no longer relegate paid work to men in favor of caregiving. The Economic Equity Act evidenced a shifting reform agenda that further pressed the bounds of the “gendered imagination.” While the early introductions of the Economic Equity Act centered almost exclusively on women in relation to their familial roles as wives (or ex-wives), mothers, and widows, gradually the provisions championed by lawmakers focused more expansively on merging the separate spheres of home and work, and eventually to expanding women’s opportunities in the marketplace and the structural support architecture necessary for women to compete effectively in the marketplace. As lawmakers debated the reality of working women, the grip that the male breadwinner/female homemaker model held as an animating feature in congressional lawmaking gave way to the already emergent dual wage-earning family model. This is not to say that the contestation over women’s role in the family and in society has concluded, but it has continued along a shifting path that began in earnest in the 1960s and 1970s towards a fuller embrace of women as wage-workers.

As society changed and the gendered imagination shifted, reformers railed against federal tax, Social Security, private pension, insurance and other laws that failed to recognize the realities of modern-day families—from two-income households to single mothers, divorcees and widows—thereby leaving women economically vulnerable as a result of the way these federal laws and related programs were structured. This process resulted in the revision of myriad laws that, while neutral on their face, negatively impacted women. For fifteen years, from 1981 to 1996, the Economic Equity Act embodied this process as driven by the Women’s Caucus and lawmakers in the Senate concerned with advancing women’s equality. The Equity Act

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342 KESSLER-HARRIS, IN PURSUIT OF EQUITY, supra note 19, at 6.
343 Id. at 18 (“[N]o one who has lived through the end of the twentieth century would argue that the gendered imagination remains what it once was.”). For more on the shift in the “gendered imagination,” see generally id.
344 See infra Table 3. For a historical examination of the influence of the rhetoric of the separate spheres ideology, see Linda K. Kerber, Separate Spheres, Female Worlds, Woman’s Place: The Rhetoric of Women’s History, 75 J. AM. HIST. 9 (1988).
345 See, e.g., Mick Cunningham, Changing Attitudes toward the Male Breadwinner, Female Homemaker Family Model: Influences of Women’s Employment and Education over the Lifecourse, 87 SOC. FORCES 299, 317 (2008) (summarizing sociological research on the decline in support for the male breadwinner, female homemaker family model in recent decades and concluding based on lifespan research that “the disappearance of gendered expectations regarding family roles does not appear to be on the near horizon”).
was central to their agenda, representing the vision that these lawmakers had for implementing equality in fact through structural legal reform.

But this agenda, this Article argues, went beyond the deconstruction of the gendered nature of federal law and policy of the post-New Deal era. This coalition of lawmakers also sought to enact laws and policies to enable women to participate on a more equal basis in the public sphere of work, education, and the marketplace. Child care tax credits and child care support services for low-income women, followed by efforts beginning in 1985 to pass family leave legislation, were intended to assist women in moving from the private sphere of home and caregiving to the public sphere. These efforts commenced the advent of a coordinated and sustained legislative effort to enact structural legal reforms to enable women to successfully compete in the marketplace. From non-traditional job training and education to workplace fairness and the massive small business reforms aimed at women, lawmakers identified and sought to remedy structural impediments to the advancement of women.

Accordingly, initial reforms focused on remedying economic disparities for divorcees, widows and working mothers, while later introductions of the bill and later legislative agendas began to view women in the context of work and family. The Economic Equity Act sought to merge the separate spheres and enable women to participate in the marketplace with structural support for familial obligations. These efforts and the incumbent shifts in thinking about women’s role in society came about in the context of a larger economic shift in which the breadwinner wage became increasingly inadequate, and middle- and upper-class women went to work to maintain standards of living as wages fell.346 During this time, women were increasingly seen as rightfully (and necessarily) doing paid market labor, not just home labor. The move toward more progressive thinking about women’s role in the home, the workplace, and society set the stage for major movement with respect to the feminist legislative agenda when favorable political circumstances coalesced in the 103rd Congress.

Ultimately, congressional lawmakers sought to disrupt a state of affairs in which women lacked adequate support to leave the work of home for the work of the market. They also recognized the realities of women’s career trajectories—often both interrupted and part-time—and tried to account for years spent at home childrearing through Social Security and private pension credits, and to bolster benefits for part-time or temporary workers. Finally, this agenda also brought to the forefront the acknowledgment that myriad factors interfered with the ability of women to enter and successfully compete in the public sphere, from domestic violence at home to inadequate

346 See Elizabeth Warren & Amelia Warren Tyagi, The Two-Income Trap: Why Middle-Class Mothers and Fathers Are Going Broke 31 (2003) (“For the middle class, however, women’s growing paychecks have made all the difference, compensating for the painful fact that their husbands’ earnings have stagnated over the past generation.”).
health care. At a time when structural approaches to remedying inequality have become central to equality debates, the Economic Equity Act is particularly salient as the foundation for contemporary, legislative structural reforms at the federal level in the name of sex equality.\textsuperscript{347}

Although the Economic Equity Act encompassed a vast agenda for legislative change, it was not exhaustive.\textsuperscript{348} Consequently, even though the Economic Equity Act is no longer a pillar of congressional advocacy for women’s issues, the Caucus (though no longer funded by Congress), with support from Women’s Policy, Inc.,\textsuperscript{349} continues its active involvement in legislative pursuits on behalf of women.\textsuperscript{350} At the time, the New Deal was not considered to be legislation pertaining to women, and yet its crafting based on the lawmakers’ views of the family—as consisting of a male breadwinner and female homemaker—created startling economic inequities for women. The revision now required to undo the shadow cast by the norm of the male breadwinner and female homemaker during the New Deal has yet to be completed.\textsuperscript{351} But the Economic Equity Act began this project in ear-


\textsuperscript{348} For a contemporary vision of equity reforms on behalf of women that ought to be advanced, see, e.g., Linda Kerber, Equity for Women—Still, Chron. of Higher Educ. (August 29, 2010), http://www.http://chronicle.com/article/Equity-for-Women-Still/124136/ (calling for “[t]he visionaries of our own time” to “focus on new harms, like, family-responsibility discrimination”).

\textsuperscript{349} Women’s Policy, Inc. is a non-profit organization that, while not formally affiliated with the Congressional Caucus for Women’s Issues, shares many of its objectives, including ensuring “that the most informed decisions on key women’s issues are made by policymakers at the federal, state, and local levels.” Mission Statement, Women’s Policy, Inc., http://www.womenspolicy.org/site/PageServer?pagename=aboutWPI (last visited Nov. 11, 2012); see also The Women’s Caucus, Women’s Policy, Inc. http://www.womenspolicy.org/site/PageServer?pagename=womens_caucus (last visited Nov. 11, 2012).

\textsuperscript{350} See The Women’s Caucus, supra note 349 (describing recent membership, leadership, and activity of the Caucus).

\textsuperscript{351} See supra Part I.B. As evidenced by the recent stimulus legislation—enacted as the American Recovery and Reinvestment Act of 2009—these lessons are relevant to present-day lawmaking as well. See Johnson, Stimulus and Civil Rights, supra note 347,
nest and, accordingly, ought to take its proper place in the contemporary sex equalit

Indeed, the conventional feminist narrative centers on the mid-1960s to the early 1980s as the period in which “U.S. feminism focused primarily on deconstructing and deinstitutionalizing the cultural mandate that women become homemakers and men breadwinners.”

However, from the perspective of some feminist scholars, “[b]y the mid-1980s, U.S. feminists’ attention had shifted away from work family issues.”

Without an understanding of the Economic Equity Act agenda, the Family and Medical Leave Act seems to stand as a lone event in 1993, far from the earlier efforts of the Equal Pay Act in 1963, Title VII in 1964, and the Pregnancy Discrimination Act of 1978. More recent efforts to support working families, such as the FMLA, did not stand alone; rather, these efforts were part of a larger, coordinated agenda that helps inform the present-day agenda as well. Accordingly, the story of the Economic Equity Act as told in this Article should join a burgeoning literature exposing the role that sex-stereotyping and the family wage model has played in law, policy, and judicial doctrine.

“The women’s movement had always viewed legislation as a central part of the anti-stereotyping project,” but until now, a key component of this legislative project in the late-twentieth century—the Economic Equity Act—has been remarkably absent from the histories of sex equality.

at 185–86 (“[T]he Recovery Act’s heavy emphasis on construction jobs may exclude African Americans, women, and other vulnerable groups.”); Melissa Murray & Darren Rosenblum, Should Job Creation Favor Men?, S.F. CHRON., May 19, 2009, at A11 (arguing that the “bailout and stimulus measures warrant additional scrutiny—from the perspective of gender equality” to avoid “repeating past mistakes by ignoring women’s economic status”), available at http://www.sfgate.com/opinion/article/Should-job-creation-favor-men-3297786.php. Women’s groups were concerned that—like New Deal era legislation—the stimulus package could have far-reaching consequences for the advancement of women’s equality for years to come. According to NOW, a cadre of women’s organizations successfully lobbied the Obama Administration to reframe the stimulus from being focused on “shovel-ready” projects to include human infrastructure as well. Kim Gandy, Economic Recovery: What’s NOW Got to Do With It?, NOW.ORG (March 6, 2009) http://www.now.org/news/now/article/030609.html?printable.

See, e.g., SERENA MAYERI, REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION 225 (2011) (describing the avenues through which feminists have “vanquished the notion that law should reinforce women’s place [as] the center of home and family life” (quoting Hoyt v. Florida, 368 U.S. 57, 62 (1961)); Franklin, supra note 65, at 88 (arguing that an anti-stereotyping theory undergirded Ginsburg’s foundational sex-based equal protection cases in the 1970s).
B. The Economic Equity Act, the ERA, and Constitutional Change

The path to women’s equality—and the incumbent shifts in the gendered imagination—were both the result of complex legal, cultural, and political dynamics. Though the Economic Equity Act never entered the popular discourse on sex equality, it played a pivotal role for lawmakers and the women’s movement vis-à-vis the ERA, and embodied much of what the women’s movement and feminist lawmakers expected would follow from the sex equality norm. As discussed, the Women’s Equality Act was a precursor to the Economic Equity Act and was originally intended to go hand-in-hand with an ERA.\textsuperscript{356} When this legislation reemerged in 1981 as the Economic Equity Act, the Caucus proclaimed the Equity Act as part of the constitutional amendment process akin to the enforcement legislation authorized by section 2 of the ERA.\textsuperscript{357} Rep. Ferraro publicly shared her view that “the Equity Act was originally conceived as implementing legislation for the Equal Rights Amendment.”\textsuperscript{358} Rep. Patricia Schroeder, co-chair of the Caucus, similarly claimed that “the Economic Equity Act underscores the need for the [E]qual [R]ights [A]mendment”—“[t]he two are intertwined.”\textsuperscript{359}

Because of its close relationship with the ERA, the aims of the Equity Act often reflected the substantive debates about sex equality both before the ERA ratification deadline in 1982, as well as afterward upon reintroduction of the ERA in 1983.\textsuperscript{360} In this way, the Equity Act served as a central vehicle through which the women’s movement, lawmakers, and their constituents staked claims to the emerging meaning of sex equality. Through the collaborative process of the Equity Act, members of the Women’s Caucus and other lawmakers embraced their representational role and responded directly to their constituents to craft a legislative package aimed at solving the problems women faced in their everyday lives. Indeed, the Equity Act was quite explicitly the embodiment of an agenda aimed specifically at remedying particular and immediate economic hardships that women were facing. As described by Representative Schroeder and others, the process through which the Equity Act provisions were determined relied heavily on constituent letters and conversations on the campaign trail to identify the problems women were facing in their everyday lives and to respond to these problems with legislation designed to ameliorate them.\textsuperscript{361} This process also involved collaboration with the women’s movement regarding the legislative agenda of the Caucus, including with regard to crafting successive versions of the

\textsuperscript{356} See supra Part I.A.
\textsuperscript{357} H.R.J. Res. 208, 92d Cong., 86 Stat. 1523 (1971). Section 2 formally provided Congress with “the power to enforce, by appropriate legislation, the provisions of this article.” \textit{Id.}
\textsuperscript{358} Ferraro, \textit{The Amendment}, supra note 5, at 2.
\textsuperscript{359} 129 \textit{Cong. Rec.}, 5072 (statement of Representative Schroeder).
\textsuperscript{360} See supra Parts I.C, II.B.
\textsuperscript{361} See supra Part II.B.4.
Equity Act, which many major women’s issues organizations then endorsed. These efforts raise important questions for contemporary debates about the sources of constitutional meaning and the dynamics of constitutional change. As Reva Siegel argues, “[n]ot only judges and courtroom lawyers . . . but elected officials and ordinary citizens regularly make claims about the Constitution.” As she further contends, “[t]he judge-centered framework in which [many constitutional theorists] describe our constitutional tradition obscures communicative pathways that connect judicial reasoning inside the courts to claims made about the Constitution by persons outside the courts.” Siegel “invites constitutional theory to develop more complex positive accounts of the practices through which nonjuridical actors participate in the production of constitutional meaning.”

The Economic Equity Act, however, remains unexplored as a complex positive account, even though the Act itself was a unique vehicle through which the women’s movement, lawmakers, and their constituents deliberated over the terms of women’s equality. Furthermore, many of the Equity Act’s legislative provisions formed a constituent part of the back-and-forth narrative between the Supreme Court and Congress in relation to the sex equality principle. This narrative with respect to sex equality reform has many familiar landmarks. For example, the exercise of the legislative power of Congress to effect sex equality has been widely examined in connection with such watershed enactments as the FMLA and the VAWA, which were both initiatives supported by the Women’s Caucus.

362 See supra text accompanying notes 113–114, 239.
364 Id. at 300. See also Larry Kramer, The People Themselves: Popular Constitutionalism and Judicial Review 8 (2004) (“Both in its origins and for most of our history, American constitutionalism assigned ordinary citizens a central and pivotal role in implementing their Constitution.”). There are, of course, many other theorists engaging in this debate with a range of views. For an extensive discussion of popular constitutionalism debates, see David E. Pozen, Judicial Elections as Popular Constitutionalism, 110 Colum. L. Rev. 2047, 2053–64 (2010).
365 Siegel, Text in Contest, supra note 363, at 303.
But the Economic Equity Act account reveals that, at times, the Supreme Court challenged Congress to act in circumstances in which it viewed action as necessary and desirable for women’s economic equality, but squarely within the power of Congress and beyond the power of the Court. For instance, the Supreme Court in *McCarty v. McCarty* declared that Congress intended military pensions only for the person who had served. But the Supreme Court was not blind to the negative consequences of its ruling, and quite explicitly challenged Congress to act on a matter it perceived as outside the reach of its judicial power:

> We recognize that the plight of an ex-spouse of a retired service member is often a serious one . . . . Nonetheless, Congress may well decide, as it has in the Civil Service and Foreign Service contexts, that more protection should be afforded a former spouse of a retired service member. This decision, however, is for Congress alone.

After the decision, military ex-wives were “up in arms” over the Court’s ruling. Congress responded to this call to action by enacting several Equity Act provisions, which, inter alia, expressly allowed military pension benefits to be assigned to ex-spouses of service members—a decision hailed for “its treatment of marriage as an economic partnership.” In this case, this legislation was enacted with the blessing of the Supreme Court.

At other times, lawmakers advancing the Equity Act were emboldened by Supreme Court pronouncements to embrace their legislative role in crafting further affirmative legal reforms to change the operation of federal law and policy. For example, in the Social Security context, the Supreme Court to the Supreme Court’s decision upholding the FMLA in *Hibbs* [hereinafter Siegel, *You’ve Come a Long Way*].

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*McCarty*, 453 U.S. at 235–36 (citations omitted). In this way, the Court could be viewed as inviting Congress to “pick up the slack,” so to speak, and do its part to effect sex equality. See generally LAWRENCE G. SAGER, *JUSTICE IN PLAINCLOTHES: A THEORY OF AMERICAN CONSTITUTIONAL PRACTICE* (2004) (arguing that judges should and do stop short of enforcing the whole of the Constitution and that the Supreme Court should welcome rather than condemn the efforts of Congress to pick up the slack).

*Scannell*, *supra* note 142, at DC5 (describing military wives’ reaction to the Supreme Court’s ruling and the pending Economic Equity Act provisions to address it); *Divorce and Military Pensions*, N.Y. Times, Aug. 7, 1981, at B4 (same).

*See* Mann, *A Chance to Improve*, *supra* note 111, at C1.

As recently illustrated in the case of pay equity, in other instances of statutory interpretation in the sex equality context, Congress has also acted in response to avowed limitations in Supreme Court holdings. *Compare* Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618, 621–23 (2007) (holding that employers cannot be sued under Title VII of the Civil Rights Act over race or gender pay discrimination if the claims are based on decisions made by the employer 180 days ago or more) *with* Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111–2, 123 Stat. 5 (2009) (amending the Civil Rights Act of 1964, stating that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new paycheck affected by that discriminatory action).
handed down a trio of decisions in the late 1970s aimed at equalizing the distribution of Social Security benefits—particularly with respect to widows and widowers.\footnote{Califano v. Westcott, 443 U.S. 76, 89 (1979) (invalidating a Social Security policy granting AFDC benefits only to the children of unemployed fathers); Califano v. Goldfarb, 430 U.S. 199, 202 (1977) (striking down a Social Security provision with less survivors’ benefits for widowers than for widows); Weinberger v. Wiesenfeld, 420 U.S. 636, 636 (1975) (invalidating the “mother’s insurance benefit” provision which provided benefits to widows (but not widowers) having minor children in their care).}

In the context of advocacy pertaining to both the ERA and the reintroduction of the ERA in 1983, advocates envisioned even further Social Security reforms that would restructure Social Security entitlements in an attempt to give economic value to home and care work.\footnote{Califano v. Goldfarb, 430 U.S. 199, 202 (1977) (striking down a Social Security provision with less survivors’ benefits for widowers than for widows); Weinberger v. Wiesenfeld, 420 U.S. 636, 636 (1975) (invalidating the “mother’s insurance benefit” provision which provided benefits to widows (but not widowers) having minor children in their care).} In an attempt to achieve this far-reaching change, controversial discussions regarding “earnings sharing,”\footnote{Mayeri, \textit{A New E.R.A.}, supra note 4, at 1261–62.} for example, were seized upon by lawmakers and incorporated into multiple versions of the Equity Act; however, these proposals were never enacted.\footnote{See supra Part II.B.1.}

Instead, Congress enacted a more limited set of Social Security reforms in the Social Security Amendments of 1983.\footnote{See supra Part II.B.1.} These reforms reflected inequities resulting from the Social Security system which were articulated in constituent letters. It was essential for Congress to do this work as these inequities would require more than Supreme Court action to ameliorate. Like many reforms at the time, these reforms amended Social Security to improve benefits for divorced and surviving spouses.\footnote{See infra Table 3 (Social Security Modernization (or Equity) Act, 99th–102d Congress).} In this way, Congress acted with its legislative power to proffer affirmative legal reforms, which are beyond the capacity of a court to fashion. Pension equity offers yet another example. After the Court in \textit{Arizona Governing Committee for Tax Deferred Annuity v. Norris} ruled that employers who offer retirement annuity plans that pay smaller monthly benefits to women than to similarly situated men violated Title VII,\footnote{Pub. L. No. 98-21, 97 Stat. 65 (codified as amended in scattered sections of 26 and 42 U.S.C.).} Congress enacted affirmative structural revisions to pension laws that went well beyond the pronouncement of the Supreme Court.\footnote{See \textit{infra} Table 2 (referencing pension changes in the Retirement Equity Act and Civil Service Spouse Retirement Equity Act in the 98th Congress, as well as the pension reform measure in the Tax Reform Act in the 99th Congress). Further, lawmakers expressed frustration at the Reagan Administration’s unwillingness to entertain legislation remedying inequalities in the pension system while the \textit{Norris} case was pending. See, \textit{e.g.}, 129 CONG. REC. 17,890 (1983) (statement of Rep. Edward R. Roybal).}

This affirmative legislative power has most recently been recognized in the Supreme Court’s decision in \textit{Nevada Department of Human Resources v.}


\footnote{463 U.S. 1073, 1089 (1983).}
Hibbs, which upheld Congress’s power to enact the family leave provisions of the Family and Medical Leave Act of 1993. As put by Reva and Neil Siegel, Hibbs is significant for having “expressly registered the sometimes deep divide between formal equality and substantive equality” for women:

[I]n an America in which women are still required to serve as the principal caregivers in their families, mere formal equality in the administration of family leave benefits—for example, allowing no leave time for any employees—would “exclude far more women than men from the workplace” and therefore would not effectively “combat the stereotypes about the roles of male and female employees that Congress sought to eliminate” in passing the FMLA.

The process of shaping the legal contours of the sex equality principle in the late twentieth century unfolded through a vibrant evolution that involved Congress as much as the courts. The generative process by which lawmakers in Congress formed an agenda and sought change in the name of sex equality illustrates not only the dynamic between Congress and the Supreme Court, but also the dynamic among the women’s movement, lawmakers, and their constituents. These dynamics are especially salient because the legal foundation for the sex equality principle did not unfold through the constitutional amendment process. The ERA was not ratified and neither a Women’s Equality Act nor an Economic Equity Act ever passed as enforcement legislation for an ERA. Instead, the Supreme Court—in what conventional wisdom submits is a “de facto ERA”—enunciated a constitutional sex equality norm through a series of opinions. The trajectory of constitutional sex equality jurisprudence—through Supreme Court doctrine instead of Article V amendment—did not alter the view of congressional lawmakers that Congress had the power to “enforce, by appropriate legislation” the sex equality norm enunciated by the Supreme Court.

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385 See supra note 1, Part I.A.
386 U.S. CONST. amend. XIV, §5.
387 See Post & Siegel, Legislative Constitutionalism, supra note 4, at 2020 (arguing that Congress was “exercising its distinctively legislative power under Section 5 of the Fourteenth Amendment” when it enacted the Family and Medical Leave Act of 1993 as a statutory right allowing employees to take unpaid family leave instead of as a prohibition on sex discrimination in the award of family leave); Mayeri, Constitutional Choices, supra note 80, at 832 (“The dual strategy’s legacy [e.g., the simultaneous pursuit of a
This is not to say that the Women’s Caucus was always successful. Not only did many Equity Act provisions and other Caucus proposals fail to see enactment, but also some enactments championed by the Caucus—such as certain provisions of the Violence Against Women Act of 1994—were struck down by the Supreme Court. Nevertheless, by proceeding with an agenda centered on the Equity Act, Congress simultaneously challenged the bounds of sex equality doctrine and the bounds of its power to speak to that doctrine. With respect to sex equality, legal commentators have brought multiple contestations of constitutional meaning to bear on the constitutional sex equality norm, including the Nineteenth Amendment, the ERA (I and II), and the FMLA. The Economic Equity Act is a relevant part of the dynamics that elaborated the emerging meaning of sex equality under the law in the late twentieth century.

C. Economic Citizenship in the Advent of the Twenty-First Century

“...feminist jurisprudence would anticipate the future needs of women as women, not as men.” In order to do so, historian Joan Hoff writes, “It is, therefore, of the utmost importance for women in the United States to continue to stretch the outer limits of the law until the legal system finally addresses their long-ignored socioeconomic concerns.” The Economic Equity Act involved a process by which a coalition of congressional lawmakers imagined, advanced, and in some cases enacted legal changes to address the socioeconomic concerns of women. This Article has excavated the Equity Act to better understand the constitutional amendment and judicial reinterpretation of the Fourteenth Amendment.

388 See, e.g., United States v. Morrison, 529 U.S. 598 (2000) (holding that a provision of VAWA that created a federal civil cause of action for victims of gender-motivated violence against their abusers exceeded the scope of Congress’s powers under the Commerce Clause and Section 5 of the Fourteenth Amendment). 389 See Reva Siegel, She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family, 115 Harv. L. Rev. 947, 1030–1035 (2002) (writing with respect to the Nineteenth Amendment); Siegel, Constitutional Culture, supra note 1, at 1324 (writing with respect to ERA I); Mayeri, A New E.R.A., supra note 4, at 1291–1300 (writing with respect to ERA II); Post & Siegel, Legislative Constitutionalism, supra note 4, at 2005–20 (writing with respect to the FMLA). The FMLA in particular, and the decision upholding congressional authority to enact prophylactic anti-sex discrimination legislation under Section five of the Fourteenth Amendment."

390 See Reva Siegel, She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family, 115 Harv. L. Rev. 947, 1030–1035 (2002) (writing with respect to the Nineteenth Amendment); Siegel, Constitutional Culture, supra note 1, at 1324 (writing with respect to ERA I); Mayeri, A New E.R.A., supra note 4, at 1291–1300 (writing with respect to ERA II); Post & Siegel, Legislative Constitutionalism, supra note 4, at 2005–20 (writing with respect to the FMLA). The FMLA in particular, and the decision upholding congressional authority to enact prophylactic anti-sex discrimination legislation under Section five of the Fourteenth Amendment."

391 Id. at 373.
methods used by lawmakers—and obstacles faced by lawmakers—in advocating for a legislative agenda on behalf of women’s equality and in advancing a reconfiguration of economic citizenship under federal law.

The ideological choices made by lawmakers at the helm of legislative advocacy for women in Congress marked critical turning points in determining the role of marriage, family, and work in the conferral of the benefits and privileges of the state. For instance, at the outset of this legislative project, legal reformers drafting the Equity Act acceded to a more limited vision of equal citizenship for women. Gone were the kind of sweeping reforms demanded at the advent of the second women’s movement, such as calls for free 24-hour daycare.\footnote{392} While the Women’s Caucus asserted the Act was “carefully crafted to meet the needs of American women,” Judy Mann of the Washington Post immediately perceived that it was also “carefully crafted to meet the political needs of the time,” even acknowledging early feminist demands in noting that “[n]othing in the bill involves the government in daycare.”\footnote{393}

Lawmakers did not fundamentally question a system in which the benefits and privileges of economic citizenship were tied to work rather than “residence or citizenship”—a framework predicated on the family wage model that was thoroughly ingrained in post-New Deal federal law and policy.\footnote{394} This is not to say that reformers did not hope for a broader conception of citizenship over time. For example, Equity Act provisions were advanced to create Spousal Individual Retirement Accounts, to provide limited credit for childbearing years toward Social Security and pension earning, and to expand tax credits for childcare costs. But the agenda embodied in the Equity Act nevertheless advanced reforms largely within the citizen-as-worker model, evidencing a pragmatic approach to improving the lives of women within the confines of the state as ideologically constructed.

In this way, the agenda embodied in the Equity Act never moved beyond a piecemeal and incremental process. It is impossible to know whether the Equity Act as a whole would have been more successful if the ERA had passed, or had the political climate been more favorable toward new demands on the public fisc. The Equity Act’s most ambitious (and controversial) provisions—to give credit in public entitlement programs toward a certain number of years spent out of the workforce for childrearing—never gained traction. Provisions that were enacted were largely premised on marriage to a wage-earning worker in order to accrue benefits for caregiving in

\footnote{392} This demand was part of the tripartite platform of the Women’s Strike for Equality on the fiftieth anniversary of the ratification of the Nineteenth Amendment in 1963. See supra note 44; see also Deborah Dinner, The Universal childcare Debate: Rights Mobilization, Social Policy, and the Dynamics of Feminist Activism, 1966–1974, 28 LAW & HIST. REV. 577, 588 (2010). Congress passed comprehensive child care reform, but President Nixon vetoed it. Dinner, supra, at 614.

\footnote{393} Mann, A Chance to Improve, supra note 111, at C1.

\footnote{394} Fisk, supra note 55, at 423.
relation to the family wage. Otherwise, as welfare reform ultimately demanded, working for wages was expected. Accordingly, the remainder of the Equity Act agenda largely centered on enabling women to leave the work of home for the work of the market and to advance in that sphere.

The compromises made during this period of lawmaking continue to have ramifications for sex equality claims being made today. For example, in both the early years of the Equity Act, as well as during debates over the FMLA, lawmakers—and even President Clinton—found it difficult to gain momentum not just on proposals to use public programs to credit women for childrearing years, but also on proposals to use unemployment insurance or other publicly regulated programs to compensate women during a maternity leave from paid work. In a political climate marked by austerity, lawmakers continue to advance proposals to strengthen family leave with a compensation scheme—with little success.

During the fifteen years that lawmakers pursued a women’s agenda centered on the Economic Equity Act, larger ideological struggles over the role of government were unfolding. As a product of the legislative branch, the political realities of the time indelibly marked the progression of enactments originating from the Equity Act. The enduring influence of Reaganomics—including the emphasis on smaller government, less government regulation, and less government spending—coupled with the deep divide of women and other lawmakers over the proper approach to (and propriety of) welfare re-

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395 Ultimately, welfare reform exposed the power of marriage as a mediating force in this debate—marriage promotion policies evidenced that “family values” still dictated marriage for those otherwise deemed dependent (e.g. single mothers). Dubler, *In the Shadow of Marriage*, supra note 132, at 1643–44 (discussing marriage promotion policies in relation to welfare reform and the privatization of dependency); see also Ariela Dubler, *Wifely Behavior: A Legal History of Acting Married*, 100 COLUM. L. REV. 957, 1021 (2000) (“[T]he notion that marriage proper constitutes the normative legal model for nonmarital relations endures.”). Accordingly, efforts to support women’s economic independence still collide with efforts to privatize that dependency through marriage.


398 See, e.g., Family Leave Insurance Act of 2008, H.R. 5873, 110th Cong. (2008) (providing up to twelve weeks of paid leave for family care or personal health reasons); Family Leave Insurance Act of 2007, S. 1681, 110th Cong. (2007) (providing up to eight weeks of paid leave under the FMLA); Healthy Families Act, S. 1085, 109th Cong. (2005) (requiring employers to provide employees with at least seven paid sick days per year in order to combat discrimination based “on persistent stereotypes about the ‘proper’ roles of both men and women in the workplace and in the home”); see also Healthy Families Act, H.R. 1902, 109th Cong. (2005) (companion bill introduced in the House).
form, served as mitigating forces to the effectiveness of the Women’s Caucus and the Economic Equity Act. Accordingly, early debates in Congress over child support enforcement, Social Security and pension benefits for widows and divorcees, and how to address the problem of displaced homemakers foreshadowed the larger battle over poverty, dependency, and the role of government to provide for women (and men) in need. The overhaul of the modern welfare system that included both the Family Support Act of 1988, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 made plain that battles over federal spending for guarantees of food and medical care for the worst-off in society, as well as for essential corollaries such as education, job training, and child care, were far from over.

The centrality of marriage as a path to the benefits and privileges of economic citizenship has also shaped the contours of contemporary sex equality claims. The marriage equality movement, for example, has resulted in an increasing number of federal marriage-based claims by same sex partners—reminiscent of the claims made in the early 1980s—to military and veterans benefits, pensions, Social Security payments, and other federal benefits. These benefits, as a result of Equity Act and other advocacy, are entitlements granted through marriage that carry forward even after divorce or death of a spouse. In the early 1980s, lawmakers advancing the Equity Act responded to the dire economic circumstance of many women who sought to lay claim to their husbands’ (former or deceased) earnings and related benefits and entitlements.\textsuperscript{401} Lawmakers succeeded in staking claims to economic citizenship in ways inherently defined by the status quo at the time, and in ways that operated to entrench the role of marriage in the federal system. Long denied the benefits and privileges that flow from marriage,\textsuperscript{402} the contemporary marriage equality movement seeks equal access to marriage as, inter alia, a path to economic citizenship for same-sex couples and to the attendant privileges and benefits under federal law that the status of being married confers.\textsuperscript{403} Whether marriage equality under federal law emerges through a Supreme Court challenge to the constitutionality of the Defense of

\textsuperscript{401} See supra Part II.A.
Marriage Act of 1996, which limits the definition of marriage as a “legal union between one man and one woman,” or through Congress’s repeal thereof, the demand for the equal citizenship that marriage confers can be heard through many channels of contestation.

The failure of the ERA, the coalescence of enduring resistance to the post-New Deal welfare state, and the continued support for marriage as a means of privatizing family economic support intervened at a time when societal changes called for restructuring of the federal system. The conflict and compromise related to the Economic Equity Act reveal the centrality of competing visions of the ideal family to the reconfiguration of economic citizenship that took place in the late twentieth-century. By reconstructing this history of Congress’s role in enunciating and effecting the sex equality principle, this Article aims not to add the unfinished business of the Equity Act to the congressional agenda, but rather to explicate the breadth and depth of legal and policy responses considered—and in some cases implemented—in the quest for sex equality and equal citizenship for women and men in the late twentieth century and the attendant disputes, conflicts, and compromises that forged the terms of economic citizenship under federal law today. At the advent of the twenty-first century, this history suggests that difficult questions, choices, and challenges remain regarding the role of marriage, family, and work in the conferral of the benefits and privileges of citizenship under federal law.

CONCLUSION: IMPLICATIONS OF SEX EQUALITY’S REVISED NARRATIVE

This Article adds to the sex equality narrative a new account of congressional action aimed at entrenching the substantive guarantees of the sex equality principle through the Economic Equity Act. In the wake of the Equal Rights Amendment, a coalition of lawmakers in Congress advanced a capacious agenda through the omnibus Economic Equity Act in which they sought to both shape the meaning of sex equality under the law, and exercise their power to effect sex equality in the state at large. This endeavor extended well beyond what is traditionally viewed as classical antidiscrimination law—i.e., the facial prohibitions on discrimination—to a reevaluation of inequities existing in the legal order in an effort to achieve substantive equality for women. This Article has analytically consolidated the scattered proposals and enactments of the omnibus Equity Act to see this deconstructive undertaking over a sustained period of time. This exercise enables us to pin down for inspection the elusive path of federal legislative action aimed at revising the New Deal-era federal system predicated on the family wage model of a male breadwinner and female homemaker. Through the provi-


405 See supra note 346.
sions of the Equity Act, the women’s movement, lawmakers, and their constituents made claims to the emerging meaning of sex equality and the terms of women’s economic citizenship—a critical chapter that has been written out of the histories of sex equality. At stake for countless women were many forms of basic economic support. At stake for the lawmakers who were advancing the Equity Act were the terms on which the benefits and privileges of economic citizenship under federal law would be conferred in the wake of the societal changes precipitated by the modern women’s movement. Furthermore, during this critical chapter, these lawmakers, through strategic and intentional legislative activity, defined the role of Congress in articulating the sex equality principle. As demonstrated by recent cases seeking equal access to federal benefits for same-sex couples, the reconfiguration of economic citizenship sought by proponents of the Economic Equity Act continues to be advanced and built upon in claims to equal citizenship at the forefront of sex equality debates today.
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TABLE 1. SUMMARY OF BILL NUMBERS AND INTRODUCTION DATES OF THE ECONOMIC EQUITY ACT BY CONGRESS, 1981–1996

<table>
<thead>
<tr>
<th>Congress &amp; Session Years</th>
<th>Bill Numbers</th>
<th>Date Introduced</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>S. 888</td>
<td>April 7, 1981</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(legislative day, February 16)</td>
</tr>
<tr>
<td></td>
<td>S. 888</td>
<td>March 23, 1983</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(legislative day, March 22)</td>
</tr>
<tr>
<td></td>
<td>S. 1169</td>
<td>May 20, 1985(^{46})</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(legislative day, March 22)</td>
</tr>
<tr>
<td></td>
<td>S. 1309</td>
<td>June 2, 1987</td>
</tr>
<tr>
<td></td>
<td>S. 1480</td>
<td>August 2, 1989</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(legislative day, January 3)</td>
</tr>
<tr>
<td></td>
<td>S. 2677</td>
<td>May 7, 1992</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(legislative day, March 26)</td>
</tr>
<tr>
<td></td>
<td>S. 2514</td>
<td>October 6, 1994</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(legislative day, September 12)</td>
</tr>
<tr>
<td></td>
<td>No Senate Bill</td>
<td></td>
</tr>
</tbody>
</table>

\(^{46}\) During the 99th Congress, the Economic Equity Act was also introduced in the Senate as S. 888 on May 4, 1985. However, the Congressional Caucus for Women’s Issues generally referred to S. 1169 as the companion bill for the 99th Congress.

97th Congress (1981–82)

- Requires payment of the military pension of a member or former member of a uniformed service to a spouse or former spouse of the amount specified in a court’s final decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement. Limits the total amount of pension subject to court order to 50%.
- Entitles members or former members with a former spouse to participate in the Survivor Benefit Plan.
- Entitles former spouses married twenty years or more during the member’s service to coverage under the Civilian Health and Medical Program of the Uniformed Services barring other medical coverage.

- Increases the child and dependent care income tax credit to 30% of employment-related expenses for taxpayers with incomes of $10,000 or less, beginning in 1982. Reduces the rate of such credit, but not below 20%, by 1% for each $2,000 of taxpayer income in excess of $10,000. Increases the maximum dollar amount of such credit.
- Reforms regarding the estate tax on agricultural property and farm loan provisions to facilitate fair inheritance of family-owned farms by widows.

98th Congress (1983–84)

Retirement Equity Act of 1984 (Pub. L. No. 98-397)
- Lowers the age limitation for participation in a qualified retirement plan from twenty-one to twenty-five.
- Treats breaks in service due to pregnancy, birth, or adoption of a child as completed hours of service according to a specified formula.
- Requires pension plans that provide life annuity benefits to pay such benefits in the form of a qualified joint and survivor annuity to the participant’s spouse upon participant’s death; benefits can be waived only with the written consent of a participant’s spouse.
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• Provides enforcement assistance for all families in collecting court-ordered child support. The new law requires states to implement a system of automatic wage-withholding and interstate enforcement of support orders.

Civil Service Retirement Spouse Equity Act of 1984 (Pub. L. No. 98-615)
• Protects the right of former spouses of federal employees to survivor pension benefits and federal employee health plan coverage.

Human Services Reauthorization Act (Pub. L. No. 98-558)
• Creates a new dependent care block grant providing funding for public and private organizations to set up clearinghouses for dependent care information and referral services.

Deficit Reduction Act of 1984 (Pub. L. No. 98-369)
• Provides tax-exempt status for non-profit dependent care facilities.
• Allows alimony to be treated as income for IRA purposes.

99th Congress (1985–86)
• Private pension reform reducing the number of years a person must work to be fully vested in a private pension program from ten to five, or to seven years if the employer complies with a tiered vesting scheme that vests workers with 20% of employer contributions following three years of service.
• Private pension reform requiring increased coverage of workers, resulting in more low-paid workers benefitting from employer-sponsored retirement plans.
• Allows single heads-of-household a greater standard deduction than a single taxpayer with no dependents (making the single heads-of-household deduction more similar to the standard deduction for married couples filing jointly).
• Increase in Earned Income Tax Credit granted to lower-income taxpayers.

• Includes military pension reforms permitting state courts to award the military pension survivor’s benefit to a former spouse; lowering the age at which a surviving spouse of a service member may remarry without losing benefits from sixty to fifty-five; and eliminating the deduction for life insurance premiums when determining a “disposable retired pay,” so that a former spouse will no longer be paying for a policy for which she may not be an annuitant.
• Provides funding for on-site day care for low-income students.

• Requires the continuation of employment-based health insurance coverage for three years for widows, divorced spouses, Medicare-ineligible spouses of retired workers, and their dependent children; and for eighteen months for workers who have been laid off, terminated, or have reduced hours, and their dependent children.

100th Congress (1987–88)
Women’s Business Ownership Act of 1988 (Pub. L. No. 100-533)
• Extends the prohibition on sex discrimination in lending in the Equal Credit Opportunity Act to commercial loans.

• Provides spousal protections under Medicaid.

Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203)
• Increases block grants under Title XX of Social Security Act.

Housing and Community Devel. Act of 1987 (Pub. L. No. 100-242)
• Authorizes child care projects in public housing.

101st Congress (1989–90)
• Requires that 10.5% of the basic state grant in the bill be set aside for programs for displaced homemakers, single parents, and single pregnant women, and for programs to eliminate bias and stereotyping on the basis of sex and to encourage the entry of women into nontraditional programs.

Cranston-Gonzalez National Affordable Housing Act (Pub. L. No. 101-625)
• Permits single parents and displaced homemakers who have previously been part-owners of a house to participate in federal first-time homebuyer programs.
• Authorizes the development of child care services for residents of transitional housing.
• Authorizes up to ten demonstration projects for one-stop prenatal and postnatal care services in public housing projects.
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- Increases funding for Title XX Social Services Block Grants providing funds to states for a variety of social welfare programs.
- Increases funding for the Maternal and Child Health Block Grant.

- Authorizes Medicare reimbursement funding for coverage of routine mammography screening for older women.

Sense of Congress Resolution on Domestic Violence (H. Con. Res. 172)
- Addresses child custody awards in cases where spousal abuse has occurred and favors a statutory presumption that placing a child in the custody of the abusive spouse is detrimental to the child’s welfare.

- Waives the two-year waiting period of “conditional” residency for foreigners who marry American citizens when the foreigner is involved in an abusive marriage.

102nd Congress (1991–92)

Civil Rights Act of 1991 (Pub. L. No. 102-166)
- Title II, the Glass Ceiling Act of 1991, establishes a commission to examine the “glass ceiling” affecting women and minorities in the workforce and to recommend policies to promote advancement opportunities.

Nontraditional Employment for Women Act (NEW) (Pub. L. No. 102-235)
- Amends the Job Training Partnership Act to add program requirements relating to the training, placing, and retaining of women in jobs traditionally dominated by men. Establishes a $1.5 million demonstration program for six states to develop and expand nontraditional employment programs.

- Includes provision to increase the participation of women and minorities in math and science.
- Extends Pell grants to students attending less than half-time.

- Authorizes a study to determine the obstacles women and minorities face in obtaining surety bonds and to suggest ways to overcome those obstacles. Businesses wishing to obtain government contracts must have a surety bond, a type of insurance which guarantees that the work contracted for will be completed.
- Authorizes the Small Business Administration to make loans and grants to community based organizations to provide technical assistance for the startup and expansion of microenterprises. Authorizes appropriations.

103rd Congress (1993–94)

Congressional Employee Fairness Act (H. Con. Res. 78)

- Establishes a commission to collect demographic data on the composition of legislative branch employees with respect to race, sex, wages, and employment practices of Members’ offices. Annual reports on the composition of the Congressional workforce, including comparisons to previous years, must be submitted to the Congress.


- Requires federal agencies to establish a goal of procuring 5% of government awards or contracts from women-owned businesses.

Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. No. 103-403)

- Establishes the Office of Women’s Business Ownership.

104th Congress (1995–96)

- No enactments.

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407 In addition to enactments that were part of the Economic Equity Act of the 103rd Congress, several measures included in the Economic Equity Act of the 101st Congress (and part of the Women’s Health Equity Act) were enacted separately in the 103rd Congress as part of the National Institute for Health Revitalization Act.
TABLE 3. SUMMARY OF MAJOR CATEGORICAL PROVISIONS OF THE ECONOMIC EQUITY ACT WITH AVAILABLE CORRESPONDING BILL NUMBERS BY CONGRESS, 1981-1996

97th Congress (1981–82)

Title I. Tax and Retirement
   A. Private Pension Reform Act (H.R. 1641)
      1. Retirement Benefits for Spouses
      2. Written Spousal Consent to Forego Survivor Benefits
      3. Assignment of Retirement Benefits for Child Support, Alimony, and Marital Property
      4. Lower Age Limit for Retirement Plan Eligibility from 25 to 21
      5. Accrual of Benefits under ERISA and Internal Revenue Code During Maternity or Paternity Leave
   B. Heads of Household: Zero Bracket Amount (H.R. 994)
   C. Public Pension Reform: Civil Service Ex-Spouses & Survivors (H.R. 3040)
   D. Public Pension Reform: Military Service Ex-Spouses and Survivors (Pub. L. No. 97-252)
   E. Displaced Homemaker Tax Credits (H.R. 835)

Title II. Day Care Program: Tax Credits (Pub. L. No. 97-34)

Title III. Armed Forces
   A. Remove Gender from Property Distribution Rules for Deceased Air Force and Army Members and Establish Distribution Formula
   B. Eliminate Sex from Promotion/Removal in Naval/Marine Reserve
   C. Annual Reports Concerning Status of Women in the Armed Forces

Title IV. Agricultural Estate Taxes and Farm Loans (Pub. L. No. 97-34)

Title V. Nondiscrimination in Insurance (H.R. 100, 323)

Title VI. Regulatory Reform and Sex Neutrality (H.R. 2991)

Title VII. Study of Enforcement of Alimony and Child Support (H.R. 4710)

408 Enacted measures are indicated in italics. Titles and Subtitles are taken from the House versions of the Economic Equity Act introduced in each Congress. For some provisions throughout the various versions of the Economic Equity Act, I was not able to find corresponding bill numbers.
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98th Congress (1983–84)

Title I. Tax and Retirement Matters
   A. Private Pension Reform (Pub. L. No. 98-397)
   B. Spousal Individual Retirement Accounts—Use of Alimony (Pub. L. No. 98-369)
   C. Displaced Homemaker Tax Credit (H.R. 2127, S. 1700)
   D. Civil Service Pension Reform (Pub. L. No. 98-615)
   E. Head-of-Household Tax Reform (H.R. 2126)

Title II. Dependent Care Program
   A. Sliding Scale for Tax Credits (H.R. 1991)
   B. Tax Exempt Status for Child Care Facilities (Pub. L. No. 98-369)
   C. Refundability (H.R. 2093)
   D. Information and Referral (Pub. L. No. 98-558)

Title III. Nondiscrimination in Insurance (H.R. 100, S. 372)

Title IV. Regulatory Reform and Sex Neutrality (H.R. 2410)

Title V. Child Support Enforcement
   A. Amendments to Title IV-d, Social Security Act (Pub. L. No. 98-378)
   B. Federal Mandatory Wage Assignment (H.R. 2411)
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99th Congress (1985–86)

Title I. Retirement Security
A. Private Pension Reform (Pub. L. No. 99-514)
B. Social Security
   1. Social Security Modernization (Equity) Act (Earnings Sharing) (H.R. 158, S. 3)
   2. Full Benefits for Disabled Widow(ers) (H.R. 159)
   3. Transition Benefits for Displaced Homemakers (H.R. 160)
   4. Disability Definition for Widow(ers) (H.R. 556)
C. Uniformed Services Former Spouses’ Equity Act (Pub. L. No. 99-661)

Title II. Dependent Care
A. Social Services and Child Care Assistance Act (H.R. 798, S. 803)
B. Child Care Program for Postsecondary Students (Pub. L. No. 99-498)
C. Public Housing Child Care Services Act (H.R. 2176, S. 805)

Title III. Insurance
A. Nondiscrimination in Insurance Act (H.R. 1793)
B. Health Insurance Continuation (Pub. L. No. 99-272)

Title IV. Employment
A. Pay Equity Act
   1. Enforcement and Education (H.R. 375)
   2. Federal Study (H.R. 27, S. 519)
   3. Legislative Branch Study (H. Con. Res. 139)
B. Demonstration and Pilot Programs in Education and Training for AFDC Mothers (H.R. 880, S. 19)
C. Women in Business
   1. National Commission on Women’s Business Ownership (H.R. 887, S. 872)
   2. Equal Credit Opportunity for Family and Household Purchases (H.R. 1575, S. 1486)

Title V. Tax Reform
A. Head of Household Zero Bracket Amount (H.R. 2477)
C. Dependent Care Tax Credit (H.R. 2527, S. 912)
D. Deductions for Contributions to Retirement Accounts Based on Spouse’s Income (H.R. 797, S. 200)
E. Nondiscrimination in Business Expense Deduction Act (H.R. 876)
Title I. Work
A. Pay Equity
   2. Study of Legislative Branch Pay (H Con. Res. 120)
B. Women in Business
   1. Equal Credit Opportunity Act for Commercial Loans (Pub. L. No. 100-533)
C. Part-time and Temporary Workers Protection Act (H.R. 2575)
D. Economic Security
   1. Social Security Modernization (or Equity) Act (H.R. 674, S. 3)
   2. Disability Definition (H.R. 203, S. 170)
   3. Pension Reform Act (H.R. 2613)
   5. Nondiscrimination in Insurance Act

Title II. Family and Dependent Care
A. Child Care Opportunities for Families Act (Family Day Care Provider Assistance Act)
   1. Training for Family Day Care Providers (H.R. 1001, Sec. 402, S. 982)
   2. Improvement of Child Care Standards (H.R. 1001, Sec. 201, S. 934)
B. Access to Dependent Care for All Families
   1. Dependent Care Tax Credit (Child Care Tax Act) (H.R. 2456, 5570)
   2. Mortgage Financing for Family Day Care Centers (S. 1300)
C. Supply of Dependent Care for Lower-Income Families
   1. Social Security Act Title XX Funding (Pub. L. No. 100-203)
   2. State Dependent Care Grants Amendments Act (H.R. 2105, S. 222)
   3. Child Care in Public Housing (Housing and Community Development Act) (Pub. L. No. 100-242)
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101st Congress (1989–90)

Title I. Employment
A. Pay Equity Technical Assistance Act (H.R. 41, S. 16)
B. Legislative Pay Equity Study (H. Con. Res. 95)
C. Part-Time and Temporary Workers Protection Act (H.R. 2563)
D. Federal Council on Women Act (H.R. 1187)
E. Vocation Education (Pub. L. No. 101-392)
F. Women in Business Procurement Assistance Act (H.R. 2947, S. 2294)

Title II. Economic Security
A. Earnings Sharing by Married Couples (Social Security Modernization Act) (H.R. 203, S. 51)
B. Disability Definition (Social Security Disabled Widow’s and Widower’s Equity Act) (H.R. 2731, S. 1872)
C. Pension Reform Act (H.R. 3306)
D. Displaced Homemakers and Single Parents Homeownership Assistance Act (Pub. L. No. 101-625)
E. Housing Assistance for Domestic Violence Victims (H.R. 2951)

Title III. Dependent Care
A. Quality Child Care Demonstration Projects (H.R. 1618, sec. 212)
B. Dependent Care Tax Credit (H.R. 994)
C. Mortgage Financing for Family Day Care Centers (H.R. 2330, 1297)
D. Flexible Work Force (H.R. 1618, sec. 303)
E. Transitional Housing Child Care Services (Pub. L. 101-625)
F. Social Security Act Title XX Funding (Pub. L. No. 101-239)
G. School-Based Child Care (H.R. 2220, S. 2681)

Title IV. Health Care (Later Severed to Become the Health Equity Act)
B. Maternal and Child Health Funding (Pub. L. No. 101-239)
C. Public Housing Prenatal Services (Pub. L. No. 101-625)
D. Domestic Violence and Judicial Training (H.R. 2952, S. 1482)
E. Sense of Congress Resolution on Domestic Violence (H. Con. Res. 172)
F. Immigration Reform for Battered Spouses (Pub. L. No. 101-649)
G. Long-term Care Volunteers (H.R. 2238, S. 1457)
H. Sense of Congress Resolution on Caregivers (H. Res. 170, S. Res. 161)
Title I. Employment Opportunities
A. Nontraditional Employment for Women Act (Pub. L. No. 102-235)
B. Worker Retraining Act (H.R. 3707)
C. Women in Apprenticeship Occupations and Nontraditional Occupation Act (Pub. L. No. 102-235)
D. Glass Ceiling Act (Pub. L. No. 102-166)
E. Women and Minorities in Science and Mathematics Act (Pub. L. No. 102-235)
F. Advancement of Women in Science and Engineering Act (H.R. 3476)

Title II. Women in Business
A. Act for Microenterprise (H.R. 288)
B. Microlend for the Future Act (Pub. L. No. 102-366)
C. Women’s Business Procurement Assistance Act (H.R. 3517, S. 1959)
D. Equal Surety Bond Opportunity Act (H.R. 3534, S. 2611)

Title III. Economic Justice
A. Pay Equity Technical Assistance Act (H.R. 386, S. 1856)
B. Legislative Pay Equity Study (H. Con. Res. 222)
C. Part-time and Temporary Workers Protection Act (H.R. 3793)
D. Child Support Enforcement Improvements Act (H.R. 3677)
E. Dependent Care Tax Credit Refundability (H.R. 3506)
F. Pell Grant Eligibility Expansion Act (Pub. L. No. 102-325)
G. Federal Council on Women Act (H.R. 2567)

Title IV. Retirement Equity
A. Pension Reform Act (H.R. 1735, S. 3184)
B. Spousal Pension Equity Act
C. Social Security Care Provider Act (H.R. 3328, S. 762)
D. Social Security Modernization Act (H.R. 52)
E. Former Military Spouses (H.R. 3525)
F. Federal Employees Former Spouses (H.R. 108)
Title I. Workplace Fairness
   A. Equal Remedies Act (H.R. 224, S. 17)
   B. Federal Employee Fairness Act (H.R. 2721, S. 404)
   C. Congressional Employees Fairness Act (H.R. 2846)
   D. Sexual Harassment Prevention Act (H.R. 2829, S. 1979)
   E. Part-time and Temporary Workers Protection Act (H.R. 2188)
   F. Unemployment Insurance Reform (H.R. 1359)
   G. Federal Temporary Workers Protection Act (H.R. 98)
   H. Legislative Pay Equity Study (H. Con. Res. 78)

Title II. Economic Opportunity
   A. Women’s Business Procurement Assistance Act (Pub. L. Nos. 103-355, 103-403)
   B. Microenterprise Opportunity Expansion Act (H.R. 2308)
   C. Equal Surety Bond Opportunity Act (H.R. 1464, S. 1259)
   D. Commission on the Advancement of Women in the Science and Engineering Work Forces Act (H.R. 467, S. 2356)
   E. Self-Sufficiency Standard Act (Job Training) (H.R. 2788)

Title III. Work and Family
   A. Child Care Public-Private Partnership Act (H.R. 1196, S. 495)
   B. After-School Child Care Act
   C. Dependent Care Tax Credit Refundability Act (H.R. 1947)
   D. Tax Incentives for Family-Friendly Workplaces Act
   E. Federal Parental Leave for Education Activities (H.R. 2437)

Title IV. Economic Self-Sufficiency
   A. Child Support Enforcement
      2. Interstate Child Support Act (H.R. 1961)
      3. Child Support Enforcement Improvements Act (H.R. 2396)
      4. Inclusion of Overdue Child Support in Consumer Credit Reports (H.R. 2346)
   B. Pension Reform Act (H.R. 2502, 4367)
   C. Social Security
      1. Social Security Reforms (H.R. 2536—39)
      2. Social Security Caregiver Act (H.R. 2540)
   D. Former Military Spouses Retirement Benefits Protection (H.R. 2258)
   E. Unremunerated Work Act (H.R. 966)
Title I. Workplace Fairness
   A. Part-Time and Temporary Workers (H.R. 3682)
   B. Federal Employees Fairness Act (H.R. 2133)
   C. Legislative Pay Equity Study (H. Con. Res. 194)
   D. Sexual Harassment Prevention Act (H.R. 3646)
   E. Sexual Harassment Information (H.R. 1859)
   F. Sexual Harassment Tax Equity Act (H.R. 3530)
   G. Equal Remedies Act (H.R. 96, S. 296)
   H. Federal Temporary Workers Protection Act (H.R. 1724)
   I. Contingent Work Force Equity Act (H.R. 3657)

Title II. Economic Opportunity
   A. Microenterprise Opportunity Expansion Act (H.R. 1019)
   B. Commission on the Advancement of Women in Science and Engineering Work Forces (H.R. 3726)
   C. Equal Surety Bond Opportunity (H.R. 3702, S. 666)
   D. Self-Sufficiency Standard Act (Job Training) (H.R. 3616)
   E. Community Reinvestment (H.R. 3826)
   F. Telecommunication Economic Opportunity Act (H.R. 503)
   G. HHS Women Scientist Employment Opportunity Act (H.R. 3791)
   H. Women in Enterprise Development Act (H.R. 3827)

Title III. Work and Family
   A. Child Care Consolidation and Investment Act (H.R. 3860, S. 472)
   B. Child Care Public Private Partnership Act (H.R. 986)
   C. Dependent Care Tax Credit Refundability (H.R. 4154)
   D. IRA Deductions for Homemakers (H.R. 708, S. 287)
   E. Federal Parental Leave for Education Activities (H.R. 3704)
   F. Tax Incentives for Family-Friendly Workplace Act (H.R. 3836)
   G. Parental Equity Leave for Adopted and Foster Children (H.R. 2237)

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409 In the 104th Congress, the Economic Equity Act was only introduced in the House. It was not reciprocally introduced in the Senate.
Congressional Power to Effect Sex Equality

Title IV. Economic Self-Sufficiency
   A. Child Support Responsibility Act (H.R. 785, S. 442)
   C. Child Support Enforcement Improvements Act (H.R. 3362)
   D. Single Parent Protection Act (H.R. 3529)
   E. Women’s Pension Equity Act (H.R. 3510, H.R. 3511, S. 1756)
   F. Pension Reform Act (H.R. 1048)
   G. Social Security Caregiver Act (H.R. 3357)

Title V. Economic Impact of Domestic Violence
   A. Workplace Violence Prevention Tax Credit Act (H.R. 3584)
   B. Insurance Protection for Victims of Domestic Violence Act (H.R. 1201, H.R. 3145)
   C. Fairness to Minority Women Health (H.R. 3179)
   D. Battered Women’s Employment Protection Act (H.R. 3837)
   E. Domestic Violence Legal Services Eligibility (H.R. 3733)

Battered Women’s Employment Protection Act, 104th
Child Care Consolidation and Investment Act, 104th
Child Care Opportunities for Families Act (or Family Day Care Provider Assistance Act), 99th–100th
Child Care Public Private Partnership Act, 102nd–104th
Child Care Tax Act, 100th
Child Support Economic Security Act, 102nd–103rd
Child Support Enforcement Improvements Act, 102nd–104th
Child Support Responsibility Act, 103rd–104th
Commission on the Advancement of Women in the Science and Engineering Work Forces Act, 102nd–104th
Contingent Workforce Equity Act, 103rd–104th
Continued Access to Group Health Insurance Act, 99th
Dependent Care Tax Credit Refundability Act, 103rd
Displaced Homemakers and Single Parents Homeownership Asst. Act, 101st
Domestic Violence Legal Services Eligibility, 104th
Equal Remedies Act, 104th
Equal Surety Bond Opportunity Act, 102nd–104th
Fairness to Minority Women Health, 104th
Family Housing Options Program Act, 101st
Federal Council on Women Act, 100th–102nd
Federal Employee Fairness Act, 103rd–104th
Federal Equitable Pay Practices Act, 100th
Glass Ceiling Act, 102nd
Homemakers’ Equity Act, 99th
NIH Women Scientist Employment Opportunity Act, 103rd–104th
Insurance Protection for Victims of Domestic Violence Act, 104th
Interstate Child Support (Enforcement) Act, 102nd–104th
Medicaid Community Property and Respite Care Act, 100th
Microenterprise Opportunity Expansion Act, 103rd–104th
Microloand for the Future Act, 102nd
Nondiscrimination in Business Expense Deduction Act, 99th
Nondiscrimination in Insurance Act, 99th
Nontraditional Employment for Women Act, 101st–102nd
Part-Time and Temporary Workers Protection Act, 100th–104th

410 Many provisions in the successive versions of the Economic Equity Act do not indicate a correlating bill. Accordingly, this Table is intended as a reference to illustrate the variety and character of the bills advanced through the omnibus Economic Equity Act over time and is not intended to be exhaustive. Some bill names also varied; alternatives have been placed in parentheses.
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Older Women’s Breast Cancer Prevention Act, 101st–102nd Pay Equity Act, 99th
Pay Equity Technical Assistance Act, 101st–102nd Pension Reform Act, 100th–104th
Pension Vesting, Integration, and Portability Act, 99th Public Housing Child Care Act (or Services Act), 99th
Public Housing One-Stop Perinatal Services Act, 101st Self-Sufficiency Standard Act, 103rd–104th
Sexual Harassment Prevention Act, 103rd–104th Sexual Harassment Tax Equity Act, 104th
Single Parent Protection Act, 104th Small Business Access to Surety Bonding Survey Act, 102nd
Small Day Care Center Assistance Act, 101st Social Security Care Provider Act (or Caregiver Act, Caregiver Credit
Act), 101st–104th Social Security Disabled Widow’s and Widower’s Equity Act, 101st–102nd
Social Security Modernization (or Equity) Act, 99th–102nd Social Services and Child Care Assistance Act, 99th
State Dependent Care Grants Amendments Act, 100th–101st Tax Incentives for Family-Friendly Workplaces Act, 103rd–104th
Telecommunications Economic Opportunity Act, 104th Transitional Housing Child Care Services Act, 101st
Unremunerated Work Act, 102nd–104th Uniformed Services Former Spouses’ Equity Act, 99th
Women and Minorities in Science and Mathematics Act, 102nd Women in Apprenticeship Occupations and Nontraditional Occupations
Act, 102nd Women in Enterprise Development Act, 102nd and 104th
Women’s Business Ownership Act (or Women’s Small Business
Ownership Act), 99th Women’s Business Procurement Assistance Act, 101st–103rd
Women’s Pension Equity Act, 104th Worker Retraining Act, 102nd
Workplace Violence Prevention Tax Credit Act, 104th
APPENDIX. METHODOLOGY FOR DETERMINING CORRESPONDING BILL NUMBERS AND ENACTMENTS ORIGINATING FROM THE ECONOMIC EQUITY ACT, 1981-1996

A single source specifying and describing in detail both the proposed provisions and enacted provisions of the Economic Equity Act, as well as the bill and public law numbers associated with these proposed provisions and enactments, has not been previously available. The preceding Tables are the product of extensive legislative and archival research, which was necessary in order to connect each provision of the Economic Equity Act to its corresponding bill in Congress, and then in the case of enacted provisions, to a public law.

I began by constructing a table summarizing the provisions of the successive versions of the Act based on the original House bills, which did not contain correlating bill numbers, but sometimes contained correlating bill titles. I then reviewed available publications of the Congressional Caucus for Women’s Issues, titled “Update.” At times, the Caucus previewed or reviewed the Act for a particular Congress. If bill numbers and public law numbers were included, I added that information to the Tables. If they were not, I searched on Thomas (www.thomas.gov) for correlating bill numbers and enactments, using substantive search terms and comparing bill titles and substantive provisions to confirm that a match had been found.

Finally, I cross-referenced three sources to check the validity of my findings. First, I reviewed Irwin Gertzog’s books titled Women and Power on Capitol Hill: Reconstructing the Congressional Women’s Caucus (2004) and Congressional Women: Their Recruitment, Integration, and Behavior (1995). In his substantive discussions of the Caucus, he references various enactments, as well as various failures, of the Act. Further, I referenced Barbara Burrell’s book titled A Woman’s Place is in the House: Campaigning for Congress in the Feminist Era (1994). Burrell sets forth a cursory listing of the successive versions of the Act through the 103rd Congress, placing a star next to areas that included enactments. While bill numbers, public law numbers, or bill titles were not included in her work, her designation of enactments offered a useful cross-reference. These sources provided cross-references for only a subset of the information in the Tables, but their consistency offers some validation that my methodology has produced a compilation that is as accurate and complete as possible based on the information available about the Act.