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Pages 4B and 5B

MONDAY, OCTOBER 4, 1982 W 25¢

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St. Louis school board has supported city-county desegregation efforts.

Rava called the action "the crowning result and conclusion of a long series of precedents. The Supreme Court has denied (review) ... of the ...ase at least three times. It is very ...portant to the orderly dispatch of the ...ing aspects of the case."

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...N, Page 8

Supreme Court Declares ERA Issues Legally Dead

WASHINGTON (UPI) — The Supreme Court today closed the coffin lid on the 10-year-old Equal Rights Amendment. The court declared the amendment legally dead and refused to rule on questions raised about the ratification process.

The justices dismissed a case over a federal court ruling that upheld Idaho's revocation of its earlier approval of the ERA. They declared the issues "moot" — no longer presenting a live controversy.

The court had temporarily blocked the ruling in January. Today, it wiped the decision off the books so that it could not serve as a precedent.

The amendment was adopted by Congress in March 1972. It officially died on June 30, when the amendment gained approval of only 35 states. This was 3 states

See COURT, Page 8

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

October 4, 1982

The Honorable Lawrence G. Wallace
Acting Solicitor General
U. S. Department of Justice
Washington, DC 20530

Laurence H. Tribe, Esq.
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138

RE: National Organization for Women, Inc., et al. v. Idaho (No. 81-1282); National Organization for Women, Inc., et al. v. Idaho, et al. (No. 81-1283); Gerald P. Carmen, Administrator, General Services v. Idaho, et al. (No. 81-1312); Gerald P. Carmen, Administrator General Services v. Idaho, et al. (No. 81-1313)

Dear Counsel

The Court today entered the following order in the above-entitled case:

'Upon consideration of the memorandum for the Administrator of General Services suggesting mootness, filed July 9, 1982, and the responses thereto, the judgment of the United States District Court for the District of Idaho is vacated and the cases are remanded to that Court with instructions to dismiss the complaints as moot. United States v. Munsingwear, Inc., 340 U.S.36 (1950)."

Very truly yours,

ALEXANDER L. STEVAS, Clerk

By

Francis J. Lorson
Chief Deputy Clerk

rjb
cc: Counsel of record
Gerold L. Clapp, Esq., Clerk, U. S. District Court for the District of Idaho (your No. 79-1097)
Phillip Winberry, Esq., Clerk, U. S. Court of Appeals for the Ninth Circuit (your No. 79-4844)

Back to ERA Information

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL. v. IDAHO ET AL.
NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL. v. IDAHO ET AL.
CARMEN, ADMINISTRATOR OF GENERAL SERVICES v. IDAHO ET AL.
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No. 81-1282; No. 81-1283; No. 81-1312; No. 81-1313.

SUPREME COURT OF THE UNITED STATES

459 U.S. 809; 103 S. Ct. 22; 1982 U.S. LEXIS 3006; 74 L. Ed. 2d 39; 51 U.S.L.W. 3251; 30 Empl. Prac. Dec. (CCH) P33,063

October 4, 1982

PRIOR HISTORY:

Appeal from D.C. Idaho. [Probable jurisdiction postponed, 455 U.S. 918);
C.A. 9th Cir. [Certiorari before judgment granted, 455 U.S. 918);
Appeal from D.C. Idaho. [Probable jurisdiction postponed, 455 U.S. 918); and
C.A. 9th Cir. [Certiorari before judgment granted, 455 U.S. 918.]

OPINION:

Upon consideration of the memorandum for the Administrator of General Services suggesting mootness, filed July 9, 1982, and the responses thereto, the judgment of the United States District Court for the District of Idaho is vacated and the cases are remanded to that court with instructions to dismiss the complaints as moot. *United States v. Munsingwear, Inc., 340 U.S. 36 (1950).*

In the Supreme Court of the United States

OCTOBER TERM, 1982

Nos. 81-1282 and 81-1283

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.,
APPELLANTS AND PETITIONERS

v.

STATE OF IDAHO, ET AL.

Nos. 81-1312 and 81-1313

GERALD P. CARMEN, ADMINISTRATOR OF GENERAL
SERVICES, APPELLANT AND PETITIONER

v.

STATE OF IDAHO, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO IN NOS. 81-1282 AND 81-1312 AND ON WRITS OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IN NOS. 81-1283 AND 81-1313

MEMORANDUM FOR THE ADMINISTRATOR OF GENERAL SERVICES SUGGESTING MOOTNESS

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1. These cases present several questions concerning the ratification by the states of the proposed Equal Rights Amendment to the Constitution. Congress passed a resolution proposing that Amendment in March 1972. The preamble of the resolution specified that the Amendment "shall be valid to all intents and purposes as part of the Constitution

when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress." H.R.J. Res. 208, 92d Cong., 1st Sess. (1972), 86 Stat. 1523 (81-1282 J.S. App. 154a).

During the seven years after the Amendment was proposed, 35 of the necessary 38 states ratified it and, pursuant to 1 U.S.C. 106b, transmitted official ratification documents to the Administrator of General Services (81-1282 J.S. App. 4a). Five of the ratifying states, including appellee-respondent Idaho, also passed resolutions purporting to withdraw their ratifications (*id.* at 4a & n.2). Idaho notified the Administrator of its rescission resolution (*id.* at 8a).

In August and October 1978, each House of Congress passed, by a majority (but less than two-thirds) vote, a resolution extending the expiration date of the proposed Amendment by 39 months, until June 30, 1982. H.R.J. Res. 638, 95th Cong., 2d Sess. (1978), 92 Stat. 3799 (81-1282 J. S. App. 155a). The President signed the resolution on October 20, 1978 (*ibid.*).

2. Appellee-respondents—Idaho and Arizona, a state that has not ratified the Amendment (81-1282 J.S. App. 8a-9a), and legislators from those two states—brought this suit in the United States District Court for the District of Idaho against the Administrator of General Services in May 1979. The National Organization for Women (NOW) intervened in the suit as a defendant.[1] Plaintiffs sought a declaration that Idaho's rescission was valid and nullified its prior ratification; an injunction requiring the Administrator not to list Idaho as a ratifying state; and an injunction restraining the Administrator from taking account of any ratification that occurred after the expiration of the original seven-year period (*id.* at 2a).

n1. Legislators from the State of Washington intervened as plaintiffs. 81-1282 J.S. App. 2a.

The district court ruled in favor of plaintiffs. It held that plaintiffs had standing to sue and that their claims were ripe and did not present a political question (81-1282 J. S. App. 13a-76a). The district court then declared that the state rescissions nullified the prior ratifications, that Congress could establish the period in which ratifications would be valid only by a two-thirds vote, and that in any case Congress lacked the power to extend the ratification period for a proposed amendment once that period had been established (*id.* at 76a-93a).

The Administrator and NOW appealed to the United States Court of Appeals for the Ninth Circuit, filed petitions for a writ of certiorari before judgment to that court, and docketed appeals in this Court. On January 25, 1982, the Court granted the petitions for a writ of certiorari, postponed further consideration of the question of jurisdiction on appeal to the hearing of the cases on the merits, consolidated the cases, and stayed the judgment of the district court.

3. On June 30, 1982, the extended period for ratifying the Amendment expired. The Administrator informs us that no state transmitted a ratification of the Amendment during the period after the original expiration date of March 22, 1979. Congress has not passed any additional extension.

Consequently, the Amendment has failed of adoption no matter what the resolution of the legal issues presented here, and the Administrator informs us that he will not certify to Congress that the Amendment has been adopted. Even if all the ratifications remain valid, the rescissions are disregarded, and Congress is conceded the power to extend the ratification period as it did here, only 35 of the necessary states can be regarded as having ratified the Amendment. If appellee-respondents were to prevail on all issues, fewer than 35 states would be counted as having ratified the Amendment, and the Amendment would be regarded having failed of adoption in March 1979. But the date on which the proposed Amendment failed of adoption, and the extent to which it fell short of the necessary three-fourths of the states, do not affect the legally cognizable interests of any party.

Because these cases accordingly present only " 'questions that cannot affect the rights of litigants in the case before' " the Court (*DeFunis* v. *Odegaard*, 416 U.S. 312, 316 (1974), quoting *North Carolina* v. *Rice*, 404 U.S. 244, 246 (1971)), they are moot. See *United States* v. *Alaska Steamship Co.*, 253 U.S. 113, 116 (1920). It is therefore respectfully submitted that the judgment of the district court should be vacated and the cases remanded with instructions to dismiss the complaint as moot. See, *e.g. Great Western Sugar Co.* v. *Nelson*, 442 U.S. 92 (1979); *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-41 (1950).

LAWRENCE G. WALLACE
Acting Solicitor General[*]
Department of Justice
Washington, D.C. 20530

JULY 1982

[*] The Solicitor General is disqualified in these cases.