FIFTIETH YEAR

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contents:

Congress & The Equal Rights Amendment.....page 1
Earlier Efforts to Win Equal Rights.....page 2
Legal Setting--Part I. Federal Law Involved ....page 4
Part 2. State Law Involved.....page 5

Controversy Over The "Equal Rights For Women" Amendment

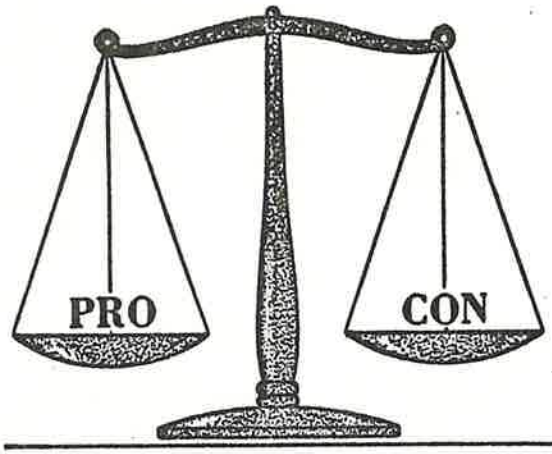
"Equal Rights" Action, 1969-1970.....page 8
PRO--Should Congress Approve the "Equal Rights Amendment"? .....page 10
CON-- .....page 11

Pro & Con

COMPLIMENTS OF ASSEMBLYMAN WALTER KARABIAN

A.J.R. 17--Resolution to Ratify the National Equal Rights Amendment

WASHINGTON, D.C.



THIS MONTH'S FEATURE

He Who Decides a Case Without Hearing the Other Side . .
. . Tho He Decide Justly, Cannot Be Considered Just—SENECA

CONGRESS & THE "EQUAL RIGHTS AMENDMENT"

PENDING in the Congress for almost half a century has been the proposed Equal Rights Amendment to the U. S. Constitution, which seeks to establish as a fundamental principle of American government the full legal equality of women. First introduced in 1923 at the instance of Alice Paul, the leader of the National Woman's Party, which had played the dominant role in securing final approval of the Woman Suffrage (19th) Amendment and which continues today to press for approval of the long-pending equal rights proposal, the amendment has been offered in every Congress since that time, receiving favorable action but never achieving final acceptance (see page 2).

Then quite suddenly in the 91st Congress, just terminated, a number of women Members of the House of Representatives decided to "go for broke" in an effort to win final approval of the amendment. Spearheading the effort was Rep. Martha Griffiths, Mich., D., who had introduced the amendment in the 91st Congress. As will be seen in the article on page 8, her successful drive to discharge the House Judiciary Committee from further legislative responsibility for the amendment, a record achievement, forced it to the floor of the House where it was subsequently approved by a wide margin.

The House-approved amendment reads (as has been the case since 1943, when earlier wording was revised): "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation."

Like the Woman Suffrage Amendment, which languished in the committees of Congress for more than forty years before finally winning approval, the Equal Rights Amendment over the years has been the subject of frequent hearings and endorsements at the committee or subcommittee level (see page 2).

Proponents of the amendment cite as justification for its need the many areas of law and custom in which sex discrimination exists (see pages 4 and 5). Some of its spokesmen have long held that many of the "protective" State and Federal statutes which accord women special status with regard to maximum hours of employment, permissible work categories, and general working conditions, are discriminatory rather than protective. Opponents of the amendment, on the other hand, take the view that such legislation is not only desirable but necessary, and express the fear that adoption of the amendment would nullify many of the "benefits" conveyed to women, particularly working women, by such laws.

On several past occasions, efforts have been mounted in Congress to modify the Equal Rights Amendment by adding such language as that proposed in the so-called "Hayden rider" of the 81st, 83rd, and 86th Congresses: "The provisions of this article shall not be construed to impair any rights, benefits, or exemptions now or hereafter conferred by law upon persons of the female sex." Such modifications, designed to preserve existing "protective" legislation and to formalize such exemptions as immunity from the military draft, have failed to secure Congressional passage of the amendment, however, and have been rejected as well by the leadership of the equal rights movement.

In consequence, the controversy as it presently exists centers in large measure on two diametrically opposed viewpoints. Opponents contend that a substantial body of Federal and State law—including a number of recent enactments (see pages 4 and 5)—as well as applicable (but, to date, largely unapplied) provisions of the Constitution itself already provide the sought-after legal equality and preserve, at the same time, a desirable modicum of protection and recognition of inherent differences between the sexes.

Those long prominent in the equal rights movement, however, have consistently rejected efforts to perpetuate by Constitutional amendment any such distinctions, tak-

(Continued on page 32)

THE FOREWORD

Continued from page 1

ing the position that in so fundamental a document as the Federal Constitution the only appropriate provision is one which establishes unequivocally the principle of unqualified legal equality between the sexes, whatever the consequences.

In the recently-adjourned 91st Congress, the amendment reached what to date must be accounted its high-water mark. As will be seen in the article on page 8, the U. S. House of Representatives—heretofore the least amenable branch of Congress to the amendment—approved it in August 1970 by a wide margin. Similarly, in the Senate its introduction had the ultimate backing of more than 80 co-sponsors. In that body, however, efforts by the Leadership to secure favorable floor action on the House-passed version of the amendment were unsuccessful, and the Senate resolution proposing the amendment died in the Judiciary Committee at adjournment despite earlier favorable recommendation by the latter's Constitutional Amendments Subcommittee.

Clouding the issue somewhat has been the extensive press coverage and resultant national attention accorded recently-formed organization in the so-called women's liberation field. In recent years a number of such groups, some employing techniques of pronounced militancy, have espoused a variety of controversial "liberation" causes in addition to offering nominal—or actual—support to the established women's rights movement. It is not known what, if any, impact such espousal may have had on the ultimate fate of the Equal Rights Amendment in the 91st Congress.

Notwithstanding its failure in 1970, supporters of the amendment are sanguine that, from the legislative standpoint, it is an idea whose time has arrived, and that the incoming 92nd Congress will be the one finally to submit "equal rights for women" to the States for ratification.

EARLIER EFFORTS TO WIN EQUAL RIGHTS

JUDICIAL INTERPRETATION of the U. S. Constitution over the years has usually occurred against the legal background of English Common Law. As such interpretation has affected the question of the legal rights and status of women, it has tended to uphold in many instances the Common Law concept of a special status (generally, from a legal standpoint, an inferior one) for women before the law.

Well before the adoption of the U. S. Constitution, however, efforts to secure equal legal standing for women had occurred on the North American continent. In 1648 the first petition for the right to vote ever presented in America was placed before the House of Delegates at St. Mary's in the Colony of Maryland by Mistress Margaret Brent. She requested "place and voyce" in the Assembly as the executrix and representative of her kinsman, Lord Baltimore. Her petition was denied because of her sex.

In 1776 Abigail Adams wrote to her husband, John Adams, then in Philadelphia: "I long to hear that you have declared an independency. And, by the way, in the new code of laws which I suppose it will be necessary for you to make, I desire you would remember the ladies and be more generous and favorable to them than your ancestors. Do not put such unlimited power into the hands of the husbands. Remember, all men would be tyrants if they could. If particular care and attention is not paid to the ladies, we are determined to foment a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation."

Within 60 years of the writing of the Constitution, the first of a series of organized challenges to the denial of feminine political, social, and economic equality arose. In 1848 at Seneca Falls, New York, the first Woman's Rights Convention met at the call of Lucretia Mott, Martha Wright, Elizabeth Cady Stanton, and Mary Ann McClintock. Resolutions were drawn calling for the removal of all forms of subjection of women and demanding specifically the right to vote and complete equality under the law.

Post-Civil War Developments

The 14th Amendment, ratified in 1868, was designed chiefly to guarantee rights and privileges to newly liberated Negroes. In its wording Congress departed from previous Constitutional practice with regard to distinction as to sex. In the body of the Constitution, "men" or "women" are not mentioned, but rather "people," "persons," "representatives," "members," and "citizens." The apportional clause of the 14th Amendment, however, refers three times to "male inhabitants" or "male citizens." Efforts by leaders of the women's equality movement to have equality without discrimination as to sex written into the amendment were unavailing, and were similarly unsuccessful with regard to the 15th Amendment, ratified two years later. Abolitionist supporters of the "reconstruction amendments," rejecting the women's attempts, are quoted as having explained: "This is the Negro's hour."

In 1868 the first publication advocating equality of rights for women was issued. The weekly paper, *The Revolution*, was published by Susan B. Anthony and Elizabeth Cady Stanton, and continued for four years.

In the following year (1869) the Territory of Wyoming became the first jurisdiction in the United States to enfranchise women.

A law passed by Congress in 1870 opened the civil service to women in very limited degree. It provided official sanction to prevailing practices with respect to women, however, by permitting appointing officers to confine their consideration for a particular job to members of the male sex.

The Suffrage Amendment

In 1878 the women who had been turned down in their efforts to secure equality for women through the 14th and 15th Amendments succeeded in having introduced in the Congress a Resolution for votes-for-women in the form of a proposed Constitutional amendment. Drafted by Susan B. Anthony, who five years earlier had been convicted by a U. S. court for illegally voting in the 1872 Presidential election, the Suffrage or Susan B. Anthony Amendment, as it became known, was reintroduced in each succeeding Congress until its adoption.

Meanwhile, campaigns were being mounted in the States as well, seeking to attain the vote for women on a State by State basis, and by 1919, when Congress finally passed the Suffrage Amendment by the necessary two-thirds vote, the campaign was proving effective. Washington, California, Oregon, Kansas, Arizona, Nevada, Montana, New York. Oklahoma, South Dakota, and Michigan were added to Wyoming as States which had authorized the vote for women. There were indications of probable similar action in several others.

Rejecting the piecemeal approach, however, and reasoning that what State legislatures enacted they could also repeal, woman suffrage proponents concentrated their major efforts on securing the vote nationwide by amending the Federal Constitution. Spearheading the effort in the latter years of the campaign was Alice Paul who in 1913, fresh from experiences with the suffrage movement in England, formed the National Woman's Party to

promote a militant campaign designed to move the Suffrage Amendment through Congress.

The women's efforts were successful, and on August 20, 1920, less than fifteen months after approval by Congress, ratification of the Nineteenth Amendment was completed. Its two sections state:

"1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

"2. Congress shall have power to enforce this Article by appropriate legislation."

Equal Rights Amendment

Thus fortified, women resumed their campaign for complete legal equality. Still led by Alice Paul, the National Woman's Party succeeded in 1923 in having introduced in Congress for the first time what for almost half a century, and with only minor variation in text, has been known as the Equal Rights Amendment.

Between the year of its first introduction (1923) and 1938, the only legislative actions to ensue were hearings on several occasions before subcommittees of the Judiciary Committees, three of which resulted in the favorable reporting of the amendment to the full Committee.

In 1940 the Equal Rights Amendment received support for the first time in the platform of a major political party. The Republican platform for that year's Presidential election stated: "We favor submission by Congress to the States of an amendment to the Constitution providing for equal rights for men and women." Since that time both major parties have included a similar endorsement of the objectives of the Equal Rights Amendment.

By the end of 1943 the amendment had been reported favorably by House and Senate subcommittees five more times. In that year the Senate Judiciary subcommittee altered the earlier language of the amendment to read:

"Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex. Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation."

The subcommittee report noted that the States were given a share in the "authority to enforce this article by appropriate legislation" because of objections that the amendment might be interpreted to exclude the States from any enforcement powers.

"Equal Rights" Since World War II

Over the years a recurring argument of those opposed to the Equal Rights Amendment has been that so-called "protective" legislation enacted by State and Federal governments would be placed in jeopardy by the amendment's adoption.

The Nation's experience during World War II, however, when in the interest of higher war production most "protective" industrial laws were waived without apparent detriment to women workers, substantially enhanced the position of the amendment's advocates, who had long contended that such laws were essentially unnecessary and were, in fact, discriminatory rather than protective.

In each Congress since 1923 the Equal Rights Amendment has continued to be introduced, its language since 1943 following that adopted in that year. In the House of Representatives, although reported favorably many times by Judiciary Committee subcommittees and on two occasions by the full Committee, the amendment never reached the House floor until the recently-completed 91st Congress (see page 8).

The Senate has been somewhat more favorably inclined toward the amendment, conducting particularly extensive hearings in 1945, 1948, and 1956 (in the Committee on the Judiciary) and bringing the amendment to floor debate on several occasions. One such occurred in July 1946, the sequel to comprehensive hearings held the previous year. The amendment was debated by the full Senate—the first time since its introduction in 1923 that it had reached a point that far along in the legislative process—but failed of passage by a vote of 38 ayes to 35 nays—11 votes short of the required two-thirds majority.

On two subsequent occasions—January 1950 and July 1953—the amendment passed the Senate, but with the "Hayden rider" attached, which leaders of the women's rights movement have consistently felt violated the principle of unqualified legal equality which has long been their avowed goal. Failure of the House of Representatives to act killed the measure on both occasions. A further development in the Senate, occurring in 1960, saw the Hayden rider itself approved but later recommitted to committee, where the effort died.

By the end of the 1950's, members of the Judiciary Committees had reached the conclusion that their close familiarity with the arguments for and against the amendment, coupled with the substantial hearing record that had been accumulated over the years, rendered further oral hearings essentially unnecessary. Throughout the 1960's, despite biennial reintroduction of the amendment, and notwithstanding favorable committee and subcommittee action (most commonly in the Senate), the amendment continued to fail of approval.

It was here that matters stood when, in the Second Session of the 91st Congress, two developments provided major impetus to the campaign in support of the amendment: in the House, the success of Rep. Martha Griffiths of Michigan in forcing discharge of the amendment from the Judiciary Committee, with subsequent House passage by a wide margin; and in the Senate, where Constitutional Amendments Subcommittee Chairman Birch Bayh of Indiana convened the first public hearings on the amendment to be held in more than a decade (see page 8).

LEGAL SETTING—I: FEDERAL LAW INVOLVED

MOST LAWS affecting the political and economic status of women are those which have been enacted by the States and lesser jurisdictions under reserved powers of the Tenth Amendment to the Constitution (see page 5). A limited body of Federal law, both Constitutional and statutory, is additionally of relevance to the question of the legal status of women.

Constitutional Provisions

Among those Constitutional provisions cited in debate over the Equal Rights Amendment are the 19th and portions of the 14th Amendments.

Fourteenth Amendment: "Section 1—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Nineteenth Amendment: (See page 2.)

Federal Statutes

Most Federal statutes cited in the debate over proposals for full legality equality for women pertain to access to and conditions of employment. Among those laws with either direct or indirect impact on the subject are the following:

Fair Labor Standards Act of 1938: Known as the Federal wage and hour law, the FLSA was the first Federal law to establish a floor for wages paid to persons engaged in interstate commerce or the production of goods for commerce, and to encourage a shorter workweek by requiring premium pay for work beyond a specified number of hours. Revised a number of times over the years, the most recent amendments to the law were adopted in 1966. As had previous amendments, the 1966 revisions broadened the law's applicability to a number of occupations not previously covered, including several categories of employment dominated by women workers.

Equal Pay Act of 1963: Signed into law on June 10, 1963, the Act amends the Fair Labor Standards Act by prohibiting employers covered by FLSA from discriminating on the basis of sex in the payment of wages for equal work on jobs requiring equal skill, effort, and responsibility and which are performed under similar working conditions. The law does not prohibit wage differentials based on a seniority system, a merit system, a system measuring earnings by quantity or quality of production, or any other factor other than sex.

Civil Rights Act of 1964: Title VII of the Act, which became effective July 2, 1965, prohibits discrimination in private employment based on sex as well as on race, color, religion, and national origin in industries affecting commerce. The law also applies to labor organizations and to employment agencies, including the Federal-State employment service system. Since July 2, 1968, employers and unions with at least 25 employees or members have been covered.

The law makes unlawful specified acts by employers, public and private employment agencies, labor organizations, and joint labor-management committees, including the following:

For an employer to fail or refuse to hire, to discharge, or otherwise to discriminate against an individual because of race, color, religion, sex, or national origin, with respect to compensation, terms, conditions, or privileges of employment; or to limit, segregate, or classify his employees in any way which deprives them of employment opportunities;

For a union to exclude or expel from membership, limit, segregate or classify its membership; fail or refuse to refer for employment any individual on any of the prohibited grounds; or to cause or attempt to cause an employer to discriminate;

For an employment agency to fail or refuse to refer for employment any individual on any of the prohibited grounds;

For any of the above to print, publish, or cause to be printed advertisements regarding employment indicating any preference, classification, or discrimination on any of the prohibited grounds;

For an employer, labor union, or joint labor-management committee to discriminate on any of the prohibited grounds in apprenticeship or other training or retraining, including on-the-job training programs.

Exception to the above prohibitions is permitted when sex is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business. Among those not covered are local, State, and Federal agencies, government-owned corporations, Indian tribes, and religious or educational institutions where the employee performs work connected with the institution's religious or educational activities.

Executive Orders of the President: In July 1962, President John F. Kennedy issued a directive to Federal agencies to make all selections for appointments, advancement, and training in the Federal service without regard to sex, except

(Continued on page 32)

FEDERAL LAW INVOLVED

Continued from page 4

in unusual circumstances found justified by the Civil Service Commission.

On September 24, 1965, President Lyndon B. Johnson issued Executive Order 11246 which prohibited discrimination on the basis of sex in Federal employment, employment by Federal contractors and subcontractors, and employment on Federally-assisted construction.

On October 13, 1967, President Johnson issued a further Executive Order, #11375, amending and broadening the two previous Presidential directives.

Age Discrimination in Employment Act of 1967: A further Federal statute, enacted in December 1967, is not explicitly directed at women, but is regarded as having potentially major impact on older workers, women as well as men. The law prohibits discrimination in employment against persons 40 to 65 years old by employers, employment agencies, and labor unions, and applies not only to employed persons, but also to those applying for or seeking employment.

LEGAL SETTING—II: STATE LAW INVOLVED

STATE LAWS which make distinctions between men and women cover a variety of subjects, among them legal age of majority, service as jurors, minimum wage, overtime compensation, hours of work, industrial homework, occupational limitations, and employment before and after childbirth.

Age of Majority

In most States legal majority is attained at the age of 21 for men and 18 for women, although exceptions are noted to the legal majority of 18-year-olds in some instances (with respect, for example, to age at which alcoholic beverages may be purchased).

Marriage laws are an area in which age distinction is commonly made according to sex. Of fifty-three United States jurisdictions (the 50 States, District of Columbia, Puerto Rico, Virgin Islands), thirty permit marriage without parental consent for men at age 21 and women at age 18. In 14 jurisdictions both parties must be 21, in one both parties must be 20, in two 19, and in four 18. The remaining two permit marriage at age 18 for women and ages 20 and 19 respectively for men.

Jury Service

Through 1969, a survey conducted by the Legislative Reference Service of the U. S. Library of Congress indicated that in all of the fifty States there was no distinction between males and females as to basic qualifications for service on juries. Twenty-six States do not appear to have any distinction between males and females, although in some an affirmative act may have to be performed by a woman or a determination made by the body listing potential jurors before service may be allowed.

In the State of Washington, according to the above study, a literal reading of statutes would appear to indicate that although women are qualified to be jurors, if they have an exemption it is mandatory that they exercise it. In the remaining 23 States, no distinction appears as to qualifications, but exemptions or excuses are provided for women or for members of female-dominated professions or categories.

Those States making no distinctions and providing no female exemptions are Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Michigan, Mississippi, Nebraska, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Vermont, West Virginia, and Wisconsin.

States making no distinctions but permitting female exemptions are:

Alabama—"A female has a right to be excused for good causes shown in the discretion of the judge."

Connecticut—Exemption, if desired, for any woman who is a trained nurse in active practice, an assistant in a hospital, or an attendant nurse or who is nursing a sick member of her family, or who cares for one or more children under the age of 16 years.

Georgia—Excuse provided for a housewife with children 14 years or younger, and any woman who does not desire to serve may notify jury commissioner to that effect and her name will not be placed in jury box.

Iowa—Exemption for registered nurses.

Kansas—Duty of each township and city assessor to inquire of each woman elector whether she desires to be exempt from jury service.

Louisiana—A woman shall not be selected for jury service unless she has previously filed with the clerk of the court of the parish in which she resides a written declaration of her desire to be subject to jury service.

Massachusetts—Exemption for trained nurses, attendant nurses, mothers of children under 16 years of age or women having custody of such children, and women members of religious orders.

Minnesota—A woman may be excused upon request in the discretion of the court.

Missouri—Excuse provided for any woman who requests exemptions before being sworn as a juror.

Montana—Exemption provided for nurses engaged on a case or a "person" caring directly for one or more children.

Nevada—Exemption for any woman for one year periods upon filing of a written statement claiming exemption.

New Hampshire—Exemption provided for any woman who has care of one or more children under the age of twelve years if she so desires.

New Jersey—Exemption for any "person" who has the actual physical care and custody of a minor child.

New York—Exemption provided for a woman.

Ohio—Exemption for registered nurses and nuns.

Oklahoma—Exemption, if claimed, for all women with minor children.

Rhode Island—A woman can be excused upon notice.

South Carolina—Excuse, declared by presiding judge, for any woman who has the legal custody and duty of care of a child under seven years of age.

Tennessee—A woman has the option of serving or not when summoned to jury duty.

Texas—Exemption for all females who have legal custody of a child or children under the age of sixteen, and for all registered, practical, and vocational nurses actively engaged in the practice of their profession.

Utah—Exemption for a female citizen who has the active care of minor children.

Virginia—Women are exempt.

Wyoming—A woman may be excused from jury service "when household duties or family obligations require her absence."

Minimum Wage Laws

In an August 1970 publication, the Women's Bureau of the U. S. Department of Labor describes distinctions according to sex in State labor laws. With regard to minimum wage legislation it states as follows:

"A total of 38 States, the District of Columbia, and Puerto Rico have minimum wage laws with minimum rates currently in effect. These laws apply to men as well as women in 31 States, the District of Columbia, and Puerto Rico. In seven States minimum wage laws apply only to women or to women and minors. Several additional States have minimum wage laws, applicable to females and/or minors, which are not in operation."

The jurisdictions with minimum wage legislation include those with statutory rate and wage board laws for men, women, and minors; those with statutory rate law only, applicable to men, women, and minors; and those with wage board law only for men, women, and minors.

Overtime Compensation

The Women's Bureau states in a 1969 publication that of the sixteen States, the District of Columbia, and Puerto Rico, which have laws or regulations (usually part of the minimum wage program) that provide for overtime compensation, one State—Idaho—separates a premium pay (overtime wage rates) requirement from the minimum wage program and applies it to women only. Three additional States—California, Colorado, and Oregon—apply overtime pay requirements to women and minors only.

Hours of Work

Forty-six States, the District of Columbia, and Puerto Rico have established standards governing at least one aspect of women's hours of employment—maximum daily or weekly hours, day of rest, meal and rest periods, or nightwork. Forty-one States and the District of Columbia regulate the number of daily and/or weekly hours of employment for women in one or more industries. Such limitations have been established either by statute or by order. Nine States—Alabama, Alaska, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, and West Virginia—as well as Puerto Rico do not have such laws. However, laws or wage orders in five of these jurisdictions—Alaska, Hawaii, Idaho, Puerto Rico, and West Virginia—require the payment of premium rates for time worked over specified hours.

Hours standards for three of the 41 States—Georgia, Montana, and South Carolina—are applicable to both men and women. In addition there are three States—New Mexico, North Carolina, and Washington—which cover men and women in some industries and women only in others.

The standard setting the fewest maximum hours which may be worked varies from State to State. In 16 jurisdictions, the standard in one or more industries is eight hours per day, 48 hours per week maximum. Two States (South Carolina and Oregon) permit a maximum of eight hours per day, 40 hours per week. Four States (Kentucky, Georgia, Maryland, and Mississippi) have set ten hours per day and 60 hours per week as a maximum. The remainder range between 40 and 60 hours per week, the most common maximum, as noted above, being eight hours per day and 48 hours per week.

Day of Rest: Twenty-six States, the District of Columbia, and Puerto Rico have established a six-day maximum workweek for women employed in some or all industries. In eight of these jurisdictions this standard is applicable to both men and women. Of the remaining 30 States, 20 have laws that prohibit specified employment or activities on Sunday.

Meal Period: Twenty-three States, the District of Columbia, and Puerto Rico provide that meal periods, varying from 20 minutes to one hour in duration, must be allowed women employed in some or all industries. In three States these provisions apply to men as well as women.

Combining rest period and meal period provisions, Kentucky requires, before and after the regularly scheduled lunch period (duration not specified), rest periods to be granted to females; Wyoming requires two paid rest periods, one before and one after the lunch hour, to be granted to females employed in specified establishments who are required to be on their feet continuously.

Rest Period: Twelve States and Puerto Rico provide by statute or wage order for rest periods (as distinct from meal periods) for women workers. The statutes in four of these States—Alaska, Kentucky, Nevada, and Wyoming—cover a variety of industries (in Alaska and Wyoming, applicable only to women standing continuously); laws in New York and Pennsylvania apply to elevator operators not provided with seating facilities. Rest periods in one or more industries are required by wage orders in Arizona, California, Colorado, Oregon, Utah, Washington, and Puerto Rico. Most of the provisions are for a ten-minute rest period within each half day of work. The North Dakota Manufacturing Occupation Order prohibits the employment of women for more than two hours without a rest period.

Arkansas manufacturing establishments operating on a 24-hour schedule may be exempt, when necessary, from

the meal period provision if females are granted two ten-minute paid rest periods and provision is made for them to eat at their work.

Nightwork: In 18 States and Puerto Rico nightwork for adult women is prohibited and/or regulated in certain industries or occupations. Nine States and Puerto Rico prohibit nightwork for adult women in certain occupations or industries or under specified conditions. In North Dakota and Washington the prohibition applies only to elevator operators; in Ohio, only to taxicab drivers.

In nine other States, as well as in several of the jurisdictions that prohibit nightwork in specified industries or occupations, the employment of adult women at night is regulated either by maximum hour provisions or by specified standards of working conditions.

Equal Pay

Thirty-one States have equal pay laws applicable to private employment that prohibit discrimination in rate of pay based on sex. These establish the principle of payment of a wage rate based on the job and not on the sex of the worker. Five States with no equal pay law have fair employment practices laws and the District of Columbia, an ordinance, that prohibit discrimination in rate of pay or compensation based on sex.

The thirty-one States with equal pay laws are: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Washington, West Virginia, and Wyoming. In addition, fair employment practices acts in five states with no equal pay law—Idaho, Nevada, Utah, Vermont, and Wisconsin—prohibit discrimination in rate of pay or compensation based on sex.

Equal pay laws in Colorado, Georgia, Indiana, Kentucky, Maryland, Montana, Nebraska, North Dakota, and Pennsylvania are applicable to public as well as private employment. In 21 States the laws apply to most types of private employment; in general, those specifying exemptions exclude agricultural labor and domestic service. The Illinois law applies only to manufacturing.

Fair Employment Practices

Thirty-seven States, the District of Columbia, and Puerto Rico have fair employment practice laws, but only 15 of the States and the District of Columbia include a prohibition against discrimination in employment based on sex. Such laws tend to expand, in the jurisdictions concerned, the effect of Title VII of the Federal Civil Rights Act of 1964 which prohibits discrimination in private employment based on sex (in addition to race, color, religion, and national origin). Title VII covers private employment and labor organizations engaged in industries affecting commerce, as well as employment agencies, and applies to such employers and unions with at least 25 employees or members.

Two additional States—Alaska and Vermont—prohibit discrimination based on sex in wages only. In a third State—Colorado—the law prohibits only discrimination based on sex in apprenticeship, on-the-job training, or other occupational instruction, training, or retraining programs.

Prior to passage of the Federal Civil Rights Act, only two States—Hawaii and Wisconsin—prohibited sex discrimination in employment.

Industrial Homework

Nineteen States and Puerto Rico have laws or regulations controlling industrial homework (the performance of labor for an employer, generally on a "piece-work" basis, in the home). These apply to all persons except in Oregon, where the provisions apply to women and minors only.

Employment Before and After Childbirth

Six States and Puerto Rico prohibit the employment of women in one or more industries or occupations immediately before and/or after childbirth. In addition to a prohibition against employment, Puerto Rico requires the employer to pay the working mother half her regular wage or salary during an eight-week period and provides for job security during the required absence.

Rhode Island's Temporary Disability Insurance Act provides that women workers covered by the Act who are unemployed because of sickness resulting from pregnancy are entitled to cash benefits for maternity leave for a 14-week period beginning with the sixth week prior to the week of expected childbirth, or with the week childbirth occurs if it is more than six weeks prior to the expected birth.

The New Jersey Disability Benefits Act provides that women workers to whom the Act applies are entitled to cash payments for disability existing during the four weeks before and the four weeks after childbirth.

Also, the Oregon Mercantile Order recommends that an employer should not employ a female at any work during the six weeks preceding and the four weeks following the birth of her child, unless recommended by a licensed medical authority.

Occupational Limitations

Twenty-six States have laws or regulations that prohibit the employment of adult women in specified occupations or industries or under certain working conditions that are considered hazardous or injurious to health and safety. In 17 of these States the prohibition applies to women's employment in or about mines, while ten States prohibit

(Continued on page 32)

STATE LAW INVOLVED

Continued from page 7

women from mixing, selling, or dispensing alcoholic beverages for on-premises consumption.

A number of other specified occupations or industries are prohibited to women by the laws of the various States. These occupations include bellhop, occupations requiring constant standing, in blast furnaces and smelters, as crossing watchmen, section hand, express driver, metal molder, gas or electric meter reader, in shoeshine parlors, pinsetters in bowling alleys, in various types of baggage and freight handling and trucking, among others.

Personal and Property Rights of Married Women

State laws concerning personal and property rights of single persons are generally the same for males and females. In a number of States, however, significant differences exist in legal treatment between married men and married women. The subject is a complex one which does not lend itself to summary treatment, although the general nature of such distinctions may be noted.

There are basically two types of matrimonial property systems in the United States: in 42 States and the District of Columbia, earnings and property acquired during marriage are owned separately by the spouses; in eight States—Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, and Washington—earnings and most property acquired by either spouse during marriage are owned in common. (The systems of the separate property States derive from the English Common Law; those of the community property States adopt the French or Spanish civil law concept.)

While all States have modified in some degree inequities arising from outmoded laws with regard to property rights of married women, many continue to remain. In the separate property States, for example, a wife has no legal rights to any part of her husband's earnings or property during the existence of the marriage, aside from a right to be properly supported. In the community property system, while the wife has an interest in the commonly owned property, the husband generally has exclusive authority to manage and control such property.

"EQUAL RIGHTS" ACTION, 1969-1970

SINCE THE beginning of the Nixon Administration and the opening of the 91st Congress in 1969, developments concerned with the question of "women's rights" have occurred in both the Executive and the Legislative Branches of the Federal Government.

A. Executive Actions

The Nixon Administration has expressed on a number of occasions support for the objectives sought in the Equal Rights Amendment, and has initiated a number of actions expressive of such support.

Prior to the 1968 Presidential election, Mr. Nixon stated (in July 1968):

"Forty-eight years ago, American women were given the Constitutional right to vote. Today it is accepted as a matter of course that men and women have an equal electoral franchise in this country and that American men and women will have an equal voice in choosing a new President, a Congress and state and local governing officials and bodies.

"But the task of achieving Constitutional equality between the sexes still is not completed. All Republican National Conventions since 1940 have supported the long-time movement for such equality.

"It is my hope that there will be widespread support for the Equal Rights for Women Amendment to our Constitution, which would add equality between the sexes to the freedoms and liberties guaranteed to all Americans."

Executive Order 11478

On July 10, 1969, several days after a meeting with women Members of the Congress, the President requested top officials in the Executive Branch to undertake renewed efforts to open more high-level Federal positions to qualified women.

One month later, on August 8, the President issued Executive Order #11478, superseding portions of earlier directives (Executive Orders 11246 and 11375—see page 4), and restating and amplifying the principle of equal employment opportunity in the Federal Government. The salient language of the Order states:

"It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government."

Citizens' Advisory Council

On August 15, 1969, the President named his appointees to the Citizens' Advisory Council on the Status of Women. Originally created in November 1963 by President John F. Kennedy, the Council "serves as a means of suggesting and stimulating action with private institutions, organizations, and individuals working for the improvement of conditions of special concern to women. The Council reviews and evaluates the progress of organizations in furthering the full participation of women in American life as well as advising and assisting the Interdepartmental Committee on the Status of Women in evaluating the total progress made in this area and recommending action to accelerate that progress."

On February 13, 1970, the Council forwarded to the President a resolution stating: "The Citizen's Advisory Council on the Status of Women endorses the proposed Equal Rights Amendment to the United States Constitution and recommends that the Interdepartmental Committee on the Status of Women urge the President to immediately request the passage of the proposed Equal Rights Amendment by the Congress of the United States."

Task Force on Women's Rights & Responsibilities

Meanwhile, on October 1, 1969, the President appointed a special Task Force on Women's Rights and Responsibilities, which filed a report signed by its chairman, Virginia R. Allan, on December 15, 1969. Among the recommendations made were the appointment of more women to positions of top responsibility in all branches of the Federal Government, a series of recommendations to be implemented by the Executive Branch, the calling of a White House Conference on Women's Rights and Responsibilities, the establishment of an office of Women's Rights and Responsibilities in the Executive Branch, and a program of legislative recommendations for action by Congress. In the latter was included a call for passage of the pending resolution proposing to the States an Equal Rights Amendment to the Constitution.

Labor Department Guidelines

On June 9, 1970, the Women's Bureau of the U. S. Department of Labor issued a set of guidelines, pursuant to Executive Order 11246 (see page 4), designed to assure equal job opportunity for women on work performed by private contractors paid for by Federal funds.

B. Action in the Congress

Early in the 91st Congress the Equal Rights Amendment was introduced—as it had been regularly over the preceding 45 years—in both the House of Representatives and the Senate. In the Senate, the text of the amendment, unchanged since 1943, was introduced on February 28, 1969, by Senator Eugene McCarthy, Minn., D., as Senate Joint Resolution 61. In the House it appeared as House Joint Resolution 264, introduced by Rep. Martha Griffiths, Mich., D. Both were routinely referred to the respective Judiciary Committees where, for the remainder of 1969 and well into 1970, no legislative action ensued.

House of Representatives

Although, as will be seen below, the earliest 91st Congress action on the Equal Rights Amendment occurred in the Senate's Constitutional Amendments Subcommittee in May 1970, the most noteworthy developments occurred in the House of Representatives three months later, in August 1970.

Over the years since 1923, when the amendment had been first proposed, the Judiciary Committee of the House of Representatives had considered it on many fewer occasions than had its counterpart in the Senate. In those years when the amendment, either in original form or modified by the "Hayden rider" (see pages 1, 2), had reached the Senate floor, failure of the House Judiciary Committee to act had killed the proposal.

On January 16, 1969, Rep. Griffiths introduced the amendment; as H. J. Res. 264, it was referred to the Judiciary Committee, chaired by Rep. Emanuel Celler, N. Y., D. Although the amendment had been introduced in each previous Congress, it had been 1948 since the House Judiciary Committee last held hearings on it. None ensued in the 91st Congress.

Consequently, on June 11, 1970, Rep. Griffiths introduced a discharge petition whose effect would be to remove the amendment from the Judiciary Committee and bring it to the House floor for consideration. Although a seldom-successful parliamentary maneuver, by July 20 the petition had received the requisite number of signatures (half the total Membership of the House, plus one). On August 10 the petition received favorable vote by the House and on the same day, following one hour of debate, the Equal Rights Amendment was approved by a vote of 350 to 15—the first time in its half-century history that it had received favorable action by the full House of Representatives.

Senate Action

Meanwhile, Senator McCarthy of Minnesota had introduced the amendment in the Senate on February 28, 1969, as Senate Joint Resolution 61. At the time of introduction, the resolution had 43 cosponsors, which number later rose to more than 80 Members of the Senate, with additional Members expressing support but not joining in sponsorship. The measure was referred to the Judiciary Committee's Subcommittee on Constitutional Amendments, chaired by Sen. Birch Bayh, Ind., D.

For three days in early 1970—May 5, 6, and 7—the Subcommittee held hearings on the amendment, the first such sessions since the late 1950's. On July 28 the proposal was favorably reported to the full Judiciary Committee.

The latter convened hearings of its own, following the unexpected passage of the amendment by the House in mid-August; these were held over a four-day period in September—the 9th, 10th, 11th, and 15th. No further action ensued in the Senate Judiciary Committee.

Meanwhile, other developments were bringing consideration of the amendment to a head in the Senate. When the House-passed version reached that body, Democratic Majority Leader Mike Mansfield of Montana objected to the normally routine procedure of referring the proposal to committee, and instead held it "at the desk" for placement on the Senate calendar.

On October 7, 1970, the Equal Rights Amendment by this procedure reached the floor of the Senate which, over the period of October 7-14: rejected an amendment to H. J. Res. 264 by Senator Allen of Alabama which provided that each State "shall have sole and exclusive jurisdiction of the organization and administration of all public schools within such State"; approved an amendment by Senator Ervin of North Carolina assuring the validity of any laws which exempt women from compulsory military service; and approved an amendment by Senator Baker of Tennessee providing for the right of persons legally assembled in any public building to participate in non-denominational prayer.

In the face of these and other moves to alter or expand the purposes of the Equal Rights Amendment, including the introduction of separate alternative versions and suggestions (not acted upon) that it be further amended relative to the political status of the District of Columbia, debate on the amendment was discontinued on October 14. Following the one-month election recess, the amendment on November 16 was returned to the Senate calendar —a move which could have permitted resumption of debate at the wish of the Senate, but which, in the event, killed the amendment in the 91st Congress.

As a sequel to these events, Senator Ervin, who had offered a number of proposals to change the House-passed amendment as well as distinct versions of the amendment of his own authorship, announced that he was undertaking a comprehensive study of existing State laws in an effort to provide the Congress with more complete data than it had heretofore possessed relative to the possible impact of the amendment on "protective" and other women-oriented legislation presently in force.

PRO

Should Congress "Equal Rights

by HON. BIRCH BAYH
United States Senator, Indiana, Democrat

From an address given on the floor of the U.S. Senate on October 7, 1970, at the outset of debate on H. J. Res. 264, the House-passed Constitutional Amendment proposal for "equal rights for men and women." Sen. Bayh is Chairman of the Constitutional Amendments Subcommittee of the Senate Committee on the Judiciary which has conducted hearings on the above and related proposals.

"I RISE to express my enthusiastic support for House Joint Resolution 264, the proposed amendment to the Constitution to guarantee equal rights for men and women.

"As the chairman of the subcommittee which has held hearings on this matter, and as one of the principal sponsors, I feel that it is important to set out the interpretation of the supporters of the measure relative to some of the controversial points. This is important in hopes of persuading some to join in support who otherwise would not. I am also sure that the courts at some future date might look to see what certain of us felt the critical points of the amendment should be interpreted to mean.

"In my judgment, only by passing the equal rights amendment can we abolish the discrimination which exists today in the eyes of the law on the basis of sex.

"For almost one-half a century, we have failed to take action on this amendment and by failing to act have allowed the women of our country, in many respects, to suffer the burdens of second-class citizenship—burdens which by no reasonable explanation can be justified or should be tolerated.

"This proposed amendment provides that—

" 'Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have the power, within their respective jurisdictions, to enforce this article by appropriate legislation.'

"The language of the amendment warrants careful study, for there is considerable controversy over what it does or does not mean. It would not eliminate all the differences between the sexes. Congressional enactment would not and should not eliminate the natural physiological differences between the sexes. But Federal, State, and local governments can be prohibited from imposing legal distinctions based on sex. That is exactly what the equal rights amendment is designed to do—no more, no less.

"Some complaints have been heard that this amendment has been presented without adequate study. No amendment has been more thoroughly studied than this one. The amendment itself is not new. Resolutions proposing this amendment have been introduced in every Congress since 1923. In earlier years, hearings were held by the House Judiciary Committee in 1948, and by the Senate Judiciary Committee in 1956. The amendment was reported favorably by the Senate Judiciary Committee in the 80th, 81st, 82d, 83d, 84th, 86th, 87th, and 88th Congresses.

"In addition, the bill has been debated twice previously by this body, in 1950 and 1953. However, both times this measure was passed it had been amended by the addition of the so-called Hayden rider. That rider provided that the amendment 'shall not be construed to impair any rights, benefits, or exemptions now or hereafter conferred by law, upon person of the female sex.' All supporters of the amendment agreed that the rider effectively destroyed the intended result of the amendment. For it is under the guise of 'rights and benefits' that women have often been deprived of rights which are available to men.

"In other words, the term 'rights and benefits,' although well-intentioned phraseology, actually has served to penalize women and deny them rights.

"It is for this reason that in the 86th Congress, after the Hayden rider had again been added during the floor debate, sponsors of the bill agreed to recommit the bill to committee, rather than have it enacted in that form.

"More important, there has been significant new action in this Congress. The Subcommittee on Constitutional Amendments, which I serve as chairman, held 3 days of extensive hearings on the amendment—on May 5, 6, and 7, 1970. We heard 42 witnesses, representing all possible points of view about the amendment, and compiled a record of printed hearings comprising almost 800 pages. The Subcommittee on Constitutional Amendments reported the measure favorably to the full Judiciary Committee on July 28, 1970.

"But that is not the full extent of study in this Congress. The Judiciary Committee held a series of additional hearings, including comments from a series of distinguished law professors.

(Continued on page 12)

PRO—BAYH, *continued from p. 10*

"This year for the first time this amendment was debated on the floor of the House of Representatives. And the way in which it was brought to the floor in the House indicates the wide-spread support that this proposal has across the country. Since the House Judiciary Committee had never reported the joint resolution, Representative Griffiths filed a discharge petition and obtained the requisite number of signatures. The bill was brought before the House on August 10, 1970, and passed by the overwhelming vote of 350-15.

"So I think that this record of floor action and at least four separate sets of hearings clearly refutes the charge of inadequate consideration of this bill. This measure has been before us and the subject of general discussion for more than 47 years. Now is the time for action.

"Now is the time to stop pretending that we are in favor of women, widows, and children and to actually give them more equal treatment. Representative Griffiths had to resort to the parliamentary discharge petition, and the majority leader had to ask that that measure be kept on the calendar, rather than being sent back to committee, because only by such tactics can we prevent a few people who are opposed to this measure from keeping us from having a chance to discuss it at all.

"Of course, the record of committee study and previous floor action does not mean that there is no need for debate. I welcome the opportunity for debate. I know that all of its supporters do, as well. No change should be made in the Constitution without complete study and full debate. But I think that when my colleagues study this proposed amendment and the record of the hearings which have been held, they will conclude along with me that it is the Senate's turn to act. It is time to assure equality of legal rights for all our citizens.

"Some opponents of the equal rights amendment argue that it is unnecessary. They feel that the 14th amendment together with a series of statutes have effectively eliminated the type of discrimination which the equal rights amendment would make unlawful. I disagree.

"Let there be no doubt about it. We have made considerable progress in recent years. Especially in the last few years the courts have taken great strides toward providing the kind of equality I believe is necessary. I believe that if given enough time the Supreme Court would eventually hold that the equal protection clause of the 14th amendment demands the kind of equality between the sexes which the equal rights amendment would guarantee. But that process would take far too long in my judgment.

"It seems to me that the Supreme Court has never interpreted the 14th amendment as treating women as truly equal.

"A three-judge panel in *White* v. *Crook* (1966) struck down an Alabama statute denying women the right to serve on juries. That case was not appealed to the Supreme Court, and the Supreme Court has not spoken on the matter since then.

"The case of Phillips against Martin-Marietta is presently before the Court on certiorari. But if we look at the Government's argument against Martin-Marietta, they do not make their case under the 14th amendment. They make a case based upon title VII of the Civil Rights Act of 1964. They do not make it on the right of women to be treated as equal persons under the 14th amendment.

"I cannot see how anyone conversant with the law can look at the Hoyt case and deny the fact that there the Supreme Court of the United States permitted a State statute to stand which, in essence, denies women the same right and opportunity to serve on juries as men.

"The courts have not been alone. In 1963, Congress passed the Equal Pay Act. It provides that no employer subject to the act shall discriminate in salary 'because of sex between different employees for equal work on jobs the performance of which requires equal skill, effort, and responsibility.' Another important step was taken in title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of sex, in addition to race and national origin.

"It was this section of the Civil Rights Act of 1964 on which the Government bases its contention that Martin-Marietta discriminated against Mrs. Phillips. The Supreme Court has now granted certiorari in that case. As I read the 14th amendment's language, it should encompass women. But just because it ought to does not mean that the court has interpreted it in this manner. Hoyt was decided by the highest court in the land.

"The State legislatures have also made great forward strides in recent years. Many of them have worked hard to eliminate discrimination against women in terms of limitations on hours and conditions of work, minimum wages, the age of legal majority, jury service, and many other areas.

"Indeed, we have made progress, through Federal and State legislation, through judicial decisions, and through executive action. But much remains to be done.

"Let me provide only a few examples. If we are really concerned about these mothers and widows and children, let us look at a few examples of the laws that exist today and see how they treat these women and widows and children.

(Continued on page 14)

PRO—BAYH, *continued from page 14*

"I do not agree with the contention of some persons that if this measure becomes law women will automatically be drafted.

"In some cases the existing legal distinctions based on sex will be retained because of 'an overriding and compelling public interest.' I think that such an interest is present here. Combat duty is more dangerous and demanding than any other job. Because combat demands absolutely unique abilities, Congress might justifiably decide that women are not physically suited for it, just as it has decided that men without the requisite physical characteristics are not suited. And since all soldiers must be trained for combat duty, there is no reason to believe that women would be drafted any more than men who are not considered, in the judgment of Congress, to be suited, are drafted. The only likely effect of the amendment would be to prevent Congress from setting arbitrary limits on the number of women who may enlist, unless those limits are directly related to the proven needs of the military. The amendment would thus allow those women who wanted to serve to volunteer.

"Some have charged that this amendment would end the benefits that women, particularly in their role as wives and mothers, enjoy. However, the purpose of the amendment is not to cut down benefits accorded to only one sex, but to extend them to both sexes.

"What do we do when we have broken families? There has been much discussion of the problem of alimony. Some say if this measure passes it will prevent the proper support of people from broken homes.

"The passage of the equal rights amendment would not make alimony unconstitutional. It would only require a fair allocation of it on a case-by-case basis. In the great bulk of cases, women would still receive alimony or support payments. I see no reason not to make all men eligible for alimony, as is already the case in nearly one-third of the States. A man might justifiably collect, for example, if the man were disabled and unable to work, and the woman was independently wealthy.

"We are suggesting that we should make uniform the practice presently followed in one-third of the States. In those States the question of who should provide alimony and child support is decided on a case-by-case basis. In most cases the man would provide it, but in the case I mentioned earlier, if the man were crippled and unable to work, and if the woman has independent sources of income, it seems to me the judge ought to be able to take that into consideration.

"Protective labor legislation is also an issue in this debate. It has been said that women workers would be exploited if this legislation were nullified by passage of the equal rights amendment. Of course, protection of workers against unethical or unhealthy labor practices is of the utmost importance. Therefore, we were especially careful to explore this charge carefully at our hearings.

"I think that I have shown that there is indeed a great need for the equal rights amendment. We must make it abundantly clear for future years that we will not tolerate discrimination based on sex, instead of the attributes of each individual. I think, further, that there is ample evidence to show that this measure has been fairly and completely studied. It is legally sound.

"The amendment is needed. It is sound. It has been passed by the House. Now it is time for this body to act."

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by HON. MARTHA W. GRIFFITHS

United States Representative, Michigan, Democrat

From testimony presented before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary on May 5, 1970, during consideration of Constitutional Amendment proposals to provide "equal rights for men and women." Rep. Griffiths introduced in the House of Representatives the Equal Rights Amendment subsequently adopted by that body.

"IT IS certainly possible for the courts of this country to interpret the Constitution to make an equal rights amendment totally unnecessary; but anyone who has read any decision from the Supreme Court, any Federal Circuit Court, or any District Court must know, by now, that this never is going to happen. Therefore, as an introducer of the Equal Rights Amendment, I urge the passage of this amendment forthwith, without so much as adding a comma.

"For all of those supporters of the status quo, all of those admirers of the rule of *stare decisis*, those people who believe that the courts have created havoc, those admirers of yesterday, let them look to any decision in any Federal court that deals with women and they will find, almost without exception, that as women are treated today by those courts, they were treated yesterday and yesterday and yesterday—throughout the life of this nation.

"In a man's view of the world, men work for money—they have mothers; wives; widows and children. It is a man's duty to love and honor his mother; to support his wife and children; and to provide for his widow and orphans. In this rather simple view of today's world, a woman is a mother, a wife, or a widow. Laws made and interpreted in this country almost exclusively by men for 180 years have welded these views into the statutory and case law of the country. Thus, no woman litigant has ever

(Continued on page 18)

PRO—BAYH, *continued from page 12*

"Until 1966, three States excluded women from juries altogether. In one State, women—but not men—must register specially to be eligible to serve on juries.

"In one State, there is a statute allowing women to be committed for up to 3 years in the reformatory for offenses such as 'drug using' and 'habitual intoxication,' although men cannot be sentenced to more than 30 days for drunkenness. That hardly seems like equality.

"In at least eight States women cannot contract or sign leases until they are 21, while men can do so at 18.

"If women mature at an earlier age than men, why should we give the opposite right to men in these States where men are permitted to contract at the age of 18 and women are not permitted until the age of 21?

"California and four other States require a married woman to obtain a court order before establishing an independent business. Eleven States place special restrictions on the right of a married woman to contract. In three States, a married woman cannot become a guarantor or surety.

"Women continue to be discriminated against in admissions to public colleges. In the fall of 1968, only 18 per cent of the men entering public 4-year college had received high school grade averages of B-plus or better.

"But 41 per cent of the freshmen women had attained such grades. One State university has published an admissions brochure saying that 'Admission of women on the freshman level will be restricted to those who are especially well qualified.' There was no such requirement made for men.

"Sex discrimination still exists in the labor laws of every State in the Union except Delaware. And despite contrary decisions under title VII of the 1964 Civil Rights Act by the Equal Employment Opportunity Commission, two Federal appeals courts, and several State attorneys general, a recent survey showed that 51 per cent of major employers continue to enforce these restrictions.

"Thirty-nine States and the District of Columbia impose limitations on the number of hours worked by women. These provisions often preclude women from occupying supervisory jobs requiring overtime.

"This is a specific example of what I mentioned a moment ago.

"These so-called protective laws which are supposed to give special privileges and rights to women are really 'privileging' them right out of meaningful advancement and opportunities in the employment market.

"During the hearings the committee was told that 26 States have laws or regulations which completely bar adult women from certain occupations or professions. For example, in nine States, women are not allowed to mix, sell, or dispense alcoholic beverages.

"One witness pointed out that the weight-lifting laws in New York only 'protect' women from lifting weights in foundries.

"It is clear that there is a legal need for the equal rights amendment. But to my mind the most important reason for enacting this amendment is its symbolic value. The amendment will not eradicate, immediately upon passage, all the unduly discriminatory habits and customs of this country. No amendment or statute could immediately solve the whole problem of unfair discrimination based on sex. The bulk of the prejudice and unfairness against women does not stem from the command of specific statutes. It is much more subtle. It comes from socially engrained ideas about the 'proper role of women.'

"We want to make sure women have the dignity and legal status to which they are entitled. It is a proper role for women to pay taxes, it is a proper role to serve in the Armed Forces, in philanthropic agencies, and to nurse the sick and administer to the poor, and it is a proper role to provide all sorts of services to the country. Those are proper roles. But many males believe that this 'proper role' should keep women from developing their full potential.

"But I believe that passage of this amendment will go a long way toward providing the kind of dignity and legal status to which every American is entitled. It would prod the courts into taking long-overdue action. It would prod many employers into reevaluating their employment practices, to see whether they, too, hire, assign work, and determine pay scales on the basis of sex, instead of making those decisions on the basis of an honest evaluation of each individual's personal abilities.

"The addition of this amendment to the Constitution will symbolize the dedication of this country to providing true equality for all. It will show the world that all our citizens are in fact equal in the eyes of the law. We must not minimize the importance of such symbolic action. Even if there were no State discrimination which would be made illegal by the passage of this amendment, I would still be an ardent proponent.

"For the past hundred years we have been in the midst of a peaceful revolution, to make sure that all our citizens, whether or not part of a minority, are truly equal. An explicit statement in our Constitution that both sexes are equal before the law is long overdue.

"Some critics have charged that this amendment should not be passed by this body because it would cause chaos in the courts, and upset many relationships in our society. I strongly disagree.

(Continued on page 16)

PRO—GRIFFITHS, *cont. from page 16*

stood before the Supreme Court of this country and successfully argued that she is entitled to the equal protection of the law's clause of the 14th Amendment.

"In every instance that I know where a State has enacted so-called protective laws, the courts of this country, including the Supreme Court, have determined that it was well within their powers. As late as 22 years ago, in Goesaert v. *Cleary*, the majority of the Supreme Court, in a decision written by Justice Frankfurter, a decision, I might say, that comes close to being obscene, denied the 'equal protection' clause to possible women bartenders in Michigan.

"In November, 1961, Justice Harlan was able to determine that a Florida statute, which granted women an absolute exemption from jury duty based solely on their sex, but included no similar exemption for men, was absolutely within the powers of the State of Florida. He also was able to distinguish this from cases where Negroes or Mexican Americans were excluded from juries. He was so engrossed in the rights of every woman to remain at home that he scarcely bothered to mention the rights of the female defendant, convicted of a capital crime, if indeed he believed that she had any, or for that matter, even a soul.

"Now, what happens, when the Congress attempts to equalize rights for women. The 1964 Civil Rights Act gives you a good example of the Federal Court system at work.

"This law, as it relates to women, was first tried in Cooper v. *Delta Air Lines, Inc.*, where Delta Air Lines had fired a stewardess for marrying. In an incredible decision, Judge Comiskey determined that 'sex just sort of found its way into the Civil Rights Act.' Having determined that amendments did not count, he ruled against the stewardess, although Delta admitted that the only question in the case was whether being single was a bona fide occupational exception.

"In the case of *Ida Phillips* v. *the Martin-Marietta Corporation*, the Fifth Circuit Court of Appeals affirmed the decision of the lower court which held that an employer, who was willing to hire men with preschool-age children for a certain position, but would not hire women with preschool-age children for the position, did not violate the Civil Rights Act. Having determined that Martin-Marietta hired other women, the court then determined that Martin-Marietta had added a qualification other than sex for denying the woman the job.

"This case is now on appeal to the Supreme Court and I am happy to say the Attorney General has entered on the side of Mrs. Phillips.

"Wouldn't you think that the Fifth Circuit would have considered the results of their action? Couldn't they just once have thought in the terms of modern America. What they really were saying was that the children of women can starve, or the mother can work for $1.00 per hour, where no one bothers to ask how many children you have.

"The Equal Pay Act has been interpreted recently by the courts in 2 or 3 instances for the benefit of women; but there are literally millions of instances in this country where there is unequal pay for the same work. Unions, uttering pious platitudes on brotherhood, are still willing to set up distinctions without differences in work, and negotiate different pay for men and women.

"It has been suggested that the Equal Rights Amendment would, if enacted, wipe out dower rights. Dower rights were valuable in the Middle Ages in entailed lands. Any night school lawyer can show a husband today how to beat dower rights. The rights of value in today's world are the rights to a job; to a promotion; to a pension; to social security; to all of the fringe benefits of any job. And in almost every case here, rights are either flatly denied to women or are different for women than for men. Thus, if I die while I sit here, my husband has no survivor rights in my pension; but if you die while you listen, we will pick up your widow in the morning. The discrimination against women applies not only to them, but to their husband and their children. It is, in fact, a discrimination against families.

"Laws written and enforced by men only have supported the man and his current wife or his widow. They do not really protect the woman in the home unless in some way she currently is connected with a male wage earner.

"If the Equal Rights Amendment becomes the law, and I urge its passage, there will be the usual snickering; the usual obscenities; and I would assume a good many court cases. All this amendment asks could easily be done without the amendment, if the Supreme Court were willing to do it, but they are not. The Constitution, written in the time of sailing ships and horse-drawn carriages, has been quite adequate to cover the problems, without amendment or mishap, of automobiles, submarines, jet take-offs and trips to the moon. Yet, it took a Constitutional amendment to change a woman, who was admittedly a citizen, into a voter.

"The amendment, if passed, would be like a beacon light which should awaken those nine sleeping Rip Van Winkles to the fact that the 20th century is passing into history. It is a different world and they should speak for justice, not prejudice. I want my education, my effort to buy in the market place exactly the same thing yours does. Like Rosa Parks who was tired of standing up in the back of the bus, I am tired of paying into a pension

(Continued on page 20)

PRO —GRIFFITHS, *cont. from page 18*

fund to support your widow, but not my widower. I am tired for every working wife in America who is paying into a social security fund for an unequal right. I seek justice—not in some distant tomorrow, not by some study commission, but now while I live."

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by HON. SHIRLEY CHISHOLM
United States Representative, New York, Democrat

From testimony presented before the Constitutional Amendments Subcommittee of the Senate Committee on the Judiciary on May 5, 1970, in the course of hearings on proposed "equal rights" amendments to the Constitution.

"COLORED minority-group Americans are not the only second-class citizens in this country. The largest single group of second-class citizens is the majority of Americans—American women. According to the 1960 census there were three and one-half million more females than males. However, when one examines their representation in the various walks of life we find that they are not nearly adequately represented.

"More than half of the population of the United States is female. But women occupy only 2 per cent of managerial positions. They have not even reached the level of tokenism yet. No women sit on the AFL-CIO Council or Supreme Court. There have been only two women who have held Cabinet rank, and at present there are none. Only two women now hold ambassadorial rank in the diplomatic corps. In Congress, we are down to one Senator and 10 Representatives.

"The issue before us today calls for immediate redress of a situation that has hampered this country for 194 years too long. While the Constitution mentioned black Americans only in the negative terms of three-fourths of a man, at least it did refer to them; it does not refer to the inherent rights of women at all.

"People have often asked me why I feel that American blacks and American women have received such treatment. I have always had to respond that I believe it is because American institutions were created by white males and that the freedom, quality and justice that they mentioned and fought for was intended, albeit unconsciously, for them and them alone. This is, I believe, the reason that an amendment such as the one presently under consideration has not been passed by the male-dominated Congresses in the past.

"But may I say that more and more women because of the futility and frustration are beginning to realize that Frederick Douglass' words 'power concedes nothing without a struggle' are as apropos for women as they are for minority group Americans.

"It is not the intention of American women to become a nation of Amazons. We will no longer, however, be denied our rights as human beings, equal in all respects to males.

"When a young woman graduates from college and starts looking for a job, she is likely to have a frustrating and even demeaning experience ahead of her. If she walks into an office for an interview, the first question she will be asked is, 'Do you type?'

"There is a calculated system of prejudice that lies unspoken behind that question. Why is it acceptable for women to be secretaries, librarians, and teachers, but totally unacceptable for them to be managers, administrators, doctors, lawyers, and Members of Congress?

"The unspoken assumption is that women are different. They do not have executive ability, orderly minds, stability, leadership skills, and they are too emotional.

"It has been observed before, that society for a long time discriminated against another minority, the blacks, on the same basis—that they were different and inferior. The happy little homemaker and the contented 'old darky' on the plantation were both stereotypes produced by prejudice.

"As a black person, I am no stranger to race prejudice. But the truth is that in the political world I have been far oftener discriminated against because I am a woman than because I am black.

"Prejudice against blacks is becoming unacceptable although it will take years to eliminate it. But it is doomed because, slowly, white America is beginning to admit that it exists. Prejudice against women is still acceptable. There is very little understanding yet of the immorality involved in double pay scales and the classification of most of the better jobs as 'for men only.'

"It is true that part of the problem has been that women have not been aggressive in demanding their rights. This was also true of the black population for many years. They submitted to oppression and even cooperated with it. Women have done the same thing. But now there is an awareness of this situation particularly among the younger segment of the population.

"As in the field of equal rights for blacks, Spanish-Americans, the Indians, and other groups, laws will not change such deep-seated problems overnight. But they can be used to provide protection for those who are most abused, and to begin the process of evolutionary change by compelling the insensitive majority to reexamine its unconscious attitudes.

(Continued on page 22)

—CHISHOLM, *continued from page 20*——

"Let me note and try to refute two of the commonest arguments that are offered against the Equal Rights Amendment. One is that women are already protected under the law and do not need legislation. Existing laws are not adequate to secure equal rights for women. Sufficient proof of this is the concentration of women in lower paying, menial, unrewarding jobs and their incredible scarcity in the upper level jobs. If women are already equal, why is it such an event whenever one happens to be elected to Congress?

"It is obvious that discrimination exists. Women do not have the opportunities that men do. And women that do not conform to the system, who try to break with the accepted patterns, are stigmatized as 'odd' and 'unfeminine.' The fact is that a woman who aspires to be chairman of the board, or a Member of the House, does so for exactly the same reasons as any man. Basically, these are that she thinks she can do the job and she wants to try.

"A second argument often heard against the Equal Rights Amendment is that it would eliminate legislation that many States and the Federal Government have enacted giving special protection to women and that it would throw the marriage and divorce laws into chaos.

"As for the marriage laws, they are due for a sweeping reform, and an excellent beginning would be to wipe the existing ones off the books. Regarding special protection for working women, I cannot understand why it should be needed. Women need no protection that men do not need. What we need are laws to protect working people, to guarantee them fair pay, safe working conditions, protection against sickness and layoffs, and provision for dignified, comfortable retirement. Men and women need these things equally. That one sex needs protection more than the other is a male supremacist myth as ridiculous and unworthy of respect as the white supremacist myths that society is trying to cure itself of at this time."

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by NATIONAL WOMAN'S PARTY
Margery C. Leonard, Vice Chairman

From testimony presented before the Constitutional Amendments Subcommittee of the Senate Committee on the Judiciary on May 6, 1970, in the course of hearings on proposed "equal rights" amendments to the Constitution.

"THE QUESTION is frequently asked: Why do we need the Equal Rights Amendment? I shall attempt to answer that question.

"The purpose of the Amendment is to lift the women of the United States out of the state of inferiority imposed by the English common law and the French and Spanish civil law brought here by the Colonists. It would complete the Equal Suffrage Amendment by giving constitutional equality in the fields not covered by the Nineteenth Amendment. It would place the principle of the equality of the sexes at the basis of our legal system. For more than three centuries women have labored for equality—patiently and without violence.

"The Supreme Court has always held that the Constitution created no new rights; it merely guaranteed those already in existence when the Constitution was adopted in 1789. What were the rights of women at the time of the adoption of the Constitution? The best statement of the rights of women is found in Blackstone's Commentaries of the Laws of England printed in 1756. Blackstone stated that when a man and woman married, they became one and HE was the one. Upon marriage, all her property including furniture, clothes, jewelry and even her hair became HIS property. She had nothing to say about her children; in fact, the husband could take them away from her. She could not vote nor hold office. Neither could she serve on a jury. She could not contract nor make a will. She could not even control her own earnings. Blackstone went on to say that the husband had the right to beat his wife—for her protection! This appears to be the first use of the phrase 'protection of women.' She was a chattel, and her husband's servant. The husband could even sue for the loss of her services, resulting from the act of a third person.

"This is a very sketchy outline of the basic law of our country in respect to women as it was in 1789.

"Some opponents of the Equal Rights Amendment maintain that there is no reason for the adoption of the Equal Rights Amendment because the principle of the equality of the sexes is already guaranteed by the Constitution through the Fourteenth Amendment. However, the Supreme Court has not taken this point of view. Many years ago, Justice Oliver Wendell Holmes said that the rights of women are what the courts say they are. When the Fourteenth Amendment was adopted, the word 'male' was inserted three times in Section 2, thereby showing the intent of the drafters of the Fourteenth Amendment in the Congress not to include females. This is the first time that discrimination on the basis of sex was written into our Constitution. George Gordon Battle, distinguished constitutional lawyer, submitted a brief to the Senate Judiciary Committee July 11, 1941, in support of the Equal Rights Amendment, and stated, in part:

" 'This famous amendment (14th), although its main purpose was to establish the citizenship of the Negro, con-

(Continued on page 24)

PRO —NWP, *continued from page 22*

tained no reference to race or color. These provisions were entirely general and unrestricted. Nevertheless, the courts of this country, led by the Supreme Court, whittled away the full force and meaning of the words of this amendment. So far as women were concerned, it was held that the State still had the power to restrict to men the right to vote. . . . In many instances the unjust and discriminatory State statutes were upheld as being within the police power of the State. It soon became evident that the right to redress this injustice against women was not to be found in the Fourteenth Amendment.'

"The Supreme Court has interpreted the Fourteenth Amendment to give protection for the alien, the powerful and ruthless corporation, the criminal of the most vicious type and for the Communist who would destroy our country; but it has never, with one short-lived exception, interpreted the Fourteenth Amendment to give protection for half our people, the women. After more than a century of decrees to this effect, it is inconceivable that the Supreme Court will reverse this interpretation. Further the Congressional debates at the time of the adoption of the Fourteenth Amendment show that the proponents never intended that it should apply to women.

"In a long line of cases, the Supreme Court has held that many statutes restricting women were not repugnant to the Fourteenth Amendment. That is the phrase used each time.

"The Constitution makes it clear that the power to say the final word as to the validity of a statute assailed as being unconstitutional was given to the Supreme Court. As you well know, there is no appeal from a decision of the Supreme Court.

"Fifty years after the extension of the vote to Negroes by the adoption of the Fifteenth Amendment, the grant of the Franchise was given to women by the Nineteenth Amendment. The only right which women have which is guaranteed by the Constitution and enforceable by the Supreme Court is the right to vote and hold office, as granted by the Suffrage Amendment; and that is ALL we have. This was tersely stated by the late Justice Robert Jackson in *Fay v. New York* (1947):

" '. . . It would, in the light of this history, take something more than a judicial interpretation to spell out of the Constitution a command to set aside verdicts rendered by juries unleavened by feminine influence. The contention that women should be on the jury is not based on the Constitution, it is based on a changing view of the rights and responsibilities of women in our public life, which has progressed in all phases of life, including jury duty, but has achieved constitutional compulsion on the States only in the grant of the franchise by the 19th Amendment.'

"One further point: the preamble of the Charter of the United Nations, adopted June 26, 1945 and ratified by the United States August 8, 1945, states:

" 'We the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. . .'

"As the world's greatest democracy, we do not yet have in our own Constitution a guaranty of equal rights for men and women. This is what we are demanding in our efforts for the passage of the pending Equal Rights for Men and Women Amendment."

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by NATIONAL ORGANIZATION FOR WOMEN
Jean Witter, Chairman
Equal Rights Amendment Committee

From testimony presented before the Constitutional Amendments Subcommittee of the Senate Committee on the Judiciary on May 5, 1970, in the course of hearings on proposed "equal rights" amendments to the Constitution.

"THE U.S. CONGRESS finds itself increasingly in the position of having to answer the question, 'Why are you still beating your wife?' Further delay in the passage of the Equal Rights Amendment is indefensible. To deny Constitutional Equality to over half the U.S. population in 1970, in an era when people are becoming increasingly aware of human rights and human dignity, is incomprehensible, inexcusable, and will in fact become tantamount to political suicide before long.

"Only the fact that the Equal Rights Amendment has been 'the best kept secret of the 20th century' has allowed Congressmen to return to their seats session after session, while they have denied our women Constitutional Equality and the full recognition as first class citizens. One cannot help but to surmise that the members of Congress expect the Amendment to die a quiet death and to be quietly resurrected to start from scratch again in the new Congress in 1971. American women have better things to do with their time, even if Congress appears not to.

"It is well-known that many laws discriminate on the basis of sex. It has not been emphasized, however, that nearly every form of discriminatory law has been either repealed or never existed in some States.

"The fact that a condition of non-discrimination on account of sex does exist in some States in nearly every area of disputable legislation, does prove that the system of sex

(Continued on page 26)

PRO—NOW, *continued from page 26*

"'Equality of rights under the law' for both men and women in the form of the Equal Rights Amendment is an essential step, but full enforcement may take up to a century. Certainly, not every eligible woman registered to vote after the passage of the 19th Amendment, and some of our older women have never considered voting. In recent elections, however, the number of women who voted exceeded the number of men who voted; and the percentage of college educated female voters exceeded the percentage of college educated male voters. The fact that some women were not ready to accept suffrage at the time of the passage of the 19th Amendment was fortunately not permitted to stand in the way of giving suffrage to their daughters.

"Similarly, let us now not be blinded from taking this essential step in the full emancipation of U.S. women by the fact that some women are not yet ready or anxious for full equality. We must not continue to deny our daughters equal opportunity. Our daughters must have Constitutional Equality even if many older women and men are not able to accept immediately all of the implications and manifestations of Constitutional Equality for women.

"U.S. women could possibly achieve Constitutional Equality by two routes in addition to the route of the Equal Rights Amendment. Neither of the other two methods would assure the immutable protection to both men and women that will be assured by the Equal Rights Amendment.

"Women could eventually achieve Constitutional Equality by Supreme Court decision. If the Supreme Court ruled that several sex discrimination laws were unconstitutional according to the 14th Amendment, women would then have the 'equal protection of the law.' However, there is no assurance that the next Supreme Court decision would not reverse the previous decisions, thereby again denying Constitutional Equality to our women. The Supreme Court in one case, *Adkins v. Children's Hospital* (1923), held an act of Congress fixing minimum wage standards for women to be unconstitutional. The doctrine expressed in the Adkins case was soon reversed by subsequent Supreme Court rulings. All other Supreme Court rulings before and after the Adkins case have held that differences in the law based on sex are not unreasonable and, therefore, constitutional.

"It may be a long, arduous and expensive route for women to achieve Constitutional equality by Supreme Court interpretation of the 14th Amendment. Since it was not the original intent of Congress that women should have the 'equal protection of the laws' when the 14th Amendment was passed in 1868, the Supreme Court could justify excluding women from coverage under the 14th Amendment indefinitely. It is after all the function of the Supreme Court to interpret the Constitution and its amendments according to the original intent of Congress and not to change the Constitution or its intent. The U.S. Congress should not abdicate its legislative power to the Supreme Court by taking the stand the Supreme Court should change the original meaning of the 14th Amendment to include women. It is clearly the responsibility of the Congress under the Constitution to pass the Equal Rights Amendment; men and women must have the equal protection of the Constitution, and it is the duty of the Congress to bring this about by exercise of its Constitutionally ensured legislative powers.

"Constitutional Equality for women could also be accomplished by 'appropriate legislation' under the 14th Amendment, Section 5. Recently, such 'appropriate legislation' was passed to reduce the voting age to 18. But the best age at which citizens should start voting may change over the centuries, and is not the subject for a constitutional amendment, although an amendment was thought by some to be necessary. The rights guaranteed in the Equal Rights Amendment are basic human rights and should be clearly and unequivocally stated as part of the U.S. Constitution.

"I have considered having a bill introduced in Congress to clearly extend 'the equal protection of the law' in the 14th Amendment to cover both men and women, specifically stating that sex shall not be considered a reasonable ground for discrimination under the law. Such a bill is provided for in the 14th Amendment, Section 5: 'this amendment may be enforced by appropriate legislation.'

"Such a bill could pass with only a majority vote in each House. It would certainly be quicker than a constitutional amendment and could possibly accomplish the purpose. However, a similar bill could repeal or qualify the bill at a later date. And of course, the Supreme Court may eventually declare the law unconstitutional in that it was not the original intent of the 14th Amendment to give women 'the equal protection of the laws.' While I believe such a bill should be considered as a temporary measure to extend the 14th Amendment to women immediately, the Equal Rights Amendment must become a part of our Constitution to protect both men and women for all time.

"Does the Equal Rights Amendment imply that women should be subject to the draft or compulsory military service as well as men? Many older and middle aged people in the U.S. seem much against the draft for women, mostly I believe, because it was something they never considered for themselves when they were draft age. It is interesting that the young people who are draft age are

(Continued on page 30)

PRO—NOW, *continued from page 24*

discrimination under the law is not essential and that people living under the equal situation find that situation not a problem and not a hardship. The argument that the Equal Rights Amendment should not be passed because of the many changes that would be required in State laws is a poor one; on the contrary, the Equal Rights Amendment may be of great benefit to the States in helping them to up-date their laws, and encouraging more uniformity in family law from State to State.

"The Equal Rights Amendment was once opposed by some groups because it was a threat to protective legislation, or protective labor laws for women. In recent years protective legislation has proven to be restrictive legislation. In the past five years 17 States have repealed all or part of their protective laws. Delaware, for example, repealed its protective labor laws in 1965 with no ill effects.

"Ohio has announced recently that it will no longer enforce the protective labor laws since they are in conflict with Title VII of the Civil Rights Act of 1964.

"In Pennsylvania the new Sex Amendment to the State Human Relations Act has, by the statement of Pennsylvania's Attorney General, impliedly repealed the Pennsylvania Protective Labor Laws. The staff and machinery for the enforcement of these laws no longer exists. There have been no complaints.

"Protective labor laws can no longer stand in the way of the passage of the Equal Rights Amendment; they are on the way out of existence even without the Amendment. The strict enforcement of Title VII of the Civil Rights Act of 1964 would eventually supersede the protective labor laws.

"Similarly, the strict enforcement of Title VII would supersede many other State laws that may discriminate in employment situations.

"When the Equal Rights Amendment is a part of the U.S. Constitution, laws that discriminate on the basis of sex will not be passed since they would be unconstitutional. The Amendment will thus protect both men and woman from injustice on account of their sex.

"When our U.S. Constitution was written in 1787, the Old English Common Law was then in use in the English speaking world, including our thirteen colonies. Under the Old English common law, women were not regarded as persons under the law; women were regarded as chattel, as property. Consequently, when a legal document or constitution contained words such as people or person, these words did not mean women and men, but men only.

"Bearing in mind that words like people and person did not originally mean women in a legal document, such as a constitution, if we read again our Constitution looking particularly for changes which were made to give our women coverage under the Constitution, we find only one such change; namely, our 19th Amendment gave our women the right to vote. Women are covered by our U.S. Constitution for three minutes twice a year in the voting booth. Other than this our women are covered by our State laws and by a few specific Federal laws, but not by the U.S. Constitution. Only our men have the full protection of the U.S. Constitution. The Equal Rights Amendment is needed to rectify this situation—and the sooner, the better!

"With the advent of woman suffrage, State constitutions have gradually come to be interpreted that words such as person and people do mean both men and women. In other words, under the present common law, State constitutions are gradually being interpreted as protecting both sexes equally. Why then, hasn't the U.S. Constitution gradually come to include both sexes under the common law? If it were not for the 10th Amendment, this probably would happen. The 10th Amendment states: 'The powers not delegated to the U.S. by the Constitution . . . reserved to the States . . . or to the people.'

"Therefore, when women are admitted into a State Legislature, it is because words like 'citizen' or 'person' in the State constitution are being interpreted by the common law to include women. The common law is allowing the legal meaning of such words to change to mean both men and women in State law.

"However, when women were admitted into Congress, it was not because the word 'person' in the U.S. Constitution was being interpreted by the common law to include women. It was because the method of selecting State representatives to Congress is determined by the States and is a matter of States' Rights as protected by the 10th Amendment, a power reserved to the States. Not to admit Jeannette Rankin, the first woman Representative, in 1917 as the Representative from Montana, would have been an abridgement of States' Rights as protected by the 10th Amendment.

"Since all laws regarding women were originally regarded as being in the realm of 'powers reserved to the States,' a constitutional amendment is needed in order clearly to give to U.S. women the equal protection of the U.S. Constitution. The Equal Rights Amendment is needed because the 10th Amendment cannot allow this change in interpretation of the U.S. Constitution to come about by common law interpretation. Neither can it be denied that such a basic right as equality under the law between the sexes should be clearly spelled out in the words of a Constitutional Amendment.

(Continued on page 28)

PRO—NOW, *continued from page 28*

very open to the idea of drafting women. They realize that women in some countries are already subject to military service and do serve in the armed forces on the same basis as men.

"Many of those working for women's rights, myself included, very much oppose war as a way of solving international problems. As an individual, I favor a well-funded Dept. of Peace and a national peace program equivalent in scope and intensity to our present defense and space programs. But in spite of such aspirations, we must recognize that equality of responsibility does imply that as long as men are being drafted, women should be drafted as well.

"However, a valid question can be raised as to whether women do indeed have any obligation to serve in the armed forces. Since women in practice have been denied access to policy-making position, they have not been involved in the decisions leading to military involvement. One can argue that women, as a group, have no responsibility to risk their lives to carry out policy decisions from which they as a group are barred. This is a valid point.

"However, the same argument can be made on the basis of age; that is, the young should not be asked to implement the decisions of the old. Perhaps it is equally unfair, and even uncivilized, to draft the young men to carry out the military decisions of the old men. The fact remains that we have always done this, and we are still doing it today. The case can be made that the draft is just as unfair to young men as it would be to young women. Therefore, we must consider drafting women as long as we draft anyone.

"It should be emphasized that not passing the Equal Rights Amendment will not ensure that women will not be drafted in the future. Congress already has the power to include women in any conscription and the Equal Rights Amendment would not affect the power of Congress. The Equal Rights Amendment, however, would imply that women would be required to register for military service and would be called for induction on the same basis as men.

"On the whole the advantages to American women because of being subject to the draft are greater than the disadvantages. If American women are to step into their rightful place in the nation, they must accept full responsibility as well as rights. At this point in history, a part of full responsibility includes the draft.

"If some do object to people, male or female, being drafted, then it is up to those of us who object to the draft to change the world so that the draft can become a part of our primitive history. Until that time, women and men must share equal responsibility in being subjected to the draft.

"In the year 1900 to speak of 'equality of rights under the law' for women would have been a purely academic, if not meaningless, consideration because women were in no position to demand equality of rights, and no group has ever received rights without first demanding them. Most women were involved almost continuously in the reproductive processes throughout their adult years, until shortly before death—on average at the age of 48 years.

"In 1970 only 40% of U.S. women have one or more children under age eighteen, and of these mothers nearly 10% are also the head of a household. Who is to say that these women and U.S. women of past generations should not share the 'equal protection of the laws' under our Constitution? Who is to say that the bearing of rifles in the past by our men was more important to the nation than the bearing of children? And who is to say that the men of our nation deserved full Constitutional protection for carrying their share of the burdens, but the women did not? It is a grave miscarriage of justice that has denied U.S. women Constitutional Equality until 1970! Certainly women are human beings and deserve to be accorded equal treatment under the law. Women cannot be denied Constitutional Equality because they bear the burden of reproduction!

"In 1970 60% of U.S. women do not have a child under age eighteen. To deny equal opportunity to 60% of U.S. women who do not have a child under 18 years of age, because of biological sex differences, is senseless, as well as unconscionable. Indeed, we must recognize motherhood as a temporary condition and encourage our young mothers to realize that they can expect to do other things in addition to being a parent, just as men do.

"The problems of the world today that must be solved soon are of such a magnitude that we cannot continue to waste our human talent. If we do not encourage our women to fully utilize their talents to help to solve the critical problems of the world today, none of us may survive to criticize our present poor judgment or prejudice.

"The U.S. Congress cannot afford to take upon themselves the responsibility of further penalizing the nation by continuing to discourage our women at this time; a time when the population explosion is already a reality. At a time when over 10 million people in the world die yearly from starvation, our women must be encouraged to participate in the mainstream; they must have reason to believe that there are other rewarding endeavours for women besides producing a large family.

"For the U.S. Congress to kill the Equal Rights Amendment would be a crime not only against the 51% of the population who are women, but against the survival and well-being of the nation as a whole."

Approve The Amendment"?

CON

by HON. SAM J. ERVIN, JR.
United States Senator, North Carolina, Democrat

From an address given on the floor of the U.S. Senate on August 21, 1970. Sen. Ervin authored several proposed amendments to the House-passed Equal Rights Amendment as well as a substitute proposal which differed from the House version in several respects.

"THE OBJECTIVE of those who advocate the adoption of the House-passed equal rights amendment is a worthy one. It is to abolish unfair discriminations which society makes against women in certain areas of life. No one believes more strongly than I that discriminations of this character ought to be abolished, and that they ought to be abolished by law in every case where they are created by law.

"Any rational consideration of the advisability of adopting the House-passed equal rights amendment raises these questions:

"First. What is the character of the unfair discriminations which society makes against women?

"Second. Does it require an amendment to the Constitution of the United States to invalidate them?

"Third. If so, would the House-passed equal rights amendment constitute an effective means to that end?

"It is the better part of wisdom to recognize that discriminations not created by law cannot be abolished by law. They must be abolished by changed attitudes in the society which imposes them.

"From the many conversations I have had with advocates of the House-passed equal rights amendment since coming to the Senate, I am convinced that many of their just grievances are founded upon discriminations not created by law, and that for this reason the equal rights amendment will have no effect whatsoever in respect to them.

"When I have sought to ascertain from them the specific laws of which they complain, the advocates of the equal rights amendment have cited certain State statutes, such as those which impose weight-lifting restrictions on women, or bar women from operating saloons, or acting as bartenders, or engaging in professional wrestling. Like them, I think these laws ought to be abolished. I respectfully submit, however, that resorting to an amendment to the Constitution to effect this purpose is about as wise as using an atomic bomb to exterminate a few mice.

"From the information given me by many advocates of the equal rights amendment and from my study of the discriminations which society makes against women, I am convinced that most of the unfair discriminations against them arise out of the different treatment given men and women in the employment sphere. No one can gainsay the fact that women suffer many discriminations in this sphere, both in respect to the compensation they receive and the promotional opportunities available to them. Some of these discriminations arise out of law and others arise out of the practices of society.

"Let me point out that Congress has done much in recent years to abolish discrimination of this character insofar as they can be abolished at the Federal level. It has amended the Fair Labor Standards Act to make it obligatory for employers to pay men and women engaged in interstate commerce or in the production of goods for interestate commerce equal pay for equal work, irrespective of the number of persons they employ.

"Congress has also decreed by the equal employment provisions of the Civil Rights Act of 1964 that there can be no discrimination whatever against women in employment in industries employing 25 or more persons, whose business affects interstate commerce, except in those instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the enterprise. Furthermore, it is to be noted that the President and virtually all of the departments and agencies of the Federal Government have issued orders prohibiting discrimination against women in Federal employment.

"Moreover, State legislatures have adopted many enlightened statutes in recent years prohibiting discrimination against women in employment.

"If women are not enjoying the full benefit of their Federal and State legislation and these Executive orders of the Federal Government, it is due to a defect in enforcement rather than a want of fair laws and regulations.

"A good case can be made for the proposition that it is not necessary to resort to a constitutional amendment to abolish State laws which make unfair discriminations between men and women in employment or any other sphere of life. This argument rests upon the equal protection clause of the 14th Amendment which prohibits States from treating differently persons similarly situated, and is now being interpreted by the courts to invalidate State laws, which single out women for different treatment not based on some reasonable classification.

(Continued on page 13)

CON—ERVIN, *continued from page 11*

"To be sure, the equal protection clause may not satisfy the extreme demands of a few advocates of the equal rights amendment who would convert men and women into beings not only equal but alike, and grant them identical rights and impose upon them identical duties in all the relationships and undertakings of life.

"It cannot be gainsaid, however, that the equal protection clause, properly interpreted, nullifies every State law lacking a rational basis, which seems to make rights and responsibilities turn upon sex.

"The House-passed equal rights amendment is shrouded in obscurity, and no one has sufficient prophetic power to predict with accuracy what interpretation the Supreme Court will place upon it. One possible interpretation is that it will nullify every existing Federal and State law making any distinction whatever between men and women, no matter how reasonable the distinction may be, and rob Congress and the legislatures of the 50 States of the legislative power to enact any future laws making any distinction between men and women, no matter how reasonable the distinction may be.

"If it should be adopted and this interpretation should be placed upon it by the Supreme Court, the House-passed equal rights amendment would produce constitutional and legal chaos, and would not accomplish the objective of any of its advocates. This is so because under this interpretation the equal rights amendment would merely abolish all laws making any distinctions between men and women. It would not bring into existence any new laws giving us a discrimination-free society, and those who desire such a society would have to implore Congress and the legislatures of the 50 States to enact new laws creating the kind of society they seek, insofar as such a society can be established by law.

"Consequently, those who seek a discrimination-free society should seek to persuade Congress and the legislatures of the various States initially to enact suitable legislation to accomplish their purpose insofar as such purpose can be accomplished by law without first invalidating all laws making distinctions between men and women and plunging society into constitutional and legal chaos.

"For these reasons, the House-passed equal rights amendment represents a potentially destructive and self-defeating blunderbuss approach to the problem of abolishing unfair discriminations against women.

"What has been said makes it manifest, I think, that society does make unfair discriminations against women, and that the House-passed equal rights amendment does not constitute a sensible approach to their abolition.

"This brings us to the questions whether Congress should consider the submission to the States of a constitutional amendment to deal with the matter, and whether such amendment should permit Congress and the States acting within their respective jurisdictions to make reasonable distinctions between the rights and responsibilities of men and women in appropriate areas of life.

"I honestly believe that the equal protection clause, properly interpreted, is sufficient to abolish all unfair legal discriminations made against women by State law.

"Nevertheless, I am constrained to favor a constitutional amendment which will abolish all unfair legal discriminations against women without robbing them of necessary legal protections and without imprisoning the legislative powers of Congress and the States in a constitutional straitjacket.

"My reasons for so doing are twofold. First, some advocates of the House-passed equal rights amendment do not share my opinion of the efficacy of the equal protection clause; and, second, the equal protection clause does not apply to Congress, and it is problematical whether the Supreme Court will hold in this instance, as it did in *Bolling* v. *Sharp*, that the due process clause of the Fifth Amendment imposes the same prohibitions on the Federal Government that the equal protection clause does on the States.

"While I believe that any unfair discriminations which the law makes against women should be abolished by law, I have the abiding conviction that the law should make such distinctions between the sexes as are reasonably necessary for the protection of women and the existence and development of the race.

"When one undertakes to ascertain the obscure meaning of the ambiguous House-passed equal rights amendment in an impartial, intellectual and unemotional manner, he is inevitably impelled to the conclusion that it is susceptible of several different and discordant interpretations.

"Time and space preclude me from an attempt to picture in detail the constitutional and legal chaos which would prevail in our country if the Supreme Court should feel itself compelled to place upon the House-passed equal rights amendment the devastating interpretation feared by legal scholars.

"For this reason, I must content myself with merely suggesting some of the terrifying consequences of such an interpretation.

"Congress and the legislatures of the various States have enacted certain laws based upon the conviction that the physiological and functional differences between men and women make it advisable to exempt or exclude women

(Continued on page 15)

CON—ERVIN, *continued from page 13*

from certain arduous and hazardous activities in order to protect their health and safety.

"Among Federal laws of this nature are the Selective Service Act, which confines compulsory military service to men; the acts of Congress governing the voluntary enlistments in the Armed Forces of the Nation which restrict the right to enlist for combat service to men; and the acts establishing and governing the various service academies which provide for the admission and training of men only.

"Among the State laws of this kind are laws which limit hours during which women can work, and bar them from engaging in occupations particularly arduous and hazardous such as mining.

"If the House-passed equal rights amendment should be interpreted by the Supreme Court to forbid any legal distinctions between men and women, all existing and future laws of this nature would be nullified.

"The common law and statutory law of the various States recognize the reality that many women are homemakers and mothers, and by reason of the duties imposed upon them in these capacities, are largely precluded from pursuing gainful occupations or making any provision for their financial security during their declining years. To enable women to do these things and thereby make the existence and development of the race possible, these State laws impose upon husbands the primary responsibility to provide homes and livelihoods for their wives and children, and make them criminally responsible to society and civilly responsible to their wives if they fail to perform this primary responsibility. Moreover, these State laws secure to wives dower and other rights in the property left by their husbands in the event their husbands predecease them in order that they may have some means of support in their declining years.

"If the House-passed equal rights amendment should be interpreted by the Supreme Court to forbid any legal distinctions between men and women, it would nullify all existing and all future laws of this kind.

"There are laws in many States which undertake to better the economic position of women. I shall cite only one class of them; namely, the laws which secure to women minimum wages in many employments in many States which have no minimum wage laws for men, and no other laws relating to the earnings of women.

"If the House-passed equal rights amendment should be interpreted by the Supreme Court to prohibit any legal distinction between men and women, it would nullify all existing and future laws of this kind.

"In addition, there are Federal and State laws and regulations which are designed to protect the privacy of males and females. Among these laws are laws requiring separate restrooms for men and women in public buildings, laws requiring separate restrooms for boys and girls in public schools, and laws requiring the segregation of male and female prisoners in jails and penal institutions.

"Moreover, there are some State laws which provide that specific institutions of learning shall be operated for men and other institutions of learning shall be operated for women.

"If the House-passed equal rights amendment should be interpreted by the Supreme Court to forbid legal distinctions between men and women, it would annul all existing laws of this nature, and rob Congress and the States of the constitutional power to enact any similar laws at any time in the future.

"I do not believe that the advocates of the House-passed equal rights amendment wish to nullify laws which are adopted for the protection of women and for the promotion of the highest interest of society. Moreover, I am unwilling to attribute any such motive to the Representatives who voted for the House-passed equal rights amendment, or to the Senators who have sponsored the Senate version of such amendment. I attribute to all of them the laudable desire of abolishing unfair discriminations against women without destroying laws reasonably designed to protect them, and without robbing Congress and the legislatures of the 50 States of the power to enact similar laws in the future."

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by AFL-CIO

Andrew J. Biemiller, Director, Department of Legislation

From a statement filed with the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary on May 7, 1970, in the course of hearings on proposed "equal rights" amendments to the Constitution.

"I APPRECIATE this opportunity to present the views of the AFL-CIO on the proposed Equal Rights Amendment to the Constitution. About 2.7 million, or approximately 20 per cent, of our 13½ million union members are women.

"In brief we oppose the Amendment on the following principal grounds:

"(1) The Amendment could destroy more rights than it creates by attempting to create equality through 'sameness';

"(2) Many State labor standards laws on wages, hours and other conditions of employment apply only to women.

(Continued on page 17)

CON—AFL-CIO, *cont. from page 15*

The practical effect of the Amendment could be to destroy these laws for women rather than to accomplish extension of coverage to men. Most working women do not have the protection afforded by trade union membership and must therefore rely on safeguards provided by law. The existence of special labor standards legislation for women is a positive offset to discriminatory disadvantages they suffer in the market place.

"Further we note that the Equal Rights Amendment is essentially negative in its impact. It creates no positive law in itself to combat discrimination against women where private employment or other discriminatory practices are concerned. Finally we note the myriad of legal relationships in every area of life which eventually might be affected by the Equal Rights Amendment, with uncertain and possibly inequitable results in particular situations where identity of treatment might not yield true equality of treatment between the sexes.

"The preferred route for remedying legal discrimination against women, we believe, is through specific legislative remedies to particular legal inequities plus specific positive anti-discrimination legislation such as the Equal Pay Act, which was enacted into law on June 10, 1963, with our full support.

"Because of developments under Title VII of the Civil Rights Act, which have been essentially hostile to certain types of women's labor legislation, it has been suggested that there is no reason for the labor movement to continue its opposition to the Equal Rights Amendment. We must respectfully disagree. While the EEOC has dealt a severe blow to certain types of such laws it has not completely destroyed them, nor has it attacked every form of women's labor legislation. If the Commission can be persuaded to a less doctrinaire viewpoint, allowing for situations where the laws clearly continue to serve a protective function, the worst aspect of its attack could be blunted. Of course, the Congress and the courts could in future actions also serve as a moderating influence.

"The Equal Rights Amendment, on the other hand, permits of no negotiation or compromise, no matter what the circumstances. It would simply become unconstitutional for any law to distinguish in its application between men and women. It makes no guarantee of extension of labor law protections to men. Enemies of labor legislation, powered by a combination of middle-class feminists and employers, could speedily wipe out all forms of protections afforded specifically to women whether 'restrictive' or not—minimum wage laws, rest periods, meal periods, seating requirements, transportation at night, and other provisions.

"Finally, with regard to the recommendations and analysis released by President Nixon's Citizens' Advisory Council on the Status of Women, it is notably unrepresentative of any group except business and professional women. The prior bodies were broadly representative of all areas of American life, including labor. The Council held no public hearings and rather speedily came out with an endorsement of the Equal Rights Amendment in February of this year. This endorsement cannot, therefore, be said to represent a broad consensus of opinion as did the original President's Commission of 1963, and succeeding Advisory Councils.

"We have carefully reviewed the arguments presented in the analytical memorandum of the new Citizens' Advisory Council. We would like to point out certain areas of our own disagreement and what we consider important omissions and mistaken assumptions:

"We basically take exception to the proposition that 'constitutional protection' is needed 'against laws and official practices that treat men and women differently.' We do subscribe to elimination of discriminatory differentials of treatment and believe this can be achieved under the present Constitution and through appropriate and specific legislative enactments.

"The section entitled 'Laws Which Discriminate on the Basis of Sex' fails to identify the basis of past opposition to the Equal Rights Amendment, casually dismissing it as 'based in part on "fear of the unknown"; i.e. lack of information concerning the types of laws which distinguish on the basis of sex and would therefore be affected by the amendment.' Totally ignored is the history of opposition by labor, women's reform groups, and government agencies seeking to improve the conditions of work for women through women's labor legislation. The memorandum then lists several types of invidious distinctions, including what the EEOC has ruled 'restrictive' labor laws.

"The numerous other types of labor standards laws which apply only to women are not mentioned, but they also would be affected, as pointed out earlier in our statement. The memorandum is clearly inadequate due to its obvious lack of information and lack of understanding of the purposes and necessities of labor legislation.

"No persuasive case is made that adequate protection against invidious legal discriminations cannot be secured under the present Constitution through its 5th and 14th Amendments. The argument for the additional amendment in reality is reduced to (1) a feeling of 'anxiety' on the part its proponents and (2) the proposition that 'no harm would be done' if the Equal Rights Amendment turned out simply to be duplicative of present Constitutional protections.

(Continued on page 19)

CON—AFL-CIO, *continued from page 17*

"The section entitled 'Effect the Equal Rights Amendment Would Have on Laws Differentiating on the Basis of Sex' is an exercise in wishful thinking rather than a sober assessment of the possible ramifications of the Equal Rights Amendment.

"Particularly unrealistic is the assumption that laws 'conferring a benefit, privilege or obligation of citizenship' would automatically be extended to the opposite sex by striking the words of sex identification. Legislatures are under no obligation to retain existing legislation for either sex, let alone extend it to both. This issue would be particularly serious in the field of State labor legislation. It is true that any of the existing 7 State minimum wage laws that apply only to women could readily be adjusted by striking the sex identification in the law. But it is equally true that the legislature could strike the laws altogether. Labor legislation is highly vulnerable to the 'least common denominator' approach. Nothing in the Amendment prohibits the reduction of present benefits and privileges as a means of complying with the equality standard set out by the Amendment.

"We question the simplistic distinction made between 'opportunities' and 'restrictions.' The authors of the memorandum assume that 'restrictions' in the field of labor law are automatically an invidious invasion of individual liberty. They give no weight to the fact that the restraints are upon employers in relation to their workers, in recognition of the power of the employer to compel excessive hours of work on the part of employees to the detriment of their health and their well-being; or to condition employment upon the acceptance, without protest, of substandard conditions of work.

"Freedom of unlimited weight-lifting appears to be sought as a constitutional right, no matter what the consequences to the individual. Labor organizations throughout the world have sought restraints on weight-lifting, for the protection of the worker. The ILO Convention No. 127, which deals with this subject, includes provision for lower limits on weights to be lifted by women than by men. Presumably the Equal Rights Amendment would preclude ratification of such an international Convention by the United States and would render it completely inapplicable in this country. Admittedly, a requirement that weight-lifting limits be geared to each individual worker would be the ideal solution, but this millennium is unlikely to occur in the foreseeable future. Other reasonable means of dealing with the problem should not be rendered unconstitutional.

"The authors of the memorandum could as easily have put 'restrictive' laws in the category to be extended to both sexes as a means of worker protection. But they have chosen instead to render these laws simply unconstitutional in their own system of values.

"We would anticipate that 'rights,' 'opportunities,' and 'restrictions' in various other areas of law would also develop into controversy rather than neatly falling into place under the far-from-immutable principles of right and wrong postulated in this document, reflecting the particular values of the women whose views are represented in it.

"We sincerely believe that the Amendment will produce more problems than it solves, that it is a threat to labor standards legislation for women and for labor generally, and that adequate and more fruitful means of eliminating discrimination against women are available through the legislative process and through the judicial process under the present Constitution."

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by MYRA K. WOLFGANG

From testimony presented before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary on May 6, 1970, in the course of hearings on proposed "equal rights" amendments to the Constitution. Mrs. Wolfgang is Vice President of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO; a member of the Michigan State Minimum Wage Board; and a member of the Michigan Women's Commission.

"MY CONCERN with the Equal Rights Amendment is not an academic one. It embodies the problems that I work with day in and day out, year in and year out. My concern is for the widowed, divorced mother of children who is the head of her family and earns less than $3500.00 a year working as a maid, laundry worker, hospital cleaner or dishwasher. There are millions of such women in the work force. Now is as good a time as any to remind you that only one out of ten women in the work force have had four or more years of college, so I am not speaking of or representing the 'bird in the gilded cage.' I speak for 'Tillie the Toiler.'

"I am opposed to enactment of the Equal Rights Amendment to our Constitution. I recognize that the impetus for the passage of the Equal Rights Amendment is the result of a growing anger amongst women over job discrimination, social and political discrimination and many out-moded cultural habits of our way of life.

"The anger is justified, for certainly discrimination against women exists. I do not believe, however, that passage of the Equal Rights Amendment will satisfy, or is the solution to, the problem. The problem of discrimination against women will not be solved by an Equal Rights

(Continued on page 21)

CON—WOLFGANG, *continued from page 19*—

Amendment to the Constitution; conversely, the Amendment will create a whole new series of problems. It will not bring about equal pay for equal work, nor guarantee job promotion free from discrimination. The Equal Rights Amendment is a negative law with no positive or specific provisions to combat discrimination.

"The Amendment is excessively sweeping in scope, reaching into the work force, into family and social relationships and other institutions, in which 'equality' cannot always be achieved through 'identity.' Differences in laws are not necessarily discriminatory, nor should all laws containing different provisions for men and women be abolished.

"Opposed, as I am, to the Equal Rights Amendment, certainly does not mean that I am opposed to equality. The campaign for an Equal Rights Amendment has become a field day for sloganeers and has become as jingoistic as did the 'Right to Work' law campaign. 'Right to Work' laws do not guarantee a job, anymore than the Equal Rights Amendment guarantees equality.

"Representing women service workers gives me a special concern over the threat that a simple Equal Rights Amendment would present to minimum labor standards legislation, since such standards influence working conditions. Many such State laws apply only to women.

"Today, the 50 States, the District of Columbia and Puerto Rico, all have minimum labor standards laws applying to women. The principal subjects of regulations are: (1) minimum wage; (2) overtime compensation; (3) hours of work, meal and rest periods; (4) equal pay; (5) industrial homework; (6) employment before and after childbirth; (7) occupational limitations; and (8) other standards, such as seating and washroom facilities and weightlifting limitations. It would be desirable for some of these laws to be extended to men, but the practical fact is that an Equal Rights Amendment is likely to destroy the laws altogether rather than bring about coverage for both sexes. Those State laws that are out-moded or discriminatory should be repealed or amended and should be handled on a 'case by case' basis. Let us be sure, though, that we agree on what is 'discriminatory' before we rush into repealing old, or enacting new, legislation.

"It is difficult to unite women against vague philosophies, so the new Feminists look for a focus in the law. Thus, the revived interest in the Equal Rights Amendment and the repeal of protective legislation. The Feminist Movement in the main is middle class, professional woman, college-girl oriented. Working class women are noticeably scarce at these gatherings. Some Feminists groups have concluded that since only females reproduce, and to be a mother is to be a 'slave eternal,' that nothing short of the destruction of the family and the end of internal reproduction will do.

"You will be hearing from many Feminists who will contend that there are no real differences between men and women, other than those enforced by culture. What nonsense!! Has culture created the differences in the size of the hands, in muscular mass, in respiratory capacity? Of course not, the differences are physical and biological. Nothing can alter that fact.

"One can take any cell from a human being and determine whether it came from a male or a female. This does not suggest superiority or inferiority among the sexes, it emphasizes the differences. Because of the physical and I emphasize physical differences between men and women, the question of protective legislation for women must be reviewed. In addition, the dual role of women in our modern society makes protective legislation a necessity.

"The working mother has no 'wife' to care for her or her children. She assumes the role of homemaker and worker and must perform both these roles in a 24-hour period. Even in the two-parent households, there is an unequal division of domestic chores. While much could be done to ease the burden of the working women by men assuming a fair and equal share of domestic chores, they are not prepared to do so. What is more, society as a whole is reluctant to expect this of men or to build child care centers to ease the burden of woman's dual role.

"If the community does not take action through protective legislation to enable women to work outside the home, then the expressed desire for equal rights is an empty promise and myth. The Equal Rights Amendment would make it unconstitutional to enact and would repeal legislation embodying this protection for working women. You must ask yourself the question. Should women workers be left without any legislation because of State Legislatures' failure and unwillingness to enact such legislation for men? Do we discard protective legislation for women if we are unable to get such legislation for men? The passage of the Equal Rights Amendment would do this, and it is wrong.

"The elimination of laws regulating hours women may work permits employers to force them to work excessive overtime, endangering not only their health and safety, but disrupting the entire family relationship.

"The women in the work force who are in the greatest need of the protection of maximum hour legislation are in no position to fight for themselves. Let's emphasize again that the majority of them are not represented by labor unions (working as they do in unorganized industries); thousands are not covered by the Fair Labor Standards Act since their employers do not gross $500,000 per

(Continued on page 23)

CON—WOLFGANG, *continued from page 21*—

year to meet the inter-state commerce definition nor are they covered by Title VII of the Equal Opportunities Act, since employers of 25 persons or less are excluded.

"Yet, we are told that the recent decision of the Equal Employment Opportunity Commission, stating that State laws are superseded by the Federal law, should remove objection to enactment of the Equal Rights Amendment. I disagree. The Equal Employment Opportunity Commission, in setting guidelines on the question of labor standards law applying to women only, stated that 'such laws and regulations conflict with Title VII of the Civil Rights Act of 1964 and will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.'

"The new guidelines, as such, give protection to a small minority of working women who wish to work overtime by saying that the employer can no longer refuse them such work because of limiting State laws. Obviously a woman must ask for overtime before an employer can refuse to give it. But, let me point out that State laws limiting the number of hours women can work protect the woman who cannot and does not want to work overtime. The decision of the Equal Employment Opportunity Commission gives the woman who wants overtime the right to insist that her employer offer it to her. The rights of thousands of women who are unable to work excessive overtime, who are not covered by the Equal Employment Opportunities provision of the Civil Rights Act and who consider overtime a punishment not a privilege, must also be protected. The Equal Rights Amendment will make it impossible to do so.

"In this mad whirl to 'equalize'—male, female—everyone, one question remains unanswered—who will take care of the children, the home, the cleaning, the laundry and the cooking? Can we extend this 'equality' into the home? Obviously not, since the proponents of the Equal Rights Amendment are quick to point out that the Amendment would restrict only governmental action and would not apply to purely private action.

"I am sure my sisters in the Woman's Liberation Movement have reminded you in strong and ominous tones that women represent the majority of voters. True, but there is no more unanimity of opinion among women than among men. Indeed, a woman on welfare in Harlem, a unionized laundry worker in California, an elderly socialite from Philadelphia may be of the same sex and they may be wives and mothers, but they have little in common to cause them to be of one opinion.

"Whatever happens to the structure of opportunity, women are increasingly motivated to work—and they want to work short hours on schedules that meet their needs as wives and mothers. They want fewer hours a week because emancipation, while it has released them for work, has not released them from home and family responsibilities.

"I oppose the Equal Rights Amendment since the equality it may achieve may well be equality of mistreatment."

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by PAUL A. FREUND
Professor of Constitutional Law
Harvard University Law School

From testimony given before the Senate Committee on the Judiciary on September 9, 1970, in the course of hearings on S.J. Res. 61 and S.J. Res. 231, proposed "equal rights" amendments to the Constitution.

"I AM a professor at the Harvard Law School, specializing in constitutional law, and I am here in a purely personal capacity, having prepared a statement some 20 years ago in opposition to the amendment when it was previously before the Senate.

"I am anxious that my position not be misunderstood. I am in wholehearted sympathy with the efforts to remove from the statute books those vestigial laws that work an injustice to women, that are exploitative or oppressive discriminations on account of sex.

"Too many of such laws continue to disfigure our legal codes. I submit, however, that not every legal differentiation between boys and girls, men and women, husbands and wives, is of this obnoxious character, and that to compress all these relationships into one tight little formula is to invite confusion, anomaly, and dismay.

"Let me illustrate. Consider two types of laws that differentiate on the basis of sex. One prescribes heavier criminal penalties for men than for women who commit identical offenses. This can only be explained on some moralistic basis that has no rational relation to the purposes of the criminal law. The other type prescribes, or officially approves, different premium rates for life insurance for men and women; based on actuarial statistics of life expectancy, the rates for women are lower. Here is a legal recognition of the facts of life, which happen indeed to favor the position of women. Is there any reason to visit the same condemnation on these two kinds of laws, as if they were equally repugnant to our sense of justice, and to do so by a change in our fundamental law that would leave no freedom of action to any State? Anyone who sees an important difference in these two cases cannot in good

(Continued on page 25)

CON—FREUND, *continued from page 23*

conscience, I submit, support the proposed amendment.

"It will not do to answer that the courts will make sensible distinctions and will not give a literal meaning to 'equal rights under law.' If only that were the purport of the amendment it would be redundant of the equal-protection guarantee of the 14th Amendment. The Supreme Court has not held, as is sometimes loosely stated, that women are not 'persons' within the meaning of that amendment. Rather the Court has found in the past that certain laws do not discriminate unfairly against women. Very probably the Court would be less tolerant today in applying the guarantee of equal protection to differences based on sex, as it is less tolerant of unequal treatment in other fields. But it is precisely to avoid the necessity of submitting such questions to the courts, to strip the courts of any latitude of application, that the proponents of the equal rights amendment urge the necessity of its adoption. Their model is not the generally flexible concept of equal protection, but the concept as it has now come to be applied to provisions of law based on race. The law, it is argued, must be sexblind no less than colorblind.

"Let us see whether the analogy to race is a satisfying one. It is now a constitutional principle that public schools and universities may not maintain a dual system for white and black students, respectively. Does it follow that men and women must be admitted without differentiation to West Point and Annapolis—not in separate but equal academies but in the same classes and in the same school activities? If this is indeed the will of Congress, it can be carried out by simple majority vote, on an experimental basis, without waiting for a binding mandate from three-fourths of the States. If it is not the will of Congress, I assume the proposed amendment will not be approved by this body. The strict model of racial equality, moreover, would require that there be no segregation of the sexes in prisons, reform schools, public restrooms, and other public facilities. Indeed, if the law must be as undiscriminating concerning sex as it is toward race, it would follow that laws outlawing wedlock between members of the same sex would be as invalid as laws forbidding miscegenation. Whether the proponents of the amendment shrink from these implications is not clear.

"It has been stated that equal treatment would not be required if it ran counter to prevailing standards in the present state of our culture. This is an escape valve not found in the amendment itself and one of very uncertain dimensions. Some may believe that to permit women to work as coal miners offends prevailing mores; but evidently such an exemption from the amendment's coverage would be strongly repudiated by the proponents.

"Subjection of women to compulsory military service, along with men, raises a similar question. Again, the proponents appear to insist that the drafting of women as well as men for suitable military service would in fact be required under the amendment. They assume, probably correctly, that equal 'rights' would include obligations of service; and under the amendment men could claim that the 'right' of exemption from the draft must be applicable without regard to sex. If this major innovation in the draft is truly the will of Congress, it can be achieved, like the opening up of West Point and Annapolis, by simple legislation, and at once, without waiting to be bound by the action of three-fourths of the States. Draft policy is, after all, the responsibility of the National Government. A change of policy of this magnitude in framing a draft law is customarily the subject of full and informed hearings before appropriate committees and is voted on after well-focused debate. It may or may not be a desirable change to make, but in other circumstances it would surely be thought irresponsible to impose such a reform almost without attention, as a half-hidden implication of a motto which, in addition, would be frozen unalterably in the Constitution.

"As I have read the debates, the proponents are quite literal and acknowledge very freely that women would be subjected to compulsory military service, though they add that the appropriateness of the particular branch of service would be left, of course, to be decided. They don't try to escape in that what seems to me rather extreme application, as they might have by saying this amendment deals with rights and not with responsibilities. They don't make that attempt to escape from the language.

"In effect it might be a constitutional bar for practical purposes to future compulsory military service, and some people might welcome that, but I think that that is an issue that would be put before the appropriate committees of the Congress, receive highly focused debate and not be a conclusion that would be an almost unnoticed incident of the adoption of a constitutional amendment through the inclusion of some motto that happened to include universal military service within it.

"Even if you were to make some kind of a verbal play with the word 'rights' as distinguished from 'duties,' it could always be argued by man that he had a right of exemption because women had a right of exemption under the present draft law. So that even literally one doesn't escape from the force of the word 'rights,' since men can claim their rights as well as women under the proposed amendment. And I think the military service issue is inescapable.

"Consider next the field of domestic relations, with its complex relationships of marital duties and parental re-

(Continued on page 27)

CON—FREUND, *continued from page 25*

sponsibilities. Every State makes a husband liable for the support of his wife, without regard to the ability of the wife to support herself. The obligation of the wife to support her husband is obviously not identical to this; if it were, each would be duty bound to support the other. Instead, the wife's duty varies from State to State. In some jurisdictions there is no obligation on the wife, even if the husband is unable to support himself. In others, the wife does have a duty of support in such a case. In 1968 a recommendation on the subject was made by a Task Force on Family Law and Policy of the Citizen's Advisory Council on the Status of Women, a group that supports the amendment. The recommendation was a progressive and equitable one: 'A wife should be responsible for the support of her husband if he is unable to support himself and she is able to furnish such support.'

"So far, so good. But, under the mandate of the Equal Rights Amendment, what would be the effect on the rule fixing the husband's duty? Some members of the task force, but only some, took a position consistent with the principle of the amendment:

" 'Some of the task force members believed that a husband should only be liable for the support of a wife who is unable to support herself due to physical handicap, acute stage of family responsibility or unemployability on other grounds.'

"This solution would be dictated by the Equal Rights Amendment but would be contrary to the law of every State. Can it be said that the favorable treatment everywhere accorded to wives in respect of support is a manifestation of male oppression or chauvinism or domination? Can it be expected that all the States will make an about face on the law of support within a year of the adoption of the amendment; and if they do not, what will be the reaction of housewives to the Equal Rights Amendment when husbands procure judicial decisions in its name relieving them of the duty of support?

"The truth is that a motto of four words, however noble in purpose, is hopelessly inept to resolve all the diverse issues of classification by sex in the law. It is as if the Constitution declared 'All power to the people,' and left it at that. A hundred years ago the framers of the 14th Amendment resorted to a high-sounding but unexamined motto when they provided that no State might abridge the 'privileges and immunities of citizens of the United States.' What those privileges are still is a subject of litigation and debate. We wonder how a phrase so unthought through could have found its way into the Constitution as a mandate for legislatures and courts. We can at least profit from that experience. We can at least try to think things, not merely words, when amending our fundamental law. Of course, no legal provision can anticipate unforeseeable or out-of-the-way problems that may arise. But when a proposal leaves the mind so unsatisfied regarding its effect on ordinary, obvious, recurring relationships, a more specific and concrete approach is clearly called for.

"I would not want to leave the subject on a purely negative note. My concern, as I have said, is with the method proposed, which is too simplistic for the living issues at stake. It remains, then, to suggest alternative approaches. A great deal can be done through the regular legislative process in Congress.

"I think the 14th Amendment can do the job so far as State laws are concerned, and that legislation by Congress could do the job so far as the private conduct is concerned, either under the commerce clause as we now have it, or conceivably under other clauses of the Constitution, spending power, and so on.

"It seems to me it would be a demonstration of the earnestness of the Congress in addressing itself to women's rights if it passed that kind of a program instead of waiting for three-fourths of the States to tell it what to do with respect to such matters as the Armed Forces or West Point or business in interstate commerce which have always been regarded as the responsibilities of Congress."

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by MARY DUBLIN KEYSERLING
Economic Consultant

From testimony given before the Senate Committee on the Judiciary on September 11, 1970, during hearings on proposed "equal rights" amendments to the Constitution. Mrs. Keyserling served from 1964 to January 1969 as Director of the Women's Bureau of the U.S. Department of Labor and as Executive Vice Chairman of the Interdepartmental Committee on the Status of Women.

"I TESTIFY in my individual capacity, although many of the views I will express are widely shared by many of the women's and other large organizations.

"From 1964 to January 1969, I served as Director of the Women's Bureau of the U.S. Department of Labor and as Executive Vice Chairman of the Interdepartmental Committee on the Status of Women. From 1953 to 1964 I was associate director of the Conference on Economic Progress, a national research organization concerned with the major problems of the American economy. During a part of this period, I served on one of the committees of the President's Commission on the Status of Women. From 1941 to 1953, I held various economic posts in the

(Continued on page 29)

CON—KEYSERLING, *cont. from page 27*——

Federal Government. Prior to this, I was for 3 years executive director of the National Consumers League and for 5 years taught economics at Sarah Lawrence College.

"Throughout my working life, I have sought actively to help assure women greater equality of rights and opportunities. I have sought to publicize the serious inequities which still confront women and to work for their speedy redress. Particularly was this so during the 5 years I headed the Women's Bureau when I used every means at our command to increase national awareness of the underutilization of women's talents in our economy, our educational institutions and in civil and political life. I used every means to promote solutions.

"I stress this to emphasize how deep is my conviction that efforts to assure equality of rights for women are of signal importance in our society today.

"The task is a very large one. There are laws on the statute books which have long been outmoded, are inequitable, and should be changed. Women are still faced with serious obstacles in employment; they remain highly concentrated in the lesser paid, lesser skilled jobs. Equal pay for equal work is far from realization. There are many barriers in employment training. The law, medical, and engineering schools, among others, rationalize their quota systems by drawing on myths with respect to women's labor force participation and work performance. So one could go on at long length.

"If I believed the Equal Rights Amendment would truly hasten progress for women, which has been all too long delayed, I would support it, even though in some respects it might do certain injury. It would be easier to support it these days than to oppose it as I do in its current form. But, my own knowledge and experience leads me to the conclusion that the House-passed Equal Rights Amendment would achieve very few of the gains its advocates claim for it: Even if ratified, all the major battles for true equality on the job, in education and civil and political life would still have to be fought. It would deprive many women of rights, opportunities and benefits which the amendment would not automatically extend to men. It would create confusion, open up a Pandora's box of litigation, and create problems which would do the majority of women more harm than good.

"This view has been widely shared over the years. As you know, the Equal Rights Amendment was first introduced in 1923. But time and time again a very large number of organizations representing many tens of millions of women actively opposed the amendment in the twenties, the thirties, the forties, fifties, and sixties.

"In 1961, President Kennedy appointed a Commission on the Status of Women. Its members included outstanding men and women representative of industry, labor, civic, and political life, and the major national women's organizations. It was chaired by Mrs. Eleanor Roosevelt. The mandate given the Commission was to analyze remaining barriers to the full realization of women's basic rights and to develop recommendations for overcoming remaining discriminations.

"Naturally the Commission gave the Equal Rights Amendment close study. In fact, it held two special hearings on this subject and reviewed many documents submitted to it. Especially to advise it in this area, it appointed a committee on civil and political rights composed of 14 distinguished leaders in this field. The committee, after more than a year of intensive study, unanimously advised the Commission that it was not taking a position in favor of the proposed amendment. It expressed the view that the principle of equality of rights under law for all persons, male or female, is implicit in the Fifth and 14th Amendments to the U.S. Constitution and urged early review by the courts of the validity under the Fifth and 14th Amendments of laws and official practices discriminating against women so that the principle of equality will be firmly established in our constitutional doctrine.

"In its report to the President in October 1963, the full Commission unanimously endorsed the position taken by its Committee on Civil and Political Rights, concluding: 'Since the Commission is convinced that the U.S. Constitution now embodies equality of rights for men and women, we conclude that a constitutional amendment need not now be sought in order to establish this principle.' It declared that 'Early and definitive court pronouncement, particularly by the Supreme Court, is urgently needed with regard to the validity under the Fifth and 14th Amendments of laws and official practices discriminating against women, to the end that the principle of equality becomes firmly established in constitutional doctrine.' I strongly concur in the position taken by the President's Commission on the Status of Women.

"All of the recommendations of the Commission were reviewed some 5 years later by the Citizen's Advisory Council on the Status of Women which had been appointed by the President to carry forward the work of the Commission. After intensive study the position which had been taken by the Commission with respect to the proposed amendment was not reversed.

"It is true that the subsequent Citizen's Advisory Council on the Status of Women, appointed by President Nixon in August 1969, endorsed, but not unanimously, the proposed Equal Rights Amendment in February of this year.

(Continued on page 31)

CON—KEYSERLING, *cont. from page 29*——

"It is said by some that this reversal reflects the unrepresentative composition of the new Council, being largely composed of business and professional women. I would prefer to say that its differing view reflects a new impatience—which I understand—with the apparent slowness with which the courts have acted. The Citizen's Council, like many women who support the Equal Rights Amendment, and like many who don't, wants speedy action with respect to continuing inequities and barriers.

"So do we all. But, if in our haste we introduce new problems even worse than those we now confront, we shall not have served well the cause of true equality. This is what I believe the proposed amendment would do.

"Such haste, without more careful scrutiny and reflection, is not justified nor warranted. There have been many decisions which have, in fact, done what the Commission on the Status of Women hoped the courts would do. Definitive pronouncements have been made with respect to the validity under the Fifth and 14th Amendments of laws and official practices discriminating against women.

"We can and must speed the court process. More cases need to be brought. But it is vital that we recognize that the ratification of the proposed amendment would seek to do by a constitutional provision what really needs to be done, and can only be done, by economic, social, and political action backed by improved legislation—and I would stress that the Constitution in its present form is no barrier to such action. The proposed amendment would also set in motion an infinitude of cases on almost unlimited issues which would require clarification, which would require endless years for resolution, and which would, in my judgment, set us back rather than forward in our struggle for equality.

"I can indicate a few of the wide range of problems which would in all likelihood arise were the amendment ratified.

"Proponents of the amendment claim that it would require that 'when the law confers a benefit, privilege or obligation, such would be extended to the other sex,' and such laws would not be rendered unconstitutional. But, say the proponents, 'where a law restricts or denies opportunities of women or men, as the case may be, the effect of the Equal Rights Amendment would be to render such laws unconstitutional.'

"Let me refer first to laws conferring benefits. For example, can we say with any certainty that the courts would automatically extend to men minimum wage laws now benefiting only women? The amendment would merely require that laws not distinguish between men and women. 'Equality' before the law can just as easily be obtained by striking down a benefit. There is nothing in the proposed amendment to prevent this. We have already seen this striking down of benefits in the name of 'equality' in employment. A number of laws which provide rest and lunch periods for women, benefits equally needed by men, have recently been nullified rather than extended on the ground they did not apply equally. Who can say such nullification would not be the fate of many of the 'benefits' now on the statute books?

"The President's Commission on the Status of Women wisely took a very different approach. It recommended a specific remedy for a specific need. It counseled that we seek amendments of State laws to extend benefits now applicable only to women to men as well.

"Just this type of change has been in rapid process in recent years. It was not long ago, for instance, that State minimum wage laws applied only to women. Now 38 States, the District of Columbia and Puerto Rico have minimum wage laws in effect. Of these, 32 apply alike to men and women. Had the proposed amendment been ratified 15 or 20 years ago few State minimum wage laws might now remain on the books.

"What would be the fate of laws said to restrict or deny an opportunity were the proposed amendment ratified? They would be nullified, say the proponents of the amendment. Let's take the case of a law that restricts the opportunity of 10 women but benefits 10,000. One would presume from the arguments of the proponents of the amendment that it would still be held unconstitutional. All laws, they say, must apply identically.

"The inequality of women does not arise out of constitutional defect—but rather out of economic, social, political, and legislative default. The amendment would not ameliorate the great mass of inequalities which confront us. Most of them are not rooted in laws which apply unequally but in custom, tradition and attitudes which the amendment could not touch. It is these outmoded customs, traditions and attitudes which are the basis of unequal pay, unequal job opportunities, unequal access to professions and to institutions of higher learning. These must be countered through positive, specifically directed efforts and protest, too, if you will.

"Our challenge is to keep on with the hard task of working for new and better laws, where necessary the improvement and modification of old laws, and effective enforcement of good ones now on the books. We must educate and persuade, making more widely known the large price we pay for the underutilization of the skills of half our people. This is what is needed rather than constitutional change."