S. HRG. 98-1259, PT. 1

THE IMPACT OF THE EQUAL RIGHTS AMENDMENT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST AND SECOND SESSIONS

ON

S.J. Res. 10

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATIVE TO EQUAL RIGHTS FOR WOMEN AND MEN

MAY 26, SEPTEMBER 13, NOVEMBER 1, 1983; JANUARY 24, FEBRUARY 21, MARCH 20, APRIL 23, AND MAY 23, 1984

PART 1

Serial No. J-98-42

Printed for the use of the Committee on the Judiciary

OPENING STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Mr. Chairman, the long battle over equal rights for women has been a struggle marked by many ironies. Those who opposed the ERA argued that women did not need the protection of the ERA; what they needed was protection from equality.

You heard that patience would produce legislation equalizing equality of justice for men and women, but you also heard that equal rights and obligations for each sex were not really good for society.

[Whereupon, Senator Thurmond assumed the chair.]

Senator LEAHY. You heard that women were better off at home, and you heard it from a woman attorney who spent years in airplanes and on the road to make her point that women were better off at home. [Laughter.]

Now, the equal rights amendment was defeated because a minority of Americans were able to sell just enough of the message that no woman should stray very far from traditional roles. They were able to sell the notion that any woman in a closely knit family could not aspire to be treated as a legal equal to the men in the family or in the country.

The equal rights amendment cannot change who any of us is or what kind of person we will become, nor would anybody in this room want it to. It will not change the nature of love or intimacy, nor will it redress the estrangements between people of either sex that so often accompany modern life.

The equal rights amendment is not about any of these things. It is about simple justice. The fact is that we live in a society with generations of official bias against women. The results of that discrimination are clearer than ever in hard times when both men and women face a superhuman struggle to make ends meet. But

women's struggles are made even harder by deeply engrained inequality on the job.

I hope and expect that the second struggle for the equal rights amendment will be less over mythology and more about respect; less about women in combat and more about paychecks; and less about the loss of intimacy and more about the true human potential of both sexes.

This century has seen the greatest concerted effort ever made by a single society to root out racial and religious discrimination, and that effort is far from over. The same society cannot and will not ignore as deeply rooted an evil as sex discrimination, nor will it be bullied into believing that with equality of rights, the uniqueness and diversity of spirit that men and women each bring to life will be lost.

I believe that this Congress will adopt, and the Nation will ratify, the equal rights amendment. Its passage will not transform our society overnight, but it will provide men and women with the dignity enshrined in law to work hard together towards that transformation.

So, I value the hearings that begin today. I think they are extremely important, and I look forward to this matter coming once again to the floor of the Senate. Thank you.

The CHAIRMAN. Thank you, Senator.

Ms. Marna Tucker, I believe, is the next witness, if she would come around. Will you have a seat, Ms. Tucker?

Do you have anyone with you, Ms. Tucker?

Ms. TUCKER. No, I do not, Senator.

The CHAIRMAN. I understood that Prof. Walter Berns was on the panel with you. Is he here?

Dr. BERNS. Yes.

The CHAIRMAN. Would you come around, Mr. Berns, from the American Enterprise Institute? Have a seat.

Ms. Tucker, you may proceed.

[Whereupon, Senator Hatch resumed the chair.]

Senator HATCH. Go ahead, Ms. Tucker.

Thank you, Senator.

STATEMENT OF A PANEL CONSISTING OF MARNA S. TUCKER, ATTORNEY, WASHINGTON, DC, AND WALTER BERNS, RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE

Ms. TUCKER. Chairman Hatch, members of the subcommittee, my name is Marna S. Tucker. I am an attorney in the District of Columbia. I am in private practice and I specialize in domestic relations law and employment discrimination work.

I am a member of the Women's Legal Defense Fund, an organization which was founded in 1971 and of which I was one of the founding members. I am also a member of the Board of Trustees of the National Women's Law Center. It is from these organizations that I have gotten my interest in the equal rights amendment, but I am testifying today on behalf of myself.

I wish to thank the subcommittee for the opportunity to testify on Senate Joint Resolution 10, the new equal rights amendment. I

will highlight my testimony and I would like to ask that my formal statement be submitted in its entirety for the record.

Senator HATCH. Thank you. Without objection, we will put your full statement in the record.

Ms. TUCKER. I am here today to urge this committee and the Senate to demonstrate to the women of this Nation that discrimination on the basis of sex has no place in American life by again submitting to the States for ratification an equal rights amendment to the Constitution of the United States.

The equal rights amendment was first introduced 60 years ago by the National Women's Party to complement the women's newly won right of suffrage. And here we are 60 years later; women have only just begun to achieve meaningful progress.

The inferior status of women in virtually every economic and political sphere remains the norm. The exclusion of women from participation at many levels in our society is still an embarrassing reality and it is a national disgrace.

The continuing existence of laws which sanction inequality is a governmental expression to the public that inequality of rights is an acceptable public policy. The mere existence of these laws makes women second-class citizens. Only an equal rights amendment to the Constitution will end this shameful treatment and will signal the Nation's clarion call once and for all to equality.

Even those rights we have painfully won over the years are incredibly fragile. For example, the administration during the past 2 years has effectively undermined existing Federal antidiscrimination legislation by its feverish rewriting of Federal regulations designed by prior administrations to encourage equal opportunity.

Only with the passage of the equal rights amendment will our national commitment to equality for women be unequivocally and emphatically affirmed for all of our citizens for all time.

During the course of these hearings, you will undoubtedly hear many, many reasons why an ERA is needed to guarantee equality for women. In my own testimony, I would like to limit my remarks to a discussion on the areas that I feel I know best—family law, employment, and education as it relates to employment.

In the area of family law, for example, every day I see in my own practice how the institutionalized discrimination against women as homemakers contributes to their desperate economic condition following divorce—a kind of discrimination that will not be tolerated under the ERA.

I am talking about an economic disparity between divorced men and women that studies are just now beginning to corroborate. Studies have shown that in the first year immediately following divorce, the financial security of women plummets by 73 percent and that of men increases by 43 percent. [Applause.]

As a lawyer, I find myself saying to my women clients that they cannot expect equality of treatment in the courts in the area of family law. I say that it is a man's world in the courtroom. I say that sexist presumptions prevail, and the only hope we have for equality of treatment under the current state of the law is for an enlightened judge that will hopefully listen to the arguments I raise.

Child support awards are totally inadequate. Why judges feel that they cannot award more than half a man's salary to a woman who has total responsibility for raising three-fourths of the family, I will never understand.

Spousal support, or alimony, is chintzy. I find judges saying over and over again, "Oh, the woman is making $15,000 a year; that is good pay for a woman; she does not need alimony."

Marital property distribution favors the wage earner. Why does this happen? Why do judges respond that way? My own opinion on that is based in a lot of the sexist presumptions that prevail in the law. Those judges have some feeling that somehow men need money for status more than women, and they know that women will survive.

They know that women will not let their children go without child care; if they have to go to work, they will not leave them on the street. They know their children will not go without food. The women will cut the meat a little thinner and eat less themselves.

They know that women will survive, so they have no reason to change the rules, and they know they will survive because they have survived for centuries. And men have traded on that, and it is time to stop that right now in the family law courts.

Three problems that I have mentioned have found their genesis in the underevaluation of the homemaker's contribution to the family and to the acquisition of marital property. Very simply, courts tend traditionally to view money as the controlling currency. Women want their contribution as wives and mothers to be viewed as equal currency. That is what we ask for and that is what the ERA will give us.

In the 16 States which have incorporated an equal rights amendment in their State constitutions, the experience has shown that according legal recognition to the value of homemaker services does insure economic protection for homemakers and equity in the marriage.

In the area of child support, State ERA's have been used to establish not only a mutual obligation for support of the parents, but to accord economic value to custodial homemakers' nonmonetary contribution of child care and nurturing. There are courts in Pennsylvania and Texas and Colorado who have all recognized the value of the nonworking parent's custodial contribution and they have begun to issue support awards in accordance with the respective abilities for each spouse to contribute.

The importance of these rulings for the custodial, nonworking parent is clear. Recognizing the economic value of the homemaker's contribution in the face of an equal and mutual obligation of support has resulted in comparable and equivalent financial support being assessed against working, noncustodial spouses, men or women.

In the distribution of marital property, State ERA States have been responsible for equalizing each spouse's share of marital property at the time of divorce. Consistent with the newly emerging concept of marital partnership, the Pennsylvania courts, for example, have interpreted that State's new equitable distribution law to require a starting presumption of equal distribution.

Finally, married women, and particularly homemakers, have also acquired new strength in the area of spousal support as a result of the passage of ERA's. A Pennsylvania court recently struck down a rule imposing an arbitrary limit on a wife's right to support, declaring the rule inherently sexist in its requirement that a wife receive less than one-half of her husband's earnings despite her own needs.

The increased value accorded the husband's labor, accompanied by the devaluation of the wife's work as a homemaker, were viewed by the court as violative of the spirit, if not the letter, of Pennsylvania's equal rights amendment.

Clearly, the extension of legal rights and benefits to both men and women and the simultaneous removal of gender-based presumptions and burdens that have been triggered by State ERA's have laid the foundation for a changing family law system that is more equitable and more responsible to each family member's needs.

In the emerging system, and the system that I hope to deal with my clients in someday, it is the needs, the abilities, and the unique contributions of each family member, rather than antiquated rules based on sex stereotypes, that form the basis of the laws, and would inform judicial decisionmaking.

We need an equal rights amendment to the Constitution so that these principals that we are just beginning to see emerge in the States that have equal rights amendments will be extended to all 50 States.

I would like to call the committee's attention to another area in which the pervasive discrimination against women clearly calls for the remedy of the equal rights amendment. I am, of course, speaking of the interrelated issues of employment and education.

As was highlighted earlier in some of the remarks, employed women today are paid only 60 cents for every $1 paid to men. There are, we feel, two principal reasons for this disparity.

First, equal employment laws are inadequate and enforcement is insufficient. Second, our system of public education tends to deny women training for all but a handful of low-paying, dead-end women's jobs.

The enactment of title VII of the Civil Rights Act of 1964 was a significant step in addressing the more obvious problems of employment discrimination on the basis of sex. But the statute has many gaps in its coverage. The most glaring omission is that the statute fails to protect the employees of employers of fewer than 15 persons. Another, and particularly ironic, is that title VII was written to deny protection to the staffs of the Members of Congress and the Federal judiciary.

But as useful as it may be and as much as the case law has developed, title VII is still only a statute, and statutes can be repealed at the whim of Congress. Only when the policies of equal opportunity which underlie title VII are mandated by the Constitution itself will we feel truly secure that an end to discrimination in employment will be possible.

Equal educational opportunities are effectively denied to women by many jurisdictions through a pattern of formal restrictions and

active discouragement of women and girls from entering vocational programs.

Moreover, the military, as the single largest training institution in the Nation, is one of the principal discriminators against women in these programs. Again, only an equal rights amendment will insure that women will be able to obtain equal educational opportunities, and thereby break through the trap of continually being only relegated to women's work.

Of course, the equal education opportunity laws, like title IX, are only statutes, and as such these statutes can be repealed. Law-by-law, State-by-State efforts at eliminating sex discrimination simply will not do.

I think Representative Barbara Mikulski said it best when she said that a law-by-law approach to eliminating sex discrimination is like prohibiting slavery plantation by plantation.

We will never see an end to discrimination unless nondiscrimination in all governmental activities, including education, becomes the fundamental law of the land.

I now would like to address some issues that the chairman in his questioning of Senator Tsongas raised. When he stated that his objection to the proposed ERA was based on its ambiguous wording—he is concerned that its proponents do not know what it means.

As Senator Kennedy said, and I would like to reiterate, we know what it means, and I would like to respond to this contention. The Constitution and the Bill of Rights is a living document. Many of the phrases which are viable today are from British jurisprudence.

Phrases like "freedom of speech," "privileges and immunities," "equal protection of the laws," "due processes of the laws," "cruel and unusual punishment"—these phrases are all principals that have been set out.

The truth is that the ERA sets out firm principles that are as clear as any of the rights already existing in the Constitution. In reality, today, under our current law and the interpretation of cases under the 5th and 14th amendments, we are far more ambiguous in our position than we would be with an ERA.

The concept of equal protection under both the 5th and 14th amendments has not been given uniform articulation by the courts. There has been a great deal of ambiguity about the meaning of sex equality. ERA is designed to eliminate that ambiguity, not to foster it. It would give less discretion to the courts. It would curtail judicial activism in the area of sex discrimination.

Under the current standards of judicial scrutiny, a sex-based classification must serve important governmental objectives and must be substantially related to achievement of those objectives. That is the current standard for sex equality, as defined by the Supreme Court.

That standard invites courts to be super-legislatures, deciding what the value-laden terms like "important governmental objectives" and "substantially related" would mean.

We now, under our current law, under the 14th amendment, have the least certainty and the least predictability where it concerns sex discrimination. If we had an equal rights amendment, we know then what that means. The ERA will make it clear.

Sex-based discrimination, like race-based discrimination, is intolerable. In extraordinary situations, there may be exceptions. That is true of every constitutional principle, and it has been true of every constitution.

Senator HATCH. By and large, you would equate sex discrimination with race discrimination under the standard of review that you are describing here today?

Ms. TUCKER. I am saying that it would be treated as race discrimination would be, most likely.

Senator HATCH. Would it be treated as a suspect classification or an absolute classification under constitutional law?

Ms. TUCKER. Whether it would be treated as a suspect classification, Senator, I think that might be a little too simplistic to describe it that way.

Senator HATCH. OK.

Ms. TUCKER. Let me explain that. In virtually all race cases and virtually all national origin cases where statutes have had those classifications, they have been struck down—virtually all of those—and they are called suspect classifications, but, in fact, they have been absolute in those terms.

The only exceptions to that have been the Japanese internment cases—certainly, a blot on our past.

Senator HATCH. All of us agree with that.

Ms. TUCKER. OK. And in the sex classifications, we would anticipate the same kind of analysis.

Senator HATCH. Then, sex classifications would be absolutely prohibited?

Ms. TUCKER. If the word "absolute" means that when an issue comes up before a court and all of the facts and circumstances are adjudged case by case—if that is what it means, yes.

Senator HATCH. That is what I was trying to get to with Senator Tsongas.

Would you agree with Professor Emerson that the object of the ERA is, as he said, to "prohibit any differentiation in legal treatment on the basis of sex?" Would you agree with that?

Ms. TUCKER. Yes.

Senator HATCH. Would you agree with Professor Emerson that the ERA must be applied "comprehensively and without exception?"

Ms. TUCKER. I am not sure what he means by "comprehensively and without exception."

Senator HATCH. In all cases it would be prohibited, without exception?

Ms. TUCKER. It means that equal protection of the laws will not be denied on the basis of sex.

Senator HATCH. I see.

Ms. TUCKER. That is what it means.

Senator HATCH. What it basically requires is equal protection?

Ms. TUCKER. Equal protection of the laws will not be denied on the basis of sex.

Senator HATCH. Do you agree with Professor Emerson that the constitutional mandate of the ERA must be, as he said, "absolute?"

Ms. TUCKER. The constitutional mandate may be absolute as to what?

Senator HATCH. Well, as to the permissibility of sex classifications.

Ms. TUCKER. I believe that a classification that is based on sex should be given the strictest judicial scrutiny on a case-by-case basis.

Senator HATCH. So, you would apply the strictest judicial scrutiny?

Ms. TUCKER. Absolutely.

Senator HATCH. Which is constitutional language, establishing sex as a suspect or absolutely prohibited classifications?

Ms. TUCKER. Yes.

Senator HATCH. You said yes?

Ms. TUCKER. Yes.

Senator HATCH. OK. Now, would you agree with Professor Emerson that the issue under the ERA cannot be "reasonable" "or unreasonable" classifications but that the ERA must be interpreted so that sex is simply not a factor?

Ms. TUCKER. Well, Senator, I wish to point out first of all that Professor Emerson's article was written in 1971.

Senator HATCH. Sure.

Ms. TUCKER. I have to tell you that 1972 was the last time I read that law review article when I was teaching. Also, in 1971 when it was written, we did not have the school of law that now exists on constitutional principles. Even Professor Emerson there was really predicting it.

We have developed since that article was written at least three different standards of sex equality, and what I am submitting to you today is that it is time to have that over with. We ought to make it absolutely clear that sex equality is forbidden by the Constitution of the United States, unequivocally.

Senator HATCH. OK. I will have some other questions later, but I wanted to clarify a few points while you were on the subject. You have been very helpful, and I appreciate it.

Ms. TUCKER. Thank you.

Senator HATCH. Go ahead.

Senator LEAHY. Could I just ask one clarification, Mr. Chairman?

Senator HATCH. Sure.

Senator LEAHY. I am not sure whether I understood. Did you say sex equality or sex inequality is forbidden under the——.

Ms. TUCKER. I could not hear you; I am sorry.

Senator LEAHY. In your last answer, did you refer to sex equality or sex inequality as being forbidden under the Constitution?

Ms. TUCKER. Sex inequality.

Senator LEAHY. Thank you.

Ms. TUCKER. Sex equality would be guaranteed.

Senator LEAHY. Sex equality would be guaranteed and sex inequality would be forbidden. OK, thank you.

Ms. TUCKER. I certainly did not mean to make that mistake.

Senator LEAHY. I did not think so.

The CHAIRMAN. That was just a slip of the tongue. I am sure you meant that sex inequality was forbidden by the Constitution. That is what you meant, was it not?

Ms. TUCKER. That is correct.

Senator HATCH. I understand.

Are you finished?

Ms. TUCKER. Just in completing the testimony, Senator, if our years of litigation and lobbying for equality have taught us anything, it is that discrimination against women has been woven through the fabric of our laws. For years, we have sought to root it out one law at a time. We have had some success in this.

But there are too many discriminatory laws remaining for the job to be completed in our lifetime, and new laws are being enacted all the time. It is obvious to me that the only way by which real progress can be achieved in making our society one in which the opportunities and rights of women are truly equal to those of men is for the adoption of the equal rights amendment.

And I ask you to once again submit to the States the equal rights amendment so that America may finally become the land of equal opportunity.

Thank you.

Senator HATCH. Thank you. I appreciate your testimony. I understand that Senator Thurmond introduced both of you, but did not say much about your background.

Marna Tucker is a partner in the Washington, DC, law firm of Vosburgh, Klores, Feldesman & Tucker. She has been an adjunct professor on women's rights at both Catholic University and Georgetown University. She is chairperson of the American Bar Association's Committee on Individual Rights and Responsibilities, and a member of the National Women's Legal Defense Fund.

She testified before our committee on the subject of the bicentennial of the Constitution several years ago, and I appreciated that.

She can take pride in the fact that she was recommended by the Senate proponents as the individual who could best represent the pro-ERA position to this committee at its opening hearing.

Dr. Walter Berns is an individual who has testified before this subcommittee on a number of important occasions. He is a resident scholar at the American Enterprise Institute, and one of the most distinguished constitutional scholars in the country.

Dr. Berns has taught constitutional law for more than 30 years at such institutions as Yale University, Cornell University, the University of Toronto, and presently at Georgetown University. He has written a number of scholarly works on issues of constitutional law. And if I am correct, Dr. Berns further served as the U.S. representative to the United Nations Human Rights Commission.

[Prepared statement follows:]

PREPARED STATEMENT OF MARNA S. TUCKER

Chairman Hatch and Members of the Committee, I am Marna S. Tucker. It is my privilege to appear before you today on behalf of the Women's Legal Defense Fund, which I helped found.

The WLDF was organized in 1971 as a vehicle for educating the public on legal and political issues of importance to women and for facilitating litigation attacking sex discrimination in all forms. Over the years, we have been invited to present our views to Congress on dozens of matters. And, we have participated in hundreds of law suits at all levels of federal and state courts.

We are here today to urge this Committee, and the Senate, to demonstrate to the women of this Nation that discrimination on the basis of sex has no place in American life by again submitting to the states for ratification an Equal Rights Amendment to the Constitution of the United States.

The Equal Rights Amendment was first introduced sixty years ago by the National Women's Party, to complement women's newly won right of suffrage. The feminists of that time recognized that their recent victory was only the beginning of the far more difficult struggle to obtain equality in all aspects of American society. They were, unfortunately, very right in their assessment of how difficult the struggle would be.

Sixty years later, women have still only begun to achieve meaningful progress. The inferior status of women in virtually every economic and political sphere remains the norm. The total exclusion of women from participation at many levels in our society is still an embarassing reality and a national disgrace.

The continuing existence of laws which sanction inequality or accept a diminished status for women have an effect far beyond the literal meaning of their terms. Each of these laws is

a governmental expression to the public that inequality of rights is an acceptable public policy. Their mere existence is an affirmation that American women remain second class citizens. Only an Equal Rights Amendment to the Constitution of the United States will end this shameful treatment.

Without an ERA, we know that those rights which have been painfully won are incredibly fragile. Indeed, the Reagan Administration is proving this point beyond our worst fears. The Administration, during the past two years, has effectively undermined existing federal anti-discrimination legislation by its feverish rewriting of federal regulations designed by prior administrations (including Republican ones) to encourage equal opportunity. The Reagan Administration is clearly signaling to the Nation that equal rights for women is no longer an important item on our national agenda.

Only with the passage of an Equal Rights Amendment will our national commitment to equality for women be unequivocally and emphatically affirmed for all of our citizens, for all time.

We have learned that there is no acceptable substitute for an ERA. Neither the Fifth nor the Fourteenth Amendments' guarantees of equal protection under the laws provides us the guarantee of equality we seek. The Supreme Court has made this clear again and again by refusing to view classification based on sex as inherently suspect (as it does classifications based on race).

During the course of these hearings, you will undoubtedly hear many, many reasons why an ERA is needed to guarantee equality for women. In my own testimony, I would like to limit my remarks to a discussion of the three areas I feel I know best: family law, employment, and education. For me, these three areas hold special importance because I see in them more than particular types of discrimination with which every woman

can identify. I also see a direct link between them and the phenomenon of the feminization of poverty.

In the area of family law, for example, I see every day in my own practice how the institutionalized discrimination against women as homemakers contributes to their desperate economic condition following divorce - a kind of discrimination that would not be tolerated under an ERA. I am talking about an economic disparity between divorced men and women that we, as women, have always known to be true and that studies are just now beginning to corroborate. Studies have shown then, in the year immediately following divorce, the financial security of women plummets by an average of 73% while that of their husbands increases by 43%.

The root causes of this disparity may be found in inadequate child support awards, unequal distribution of marital property, and insufficient arrangements for spousal support - three problems which themselves find their genesis in the undervaluation of the homemaker's contribution to the family and to the acquisition of marital property.

We know that an ERA will alleviate these aspects of discrimination because, for the past 10 years, we have been watching the steady progress that has been made in many of the 16 states which have incorporated an equal rights amendments into their state constitutions. The experience in these states has shown that according legal recognition to the value of homemaker services <u>does</u> ensure economic protection for homemakers and equity in the marriage. State equal rights amendments have been effectively applied to achieve economic equity in all of these critically important areas.

In the area of child support, state ERA's have been used to establish not only a mutual obligation of support by both parents, but also to accord economic value to the custodial

homemaker's non-monetary contribution of child care and nurturing. Courts in Pennsylvania, Colorado and Texas have all recognized the value of the non-working parent's custodial contribution, and have begun to issue support awards in accordance with the respective abilities for each spouse to contribute. The importance of these rulings for the economic well-being of the custodial non-working parent is clear: recognizing the economic value of the homemaker's contribution in the face of an equal and mutual obligation of support has resulted in comparable and equivalent financial support being assessed against the working, non-custodial spouse.

In the distribution of marital property, state ERA states have overturned outmoded common law notions of ownership and have been responsible or equalizing each spouse's share of marital property at the time of divorce. Consistent with the newly-emerging concept of marital partnership, the Pennsylvania courts, for example, have interpreted that state's new equitable distribution law to require (in light of Pennsylvania's ERA) a starting presumption of <u>equal</u> distribution.

Finally, married women and particularly homemakers have also acquired new strength in the area of spousal support as a result of the passage of state ERA's. A Pennsylvania court recently struck down a rule imposing an arbitrary limit on a wife's right to support, declaring the rule inherently sexist in its requirement that a wife receive less than 1/2 of her husband's earnings, despite her own needs. The increased value accorded the husband's labor, accompanied by a devaluing of the wife's work as a homemaker, were viewed by the court as violative of the "spirit if not the letter of the Pennsylvania Equal Rights Amendment ..."

Clearly, the extension of legal rights and benefits to both men and women, and the simultaneous removal of gender-

based presumptions and burdens that have been triggered by state ERA's have laid the foundation for a changing family law system that is more equitable and responsive to each family member's needs. In the emerging system, it is the needs, abilities, and unique contributions of each family member, rather than antiquated rules based on sex stereotypes, that form the basis of the laws and inform judicial decisionmaking. The experience in these states demonstrate the value of an equal rights provision in enhancing women's economic and legal status, and highlight the burning need for an Equal Rights Amendment to the Constitution of the United States so that these principles will be extended to all fifty states.

I would like now to call the Committee's atttention to another area (actually two areas) in which the pervasive discrimination against women clearly calls for the remedy of an Equal Rights Amendment. I am, of course, speaking of the interralated issues of employment and education.

Employed women are today paid only 60¢ for every dollar paid to men. There are, we feel, two principal reasons for this disparity. First, existing equal employment laws are inadequate and enforcement is insufficient. Second, our system of public education tends to withhold from women training for all but a handful of low paying dead-end "women's jobs."

The enactment of Title VII of the Civil Rights Act of 1974 was a significant step in addressing the more obvious problems of sex discrimination in employment. But, the statute has many gaps in its coverage. The most glaring omission is that the statute fails to protect the employees of employers of fewer than 15 persons. Another, and particularly ironic, omission is that Title VII was written to deny protection to the staffs of Members of Congress and the federal judiciary. One can only speculate as to what message these exemptions convey to the

women of America about Congress' commitment to ending job discrimination.

As useful as it may be, Title VII is only a statute. And, statutes can be repealed at the whim of Congress. Similarly, a lack of commitment of an Administration to enforce statutory policies can undermine the best intention of an earlier Congress. As I mentioned before, we are seeing this now in the Reagan Administration. Only when the policies of equal opportunity which underlie Title VII are mandated by the Constitution itself will we feel truly secure that an end to discrimination in employment will be possible.

Equal educational opportunities are effectively denied to women by many jurisdictions through a pattern of formal restrictions and active discouragement of women and girls from entering vocational training programs. Only an Equal Rights Amendment will ensure that women will be able to obtain equal educational opportunities and thereby break through the trap of continually being only relegated to "women's work."

Of course, equal educational opportunity laws, like Title IX, are only statutes and, as such, can be repealed. Law-by-law, state by state efforts at eliminating sex discrimination simply will not do. We will never see an end to discrimination unless non-discrimination in all government activities, including education, becomes the fundamental law of the land. Only an Equal Rights Amendment will insure that women and girls will be given fair educational opportunities and that the wage gap between men and women will be eliminated.

There is another significant source of education and training to which access by women is severely restricted and frequently denied: that provided by the military services. The military is the single largest educational and training institution in the United States. It has taught millions of

persons advanced skills and occupations which they might otherwise never have been exposed to. Indeed, military occupation training is the route by which many poor Americans are able to pull themselves out of poverty. Unfortunately, the military is one of the principal discriminators against women.

Indeed, the Reagan Administration's recent preclusion of women from some 23 Army military occupational specialties, which had been open to them under the previous Administrations, has effectively destroyed the Army careers of many women. Through this discriminatory preclusion,women have once again been denied access to many military occupation specialties which would train them for such non-traditional jobs as carpentry, plumbing, and other skilled trades.

The armed services, may, in a future Administration, reverse themselves. But such a reversal is likely to be only transitory. Only an Equal Rights Amendment will ensure that women members of the armed services will have equal opportunity, based upon their individual abilities, to learn the skills that will significantly improve their economic lot in post-service life. Until an Equal Rights Amendment is added to the Constitution, a principal vehicle for lifting themselves out of poverty (and possibly the only meaningful one left after the massive social program budget cuts imposed by the Reagan Administration) will be denied to women.

If our years of litigation and lobbying for equality have taught us anything, it is that discrimination against women is embedded throughout the fabric of our laws. For years, we (and similar organizations) have sought to root it out one law at a time. We have had some success in this. But, there are too many discriminatory laws remaining for the job to be completed in our lifetime. And, new laws are being enacted all the time. It is obvious to us (as we believe it is to any student of