I hope to be able to maintain an open mind as we proceed with these hearings.

I thank the Chairman.

Mr. Edwards. The gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. Thank you, Mr. Chairman. I really want to commend the chairman, Congressman Edwards, for all that he has been through getting these hearings off the ground. It is terribly important, and I think that he has really gotten them off the ground on the right start. Unfortunately, the first equal rights amendment, there were groups trying to say that little constitutional amendment was going to turn women into men and men into women, and on and on and on.

If there is anything we could figure out how to do that with constitutional amendments, legislation or anything else, let me know. What the constitutional amendment does is grant equality—not sameness—equality. It is a very different concept. And going way back to the beginning of the founding of the Republic our forefathers and foremothers understood that difference between sameness and equality.

It really is an economic issue as we see the feminization of poverty only getting heavier and heavier with incredible statistics coming down the line showing what is happening to homemakers, working women, wives, college graduates, and on and on and on. We have to point out that it is an economic issue and not a sameness issue, or a social revolutionary issue, or what-have-you. I say if women can go into space, they can go into the Constitution. It is long overdue, and I commend the chairman for kicking these hearings off.

Mr. Edwards. Thank you.

We welcome a new member to the subcommittee, the distinguished member from New York, Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

I, too am a fervent supporter of the Equal Rights Amendment for all the reasons that have been outlined, over the last 10 years. There is a definite need for equality. The refusal to put the equal rights amendment in the Constitution, I think, is an insult not only to the women of America but to the men of America as well. By refusing to say that we are equal, that to me is against the American way.

I imagine that this time around, just as last time around, the litany of scare tactics will come up again, and they will have some effect. But I think there is one thing different now than before. There are many things different, but there is one thing that I would like to point out, and that is that I think the myth that the ERA is only wanted by a minority of American women has been totally put to rest.

There is broad-based support among women of all political stripes, all different backgrounds, economic and social levels. If anything, that shows up in the gender gap.

The gender gap knows that American women are looking to see who are their friends and who are their enemies. And if Ronald Reagan wants to do something to reduce the gender gap, he does not have to take pictures with one person or another, or ignore it.

He ought to come out and support the equal rights amendment once and for all.

Until he does, along with other people in America who have opposed it, the gender gap will remain, and women will justifiably not trust this administration with their rights.

Thank you, Mr. Chairman.

Mr. Edwards. Thank you, Mr. Schumer.

I am going to ask the dean of the women’s delegation to the House of Representatives, the gentlewoman from Colorado, Ms. Schroeder, to welcome and introduce our first witness.

Mrs. SCHROEDER. Thank you, Congressman Edwards.

I must say while most of you in this room think of our first witness as the Governor of Colorado, in my family, where I have a 13-year-old daughter, he is thought of as Heather Lamm’s father.

Heather Lamm is 12, and I am sure the Governor of Colorado and his wife have some of the same feelings about her that my husband and myself have, and many other parents around the country do about our children. That is that we think of our male children and female children as equals, and we are very upset that the law does not.

I think that if you look at what the Governor of Colorado has done, Richard Lamm who is sitting there — and I am going to try to make him blush — he has not just talked, he has acted.

Over 43 percent of his appointments to boards and commissions have been women. In prior administrations, it never got up to 10 percent.

His wife is absolutely fantastic, the No. 1 feminist, I think, in the State. She is fabulous and takes a back seat to no one.

He has been a sterling example and I don’t think there could be any better witness to come here and say what the equal rights amendment really is.

When I ran in 1972, the adoption of the equal rights amendment was on the ballot in Colorado. It passed, and so we have had a long history of dealing with it in the State and pointing out it is a good economic issue.

I think that starting with the Governor of the State, we did not want to start with fluff. We did not want to start with sparks. We wanted to start with answers and the real facts.

So I can’t tell you how honored I am to have you here today, and I know the women in our State are very honored to have you here. I know Heather Lamm will be honored to have you here.

I thank you very much, Governor. We are very pleased.

Mr. Edwards. Governor, you may proceed.

TESTIMONY OF HON. RICHARD Lamm, GOVERNOR OF THE STATE OF COLORADO

Governor Lamm. Thank you, Representative Schroeder, for your kind remarks.

Mr. Chairman, members of the committee, I am truly here in support of the equal rights amendment. My specific assignment, as I think it relates to the understandable questions that were raised earlier, has been, what has been Colorado’s experience?
Colorado is one of 17 States that has its own State equal rights amendment or variation thereof, and I would like to testify with regard to what has happened in Colorado. We know firsthand the success of the equal rights amendment, and I am here today to share with you what has been Colorado’s experience with our State ERA.

I think what happened in Colorado would be of particular importance because Colorado has an ERA that is virtually the same wording as the one that you have in front of you. Colorado’s says, “Equality of rights under the law shall not be denied or abridged by the State of Colorado or any of its political subdivisions on account of sex.” I think the proposed Federal law, as you know, simply substitutes the words “by the United States or by any State.”

So essentially we have, I think, an analogous situation to the situation that is in front of you, and hopefully our experience can be of at least somewhat instructive.

Our equal rights amendment was adopted by the voters in the 1972 general election and became part of the constitution in January of 1973, so we are talking about 10 years of experience now.

Four years after its adoption, the ERA was again on the ballot as an attempt was made to repeal it. The repeal attempt failed, and in both elections over 60 percent of the electorate supported the ERA.

Colorado’s experience has been positive. The parade of horribles that you hear about has not come about. Through legislative reform and court decisions, many laws and practices which discriminated on the basis of sex have been changed. I would like to describe some of those areas.

Historically, the laws pertaining to the family have been riddled by presumptions and mandates, which discriminate against women. At common law, a married couple was considered to be one person and that person was the husband, both in Colorado and most other places. Married women had no property rights and children were considered to be the property of the father.

Vestiges of these common law notions remain in many State laws to this day.

In Colorado, the passage of the equal rights amendment was preceded by the adoption of the Uniform Dissolution of Marriage Act, which we passed when I was in the legislature in 1971. Combined with the ERA, this act established fair treatment of both sexes with respect to the division of property, child custody, child support, spousal maintenance and divorce settlements.

The courts have required cases to be evaluated individually on their merit with full recognition of the circumstances peculiar to the spouses involved and keeping in mind the best interests of the children and the custody matters.

The courts have successfully resisted efforts to misuse the ERA. For example, in a 1978 decision by the court of appeals, the court rejected a husband’s assertion that his pregnant former wife should be ordered to obtain paid employment in order to financially contribute to the support of their child.

The court called the husband’s argument sexist and discriminatory and recognized that nurturing is part of the supporting of one’s child. The law does not require identical monetary contributions.

Certain family laws which discriminate against men have also been changed as a result of our State ERA. Two are noteworthy here.

One was the felony nonsupport law which provided criminal penalties for fathers who failed to support their children. After the Colorado Supreme Court held that the ERA could not be applied retroactively to invalidate nonsupport contributions obtained before the effective date of the ERA, the legislature sensibly amended the statute to apply to both parents.

Another supreme court ruling extended to a male the right to bring a paternity action to prove that he was the biological father of a child. The court held it violated both the equal protection laws of a child. The court held it violated both the equal protection laws and the State ERA to limit the initiation of paternity suits to the child’s mother. The legislature amended the State’s Uniform Parentage Act to provide equal rights to both parents claiming to be parents.

In the criminal law, again, I think the Colorado experience has been instructive and constructive. The principal statutes were the sexual assault laws which the legislature rewrote in neutral language, defining the crimes in terms of actors and victims.

There was, however, a time gap between the effective date of ERA and the legislative changes in the sexual assault laws. As a result, our supreme court was faced with a series of cases where defendants convicted under the old sexual assault laws claimed that their convictions were invalidated by the passage of the ERA. The courts did not buy it. It did not permit the ERA to be used to protect male criminals.

Relying on the remedial purposes of the ERA and recognizing that it permits different treatment based on unique physical characteristics of the two sexes, the court upheld convictions for rape and gross sexual imposition and statutory rape under the old laws. It just simply was not a problem.

Let me turn briefly to the area of employment.

Most of us are familiar with the distressing evidence of discrimination against women. We know that women generally earn only about 59 cents for every dollar earned by men, particularly after the dissolution of marriage, where the male’s income increases and the female’s income decreases.

We know that the average male with an elementary school education still is paid more than a woman with a college degree. We know that 80 percent of women workers are concentrated in low-paying jobs in service industries, clerical positions, plant and factory jobs, retail sales, and the needle trades.

In Colorado, the percentage of adult women in the formal workplace climbed to an estimated 60 percent in 1982, compared with only 38 percent in 1970. Forty-six percent of the women employed in Colorado were single, divorced, or separated.

Many of these single women work to support their families as well as themselves.

Nationwide, there are five times as many married women in the workforce today as there were in the 1940’s. In nearly 60 percent of American families today, both spouses are employed full time in jobs outside the home.
Today, the average woman can expect to spend 26 years in the work force if she is married and 45 years in the work force if she is single.

I think that those statistics speak volumes of the change that we have seen in society and what we are undergoing is clearly a time of profound change.

Outmoded stereotypes about a woman's place must give way to a new reality of women in the work place.

I believe the ERA will play an increasingly important role in removing the legal barriers to attainment of the long-promised goal of equal employment opportunities for women.

Laws which restrict employment opportunities on the basis of sex unfortunately pervade most states' labor laws. In two Colorado cases, very strong attacks based on the ERA were made on such discriminatory laws. In each case, the supreme court ultimately based its ruling on the lower standard of the equal protection clause which, of course, necessarily means that the law also violated the ERA.

The first case concerned a blatant bit of occupational protectionism. Colorado law provided that men could only have their hair cut by barbers. Why we ever did that is lost in the realm of time.

Cosmetologists, who are also licensed by the State and who are overwhelmingly female, were prohibited under a penalty of misdemeanor from cutting men's hair. The supreme court had no hesitation in invalidating that law. Again, a logical and humane result.

The other case involved a Colorado statute effectively denying unemployment compensation to certain women who left their jobs because of childbirth. Just at the time when a woman would need help the most, when she has had a baby and is ready to return to a job, the State law denied her unemployment compensation until she found a new job and was employed for 18 weeks.

The great hardship which this law caused to women and their families is obvious. Again, the court had no difficulty finding the law unconstitutional.

There are, of course, other cases involving the ERA and other statutes which have been changed as a result of the ERA. In addition, there are countless discriminatory statutes which have never been drafted because of the existence of the ERA, so it was also preventative.

I have discussed these three substantive areas to give you a feel for effect of the ERA. The case law is limited because prompt legislative action eliminated many discriminatory laws.

Our legislature, to their credit, went through and did a computer study finding every place in our statutes that had a mention of either male or female, woman or man, and in fact changed almost all of those. But there has been no parade of horribles.

The cases illustrate, however, the common sense approach which the courts have taken to interpreting the ERA. Judges generally have stayed with familiar legal theories by employing the strict scrutiny test to review laws which classify persons on the basis of sex.

They have permitted the use of statistics to prove that, although an act is neutral on its face, it could have a discriminatory impact.

They have recognized that unique physical characteristics may be a compelling reason to uphold a sex-based classification.

The courts have refused to play games with the ERA. The judges have always kept in mind the purposes of the ERA and have not permitted the ERA to become a refuge for law breakers or those who seek to penalize women by wrapping themselves in the ERA.

In reviewing 10 years' experience with the Colorado equal rights amendment, I can also say that predictions of dire happenings made by the opponents of the ERA did not come true.

We do not recognize same-sex marriages. We continue to enjoy freedom of religion. Families remain free to allocate wage earning and nurturing responsibilities among their members. In short, none of the bugaboos have materialized.

Colorado has a nationwide reputation as an outstanding place to live. It has a healthy business climate and it attracts large numbers of new residents and tourists to our State every year. It has an open government which, thanks to the vote of the people for the ERA, is pledged to provide services and benefits on equal basis to all of its citizens.

I think the ERA contributes to the vitality of Colorado and to the optimistic "can do" spirit which is characteristic of Coloradans.

Passage of the Federal ERA is in the best interests of all Americans. I urge its speedy passage.

Thank you.

Mr. Edwards. Thank you very much, Governor, for really excellent testimony.

[The statement of Governor Lamm follows:]

TESTIMONY OF GOV. RICHARD D. LAMM ON THE EQUAL RIGHTS AMENDMENT

As I speak today in support of the Equal Rights Amendment, I am reminded of those who have gone before me. I think of the many eloquent women and men who have spoken and written on behalf of basic human rights and who have called for a declaration of equality between men and women.

As early as 1870, Paulina W. Davis, who chaired the National Women's Rights Movement, could look back on twenty years dedicated to this cause. She accurately assessed the opposition when she said: "In commencing this work we knew that we were attacking the strongholds of prejudice, but truth could no longer be suppressed, nor principles hidden. It must be ours to strike the bottom line. We believed it could take a generation to clear away the rubbish, to uproot the theories of ages, to overthrow customs, which at some period of the world's history had had its significance. We knew that in attacking those strongholds we should bring ridicule and opposition, but having counted the cost, and put our hand to the plow, we would not turn back."

Ms. Davis was wrong in one respect. We know now that her estimate of a generation-long struggle was too optimistic. But she was right in saying that we will not turn back.

In Colorado know firsthand the success of the Equal Rights Amendment and I am here today to share with you Colorado's experience with its state ERA. What has happened in Colorado is particularly relevant to your consideration of the federal equal rights amendment because the Colorado ERA is, in all important respects, identical to the proposed federal ERA. Article II, Section 25 of the Colorado Constitution states: "Equality of rights under the law shall not be denied or abridged by the State of Colorado or any of its political subdivisions on account of sex."

The proposed federal ERA substitutes "by the United States or by any state" for the Colorado ERA's reference to the state and its political subdivisions.

The Colorado Equal Rights Amendment was adopted by the voters in the 1972 general election and it became part of the Constitution in January 1973. Four years later, the ERA again was on the ballot as an attempt was made to repeal it. The repeal attempt failed and, in both elections, over 60 percent of the electorate supported the ERA.
Colorado's experience with the ERA has been positive. Through legislative reform and court decisions, many laws and practices which discriminated on the basis of sex have been changed. Let me briefly discuss some substantive areas.

Historically, the laws pertaining to the family have been riddled with presumptions and mandates which discriminate against women. At common law, a married couple was considered to be one person and that person was the husband. Married women had no property rights and children were considered to be the property of the male. The vestiges of these common law notions remain in many state laws.

In Colorado, passage of the Equal Rights Amendment was pressured by the adoption of the Uniform Dissolution of Marriage Act in 1971. Combined with the ERA, this act has established fair treatment of both sexes with respect to the division of property, child custody, child support and spousal maintenance in divorce actions. The courts have utilized individual cases to be evaluated individually on their merits with full recognition of the circumstances peculiar to the spouses involved and keeping in mind the best interests of the children in custody matters.

The courts also have successfully resisted efforts to misuse the ERA. For example, in a 1978 decision by the Court of Appeals, the court rejected a husband's assertion that his pregnant former wife should be ordered to obtain paid employment in order to financially contribute to the support of their child. The court called the husband's argument "sexist" and discriminatory. It recognized that nurturing is part of supporting one's child and that the law does not require identical monetary contributions.

Certain family laws which discriminated against men have also been changed as a result of the ERA. Two are noteworthy. One was the felony nonsupport law which provided criminal penalties only for fathers who failed to support their children. After the Colorado Supreme Court held that the ERA could not be applied retroactively to the convictions obtained after the effective date of the ERA, the Legislature amended the statute to apply to both parents.

Another Supreme Court ruling extending to a male the right to bring a paternity action to prove that he was the biological father of a child. The court held that it violated both the equal protection clause of the state and the equal protection clause of the federal Constitution in its interpretation of the Uniform Parentage Act to provide equal rights to both persons claiming to be parents.

In the criminal law, the principal statutes requiring reform in light of the ERA were the sexual assault laws, which the Legislature rewrote in neutral language defining the crimes in terms of actors and victims. There was, however, a time gap between the effective date of the ERA and the legislative changes in the sexual assault laws. As a result, the Supreme Court was faced with a series of cases where defendants who had been convicted under the old sexual assault laws claimed that their conviction were invalidated by passage of the ERA.

The court did not permit the ERA to be used to prosect male criminals. Relying on the precept that the ERA and recognition of the ERA permits different treatment based on the unique physical characteristics of the two sexes, the court upheld convictions for rape, gross sexual imposition and statutory rape under the old laws.

Let me turn briefly to the area of employment. Most of us are familiar with the disturbing evidence of discrimination against women. We know that women generally earn only about 59 cents for every dollar earned by men. We know that the average male with an elementary school education still is paid more than a woman with a college degree. We know that 68 percent of women workers are concentrated in low-paying jobs in service industries, clerical position, plant and factory jobs, retail sales and the need for them is diminish.

In Colorado, the percentage of adult women in the formal workplace climbed to an estimated 60 percent in 1982, compared with only 36 percent in 1970. Forty-six percent of the women employed in Colorado were single, divorced or separated. Many of these women work to support themselves.

Nationwide, there are five times as many married women in the workforce today as there were in the 1940's. In nearly 60 percent of American families today both spouses are employed full-time in jobs outside the home. Today, the average woman can expect to spend 20 years in the workforce if she is married and 45 years in the workforce if she is single.

These statistics are the proof that we, as a country, are undergoing a period of profound change. Outmoded stereotypes about a "woman's place" must give way to the new reality of women in the workforce. I believe the ERA will play an increasingly important role in removing the legal barriers to attainment of the long-promised goal of equal employment opportunities for women.