Mr. Edwards. The next panelist to speak will be Judy Goldsmith, President of the National Organization for Women.

STATEMENT OF JUDY GOLDSMITH, PRESIDENT, NATIONAL ORGANIZATION FOR WOMEN

Mr. Goldsmith. Thank you very much, Mr. Chairman and members of the committee and for the opportunity to appear before you today to address the pressing need for the Equal Rights Amendment.

I have written testimony which details the discrimination that affects women in the area of social security and pensions and insurance. But for the next few minutes I would like to concentrate on some of the basic principles that affect discrimination in those areas as well as several others.

Sex discrimination in this country is deeply rooted, pervasive, and so engrained that it is often camouflaged as “the American way of life” or “the natural order of things.” Because it is in effect metabolized into our culture, only a powerful constitutional principle, clearly articulated, can provide the necessary tool to root it out.

Systemic sex discrimination takes several forms. In social security, insurance and pensions, as in many other areas, the norm against which needs are measured is a male norm. Women’s needs, often unique and specific, are not served or are poorly served by those norms. The pervasive nature of sex discrimination means that we often cannot see the forest for the trees. In the consideration of laws in Congress or in State legislatures or in the laws’ interpretation in the courts, women’s needs and the realities we face are often simply not a factor in those considerations. Sometimes sex discrimination involves active antipathy towards women. More often, and with possibly greater devastation, it regards our needs as irrelevant.

Thus, it is usually impossible to prove the intent which courts often say is necessary to successful pursuit of sex discrimination cases. A law which is facially neutral but has a punishing disparate impact on women raises the judicial question, “Did the legislative body which passed this law intend to harm women?” And the answer is likely to be, “Of course not. Women never entered our minds.”

Underlying the systemic discrimination in social security, pensions and insurance are basic sexist assumptions which piecemeal reform will never effectively address. They are these:

Number one, systems are modeled on male employment patterns to the detriment of women. Number two, systems assume a principal worker-dependent relationship. In social security this assumption not only reduces the majority of women to a presumed condition of dependency but it negates the vitally important concept of marriage as an economic partnership of co-equals. The system works to penalize married women, both homemakers and those who outside the home.

Number three, systems mandate and charge for overlapping coverage but eliminate duplication on the benefit side both in social security and in some types of insurance. The loser with this prac-
tice is frequently women, whose lesser coverage yields to men's greater economic advantage.

Number four, men's service to others, such as military service, is considered to be a sacrifice and is rewarded by extensive material lifetime subsidies and privileges. Women's service, on the other hand, such as child-bearing and rearing and caring of the sick and elderly, is viewed as a duty inherent in the status of femineness. Not only is that service not rewarded in any material way, but women are frequently penalized for it. In social security, for example, if an employed married woman leaves the paid labor force to care for her family, zero earnings are entered into her savings history for those years and her payouts are thereby reduced.

Number five, sex discrimination is assumed to be fair and acceptable if it is done "correctly." In insurance the assumption that actuarial classifications based on sex are legally acceptable has resulted in consistent and sizeable overcharges and reduced payments to women in every line of insurance in which sex is used as a rating factor.

Number six, it is deemed appropriate for women to subsidize men in insurance, social security and pension systems but not permissible for men and/or employers to meet their obligations to women. Millions of women have helped to support the social security system through their own payroll deductions but have never been able to collect in their own name.

In auto insurance women heavily subsidize men after the age of 25 when they pay the same rates, in spite of women's much lower accident rate and considerably lesser involvement in drunk driving accidents. Other areas of insurance involve other degrees of female subsidization of males.

Number seven, it is assumed that elimination of sex discrimination can only be accomplished at a cost to men's welfare. Only with women—never with men—is the question asked whether the price of equality or justice is affordable. And the answer usually is that it is not.

The obvious conclusion is, therefore, that women must continue to bear the costs of sex discrimination on their own backs. That conclusion is, for all of the obvious reasons, intolerable.

We are all equally citizens of this Nation. We all equally bear the responsibilities of citizenship. It is well past time that we all equally share in the privileges and immunities of constitutional inclusion.

Sex discrimination in our Nation is deep, traditional, systemic, and pervasive, not only in insurance, social security and pensions, but throughout our political and legal systems. The Equal Rights Amendment is a national repudiation of sex discrimination and the profound consequences of its practice. The Equal Rights Amendment would provide a clear standard and comprehensive mandates to eliminate sex discrimination in our Nation. I thank you.

Mr. Edwards. Thank you, Ms. Goldsmith.

[The prepared statement of Judy Goldsmith follows:]
What are the amounts women and their families stand to lose in pensions through past sex discriminatory funding? For public pension funds, the New York State Superintendent of Insurance in 1982 estimated that $19 to $20 billion would be the cost of equalization from the date of the Manhart decision in 1978. If, as a result of the Norris decision there is no further accumulation to the cost of equalization, these sums are also estimates of the costs to women of continued sex discrimination in reduced payouts to retired women for decades.

Ratification of ERA will make sex discriminatory payouts from public pensions unconstitutional. For the legacy of sex discrimination in payouts from private pensions, ERA will provide the essential Constitutional basis for Title VII, and will give impetus to new legislation to correct the results of past discrimination so out of consonance with the principle of the ERA.

With the immediate monetary consequences of ERA apparently so great (in fact, the sums could be amortized over considerable time), there will be incentive to attack ERA because of its having "retroactive" effect, which will be characterized as "unfair." In fact, the real unfairness and breach of good faith by the Supreme Court is its failure to enforce Title VII over sex discrimination in pensions when women are the victims.

IV. Sex Discrimination in Insurance

Use of race, color, sex, religion, or national origin in marketing and customer selection (underwriting) makes availability of reasonably priced insurance coverage a severe problem for consumers. Of these factors, only sex discrimination is currently given open legal approval. With the consent of state insurance departments, sex is used either invariably or arbitrarily as a basis for prices and payouts, as well as in defining coverage, for major types of insurance.

Although each discriminatory provision may at first appear to advantage one sex or the other, analysis shows each always works to the advantage of insurers and their employer-customers. Furthermore, as consumers, women are consistently more disadvantaged than men are by the discriminatory systems. State legislators, insurance regulators, and courts have not only failed to protect women consumers, but are often aligned with the insurance industry and employers against them.

Insurers selectively use real or imagined "differences" between women and men to manipulate prices and payouts. Across all lines of insurance -- auto, life, old age income (annuity/pension), medical expense, and disability income -- "differences" that advantage insurers are used as pricing factors. "Differences" that might hurt sales or reduce profits are ignored. The industry's name for this practice, and for the state laws that support it, is "fair sex discrimination."

As a constitutional ban on sex discriminatory laws, the Equal Rights Amendment will outlaw, or support legal challenges to end, sex discriminatory price and payout abuses by insurers, employers, and government, such as the following:

- Medical Expense and Disability Income Insurance: Women
are charged for limited medical coverage up to levels exceeding 100% more than men are charged for full coverage, despite the fact that sex is a poor predictor of health. To compensate for group coverage that is inadequate or nonexistent, insurance companies sell sex-discriminatory individual coverage -- $5 billion in health insurance and $2 billion in disability income insurance in 1981, for example. Severe surcharging, particularly in converting from group to individual insurance, forces many women to forego insurance protection. Surcharging or denial of maternity coverage to women on the grounds that it is a "voluntary" expense for which women are solely responsible is a punitive policy toward this most fundamental of human conditions, and one to which the concept of risk sharing is singularly appropriate.

- ANNUITIES AND PENSIONS: Women's payments are cut 10-15%. This practice is "justified" by women's alleged longevity, regardless of smoking and other individual health factors now demonstrated to be prime determinants of life expectancy. Savings to employers and inflated profits for insurers are the evident consequences and only "benefits" of reducing old age income for those expected to have to sustain themselves longer in old age.

- TAXES: A higher tax is levied on women's pension and annuity payouts than on men's, a secondary longevity penalty on income already reduced by the primary longevity penalty.

- JOINT AND SURVIVOR PENSIONS: Retired men and their presumably longer-lived wives are paid less than are retired women and their husbands. Large employers, prohibited by Title VII from cutting the pensions of women employees, still gain large savings in employment costs by reducing pension payments to dependent women.

- LIFE INSURANCE: Heavy surcharges (not cost-based) are imposed on smaller policies -- all that women typically can afford. These surcharges recoup several times over the list price discounts for women widely publicized by insurers. Price "setbacks," claimed to reflect the lower cost of insuring a longer-lived group commonly include "setbacks" in non-insurance components as well -- lower refunds (dividends) and cash value buildup. Lower monthly income payouts are made to women beneficiaries than to men, although protection of widows is a major life insurance selling point.

- AUTO INSURANCE: Most women are overcharged throughout their driving lifetime for auto insurance that ignores women's lower mileage (averaging half of men's) and alcoholism (averaging one-fifth of men's) and women's resulting lower accident rates. Imposing smaller surcharges on young women than on young men is using sex as a crude substitute for the same factors. Publicizing this short term lesser surcharge as a "break for women" diverts consumer attention from life-long overcharges.

As a ban on legal sex discrimination, the ERA will provide the essential constitutional basis for civil rights laws such
as Title VII and the proposed Nondiscrimination in Insurance Act. It will make them realities to be enforced, rather than opportunities for judicial hairsplitting.

V. Sexist Assumptions in Insurance

Sex discrimination in insurance is a brute fact given legal sanction and spurious scientific justification by such language as that used in the Florida insurance code (626.9541(7)(a)) to prohibit "knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life" in life insurance and annuity contracts.

Apart from the obvious loopholes provided by requiring discrimination to be "knowingly unfair" in order to be prohibited, this type of code language establishes three false but profitable assumptions:

- That there is such as thing as "fair" sex discrimination.
- That actuarial analysis, a tool for predicting expense, can by used prescriptively to mandate "actuarially supported" classifications as a nominal justification for differential treatment of individuals.
- That "expectation of life" is an actuarially supported and therefore valid classification mandating sex discrimination.

Although insurers' public references to "sound actuarial principles" as justification for discrimination imply an almost religious faith in actuarial tables, professional discussions among actuaries convey a more realistic view of statistical tinkering in the service of sales and personnel departments.

Speaking at a 1980 symposium on "The Future of Life Ex-

pectancy," a consulting pension actuary observed that Data are usually insufficient to permit a pension actuary to develop retirement rates, rates of pay increase, and rates of withdrawal from service all by age, sex, and length of service. Actuaries in the practical world are forced to use rather crude mechanical devices to take into account mortality differentials and mortality improvement. And the most common, of course, is the use of a conservative mortality table. When it ceases to be conservative, set the age back a year or two or three, and so on.

Despite the inadequacies of actuarial support, sex discriminatory insurance classifications flourish because they conform to widely held stereotypes which the public is unlikely to question. The "equal expectation of life" classification arises from the deeply ingrained and emotionally loaded male notion that "women live longer." Other unquestioned assumptions are that young men are hormonally compelled to be reckless drivers and that women are more likely than men to be sick and disabled. Each of these assumptions is worth billions of dollars in inflated profits to insurers, and each is sanctioned by sex discriminatory state and federal laws.

The "Women Live Longer" stereotype relies on the inaccurate assumption that all women and men live the average lifespan for their sex and that women therefore live longer than men. The existence of huge numbers of long-lived men and short-lived women should give lie to the stereotype and its pseudo-biological basis, but this evidence is not noted. Instead, the notion that women "enjoy" an inherently greater chance for a long life is invoked as the ultimate score evener whenever it becomes unavoidably apparent that women are economically disadvantaged. Virtually guaranteed longer life is represented as an enviable
advantage for which woman must, of course, be expected to pay.

What must be added to this discussion is a glaring reality: It is a hard and cynical public policy, notably lacking in compassion, which arbitrarily identifies a segment of the population as being longer-lived, and then pays them less on which to sustain themselves.

In setting prices and payout levels for pensions and annuities, insurance companies and employers focus on a well-publicized four-to-six-year difference between women and men in average post-retirement longevity. Effecting a nice cost saving, insurers and employers use this difference in averages to justify setting all women's monthly payouts 10-15% lower than men's. Legal prohibition of this practice is limited and does not preclude grandfathering lower payouts for women well into the next century. As the Chief Justice remarked in his dissent to the Manhart decision, "It seems to me irrational to assume that Congress intended to outlaw use of the fact that...women as a class outlive men." [435 U.S. at 726]

The convenient assumption of biological inevitability to explain differences in lifespan thus permits sex to serve as a proxy for the causal factors actually affecting lifespans and to screen these factors from critical attention.

For example, while sex as a dividing line yields a four-to-six-year average difference in longevity, occupational divisions yield differences of up to 17 years in average post-retirement lifespans. The devastating effects of widespread alcohol abuse on men's health and longevity are well-acknowledged.

A recently published scientific study confirms earlier findings that, barring violent deaths, there is no difference in life expectancy between women and men of the same social groups who have never smoked. Yet all of these valid causal factors are ignored in favor of the "Women Live Longer" assumption.

Why should a theory so flawed be preferred to fact? Only biological inevitability relieves individuals, businesses, and governments of responsibility for identification and correction of the reasons for significant patterns of early death. That it also permits economic reprisals against women may be regarded as a fringe benefit and a source of enormous profit to those same individuals, businesses, and governments.


Underlying the systematic discrimination in Social Security, pensions, and insurance are basic sexist assumptions which piecemeal reform will not effectively address. They are:

1. Systems are modeled on male employment patterns to the detriment of women.

2. Systems assume a principal worker/dependent relationship which works to penalize married women, both homemakers and those employed outside the home.

3. Systems mandate and charge for overlapping coverage but eliminate duplication on the benefit side. Example: income from many pension plans is reduced by half the amount receivable from Social Security, a regressive practice impacting heavily on women. A similar prin-
ciple is applied to health insurance when two workers in one family are covered.

4. Men's service to others (e.g. military) is rewarded by governmental regulations, while women's service to others (e.g. child bearing and rearing, nursing elderly and sick) is penalized.

5. Sex is used as a legal and acceptable actuarial classification.

6. It is deemed appropriate for women to subsidize insurance, Social Security, and pension systems, but not permissible for men and/or employers to meet their obligation to women.

7. It is assumed that elimination of sex discrimination can be accomplished only at a cost to men's welfare.

Sex discrimination is deep, traditional, systemic, and pervasive not only in insurance, Social Security and pensions but throughout our political and legal system. The Equal Rights Amendment is a national repudiation of sex discrimination and the profound consequences of its practice. The ERA would provide a clear standard and a comprehensive mandate to eliminate sex discrimination in our nation.

Mr. Edwards. We will now hear from Dorothy Ridings, who is the National President of the League of Women Voters. Welcome.

STATEMENT OF DOROTHY RIDINGS, NATIONAL PRESIDENT, LEAGUE OF WOMEN VOTERS

Ms. Ridings. Thank you, Mr. Chairman and members of the committee. Thank you very much for the opportunity to be with you today and to tell you why the League of Women Voters is so deeply committed to congressional passage and ratification of the Equal Rights Amendment.

Passage of the ERA has been a lead priority since 1972. The need for the ERA is as acute today as it was when it passed Congress in 1972. There still is no permanent and comprehensive national standard for judicial redress of sex discrimination in this country. The rights of women still vary from State to State. And there is no reason to believe that this situation will change until the ERA is finally passed and ratified.

In the last few years, the League has become especially concerned about the social and the economic costs of continuing sex discrimination. Poverty has become increasingly a woman's issue, an economic issue that could affect almost any woman at some point in her lifetime. The economic problems women are facing are extremely serious and show every sign of becoming even more so despite the tools currently available to attack the problem.

The root causes of women's economic disadvantage are numerous, as I have described in my written testimony, and pervade all aspects of our Nation's public policy. They are the result of a historic attitude that permeates our society. Women are second-class citizens, relegated to a supporting role and subject to rules and institutions designed by men to meet the needs of men.

The ERA would improve the economic status of women in a number of ways that go beyond what is possible under existing law. First and foremost, the ERA would conclusively establish equality of the sexes as the fundamental law of this land. It would make explicit that equality under the law is guaranteed to women as well as to men. That principle of equality would become an integral part of our Constitution, the embodiment of our highest values, the social contract under which our society exists.

The ERA would establish in a way that the Fourteenth Amendment, with its unique historic origins, has not, that discrimination on the basis of sex will not be tolerated in this society.

The elevation of the principle of equality under the law on the basis of sex will have numerous effects on the source of women's economic distress. The ERA will, of course, prohibit Federal and State laws or regulations that are classifications on the basis of sex. Many States with Equal Rights Amendments to their State constitutions have already revised their State laws to the benefit of women in those States.

Rules and policies that appear to be gender-neutral but which have had disproportionately negative effects on women will also be subject to rigorous scrutiny under the ERA. Such facially neutral policies may affect the status of women in jobs that they share with men, but they also are likely to be factors that perpetuate the