time, that they not apply to the military service. And at that time, courts were more than willing to give deference to congressional intent.

I can say that the courts are no longer quite that willing.

Ms. LeRoy. Thank you.

Mr. Edwards. Ms. Schroeder?

Ms. Schroeder. I'm sorry, Mr. Chairman. I had to sneak away to go testify somewhere else. So I think, in deference to having missed some of the testimony, I shouldn't ask questions at this time.

Mr. Edwards. Mr. DeWine?

Mr. DeWine. Nothing, Mr. Chairman.

Mr. Edwards. Counsel?

Mr. Kiko. I have one question for Professor Karlson. When before the subcommittee on September 14th, Dorothy Ridings, president of the League of Women Voters, in her written testimony, stated that the Supreme Court decision of Massachusetts versus Feeney, which upheld veterans' preferences in the State of Massachusetts, would fall in a challenge to the ERA. Do you agree with her interpretation?

Dr. Karlson. The present Supreme Court's opinion in that area was based upon and intermediate standard of review. The question, I believe, depends upon the standard of review that will be chosen. Again, I believe that Professor Emerson's standard is the one that court will look to.

Assuming that that is the standard, yes, I believe that it would fall, that veterans' preferences would not longer be constitutional under the ERA.

Mr. Kiko. How about if it were a strict scrutiny standard?

Dr. Karlson. Even under a strict scrutiny standard, I believe you would have great difficulty upholding it. It's possible. It's possible under the strict scrutiny standard, and that's a toss up. But under the absolutist standard, there is no doubt in my mind that it would fail.

Mr. Kiko. I have no further questions.

Mr. Edwards. We thank the panel very much for a very helpful testimony.

There are four participants on our last panel. Ms. Phyllis Schlafly is head of the Eagle Forum and has testified before the subcommittee before. Ms. Elaine Donnelly of Donnelly Media Associates, Ms. Donnelly is also a political activist and former member of the Reagan-Bush Campaign Women's Policy Advisory Board. Carl Hoffman is president and director of Hoffman Research Associates, which is a social science research firm specializing in personnel research and data processing. And last is Judith Finn, a political scientist and economist who formerly taught at Kenyon College.

We welcome you all, and who is first? Ms. Schlafly?

Ms. Schlafly. Thank you, Mr. Chairman.

Mr. Edwards. Without objection, all of the statements will, of course, be made in full a part of the record. We'll turn the light on for about 7 or 8 minutes, but that's just so that you can help keep your time yourself.

Mr. Edwards. Ms. Schlafly.

STATEMENT OF PHYLLIS SCHLAFLY, EAGLE FORUM

Ms. Schlafly. Thank you, Mr. Chairman. I'm Phyllis Schlafly of Alton, Illinois, a homemaker and mother of six children, a member of the Illinois Bar, and the president of Eagle Forum, a national pro-family movement.

In the interest of time, I will give a brief summary of my statement and I ask to have my entire text printed in the record, along with the appendix and two photographic exhibits.

The Equal Rights Amendment had ten years around the state capitols, and at the end of that period, 20 of the 50 states were on record as saying "no" to the Federal ERA. It takes only 15 states to prevent a change to the U.S. Constitution.

To induce a constitutional change that lacks the support of a super-majority is not in the best interests of a democratic republic. We had one such experience with the Prohibition Amendment. We don't need another with ERA.

Mr. Chairman, if you were supporting a piece of legislation and you hadn't been able to get it passed for 10 years, wouldn't you ask yourself, how can I amend it so as to gain more support and counter some of the criticisms against it? Therefore, I propose a series of amendments which would address the major criticisms against the Equal Rights Amendment.

First, "This article shall not be construed to secure, expand, or endorse any right to abortion or the funding thereof." We believe that the most immediate and costly effect of ERA would probably be to mandate taxpayer funding of abortions by making the Hyde Amendment unconstitutional. This would reverse the 5-to-4 decision in Harris v. McRae. This effect is foreshadowed in the recent U.S. Supreme Court decision in Newport News Shipbuilding and Dry Dock Company v. EEOC, in which Justice Stevens wrote: "The Pregnancy Discrimination Act has now made clear that, for all Title VII purposes, discrimination based on a woman's pregnancy is, on its face, discrimination because of her sex."

The scope of the Newport News case is limited to employment under Title VII, but the definition of sex discrimination enunciated in that law and decision constitute the most authoritative definition of what the word "sex" would mean in ERA. It is clear from briefs filed by pro-abortion groups in three states with a state ERA in their state constitutions—Pennsylvania, Massachusetts, and Hawaii—that pro-abortion lawyers will use ERA as a major argument to persuade the courts to force tax funding of abortion.

Clearly, the burden of proof is on the ERA advocates to prove that ERA will not require the spending of tax funds for abortions, and this burden of proof is impossible to meet unless specific language is added to the text of ERA to prohibit that result.

We recommend an amendment which would make ERA abortion-neutral. All pro-life groups are united in that it is absolutely essential to have an abortion exclusion amendment to ERA.

Second, "This article shall not be construed to grant or secure any rights to homosexuals or lesbians." Many legal authorities are on record as saying that ERA extends to homosexuals and lesbians, such as a landmark article in the Yale Law Journal.
Sixth, "This article shall not be construed to deprive wives or widows of any right or benefit granted by any state or to interfere with state laws that obligate husbands to support their wives."

Seventh, "This article shall not require the sex integration of private schools, churches, hospitals, prisons or public accommodations or to require treating males and females the same where differences tend to accommodate personal modesty."

Eighth, "This article shall not require insurance to ignore or actuarial differences between men and women."

Ninth, "Delete Section 2 of ERA."

These nine proposed amendments are only the principal ones needed to prevent ERA from having mischievous, unreasonable and unwanted results. And for what? The only effect ERA would have in the field of employment would be to overturn the 1977 Supreme Court case of Dothard v. Rawlinson, which upheld the BFOQ qualification in Title VII, and thereby denied a woman a job as a prison guard in an Alabama maximum security prison. For this we are asked to constitutionalize taxpayer-funding of abortions and homosexual marriages, allow our daughters to be drafted and sent into combat, just like our sons, forfeit veterans' preference and tax-exemption of religious schools, sacrifice traditional rights of wives, abandon our right to have single-sex schools and extra-curricular activities, pay greatly increased insurance premiums, and transfer enormous new powers from the states to the federal courts.

The only way that we can know for sure that these things will not happen is to add amendments to ERA to clarify what it means.

Thank you, Mr. Chairman.

Mr. Edwards. Thank you, Ms. Schlafly.

[The prepared statement of Phyllis Schlafly follows:]
I am Phyllis Schlafly of Alton, Illinois, a homemaker and mother of six children, a member of the Illinois Bar, and the president of Eagle Forum, a national pro-family movement.

The Equal Rights Amendment (ERA) was voted out of Congress on March 22, 1972, and was debated in State Capitol from that day until the expiration of the extended time period at midnight on June 30, 1982. Despite extensive consideration, fifteen states never ratified ERA, and five states which originally ratified ERA thereafter changed their minds and rescinded. Therefore, at the end of the ten-year period, 20 of the 50 states were on record as saying NO to the Federal ERA. It takes only 13 states to prevent the change to the U.S. Constitution.

Constitutions are purposely made difficult to amend, whether they be constitutions of a nation, state, corporation, or organization. Amending the United States Constitution requires a contemporaneous consensus of a super-majority of three-fourths of the states. To induce a constitutional change that lacks the support of a super-majority is not in the best interests of a democratic republic. We had one such experience with the Prohibition Amendment. We don't need another with ERA.

The emotional issues involved with the right to drink alcohol are vastly exceeded by the emotional issues involved in the legal effects of ERA. ERA touches more divisive and deeply-held beliefs than any other Congressional issue.

The Illinois General Assembly voted on ERA at least once every year for ten years. The ERA experience was disruptive, divisive, and destructive of responsible law-making.

In the final weeks of the ERA battle in May and June of 1982, the State Capitol at Springfield, Illinois, became a three-ring circus. On the first floor of the Capitol, seven pro-ERA hunger strikers demonstrated in wheelchairs and on stretchers. On the third floor, another pro-ERA group called the "chain gang" chained themselves to the Senate Chamber door and lay on the floor night and day so that Senators had to stop over them to get to their desks. Across the rotunda in the House, another platoon of the "chain gang" lay down in front of the Speaker's rostrum and forced legislative business to a halt.

Still another group of pro-ERA demonstrators poured pigs' blood (bought from a packing house) on our flags and on the marble floors, writing in blood the names of the Legislators whom they hated the most. I have appended to my testimony two newspaper photographs of the pouring of the blood and of the "chain gang" and ask that they be published with my testimony. Fortunately, Illinois had enough legislators who refused to allow the Constitution to be amended by such shenanigans.

Some have argued that Congress should vote on ERA and "let the states decide." But the states have already decided, and the answer is NO. It simply isn't fair to put this monkey on the backs of State
Legislators again after ten years (the original seven years plus the unprecedented three-year extension which a Federal Court ruled was unconstitutional). At the very least, we need a cooling-off period.

In all fairness, why not give the states the opportunity to vote on the School Prayer Amendment? The states should get the right to vote on that amendment before being sent ERA again.

Mr. Chairman, if you were supporting a piece of legislation, and you hadn’t been able to get it passed for ten years, wouldn’t you ask yourself, how can I amend it so as to gain more support and counter some of the criticisms against it? This is the way the legislative process works in a democratic republic. The testimonies presented to this Subcommittee by the ERA proponents reveal a stubborn refusal to address the legal effects of ERA, plus a preoccupation with economic and sociological conditions which would not be affected by ERA. Yet the legal effects touch such sensitive areas that they cannot be ignored. We thank AFL-CIO President Lane Kirkland, a pro-ERA witness before this Subcommittee on September 14, for recognizing that Congress must deal with the substantial issues in ERA such as abortion and the military.

Therefore, I propose a series of amendments which would address the major criticisms of the Equal Rights Amendment.

(1) This article shall not be construed to secure, expand or endorse any right to abortion or the funding thereof.

The most immediate and costly effect of ERA would probably be to mandate taxpayer-funding of abortion by making the Hyde Amendment unconstitutional. This would reverse the 5-to-4 U.S. Supreme Court decision in Harris v. McRae (1980). This effect is foreshadowed in the recent U.S. Supreme Court decision in Newport News Shipbuilding & Dry Dock Co. v. Equal Employment Opportunity Commission (77 L. Ed. 2d 89, June 20, 1983), in which Justice Stevens, joined by six other Justices, wrote: "The Pregnancy Discrimination Act has now made clear that, for all Title VII purposes, discrimination based on a woman’s pregnancy is, on its face, discrimination because of her sex." (Id. at 103)

In a footnote, Justice Stevens quoted Representative Augustus F. Hawkins, speaking for the Pregnancy Discrimination Act during the House debate, as saying, "It seems only common sense, that since only women can become pregnant, discrimination against pregnant people is necessarily discrimination against women, and that forbidding discrimination based on sex therefore clearly forbids discrimination based on pregnancy." (122 Cong. Rec. 10582, 1972)

The scope of the Newport News case is limited to employment matters under Title VII, but the definition of "sex" discrimination enunciated in that law and in the Supreme Court decision constitutes the most authoritative legislative definition of what the word "sex" would mean in ERA or in any other federal legislation (unless a contrary or limiting definition is specifically included). There is an exception in the Pregnancy Discrimination Act (42 U.S.C. sec. 2000e-(k)) to prevent compulsory funding of abortions. But there is no exception in ERA as presently written; the absolute language of ERA would be a constitutional mandate against all sex discrimination and would nullify any exceptions in existing laws.

It is clear from briefs filed by pro-abortion groups in three states with a State ERA in their state constitutions that pro-abortion lawyers will use ERA as a major argument to persuade the courts to force taxpayer-funding of abortion.

In the 1983 Pennsylvania case of Fischer, Planned Parenthood, et al v. Dept. of Public Welfare, the American Civil Liberties Foundation of
Pennsylvania argued in its Complaint that it is unconstitutional under the Pennsylvania State ERA to deny state tax funds for abortions because this would "constitute a gender-based classification in violation of the Pennsylvania Equal Rights Amendment."

In the 1980 Massachusetts case of Roe v. King, the Civil Liberties Union of Massachusetts argued in its Complaint that it is unconstitutional under the Massachusetts State ERA to deny state tax funds for abortions because "singling out for special treatment and effectively excluding from coverage an operation which is unique to women ... constitute[s] discrimination on the basis of sex, in violation of the Massachusetts Equal Rights Amendment."

In the 1978 Hawaii case of Hawaii Right to Life v. Chang, the American Civil Liberties Union brief argued that "withdrawing funding for abortions while continuing to reimburse other medical procedures sought by both sexes or only by men would be tantamount to a denial of equal rights on account of sex."

Would the pro-abortion lawyers be successful with their argument in the U.S. Supreme Court under the Federal ERA? Harris v. McRae, the decision which upheld the constitutionality of the Hyde Amendment under the present Constitution, was a 5-to-4 decision. The pro-abortion majority on the Supreme Court in at least 6-to-3. Therefore, the pro-abortion-funding advocates -- using the definition of "sex" accepted by seven Justices in Newport News -- would need to convince only one pro-abortion Justice that ERA makes the "sex discrimination" difference.

Congressmen who oppose taxpayer-funding of abortion should not give the Supreme Court this opportunity to overturn every vote Congress has ever taken in approval of the Hyde Amendment. The sensible course of action is to amend ERA to remove abortion and abortion-funding from ERA's grasp.

Something happened in Wisconsin this year which provides further proof that the pro-ERA advocates admit the ERA-abortion connection. In an attempt to put an ERA into the Wisconsin state constitution (in a state where ERA had already once been defeated on a referendum), the pro-ERA advocates added a clause to prohibit the use of ERA for abortion purposes. This shows that ERA advocates themselves know that ERA will give constitutional protection to abortion and abortion funding unless the language of ERA specifically prohibits this result. After this amendment was added, the Wisconsin Civil Liberties Union opposed the Wisconsin State ERA "unless the objectionable anti-civil libertarian [i.e., anti-abortion] language is removed."

Clearly, the burden of proof is on the ERA advocates to prove that ERA will not require the spending of tax funds for abortions -- and this burden of proof is impossible to meet unless specific language is added to the text of ERA to prohibit that result. We recommend an amendment which would make ERA abortion-neutral; it would not overturn Roe v. Wade -- it would simply prevent ERA from being used to mandate taxpayer-funding of abortions or to grant any other abortion rights. All pro-life groups are united in that it is absolutely essential to have an abortion-exclusion amendment to ERA.

(2) This article shall not be construed to grant or secure any rights to homosexuals or lesbians.

The leading textbook on sex discrimination used in U.S. law schools, written by nationally-known pro-ERA advocate Barbara Babcock, states: "The effect that the Equal Rights Amendment will have on discrimination against homosexuals is not yet clear. The legislative history suggests that it was not the intent of Congress [in 1971-72] to
prohibit such discrimination. On the other hand, it is hard to justify a distinction between discrimination on the basis of the sex of one's sexual partners and other sex-based discrimination." (Barbara Babcock, Sex Discrimination and the Law (1975), p. 180)

An article called "The Legality of Homosexual Marriage" in the Yale Law Journal of January 1973 (p. 589) refutes the "legislative history" argument and states: "The stringent requirements of the proposed Equal Rights Amendment argue strongly for removal of this stigma [of deviance] by granting marriage licenses to homosexual couples who satisfy reasonable and non-discriminatory qualifications." The authors support ERA, homosexual marriages, and the ERA-homosexual connection.

In Baker v. Nelson (291 Minn. 310, 191 N.W.2d 185, 1971), the Minnesota court refused to permit same-sex marriages. The homosexuals' appeal from this decision under the 9th and 14th Amendments was dismissed by the U.S. Supreme Court (409 U.S. 810, 1972). The Yale Law Journal article quoted above is widely cited as a forecast that ERA would compel a contrary result.

Harvard Law School Professor Paul Freund testified in the original ERA hearings: "Indeed, if the law must be an undiscriminating concern for 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." (Cong. Rec., Mar. 22, 1972, p. S5478)

Senator Sam J. Ervin, Jr., the leading constitutional lawyer in the U.S. Senate until his retirement, stated in Raleigh, North Carolina on February 22, 1977: "I don't know but one group of people in the United States the ERA would do any good for. That's homosexuals."

A leading pro-ERA lawyer, Rita Hauser, gave a major address on the Equal Rights Amendment to the 1970 Annual Meeting of the American Bar Association in St. Louis in which she stated: "I also believe that the proposed [ERA] Amendment, if adopted, would void the legal requirement or practice of the states' limiting marriage, which is a legal right, to partners of different sexes."

The word used in ERA is "sex," not "women," and the "sex" in ERA is not defined or limited in any way. One would have to be blind, deaf and dumb not to be aware of the political activism of the homosexual community and their attempts (usually unsuccessful) to legislate their "gay rights" agenda at the Congressional, state legislative, and city council levels. To hypothesize that they would not litigate under ERA to get everything they have failed to get by legislation would be unrealistic, especially when prominent lawyers are already on record as confirming the ERA-homosexual connection.

The questions posed by the ERA "gay rights" connection are endless -- and unanswerable -- unless Congress adds an amendment to clarify its intent. Would ERA prohibit us from denying marriage licenses to homosexuals and lesbians, and from denying them the tax benefits and spousal employment and medical benefits now accorded to husbands and wives? Would ERA prohibit the U.S. Armed Forces from discharging homosexuals and lesbians? Would ERA prohibit a judge from considering homosexuality/lesbianism in awarding child custody, adoptions, or artificial insemination rights? Would ERA make all anti-sodomy laws unconstitutional? Would ERA prevent a private school or church from dismissing a homosexual or lesbian employee? Would ERA force the hiring of homosexuals as local policemen? Would ERA prohibit landlords from refusing to rent apartments or rooms to homosexuals? Would ERA prohibit the Scouts from refusing to have homosexuals or lesbians as troop leaders? Would ERA force public-school sex-education curricula to present homosexuality as an acceptable "alternative lifestyle"? Would ERA prohibit colleges from denying campus recognition and funding to
homosexual/lesbian student groups? Would ERA give "minority status" to homosexuals and lesbians under the Civil Rights Act and make them eligible for "affirmative action" benefits?

Then come the questions about disease, especially about AIDS for which the incubation period is two years, during which time no test can identify the disease-carriers. Would ERA prohibit us from refusing homosexuals the right to give blood to blood banks? Would ERA prohibit cities from closing down the homosexual bathhouses as public health nuisances? Would ERA prohibit police, paramedics, dentists, health personnel, and morticians from taking what they believe are adequate precautions to defend themselves against AIDS and other homosexual diseases? Would ERA prohibit cities from denying the use of public facilities to large gatherings of homosexuals (such as the "gay pride" demonstrations and the "gay rodeo")? Would ERA prohibit restaurants from barring homosexuals from food-handling jobs?

Since ERA prohibits all discrimination "on account of sex," would ERA prevent society from protecting itself against a class of people whose only identifiable difference is sex?

Some people will claim that the "sex" in ERA does not refer to "sexual preference." But the burden of proof is on those who make that claim, and there is no way they can prove it unless they use explicit language in ERA to prevent ERA from being used by the courts to grant privileges to homosexuals and lesbians which the various legislatures have thus far been unwilling to grant.

The 1981 experience with the proposed Wisconsin State ERA referred to above (in the abortion section of my testimony) applies equally to the ERA-"gay rights" connection. The pro-ERA advocates in Wisconsin added language to the proposed State ERA forbidding its use for "sexual preference." This proves that the pro-ERA advocates admit the connection. When the Wisconsin Civil Liberties Union testified against what it called the "anti-civil libertarian language" added to the Wisconsin ERA, this criticism included the "gay rights" exclusion language.

Congress, the states, and the American people are entitled to know for sure whether or not ERA includes the "gay rights" agenda. It would be unreasonable and irresponsible to leave it to the courts to resolve this sensitive issue. If Congress does not intend an ERA-"gay rights" connection, then why not say so by adding our proposed amendment?

(3) This article shall not be construed to require the drafting of women or the assignment of women to military combat.

The effect of ERA on the draft and on military duty is certain and is not disputed by pro-ERA lawyers. The House Judiciary Committee which reported out ERA in 1971 stated: "Not only would women, including mothers, be subject to the draft, but the military would be compelled to place them in combat units alongside of men."

The 1977 U.S. Civil Rights Commission book entitled Sex Bias in the U.S. Code, written largely by pro-ERA lawyer Ruth Bader Ginsburg (now a federal judge), stated: "The equal rights principle implies that women must be subject to the draft if men are, that military assignments must be made on the basis of individual capacity rather than sex." (p. 218)

The premier piece of pro-ERA literature, the 100-page article by Professor Thomas I. Emerson in the Yale Law Journal of April 1971, stated about ERA: "As between brutalizing our young men and brutalizing our young women there is little to choose.... Women will be subject to the draft.... Women will serve in all kinds of units, and they will be eligible for combat duty." (see pp. 969-978)
President Jimmy Carter called for the equal draft registration of women in 1980. This proposal was soundly rejected by Congress; the House and Senate both voted overwhelmingly to exempt all women from the draft registration law. The pro-ERA advocates then took their case to the U.S. Supreme Court and lost. In \textit{Rostker v. Goldberg} on June 21, 1981, the Supreme Court upheld the exemption of all women (a sex classification) from the military draft and from draft registration, and described the necessity to exclude women from military combat as a self-evident truth which is obvious in a civilized society.

ERA would reverse \textit{Rostker v. Goldberg} and make unconstitutional the male-only draft registration law plus the laws exempting women from military combat (10 U.S.C. §6015 and §8549).

Drafting women and sending them out in combat units to fight our country's wars would be so contrary to our nation's culture that this issue deserves to be debated and decided by itself in the light of whatever emergency faces us. We should not be compelled to fight the next war in a constitutional strait jacket based on a social experiment which defies all the wisdom of wartime experience.

The ERA-draft connection is a "sleepier" issue because few people really believe that Congress would do anything so foolish as voting to draft 18-year-old girls into the army. This is also a tremendously powerful issue because it is the one point at which ERA would take away traditional women's rights at the point of a gun and threaten a prison sentence for refusing to conform to ERA demands. It would produce a divisive national crisis if federal marshals started arresting 18-year-old girls for refusing to report for induction after getting their "greetings" from the President. And the irony of it all is that this strong-arm compulsion is deceitfully packaged in the name of "women's rights."

(4) This article shall not be construed to affect any benefit or preference given by the United States or any State to veterans.

We enjoy our freedom and independence because brave Americans, mostly men, were willing to fight for our country. One of the ways our nation has shown its gratitude is by giving veterans a slight preference in certain employment situations. That's little enough to repay them for what they did for us. Female veterans receive exactly the same preference as male veterans.

One of the effects of ERA would be to deprive veterans of this small preference. That this would not only be an effect of ERA, but is one of its purposes, was made clear in the testimony to this Subcommittee presented by Dorothy S. Ridings, president of the League of Women Voters, on September 14, 1981. She stated bluntly that ERA would overturn the Supreme Court decision in \textit{Massachusetts v.彭西}, which upheld veterans preference under our present Constitution.

The pro-ERA position is that veterans preference is sex discriminatory within the meaning of ERA because veterans are 98\% male. This is the same type of rationale used in the ERA-abortion connection; since abortions are performed exclusively on women, it is a violation of "equal rights" to deny funding for abortions. Likewise, since 98\% of veterans preference goes to men, it is a violation of "equal rights" to give veterans this advantage over non-veteran women.

In order to prevent ERA from substantially hurting veterans, an amendment should be added to ERA to prohibit it from affecting veterans preference.
This article shall not be construed by the Internal Revenue Service or by the courts to deny tax exemption to private schools, seminaries or churches which treat men and women differently.

This amendment to ERA is made absolutely essential by the 1983 Supreme Court decision in Bob Jones University v. United States. In this decision the Court held that the Internal Revenue Service has the right to withdraw tax-exempt status from any school (including religious schools) which has any rule or regulation contrary to public policy, even though the regulation pertains to something so private as dating and marriage, and even though the regulation concerns a matter of religious principle. The Court recognized "the primary authority of the I.R.S. ... in construing the Internal Revenue Code," so that the I.R.S. can make these decisions without express authority in the statute.

The Court said: "Whatever may be the rationale for such private schools' policies, and however sincere the rationale may be, racial discrimination in education is contrary to public policy."

The Court ruled: "The Government has a fundamental, overriding interest in eradicating racial discrimination in education.... That governmental interest substantially outweighs whatever burden denial of tax benefits places" on the private religious schools' exercise of their religious beliefs.

If ERA means anything at all, it certainly means a policy of eradicating sex discrimination. For ten years, ERA lawyers (including presidents of the American Bar Association) have testified that the legal impact of ERA would be to treat "sex" exactly as we now treat "race."

Therefore, if ERA were ever added to our Constitution, it would give the Government a fundamental, overriding interest in eradicating sex discrimination; and this interest would override the First Amendment rights of all religious schools. That means that churches which do not ordain women (or which treat women differently in any way) would lose tax exemption for their schools and seminaries.

This article shall not be construed to deprive wives or widows of any right or benefit granted by any state, or to interfere with state laws that obligate husbands to support their wives.

American Jurisprudence, 2d, Volume 41, under the heading "Husband and Wife," summarizes American law on the matter of family support:
"One of the most fundamental duties imposed by the law of domestic relations is that which requires a man to support his wife and family. In some jurisdictions, the duty of support is imposed on the husband by statute.... But it exists apart from statute, as a duty arising out of the marital relationship...." (This is the law of the marital relationship and does not describe the divorce or the post-divorce relationship.)

Nothing in this statement compels a wife to accept the support of a husband if she doesn't want it. Some women today, especially the pro-ERA advocates, appear to reject the traditional marriage relationship. They certainly have their freedom of speech and association to reject the "man and wife" relationship if they wish.

What is so strange is their demand that this support right be taken away from those women who do want it. For example, in explaining the effect of the Equal Rights Amendment, the 1977 book published by the U.S. Civil Rights Commission called Sex Bias in the U.S. Code (written by pro-ERA advocate Ruth Bader Ginsburg) states that the traditional family concept of husband-breadwinner and wife-homemaker "must be
eliminated from the code if it is to reflect the equality principle.*
(p. 206)

Wives have lost their legal right to support in states which have a State ERA, as well as in a few other states where pro-ERA advocates have brought about statutory changes. But it makes no sense for the U.S. Constitution to prohibit for all time in the future the laws of family support which most husbands have obeyed, which still exist in most states, and which are a "fundamental" part of our culture. Eliminating the support laws does no good for the woman who does not have a husband, or who has a husband who evades his responsibility. But it does terrible damage to married women who have chosen the traditional role, and who may not have the skills to enter the labor force, because it tells all husbands that it is no longer their "duty" to support their wives.

It cannot be denied that one of the far-reaching effects of ERA -- and indeed a continuing goal of the pro-ERA advocates -- is to make all federal and state laws sex-neutral or gender-free. However, "spouse must support spouse" simply does not have the same meaning, grammatically or legally, as "husband must support wife." An amendment to ERA is urgently needed to prevent ERA from sacrificing the traditional legal rights of wives on the altar of the feminist sex-neutral society.

(7) This article shall not require the sex-integration of private schools, churches, hospitals, prisons, or public accommodations, or require treating males and females the same where differences tend to accommodate personal modesty.

Our experience with Title IX (the Education Amendments of 1972) provides a good precedent for how the American people demand exceptions to a general rule against sex discrimination. Congress could not pass

Title IX until it first carved specific exceptions in Title IX for single-sex schools and colleges, military schools, seminaries, and college dormitory living facilities.

After the Department of Health, Education and Welfare began enforcing Title IX, other problems surfaced. For a time, Congress was compelled to amend Title IX almost every year in order to eliminate the mischief of a blanket rule against sex discrimination. One year, Congress amended Title IX to exempt fraternities, sororities, Boy Scouts, and Girl Scouts. A second year, Congress amended Title IX to exempt the American Legion-sponsored programs called Boys' State and Girls' State. A third year, Congress amended Title IX to exempt mother-daughter and father-son school events.

It is fortunate that Title IX was not part of the Constitution, else all these problems would have been raised to constitutional dimensions and have required separate constitutional amendments.

Title IX applies not only to all public schools and colleges, but also to all private schools and colleges that receive any public money. Would ERA extend to schools and colleges which are wholly private (receiving no public funding whatsoever)? Available evidence indicates that the answer to this question is Yes.

The U.S. Commission on Civil Rights, in a 1978 booklet called Statement on the Equal Rights Amendment, says: "Unlike Title IX, federal funding will not be required to trigger its [ERA's] application. ... [ERA] will be a clear mandate of the highest order that sex bias is not acceptable in our nation's schools." (p.16)

Virtually every pro-ERA lawyer states that ERA will impose a national standard which will apply the same strict standards to sex as we now apply to race. To predict what will be the effect of ERA in any area, just ask yourself, "how do we handle it in race?" and you will
have the answer about the effect of ERA. If this answer is applied to
all schools and colleges, this will eliminate diversity in education and
force all students into the unisex conformity demanded by the pro-ERA
advocates.

The burden of proof is on the pro-ERA advocates to provide language
in ERA which would prevent ERA from treating sex exactly the same as we
now treat race.

(8) This article shall not require insurance to ignore factual
or actuarial differences between men and women.

ERA would have a massively costly effect on young women buying
automobile accident insurance and on women of all ages buying life
insurance, because the statistical facts that women have fewer accidents
and tend to live longer than men could no longer be taken into consider-
ation in the setting of lower rates for women.

Statistical evidence is overwhelming that women are entitled to
lower rates because, as a group, they have fewer automobile accidents
and they live longer. ERA would place an unfair, disproportionate
burden of the costs of insurance on female policyholders who deserve
lower rates because they cost less to insure.

The pro-ERA advocates admit that ERA will have the same effects as
the proposed unisex insurance bills and, indeed, they say this is one of
the purposes of ERA. As testified by other witnesses, this would cost
young women hundreds of millions of dollars per year in additional auto-
mobile accident and life insurance premiums for which they would get no
additional benefit.

Furthermore, ERA would raise all these matters to a constitutional
level, so that there could not be any modification in the unisex
insurance rule, however minor or reasonable, without another
constitutional amendment.

An insurance exception amendment is needed to prevent this kind of
mischief-making from tarnishing the U.S. Constitution and so that
unforeseen problems can be remedied at the statutory level.

(9) Delete Section 2 of ERA.

It is a fundamental principle of constitutional construction that
no language in the U.S. Constitution can be meaningless or redundant.
Section 2 must have a purpose and an effect. Section 2 cannot mean
merely that Section 1 must be obeyed and enforced. It is established
law under Marbury v. Madison that the Supreme Court would have the
authority to invalidate any federal or state law found to be in dishar-
mony with Section 1.

Section 1 of ERA would require that all federal and state laws
conform to its rigid, absolutist mandate, without any rational differ-
ences of treatment based on factual differences between men and women.
Section 2 of ERA would grant affirmative powers to Congress and to the
federal courts, either or both, to define (after ratification) what
Section 1 means and to enforce that yet-to-be-determined definition.

In addition, Section 2 would enable Congress to preempt the field
and to substitute its decision-making power for that of the states even
though state laws are in harmony with Section 1.

Section 2 of ERA has the same language as the enforcement clauses
of the 13th, 14th, and 15th Amendments, and we have had more than a
century of experience with Court interpretations. Beginning in the
mid-1960s, the Supreme Court drastically changed the official inter-
pretation of the enforcement clause and redefined it as a positive grant of
affirmative power to the Congress which is even greater than the Commerce Clause or the Necessary and Proper Clause.

Katzenbach v. Morgan would be the principal authority for interpreting Section 2 of ERA to give Congress both the power to preempt state laws which are otherwise completely constitutional, plus the power to write its own definition of the rights covered by Section 1. Morgan makes clear that the enforcement clause goes far beyond outlawing unconstitutional acts. It is a grant of affirmative power to the Congress to do whatever it thinks is "necessary and proper" to achieve the purposes of Section 1. The holding of Morgan is that, under the enforcement clause, Congress can outlaw a state practice that does not violate Section 1 if Congress believes that such practice tends to impair the goal which Section 1 is designed to promote.

Section 1 of ERA would require every federal and state law to be sex-neutral; but Section 2 of ERA would transfer from the states to the Federal Government the final decision-making power over all those areas of state law which traditionally have made differences of treatment on account of sex. These would include: marriage and marriage property laws, child custody and adoptions, divorce and alimony, abortion, homosexual laws, sexual crimes, private and public schools, school sports, protective labor laws, prison regulations, public accommodations, and insurance rates.

Here are some examples of how the vast Section 2 power could be used, based on a study of materials written by prominent pro-ERA advocates:

(a) ERA lawyers will argue that ERA makes family law a federal matter. The 1977 U.S. Civil Rights Commission publication Sex Bias in the U.S. Code, written by pro-ERA lawyer and now Federal Judge Ruth Bader Ginsburg, states that the concept of breadwinning-husband and homemaking-wife "must be eliminated from the Code if it is to reflect the equality principle." This report also states that "no-fault divorce" should be adopted nationally. (pp. 205 and 159)

(b) ERA lawyers will argue that ERA will impose the duty on Congress and state legislatures to set up and to finance child-care institutions for all children, regardless of need. They will argue that this mandate comes from the "equality principle" of Section 1, as affirmatively enforced by Section 2. Sex Bias in the U.S. Code states that, in order to achieve the "equality principle" of ERA, "the increasingly common two-earner family pattern should impel development of a comprehensive program of government-supported child care." (p. 214)

The Governor of Ohio set up a Task Force for the Implementation of the Equal Rights Amendment in 1975 which concluded: "The equality principle embodied in the ERA requires consideration of a new public policy on the issue of child care. Women who are mothers need to enjoy the same freedoms and opportunities as men who are fathers.... UNIVERSALLY AVAILABLE--Quality child care must be available to all families who need such services irrespective of their income level." (pp. 17-20)

(c) ERA lawyers will try to bring about a restructuring of Social Security in order to force the full-time homemaker (the dependent-wife) to pay a double Social Security tax in order to receive the same retirement benefit which the System has paid to homemakers for the past 40 years. This radical notion was set forth in a Social Security Administration document called Social Security and the Changing Roles of Men and Women published in 1979, which recommended three options to change the System, of which one was the Homemaker's Tax. Under this recommendation, the Federal Government would set "a specific dollar value for work performed in the home ... [and then] require homemaker
to pay Social Security taxes on the imputed value of their services." (p. 105) The financial columnist, Sylvia Porter, is one of those who have argued that, "if some change along these lines is not enacted sooner, the Equal Rights Amendment, when finally passed, will require it." ( Syndicated column, April 9, 1975)

Since it is an admitted fact that the Social Security law has been made completely sex-neutral by a combination of Congressional legislation and Supreme Court decisions, ERA should have no effect on it. This radical notion of taxing homemakers is part of the hidden agenda of the pro-ERA advocates who continue to claim that Social Security is an "ERA issue." They are counting on ERA being interpreted by judicial activists.

In any event, the power of Section 2 is tremendous, and the scope of subject matter that would come under the enforcement clause is virtually unlimited.

Conclusion

Those nine are only the principal amendments needed to prevent ERA from having mischievous, unreasonable, and unwanted results. Harvard Law School Professor Paul A. Freund explained this need best when he wrote in the Harvard Civil Rights-Civil Liberties Law Review of March 1971: "Constitutional amendments, like other laws, cannot always anticipate all the questions that may arise under them. Remote and esoteric problems may have to be faced in due course. But when basic, commonplace, recurring questions are raised and left unanswered by text or legislative history, one can only infer a want of candor or of comprehension.... The real issue is not the legal status of women. The issue is the integrity and responsibility for the law-making process itself."

And for what? The only effect that ERA would have in the field of employment would be to overturn the 1975 Supreme Court case of Dothard v. Rawlinson which upheld the bona fide occupational qualification in Title VII of the Civil Rights Act and thereby denied a woman a job as a prison guard in an Alabama maximum security prison. Thus, the only gain for women in employment, under a Federal ERA, would be the opportunity for a small woman to get a job as a prison guard in a maximum security prison.

For this we are asked to constitutionalize taxpayer funding of abortions and homosexual marriages, allow our daughters to be drafted and sent into combat just like our sons, forfeit veterans preference and tax exemption of religious schools, sacrifice traditional rights of wives, abandon our right to have single-sex schools and extra-curricular activities, pay greatly increased insurance premiums, and transfer enormous new powers from the states to the federal courts.

The evidence is massive that ERA will, at the very least, reverse the following Supreme Court decisions:

(a) Harris v. McRae (upholding the Hyde Amendment),
(b) Baker v. Nelson (denying an appeal from a state court which refused to grant marriage licenses to homosexuals),
(c) Rostker v. Goldburg (upholding the exemption of all women from the military draft),
(d) Massachusetts v. Feeney (upholding veterans preference), and
(e) Dothard v. Rawlinson (upholding the BFOQ exception in Title VII employment law).

The evidence is also massive that ERA will apply the following Supreme Court decisions to the vast subject-matter of ERA:

(a) Bob Jones University v. United States (giving power to
Internal Revenue Service to withdraw tax exemption from religious schools with rules contrary to public policy).

(b) Katzenbach v. Morgan (utilizing the enforcement clause to give vast powers to Congress and the federal courts).

It would be irresponsible to leave all these sensitive issues for the federal courts to decide. They are legislative, not judicial, issues. Whether individual Congressmen support one side or the other of these sensitive issues, we are entitled to know what ERA means before it is voted on. The only way we can know for sure is to add amendments to ERA to clarify what it means.

Postscript on State ERAs

Only six of the fifty states have amended their state constitutions with language identical to Section 1 of the proposed Federal ERA. Eleven additional states have added "sex" accompanied by various constitutional limitations which prevent an absolutist interpretation. Thus, 33 states have refused to include "sex" in their state constitutions, and 44 states have refused to include straightforward, absolutist Federal ERA-type language. Since the momentum turned against ERA in 1973, five states have defeated a state ERA in statewide referenda: Wisconsin, New York, New Jersey, Florida, and Iowa.

The Appendix to this testimony gives an analysis of the texts and experience of State ERAs in the minority of states which have adopted them.