Mr. Edwards. And our last member of the panel to testify is Ms. Tish Sommers, Older Women’s League of Oakland, California.

STATEMENT OF TISH SOMMERS, OLDER WOMEN’S LEAGUE

Ms. Sommers. Thank you, Chairman Edwards.

I am pleased to have this opportunity to speak to you in favor of H.J. Res. 1, the proposed Equal Rights Amendment.

I am Tish Sommers. I am president of the Older Women's League, a national membership organization with chapters nationwide, which addresses the special concerns of midlife and older women. Furthering public policy changes through research and education, OWL works forcefully to improve the image and status of older women, to provide mutual support for its members and to achieve economic and social equity.

The subject of today's testimony, the E.R.A., is of vital concern to our constituency. Ours is the "pay-off generation"—when the effects of former iniquity are most clearly felt. From the vantage point of advancing years, we both feel the full results of inequality personally, and we sound a warning to younger women based upon our experiences.

First, why are so many older women poor and alone? Women end up poor or near poor, because they've experienced those closed and unequal opportunity throughout their work lives. That .59 cents to a man's dollar that a woman earns inevitably means low retirement benefits. An income replacement system, lower wages and years out of the labor force for child rearing, end up in lower retirement income, which must be stretched out over a longer period of compounding inflation through the greater life expectancy of women.

Median income of women over 65 alone, is only $400 above the poverty line. Older women end up poor and alone, because their is a presumption in society that the husband will take care of "the little woman," and many of our public policies are based upon that presumption. Unfortunately, the man is likely to die before the wife. 85 percent of surviving spouses are female, and divorces have increased drastically, to the detriment of many older women.

We will present some more detailed statistics of the actual circumstances of older women, together with the testimony.
Ms. Sommers. Dependency of women is becoming a very precarious matter, especially in old age. Homemaking, which was the career of preference in my generation, is not recognized in law as having economic value, thereby leaving women vulnerable to poverty, in old age.

How do public policies discriminate against older women?

Laws affect women unequally in two ways: overt discrimination and sexual neutral laws which impact upon women in a discriminatory manner. Both combine to affect women in later life.

Examples of the first on a federal level are being whittled away through the slow and expensive means of using whatever legal handles exist, such as Title VII of the Civil Rights Act or the equal protection clause of the constitution. An example which still exists in Social Security is the presumption that a business or farm owned jointly and worked by both husband and wife is the property of the man and benefits accrue to his name. Therefore, if the wife is disabled, she has no credits on which to seek benefits. Also, sex-based actuarial tables, such as those used in pension and annuity programs and the Internal Revenue Code explicitly discriminate against women. While the number of federal laws which are directly discriminatory are being slowly and painfully reduced, many still exist on a state level.

Far more important are examples of disparate impact—policies which in legal terms are sex neutral, but in practice result in unequal treatment.

All our retirement income policies fall into this category, because they were designed on the presumption of women’s dependency.

Social Security is an important example, because 60 percent of its beneficiaries are women, and despite its original purpose as a supplementary retirement income source, it is now the primary source of income in old age, especially for women.

The difference in average monthly benefits between men and women is striking: $335 for retired women workers and $443 for men; even though the system is weighted in favor of low-income workers. The most important shortcoming is lack of recognition of the economic contribution to the family of the homemaker. For every year out of the labor market a woman is penalized with a zero earning year, which decreases her benefits later on. Even if all sex discrimination in employment were eliminated, this homemaker’s penalization would lower retirement benefits in later life.

In addition, many women who combine a paid work career with homemaking may not meet the 40 quarter threshold and can receive benefits only as dependents, being ineligible for more advantageous worker benefits. There is also no disability protection for homemakers.

The second leg of our so-called “retirement income stool” is a pension. Only 19 percent of retirement age women receive a pension, either on their own earnings or on their husbands’, compared to 38 percent of retirement age men. Even if a woman does have an interest in a pension based on her own earnings, the average benefit is only 59 percent of a man’s average benefit.

The reasons why women do so badly with private pensions, stem from the fact that ERISA and other pension policy is designed to reward the long-term, steady worker with low mobility and high earnings. This is far more likely to be a man than a woman. For example, ERISA permits employers to exclude from coverage persons under 25 years of age, although this is the age when the highest proportion of women are in the workplace.

After age 25, women’s participation drops sharply, as women leave to assume family responsibilities. Further, ERISA’s tolerance of a 10-year “vesting” requirement, eliminates many women workers who leave the workplace to raise families. In addition, ERISA permits employers to exclude persons who work less than 1000 hours per year—that’s 19 hours per week, a pattern very common for trying to combine homemaking with employment. These and many other problems which exclude women from pension benefits, are the result of sex neutral laws which have a very negative impact on women.

Resistance by such opponents of the E.R.A. as Senator Ervin, is based upon the belief that such an amendment would be tantamount to saying that “God made a mistake by creating man and woman” are the result of sex neutral laws which have a very negative impact on women.

On a state level, divorce laws do the same thing. Pensions are very often the most significant property of an older divorcing the property laws of the particular state. In California, even uncommunity property. On the other hand, some states divide only vested pensions. Others divide only after retirement, and some don’t divide them at all.

These are but a few of examples of sex neutral laws which have a very negative impact on women and contribute to the feminization of property in old age.

What would it mean to bring women’s equality into the Constitution? It would be an expression of national will to overcome the discrimination that women experience throughout their life spans. A message that clearly states in the nation’s most basic document that equality of rights under the law shall not be denied or will open up a new era for women.

Statistics overwhelmingly show that once women’s traditional work is done, there is no effective safeguard to keep women from becoming a burden on the taxpayer. Until the barriers are removed lems of millions of poor aging women will only get worse. Passage to move in that direction.

The examples of overt discrimination will undoubtedly be changed most readily with passage of the E.R.A., both in terms of federal policy and state law. For example, sex-based actuarial tables, such as those used in the Internal Revenue Code and other federal agencies, should be taken care of rapidly.
the basic discriminatory impact of public policy on women. One struggle will center upon recognition of the economic value of homemaking in retirement income policy. This may be inclusion of earnings sharing under Social Security law, which means simply that the earnings of a husband and wife during the period of their marriage shall be divided equally and shared between them for Social Security benefit purposes.

Another struggle will center around equal pay for comparable work, and still another will lead to revision of divorce laws which leave women disadvantaged. Whatever they are, the disparate impact laws will certainly be scrutinized by women, who will, within E.R.A., have a constitutional tool to work with, together with a clearly expressed intent on the part of the nation to at last address inequality of the sexes head-on. “Having the law in place,” as Dr. Sandler said.

The so-called “gender gap” has been brought into high relief in recent weeks, and is the subject of debate by both Republicans and Democrats. As the “Wall Street Journal” recently observed, “The gap exists, and any real-life politician would be a dummy to deny it.”

The stalemate on the ERA, together with the economic results of failure to pass that amendment, are among the underlying causes of that gender gap.

Apart from politics, passage of the Equal Rights Amendment is a matter of simply justice.

Mr. Edwards. Thank you very much, Ms. Sommers.

[The prepared statement of Tish Sommers follows:]

STATEMENT OF TISH SOMMERS BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE HOUSE COMMITTEE ON THE JUDICIARY

THE EQUAL RIGHTS AMENDMENT

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.

I am pleased to have this opportunity to speak to you in favor of H.J. Res. 1, the proposed Equal Rights Amendment. I am Tish Sommers, President of the Older Women’s League, a national membership organization with chapters nationwide, which addresses the special concerns of midlife and older women. Furthering public policy changes through research and education, OWL works forcefully to improve the image and status of older women, to provide mutual support for its members, and to achieve economic and social equity.

The subject of today’s testimony, the E.R.A., is of vital concern to our constituency. Ours is the “pay-off generation”—when the effects of former inequities are most clearly felt. From the vantage point of advancing years, we both feel the full results of inequality personally, and we can sound a warning to younger women based upon our experience.

I will be speaking on five points: (1) the dismal facts of life for many older women; (2) why so many of us end up poor and alone; (3) how public policies discriminate against women; (4) the political impact of passage of the Equal Rights Amendment upon the most severe problems which older women face; (5) the legal effects of passage of E.R.A. on these same problems and how these two forces—political and legal—can work together to bring about the desired results, equality for women.

Why are so many older women poor and alone?

Women end up poor (or near poor) because they have experienced closed doors and unequal opportunity throughout their work lives. It is often said that a woman earns $90 to a man’s dollar, which inevitably means low retirement benefits. In an income replacement system, lower wages and years out of the labor force for child rearing end up in lower retirement income, which must be stretched out over a longer period of time. Women tend to rely more on Social Security than men do to substitute a primary income stream. Older women end up poor and alone because there is a presumption in society that the husband will take care of the little woman, and many of our public policies are based on that presumption. Unfortunately, the man is likely to die before the woman. Eighty-five percent of surviving spouses are female, and divorces have become more prevalent.

Dependency of women is becoming a very precarious matter, especially in old age homemaking, which was the career of preference in my generation, is not recognized in law as having economic value, thereby leaving women vulnerable to poverty in old age.

How public policies discriminate against older women.

Laws affect women unequally in two ways: (1) direct (de jure) discrimination and (2) sex neutral laws which impact upon women in a discriminatory way. Both combine to affect women in later life.

Examples of the first are being whittled away through the slow and expensive means of using whatever legal handles exist, such as Title VII of the Civil Rights Act. The second is more prevalent. An example is that which still exists in Social Security is the presumption that a business or farm owned jointly and worked by both husband and wife is the property of the man and benefits accrue in his name. Therefore if the wife is disabled she has no credits on which to seek benefits. Also, sex-based actuarial tables, such as those used in annuity programs and the Internal Revenue Code, which discriminate against women. While the number of federal laws which are directly discriminatory are being slowly and painfully reduced, many still exist on a state level.

Far more important are examples of disparate impact—policies which in legal terms are sex neutral but in practice result in unequal treatment. All our retirement income policies fall into this category because they were designed on the presumption of women’s dependency.

Social Security is an important example because 60% of its beneficiaries are women, and despite its original purpose as a supplementary retirement income source, it is now the primary source of income in old age, especially for women. The difference in average monthly benefits between men and women is striking— $385 for retired women workers and $443 for men (April, 1982), even though the system is weighted in favor of lower income workers. The most important shortcoming is lack of recognition of the economic contribution to the family of the homemaker. Every year out of the labor market a woman is penalized with a “zero earnings year,” which decreases her benefits later on. Even if all sex discrimination in employment were eliminated, this homemaker penalty would mean lower retirement benefits in later life. In addition, many women who combine paid work career with homemaking may not meet the forty-quarter threshold and can receive benefits only as dependents, being ineligible for more advantageous worker benefits. There is also no disability protection for homemakers.

The second leg of the so-called retirement income stool is a pension. Only 18 percent of retirement age women receive a pension, either on their own earnings or on their husbands’, compared to 38 percent of retirement age men. Even if a woman does have an interest in a pension based on her own earnings, the average benefit is only 59 percent of a man’s average benefit.

The reasons why women do so badly with private pensions stems from the fact that E.R.A. and other pension policy is designed to reward the long-time, steady worker with low mobility and high earnings. This is far more likely to be a man than a woman. For example, ERISA permits employers to exclude from coverage persons under 25 years of age, although this is the age when the highest proportion of women are in the workplace. After age 25, women’s participation drops sharply as women leave to assume family responsibilities. Further, ERISA’s tolerance of a ten year “vesting” the remittance of early retirement, who leave the work-force to raise families. In addition, ERISA permits employers to exclude persons who work less than 1000 hours per year (19 hours per week), a pattern very common for women trying to combine homemaking with employment. These and many other problems which exclude women from pension benefits, are the result of sex neutral laws which have a very negative impact on women.

On a state level, divorce laws do the same thing. Pensions are very often the most significant property of an older divorcing couple. Whether a pension is divisible depends upon the property laws of the particular state. In California, even unvested pension credits earned during the marriage are held to be communi-
ty property. On the other hand, some states divide only vested pensions, others divide pensions only after retirement and some don't divide them at all.

These and a few other examples of sex neutral laws which have a very negative impact on women, and contribute to the feminization of poverty in old age.

The Political Impact of Passage of the Equal Rights Amendment.

What would it mean to bring women's equality into the Constitution? It would be an expression of the national will to overcome the discrimination that women experience throughout their life spans. Apart from the legal message that clearly states in the nation's most basic document that equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex, will open up a new era for women. Resistance by such opponents of the E.R.A. as Senator Sam Ervin is based upon the belief that such an amendment would be tantamount to saying that "God made a mistake by creating two sexes to perpetuate human life on earth." Senator Ervin believes that "customs and laws assign to husbands and fathers the legal responsibility to provide shelter, food, and other necessities of life for themselves, their spouses, and their children, and to wives and mothers the legal responsibility to make the shelter a home for themselves, their spouses, and their children and to supply their children the essential nurture their infancy and early childhood require." Unfortunately statistics overwhelmingly show that once women's traditional work is done, there are no effective safeguards to keep women from becoming a "burden to the taxpayer." Until the barriers are removed which prevent women from taking care of themselves, the problem of millions of poor aging females will only get worse. Passage of the E.R.A. will be a major signal that it is this country's desire to move in that direction.

The legal effects of passage of the Equal Rights Amendment on the most severe problems older women face.

The de jure examples of discrimination will undoubtedly be changed most readily, both in terms of federal policy and state law. For example, sex-based actuarial tables, such as those used by the Internal Revenue Code and other federal agencies should be taken care of rapidly. More difficult will be those provisions which enforce inequality by their impact, such as Social Security, ERISA and the Railroad Retirement Act, all of which have provisions of great economic consequence for women.

Passage of the E.R.A. would change the legal ground rules. The Supreme Court has two quite different ways to view discrimination in government action. In most circumstances, it has used the test whether the distinctions or discriminations made are rational, so, even though there may be unfairness. Only in circumstances in which persons belonging to a class about whom there is a national will to overcome discrimination—particularly disadvantaged racial or national origin groups—is the state compelled to show that a purpose of overriding importance is served by the discrimination, a purpose that cannot be achieved by other means. So far, while the government has not been permitted to use any excuse to make distinctions on the basis of sex, it has been permitted to make many distinctions to the disadvantage of women. Constitutional scholars feel that the E.R.A. would prohibit such gender-based distinctions. Furthermore, rules and state activities that appear neutral on their face, but in real life have a discriminatory impact on women, could no longer be ignored by the courts.

That is why it will take the combined force of a constitutional amendment and political and legal efforts to overcome the basic discriminatory impact of public policy on women. One struggle will center upon recognition of the economic value of homemaking in retirement income policy. This may be inclusion of "earnings sharing" under Social Security law, which means simply that the earnings of a husband and wife during the period of their marriage shall be divided equally and shall be considered between them for Social Security benefit purposes. Another struggle will center around "equal pay for comparable work" and still another will lead to revision of divorce laws which leave women disadvantaged. Whatever they are, the disparate impact laws will certainly be scrutinized by women, who will now have a constitutional tool to work with, together with the clearly expressed intent on the part of the nation to at least address inequality of the sexes head-on.

The so-called "gender gap" has been brought into high relief in recent weeks and is the subject of debate by both Republicans and Democrats. As the Wall Street Journal recently observed, "The gap exists, and any real-life politician would be a dummy to deny it." The stalemate on the E.R.A., together with the economic results of failure to pass that amendment, are among the underlying causes of that gender gap. Apart from politics, passage of the Equal Rights Amendment is a matter of simple justice.

SELECTED DATA ON PERSONS AGE 65+: INCOME, POVERTY, MARITAL STATUS

<table>
<thead>
<tr>
<th>Age</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>65-69</td>
<td>$21,248</td>
<td>$7,494</td>
</tr>
<tr>
<td>70-74</td>
<td>20,796</td>
<td>6,313</td>
</tr>
<tr>
<td>75-79</td>
<td>19,879</td>
<td>5,926</td>
</tr>
<tr>
<td>80-84</td>
<td>14,807</td>
<td>4,966</td>
</tr>
<tr>
<td>85+</td>
<td>8,173</td>
<td>4,775</td>
</tr>
</tbody>
</table>

(Poverty level in 1981 for a person living alone: $4,359)

(Source: Census Bureau, Current Population Reports P-60, No. 134, Table 10)

POVERTY RATES BY SEX AND RACE/HISPANIC ORIGIN FOR PERSONS AGE 65 OR OVER IN 1981

<table>
<thead>
<tr>
<th>Age</th>
<th>White</th>
<th>Black</th>
<th>Spanish Origin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>10.5%</td>
<td>9.0%</td>
<td>32.3%</td>
</tr>
<tr>
<td>Women</td>
<td>16.5%</td>
<td>16.2%</td>
<td>43.5%</td>
</tr>
</tbody>
</table>

(Poverty rate in 1981 for persons 65+: 15.32%)

(NUMBERS OF PERSONS AGE 65 OR OVER IN POVERTY IN 1981, BY SEX AND RACE/HISPANIC ORIGIN

<table>
<thead>
<tr>
<th>Age</th>
<th>White</th>
<th>Black</th>
<th>Spanish Origin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>1,080,000</td>
<td>787,000</td>
<td>272,000</td>
</tr>
<tr>
<td>Women</td>
<td>2,773,000</td>
<td>2,191,000</td>
<td>547,000</td>
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</table>

(Source: P-60, No. 134, Table 17)

MARITAL STATUS OF PERSONS 65+ IN 1981, BY SEX

<table>
<thead>
<tr>
<th>Status</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married</td>
<td>772</td>
<td>382</td>
</tr>
<tr>
<td>Widowed</td>
<td>132</td>
<td>211</td>
</tr>
<tr>
<td>Separated/Divorced</td>
<td>42</td>
<td>52</td>
</tr>
<tr>
<td>Never Married</td>
<td>41</td>
<td>65</td>
</tr>
</tbody>
</table>

MARITAL STATUS OF PERSONS OVER 65, BY SEX AND AGE

<table>
<thead>
<tr>
<th>Married</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>65 to 74</td>
<td>402</td>
<td>222</td>
</tr>
<tr>
<td>75+</td>
<td>482</td>
<td>222</td>
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</table>

(Source: P-20, No. 372, Tables 1 and 8)

Prepared by: Older Women's League, 1325 G St. NW, LL B, Washington, DC 20005