THE EQUAL RIGHTS AMENDMENT
A MANDATE FOR EQUALITY
BETWEEN FEMALES AND MALES
BY
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THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

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The Equal Rights Amendment:
A Mandate For Equality
Between Females And Males

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Honors Thesis
June 1978
for my grandmother, mother, sister and all of womankind
who I love dearly and regard with the deepest of affection and respect

I have been touched somehow by each of your struggles
in almost every way remaining unknown and unnamed
to this one can

while I cannot alter the past
I can learn from it
I can work and live for the day
when we all will be free together
to exist beyond what our imaginations dare not disclose today
this, oh sisters and brothers
I promise you

(May 1978)
"And it doesn't really matter
if you like it or don't like it
'cause I've got to ask these questions anyway"

(Holly Near, "Better Days")
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Introduction

Statistics, all available data and unending personal testimony all point to one undeniable fact—women and girls are harshly discriminated against in American society because of one basic and simple factor: they were born female. This discrimination, to wit, sexism, has no boundaries and leaves no female untouched or unharmed. Whether it be the real and subtle fear of rape and rape itself, the nefarious socialization in our schools or the blunt "no, you can't do that" or "no, you can't have that job" simply because one is female, it is impossible to avoid the innumerable forms of sexism constructed and upheld by our society. Like all forms of discrimination, no amount of money can buy a woman's freedom from sexism. A wealthy woman can fear rape (read: can be raped) and statistics reveal that wife beating and other forms of domestic violence perpetrated by men against women and children are just as prevalent among the American middle and upper classes as among the lower classes. In the eyes of our society and the law, all women are second class citizens—"the second sex"—while all men are first class citizens—"the first sex."

While the efforts of millions of women (and a few men) to bring an end to sexism are almost as old as history itself, discrimination against females is still very much a part of the fabric of American society with some people claiming that on the eve of the twenty-first century, women have actually lost ground in the past 20 years. While this point is debatable, certain facts are not.

*The U.S. has never had a woman president or vice-president, while prospects for one in the foreseeable future are unlikely.
* Women hold only five percent of all public offices in the United States yet they are 53% of the voting population and 40% of the labor force. 1

* Fifty-two percent of all state boards and commissions have no women. Of those states which have women on their boards, 35% are on boards related to youth and the elderly, 20% health, 18% education, 11% labor boards, 8% utilities, 6% economic and industrial development and 4% transportation. 2

* Under no circumstances can a man legally rape his wife in many states, including Illinois.

*The 1970 census shows that for full time, twelve month employment, an eighth grade graduate who is male averages a salary of $7,140. For a female with an eighth grade education, the average salary is $3,970. A male high school graduate averages a salary of $9,100, while a female high school graduate can expect to receive an average salary of $5,280. With a college education, males average $13,320 in salary and females average $7,930. 3

* The number of working men has increased by only 25% since 1950. Employment of women has doubled in that time. The median income for women in 1974 was $6,957, representing only 57% of the average $12,152 paid to male workers that year. 4

There is little doubt that the examples of inequities between females and males in our society would comprise an inexhaustible list. With the advent of the modern day women's movement, there isn't a single American institution which isn't at least in part, examining its role in relationship to the oppression of women and girls by men and boys. Demands from within as well as from outside these institutions have caused serious questions to be raised about religious doctrine and practices, traditional marriage arrangements, education policies, the disparaging treatment of women in the business, medical and arts worlds, and
of course, the discrepancies between females and males in governmental practices and under the various local, state, and federal laws. Debate with regard to all of these areas, and particularly in the legal and governmental arena, focuses on the extent to which these institutions are responsible for discrimination against women. Furthermore, as a society governed by laws, we must examine our responsibility to end this discrimination, assuming of course, the discriminatory practices are recognized and our lawmakers have a genuine willingness to end these practices.

Perhaps no other issue relating to women's equality in the last fifty years has commanded more attention, time, money and has sparked as much debate as the proposed 27th Amendment to the U.S. Constitution--the Equal Rights Amendment (ERA), more obscurely known as the Alice Paul Amendment. Many would contend (both proponents and opponents) that the Equal Rights Amendment has not been given nearly the attention it warrants, considering its importance, magnitude and perceived impact on all facets of American life.

The following examination of the Equal Rights Amendment will explore its history, necessity for ratification as well as the various issues raised by proponents and opponents of the pending Amendment. There is very little doubt that passage of the Equal Rights Amendment (and at this point in time, its possible failure to meet the March 22, 1979 deadline for ratification) will have far reaching ramifications on all of our institutions and the future quality of American life. While the Equal Rights Amendment will not directly affect (read: interfere with) the personal attitudes and practices among individuals, it will have a strong, positive and indirect impact in this area for many generations to come. Passage of the Equal Rights Amendment will enshrine the concept of legal equality between females
and males in the highest law of the land, the United States Constitution. It will imbed within our legal framework the concept that males and females are to be treated as equal individuals—people bearing distinct and varying characteristics and abilities that are not necessarily linked to the fact that one is male or female. In other words, it will guide us in recognizing that all of us are individuals with varying degrees of potential to act and be whatever we determine, without regard to gender. Essential to keeping the Equal Rights Amendment in perspective is recognition that it will only affect those policies and activities within the realm of the law. The fifty-two words of the Amendment itself are very clear with regard to this point:

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

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

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

If ratified, the Equal Rights Amendment will be a guiding principle of legal equality between women and men for the judiciary, legislative, and executive bodies of the federal, state and local governments to follow when making legal determinations. The Equal Rights Amendment will legally recognize males and females as being equal, yet distinct as individuals, regardless of sex.
History Of The Equal Rights Amendment

The Equal Rights Amendment is not, as some have alleged, a new idea born out of the modern women’s movement. Rather, it has been introduced in every session of the U.S. Congress since 1923 until on March 22, 1972, it passed the U.S. House of Representatives by an overwhelming vote of 345 to 23 and the U.S. Senate by a vote of 84 to 8.

The concept of the Equal Rights Amendment was first brought forward over a century ago when Lucretia Mott, Elizabeth Cady Stanton and Susan B. Anthony began the “Equal Rights” movement in the United States.

Among the demands of the first Equal Rights Convention held in this country, the Seneca Falls Convention of 1848, were: Equal Rights in the franchise, in education, in industry, in the professions, in political office, in marriage, in personal freedom, in control of property, in guardianship of children, in making contracts, in the church, and in the leadership of all public and moral movements.

Out of the Seneca Falls Convention came the National Woman’s Party, organized fully in 1913 by Alice Paul, who believed that the low-keyed efforts of women would not bring about passage of the Suffrage Amendment (ratified in 1920), the present 19th Amendment to the U.S. Constitution which guarantees women the right to vote. After Paul’s visit to England and the movement’s use of more militant tactics to finally bring about passage of the 19th Amendment, the National Women’s Party convened once again in 1923 in Seneca Falls, N.Y. to celebrate the first 1848 meeting and the passage of the Suffrage Amendment. It was at this time that Paul was asked to give a speech in response to many women who said, “we have the vote, but it is the
beginning, not the end. We want more to give to our children." As a result, Alice Paul drafted the Equal Rights Amendment stating that she wanted to place equality between women and men in the Constitution. So, in 1923, the struggle for passage of the Equal Rights Amendment began as it was first introduced into Congress that year and met defeat every year thereafter until 1972. The original Alice Paul Equal Rights Amendment read:

"Men and women shall have equal rights throughout the U.S. and every place subject to its jurisdiction"

Because it was argued that this wording might be interpreted to require geographic uniformity, the language was slightly altered in 1943 to read:

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

The revised version was introduced continuously from 1943 to 1972.

Hearings on the Equal Rights Amendment were held by the United States House and Senate Judiciary Committees in 1948 and 1956.6 Repeatedly, the Amendment had been favorably reported by the Senate Judiciary Committee and had twice passed the Senate in 1950 and 1953. Both times however, it contained the so-called "Hayden rider" which stated that the Equal Rights Amendment "shall not be construed to impair any rights, benefits, or exemptions now or hereafter conferred by law, upon persons of the female sex." 7 Both times the rider accomplished its purpose of killing the proposed Equal Rights Amendment since, as the Senate Judiciary Committee noted, the rider's "qualification is not acceptable to women who want equal rights under the law. It is under the guise of so-called 'rights' or 'benefits' that women have been treated unequally and denied opportunities which are available to men."8
It came as no surprise to Equal Rights Amendment proponents that these tactics to water down or destroy the Amendment were being used by opponents in light of the same strategy which was used in an attempt to destroy the Suffrage Amendment for over forty years prior to ratification.

While these attempts to abort the Equal Rights Amendment were disheartening to the Amendment's supporters, a new wave of interest and activism came about in the four years between 1968 and 1972. Pressure on Congress mounted during this time as a result of demonstrations, lobbying, educational efforts and a new wave of feminism which was launched in the United States at the end of the "anti-war" activism period. Thousands of groups and individuals responded to the call for ratification of the Equal Rights Amendment.

The Equal Rights Amendment passed the House in 1970 but met opposition in the Senate. A substitute amendment was introduced in an effort to save it: "Neither the United States nor any state shall, on account of sex, deny any person within its jurisdiction the equal protection of the law." Neither the Equal Rights Amendment nor its substitute generated sufficient support for passage and both died in the 91st Congress. Discussion intensified during 1971. In 1972, the call by millions of Americans for "equality of rights under the law" was answered on March 22nd. It was then up to three-fourths of the state legislatures (38 states) to ratify the Equal Rights Amendment.

Within hours after the final vote, Hawaii became the first state to ratify the Equal Rights Amendment. Twenty-one additional states gave their approval in 1972: Alaska, California, Colorado, Delaware, Idaho, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey,
New York, Pennsylvania, Rhode Island, Tennessee, Texas, West Virginia and Wisconsin.

In 1973, the AFL-CIO officially endorsed the Equal Rights Amendment, reversing its previous stand of opposition when it realized that the Equal Rights Amendment had the potential to extend protective legislation to men, rather than to endanger the hard-fought gains of such coverage. Eight more states also ratified in 1973: Connecticut, Minnesota, New Mexico, Oregon, South Dakota, Vermont, Washington and Wyoming.

In 1974, ratification was successful in three additional states: Maine, Montana and Ohio. North Dakota became the thirty-fourth state to ratify in 1975 and Indiana the thirty-fifth state in 1976. Since 1976, all attempts to ratify the Equal Rights Amendment in the remaining states have met fierce opposition by a small, yet vocal and well financed minority of people, despite all recent national and state polls (Roper, Harris, Gallup, et. al.) indicating that an overwhelming majority of Americans (both male and female) support the Amendment. This same overwhelming majority exists in Illinois and other unratified states as well. The latest Roper Poll, conducted for National Public Broadcasting, showed that 53% of the public supports the Equal Rights Amendment, 22% oppose it, 15% have mixed feelings and 10% have no opinion (November, 1977). Polls conducted solely in unratified states also show strong support for the Equal Rights Amendment. A poll conducted by the St. Louis Globe-Democrat, December 3-6, 1976, showed that 60% of the registered voters surveyed statewide favored Missouri's passage of the Equal Rights Amendment to the U.S. Constitution, compared to 27% opposed and 13% undecided. The Globe-Democrat stated that the Equal Rights Amendment received "strong backing from voters of both sexes and all ages, political persuasions, occupations, in-
come levels and areas."  

In Illinois, a poll taken by the Illinois Commission on the Status of Women in 1976 at the Illinois State Fair revealed that 71.9% of the Illinois women surveyed agreed with passage of the Amendment to the U.S. Constitution (53.1% agreed strongly and 18.6% agreed), 17.2% had no opinion, 4.8% were in opposition and 6.2% were in strong opposition.  

In light of the overwhelming evidence that Americans want the Equal Rights Amendment incorporated into the U.S. Constitution, it is the feeling of many national, state and local proponents of the Amendmer that it has been the victim of "lip-service, political deals, trade-offs and do nothingness" by politicians with other political interests. Several compelling facts support this accusation:

1) All United States presidents since Eisenhower have supported the Equal Rights Amendment and it has been endorsed and included in both the Democratic and Republican National platforms;

2) Only 7% of those voting on the Equal Rights Amendment in the state legislatures have been women;

3) Of those voting at International Women's Year Houston, Texas 1977), 80% supported the Amendment;

4) Two-thirds of the states (with over three-quarters of the United States' population) have ratified the Equal Rights Amendment (see attachent #1 for map).

5) Two states (Alabama and Illinois--both unratified) require a three-fifths vote of both their House and Senate instead of the customary simple majority. Under these newly imposed rules, the Civil Rights Act of 1968 and the fourteenth amendment would never have received the number of votes needed for passage.
Over 200 national organizations, including women's, civil rights, professional, educational and religious groups, as well as organized labor have endorsed the Equal Rights Amendment.13

(For an incomplete list (2/76) of national supporters, see Appendix)

We have faithfully, if naively, worked within the democratic process, time and again electing pro-ERA candidates to the state legislatures and time and again defeating anti-ERA candidates, only to have commitments of support publicly betrayed as a result of the most cynical and sinister backroom power-brokering.14

(Eleanor Smeal, President of the National Organization for Women)

Support for the Equal Rights Amendment has always been, and is still today, grounded in solid reason and logic—the reason and logic of legal equality among females and males. In the words of Thomas I. Emerson, Professor of Law Emeritus at Yale Law School, who for over thirty years has taught, done research, published in the field of Constitutional Law and is considered to be one of the most respected authorities on the U.S. Constitution:

The need for the Equal Rights Amendment continues in full force. Discrimination against women persists in many areas of our law. This unequal treatment is particularly acute in the field of family law, Social Security, welfare, and, in many states though not Connecticut, criminal law. Equally important, most of our public institutions, such as government agencies, our educational systems and the military, retain many of the attitudes and practices that throughout the ages have relegated women to the status of second class citizens. Outside the area of direct government involvement—in private employment, education, business and the professions—women still largely play a secondary and subordinate role. Thus, while some progress has been made in recent years, the problem of achieving equal status for women in our national life remains unsolved.

Furthermore, nothing has happened to alter the prior judgment that the Equal Rights Amendment constitutes the most appropriate instrument for eliminating discrimination on account of sex from our laws and institutions.15

What follows is an examination of the legal, political and social issues surrounding ratification of the Equal Rights Amendment.
The Equal Rights Amendment and the Constitution

(The information contained in this section was compiled from Equal Rights Amendment Project, California Commission On The Status Of Women)

Imperative in fully realizing the necessity for the Equal Rights Amendment with respect to the U.S. Constitution is an understanding of the basic constitutional issues which serve as some of the most compelling evidence for ratification of the proposed 27th Amendment. An examination of the manner in which the U.S. Supreme Court as well as lower courts have treated the classification of gender in the past, and speculation as to the manner in which gender will be treated in the future reveal:

1) that without a constitutional mandate for legal equality between the sexes, numerous decades will pass before women will even begin to be treated as nearly equal to men, under the law;

2) the Equal Rights Amendment is the only mechanism which will fully bring about the expressed intent of the people, vis-a-vis the United States Congress, through passage of the Amendment and various federal regulations; and

3) without the Equal Rights Amendment, women (and men) will be left in legal limbo as their constitutional rights will remain unclear, and worst of all, will be at the mercy of the courts and Congress which are subject to change in philosophy and membership. The Constitution was drafted to guarantee unalienable rights for all citizens. We have obviously failed to live up to this promise, if men and women are not guaranteed equal protection under the highest laws of our land--the U.S. Constitution.

The need for a constitutional amendment is a simple concept--females and males have not been treated equally under the law and they won't be without
the Equal Rights Amendment. The famous equal protection clause of the fourteenth amendment, ratified in 1968 provides:

"Nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws."

On face value it would seem that this clause would direct the courts to treat males and females equally under the law. Very little could be further from the truth. The Supreme Court, as well as the lower courts, has been hesitant, at best, to interpret the equal protection clause to include gender when rendering decisions. In its interpretation of the equal protection clause, the Supreme Court has traditionally applied at least two tests—the "minimum scrutiny" or "reasonableness" test and the "strict scrutiny" test.

Under the "minimum scrutiny" or "reasonableness" test, a legislature is required to have a "reasonable" basis for the classifications it enacts in a statute. Under this test, the courts will uphold a law if, 1) the purpose of the law is a valid one, and 2) the classifications made or the persons affected are "reasonably" related to the law itself. The first requirement is almost invariably met as the legislatures have extremely broad "police" powers under which they can enact a variety of laws. Under the second requirement or test, if the court can imagine any rational basis for the law, the act will not be held to violate equal protection.

In the last 33 years, the "strict scrutiny" test for "suspect classifications" (race, sex, etc.) has been developed by the Court. If this test is deemed applicable in a particular case, the burden of proof shifts to the state, meaning that the state must demonstrate that, 1) it had a "compelling state interest" for passing the law, and 2) the classification of persons to whom the law applies was necessary to accomplish the state's extremely important, or
"compelling" purpose.

Strict scrutiny was first enunciated by the Court in 1942 in *Skinner v. Oklahoma*, 316 U.S. 535; however, it was not fully accepted as a recognized constitutional doctrine until the middle 1950's, after the Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), applied the test to racial classification.16

When applied, the minimum scrutiny test almost always assures that a law will be upheld, while the application of the strict scrutiny test is tantamount to assurance that the challenged law will be stricken. In cases where the strict scrutiny test has been applied, the only racial classification over upheld was that of *Korematsu v. U.S.*, 323 U.S. 214 (1945), when Japanese-Americans were sent to concentration camps during World War II. While many commentators believe that this decision was incorrect, the Court said that the emergency of war necessitated a "compelling state interest."

"Thus, if strict scrutiny is applied, the law in question will almost always be found to violate equal protection." 17

Until 1971, in *Reed v. Reed*, 404 U.S. 71 (1971), the Supreme Court had never found a statutory classification based on sex to be unconstitutional. However, the Court did not apply the strict scrutiny test in *Reed v. Reed*, but claimed to have applied the minimum scrutiny or "reasonableness" test, meaning that the law did not even meet this very lenient test. It is important to note that in two famous earlier cases, *Goesaert v. Cleary*, 335 U.S. 464 (1948), and *Hoyt v. Florida* 368 U.S. 57 (1961), the Court held that legislative classifications based solely on sex were constitutional. An examination of these cases points directly to the reason for any supporter of equal rights between males and females having to be supportive of the Equal Rights Amendment.
In *Goesaert v. Cleary*, the Michigan Legislature had passed a law which prohibited women from serving as "barmaids" unless they were the wives or daughters of male bar owners. The law was challenged by the Goesaerts, a mother and daughter who owned a bar and made their living by operating it. In handing down its decision, the Court said that the Michigan Legislature might have rationally believed that women tending bar would be in danger unless a male relative (husband or father) were in the bar for protection. Even though all factual evidence failed to support this conclusion, the minimum "rational" basis was enough to uphold the statute as constitutional. This case is but one example of the almost automatic results of a minimum scrutiny, when applied. (It is well documented and was argued in the case that the all-male Bartenders Union ran a successful campaign in 1945 to have the state prohibit women from tending bar.)

In *Hoyt v. Florida*, a woman had been convicted by an all-male jury of murdering her husband with a baseball bat in a fit of rage over his adultery. It was argued that she was denied equal protection due to Florida's jury selection laws which automatically exempted all women unless they went through a special registration process. The men were not required to register and as a result, less than 5% of Florida's juries included women. It was argued that women on the jury (trial by peers) might have been more sympathetic than the all-male jury. As late as 1961, when this case was decided, the Supreme Court had no difficulty in determining that the Florida Legislature had a reasonable basis for imposing jury duties and giving exemptions solely on the basis of a prospective juror's sex. The Court said:

> We cannot conclude that Florida's statute is not based on some reasonable classification. . . . Despite the enlightened emancipation of women from restrictions and protections of
by-gone years, and their entry into many parts of community life formerly reserved for men, women are still regarded as the center of home and family life. We cannot say that it is constitutionally impermissible for a state...to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own responsibilities. (368 U.S. 57, 61-62)

Thus, equal protection was denied and the statute upheld as "reasonable" based on a gross overgeneralization made solely on the basis of sex.

In 1971, just before the Reed v. Reed decision, the Court, in Williams v. McNaught, 410 U.S. 951 (1971), affirmed without opinion a lower court decision upholding South Carolina's educational system which maintained all-male and all-female colleges in addition to gender-integrated institutions. The lower court ruled that such classifications by sex in the public school system was "reasonable" and did not violate equal protection.

Because this decision was so disappointing and difficult to believe, in 1971 many national organizations submitted amicus curiae ("friend of the Court") briefs urging the Court to declare sex a "suspect" classification in Reed v. Reed which was also before the Court in 1971. It was believed that a state should demonstrate a "compelling" interest in order to justify gender alone as grounds for classification in a state law.

In Reed v. Reed, the issue was an Idaho law which guaranteed men statutory preference in the probate courts when appointing administrators of estates. The Reeds were divorced and were involved in litigation to determine who should be appointed administrator of their deceased son's estate. The Idaho Supreme Court upheld the probate court's appointment of Mr. Reed as the administrator of the estate, maintaining the law against an equal protection attack. The U.S. Supreme Court reversed this decision by applying the minimum scrutiny test. The Idaho law did not even meet the very lenient test of reason-
The Reed v. Reed decision elicited a wide range of comments and speculation. Many scholars contended that if the "reasonableness" test were truly applied, as in past decisions, the statute would have been upheld. It would have been easy for the Court to determine that the Idaho Legislature had a rational basis for believing that men were more experienced than women in business matters, and thus more qualified to serve as administrators of estates. This certainty would have been consistent with the Goesaert v. Cleary decision whereby women were in physical danger while tending bar unless a male relative were present. It was concluded by many that where the classification of sex was concerned (although the minimum scrutiny test was used in Reed v. Reed), the Court would apply a standard stricter than minimum scrutiny, but one less strict than if sex were declared a "suspect" classification, imposing the strict scrutiny test.

The California Commission on the Status of Women, in discussion of the Equal Rights Amendment stated:

When Reed came down, the many supporters of equal rights who had hoped that the Court would place sex, along with race, in the "suspect" classification category realized that the Court would not follow that route easily or quickly. It was only then that efforts began in earnest to secure ratification of the Equal Rights Amendment.

Court decisions after the 1971 Reed v. Reed decision have proven that the Equal Rights Amendment would still be necessary even if the Court were to decide that sex is a suspect classification. Since 1971, the history of sex discrimination cases decided by the Supreme Court has been erratic at best.

(M.D. Ala. 1971), a lower court decision was upheld without opinion which affirmed an Alabama regulation requiring married female driver's license applicants to use their husbands surnames rather than their own birth names. Once again, as in the past, the Court determined that this law was "reasonable" and did not violate the equal protection clause. Nineteen-seventy-two also brought the decision of Frontiero v. Richardson, 411 U.S. 677 (1972), in which the Court, in an eight to one decision, struck down an Air Force regulation which required husbands of female Air Force officers to prove that they were in fact dependent on their wives for support before gaining dependency benefits. All wives of male Air Force officers were given the same benefits automatically. Even more important than the outcome of the decision was the fact that four of the nine justices declared their belief that sex was a "suspect" classification and should be treated as such in all future cases. While four justices are not a majority of the Court, the basis for the decision indicated that there was indeed support for applying the strict scrutiny test to all future sex-based classifications. Also interesting to note is that the four justices who concurred on the result but did not agree that sex was a "suspect" classification, did so largely because the Equal Rights Amendment was in the process of being ratified by the states. These four justices felt that the Court should be prevented from stepping in at that particular moment of history by declaring sex a suspect classification.

An additional sex discrimination decision, Stanley v. Illinois, 405 U.S. 645 1972, was decided in the same year; however, the ruling by the Court was based more heavily on the fourteenth amendment's guarantee of procedural due process, the right to a hearing before the state may deprive a person of certain rights. This case involved an Illinois statute whereby unwed mothers
were presumed to be fit to have legal custody of their children but unwed fathers were presumed to be unfit for custody and their children placed automatically in foster homes. While the Court held this law to violate a natural father's equal protection rights, it is generally agreed that the decision was based more on the due process clause, thus making it less significant than other cases.

In 1973, the Court made no decisions which involved sex discrimination and the equal protection clause; however, due to the strong sentiment of the Court in Fronterio v. Richardson, it was hoped that future decisions would reflect the same attitude. Nineteen seventy four eliminated these hopes and established more clearly than ever before that the Equal Rights Amendment was indeed imperative if sex was going to be treated in the same manner as race under the equal protection clause. Two out of the four sex discrimination cases handed down in 1974 were once again, as in Stanley v. Illinois, decided on the merits of due process. In both Cleveland Board of Education v. LaFleur and Cohen v. Chesterfield County School Board, 414 U.S. 632 (1974), teachers challenged the constitutionality of school district rules which required maternity leaves to begin four to five months before expected childbirth. The Court said that arbitrarily fixed maternity leaves were "conclusive presumptions" concerning the physical ability of pregnant teachers to perform their duties and as such, were unconstitutional because they did not account for individual physical differences. Although the teachers won in both of these cases, because the due process approach was taken instead of the equal protection clause, pregnancy was treated as a unique problem rather than one comparable to any other temporary physical disability. Because of this, school boards continue to require proof of a teacher's capacity
to work before and after pregnancy, while not requiring employees with other physical disabilities to prove the same.

The two 1974 sex discrimination cases decided on the basis of the equal protection clause brought alarming decisions for supporters of equal rights in that they were a retreat from the promising \textit{Frontiero v. Richardson} case. \textit{Kahn v. Shevin}, 416 U.S. 351 (1974), challenged a Florida statute which provided a $500 property tax exemption to all widows without regard to need or income, but did not provide the same for widowers. The minimum scrutiny test was applied here and in a six to three decision it was reasoned by the Court that past economic discrimination against women in jobs and salaries was a rational basis for the Florida law in an attempt to rectify, by form of benign discrimination now, past discrimination without regard for economic circumstances. While on face value this form of benign discrimination may be reasonably justified, it is imperative to understand that this form of legal reference (discrimination) is often the guise for protective labor legislation as well as other statutes and governmental actions which in fact, ultimately work not for the benefit of women, but to their detriment. Furthermore, statutes which harm men can be upheld under this type of ruling.

While it is clear that the Florida tax exemption was upheld by the Court's majority, the minority opinion, which invoked the compelling state interest or strict scrutiny test, also would have agreed on the decision if it were not drawn so broadly. This points out that even when the strict scrutiny test is applied, the Court is willing to be more lenient in its application regarding sex discrimination than it is in cases involving racial discrimination. This is all the more reason for the Equal Rights Amendment. (Further discussion of "benign quotas" and affirmative action is presented
in the section of this paper entitled "The impact of the Equal Rights Amendment on the U.S. Constitution."

In the second sex discrimination case of 1974, Geduldig v. Aiello, 417 U.S. 484 (1974), the Court upheld the constitutionality of a California unemployment insurance statute which excluded from its coverage all disabilities related to pregnancy. The majority opinion stated that the California law did not discriminate on the basis of sex, but merely on the basis of one physical condition, pregnancy—a condition oddly enough, unique to females. Even more revealing was the fact that only one footnote (#20) of the majority opinion discussed the issue of sex discrimination. In the strong dissenting opinion, three justices cited Title VII of the 1964 Civil Rights Act which requires pregnancy to be treated like any other disability. In addition, the dissenting minority reiterated its opinion that sex was a "suspect" classification and thus subject to strict scrutiny. They also concluded that the majority opinion was an "apparent retreat" from the earlier Reed v. Reed and Frontiero v. Richardson decisions.

In 1975, the Court decided four cases which dealt with sex discrimination in some way. In three of them sex-discriminatory laws were stricken.

In Taylor v. Louisiana, 95 S. Ct. 692 (1975), Hoyt v. Florida was implicitly overruled by the Court holding unconstitutional a jury system which required all men to register for jury service, but automatically exempted all women. While the case was not expressly decided on sex discrimination grounds, but rather the sixth amendment right to trial by a jury drawn from a fair cross section of the community, the Court demonstrated that its consciousness had been raised in the fourteen years since Hoyt v. Florida. Instead of stating, "that woman is still regarded as the center of home and family life" on which the outcome of
Hoyt v. Florida rested, the Taylor v. Louisiana decision, noting labor statistics, said in footnote 17:

the evolving nature of the structure of the family unit in American society. . .(and) they certainly put to rest the suggestion that all women should be exempt from jury service based solely on their sex and their presumed role in the home.

It is interesting to note that, as in a few of the cases since 1971 in which the Court overruled sex discrimination, the defendant was a male convicted of rape who could not have possibly claimed that a lack of women on the jury produced a denial of due process. However, in Hoyt v. Florida, the defendant was a woman convicted of murdering her husband and certainly had a reasonable claim that an all-male jury would be less sympathetic than a jury made up of women.

In the second 1975 case, Schlesinger v. Ballard, 95 S. Ct. 572 (1975), a bare majority of the Court, applying only the minimum scrutiny test, held that it was constitutional for the U.S. Navy to allow female officers three more years than male officers for promotion before discharge. The majority, looking at the "promotion and discharge" scheme created by Congress, concluded that women should have a longer period of time to attain promotion due to fewer opportunities in combat and sea duty. The minority of the Court, however, severely criticized the majority for only applying the minimum scrutiny test to a sex discrimination statute and said that the most lenient test had not been met because Congress did not intend to compensate women officers when the statute was enacted.

This case is extremely interesting because the Court once again, as in Kahn v. Shevin, fell back on the concept of benign discrimination instead of attacking the real discrimination—the limited opportunities for women to
elect combat and sea duty. Since 1975, the Navy, as well as other branches of the military services, has increased the opportunities for women to participate more thoroughly in its operations. Furthermore, recent Pentagon statements have indicated that women are being trained to serve in active duty and the day will come, with or without the Equal Rights Amendment, when women will be active in combat if necessitated by military confrontation.

In the third 1975 case, *Weinberger v. Wiesenfeld*, 95 S. Ct. 1225 (1975), a sex-based distinction in the Social Security Act, which gave survivors' benefits to mothers but not to fathers of dependent children whose deceased spouses had paid into Social Security before their deaths, was held unconstitutional under the Fifth Amendment due process clause which imposes the same equal protection restrictions on the federal government that the Fourteenth Amendment equal protection clause imposes on state governments. In this case the Court applied the "reasonableness" test for determining that the sex-based classification should not be sustained. There was no rational basis for achieving the purpose of the statute. While the result of this case was encouraging, it by no means strengthened the application of the strict scrutiny test.

In the final sex discrimination case of 1975, *Stanton v. Stanton*, 43 U.S.L.W. 4449 (1975), the Court reversed a Utah Supreme Court decision declaring unconstitutional a Utah law which established the age of majority at 18 for females and 21 for males. The Court explicitly stated that *Reed v. Reed* controlled its decision. In addition, the Court noted:

> We therefore conclude that under any test--compelling state interest, or rational basis, or something in between--(the Utah Statute)--does not survive an equal protection attack. (43 U.S.L.W. 4449, 4452)

Through the above examination of sex discrimination challenges which
have gone before the Supreme Court, it is obvious that the Court will
deal with such a challenge in a variety of ways. These range from classi-
fying sex as a "suspect" classification, to an intermediate standard which
is greater than true minimum scrutiny, but less than strict scrutiny, to
the position that sex-based classifications are subject only to minimum
scrutiny. Those who persist in claiming that the fourteenth amendment
guarantees "equal protection of the laws," and therefore the Equal Rights
Amendment is not necessary, have failed to understand the Supreme Court's
opinions regarding equal protection and sex-based classifications. Supporters
of equal rights between males and females cannot rely on the Court to declare
sex a "suspect" classification under the fourteenth amendment's equal pro-
tection clause. Even if the Court were to do so, we have seen in Kahn v. Shevin,
that a compelling state interest could still be found to justify sex discrimination
in statutes or governmental action. The Equal Rights Amendment is the
only means through which supporters of equal legal rights between men and
women can count on their goal being achieved and implemented.

The California Commission on the Status of Women commented:

Beyond the constitutional reasons, the (Equal Rights) Amendment
is needed as an impetus for broad-scale legal reforms which
a Supreme Court decision alone could never provide: litigation
is a slow expensive process which achieves genuine law reform
only in time measured by decades. For those who doubt this,
the Supreme Court's decision in Brown v. Board of Education
and its tragic aftermath during the Tong years of non-imple-
mentation--including recent events in the public schools of
Boston--need only be remembered. Passage of the Equal Rights
Amendment can only be regarded as an urgent necessity if
"equal justice under law" for women and men is to be a reality
in our lifetimes.19

Finally, those who continue to state that they are "for full equal
rights between men and women" but continue to oppose the Equal Rights Amendment,
are either naive or ignorant, or else they are deliberately deceptive in order
to hide their true feelings of opposition to legal equality under the law between females and males.
The Impact of the Equal Rights Amendment on the U.S. Constitution

While it is difficult to predict with certainty, the standards which the Supreme Court will use to interpret the Equal Rights Amendment in the first cases which come before it after the Amendment's passage, the standard will quite likely be placed somewhere between strict scrutiny and "absolute prohibition." The "absolute prohibition" standard is indeed supported by Congressional intent which is relied upon heavily by the Court when interpreting a constitutional amendment. The most authoritative source, which is a recorded part of the Equal Rights Amendment's history, is the famous Yale Law Journal article of 1971 by Brown, Emerson, Falk and Freedman, "The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women," supports the "absolute prohibition" stand. In this article the authors state:

It follows that the constitutional mandate must be absolute. The issue under the Equal Rights Amendment cannot be different but equal, reasonable or unreasonable classification, fundamental interests, or the demands of administrative expediency. Equality of rights means that sex is not a factor. . .

The only exceptions made in the Yale Law Journal article are laws and government actions which protect the right to privacy (already guaranteed by the Constitution) and certain applications of the "unique physical characteristics" test. (For a further analysis of the right to privacy and unique physical characteristics, see section in this paper).

The absolute prohibition standard, accompanied by the above exceptions, regardless of any "compelling state interest," is the theory upon which leading supporters of the Equal Rights Amendment in Congress acted in adopting the Amendment.

It is important to note that the Yale Law Journal article was written at a
time (1971) when the Supreme Court was more liberal than it is today and more importantly, before the Kahn v. Shevin decision which provided for benign discrimination to counter past discrimination, albeit a very broad decision on the part of the Court. It is my opinion that the Equal Rights Amendment, when ratified, will accomplish a great deal of necessary legal reform, regardless of what standard the Court applies between absolute prohibition and strict scrutiny. I believe it is safe to say that in the same way the Court has rendered decisions somewhere between strict scrutiny and minimum scrutiny before passage of the Equal Rights Amendment, it will base its decisions between strict scrutiny and absolute prohibition after passage of the Amendment. Although this cannot be stated with absolute certainty until the Court actually acts under the Equal Rights Amendment, it is certain that the Amendment will accomplish a great deal in ending legal discrimination based solely on sex.

While the impact of the Equal Rights Amendment, both on the U.S. Constitution and on state laws will be discussed throughout the rest of this paper, it is important to discuss two additional areas which will aid in understanding the impact of the Equal Rights Amendment more thoroughly. These two areas are the state action concept and benign quotas/compensatory aid or affirmative action.

It has long been settled that the fourteenth amendment of the U.S. Constitution applies only to "state action." This concept is derived directly from the fourteenth amendment itself which says that "no state shall deny...the equal protection of the laws." The Court has held that the equal protection clause does not apply to private discrimination,
but only to discrimination by state governments, whether statutory or through the action of government officials, or by private entities which can be said to be so "significantly involved" with the state that their actions are tantamount to the actions of the state. Under the fourteenth amendment, state action has been applied not only to the actions of state governments, but to some nominally private individuals. In *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), racial discrimination under the fourteenth amendment's equal protection clause was found to be unconstitutional because a privately owned restaurant was leased from the city and located in a building devoted to public parking. This was found to be "significant state involvement" which is the test used by the Court in determining whether private actions are significantly intertwined with state actions to consider them the same.

The Court is constantly dealing with cases under the fourteenth amendment's equal protection clause which present a variety of new facts and situations. The lower courts have also struggled with the question of "significant state involvement" and generally look to the following factors in their consideration: state regulation of the institution in question, tax exemptions, funding, or some other state involvement which enhances the ability of the private entity to operate and therefore discriminate. When enough state involvement is found to exist in a given case—although it is difficult to determine how much is "enough," the private entity becomes subject to the fourteenth amendment requirements.

A second major test relating to state action is the "public function" test. In certain cases the Court has determined that when a private entity is performing a governmental or public function, it is then subject to the
fourteenth amendment's requirements. Very few cases have been decided
501 (1946), a wholly-owned company town which provided housing and all other
necessary services to residents of the community, would not allow residents
of a particular religious sect to proselytize door-to-door. This pro-
hibition was found to be unconstitutional under the "public function"
test. Another case decided on the basis of the "public function" test,
*Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308 (1968),
held that a shopping center open to the public could not discriminate against
labor picketers. However, the Court undercut this case in *Lloyd Corp v. Tanner*,
407 U.S. 551 (1972) when it held that anti-war leafleters could be banned
from private property in a large shopping center which was open to the public.
Furthermore:

It has never been suggested in the fourteenth amendment cases that
the "public function" test could be used to find that private
educational institutions, churches, private single-sex clubs,
banks, savings and loans, insurance companies or places of public
accommodation were subject to the fourteenth amendment.20

By the same token, it is relevant to the Equal Rights Amendment to
understand that the only state action test which will be used is that
of "significant state involvement" and not the "public function" test.
The text of the Equal Rights Amendment itself points this out very clearly
in a manner similar to the fourteenth amendment's clause relating to state
action:

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

All respected legal scholars have agreed that the Equal Rights Amendment
(in the same manner as the fourteenth amendment) will recognize the first
amendment's right to privacy or as stated by Supreme Court Justice Douglas in a racial discrimination suit, a "zone of privacy."

The California Commission on the Status of Women concludes:

Thus, the Equal Rights Amendment will apply only to the actions of government and those private institutions which are so intertwined with the government that they can be said to be acting for the state. It will not apply, just as the fourteenth amendment does not apply, to actions or activities of wholly private persons or groups.21

Therefore, Equal Rights Amendment opponents who claim that the Amendment will require men to stop opening doors for women and will dictate the conduct of personal relationships cannot find support for this reasoning in the Courts, much less in reality. The Equal Rights Amendment, not unlike the fourteenth amendment, will respect an individual's right to privacy. (Further discussion of this topic is contained in other sections in this paper).

While a discussion of benign discrimination, quotas, compensatory aid and affirmative action could be somewhat dated at any time due to the famous Bakke case now before the Supreme Court, it is important to understand how these issues can be dealt with by the Court under the fourteenth amendment as well as the Equal Rights Amendment.

Depending on which approach the Court pursues in interpreting the Equal Rights Amendment (absolute prohibition, strict scrutiny or something in between) is directly contingent on how the Court is likely to deal with benign discrimination, quotas, compensatory aid and affirmative action. The Court will also have the responsibility of dealing with these issues in light of:

1) litigation which is brought before it where discrimination is determined to have existed within a particular institution or institutions, and

2) broad-scale quotas on affirmative action programs which attempt to
remedy injustices against one race or sex in our society at large. The latter is probably the area which the Court will address regarding the Bakke case. Regardless of the Bakke results, it is anticipated by legal scholars that years of litigation will ensue before this issue is settled with certainty. The same also holds true for women regardless of whether or not the Equal Rights Amendment is ratified. Without the Amendment, it would certainly be ironic for the Supreme Court to hold that quotas and affirmative action programs based solely on sex were unconstitutional under the fourteenth amendment's equal protection clause, considering that in the past, the Court has been hesitant at best to apply the same strict standards which are applied to race. By doing this, the Court would almost certainly have to apply at least the strict scrutiny test, if not the absolute prohibition test. The irony would rest with the fact that this would be brought about as a result of a man claiming sex discrimination in an area which has been generally recognized as the most effective tool for bringing an end to sex and race discrimination. What a strange means for women to gain greater legal equality under the law! In taking one further step, without the Equal Rights Amendment, there is no guarantee that the Court will abide by this strict scrutiny or absolute prohibition standard in future cases brought before it—especially if the plaintiffs are women.
The Right To Privacy

Even though the right to privacy is guaranteed by the U.S. Constitution and the Supreme Court has firmly established this right in recent court decisions, opponents of the Equal Rights Amendment continue to distort this issue in many areas, i.e., unisex bathrooms, locker rooms being shared by females and males, the interference in personal relationships between people of opposite sexes. Because of the continuous attention given to the right to privacy by the Amendments opponents, it is necessary to address the issue at this time.

The authors of the Yale Law Journal article, as well as the Equal Rights Amendment's proponents in Congress, recognize the right to privacy doctrine as a major and essential qualification to the Amendment. The Senate Report states:

The constitutional right to privacy established by the Supreme Court in Griswold v. Connecticut, . . . would. . . permit under the Equal Rights Amendment a separation of the sexes with respect to such places as public toilets, as well as sleeping quarters and public institutions.22

The right to privacy was first established as a constitutional right by the Supreme Court, in Griswold v. Connecticut, 381 U.S. 479 (1965), whereby the Court prevented the State from imposing laws concerning the use of contraceptive devices in the marital relationship. In a similar case, Eisenstadt v. Baird, 405 U.S. 438 (1972), the Court struck down a statute which prevented an unmarried person from receiving contraceptive information. The most important decisions came in the cases of Roe v. Wade, 410 U.S. 113 (1973), and Doe v. Bolton, 410 U.S. 179 (1973), where the Court protected a woman in the first trimester of pregnancy from interference by the state in her decision as to whether or not to have an abortion.
These decisions make it clear that the Court will not allow interference by the state regarding an individual's right to control her/his bodily functions. In clearly stated terms, the Equal Rights Amendment Project: California Commission on the Status of Women states:

...in context of the Equal Rights Amendment, the right to privacy would protect an individual's right to perform personal bodily functions, such as sleeping, showering and dressing, without intrusion by members of the opposite sex due to the integration of dormitories, living facilities, locker rooms, and other physical facilities belonging to the state where such personal functions are customarily performed. 23

Because of the significance and national impact of Roe v. Wade and Doe v. Bolton, the Court has indicated support for using the right to privacy doctrine under the Equal Rights Amendment in deciding less important cases concerning sexually segregated public bathrooms and dormitories. Both the Court's recent reliance on the doctrine of right to privacy and the expressed recognition of the same concept in the Congressional debate and in the Yale Law Journal article make it certain that the right to privacy will be an acceptable qualification to the Equal Rights Amendment after its ratification.
Unique Physical Characteristics Found Only in One Sex

Even if the "absolute" standard (absolute prohibition) put forward in the Yale Law Journal and legislative history is used to interpret the Equal Rights Amendment, it will be qualified by the "unique physical characteristics" principle. Under this test, physical, but not emotional, psychological, or social factors found in one sex alone may be used as the basis for particular legislation. Common examples of such laws which could constitutionally apply to only one sex are statutes dealing with wet nurses or sperm donors. Laws or regulations allowing women to take leaves for childbirth, as opposed to childrearing, would also be constitutional under the Equal Rights Amendment. In addition, laws establishing the paternity of children would be valid based upon a "unique physical characteristic."

While these examples are obvious and uncomplicated, the area likely to cause problems and litigation under the "unique physical characteristics" test is that of pregnancy. There is a multitude of statutes and other state action which are sex discriminatory based on a woman's unique ability to bear children. One such example is the expulsion of pregnant students from schools by school boards. The "unique physical characteristic" of females to bear children has absolutely no relationship to any legitimate interest of a school board and should not be accepted as a subterfuge for what is really sex discrimination. Thus, when pregnancy or any other "unique characteristic" comes into question as being sex-discriminatory under the Equal Rights Amendment, it will be up to the courts to critically examine the law for its intent and purpose outside of sex discrimination. The Yale Law Journal puts forth six tests which can be used to determine the constitutionality of a "unique characteristic"
question. These tests are:

1) The proportion of the members of one sex who actually have the characteristic;

2) The relationship between the characteristic and the problem sought to be solved by dealing with only the persons who have the characteristic;

3) The proportion of the problem which is sought to be solved which can be properly attributed to the unique physical characteristic;

4) The proportion of the problem which is eliminated by the solution;

5) The availability of "less drastic alternatives"—less drastic for the person restricted, more limited in the number of persons or opportunities affected, or alternatives not based on sex at all;

6) The importance of the problem being solved as compared with the cost of the least drastic solution.

If pregnancy is used as a guise for sex discrimination, these six tests should be used when the "unique physical characteristic" doctrine is being employed. Pregnant women may continue to be harmed severely by sex discrimination if laws and regulations aren't strictly scrutinized after passage of the Equal Rights Amendment.
The Right of States to Legislate Under the Equal Rights Amendment

Section two of the Equal Rights Amendment states: "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." This clause is nearly identical to the provisions found in the 13th, 14th, 15th, 19th, 23rd, 24th and 26th amendments to the U.S. Constitution. Opponents claim that because section two only mentions Congress, the states will be giving up the power to revise or deal with vast areas of law now regulated by state legislatures, including family and marital property laws, labor laws, criminal laws and specific educational matters. Those who claim this to be the case are demonstrating a great deal of ignorance regarding the basic and central theory of the U.S. Constitution. Article I of the Constitution which establishes Congress and Section 8 specifically, which enumerates the subjects upon which Congress has power to legislate, contain express grants of power to Congress in order to legislate on those subjects. As amendments to the Constitution were added, it was necessary to expressly state in each successive amendment that "Congress shall have the power to enforce this article by appropriate legislation." It is for that reason alone that so many constitutional amendments contain express grants of power to Congress to legislate.

On the other hand, the Constitution places the states in precisely the opposite position. While the federal government has only the powers expressly granted to it, all other powers are reserved for the states. That was understood in 1787 when the Constitution was adopted and was reiterated again in 1791 with the adoption of the tenth amendment, which states:
Powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively or to the people.

Therefore, it is absolutely clear from the underlying theory of the U.S. Constitution that no express grant of power contained throughout the Constitution itself and the amendments, and the wording of the tenth amendment, that section two of the Equal Rights Amendment is absolutely necessary as a matter of constitutional law to give Congress the power to legislate under it. The states do have the power to legislate concerning matters of state law because that power was retained by them as the tenth amendment affirms.

The legislative history of the Equal Rights Amendment reflects this basic fact of United States Constitutional theory. In one version of the Amendment put forward in 1970 and 1971, section two read:

Congress and the several states shall have the power, within their respective jurisdictions, to enforce this article by appropriate legislation.

Proponents and opponents alike criticized this version of section two for being an exceedingly poor constitutional draft. It was stated by Professor Paul Freund of Harvard Law School, a well-known opponent of the Equal Rights Amendment, that the language--"within their respective jurisdictions"--restricted Congressional power more than that found in any other amendment or elsewhere in the Constitution and suggested that the present section two be adopted. Dean Pollack of the Yale Law School, a proponent of the Amendment, concurred with the criticism of the 1970-1971 draft of section two, whereby the present language of section two was adopted by Congress in 1972.

Some opponents of the Equal Rights Amendment have also claimed that a recent Supreme Court case, *Katzenbach v. Morgan*, 384 U.S. 641 (1966), because
of identical language contained in the fourteenth amendment, gives Congress
great new powers to legislate regarding matters of state law, which it does not
now possess, even if the states have concurrent power to also legislate in
such areas. A brief examination of the case demonstrates that this assertion
is legally incorrect.

The Supreme Court's decision in this case prohibited the states from
placing restrictions concerning English literacy on the right to vote in
state elections. Because many Puerto Ricans living in New York were literate
in Spanish but not in English, two New York Senators proposed an act in
Congress to allow those persons educated through the sixth grade in American
flag schools to vote in state elections, regardless of the language used in
those schools and regardless of whether the voter could speak or read English.
This act was challenged because Congress was granted the power to legislate
matters concerning federal elections and not state elections. By upholding
this Congressional act as constitutional, the Court specifically stated in
a very far-reaching decision that Congress could legislate matters concerning
voter qualifications for state elections because Congress has the power
to define equal protection. This power granted to Congress is contained
in Article I of the U.S. Constitution.

Opponents who claim that section two of the Equal Rights Amendment
will give Congress great new powers to legislate because of the Katzenbach v.
Morgan decision have failed to grasp the importance of this decision. If
the Amendment's opponents believe that this decision prohibits distinctions
in state voting laws, then surely Congress has the power to prohibit all
distinctions based on sex with respect to all state and federal laws. While
this is obviously not true, it does prove that Congressional passage of the
Equal Rights Amendment is far from a frightening example of a "federal grab for power," but rather, it is a demonstration of Congressional respect for the states' rights. The California Commission on the Status of Women states this point quite clearly in the following:

The Morgan case, which some opponents of the Amendment claim makes section two of the Amendment so potentially harmful, in fact--read as literally as opponents read it--gives Congress the power to enact all necessary equal rights legislation, both state and federal, without passing any constitutional amendment at all. In this context, then, passage of the Amendment by Congress in 1972--some six years after Morgan--is the most convincing 'proof of Congressional respect for the states' position and authority.'

Thus, it is clear that section two of the Equal Rights Amendment is completely necessary and in concert with constitutional theory. A deletion or variation of section two would ignore the intention of the Constitution with regard to the explicit power relationship between Congress and the states, as well as those clearly understood methods for amending the U.S. Constitution.
Rejection of the Separate-But-Equal Doctrine Under the Equal Rights Amendment

With the 1954 Supreme Court decision in Brown v. Board of Education, 347 U.S. 483 (1954), the separate-but-equal doctrine was struck down as unconstitutional as it applied to race relations. As a result of this landmark decision, it has not been legal for any state to maintain racially segregated facilities, whether they are schools, beaches, restrooms, or other places open to the public. Because separate is rarely equal, the authors of the authoritative Yale Law Journal, as well as Congress, have rejected the separate-but-equal doctrine under the Equal Rights Amendment. The authors of the Equal Rights Amendment Project, California Commission on the Status of Women, take the same position as the authors of the Yale Law Journal article and Congress by stating:

Were that (separate-but-equal) doctrine to be maintained under the Amendment, a gaping hole would be torn in its guarantee of legal equality of the sexes.

...women's prisons are today almost universally separate from men's; however, they are never equal in training and vocational rehabilitation programs, educational opportunities and the like. Similarly, men's prisons are not equal to women's in physical comforts. It is only the physical integration of men's and women's prisons that will insure the equality of the sexes which passage of the Equal Rights Amendment will affirm as law of the land. Allowing a doctrine of separate-but-equal to exist under the Equal Rights Amendment will in fact only serve to perpetuate unequal physical facilities provided by the state for the sexes.

Similarly, in the field of education, after passage of the Amendment, states will not be allowed to maintain separate-but-equal schools for the sexes. Again, although men's and women's schools are often separate, they are rarely equal. The only way to insure equality of education for both men and women is to insure that each sex has the same opportunity to obtain precisely the same education—not a sexually separate one, but a sexually integrated one.

If the separate-but-equal doctrine is not rejected, decades upon
decades of litigation will ensue before the Amendment's guarantee of equality for the sexes under the law is fulfilled.25

(For further discussion of the issues and problems surrounding prisons, education, right to privacy and unique physical characteristics, see sections in this paper).

It is clear that the Congressional intent (also reflected in the Yale Law Journal article) was established as to not leave any doubt in the minds of the states or the Supreme Court that the separate-but-equal doctrine is to be flatly rejected when interpreting the Equal Rights Amendment. Supporters of the Amendment should feel safe in the knowledge that the Amendment was adequately and laborously debated with respect to this question and the Supreme Court will have very little choice but to take this into account in its application of the Equal Rights Amendment to specific litigation.
Statutes Which Are "Neutral on Their Face But Discriminatory in Impact"

Upon implementation of the Equal Rights Amendment, it may be said that statutes which are adopted in terms of sex will be absolutely prohibited. Thus, statutes such as the now unconstitutional jury selection laws which require all males to serve, but automatically exempt all females, would be invalidated by the Equal Rights Amendment. The two exceptions to the absolute prohibition concept are the right to privacy which will permit statutes or governmental institutions to make distinctions based solely on sex where it is necessary to preserve an individual's right to personal privacy in matters relating to bodily functions, and the "unique physical characteristics" test where in certain narrowly defined circumstances, sex-specific laws will be permitted if these laws deal with the necessary result of physical characteristics found only in one sex. (For a more complete discussion of "right to privacy" and "unique physical characteristics," see specific sections in this paper).

Aside from "unique physical characteristics" and right to privacy, the Amendment will allow laws and government action which pertain to persons of either sex, but not by explicit reference to sex itself. Under this principle, leaves of absence prescribed by school districts or government agencies for specific periods of time to devote to childrearing will have to be drafted in gender-neutral terms because either sex can perform this function.

However, in some instances, laws which are drafted in gender-neutral terms may bear more heavily on one sex than the other. Such laws have been termed as "neutral on their face, but discriminatory on impact." The Supreme Court has held many statutes to be un-
constitutional under the fourteenth amendment as they were "neutral on their face, but discriminatory in impact." In *Griggs v. Duke Power Co.*, 401 U.S. 242 (1971), the Court found that Title VII prohibited an employer from imposing a test for certain jobs where the employer could not demonstrate that the test was related to the skills necessary for the job, and the test had a disproportionate impact on Blacks.

One of many possible examples of a law or rule drawn in gender-neutral terms would be the maintenance of one high school sport team which limited participation to only 20 people. In a high school of 2,000 students with ten athletic teams and 20 people to a team, it is obvious that women students, because of their limited athletic training and generally smaller size, would be effectively precluded from participation in state-sponsored athletic programs for that school. It could be said that such a law or rule would in fact discriminate against women students who would not be able to participate on an equal basis with men. This is one hypothetical example of the "neutral on its face, but discriminatory on impact" principle. Another example would be the imposition of a state statute which provided for criminal penalties for nonpayment of child support. While this law would appear to be gender-neutral, the facts is that in 95% of all child custody cases, women are given custody of the children, and in most of these cases men are ordered to pay child support payments; such a criminal statute would bear more heavily on men than on women.

Statutes and rules such as the above examples will have to be strictly scrutinized to determine if they are in fact "neutral on their face, but discriminatory on impact." This concept is essential to understanding the implementation of the Equal Rights Amendment.
At this time, it is difficult to determine the precise interpretation to be used by the Supreme Court when applying the principles of the Equal Rights Amendment. For this reason, and in Jefferson v. Hackney, 466 U.S. 635 (1974), where the Court did not strike a statute which was considered to be "neutral on its face, but discriminatory on impact," the authors of the Yale Law Journal have reservations regarding the Court's application of this principle. While it would be more desirable for the Court to interpret the Amendment using the "absolute prohibition" doctrine, a less strict standard may still find specific statutes and rules to be neutral on their face, but discriminatory on their impact. This would certainly be consistent with the intent of Congress and other proponents of equal rights between women and men under the Equal Rights Amendment.
Public Accomodations

Numerous restaurants, bars, nightclubs, hotels, apartments and other places are open to the general public but closed to one sex. Litigation attempting to prohibit these practices under the fourteenth amendment's "equal protection" clause have been relatively rare to date. However, one federal district court decided, in Seidenberg v. McSorley's Old Ale House, Inc., 317 F. Supp. 593 (S.D.N.Y. 1970), that a liquor license held by a bar open to all members of the general public who were male significantly involved the state in the bar's operation. The district court prohibited sex discrimination in this context by holding the bar to the equal protection standards of the fourteenth amendment. Given this ruling, it is likely that such a prohibition will be extended to places of public accommodation after passage of the Equal Rights Amendment. Of course, it must be remembered that in Moose Lodge v. Irvis, the Supreme Court refused to recognize a state issued liquor license as "significant state involvement."

While it is difficult to determine the extent to which public accomodations will be held to the "significant state involvement" test, analysis by leading commentators on the state action doctrine indicates that essentially, the Court's balancing of the competing interests (bar v. single-sex) is at stake. As noted earlier in Moose Lodge v. Irvis, the Court upheld, under the fourteenth amendment and in the belief that the first amendment rights were important ones to protect, a private organization's members' right to freely associate with whomever they choose. The interests which can be claimed by the operator of an establishment which is open to the general public, except those of one race or sex, are much less compelling than those
interests claimed by members of a truly private club. When an establish-
ment is open to the public and will only admit someone who is of the "right" 
sex or race and not someone who is of the "wrong" sex or race, the first 
amendment of right to privacy and free association is most certainly 
weak.

Although the court majority relied on narrow, technical grounds of 
state law for a decision whereby a restaurant open to the public could not 
refuse to serve Blacks while serving all whites, Justice Douglas, in his 
concurrence, urged the Court to recognize that in the area of public accomo-
dation the first amendment right of privacy and free association should 
not be extended. Douglas stated:

The property involved is not...a man's home or his yard or even 
his fields. Private property is involved, but it is property 
which is serving the public...we should not hold that property 
voluntarily serving the public can receive state protection when 
the owner refused to serve someone solely because they are color... 

(Bell v. Maryland, 378 U.S. 226 at 252 (1964)).

Thus, it is possible that even given the Moose Lodge v. Irvis decision, 
places of public accommodation which are licensed by the state could be 
found to be so significantly involved with the state and their activities 
to constitute state action for the purposes of the Equal Rights Amendment. 
Even if the Court does not determine this to be the case, with or without 
the Equal Rights Amendment, state legislation and city ordinances (such as 
those presently contained in the Illinois Constitution and Champaign's and 
Urbana's Human Rights Ordinances) can be enacted to prohibit sex discrimination 
in places of public accommodation.
Private Single-sex Clubs

Many private single-sex clubs or organizations exist in the United States, some with very little or no state involvement and others with varying degrees of state involvement in their activities. Examples of such clubs or organizations include the American Association of University Women, the Kiwanis and Rotary, Elks and Moose Lodges, the V.F.W., Knights of Columbus, sororities and fraternities. Attempts to subject such organizations to the fourteenth amendment’s prohibition against racial discrimination or, upon passage of the Equal Rights Amendment, a prohibition against sex discrimination, must take into account the first amendment’s guarantee of the right to freedom of association.

The Supreme Court in *Moose Lodge v. Irvis*, 407 U.S. 163 (1972), refused to hold that the racially discriminatory practices of the Lodge were unconstitutional simply because the Lodge held a liquor license issued by the state. The Court said that the liquor license was not enough to subject the Lodge to the requirements of the fourteenth amendment. Even Justice Douglas, who dissented in the 6-3 decision, recognized that the first amendment creates a "zone of privacy" by stating:

"The associational rights which our system honors permit all white, all black, all brown and all yellow clubs to be formed." (407 U.S. 179-80)

As long as clubs or organizations are not "significantly involved" with the state, the first amendment also protects the right of persons wishing to form private all-male and all-female groups. Therefore, it can be said with certainty, given the precise contours of the state action doctrine under the fourteenth amendment, that under the Equal Rights Amendment private single-sex
clubs and organizations will be allowed to exist. Additional considerations the Court takes into account when establishing significant state involvement include tax exemptions, the use of government facilities for meetings or other activities, and the issuing of liquor and other types of licenses. Thus, most private clubs will not be subject to the requirements of the Equal Rights Amendment and those which are presently single-sex may remain as such if they so choose.
Religious Institutions

Because the first amendment prohibits the "establishment of religion" by the federal government or by any state government, there is much less involvement by the government in religious institutions than with private educational institutions. The only significant involvement of the state with respect to religious institutions is the granting of tax exemptions for property used by churches. In a recent Supreme Court case, *Walz v. Tax Comm'r. of the City of New York*, 397 U.S. 664 (1970), the Court held that the mere granting of tax exemptions to church property was not significant state involvement under the first and fourteenth amendments.

Some opponents of the Equal Rights Amendment claim that those churches which now exclude women from their ministries would be subject to the Equal Rights Amendment, thus forcing religious institutions to change their current religious beliefs. This claim is demonstrably false, not only because of the clear precedent set by the Court in *Walz v. Tax Comm'r. of the City of New York*, but also because another clause of the first amendment prohibits the state and federal government from interfering in any manner with the "free exercise" of religious beliefs. This point is made quite clear by the California Commission on the Status of Women in the following:

Thus, the "free exercise" clause of the first amendment would prohibit the application of the Equal Rights Amendment to a particular religious organization's beliefs, even if the institution were, hypothetically, considered to be acting for the state. 26

Therefore, it is absolutely clear that private religious institutions will not be subject to the Equal Rights Amendment, nor will the Amendment require any particular religious organization to admit women to its ministry.
Banks and Savings and Loan Associations

The business activities of banks and savings and loan associations have never been held to constitute state action and therefore have not been subject to the requirements of the fourteenth amendment. Therefore, it is most unlikely that such institutions would be held subject to the requirements of the Equal Rights Amendment.

However, Title VII of the Civil Rights Act of 1964 prohibits all banks and savings and loan associations in the United States from discriminating on the basis of sex in employment. Thus, prohibition of sex discrimination in employment by these institutions has already been provided by federal law. Further, the Equal Credit Opportunity Act of 1975 prohibits any creditor in the United States from discriminating on the basis of sex or marital status in the granting of credit or in any other area of credit transactions. Therefore, the Equal Credit Opportunity Act has obviated the major reason for any attempts to subject banks and savings and loan associations to the requirements of the fourteenth amendment. Thus, while it is doubtful that these private institutions will be subject to the requirements of the Equal Rights Amendment, federal laws already enacted by Congress under other provisions of the United States Constitution already provide for important prohibitions concerning sex discrimination by banks and savings and loan associations. The Equal Rights Amendment would demonstrate a strong commitment to these principles and laws, and by being enshrined in the U.S. Constitution, revocation of already enacted federal statutes would be most unlikely.
Insurance

The widespread attitude that a woman is only a temporary wage earner and dependent on a male wage earner severely affects a woman's access to insurance. This is in spite of the revealing statistics that women comprise over 40% of the work force and of these working women, 70% work because of economic necessity; they are either single, separated, divorced or widowed, or their husbands earn less than $7,000 per year. Another prevailing attitude is that women do not work for long periods of time or that they will feign illness in order to collect insurance benefits. This attitude is clearly revealed in insurance company manuals as stated by the North American Reassurance Company, "women's role in the commercial world is a provisional one...they work not for financial need, but for personal convenience." In reality, many women who do leave the work force to marry or have children return, and the statistics on absenteeism are only slightly higher for women than for men. Public Health Surveys indicate that in 1971 men lost 5.1 days for acute disabilities and women 5.2 days, including time off due to childbirth and the complications of pregnancy.

The major discrimination exists in disability insurance which provides income when a person is not able to work because of illness, injury or disease. A typical policy not only includes "normal" pregnancy, but also all complications of pregnancy. Some states have government-sponsored temporary disability insurance programs; however, these laws contain exclusions, riders and waivers not present in policies for males. While some states limit the amount of benefits covered for pregnancy, several others exclude pregnancy coverage completely. Where private disability income
coverage is available, payments for pregnancy related disabilities are almost always excluded. These policies can cost as much as 5 to 150% more and/or they restrict benefits to a two to five year period for women, while men are entitled to receive benefits for up to 65 years of life. Where group plans are offered by employers, pregnancy benefits are included in only one-half of these disability policies, thus depriving many women who plan to return to work of maternity benefits. Labor unions generally advocate maternity leave, but the advocacy of re-employment or other benefits is limited and usually not pursued vigorously. This entire situation is ironic for a society which is generally such a strong proponent of motherhood, the family unit, and protection of children.

Regarding medical insurance plans, most private policies do not cover pregnancy and/or gynecological disorders or coverage is insufficient with flat maximum payments, while other illnesses or injuries are not subject to the same limitations. In most employment-related group policies, restrictions and discrimination are often evident. Some policies cover maternity benefits for spouses of male employees, but exclude female employees from these benefits. Often, wives are not permitted to include their spouses unless they can prove them to be disabled or retired, while under the same plans, wives of male employees are included either automatically or by simply paying a higher rate (with no such questions asked). Many policies provide for the exemption of unmarried women and their female children from maternity benefits. Often times, benefits are only made available to an employee if s/he is a principle wage earner. A 1969 health insurance association study of employment-related group policies showed that 61% of the policies covered maternity benefits for wives and female employees,
9% covered wives of male employees only, 1% covered female employees only, and the remaining 29% of the policies did not cover maternity at all.

In purchasing life insurance, women pay less than men (except for annuities) but more than they should for individual policies. While statistics show that women live 6 to 9 years longer, females are charged the same rate as males who are three years younger.

In the area of automobile insurance, sex classification is used to determine rates. Men in the 19 to 25 age bracket pay higher rates because they produce higher losses. At age 45, the rates are nearly equal for men and women. The blatant sex discrimination in automobile insurance exists for single, separated and divorced women who pay higher rates than married women, although these rates are still less than those paid by men. Sex discrimination also exists in underwriting practices. In the words of Dr. S. Denerberg, former Insurance Commissioner of Pennsylvania: "It is time that the fact... that really cause the difference be sorted out to replace sex as a classification base." 27

Traditionally, gender has been used as a distinguishing factor in the insurance industry because it is convenient, simple, efficient and yields greater profits. The sex discrimination which is a result of these practices indicates that other bases for classifications should be used in order that women (and men) be treated more equitably.

Title VII of the 1964 Civil Rights Act has a provision which is supposed to ensure that women and men are treated equally in the areas of medical, hospital, retirement and life insurance. However, the Equal Employment Opportunities Commission (EEOC) does not cover all employers and is extremely backlogged in its caseload. In addition, the 1945 McCarran-Ferguson Act exempts the insurance
industry from many federal antitrust laws and leaves regulation of the industry in the hands of the states. To the extent that the insurance industry can be regulated by the states, passage of the Equal Rights Amendment will mean more equal treatment of women in insurance, employment benefits, and in the availability and cost of coverage. As stated in the *Yale Law Journal* article: "The law may operate by grouping individuals in terms of existing characteristics or functions, but not through the vast over classification of sex."

According to Senate Judiciary Committee Reports, the Equal Rights Amendment will not affect laws granting maternity benefits. In accordance with EEOC guidelines, coverage will be available, not in a restrictive way, but will offer women the complete protection they need. In determining insurance rates, passage of the Equal Rights Amendment will not allow different rates for women and men based solely on sex unless there is a "compelling state interest" to do so. With the use of other classifications it would seem that women will benefit, especially in relation to health and disability insurance. As in many other areas, the more equitable treatment of women in the insurance industry is evolving slowly and painfully. Only passage of the Equal Rights Amendment will insure that the necessary changes are made quickly and that these benefits will remain permanent.

While ratification of the Equal Rights Amendment is necessary to end sex discrimination in insurance practices, the following should be kept in mind. No insurance company activity has yet been held to constitute "state action" by the Supreme Court, even though litigation in this area has attempted to establish the states to be "significantly involved" with the operations of those insurance companies. This is due to the fact that the Court is reluctant to extend the state action doctrine and it seems unlikely that state action
will be found. Therefore, it is likely that under this current trend, private insurance companies will not be held subject to the requirement of the Equal Rights Amendment. However, it should be noted that numerous insurance company practices are largely unregulated today and this could change in the future. Because the Amendment, in all likelihood, will not end many of the serious inequities existing in private insurance, other means in addition to the Equal Rights Amendment may be required to bring about equitable and necessary changes.
Labor, Criminal System, Education, and Family
Introduction

The following four sections will explore the areas of labor law, family law, criminal law, and education policies and practices with respect to the Equal Rights Amendment. It is far beyond the scope of this paper to treat these topics with the amount of detail and analysis which each commands. For those interested in further information, two excellent and authoritative sources are "The Equal Rights Amendment Project: A Commentary on the Effect of the Equal Rights Amendment on State Laws and Institutions" prepared for the California Commission on the Status of Women's Equal Rights Amendment Project, and the Yale Law Journal article referred to throughout this paper.

The amount of sex discrimination contained in each of these areas is staggering. The practices which arise as a result of sex-discriminatory statutes and policies are based solely on presumptions about females and males with absolutely no regard for the individual, much less the changes which have come about in our society over the past ten to fifteen years. There is no doubt that passage of the Equal Rights Amendment will affect the of these areas conclusively. While the states and federal government will have two years after ratification of the Equal Rights Amendment for its implementation, full compliance will clearly require a much longer time frame and litigation will almost certainly ensue because of the magnitude of the problem.

On the other hand, it should be noted that many states (eighteen) have enacted state Equal Rights Amendments which are either duplicates of the federal amendment or similar "equal rights" clauses. As a result of this action, these states have already begun the work necessary for implementation of the Equal Rights Amendment. It is recognized that many of their statutes
and policies already stand as models for other states either wishing to eliminate sex discrimination or those which will be required to do so once the Equal Rights Amendment is approved. Furthermore, many states have begun the work that would be necessary under the Equal Rights Amendment, in anticipation of its passage.
Because large numbers of people have never had to deal with the criminal justice system, there is a great degree of ignorance (lack of knowledge) as to its extraordinary impact on people's lives. Like every other institution in our society, this system has not escaped the damaging effects of sex discrimination. In fact, it is probably in this area more than any other that the sex-discriminatory practices are the most shocking and intense with the greatest degree of direct harm done to individual males and females.

Some of the presumptions about females (and males) which have been used to justify the system's practices and statutory distinctions based on sex are:

1) women who commit crimes are harder criminals than men who commit crimes because it is deemed as much more aberrant behavior for women to violate the law. Thus, by logical extension, women need higher bonds and longer sentences in order to be rehabilitated, and stricter scrutiny when being considered for parole;

2) for "girls" (teenagers and pre-teenagers) the system is even harsher as the conduct for which they can be committed to an institution as "status offenders" or criminals is entirely subjective and does not even approach the conduct for which "boys" can be held by an institution.

3) men are much more productive members of society and once released from an institution, can be expected to contribute more to society. Women who have been arrested and convicted of crimes who have not conformed to traditional female roles (wife, homemaker, mother) are presumed to be
more difficult and thus require "stronger" treatment and rehabilitation.

The following is a partial list of the areas in which men and women are treated differently by the criminal justice and penal system with a brief explanation offered for some. In each of these areas, the Equal Rights Amendment will have a dramatic effect in eradicating the injustice contained within each of these systems. It should be noted that the "right to privacy" where relevant, will be honored and upheld by the necessary changes (see section on "right to privacy" in this paper).

1) Pre-trial Release Practices - Instead of basing these practices on the sex of the person, they should be based on the crime with which the person is being charged.

2) Sentencing of Women Convicted of Crimes - Many state statutes require longer sentences for women than men based on the afore-mentioned presumptions. This practice will most certainly end under the Equal Rights Amendment as well as the practices by many judges who automatically impose longer sentences for men than for women and vice versa.

3) Standards for Granting Parole - While accurate records by parole boards are almost non-existent due to the fact that parole is considered a "privilege" as opposed to a "right," it can be documented that parole procedures and the granting of parole vary from jurisdiction to jurisdiction based solely on sex. Sex should not be a determining factor in the granting of parole. This also holds true for the conditions of parole. Once again, while documentation is difficult, women who are granted parole are subject to much harsher and more stringent conditions than men.

4) Standards of Misconduct for Which Juveniles are Incarcerated - A Connecticut study revealed that while only 18% of the boys in reformatories
were there for conduct which would not be considered criminal if committed by an adult, 80% of the girls were committed for non-criminal conduct and the girls were found to be "criminals without crimes." Girls are committed for such offenses as running away from home, being incorrigible or ungovernable by parents, being truants, being promiscuous, engaging in sexual relations and becoming pregnant. These statistics undoubtedly reflect the attitudes of our society concerning sex roles which render aggressive, anti-parental or overt sexual conduct by girls sufficient reason for incarceration. Similar behavior in boys is rarely considered serious enough for commitment to an institution. The Equal Rights Amendment will change this situation.

5) Integration of Men's and Women's Prisons - This is probably one of the most controversial issues raised by opponents of the Equal Rights Amendment (which is entirely due to their lack of understanding in this area). First of all, by "integration of men's and women's prisons," it is meant to include programs and services offered by the prison, and not those activities such as showering, disrobing, and sleeping which are recognized as private matters (once again, protected by the constitutional right to privacy--see section regarding "right to privacy" in this paper). Because "separate" is rarely "equal," this concept must be rejected here as it is in educational institutions.

Women's prisons are generally more comfortable than men's prisons and a greater degree of flexibility is available for decoration of cells and personal dress. On the other hand, men's prisons offer a wide range of vocational rehabilitation opportunities, educational and work release programs, honor farms and halfway houses, recreational facilities and programs, visiting and visitors' hours, religious services, and medical services which are almost
non-existent in women's prisons (or at best, not nearly as adequate as those in men's prisons). When the Equal Rights Amendment goes into effect, these discrepancies will have to be eliminated and the integration of prisons is the only way to insure this. It is reasonable to believe that men will benefit from the advantages women have in the area of dress and personal taste and women will benefit from expanded services and programs. In any event, each will have to be treated equally and the entire penal system will benefit from a close examination of all of its practices and policies (beyond the issue of gender under enforcement of the Equal Rights Amendment).

6) Other areas of the penal system in which inequities exist include:
   a) lack of abortion rights;
   b) failure to classify women prisoners by the seriousness of the offense;
   c) isolation of women in county jails;
   d) women committed to state mental institutions more readily than men and once they arrive, their treatment is greatly inferior to that of men (three times as many lobotomies in all mental institutions are performed on women as on men);
   e) women are punished for sexual behavior, whereas men rarely are;
   f) rape, sexual assault, and sodomy are areas which deserve long discussion; some of the larger issues include differing punishments for crimes of forcible rape of a woman and forcible sodomy performed by a man; the definition of rape; statutory rape of minor females and seduction of minor males; sodomy laws which ignore females but include males; and, the impossibility of rape between married persons as prescribed by most state statutes;
   g) statutes which only punish prostitution by females as well as
statutes which do not punish or punish the patrons of prostitutes less severely than the prostitutes themselves;

h) laws relating to sexual behavior such as seduction, retribution, destruction of a woman's reputation, abduction, sodomy and adultery; and

i) criminal conduct by husbands and wives jointly.

Because of sex discrimination, women suffer severely in almost all of the above areas (men do in just a few such as the sodomy statutes). Passage of the Equal Rights Amendment will end almost all of these grave injustices immediately, while a sorted few will probably be the subject of litigation. As stated earlier, several states have already begun to revise their criminal codes to conform with state Equal Rights Amendments or in anticipation of the federal Amendment's passage. Many states have also been insightful enough to realize the pernicious effects of certain statutes and practices and have slowly made the necessary changes. The Equal Rights Amendment will guarantee these changes.
Education

Education is another widely debated area between Equal Rights Amendment proponents and opponents. Who will be subject to the Amendment and to what extent, are the broader topics which have sparked discussion on both sides of the issue. In 1978, it is no secret that conformance with Title IX of the Federal Civil Rights Act is keeping both educational institutions and the federal government at odds with each other without the Equal Rights Amendment. Women athletes are suing colleges and universities for equal treatment in programs, activities and facilities, while women professors and students are suing for equal access to the educational system as a whole. While the educational institutions are claiming to make attempts at Title IX conformance, almost everyone else is claiming the same, saying that the change is too slow and that there is not a real commitment to equality within the system. The battle is likely to continue with or without the Equal Rights Amendment and the educational institutions will continue to make progress (albeit slowly) in the area of equality between males and females.

Passage of the Equal Rights Amendment will insure that the goals, objectives and ideas encompassed in Title IX will be carried out and will add a constitutional basis for doing so. Even though it is unlikely to happen, it is within the realm of possibility (as well as the power of Congress) to retract or alter Title IX which means women could lose all of the gains of the past and have no guarantee for the future. With passage of the Equal Rights Amendment, such action would be impossible unless the Amendment is repealed or a constitutional convention of the states eliminates it from the Constitution itself.
Education is not the end-all answer to rectifying discrimination as we have seen and experienced in the area of racial discrimination; however, it does provide a strong sphere of influence on people's lives. Outside the family and other immediate influences, education is recognized as the strongest of all our institutions.

The issue of education must be broken down into the two categories of private schools and public schools. With regard to private schools, it is anticipated and supported by Supreme Court decisions of the past that the Equal Rights Amendment will influence private schools in the same manner for men and women as the fourteenth amendment has with regard to racial classification. The Court has already determined the degree to which "state action" will be a deciding factor in racial, and under the Equal Rights Amendment, sex integration. The receiving of federal and/or state funds does not in itself constitute "state action." Rather, the amount of money received and the degree to which a particular institution is acting in the interest of the state would be determining factors. Thus, it is safe to conclude that those private schools which have not been subject to the requirements of the fourteenth amendment (and Title IX) will also not be subject to the requirements of the Equal Rights Amendment. This is a widely accepted concept and opponents of the Amendment who continue to use this as an argument are misinformed or do not understand the issue. In addition, those who base their opposition on the integration of dormitories and other living quarters such as fraternities and sororities, locker rooms, washrooms, etc., have been equally misinformed or have failed to understand the basic right to privacy concept already guaranteed by the Constitution (see section in this paper on "right to privacy").

A discussion of the Equal Rights Amendment and its impact on public schools
is not complete without mention of Title IX. Title IX provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Title IX is pertinent to the Equal Rights Amendment because it legislates almost all of the requirements to which public schools and some private schools will be subject under the Equal Rights Amendment. Title IX excludes from its provisions admissions policies by single sex schools and this will be covered by the Equal Rights Amendment. The extent is not precisely clear at this time, but the fourteenth amendment's requirements are a good indicator as stated previously. It should also be noted that Title IX places very broad prohibitions on educational institutions, whereas the Equal Rights Amendment will make these prohibitions more stringent. The degree of stringency of these prohibitions rests heavily on the standard the Supreme Court uses in applying the Amendment (see section entitled The"Equal Rights Amendment and the Constitution"in this paper).

Due to the vast amount of material available regarding the effects of the Equal Rights Amendment (and Title IX) on educational institutions as well as the scope of the topic itself, a few of the areas will be outlined below.

1) Athletic Teams - The biggest problem encountered across the country today is that teams for women simply do not exist in many sports. Where this is the case, under Title IX, women must be admitted to men's teams if they qualify. This applies only to "non-contact sports" and has been upheld in several court cases. Given the great controversy over men's and women's sports today, in conjunction with the "separate but equal" principle, this is a matter which the courts will surely end up deciding once the Equal Rights Amendment
is passed. Several good proposals have been offered which will benefit both men and women in the long run and will not undermine the basic concept of the Amendment. For certain, more money will have to be put into athletic programs by educational systems in order to give women the same benefits and opportunities as men. This includes the integration of athletic departments and facilities. The process is already underway and compliance with the Equal Rights Amendment will not be as difficult as some perceive it may.

2) Admission to Courses Which Are Restricted to One Sex - Where courses are limited to just one sex, such as shop and home economics, the Equal Rights Amendment will require that both sexes be admitted. While prerequisites have been used in the past to screen out prospective students, it has already been determined that this is unconstitutional.

3) ROTC Training - The Equal Rights Amendment will allow no restrictions in ROTC training. A greater number of women are enrolling in the ROTC programs now available which means that the Equal Rights Amendment will simply guarantee this right in the future.

4) Vocational Education - Not unlike ROTC training and courses restricted to one sex, those vocational schools which only allow one sex will be in non-compliance with the Equal Rights Amendment.

5) Women's Studies - In the women's studies courses and programs offered, the Equal Rights Amendment will not allow enrollment or participation to be closed to men. While a "compensatory aid" argument to make up for past discrimination could be made, it is unlikely to be constitutional, especially if the Supreme Court employs the "absolute" approach.

6) Pregnant Students - Prohibitions on pregnant students will most likely be found to violate the Equal Rights Amendment. In fact, it is very likely that
special courses (pre-natal health care, etc.) may be required by the schools to meet the needs of pregnant students.

7) Sex Education Classes - Those classes segregated by sex will be in violation of the Equal Rights Amendment. While a right to privacy argument may be made in these instances, it is recognized that the right to privacy is limited to bodily functions and disrobing.

8) Extra-curricular Single-sex Organizations and Clubs - These organizations and clubs will be subject to the same requirements as the fourteenth amendment requires, under the Equal Rights Amendment. The same will hold true for the right of sex-restricted private groups to use school or state facilities.

9) Sex Discrimination in Educational Employment - Title VII of the 1964 Civil Rights Act already prohibits discrimination in employment based on sex, which means that the Equal Rights Amendment will not have a substantial effect in this area. However, the Amendment will create greater and more expansive remedies for women who pursue cases of discrimination under the Amendment because Title VII places restrictions on back pay, promotion, reinstatement, etc. The Equal Rights Amendment contains no restrictions.

While this is only a brief overview of the effects of the Equal Rights Amendment on education, it does offer a general understanding of the basic concepts to which educational institutions will be subjected subsequent to adoption of the Amendment.
The potential effect of the Equal Rights Amendment on the family has generated more misunderstanding than perhaps any other area. Opponents to the Amendment claim that the concept of equalized duty of support will require all homemakers to contribute one half of the family's financial support, thus forcing every homemaker into the paid labor market. This statement totally ignores the fact that for over 70 years, some states have had equalized duty of support statutes which has not resulted in the expectations to which opponents refer. In addition, many states which have recently enacted state equal rights amendments or equal rights clauses have changed their statutes to include "equalized duty of support." Once again, the results of these statutes have been obvious. The authors of the Yale Law Journal article (as part of the Congressional Record) clearly refute this point as summed up in the Equal Rights Amendment Project:

...the duty of support can be rendered in the home by performing services, or outside the home by earning money with which to pay for a family's needs. Thus, to suggest, as opponents of the Amendment do, that labor performed for the family in the home will not be legally construed as "support" of the family after passage of the Equal Rights Amendment belies its history.

Beyond not legally requiring all homemakers to immediately take paying jobs, the Amendment will have some very significant effects in the area of family law. First, it will require the states to examine their marital property laws in light of ownership of property and earnings acquired by either spouse during marriage.

Second, the Amendment will create solutions to the problems which now face millions of American women; most of these women are living independently from men without the assistance of anyone else. For example: the divorce rate
has doubled between 1963 and 1973, many broken marriages have produced minor children who must be cared for by one spouse or another, mothers are given custody of the children in 95% of child custody cases and in 85% of these cases the father has expressly consented to the mother's custody. Although child support is ordered in almost every case, in 42% of the cases where support is ordered, the husband defaults on his support payments. Within the first year, 79% of the ex-husbands are in total non-compliance. Faced with this situation, most divorced mothers, with little more than some higher education, enter the labor market where a woman's average wage is 57% of a man's wage. The statistics reveal a national tragedy for millions of American women.

Since the Equal Rights Amendment will do comparatively little to actually affect ongoing marriages and the states as well as the courts are generally hesitant to intervene in this legal arrangement (marriage arrangements are viewed as a matter between spouses), this section will focus on the effects of the Equal Rights Amendment, once a marriage has been dissolved through divorce or by the death of one spouse. However, first it is important to understand some of the sex discrimination problems encountered by women within a marriage. Some of these problems are:

1) Loss of Consortium - In 31 states, a husband can sue for deprivation of a wife's services, affection and sexual relations, whereas a wife cannot sue her husband for the same.

2) Rape is Not Legally Recognized Between a Husband and Wife in Many States - Although this is a criminal matter, it falls within the boundaries of marriage.

3) Wife's Name and Domicile After Marriage - Although only Hawaii requires a woman to take her husband's name after marriage, several states require this specifically for voter registration, driver's licenses, the naming of children, etc.
In many states, the legal domicile of a wife is where her husband resides, regardless of where she resides. This affects numerous areas such as tuition rates at state schools, voter registration, etc. The domicile of children is also that of the father, regardless of where or with whom they reside.

4) Age at Which Women May Marry - In some states the minimum age for females and males to marry is different. Although the Supreme Court has found this to be unconstitutional, after passage of the Equal Rights Amendment, there will be no doubt as to the unconstitutionality of such a statute.

5) Grounds for Divorce - This is a hotly debated area presently before the courts; however, many states have sex-discriminatory grounds for divorce which the Equal Rights Amendment will render unconstitutional.

Opponents of the Equal Rights Amendment often argue that the state should stay as far as possible from dictating the constructs of marriage in the private sphere. Most proponents of the Amendment would agree wholeheartedly, which is precisely their rationale for supporting it. If the Amendment's opponents were even marginally aware of the degree to which many sex-discriminatory laws invade the institution of marriage, the opponents would have no other choice but to support the Equal Rights Amendment. This point is particularly relevant in light of the fact that newly introduced marriage and divorce laws are removing many of the legal barriers from the private sphere of marriage without the Amendment.

The major problems women face in a legal marriage arrangement ensue during and after divorce or upon the death of the husband. As partially demonstrated in the above examples, in 42 states, a woman who marries loses her separate legal identity based on the theory that husband and wife are one—the husband being the one. However, in recent years, the law has moved slowly to give independent identity to the wife and treat marriage as an economic
partnership under the law. In addition, recent court decisions have tended to view the state's regulation of marriage in terms of economic factors, while striking those statutes which tend to dictate personal choice, i.e. birth control, abortion and activities between consenting adults.

Because property acquired during a marriage is viewed as the husband's (with few exceptions) and there is little or no value on the non-monetary contributions of the wife, women often end up with next to nothing after a divorce, even when many long years of service have gone into the home and family life. As pointed out earlier, men are all too eager to grant custody of the children to their wives, but are much less eager to assume the financial responsibility of those children. This situation, once again, leaves women with the responsibility of caring for the children both in terms of their general welfare and financial well-being. The Equal Rights Amendment will do a great deal in recognizing the contribution of the homemaker in divorce settlements as does the "Uniform Marriage and Divorce Act" approved by the American Bar Association (but not enacted by many states' legislatures). The Equal Rights Amendment will increase the effectiveness of child-support and alimony payments owed by one spouse to the other. The courts will also be forced to view the granting of child support and alimony payments in terms of which partner is most able to pay and care for the children (when custody is contested). In other words, the Equal Rights Amendment will force the law to recognize both husband and wife as individuals with less reliance on outmoded stereotypes of each sex. With a greater number of women entering the labor market and the professions, the courts have already been made aware of the necessity for change in granting divorce settlements.

The area of inheritance taxes has recently gained attention as a result of
the debate surrounding the Equal Right Amendment. In many states, upon the
death of the husband, the wife is required to pay inheritance taxes, whereas
the husband pays no inheritance taxes, due to the fact that the property has
been recognized as being solely his throughout the marriage. This situation
is especially tragic for farm women and others who have spent their entire
lives living and working under the assumption that they were equal partners
in the business. A Chicago Daily News article points this out quite clearly:

A major problem for women on Illinois' 120,000 farms is
that they aren't automatically recognized as their husbands' legal partners. He (the husband) owns the farm. They could both work on it all their lives, figuring they both own it.
Then he dies and she finds out she doesn't own a thing on that farm.

It's the inheritance-tax situation which has made it clear
to farm women. Unless the couple had engaged in such estate-
planning devices as joint tenancy or the woman had worked
off the farm (bringing in "fresh" money for investment), a
woman pays inheritance tax on the farm as if she hadn't con-
tributed to the business at all. She has to prove an equity
in it, even though she may have actually been an integral
part of the operation. Of the women we polled, 48% handled
the bookkeeping themselves; yet, when their husbands die,
the law assumes they made no partnership contribution to
the business. Other women work in the fields; they face the
same problem.29

The Equal Rights Amendment will not abolish all inheritance tax laws;
however, it will provide for the fair and equitable treatment of women and
men under these laws. The Equal Rights Amendment will recognize each spouse
as an individual within the context of the marriage or family business and treat
each as such, devoid of sex discrimination and stereotypes.

The area of pensions, social security, worker's compensation and disability
insurance is parallel to the situation of the farm women and women involved in
family-owned businesses, except that in these cases, it is often the husband
who suffers. When a wife dies, is injured or becomes disabled, the husband must
often prove primary dependence on the wife in order to collect the benefits which are due him as a result of the wife's working and contributing to these various plans or programs. In contrast, a wife is automatically entitled to these benefits, regardless of her economic situation or potential earning power. Even though the Supreme Court has dealt with this question within the limited scope of the Armed Services, the inequities continue to exist. Both wives and husbands will benefit a great deal once these programs and plans are made to conform with the provision of the Amendment.

Finally, it should be noted here that several organizations (labor, civil, etc.) as well as the courts, state legislatures, and certain federal guidelines have already begun to make headway in the area of family law and specific relevant statutes. The progress has been far too slow and only the Equal Rights Amendment can guarantee that such reforms are brought about effectively and with great speed.
Due to the fact that labor organizations are generally active and effective (especially women's groups) many of the requirements affecting state labor laws under the Equal Rights Amendment have already been enacted vis-a-vis Title VII of the Civil Rights Act of 1964 and other progressive legislation. However, the Equal Rights Amendment will perform several important functions in the area of labor law. It must be noted that many of the issues which opponents of the Amendment have raised in the area of labor law, i.e., weightlifting, protective labor laws, occupational restrictions, have been dealt with sufficiently and satisfactorily by Title VII, the courts and state legislatures. The Equal Rights Amendment will invalidate state laws still effective for employers of less than 15 employees, not covered by Title VII. The Equal Rights Amendment should reverse a 1974 Supreme Court decision whereby state unemployment insurance does not cover pregnancy or pregnancy-related disabilities. Also, the Amendment will provide the additional remedy of suit for damages resulting from sex discrimination by state or local governments acting in their capacities as employers. Presently, Title VII has a 180 day time limit within which complaints must be filed. While the Amendment will not impose new duties and responsibilities on state governments, it will remove this stringent time barrier. This is especially important when one considers the 37,000 case backlog and the insufficient funding of the Equal Employment Opportunities Commission (EEOC), the branch of the federal government presently responsible for handling discrimination cases. Not all of the EEOC cases are based on sex discrimination, however nearly one half are.

In 1973, the AFL-CIO endorsed the Equal Rights Amendment after realizing
its benefits for working women and men. A brief overview of early labor laws is necessary to the understanding of the Amendment and Title VII.

At the beginning of the twentieth century, the labor movement struggled for minimum pay and maximum work hours legislation for all workers, only to have the Supreme Court find these laws unconstitutional after first enactment in New York. The Court found the New York laws to be an infringement upon due process rights of freedom of contract. After this major defeat for the labor movement on general grounds, protective legislation was introduced to cover women only. The Supreme Court found these laws to be constitutional on the basis of the inferior physical capacities and social position of women which entitled them to be grouped as a special class with only a "minimum rationale basis" needed to justify the laws (Muller v. Oregon 208 U.S. 412 (1908)). These laws, which were immediately adopted in every state to appease the labor movement, included minimum wages, overtime pay, rest periods, chairs, a prescribed day of rest, as well as restricted occupations for women only. They also provided for legally-specified periods of work before and after childbirth.

In 1964, Congress included Title VII in the Civil Rights Act and with subsequent amendments, these benefits were extended to men and those laws which worked to the detriment of women were to be ignored. In addition, these guidelines protect employees who refuse to work over a certain number of hours per week from being discharged. The Equal Rights Amendment will do three important things in this area:

1) It will cover employers with less than 15 employees who are now exempt under Title VII;

2) It will give an impetus to states to amend those statutes which have
been repealed or substantially amended by the 1972 EEOC guidelines; and

3) it will lend support for passage of specific statutes which would prohibit employers from discharging any employee for refusing to work over a certain number of hours.

Although some opponents of the Equal Rights Amendment may doubt that the Amendment will extend protective labor legislation to men as opposed to underminding it for women, in *Hays v. Patlatch, Forests, Inc.*, 465 F. 2d 1081 (8th Cir. 1972), a federal appeals court required that an Arkansas overtime statute which applied only to women be extended to cover male employees also. Shortly thereafter, the EEOC under Title VII issued very specific and more stringent guidelines to cover male and female employees in this area and with regard to other protective labor laws. The only exception to these laws is the very narrowly defined "business necessity" doctrine for unusual cases and an employer must prove that the business will be seriously injured if a benefit such as short rest periods are extended to men in work such as that of a continuous assembly line. The use of this "business necessity" is very limited and can be used in rare cases. Legal scholars are certain that the "business necessity" proviso will be upheld under the Equal Rights Amendment.

Finally, due to Title VII, action by the federal government, the courts, and state legislatures, it is not surprising that every major labor organization supports the Equal Rights Amendment and sees it as a necessary underpinning for the many rights already won by the labor movement. These organizations also recognize the Equal Rights Amendment as an extension of their hard won victories. This is especially true for women labor leaders.

As the AFL-CIO said in its 1973 convention resolution, the
Equal Rights Amendment is:

precisely the kind of clear statement of national commitment to the principle of equality of the sexes under the law that working men can use to their advantage in their efforts to eliminate employment discrimination against women.30
Social Security and Credit

The overwhelming passage of the Equal Rights Amendment by Congress in 1972 put the federal government in a frame of mind (unlike the Supreme Court) to begin correcting many of the sex-discriminatory laws and policies over which it has control. The changing or deletion of laws which discriminate on the basis of sex were then and are now being acted upon in anticipation of the Amendment's approval by the required number of states. Thus, beginning in 1972, Congress began to act, albeit slowly. While Congress hasn't done nearly enough in the areas of social security and credit, it has made significant changes which passage of the Equal Rights Amendment would enhance and establish permanently. As mentioned earlier, although unlikely at this time, any Congress can retract laws which it has previously enacted. The Equal Credit Opportunities Act of 1975 and the fact that in 1975 Congress voted to end all distinction between men's and women's social security benefits, makes a discussion of these areas less important than others where gross sex discrimination is ongoing and strong. However, women do stand to lose considerable benefits under Social Security as a result of divorce (discussed in section on the family in this paper), regardless of how many years they were married to one or more individuals. This problem is more germane to the sex discrimination in family laws.

Finally, the Equal Rights Amendment will do little to affect private pension plans and programs as many of these are already covered under Title VII of the 1964 Civil Rights Act.

Opponents of the Equal Rights Amendment often claim that passage of the Amendment will require men and their families to make social security payments
for their wives' services in the household as homemakers. This is patently ridiculous and has no basis under the law, with or without the Equal Rights Amendment.

Finally, it is interesting to note that Congress has moved quickest to end those sex-discriminatory laws which worked to the detriment of men, i.e., social security and pension plans, while on the other hand, it has moved at an incredibly slow rate and still has much to do in those areas which work to the detriment of women.
Abortion

While opponents of the Equal Rights Amendment have led many people to believe that the Amendment and abortion are somehow related, the fact remains that the two issues have no legal connection. Abortion law falls completely outside the scope of all equal rights laws, including the Equal Rights Amendment, which have only to do with extending rights, benefits, and responsibilities equally to both sexes under the law. To point out the lack of any connection between the Equal Rights Amendment and abortion laws, the Supreme Court has already, in two cases, Roe v. Wade, 410 U.S. 113 (1973), and Doe v. Bolton, 410 U.S. 179 (1973), determined that abortion in the first trimester of pregnancy is a matter of privacy between a woman and her physician. These laws took effect when (as now) there was no Equal Rights Amendment contained in the U.S. Constitution.

Secondly, the Amendment's opponents have somehow come up with the notion that the Equal Rights Amendment will "force" doctors and nurses to perform abortions or participate in abortion procedures against their will. Once again, there is no evidence or indication that this could or will happen. In the words of Mary McCann-Spicer, District Five President of the Maryland Nurses Association:

To my knowledge no nurse in the state of Maryland has ever been forced to participate in a procedure to which she is morally or professionally opposed. And I have heard no statements indicating that the equal rights law in our state has caused any change in this practice. 31

The Equal Rights Amendment will guarantee that women and men receive equal access and care in the area of medical advice and services where these are provided to both sexes and legally sanctioned. This would include, but
is not limited to, the Armed Services and penal institutions. Once again, there is no legal connection between the Equal Rights Amendment and abortion.
Marriage Between People of the Same Sex

In all states, marriage between persons of like sex is either implicitly or expressly prohibited. Opponents of the Equal Rights Amendment claim that the Amendment will force the states to legalize same-sex marriages. They argue that to do otherwise would discriminate against women and men on the basis of sex. Two factors strongly suggest otherwise.

First, the question has already been litigated in several states which have state Equal Rights Amendments or equal rights clauses. The outcome of such litigation has put a strict prohibition on same-sex marriages. The question was brought before the Washington Supreme Court, in *Singer v. Mara*, 11 Wash. App. 247, 522 P. 2d, 1187 (1974), and marriage between people of the same sex was found to be specifically illegal under the State of Washington's Equal Rights Amendment.

Second, Senator Bayh, the chief sponsor of the Equal Rights Amendment in the U.S. Senate, stated during the debate that he and the other sponsors of the Amendment did not interpret or intend for the Equal Rights Amendment to legalize same-sex marriages.

Bayh's remarks are extremely important because the Supreme Court, as well as all other lower courts, traditionally places a great deal of emphasis on the chief sponsor's interpretation of an act when asked to ascertain its application and meaning.

Finally, the only effect the Equal Rights Amendment will have on same-sex marriages is that if a state does legalize marriage between the same sex for one sex only, it will be required to extend that law to cover the other sex as well. The Amendment is specifically interpreted to mean between the
sexes, not among the sexes.

Finally, it has always been true that if a particular state wanted to allow, or specifically legislate for, same-sex marriage, it may do so with or without the Equal Rights Amendment.
The Military

Perhaps no other area concerning the Equal Rights Amendment needs to be brought into perspective more than that of the military. Even though there is presently no draft, Congress has always had the constitutional power to draft women. Contrary to popular notion, women have been in the military for over thirty years in all capacities and have served quite well at that. In fact, a recent court case, United States v. Reiser, Criminal No. 4517, U.S.D.C., Mont., May 16, 1975, will require both women and men to register with the Selective Service, if and when it is re instituted. However, this does not mean that all women will be drafted anymore than all men are drafted and women will, of course, be eligible for exemptions and deferments which have been available to men who are fathers and husbands.

With every year, a greater number of women are entering the military services, while at the same time ROTC programs and military academies are graduating significant numbers of women. Military job specialties open to women increased from 35% of all specialties in late 1971 to 81% in late 1972. Presently, there are very few job specialties which are not open to women. Because of the changing social climate and the excellent benefits which the armed services offer both during and after service this trend is likely to continue in the future. At the same time the armed services are making some progress at eliminating discriminatory practices which use sex as a classification. Many of the differences in the treatment of men and women and their dependents have been corrected by the "The Veterans Education And Training Amendment" and "The Equal Treatment Of Married Women Who Are Federally Employed Act." These laws provide benefits for husbands and widowers of women veterans on the same basis as they are provided to wives
and widows of male veterans.

On the other hand, significant barriers to women's full participation in the armed services continue to exist. The biggest barriers are the restrictions put upon women at the entry to the military services, as well as further restrictions in assignments and promotion. Upon entering, women must have a high school diploma or an equivalency diploma, whereas men do not. In 1972, 30% of the male enlistees did not meet this requirement. Thus, women who do not complete high school are denied the opportunities of vocational training which are afforded to their male peers. Restrictive job assignment policies also reduce the number of training programs open to women and significantly narrow their range of work experiences. According to Lt. Col. Jacqueline G. Gutwillig, in 1973, actual job assignments are still largely limited to traditional women's fields such as "administrative specialists and clerks" and "medical and dental specialists."

Until such time that real acceptance replaces tokenism in the military services, women will continue to be unfairly limited. Despite the fact that women enlistees are better qualified as a group than men, their opportunities for experience and promotion also severely limit their opportunities for post-service employment. Hearings before the House Armed Services Committee in 1973 pointed out that:

There are roughly about 860,000 people in the Army, about one woman for every 66 men. There is one woman brigadier general for every 255 male brigadier generals; one woman colonel for every 500 male colonels; one woman lieutenant colonel for every 100 male lieutenant colonels; one woman captain for every 140 male captains. In the role of lieutenant, women approach but do not meet their proportionate share.\(^\text{32}\)

While the past five years have brought changes in women's proportional representation in the military services, the gains have been largely restricted to the lower levels with minor tokenistic promotions at the middle and upper levels.
This, of course, once again, severely limits benefits and opportunities open to women.

There are many excellent benefits available to military personnel both during active duty and upon retirement. These services include: in-service vocational and specialist training, medical care and benefits for dependents. Veterans receive educational scholarships and loans, preference in government employment, pensions, insurance and medical treatment. Because women have been denied equal opportunities in admission and while in the services, many of these benefits have been lost to them. Since the end of World War II, college training has been secured by 7,080,000 persons, but only 194,179 or 2.7% of these individuals have been women. Another benefit lost to women - pension and hospital care available to veterans who are disabled and cannot work because of nonservice conditions and employment.

Members of the military services are tested for abilities, aptitudes and attitudes prior to being assigned duties. Women will most likely be recruited to monitor instruments and perform duties not involving combat, i.e. administrative, supply, tactical, intelligence, and training assignments. Combat soldiers make up only a small percentage of military personnel. At the height of the Vietnam War, only 14% of those in the armed services were in combat, while the rest were assigned to non-combat duties. Thus, the issue of assigning women to actual combat duty involves a relatively small segment of the total military assignments. In addition, women in the past have served in various capacities at the "front lines" and in extremely dangerous situations. For the most part, there has been a general refusal to recognize this point.

Passage of the Equal Rights Amendment would require women to be admitted to the military services under the same standards as men and would require equal
consideration of women for all assignments and ranks. Admission and assignments will be based on rigid physical and emotional qualifications. Those qualifications are even more strenuous when one is being considered for combat assignment. A statement from the U.S. Senate Report on the Equal Rights Amendment reads:

...the ERA will require Congress to treat men and women equally with respect to the draft. This means that if there is a draft at all, both men and women who meet the physical and other requirements, and who are not exempt or deferred by law, will be subject to inscription. Once in service, women, like men, would be assigned to various duties by their commanders, depending on their qualifications and services needs. 33

Of course, the Equal Rights Amendment will not require that all women serve in the military any more than all men are now required to serve. Those women who are physically and mentally unqualified, or who are conscientious objectors, or are exempt because of their responsibilities (e.g., certain public officials or those with dependents) will not have to serve, just as unqualified or exempt men did not serve in the past. Thus, the fear that mothers will be conscripted from their children into military service if the Equal Rights Amendment is ratified is totally and completely unfounded. Congress will retain ample power to create legitimate sex-neutral exemptions from compulsory service. For example, Congress might well decide to exempt all parents of children under eighteen years of age from the draft. 34

In order to bring the issue of drafting women into its total perspective, it is important to understand just how few women would actually be affected and to what degree with respect to combat duty. The following statements (which are part of the Congressional debate on the Equal Rights Amendment) by Senator Birch Bayh point to the small number of women who would actually be drafted under the Equal Rights Amendment as well as the even smaller number that would be required to serve in combat duty.
....Let us look at those who are not able to claim an exemption and those who are subject to the draft. What size burden are we really talking about? Does every 17-, 18-, or 19-, or 22-year-old woman feel that she is going to be drafted?

....Let us take the 1971 draft call, the most recent draft call. There were, in 1971, 1.9 million men in this country eligible for the draft; 50.5 percent, or over half of those, were rejected for induction for one reason or another; 24.9 were rejected at induction.

So when we get right down to it, less than 25 percent of the men of this country were subjected to the draft in the first place. That number was between 400,000 and 500,000. Of this almost 500,000-man pool of men subjected to the draft after the various rejections, only 98,000 were ever called, and only 94,000 of those were ever inducted.

In other words, 5 percent of the eligible males in the country were inducted into the Army last year....less than 1 percent of the eligible males in the whole country....were ever assigned to a combat unit.

It might be fair to say that is about the same risk women should be subjected to, except it would be fairer to assume that the sex-neutral standards that would be established by the Armed Forces on the basis of physical competence would exclude an even greater percentage of women because of the ordinary physical standards required, such as pushups, chins, running, and other physical and combat characteristics that are necessary for any member of the armed services.35

In addition to Senator Bayh's statements in the Congressional Record, it is important to remember that not only Congress, but also the President, through executive order, has the authority to make exemptions and deferments from the draft. Given the small number of women who would actually be affected by the draft, such action by Congress and/or the President will hardly even be necessary if and when the draft is reinstated.

The United States, under any law which would subject women to the draft on the same basis as men, would be in keeping with the policies of other nations such as Israel. Realistically, the concept of military service (or alternative service) is based on a total commitment to one's country and the obligations of full and equal citizenship.
Finally, it should come as no shock to anyone that the greatest number of casualties (far beyond the numbers of military personnel) in recent wars have been children and women, almost all of whom have been innocent and defenseless victims of war. This was especially true in the Vietnam War where the number of women and children wounded or killed exceeded that of soldiers on both "sides" of the war by four times. With the obsolescence of hand-to-hand combat, which has been replaced by highly technological bombs, computers, nuclear weapons, etc., it is absurd to think of the "front lines" of any future war to be contained in any one small area. Military technology has brought the "front line" to all of our backyards. Women, just as easily as men, can press buttons which release the potential to kill hundreds, thousands, and millions of people. This is indeed the saddest and most disturbing aspect of any military system within any nation on the face of the earth.

"Said the sargeant with a sneer, 'well then tell me something dear. Are you willing to be drafted with the others?'
She answered, 'yes, and more! I will not support your war,
I will resist and fight beside my brothers.'"(Kristen Lems, "Ballad Of The ERA")
Veterans' Preference In Employment and Educational Opportunities

Many states presently have state personnel systems whereby veterans of the United States armed forces are given bonus points or some other form of job preference when they apply for employment. Veterans preference points are also utilized by some educational institutions regarding admissions policies, university owned housing and access to various programs and activities. Because the armed forces are overwhelmingly male, such statutes are laws which are "neutral on their face; but discriminatory on impact" (see section in this paper) upon women. In all likelihood these statutes will therefore be unconstitutional under the Equal Rights Amendment, especially if the "absolute prohibition" doctrine is adopted by the Supreme Court.

While these veterans' preference statutes could be simply repealed, leaving all applicants for state jobs and those seeking admission to certain educational institutions to compete on their own merits, a solution adopted by the State of Washington under its 1973 Equal Rights Amendment would certainly be acceptable under the federal amendment. The State of Washington enacted a statute which has substantially broadened the veterans' preference law to include not only veterans, but also their spouses. By doing this, a sex-neutral statute which benefits both sexes can be retained under the Equal Rights Amendment. Such an approach could be justified in terms of the substantial sacrifice made by many wives of men in the armed forces while their husbands are in service. One possible problem could arise if both husband and wife apply for jobs with the state government or for admission to an educational institution as both would get preferences, thus creating a double reward for service by only one of them. In addition, it
would seem possible to extend veterans' preference to all spouses of men and women who have served in the armed services, thus correcting the prohibition contained in statutes which are "neutral on their face, but discriminatory in impact."

Finally, it is important to note that the State of Washington has experienced little or no problems with its treatment of veterans' preference under its state Equal Rights Amendment. This is also true in other areas where conformance to the amendment has mandated other changes. There is no reason to believe that the various states will not find similar solutions to the many changes which the federal amendment will require upon ratification. Most certainly, the State of Washington and the sixteen additional states with Equal Rights Amendments or equal rights clauses stand as working models for implementation of the federal Equal Rights Amendment.
The Question Of Rescission

Several state legislatures have considered rescission of their previous Equal Rights Amendment ratifications and a few states have actually done so. It is the general consensus that once a state has ratified a constitutional amendment, this approval cannot be withdrawn by a state legislature, but it is the decision of Congress to act on the question of rescission. In 1977, at the request of several national Equal Rights Amendment proponents and opponents, United States Attorney General Bell confirmed that it is at the discretion of Congress to deal as it chooses with those states which have ratified the Equal Rights Amendment and, at a later date, voted to withdraw that vote. Legal opinions, judicial decisions, and more importantly, the precedents established by Congress itself, make it clear that once a state has ratified an amendment, that state has "exhausted the only power conferred on it by Article V of the Constitution, and may not, therefore, validly rescind such action."^36

In addition, the Supreme Court has followed a policy of nonintervention in the ratification process of constitutional amendments. In Coleman v. Miller, 307 U.S. 433 (1939), the Court declared that the issue of vote changes by state legislatures is a "political question" for Congress and the Secretary of State. Attempts to rescind the fourteenth amendment by Ohio and New Jersey, and New York's rescission of the fifteenth amendment, put Congress in the position of having to deal with the question of rescission. In both cases, Congress accepted only the affirmative action to ratify by pronouncing that the ratification of amendments by these states was valid and sufficient. The Institute For Studies In Equality shares the same opinion in its statement that:
State Legislative Counsel have been joined by the American Law Division of the Congressional Research Service, the Legal Counsel of the U.S. Senate Judiciary Committee, and the Attorneys General of the States of Idaho, Michigan, and California, in concluding that ratification by a state is a final action which cannot be repealed or revised. It is clear that any effort to rescind ratification of Constitutional Amendments is a costly and futile investment.
Extension of the Equal Rights Amendment Deadline by Congress

When the Equal Rights Amendment was first drafted by Alice Paul and introduced into Congress in 1923, it had no time limit at all. When the seven year time limit was attached to the Amendment in 1971, Paul remained absolutely opposed to it due to the Amendment's grave importance. The seven year time limit was attached to the Equal Rights Amendment by its opponents in Congress who claimed that it might otherwise "roam around...for fifty years," or end up like other old amendments that were "floating around." The strong opinion of Alice Paul and the now false contentions of the Amendment's opponents hardly find the Equal Rights Amendment silently collecting dust in the chambers of state legislatures. In every unratified state (and even in some of those which have already ratified) the debate surrounding ratification is vigorous and ongoing.

As it stands right now, either the necessary thirty-eight states will have ratified the Equal Rights Amendment by the March 22, 1979 deadline or the process of passing it through Congress and back to the states will begin all over again, unless, of course, the deadline is extended by Congress. Because a clear majority of Americans (including a majority in those states which have yet to ratify) support the Equal Rights Amendment, many feel that Congress has a moral obligation to grant an extension. Legally, it is the opinion of the Justice Department that Congress does indeed have the power to extend the deadline by a simple majority vote, if it so desires. Based on this 1977 opinion of the Justice Department, Representative Elizabeth Holtzman (D-N.Y.) and twenty co-sponsors have introduced H.J.R. 638 which, if passed by the House and Senate, will extend the deadline for ratification of
the Equal Rights Amendment seven more years. Committee hearings have
taken place on H.J.R. 638 over the past few months and the resolution is
expected to be on the House Floor for a vote in late June or early July of
1978. Senate action can begin at any time; however, hearings and an actual
Senate vote will probably be delayed pending the decision of the House.
Meanwhile, Equal Rights Amendment opponents claim the extension would be
"changing the rules in the middle of the game," while proponents assert
that not enough time has been granted for the ratification process and that
the issue is alive and kicking from coast to coast. There are several com-
pelling reasons in support of granting an extension to the Equal Rights
Amendment.

The amendment system was established to allow the nation to come to
a consensus on constitutional issues. Even if one does not credit the
majority of public opinion in favor of the Amendment, it is certainly
clear that there is not a national consensus against the Equal Rights
Amendment. If the deadline is not extended, discussion of this enormously
misunderstood issue will be cut off in mid-debate. While some may view
the extension effort as a "desperate" move on the part of Equal Rights Amend-
ment proponents, it is also seen as taking the offensive in addition to being
a tool for using national resources and national momentum in order to "fire up"
state campaigns. As stated in Ms Magazine, "extension would also strengthen
a dynamic new pressure for the Equal Rights Amendment."

Legal Scholars have agreed that Congress does have the power to grant
extensions to constitutional amendments, especially since it was Congress
that set the arbitrary seven year deadline to begin with. Eighteen amendments
have gone to the states without a deadline, in addition to there being no deadline
required in Article V of the Constitution that outlines the conditions for amending the Constitution. The notion of a time limit on constitutional amendments came during the debate on prohibition when one Senator suggested a deadline so that amendments would not be "floating around in a cloudy, nebulous, hazy way." The original suggestion for a time period was up to twenty years, and the number seven was chosen arbitrarily with very little discussion as to how long the period should actually be. The seven year deadline is not even part of the Amendment itself, but rather it is a provision contained in the preamble. Thus, the seven year time limit was not in the words of the Amendment which thirty-five state legislatures have ratified to date. In addition, there has never been a constitutional amendment which has died because a time period specified by Congress had run out.

While the Equal Rights Amendment was approved by an overwhelming majority of Congress in 1972, it is believed that many Congresspeople would like to see the intense political activity around the Amendment stay within the chambers of state legislatures and not in Washington D.C. The furor over International Women's Year (I.W.Y) in 1977, not to mention the highly charged controversy over abortion, increases the desire by many Washington politicians to not "fan the flames" any further with another national issue as powerful and compelling as the Equal Rights Amendment. Regardless of the fate of the Amendment in the state legislatures and/or in Congress, one thing is certain—the Equal Rights Amendment is not going to vanish or go away. In the words of Eleanor Smeal, President of N.O.W., "whether they like it or not, debate will not stop on ERA on March 22."38

Hundreds of national organizations have already gone on record as being in support of an extension for the Equal Rights Amendment. Now it is up to
Congress to decide one way or the other. While it may seem easier to some to avoid the issue at this time, these people can stand assured that if March 22, 1979 does not see the Equal Rights Amendment ratified in thirty-eight states, the Amendment will be before them again—probably on March 23rd.
RATIFICATION TACTICS

The many supporters of the Equal Rights Amendment (a vast majority of the United States' population--see introduction) have employed a variety of tactics to help bring about the Amendment's ratification. In the 1960's, a large number of equal rights proponents had placed their hopes for equality under the law between men and women with the Supreme Court after indications that the fourteenth amendment's equal protection clause would be expanded to include gender as a suspect classification. With the Court's departure from this original hope (see section entitled "The Equal Rights Amendment and the Constitution)," equal rights proponents lobbied the U.S. Congress very heavily to bring about the Amendment's passage on March 22, 1972. At this time it seemed as though the necessary thirty-eight states would ratify the Amendment rather quickly, and surely before the March 22, 1979 deadline. In 1978, history has proven the course of the Equal Rights Amendment to be substantially different from what was originally anticipated.

Early ratification tactics included letter writing campaigns to state legislators and the dissemination of educational materials to the media, general public and political figures. Many national organizations rallied behind the call for passage of the Equal Rights Amendment. These organizations included women's, civil rights and religious groups. By 1975, it became increasingly evident that these low-keyed measures might not be sufficient for achievement of ratification by the remaining four states needed. It was also at this time that anti-ERA groups such as the Eagle Forum and Stop ERA started gaining national attention, while focusing their efforts on those states which had not yet ratified. Here in Illinois, for several reasons,
the battle over Equal Rights Amendment ratification has been the most intense of any in the nation.

*Illinois is only one of two states which has seen fit to impose a three-fifths majority requirement for ratification. The other forty-eight states require a simple majority vote on constitutional amendments. This issue has been to the Illinois Supreme Court with the Court ruling that the House and the Senate each has the prerogative to set its own rules with regard to the ratification process. Because many legislators who claim to support the Equal Rights Amendment (and many actually vote "yes" on it) will not support the simple majority ruling, the Amendment has been consistently rejected by both chambers, each time falling a few votes short of the three-fifths required but having more than simple majority support.

*Illinois' political make-up (the Chicago area vs. downstate) has made the Equal Rights Amendment a political "football" within both the Democratic and Republican parties. While one cannot be sure as to the amount of back-room political "horse-trading" that has gone on with the Amendment, it is well documented that ratification was attached to the 1975 reapportionment bill proposed by Daley's Chicago machine. (Daily Illini Editorial, June 15, 1975). Recent reports by well placed sources in Springfield, Illinois state that the Amendment is now in the middle of the controversy over Off-Track Betting (OTB)—once again, a Chicago sponsored piece of legislation.

*Illinois is the home of the national Stop ERA campaign, spearheaded by the Amendment's most vociferous opponent, Phyllis Schlafly of Alton, Illinois. Schlafly and her small number of followers are well organized and bankrolled in Illinois and seize every opportunity to attack the Equal Rights Amendment. Many of the misconceptions surrounding the Amendment have been perpetrated by
the Stop ERA zealots and are addressed in this paper.

*I Illinois is the only northern industrial state which has not yet ratified the Amendment, which makes it stand out on the map of those states which have given approval.

The first national Equal Rights Amendment rally was held in Springfield, Illinois on May 16, 1976 in order to focus the country's attention on this state and the issue that only four more states were needed to make the Amendment part of the United States Constitution. When Indiana became the 35th state to ratify in 1976, a new trend appeared to begin, indicating that the remaining three states whose votes for ratification were needed would fall into place with the continued low-keyed tactics of writing letters, persuasive lobbying and a persistent educational campaign.

With the defeat of the Amendment in nine states (including Illinois) during 1977, it became increasingly apparent that if the Equal Rights Amendment were to be ratified by March 22, 1979, supporters would have to get serious, increase their visibility and most important, "get tough" with those states and politicians not committing themselves to ratification. It was at this time that Betty Friedan declared the upcoming push for the Amendment's passage as the "days of outrage," the National Organization for Women (N.O.W.) declared the Equal Rights Amendment in a "state of emergency," the League of Women Voters and other organizations committed themselves to raising millions of dollars for the ratification effort, the showdown between opponents and proponents at the International Women's Year (I.W.Y) in Houston produced a resounding resolution in favor the the Amendment and Congress began to consider extending the deadline for ratification another seven years (see section in this paper entitled "Extension of the Equal Rights Amendment Deadline By Congress)." In
addition, action was being taken by the Amendment's supporters to unseat 
opponents in the state legislatures when they were up for re-election. 
While the total results of these efforts are yet to be determined, it 
appears that the vote tallies will remain approximately the same in the 
various state legislatures.

Further tactics include a national boycott of the unratified states' 
convention and tourism businesses which has now been endorsed by hundreds 
of national organizations. Again, the results of the boycott are yet to 
be determined as the deadline for ratification looms closer with several more 
states still in opposition to consider the Equal Rights Amendment.

In the meantime, silent vigils are being held at the state capital 
buildings in unratified states, the education and letter writing campaigns 
are still underway and a national rally is being planned by N.O.W. in Washington D.C. 
for July 9, 1978 in order to push for ratification and the seven year extension 
of the deadline by Congress.

At the first point in item when supporters of the Amendment began to 
question whether or not the original low-keyed tactics would be sufficient 
to bring about ratification, factions within the various supporting groups 
asserted that a more "militant" strategy, similar to that employed by those 
who fought for women's right to vote, was needed. While civil disobedience, 
arrests and long stays in jail were considered by many, these tactics have 
ever been given serious consideration by the larger and "mainstream" organizations 
supporting the Amendment. Whether these more militant tactics would have been 
more successful than the traditional political avenues new being used cannot, 
of course, be determined; however, the viability of working solely within 
the framework of the established political system has until March 22, 1979 (or
seven years thereafter, if the extension is granted by Congress) to be proven a complete success or a complete failure. Only time itself will tell. Let us hope, for the sake of equality of rights under the law between females and males, that we will not have to review our tactics prior to another era of the Equal Rights Amendment ratification struggle.
Conclusion

Ratification of the Equal Rights Amendment is an obvious necessity in order to bring about full and complete legal equality among females and males. The shortcomings of piecemeal legislation are three-fold:

1) Legislation other than a constitutional amendment will be incomplete, erratic and will vary greatly from state to state. No person should gain or lose basic legal rights upon crossing state lines.

2) Piecemeal legislation can be withdrawn quite easily by Congress and the states leaving the basic legal rights of women and men at the mercy of these bodies. With each election of state or federal lawmakers, the status of legal equality between females and males could change. No person should be subject to losing basic legal rights at the whim of different elected officials.

3) Piecemeal legislation will take decades upon decades, if not centuries; and, the result will be unsatisfactory in bringing about legal equality among the sexes. Women and men have waited too long to be recognized as equals under the laws in the United States. Thus, a constitutional amendment is the only reasonable, safe and logical means of achieving equality of rights under the law regardless of sex.

With regard to the effects of the Equal Rights Amendment after ratification, one need only examine the decisions and ramifications which have come about as a result of the fourteenth amendment. Since the fourteenth amendment contains the famous equal protection clause, the Equal Rights Amendment will guarantee that persons will be equally protected under the law without regard to sex. It is reasonable to state that the Supreme Court will interpret the Equal Rights Amendment with regard to sex discrimination in the same manner as it
has interpreted the fourteenth amendment with regard to racial discrimination, "unique physical characteristics" and right to privacy being the only exceptions in consideration of sex discrimination. The concepts and various constitutional doctrines of fourteenth amendment Court decisions will apply to the Equal Rights Amendment. Thus, much of the groundwork for enforcement of the Amendment has already been set which will make its application smooth, posing few problems upon subsequent sex discrimination litigation.

There are people who would question the fact that the role of women (and men) in American society is changing with a vast majority of individuals agreeing that these changes are for the betterment of society and future generations. Concepts of females and males which may have seemed valid at one time, for whatever reasons, are no longer reasonable and are lingering in the minds of a few people (and very much in the laws), having the pernicious result of women being treated as less than equal to men. Let us not forget that the same arguments being used today to deny legal equality among the sexes are the same arguments used by those who attempted to deny women the very basic right to vote. The changing role of women is reflected in every cultural aspect of our society, and thus, by logical extension, is being reflected in the slow and painful process of new laws and attitudes. While hardly anyone today would even attempt or dare to argue that women should not have the right to vote (although North Carolina did not ratify the Women's Suffrage Amendment until 1971), or that racial and cultural minorities should not be protected by the U.S. Constitution, the same will be true tomorrow with regard to the express inclusion of women in the highest law of the land by passage of the Equal Rights Amendment. As the inscription on the Jefferson Memorial in Washington, D.C. reads:
I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truth discovered and manners and opinions change, with change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as a civilized society to remain ever under the regimen of their barbarous ancestors.

Yes, laws, policies, rules and regulations are changing with every year in the attempt to recognize that women and men are equal, yet individual. One can hardly pick up a newspaper or periodical without being drawn to the national and individual attention being given to the struggle for gender equality. A national consensus has been met and ratification of the Equal Rights Amendment is one step in solidifying that particular point of consensus by our society. Further delay in implementing the desires of the majority is a shameful waste of human potential and human energy.

It was difficult to keep this paper current and up to date as during the months of research and writing, the status of various laws and policies and even the Equal Rights Amendment itself, were subject to change. This is perhaps one of the problems in trying to analyze and clarify contemporary political thought, trends and of course, the "science" itself. I drew the bottom line of being current (it is all relative anyway) at various different points throughout the paper as is reflected from section to section. I purposely gave a shorter analysis of social security and credit because these aspects of the Equal Rights Amendment are touched upon throughout many different sections of the paper. In addition, a great deal of positive Congressional action has been taken in these two areas as stated herein. While the enforcement of Equal Credit Opportunity laws is weak, the issue of actually establishing equality in this area has been dealt with. The thrust of the Equal Rights Amendment
will be the impetus for stricter enforcement, not only in the area of credit, but in every other area of law, whether or not these areas are currently covered by a specific Act or statute.

Finally, without any reservations, I can state that the Equal Rights Amendment will be ratified—women and men will be included equally in the highest law of the land. Regardless of the Amendment's fate over the period of the next year, five years, ten years...it will be ratified at some point in the future. The struggle of women has been long and courageous, not only in the two hundred years of this country's history, but for the centuries before. All the inane arguments, political games and lack of consciousness on the part of those few individuals who wish to strangle women's aspirations for complete equality of rights and dignity will wear thinner and thinner as time passes. In the words of Susan B. Anthony, "Failure is impossible!"

(A most sincere thank you to Esther Patt for all her input, assistance, and most importantly, encouragement)
Appendix
National Supporters of the Equal Rights Amendment

Amer. Assn. of University Professors
Amer. Assn. of Law Libraries
Amer. Assn. of University Women
Amer. Assn. of Women Ministers
American Bar Assn.
Amer. Civil Liberties Union
Amer. Business Women's Assn.
AFL-CIO
Amer. Federation of Soroptimist Clubs
AFSCME, Amer. Fed. of State, County & Municipal Employees
AFT, Amer. Federation of Teachers
Amer. Fed. of Television And Radio Artists
Americans for Democratic Action
American Home Economics Assn.
American Jewish Congress
American Medical Women's Assn.
American Newspaper Guild
American Nurses Assn.
American Psychiatrist Assn.
American Psychological Assn.
American Public Health Assn.
American Society for Public Administration
American Society for Microbiology
American Society of Women Accountants
American Society of Women Certified Public Accountants
American Veterans Committee
Appalachian Women's Rights Project
Assn. of American Colleges
Assn. of Junior Leagues
Assn. of Women Dentists
Assn. for Supervision and Curriculum Development
Assn. of Women Business Owners
B'nai B'rith Women
Brotherhood of Railway, Airline, Steamship Clerks
Camp Fire Girls
Catholic Women for ERA
Center for American Women and Politics
Center for Law and Social Policy
Center for a Woman's Own Name
Center for Women Policy Studies
Church Women United
Citizens Advisory Council on the Status of Women
CLUW, Coalition of Labor Union Women
Common Cause
CWA, Communications Workers of America
Consumer Product Safety Division
Ecumenical Task Force on Women and Religion (Catholic Caucus)
Evangelicals for Social Action
FEW, Federally Employed Women
Federation of Organizations for Professional Women
Federation of Women Shareholders in American Business
FHA, Future Homemakers of America
General Federation of Women's Clubs
Girls Clubs of America
Gray Panthers
HADASSAH
NEW Secretary's Advisory Comm on Women's Rights and Responsibilities
Intercollegiate Assn. of Women Students
Intl. Air Line Pilots Assn. - Flight Attendants Division
Intl. Assn. of Human Rights Agencies
Intl. Brewery, Flour, Cereal, Soft Drink Distillery Workers
Intl. Brotherhood of Painters, Allied Trades
Intl. Brotherhood of Teamsters
Intl. Cement, Lime, Bypsum Workers
Intl. Oil, Chemical and Atomic Workers Union
Intl. Service Employees Union
Intl. Union of American Leather Workers
Intl. Union of Barbers, Hairdressers and Cosmetologists
Intl. Union of Electrical, Radio and Machine Workers
UAW, Intl. Union of United Automobile, Aerospace & Agricultural Implement Workers
Interstate Assn. of Commissions on the Status of Women
Ladies of the Grand Army of the Republic
Las Hermanas
LaLache League
Leadership Conf. of Civil Rights
Leadership Conf. of Women Religious (Catholic)
LAWN, League of Working Women
League of Women Voters
Lutheran Church Women
Men for ERA
National Assembly of Women Religious (Catholic)
NAACP, Natl. Assn. for the Advancement of Colored People
Natl. Assn. of College Women
Natl. Assn. of Colored Women
Assn. for Commissions for Women
Natl. Assn. of Laity (Catholic)
Natl. Assn. of Negro Business & Prof. Women's Clubs
Natl. Assn. of Railway Business Women
Natl. Assn. of Social Workers
Natl. Assn. of Women Deans, Administrators & Counselors
Natl. Assn. of Women Lawyers
Natl. Catholic Congress for Interracial Justice
Natl. Coalition of American Nuns
Natl. Comm. for Household Employment
Natl. Conf. of Puerto Rican Women
Natl. Council of Churches of Christ
Natl. Council of Jewish Women
Natl. Council of Negro Women
Natl. Council of Women Chiropractors
Natl. Council of Women of the U.S.
National Democratic Party
National Education Assn.
BMP, National Fed. of Business & Professional Women's Clubs
National Fed. of Republican Women
National Gay Task Force
NOWL, National Order of Women Legislators
NOW, National Organization for Women
National Professional Society of Pharmacy Students
National Republican Party
National School Board Assn.
National Secretaries Assn.
National Treasury Employees Union
NETWORK - Catholic Nuns
Phi Delta Gamma
Planned Parenthood
President's Commission on the Status of Women
President's Intlnl. Women's Year Comm.
President's Task force on Women's Rights and Responsibilities
Presbyterian Church in the U.S.
Priests for Equality (Catholic)
Sociologists for Women in Society
SCLC, Southern Christian Leadership Conference
St. Joan's International Alliance, Catholic
Union of American Hebrew Congregations
Unitarian-Universalist Assn.
Unitarian Universalist Women's Federation
United Church of Christ, Council for Christian Social Action
United Farm Workers
United Methodist Church
United Presbyterian Church, USA
United Presbyterian Women
U.S. Comm. on Civil Rights
United Steelworkers of America
United Mineworkers
Women in Communications
Women's Bureau, U.S. Dept. of Labor
Women Theologians United
Women's Christian Temperance Union
Women's Circle, Woodmen of the World
Women's Comm. on Freedom in the Church (Catholic)
WEAL, Women's Equity Action League
Women's International League for Peace and Freedom
Women's Joint Legislative Committee for Equal Rights
YWCA, Young Women's Christian Assn.
Zero Population Growth
Zonta International

Assn. of the Bar of the City of New York
Baptist Joint Committee on Public Affairs
Comm. on Social Action of American Reform Judaism
Delta Sigma Theta, Inc.
National Ass. of Secretaries of State
National Women's Political Caucus
National Leadership Board of the Sister Formation Conference
The Newspaper Guild
National Women's Party
National Women's Campaign Fund
Professional Women's Caucus
Women in Communications, Inc.
National Conference of Churches (Protestant)
American Federation of Government Employees
WE, Women Employed
Amalgamated Meat Cutters and Butcher Workmen
Operation PUSH
League of Black Women
Equal Rights Amendment Support Project - Sacramento, Calif.
ERAmerica - National Umbrella Organization
National Congress of Neighborhood Women

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State ERA Update

States With ERA Provisions

(Map by George Mahnke)
Equality in Social Security

Ruth Bader Ginsburg, Professor of Law at Columbia University and General Counsel for the American Civil Liberties Union, has successfully argued a number of landmark sex discrimination cases before the Supreme Court. Among them are Franks v. Richardson (1972) and Califano v. Goldfarb (1977). Her strategy in the Goldfarb case was, "To attack the most pervasive stereotype in the law - that men are independent and women are men's dependents." In this paper prepared for ACLU affiliates, Professor Ginsburg explains the rationale behind the Court's March 1977 decision regarding social security and clarifies the distinction between invalid discrimination and genuine compensation.

More pervasive than any other gender line in the law is the legislature's assumption of an adult population composed of two classes: breadwinning males and dependent females. ACLU's Women's Rights Project has sought to disabuse lawmakers and jurists of the notion that such gross classifications operate benignly in women's favor. This effort achieved an important success in a series of husbands and widowers Social Security cases planned and developed by the Project and decided in March 1977 by the Supreme Court. That same month the High Court attempted to clarify the distinction between laws genuinely aimed at redressing discrimination between men and women, and laws perpetuating attitudes and practices that restrict women's opportunities.

Legislation based on "archaic and unenlightened generalizations" about women was the target of the Court's June 19, 1977, 9-0 decision in Califano v. Rabushka (430 U.S. 229). Gender-based policies requiring a deceased male worker's spouse for survivor benefits automatically, for example, qualify a widower for benefits only upon proof that his wage- earning was supplied at least three-fourths of the worker's income and at least one-half of his family's income. This stringent dependency test failed to survive equal protection scrutiny, the Court held.

In a concurring opinion, Justice Stevens, associated himself with the opening point made by the dissenting justices that Social Security benefits are neither compensation nor a form of compensation for services rendered. Social Security, to call a benefit "compensation" is to put in question the status of the benefit and the worker. In the same breath, they are "expressed as a percentage of the worker's earnings, they are compensatory in every sense of the word. The standard of "surviving spouse," however, is a "meaningless" description of the role of the worker. In dismissing the argument that widows should be treated differently from widowers, the Court held it involves a "false" comparison just as a valuation for benefits. Rather, Congress simply acted on the basis of the "commonly accepted" stereotypes that men are breadwinners first and foremost, while women are primarily wives and mothers. In other words, Congress made the familiar assumption that women depend on men, but not vice versa.

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more Social Security...
(continued from page 10)

the Court dealt summarily with the identical gender line in the context of derivative old-age (wives and husbands) benefits. There, too, the one-way dependency test was invalidated.

_Califano v. Webster_ (45 U.S.L.W. 3630), also decided on March 21, 1977, distinguished from the husband-and-widowers cases a law purposely enacted to compensate women for past employment discrimination. _Webster_ upheld a Social Security provision which, prior to its recent amendment, authorized a retirement benefit computation more favorable to female wage earners than to male wage earners. Old-age relief benefits are based on the wage earner's "average monthly wage." Before 1972, women could exclude from the computation of their average monthly wage three more low-earning years than men could exclude. The provision sanctioned disparate treatment solely on the basis of sex. But this scheme, unlike the one before the Court in _Goldfarb_, had been enacted in direct response to job market conditions "inhospitable to the woman seeking any but the lowest paid jobs." Congress confronted head-on the labor market realities — depressed wages and early retirement policies applied to employers to women but not to men. It sought to lessen the carry over impact on the working woman's retirement years of past wage and job placement bias against her. (When Congress amended the provision in 1972, after the Equal Pay Act and Title VII were on the books, it did so not by removing the three low earning years exclusion for women, but by extending the exclusion to men.)

In sum, two points emerge from the Court's March 1977 rulings. (1) Where, as in _Webster_, legislation directly addresses discrimination and serves to remedy it, disparate treatment of the sexes, at least as an interim "catch-up" measure, is constitutional. (2) Where, as in _Goldfarb_, disparate treatment of the sexes is the byproduct of "romantic paternalism," of "the role-typing society has long imposed," and is not deliberately and specifically aimed at redressing past injustices, disparate treatment based on sex is unconstitutional.

Four Justices (Rehnquist, Burger, Stewart, Blackmun), dissenting in _Goldfarb_ and concurring in _Webster_, failed to see the difference between the two cases. One may hope that over time, and with the aid of the E.E.O.C., all of the Justices will come to comprehend the inconsistencies of laws rooted in the "same and unenforceable theory of sex discrimination."
New Mexico Governor Reports on ERA

AN OPEN LETTER FROM JERRY APODACA, GOVERNOR OF NEW MEXICO

It is a pleasure for me, as a long-time equal rights supporter, to have this opportunity to share the experience we have had in New Mexico since our state equal rights amendment was adopted three years ago.

The amendment was adopted by the legislature in 1973 and was approved in November of that year by an almost 3 to 1 majority of the state's voters.

The 1973 legislative session, in which I served as a State Senator and as Chairman of the Senate Judiciary Committee, approved changes in 30 state statutes and 2 constitutional amendments, in order to bring those changes in line with our state ERA. Among these statutory changes were the removal of marriage and divorce provisions which are not our neutral.

New Mexico law has, since 1977, required annual support of a husband and wife in a marriage. Support may be contended by caring for a home and children, as well as by income earned outside of the home. Custody of children in a divorce continues to be decided by the court on the basis of the child's best interest. Littleimony is granted in New Mexico, and the personal property division in a divorce is usually equal.

We cannot indulge in the notion that the community is any better prepared to solve such problems than it was when the ERA was adopted. The notion that an amendment should be probable to a new community is not an unreasonable one.

Our new community property law

Significant changes have also occurred in the participation of women in professional, clerical, and service roles.
Pennsylvania Governor Reports on ERA

An open letter from Milton J. Shapp, Governor of Pennsylvania:

have been extended to widowers as well as to widows.

One particularly significant accomplishment under the E.R.A. has been recognition in economic terms of the contributions of homemakers. The concept was first acknowledged by the Pennsylvania Supreme Court when it ruled that child support obligations between spouses in event of a divorce must be equal and determined on the basis of what each spouse is able to contribute. This led to a new standard which looks at these contributions not only monetarily, but also in terms of homemaking and child care services.

A precedent-setting opinion by Presiding Judge Murphy of the Philadelphia Family Court makes it clear that a woman makes an indisputable economic contribution to the family by her role as homemaker and mother.

He noted in the opinion that because of the state Equal Rights Amendment the responsibility for child support no longer rests primarily on the father in Pennsylvania, but must be divided between the parents according to their ability to pay.

And then he stated, "This is not, of course, to suggest that a mother who is keeping a house and caring for her children must secure the services of a babysitter and seek employment in order to contribute to the children's financial support; it is obvious that a mother who is working for her children contributes with valuable support."

It is the first time a woman's contribution as homemaker has been recognized and evaluated with a woman's financial contribution. It is a good indication of the progress that will be made in this area under the E.R.A.

I am happy to report that since the passage of the E.R.A., many states have passed laws or amendments to their state constitutions that provide for women's rights. The E.R.A. has been incorporated into the constitutions of many states, and the passage of the E.R.A. has led to the passage of laws that provide for women's rights.

As governor of a "double E.R.A. state," I am pleased to report on the positive effects of equality under the law in Pennsylvania.

The people of Pennsylvania added an equal rights amendment to their state constitution in 1971, and our legislature ratified the federal E.R.A. in 1972. Although more than half of our state's representatives and senators are women, we still have a long way to go in achieving true equality.

For example, under our state E.R.A.:—

- Household goods are now held equally by both husband and wife.
- Discrimination in employment, housing, and public accommodations is illegal. Any person who is not treated equally in any of these areas may be entitled to relief.
- Financial discrimination in state financial institutions has been outlawed, and the Pennsylvania Banking Department has established an equal credit counseling service.
- Discrimination in insurance and health care coverage or availability of life insurance has been outlawed, and disability insurance must now cover limitations of prog.

These are just a few of the positive effects of equality under the law in Pennsylvania. We have a long way to go, but we are making progress.

As governor of a "double E.R.A. state," I am proud of the progress we have made, and I am committed to fighting for equality under the law for all women. The E.R.A. has taken us a step closer to that goal, and I am confident that we will continue to make progress in the years to come.

Milton J. Shapp
Footnotes


2. "...To Form A More Perfect Union..." pp.311-313.


17. Equal Rights Amendment Project, p. 6.


19. Equal Rights Amendment Project, p. 16.

(Continued)


23. Equal Rights Amendment Project, p. 34.

24. Equal Rights Amendment Project, p. 44.


28. Equal Rights Amendment Project, p. 156.


37. Equal Rights Amendment Questions And Answers, Institute For Studies In Equality. p. 4.

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