United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 91st CONGRESS, SECOND SESSION

SENATE—*Friday, October 9, 1970*

The Senate met at 10 a.m. and was called to order by Hon. GEORGE MCGOVERN, a Senator from the State of South Dakota.

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O Thou who hast bidden Thy people to: "Serve the Lord with gladness; come before His presence with singing. Enter into His gates with thanksgiving, and into His courts with praise; be thankful unto Him and bless His name. For the Lord is good, His mercy is everlasting; and His truth endureth to all generations."

We pause to thank Thee for Thy providential protection and to yield ourselves to Thy sovereign guidance. Restore our souls, relieve our fatigue, reward our work, and lead us in paths of righteousness for Thy name's sake.

May the promise of peace be lifted high by all the endeavors of this Nation and find fulfillment in Thy time, as Thy kingdom comes on earth as it is in Heaven. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication from the President pro tempore of the Senate (Mr. RUSSELL).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 9, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. GEORGE MCGOVERN, a Senator from the State of South Dakota, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

Mr. MCGOVERN thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, October 8, 1970, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Subcommittee on Internal Security of the Committee on the Judiciary, the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, and the Subcommittee on Employment, Manpower, and Poverty of the Committee on Labor and Public Welfare be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate today.

Mr. SCOTT. Mr. President, on this matter I must, by request, reluctantly object. The objection is not from me. I should like the committee to meet.

The ACTING PRESIDENT pro tempore. Objection is heard.

WORLD ENVIRONMENTAL INSTITUTE

The ACTING PRESIDENT pro tempore. Under the order of yesterday, the Chair lays before the Senate, Calendar No. 1274, Senate Resolution 399, relating to the creation of a World Environmental Institute.

Mr. MAGNUSON. Mr. President, I would like to commend the distinguished Senator from Arkansas and his committee for having reported out in timely fashion a resolution which I regard as of great significance for our country and our world. The creation of an environmental institute with global responsibilities, I would argue, is essential to continued human advancement and perhaps to human survival as well. Aware of the potential importance of this concept, the committee has moved with appropriate dispatch. It has also moved adeptly to satisfy objections to the concept earlier raised by the executive branch.

The State Department had objected to a possible duplication of effort arising out of an institute operating independently of the United Nations and its environmental endeavors. The committee, in response to this objection, amended the original resolution to provide for coordination between the Institute's and the U.N.'s activities. Accordingly, the Department is now in support of the proposal, as are the American and international scientific communities. It is my sincere hope that this Senate body today will add its endorsement to this valuable concept.

At the time I submitted Senate Resolution 399 on April 27, I called attention to some global environmental problems, including DDT in the oceans and atmosphere, the buildup of carbon dioxide in the atmosphere, and the 100 million tons of oil that are spilled in the oceans every year. These types of problems cannot be dealt with except on an international basis. Many other environmental problems are not yet global in scope, but are common to all industrialized nations. Research and information on these problems must be pooled in an international institution to avoid expensive duplications of effort and costly delays in making information available to all nations. I need only remind the committee that 10 percent of all inland waters in the United States are now contaminated by mercury, and that this contamination could have been prevented if we had known of the research on the mercury problem that took place 5 and even 15 years ago in Sweden and Japan. Because of the seriousness of such cases, and because the number of poisons we are pumping into the air and water is growing, it is no exaggeration to say that human survival may ultimately depend on international environmental cooperation.

As Adlai Stevenson said in his last speech:

> We all travel together, passengers on a little spaceship, dependent on its vulnerable reserves of air and soil; all committed for our safety to its security and peace; preserved from annihilation only by the care, the work, and the love we give our fragile craft.

The care, work, and love of which Stevenson spoke will have to take place within an institutional framework. The current institutional framework for international environmental problems is chaotic and in desperate need of rationalization. The dozens of international organizations dealing with some aspect of the environment need not be swept away, but their activities must be consolidated and coordinated to avoid waste, duplication, and inefficiency.

The first step in providing that rationalization is the creation of a new international institution, open to all nations of the world regardless of politics, that can serve as a clearinghouse on environmental information. This institution should gather and disseminate the results of all environmental studies throughout the world, and should undertake research on those environmental problems that are global in scope or common to many nations. This is the type of institution proposed as the World Environmental Institute in Senate Resolution 399.

It is indeed true, as the Secretary General of the United Nations has pointed out, that other institutions with the power to set pollution standards and to propose international environmental agreements will be needed eventually. But these institutions cannot be established without a firm data base that a World Environmental Institute would provide. Of equal importance is the fact that the less developed countries, who are beginning to experience severe environmental problems of their own, will probably be hostile to new international institutions with broad powers unless environmental awareness and cooperation are developed through an institution open to all nations of the world.

VIEWS OF THE SCIENTIFIC COMMUNITY

This resolution is supported enthusiastically by the National Academy of Sciences, its new Committee for International Environmental Programs—IEPC—and the U.S. Executive Committee for the International Biological Program—USEC/IBP. Similar support for the concept of this resolution may be found in the summary and working papers of the monthlong study of critical environmental problems—SCEP—sponsored by the Massachusetts Institute of Technology.

These views form an authoritative opinion of the American scientists involved in international environmental affairs. These are the men who will spearhead American efforts in this field throughout the coming years, and who will be our chief participants in the 1972 United Nations Conference on the Human Environment in Stockholm. These scientists have been encouraged by this resolution, and passage of the resolution will give their important efforts a substantial boost.

The international scientific community, as represented by the International Council of Scientific Unions—ICSU—has come to a similar conclusion and recommended the creation of an International Center for the Environment, which is almost identical to the World Environmental Institute proposed in my resolution. A discussion of the ICSU proposal may be found in my floor statement of June 3.

Passage of Senate Resolution 399 will indicate to the world scientific and governmental community that not only American scientists, but the U.S. Senate, subscribes in principle to the creation of a new international environmental institution like that described in this resolution.

CONCLUSION

In conclusion, Mr. President, there is widespread support for this resolution in the Senate, in the scientific community, and in the executive branch. This support is based on a recognition of the global nature of environmental problems, and the need for international action. Pollution of the Yangtze, the Ganges, the Rhine, or the Dnieper is no less important to our continued existence than pollution of the Missouri and the Potomac. DDT is no less hazardous to us all if it is sprayed on the Indian Subcontinent instead of on the United States. All the wastes and poisons from around the world mingle together in our common environment—the air, the water, and the soil—to form a blanket of danger that envelops the guilty and innocent alike.

The time has come for the United States to take the lead and to support creation of an institution like that described in this resolution. The time has come for us to recognize that world leadership and world prestige are based on the power of ideas, not the power of weapons. And the time has come for knowledge—that most precious of man's many resources—to be liberated from the prisons of nationalism and the shackles of the cold war.

For these reasons, I earnestly hope that the Senate will act favorably today on the resolution before it.

The Senate proceeded to consider the resolution (S. Res. 399) relating to the creation of a World Environmental Institute to aid all the nations of the world in solving common environmental problems of both national and international scope which had been reported from the Committee on Foreign Relations with amendments on page 2, line 6, after the word "That", strike out "said" and insert "such a"; in line 7, after the word "Institute,", strike out "should be independent of" and insert "while coordinating its activities with"; in line 8, after the word "organizations,", strike out "nonpolitical, and" and insert "should be"; in line 9, after the word "to", insert "membership for"; on page 3, line 1, after the word "the", where it appears the second time, strike out "First"; at the beginning of line 3, strike out "creation of the", and insert "consideration of a"; in line 5, after the word "of", strike out "the" and insert "a"; and in line 11, after the word "of", strike out "the" and insert "a".

The amendments were agreed to.

The preamble was amended and agreed to.

The resolution (S. Res. 399), with its preamble, reads as follows:

Relating to the creation of a World Environmental Institute to aid all the nations of the world in solving common environmental problems of both national and international scope.

Whereas human ecology is global in nature and human survival depends ultimately upon the cooperative effort of the entire human species; and

Whereas worldwide pollution of man's common resources—the air, the water, and the soil—poses a threat to all peoples; and

Whereas environmental problems caused by technological and population growth are common to all nations alike, and knowledge of such problems must be shared among all nations to insure the survival and well-being of the human species; and

Whereas an international institution open to all nations of the world is needed to provide technical information and scientific knowledge to each nation and to international organizations dealing with environmental problems; and

Whereas a forum for advocating such an institution exists in the International Conference on the Human Environment to be held under the sponsorship of the United Nations at Stockholm in 1972: Now, therefore, be it

Resolved, That the Senate recommends, urges, and supports the creation of a World Environmental Institute to act as a global research center and to disseminate knowledge of environmental problems and their solution to all nations of the world upon request; and be it further

Resolved, That such a World Environmental Institute, while coordinating its activities with existing international organizations, should be open to membership for all nations of the world, with its location and funding to be agreed upon by representatives of said nations assembled; and be it further

Resolved, That the Senate recommends and urges that the United States representatives to the International Conference on the Human Environment prepare to propose consideration of a World Environmental Institute to the Conference; and be it further

Resolved, That in furtherance of a World Environmental Institute concept, the Senate recommends, urges, and supports the invitation to the Conference of all nations not presently members of the General Assembly of the United Nations; and be it further

Resolved, That the Senate recommends, urges, and supports creation of a World Environmental Institute as an official policy of the United States Government, to be pursued with other nations both formally and informally, at Stockholm and in other appropriate forums where the cause of the Institute can be furthered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1255), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE AND PROVISIONS

The purpose of Senate Resolution 399 is to express the sense of the Senate regarding the creation of a World Environmental Institute. The resolution, as amended, contains the five following operative clauses:

1. Resolved, That the Senate recommends, urges, and supports the creation of a World Environmental Institute to act as a global research center and to disseminate knowledge of environmental problems and their solutions to all nations of the world upon request; and be it further

2. Resolved, That such a World Environmental Institute, while coordinating its activities with existing international organizations, should be open to membership for all nations of the world, with its location and funding to be agreed upon by representatives of said nations assembled; and be it further

3. Resolved, That the Senate recommends and urges that the U.S. representatives to the International Conference on the Human Environment prepare to propose consideration of a World Environmental Institute to the Conference; and be it further

4. Resolved, That in furtherance of a World Environmental Institute concept, the Senate recommends, urges, and supports the invitation to the Conference of all nations not presently members of the General Assembly of the United Nations; and be it further

5. Resolved, That the Senate recommends, urges, and supports creation of a World Environmental Institute as an official policy of the U.S. Government, to be pursued with other nations both formally and informally, at Stockholm and in other appropriate forums where the cause of the Institute can be furthered.

COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on Senate Resolution 399 on September 1, 1970, at which time Senator Warren G. Magnuson testified in support of the resolution. His prepared statement, with the exception of the documents referred to

therein, is reprinted below. No executive branch witness presented testimony at the hearing and the only formal expression of views on the resolution is contained in a letter which the committee received from the Department of State. It is also incorporated in this report.

Senate Resolution 399 was considered in executive session on September 15 and 30, 1970. On the latter date it was ordered reported favorably to the Senate. In so doing, however, the committee emphasizes that while it supports the general concept of creating an international institution to deal with environmental problems, it does not have sufficient information at this time to recommend that such an institution should be designated as the World Environmental Institute. On the contrary, if an international environmental institution is to be established, the name of the organization, as well as its location, funding, functions, and relationships with other environmental activities and institutions are proper subjects for future discussions by representatives of interested nations. It is the committee's expectations, therefore, that if the U.S. Government decides to pursue the "sense of the Senate" expressions contained in Senate Resolution 399, it will do so with an open mind.

STATEMENT OF SENATOR WARREN G. MAGNUSON ON SENATE RESOLUTION 399

Mr. Chairman, I wish first to express my deep thanks to you and the members of this distinguished committee for taking the time to hear my testimony today. A number of rollcall votes are scheduled for this afternoon, and we will all be required to be on the floor, so I will make my statement as brief as possible. I have attached to my statement several documents of great importance that can be read by the Committee members after I finish my testimony, and these documents should answer any questions the committee may have.

As I indicated in my August 26 letter to Chairman Fulbright, it would be extremely helpful if we could obtain Senate passage of Senate Resolution 399 by September 19, since that date marks the opening of an international scientific conference that may very well result in the founding of an institution like the "World Environmental Institute." Because of this time constraint, and because this committee will not meet again until the eve of that conference, I am hopeful that the committee can act favorably on Senate Resolution 399 today.

The basis for taking such favorable action is a sound one. Forty Members of the Senate, including seven members of this committee, are cosponsors of this legislation. The American scientific community and the international scientific community support the concept of a "World Environmental Institute," wholeheartedly, and support can also be found for the concept within the executive branch. As I indicated in my letter to Chairman Fulbright, and as State Department officials have confirmed to the staff of this committee, new State Department views favorable to passage of Senate Resolution 399 should be in the hands of the committee by the end of the Labor Day recess.

All of this support, which I will discuss in a moment would warrant favorable action on Senate Resolution 399 even if it were a substantive piece of legislation involving the expenditure of Federal funds. As the committee is well aware, however, this legislation is merely a sense-of-the-Senate resolution that does not commit the United States or the Senate to any expenditure of funds or to support of any particular institution that may be created in the future. What the resolution does do is call attention to the global nature of human ecology, the need for international cooperation on environmental problems and the need for creation of suitable international institutions to deal with those problems.

At the time I submitted Senate Resolution 399 on April 27, I called attention to some global environmental problems, including DDT in the oceans and atmosphere, the buildup of carbon dioxide in the atmosphere, and the 100 million tons of oil that are spilled in the oceans every year. These types of problems cannot be dealt with except on an international basis. Many other environmental problems are not yet global in scope, but are common to all industrialized nations. Research and information on these problems must be pooled in an international institution to avoid expensive duplications of effort and costly delays in making information available to all nations. I need only remind the committee that 10 percent of all inland waters in the United States are now contaminated by mercury, and that this contamination could have been prevented if we had known of the research on the mercury problem that took place five and even 15 years ago in Sweden and Japan. Because of the seriousness of such cases, and because the number of poisons we are pumping into the air and water is growing, it is no exaggeration to say that human survival may ultimately depend on international environmental cooperation.

As Adlai Stevenson said in his last speech, "We all travel together, passengers on a little spaceship, dependent on its vulnerable reserves of air and soil; all committed for our safety to its security and peace; preserved from annihilation only by the care, the work, and the love we give our fragile craft."

The care, work, and love of which Stevenson spoke will have to take place within an institutional framework. The current institutional framework for international environmental problems is chaotic and in desperate need of rationalization. The dozens of international organizations dealing with some aspect of the environment need not be swept away, but their activities must be consolidated and coordinated to avoid waste, duplication, and inefficiency.

The first step in providing that rationalization is the creation of a new international institution, open to all nations of the world regardless of politics, that can serve as a "clearinghouse" on environmental information. This institution should gather and disseminate the results of all environmental studies throughout the world, and should undertake research on those environmental problems that are global in scope or common to many nations. This is the type of institution proposed as the "World Environmental Institute" in Senate Resolution 399, and support for ths type of institution as a first step in the solution of international environmental problems may be found throughout the documents attached to my statement.

It is indeed true as the Secretary General of the United Nations has pointed out, that other institutions with the power to set pollution standards and to propose international environmental agreements will be needed eventually. But these institutions cannot be established without a firm data base that a "World Environmental Institute" would provide. Of equal importance is the fact that the less developed countries, who are beginning to experience severe environmental problems of their own, will probably be hostile to new international institutions with broad powers unless environmental awareness and cooperation are developed through an institution open to all nations of the world.

A VOICE IN THE WILDERNESS

Mr. MAGNUSON. Mr. President, at this time of heightened concern about the depletion of our natural resources and destruction of the earth's environment, National Educational Television has produced a series of eight half-hour programs in color exploring aspects of the problem and suggesting some remedies.

These programs can be seen on the more than 190 television stations of the Public Broadcasting Service beginning October 11. In most localities, the programs will be shown Sunday nights from 8:30 to 9.

The series, "Our Vanishing Wilderness," is the culmination of 2 years' travel and observation by photographer-naturalist Shelly Grossman and his wife, Mary Louise, and John N. Hamlet, who are both outstanding naturalists. In an article, the program's executive producer, David Prowitt of NET, expresses the aims of the series. It was published in WNET New York's monthly Image magazine, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A VOICE IN THE WILDERNESS

(By David Prowitt)

Consider Jeremiah. Now, he was one of the Old Testament Prophets I had not thought a great deal about—until recently. He framed some specific indictments about the way his people were living and no one paid any attention to him for a long time—until his prophecies began to come true. He was dead by then—and he was co-opted into the "Establishment" of his time and was paid due homage with several pages in the Bible.

Ditto John the Baptist in the New Testament, where he was described as "a voice crying in the wilderness."

Ideally, the new National Educational Television series, "Our Vanishing Wilderness," should have been scheduled two years ago, when it might well have been hailed as a vanguard effort. By now, a great deal of ecological rhetoric has flowed under the bridge and become polluted in the same process.

But as Jeremiah and John the Baptist learned the hard way, there is something to be said for presenting your message when the people are prepared to receive it. Politicians of both parties and young people earnestly picnicking on Earth Day have given indications that a serious look at ecology has come due.

"Our Vanishing Wilderness" explores the political, economic and social changes that must take place if we are to save our environment and achieve the quality of life we desire. More importanly, it is a series that probes these subjects in greater depth than any other television programs yet undertaken.

It is not a doomsday series ("Now is the time! Time is short! Wham! This is it!"). There is little question that man can continue to live on this planet for a long, long time. The question is: *Will the planet be worth living on?*

With this question in mind, Sheldon Grossman, the program's producer-director set out. He took with him impressive credentials as a photographer and as a naturalist, and his wife Mary Louise, a talented writer. They are aware, compassionate and involved.

They shared with me the feeling that man is no more than a part of the ecological structure, yet his effect on it is greater than that of any other natural force—and therefore, he has the greatest responsibility. It is a responsibility he has tended to abrogate.

Had this program been done at a time when this concern was less fashionable, it might have seemed enough if we simply indulged in headshaking and finger-waving with the excuse that if we offered no solu-

tions, we at least drew attention to the problem. The Grossmans and I are both grateful that the cop-out is no longer available to us.

Ecology and the corrosion of the natural balance of nature should not be subjects for sensationalism. They consist of the most subtle interweaving of social, economic and political considerations. If the "problem-solution" dwells in just one of these areas, ultimately nothing is solved. As Jeremiah learned, shouting directives that something must be done is not very effective. In "Our Vanishing Wilderness" we attempt to show the interaction between various forces which have produced our current environmental crisis and to simply put it up to those who are in the ultimate position to do something about it: the American people. We point out that "something's got to give"—either the quality of life or man's current persistent inability to live with his environment. If we are crusaders, this is our message. Man cannot afford to consider himself outside of the ecological sphere.

In our series we have selected problems which do not easily yield to a quick either/or solution. Some of them have been brought to public attention through abbreviated features on national news programs; others are problems which are being posed for the first time—however long they may have existed.

Everyone who follows the news knows of the problem of oil pollution in such places as Santa Barbara or the Louisiana coast. But it is not really within the province of spot news programs to raise such questions as: Do we really need that oil now? And if we do, what costs are we willing to pay for it in animal and marine life? And above all, the question which oil companies will not ask and which is seldom required of the television viewer: Can we afford it?

In another case, there has been a vogue for celebrities to bewail the plight of the American Indian. But seldom is the deep, spiritual relationship between the Indian and the land brought into account. As part of the Pueblo religion, for example, the reverence for all living things is an atavistic safeguard in favor of conservation. Yet mining and lumber interests do not share this belief which they write off as "primitive superstition," and they are willing to exploit the land with little regard for either natural or human problems.

For those who have been honing arguments against "non-objective reporting," let me admit that these programs do have a point of view. However, they are not mindless propaganda; what they attempt to do is provide a new perspective on situations in which perhaps only one side has heretofore had the money and resources with which to give its viewpoint.

For example, on the prairies, one of our last reclaimable areas, the government and ranchers are indulging in what many consider the needless slaughter of prairie life. Although the animals threatened have long been dismissed as "pests", and there may have once been a need for their extermination in order to give man ecological room in which to bring up his cattle and sheep, there is probably no longer this need, and yet the sanctioned killing continues.

People outside Alaska seldom consider the tundra and the Eskimos who get their living off that land. The tundra, too, is threatened by destruction from heavy industry and pipelines. Is it worth saving? Can progress be denied? This is a question only the public can answer—and a question that, as of now, only public television wants to deal with in depth.

When I have talked about this program and what we are trying to do, I get a reaction from young people that roughly translates as, "It's about time that people woke up to the outrages that are being perpetrated. Give it to them good!" And older people sigh and say, "Not another ecology series! I saw ecology advertised last year when it was popular."

Viscerally, I feel they are both wrong. It is not a simple good-guy versus bad-guy melodrama, as the youth would have it. Nor is it a case of bleeding-heart bird watchers lavishing devotion on animals and plants and ignoring people (or mourning a dead horse) as their cynical elders feel.

Sheldon Grossman traveled around the country for two years, photographing what he found. We feel that what interested him will absorb the attention of a wide range of people. He has filmed with sensitivity and intelligence and judgment. The result is not a program merely to delight those who were already convinced, or to provide a primer for those totally unaware. It is a program upon which can be built a solid base of crucial understanding.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of measures on the calendar to which there is no objection, beginning with Calendar No. 1299; then Calendar Nos. 1301 through 1307.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT OF THE RAILROAD RETIREMENT ACT

The Senate proceeded to consider the bill (S. 988) to amend the Railroad Retirement Act of 1937 so as to permit certain individuals retiring thereunder to receive their annuities while serving as an elected public official, which had been reported from the Committee on Labor and Public Welfare, with an amendment, on page 1, at the beginning of line 8, insert "or appointed"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Railroad Retirement Act of 1937, as amended, is amended by adding at the end thereof the following new subsection:

"(k) For purposes of subsections (a) and (d) of this section, service performed by an individual as an elected or appointed public official shall not be regarded as 'compensated service' rendered to an employer or to any other person, if such service is compensable at a rate which does not exceed $5,000 per annum, and if such individual is deemed under section 1(o) to have a current connection with the railroad industry at the time he ceases to render compensated service to an employer."

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1281), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF LEGISLATION

S. 988 amends section 2 of the Railroad Retirement Act to provide that employment as an elected or appointed public official shall not be regarded as "compensated service," from which the individual would normally be required to retire to qualify for an annuity, so long as the compensation for such employment as an elected or appointed public official does not exceed $5,000 per year and if such individual also has a current connection with the railroad industry at the time of his retirement.

NEED FOR LEGISLATION

The Railroad Retirement Act of 1937 presently requires that in order for an individual to be eligible for an annuity he must cease compensated service to (1) a railroad employer [as defined in sec. 1(a)], and (2) to his last nonrailroad employer. This requirement is known as the "last person service rule." In addition, the retiree must relinquish rights to return to the service of his last employer and his annuity is lost for any month after retirement during which he is employed by such last employer.

This restriction was originally adopted as a part of the Railroad Retirement Act of 1937 in an effort to avoid discrimination against the career railroad worker; that is, one who worked in the railroad industry until he reached retirement age. It was contended that those persons who accrued sufficient railroad service to qualify for an annuity, but who left railroad employment and worked elsewhere prior to reaching retirement age, would have an advantage over career railroad employees. The former, upon attaining age 65, would be eligible to receive their annuities while continuing to receive their salaries earned from their nonrailroad jobs. On the other hand, career railroad workers who remained in the railroad industry to retirement age had only their annuities to reply upon.

For this reason, the last person service rule was instituted to provide that both career railroad employees and those holding nonrailroad jobs be required to retire from whatever employment they may be engaged in at the time they seek to qualify for an annuity.

The modification of the last person service rule contained in S. 988 would be of extremely limited application. The bill provides that an elected or appointed official who, at the time of retirement, is also employed by a covered railroad employer may qualify for an annuity by relinquishing only his railroad job and may retain his public office, so long as the annual compensation from such office does not exceed $5,000 a year. Thus, this exemption would apply only to individuals who are both covered railroad employees and who hold a public position at the time of their retirement.

Frequently, elected and appointed officials serving in local governmental positions are part-time officers who receive comparatively small compensation. City and town councilmen, county supervisors or commissioners, township trustees, school board members, planning commissioners and other local governmental officers usually perform their duties at times which do not conflict with their primary occupation. Even many State legislators are still regarded as part-time employees whose major tasks are completed during a 60 to 90 day session every 2 years. The salary received by most of these State and local officers is usually neither large nor is it expected to be their principal means of support.

The committee is of the view that the public interest is best served by promoting citizen participation in public affairs rather than by imposing a penalty upon such participation as is the case under the present railroad retirement law.

Forcing a railroad employee who has been elected to public office either to relinquish that post or lose his annuity when he retires poses an unfair dilemma. Any career railroader, knowing about this mandate, would obviously be discouraged from becoming an active participant in the political process if he were approaching retirement years. The exclusionary effect of the present law is aggravated by the provision that an individual who has resigned a position of public trust in order to obtain retirement

benefits cannot resume the same position at a later date without losing his retirement benefits. The obvious effect is to strongly inhibit a citizen from holding office and deprives the public of the services of one it may wish to have elected or appointed to public office.

The committee notes that the enactment of this legislation would by no means mark a substantial departure from existing procedures. At present, the Railroad Retirement Board permits the performance of "incidental" services by a retiree for the employer for whom he last worked immediately preceding retirement; that is, the "last person employer." The Board has determined administratively that services compensated at a rate not exceeding $150 a month ($1,800 per year) are "incidental" services and are therefore not prohibited by the last person service rule. Under this administrative rule, an elected or appointed public official may now retain a public office he holds at the time of retirement and still receive an annuity so long as his salary is no greater than $1,800 per year. The net effect, then, of S. 988 will be merely to increase from $1,800 to $5,000 per year the existing exemption from the last person service rule, with the enlarged exemption limited to public service employment.

This bill also provides that the exemption provided therein is limited to public service employees having a current connection with the railroad industry at the time of retirement. Thus, it does not discriminate against the career railroad employee in favor of those who have left railroad service some time prior to retirement.

S. 988 as originally introduced would have provided such an exemption for elected officials only. The committee is of the view that appointed public officials should also share in the benefits provided by this legislation. In many communities, such positions as school board member, library trustee, and so forth, are appointive rather than elective. Retired persons are often uniquely qualified for such jobs because of their experience, and because they have available the time necessary to perform such services. Accordingly, the committee amendment provides for appointed as well as elected officials with the same restrictions as to earnings and current connection with the railroad industry at the time of retirement.

COLIE LANCE JOHNSON, JR.

The bill (H.R. 16997) for the relief of Colie Lance Johnson, Jr., was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1283), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the proposed legislation is to authorize the Secretary of the Treasury to pay the amount certified by the Administrator of Veterans' Affairs as the amount that the said Colie Lance Johnson, Jr., would have been paid to him by the Veterans' Administration as the dependent son of a soldier killed in World War II had timely application for benefits been made in his behalf.

LAND IN TRUST FOR THE YANKTON SIOUX TRIBE

The bill (H.R. 13519) to declare that the United States holds 19.57 acres of land, more or less, in trust for the Yankton Sioux Tribe was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1284), explaining the purpose of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of H.R. 13519 is to declare that 19.57 acres of Federal land are held in trust for the Yankton Sioux Tribe of South Dakota. The donation will be without consideration, but if the tribe recovers any judgment against the United States in the Indian Claims Commission, the Commission will consider the value of the land as a possible setoff. The land has a current value of $2,000.

NEED

The land originally belonged to the tribe, but it was conveyed to the Episcopal Church in 1895 for a school. In 1902 the school was closed, and the land was purchased by the Bureau of Indian Affairs for $7,000. The buildings were removed, and the tribe has been using the land for the past 30 years.

The tribe now plans to develop the land for a low-cost housing project. The Department of Housing and Urban Development has approved the project, but title to the land must be transferred to the tribe before the project can proceed. The Federal Government has no use for the land, and its use for a housing project would be highly beneficial to the Indians.

COST

The bill will require no appropriation of funds. Although the bill disposes of Federal property without consideration, the value of the property may be recovered through the Indian Claims Commission.

CONVEYANCE OF CERTAIN LAND TO THE CHEROKEE TRIBE OF OKLAHOMA

The bill (H.R. 15624) to convey certain federally owned land to the Cherokee Tribe of Oklahoma was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1285), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of H.R. 15624 is to sell to the Cherokee Tribe of Oklahoma 38.5 acres of land for $2,258.80, which is the amount paid by the United States when it bought the property. The property is a part of a 93-acre tract that was purchased by the Government in 1935 for an Indian school farm. The school farm has been discontinued, and the property is excess to the needs of the Bureau of Indian Affairs.

NEED

Forty acres of the original 93 acres were conveyed to the tribe by the act of August 20, 1964 (78 Stat. 559), without consideration, and the land has been developed by the tribe for industrial uses. The 38.5 acres covered by this bill are needed by the tribe to continue this development. Developments already completed include a restaurant, arts and crafts shop, service station, warehouse, office building, and industrial building. Further developments contemplated include a motel, expansion of the industrial building, retail shopping area, and various tourist-oriented projects.

This industrial program will contribute significantly to Indian employment and improved standard of living.

The present estimated value of the 38.5 acres is $700 per acre ($26,950). Its estimate value in 1964 when the first 40 acres were conveyed to the tribe was $150 per acre, and the increase in value is due largely to the tribal improvements on the 40-acre tract. Since the bill requires the tribe to pay only the original cost price to the Government ($2,258.80), the bill provides that the difference between that figure and its estimated value in 1964 ($5,775) shall be considered by the Indian Claims Commission as a possible setoff in any claims judgment that may be awarded.

SUBSISTENCE TO CERTAIN AIR EVACUATION PATIENTS

The bill (H.R. 9654) to authorize subsistence, without charge, to certain air evacuation patients was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1287), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to authorize subsistence, without charge, to officers of the uniformed services, to civilian Government employees, and to dependents, who are air exacuation patients.

EXPLANATION OF THE BILL

Military officers, civilian Government personnel, and their dependents who travel in the air evacuation systems are required to pay for meals furnished them while they are in the air evacuation chain. Enlisted personnel are entitled to subsistence in kind and thus are not charged. An officer, a civilian, or one of their dependents is charged for meals consumed while aboard the evacuation aircraft, and further, he is required to pay the hospitalization subsistence charge while he is hospitalized at the casualty staging unit, whether or not the meals are consumed. This bill would authorize this subsistence without charge to these air evacuation patients. It would also authorize this subsistence to a dependent, accompanying the patient, in the few instances when this situation occurs, such as a mother flying with her sick child. In fiscal year 1968 a total of 170,000 patients were transported in the air evacuation system of which 39,000 were required to pay for their meals.

Numerous problems are generated by the present requirement that these charges be imposed and collected. Payments are accepted at the time meals are served, but since many patients do not have funds with them, deferred collections are allowed. At the present time a great number of air evacuation patients are Vietnam battle casualties and collection of the charge under these circumstances presents an awkward embarrassing situation. Further, the deferred collections are extremely burdensome and costly. Based upon a sampling, it appears that the elimination of this paperwork and related administrative responsibilities will result in a savings of up to $124,000 per year. This savings amounts to 70 percent of the annual anticipated cost of the proposed bill.

ADJUSTMENT OF DATE OF RANK OF COMMISSIONED OFFICERS OF THE MARINE CORPS

The bill (H.R. 10317) to adjust the date of rank of commissioned officers of the Marine Corps was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1288), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The bill would delete the provision of law whereby an officer promoted to the grade of major general in the Marine Corps is assigned the date of rank held by him in the grade of brigadier general. The bill would permit adjustment of the date of rank for Marine Corps major generals on the same basis that obtains for major generals in the Army and Air Force.

Under current provisions of law the Army and Air Force follow a practice whereby a brigadier general who is promoted to major general is given a date of rank immediately junior to the date of rank of the junior rear admiral of the upper half (equivalent to major general) in the Navy. This procedure was established to rectify a situation which existed prior to 1952 wherein almost all Navy rear admirals of the upper half were senior in date of rank to all Army and Air Force major generals. This stems from the fact that a Navy rear admiral of the lower half (equivalent to brigadier general) is automatically advanced to upper half after serving in the lower half for about 4 years. However, he retains the date of rank which he held in the lower half. Since Army and Air Force promotions to major general occur after less than 4 years in grade as a brigadier general, the upper half rear admiral would emerge senior to major generals in the Army and Air Force who were promoted prior to his advancement to the upper half.

The Army and Air Force procedure currently followed solved the problem of rank inversion in those services, but created the identical problem for the Marine Corps.

This bill if enacted would repeal that provision of law that prevents Marine Corps generals from adjusting dates of rank in the same manner as the Army and Air Force.

The effective date of this enactment would be January 1, 1959, to cover all Marine Corps major generals currently on active duty. The law would serve no practical purpose to adjust dates of rank of retired major generals.

COMPUTATION OF OVERSEAS COST-OF-LIVING ALLOWANCES FOR UNIFORMED SERVICES PERSONNEL

The bill (H.R. 14322) to amend section 405 of title 37, United States Code, relating to cost-of-living allowances for members of the uniformed services on duty outside the United States or in Hawaii or Alaska, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1286), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

H.R. 14322 is a bill designed to affirm the computation of overseas cost-of-living allowances for uniformed services personnel. It would validate the existing system which breaks down overseas cost of living allowances into two parts, one for housing and another for elements of the cost of living except housing. The system has been in force for approximately 12 years. Its legality is now in question by the Comptroller General of the United States.

The relevant statute is section 405 of title 37 United States Code which provides, in part, that:

"Without regard to the monetary limitations of this title, the Secretaries concerned may authorize the payment of a per diem, considering all elements of the cost of living to members of the uniformed services under their jurisdiction and their dependents including the cost of quarters, subsistence, and other necessary incidental expenses, to such a member who is on duty outside of the United States or in Hawaii or Alaska whether or not he is in a travel status * * *."

The foregoing was implemented by the Secretaries of the uniformed services by prescribing two separate allowances, one for "Housing" and another termed a "Cost-of-living" allowance for all elements of the cost-of-living—except housing. The enabling statutes (Pay Readjustment Act of 1942 as amended by section 203, act of August 2, 1946, and later amended by Career Compensation Act of 1949) which first authorized payment of these station allowances did not prescribe any specific formula for establishing an allowance or allowances.

The bill if enacted would resolve the objections of the Comptroller General and the existing system of computation would be validated. This would be accomplished by adding the proposed language to section 405 of title 37, United States Code.

FEDERAL AID IN FISH RESTORATION ACT AMENDMENTS OF 1970

The Senate proceeded to consider the bill (H.R. 12475) to revise and clarify the Federal Aid in Wildlife Restoration Act and the Federal Aid in Fish Restoration Act, and for other purposes, which had been reported from the Committee on Commerce, with amendments, on page 8, line 24, after "section 4", insert "(b)"; in the same line, after the word "to", insert "75"; on page 16, line 19, after the word "Guam", insert "the Governor of American Samoa,"; in line 24, after the word "Guam", insert "American Samoa,"; and, on page 17, line 3, after "per centum", insert a comma and "for American Samoa one-third of 1 per centum,".

Mr. HART. Mr. President, H.R. 12475, which was reported unanimously by the Committee on Commerce, is a bill deserving of the enthusiastic support of this body. On June 4, I introduced S. 3927, a companion to the House bill I now report. As is S. 3927, H.R. 12475, introduced and guided through the House by the distinguished Congressman from Michigan, Mr. DINGELL, is a bill which should lead to major advancements in the fields of conservation, hunting, and fishing. The legislation is designed to encourage comprehensive planning by State fish and game departments, to increase revenues available to the States for wildlife restoration projects, and to provide funds for the States to carry out programs supporting hunter safety.

That these objectives are worthy ones seems beyond question. At hearings before the Senate Subcommittee on Energy, Natural Resources, and the Environment, which I chair, all of our witnesses supported the purposes of the bill and urged enactment of legislation that would promote those objectives. The Committee on Commerce was unanimous in its view that H.R. 12475 represented a desirable approach to the questions considered.

The management of fish and wildlife resources traditionally has been considered to be primarily the responsibility of State fish and game departments. Accordingly such management has been financed largely from State hunting and fishing license fees. Federal aid to the States, however, has long been recognized as a valuable and necessary contribution to this function. Such aid has been channeled to State boards over the years through the operation of the Pittman-Robertson Act of 1937 and the Dingell-Johnson Act of 1950.

The proposed legislation would effect two major changes in the administration of these acts, both of which, I would argue, are greatly needed. The first would give the States the option of using comprehensive long-range fish and wildlife plans—as compared to the existing project-by-project plans—in their applications for assistance under the acts. In view of the projected demand on open spaces for future urban programs, transportation corridors, forest products, and outdoor recreational uses unrelated to fish and wildlife, it is imperative that agencies responsible for these resources plan adequately in advance to protect their interests. The proposed bill, it is hoped, would provide inducement for the States to mount a planning effort of the kind desired.

The second major change would provide that revenues derived from the existing 10-percent tax on pistols and revolvers be earmarked for wildlife management and hunter safety programs. The need for additional financing for wildlife management is well recognized. Existing management areas and resources will have to be increased in productivity and expanded in size if the additional hunting pressure which is anticipated is to be accommodated. Efforts are needed to identify new species of game, to lengthen hunting seasons, and to provide more hunting areas through land purchases and leases. The increased revenues proposed by this legislation would help considerably in these efforts.

As for hunter safety, the fatalities suffered each year are strong testimony as to the need that exists in this area. In 1968, 2,600 persons died as a result of firearms accidents, reflecting a fatality rate of 1.3 per 100,000 population. Many of these accidents undoubtedly could be prevented by the establishment of meaningful hunter safety programs in every State. As of now, only 17 States require graduation from hunter safety programs as a prerequisite to obtaining a hunting license. It is to be hoped that the funding provided by this bill would increase that number substantially.

In the past many of us have differed on the question of what should be done

about the availability of weapons in this country. Yet whatever the differences may be on that question, it seems difficult to imagine differences on the need for safe use of the weapons which are available. The proposal before us today recognize that need and represents a significant step in our efforts to satisfy it. For this and the other reasons mentioned, I urge the Senate to give unanimous approval to this worthy measure.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the transaction of routine morning business, with statements therein limited to 3 minutes, not to extend beyond 30 minutes.

THE TRANQUILIZER—MEPROBAMATE

Mr. NELSON. Mr. President, today, I should like to call the attention of the Senate and the public to a shocking situation in the pricing structure of tranquilizing drugs. Tranquilizers are widely used by doctors to treat patients suffering from anxiety, tension headaches, muscle spasms, and nervous diseases. One of the most widely prescribed tranquilizers—indeed the fifth most widely prescribed drug of any kind—is a compound known officially as meprobamate and widely sold under the trade names of Miltown and Equanil.

The holder of the patent on meprobamate is Carter-Wallace, Inc., a pharmaceutical manufacturer based in New York City. Although Carter-Wallace sells meprobamate under the trade name, Miltown, this firm does not and never has produced its own meprobamate either in bulk or in final dosage form. Carter-Wallace buys the bulk material from foreign manufacturers for resale and for use in the meprobamate tablets it sells under its own name. The world price of bulk meprobamate is 87 cents a pound. Carter-Wallace resells it to domestic manufacturers for $23,30 a pound. In other words, Carter-Wallace has been buying it at 87 cents a pound and selling it to domestic manufacturers at $23.30 a pound. On January 27, 1960, the U.S. Government sued Carter-Wallace—then known as Carter Products, Inc.—for attempting to monopolize and fix prices in the interstate and foreign trade in meprobamate. Two years later, the company signed a consent decree designed to end its monopolistic activities in meprobamate tranquilizers and bring down the price to a reasonable level.

It is astonishing to note that in the 6½ years since the decree was signed, Carter-Wallace has raised its prices to the trade and the consumer—increasing its profits on the drug fivefold—while the world price of bulk meprobamate has dropped sharply.

In other words, Carter-Wallace has been able to carry on its monopolistic practices despite the very decree designed to end them. It forces the American public to pay increasingly exorbitant prices for a widely prescribed drug while its cost of manufacture continues to drop.

On March 23, 1968, the U.S. Government charged in the U.S. Court of Claims that Carter-Wallace's patent is invalid, that it has misused its patent, and that the firm "has combined and conspired to restrain and combined and conspired to monopolize and attempted to monopolize interstate and foreign trade and commerce in meprobamate in violation of sections 1 and 2 of the Sherman Act."

Carter-Wallace's actions are aimed at one goal; to prevent meprobamate from becoming available to the American public as a generic drug at a reasonable price. Generic drug manufacturers cannot afford to make meprobamate tablets if they buy bulk material at Carter-Wallace's price. When they go into the world market to buy meprobamate at the price Carter-Wallace itself pays, the company harasses them with patent infringement suits even though, as the Government charged, the patent is invalid. Indeed, Carter-Wallace has gone so far as to sue the U.S. Government itself for $8 million because the Defense Department, the Veterans' Administration, and the General Services Administration refused to pay Carter-Wallace's excessive price for meprobamate tablets which was as much as nine times the competitive price and went abroad to buy the drug.

I ask unanimous consent that a tabulation showing the vast and almost incredible savings made by the Defense Department in procuring this drug from competitive sources be printed at this point in the RECORD.

There being no objection, the tabulation was ordered to be printed in the RECORD, as follows:

MEPROBAMATE PROCUREMENTS BY THE DEFENSE DEPARTMENT

Year	Number of contracts	Cost of foreign product	Value of low domestic offer	Savings to defense department	Percentage Carter-Wallace price as compared to foreign product price
1960	2	$288,594	$1,440,772	$1,152,177	500
1961	3	474,553	2,969,087	2,494,534	630
1962	1	181,773	1,419,659	1,237,886	780
1963	2	206,652	1,756,384	1,549,732	850
1964	1	59,433	339,464	280,030	570
1965	1	28,919	195,350	166,430	680
1966 [1]	2	$235,846	$1,102,836	$866,990	470
1967	1	65,503	253,992	188,489	390
1968	2	142,310	795,264	652,954	560
Total		1,629,583	10,272,808	8,589,222	

[1] In 1966 only two of seven contracts were placed on a competitive basis.

Mr. NELSON. Mr. President, by purchasing from foreign competitive sources in the 9-year period 1960–68, the Defense Department bought for $1.6 million what would have cost $10.3 million, thus saving the taxpayers about $8.6 million on this one drug alone. The Defense Department and other Federal agencies can accomplish these great savings because they are not bound by law to observe patents or licensing agreements and may purchase at the lowest price from any manufacturer in the world. However, the American consumer does not have such a right and thus must pay whatever price Carter-Wallace decides to charge. In 1969, the Veterans' Administration bought meprobamate at $1.55 for a bottle of 500, 400-milligram tablets. The price to the American druggist for this tranquilizer under the name of Miltown is $31.20, which is 2,000 percent as much as the VA's price. The price to the American consumer is about $52 or 3,300 percent as much as VA's price.

Under the terms of the consent decree, Carter-Wallace was required to sell bulk meprobamate on a nondiscriminatory price basis to all qualified pharmaceutical houses. A maximum price of $20 a pound was fixed as the sales price with a provision for increase of this maximum price based on the Consumer Price Index. Since the entry of this decree, Carter-Wallace has sold only at the maximum price—which in September 1966 was raised to $21.40 a pound based on an increase in the Consumer Price Index, and in February of 1969 was increased to $23.30 per pound.

The Carter-Wallace consent decree was approved by the Court after a hearing in which all parties presented detailed argument. Judge Weinfeld summarized the Government's position as follows:

> The Attorney General emphasizes that in end result the Decree will correct the noncompetitive and monopolistic situation which he charges has existed in the manufacture, use and distribution of meprobamate compound for the past seven years; that not only will true competition result by reason of the availability of the product to all pharmaceutical houses on a non-discriminatory basis, but that the maximum price of $20.00 will enable them . . . to make a handsome profit and at the same time substantially reduce the price of tranquilizing and combination drugs to the consuming public.

In support of the proposed final judgment, both Carter-Wallace and the Government relied on the same argument.

This argument, as stated in Carter-Wallace's memorandum, was as follows:

Therefore, a pharmaceutical house paying $20.00 a pound for meprobamate can, after also reflecting labor and factory overhead in manufacturing the compound into a meprobamate, tranquilizing drug, and the cost of packaging materials, reduce the price to the wholesale trade of $2.70 per bottle, for 50 tablets of 400 milligrams strength, now charged by Carter by 25% to $2.025 per bottle, and make a gross profit of 54.5%; it could effect a 33⅓% price reduction to $1.80 a bottle and make a 48.8% gross profit; and could effect a 50% price reduction to $1.35 a bottle and make a 32% gross profit.

In further support of the maximum price of $20 per pound, the Government stated in its memorandum, as follows:

The above figures show that other pharmaceutical houses wishing to enter this field and willing to operate on lower profit margins than is presently current could cut prices of finished drugs as much as 50% below those prevailing and still enjoy a considerable profit.

Carter-Wallace's cost of meprobamate in final dosage form, which was computed as 36.6 cents per bottle of 50 tablets, 400 miligrams was taken from data submitted by Carter-Wallace, which information had also been submitted by that company in 1960 during the Kefauver investigation of administered prices in the drug industry. The cost of 36.6 cents per bottle of 50 tablets, 400 milligrams was, expressed as $7.32 per bottle of 1,000 tablets, 400 milligrams, in exhibit 156, page 9157, part 16, of the Kefauver committee hearings. In terms of bottles of 50 tablets, these costs may be broken down as 19.2 cents for the chemical compound, 4 cents for 2 percent wastage, 10 cents for tableting and 7 cents for bottling, which totals 36.6 cents per bottle of 50 tablets.

Since 1962, Carter-Wallace's price to the wholesale trade of $2.70 per bottle, for 50 tablets, 400 milligrams, has risen to $3.60 per bottle while the cost of the meprobamate bulk chemical compound to Carter has dropped from $4.25 to less than 90 cents per pound, or from 19.2 cents to 4.5 cents per bottle. Indeed, it is still dropping. A copy of a price list of a broker, M. W. Hardy & Co., Ltd., dated February 1969, lists meprobamate at $1.92 a kilo, which equals about 87 cents per pound. Thus, even accepting, Carter-Wallace's tableting and bottling costs, its final dosage form cost is now approximately 21.9 cents and its profit per bottle of 50 tablets, 400 milligrams, has risen from 740 to 1,640 percent. On the other hand, the pharmaceutical houses presently paying Carter-Wallace $23.30 per pound for the bulk material have an additional manufacturing cost over Carter-Wallace of $22.40 per pound, or 97 cents per bottle of 50 tablets, while its price to the wholesale trade currently averages $1.10 per bottle of 50.

In sum, Carter-Wallace buys meprobamate bulk chemical compound for less than 90 cents per pound, and sells it to pharmaceutical houses at $23.30 per pound for a 2,600-percent profit. In addition, it puts its own label on the finished tablet manufactured by someone else which it sells to the wholesale trade at $3.60 per bottle of 50 for a 1,640-percent profit. The pharmaceutical house which purchases the bulk material from Carter-Wallace at $23.30 per pound just about breaks even when it sells the finished tablets to the wholesale trade at $1.10 per bottle of 50. The following chart demonstrates the changes in the market situation since 1962:

	1962	1969
Carter-Wallace's cost of bulk meprobamate per pound	$4.25	$0.90
Carter-Wallace's price for bulk meprobamate per pound	$20.00	$23.00
Carter-Wallace's profit on bulk meprobamate per pound (percent)	475	2,600
Carter-Wallace's cost of finished tablets, 50, 400 (milligrams)	$0.366	$0.209
Carter-Wallace's price to wholesalers, 50, 400 milligrams	$2.70	$3.60
Carter-Wallace's profit on finished tablets, 50, 400 milligrams (percent)	740	1,640

Various agencies of the U.S. Government, including the Departments of the Army, Navy, and Air Force as well as the Veterans' Administration, purchased substantial quantities of meprobamate tablets from sources other than Carter-Wallace for use by the Armed Forces and veterans hospitals. On September 14, 1967, Carter-Wallace filed a patent infringement suit for damages of $8,000,000 against the United States in the Court of Claims. On March 29, 1968, the Government filed its answer, in which it charged that Carter-Wallace "has combined and conspired to restrain and combined and conspired to monopolize, and attempted to monopolize interstate and foreign trade and commerce in meprobamate in violation of sections 1 and 2 of the Sherman Act thereby rendering said patent unenforceable."

The patent on this drug was issued in 1955, and for the last 15 years the firm has been reaping tremendous profits. Carter-Wallace's profits compared to its costs, on both bulk meprobamate and finished tablets are nothing short of sensational. Yet, this position is being maintained by the 1962 consent judgment which allows Carter-Wallace to wring the maximum possible price from the public.

The effect of the Department of Justice's 1962 consent decree is to provide Carter-Wallace with an umbrella and allows the firm to charge unconscionable prices.

The U.S. Government 2 years ago charged that Carter-Wallace has conspired to monopolize, and has attempted to monopolize trade and commerce in meprobamate, in violation of sections 1 and 2 of the Sherman Act.

On June 11, 1970, the Department of Justice repeated its claim that the meprobamate patent is invalid and void and that Carter-Wallace through written contracts with other firms, first, has allocated markets; second, tried to control the use of meprobamate even after selling it to other firms; third, sold meprobamate with the provision that the validity of its patents would not be contested, and, fourth, sold to certain large firms at a lower price than it charged other customers to the competitive disadvantage of such customers.

In view of the charges by the Department of Justice, I believe it would be in the public interest for the Department to reopen the consent judgment or to consider the initiation of new proceedings against Carter-Wallace. Carter-Wallace's prices for meprobamate and its ability to maintain them at such a high level should be thoroughly explored so that the public will understand why it is paying such high prices for this drug.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempport. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

NOMINATIONS—SUSPENSION OF SENATE RULE XXXVIII DURING ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that paragraph of rule XXXVIII of the Standing Rules of the Senate relating to proceedings on nominations be, and it is hereby, suspended with respect to nominations unacted upon during the present session, and the status quo shall not be affected by the October 14 to November 16 adjournment of the second session of the 91st Congress.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the morning business is concluded the Senate proceed to the immediate consideration of Calendar No. 1282, H.R. 4432.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the amendments of the Senate to the bill (H.R. 17654) to improve the operation of the legislative branch of the Federal Government, and for other purposes.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 17809) to provide an equitable system for fixing and adjusting the rates of pay for prevailing rate employees of the Government, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. DULSKI, Mr. HENDERSON, Mr. UDALL, Mr. CORBETT, and Mr. GROSS were appointed managers on the part of the House at the conference.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 18583) to amend the Public Health Serv-

ice Act and other laws to provide increased research into, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug-dependent persons; and to strengthen existing law enforcement authority in the field of drug abuse; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. JARMAN, Mr. ROGERS of Florida, Mr. SATTERFIELD, Mr. SPRINGER, Mr. NELSEN, and Mr. CARTER were appointed managers on the part of the House at the conference.

The message also announced that the House had passed a bill (H.R. 19590) making appropriations for the Department of Defense for the fiscal year ending June 30, 1971, and for other purposes, in which it requested the concurrence of the Senate.

The message further announced that the House had agreed to the following concurrent resolutions, in which it requested the concurrence of the Senate:

H. Con. Res. 774. Concurrent resolution providing for an adjournment of the two Houses from October 14, 1970, to November 16, 1970; and

H. Con. Res. 775. Concurrent resolution authorizing the Speaker of the House and the President of the Senate to sign enrolled bills and joint resolutions notwithstanding the adjournment of Congress from October 14, to November 16, 1970.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the President pro tempore:

H.R. 140. An act to authorize the establishment of the Andersonville National Historic Site in the State of Georgia, and for other purposes;

H.R. 4172. An act to authorize the Secretary of the Interior to provide financial assistance for development and operation costs of the Ice Age National Scientific Reserve in the State of Wisconsin, and for other purposes;

H.R. 9548. An act to amend section 15–503 of the District of Columbia Code with respect to exemptions from attachment and certain other process in the case of persons not residing in the District of Columbia;

H.R. 10837. An act for the conveyance to Pima and Maricopa Counties, Ariz., and to the city of Albuquerque, N. Mex., of certain lands for recreational purposes under the provisions of the Recreation and Public Purposes Act of 1926;

H.R. 12960. An act to validate the conveyance of certain land in the State of California by the Southern Pacific Co.;

H.R. 13125. An act to amend section 11 of the act approved February 22, 1889 (25 Stat. 676), as amended by the act of May 7, 1932 (47 Stat. 150), and as amended by the act of April 13, 1948 (62 Stat. 170) relating to the admission to the Union of the States of North Dakota, South Dakota, Montana, and Washington, and for other purposes;

H.R. 14685. An act to amend the International Travel Act of 1961, as amended, in order to improve the balance of payments by further promoting travel to the United States, and for other purposes;

H.R. 15012. An act to authorize a study of the feasibility and desirability of establishing a unit of the national park system to commemorate the opening of the Cherokee Strip to homesteading, and for other purposes;

H.R. 17575. An act making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending June 30, 1971, and for other purposes;

H.R. 18410. An act to establish the Fort Point National Historic Site in San Francisco, Calif., and for other purposes;

H.R. 18776. An act to establish in the State of Michigan the Sleeping Bear Dunes National Lakeshore, and for other purposes; and

H.J. Res. 1396. Joint resolution to extend the time for conducting the referendum with respect to the national marketing quota for wheat for the marketing year beginning July 1, 1971.

HOUSE BILL REFERRED

The bill (H.R. 19590) making appropriations for the Department of Defense for the fiscal year ending June 30, 1971, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. MCGOVERN) laid before the Senate the following letters, which were referred as indicated:

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the opportunities for improvement in the administrative and financial operations of the U.S. district courts, judicial branch, dated October 8, 1970 (with an accompanying report); to the Committee on Government Operations.

REPORT OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

A letter from the Chairman, Federal Deposit Insurance Corporation, transmitting, pursuant to law, a report of the Corporation, for fiscal year 1969 (with an accompanying report); to the Committee on Banking and Currency.

PETITION

The ACTING PRESIDENT pro tempore (Mr. MCGOVERN) laid before the Senate the petition for redress of grievances of Orville L. Cain, which was referred to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIBLE, from the Committee on the District of Columbia, without amendment:

S. 3748. A bill to provide for the removal of snow and ice from the paved sidewalks of the District of Columbia (Rept. No. 91–1310);

H.R. 10335. An act to revise certain provisions of the criminal laws of the District of Columbia relating to offenses against hotels, motels, and other commercial lodgings, and for other purposes (Rept. No. 91–1311); and

H.R. 14982. An act to provide for the immunity from taxation in the District of Columbia in the case of the International Telecommunication Satellite Consortium, and any successor organization thereto (Rept. No. 91–1312).

By Mr. BIBLE, from the Committee on the District of Columbia, with an amendment:

H.R. 10336. An act to revise certain laws relating to the liability of hotels, motels, and similar establishments in the District of Columbia to their guests (Rept. No. 91–1313); and

H.R. 13565. An act to validate certain deeds improperly acknowledged or executed (or both) that are recorded in the land records of the Recorder of Deeds of the District of Columbia (Rept. No. 91–1314).

By Mr. BIBLE, from the Committee on the District of Columbia, with amendments:

S. 3747. A bill to amend the District of Columbia Code to increase the jurisdictional amount for the administration of small estates, to increase the family allowance, to provide simplified procedures for the settlement of estates, and to eliminate provisions which discriminate against women in administering estates (Rept. No. 91–1315); and

S. 3749. A bill relating to crime in the District of Columbia (Rept. No. 91–1316).

By Mr. HATFIELD, from the Committee on Interior and Insular Affairs, with amendments:

S. 1142. A bill to authorize and direct the Secretary of Agriculture to classify as a wilderness area the national forest lands adjacent to the Eagle Cap Wilderness Area, known as the Minam River Canyon and adjoining area, in Oregon, and for other purposes (Rept. No. 91–1317).

ADDITIONAL COSPONSOR OF A BILL

S. 1424

At the request of the Senator from Wisconsin (Mr. NELSON), the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 1424, the Truth-in-Packaging Act.

PROPOSED AMENDMENT OF THE CONSTITUTION RELATIVE TO EQUAL RIGHTS FOR MEN AND WOMEN—AMENDMENTS

AMENDMENTS NOS. 1043 THROUGH 1046

Mr. ERVIN submitted four amendments, intended to be proposed by him, to the joint resolution (H.J. Res. 264) proposing an amendment to the Constitution of the United States relative to equal rights for men and women, which were ordered to lie on the table and to be printed.

AMENDMENT NO. 1047

Mr. ALLEN proposed amendments to House Joint Resolution 264, supra, which were ordered to be printed.

ADDITIONAL STATEMENTS OF SENATORS

TISHRI 10—1970: THE DAY OF ATONEMENT; OCTOBER 9–10: TIME OF NATIONAL ASSESSMENT

Mr. NELSON. Mr. President, the Nation's Jewish community is at present observing the last days of the High Holidays, and this evening will begin Yom Kippur, the Day of Atonement. For world Jewry, this has been a period of contemplation and reflection, a time to seek forgiveness for the transgressions of the past, and a time to reach for the strength, the understanding, and the wisdom to face the problems and the issues of the ensuing year.

The High Holy Day message of the Jewish Theological Seminary of America sets the earnest tone of these days in a concluding line from the "Ethics of the Fathers"—2:20:

The day is short. The work is hard. . . . Ours is not to complete the task. Yet neither are we free to neglect it.

This is also a time of reflection for our entire country as we attempt to understand and come to grips with the complex problems which presently test us as a nation and a society: the issues of war and unrest abroad, and the serious challenges of violence, racism, crime, poverty, drug addiction, environmental destruction, and institutional paralysis here at home.

The message of the Jewish Theological Seminary of America which was printed in yesterday's New York Times focuses on questions and thoughts which are not restricted by religious affiliation. It speaks to the mind and conscience of all citizens who are concerned about the future direction of this society, and who are unwilling to neglect these challenges.

I ask unanimous consent that the 1970 High Holy Day message of the Jewish Theological Seminary of America, entitled "Who are the Addicted?" be printed in the RECORD.

There being no objection, the message was ordered to be printed in the RECORD, as follows:

WHO ARE THE ADDICTED?

It is not hard to point out those who are addicted: who turn to alcohol or drugs or violence, seeking a quick release from problems they feel helpless to attack.

But why do *we* so often try short-cuts to the good, deceiving ourselves that it can be easily achieved?

It is, of course, easier to see this in the lives of others than to recognize it in our own.

We see it tragically today in the growing numbers of our young who addict themselves to drugs.

They profess to be living *more fully* when they seek to make their contact with the good through the chemistry of drugs.

Yet in so doing are they not refusing to face the challenges, the persistent struggles, and even the frustrations, required to achieve *any* good?

Are they living more fully—or, instead, are they evading life?

Yet how many of their elders are also addicted, in their own ways, to evading reality?

AS PARENTS

How many of today's parents are facing-up to the reality that there are *no* short-cuts to the good, within their own home?

They will often imagine, with all sincerity, that they are providing a good life for their children and themselves by multiplying every material security for their family. As though any amount of material goods and ambitions can be *enough* to create a healthy family.

To be a parent, instead of only a provider, is to give our children our presence, as well as our presents. It is to understand them; and to give them our patience as well as one love.

It is not only to instruct but also to listen; not only to criticize them but to accept and respond to their criticism, as well.

For how else can we teach our children to listen and respond to us?

In what other ways can we hope to reach our children deeply enough to shape their characters and their lives for the good?

To imagine there is some lesser or easier way is to be addicted to an evasion of reality.

OUR TEACHERS

How many educators, in this age of wonderful technologies, have become addicted to the uses of short-cuts to a good education?

We must never diminish our attention to the crucial needs for improving and expanding all of our educational resources.

Yet, all of us will fail to face reality if we assume that any combination of the material resources for good education can be substituted for the primary educational resource: a good teacher.

It never was easy to be a good teacher. Nor can it be. Involvement in one's subject is essential, but even more insistent is the unending need to be involved in the lives of one's students: to work unremittingly to transmit to them, not information alone, but also the desire to learn—and to build the student's character by the teacher's consistent example of what good character means.

We can be sure that nothing less can teach wisdom as well as knowledge; nothing less can truly educate our young.

THE LEADERS OF OUR SOCIETY

Our leaders fail us whenever they turn to illusory short-cuts to the good.

We, and they, must not lose sight of the inescapable fact that no new weapon-systems, no new laws, no new government programs, important as they may be, are *enough* to bring the solutions to the problems which overwhelm us today.

Anyone who imagines he has found, or can find, some abrupt way to solutions is wrong. And leaders who yield to the temptation of offering simple answers, where there are none, are turning their backs on reality instead of coping with it. They too are addicted to the immediate rather than the good.

Such addictions become profoundly dangerous as we move against the stubborn, complex problems of our time: of our cities, of our nation, of the world—of our bitter racisms, our violences at home and abroad, the stain of our poverty-stricken and of the world's poverty-stricken.

What we need from our leaders—as much as from ourselves, our young, our parents and our teachers—are the great strengths of reality: vision *and* character. We need their determination and dedication, and our own, to keep advancing on the long road to the good—whatever difficulties and disappointments and frustrations we may find on the way.

Therefore, we must know that, in every aspect of our lives, and of society . . .

It is as much an error to be overconfident, when some small advance toward the good is achieved, as it is to be pessimistic because more has not yet been accomplished.

"The day is short. The work is hard . . . Ours is not to complete the task. Yet neither are we free to neglect it."—Ethics of the Fathers [2:20].

NATIONAL WHEAT INSTITUTE

Mr. MANSFIELD. Mr. President, it is a coincidence, yet nonetheless significant, that this year's "Day of Bread" observance on October 6 occurred almost simultaneously with the formation of the National Wheat Institute. Day of Bread is a symbolic expression of international gratitude for the staff of life. As such it serves to focus worldwide attention on the great contribution wheat makes to the human diet, and the important qualities that make wheat a major weapon in the fight against hunger and malnutrition. This year's observance is enhanced considerably by the formation of a new organization which will attempt through a national research and promotion program to make wheat even more attractive and beneficial to people at home and abroad.

WHEAT'S NEW DIMENSION: THE AGE OF INTELLIGENT CONSUMPTION

The work of the State wheat commission in my own State and in the nine other commercial wheat States has proven beyond a doubt that research and promotion funds can be put to constructive use to increase utilization of this basic commodity.

Basic and applied research authorized by these commissions have played a major role in unlocking the nutritional secrets of wheat. But until now, their activities have lacked cohesive and comprehensive support on the national level.

Now, for the first time, a program that is national in scope is being implemented to seek expanded exports and to achieve an elusive, yet basic, objective of the American wheat producer: to break the 40-year-old cycle of declining per capita consumption.

Based in Washington, the National Wheat Institute will focus on two areas of critical importance: First, research on enrichment, fortification, and market development; and second, a change in public attitude that, hopefully, will bring about more widespread appreciation for wheat's excellent nutritional qualities.

Figures on per capita U.S. wheat consumption for the past 40 years vividly dramatize the need for such a program. During that period, flour consumption has dropped from 169 pounds to 112 pounds, and even though the rate of decline has slowed sharply in recent years, the net result is that Americans now are eating about a third less wheat than previously.

The trend is especially distressing to the American wheat producer, who finds himself hemmed in by a somewhat static domestic market in which population increase alone provides room for growth. In addition, the wheat producer is beset by the same chronic ills that plague other major segments of agriculture: his costs for supplies, equipment, taxes—virtually everything he buys—continue to rise, but his prices stay the same.

From his standpoint, the formation of this new organization is indeed a hopeful sign. Before we examine the potential it offers, we should consider how this organization came about, and how it will be funded.

During the 1968–69 farm program year, here was an accumulation of approximately $4.2 million in the Wheat Inverse Subsidy Pool, which was established as a means of keeping our wheat competitive with world prices. Because of pricing arrangements under the International Grains Agreement during 1968, world wheat prices for much of that year held about our domestic prices—the only recent year in which such conditions have prevailed. Fewer payments from the pool thus were needed to keep our wheat moving into international trade. And, the books at USDA showed a balance of $4.2 million at the end of the program year.

The mere disbursing of a pool of that size would pose considerable difficulty—

especially since approximately 832,000 wheat producers participated in the program. More than half the refunds to producers would be for less than $3.

And so, Congress, by a unanimous vote in both Chambers, approved legislation that gives producers the opportunity to accomplish jointly what they could not possibly do alone: to sponsor a comprehensive program designed to increase utilization and to improve their overall competitive position.

I emphasize the point that Government funds are not involved in this program. I also emphasize the point that this is not a scheme to usurp funds that rightfully belong to producers. The right of the individual to withdraw his pro rata contribution from the pool has been carefully safeguarded. The legislation passed by Congress provides for a 90-day period in which any producer can withdraw his contribution to the fund—and none of the money can be spent until that 90 days has expired.

I believe the great majority of producers will welcome the opportunity to participate in a program of this kind—that they will quickly recognize and accept the challenge to achieve a common objective.

Certainly this is the quickest way for wheat producers to generate needed and dramatic impact; it is also the least painful way financially. Actually the possible refunds would only amount to 0.5 percent times the producers 1968 certificate payment.

The fact that the program will not work a hardship on producers is fairly evident from the breakdown on the size of the payments—or possible refunds—involved: 229,000 would be for less than a dollar; 417,000 would be for between $1 and $5.79; and only about 5,000 producers are eligible for a refund of more than $58.

The most important questions from the producer's standpoint are:

Who will administer the funds once a determination has been made of how much money is available?

What potential does the program offer?

What projects would the Institute undertake?

First, the funds will be administered by wheat producers serving on the Institute's board of directors. These producers will also represent the general farm organizations who founded the National Wheat Institute: U.S. Durum Growers, NFO, Farmers Union, National Grange, and National Association of Wheat Growers. The Board will have an ex officio member from USDA, and the Secretary of Agriculture will also approve specific program projects.

In addition to this organization structure, the Institute will also have an advisory committee consisting of representatives of other segments of the wheat industry, such as the Millers National Federation, the American Bakers Association, the Wheat and Wheat Food Foundation, and others. The advice and counsel of technical advisers from universities and research organizations will also be available to the Institute.

The exciting side of this story is that such an undertaking may well trigger a major shift in emphasis for wheat, a shift in which there is less concentration on conspicuous production, and much greater emphasis on intelligent consumption.

In the past few decades, the American wheat producer has made tremendous strides from a production standpoint. Per acre yields nationally have risen dramatically in the past 20 years—from about 20.7 bushels per acre—the 1950–60 average—to about 30.7 bushels per acre in 1969.

Yet, wheat has fallen far short in the critical areas of utilization. Exports have risen, yes. But not enough. In addition, the wheat industry has been unable to combat effectively the present deplorable consumption trend.

The solution to this problem will be difficult at best; it will require a fundamental change in public attitude.

When the economy of a nation improves significantly, as ours has in recent years, the traditional foods in the diet—usually those high in starch content, and relatively inexpensive—decline in utilization. In the United States we have seen a terrific increase in consumption of meat in the past decade or so, and this meant a general upgrading in the diets of consumers primarily because meat is an excellent source of protein.

Yet converting grain into animal protein is an expensive process; it takes 10 pounds of feed to make one pound of beef; about 2 pounds of feed to make a pound of chicken; and about 3 pounds of feed to make a pound of eggs. Most of the underdeveloped countries cannot afford to make that conversion.

Here we can, and while we have witnessed an amazing increase in consumer demand for meat, we have also seen a reduction in demand for starch-based foods.

Most Americans have become extremely diet conscious. The unfortunate aspect for wheat is that breadstuffs are distinguished in the public mind as high in starch content—something to steer clear of it you do not want to get fat. It is unfortunate because the facts speak otherwise. The nutritionists make an excellent case for wheat as a basic part of the diet—the possibilities through enrichment and fortification hold fantastic potential—but only if basic research is applied on a practical level. This coupled with more intelligent consumption on the part of the public can have a strong positive impact for wheat.

This dual challenge should serve as a guidepost for the new National Wheat Institute.

The experts seem in general agreement that traditional uses provide the greatest potential for expanded domestic wheat utilization. Still we need to know a great deal more about established eating habits. More knowledge about consumption patterns is needed in order for nutritionists to make good value judgments about the overall role bread plays in our diet. Once this is known, enriched and fortified products can be made that are attractive in terms of taste and texture and also from an economic standpoint. For example, considerable evidence now suggests that fortification of flour-based foods represents the most appropriate way to improve the iron content of the American diet.

And so to increase domestic consumption, wheat needs new and improved products; there is an urgent need for an organization that will not only help develop these products, but will also promote them with the general public.

The Institute's other major target area—exports—is equally promising. Most of the world's population still depends on cereal grains as its primary source of caloric intake. And of the world's total acreage planted to cereals, 31 percent is devoted to wheat.

Japan recently became our first billion dollar customer for agricultural products, and if its example of wheat usage is followed by the developing nations, the possibilities for increased wheat exports are staggering. But again, these nations will develop as good customers for American wheat only as a result of sound technological, economic and market development work.

The role of wheat and other cereal grains in combating world hunger will become increasingly important; the basic problem of nutritional deficiency boils down to one of finding a digestible and acceptable balance of proteins. And in many countries livestock sources are out of the question for cost reasons for many years to come. The problem is made especially complex because even if sufficient good quality food is available, getting it into the diet of illiterate, unknowing and unbelieving people may still be impossible. The obstacles here again challenge the initiative of the wheat industry because centuries' old habits, traditions, taboos and methods must be erased or circumvented. Whole national habits of eating, cooking, serving, preparing, marketing, growing, processing, storing, and selling are involved.

Yet, the technology needed to overcome these problems is emerging at a rapid rate.

The National Wheat Institute should give a significant boost to the effort already underway to put this technology to work. Some of our competitors, such as Canada with its central marketing organization, are making major strides in this field, and it is essential that we keep pace with them.

I am especially encouraged that the Nation's wheat producers will have for the first time at the national level a source of guidance and assistance in the critical area of increased utilization.

It represents a major opportunity to attack wheat's persistent and perplexing problem of underconsumption at home, and meet the challenge of expanding exports abroad.

NEBRASKA WANTS ELECTORAL VOTE CONCEPT RETAINED

Mr. HRUSKA. Mr. President, there are many who hold firm and abiding judgment that Senate Joint Resolution 1 is not only unwise but dangerous. The joint resolution seeks to bring about the election of the President of the United States by direct popular vote. It would totally abolish the electoral college.

While there are many objections to such a change, among the most frequently mentioned are that it would substantially change the form of our Federal Government, and for the worse, and also that it would greatly reduce the voting power and the position of the smaller, less populous States, like Nebraska.

Recent editorial comment in Nebraska newspapers shows that attention and study beyond the slogan of one-man, one-vote has been devoted to this vital subject.

The Omaha World Herald editorial cites nine "valid" reasons for opposing the direct popular election. Each of those reasons is sufficiently described to carry much weight. The Lincoln Journal editorial points out that the change would produce "its own set of uncertainties, doubts, fears, and imponderables that could be even more appalling than those of the present procedure."

The Journal goes on to say that the direct popular vote would "remove one of the sturdiest girders of our federal republic system" and that it would tend to concentrate this power in the large population centers.

The two glaring defects of the present electoral system are: First. The individual presidential electors are free to cast their votes for whomsoever they please, regardless of the votes cast by the State; second, if no candidate gets a majority of electoral votes, each State has one vote, which is cast by the State delegation serving in the House of Representatives. The correction of these errors is simple: First, abolish personal electors and simply have an automatic tallying of the electoral votes of each State. Second, if a run-off is necessary, have a joint session of Congress, where each Member of the House and Senate would cast one vote for either of the two highest candidates.

Recently a great many unsupported statements were made about how the "people" in Nebraska feel about this issue.

Last week a non-Nebraskan, visiting in the State for political purposes, said he was "willing to bet" that a poll in the Cornhusker State would show a majority in favor of popular voting.

On this subject, each Nebraskan would have his own ideas. An editorial in the Lincoln Evening Journal spoke on this subject in an editorial entitled "Worst Conceivable Time." It is well put.

I ask unanimous consent that the editorial from the Omaha World Herald and the two editorials from the Lincoln Evening Journal be printed in the RECORD.

Similar consent is requested as to Nebraska Unicameral Resolution 104, approved on September 19, 1969, by a vote of 29 to 2 and as introduced by Senator Henry F. Pedersen, Jr. It calls for retaining the electorial vote system under the so-called "District" plan.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

[From the Sunday World-Herald, Sept. 27, 1970]

WHY WE OPPOSE ELECTION

Reader Brian R. Hill challenges us in a Public Pulse letter today to give "a valid reason" why the president of the United States should not be chosen by direct popular election.

Here are nine reasons we consider valid. It should be emphasized that we are speaking of Sen. Birch Bayh's measure currently before the Senate. It is a proposal for a constitutional amendment which would abolish the Electoral College. The candidate receiving the largest popular vote would be elected, provided he received at least 40 per cent of the votes cast. If he did not, a runoff election would be held between the two highest vote-getters.

1. Direct-popular election would encourage splinter candidates and the formation of single-issue parties.

Much of the concern behind present reform attempts arose from the George Wallace threat in 1968. It was feared that Wallace would get enough electoral votes to throw the election into the House, and that Wallace thus would be placed in a position to bargain with the two major candidates for their support.

Under the Bayh plan, there could and probably would be several splinter candidates, making a run-off election a distinct probability. The two leading candidates would be under tremendous pressure to make deals with the splinter groups for their support in the runoff.

2. Under the Bayh proposal, a candidate could win the presidency with only 40 per cent of the vote, even though he carried no states.

A weakness of the present system is that a candidate can receive fewer popular votes than his opponent, but still win the presidency in the Electoral College. We do not believe it would be an improvement to enable a man to become president on the votes of a few big cities.

3. The federal system, already on shaky ground, would be weakened further, possibly terminally, by removing the states from the electoral process.

4. The rights of all minorities would be endangered by the removal of incentive for compromise of political ideas.

It no longer would be necessary, under the Bayh plan, for a national party to put together a broad-based program designed to appeal to a wide cross-section of the electorate. Demagoguery would be encouraged; conceivably the presidential election would be determined by television campaigning in the big cities.

5. Direct popular election would require federal election standards and policing to which all states would have to submit, regardless of their own laws or constitutional provisions.

The complications that would arise from this are being foreshadowed by the confusion over the congressional enactment providing an 18-year-old voting age.

6. The opportunities and temptations for vote fraud would be enlarged. Under the present system, the effect of ballot stealing is localized. In a national direct vote, fraud would have a direct impact on the final outcome.

7. The vote-counting process would be long and unwieldy. With run-offs and recounts, the nation would be kept in an unsettling suspense for weeks, possibly months.

8. The participation of small-population states in the political process would be reduced measurably.

It has been calculated that Nebraska's voting power would have been reduced by 20 per cent in 1968 had there been direct election of the president. Thirty-three other states would face diminution of political "clout" in varying degree.

9. The Bayh plan is characterized by numerous procedural uncertainties.

How would election standards be set and enforced? Who would determine which parties could field candidates? How long would it take to count votes, and how would challenges be resolved?

Reader Hill characterizes our opposition to the direct election as "moss-backed conservatism." If that is what it is, then someone is in dubious company, for we are joined by such as Theodore White, columnists Mankiewicz and Braden, Professor Alexander Bickel of Yale Law School, former Eugene McCarthy aide Richard N. Goodwin, Sen. Thomas Eagleton of Missouri, and a host of other certified liberals.

We believe the electoral system should be reformed. But we do not believe it should be reformed in a way that would destroy the two-party system, usher in the politics of ideology, endanger the political rights of minorities and change the United States overnight from a federal republic to a unitary democracy.

[From the Lincoln Evening Journal and Nebraska State Journal, Sept. 12, 1969]

ELECTING A PRESIDENT

The presidential election system of this country does contain "uncertainties, doubts, fears and imponderables," as Rep. Emanuel Celler, D-N.Y., contended in House debate on the subject.

But it does not necessarily follow that a system of direct popular election of the President is required to overcome these horribles, which is proposed by Celler, chairman of the House Judiciary Committee.

It is quite possible, in fact, that direct popular election of the President, scrapping the whole electoral system, could produce its own set of uncertainties, doubts, fears and imponderables that could be even more appalling than those of the present procedure.

Actually, the major faults of the existing system are not so extreme as to warrant such a far-reaching change as the direct election would entail; nor is the correction of these faults so controversial as to jeopardize any change at all, as is the case of the fight for direct election.

The two glaring defects in the present electoral system are: (1) the freedom of individual electors in some states to cast their presidential ballot for whomever they please, without regard for the expressed preference of the voters in those states; and (2) throwing the decision into the House of Representatives, with one vote for each state, if no presidential candidate has a majority of the electoral votes.

The first of these could be disposed of by eliminating the position of "elector" and simply having an automatic tallying of the electoral votes of all the states.

The second would require only a change to, preferably, a run-off election between the two highest candidates or designation of both the House and Senate, with each member having a vote, as the decisive element where an electroal majority is lacking.

Another shortcoming, less severe, in the present system is the "winner-take-all" distribution of electoral votes in each state.

This could be remedied—and, in the opinion of The Lincoln Journal, should be remedied—by going to the "district" plan, under which one electoral vote would be allotted to each congressional district, determined by the outcome of the popular vote for President in that district, and two votes to each state at large, determined by the presidential vote in the whole state.

This would retain in integrity of the federal system, which is one of the unique features of this country's very successful political system, in which the states have certain powers of their own—specifically, in this case, the election of a President.

Elimination of the electoral concept in favor of a direct popular vote would remove one of the sturdiest girders of our federal republic system and move the country inevitably toward a unitary, centralized

democracy. It most certainly would weaken the influence that the more sparsely populated states now have on the selection of a President and would tend to concentrate this power in the large population centers.

The direct election opens a host of additional uncertainties such as federal control over election laws generally and the accessibility of third parties to the national ballot.

Finally, inasmuch as a large number of smaller states would lose their electoral identity in a change to direct elections, it would seem almost certain that this approach could never be ratified by the necessary 38 states.

This makes the current congressional preoccupation with direct election worse than an exercise in futility; it undoubtedly is delaying the urgent changes needed in the present system.

[From the Lincoln Evening Journal and Nebraska State Journal, Oct. 3, 1970]

WORST CONCEIVABLE TIME

It was a little presumptuous of Sen. Birch Bayh, Indiana Democrat, to come into Nebraska and say that he would be "willing to bet" that a poll of Nebraskans would show a majority in favor of direct popular election of the President, even though the state's two senators are battling the proposition.

It is tragic that such important legislation was not pushed early in the session so that there could have been adequate debate and some opportunity for amendment reform to be submitted to the states with the possibility of consideration before the next presidential election.

The amendment, as presented by Sen. Bayh, had vast implications for the American political system. It was brought to the floor at the worst conceivable time for methodical and considerate debate; a time when there was a rush for adjournment and to hit the campaign trails.

After George Wallace, as a third party candidate, threw fear into the party leaders and serious Americans in 1968, there was much talk about a need for change, but little consensus as to what the change should be.

Possibly if there had not been a filibuster against the bill the Senate might have voted for it. Yet taking the risks of the worst that can happen under the present system is preferable to hastily passed legislation which would change the American system of electing presidents.

To Sen. Bayh it could be said: he might have known the Democratic audience he was addressing but it is doubtful if he could win much money betting on how Nebraskans would vote.

LEGISLATIVE RESOLUTION 104

Whereas, there are now pending in the Congress of the United States several proposals for changing the method of electing the President and the Vice President of the United States; and

Whereas, there is a need for a change in the present electoral college system; and

Whereas, one such proposal is contained in Senate Joint Resolution 12 cosponsored by Senator Carl Curtis of Nebraska, and under this proposal each congressional district would have one electoral vote which would go to the winning presidential candidate, and each state would have two additional votes which would go to the winner in the state.

Now, therefore, be it resolved by the members of the Nebraska Legislature in eightieth session assembled:

1. That the Legislature endorses and urges the adoption of Senate Joint Resolution 12.

2. That copies of this resolution be sent to Senator Curtis and the other members of the Nebraska delegation in Congress.

HOPE FOR NEGOTIATED PRISONER SETTLEMENT STRONG

Mr. HATFIELD. Mr. President, despite the initial Communist denunciation of the peace proposals made by President Nixon Wednesday night, there is real hope progress can be made in gaining the release of American prisoners of war. The Communist reaction was as expected. Also as expected, their rejection of the Nixon proposals was not outright and irrevocable.

Viewed objectively, proposals by President Nixon this week and those made by the other side last month are less far apart than previously. Although we propose unconditional release immediately, and the Communists insist upon holding the POW's until completion of a political settlement satisfactory to them, at least, for the first time, both proposals are on the table side by side.

Prior to this week there has been no real room for negotiations which both sides would recognize. That there is now such a possibility for negotiations is a real sign of hope.

ARTICLE II, SECTION ON MENTAL HARM OF GENOCIDE CONVENTION IS MADE CLEAR BY PRESIDENT'S PROPOSED UNDERSTANDING

Mr. PROXMIRE. Mr. President, in past years there have been some questions concerning the exact meaning of the section of article II of the Genocide Convention referring to acts causing "serious mental harm." The question, and I consider it most important, centers around the definition of "mental harm."

It is clear to me that the President's proposed understanding, which would be issued by the United States, makes the meaning and intent of this phrase perfectly clear. The proposed understanding reads:

That the United States Government understands and construes the words "mental harm" appearing in Article II(b) of this Convention to mean permanent impairment of mental facilities.

With this understanding, before a charge could be sustained, it would have to be proved that the person involved had suffered permanent impairment of their mental facilities. This standard would deter allegations of a frivolous nature. It also provides us with a guideline for interpretation in our courts.

I believe that the time has come for the entire Senate to discuss the ramifications of this convention, such as the one I have just mentioned. By bringing the Genocide Convention to the floor of the Senate in the post-election session, we could discuss all of the issues involved. I urge the Committee on Foreign Relations to consider action on this convention at the earliest possible date.

IMPROVED STREET LIGHTING IN THE DISTRICT OF COLUMBIA

Mr. BIBLE. Mr. President, I am sure that many Senators have noticed the beginnings of a bright, new look in certain areas of Washington, D.C., as a result of a new street lighting program begun by the District of Columbia Department of Highways and Traffic.

This program is aimed at making the major streets of Washington safe from crime, by eliminating the cover of darkness which is vital to the mugger and criminal element now preying on innocent citizens and small businesses in the community.

The Select Committee on Small Business—of which I have the honor of being chairman—in its hearings on the impact of crime against small business, cited street lighting as one of the major factors in the prevention of crime. The report of the Small Business Administration, "Crime Against Small Business," published by the Select Committee on Small Business in 1969, stated that "effective street lighting is one of the best deterrents to robbery and burglary."

This program, begun by the District of Columbia Highway Department, will certainly go a long way in providing protection for the many beleaguered small businessmen in high crime areas of the District of Columbia.

I am sure every Senator joins with me in urging the District of Columbia government to move forward as fast as possible to relight Washington and return the streets to the citizens.

For the information of all Senators, I ask unanimous consent that a letter which I received from the District of Columbia Department of Highways and Traffic, an editorial from the Washington Post of October 5, 1970, and an article published in U.S. News & World Report of September 21, 1970, be printed in the RECORD to provide additional detail on this program.

There being no objection, the item was ordered to be printed in the RECORD, as follows:

GOVERNMENT OF THE DISTRICT OF COLUMBIA, DEPARTMENT OF HIGHWAYS AND TRAFFIC,
Washington, September 30, 1970.

Hon. ALAN BIBLE,
U.S. Senate, Old Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: This is in regard to my recent telephone conversation with Mr. Evans of your staff, wherein we discussed a number of points concerning the street lighting program currently underway here in the District of Columbia.

As you may know, we have long held the belief that higher levels of street light intensity can be used as a deterrent to nighttime crime. Earlier studies conducted in other cities have indicated this in general terms, but insofar as we know, a controlled statistical study for determining the actual effect of high intensity street lighting on nighttime crime experience has never been carried out.

In view of this, we recently formulated a program in which four crime statistical areas were to be provided with high intensity street lighting. Known here in Washington as "Carney Blocks", these four areas include 113 city blocks. They were selected on the basis of high crime incidence as provided to us by officials of the Planning and Operations Division of the Metropolitan Police Department.

In conjunction with this, we requested and received a supplemental appropriation from Congress in the amount of $365,000 to implement the "Carney Block" program. Our plan calls for equipping all the streets in these blocks with high intensity lighting,

with higher lighting levels being directed toward arterial streets, and lesser ones on residential streets and alleys. This program is currently underway insofar as engineering is concerned. However, at the present time, only a very small number of units have actually been installed in the field.

Thus, insufficient time has elapsed to enable us to statistically determine the degree to which crime will actually be reduced in these experimental areas. However, based on the limited information available following the relighting of 7th Street, N.W., between Pennsylvania Avenue and New York Avenue, it appears that a reduction of approximately 30% in nighttime crime has occurred in this area. Therefore, we anticipate similar decreases in crime in the "Carney Blocks".

Now that you have some of the program background as it was originally conceived, you may wish to know a little more concerning our present activity in terms of high intensity lighting installations on other streets in the city. I believe you are aware of the high intensity lighting recently installed on Pennsylvania Avenue, S.E., between the Capitol and Barney Circle. This installation was funded from the "Carney Block" appropriation. I should also point out that high intensity lights were installed under special funding on the following streets:

14th Street, N.W., between New York Avenue and Spring Road.

7th Street, N.W., between New York Avenue and Florida Avenue.

H Street, N.E., between 2nd Street and Bladensburg Road.

The cost of lighting these streets was $110,000 and was completely financed through funds received from the Redevelopment Land Agency. Incidentally, the impact of the lighting on these three streets, referred to by the Redevelopment Land Agency as Civil Disturbance corridors, has been significant. Encouraging comments have been received not only from local residents and businessmen, but from other casual sources as well.

I believe that particularly as a result of these RLA projects, significant interest has been aroused on the part of members of the community for improvements in city-wide street lighting. In fact, the number of letters we are receiving requesting the installation of high intensity lighting has increased tremendously since 14th Street, 7th Street and H Street were relighted. For instance, requests have been received for high intensity lighting on Columbia Road, N.W.; 18th Street, N.W.; Georgia Avenue, N.W.; and Benning Road, S.E.; to name but a few.

A more recent development in our street lighting program was my appearance before the Law Enforcement Assistance Act Committee, who reviewed our application for a grant-in-aid for relighting additional high crime streets in the District of Columbia. Unfortunately, the response was not as favorable as we had hoped for, but we have been requested to make another presentation in approximately three weeks which should more clearly present the need I believe the community has for utilizing street lighting to make streets safer at night. In this connection, a staff engineer is presently contacting the Inspector of each Metropolitan Police District, to obtain from him a determination as to the business streets on which he feels funds for improved lighting can be most efficiently expended.

I hope the information outlined here will be useful to you. I do wish to personally thank you for your continuing interest in our program and, at the same time, assure you that its execution will be vigorously and continuously pursued insofar as our financial capabilities permit.

Sincerely yours,

JOHN E. HARTLEY,
Assistant Director.

[From the Washington Post, Oct. 5, 1970]

THANKS FOR THE LIGHT TOUCH

If you've been downtown at night recently—perhaps for some of those Thursday evening shopping specials—you may have noticed that the city has done something very bright along the streets: new sodium vapor lights, more than twice as effective as those old purplish mercury vapor ones. In fact, the new units have made some blocks as bright at night as they are on sunny afternoons. Credit for the switch goes to the Metropolitan Washington Board of Trade, which campaigned hard for the project, and to the city's highway department, which is responding. Not only are the new lights apparently helping to cut down crimes in these areas, but they are making the downtown street more attractive for evening strollers.

[From U.S. News & World Report, Sept. 21, 1970]

WASHINGTON'S NEW LOOK AT NIGHT

A drive is on to sweep the shadows from Washington, D.C., and turn it into a city of light.

President Nixon likes the idea. Dismayed to find that the capital city these days is "abandoned by night" and "all but lifeless during the week-ends," he has reversed the 1964 edict of Lyndon B. Johnson which dimmed the lights inside the White House in the interest of economy.

To combat Washington's current image—as a city where crime is rampant and where many people are afraid to stay downtown after dark—Mr. Nixon is trying literally, to roll back the darkness.

FLAG WILL FLY

His campaign began with a symbolic gesture: The President ordered that the American flag which flies over the White House be appropriately illuminated so that it could legally be kept flying—and visible to tourists—all night long.

But symbolism is only a part of it.

Other Presidents had fought the darkness with patriotic fervor. The John F. Kennedys lighted the Jefferson Memorial for the first time. The Johnson Administration found the funds to floodlight the U.S. Capitol dome from dusk until dawn. New and dramatic lighting was installed at other great federal monuments. Yet the spreading blight of darkness and fear crept over the city's core.

Now, Mr. Nixon hopes, all that can be changed. The General Services Administration has a plan to light up the entire "Federal City"—or central part of Washington—after dark.

That effort was launched in April. Riot-torn areas of Washington were equipped with bright new street lamps which, according to Mayor Walter Washington, have brought a measurable decrease in crime. Plans are going forward to bathe every important federal building in light—Post Office Department, Internal Revenue Service and all others.

Target date for completion of this project is this Christmas. When the President lights the National Christmas Tree, the planners say, "He can have the added pleasure of lighting up the downtown sector at the same time."

PRESIDENTIAL STROLL

On September 9, Mr. Nixon took a daytime stroll through the Federal City area to see what else needs to be done to revitalize it.

The Federal City area is a stretch of land—just over a mile—that runs between the Capitol and the White House, and the area immediately around it—three or four blocks north and south.

The President came up with several suggestions. In the area around the Mall which is being cleared by tearing down old temporary buildings, Mr. Nixon envisaged a lively park, such as Copenhagen's Tivoli Gardens or the Bois de Boulogne in Paris, filled with restaurants and other attractions.

Along Pennsylvania Avenue, where commercial buildings have been giving way to huge federal buildings and asphalt parking lots, Mr. Nixon expressed distress at a lack of human activity.

"DO IT BY 1976"

To combat this, Mr. Nixon endorsed an ambitious plan to make Washington's heart "the most modern central city in the world"—and to do it by 1976, in time for the nation's bicentennial celebration.

"Hotels' restaurants, theaters, retail stores, housing and office space could be constructed in the next six years," Mr. Nixon said. He urged Congress to create a development corporation to achieve this end. It would be a nonprofit corporation which would borrow funds from the Government, but eventually pay them back to the Treasury.

On his stroll through the city, the President encountered a number of tourists, many of them from foreign countries. He commented: "This is the capital. They should see it. They should see it beautiful."

So the drive is on to make Washington beautiful—by night as well as by day. In the President's words: "Time is short. . . . Let us do it now."

Nightfall, in Washington, is becoming a magical hour for visitors.

As twilight fades, at one historic monument after another, hidden spotlights come into play. Forty-foot columns loom dramatically. Fountains spring from dimness into stunning life.

The effects are striking—but beauty is not the only goal. Says a Government official of the lighting: "Special emphasis will be placed on entrances, archways and other areas where intruders have been able to lurk."

It is all part of the campaign to "light up the town" and make it a safe, happy haven for both residents, and the several million tourists who come to visit every year.

IMPORTANCE OF INTERNATIONAL TRADE TO KANSAS AGRICULTURE

Mr. HATFIELD. Mr. President, on behalf of the distinguished Senator from Kansas (Mr. PEARSON), who is necessarily absent today, I ask unanimous consent to have printed in the RECORD a statement by him entitled "Importance of International Trade to Kansas Agriculture" and a table related thereto.

There being no objection, the statement and table were ordered to be printed in the RECORD, as follows:

IMPORTANCE OF INTERNATIONAL TRADE TO KANSAS AGRICULTURE

Mr. PEARSON. Mr. President, the question of new directions in United States international trade policy is again the subject of considerable debate. And there is legislation before the Congress which would substantially modify our current trade policy.

It is entirely appropriate for Congress to undertake a major review of the present trade policy. Comprehensive hearings by the appropriate Senate committee will be essential in developing the background necessary for a full Senate debate and for the writing of new legislation.

Mr. President, we need more effective means of counteracting the threat of foreign dumping and subsidized imports. We need to strengthen the existing law in certain areas to better assure that foreign imports do not run contrary to domestic policy objectives or violate basic international interest.

By and large, however, I believe that the central objective should be that of expanding international trade not restricting it. We

have pursued an expansionist trade policy for over three decades. The nation as a whole has benefited from this policy as have all other nations in the world which have participated in this effort to expand trade among themselves.

In regards to international trade this is an extremely delicate period. There appears to be a rising tide of protectionism abroad as well as here at home. Therefore, we must be extremely careful in the adoption of new trade legislation. We must protect legitimate domestic needs but we must avoid actions which will invite retaliation in the form of restrictions by other countries against our exports.

American agriculture is particularly vulnerable to retaliation, especially from the Common Market countries and from Japan.

Nearly a fourth of this country's total crop production eventually reaches overseas markets. In fiscal 1970 we exported 41% of our wheat, 50% of our soy bean crop, and 15% of our feed grains. Altogether we sold $6.6 billion dollars worth of agriculture products abroad during fiscal 1970. This is the equivalent of 14% of the total cash receipts of farm marketing in the United States.

Kansas, the largest wheat producing state in the nation and a major producer of feed grains and soy beans, is especially affected by international trade conditions. During fiscal 1970, $314 million dollars worth of Kansas agricultural products were sold abroad. This is the equivalent of 18.3% of the total cash receipts from farm marketings in that year.

Exports are particularly important to wheat, feed grain, and soy bean farmers. For example, the value of Kansas wheat exported during fiscal 1970 represented 65% of the total cash receipts during that year. The value of Kansas feed grains exported represented 25% of cash receipts. And the value of Kansas soy beans exported represented 49.1% of cash receipts.

Mr. President, I ask unanimous consent that a table showing agricultural exports as a share of cash receipts of farm marketings for the fiscal years of 1966, 1968, and 1970, and also a table showing the total value of Kansas exports of all major farm commodities for fiscal 1970 with these values expressed as a percent of the total United States agriculture exports, be printed in the RECORD at the conclusion of my remarks.

Mr. President, it is apparent that action by the Common Market countries and by Japan, which are the largest foreign consumers of Kansas agricultural products, to restrict agricultural imports would have a profoundly adverse effect on the farm economy of Kansas. But the farmers would not be the only ones affected. A great number of persons in Kansas are employed in agriculturally related industries. A curtailment of agricultural exports would have a severe impact on their economic position as well.

Mr. President, I again emphasize that it is appropriate and desirable to subject United States trade policy to review. But new trade legislation should not be adopted without comprehensive and detailed study and a full scale debate.

In the writing of new legislation, we should provide protection where protection is due, but we would be ill advised, it would seem to me, to adopt a generally protectionist trade posture. We cannot afford to trigger an international trade war. Kansas agriculture, American agriculture, indeed the nation's economy in general, would suffer from such a war.

AGRICULTURAL EXPORTS AS A SHARE OF CASH RECEIPTS FROM FARM MARKETINGS, KANSAS AND UNITED STATES, FISCAL YEARS 1966, 1968, AND 1970

Commodity and year	Million dollars: Cash receipts from farm marketings [1]		Million dollars: Exports		Exports as percent of cash receipts or Kansas (percent)
	Kansas	United States	Kansas	United States	
Wheat: [2]					
1966	300.3	1,636.8	273.0	1,403.1	90.9
1968	278.6	1,917.2	189.2	1,277.5	67.9
1970	284.2	1,589.0	183.6	941.6	64.6
Feed grains: [3]					
1966	116.7	3,151.8	50.0	1,351.2	42.8
1968	142.5	3,767.9	49.1	1,000.3	34.5
1970	201.0	3,800.7	51.5	995.3	25.6
Soybeans:					
1966	33.5	1,812.3	16.2	734.4	48.4
1968	43.0	2,474.4	14.3	750.7	33.3
1970	38.3	2,498.0	18.8	1,069.0	49.1
Total:					
1966	1,209.4	39,349.8	392.2	6,680.9	32.4
1968	1,453.4	42,693.0	296.0	6,315.1	20.4
1970	1,717.8	47,229.2	314.0	6,646.3	18.3

[1] Cash receipts are estimates for 1965, 1967, and 1969.
[2] Includes wheat flour exports.
[3] Includes corn, barley, oats, and sorghum grains.

U.S. AGRICULTURAL EXPORTS AND KANSAS' SHARE OF PRINCIPAL COMMODITIES FOR FISCAL YEAR 1970

Commodity	Million dollars: Kansas	Million dollars: U.S. total	Kansas as percent of total
Wheat and flour	183.6	941.6	19.5
Feed grains	51.5	995.3	5.2
Soybeans	18.8	1,069.0	1.8
Lard and tallow	9.1	213.1	4.3
Hides and skins	7.2	157.3	4.6
Protein meal	5.6	322.6	1.7
Meats and meat products	4.9	140.0	3.5
Soybean oil	2.4	138.7	1.7
Dairy products	1.8	108.9	1.7
Vegetables and preparations	.3	209.0	
Rice, tobacco, flaxseed, cotton, cottonseed oil, fruits, poultry products, and edible tree nuts		1,741.3	
Other [1]	28.8	609.5	4.7
Total	314.0	6,646.3	4.7
Cash receipts from farm marketings 1969	1,717.8	47,229.1	
Exports as share of cash receipts (percent)	18.3	14.1	

[1] Miscellaneous agricultural products not included in the 18 major commodity groups.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

BUDGET AND ACCOUNTING IMPROVEMENT ACT OF 1970

The PRESIDING OFFICER. Under the order of yesterday, the Chair lays before the Senate Calendar No. 1282, S. 4432, which will be stated by title.

The legislative clerk read the title as follows:

A bill (S. 4432) to revise and restate certain functions and duties of the Comptroller General of the United States; to change the name of the General Accounting Office to "Office of the Comptroller General of the United States," and for other purposes.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIBICOFF. Mr. President, this bill is an outgrowth of hearings held last year by the Subcommittee on Executive Reorganization on the capability of the General Accounting Office to analyze and audit Federal programs. We also explored the relationship of GAO to Congress and the ways in which it can provide greater assistance in the legislative process.

We found that the Comptroller General's reports have resulted in the saving of millions of dollars and reform of programs throughout Government. However, these reports were frequently issued long after the event in question had occurred. The committee now believes that his Office can be even more useful to Congress by focusing on the results of on-going activities and new proposals. In this way, Congress can obtain the benefit of his views in time to halt unsound practices in their incipiency and select the most effective program alternatives.

The purpose of this bill is to strengthen and broaden the operations under the

Comptroller General's Office and focus its work on those activities which will be most relevant and meaningful to Congress. To achieve this, the bill assigns significant new responsibilities to the Comptroller General in analyzing and auditing Federal expenditures and reduces certain outmoded statutory auditing requirements over Government corporations and certain other special Federal operations. The bill also changes the name of the General Accounting Office to the Office of the Comptroller General of the United States and grants the Office authority to employ experts and consultants and to subpena records which it is already entitled to review.

Finally, the bill provides authority for the Comptroller General to institute suit and to appear in court with his own counsel where he differs with the Attorney General over the legality of certain Federal actions.

The bill contains seven titles:

Title I. Grants the Comptroller General authority to:

First, analyze legislation before Congress at the request of Members;

Second, audit periodically Federal research, development, construction, and procurement programs; and

Third, employ additional personnel to carry out his new responsibilities.

Title 2. Redesignates the General Accounting Office the "Office of the Comptroller General of the United States," renames the Assistant Comptroller General the "Deputy Comptroller General" and establishes two new positions of Assistant Comptroller General.

Titles 3 and 4. Amend the audit requirements for Government corporations and revolving funds to specify that they be audited only once every 3 years, rather than every year.

Title 5. Authorizes the Comptroller General to pay experts and consultants at the rate of level II on the executive pay scale. The highest rate GAO can now pay is GS–18.

Title 6. Grants GAO subpena power over the records of contractors it is otherwise entitled to review, and provides for the enforcement of subpenas.

Title 7. Provides that where the Comptroller General and the Attorney General differ as to the legality of a certain Federal expenditure the Comptroller General may bring suit in court, unless Congress disapproves such action, to seek a resolution of the dispute and represent his own position.

The total cost of the bill is estimated at about $9 million over a period of several years. This sum will be used to recruit and train 400 to 500 new GAO employees. However, the first year only 50 to 75 employees will be hired at a cost of $1 million.

Mr. President, Congress should be an equal partner with the Executive in the legislative process. But it now lacks the necessary information on which to base its judgments. Too often Congress is forced to accept a proposal or reject it, without knowledge of alternatives or the real facts about a program.

The dilemma of most Members was aptly described by one of our colleagues last year. He told the subcommittee:

The pressures of time are so great for Senators and Congressmen that it is often impossible for us to go into much detail. How can a legislator meet his responsibilities to his constituents when it comes to voting on a $20 billion bill, if he does not know what is in it?

Under this new legislation, the General Accounting Office—GAO—will be able to give Congress the help it needs to legislate more effectively.

In recent years a dangerous trend has developed in our Government. Congress has been losing its authority to the executive branch. This threatens to destroy the checks and balances which the Constitution has built into our system of government.

The Congress must begin to reassert its authority. But, as the majority leader recently observed:

Congress as a coequal branch of Government will exercise its equality as a branch only if it is willing to accept the responsibility of hard decisions on questions of policy. For Congress to make the type of contribution the Constitution envisioned, the burden of independent factfinding and judgmentmaking—must be—assumed.

With a budget of more than $200 billion and literally thousands of programs in more than 150 departments and agencies, it is obvious that the 535 Members of Congress cannot personally review every program or analyze in detail every legislative proposal. We need help to carry out these responsibilities.

The GAO can be a significant new source of assistance to Congress. For years GAO has assured the honesty of the Government's financial dealings. Now it is time to expand its mission—to bring its resources and unquestioned competence to bear on the legislative problems of the seventies.

This bill will put GAO at the service of Congress in the legislative process. Its reviews and reports will promote intelligent debate on legitimate issues. As a result, the quality of our decisions will be improved and public confidence in Congress increased.

For these reasons, I urge approval of the bill.

Mr. President, I offer an amendment, in the nature of a technical amendment, to the bill.

The ACTING PRESIDENT pro tempore (Mr. MCGOVERN). The amendments will be stated.

The assistant legislative clerk proceeded to read the amendments.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendments are as follows:

On page 2, strike out lines 1 through 22.

On page 2, line 23, strike out "(h)" and insert in lieu thereof "(f)".

On page 5, line 4, strike out "(i)" and insert in lieu thereof "(g)".

On page 5, line 9, strike out "(j)" and insert in lieu thereof "(h)".

On page 15, beginning with line 15, strike out through line 11 on page 16.

On page 16, line 12, strike out "321" and insert in lieu thereof "320".

On page 18, line 8, strike out "322" and insert in lieu thereof "321".

On page 18, lines 9 and 10, strike out "sections 320 or 321" and insert in lieu thereof "section 320".

Mr. RIBICOFF. Mr. President, this amendment strikes three provisions of the bill.

Sections 101 (f) and (g) were eliminated because they duplicate provisions already in the legislative reform bill. Section 320 was excluded after consultation with the Justice Department and the General Accounting Office. After the bill was ordered reported, the Government Operations Committee became aware of certain objections raised by Justice. Due to the lack of time available to resolve these problems, GAO consented to dropping the provision with the understanding that this was without prejudice to its right to seek enactment of the section next year.

The amendment has been cleared with the chairman and the ranking minority member.

Mr. President, I move the adoption of the amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to

Mr. RIBICOFF. Mr. President, I move the passage of the bill.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 4432) was passed, as follows:

S. 4432

An act to revise and restate certain functions and duties of the Comptroller General of the United States; to change the name of the General Accounting Office to "Office of the Comptroller General of the United States", and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Budget and Accounting Improvement Act of 1970".

TITLE I—ASSISTANCE TO CONGRESS

ANALYSIS AND EVALUATION

SEC. 101. Section 312 of the Budget and Accounting Act, 1921 (31 U.S.C. 53), is amended by adding at the end thereof the following new subsections:

"(f) (1) The Comptroller General is hereby authorized to make analyses and reviews of legislative proposals and alternatives to such proposals, including those available to the departments and agencies, the long-term costs and benefits thereof, the analytical processes involved in the justification of such proposals and the validity of the data supporting them, when ordered by either House of Congress or requested by the chairman of any committee of the House or Senate or of any joint committee of the two Houses having jurisdiction over such legislative proposal, or any Member of Congress as provided in paragraph (2) of this subsection.

"(2) Any Member of Congress desiring an analysis or review of any legislative proposal may so notify in writing the Comptroller General and the chairman of the committee of the House in which the Member is serving or the chairman of the joint committee having jurisdiction over the legislative proposal. The notice shall state in as specific terms as possible the questions and issues to be reported on. Within thirty days thereafter, the Comptroller General shall advise the

Member requesting the study and the committee chairman which questions and issues are within the competence and available resources of his office. The Comptroller General shall proceed to carry out the study requested to the extent of his capability and resources unless the study requested would require the Comptroller General to make a recommendation regarding the adoption of a particular program or policy, or would duplicate studies already done by or for the committee, or which the Comptroller General is currently engaged in. The Comptroller General shall determine the relative priority of all studies and reviews undertaken.

"'(3) The Comptroller General shall complete his work and submit a report within sixty days following, or as soon thereafter as possible, to the House or chairman requesting such report, or in the case of a request by a Member, to the Member and the chairman of the committee with jurisdiction over the legislative proposal. The chairman shall make such reports available to other Members of Congress. Such reports shall be made available under appropriate security arrangements where necessary.

"(4) The departments and agencies shall make available to the Comptroller General such information and documents as he considers necessary for him to complete his work under this subsection. If the Comptroller General requests any such information or document and there is a refusal by a department or agency to furnish any such information or document, he shall promptly bring to the attention of the House or chairman making the request, or in the case of a Member, to the attention of the Member making the request and the chairman of the appropriate committee. The chairman shall endeavor to resolve the dispute with officials of the department or agency involved. In his report, the Comptroller General shall specify any information or documents that he considers necessary to complete his work under this subsection which he was ultimately denied access to, or any questions which the department or agency would not answer, and the reasons given for such action.

"(g) The Comptroller General shall have available in the Office of the Comptroller General of the United States employees who are expert in analyzing and conducting cost-benefit studies and in other skills necessary to carry out the duties imposed upon him by this Act, or any other law.

"(h) The Comptroller General shall submit to the Congress not later than thirty days after the beginning of each congressional session and at such other times as he believes useful during the period when authorizations and appropriations are under consideration, status reports on such major weapons systems, major construction programs, and research and development programs as he considers will be of primary interest to the Congress. Such reports shall be designed to supply the Congress such information as the following:

"(1) current estimated costs compared with the prior estimates for (A) research, development, and engineering, and (B) production;

"(2) the reasons for any significant increase or decrease from cost estimates at the time of the original authorization and the original contract, if any;

"(3) options available under the contract for additional procurement and whether the agency intends to exercise any options, and the projected cost of exercising options;

"(4) changes in the performance specifications or estimates made by the contractor or by the agency and the reasons for any major changes in actual or estimated differences from that called for under the original contract specifications; and

"(5) significant slippages in time schedules and the reasons therefor.

In preparing such reports, the Comptroller General shall utilize to the extent practicable records and reporting systems developed by the executive branch agencies and shall suggest improvements in such reporting systems as he deems appropriate."

TITLE II—OFFICE OF THE COMPTROLLER GENERAL OF THE UNITED STATES

DESIGNATING THE OFFICE

SEC. 201. Section 301 of the Budget and Accounting Act, 1921 (31 U.S.C. 41), is amended by striking out the name "General Accounting Office" wherever it appears therein and inserting in lieu thereof "Office of the Comptroller General of the United States."

ADDITIONAL OFFICERS

SEC. 202. Section 302 of such Act (31 U.S.C. 42) is amended by inserting "(a)" immediately after the section designation and by adding at the end thereof a new subsection (b) to read as follows:

"(b) The Comptroller General may place two positions in the Office of the Comptroller General of the United States at a salary rate not to exceed the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, when he considers such action necessary because of changes in the organization, management responsibilities, or workload of the Office."

TECHNICAL PROVISION

SEC. 203. Any other reference in the Budget and Accounting Act, 1921, or in any other law, to the "General Accounting Office" shall be held and considered to be a reference to the "Office of the Comptroller General of the United States".

DESIGNATING DEPUTY COMPTROLLER GENERAL

SEC. 204. The Assistant Comptroller General of the United States shall hereafter be known as the "Deputy Comptroller General of the United States."

TITLE III—AUDITS OF GOVERNMENT CORPORATIONS

AMENDMENT TO THE GOVERNMENT CORPORATION CONTROL ACT

SEC. 301. (a) Section 105 of the Government Corporation Control Act (31 U.S.C. 850) is amended by adding thereto the following sentence: "Effective January 1, 1971, each wholly owned Government corporation shall be audited at least once every three years."

(b) The first sentence of section 106 of such Acts (31 U.S.C. 851) is amended to read as follows: "A report of each audit conducted under section 105 shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of the last year covered by such audit."

(c) Section 202 of such Act (31 U.S.C. 857) is amended by adding thereto the following sentence: "Effective January 1, 1971, each mixed-ownership Government corporation shall be audited at least once every three years."

(d) The first sentence of section 203 of such Act (31 U.S.C. 858) is amended to read as follows: "A report of each audit conducted under section 202 shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of the last year covered by such audit."

AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT

SEC. 302. (a) Section 17(b) of the Federal Deposit Insurance Act (12 U.S.C. 1827(b)) is amended by adding thereto the following sentence: "The Corporation shall be audited at least once every three years."

(b) The first and second sentences of section 17(c) of such Act (12 U.S.C. 1827(c)) are amended to read as follows: "A report of each audit conducted under subsection (b) of this section shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of the last fiscal year covered by such aduit. On or before the expiration of five and one-half months following the close of the last fiscal year covered by such audit the Comptroller General shall furnish the Corporation a short form report on his audit of the Corporation at the close of the last fiscal year covered by such audit."

AMENDMENT TO THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

SEC. 303. Section 107(g) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701y(g)) is amended by—

(1) adding a new sentence at the end of subparagraph (1) thereof as follows: "Such audit shall be made at least once every three years."

(2) substituting the following sentence in lieu of the first sentence in subparagraph (2) thereof: "A report of each such audit shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of the last fiscal year covered by such audit."

AMENDMENT TO THE DISTRICT OF COLUMBIA REDEVELOPMENT ACT OF 1945

SEC. 304. Section 17 of the District of Columbia Redevelopment Act of 1945 (60 Stat. 801) is amended by deleting the word "annual" from the clause "such books shall be subject to annual audit by the General Accounting Office".

AMENDMENT TO THE FEDERAL HOME LOAN BANK ACT

SEC. 305. Section 18(c)(6) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)(6)) is amended by deleting the word "annually" from clause (B) of the first sentence thereof.

TITLE IV—REVISION OF ANNUAL AUDIT REQUIREMENTS

AMENDMENT TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

SEC. 401. Section 109(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 756(c)) is amended to read as follows:

"(c)(1) As of June 30 of each year, there shall be covered into the United States Treasury as miscellaneous receipts any surplus in the General Supply Fund, all assets, liabilities, and prior losses considered, above the amounts transferred or appropriated to establish and maintain such fund.

"(2) The Office of the Comptroller General shall make audits of the General Supply Fund in accordance with the provisions of the Accounting and Auditing Act of 1950 and make reports on the results thereof."

AMENDMENT TO THE FEDERAL AVIATION ACT OF 1958

SEC. 402. That part of the second sentence of section 1307(f) of the Federal Aviation Act of 1958 (49 U.S.C. 1537(f)) which precedes the proviso is amended to read as follows: "The Secretary shall maintain a set of accounts which shall be audited by the Office of the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950:".

AMENDMENT WITH RESPECT TO THE BUREAU OF ENGRAVING AND PRINTING FUND

SEC. 403. Section 6 of the Act entitled "An Act to provide for financing the operations of the Bureau of Engraving and Printing, Treasury Department, and for other purposes" (31 U.S.C. 181d) is amended to read as follows:

"SEC. 6. The financial transactions, accounts, and reports of the fund shall be audited by the Office of the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950."

AMENDMENT WITH RESPECT TO THE VETERANS' CANTEEN SERVICE

SEC. 404. Section 4207 of title 38, United States Code, is amended to read as follows:

"§ 4207. Audit of accounts

"The Service shall maintain a set of accounts which shall be audited by the Office of the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950."

AMENDMENT WITH RESPECT TO THE HIGHER EDUCATION INSURED LOAN PROGRAM

SEC. 405. Paragraph (2) of section 432(b) of the Higher Education Act of 1965 (20 U.S.C. 1082(b)(2)) is amended to read as follows:

"(2) maintain with respect to insure under this part a set of accounts, which shall be audited by the Office of the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950, except that the transactions of the Commissioner, including the settlement of insurance claims and of claims for payments pursuant to section 428, and transactions related thereto and vouchers approved by the Commissioner in connection with such transactions, shall be final and conclusive upon all accounting and other officers of the Government."

AMENDMENTS WITH RESPECT TO CERTAIN HOUSING PROGRAMS

SEC. 406. (a) Section 106(a)(2) of the Housing Act of 1949 (63 Stat. 417; 42 U.S.C. 1456(a)(2)) is amended to read as follows:

"(2) maintain a set of accounts which will be audited by the Office of the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950: *Provided*, That such financial transactions of the Administrator as the making of advances of funds, loans, or grants and vouchers approved by the Administrator in connection with such financial transactions shall be final and conclusive upon all officers of the Government."

(b) Section 402(a)(2) of the Housing Act of 1950 (64 Stat. 78; 12 U.S.C. 1749a(a)(2)) is amended to read as follows:

"(2) maintain a set of accounts which shall be audited by the Office of the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950: *Provided*, That such financial transactions of the Administrator as the making of loans and vouchers approved by the Administrator in connection with such financial transactions shall be final and conclusive upon all officers of the Government."

TITLE V—EMPLOYMENT OF EXPERTS AND CONSULTANTS

EXPERTS AND CONSULTANTS

SEC. 501. The Comptroller General is authorized to enter into contracts with organizations or individuals, or employ individual experts and consultants in accordance with section 3109 of title 5, United States Code, at a rate not to exceed the daily rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

TITLE VI—SUBPENA POWER

AUTHORIZATION OF SUBPENA POWER

SEC. 601. To assist in carrying out his functions, the Comptroller General may sign and issue subpenas requiring the production of negotiated contract and subcontract records and records of other non-Federal persons or organizations to which he has a right of access by law or agreement.

ENFORCEMENT OF SUBPENAS

SEC. 602. In case of disobedience to a subpena, the Comptroller General may invoke the aid of any district court of the United States in requiring the production of the records referred to in section 601 of this title. Any district court of the United States within the jurisdiction in which the contractor, subcontractor, or other non-Federal person or organization is found or resides or in which the contractor, subcontractor, or other non-Federal person or organization transact business may, in case of contumacy or refusal to obey a subpena issued by the Comptroller General, issue an order requiring the contractor, subcontractor, or other non-Federal person or organization to produce the records; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

TITLE VII—ENFORCEMENT OF DECISIONS AND SETTLEMENTS

ENFORCEMENT

SEC. 701. The Budget and Accounting Act, 1921, is further amended by adding at the end thereof the following new sections:

"SEC. 320. (a) Whenever the Comptroller General, in the performance of any of his functions authorized by law, has reasonable cause to believe that any officer or employee of the executive branch is about to expend, obligate, or authorize the expenditure or obligation of public funds in an illegal or erroneous manner or amount, he may institute a civil action in the District Court for the District of Columbia for declaratory and injunctive relief. The Attorney General, if he certifies he is in disagreement with the Comptroller General, is authorized to represent the defendant official in such action. Other parties, including the prospective payee or obligee who shall be served with notice of process, may intervene or be impleaded as otherwise provided by law, and process in such an action may be served by certified mail beyond the territorial limits of the District of Columbia.

"(b) Upon application of the Comptroller General or the Attorney General an action brought pursuant to this section shall be heard and determined by a district court of three judges under section 2284 of title 28, United States Code. An action brought under this section shall be expedited in every way.

"(c) In actions brought under this section the Comptroller General shall be represented by attorneys employed in the Office of the Comptroller General and by counsel whom he may employ without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provision of chapter 51 and subchapters III and VI of chapter 53 of such title relating to classification and General Schedule pay rates.

"(d) In the event the institution of suit under this section serves to delay a payment beyond the date it was due and owing in payment for goods or services actually delivered to and accepted by the United States, then such payment when made by the agency involved shall include interest thereon at the rate of 6 per centum per annum for the time it has been withheld. Otherwise, no court shall have jurisdiction to award damages against the United States, its officers, or agents as a result of any delay occasioned by reason of the institution of suit under this section.

"(e) This section shall be construed as creating a procedural remedy in aid of the statutory authority of the Comptroller General and not as an enlargement or limitation of such authority. It is not intended to alter or affect any existing provisions of law.

"SEC. 321. No action may be instituted nor an appearance made by the Comptroller General under section 320 until the expiration of a period of sixty calendar days (excluding the days on which either House is not in session because of adjournment of more than three days to a day certain or an adjournment of the Congress sine die) following the date on which an explanatory statement by the Comptroller General of the circumstances giving rise to the action contemplated has been filed with the Committees on Government Operations of the House of Representatives and the Senate and during such sixty-day period the Congress has not enacted a concurrent resolution stating in substance that it does not favor the institution of the civil action proposed by the Comptroller General."

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD of West Virginia. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EQUAL RIGHTS FOR MEN AND WOMEN

The ACTING PRESIDENT pro tempore. Under the order of yesterday, the Chair lays before the Senate the unfinished business, which will be stated.

The assistant legislative clerk read the title, as follows:

A joint resolution (H.J. Res. 264) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

The Senate proceeded to consider the joint resolution.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS AND FOR THE CONSIDERATION OF THE UNFINISHED BUSINESS (H.J. RES. 264) ON MONDAY, OCTOBER 12, 1970

Mr. BYRD of West Virginia. Mr. President, at the request of the majority leader, I ask unanimous consent that on Monday next, following the disposition of the reading of the Journal and any unobjected to items on the Legislative Calendar, there be a period for the transaction of routine morning business not to extend beyond 12 noon, with statements therein limited to 3 minutes; provided further, that if morning business is concluded prior to 12 noon on Monday next, the unfinished business, House Joint Resolution 264, be laid before the Senate, and, in any event, that House Joint Resolution 264 be laid before the Senate not later than 12 noon on Monday next; that beginning at 12 o'clock noon on Monday next, debate on amendment No. 1042, offered by the able Senator from Alabama (Mr. ALLEN), or as he may modify it, be limited to 1 hour, the time to be equally divided and controlled between the distinguished Senator from Alabama (Mr. ALLEN) and the able manager of the resolution, the Senator from Indiana (Mr. BAYH); that at the termination of the 1 hour of controlled time, a vote occur on the amendment.

Mr. ALLEN. Reserving the right to object, Mr. President, may I inquire of the distinguished Senator from West Virginia whether his unanimous-consent request would carry with it permission that the junior Senator from Alabama might offer a modification to his amendment, as a matter of right, at some time prior to a vote being taken.

Mr. BYRD of West Virginia. Yes. My unanimous-consent request would provide for such an eventuality.

Mr. ALLEN. I will state to the distinguished Senator from West Virginia that

if any modification is offered, it will be offered today, so that Senators will have an opportunity to study the amendment as modified.

Mr. BYRD of West Virginia. Mr. President, I am glad that the Senator from Alabama has offered to present such a modification today, because this would enable all Senators to be cognizant of the content of such modification.

Mr. ALLEN. I thank the distinguished Senator.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The unanimous consent agreement, subsequently set out separately, is as follows:

Ordered, That on Monday, October 12, 1970, beginning at the hour of 12 noon, the time be equally divided and controlled by the Senator from Alabama (Mr. ALLEN) and the Senator from Indiana (Mr. BAYH) for a period of one hour on the amendment offered by the Senator from Alabama (#1042) giving to each State sole and exclusive jurisdiction over public schools, to H.J. Res. 264, providing equal rights for men and women.

Ordered further, That at any time before the vote the Senator from Alabama retains the right to modify his amendment.

Ordered further, That at the conclusion of one hour, the Senate proceed to vote on the amendment.

UNANIMOUS-CONSENT REQUEST

Mr. BAYH. Mr. President, the Senator from Indiana did not object to the request of the distinguished Senator from West Virginia. The Senator from Indiana intends to oppose strenuously the amendment of his friend the Senator from Alabama. I agree to the vote so that we can move forward to ultimate consummation of this debate. I ask unanimous consent that following the vote on the Allen amendment, the Senate consider, in order of introduction, the other amendments that have been submitted to the pending resolution, with 2 hours debate on each amendment, to be divided equally between the floor manager of the bill and the sponsor of the amendment; that following action on all amendments, 4 additional hours be permitted on the resolution itself, the time to be equally divided between the Senator from Indiana and the Senator from North Carolina; and that thereafter a vote occur on final passage of this measure.

I ask unanimous consent that we pursue that timetable.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. Mr. President, reserving the right to object, the junior Senator from Alabama has no personal objection to the schedule suggested by the distinguished Senator from Indiana. He supports the resolution, and he wants to see it come to a vote prior to the recess. He recalls that on yesterday the distinguished majority leader stated that the word had been circulated that there would be no vote on the resolution until after the recess. The purpose of the Senator from Alabama temporarily imposing an objection to the unanimous-consent request was to give the distinguished Senator from North Carolina an opportunity to return to the Chamber, and he was going to request that the distinguished Senator from Indiana withhold his motion until the return of the distinguished Senator from North Carolina.

Mr. ERVIN. Mr. President, the Senator from North Carolina has returned to the Chamber, with a certain degree of amazement that he would not be notified before a request of this kind was made. I assure every Member of the Senate who is interested in this matter to such a great degree as is my good friend, the Senator from Indiana, that I will not make any request for a unanimous-consent agreement without prior notice to them, and I hope that I will be extended the same courtesy.

I object to setting any time limit on this matter at this time. We had some experience with the previous resolution to change the Constitution. I insisted that it be debated adequately; and after it was debated adequately, I offered to vote on an amendment. Those who had been saying there had been sufficient discussion on the amendment when they attempted to gag people who entertained my views then rose and said there had not been sufficient discussion, that they could not agree to vote on the proposal for a proportional plan, and that they needed more time to collaborate. We need more time to discuss this matter.

It is well to remember that no committee hearings on the resolution were held in the House and, consequently, neither the House or the Senate has had the benefit of any committee report or recommendation. Moreover, it is to be noted that notwithstanding the rules of the Senate expressly provide that the Senate Judiciary has jurisdiction of proposals to amend the Constitution, regular Senate practices have been thwarted in respect to this resolution, which has been held on the calendar. Hence, the Senate has been denied the benefit of its consideration by the Senate Judiciary Committee.

I think that if we have adequate time to discuss this matter, those women in the United States who have voluntarily elected to become wives and mothers and working women in the industries of this country and those who have unfortunately become widows will recognize that I am fighting to preserve the rights and the protections which the fifth amendment and the 14th amendment undertake to guarantee them.

I think that those who will study this situation will also find that the due-process clause of the fifth amendment, which applies to the Federal Government, and the due process and equal protection clauses of the 14th amendment, who apply to the States, disable both the Federal Government and the States to pass any law now which makes any arbitrary or invidious discrimination against women, and that for this reason, the proposed equal rights amendment is totally unnecessary, unless Congress and the States of this country wish to disable Congress and the States hereafter to pass any law which recognizes that there are physiological or functional differences between men and women.

I recognize that some people think that two sexes are one too many, and they would like to abolish one of the sexes, and they would like to do so by a constitutional amendment which the Lord God Almighty and nature will declare unconstitutional even if it is approved and submitted and ratified. But I am in favor of two sexes. I thank the good Lord for creating two sexes, and I do not want to see either one abolished. I particularly do not want to see the feminine sex abolished, and I do not want to see it robbed of any of its rights which Congress and the legislatures of the 50 States of the Union are empowered to extend to women under the existing fifth amendment or the existing 14th amendment.

The truth is that this resolution, if it is interpreted to mean anything whatever, seeks to rob the wives, the homemakers, the mothers, the workingwomen, and the widows of America of the rights and the protections which have been extended to them by Congress and by the States in the exercise of their powers under the fifth and 14th amendments. If this resolution is not intended to deprive Congress and the legislatures of the 50 States of their legislative power to extend to women and girls the rights and protections sanctioned by the fifth and the 14th amendments, it is totally unnecessary.

Mr. ALLEN. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

Mr. ALLEN. Would the Senator be saying to the Senate that he approves of the exclamation of the Frenchman, in commenting on the differences between the sexes, "Vive la difference."

Mr. ERVIN. I certainly do say amen to that proposition.

Mr. ALLEN. I thank the distinguished Senator.

The ACTING PRESIDENT pro tempore. The Chair would inquire of the Senator from North Carolina, is he objecting?

Mr. ERVIN. Yes, Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. ERVIN. I have no objection to anyone else who offers an amendment having it set down for a vote at a particular time. I would assure the distinguished Senator from Indiana that I will consent, on Monday next, to setting a time for a vote on my amendment to strike out section 2 of the resolution, the section which, for a second time, unnecessarily declares the amendment will not become effective unless it is approved by three-fourths of the States. I do not know why the proponents of the resolution have not discovered and stricken this superfluous and irrelevant statement, which should not be embodied in the Constitution of the United States.

Mr. President, I am also ready to consent to a vote on an amendment that would change the 1-year limitation on the time the amendment is to become effective to a 2-year limitation. If the amendment is to be ratified by the legislatures of the States, they ought to have the opportunity to pass laws to make men and women exactly alike, as the amendment contemplates they are to be made. Certainly, they cannot take such action in less than 2 years. Besides, the legislatures of some States meet biennially—

not annually. They should have 2 years after the amendment takes effect to see if they can find some way to make men and women identical legal beings. That would certainly be a hard problem to solve even in 1 year for those States whose legislatures meet every year. It would be an impossible task for legislatures which meet biennially.

On Monday next, I shall be prepared to offer also what is known as the Hayden amendment and I will consent to a time certain for voting on that. I object, however, to any unanimous-consent request seeking a time for voting at this present moment on any amendment proposed by me.

Mr. BAYH. Mr. President, I should like to observe, for the sake of the record because of the warm feeling I have in my heart for my good friend and sometimes enthusiastic adversary, the distinguished Senator from North Carolina, that when the distinguished Senator from West Virginia proposed the first unanimous-consent request, the Senator from North Carolina was in the Chamber. He was sitting there gazing back at me, and I was negligent in not returning that gaze after the first unanimous-consent request. The Senator from Alabama had risen, and being a man of some size and stature, I assumed the Senator from North Carolina was somewhere back behind him or I would not have proposed that unanimous-consent request.

I think the Senator from North Carolina knows that we may disagree sometimes, but we are not going to try to pursue a less than honorable means of working our will.

Mr. ERVIN. Mr. President, I would disclaim any purpose to say that it was intentional on the part of the Senator from Indiana. He and I are oftentimes on the same side of an issue, and sometimes on different sides of a proposition, but although the Senator from Indiana is a hard fighter for the causes in which he believes, he always fights fairly. He never intentionally hits anyone below the belt. The distinguished Senator from Indiana would have been a worthy adversary back in the days of the knights of old, when knighthood was in flower.

Mr. BAYH. Well, I appreciate that compliment on the part of my good friend from North Carolina. However, we are not living in the days of knights of old. Unfortunately, we are still treating women as if we were, in some respects. That is why we have proposed this amendment.

The Senator from North Carolina suggested that during the earlier battle on electoral reform, which I hope and pray will be rejoined before we adjourn sine die, the Senator from Indiana objected to bringing some amendments to a vote because there had not been sufficient time to discuss the amendment. Someone may have said that. I do not recall it. I said that if we were going to vote on the amendment of the Senator from North Carolina, we should also vote on the other amendments, and on final passage.

I propose the unanimous-consent request to put everyone on notice that I will push for an early vote on this joint resolution. The Senator from Indiana will continue to pursue this and wants to make the record absolutely clear.

We have gone through one effort at extended debate. That debate soon became an effort—not even carefully veiled—to talk the electoral reform measure to death. One of the opponents made clear to the press that it was going to be filibustered.

I made that unanimous-consent request so that if we are in the process of having another repeat performance—a replay of the late-late show—I want everyone to know from the beginning exactly what we are up against.

I happen to disagree with the Senator from North Carolina. Everyone here has basic rights which we all protect. The Senator from Indiana certainly intends to protect the rights of his friend from North Carolina. As each one of us pursues those rights, we must be willing to accept the consequences of our acts. Those who insist upon talking this bill to death, or adding "innocuous amendments" which would throw this measure into a conference and thus kill the bill, have to be held responsible. I am sure that they intend to be held responsible. However, I want the record to show what is going on here.

The Senator from North Carolina claims to be protecting widows, mothers, and orphans. It is pretty hard to argue with the fellow who wants to protect babies in the country. But his actions are like those of the mother who is so protective of her new-born child that she actually smothers it by her very grip. Some of the so-called protective laws are in reality "protecting" women from an equal opportunity for education, for employment, for compensation, to enter business, and so forth.

I think the time has come to wipe away all vestiges of knighthood and give the women of this country the full right to make a place for themselves in America.

The opponents claim that we are not aiding widows and mothers and orphans but penalizing them by advocating this amendment. That is a strange interpretation of the amendment. I do not see it that way, and I do not believe any court in the land would see it that way.

If I might digress here, I remember a statement made by our late beloved President Eisenhower, when we were debating the 25th amendment. In that struggle the Senator from North Carolina was an able ally of the Senator from Indiana. I dare say we would not have been successful had it not been for his cooperation. As I was saying, I remember reading an address by our late President. He said that if any law is to function properly, if we are to pass any legislation at all, we must accept the normal rationale that our laws are going to be interpreted by reasonable men. I do not see how any reasonable men could read the provisions of the resolution and suggest that it would penalize women, widows, and orphans. It is not so, Mr. President. Not so.

Mr. EAGLETON. Mr. President, will the Senator from Indiana yield at that point?

Mr. BAYH. I yield.

Mr. EAGLETON. I have some questions I have been considering propounding to the Senator from Indiana. Perhaps we can do that today at this juncture if the Senator has some time to discuss for my edification and for the clarification of the record just what the full thrust, purport, and intent of the constitutional amendment would be.

Would this be the appropriate time for me to direct some questions to the Senator from Indiana so that we could test out the meaning of the amendment and what the Senator from Indiana, as principal author of it, envisions as its meaning should it become part of the constitutional fabric of this land?

Mr. BAYH. Mr. President, I think it is always time for the distinguished Senator from Missouri to explore any piece of legislation. He is certainly one who has indicated by his every action since he has become a Member of the Senate that he does not make any decision without careful thought and study.

I would be delighted to embark on a colloquy with the Senator, either for the clarification of the record or to clear up any questions he might have concerning what we are trying to accomplish.

If I might digress before we proceed further, the distinguished Senator from North Carolina suggested that he feels the rights we are trying to protect are adequately covered under the 14th and fifth amendments.

This is another area in which I agree with my friend, the Senator from North Carolina. The rights are protected. However, there is one little thing wrong with the reasoning of both the Senator from North Carolina and the Senator from Indiana. That is that the Supreme Court of the United States has never agreed. But the Supreme Court has never from the days of the Civil War to this day held a statute unconstitutional under the 14th amendment on account of sexual discrimination. Therefore, since the Supreme Court has not acted, the only course open to us is to change the Constitution itself and to make it absolutely clear that we do not tolerate discrimination on the basis of sex.

Mr. EAGLETON. Mr. President, I am concerned that the equal rights amendment not undermine practices which emanate from the right to individual privacy. I would therefore ask the Senator to clarify the effect of the equal rights amendment in the following situations:

First, would statutes requiring public places to maintain separate restroom facilites for men and women be invalid under the equal rights amendment?

Mr. BAYH. Mr. President, the Senator from North Carolina would take issue with the Senator from Indiana. However, I would like to stress now what I stressed earlier. We are not trying to wipe away the very real, important, and valuable distinctions that exist between men and women. We are not trying to make women over in the image of man.

It would seem to me that, because of these unique differences between the male and female species, the right of privacy is appropriate and will continue to be appropriate after the enactment of this constitutional amendment.

Mr. EAGLETON. Mr. President, pursuant to that, is it correct then that, if in a public building operated by any public entity, Federal, State, county, or municipal, separate restrooms were indi-

cated—one door marked "men" and one door marked "women"—a criminal action could be brought against a man who attempted to utilize the women's facilities?

Mr. BAYH. The Senator is correct. That is my judgment. It might be helpful if I read into the RECORD a sentence or two from the colloquy that preceded the passage of this measure in the House. Representative MARTHA GRIFFITHS, the distinguished Congresswoman from Michigan, who is one of the primary sponsors of this measure, answered that same question:

> Separation of the sexes by law would be forbidden under the amendment, except in situations where the separation is shown to be necessary because of an overriding and compelling public interest and does not deny individual rights and liberties.

She used as a specific example of the separation which is required, and should be required, the matter of restroom facilities.

Mr. EAGLETON. Pursuant to that same line of thought, could prisons maintain separate sleeping and recreational facilities for men and women?

Mr. BAYH. Yes; I think they could for the same reason that we have an overriding, compelling public interest to keep the sexes separate when they are incarcerated in that manner.

Mr. EAGLETON. Mr. President, my State maintains two separate adult facilities, one at Jefferson City for male felons, and one at Tipton for female felons. They are separated by several miles and are totally separate institutions separately administered.

Would that still be permissible under the equal rights amendment?

Mr. BAYH. The Senator is correct. In my judgment, there would be an overriding, compelling public interest to keep the sexes separate.

Mr. EAGLETON. Mr. President, could police departments maintain a policy of having women searched only by female officers and men searched only by male officers?

Mr. BAYH. Mr. President, the Senator is correct. I think the same thing applies, with respect to the overriding, compelling interest in the right of privacy.

That is the constitutional law of this country, and the common law of other countries. We still want that policy to be followed.

Mr. EAGLETON. Mr. President, those are my questions in the privacy area. I would like to move into the area of physical difference. Certain distinctions between men and women cannot be abolished by legislative fiat, and some distinctions in the law are based on undeniable, objective physical differences between the sexes. There is no explicit recognition of this fact in the equal rights amendment, and I ask the Senator to clarify the effect of the amendment in the following areas.

First, would statutes making statutory rape a criminal offense be invalid, bearing in mind the distinction between charging a man cohabiting with a young girl with statutory rape and charging a woman cohabiting with a young boy with contributing to the delinquency of a minor?

Would that type of statutory discrimination or distinction be abolished by the equal rights amendment?

Mr. BAYH. Mr. President, the interpretation of that matter would be left to the courts. The Senator from Indiana would be of the opinion that we would have to treat both of those crimes the same.

I made a statement on a public television show with the Senator from North Carolina that there was no such thing as a female member of our species being able to commit rape on a male.

I am not yet certain whether I was right or not. But I must say that I had a couple of letters from male citizens who said they had been subjected to that type of crime. I did not have a chance to check on the veracity of those individuals.

Mr. President, I might again just read briefly from what Representative GRIFFITHS had to say on the matter. I concur with what the Congresswoman said. I am not sure whether that differs from the specific problems raised by the Senator from Missouri. I believe that he is talking about two different crimes.

Mr. EAGLETON. Mr. President, for the present moment I am talking about statutory rape. We will get to the matter of forcible rape later, but for the moment we are talking about statutory rape. In Missouri, an adult male cohabiting with a young girl who is under the age of consent on a voluntary basis is liable to a term of up to life imprisonment in the Missouri Penitentiary, where as an adult woman who has some sexual contact with a young boy below the age of legal consent would be charged with contributing to the delinquency of a minor. The latter involves a much lesser penalty. How would we unravel the distinctions in this area of the law?

Mr. BAYH. I think the court would have to determine which of those particular statutes should be applied, and apply it equally. In the judgment of the Senator from Indiana they would apply equally because the act would be the same. It is easier to distinguish between crimes that are physically impossible to perform by one sex. The distinction made by the Senator from Missouri could only be made by the courts after determining whether the two crimes were in fact identical. Rather than deny certain protective features to one sex, these features would be applied by the courts uniformly across the spectrum of our society.

Mr. EAGLETON. Now, let us move on to the area of forcible rape. The way in which most statutes are drawn forcible rape is a physical assault by force on a nonconsenting female. It is a very serious crime in most States. In my State it is a death penalty offense.

Under the equal rights amendment, how are we going to continue to have this obviously sexually related crime which makes the culprit out of the man and tries to protect the rights of the woman?

Mr. BAYH. The Senator from Indiana believes we should have rape statutes on the books. After enactment of this amendment, forcible rape statutes would theoretically apply to both sexes, but in reality be directed only at males because they are the ones sexually capable of performing such an act. I have not researched the matter, but if these two men who wrote to me are correct in stating that it is possible for the female to commit rape on the male, it seems to me that women, too, would come under the same statute. Such acts are not prevalent in our society. I think we should have rape statutes. I think they would apply under this constitutional amendment to any persons capable of performing the act defined to be illegal.

Mr. EAGLETON. That is the point I am raising. If the scientific and expert testimony—perhaps, for example, from Dr. Masters and Mrs. Johnson in St. Louis, or other medico-scientific experts—was that it is a physical impossibility for a woman to rape a man, and if we still desire, as I believe we do, to continue to have rape statutes on our books, and if the only one who can be the "raper" is the male and the only one who can be the "rapee" is the female, then is it not inescapably and absolutely necessary to take into account physical differences between a man and woman in the promulgation and application of such legislation?

Mr. BAYH. I think that a statute, such as a statute the Senator is referring to, would not need to be changed under the wording of this resolution. It is similar to separate restroom facilities. There would be no change as long as we are talking about real physical differences common to all members of only one sex. I see no way this could not be applied across the board. It would be applied to everyone, as I see it, but in the normal course of prosecution, it would not arise except against male defendants. I think we would have to approach that on a case-by-case basis, and expert testimony would tell us what to do, based on the facts in each given case.

Would the Senator permit me to yield to the Senator from Wisconsin, who has a conference report he wishes to take up?

Mr. EAGLETON. I am pleased to yield.

Mr. BAYH. Mr. President, I yield to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. PROXMIRE. I thank the distinguished Senator from Indiana and the distinguished Senator from Missouri. I will be as brief as I can be.

BANK RECORDS AND FOREIGN TRANSACTIONS; CREDIT CARDS; CONSUMER CREDIT REPORTING—CONFERENCE REPORT

Mr. PROXMIRE. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 15073) to amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in U.S. currency be reported to the Department of the Treasury, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. HUGHES). Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

(For conference report, see House proceedings of Oct. 8, 1970, pp. 35843–35849, CONGRESSIONAL RECORD.)

Mr. PROXMIRE. Mr. President, a House-Senate conference committee completed action on this bill on Tuesday, October 6. In addition to resolving the differences between the House and Senate versions of the foreign bank secrecy legislation, the House conferees also accepted with amendments the previously passed Senate versions of the fair credit reporting bill—S. 823—and a bill regulating unsolicited credit cards—S. 721. These provisions were added by the Senate to H.R. 15073 in order to expedite action in the current 91st Congress.

The Senate also added the provisions of S. 3154, the Urban Mass Transit Act, to H.R. 15073; however, this language was deleted by the conference since the Congress has already completed action on S. 3154 and it has been sent to the President for his signature.

Mr. President, by combining three legislative proposals into a single package, I believe the Senate-House conference committee has executed a triple play for the American consumer. The foreign bank secrecy bill will provide law enforcement authorities with greater evidence of financial transactions in order to reduce the incidence of white collar crime. The bill was particularly directed at obtaining more information on secret foreign bank accounts by U.S. citizens or residents. These secret foreign bank accounts have enabled white collar criminals to avoid the payment of income taxes and flout our securities laws with virtual impunity.

The Senate provisions on credit cards agreed to by the House conferees will stop the unsolicited distribution of credit cards and limit a consumer's liability for a lost or stolen credit card to $50. In addition, the bill agreed to by the conference committee will make it a Federal crime to make purchases of more than $5,000 on a credit card without the permission of the holder.

In addition, the legislation agreed to by the conference includes an amended version of the Fair Credit Reporting Act passed by the Senate last November. This legislation would give consumers access to all of the information in their credit files and enable them to correct inaccurate or misleading information. Whenever a person is turned down for credit or insurance or employment because of an adverse credit report he would have to be given the name and address of the credit reporting agency. The bill also establishes safeguards to preserve the confidentiality of credit information in credit bureau files and to protect consumers against an undue invasion of their right to privacy.

FOREIGN BANK SECRECY

Mr. President, the foreign bank secrecy portion of H.R. 15073 contains five substantive provisions.

First, U.S. banks and other financial institutions are required to maintain records of financial transactions and keep copies of checks in accordance with regulations issued by the Secretary of the Treasury.

Second, the Secretary of the Treasury is authorized to require reports on currency deposits or withdrawals by the U.S. financial institution involved and the party to the transaction.

Third, persons who export or import currency or its equivalent in excess of $5,000 on any one occasion are required to file reports in accordance with Treasury regulations.

Fourth, U.S. citizens who maintain accounts with foreign financial institutions are required to file reports or keep records or both with respect to transactions with such accounts in accordance with Treasury regulations.

Fifth, the Federal Reserve Board's margin requirements for purchasing securities on credit would be extended to U.S. borrowers, whereas the existing law only applies to lenders.

Mr. President, there were a total of 47 differences between the House and Senate versions of the foreign bank secrecy bill. While many of these provisions were minor in nature, a number of them included fairly substantial differences between the two bills. I am happy to report that your Senate conferees were able to uphold most of the Senate provisions. The House receded on 37 of the 47 specific differences and in seven cases the House receded with an amendment. In only two cases did the Senate recede outright and in one case the Senate receded with an amendment.

I believe the conferees have combined the best features of both bills so that the Secretary is given adequate authority and guidance to regulate the use of secret foreign bank accounts.

While I do not intend to discuss all of the minor differences between the two bills, I believe it would be useful to the Senate to have a brief rundown of some of the major items agreed to by the conferees.

STATEMENT OF PURPOSE UNDER TITLE I

The House bill had a congressional statement of purpose to require the maintenance of appropriate types of records by insured banks where such records may have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The Senate bill indicated a similar statement of purpose, but only when the Secretary of the Treasury determined that such records would have a high degree of usefulness. It was argued that the Senate language could be construed as delegating to the Secretary of the Treasury the authority to determine the basic purpose of the title. Congress would thus not have an independent, congressionally determined standard against which to evaluate the actions of the Secretary since he in effect would be determining the purpose of the title.

The conferees agreed to delete the Senate language from the congressional statement of purpose. In addition, the conferees made it clear that the Secretary's duty to issue regulations to carry out the purposes of title I would be subject to his determination that such records have a high degree of usefulness in law-enforcement activities.

I believe this approach actually clarifies both bills by making it clear that the basic purpose of the title is determined by the Congress but that the duty of the Secretary to issue regulations is sufficiently flexible so that he need not issue regulations in those cases where he determines that they would not achieve the purpose of the title as determined by Congress.

EXEMPTIVE AUTHORITY

The Senate bill included specific language indicating that the Secretary may make such exemptions from the recordkeeping provisions of title I "as he deems appropriate." While no similar language was included in the House bill, a reading of the House bill in its entirety implies similar exemptive authority.

The House agreed to recede to the Senate provision with an amendment making it clear that any exemption granted by the Secretary must be consistent with the purposes of the act. This was, of course, the intent of the Senate bill; nonetheless, the Senate language giving the Secretary the authority to issue such exemptions "as he deems appropriate" could be subject to misinterpretation. Accordingly, the Senate conferees agreed to the House amendment.

A FIVE HUNDRED DOLLAR EXEMPTION

The House bill exempted financial institutions from any recordkeeping requirements with respect to domestic transactions under $500. Such an exemption was not included in the Senate bill.

During the hearings it was argued that the exemption would be of little benefit to financial institutions since the cost of segregating transactions less than $500 would outweigh any potential savings. Moreover, a potential white collar criminal could easily violate the intent of the legislation by effecting a series of transactions in the amount of $499.

Accordingly, the House conferees agreed to recede to the Senate position and the $500 exemption was stricken from the bill.

STATEMENT OF PURPOSE OF TITLE II

Title II of the legislation authorizes the Secretary to require individuals to file reports and keep records of currency and foreign transactions. In the statement of purposes under title II, the House bill indicated three different purposes: First, to facilitate the supervision of financial institutions; second, to aid duly constituted authorities in lawful investigations; and, third, to provide for statistics needed for monetary and economic policy.

The statement of purpose under the Senate bill was more narrowly defined to require reports or records which have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

Since the authority given the Secretary under title II is necessarily broad, the Senate conferees felt that a narrowly defined statement of purpose was vital in order to guard against any undue abridgments to an individual's right to privacy. Under the House language, the Secretary could theoretically require individuals to file almost any kind of report on the grounds that such information might be useful to formulating economic policy.

The House agreed to recede to the Senate language so that the Secretary

will be restricted to requiring only those reports or records which are highly useful in law enforcement activities.

REQUIREMENT TO ISSUE REGULATIONS

Chapter 4 of title II of the legislation authorizes the Secretary of the Treasury to issue regulations requiring individuals to maintain certain records with respect to their transactions with foreign financial institutions. Under the House legislation the Secretary would be required to issue such regulations. Under the Senate bill, he was given discretionary authority to issue such regulations, having due regard for the impact of such regulations on foreign commerce.

The House conferees strongly felt that the requirement to issue such regulations should be mandatory in view of the importance of such records or reports to law enforcement authorities. Since the Secretary has adequate exemptive authority under both bills, any adverse impact upon foreign or domestic commerce could be alleviated.

Accordingly, the Senate conferees agreed to accept the mandatory approach of the House legislation while retaining the Senate proviso that the Secretary must have due regard for the impact of such regulations on foreign commerce. The Secretary thus has an obligation to issue rules and regulations implementing the provisions of chapter 4 of title II, although his exemptive authority is fully retained.

REPORTS ON FOREIGN TRANSACTIONS

Under the House version of chapter 4 of title II, the Secretary was given authority to require individuals to maintain records, or file reports or both with respect to their transactions with foreign financial institutions.

The Senate version of the legislation deleted the authority to require reports but retained the authority to require the keeping of records.

The House conferees were adamant in insisting that the Secretary be given the authority to require reports as well as records. Since the House conferees had already agreed to circumscribe the purpose section of title II to the more narrowly defined Senate language, it was argued that such reporting authority would not unduly jeopardize an individual's right to privacy. Accordingly, the Senate conferees receded and agreed to accept the House language.

AGGREGATE LIMITATION ON CURRENCY EXPORTS

Under the House legislation, individuals would be required to file reports on currency exports or imports in excess of $5,000 on any one occasion or $10,000 in any 1 calendar year. The Senate bill deleted the $10,000 aggregate annual limitation on currency exports or imports.

When the Senate Banking and Currency Committee first considered this issue, it was strongly influenced by a letter from the Department of Justice which urged the retention of the $10,000 annual aggregate limitation. The Justice Department wrote on July 23, 1970, that—

> We have consistently supported this provision as highly useful in law enforcement particularly as it concerns organized crime.

Since the time of the Senate committee executive session, the Department of Justice has apparently undergone a change of attitude. In a letter to Senator BENNETT dated September 15, 1970, the Justice Department softened its position and inferred that it no longer considered the retention of the $10,000 limitation as essential.

Accordingly, the Senate approved a floor amendment offered by Senator BENNETT to delete the $10,000 annual limitation. The House conferees agreed to recede to the Senate version of the legislation on this item.

MARGIN REQUIREMENTS

Both versions of the legislation extend the Federal Reserve Board's margin requirements to borrowers whereas existing law applies only to lenders. In the absence of this legislation it is possible for U.S. investors to borrow abroad in excess of the margin requirements for the purpose of carrying securities, thus circumventing the intended effect of the margin requirements.

The House version of the legislation appeared to extend the margin requirements to all borrowers regardless of whether they were U.S. citizens or foreigners, although the legislative history associated with the House bill implies the margin requirements are extended only to U.S. borrowers.

The Senate bill specifically extends the margin requirements to U.S. borrowers or to foreign borrowers who are controlled by U.S. persons. In determining whether a foreign borrower is controlled by or acting on behalf of or in conjunction with a U.S. person, the regulatory authorities are directed to make a finding whenever the U.S. person has more than a 50 percent beneficial interest in the foreign borrower.

The Senate bill also provides that any borrowing in excess of the margin requirements constitutes a violation by the borrower. Under the House bill, borrowing in excess of the margin requirements by a borrower would constitute a violation only if it were a knowing and willful violation unless the transaction involved a material misrepresentation by the borrower or credit in execss of $1 million.

The House agreed to accept the Senate language, thus giving regulatory agencies greater authority to enforce the requirements of the act.

The Senate version of the bill also extended to margin loans used for the purpose of carrying securities regardless of whether such securities were offered as collateral. Under the House bill, the margin requirements would have been extended only if the securities purchased were offered as collateral for the loan. Since it is possible to purchase securities on margin without actually offering such securities as collateral, the House language was open to potential evasion. The House conferees accepted the Senate language, thus strengthening the ability of the regulatory authorities to enforce the margin requirements.

Mr. President, there are numerous other differences between the House and Senate bills which were resolved by the conferees. On the whole, I believe we have recommended a reasonable and effective bill which will give our law enforcement authorities the additional tools they need to regulate the growing use of secret foreign bank accounts. It is anticipated and expected that the new authorities conferred by this legislation will be vigorously and swiftly implemented by the Secretary of the Treasury in order to reduce the growing rate of white collar crime.

In our justifiable concern with law and order we need to focus our attention on the crimes of the rich as well as the crimes of the poor or disadvantaged. Those who use secret foreign bank accounts to avoid our income tax laws or otherwise conduct illegal activities undermine our entire judicial system and weaken confidence in the soundness of our governmental institutions. The foreign bank secrecy bill will not, of course, solve all of the problems associated with white collar crime, but if vigorously implemented it will constitute a substantial beginning.

CREDIT CARDS

Mr. President, I am happy to report that the House conferees have agreed to accept substantially the Senate bill, S. 721, dealing with unsolicited credit cards. This legislation was passed by the Senate on April 15, 1970; however, hearings were not scheduled by the House Committee on Banking and Currency on the Senate bill in view of a related but less comprehensive credit card bill which was reported by the House Post Office and Civil Service Committee on March 26, 1970—H.R. 16542. The House Post Office bill required that any unsolicited credit card be sent via registered mail whereas the Senate bill placed an outright prohibition on unsolicited credit cards.

During the conference committee, there was some consideration given to retaining the registered mail approach contained in H.R. 16542. However, when a motion was formally made to substitute the registered mail provisions of H.R. 16542 it was rejected by the House conferees. Subsequently, the House conferees agreed to accept the Senate approach which places a prohibition on the distribution of all unsolicited credit cards.

The conferees did agree to adopt a recommendation by the Department of Justice to amend the criminal penalties section in the Senate bill. The Senate bill made it a Federal crime for anyone to use a credit card without the holder's permission. The Justice Department felt such a provision would be extremely costly to administer. It recommended that the conferees substitute a provision making it a Federal crime for the unauthorized use of a credit card only if the amounts purchased were in excess of $5,000.

The Senate and House conferees agreed to accept this modification suggested by the Justice Department. Any one making fraudulent credit card purchases in excess of $5,000 could be fined up to $10,000, or imprisoned up to 10 years, or both. Under 18 U.S.C. 2 these penalties would also extend to anyone who aids or abets in the commission of such a crime including those involved in the interstate transportation of credit cards which are used to make fraudulent purchases in excess of $5,000.

As reported by the House-Senate conferees, the credit card provisions under title V would prohibit the distribution of unsolicited credit cards. This prohibition would become effective upon the enact-

ment of the legislation. It parallels a recent regulation of the Federal Trade Commission prohibiting the distribution of unsolicited credit cards. However, the legislation is broader in that it applies to all issuers of credit cards including commercial banks, retailers, oil companies, airlines, and other issuers. There was some legal doubt about the ability of the FTC regulations to apply to commercial banks, common carriers, or other entities exempted from the Federal Trade Commission Act.

The legislation also limits a consumer's liability for a lost or stolen card to $50. If he notifies the card issuer before any unauthorized purchases have occurred, he would, of course, have no liability whatsoever. If the losses occurred prior to notification, his maximum liability would be limited to $50. The $50 limitation on liability applies to all unauthorized uses of a credit card and not to each individual unauthorized use. It is also intended that the $50 limitation applies to an account-holder's total liability with respect to any one account. For example, if he and his wife were issued two credit cards and unauthorized purchases were made on both cards, the family's maximum liability would be $50 for both cards and not $50 for each individual card.

It is expected that these matters will receive further clarification in regulations issued by the Federal Reserve Board.

CREDIT REPORTING

Mr. President, the Senate passed a fair credit reporting bill on November 6, 1969. The Subcommittee on Consumer Affairs of the House Committee on Banking and Currency held hearings on this legislation but has not yet taken action. Based upon the record developed during the House hearings, the House conferees had a number of amendments to suggest to the Senate bill. These amendments were carefully considered by the Senate conferees and were agreed to in those cases where the amendment improved the Senate bill without drastically changing its basic approach.

The following amendments were agreed to by the Senate conferees:

MEDICAL INFORMATION

The Senate conferees agreed to a House amendment specifically exempting medical information from the disclosure requirements of the legislation when such information is obtained from licensed physians or medical practitioners, hospitals, clinics, or other medical or medically related facilities. Credit reporting agencies would not be required to disclose such information to consumers in order to safeguard and protect the traditional relationship between the doctor supplying the information and his patient.

RETENTION OF OBSOLETE INFORMATION

The Senate bill prohibited a reporting agency from reporting information on an account placed for collection or charged off as a loss if the information was older than 7 years or until the governing statute of limitations expired, whichever was the longer period. The House conferees argued that such information should not be reported if it is older than 7 years regardless of the governing statute of limitations Since the consumer should not be indefinitely burdened with an adverse credit rating, the Senate conferees agreed to accept the House amendment.

The Senate bill also prohibited the reporting of adverse information older than 7 years or 14 years in the case of bankruptcies unless such information was needed in connection with a life insurance policy in excess of $25,000. The House conferees felt this limitation should be increased to $50,000 in view of the substantial number of policies between the $25,000 to $50,000 range. The Senate conferees agreed to accept this House amendment.

PROCEDURES TO INSURE ACCURACY

The Senate bill required reporting agencies who prepared investigative reports to follow reasonable procedures to assure the maximum possible accuracy of such report. The House conferees felt that this requirement should be extended to all reporting agencies, whether they prepared investigative reports or conventional credit reports. The Senate conferees felt that this was a reasonable requirement and accepted the House amendment.

SOURCES OF INVESTIGATIVE INFORMATION

The Senate bill required consumer reporting agencies to disclose the nature and substance of all of the information in a consumer's file to the consumer except for the sources of such information if used in an investigative type report. The House conferees felt that it was necessary to give consumers a specific statutory right to acquire such information on sources under appropriate discovery procedures in connection with any action brought under the act. This may be the only way in which the consumer can effectively refute allegations made in an investigative report. Accordingly, the Senate conferees agreed to accept this House amendment.

DISCLOSURE BY USERS OF CREDIT REPORTS

Under the Senate bill, if a consumer were rejected for credit, insurance, or employment either wholly or partly on the basis of a credit report, he would have to be given the name and address of the credit reporting agency if he made a written request to obtain such information. His right to make such a request was to have been communicated to the consumer by the user of the report at the time the consumer is rejected for credit, insurance, or employment.

The House conferees took the position that the consumer should not be required to make a written request to learn the identity of a credit reporting agency responsible for making an adverse credit report. It was argued that many consumers would neglect to make such a request out of fear or ignorance

The Senate conferees agreed to accept this House amendment. The rights given the consumer to review the information in his credit file are thus made more meaningful by this improved disclosure procedure.

PUNITIVE DAMAGES

The Senate bill permitted consumers to collect punitive damages in the case of any consumer reporting agency or user or information who willfully failed to comply with any provision of the act. These damages were limited to a minimum of $100 and a maximum of $1,000.

The Senate conferees agreed to an amendment suggested by the House conferees to delete the $100 floor and $1,000 ceiling on punitive damages and permit the court to fix the amount of such damages. A similar position was taken by the President's Assistant for Consumer Affairs.

NEGLIGENT FAILURE TO COMPLY WITH ACT

The Senate bill also permitted consumers to bring civil actions against reporting agencies or users of information who were grossly negligent in failing to comply with any requirement imposed by the act. The House conferees argued that it was exceedingly difficult to prove gross negligence and that reporting agencies should be held to a standard of ordinary negligence in following the requirements imposed by the act.

The Senate conferees agreed to the House amendment in order to provide a greater incentive for reporting agencies and users of information to comply with the various provisions of the act.

Thus, for example, if a reporting agency fails to follow reasonable procedures to assure the maximum possible accuracy of information in a credit report and is negligent in so doing, a consumer has a right to bring a civil action to recover any actual damages sustained.

JURISDICTION OF COURTS

The Senate bill permitted consumers to bring civil actions in any appropriate U.S. District Court. The House conferees suggested the authority to bring actions in Federal Courts be provided without regard to the amount at controversy in order to provide consumers with the most effective remedy possible.

The House also suggested a modification to a Senate requirement that a civil action be brought within 2 years from the date of the occurrence of any violation of the act. The House conferees suggested that where a defendant has materially misrepresented any information required to be disclosed and the information so misrepresented is material to establishing the defendant's liability, the action may be brought by a consumer within 2 years after the discovery of the misrepresentation.

The House amendments give the consumer a more effective legal remedy against potential violations and were accordingly agreed to by the Senate conferees.

UNAUTHORIZED DISCLOSURES BY OFFICERS OR EMPLOYEES OF REPORTING AGENCIES

The Senate bill made it a Federal crime for any person to knowingly or willfully obtain information from a consumer reporting agency under false pretenses. The House suggested that similar criminal penalties be provided with respect to any officer or employee of a consumer reporting agency who knowingly and willfully makes an unauthorized disclosure.

This amendment is intended to further safeguard the confidentiality of information in a reporting agency files and was accordingly agreed to by the Senate conferees.

DEFINITION OF CONSUMER REPORTING AGENCY

Mr. President, the statement of managers on the part of the House indicates that the House conferees "also intend that the definition of 'consumer reporting agency' not include insured financial institutions whose lending officers merely relate information about an individual with whom they have direct financial transactions." This interpretation by the House conferees was never discussed within the conference committee. It needs additional clarification to insure that the intent of the legislation is not misinterpreted by the courts or the Federal Trade Commission. The Senate bill as agreed to by the conference committee defines a consumer report under section 603(d). However, the term does not include any report containing information solely as to transactions or experiences between the consumer and the person making the report. Thus, if a bank lending officer provided information about its transactions with one of its customers to another bank or to a credit reporting agency such a communication would not be considered to be a consumer report as defined under section 603(d).

The definition of a consumer reporting agency under section 603(f) refers to any persons who make consumer reports to third parties. Thus, under the bill passed by the Senate and agreed to by the conference committee, a creditor cannot be a consumer reporting agency by virtue of making reports which do not meet the definition of "consumer report." Thus, the statement by the House conferees would seem to add nothing to the clear wording of the statute. It could be somewhat confusing, however, since the exemption stated by the House conferees appears to exempt only insured financial institutions from the definition of "consumer reporting agency" whose lending officers merely related information about one of their customers with whom they have had direct financial transactions. If such a report did not meet the definition of a consumer report as defined under section 603(d), no person making such a report would be considered to be a "consumer reporting agency" regardless of whether or not they were an insured financial institution.

On the other hand, if a bank or other insured financial institution made a report consisting of information about an individual with whom they have had direct financial transactions and part or all of the information pertained to transactions or experiences which were not between such bank or other financial institution and the person on whom the report was made, then such bank or institution would, in fact, be making a consumer report as defined under section 603(d) and would thus become a consumer reporting agency as defined under section 603(f).

The statement of managers on the part of the House also indicated that the House conferees intend that the definition of "consumer credit report" not include protective bulletins issued by local hotel and motel associations, and circulated only to its members dealing solely of transactions between members of the association and persons named in the report. Once again, this interpretation was never discussed in the conference committee and needs additional clarification. To the extent that a local hotel or motel association compiles credit or other information from its members and makes such information available to its members, it is making consumer reports as defined under section 603(d) and is acting as a consumer reporting agency as defined under section 603(f).

SUMMARY OF FAIR CREDIT REPORTING BILL

The purposes of the Fair Credit Reporting Act are to give consumers a chance to correct inaccurate information in their credit file; to preserve the confidentiality of such information; and to prevent undue invasions of the individual's right to privacy.

The act covers all reporting on consumers, whether it be for the purpose of obtaining credit, insurance, or employment. However, credit reports or other reports on business firms are excluded.

As reported by the conferees, the following consumer rights would be secured by the act:

First. To be told the reasons for a credit, insurance or employment turndown when a credit report was a factor and to be given the name and address of the reporting agency.

Second. To be informed of the nature and substance of all information in his credit file by the credit reporting agency.

Third. To have another person with him at the reporting agency when his file is discussed.

Fourth. To be told who has received reports on him during the proceeding 6 months for credit or insurance purposes and the preceding 2 years for employment purposes.

Fifth. To have inaccurate or unverifiable information deleted from his file.

Sixth. To have the information in his file reinvestigated whenever he disputes its accuracy.

Seventh. To file a brief explanatory statement on disputed items and to have the statement included on subsequent reports.

Eighth. To have the information in his file kept confidential and used only for legitimate business purposes.

Ninth. To have personal information in his file kept from governmental agencies unless ordered by a court.

Tenth. To be informed if adverse public record information is reported for employment purposes when such information cannot be kept up to date.

Eleventh. To have adverse information deleted from his file after 7 years or after 14 years in the case of bankruptcies.

Twelfth. To be informed of the scope and nature of investigative-type reports into his personal life.

Thirteenth. To have adverse information on investigative-type reports reverified before it can be used again.

Fourteenth. To bring civil actions against credit reporting agencies and collect actual damages plus attorney's fees if the agency is negligent in reporting inaccurate information.

Mr. President, I believe the amendments suggested by the House conferees will perfect and improve the provisions of the Fair Credit Reporting Act passed by the Senate last November. In view of the growing importance of credit information in our economy, we must give consumers a higher degree of protection against the consequences of an inaccurate or misleading credit report.

Millions of American consumers are affected by the credit reporting industry. While credit reporting agencies have generally discharged their functions adequately, in some cases individuals have been irreparably damaged by inaccurate credit reports.

The Fair Credit Reporting Act will for the first time give consumers a right under Federal law to obtain access to their credit file and correct any inaccurate or misleading information. I am hopeful that this legislation can be signed into law this year and that it will be vigorously enforced by the Federal Trade Commission which is assigned enforcement duties.

Mr. President, I hope the Senate adopts the conference report.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. HATFIELD. Would the Senator be willing to postpone action on the conference report for a few minutes? I am not aware yet of the feeling or thinking of the minority members of the committee. I would like to have a few moments to check that out.

Mr. PROXMIRE. I would be willing to have that done. However, I can tell the Senator that the Senator from Utah (Mr. BENNETT) and other minority members who were conferees on his side of the aisle signed the conference report. I think they were quite pleased with it, in fact they were enthusiastic about it.

Mr. HATFIELD. I do not doubt that at all and I do not challenge the authenticity of the report. Merely in the procedures we follow at this desk, I would like to have a few moments.

Mr. PROXMIRE. Certainly.

Mr. MAGNUSON. Mr. President, will the Senator yield so that I may ask a few questions?

Mr. PROXMIRE. I yield.

Mr. MAGNUSON. Does this in any way conflict with or compromise what the Federal Trade Commission is going to do about credit cards?

Mr. PROXMIRE. It complements that. We had testimony by them.

Mr. MAGNUSON. They are about to issue a rulemaking procedure because they are going to change the law or the tactics being used, not only in connection with credit card reporting but also sending bills.

This would complement that, would it not?

Mr. PROXMIRE. Yes. With respect to credit cards, this makes it illegal to send unsolicited credit cards and limits the liability of a holder of a credit card if it is stolen to $50, and to no liability if it is not used.

Mr. MAGNUSON. In other words, it would complement what the Federal Trade Commission is trying to do?

Mr. PROXMIRE. That is correct.

Mr. HATFIELD. Mr. President, I have no further objection to moving to the disposition of the conference report at this time.

Mr. PROXMIRE. I appreciate that.

Mr. BENNETT. Mr. President, on last Tuesday, October 6, 1970, conferees of the House and Senate met together to work out the differences between the Senate and House versions of H.R. 15073. In general, the conference was very successful and we retained most of the Senate provisions dealing with bank secrecy, credit cards, and credit reporting agencies. Yesterday, the House filed the conference report and the statement of managers on the part of the House. The statement for the most part was accurate in its description of the intent of the conferees and the action taken in the conference. However, there are several statements in the report which I believe do not clearly represent the action of the conferees or the intent of the language approved by the conference committee.

The first of these deals with the authority granted to the Secretary of the Treasury in determining records to be kept by financial institutions. In the Senate, we amended the House bill which was unclear, to assure that no records would be required unless the Secretary of the Treasury determined that they would have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. In amending the bill, however, we drafted it in such a way that it appeared to leave the congressional intent to the Secretary of the Treasury's determination also. The conference committee amended the Senate version by clearly establishing the purpose of the legislation as requiring the "maintenance of appropriate types of records by insured banks in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." The determination of which records have such a degree of usefulness and the determination of records or other evidence to be kept by financial institutions was left, however, entirely to the Secretary of the Treasury. In other words, no change was made by the conference to the Senate bill which would in any way decrease the authority of the Secretary of the Treasury to determine the appropriate types of records to be maintained by financial institutions.

The statement of managers on the part of the House also seems to try to legislate further in title VII containing provisions relating to credit reporting agencies. The conference report states that:

> The House Conferees also intend that the definitions of "consumer reporting agency" not include insured financial institutions whose lending officers merely relate information about an individual with whom they have had direct financial transactions.

While I may agree entirely with the desirability of such an interpretation, it is not appropriate to state that the Senate bill or the conference report was intended to have an interpretation this broad. Since no amendment was offered or accepted, the Senate bill was not changed so far as the definition of "consumer reporting agency" is concerned.

During our discussions in the Senate, the problem which could be created by this legislation for the transfer of information between correspondent banks was discussed very thoroughly. It was my position that correspondent banks should be allowed to transfer information on their customers to banks with which they had a correspondent relationship without being considered a consumer reporting agency or the information being considered a consumer report. It was argued, however, that if a complete exemption were granted, banks could in effect establish consumer reporting agencies without being subject to the same restrictions which would govern the activities of other consumer reporting agencies not affiliated with a bank.

I believe that the Senate bill language which was not altered in the conference report authorizes banks as well as other institutions to provide information to third parties so long as that information deals only with their transactions with individuals who are their customers. In other words, a bank or a retail establishment could provide information to a third party on which a credit judgment could be made so long as information was not included dealing with transactions other than those with the bank or other institution providing the information and such information would not be considered a consumer report nor would the transfer of such information make the transferring institution a credit reporting agency. The language in the statement of managers on the part of the House would seem to expand this authority to include any information which the reporting firm might have in its files on a person with whom it had direct financial transactions. The intent of the legislation is not to broaden it to that extent.

The House managers' statement also states:

> Your conferees also intend that the definition of "consumer credit report" not include protective bulletins issued by local hotel and motel associations, and circulated only to their members, dealing solely with transactions between members of the associations and persons named in the report.

The House conferees may have had such an intent, but it was not brought to our attention in the conference committee. Indeed, I believe that such protective bulletins should not be considered to be consumer credit reports and thus be subject to all of the restrictions contained in this title of the bill. Many of the provisions in this bill have made it more difficult for those who desire information on the basis of which to grant credit or insurance or employment to receive such information. There is no doubt that this title will result in restricting the amount of information which is available on which to make such decisions. In our attempt to protect consumers from improper information, we have added burdens and expense which will ultimately be paid for by consumers. To restrict an association from providing information to its own members on individuals who have not paid their motel or hotel bill or who have paid such bills with a check which is dishonored seems to be absurd. Such bulletins can, under the bill as I interpret it, be circulated within the various branches of a nationwide chain without any difficulty and without any restrictions. It appears only reasonable, therefore, that an association of independent firms should be able to have the same degree of protection against fraudulent transactions without being subject to all of the expensive disclosure and compliance procedures which are contained in this title.

While I am discussing compliance procedures, I would like to refer to another improper statement made by the managers on the part of the House. In the conference committee, we accepted a House amendment which added the requirement that consumer reporting agencies must "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." The entire explanation of this amendment by the House was:

> This language is basically the last sentence of section 614, making it a duty for all consumer reporting agencies to follow reasonable procedures to assure accuracy in their reporting.

The Senate report discussing section 614 states simply:

> Those who make investigative reports must follow procedures to assure maximum possible accuracy. The Statement of the House Managers now comes up with the intent of this section as being:
>
> "The House Conferees intend that this requirement shall include the duty to differentiate between types of individual bankruptcies (e.g., between straight bankruptcies and Chapter XIII wage earner plans), and that the disposition of a wage earner plan where the consumer conscientiously carries out his responsibilities under it should be duly noted."

No such requirement was ever mentioned in the conference nor was there any indication that any conferee intended the amendment to include this type of requirement.

There is absolutely no basis or justification for the statement by House managers that would require differentiation between types of bankruptcies or notations regarding the conscientiousness of consumers.

In the following paragraph of the statement of managers on the part of the House, the managers discuss an amendment which was offered by a House Member but which was rejected by the conference committee. The explanation of the amendment given by the Member who offered it was:

> In order for the consumer to rectify any errors in his report, it is essential that he see the information in his file rather than "the nature and substance of the information." This does not mean that the consumer will be able to physically handle the file, but merely see the information in it.

As I stated earlier, this amendment was rejected by the conferees. The House conference report now says that:

> The Senate Conferees did not agree to this amendment, contending that the existing language already accomplished this result. The Conferees of both Houses intend that this important provision be so interpreted.

I would like to state that the Senate conferees did not contend that the exist-

ing language accomplish the result of the amendment. In fact, the Senate conferees stated that they did not want any change in the Senate language nor did Members of the Senate during the conference session interpret what the language in the Senate bill was intended to mean. Since the exact Senate language was retained and since there was no discussion as to what the language was intended to mean, it means just what it says. If any additional interpretation is desired, it can be received from the Senate report dealing with section 609, from which I quote:

> This section requires reporting agencies to disclose, at the request of a consumer, the nature and substance of all information in the consumer's file, the sources of the information, unless it is an investigative report, and the persons who have received reports on the consumer during the past 6 months for credit or insurance purposes and the past 2 years for employment purposes.

Since the House did not bring a credit reporting bill to the conference and since the only bill on which we were conferring was the Senate bill, any amendments requiring additional information or more stringent procedures by credit reporting agencies should literally be outside of the bounds of the conference. An interpretation by the House conferees of the meaning of Senate provisions which were not amended is inappropriate and has no basis.

Interpretations of amendments accepted by the Senate in conference cannot properly be expanded to mean other than the meaning discussed and agreed to by the conferees in the conference.

Mr. President, I regret that it has been necessary for me to make this statement to clarify the legislative history and intent of the conference report on H.R. 15073.

Having made such a clarification, I support the report and recommend that it be approved by the Senate.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. PROXMIRE. Mr. President, I thank the Senators from Indiana, Washington, and Oregon.

EQUAL RIGHTS FOR MEN AND WOMEN

The Senate resumed the consideration of the joint resolution (H.J. Res. 264) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

Mr. MAGNUSON. Mr. President, I am going to ask a question of the three or four distinguished lawyers now on the floor. Some of us have been, not necessarily bothered, but wondering, whether or not the equal rights amendment would affect the community property laws in, I think, the eight States where those laws are now in effect. They have the old Spanish community property laws.

What effect would this amendment have on that protection for the rights of women? That law is based on the old Spanish idea that with everything being equal when one dies or when the marriage is dissolved, 50 percent will go to the woman and 50 percent to the man.

I wonder if any analysis has been made of the effect of this amendment on the community property laws of the States that have such laws.

Mr. BAYH. Mr. President, the Senator from Indiana recollects that there was some testimony in our hearings about it. I would be glad to dig it out and make it available for the Senate and the Senator from Washington. As I recall, my judgment was that the community property laws would not be affected; it would apply equally to men and women.

Mr. ERVIN. Mr. President, will the Senator yield, so I may call to the attention of the Senator from Washington the opinion of his attorney general?

Mr. MAGNUSON. I yield.

Mr. BAYH. I am glad to yield. I was asked for my opinion, and I am sure it will not be the same as that of the Senator from North Carolina or those he quotes.

Mr. ERVIN. Mr. President, I hold in my hand a letter from the attorney general of the State of Washington, Slade Gorton, dated the 4th day of September 1970, in which he sets out a number of Washington State laws which would be affected by this amendment, and he says this after discussing other laws which would be adversely affected by the amendment:

> Additionally, it is possible that this proposed amendment might have some effect upon Washington's Community Property law, under which the property of the wife is treated somewhat differently than the property of the husband. Under Revised Code of Washington sections 26.16.130 and .140, earnings of wages and accumulations of other property by a wife while living separate and apart from her husband are her own separate property, while wages and accumulations of the husband while living apart from his wife are not treated as his separate property, but are considered to be earned or accumulated for the benefit of the the marital community.

He expresses concern about that very proposition.

Mr. MAGNUSON. I have had some concern about it. I am disposed to vote for the amendment. Then it will go back to the States, and States like Washington State could determine how it would affect them. But Texas, Louisiana, New Mexico, Arizona, and my own State—these States still rigorously adhere to the old Spanish community property laws—which were based fundamentally on the protection of a woman's right in the marital relationship in the accumulation of property during the time of marriage.

Mr. ERVIN. Mr. President, I put in the RECORD yesterday a letter from the attorney general of Louisiana stating that it would invalidate the community property law of that State.

I hold in my hand a letter from the attorney general of Texas, in which he said that a similar amendment had been submitted to the Legislature of the State of Texas every year for 25 years and it had always been rejected every 2 years because the State legislature concluded that it would invalidate the community property laws of Texas.

Mr. MAGNUSON. I just do not know. I was hoping we would have a legal opinion on this. If the amendment is submitted to the States, every State will review it and determine whether it will affect its laws, including the community property laws, and determine whether it should be adopted. I do not think that my State or the State of Texas or the State of Louisiana or the State of New Mexico would want to violate the principle of the community property law, because it has worked well, and we think it is good.

I remember years back when we were allowed to file a joint income tax return because we were in a community property State. The people in Indiana could not file joint returns. Every year an amendment would be proposed, and the late, distinguished Senator from Texas, Senator Connally, and I would take the floor and try to protect States' rights by retaining the community property laws.

Finally, we suggested that taxpayers all over the Nation should be permitted to file joint income tax returns as could the people in our eight community property States. That proposal was ultimately adopted, so everybodoy files a joint income tax return even if there are not any community property laws in his particular State.

I am somewhat worried about the effect of this amendment on such laws, but I suspect that the State legislatures in the States affected will review the amendment closely.

Mr. ERVIN. If I may quote from the letter written to me by the attorney general of Texas, he said:

> This same amendment has been proposed in our Texas Legislature for twenty-five years but has met defeat every two years. Three years ago, our State Bar took a firm stand against this particular amendment, arguing that either the amendment would have no affect and would simply be a platitude or it would completely disrupt our property laws to the great disadvantage of the family. As you know, we are one of the community property states and our State Bar found that an amendment of this nature would be highly detrimental to the wife and mother and to the minor children.

Mr. MAGNUSON. I am glad to get that information. I was hoping we might have some definite legal opinion on how the amendment would affect such laws. I take it that the Senator from Indiana feels the amendment would not affect the community propery laws. Many of us in the community property law States are seriously concerned about the matter.

Let me thank the Senator.

Mr. BAYH. I appreciate the Senator from Washington bringing this matter up. I would like to point out that if we looked at the scope covered by the letter of the attorney general of Texas, it goes all of the way from saying the amendment would be nothing but a platitude, to the assertion that, in fact, it would bring about a total destruction of certain parts of Texas law. If that is the kind of opinion we are going to get, it is like taking a shotgun out into the night and trying to shoot a black target. The letter from the attorney general of Washington was vague. He did not give an unequivocal opinion. He said it was possible.

As one Member of the Senate, who happens to be floor manager of the joint

resolution, I say the legislative intent is that if there is an overriding national or public interest, the amendment would not alter such a law.

Mr. ERVIN. This amendment is not going to be interpreted according to some overriding national purpose. The amendment will be interpreted by what it says.

I would say to the Senator from Indiana and the Senator from Washington that one of the observations I think is relevant here is that of Robert Sherrill, the correspondent for The Nation, who, writing in the New York Times a short time ago, said:

> The equal rights amendment's journey down the corridors of Congress has so far been an impressive demonstration of what can be achieved through almost total ignorance.

Mr. BAYH. The Senator from North Carolina, of course, is a very learned jurist, and has been a judge in his State. The Senator from Indiana has not been a judge, and has not been a lawyer as long as the Senator from North Carolina. Nevertheless, I daresay that seldom a week or a month goes by that my distinguished friend from North Carolina does not have to look at a statute and interpret what it means—not just what the words say, but what the statute means.

That is even more true as to a constitutional amendment. Then we, by necessity, must sweep with a broad brush, and then the courts determine each case on a factual basis, and determine what the congressional intent was.

The congressional intent is not only what the words say. To determine intent, you look at the record of the debate. Right now we are trying to clarify that record and show what this amendment means.

The examples the Senator from North Carolina gives, his strong appeals that this amendment would take the labels "men" and "women" off the various restroom facilities across this country. are ridiculous. This would not happen. The right of privacy is too deeply engrained in our society. Look at the case of Griswold against Connecticut, decided by the Supreme Court.

Mr. COOK. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. COOK. I might suggest that there is also a complete line of cases out of the Supreme Court of the United States dealing with the right of privacy. We shall probably put those cases into the RECORD at a later time; but I think this discussion overlooks that entire line of cases.

Mr. ERVIN. Mr. President, will the Senator yield for a brief statement?

Mr. BAYH. I am happy to yield.

Mr. ERVIN. I would say that those cases were decided under the existing Constitution; but when this amendment becomes a part of the Constitution, it is going to have to be interpreted to supersede those cases, if they are inconsistent. A provision which says that every man and every woman has exactly the same rights means that a man has a right to go into every public restroom, even though it is marked for women, and a woman has a right to go into every public restroom, even though it is marked for men. When the Constitution is amended to prohibit the segregation of men and women in jails and prisons, privacy is gone. That is the reason I have an amendment to protect the privacy of women.

Mr. BAYH. I respect the difference of opinion of the Senator from North Carolina, and I know that in his heart he thinks he is right; but I think he is dead wrong in the way he interprets the effect of this amendment. I think he is 180 degrees wrong.

I hope the Senator from North Carolina will make that letter from the Texas attorney general available to the Senate, because, so far as we have been able to determine, the only significant change that would be required in community property laws would be that the States would probably have to allow joint management in some instances. The State of Texas adopted such a joint management provision back in 1968.

So it would be interesting to know how the attorney general of Texas handles this problem.

Mr. ERVIN. I assure the Senator I am going to put it in the RECORD. I would have put it in yesterday had consideration of the amendment not been laid aside.

Mr. EAGLETON. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. EAGLETON. I am glad the Senator has yielded to me.

Mr. COOK. Mr. President, will the Senator yield for a moment?

Mr. EAGLETON. I yield.

Mr. COOK. May I inquire how much longer this will be?

Mr. EAGLETON. I am trying to propound these questions as quickly as I can. I hope to be through in a few minutes.

I would like to ask the Senator from Indiana about the laws in the various States pertaining to prostitution, most of which take into account the difference between male and female in their phraseology.

How are we going to unravel that series of State statutes and municipal ordinances so as to give equal rights across the board?

Mr. BAYH. I would have to restate what I said earlier. Those laws would be applied equally across the board to male and female.

Mr. EAGLETON. Under the equal rights amendment, would the crime of prostitution apply not only as between persons of different sexes, but also between persons of the same sex?

Mr. BAYH. Whether that would be defined as prostitution or some other crime I do not know.

Mr. EAGLETON. If the equal rights amendment becomes law, could a valid prostitution ordinance be drafted that would differentiate between the act of the male and the female, or would it have to be drafted so broadly as to encompass activities not only between the two sexes, but between members of the same sex?

Mr. BAYH. If a crime involved the commission of certain acts between members of different sexes, this would have to be applied across the board to men and women alike. By chance was the Senator from Missouri alluding to those crimes that, by definition, include certain acts between members of the same sex.

Mr. EAGLETON. That is right.

Mr. BAYH. Those crimes would not be affected by this amendment.

Mr. EAGLETON. Let me ask the Senator about homosexual or lesbian marriages. Most States legalize the status of matrimony by statute limiting marriage between partners of the two sexes. Do those statutes, as now written, go by the board under the equal rights amendment?

Mr. BAYH. The Senator from Indiana does not think such laws would be invalidated.

Mr. EAGLETON. That is, a State which, for example, has a statute which says "the status of a marriage is valid in this State only as between man and woman" would still have a valid statute, under the equal rights amendment?

Mr. BAYH. I believe that is accurate.

Mr. EAGLETON. I note for the RECORD that Professor Freund of Harvard Law School feels a bit differently. He said:

> Indeed, if the law must be as undiscriminating concerning sex as it is toward race, it would follow that laws outlawing wedlock between members of the same sex would be as invalid as laws forbidding miscegenation.

Mr. BAYH. I have a great deal of respect for Professor Freund; however, I do not share his opinion. As long as the laws require that the marriage be a contract between people of opposite sexes, they would be constitutional because they treat men and women equally. A problem would arise if, for example, a law validated marriages between two women, but not between two men.

It is my judgment that this amendment would not affect the statutes that the Senator from Missouri is referring to.

Mr. EAGLETON. Well, of course, to the extent that the Senator has commented on it, if it would discriminate against anyone, it would discriminate against homosexuals.

Mr. BAYH. If the Senator from Missouri wants to have a constitutional amendment covering that subject, we will cover it at a later date.

Mr. EAGLETON. No, I most certainly do not. The Senator from Alabama is anxious to pursue his amendment. If I may have the indulgence of the Senator from Indiana, I would like to make a short comment, based on what we have been able to cover by my questions up to this point.

The Senator has said, with respect to these questions, that the States can and should continue, even if the equal rights amendment becomes operative, their various statutes protecting the right of privacy. Next, the Senator has stated that the States have a right to maintain or to establish statutes that "take into account the very real physical differences between the sexes." Finally, he has also stated that the States "can take into account overriding and compelling public interest that call for distinction between the sexes."

Therefore, I wonder, if an amendment were drawn to his resolution which amendment would protect the right

of privacy; protect the right of differentiation based on the "very real physical differences between the sexes"; and protect "the overriding and compelling public interest in the differentiation between the sexes," would the Senator accept such an amendment which would be in conformity with his own thinking and which would clarify the "bare bones" language of his resolution which in its present form is completely silent on these matters?

Mr. BAYH. I will be very frank with the Senator from Missouri. If we were starting out from the very beginning, the Senator from Indiana would see no objection to including specific language incorporating the suggestions made by the Senator from Missouri. But the Senator from Indiana feels that these questions of interpretation can be handled in the legislative history which we are now building. These points have been adequately covered in the House by the floor manager of the measure, the Representative from Michigan (Mrs. GRIFFITHS), the Senator from Indiana would be inclined not to favor these amendments. The very real effect of these amendments at this stage in the amending process would be to kill the amendment that is before the Senate, even though it has already been passed by the House by a significant majority.

Mr. EAGLETON. Not to prolong the matter and I thank the Senator from Alabama for being so very indulgent. I take it that the Senator from Indiana thinks there is at least a modicum, and perhaps more than a modicum, of validity to some of the points I have raised. He has agreed that we need to preserve the right of privacy; that the very real physical differences between the sexes should be taken into account; that the "overriding and compelling public interest in differentiating between the sexes" should be taken into account. He has indicated he would not mind these concepts being in a constitutional amendment. However, because we are racing the clock, he thinks that we should enact this resolution as it is now drawn and pray to God that the Supreme Court of the United States unravels it in the best interests of all of us.

Mr. BAYH. I will be glad to read the RECORD. I do not think the Senator from Indiana said that. I do not think he even inferred it.

There is more than one way to treat a problem. The Senator from Indiana feels that the amendment adequately deals with the problem. By raising these questions the Senator from Missouri has clarified several of the inevitable questions of interpretation which accompany any constitutional provision. I do not believe we should put something in the Constitution or in the statute books in a mad effort to race the clock. The Senator from Missouri suggests that we answer these questions by redrafting the amendment. I do want to point out the broad language of this amendment is typical of constitutional language. And the language has been more than adequately clarified in the debate we are having.

Mr. EAGLETON. I thank the Senator from Indiana, and I thank the Senator from Alabama.

Mr. ALLEN. Mr. President, earlier this morning, I promised that I would yield 30 minutes to the distinguished Senator from Kentucky (Mr. Cook). I therefore ask unanimous consent that I may yield to the distinguished Senator from Kentucky for 30 minutes, without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

EQUAL RIGHTS FOR WOMEN: AN IDEA WHOSE TIME HAS COME

Mr. COOK. Mr. President, the proposed equal rights amendment to the U.S. Constitution, as it passed the House of Representatives in August, reads in pertinent part:

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

If passed by a two-thirds majority in the Senate and ratified by three-fourths of the State legislatures, the equal rights amendment will become the 26th amendment to our Constitution. Resolutions similiar to this proposal, which the Senate is to consider before adjournment this year—I should like the attention of the Senator from Missouri, because he said we were in a mad rush to get this done—were first introduced in 1923 soon after the ratification of the 19th amendment giving women the franchise, the purpose of this amendment is to end the unequal treatment under the law to which women have been subjected since the Constitution was first adopted. It is important to note that the only kind of sex discrimination which this would forbid is that which exists in law. Interpersonal relationships and customs of chivalry will, of course, remain as they have always been, a matter of individual choice. The passage of this amendment will neither make a man a gentleman nor will it require him to stop being one.

Although there is now little disagreement upon the merits of the goal of equal rights for women, there is quite some difference of opinion as to how it can best be achieved. Opponents argue that the 14th amendment equal protection clause and title VII of the Civil Rights Act of 1964 which prohibited discrimination on account of sex are sufficient safeguards. The problem with this analysis is that the courts have been in some cases slow and in others completely derelict in interpreting either of these provisions as striking down irrational sex discrimination in law.

Another "red herring" which opponents raise is that all State "protective" laws for women will be nullified. This ignores recent court decisions in analagous situations in which the courts have not nullified other types of discriminatory State laws but rather extended the protection afforded to one class to the other, thereby providing equality of treatment under the law. The passage of this amendment is important because it will provide a mandate for the courts to strike down irrational sex-based discrimination wherever it is found in law.

In addition, it should also be pointed out that this is not just an equal rights amendment for women. It will also benefit men as there are many sex discriminations in law which penalize males. Equal treatment for men and women under the law is indeed an idea whose time has come.

As I stated previously there is virtually no disagreement upon the need to bring about equal treatment under the law regardless of sex. The members of the Judiciary Subcommittee on Constitutional Amendments heard the case abundantly made in hearings on May 5, 6, and 7 of this year. Additional hearings were held before the full Judiciary Committee on September 9, 10, 11, and 15. Mr. President, I am delighted to say that I was in attendance at all of them. Time and time again examples of unequal treatment of women under the law were brought to the attention of committee members. I will not recount them here except to insert in the record at this point some examples of discriminatory State laws which would be unconstitutional upon adoption of the equal rights amendment. Mr. President, I ask unanimous consent that this document be printed in the RECORD at this point.

There being no objection, the document was ordered to be printed in the RECORD, as follows:

EXAMPLES OF DISCRIMINATORY STATE ACTION OUTLAWED BY THE EQUAL RIGHTS AMENDMENT

(1) Until 1966, three states excluded women from juries altogether. In one state (Louisiana) women (but not men) must register specially to be eligible to serve on juries.

(2) In one state (Arkansas), there is a statute allowing women to be committed for up to three years in the reformatory for offenses such as "drug using" and "habitual intoxication," although men cannot be sentenced to more than 30 days for drunkenness.

(3) In eight states, women cannot contract or sign leases until they are 21, while men can do so at 18.

(4) California and four other states require a married woman to obtain a court order before establishing an independent business. 11 states place special restrictions on the right of a married woman to contract. In 3 states, a married woman can't become a guarantor or surety.

(5) Some cities in the United States (e.g., Salinas, Kansas and Biloxi, Mississippi) have different public school pay scales for male and female teachers with identical experience.

(6) Women are discriminated against in college admissions. In the fall of 1968, only 18% of the men entering public four-year colleges had received high school grade averages of B+ or better. But 41% of the freshmen women had attained such grades. One state university (University of North Carolina) has published an admission brochure saying that "Admission of women on the freshman level will be restricted to those who are especially well qualified."

(7) Sex discrimination still exists in the labor laws of every state in the union except Delaware. And despite contrary decisions under Title VII of the 1964 Civil Rights Act by the Equal Employment Opportunity Commission, two federal appeals courts, and several state attorneys general, a recent survey showed that 51% of major employers continue to enforce these restrictions.

(8) 39 states and the District of Columbia impose limitations on the number of hours worked by men. These provisions often preclude women from occupying supervisory jobs requiring overtime.

Mr. COOK. The decision upon the equal rights amendment seems to turn entirely upon legal arguments. In that regard, I felt it my duty as a supporter of Senate Joint Resolution 61 which is identical to the House-passed resolution, House Joint Resolution 264, to provide for my colleagues all the legal arguments I could muster for passage of the amendment in the form as originally introduced. My initial efforts were letters to all Senators of September 1 and 21 of this year. Mr. President, I ask unanimous consent that these letters be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., September 1, 1970.

Re: S.J. Res. 61, The Equal Rights Amendment.

DEAR SENATOR: I have become increasingly concerned about reports that some Senators are having second thoughts about their previously announced support for the proposed Equal Rights Amendment. It is the purpose of this letter to help resolve these doubts.

Some of our colleagues, I am told, are contemplating support for the Ervin Amendment which would legitimatize state schools segregated by sex, and would probably be a setback for women's rights if ratified. S. J. Res. 231, introduced by our distinguished colleague from North Carolina, is patently unacceptable to all who are concerned with advancing womens legal status.

Opponents of the Equal Rights Amendment have argued against the Amendment because of its alleged effects, including great speculation about which state laws it would strike down. However, it seems obvious to me, as a lawyer, that the intent of the proponents of the Amendment will ge given great weight by the courts in interpreting and construing the Amendment. And the intent of the proponents is clearly *not* understood by the opponents to the Amendment.

I am enclosing a copy of a speech I made on the Floor which clarifies the intent of the proponents of the Equal Rights Amendment, and also a memorandum on the effects of the proposed Amendment, published by the Citizens Advisory Council on the Status of Women.

I sincerely hope that you will take the time to study this issue, for it not only affects the Constitutional rights and equality of U.S. women, 51% of our citizens, it affects us all. The Equal Rights Amendment deserves the continued support of its 81 co-sponsors.

If you have any further questions, please contact Barbara Schuhmann or Mitch McConnell of my staff, extension 4343.

With best wishes,

Sincerely,

MARLOW W. COOK.

U.S. SENATE,
Washington, D.C., September 21, 1970.

Re: The Equal Rights Amendment.

DEAR SENATOR: As you know, the House-passed Equal Rights Amendment, H.J. Res. 264, is on the Senate Calendar and will probably be considered before the pre-election recess. Hearings on this subject were held by the full Judiciary Committee on September 9, 10, 11, and 15. Although there is little or no disagreement upon the merits of the goal of equal rights for women, there is quite some difference of opinion as to how best to achieve this goal.

Some Constitutional scholars appearing before the Committee predicted rather dire legal consequences in the form of massive nullification of state laws if passage of this amendment is secured. As an alternative, it was argued that the 5th and 14th Amendments and Title VII of the Civil Rights Act of 1964 are sufficient to safeguard the legal rights of women. The problem with this analysis is that while these provisions *might* have provided equality for women under the law, they have not been so construed by the courts. Other legal opinions of scholars more familiar with the field of women and the law were that this amendment is greatly needed. They pointed out, in allaying the fears of opponents, that state "protective" legislation, for example, would not be nullified by this amendment, but that the protection presently afforded to women would be *extended* by the courts to men who are not now "protected" and cited recent cases to support the extension doctrine.

I believe the legal reservations about H.J. Res. 264, expressed by its opponents, have been largely eliminated by the testimony of three experts in this field, Professors Leo Kanowitz, Thomas Emerson, and Norman Dorsen. I have placed their statements in the RECORD, reprints of which are enclosed for your persual.

I hope that you will study this testimony and that we will have your support for the Equal Rights Amendment as it passed the House, without any weakening amendments. If you have any further questions regarding the legal aspects of this matter, please contact Mitch McConnell of my staff at 4343.

Sincerely yours,

MARLOW W. COOK.

Mr. COOK. With the first of these letters, Mr. President, I enclosed a copy of a speech I had made on August 25 dealing with various legal aspects of this amendment. I ask unanimous consent that these remarks be printed in the RECORD at this point.

There being no objection, the text of the speech was ordered to be printed in the RECORD, as follows:

THE EQUAL RIGHTS AMENDMENT

Mr. COOK. Mr. President, Senator ERVIN'S Senate Joint Resolution 231, designed as a substitute for the equal rights amendment, would not improve women's legal status; in fact, it very probably would be a setback if it were ever ratified.

In a letter to all Senators suggesting cosponsorship, the senior Senator from North Carolina (Mr. ERVIN) explicitly states that his amendment would legitimatize State schools segregated by sex. In two recent cases the courts moved toward integrating such institutions under the 14th amendment. (*Kirstein et al* v. *the rector and visitors of the University of Virginia, etc., et al.*, E.D. Va., Richmond Division, Civil No. 220–69–R. 1969; *Margaret de Rivera, on behalf of her daughter, Alice de Rivera,* v. *Leonard J. Fliedner, principal of Stuyvesant High school, the Board of Education of the city of New York, and Bernard E. Donavan, superintendent of schools*, Supreme Court of New York, Manhattan County 00938–69, 1969.)

There certainly is a strong possibility that ratification of Senate Joint Resolution 231 would deter the courts from pursuing this suspicious start toward equal educational opportunity for women, under the 14th amendment.

The equal rights amendment would, of course, prohibit public schools from excluding women or men, and from applying higher admission standards to women.

Mr. President, I might digress a moment, since it may seem strange to some for me to be in favor of this amendment, to say that one of the reasons is that I happen to be the father of four daughters. I have a young daughter who wants to go to law school.

I inquired of a law school in the East, and found out that last year in its graduating class four of the graduating seniors were women. When the larger law firms in the country went to that college and discussed positions with members of the graduating class, they discussed positions in the law firm in the United States with all of the students in the class except those four women. The young men went out of the law school, after passing their bar examinations with an average starting salary of between $10,000 and $16,000 a year.

While all of the four girls graduated in the top 10 percent of their class, the highest salary attained by one of those four girls was $10,000. One became a legal secretary, one went to work for a bank, and two of them went to work for the Federal Government.

Mr. President, I would be happy to send my daughter to law school if the law school would permit me to pay only half the tuition paid for a male student, since she will receive only approximately half what they get when she graduates. But I am afraid I shall not have that opportunity.

Senate Joint Resolution 231 is patently unacceptable to everyone who is concerned with advancing women's legal status, and this is why I want to correct the record as to the effects of the Equal Rights Amendment. Senator ERVIN says that:

The amendment nullifies all existing laws making any legal distinction whatever between the respective rights and responsibilities of men or women.

However, nullification is not the only option open to the courts in dealing with a law that is unconstitutional. In numerous cases the courts, both Federal and State, have taken other courses of action.

In *Neal* v. *Delaware* 013 U.S. 370 (1880) the Supreme Court said:

Beyond question the adoption of the fifteenth amendment had the effect, in law, to remove from the State constitution, or render inoperative, that provision which restricts the right of suffrage to the white race.

In *Levy* v. *Louisiana*, 391 U.S. 68 (1968), the Supreme Court did not strike down a statute that had been interpreted by the State supreme court to exclude illegitimate children from the right to recover for the wrongful death of their mother; it extended the right to the illegitimate children.

In *Takahashi* v. *Fish and Game Commission*, 344 U.S. 410 (1943), the Supreme Court extended to "a person ineligible to citizenship" the right to a commercial fishing license. It did not strike down California's statute governing issuance of such licenses.

It is also clear that the Supreme Court would give great weight to the intent of Congress in interpreting the equal rights amendment, and the purpose of the proponents is clearly not to nullify all laws distinguishing on the basis of sex.

Antieau in "Modern Constitutional Law" says—footnotes omitted:

In the construction of the United States Constitution, the intention of those responsible for the particular clause should be ascertained, if possible, and the Supreme Court has many times endeavored to do this.

Comparably, in construing amendments to the Constitution it is necessary to discover, if possible, what was said in the Congress that proposed the amendment. Illustratively, in seeking to discover the meaning of the Fourteenth Amendment, the Supreme Court has often had recourse to the statements made in the Congress that proposed this amendment.

Utterances of Congressmen who proposed the amendments, as well as those who were most responsible in the convention or the Congress for the passage of the proposal are

especially respected, as witness the traditional consideration given to James Madison's views on the first amendment by the courts . . . as bearing upon the intent of those responsible for a constitutional provision, it is important to ascertain the background of the times leading to the proposal and ratification. The Supreme Court said in 1887: "It is never to be forgotten that in the construction of the language of the Constitution . . . we are to place ourselves as nearly as possible in the condition of the men who framed that instrument."

In construing constitutional provisions, the Supreme Court has regularly looked for the purpose the framers sought to accomplish (pp. 711–714).

It is very clear that the courts would give great weight to the words of Representative MARTHA GRIFFITHS in the House debate and to the words that will be spoken by the proponents of this amendment on the floor of the Senate, as well as the Senate Committee report. The chief proponents of this legislation, both inside and outside the Congress, have stated explicitly that they interpret the amendment to extend to the other sex many of the laws that distinguish on the basis of sex. The excellent legal memorandum prepared by the Citizens' Advisory Council on the status of women takes this position.

Representative GRIFFITHS said, and I agree, that in those States that allow alimony only to women, men would become eligible for alimony, but women who are homemakers would not lose the right to support in the event of divorce. Making men eligible for alimony is not a revolutionary idea, as in many States men are now eligible for alimony.

Under the Uniform Marriage and Divorce Act, recently adopted by the national commissioners on uniform State laws, "maintenance"—which replaces alimony—is provided for either spouse depending on relative financial conditions of the parties, ability to earn a living, and appropriateness of employment outside the home for the custodian of the children. This Uniform Act has no distinction based on sex, and I have no doubt that passage of the equal rights amendment by the Congress will accelerate adoption of this reform legislation by the States. I was quite pleased to see recognized in this proposed uniform law the economic contribution of homemaking to the family. It is the first time I have seen it explicitly recognized in law.

Under the equal rights amendment, women who are homemakers are not going to lose any right to support by their husbands, but wives who are employed or who have independent means would have to share the responsibility for support of the family within their means.

In the few States that provide dower rights for the wife with no similar right for the husband, the right would be extended to the husband under the intent expressed by Representative GRIFFITHS.

Representative GRIFFITHS stated that in those few States where minimum wage laws apply only to women, the law would be extended to men—North Carolina's and Kentucky's laws apply to both men and women.

The laws that prohibit women from some types of employment are another matter. They restrict women's opportunities, and any that are left on the books by the time the amendment is ratified would be invalidated. Many changes have already been made in these laws as a result of title VII of the Civil Rights Act of 1964.

A number of court cases have been brought challenging these laws—all by blue collar union women, I might add.

The court decisions to date, including two by circuit courts of appeal, and the guidelines of the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance support the view that these laws are superseded by title VII of the Civil Rights Act of 1964. I am confident that the invalidation of these laws will encourage the passage of good labor laws protecting both men and women from unconscionable demands of a few employers.

The distinguished Senator from North Carolina (Mr. ERVIN) states in his letter to his colleagues his belief that the motive of the advocates of the equal rights amendment is to invalidate present and future laws which make invidious or unfair discriminations against women. I respectfully beg to differ with the distinguished Senator from North Carolina. The testimony I heard in the May hearings and my conversations convince me that the advocates want the full legal responsibilities of citizenship as well as the legal rights and that they want to eliminate discrimination against men as well as against women.

These women recognize that they can achieve their full dignity as citizens only by shouldering responsibilities of which they are capable. They are not advocating that all women be employed outside the home, but they are asking that those who do have a commensurate share of the financial liability for the family. They are not advocating that all women seek graduate degrees; but they are seeking equal opportunity for admission to graduate schools supported by the State for those who so elect.

They are not downgrading the role of homemaker. Indeed, as Congresswoman Dwyer so ably put it. "The equal rights amendment would not take women out of the home. It would not downgrade the roles of mother and housewife. Indeed, it would give new dignity to these important roles. By confirming women's equality under the law, by upholding woman's right to choose her place in society, the equal rights amendment can only enhance the status of traditional women's occupations. For these would become positions accepted by women as equals, not roles imposed on them as inferiors."

They are not advocating that mothers—or fathers—caring for small children be called for jury service if adequate care cannot be provided for the children, but they do want women who do not have a sufficient excuse to be required to serve on juries, just as men are required to serve.

They are not advocating that mothers be drafted, but they do want women to share in the responsibilities for defending the country to the extent they are able. They particularly want to open to poor girls the avenue of upward mobility that the military has always provided for poor boys.

They do not want husbands of working wives left with small children to rear without a social security benefit based on the wife's service. They do not want men saddled with alimony payments to wives with adequate independent means, nor do they want disabled husbands left without means of support by wives able to provide alimony. They believe that wives who abandon children and husbands—and they do exist—should have a responsibility for child support commensurate with their circumstances.

In other words, I believe some of the opponents of the equal rights amendment do not understand the motivation of the advocates.

I have been very puzzled by the strong feeling of those opposed to the amendment. The changes it would make in law simply do not warrant all the fuss. I can understand why the advocates feel strongly because the passage of the amendment has great symbolic significance and will enhance the self-respect of women, in addition to the more tangible benefits of opening up of educational opportunities and removal of some disabilities of married women in managing their property. I personally am convinced that, in addition, the ratification of the amendment will greatly accelerate reforms in the law that are already underway.

I can only conclude that the opponents have not given the matter sufficient current study to understand the nature of the actual changes in law that will result. There have been many changes in law and circumstance since the amendment was last seriously considered that seem to have escaped the notice of the opponents. The statement on the legal effects relied on by opponents was written in 1946, and it is surprising to see newspapers quoting this paper as if it were written yesterday. The author might even be willing to reconsider before committing himself today.

The equal rights amendment is an idea whose time has come, and it is my sincere belief that this Congress will respond with passage this session.

Mr. COOK. In the second letter I enclosed CONGRESSIONAL RECORD reprints of testimony before the Judiciary Committee of three law professors who favor passage of the House-passed equal rights amendment without alteration. Prof. Leo Kanowitz, Thomas Emerson, and Norman Dorsen have described the need for the amendment and dispelled the legal fears of opponents in outstanding fashion. I, therefore, ask unanimous consent that their testimony be printed in the RECORD at this point.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

REMARKS BY PROF. LEO KANOWITZ ON THE EQUAL RIGHTS AMENDMENT

Mr. COOK. Mr. President, last week the full Senate Judiciary Committee held hearings on the proposed equal rights amendment. The most persuasive witness I had the privilege of hearing was Prof. Leo Kanowitz of the University of New Mexico Law School who succeeded in a quite convincing fashion in refuting most of the "red herrings" which have been raised by opponents of this amendment.

He predicted that passage of the equal rights amendment would be a good first step toward the goal of liberation of American women but warned that it would not be "a cure-all for the Myriad problems of sex discrimination in law."

I urge all Senators, especially those who remain unconvinced of the necessity for the equal rights amendment, to read the remarks of Professor Kanowitz. I ask unanimous consent that the statement be printed in the RECORD.

(There being no objection, the remarks were ordered to be printed in the RECORD, as follows:)

THE EQUAL RIGHTS AMENDMENT AND THE OVERTIME ILLUSION

Introduction

Mr. Chairman, I should first like to thank the Committee for inviting me to state my views on the proposed equal rights amendment, to the United States Constitution. As a citizen, a lawyer, and a law professor, I have been deeply concerned for a number of years with the status of women in the United States, or more precisely, with the question of sex roles in our society—as this question has come to be more accurately designated in Sweden.

Since 1965, I have studied this question to determine the role that has and can be played with respect to it by our legal institutions. The results of those studies have recently been published in my book, *Women and the Law: The Unfinished Revolution*,[1] a copy of which I have today taken the liberty of presenting to the Chairman and Committee members.

Footnotes at end of article.

In *Women and the Law,* I explore major aspects of the legal status of American women and analyse some of the social causes and effects of sex-based discrimination in American laws. Among the subjects examined are abortion, prostitution, marriageable age, age of majority, married women's names, support obligations within the family, divorce, special criminal penalties for women, jury service rules, domiciles of married women, marital property regimes in the common law and community property states, and contracts and torts of husband and wife.

Much of the book, however, deals with the law affecting women's employment in the United States, particular attention being paid to the Equal Pay Act of 1963 and to the history and effects of the prohibition against employment sex discrimination in Title VII of the 1964 Civil Rights Act. In addition, *Women and the Law* explores in considerable detail the principles of American constitutional law affecting this area of human rights.

Rather than recapitulating the contents of *Women and the Law,* or even its exposition and analysis of persisting sex-based discriminatory legal rules and official practices, I would refer the Committee to the book itself—although I am sure that many instances of such discrimination have already been brought to your attention by other witnesses. But I would take this occasion to repeat the hopes I expressed for the book in its Preface.

"Perhaps," I wrote, "an awareness of the many areas of sex-based legal discrimination, whose continued existence this book seeks to identify, will stimulate, first, courtroom and legislative attacks upon those disparities or injustices, then, a much-needed national examination of the respective roles of the sexes in every sphere of American life, and finally, the active and continuing participation of all Americans in bringing about the needed changes." [2]

My investigation in this field has persuaded me that many irrational and harmful distinctions continue to be made in the legal, political and social treatment of the sexes in our country, that the resulting injustices have impeded our development as a nation, and that they have led to much personal unhappiness for American men as well as women.

By relegating women to special tasks, by perpetuating ancient myths about the alleged physical and psychological limitations of women, we American men have subjected ourselves to an awesome burden. For the doubtful joys of feeling superior to women, we have paid a terrible price. Not only have we suffered with respect to uneven laws in the field of support obligations within the family, child support and custody awards in divorce proceedings, and the frequent lack of protective labor legislation where such legislation exists for women, but our insistence that men and only men are entitled to be society's doers and shakers has led to our dying from eight to ten years earlier, on the average, than the women of our country. Perhaps even more important is that, because of arbitrary social and legal distinction, both men and women are often prevented from relating to one another as people, as fellow members of the human race.

So, when I speak or write of the need to erase sex-based discrimination in American law, I am moved not only by the desire to end the injustices that American men have perpetrated upon our nation's women, but to end those we have imposed upon ourselves as well.

But recognizing that sex discrimination pervades American law and that it is pernicious does not tell us how best to bring about the needed changes. It is to this question—and specifically to whether the constitutional amendments proposed in either Senate Joint Resolution 61 or in Senate Joint Resolution 231 are appropriate steps to that goal—that I would now address myself.

Before I explain my reasons, however, let me state my position on these two proposed amendments. First, I support the Equal Rights Amendment as worded in Senate Joint Resolution 61. Secondly, I oppose the amendments to that Amendment that are set forth in Senate Joint Resolution 231.

Thirdly, I should also like to discuss with this Committee what I believe is the core question in the controversy over the Amendment's desirability namely the issue of state protective labor legislation. As I shall explain, I believe that much of the discusion of this question is at cross-purposes, that it proceeds from a basic fallacy in the thinking of proponents as well as opponents, and that if it can be cleared up, the spectacle of otherwise natural allies opposing one another may disappear. Finally, I would be glad to try to respond to any questions the Committee might care to ask about other aspects of this subject.

Senate Joint Resolution 61

Senate Joint Resolution 61, if adopted and ratified by the requisite number of state legislatures, would add a new article to the United States Constitution, to take effect one year after the date of ratification. The crucial language of that proposed new article reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation."

I have had occasion to consider the present desirability of such a constitutional amendment in my book, *Women and the Law.* Writing in 1969, I suggested that many proponents of the Equal Rights Amendment were mistaken in their belief that the United States Supreme Court and lower state and federal courts had in the past held existing provisions of the United States Constitution, in particular the Fifth and Fourteenth Amendments, inapplicable to women.

"The fact is," I wrote, "that the courts have not done this at all. Instead, they have generally held that existing constitutional provisions do apply to women, but that within the limits of those provisions, women in many situations constitute a class that can reasonably be subjected to separate treatment." [3]

I also suggested that the adoption of the Equal Rights Amendment would not fundamentally change the picture. "While the proposed amendment states that equality of rights shall not be abridged on account of sex," I wrote "sex classifications could continue if it can be demonstrated that though they are expressed in terms of sex, they are in reality based upon function. On the other hand, under existing constitutional provisions, particular classifications of men and women that cannot be shown to be based upon function, are vulnerable to attack—as has already been demonstrated in some lower state and federal courts with respect to discriminatory laws in the realm of jury service, differences in punishment for identical crimes, right to sue for loss of consortium and the like." [4]

This latter reference was to a series of recent cases in which sex-based discriminatory legal rules had already been struck down by various courts as violating the equal protection clause of the United States Constitution's Fourteenth Amendment. (*E.g., White* v. *Crook,* 251 F. Supp. 401 (1966); *Robinson* v. *York,* 281 F. Supp. 8 (1968); *Owen* v. *Illinois Baking Corporation,* 260 F. Supp. 820 (D.C. Mich 1966); *Clem* v. *Brown,* 3 Ohio Misc. 167, 207 N.E. 2d 398 (1965) etc.)

I also suggested that "as some of these cases make their way to the Supreme Court, the Court, influenced by the reasoning of the opinions below and perhaps more responsive to the present sociological climate surrounding the question of women's legal status than it has been in the past, may drastically revise its prior approach to determining the kind and extent of official sex discrimination that is allowable."

I continue to hold these views. I believe that there is a very high degree of probability that the United States Supreme Court, when it next confronts an equal protection or due process challenge to a sex discriminatory law, will drastically modify the undifferentiated principle originally enunciated in the 1908 case of *Muller* v. *Oregon,* 208 U.S. 412 (1908) that "Sex is a valid basis for classification,"—a principle I described in *Women and the Law* as being "often repeated mechanically by the courts without regard to the purposes of the statute in question or the reasonableness of the relationship between that purpose and the sex-based classification." [5] Indeed, I suggested, "the subsequent reliance in judicial decisions upon the *Muller* language is a classic example of the misuse of precedent, of later courts being mesmerized by what an earlier court had *said* rather than what it had *done.*" [6]

But if I believe that the Equal Rights Amendment would not achieve anything that could not be achieved by the courts in interpreting existing constitutional provisions, the question arises as to why I am supporting the Equal Rights Amendment at this time, especially since my position on the Amendment has heretofore wavered between mild opposition and lukewarm support. The answer is simple. Although I still believe that there is a very high degree of probability that the Supreme Court will perform as I hope and expect in this area, there is no guarantee that it will do so. Moreover, I now believe that it is necessary for all branches of government to demonstrate an unshakeable intention to eliminate every last vestige of sex-based discrimination in American law. The adoption of the Equal Rights Amendment at this time would give encouragement to the many American women and men who now see the need for substantial reform in this area. Finally, should the next few years bear out my prediction that the Court will soon begin to interpret existing constitutional provisions so as to eliminate irrational sex discrimination in the law, no harm will have been achieved by the presence of the Equal Rights Amendment. Indeed, many examples can be cited in which laws and official practices may violate more than one constitutional provision at one time.

Moreover, should the Supreme Court *not* respond as I have suggested it ought to in this area, then the need for the Equal Rights Amendment will have become manifest. The time that will have been gained by sending it on its ratification road immediately would be precious.

There is one word of caution I would add at this point, however. And that is that this Committee and Congress, if it adopts the proposed Equal Rights Amendment as I hope it will do, will make sure that the record discloses that it does not thereby intend to discourage the United States Supreme Court from interpreting existing constitutional provisions—and especially the equal protection clause of the Fourteenth Amendment—so as to eliminate every sex-based discrimination in American law that cannot be sustained by overwhelming proof of functional differences between men and women.

I say this because there is a very real danger that if this is not done, the adoption of the Amendment at this time will ultimately represent a defeat rather than a victory for those of us who seek the eradication of irrational sex-based distinctions in American law and society. In the absence of such a clarifying declaration in the legislative history the Court, when faced with an equal protection or due process challenge to a sex-discriminatory legal rule or official practice within the next few years, may be prompted to reason as

Footnotes at end of article.

follows: Since a coordinate branch of the federal government, the Congress, has deemed it necessary to adopt the Equal Rights Amendment, then it must have believed that existing constitutional provisions were inadequate to provide the needed relief in this area. Though such a view is not determinative, it is at least persuasive. As a result, deferring to Congress' apparent wishes in this respect, the Court could withhold any modification of the *Muller* principle and simply await the ratification of the Equal Rights Amendment before providing the needed relief in this area.

The problem of course is that one cannot be sure that the Equal Rights Amendment will be ratified by the requisite number of State legislatures. Even if it is eventually ratified, this may occur many years from now. In the meantime, many litigants, both men and women, seeking to prevent unreasonable discrimination based upon sex, may find that no redress is available from the courts.

I am aware of course of the decision in *Gray v. Sanders,* 372 U.S. 368, wherein the Supreme Court at page 379, invoked the Fifteenth Amendment's prohibition against voting denials based on race and the Nineteenth Amendment's similar prohibition of denials based on sex to sustain a challenge to a county-unit voting system that was based on the Fourteenth Amendment's equal protection clause, *Gray v. Sanders* is no guarantee however that the Court would act the same way under the circumstances we are presently concerned with. For one thing, *Gray* was decided *after* the ratification of the Fifteenth and Nineteenth Amendments, while the fear that I have expressed concerns the Supreme Court's response while the ratification of the proposed Equal Rights Amendment would still be pending. For another thing, the *Gray* decision did not require the Court to overrule or substantially modify any of its recent decisions. But if the Court were to do as I hope and expect it will with respect to equal protection and due process challenges to sex-based legal discrimination, it would have to drastically modify several decisions that were rendered as recently as 1961 (*Hoyt v. Florida,* 368 U.S. 57) and 1954 (Goesart v. Cleary, 335 U.S. 464).

For these reasons, I believe it is of crucial importance that this Committee and Congress, in adopting the proposed Equal Rights Amendment, make clear their hope and expectation that forthcoming decisions of the United States Supreme Court will soon transform that Amendment into a constitutional redundancy.

Finally, before moving on to the proposed amendments to the Amendment that are contained in S.J. Res. 231, let me make one more observation.

Some proponents of the Equal Rights Amendment are undoubtedly convinced that its adoption will inevitably revolutionize judicial attitudes about sex roles in our society. Some opponents of the Amendment are equally convinced that its adoption will introduce chaos, uncertainty and confusion in our law and judicial processes.

My most recent studies in this area have persuaded me that neither view is correct. I have just returned from a seven-month sabbatical leave in Europe. While there, I began an examination of law-based sex discrimination problems in France, West Germany, Switzerland, England, Denmark, and Sweden.

My study is still incomplete and it shall be some time before I shall be able to publish my conclusions. For the moment, however, I think I can say with some assurance that the experience of the West German courts in interpreting a similar constitutional provision (*"Männer und Fraunen sind gleichberechtigt,"*—translated as "Men and women are equal before the law." Art. 3, sec. 2 Constitution of the German Federal Republic) demonstrates two important points. One is that our Courts will face no extraordinary difficulties in dealing with the Amendment. The other is that the Amendment will not of itself represent a cure-all for the myriad problems of sex discrimination in law and society—although it will be a step in the right direction. For as I suggested in *Women and the Law,* even after the adoption of the Equal Rights Amendment, "the crucial factor will continue to be the responsiveness of the judiciary to the social impulse toward equality of treatment without regard to sex."[7]

But in contrast to my former position, when I believed that, for *tactical* reasons, efforts to secure passage of the Amendment ought to be abated in favor of vigorous challenges under existing constitutional provisions, I now believe, for the reasons advanced earlier in these remarks, that, provided the adequate legislative history is made, passage of the Amendment at this time could do no harm and possibly could do much good.

SENATE JOINT RESOLUTION 231

Let me now turn my attention to Senate Joint Resolution 231. That Joint Resolution, introduced as a substitute to Senate Joint Resolution 61, would change the proposed Equal Rights Amendment in several respects. First, it would place a seven-year limitation on the ratification process. Secondly, it would become effective two years after ratification rather than one year after ratification as proposed in S.J. Res. 61. But most importantly, it would qualify the basic declaration of equality contained in S.J. Res. 61 by adding this second sentence:

This article shall not impair, however, the validity of any law of the United States or any state which exempts women from compulsory military service or which is reasonably designed to promote the health, safety, privacy, education, or economic welfare of women, or to enable them to perform their duties as homemakers or mothers.

As indicated earlier, I recommend the rejection of S.J. Res. 231.

First of all, I oppose the seven year limitation on the ratification process. Hopefully, the basic Equal Rights Amendment, as worded in S.J. Res. 61, will be ratified long before seven years have passed. But should that not be the case, I can see nothing that will be gained by imposing such a time limit—especialy if, as I have suggested, the legislative history will clearly show Congress' hope and expectation that the Supreme Court will in the meantime render the Amendment unnecessary.

Second, while there is some merit to the idea that the State legislatures and Congress should be given more than one year to enact appropriate implementing legislation, a one year period would be adequate since both state and federal legislatures would have had time to prepare for their work while the ratification process was still pending.

My most severe reservations about S.J. Res. 231, however, go to the language in the second sentence of the first section that would qualify the basic declaration in favor of equal treatment in the law without regard to sex that is contained in the first sentence of that section.

I suggest that there are serious questions about the *meaning* of the second sentence. And even if the meaning of it can be ascertained, I fear that the interpretation probably intended by its sponsor would render that language objectionable to me as being incompatible with the needs of our society and the basic goal of equal treatment under law without regard to sex.

In ascertaining the meaning of the second sentence, I think it is important to note first the provision that it qualifies. That provision states, "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Then comes the sentence in question which states that the Article shall not impair the validity of certain kinds of laws which presently are assumed to benefit women in a variety of ways.

One possible interpretation, resulting from this juxtaposition of the two sentences, would be as follows: Since the first sentence guarantees equality of treatment without regard to sex, and since the benefits presumably flowing to women from certain laws are held inviolate in the second sentence, then the only way to achieve the equality of treatment guaranteed in the first sentence is to extend those benefits to men. Under this construction, since women's present exemption from compulsory military service is to be preserved, the constitutional command of equal treatment can be obeyed only by extending the exemption to men. This would render unconstitutional our present Selective Service law which presently applies to men only.

While, personally, I would have no objection to such a construction of this language, I wonder if this would be acceptable to the Resolution's sponsor.

A similar analysis can be offered of the remaining language of the second sentence, i.e., up to the beginning of the last clause. For, it is not only women who have an interest in laws designed to promote their health, safety, privacy, education or economic welfare. Men are equally interested in being protected by government in these areas. A reasonable reconciliation of this language with the command of the first sentence would be to read it as requiring the extension of the benefits of such laws to men. Indeed, if this is intended by this language, I could support it—although, as I will explain, the Equal Rights Amendment, as worded in S.J. Res. 61, achieves this same goal and is preferable.

The last clause of the second sentence raises some difficulties, however. It states, "or to enable them to perform their duties as homemakers or mothers." Here the extension approach is clearly not intended. Though it is possible to think of men performing the function of homemakers, it is a little difficult to conceive of them as mothers in a biological sense. Moreover, this last clause would appear to lend constitutional dignity to the social presumption that the highest, if not the sole, life's work for women is that of wife and mother.

The apparent intention of this last clause provides a key, I believe, to the probable meaning and intention of the rest of the language in the second sentence. That is, rather than intending these benefits and protections to be extended to men, the Amendment's sponsor apparently intends, by the language of the second sentence, to preserve these for women alone. Not only would this represent a nullification of the spirit and intent of the proposed Equal Rights Amendment as worded in S.J. Res. 61, but it would be a substantial step backward from the encouraging recent trend of decisions in the state courts and lower federal courts.

Even if S.J. Res. 231 is intended to embrace the possibility of extending to men certain rights, privileges and benefits of law presently enjoyed by women only, the basic fallacy in its reasoning is its apparent assumption that the unadorned Equal Rights Amendment, as worded in S.J. Res. 61, would, if adopted and ratified, deprive women of many of these rights, privileges, and benefits.

But I suggest that this need not happen at all. In *Women and the Law,* I pointed out how it would be consistent with judicial precedent for the courts, in interpreting the Fourteenth Amendment's equal protection clause in sex discrimination cases, to cure the invalid inequality by extending the benefits of particular laws of the sex

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(male or female) that had not previously enjoyed those benefits rather than by removing them from the one that had. That analysis, I suggested, was equally applicable with respect to the Equal Rights Amendment.

The Supreme Court's recent decision in *Levy* v. *Louisiana*, 391 U.S. 68 (1968), I wrote had "held that a denial to illegitimate children of a right to recover for wrongful death of their mother, where her legitimate children could recover the same wrong, violated the equal protection guarantee. But the Court's remedy for such a violation was not to remove from the legitimate children the right to recover for their mother's wrongful death, but rather to extend this right to her illegitimate children." [8]

"Even some state courts," I observed, "exercising their power to entertain federal constitutional challenges to state laws, have achieved similar results. Thus in *Clem* v. *Brown*, an Ohio Court of Common Pleas, holding that the state's rule permitting husbands but not wives to recover for loss of consortium deprives a wife of 'equal protection of the law' remedied this inequality by extending the right to wives rather than by removing it from husbands. Similarly, the decision of a federal district court in Michigan in *Owen* v. *Illinois Banking Corporation* was one more example of a . . . court curing what it regarded as a constitutionally infirm one-way consortium rule by extending the right to sue to married women.

"As long ago as 1871, the United States Supreme Court held that a state could not limit the right to sue on a cause of action created under state law so as to deprive the federal courts of the power to entertain such suits if jurisdiction was otherwise present . . . Though [this] result . . . was dictated by the requirements of Article III of the U.S. Constitution, conferring the Judicial Power upon the United States, rather than by the equal protection clause of the 14th Amendment, it is another illustration of the Court's past practice of implementing constitutional provisions by extending a state-created benefit beyond the limits intended by the state, while recognizing that the state could, if it wanted, remove the benefit from all." [9]

This, I believe, is the spirit in which the Supreme Court, aided by the legislative history, will interpret the Equal Rights Amendment as worded in S.J. Res. 61. This, I believe, is the spirit in which the Court can and should interpret the Fourteenth Amendment's equal protection clause in forthcoming sex discrimination cases.

I would also stress that the Amendment as worded in S.J. Res. 61 empowers Congress and the States, within their respective jurisdictions, to enforce the new article by appropriate legislation. This, I suggest, is the ultimate corrective, the ultimate guarantee of social consensus with regard to decisions to extend one-way rules or abrogate them.

In sum, I believe that S.J. Res. 231 is based on an invalid assumption as to the probable effects of the Equal Rights Amendment as worded in S.J. Res. 61, and therefore recommend its rejection. Though I am absolutely certain that the sponsor of S.J. Res. 231 is as interested as I am in advancing the status of American women in law and society, he has proposed a way that I simply cannot support. The fact of the matter is that this is an extraordinarily difficult question about which reasonable men and women do differ. My hope is that, in the course of these hearings, understanding of all of us will be advanced, and that the ultimate decision is the right one.

Equal rights amendment, protective labor laws, and the overtime illusion

Finally, I should like to turn my attention to how the Equal Rights Amendment, if adopted, could work in the area that has been the subject of greatest controversy. I am referring specifically to the Amendment's effect upon the State's protective labor laws that presently apply to women only. Parenthetically, I would point out that my analysis here also applies to the effects of the equal protection clause, if and when the Supreme Court begins to interpret that clause vigorously in the sex discrimination area.

Reading the testimony presented to this Committee's Subcommittee on Constitutional Amendments during its earlier hearings this year, and the testimony presented at prior Senate committee hearings on the proposed Amendment, I am struck by what I regard as a peculiar fact. That fact is that certain groups or organizations that, according to all reasonable expectations, should be allied on the issue of equality without regard to sex are in fact divided over the desirability of the Amendment as a way of achieving that goal. I am of course speaking of the basic division between the women's organizations, who have for the most part supported the Amendment and organized labor which has, for the most part, opposed it.

By and large, representatives of organized labor have expressed a fear that, should the Amendment become part of our fundamental law, many of the protections that have been won for women workers over years of difficult struggle would be nullified. On the other hand, some supporters of the Amendment have expressed a suspicion that labor's principal motive in opposing it is to monopolize for men both jobs and other supposed benefits, which I shall soon discuss. Though this suspicion is understandable if we recall longstanding collective bargaining agreements providing substantial sex-based wage differentials for the same or similar jobs, it is not, in my opinion, an accurate reading of the motives of the Amendment's trade union opponents.

In *Women and the Law*, I quoted a 1964 statement by Congresswoman Martha Griffiths of Michigan which not only characterized organized labor's basic attitude in this area, but also pointed the way to what I believe is the ultimate solution to its knotty problems. "Some people," said Congresswoman Griffiths, "have suggested to me that labor opposes 'no discrimination on account of sex' because they feel that through the years protective legislation has been built up to safeguard the health of women. Some legislation was to safeguard the health of women, but it should have safeguarded the health of men, also." [10]

Basing my analysis upon the same principle, I suggested in *Women and the Law* how this could be done. Specifically, I demonstrated how, consistently with what had already been done in administrative and constitutional law decision, the equality of treatment required in this area could be achieved by *extending* protective laws to men rather than by removing them from women. The Equal Employment Opportunity Commission, I suggested, should pursue this approach in administering the anti-sex discrimination provisions of Title VII of the 1964 Civil Rights Act. In areas that were beyond the jurisdictional reach of the EEOC, I urged reliance upon past judicial precedents such as those I have just referred to in my discussion of S.J. Res. 231, to achieve the same extension of those laws rather than their abrogation.

This analysis, I still believe, is a sound one. Not only has the Labor Department, in administering the Equal Pay Act of 1963, determined that where state law provides a minimum wage for women only, the Equal Pay Act entitles men in that state to the same minimum wage if they are covered by the federal law, but the EEOC also has taken the position that the benefits of state laws, presently applicable to women only—such as those requiring minimum wages, rest periods, seats at work—are required by Title VII to be extended to men. Even in those situations that are beyond the jurisdictional reach of Title VII and the Equal Pay Act, I suggested, the judicial extension technique employed in equal protection and other constitutional cases, could lead to the same results.

Moreover, these results can also be achieved under the proposed Equal Rights Amendment—especially if the legislative history disclosed that Congress intends this. The fears of some opponents of the Amendment that its adoption would nullify laws that presently protect women only is thus unfounded—since the equality of treatment required by the Amendment can be achieved by extending the benefits of those laws to men rather than removing them from Women. Moreover, the failure of any court to do this can be corrected through the legislative process.

Thus, as I stated in a recent article in the *Family Law Quarterly*, "the current new concern with the legal status of women will in many respects result in improving the situation of men as well as women. Just as breakthroughs in the legal status of American blacks has benefitted other racial and ethnic 'minorities,' so the effort to provide women with equal employment opportunity can substantially improve the situation of male employees in industry and commerce."

But the problem does not stop there. Essentially, I have been discussing the fate of certain protective labor laws—minimum wages, rest periods, seats at work—about which there can be little doubt that they provide valuable protections and benefits not only worth preserving for women but also worth extending to men.

But the major source of controversy concerns two types of state protective labor laws, presently applicable to women only, about which there is much confusion as to whether they in fact represent a burden or benefit. I am referring now to those state laws limiting the weights that women are permitted to lift or carry in industry, or restricting the number of hours that women may work in a day or a week.

It is with respect to these two types of laws that the extension approach begins to run into trouble. For if a state's weight-lifting limitations, presently applicable to women only, were extended to men, then, as I suggested in *Women and the Law* "it would simply mean that certain objects would not get lifted in the course of that state's industrial life" [12] hardly a tolerable result. As for the extension of hours limitations laws, this would raise problems of another order—which I shall discuss in a moment.

Recognizing that the extension approach was not feasible in the weight-lifting area, I suggested an alternative solution. That solution was to reconcile such laws with either Title VII of the 1964 Civil Rights Act or with a constitutional requirement of equal legal treatment without regard to sex by holding that a state's weight-lifting limit for women workers "merely creates a burden of proof and of persuasion in individual women applicants to show that they can perform the work in question without harmful effects, though such work requires occasional lifting of weights in excess of those permitted by the rule. That burden could be satisfied by a certificate from a family physician or some other testing procedures." [13]

I now believe that this alternative solution was faulty in that it did not in fact conform to the equality principle, since the burden of proof and persuasion that I had proposed was applicable only to women and not to men.

A more acceptable solution, which cannot be achieved judicially but requests legislative action, is the replacement of such state statutes by others, such as the one now in force in Georgia that protects both men and

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women workers from being required to lift weights that could cause "strains or undue fatigue." Such a law implicitly recognizes that many individual women can, without harm, lift weights in excess of the limits previously imposed by state law, and that many individual men cannot. Thus, under the new law, people—both men and women—are protected against being required to lift weights that are excessive for them. At the same time, no artificial sex-based distinction, having the effect of depriving one sex of equal employment opportunities, is maintained.

I repeat, therefore, that with regard to state weight-lifting statutes presently applicable to women workers only, equality of treatment without regard to sex can be achieved by adopting the type of statute I have just cited.

But now let us consider what I think is the nub of the ideological controversy over the desirability of the Equal Rights Amendment. And that is the question of how the Amendment would affect those state laws which presently provide penalties for employers who permit or require their women employees to work in excess of a given number of hours in a day or in a week. Were such laws extended to cover male employees it would not, as in the case of extending weight-lifting restrictions, bring industry to a grinding halt, although it would create some dislocation and expense for management. But the fundamental difficulty in extending such laws to cover male employees is that, because of what I consider organized labor's failure to educate its membership about the problems of overtime work, it would be regarded by many male workers as the imposition of a burden and not a boon. Stated differently, were employers penalized for permitting or requiring their *male* workers to work overtime hours, many of those male workers would in the present economic situation, regard this as a deprivation of their right to earn what they consider premium wages and not as the extension to them of a protection presently applicable to women.

Indeed, many women workers undoubtedly look upon the opportunity to work overtime from the same perspective. This, I suggest, explains much that has happened in the last few years in this area. It explains for example why all Title VII suits in the hours area have been brought by women workers seeking to invalidate state hours-limitation laws presently applying for women only. By doing so, they argue, they would, like men, be able to earn attractive overtime pay. Moreover, the elimination of the sex-based distinction in this area would also eliminate the inequality of job opportunity it creates. For many an employer has refused to hire or promote a woman employee for a job in states limiting women's working hours, claiming that the job in question often requires overtime work. This also explains, I suggest, the position taken by the EEOC in this area in seeking to invalidate such women-only hours-limitation laws in the states where they exist. And it explains why some states have been persuaded to repeal such laws in the past few years.

This entire trend, I submit, is deplorable and mistaken. It is simply the wrong way to achieve the desired equality of legal treatment and equality of job opportunity. It is a step backward from sensible policies toward overtime work.

"[W]ith victories like these," I wrote in a recent article, "women don't need many defeats. For success in these efforts not only removes limitations upon women's right to work extra hours . . . but also means that those women who do not wish to . . . work excessive hours—and I would suggest that they are many if not in the majority—can henceforth be *forced* to do so." [14]

The consternation of these developments provoke in the breasts of trade union opponents of the Amendment is indeed understandable. But I submit that labor's own record with respect to overtime policy accounts for much of this trend. For the labor movement has permitted American workers to be lulled into a false sense of economic security by the overtime illusion—the feeling that they can attain their desired standard of living by working extra hours.

As I pointed out in *Women and the Law*, it is not uncommon for many workers to "work 48, 58, and perhaps 68 hours in a given week—a situation not unlike that prevailing at the turn of the century when organized labor was struggling to reduce the 12-hour, 6-day week to a 10-hour, 6-day week." [15] I also suggested that the requirements of time and one-half pay for overtime work under state and federal laws "were not enacted to reward workers for their willingness to work excess hours. Rather, they were designed to deter employers from requiring their employees to work such hours. The overtime rates provided for by such laws, rather than being denominated as premium rates, are therefore probably more accurately described as penalty rates, when they are viewed from the perspective of their intended objects—employers as a class. For the idea behind such provisions was that employers, faced with the prospect of having to pay one and a half times as much for each excess hour of work as they would pay for each hour of non-overtime work, would pause before requiring their employees to work such hours." [16]

But this legislative policy aimed at deterring overtime work has been distorted by certain economic facts. For one thing, as I noted in the book, "Many employers have found that it is often more economical to pay experience workers a premium (penalty?) rate than to engage the services of inexperienced workers at straight-time rates (and to whom new fringe benefits would have to be paid) to complete a job at hand." [17] For another, I would now add that many American workers have grown to depend upon overtime work as a means of making ends meet or to improve their basic standard of living—an attitude that may make it easier to lead a trade union than if it didn't exist, but which makes little social sense.

That excess working hours *for both sexes* has for a long time been regarded as a social evil to be cured by legislation can be seen in the experience of New York at the turn of the century. But New York's efforts to place a ten-hour limit on the working hours of bakery employees of both sexes was rebuffed in 1905 by the Supreme Court in *Lochner* v. *New York*, 198 U.S. 45 (1905), because of its then existing notions of due process and liberty of contract. Three years later, however, the Court in *Muller* v. *Oregon*, 208 U.S. 412 (1908), upheld Oregon's maximum hours law for women only. As I suggested in *Women and the Law*, this sequence of judicial decisions led many states to enact hours limitations laws for women only on the theory that half a loaf was better than none—even though the Court's later decisions made it abundantly clear that the *Lochner* case would be decided differently today.

The combination of these factors suggests that it would be consistent with our nation's traditional policy toward overtime work to achieve equality of legal treatment for both sexes in the hours area by extending hours-limitations laws to men rather than by removing them from women. Among other things, such a step would provide protection for many male workers who, for a variety of reasons, prefer not to work overtime but whose refusal to do so today constitutes, even under many collective bargaining agreements, a cause for discharge.

For these reasons, I suggested in *Women and the Law* that the extension approach could be utilized in the hours-limitations field. Were this to be done, the fears of some labor opponents of the Equal Rights Amendment that these protections for women would be nullified would be without foundation. For not only would women retain this protection, but it would be extended to men as well.

But economic realities and the overtime illusion have not left us with an entirely free hand in this area. As a compromise, therefore, one designed to implement the principle of equal treatment and equality of job opportunity, I suggested the possibility of enacting on a wide scale state statutes that would embody the principle of *voluntary* overtime. "Such legislation," I wrote, "would permit both men and women to work a designated number of hours in excess of an established norm, but would provide that no employer subject to the coverage of the law would be allowed to discharge any employee for his or her refusal to work overtime." [18]

The path that is ultimately taken depends on many factors. But the point that I would stress is that the claim that the Equal Rights Amendment would nullify state protective laws in the hours-limitations area is unfounded. As I have explained, there are several ways in which the right not to work overtime—which, after all, is at the heart of the hours-limitation laws for women only—can not only be preserved for women, but can be made equally available to men. Above all, it is important for organized labor to begin to re-assess its overtime work policies. When that is done, the claim of many of us that the liberation of American women will lead to the liberation of American men as well will be understood for the truth that it is.

FOOTNOTES

[1] Leo Kanowitz, Women and the Law: The Unfinished Revolution, University of New Mexico Press, Albuquerque, 1969.
[2] *Id.* at vii.
[3] *Id.* at 195.
[4] *Id.*
[5] *Id.* at 154.
[6] *Id.*
[7] *Id.* at 195.
[8] *Id.* at 186.
[9] *Id.* at 186–187
[10] *Id.* at 100.
[11] Kanowitz, Women and the law: A Reply to Some of the Commentators, 4 FAM. L.Q. 19, 29 (1970).
[12] Kanowitz, Women and the Law at 183.
[13] *Id.* at 116–117.
[14] Kanowitz, *supra* note 11 at 28.
[15] Kanowitz, Women and the Law at 125.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 126.

THE EQUAL RIGHTS AMENDMENT

Mr. COOK. Mr. President, yesterday I presided at hearings before the full Committee on the Judiciary on the proposed equal rights amendment from 10 in the morning until 5:30 in the evening. Everyone was given an opportunity to be heard, from a housewife in Maryland to prominent women representing the Republican and Democratic national committees.

Almost all agree on the need to provide equality under the law for women, but the question remaining is how best to achieve it. Some say a constitutional amendment is not necessary and that the fifth and 14th amendments and title VII of the Civil Rights Act are sufficient. Others say the equal rights amendment is necessary but that it contains faulty and potentially self-defeating language.

These contentions were successfully rebutted by two eminent law professors in yesterday's hearings. Senators should read these statements before making hasty decisions to support alternative language which would probably result in no equal rights amend-

ment emerging from Congress for submission to the States this year.

Mr. President, I, therefore, as unanimous consent that the statements of Prof. Thomas I. Emerson, of Yale Law School, and Prof. Norman Dorsen, of New York University Law School, before the Judiciary Committee on September 15, 1970, be printed in the RECORD.

(There being no objection, the testimony was ordered to be printed in the RECORD, as follows:)

TESTIMONY OF THOMAS I. EMERSON ON THE WOMEN'S EQUAL RIGHTS AMENDMENT BEFORE THE SENATE JUDICIARY COMMITTEE, SEPTEMBER 15, 1970

My name is Thomas I. Emerson. I am Lines Professor of Law at Yale Law School. Most of my teaching and writing has been in the field of constitutional law, with particular emphasis on the political and civil rights of individuals. I believe that the Equal Rights Amendment provides a sound legal basis for achieving equal rights for women and I support it wholeheartedly.

The basic premise of the Equal Rights Amendment is that sex should not be a factor in determining the legal rights of women, or of men. Most of us, I think, agree with this fundamental proposition.

To take an example from my own field, virtually everybody would consider it unjust and irrational to provide by law that a person should not go to law school or be admitted to the practice of law because of his or her sex. The reason is that admission to the bar ought to depend upon legal training, competence in the law, moral character, and similar factors. Some women meet these qualifications and some do not; some men meet the qualifications and some do not. But the issue should be decided on an individual, not a group basis. And in such a decision, the fact of maleness or femaleness is irrelevant. This remains true whether or not there are more men than women who qualify. It likewise remains true even if there were no women who presently qualified, because women potentially qualify and might do so under different conditions of education and upbringing. The law in short, owes an obligation to treat females as persons, not statistical abstracts.

What is true of admission to the bar is true of all forms of legal rights. If we examine the various areas of the law one by one we will, I believe, reach the same conclusion in every case. Sex is an inadmissible category by which to determine the right to a minimum wage, the custody of children, the obligation to refrain from taking the life of another, and so on. The law should be concerned with the right to a living wage for all, the welfare of the particular child, the protection of citizens from murder—that is, with the real issues—not with stereotypes about one or the other half of the human race.

The fundamental legal principle underlying the Equal Rights Amendment, then, is that the law must deal with the individual attributes of the particular person, not with a vast overclassification based upon the irrelevant factor of sex. It should be noted at this point that there is one type of situation where the law may focus on a sexual characteristic but the basic principle just stated has no application. This occurs where the legal system deals directly with a physical characteristic that is unique to one sex. In this situation it could be said that, in a certain sense, the individual obtains a benefit or is subject to a restriction, because he or she belongs to one or the other sex. Thus a law providing for payment of the medical costs of child bearing would cover only women, and a law relating to sperm banks would restrict only men. Such legislation cannot be said to deny equal rights to the other sex. There is no basis here for seeking or achieving equality.

Instances of this kind, involving legislation directly concerned with physical differences found either in all women or in all men, are relatively rare. They do not include cases where the physical characteristic is not unique to one sex, or cases of real or assumed psychological or social differences between the sexes. Unless the difference is one that is characteristic of *all* women and *no* men, or *all* men and *no* women, it is not the sex factor but the individual factor which should be determinative.

The theoretical basis for outlawing differential treatment in the law based upon sex is thus, I think, quite clear. The practical reasons for doing so are equally compelling. History and experience have taught us that a legal system which undertakes to confer benefits or impose obligations on the basis of sex inevitably is repressive. It is perhaps too much to expect that the sex which wields the greater influence in formulating the law will not use its power to entrench its position at the expense of the other sex. At least this has been the outcome of sex differentiation in the American legal system.

The facts are rather well-known by now, and it suffices here simply to make brief reference to conditions in two areas; jury service and employment: At present only 28 States permit women to serve on juries on the same basis as men; 22 States and the District of Columbia permit women to claim exemptions not available to men. Of these, eleven states permit a woman to be excused solely on the basis of her sex. Rhode Island further provides that women shall be included in jury service only when courthouse facilities permit. Louisiana still requires that women come forward specially and register their desire to be called for jury duty before they may be considered. A similar statute was upheld by the United States Supreme Court in 1961.

Women have always been discriminated against in employment, not only in economic terms, but also in outright exclusion from certain occupations. Statutes which have been upheld range from denial of the right to practice law, to an Oregon statute prohibiting women from participating in wrestling competitions, which was upheld against Fourteenth Amendment challenge in 1956. Twenty-six States have laws or regulations that prohibit the employment of adult women in specified occupations or industries. Ohio, for example, prohibits the employment of women in many occupations including crossing watchmen, section hands, express drivers, metal molders, bellhops, gas- or electric-meter readers; in shoeshining parlors, bowling alleys as pinsetters, poolrooms; in delivery service on motor propelled vehicles of over one ton capacity; in operating certain freight or baggage elevators; in baggage and freight handling, by means of handtrucks, trucking and handling heavy materials of any kind; in blast furnaces, smelters and quarries except in offices thereof. Nine States prohibit women from mixing, selling or dispensing alcoholic beverages for on-premises consumption, and one State—Georgia—prohibits their employment in retail liquor stores. In Goesaert v. Cleary (335 U.S. 464 (1948)) the United States Supreme Court upheld one such law in a far-reaching opinion, proclaiming:

"The fact that women may now have achieved the virtues that men have long claimed as their prerogative and now indulge in vices that men have long practiced, does not preclude the States from drawing a sharp line between the sexes, certainly in such matters as the regulation of the liquor traffic."

The statute in question, which stands today, did not exclude all women, but only those who were not wives or daughters of male owners of bars.

Similarly, significant restrictions remain on businesswomen derived from traditional common law provisions under which married women were virtually legal nonentities. In four States court sanction and, in some cases, the husband's consent is required for a wife's legal venture into an independent business. In addition, Massachusetts requires a married woman or her husband to file a certificate with the city or town clerk's office to safeguard her business property from being liable for her husband's debts.

It is unnecessary to press these matters further. Abundant testimony before this Committee and available elsewhere demonstrates that our present legal system grossly discriminates against women. The major portion of that indictment is indeed admitted by most observers. And the critical need for substantial and immediate revisions in our legal structure is likewise conceded. The only serious issue before the Committee concerns the method which should be utilized to achieve reform.

There would appear to be three basic methods by which discrimination against women can be eliminated from our legal system. The first is by repeal or revision of each separate piece of existing legislation through action by the Federal, State and local legislature having jurisdiction, and change of each separate administrative rule or practice through similar action by every Federal, State and local executive agency concerned with administration. It goes without saying that such a procedure would involve interminable delay and lacks any guarantee or ultimate success. Only if no other course of action is possible, would a struggle on innumerable fronts over every separate issue be justified.

A second method is through court action under the equal protection clause of the Fourteenth Amendment and the comparable provision of the Fifth. This procedure has the advantage of affording a more broad-scale attack upon the problem, with a single agency of government, the United States Supreme Court, playing the primary role. Moreover, some progress has already been made. It is of course recognized that women are "persons" within the embrace of the Fourteenth and Fifth Amendments, and are entitled to "equal protection of the laws" under those provisions. Some State and lower Federal courts have rendered important decisions upholding equality of rights for women under the existing constitutional provisions. I feel reasonably confident that in the long run the United States Supreme Court would reach a position very close to or identical with that of the proponents of the Equal Rights Amendment. Nevertheless, there are serious drawbacks to this approach which must be considered.

In the first place there are some Supreme Court decisions and some lower court cases which move in the wrong direction. The task of overcoming or distinguishing these decisions could be a long and arduous one. There is, in short, a certain amount of legal deadwood which must be cleared away before the courts will be prepared to make clear-cut and rapid progress. In the second place the Supreme Court has been subjected over a period of time to powerful attacks for moving too fast and too far into frontier areas of the law. The Court may consequently be somewhat reluctant to take the lead in bringing about another major social reform, regardless of how constitutionally justified that reform may appear to be. Hence it would be important for the courts, in performing such a task, to have the moral support of the other institutions of government and the people as a whole.

Thirdly, and most important, the problems involved in building a legislative framework assuring equality of rights to women are somewhat different from those which the courts have faced in other areas of equal protection law. In ordinary cases, when a claim is made that equal protection of the laws has been denied, the Supreme Court

will apply the rule that differential treatment is valid providing there is a reasonable basis for the classification; and the Court will accept the legislative judgment that the classification is reasonable unless that judgment is beyond the pale of rationality. Yet such a legal doctrine is not appropriate where the differential treatment is based on sex. For reasons stated above, classification by sex, except where the law pertains to a unique physical characteristic of one sex, is *always* unreasonable. It would inappropriate, time consuming, and ultimately futile for the courts to investigate in each case whether a legislature was justified in deciding that a particular piece of legislation or administrative practice favored women, disfavored women, benefited society as a whole, and so on. That decision—namely, that all discrimination is outlawed—must be made at the beginning and not relitigated in every decision.

In cases where differential treatment is based upon race the courts have developed a different rule under the equal protection clause. In racial cases the constitutional doctrine is that classification by race is a "suspect" classification, and the legislature has the burden of showing that it is not an "invidious" or harmful classification or that it is justified by the most compelling reasons. Such a rule is more applicable to the area of discrimination on account of sex. Yet, taken as a whole, the problems in the two areas are somewhat different. For example, questions of benevolent quotas, compensatory treatment, culture bias in psychological testing, separatism, and other issues are not alike. The increasingly complex doctrines being developed in the field of race discrimination are therefore not necessarily applicable to the field of sex discrimination.

The same can be said of the other areas of equal protection law. Discriminatory treatment on account of poverty or illegitimacy, classifications in enacting economic regulations, denial of the right of franchise through malapportionment of legislative districts—all these present issues peculiar to their own spheres. In short, the establishment of equal rights for women poses questions that are in important ways sui generis. An effective solution demands a separate constitutional guarantee. Starting with such a mandate the courts can fashion a body of constitutional doctrine that will be geared to the special requirements of this important field of law. Furthermore, as stated before, unless Congress and the States, through adoption of a constitutional amendment, express the firm conviction that this reform must be promptly and vigorously undertaken progress is bound to be slow and faltering.

We come then to the conclusion that the third method—a constitutional amendment—is by far the most appropriate form of legal remedy. The final question, then, is whether the Equal Rights Amendment now before us furnishes a satisfactory constitutional framework upon which to achieve the goal of equal rights for women. I believe that it does.

The proposed amendment states clearly and simply the fundamental objective: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." In this respect it follows the tradition of the great provision of the Constitution guaranteeing freedom of religion, freedom of speech, due process of law, protection against cruel and inhuman punishment, and other rights.

The word "rights," it seems clear, includes not only rights in the narrow sense of that term but all forms of rights, privileges, immunities, duties and responsibilities. Thus service on juries, whether it be looked upon as a "right" or a "duty," plainly falls within the scope of the amendment.

The term "equality," interpreted in light of the basic philosophy of the Amendment, means that women must be treated by the law in the same way as other persons, that is, their rights must be determined on the basis of the same factors that apply to men. The factor of femaleness or maleness is irrelevant. This principle is subject to the proposition, already noted that the laws may deal with physical characteristics that exclusively pertain to one sex or the other without infringing upon equality of rights. As previously stated, such instances would only rarely occur.

The phrase "shall not be denied or abridged" constitutes a complete prohibition. It means that differentiation on account of sex is totally precluded, regardless of whether a legislature or administrative agency may consider such a classification to be "reasonable," to be beneficial rather than "invidious," or to be justified by "compelling reasons." Furthermore, for much the same reasons as in the racial area, the clause would not sanction "separate but equal" treatment. Power to deny equality of rights on account of sex is wholly foreclosed.

The Equal Rights Amendment applies only to government conduct, Federal or State. It does not affect conduct in the private, nongovernmental sector of our society. The problems of "state action" raised here are similar to those the courts have dealt with under the Fourteenth and Fifteenth Amendments. The basic legal doctrines that govern are the same, but they may of course have somewhat different application in the area of sex discrimination.

Finally, it should be noted that the Equal Rights Amendment fits into the total framework of the Constitution and should be construed to mesh with the remainder of the constitutional structure. One particular aspect of this is worth brief attention. That concerns the constitutional right to privacy.

In *Griswold* v. *Connecticut* (381 U.S. 479 (1965)) the Supreme Court recognized an independent constitutional right of privacy, derived from a combination of various more specific constitutional guarantees. The scope and implications of the right to privacy have not yet been fully developed by the courts. But I think it correct to say that the central idea behind the concept is that there is an inner core of personal life which is protected against invasion by the laws and rules of the society, no matter how valid such laws and rules may be outside the protected sphere. If this be true then the constitutional right of privacy would prevail over other portions of the Constitution embodying the laws of the society in its collective capacity. This principle would have an important impact, at some points, in the operation of the Equal Rights Amendment. Thus I think the constitutional right of privacy would justify police practices by which a search of a woman could be performed only by another woman and search of a man by another man. Similarly the right of privacy would permit, perhaps require, the separation of the sexes in public rest rooms, segregation by sex in sleeping quarters of prisons or similar public institutions, and a certain segregation of living conditions in the armed forces. The great concern over these issues expressed by opponents of the Equal Rights Amendment seems to me not only to have been magnified beyond all proportion but to have failed to take into account the impact of the young, but fully recognized, constitutional right of privacy.

I will not undertake at this time to consider in detail how the Equal Rights Amendment would affect various existing laws, regulations and practices. I understand that Professor Dorsen will discuss these problems with the Committee shortly. I will therefore merely state, without further elaboration, what seem to me the three essential points at issue here:

First, the courts are entirely capable of laying down the rules for a transitional period in a manner which will not create excessive uncertainty or undue disruption. Actually the courts face similar problems every time they hold that part of a statute is unconstitutional, and they have developed detailed rules for handling these issues under the concept of "separability" (or "severability"). The essential question is whether the legislature would have intended the statute to stand in its modified form. In making this decision the courts have the aid of legislative history, which can be supplied in this case. There is no reason to suppose, therefore, that formulation of a coherent legal theory applicable to the Equal Rights Amendment is too complex or too difficult for the legal system to cope with.

Second, there has been a great deal of talk that passage of the Equal Rights Amendment will cause vast changes in many features of our national life. I am inclined to feel that the alarms and warning are, as usual, overplayed. Whether that be the case or not, however, if such great changes do occur it will be only because they are necessary. Those opponents of the measure who stress this aspect of the Amendment are acknowledging that widespread discrimination against women persists throughout our society.

Third, it has been argued that adoption of a constitutional amendment will bring about, almost inadverently, drastic alterations in important institutions of society before there has been time to work out the major policy changes required by the new provision. The example most frequently given is the Selective Service system. But one need not conclude that, in those few areas where major new policy must be formulated, there is not adequate time in which to do it. If Congress adopts the Equal Rights Amendment it will surely have full opportunity during the period of ratification by the States to take up amendments to the Selective Service Act. Other areas of our law, such as the marriage and divorce laws, may need similar attention from State legislatures. It is not a weakness but a strength of the Amendment that it will force prompt consideration of some changes that are long overdue.

My conclusion from this survey of the legal problems raised by the Equal Rights Amendment is that the method chosen is the proper one and the instrument proposed is constitutionally and legally sound. I urge the Senate to accept the pending Resolution and submit the Amendment to the States for ratification.

STATEMENT OF NORMAN DORSEN, PROFESSOR OF LAW, NEW YORK UNIVERSITY SCHOOL OF LAW, BEFORE THE SENATE JUDICIARY COMMITTEE, ON THE PROPOSED EQUAL RIGHTS AMENDMENT, SEPTEMBER 15, 1970

I am honored to appear before the Senate Judiciary Committee to give testimony in support of the Equal Rights Amendment, as passed by the House of Representatives. I am a professor of law at New York University School of Law, where I have specialized in Constitutional Law for more than nine years. I am also General Counsel of the American Civil Liberties Union, but I am appearing here in a purely personal capacity.

The thrust of my testimony has been suggested by witnesses before the Committee who have expressed opposition to the proposed Amendment. Most if not all of these witnesses have stated that they are in sympathy with efforts to remove laws from the statute books that are unjust to or exploit women. Despite these sentiments the witnesses opposed the Amendment because they felt that a constitutional change was not the way to accomplish the goal of eliminating discrimination on account of sex. Statutory techniques were said to be preferable, perhaps supplemented by Supreme Court rulings.

I disagree with this point of view. I believe that a constitutional amendment is

peculiarly suitable to the problem presented, and today I shall present my reason for this conclusion.

My first reason is based on the nature and importance of constitutional amendments. I do not think the Constitution should be amended for trivial or transient consideration. Such solemn action should be taken only when a matter of sufficiently broad principle is at stake to warrant the long and complex process that the framers of the Constitution envisioned for alterations in the basic document. I believe that this is such a case. The decision to eliminate centuries old discrimination against women calls for a constitutional amendment. This is so because an amendment would best emphasize a national commitment to the ideal of equality between the sexes under the law. In addition, the requirement of ratification by three-quarters of the states is most appropriate because many of the areas of discrimination which the amendment will cure concern state law and practices.

My second reason for favoring a constitutional amendment responds to the contention of some critics of the Equal Rights Amendment that the Amendment will operate in unpredictable ways, cause confusion, and foster excessive litigation. I believe that this criticism is unjustified, that the difficulties have been magnified unrealistically, and that our legal institutions are sufficient to deal with any problems presented.

It should be recalled in this connection that many provisions of our Constitution are general statements that have had to be fleshed out by the courts over the decades. This is in the nature of a constitutional instrument which, except for housekeeping provisions, should not be as specific as a statute. For example, Article I, Section 8, of the original document authorizes Congress "To regulate Commerce with foreign Nations, and among the several States." These delphic words have provided the basis for the entire system of economic regulation in the United States. Hundreds, indeed thousands, of judicial interpretations have followed over the years both with respect to the powers of the Congress and the implied limitations on state authority over interstate commerce. This continuous judicial activity has not been a weakness of the Constitution. On the contrary. The courts were properly entrusted with the duty of reviewing the varied legislative enactments. So too here, where the primary authority will be in the Congress and the state legislatures "to enforce" the Amendment, subject to the overriding authority of the courts. This has been the classical American pattern.

Another example, even more pertinent, concerns the adoption of the Fourteenth Amendment, which was principally designed to protect the legal rights of former slaves. When this Amendment was passed no one could have predicted the ways it would affect life in the United States or the amount of litigation and the difficulties of interpretation that would ensue, many of which we still face today. This was to be expected because of the massive difficulties inherent in ending the institution and consequences of slavery. Yet, it surely was no mistake to pass that Amendment because of these difficulties. Could the nation have shirked the responsibility of guaranteeing in our basic charter of government the equal protection of the laws?

Women, too, have been subjected to centuries of discrimination sanctioned by our legal system. It is not so long since women lost their property when they married, lacked the right to vote or serve in government, had no right to serve on juries, no right to contract or sue in court, no right to receive an education, no right to keep their own earnings. Some of the worst manifestations of this lack of citizenship have been remedied, but others remain. The Equal Rights Amendment is needed to end these gross inequities in our legal system, and to complete the job of making women full citizens under the United States Constitution. It is wrong to suggest that because ending deepest and historic discrimination will result in some uncertainty and litigation, we should not act. The Fourteenth Amendment was needed and passed for blacks; the Equal Rights Amendment is needed and should be pasesd for women.

I would like to turn now to the problem most frequently stressed by those opposing the Amendment—the alleged impact on labor laws that protect women but not men. The fact is that the effect of the Amendment on protective labor legislation provides no sound basis for opposing it.

There are three interrelated points here. First, the crazy quilt of existing state protective laws, reveal graphically that there is no consensus on what is needed protection for either men or women, and that much of the legislation, instead of providing solutions to the real problems of women workers, actually "protect" them out of jobs they are perfectly capable of fulfilling. Second, under Title VII of the Civil Rights Act of 1964 much state legislation of this type is being invalidated and will be of no long term importance. Third, such laws that confer genuine benefits can and should be extended to men under the Equal Rights Amendment.

Before dealing with each of these points, I would like to comment on the suggestion of at least one witness before this Committee that the Equal Rights Amendment is being advanced only by professional women and that working class women will be disadvantaged by it because they need the benefits of the protective legislation that is on the books. With all respect to that point of view, I would remind the Comimttee that virtually all reform measures are propounded and pushed by middle class professionals. Certainly that was true of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. But this does not mean that others do not profit by reform. I do not have exact statistics available, but it is clear that a healthy proportion of Title VII cases under the Civil Rights Act have been brought by blue collar, working women who have been victimized by so-called "protective legislation." Moreover, at least half of the Equal Pay cases involve factory workers. It would be a mistake to regard the Amendment as exclusively or even primarily for the professional class. Most of its beneficiaries—the overwhelming percentage of working women—would not be in this category.

I turn now to the three points regarding protective legislation that I mentioned above.

First. The pattern across the country of state laws shows that there is no coherent system of protection provided for women. For instance, while women are allowed chairs for rest periods in 45 states, they are given job security for maternity leaves of absence in *no* state and maternity benefits under temporary disability insurance laws in only two states. Women are even excluded from temporary disability benefits for pregnancy leaves in these two states.

Furthermore, in the benefit areas most people would consider most important—a minimum wage and a day of rest—men do receive substantial protection already. Only seven states have minimum wage laws for women only, but twenty-nine states, plus the District of Columbia and Puerto Rico, cover both men and women. More important, the federal minimum wage law covers both men and women at *higher* rates than all state laws except one (Alaska).

In contrast, maximum hour laws are a major area where men are not covered. Thirty eight states cover women only, and three states cover men and women. Since the Supreme Court has upheld the validity of maximum hour legislation for both sexes since 1941, one can only suspect that unions have not pushed for maximum hour legislation, given their success in obtaining nationwide minimum wage laws for both sexes. This analysis would give credence to the EEOC and federal court decisions which have concluded that hour laws have been used as an excuse to keep women out of better-paying jobs.

Opponents of the Equal Rights Amendment often neglect to note the twenty-six states which altogether prohibit women from performing certain jobs. When forty states allow women to be barmaids, but ten bar them from this employment, can anyone seriously propose that women are thereby protected in those ten states? If anyone is protected, it would appear to be male bartenders.

Similar explanations suggest themselves regarding the eighteen states proscribing night work, and the six states prohibiting work for periods before and after childbirth. Women have not campaigned to obtain these "protections." This is for a very good reason. Women in fact do night work all the time. Nurses, telephone operators, airline reservationists, and scrub women have not been protected from night work. Pregnant women, too, often choose to work right up to the birth date. Who ever heard of a housewife being allowed time off from her housework and small children just because she was pregnant, or of a state law which prohibited her from working.

Weight laws also are of doubtful protection for women. There are only four states with weight limits applicable to all jobs, and these limits are set so low that, if literally applied, they would prohibit women from doing any serious labor, including carrying an unborn child. In the remaining few states with weight limits, they apply only to certain industries. In New York, for instance, women are "protected" from lifting weights only in the foundries. The theory, apparently, is that some mystical essence in foundry weight lifting will injure women, while lifting the same weights in other industries will not. Possibly it is the male workers in foundries who are being protected—from job competition.

Thus, when all of the state laws applying only to women are examined closely, it becomes clear that they do not provide a coherent system of meaningful protection. Nor do they deal with the real problem for women—exploitation by being underpaid and funneled into the lowest-paying, most menial jobs of our society. State labor laws have never dealt with this problem. Furthermore, the premise that real protection can be based on legislating by sex is fallacious.

Sex is an insufficient criterion to predict with accuracy who needs what protection. If injury due to lifting weights is a problem the answer is to forbid employers to fire individuals—both men and women—who refuse to lift weights above a safe limit. If some men and some women don't want to work overtime, laws should be passed forbidding employers to fire those who refuse overtime; both men and women who *do* want overtime pay should not be penalized.

In short, analysis of state laws that apply exclusively to women does not establish that they protect women in any important way. In fact, these laws do not protect women in the one area clearly applicable to women only— maternity benefits and job security; they are ineffective in dealing with the exploitation of women through lower pay than men; and they are used to discriminate against women in job, promotion, and higher-pay opportunities. They do not furnish a reliable basis for opposition to the Equal Rights Amendment.

Second. In light of the above it is not surprising that the Equal Employment Opportunity Commission, the federal agency charged with interpreting and administering Title VII, has concluded that state "pro-

tective" laws were superseded by Title VII and could not lawfully be enforced. The Commission stated that:

"Such State laws and regulations, although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or the expanding role of the female worker in our economy. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect." 29 C.F.R. § 1604.1(b)

The federal courts are apparently moving in the same direction. Three federal district courts—including one within the last month—have now squarely held that Title VII supersedes such restrictive state laws. In addition, both the Fifth and Seventh Circuits have held that company-imposed restriction paralleling state laws—that is, placing private weight limits on women's jobs—also violate Title VII. For instance, in *Weeks* v. *Southern Bell Telephone & Telegraph Co.*, 408 F.2d 228 (5th Cir. 1969), the court set a stringent standard for establishing a "bona fide occupational qualification" exception to Title VII. This is the exception under which employers have argued that state laws allow them to discriminate against women workers. The *Weeks* court held that:

The employer has the burden of proving that he has reasonable cause to believe, that is a factual basis for believing, that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved.

Some states have also taken action under Title VII. Delaware has repealed all its labor laws for women only. So far, there has been no outraged cry from women workers. Five states have repealed their hours laws; in six states and the District of Columbia, the Attorneys General have ruled that state laws are superseded by Title VII or state fair employment practices laws; in another six states, women workers covered by the Fair Labor Standards Act are exempted from the state laws; in two states, there are no prosecutions under state laws; in two states, there are exemptions from laws if the employee voluntarily agrees; and in one, the weight lifting regulation has been extended to men. In other words, twenty-two states and the District of Columbia have already repealed or greatly weakened the effect of the state labor laws on women.

Given this action of the EEOC, of the Federal courts, and of the States, can we really say that the impact of the proposed amendment on State labor laws furnishes any basis for opposition to it? We must recognize that these laws are already invalidated or being invalidated. It appears that opponents of the amendment are trying to erect bridges which were crossed five years ago, when Title VII went into effect.

Third and finally with respect to State labor legislation. There is abundant evidence that if the amendment is ratified it would result in the general extension of certain benefits to men that are now available only to women rather than invalidating them altogether. I recognize that this issue has been the subject of some controversy before the Committee. Nevertheless, I suggest there is ample precedent already on the books to substantiate the conclusion that the fears of wholesale elimination of benefits for women are unwarranted.

In the first place, until Title VII the EEOC has consistently held that laws giving women benefits—such as a lunch break—must be extended to men. The Seventh Circuit has indicated it would be the same, when it held in *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (7th Cir. 1969), that the company-imposed weight limit could be validly extended to men under Title VII, provided the company allowed members of either sex to show he or she could perform the job in question. And Georgia took a similar approach to its weight-lifting regulation, which was extended to men and rephrased to prohibit "strains or undue fatigue" rather than a set weight limit.

In other areas of the law, courts have also indicated a willingness to extend benefits to a class of people unconstitutionally excluded from the benefit, rather than voiding the law under which the class was improperly excluded. As long ago as 1880, in *Neal* v. *Delaware*, 103 U.S. 370, the Supreme Court ruled that a state constitution giving whites only the vote was not void under the Fifteenth Amendment, but rather that the right to vote must be extended to blacks. Lkewise, in *Levy* v. *Louisiana*, 391 U.S. 68 (1968), when a Louisiana statute denied illegitimate children the right to recover for their mother's wrongful death, the Supreme Court held that the Fourteenth Amendment required the extension of protection to them rather than voiding the legitimate children's right to recover.

Clearly, if the courts have authority to extend benefits to an excluded class under the Fourteenth and Fifteenth Amendments, they will have the same authority to extend benefits under the proposed Equal Rights Amendment. Moreover, courts have a general obligation to interpret instruments reasonably. If this means granting a day of rest to men, rather than destroying this right for women, the courts should and presumably will follow that path, especially in view of the very ample expression of opinion by members of the Congress and witnesses that some protective laws should be extended to both sexes rather than voided.

Finally, with respect to this problem, we should not lose sight of the fact that the Congress and state legislatures will have the opportunity to enforce the Amendment and fashion its general command to specific situations in a comprehensive and reasonable manner.

I would now like to turn to another major area singled out by opponents of the Equal Rights Amendment—family law. Concern has been voiced that women would lose their right to support and alimony if the Equal Rights Amendment passes. There are several answers to this concern. First, as already noted, the right to alimony and support can be extended to men by legislative act or as a matter of interpretation of the Amendment. Indeed, in one-third of the states alimony can be awarded to either spouse, and is based on the circumstances of the particular case, such as relative economic needs, duration of the marriage, and relative contributions to the marriage.

As for the right to support, although it has been much relied on, it is of somewhat illusory value to women. In the first place, in most jurisdictions not until the parties are separated, or sometimes even divorced, does a wife have the right to get a court order for a specific amount of support money. See H. H. Clark Law of Domestic Relations 181, 186 (1968). More important, the chief legal remedy for the wife during marriage—the ability to purchase household "necessaries" and charge them to the husband—is of far less value than is generally believed. As one authority has stated:

"The doctrine of necessaries may once have been an effective way of supporting wives and children (though one doubts it). Today, however, it is hedged about with so many limitations that few merchants would wish to rely on it. More importantly, it is of least value to those most in need of support, those wives and children too poor to be able to get credit. For these reasons the doctrine is of little practical value in the solution of the non-support problem." Clark, supra at p. 192.

The National Conference of Commissioners on Uniform State Laws recently adopted a Uniform Marriage and Divorce Act which takes an approach similar to that contemplated by the Equal Rights Amendment. It provides for alimony or maintenance for either spouse, and child support by either or both spouses, by defining all duties neutrally in terms of functions and needs of the people involved, rather than in terms of their sex.[1] The action by the Commissioners, a respected and prudent body, deserves special consideration.

Their approach—based on individual circumstances and needs—underlies the Equal Rights Amendment also. Put another way, laws which differentiate on the basis of sex are unjust because they arbitrarily treat all members of a class without looking at individual qualifications. State labor laws are unjust and do not protect women because they arbitrarily assume all women have stereotyped and uniform characteristics, which many individual women do not have. Alimony and support laws also have unjust consequences for both men and women when they assume that all women are weak, dependent, caretakers of children. Just as some men may need alimony, some women may prefer to pay maintenance to allow their husbands to be caretakers of children. In this connection, it is worth observing that several states already require a wife to support a husband unable to support himself.

The Uniform Marriage and Divorce Act eliminates definitions based on sex and substitutes those based on function. This is what the Equal Rights Amendment is intended to do. By passing it, we will help insure more genuine protection for those who really need it, and end the many injustices women still face.

The final issue I would deal with concerns the draft and military service. Critics of the proposed Amendment point to this as the *reductio ad absurdam* of the equal rights idea, saying that it is ridiculous to draft women into our armed services as the Amendment presumably would require.

I disagree with this point of view. Putting to one side the question whether either men or women should be subject to a draft, I see no reason to put the exclusive onus on men. It is now a commonplace that women can and do perform many useful functions in the services; and that appropriate physical examinations can weed out—as they do in the case of males—those who are unfit to

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[1] Section 308, which deals with maintenance, is typical of the Act's approach:

(a) In a proceeding for dissolution of marriage or legal separation . . . the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(1) lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs, and (2) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(b) The maintenance order shall be in such amount and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(1) the financial resources of the party seeking maintenance, . . . and his ability to meet his needs independently . . .; (2) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment; (3) the standard of living established during the marriage; (4) the duration of the marriage; (5) the age, and the physical and emotional condition of the spouse seeking maintenance; and (6) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

serve. For example, pregnant women would be exempt.

As far as the draft is concerned there is double discrimination. There is discrimination against the men who are taken from their homes and placed in the armed services against their will. This is a form of discrimination that can easily be appreciated. But there is also discrimination against women of a more subtle character. This takes place in three ways.

First, women are denied the opportunity to obtain the job training and experience available to servicemen from working class and minority group backgrounds. It is well known that the armed services serve as a "college" for many of the nation's poor; I fail to see why women should be deprived of this opportunity.

Second, as is well known, there are laws providing extensive benefits to veterans of the armed service. They relate to the essentials of life—education, housing, employment, life insurance, and hospital care. These are now distributed almost exclusively to men.

Third, on a deeper level, when women are excluded from the draft—the most serious and onerous duty of citizenship—their status is generally reduced. The social stereotype is that women should be less concerned with the affairs of the world than men. Our political choices and our political debate often reflect a belief that men who have fought for their country have a special qualification or right to wield political power and make political decisions. Women are in no position to meet this qualification.

It is no answer to the above to say that if military service is such a benefit, women are always free to enlist in one of the Women's Armed Service Corps. It is not really that simple. The law limits the size of the Women's Corps to two percent of their parent services, and even this level is not being met; in 1969 women were only about 1% of the armed forces.

For the above reasons I believe that the Equal Rights Amendment should be approved by this Committee and by the Senate as a whole as an overdue measure to eliminate discrimination on account of sex.

Mr. COOK. The arguments against the House-passed resolution are essentially as follows: First, the constitutional amendment route is not necessary as the equal protection clause of the 14th amendment and title VII of the Civil Rights Act of 1964 are sufficient to guard against sex-based discrimination under the law. Second, if an amendment is adopted the House-passed resolution is defective in three areas: First, the words "and the several States—within their respective jurisdictions" should be stricken from section 1 of the amendment; second, a section should be added providing that the amendment must be ratified by three-fourths of the State legislatures within 7 years, and third, section 3 of the amendment should be altered so that the effective date of the amendment after ratification is 2 years rather than 1. I will rebut these contentions in order.

First. Are the equal protection clauses of the 14th amendment and title VII of the Civil Rights Act of 1964 sufficient to strike down sex discrimination under the law?

Prof. Norman Dorsen of New York University Law School, a supporter of House Joint Resolution 264 whose testimony I have inserted, stated the broad philosophical reason for choosing the constitutional amendment route rather than relying upon existing law when he said:

The decision to eliminate centuries old discrimination against women calls for a constitutional amendment. This is so because an amendment would best emphasize a national commitment to the ideal of equality between the sexes under law, in addition, the requirement of ratification by three-quarters of the States is most appropriate because many of the areas of discrimination which the amendment will cure concern State law and practices.

Professor Emerson, of Yale Law School, likewise a supporter of the House-passed resolution, stated in his testimony which I have also just inserted in the RECORD, that there are three basic methods by which discrimination against women can be eliminated from our legal system. The first he suggests would be for the Federal, State, and local legislatures to repeal or revise their laws and for the administrative boards, both Federal and State, to alter their discriminatory regulations. This, Emerson suggests, would necessitate an interminable delay.

The second method would be through court action under the equal protection clauses of the fifth and 14th amendments. Although Professor Emerson is confident that the Supreme Court will, in the long run, interpret the equal protection clause to forbid sex-based discrimination in law, he envisions certain difficulties with that approach in the absence of the equal rights amendment. First, he notes that there are some Supreme Court decisions and lower court cases which move in the wrong direction. The task of overcoming or distinguishing these would be long and arduous. Second, Emerson raises an extremely valid point in this regard by pointing out that the Supreme Court has been subjected to numerous attacks in recent years for moving too fast. Therefore, the Court might be reluctant to undertake another major social reform in the absence of a clear mandate to do so. The route of the constitutional amendment, he concludes, is the most desirable method to ameliorate this condition and give the courts their clear mandate.

Prof. Leo Kanowitz, of New Mexico Law School, an expert in the field of women and the law, also testified in support of the House-passed resolution noting that he was a recent convert to the cause previously having "wavered between mild opposition and lukewarm support." Kanowitz states that while he believes it is likely that the Supreme Court will ultimately hold that existing provisions of our Constitution are sufficient to strike down sex-based discrimination "there is no guarantee that it will do so." He goes on to say that—

Should the next few years bear out my prediction that the court will soon begin to interpret existing constitutional provisions so as to eliminate irrational sex discrimination in the law, no harm will have been achieved by the presence of the equal rights amendment. Indeed, many examples can be cited in which laws and official practices may violate more than one constitutional provision at a time.

Professor Kanowitz, however, does offer one caveat which should be mentioned for the purpose of establishing the proper legislative history. He points out that it should not be the intent of Congress that the Supreme Court refrain from an expansive interpretation of the equal protection clause in the area of sex discrimination preferring instead to wait until the adoption of the equal rights amendment.

In that regard, I would state at this juncture, that it is the hope of the junior Senator from Kentucky, one of the prime sponsors of this amendment, that as Kanowitz so ably states it:

Forthcoming decisions of the Supreme Court will soon transform that amendment (equal rights) into a constitutional redundancy.

In summary, these experts do not foreclose the possibility that the Supreme Court will, in the future, interpret the equal protection clause as prohibiting sex-based discrimination in law. However, it has not yet done so and would be clearly aided by a constitutional mandate to that effect.

Second. Should the words "and the several States * * * within their respective jurisdictions" be deleted from the House-passed version?

Prof. Paul Freund, of Harvard Law School—and I am sorry that the Senator from Missouri is not here—in testimony before the full Judiciary Committee, and Dean Louis H. Pollak, of Yale, in a letter to Senator BIRCH BAYH, both expressed some concern over the inclusion of the words "and the several States * * * within their respective jurisdictions" in the House-passed resolution. I ask unanimous consent that Dean Pollak's letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

YALE UNIVERSITY LAW SCHOOL,
New Haven, Conn., August 31, 1970.

Hon. BIRCH BAYH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BAYH: In advance of the hearings scheduled by the full Senate Judiciary Committee on the proposed Equal Rights Amendment, I wish to bring to your attention that, as presently drafted, the proposed amendment contains what might turn out to be a very serious loophole.

I have in mind the second sentence of Section 1 which provides Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation.

If the proposed amendment becomes a part of the Constitution, it would be the only amendment which would confer upon the states any implementing power.

I suppose it is possible that proponents of the amendment may think that the amendment may be fortified by vesting a power of implementation in the states as well as in Congress. But I think this might in fact turn out to be a dangerous illusion. First of all, the federal courts might read this provision as requiring the same degree of judicial deference to state statutes purporting to implement the amendment as would normally be given to federal statutes implementing the amendment: this could mean that the parochial (and, as might often be the case, mutually inconsistent) statutes of state legislatures would assume an unprecedented degree of apparent dignity and consequent unreviewability merely because they were denominated implementations of this amendment. Second of all, the phrase "within their respective jurisdictions" might be

read by the federal courts as requiring some other constitutional basis for implementing legislation (e.g., Congress might be held to be without power to enforce the amendment with respect to intrastate commerce, etc.).

These would, of course, be anomalous results—results which would obstruct, not advance, the purposes of the amendment. Happily, however, it is an easy matter to clear up the wording of the proposed amendment in such a way that no court could possibly be led astray, and indeed no semantic basis would exist for delaying and diversionary litigation. The remedy is to excise the words "and the several States . . . within their respective jurisdictions." The second sentence of Section 1 would then read: "Congress shall have power to enforce this article by appropriate legislation."

This minor verbal change would, in my judgment, help to insure that the proposed Equal Rights Amendment will, if it becomes a part of the Constitution, in fact promote the amendment's important purposes.

Sincerely yours,

LOUIS H. POLLAK.

Mr. COOK. Mr. President, this letter reads in pertinent part:

I suppose it is possible that proponents of the amendment may think that the amendment may be fortified by vesting a power of implementation in the states as well as in Congress. But I think this might in fact turn out to be a dangerous illusion. First of all, the Federal courts might read this provision as requiring the same degree of judicial deference to state statutes purporting to implement the amendment as would normally be given to Federal statutes implementing the amendment: This could mean that the parochial (and, as might often be the case, mutually inconsistent) statutes of state legislatures would assume an unprecedented degree of apparent dignity and consequent unreviewability merely because they were denominated implementations of this amendment. Second of all, the phrase, "within their respective jurisdictions" might be read by the Federal courts as requiring some other constitutional basis for implementing legislation (e.g. Congress might be held to be without power to enforce the amendment with respect to intrastate commerce, etc.)

Based upon these concerns, Dean Pollak recommends that the words in question be deleted, making the second sentence of section 1 read:

Congress shall have power to enforce this article by appropriate legislation.

Since this time, Dean Pollak has written to me indicating his belief that this matter might be cleared up by proper legislative history. I ask unanimous consent that Dean Pollak's letter to me of September 28 be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

YALE UNIVERSITY,
LAW SCHOOL,
New Haven, Conn., September 28, 1970.

Hon. MARLOW W. COOK,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR COOK: This letter is written in response to a request from your assistant, Mitch McConnell, Esq., for my views on a letter which my colleague, Professor Thomas I. Emerson, wrote to you on September 24 with respect to the language in the second sentence of Section 1 of the proposed Equal Rights Amendment which would give implementing authority to "Congress and the several States . . . within their respective jurisdictions . . ." Inasmuch as Professor Emerson's letter was in part directed at concerns I raised in a letter to Senator Bayh dated August 31, I appreciate this opportunity to comment on Professor Emerson's letter.

In my letter of August 31, I raised questions about vesting implementing authority in state legislatures as well as in Congress. It seemed to me that, on the one hand, this delegation of authority to state legislatures might conceivably mislead the courts into being over-lenient in testing state laws against the new federal constitutional standards merely because the state laws were denominated implementations of the new amendment. And it seemed to me, on the other hand, that the phrase "within their respective jurisdictions" might conceivably mislead the courts into reading federal implementing legislation by too harsh a standard—i.e., a standard invalidating such legislation unless Congress had power to act derived from some grant of legislative authority other than the new amendment. I say "mislead" because it was apparent to me that either of these suggested judicial constructions would be inconsistent with the generous constitutional intent of the amendment's proponents and thus "would obstruct, not advance, the purposes of the amendment." It was in this spirit that I suggested, in my letter of August 31, a minor verbal change designed to foreclose any judicial misconstruction and thereby insure that the amendment "will, if it becomes a part of the Constitution, in fact promote the amendment's important purposes."

Professor Emerson, in his letter of September 24, argues that my concerns are unfounded: agreeing with my view of the generous constitutional intent animating you and other proponents of the amendment, Professor Emerson says flatly that "any interpretation of the Equal Rights Amendment that lessens rather than strengthens Federal and State powers of enforcement is inconsistent with the intention of the Resolution now under consideration in 1970." He then goes on to say that, "If there be any lingering doubt about this it can be readily made clear, and the necessary legislative history established, by statements of the chief supporters of the measure when it reaches the Senate floor." Since the issues involved all go to the Congressional intent underlying the proposed constitutional language, I would of course agree that establishing the necessary legislative history during floor debate in the Senate would make it unnecessary to alter the wording of the proposed amendment.

Specifically, I would urge that Senate floor discussion establish these points: (1) Congressional power to enforce the new amendment is to be the same as that Congress possesses to enforce the Fourteenth Amendment. (2) State legislative power to enforce the new amendment is to be subordinate to federal legislative and judicial authority to enforce this amendment and other provisions of the Constitution. (3) In judging the compatibility of federal and state laws with the new amendment, the courts will exercise the same paramount authority to interpret and enforce constitutional limitations which has been the central feature of the power of judicial review ever since that power was declared and given concrete application by Chief Justice Marshall in *Marbury* v. *Madison* and *Fletcher* v. *Peck*.

Sincerely,

LOUIS H. POLLAK.

Mr. COOK. Mr. President, his last paragraph states quite well the judicial interpretation which we expect to be given by the courts to the words in question. Let me read it to my colleagues.

Reading now the last paragraph:

Specifically, I would urge that Senate floor discussion establish these points: (1) Congressional power to enforce the new amendment is to be the same as that Congress possesses to enforce the fourteenth amendment, (2) State legislative power to enforce the new amendment is to be subordinate to Federal legislative and judicial authority to enforce this amendment and other provisions of the Constitution, (3) in judging the compatibility of Federal and State laws with the new amendment, the courts will exercise the same paramount authority to interpret and enforce constitutional limitations which has been the central feature of the power of judicial review ever since that power was declared and given concrete application by Chief Justice Marshall in *Marbury* v. *Madison* and *Fletcher* v. *Peck*.

In the further effort to create the proper legislative history I have received letters dealing with Dean Pollak's concern. Professors Emerson, Dorsen, and Kanowitz have each addressed themselves to the fears expressed by Pollak and have, I believe, resolved any doubts which he expressed. I ask unanimous consent that the letters of Professors Emerson and Kanowitz of September 24, 1970, and the letter of Prof. Norman Dorsen to me of September 29, 1970, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

YALE LAW SCHOOL,
New Haven, Conn., September 24, 1970.

Senator MARLOW W. COOK,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR COOK: When I testified before the Senate Judiciary Committee on the Equal Rights Amendment on September 15th you raised a question about the interpretation of the second sentence of the proposed Amendment which reads as follows:

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

I would like to expand briefly upon the statement I made at that time in answer to your inquiry.

The provision quoted serves two important functions. In the first place it gives power to both Congress and the State legislatures to pass affirmative legislation implementing the substantive provisions of the Equal Rights Amendment. Provisions of this nature, such as those embodied in the Thirteenth, Fourteenth and Fifteenth Amendments, have come to be important in legislative efforts to enforce the rights guaranteed. The Federal and State governments must, of course, exercise the powers conferred "within their respective jurisdictions."

In the second place the provision is designed to avoid the possibility that the conferring of power upon the Federal legislature will exclude the exercise of State power to implement the Amendment. As you know, the Supreme Court has sometimes held that the existence of Federal power in a certain area precludes the States from legislating in that area, even though the Federal power has not actually been exercised. In the case of the Equal Rights Amendment it is clear that many of the problems in assuring equal rights for women will arise in areas where the States have primary jurisdiction, such as marriage and divorce, property, welfare and the like. It is important therefore, that, although Congress should be given full power to enforce the Amendment, the grant of such power to the Federal Government be not construed to pre-empt the States from legislating.

It will be noted that, in the only other recent Amendment which posed a similar question of assuring the continuance of State power—namely the Eighteenth Amend-

ment enacting prohibition—a similar provision was included.

Of course, if there is a conflict between legislation passed by Congress and legislation passed by a State, the Federal law takes precedence under the Supremacy Clause. In the absence of such a conflict, however, the Equal Rights Amendment establishes that the States and the Federal Government have concurrent jurisdiction.

In a letter to Senator Bayh on August 31, 1970, which you introduced into the record at the hearing on September 15, Dean Louis H. Pollak suggested that the provision quoted above might be subject to two interpretations which "would obstruct, not advance, the purposes of the amendment". In my judgment Dean Pollak's fears are unfounded.

Dean Pollak's first concern is that "The Federal courts might read this provision as requiring the same degree of judicial deference to state statutes purporting to implement the amendment as would normally be given to federal statutes implementing the amendment;" and "this could mean that the parochial (and, as might often be the case, mutually inconsistent) statutes of state legislatures would assume an unprecedented degree of apparent dignity and consequent unreviewability merely because they were denominated implementations of this amendment."

I do not follow Dean Pollak's reasoning on this. There is no constitutional doctrine that the Supreme Court gives less deference to action of State legislatures than it does to action of the Federal legislature. To the extent that any such result obtains in practice, it is due to basic factors inherent in the nature of the federal system and the function of the Supreme Court. I cannot believe that the Supreme Court would alter its attitude or position on these matters because of a faint, hidden implication in the concurrent jurisdiction clause of the Equal Rights Amendment. Only an explicit command could effectuate such a basic alteration of constitutional law and practice.

Dean Pollak's second fear is that the phrase "within their respective jurisdictions" might be read by the Federal courts "as requiring some other constitutional basis for implementing legislation (e.g., Congress might be held to be without power to enforce the amendment with respect to intrastate commerce, etc.)." There is language in a report of the Senate Judiciary Committee in 1943 which supports such an interpretation. The crucial issue, however, is not what draftsmen of language may have meant 27 years ago but what Congress now intends in adopting the language in question. As to this there can scarcely be doubt. The proponents of the Equal Rights Amendment in its current manifestation surely do not intend to limit the power of Congress to enforce the guarantees of the Amendment by appropriate legislation. On the contrary those who have introduced and supported the pending Resolution have made it entirely clear that the purpose of the provision is to give Congress the same power to enforce the Amendment that it has under the Thirteenth, Fourteenth, and Fifteenth Amendments. Had the proponents sought to limit the powers of Congress to those it already possesses under existing provisions of the Constitution, they could simply have eliminated any reference to additional enforcement power in Congress.

In short any interpretation of the Equal Rights Amendment that lessens rather than strengthens Federal and State powers of enforcement is plainly inconsistent with the intention of the Resolution now under consideration in 1970. If there be any lingering doubt about this it can be readily made clear, and the necessary legislative history established, by statements of the chief supporters of the measure when it reaches the Senate floor.

I would like also to comment on two other matters not covered in my original testimony. Objection has been made that the resolution fails to include a provision that the Amendment becomes inoperative unless ratified by the States within seven years. There is in my judgment no need for such a provision. A limitation of this sort has been included in only four of the twenty-five amendments thus far adopted. These are the Eighteenth, Twentieth, Twenty-first and Twenty-second. No such provision appears in the Nineteenth Amendment, establishing women's suffrage, the one most comparable to the Amendment now before the Senate. Nor does any such provision appear in the last three amendments adopted—the Twenty-third, Twenty-fourth and Twenty-fifth. It seems clear, therefore, that the seven year limitation has not been considered necessary in the past.

Secondly, it has been suggested that the effective date of the Equal Rights Amendment should be two years from the date of ratification rather than one year. The only prior amendment that has had a limitation on its effective date is the Eighteenth Amendment, and that was one year. There is no reason why the one year should not suffice in the case of the Equal Rights Amendment. Many State legislatures now hold annual sessions and those who do not can easily call a special session. Many States will want to take a new look at their legislation which now discriminates against women. They will have ample opportunity to do this in the period required for ratification and in the one additional year now provided in the Resolution.

For these reasons it seems to me that the invocation of either of these arguments, as a ground for not adopting or for delaying the Equal Rights Amendment, would be sheer subterfuge.

Sincerely,

THOMAS I. EMERSON.

UNIVERSITY OF NEW MEXICO,
SCHOOL OF LAW,
Albuquerque, N. Mex., September 24, 1970.

Senator MARLOW W. COOK,
Senate Office Building,
Washington, D.C.

DEAR SENATOR COOK: I understand that questions have arisen about the potential effects of the language in S.J. Res. 61 which provides that the power of Congress and the States to enforce the article by appropriate legislation shall be exercised "within their respective jurisdictions."

As you know, Congress, in its recent enactment of the Voting Rights Act of 1970, conferred the right to vote upon 18-year-olds within the states. Congress did this on the assumption that it could, by appropriate legislation, implement the equal protection guarantee of the Fourteenth Amendment. Though the matter must still be decided by the United States Supreme Court, it is clear that, if Congress' power to do this is upheld, it will constitute an extremely important source of authority to legislate in areas that have traditionally been regarded as primarily of state concern.

It is against this background that questions have arisen about the purpose and intent of the language in the proposed Equal Rights Amendment specifying that the legislative enforcement of the proposed new article shall be carried out by Congress and the States "within their respective jurisdictions."

Were this language to be interpreted as restricting Congress' potential legislative authority to a smaller area than it believed it enjoyed under the equal protection clause in providing for the 18-year-old vote, it would be most unfortunate. For though the Equal Rights Amendment, when ratified, will likely be implemented at all levels by voluntary compliance, Congress should still reserve the authority to legislate needed reform in this field if state action is not as complete or as rapid as circumstances require.

To avoid that kind of interpretation, therefore, the legislative history of the Equal Rights Amendment should show that the phrase "within their respective jurisdictions" embraces, insofar as federal authority is concerned, the continuing power to implement the Fourteenth Amendment's equal protection guarantee by appropriate legislation in areas that are closely connected to state concerns, and that a similar power is intended with respect to the sex-based equality principle expressed in the Equal Rights Amendment itself. By contrast, the phrase "within their respective jurisdictions," as applied to the States, would be understood as referring to the territorially limited scope of state legislative power that has been defined by numerous Supreme Court decisions in this area. (*See, e.g., Edwards* v. *California*, 314 U.S. 160 (1941); *Toomer* v. *Witsell*, 334 U.S. 385 (1948); *Gibbons* v. *Ogden*, 9 Wheat 1, 6 L.Ed. 23 (1824)).

I would also re-emphasize the point I made in my testimony before the Senate Judiciary Committee on September 11, 1970 (Congressional Record, September 14, 1970, p. 31533) that the proposed Equal Rights Amendment would merely complement or supplement the present guarantees against unreasonable sex discrimination that inhere in the Fourteenth Amendment's equal protection clause, the Fifth Amendment's due process clause, and the Privileges and Immunities clause of the United States Constitution. It seems clear to me that present Congressional legislative authority flowing from these and other constitutional provisions would not be interfered with, in the sex discrimination field, or in any other for that matter, by any language in Sen. J. Res. 61, including its phrase "within their respective jurisdictions."

Finally, I should point out that recent United States Supreme Court decisions, interpreting the scope of federal legislative authority under the commerce clause of the federal constitution, suggest that the phrase "within their respective jurisdictions," as applied to Congress is almost of unlimited scope. (*See, e.g., Katzenbach* v. *McClung*, 379 U.S. 294 (1964); *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241 (1964)).

In sum, I would suggest that there is no foundation to the expressed fears that the phrase "within their respective jurisdictions" in S.J. Res. 61 would detract from present Congressional legislative authority in the sex-discrimination field. The fact is that, as a result of a long history of constitutional litigation, the "respective" legislation jurisdiction of Congress permits it to enact laws that, at one time, may have been regarded as of primary or exclusive state concern, while the "respective" legislative jurisdiction of the States is much more circumscribed.

Sincerely,

LEO KANOWITZ,
Professor of Law.

NEW YORK UNIVERSITY,
SCHOOL OF LAW,
New York, N.Y., September 29, 1970.

Senator MARLOWE COOK,
Old Senate Office Building, U.S. Senate,
Washington, D.C.

DEAR SENATOR COOK: I am writing to supplement my testimony before the Senate Judiciary Committee on September 15th on three points that have been raised in connection with the proposed Equal Rights Amendment.

1. It has apparently been objected that the resolution embodying the Amendment fails to include a provision limiting the period of ratification to seven years. In my view there is simply no need for such a provision, and it is inconceivable that its absence would impair the effectiveness of the Amendment if it is adopted by three-fourths of the States. No such provision is found in most of our constitutional amendments, including the Women's Suffrage Amendment, nor is there any basis for regarding it as mandatory.

2. It has been suggested that the effective date of the Equal Rights Amendment should

be two years from date of ratification rather than the one year that is provided. It is difficult to see why a one year rather than a two year period could make any difference to the legal effectiveness of the Amendment or its practical impact. That any postponement period exists is itself a departure from the usual practice of immediate implementation. State legislatures will have ample time to review their laws in one year, and to take what action is necessary either in a regular or special session.

3. The proposed Amendment contains the following sentence:

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

A question has been raised, most notably by Dean Louis Pollak of the Yale Law School in a letter to Senator Bayh dated August 31, 1970, as to whether the above provision might be interpreted to obstruct the purposes of the Amendment. In my view there need be no concern about this matter.

The principal issue raised by Dean Pollak relates to the possibility that the phrase "within their respective jurisdictions" might be read by the federal courts "as requiring some other constitutional basis for implementing legislation (e.g., Congress might be held to be without power to enforce the Amendment with respect to intrastate commerce, etc.)."

I do not believe that the Amendment would be so interpreted. The key question is the intent of the Congress that proposes the Amendment. Here there seems little room for dispute. Surely the proponents in the House and Senate do not intend to limit the power of Congress to enforce its guarantees; if they had they could easily have omitted from the Amendment any reference to additional enforcement power in Congress. Indeed, the sponsors of the Amendment have frequently indicated that they wish Congress to act boldly to eliminate discrimination on account of sex. Accordingly, in my opinion it is highly unlikely that the courts will interpret the language quoted above to lessen the enforcement power of the Congress.

Sincerely,

NORMAN DORSEN,
Professor of Law.

Mr. COOK. Mr. President, the crux of their rebuttal, of Dean Pollak's concern over the clause granting concurrent jurisdiction to the Congress and the States "within their respective jurisdictions" is best summed up by one paragraph in Professor Emerson's letter.

Of course, if there is a conflict between legislation passed by Congress and legislation passed by a State, the Federal law takes precedence under the supremacy clause, in the absence of such a conflict, however, the equal rights amendment establishes that the States and the Federal Government have concurrent jurisdiction.

In addition, Dr. Pauli Murray, of Brandeis, specifically rebutted Professor Freund's similar concerns about the language discussed in Dean Pollak's letter. Dr. Murray stated in her testimony before the Judiciary Committee:

Professor Freund also expressed concern that the enforcement clause which gives legislative authority to Congress and the States "within their respective jurisdictions" to implement the equal rights amendment is a restriction upon congressional power. I respectfully submit that this view is a narrow and static interpretation of constitutional theory. Judicial opinions abound with the principle that the Constitution is interpreted as a whole and the legislative history of the equal rights amendment can make it clear that it reinforces other amendments to the Federal Constitution dealing with individual rights. I further submit that the plain intent of the qual rights amendment is to overrule the judicial precedent that sex is a valid basis for legislative or judicial distinctions under the fourteenth amendment.

The Supreme Court has already overruled all precedents which support racial distinctions in the law. Since legal distinctions based upon race and upon sex have many common origins and parallel developments and have been the focal points of comparable social conflict, both should be buried in the debris of past historical errors.

Furthermore, the plain language of the amendment "within their respective jurisdictions" appears to mean no more than it says: That States are not foreclosed from passing anti-discrimination measures intended to eliminate sex-based discrimination just as now they are not foreclosed from enacting civil rights legislation even though parallel legislation by Congress may exist. There is abundant experience in our history of Federal and State legislation directed toward a common purpose: The Federal Equal Pay Act existing along side of numerous State equal pay acts; title II of the same act operating along with the public accommodations sections of numerous State civil rights acts. The language under discussion merely makes clear that the several States will have both the power and the obligation to act simultaneously within their respective jurisdictions. In the case of an irreconcilable conflict between State and Federal legislation on the same subject-matter, however, the supremacy clause of the Federal Constitution requires that the Federal legislation shall take precedence over the State law. In view of these well-established constitutional principles, Professor Freund's apprehensions seem to be ill-founded.

2(b). Should a 7-year ratification clause be inserted?

Maguerite Rawalt, an attorney and former Chairman of the Presidential Task Force on Civil and Political Rights of Women—1963—pointed out before the committee that *Coleman* v. *Miller* 307 U.S. 433 (1939) stands for the proposition that a 7-year time limit would not vitiate a constitutional amendment. Congress itself has the final determination whether by lapse of time its proposal to amend the Constitution has lost its vitality.

Professor Emerson, in his September 24 letter to me, said of any attempt to insert a 7-year ratification limit into the amendment—

There is in my judgment no need for such a provision. A limitation of this sort has been included in only four of the twenty-five amendments thus far adopted. These are the eighteenth, twentieth, twenty-first and twenty-second. No such provision appears in the nineteenth amendment, establishing women's suffrage, the one most comparable to the amendment now before the Senate. Nor does any such provision appear in the last three amendments adopted,—the twenty-third, twenty-fourth and twenty-fifth. It seems clear, therefore, that the seven year limitation has not been considered necessary in the past.

Clearly a 7-year limit on ratification need not be added as it has been only infrequently used in the past and would merely force the equal rights amendment to a conference with the House where its fate would be uncertain for this Congress.

2(c). Should the 1-year effective date after ratification be changed to allow two years for compliance?

Professor Emerson in his letter to me of September 24 also discussed the one year effective date issue. He noted that—

The only prior amendment that has had a limitation on its effective date is the eighteenth amendment, and that was one year. There is no reason why the one year should not suffice in the case of the equal rights amendment. Many state legislatures now hold annual sessions and those who do not can easily call a special session. Many states will want to take a new look at their legislation which now discriminates against women. They will have ample opportunity to do this in the period required for ratification and in the one additional year now provided in the resolution.

Marguerite Rawalt concluded of the proposed change to a 2-year effective date—

The provision that the amendment should not take effect until two years after ratification has been misconstrued before this committee. The states would not be limited to two years in which to change their discriminatory laws. The testimony of Professor Freund states: "can it be expected that all the states will make an about-face on the law of support within a year of adoption of the amendment?" and "suppose, however, that within the one year period . . . a legislature does not act to equalize certain differentials based on sex, or acts in a way thought to be still incompatible with the amendment." Examples by the hundreds answer this conjured horrific result.

One definitive pronouncement, by the one Supreme Court, in one case involving one statute, of one state, would render inoperative the similar laws of other states, and states' attorneys general would, as they have done during the past two years as to labor standards laws outlawed by title VII of the Civil Rights Act of 1964, rule that such laws were rendered inoperative and would no longer be enforced. It might even take some years to eradicate statutes from the statute books, just as we find today ridiculous laws of past ages still on the books, which have lain dormant and unenforced. As one example, I could cite the bill before this 91st Congress in this year 1970 rescinding the 19th century law prohibiting the flying of a kite on the parkland between the Capitol and the river.

In conclusion, of the proposed time limitation changes, neither is necessary and would serve only to bring about a conference with the House which would be tantamount to no equal rights amendment in the 91st Congress.

I have concluded, as has Professor Emerson, that adoption of either change in the time whether 7-year ratification limit or 2-year effective date "would be sheer subterfuge."

Mr. President, I have a statement, under date of July 1968 entitled, "Statement by former Vice President Richard M. Nixon on the Equal Rights for Women Amendment."

It reads:

Forty-eight years ago, American women were given the Constitutional right to vote. Today it is accepted as a matter of course that men and women have an equal electoral franchise in this country and that American men and women will have an equal voice in choosing a new President, a Congress and state and local governing officials and bodies.

But the task of achieving Constitutional equality between the sexes still is not completed. All Republican National Conventions since 1940 have supported the long-time movement for such equality.

It is my hope that there will be widespread support for the Equal Rights for Women Amendment to our Constitution, which

would add equality between the sexes to the freedoms and liberties guaranteed to all Americans.

Mr. President, I have a telegram dated October 24, 1968.

It reads:

The Equal Rights for Women Amendment reflects the view that I have consistently taken on this vital issue and it deserves wholehearted support of all Americans. In recent years we have made a great deal of progress toward the goal of equality between the sexes but we need a continuing concerted effort to make this principle a reality . . . to this end I pledge my support.

That telegram is signed by SPIRO T. AGNEW.

Mr. President, I have another letter under date of September 2, 1960. The heading is, "Statement by the Vice President on the Equal Rights Amendment." The last paragraph reads:

It is my hope that there will be widespread support for our platform declaration in behalf of an equal rights amendment to our Constitution which would add equality between the sexes to the freedoms and liberties guaranteed to all Americans.

That letter is signed by Richard Nixon.

Mr. President, I have a telegram dated July 20, 1968, that I would like to read. I am sorry that the senior Senator from North Carolina is not present.

The telegram reads:

I want you to know that I favor your equal rights for women amendment. If I am elected President of the United States I will do all in my power to bring about the early passage of the appropriate resolution. I feel a special kinship with your organization because a native Alabamian, Mrs. Alva E. Belmont, was your first president and also because I feel that my wife Lurleen through her service contributed to the status of women in our Nation.

That telegram is signed, "Sincerely, George C. Wallace."

Mr. President, I have a letter dated October 26, 1967, which reads:

Thank you for letting us know about your current efforts in behalf of the Equal Rights for Women amendment.

As you know, I consistently supported your efforts in this connection while in the Senate. You may be assured that my position is unchanged.

That letter is signed, "Sincerely, Lyndon B. Johnson."

Mr. President, I have a letter dated October 7, 1960. The letter reads:

Thank you for providing me with an opportunity to make a statement regarding the equal rights amendment.

As you know, I have long been convinced that discrimination in any form is contrary to the American philosophy of government. It is a basic tenet of democracy to grant equal rights to all, regardless of race, creed, color, or sex. This should be true even if there were no Constitutional amendment dealing with the subject.

Forty years ago women received the right to vote. It is long past the time when similar equal rights should be granted in other fields. As the Democratic platform so well phrased our objective: "We support legislation which will guarantee to women equality of rights under the law, including equal pay for equal work."

There should be no "artificial and arbitrary barriers to employment based on age, race, sex, religion, or national origin." The platform has my full support.

You have my assurances that I will interpret the Democratic platform, as I know it is intended, to bring about, through concrete actions including the adoption of the Equal Rights for Women Amendment, the full equality for women which advocates of the equal rights amendment have always sought.

That letter is signed, "Sincerely, John F. Kennedy."

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a Presidential proclamation under date of August 26, 1970.

There being no objection, the proclamation was ordered to be printed in the RECORD, as follows:

FIFTIETH ANNIVERSARY OF WOMAN SUFFRAGE
PROCLAMATION 3998, AUGUST 26, 1970

By the President of the United States of America a Proclamation

Fifty years ago today, Bainbridge Colby, Secretary of State of the United States, certified that the 19th Amendment had become valid as a part of the Constitution.

It is hard for any of us living in 1970 to imagine a time when women did not vote. Yet for more than seventy-five years, American women faced adversity, ridicule and derision on every level of our society as they sought this precious right. Brave and courageous women, knowing their cause was just, drawing strength and inspiration from one another through generations, fought long and hard for Woman Suffrage. Their victory was a victory for civil rights in America and it marked the beginning of a proud, new chapter in our nation's history.

Now, therefore, I, Richard Nixon, President of the United States of America do hereby call upon all Americans to recognize the great debt we owe to those who dedicated their life's work to the cause of Woman Suffrage.

While we herald their great accomplishment, let us also recognize that women surely have a still wider role to play in the political, economic and social life of our country. And, in respect for American women, let all of us work to bring this about.

In witness whereof, I have hereunto set my hand this 26th day of August, in the year of our Lord nineteen hundred seventy, and of the Independence of the United States of America the one hundred ninety-fifth.

RICHARD NIXON.

Filed with the Office of the Federal Register, 4:09 p.m., August 28, 1970.

NOTE.—Proclamation 3998 was released at San Clemente, Calif.

Mr. HATFIELD. Mr. President, on the floor of the Senate frequently when a Senator has made a presentation, it has been somewhat traditional for his colleagues to rise and make comment or issue compliments. I wish to break that tradition as purely a tradition because what I have to say is not in any sense a statement that follows procedural tradition. Rather, I want to say as a nonlawyer and as one who is deeply involved and concerned about this issue and troubled with some of the questions sincerely raised, and eloquently stated and debated, that I find the presentation made by my distinguished colleague and very good friend, the Senator from Kentucky (Mr. COOK), the most clearly stated and most eloquently stated position I have yet heard. I say that because he has used the English language in simple terms and yet he has spoken to profound questions. He has utilized the training of his profession to produce the evidence and rebut the presentation of other authorities in his profession. He has done this with great skill this morning and he has provided us much material and a good, sound argument to consider this amendment.

I would further say that it appears to me when we become involved with quotations from some authorities, it is obvious one can get an authority on any side of an issue. This does not demean the authorities or the use of quotations from authorities. But I think when the Senator this morning, in addition to citing authorities and rebutting other authorities, has given us the benefit of his own judgments, he has given us an added dimension of understanding and knowledge that is very helpful for those of us who are not skilled and trained in the law, and who must consider these problems that do involve legal technicalities.

I am grateful for the Senator's presentation. I am always interested in not only the substance of the Senator's presentations but in his manner of delivery. It is not necessary to comment on that but I want to say not only on the substance but in presentation and style you are great.

Mr. COOK. I thank the distinguished Senator from Oregon very much.

Mr. President, I wish to say one other thing to the Senator from Alabama, if I have a few minutes left.

There were many people throughout the country who were very disturbed when the New York Times a few weeks ago came out with an editorial in opposition to this amendment. They said, "How are you going to rebut the article?" I said, "Do not worry about it. The New York Times has not changed much."

Mr. President, I wish to read from an editorial published in the New York Times on February 7, 1915, entitled "The Woman Suffrage Crisis":

The Legislature of New York State has seen fit to place the question of woman suffrage squarely before the present electorate. Every man of voting age must meet the issue courageously, intelligently, and with clear vision. The answer of New York State to this long pending query should be forcible and definite. The proposed amendment to the State Constitution should be voted down by such a majority of the voters as to deprive the advocates of an objectionable and unreasonable derangement of the political and social structure of any further hope of success in this State.

The editorial goes on to state:

For the intelligent use of the ballot men in their daily callings undergo a ceaseless training. The hand of the law has within its reach every man and every woman, but in their business affairs men are in such immediate touch with controlling authority that they find themselves all the time forced to take thought about the laws that help or hinder them, whether they be good or bad, and in what way they may be bettered.

Then, the editorial states:

Either women must work as men work, or they will never be qualified to vote as men vote.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. COOK. I yield.

Mr. BAYH. As chairman of the Subcommittee on Constitutional Amendments, I would like to say that I think the Senate is indebted to the Senator from Kentucky for the diligence he has exhibited in the study of this particular

problem. I know I am indebted to him. The committee records will show and I want the Senate record to show that no Member has been more diligent and no one has been more attentive to the hearings both in the subcommittee and the full committee.

I think the Senator from Kentucky has expressed an eloquent and persuasive argument in support of the amendment. I want the record to show that his position and the statements he made have been arrived at only after long and thorough study.

I thank the Senator for the contribution he has made to our study in committee and the contribution he has made here today in the further discussion of this important amendment.

Mr. COOK. I thank the Senator from Indiana. I want the Senator to know I appreciate his remarks very much.

Mr. President, I would like to read from another New York Times editorial which was published January 13, 1915:

Congress has more work that it can hope to do well before the end of the short session. In the circumstances to devote a whole day to solemn haranguing over a subject which is of no national importance at all, as such an amendment to the Constitution, if ever submitted, would be voted down even in woman suffrage States, was worse than folly.

Mr. President, I have a number of editorials from the New York Times that I ask unanimous consent to have printed in the RECORD at this time.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the New York Times, Aug. 12, 1970]

THE HENPECKED HOUSE

Equal rights for women is a proposition so unarguable in principle and so long overdue in practice that it is a pity to have it approached by the House of Representatives as an exercise in political opportunism. For 47 years that body regularly rejected out of hand all proposals for a women's rights amendment to the Constitution. Now, it approves, without committee hearings and after only an hour's debate, a constitutional change of almost mischievous ambiguity.

The proposed amendment declares: "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 implications and consequences of such language are obscure. There are many laws specifically protecting working women; they cover such subjects as night work, dangerous and heavy work, maximum hours and maternity leave. These laws would be thrown into confusion. So would a great body of law governing divorce, child support, custody, alimony, the age at which a woman reaches her majority, and a widow's rights in her husband's estate.

Prof. Paul Freund of the Harvard Law School has warned: "If anything about this proposed amendment is clear, it is that it would transform every provision of law concerning women into a constitutional issue to be ultimately resolved by the Supreme Court. Every statutory and common law provision dealing with the manifold relations of women in society would be forced to run the gauntlet of attack on constitutional grounds. The range of such potential litigation is too great to be readily foreseen."

The prospect of a prolonged and confusing litigation is not necessarily a conclusive argument against the amendment, but it is a powerful argument in favor of holding exhaustive hearings so that an amendment, if one is found necessary, will be carefully drafted and its consequences fully understood by Congress and the states before they act.

It may be perfectly fair to charge that male chauvinism was the only factor that kept the amendment from getting such an assessment through a half-century of total neglect, but that does not wipe out the need for a real evaluation now, no matter how fierce the pressure from the embattled women's lobby.

The clear responsibility of the Senate is to give the amendment the thorough analysis it never got in the House. The Constitution and the rights of women are both too important for any further playing to the ladies' gallery.

[From the New York Times, Feb. 7, 1915]

THE WOMAN SUFFRAGE CRISIS

The Legislature of New York State has seen fit to place the question of woman suffrage squarely before the present electorate. Every man of voting age must meet the issue courageously, intelligently, and with clear vision. The answer of New York State to this long pending query should be forcible and definite. The proposed amendment to the State Constitution should be voted down by such a majority of the voters as to deprive the advocates of an objectionable and unreasonable derangement of the political and social structure of any further hope of success in this State. The question involved is not new, all the arguments of the suffragists are old and were long ago refuted and sent to limbo. Their ceaseless and noisy agitation has not developed a single new idea. Woman suffrage would result either in a needless political muddle or in a social and political turmoil which woud tend to weaken the State, to stir up discord in the home and society, and would put obstacles in the way of progress which the wisest statesmanship might fail to overcome.

The grant of suffrage to women is repugnant to instincts that strike their roots deep in the order of nature. It runs counter to human reason, it flouts the teaching of experience and the admonitions of common sense. Although women have other capacities without number, held in equal distinction and some in higher honor, they have never possessed or developed the political faculty. Without the counsel and guidance of men no woman ever ruled a State wisely and well. The defect is innate and one for which a cure is both impossible and not to be desired. That they lack the genius for politics is no more to their discredit than men's unhandiness in houswifery and in the care of infants. . . .

For the intelligent use of the ballot men in their daily callings undergo a ceaseless training. The hand of the law has within its reach every man and every woman, but in their business affairs men are in such immediate touch with controlling authority that they find themselves all the time forced to take thought about the laws that help or hinder them, whether they be good or bad, and in what way they may be bettered. The merchant and the manufacturer, men engaged in the business of banking, insurance, real estate, foreign trade, the lawyer, the doctor, the blacksmith, the farmer, men in all the thousand branches of male affairs, habitually and necessarily form reasoned opinions of the efficiency of government, the virtue of laws . . .

Some men, many men, reason foolishly, vote foolishly, but their motives and their decisions have at least some discoverable relation to the public aspects of the questions at issue. When that relation is not discoverable men have to admit that they vote in a feminine way, for women's reasons, not men's. . . .

Either women must work as men work, or they will never be qualified to vote as men vote. . . .

But if the women were to take up man's duties, who is to assume the women's duties? . . . And women would be profoundly affected by taking up man's labors, it would inevitably be a roughening process, women would be changed, and not for the better. . . . But without that transformation women cannot qualify for the vote as men qualify, and there is no other way to acquire the qualification. The effect upon women is one of the consequences most to be dreaded.

At present . . . there is a strong and wholesome barrier which serves to keep women apart from men in the burly-burly of life, to insure them courtesies from the opposite sex, to give them many precious privileges. . . . We are firmly convinced that the breaking down of the barrier would bring down upon them a burden of new evils, that it would tend to coarsen women, to deprive them of natural rights and privileges without due compensation.

The right to vote has been possessed for many years by the women of Wyoming, Colorado, Utah, and Idaho, and has been granted more recently to those of Washington, California, Arizona, Kansas, Oregon, Illinois, Montana, and Nevada. The moral effect of woman suffrage in those States has been negative. The records are extant.

Many men have taken the matter too lightly. With the great increase of women of social distinction and personal charm in the ranks of the suffragists public support of the cause in a polite way has become a sort of argeeable "function," associated with the animated talk of bright women who have found something to talk about. Men of this kind have done much more than they realize to encourage and strengthen the movement, to give it form and force. Associating with well-bred, intelligent, and witty women, many of whom have taken up suffrage agitation as a mere pastime, they have not taken pains to look closely enough into the matter to comprehend how deeply rooted in the basic ideals of our civilization are the true objections to turning woman out into the everlasting scrimmage of life, depriving her of the respect and protection she needs in return for a privilege which would surely fail of effect.

[From the New York Times, Jan. 13, 1915]

ANOTHER FUTILE DEBATE

The debate on the proposal to submit to the States an amendment to the Federal Constitution conferring the right of suffrage on women, which occupied all the time of the House of Representatives yesterday and will impose upon the people an enormous printer's bill, as all the speeches in the debate will be printed in full for distribution throughout the country, may have been, as Mr. Underwood said, a consideration of a grave question, but the gravity of the occasion was not noticeable. It may be, as Mr. Webb declared, that 80 percent of the women of the country would vote against the question if it were submitted to them, but the question, grave or not, was not the matter actually in hand . . . Congress has more work than it can hope to do well before the end of the short session. In the circumstances to devote a whole day to solemn haranguing over a subject which is of no national importance at all, as such an amendment to the Constitution, if ever submitted, would be voted down even in woman suffrage States, was worse than folly.

Femininity was assuredly dominant whether the women present were suffragists who approve Mr. Mondell's plan to overturn our fundamental law and the theory of the Democratic Party that each State shall govern its own franchise.

[From the New York Times, Jan. 1915]

HOW THEY VOTED ON SUFFRAGE

The surprising thing about the vote on the woman suffrage amendment in the House on Tuesday was that outside of the South only one State voted solidly against it.

The States where woman suffrage has already been granted voted, of course, almost solidly for the amendment. It is, however, a refreshing example of courage in public life that one man in Colorado dared to defy his woman constituents by voting against the amendment.

Much stress is laid by the suffragists upon the fact that the House debated their cause for ten hours. It is a good deal of time for the Representatives to give any question nowadays, but ten hours was far from adequate. The question is much too important to be disposed of in rapid fire speeches. It should be debated exhaustively until every member has full information to guide him.

[From the New York Times, Editorial, Nov. 3, 1917]

THE WOMAN SUFFRAGE AMENDMENT

What fruits of the woman suffrage movement, what manifestation of the spirit that prompts women to ask for the ballot, have chiefly commanded the attention of the country during this year of trial, of sacrifice, and of danger? There are two. One is the picketing of the White House by suffragists as a means of putting the President of the United States under duress, of compelling him to take the action favored by the extreme wing of the suffrage party. The other was the vote of Miss Jeanette Rankin, Member of Congress from Montana, the only woman member who ever sat in that House, against the resolution declaring that a state of war existed between the United States and Germany.

There has been nothing else that commanded large attention. The States where women have won the vote have not pushed themselves into the public view by any great social advance or political reform achieved through woman suffrage. No advocate of the cause can show that they are better governed, that their people are happier or more prosperous than when only men voted.

Women have had the vote long enough and in sufficiently large numbers to constitute a fair opportunity to justify the cause and their demands, if they are capable of justification.

The voters of the State of New York will determine by their ballots next Tuesday whether Section 1 of Article II of the Constitution of the State should be amended in such wise as to give the privilege of the ballot to women. Two years ago a woman suffrage amendment was beaten in this State by an adverse majority of 188,613. By what arguments, by what demonstrations of the political and social value of the ballot in the hands of the women have the supporters of the cause commended it to the favor of the voters since that crushing defeat.

The States of Pennsylvania, New Jersey, New York, and Maine have voted against suffrage for women and by large majorities in recent years. New York will again vote against it next Tuesday, but the issue should not be overlooked or neglected. The amendment should be rejected this year by a majority sufficiently emphatic to put an end to the agitation at least during the period when the minds of the people are preoccupied with the grave concerns of war.

[From the New York Times, Aug. 31, 1917]

LET THE ARMY GUARD THE WHITE HOUSE

One can hardly wonder or even blame when patriotic men tear down seditious suffragist banners in Washington or attack the house where they are displayed. Yet that is not the way in which law is enforced or order preserved.

To let the Washington Suffragists continue to harass the President and flount reasonable banners about the White House s to court disorder and worse . . .

Why should not the army take over from the too hesitant capital police the duty of guarding it?

[From the New York Times, Feb. 12, 1919]

FEBRUARY 10 SUFFRAGE BEATEN IN SENATE BY ONE VOTE

With all respect to the political expressions of Mrs. Catt that the nation is "dishonored" and so on, by the temporary failure of the Senate to recommend the Suffrage Amendment to the Legislatures, the woman minority has won. The high considerations of right that interject themselves every time these sacred considerations of politics need no longer concern us.

The essentiality of the whole "movement," the gradual conquering by a small minority of the public, the degradation of an agitation, fifty years ago altruistic and genuine, couldn't be expressed better. Nobody cares whether it is to the advantage of the national policy to have woman suffrage or not. The point is: Who saw it first, Democrats or Republicans?

Millions of women on whom this privilege—for it is no "right"—has been foisted have yet to utter their opinion upon a change in their relations to the State as to which they have not been consulted.

The jelly-packed politicians will amuse themselves, according to their wont, with this great change in the fundamental law. Is it right? Is it wrong? Is it desirable? Foolish questions.

The future of States and a nation that regard these deep-lying problems as pawns of politics may well call for some thought.

Mr. COOK. Mr. President, we who advocate this resolution say one thing, and we make it very clear. When people stand before their government, they say together in one voice, "I give to you my love; I give to you my devotion; I give to you all that I possess;" is this really a constitutional government when it looks back at those two standing there and says, "Thank you very much, but I will always do more for him than I do for her."

This is as clear as we can make it.

Is it right for two people to sit side by side, making the same salary, paying the same tribute, and have the courts say, "He shall always receive more than she."

Is it right in the case of those who work for their Government and contribute to the Government retirement program, and have it said, "I will always give more to him than to her."

Can we truly say in this greatest constitutional Nation in the world, that sex is a valid distinction under our Constitution? I think not.

I yield the floor, and I thank the distinguished Senator from Alabama.

Mr. ALLEN. Mr. President, I thank the Senator for his statements.

I inquire of the Chair, What is the pending question?

The PRESIDING OFFICER. The pending question is on the amendment of the Senator from Alabama, amendment 1024 to House Joint Resolution 264.

Mr. ALLEN. Mr. President, I ask unanimous consent that the amendment be stated.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

On page 1, line 3, beginning with the word "That" strike out everything down through line 7 and insert in lieu thereof the following: "That the articles set forth in sections 2 and 3 of this joint resolution are proposed as amendments to the Constitution of the United States, and either or both articles shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after being submitted by the Congress to the States for ratification.".

On page 1, between lines 7 and 8, insert the following:

"SEC. 2. The first article so proposed is the following:".

On page 2, after line 7, insert the following:

"SEC. 3. The second article so proposed is the following:

"ARTICLE —

"Each State shall have sole and exclusive jurisdiction of the organization and administration of all public schools and public school systems within the State. The courts of each State shall have exclusive jurisdiction to determine all rights, privileges, and immunities of citizens of the State with respect to public schools and public school systems within the State. No officer or court of the United States shall have power to impair or infringe any right so reserved to the States."

SPACE SPENDING CUTS

Mr. ALLEN. Mr. President, I ask unanimous consent that the name of the senior Senator from South Carolina (Mr. THURMOND) be added as a cosponsor of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered

Mr. ALLEN. Mr. President, on March 17, 1969, the junior Senator from Alabama introduced a Senate joint resolution which was assigned the number of 80, which provided for the submission of a constitutional amendment which would have returned the direction and control of the public schools throughout the country to the respective States. That resolution was referred to the Committee on the Judiciary, and by that committee assigned to the Subcommittee on Constitutional Amendments, where it has languished ever since.

So the purpose of the amendment which has been offered by the junior Senator from Alabama and the distinguished senior Senator from South Carolina (Mr. THURMOND) is to provide for the submission of a proposed constitutional amendment to the 50 States in addition to the equal rights amendment proposed by House Joint Resolution No. 264. In other words, it would not be in lieu of the constitutional amendment providing for equal rights for women; it would not supplant that constitutional amendment; it would be an additional constitutional amendment.

It is not necessary under the Constitution, under any statute, or under any of the rules of the House or of the Senate, that separate resolutions be employed to submit separate constitutional amendments. So the proposed amendment does submit, in addition to the equal rights for women amendment, an amendment, which has been stated by the clerk, providing for the return of the public schools in the country to the respective States.

Actually, Mr. President, this, in effect, would be a restatement of amendments 9 and 10, which reserve powers to the States not forbidden to the States or not conferred on the U.S. Government.

The amendment being proposed, in effect, would provide equal rights for

schoolchildren. Many people throughout the country do not realize that schoolchildren living in different sections of the country have different rules applied to them by the law of the land. There is no uniform school policy by the Federal Government, by Federal bureaucracy, by the Federal judiciary. On the other hand, contrary to that, we have a Federal school policy that demands immediate, forced desegregation of the public schools in the South, while permitting and protecting and fostering the maintenance of segregated schools in sections outside of the South.

So we see schoolchildren in Alabama and the South assigned to their schools, not by the school administrators, not by the parents of the children, but by the Department of Health, Education, and Welfare and the Federal courts; whereas in sections outside the South we find, in effect, a freedom of choice and a neighborhood school system applicable with respect to the public schools.

So in effect, Mr. President, we are submitting for consideration of the Senate an amendment that provides, or that provides the machinery to provide, a measure of equal rights for schoolchildren.

If this amendment is adopted to House Joint Resolution 264 by a majority vote, and then the entire House Joint Resolution 264 should be approved by a two-thirds vote of the Senate and then a two-thirds vote of the House, it will go to the 50 States, and the two proposed amendments will be considered separately by the respective States. Of course, it would take three-fourths of the States, or 38, approving separately the proposed amendments to obtain ratification.

The equal rights for women amendment might be ratified by 50 States and it would become part of the Constitution. On the other hand, the amendment providing for the return of the schools to local governments might not get the requisite number of States to approve. It would then fail of adoption and it would not become part of the Constitution.

Mr. President, this is the only amendment that the junior Senator from Alabama plans to offer. He has no intention whatsoever of holding up or delaying action by the Senate on the final passage of House Joint Resolution 264. He has no intention of delaying action on his own amendment and the amendment of the distinguished Senator from South Carolina (Mr. THURMOND), because unanimous consent has already been given to having a vote on the amendment at 1 o'clock on next Monday, and it is my hope that we will be able to have a final vote on House Joint Resolution 264 before the recess, which begins, I assume, the evening of October 14.

I shall offer no further amendments; this is my one and only. I shall vote for House Joint Resolution 264 with this amendment or without this amendment; but the only way, apparently, that I would be able to receive a vote upon the resolution permitting this constitutional amendment regarding the return of the public schools to local governments was to add it as an amendment to this proposed constitutional amendment.

What, then, is the theory of my amendment? It would do nothing more or less than to make it explicit in the fundamental law that the power to operate, manage and control local public schools is one appropriate for exercise only under powers reserved to the States and to the people under the provisions of articles IX and X of the amendments.

The proposed amendment does not challenge the right of Congress to appropriate funds for public education. It merely prevents the use of that power in derogation of reserved powers in the States. Consequently, it would prevent the delegation by Congress of power to the Executive to accomplish by indirection that which Congress cannot accomplish directly. More specifically, the Executive could no longer act as judge of its own powers in the area of public education as it does now.

The proposed amendment would not deprive any person of any right, privilege, or immunity under the law of the Constitution or any valid law or regulation promulgated by State or Federal authority. Instead, all questions of right would finally be determined in the courts of the separate States where "rights" to public education are created.

The amendment would give meaning and vitality in the field of public education to the provision which the Founding Fathers were careful to include in the Bill of Rights that the "powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States, or to the people."

So this, in effect, would really be a restatement of the ninth and 10th amendments to the U.S. Constitution.

The Constitution does not delegate to the U.S. Government nor prohibit to the the States the power to administer and control education in local public schools. It has been almost universally held that the people retain the right to exercise control over their public school systems through the instrumentalities of their State and local governments.

The principle has been enunciated time and again, on no less than 12 occasions since 1889 in the admission of new States to the Union. The admission acts of the following States grant exclusive control and authority over the public school systems to these States: North Dakota, South Dakota, Montana, Washington, Idaho, Wyoming, Utah, Oklahoma, New Mexico, Arizona, Alaska, and Hawaii.

As recently as 1958 the 85th Congress provided in the Alaska Statehood Act that—

> The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State or its governmental subdivisions.

As recently as the 86th Congress it was provided in the Hawaii Statehood Act that Hawaii schools "shall forever remain under the exclusive control of the said State."

In addition, Congress has time and again affirmed the principle of the local nature of public schools and provided for their control on the local level. For example, the National Defense Education Act contains the following specific language and declaration—

> The Congress reaffirms the principle and declares that the States and local communities have and must retain control over and primary responsibility for public education. . . .

Similar expressions may be found in numerous Federal aid to education statutes.

The local nature of school financing and management is exemplified in the fact that a vast majority of all public school revenue and practically all capital outlay funds for public school facilities are raised on the State and local levels. It is only reasonable and fair and right that State and local officials continue to exercise authority commensurate with their responsibilities in the area of public education.

So in this amendment to the resolution, I ask only for an affirmation of the principle of local control of public education as provided in the basic document of our Government, the Constitution of the United States.

Let us settle once and for all that neither the Supreme Court nor any other branch of Federal Government has constitutional authority to take control from State and local communities.

Let us reaffirm as a part of the Constitution itself the inalienable right of our citizens through their State and local governments to control their own schools.

By thus preserving this principle we shall greatly strengthen our America and we shall help build an impregnable bastion of human liberty for an enlightened and free people.

If we were to judge from past statements of individual Members of Congress and by the language of various statutes authorizing Federal aid to education, we could reasonably conclude that the proposed amendment would be welcomed. For example:

As late as 1963 Commissioner of Education, Dr. Sterling McMurrin said:

> I do not believe that giving more Federal funds to public schools will lead to Federal control of public education.

How wrong he was.

> For the simple reason that no one wants it. The educators don't want it, the taxpayers don't want it, and quite certainly the people in government don't want it. . . .

The above statement was quoted, with approval, by the distinguished Senator from Minnesota, the Honorable EUGENE J. MCCARTHY, in his book, "A Liberal Answer to the Conservative Challenge."

Naturally, if it is true, as contended, that the Executive is not interested in controlling public education—to say nothing of interfering in the administration of local public schools, then we can conceive of no reasonable objection to this amendment which would merely preclude the possibility of future interference by the Executive.

From the standpoint of the Federal judiciary, we do not believe that a majority of Federal judges are so distrustful of their colleagues on State benches as to oppose the traditional exercise of power in State courts to determine constitutional and statutory rights of citizens as they relate to public school

education. If the Federal judiciary does object to the amendment on the ground of mistrust, then the issue is political. As a political issue it is beyond the competence of the Federal judiciary and one which properly can be determined only by Congress or the people.

Despite frequent disclaimers by Congress; despite denials by the Federal executive that they do not want to or intend to regulate and control local public schools; and despite similar disclaimers by the Federal judiciary—the facts speak otherwise. Federal Government, through the instrumentalities of the executive and judicial branches, has assumed plenary powers over public schools and are regulating and supervising the administration of local public schools throughout this Nation. That is indeed a fact.

It is a devastating commentary on our times, and an indictment of trends in our Nation, that this fact is disputed in the face of overwhelming evidence to the contrary. The Federal Government is not only interfering in the administration of public schools but is actually dictating policy and actually supervising the administration of local public schools in infinite detail, and it is doing so pursuant to Federal policy and intent.

The Executive has promulgated 30-, 40-, and 50-page guidelines. These so-called guidelines regulate every aspect of public school administration. They lay down absolute conditions with respect to recruitment, employment, training, compensation, assignment, promotion, demotion of schoolteachers. They prescribe absolute conditions relating to pupil assignment, pupil transfers, busing, and school attendance boundary lines. They assert power to regulate the location of new schools. They assert a power to overrule the will of the people, elected public officials, and even prevent the expenditure of proceeds from publicly approved bond issues for new construction and renovation of existing schools. They regulate extracurricular activities of pupils and parents, they assert a supervisory power over curriculums, textbooks, courses of study, and methods of instruction and a virtual veto power over expenditures of all school funds.

Federal district courts have gone to greater extremes. Federal courts have compelled closing of neighborhood schools throughout this Nation—some $100 million worth in Alabama alone; they have enjoined the expenditure of publicly approved bond issues for improvement and renovation of schools. They have asserted a power to override the judgment of parents and elected public officials. They set aside solemn acts of State legislatures addressed to matters of health, safety, morals, and welfare of schoolchildren. They have enjoined the highest constitutional officers of State government and other elected public officials each of whom is charged by the obligation of a solemn oath to exercise their judgment free of coercion in matters involving the best interest of children, parents, and communities.

In addition, Federal district courts have perverted the judicial process of injunction. It is used today as mandamus to compel public officials to act contrary to State and local laws and contrary to their conscience, and contrary to their best judgment respecting the best interest, safety, and welfare of children under their care.

Nor is that all. Federal district courts have legitimized actions which offend all rational concepts of due process of law. They have sanctioned the use of pencil and paper regulations having force and effect of law, as well as law by memorandum, law by telephone, and oral law handed down by Federal agents. Federal courts authorize swarms of Federal agents to go about States threatening, bullying, and intimidating local public officials as a means of implementing executive edicts.

Furthermore, Federal district courts incorporate voluminous administrative rules and regulations in injunctions and decrees and compel obedience by threats of fine and imprisonment for civil contempt without benefit of trial by jury. Mind you, this is the constant threat and coercive power used to control decisions of elected public officials on questions relating to safety and welfare of schoolchildren.

Federal district courts have sanctioned the basic premise of the inquisition. They authorize deprivation of innocent schoolchildren, the aged, the sick, the blind, the handicapped, of funds and services to which they are otherwise entitled. Such deprivations are authorized without benefit of a hearing or even an opportunity of those deprived to object or protest on grounds of human compassion or law or reason.

Both the executive and the Federal judiciary contend that a hearing provided for boards and commissions and those who administer Federal education programs and not the individual victims who suffer the loss is right, and just, and all that is required by law.

This is a monstrous departure from due process. Compare this barbaric treatment with that accorded common criminals. Criminals are entitled to counsel, at public expense if necessary, to protect their rights. Rightfully so. But not innocent schoolchildren, parents, or local school boards. No funds are budgeted for school boards or parents of children to enable them to protest abuses of power by the Federal executive. These must accept without recourse any rule or regulation handed down to them by strangers to the community. The only alternative is to file an action in a Federal district court, to amend, modify, or repeal an offensive regulation. But, in the absence of funds this recourse is meaningless. They are at the mercy of Federal officials.

And what of the rights of children who suffer the loss of lunches? What of the rights of parents who object to unreasonable regulations relating to busing of their children? What can be done to alleviate the dangers to which these children are unnecessarily exposed? Under the present system there is no recourse. This we are told is "due process."

There is no point in belaboring the obvious. It is a fact that both the Federal executive and the Federal judiciary are regulating the administration of public schools throughout this Nation. I reject the contention that these regulations are justified on grounds related to equal protection. The issue is not regional or sectional.

I might say, Mr. President, that if the time comes when we do enunciate in Congress a uniform Federal public school policy that is enforced alike in all sections of the country, which is acceptable to people throughout the country, the people of the South will be willing to abide by that uniform Federal public school policy. But, as I stated earlier in my remarks, we do not have a uniform Federal public school policy. We have one policy for the South and one policy for sections outside the South. That is what we are trying to remedy in the proposed amendment.

The issue is not regional or sectional. It is a national issue with dangerous consequences. For, the power to control public schools has been centralized in Federal Government pursuant to deliberate design to nationalize public education. Does anyone doubt it?

Daniel P. Moynihan has spoken with approval of the achievement on the Federal level of "nationalization of public policy that has accompanied the achievement of a generally national society." With respect to nationalization of education, he has said that the process is not yet complete but seems well underway. He observes further, "in this sense we have centralized decisionmaking within a Federal structure" and thereby reduced pressures to change the Federal structure itself.

Dr. Ronald Campbell, a noted educator, has been more explicit in identifying aspects of nationalization. He sees national policies established "at the Federal level with important roles played by the courts, the Congress, and the Executive Office of the President. All policy questions regarding education seem to be shaped within the context of general government."

The degree of arrogance bred by nationalization of education is illustrated by a statement made some years ago by Dr. Harold Howe, who has angrily condemned local control in these words:

> Local school districts must not sit on their hands and then bellow about having the reins of educational policy yanked from their fingers.

A reasonable estimate of executive intentions, as they relate to nationalization of education, may be fairly summarized as follows: It is an intent to establish Federal education policies at the national level. Certainly we are being subjected to that—not uniform policy but separate policies for the South and for other sections of the country. To initiate and implement revolutionary national school programs; to effect drastic changes of public education policies throughout the Nation; to secure discretionary powers on the Federal level to enable planners to control curricula, teaching methods, teacher training, teacher tenure, and qualifications and certification of teachers; to draw school district boundaries, consign children to federally controlled schools and otherwise establish local policies with respect to programs and priorities in all public schools in the United States.

In addition, it is an intention to establish vast regional school districts, characterized by school parks of 40- to 50-acres, and most significantly to establish "special education governments." This last movement is well underway.

This summary of Federal intent is a matter of record. Agents and agencies of Federal Government now assert the power to implement these goals. But even these goals are merely the part of the nationalization iceberg presented to public view.

In this connection we submit that the power delegated by Congress to the executive to accomplish these intentions poses a many-sided threat to our federal system of government.

One aspect of that threat is in its contribution to an ever-expanding Federal bureaucracy, about which Peter F. Drucker has warned:

> Modern government has become ungovernable. There is no government today that can still claim control of its bureaucracy and of its various agencies. Government agencies are all becoming autonomous, ends in themselves, and directed by their own desire for power, their own narrow vision rather than by national policy.
>
> This is a threat to the basic capacity of government to give direction and leadership. Increasingly, policy is pragmatic and execution is governed by the inertia of the large bureaucratic empires rather than policy.

The above point can be illustrated by what has happened to "policy" announced by Congress in relation to Federal aid to education. The Senate will recall that it was the expressed intention of Congress that the executive should not be empowered to compel busing of schoolchildren. This surely was a limitation on power delegated. How faithfully has this limitation been observed? Local public schools are now ordered closed by the executive under alleged authority of Congress and children are bused all over counties and cities. Thus the intention of Congress not to require "busing" is circumvented by the exercise of a more drastic power in the executive to close schools. Did Congress intend to give power to the executive to compel closing schools?

Furthermore, it was the intention of Congress that innocent children and others entitled by law to benefits provided by Congress should not be deprived without due process of law. Yet, hearings are provided only for administrators of programs—not those who actually suffer the loss of funds and services. Public school districts and administrators do not eat school lunches. They are not the beneficiaries of innumerable Federal-aid programs. The actions of the executive in this regard is obviously a devious and dangerous departure from due process of law and a gross abuse of delegated powers.

But aside from ethical and humanitarian considerations, Federal intervention in the administration of local public schools points up the disparity between the apparent power of Congress to establish policy and the actual lack of control over policy when unlimited discretionary powers are delegated to the executive. It has been said that the trend in this direction may represent the greatest crisis of Federal Government today.

Proliferation of Federal administrative agencies involved in local education is bound to undermine congressional policy: In the words of Peter Drucker:

> No sooner are they called into being than they become ends in themselves, acquire their own constituency as well as a vested right to grants from the Treasury, continuing support by the taxpayer, and immunity to political direction. No sooner, in other words, are they born than they defy public will and public policy.

The abortive experiment in nationalization of education is a classic example. It has yielded nothing but bungling, waste, and hardships, loss of public confidence, good will, and public support.

A few of hundreds of examples could be cited in support of this last conclusion. A few will suffice. A judgment on bureaucratic ineptitude in one area of nationalization of education has been expressed by Prof. Edmund Gordon. Writing in the winter 1966–67 issue of College Board Review, he observed:

> For all their variety the programs have generally suffered from one fundamental difficulty: They are based on sentiment rather than on facts.

In addition it is openly admitted that programs were designed in the face of overwhelming evidence that they could not produce what their sponsors promised, and such evidence continues to pour in.

Roger A. Freeman writing in the National Review cites these facts for consideration:

> The Associated Press conducted a nationwide survey of the program results in May and found that both critics and supporters now agree that it is not working. "It is a monumental flop," and the outbreak of recent riots speak louder than anything I can say about the total collapse of the program.

The former Assistant U.S. Commissioner of Education, Joseph Fronkin, has stated:

> We still have little evidence that the problem is being licked; in fact, we may be even falling behind.

And Alice M. Rivlin, former Assistant Secretary for Program Analysis at HEW, has said:

> I think we have found the task is much tougher than we thought at the start. When we began, we really didn't know how to go about it. We still don't. . . .

That is what happens when the Federal Government takes over the local institutions of our public schools.

And what can Congress do about it? What will Congress do about it? One answer, and the wrong one, is shown by a survey which reveals the continuing proliferation of bureaucratic agencies and programs which continue to be added by Congress. Let us take a look.

The situation has been compounded many times since that time.

James Reston in the New York Times, November 23, 1966, cited the fact that there were then 170 different Federal-aid programs on the books, financed by over 400 separate appropriations and administered by 21 Federal departments and agencies, aided by 150 Washington bureaus and over 400 regional offices. One congressional session alone passed on three health programs, 17 new educational programs, 15 new economic development programs, 12 new programs for the cities, 17 new resources development programs, and four new manpower training programs, each with its own administrative machinery.

Under these circumstances we cannot but concur in the observation of Peter Drucker that the best we can get from government in the welfare state is competent mediocrity but more often—not even that. We get incompetence such as would not be tolerated in private industry. The more we expand, the less capable routine mediocrity becomes. What does this hard judgment mean for the future of public education? We had better not try to duck this question, because chaos in education is inevitable unless changes are made. Let me show why this is so.

The powers of State and Federal Governments are distributed, allocated, and balanced on the basis of a logical proposition that there are separate and distinct functions of government.

It is axiomatic that powers of government follow responsibilities of government which identify function. No power is delegated under the Constitution independently of the logical function of the agency to which the power is delegated. If the agency has no responsibility in a particular area of public concern, it has no power in that area.

This is a fundamental limitation upon the powers of governments. It stands to reason that Congress, the Federal executive, and the Federal judiciary have no competence, no rightful responsibility, and therefore no power to regulate and supervise administration of local public schools. On the contrary, it is the responsibility of State and local governments. Power follows that responsibility, and logically that power was reserved in the States.

Mr. President, that is what the proposed amendment would accomplish. It would restate the proposition that the control and administration of public schools is a power that was reserved to the people.

We have departed from this rational principle of limitation. In this connection the well-known student of government, Montesquieu said:

> When once the principles of government have been corrupted, the very best laws become bad and turn against the state; but when the principles are sound, even bad laws have the same effect as good; the force of principle draws everything to it.

The essence of Republican government is in limitations placed upon powers of government. Its integrity is measured by faithful adherence to such limitations by agents and agencies of government. Federal intervention in the operation of public schools is a gross usurpation of powers and violates the integrity of Republican government.

And what is to be done? Again let us return to Montesquieu who suggested:

> When once a Republic is corrupted, there is no possibility of remedying any of the growing evils but by removing the corruption and restoring its lost principles: Every other correction is either useless, or a new evil.

The proposed amendment will restore control of public schools to the States

and local communities. It will remove a corruption and restore our Nation to its lost principles.

Mr. President, at this time, acting under the unanimous-consent agreement that was previously entered into, I send to the desk a modification of my amendment and ask that it be stated.

The PRESIDING OFFICER. The modification will be stated.

The legislative clerk read as follows:

"A state shall have the absolute right to assign students to the public schools it operates by a freedom of choice system. A freedom of choice system means a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races, creeds, and national origins, and in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the public schools and classes available for the instruction of students of their ages and educational standings.

The PRESIDING OFFICER. The amendment is accordingly modified.

Mr. ALLEN. Mr. President, this modification merely states the right of a State to have the absolute right to assign students to the public schools they operate by a freedom of choice system.

Mr. President, since the amendment, as modified, is to be voted on at 1 o'clock on Monday, I ask unanimous consent that the amendment, as modified, be printed so that it can be made available to the Senators on Monday.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modified amendment reads as follows:

On page 1, line 3, beginning with the word "That" strike out everything down through line 7 and insert in lieu thereof the following: "That the articles set forth in sections 2 and 3 of this joint resolution are proposed as amendments to the Constitution of the United States, and either or both articles shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after being submitted by the Congress to the States for ratification.".

On page 1, between lines 7 and 8, insert the following:

"SEC. 2. The first article so proposed is the following:".

On page 2, after line 7, insert the following:

"SEC. 3. The second article so proposed is the following:

"ARTICLE —

"A state shall have the absolute right to assign students to the public schools it operates by a freedom of choice system. A freedom of choice system means a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races, creeds, and national origins, and in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the public schools and classes available for the instruction of students of their ages and educational standings."

Mr. BAYH. Mr. President, I wish to express briefly my opinion with respect to the parliamentary impact, that in my judgment, will befall the equal rights amendment if we follow the lead of my distinguished friend, the Senator from Alabama.

Since equal time is provided for debate on Monday, the Senator from Indiana will not discuss in detail the merits of this amendment at this time.

I deeply appreciate the concern of my friend, the Senator from Alabama, for the problems that exist in the schools in his State and the schools all over the country. Indeed, if there is one note that permeates all the writings and editorials he referred to, it is the fact that this is a very difficult problem, and it is.

In the judgment of the Senator from Indiana, it is the result of generations of neglect. And we would have had even a longer period of neglect had the well-intentioned amendment of the Senator from Alabama been on the record books at the time the Supreme Court put down the decision of Brown against Board of Education.

I am deeply concerned that the strategy followed by my friend, the Senator from Alabama—and it is certainly within his right—is going to be disastrous, if he is successful, on our efforts to try to pass this amendment and get it consummated by both Houses of Congress.

It is just this type of extraneous amendment that will make it extremely difficult to have this matter considered in the normal course of business in the House. I know that the Senator is a dedicated fighter for what he believes is right. Although the Senator from Indiana might disagree with the relative merits of this proposal, I wonder if over the weekend the Senator from Alabama might not consider the advisability of letting this particular measure stand on its own merits and not try to commingle it with the equal rights amendment.

I say that because I know he is a supporter of that amendment. It is the judgment of this Senator who, as chairman of that subcommittee, has become rather familiar with the nuances of how different measures pass, that if this measure goes back to the House with the amendmend added to it, it will be defeated.

Because of this familiarity, I suggest that it might be worthy of consideration if we find some other measure to attach the amendment to, since it would very likely be the death knell to the equal rights amendment.

I am sure that the Senator from Alabama would not want that to happen.

RELIEF OF JOHNNY MASON, JR. (JOHNNY TRINIDAD MASON, JR.)

Mr. BYRD of West Virginia. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3529.

The ACTING PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 3529) for the relief of Johnny Mason, Jr. (Johnny Trinidad Mason, Jr.), which was on page 1, line 8, strike out all after "mother" down through and including "age," in line 9, and insert "or brothers or sisters of the beneficiary shall not, by virtue of such relationship,".

Mr. BYRD of West Virginia. Mr. President, this matter was cleared with the other side yesterday.

By request, I move that the Senate concur in the amendment of the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from West Virgina.

The motion was agreed to.

DISASTER RELIEF ACT OF 1970

Mr. BYRD of West Virginia. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3619.

The ACTING PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 3619) to revise and expand Federal programs for relief from the effects of major disasters, and for other purposes, which was to strike out all after the enacting clause and insert:

That this Act may be cited as the "Disaster Relief Act of 1970".

SEC. 2. The Act entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes", approved September 30, 1950 (Public Law 875, Eighty-first Congress; 42 U.S.C. 1855–1855g), as amended, is amended as follows:

(1) The first section is amended by striking out "essential".

(2) Section 2(a) is amended (A) by striking out "disaster assistance under this Act" and inserting in lieu thereof "Federal disaster assistance", and (B) by striking out "(or the Board of Commissioners of the District of Columbia)".

(3) Section 2(c) is amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "and the District of Columbia;".

(4) Section 2(e) is amended by striking out ", or the District of Columbia".

(5) Section 3(d) is amended to read as follows: "(d) by performing on public or private lands protective, emergency, and other work essential for the preservation of life and property; making repairs to and replacements of public facilities (including street, road, and highway facilities) of States and local governments damaged or destroyed in such major disaster, except that the Federal contributions therefor shall not exceed the net cost of restoring each such facility on the basis of the design of such facility as it existed immediately prior to the disaster in conformity with current codes, specifications, and standards; providing temporary housing or other emergency shelter, including, but not limited to, mobile homes or other readily fabricated dwellings for those who, as a result of such major disaster, require temporary housing or other emergency shelter, except that for the first twelve months of occupancy no rentals shall be established for any such accommodations, thereafter rentals shall be established, based upon fair market value of the accommodations being furnished, adjusted to take into consideration the financial ability of the occupant; and making contributions to States and local governments for the purposes stated in this clause."

(6) Section 3(b) is amended by inserting immediately after "Red Cross" a comma and the following: "the Salvation Army,".

SEC. 3. The Disaster Relief Act of 1969 (Public Law 91–79; 83 Stat. 125) is amended as follows:

(1) Section 6 is amended to read as follows:

"SEC. 6. (a) In the administration of the disaster loan program under sections 7(b)

(1), (2), and (4) of the Small Business Act, as amended (15 U.S.C. 636(b)), in the case of injury, loss, or damage resulting from a major disaster as determined by the President, a natural disaster as determined by the Secretary of Agriculture, and a disaster as determined by the Administrator of the Small Business Administration—

"(1) to the extent such injury, loss, or damage is not compensated for by insurance or otherwise, may grant any loan for repair, rehabilitation, or replacement of property injured, damaged, or destroyed, without regard to whether the required financal assistance is otherwise available from private sources.

"(2) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property to is to be repaired, rehabilitated, or replaced, except that the amount refinanced shall not exceed the amount of the physical loss sustained. This clause shall apply only to loans made to cover injury, losses, and damage resulting from major disasters as determined by the President.

"(3) to the extent that repayment of a loan made under this section would constitute a hardship upon the borrower, may, on that part of any loan in excess of $500, cancel the principal of the loan, except that the total amount so canceled shall not exceed $2,500. This clause shall apply only to loans made to cover injury, losses, and damage resulting from major disasters as determined by the President.

"(4) may defer interest payments or principal payments, or both, in whole or in part, on any loan made under this section during the first three years of the term of the loan, except that any such deferred payments shall bear interest at the rate determined under subsection (b) of this section.

"(b) Any loan made under this section shall not exceed the current cost of repairing or replacing the disaster injury, loss, or damage in conformity with current codes and specifications. Any such loan (including any refinancing under clause (2) and any deferred payment under clause (4) of subsection (a)) shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed 1 per centum per annum. In no event shall any loan made under this section bear interest at a rate in excess of 6 per centum per annum.

"(c) A loan under this section shall not be denied on the basis of the age of the applicant."

(2) Section 7 is amended to read as follows:

"SEC. 7. (a) In the administration of the emergency loan program under subtitle C of the Consolidated Farmers Home Administration Act of 1961, as amended (7 U.S.C. 1961–1967), and the rural housing loan program under section 502 of title V of the Housing Act of 1949, as amended (42 U.S.C. 1472), in the case of loss or damage resulting from a major disaster as determined by the President, or a natural disaster as determined by the Secretary of Agriculture, the Secretary of Agriculture—

"(1) to the exent such loss or damage is not compensated for by insurance or otherwise, may grant any loan for the repair, rehabilitation, or replacement of property damaged or destroyed, without regard to whether the required financial assistance is otherwise available from private sources.

"(2) may, in the case of the total destruction or substantial property damage of homes or farm service buildings and related structures and equipment, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that the amount refinanced shall not exceed the amount of the physical loss sustained. This clause shall apply only to loans made to cover losses and damage resulting from major disasters as determined by the President.

"(3) to the extent that repayment of such loan made under this section would constitute a hardship upon the borrower, may, on that part of any loan in excess of $500, cancel the principal of the loan, except that the total amount so canceled shall not exceed $2,500. This clause shall apply only to loans made to cover losses and damage resulting from major disasters as determined by the President.

"(4) may defer interest payments or principal payments, or both, in whole or in part, on loans made under this section during the first three years of the term of the loan, except that any such deferred payments shall themselves bear interest at the rate determined under subsection (b) of this section.

"(b) Any loan made under this section shall not exceed the current cost of repairing or replacing the disaster loss or damage in conformity with current codes and specifications. Any such loans (including any refinancing under clause (2) and any deferred payment under clause (4) of subsection (a)) shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed 1 per centum per annum. In no event shall any loan made under this section bear interest at a rate in excess of 6 per centum per annum.

"(c) A loan under this section shall not be denied on the basis of the age of the applicant."

(3) (A) Subsection (a) of section 8 of the Act is amended by inserting "and local governments" immediately after "individuals".

(B) Subsection (c) of section 8 of the Act is amended to read as follows:

"(c) Any State desiring assistance under this section shall designate or create an agency which is specifically qualified to plan and administer a disaster relief program, and shall, through such agency, submit a State plan to the President, which shall (1) set forth a comprehensive and detailed State program for assistance to individuals and to local governments suffering losses as a result of a major disaster and (2) include provisions for the appointment of a State coordinating officer."

(C) Section 8 of the Act is further amended by adding a new subparagraph (f) as follows:

"(f) The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining, and updating State disaster assistance plans, except that no such grant shall exceed $25,000 per annum to any State."

(4) Section 14 is amended to read as follows:

"SEC. 14. (a) The President, whenever he determines it to be in the public interest is authorized—

"(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters.

"(2) to make grants to any State or local government for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

"(b) No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal."

(5) (A) Section 15(a) is amended by striking out ", and on or before December 31, 1970".

(B) Section 15(b) is amended to read as follows:

"(b) Sections 2, 4, and 10 of this Act shall not be in effect after December 31, 1970.".

(C) The amendments made by this paragraph shall take effect on the date of enactment of this Act.

SEC. 4. Notwithstanding any other provision of law or regulation promulgated thereunder no person otherwise eligible for relocation assistance payments authorized under section 114 of the Housing Act of 1949 shall be denied such eligibility as a result of a major disaster as determined by the President.

SEC. 5. The President is authorized to make grants to any local government which, as the result of a major disaster, has suffered a substantial loss of property tax revenue (both real and personal). Grants made under this section may be made for the tax year in which the disaster occurred and for each of the following two tax years. The grant for any tax year shall not exceed the difference between the annual average of all property tax revenues received by the local government during the three-tax-year period immediately preceding the tax year in which the major disaster occurred and the actual property tax revenue received by the local government for the tax year in which the disaster occurred and for each of the two tax years following the major disaster but only if there has been no reduction in the tax rates and the tax assessment valuation factors of the local government. If there has been a reduction in the tax rates or the tax assessment valuation factors then, for the purpose of determining the amount of a grant under this section for the year or years when such reduction is in effect, the President shall use the tax rates and tax assessment valuation factors of the local government in effect at the time of the disaster without reduction, in order to determine the property tax revenues which would have been received by the local government but for such reduction.

SEC. 6. If the President determines that a major disaster is imminent, he is authorized to use Federal departments, agencies, and instrumentalities, and all other resources of the Federal Government to avert or lessen the effects of such disaster before its actual occurrence.

SEC. 7. The Director of the Office of Emergency Preparedness is authorized and directed to make in cooperation with the heads of other affected Federal and State agencies, a full and complete investigation and study for the purpose of determining what additional or improved plans, procedures, and facilities are necessary to provide immediate effective action to prevent or minimize losses of publicly or privately owned property and personal injuries or deaths which could result from fires (forest and grass), earthquakes, tornadoes, freezes and frosts, tsunami, storm surges and tides, and floods, which are or threaten to become major disasters. Not later than one year after the date of enactment of this Act the Director of the Office of Emergency Preparedness shall report to Congress the findings of this study and investigation together with his recommendations with respect thereto.

SEC. 8. (a) For the purposes of this Act, the Disaster Relief Act of 1969, and section 9 of the Disaster Relief Act of 1966, the terms "major disaster", "United States", "State", "Governor", "local government", and "Federal agency" shall have the same meanings as are given them in section 2 of the Act of

September 30, 1950, as amended (42 U.S.C. 1855a).

(b) Section 7 of the Act of September 30, 1950, as amended (42 U.S.C. 1855f) is amended—

(1) by inserting in the first and second sentences thereof after "this Act," each place it appears the following: "and section 9 of the Disaster Relief Act of 1966, the Disaster Relief Act of 1969, and the Disaster Relief Act of 1970,",

(2) by striking out in the third sentence thereof "specified in section 8." and inserting in lieu thereof "available to carry out this Act, section 9 of the Disaster Relief Act of 1966, the Disaster Relief Act of 1969, and the Disaster Relief Act of 1970.",

(3) by inserting in the last sentence thereof immediately following "section 3" the following: "of this Act, section 9 of the Disaster Relief Act of 1966, the Disaster Relief Act of 1969, and the Disaster Relief Act of 1970,".

SEC. 9. The President may exercise any authority granted him by this Act, the Act of September 30, 1950 (42 U.S.C. 1855–1855g) the Disaster Relief Act of 1966, and the Disaster Relief Act of 1969, directly or through such Federal department or agency as he may designate and his authority shall include directing Federal departments or agencies to provide assistance by utilizing their equipment, supplies, facilities, personnel, and other resources for any other program, with or without compensation therefor, and he may reimburse Federal departments and agencies for expenditures under this Act, such Act of September 30, 1950, and such Disaster Relief Acts as he deems appropriate from funds appropriated for the purposes of this Act or such other Acts. All such reimbursements shall be deposited to the credit of the appropriations currently available for such services or supplies.

SEC. 10 Notwithstanding any other provision of law, temporary housing (including, but not limited to, mobile homes or other readily fabricated dwellings) acquired by purchase under authority of the Act of September 30, 1950 (42 U.S.C. 1855–1855g), the Disaster Relief Act of 1969, or any other provision of law, for dwelling accommodations for individuals and families requiring such accommodations as the result of a major disaster, may be sold directly to individuals and families who are occupants thereof at prices that are fair and equitable.

SEC. 11. In the administration of the Act of September 30, 1950 (42 U.S.C. 1855–1855g) the Disaster Relief Act of 1966, the Disaster Relief Act of 1969, and this Act, the President is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, entered into prior to the disaster. Such assistance shall be provided for a period of not to exceed one year or for the duration of the period of financial hardship, whichever is the lesser.

SEC. 12. This Act, and (except as otherwise provided in section 3(5)(C)) the amendments made by this Act, shall apply only to major disasters determined by the President pursuant to the Act entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes", approved September 30, 1950, as amended (42 U.S.C. 1855–1855g), natural disasters determined by the Secretary of Agriculture, and disasters as determined by the Administrator of the Small Business Administration, which disasters occur on or after December 1, 1968, except that in the case of any such disaster, natural disaster, or disaster which occurs on or after December 1, 1968, and before the date of enactment of this Act, whoever is eligible for Federal disaster relief assistance as a result of such a disaster shall make an election to receive benefits either under this Act (including the amendments made by this Act) or under the law applicable to such disasters occurring prior to December 1, 1968.

Mr. BYRD of West Virginia. Mr. President, I wish to state that this matter was cleared with the other side yesterday.

Mr. President, I move, on behalf of Senator RANDOLPH, the chairman of the Committee on Public Works, that the Senate disagree to the amendment of the House of Representatives, ask for a conference with the House thereon, and that the Chair appoint the conferees on the part of the Senate, a list of which has been supplied to me by the chairman.

The motion was agreed to; and the Acting President pro tempore appointed Mr. BAYH, Mr. SPONG, Mr. EAGLETON, Mr. DOLE, and Mr. GURNEY conferees on the part of the Senate.

STATUS OF UNFINISHED BUSINESS—EQUAL RIGHTS FOR MEN AND WOMEN

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the unfinished business now be temporarily laid aside and that it remain in that status until the close of morning business on Monday next.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent, for the purpose of making it the pending business and with the understanding that there will be no action taken thereon today, that the Senate now proceed to the consideration of Calendar No. 1300, S. 2193.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read the bill by title, as follows:

A bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions, to provide for research, information, education, and training in the field of occupational safety and health; and for other purposes.

The ACTING PRESIDENT pro tempore. The question is on the consideration of the bill.

PROGRAM—UNANIMOUS-CONSENT REQUEST

Mr. BYRD of West Virginia. Mr. President, I now ask unanimous consent that, on Monday next, not later than 3 p.m., the unfinished business be temporarily laid aside, to remain in that status until the conclusion of morning business on Tuesday next, and that at that time—not later than 3 p.m. on Monday next—the pending measure, Calendar No. 1300, S. 2193, be laid before the Senate.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ERVIN. Mr. President, reserving the right to object, I did not hear the request.

Mr. BYRD of West Virginia. Mr. President, I have informed the able Senator from North Carolina as to the content of my request.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. HATFIELD. Mr. President, I am going to object to this unanimous-consent request on behalf of colleagues who are not able to be here at this time I will have to enter an objection to the unanimous-consent agreement requested by the distinguished acting majority leader. I am sure that by the Monday hour or by the time we meet on Monday we can reconcile the differences on this point. We will work toward that end.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. BYRD of West Virginia. I thank the distinguished Senator. I fully appreciate his reasons for objecting. Therefore, I shall not renew the request at this time.

It is hoped that on Monday we will be able to resolve the matter and that at some reasonable hour during the afternoon on Monday we may be able to proceed with the pending business, S. 2193.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. BAYH. Mr. President, sitting here listening to these unanimous-consent requests, I wonder if the distinguished leader would clarify for the RECORD the fact that the Senator from Indiana is under the impression that when we come in on the next legislative day the pending order of business will be the equal rights amendment, with the specific unanimous-consent request agreed to vote at a time certain on the amendment of the Senator from Alabama.

Mr. BYRD of West Virginia. I thank the Senator from Indiana for the inquiry he has made. I think it is appropriate that I make a statement recapitulating the unanimous-consent requests that have already been agreed to so that the Senator from Indiana and all other Senators will understand what the program will be on Monday next, which is as follows:

Hopefully, the Senate will adjourn shortly until 10 a.m. on Monday next. Immediately following the disposition of the reading of the Journal and disposition of any unobjected to items on the Legislative Calendar, there will be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

The period for the transaction of routine morning business will not extend beyond 12 o'clock noon on Monday next, and at the conclusion of the period for the transaction of routine morning business on Monday next, which, as I say, cannot extend beyond the hour of 12 o'clock noon under the previous order, but may be brought to a close earlier, the unfinished business, House Joint Reso-

lution 264, will be laid before the Senate automatically.

Beginning at the hour of 12 o'clock noon there will be 1 hour of controlled time on the amendment that has been offered by the Senator from Alabama, as modified. The controlled time will be limited to 1 hour equally divided and controlled between the Senator from Alabama (Mr. ALLEN) and the able manager of the resolution, the Senator from Indiana (Mr. BAYH).

At the completion of the 1 hour of controlled time a vote will occur on the amendment, as modified.

That is a summation of everything agreed to up to this time.

Mr. BAYH. I thank the Senator for going through the requests to put the RECORD absolutely straight so there will be no question.

Mr. BYRD of West Virginia. It is no imposition. I think it is quite helpful to all Senators.

ADJOURNMENT UNTIL 10 A.M. ON MONDAY, OCTOBER 12, 1970

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 o'clock on Monday morning next.

The motion was agreed to; and (at 1 o'clock and 29 minutes p.m.) the Senate adjourned until Monday, October 12, 1970, at 10 a.m.

EXTENSIONS OF REMARKS

"CONSTITUTION WEEK ESSAY AND ART COVER CONTEST"

HON. J. HERBERT BURKE

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1970

Mr. BURKE of Florida. Mr. Speaker, it is truly a pleasure for me to offer my congratulations to the winners in the Francis Broward Chapter of the Daughters of the American Revolution's Ninth Annual "Constitution Week Essay and Art Cover Contest," in Broward County, Fla., which is within the district that I am privileged to represent in the Congress.

The awards to these outstanding, talented youngsters were presented to them at a party honoring both the winners and their parents on September 25 at the First Lutheran Church in Fort Lauderdale.

The top senior high school prize of a $100 scholarship went to Paula Schwed of Madonna Academy for her essay, "The Constitution." Millie Ceravolo of Cardinal Gibbons took honors in the junior high division. Adrian Avery of Sanders Park Elementary School was essay winner in the elementary school division.

In the Art Cover contest, Janet Peterson of Bayview Elementary School received the first prize in that division. Richard Leidy of St. Elizabeth's of Pompano Beach was the winner in the Junior High Division of the Art Cover contest.

Other winners were:

Art Cover contest, elementary division: North area: Monica Briggs, Coleman Elementary.

Central area: Janet Peterson, Bayview Elementary, first; Laura Hirsh, Bayview Elementary, second; honorable mention, Cynthia Strecht, Mary Ellen Tack, Lisa Bowers, Debbie Donaldson.

South area: Karen Riddlehoven, Sterling Elementary; David Wheeler, Sterling Elementary.

Broward County winner in the Elementary division: First, Janet Peterson, Bayview Elementary; second, Laura Hirsh, Bayview Elementary.

Junior High division: North area, Richard Leidy, St. Elizabeth's of Pompano, Kathleen Rokas, St. Elizabeth's of Pompano; honorable mention, Nancy Jendras, Mary Beth Tyne, Karen Lynn Jendras, all of St. Coleman's; Chris Troxell of St. Elizabeth's.

Central area: Cosette Carrier, Cardinal Gibbons; Nancy Lewis, Cardinal Gibbons and Alisa Whitehead, St. Gregory—tied for second place.

South area: Stephen Miciak, Nova, Broward county winner in the Junior High Division: First, Richard Leidy, St. Elizabeth's; second, Kathleen Rokas, St. Elizabeth's.

Essay contest: elementary division; North Area: Adrian Avery, Sanders Park, Monica Briggs, St. Coleman's.

Central Area: Becky Clark, Westwood Heights, Donna MacLellan, Plantation.

South Area: Karen Cutler, Sterling Elementary, Ginger Emas, Sterling Elementary.

Broward County winner, Elementary Division: Adrian Avery, Sanders Park, Becky Clark, Westwood Heights.

Junior High Division: North Area, Cindy Quinlan, St. Coleman's, Joe Scoglio, St. Coleman's.

Central Area: Millie Ceravolo, Cardinal Gibbons, Mary Fitzgerald, Cardinal Gibbons and Maria Curran, St. Anthony's—tied for second place).

South Area: Mary Miciak.

Broward County winner, Junior High Division: Millie Ceravolo, Cardinal Gibbons, Maria Curran, St. Anthony's and Mary Fitzgerald, Cardinal Gibbons—tied for second place.

Senior High Division: South Area, Paula Schwed, Madonna Academy, Patti Tarquinio, Madonna Academy.

Broward County winner, Senior High Division: Paula Schwed, Madonna Academy, Patti Tarquinio, Madonna Academy.

Mr. Speaker, Traveling Trophies went to Sanders Park Elementary School, Cardinal Gibbons, and Madonna Academy. I might add here that this is the second time Madonna Academy has won the Senior High Traveling Trophy, and under present contest rules, if won again next year, the trophy will become the permanent property of that school.

At a time in our history when our Government is ridiculed and dishonored by some and all of our young people are blamed by some for the actions of a few of their contemporaries, I think we should take pride in the thinking of these youngsters who have won these awards. It is a pleasure for me to share the winning essays with my colleagues here in the House of Representatives which are as follows:

"THE CONSTITUTION"

(By Paula Schwed)

There have been many theories formulated about U.S. government. It has numerous critics who predict the decline of American system in the not too distant future. There are also those who declare the Constitution to be the best form of government devised by man.

The Constitution is a very flexible document which when interpreted, presents many conflicting views. There is also a discrepancy between theory and the actual practice of ideas set forth in the Constitution. Critics of our government also cite the manner in which criminals make use of "legal loopholes" which are not in the interest of the common man, to twist the law to their advantage.

There are defects that our critics can point out in demeaning U.S. government, but these shortcomings are the exception rather than the rule.

The Constitution was written by many different types of men; no one interest group was favored over another. The product they created was so flexible as to have lasted over 175 years. Since 1787 the Constitution has been elaborated and expanded to meet the needs of a civilization which its writers could never have foreseen. Pure food and drug laws, lottery acts, a white slave law, a statute requiring the use of safety devices on interstate trains, and many others have been passed under the general authority given to Congress.

The men who founded our republic knew definitely the general ideas that they wanted set forth in the Constitution, then left the working out of details to later interpreters, which has been proven a remarkably successful method, by the test of survival.

In our complex society, the Constitution protects the individual unable to do so himself. Most dealings are no longer conducted on a one to one basis: a man buying meat from a butcher who raises the cattle for his products himself. Rather, it is an individual dealing with a giant corporation or other such arrangements. Therefore laws were needed to make the individual's rights secure.

Another favorable point of the Constitution is its successful combination of the elements of democracy and republic. True democracy as practiced in ancient Greece would not be a realistic form of American government. There are too many people in the U.S. today for each citizen to present his own view to the rest of the people. This would result in mass confusion. So, instead the Constitution is set up in such a way that all people may voice their opinion, but to certain representatives they have chosen expressly for this purpose. Men have constantly sought to bring government officials and the common people together. The Constitution is an example of this effort. As in any political system of government yet devised, flaws can be found in it. But in relation to the favorable points in the Constitution, the draw-