

Stacks
S2
Colo. 6

No. 213-
216

Report to the Colorado General Assembly:

COMMITTEE ON THE EQUAL RIGHTS AMENDMENTS

RECEIVED

APR 22 1976

LAW LIBRARY
UNIVERSITY OF DENVER

RECEIVED

JAN 27 1976

LAW LIBRARY
UNIVERSITY OF DENVER



COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 213

December, 1975

Bound by DENVER BOOKBINDING CO., 2715 - 17th St., Denver, Colo. 80211

COMMITTEE ON THE
EQUAL RIGHTS AMENDMENTS

Legislative Council
Report to the
Colorado General Assembly

Research Publication No. 213
December, 1975

COLORADO GENERAL ASSEMBLY

MEMBERS



OFFICERS

REP. PHILLIP MASSARI
Chairman
SEN. FRED E. ANDERSON
Vice Chairman

STAFF

LYLE C. KYLE
Director
DAVID F. MORRISSEY
Assistant Director

SEN. BARBARA S. HOLME
SEN. HAROLD L. McCORMICK
SEN. VINCENT MASSARI
SEN. RICHARD H. PLOCK Jr.
SEN. JOSEPH B. SCHIEFFELIN
SEN. TED L. STRICKLAND
REP. BOB LEON KIRSCHT
REP. STEPHEN A. LYON
REP. CLARENCE QUINLAN
REP. RONALD H. STRAHLE
REP. RUBEN A. VALDEZ
REP. ROY E. WELLS

LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-3521
AREA CODE 303

November 24, 1975

To Members of the Fiftieth Colorado
General Assembly:

In accordance with the provisions of House
Joint Resolution No. 1046, 1975 session, the Leg-
islative Council transmits the accompanying report
and recommendations relating to the state and
federal Equal Rights Amendments.

The report of the Committee on Equal Rights
Amendments was accepted by the Legislative Coun-
cil for transmission to Governor Lamm and to the
second regular session of the Fiftieth Colorado
General Assembly.

Respectfully submitted,

/s/ Representative Phillip Massari
Chairman
Legislative Council

PM/mp

COLORADO GENERAL ASSEMBLY

MEMBERS

SEN. BARBARA S. HOLME
SEN. HAROLD L. McCORMICK
SEN. VINCENT MASSARI
SEN. RICHARD H. PLOCK Jr.
SEN. JOSEPH B. SCHIEFFELIN
SEN. TED L. STRICKLAND
REP. BOB LEON KIRSCHT
REP. STEPHEN A. LYON
REP. CLARENCE QUINLAN
REP. RONALD H. STRAHLE
REP. RUBEN A. VALDEZ
REP. ROY E. WELLS

OFFICERS

REP. PHILLIP MASSARI
Chairman
SEN. FRED E. ANDERSON
Vice Chairman

STAFF

LYLE C. KYLE
Director
DAVID F. MORRISSEY
Assistant Director



LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-3521
AREA CODE 303

November 6, 1975

Representative Phillip Massari
Chairman
Legislative Council

Dear Mr. Chairman:

Pursuant to House Joint Resolution No. 1046, 1975 session, the Committee on the Equal Rights Amendments submits the accompanying report for consideration by the Legislative Council.

The committee requests that the Legislative Council transmit the report to Governor Lamm and to the second regular session of the Fiftieth Colorado General Assembly with recommendation for favorable consideration.

Respectfully submitted,

/s/ Senator Joe Schieffelin
Chairman
Committee on the Equal
Rights Amendments

JS/mp

FOREWORD

House Joint Resolution No. 1046, 1975 session, directed the Legislative Council to appoint a committee to study the Equal Rights Amendment to the Colorado Constitution and the proposed Equal Rights Amendment to the United States Constitution.

Members of the Colorado General Assembly appointed to the Committee on the Equal Rights Amendments were:

Sen. Joe Schieffelin, Chairman	Rep. Art Herzberger
Rep. Nancy Dick, Chairwoman	Rep. Bill Hilsmeier
Sen. Robert Allshouse	Rep. Leo Lucero
Sen. Eldon Cooper	Rep. Betty Orten
Sen. Lorena Darby	
Sen. Kenneth Kinnie	

The committee and the Legislative Council express appreciation to the many persons who testified before and provided assistance to the committee during the interim study.

Ms. Sue Burch (Legislative Drafting Office staff) and Mr. Earl Thaxton and Mr. John Silver (Legislative Council staff) provided assistance to the committee in the completion of its study.

December, 1975

Lyle C. Kyle
Director
Legislative Council

TABLE OF CONTENTS

	<u>Page</u>
LETTERS OF TRANSMITTAL.....	iii
FOREWORD.....	vii
INTRODUCTION.....	1
The Proposed Federal Equal Rights Amendment.....	1
The Colorado Equal Rights Amendment....	1
Committee Charge.....	2
Statutory Analysis - Colorado Revised Statutes 1973.....	3
Committee Findings and Recommenda- tions.....	4
PROPOSED COMMITTEE REPORT BY SENATOR JOE SCHIEFFELIN	
PROPOSED COMMITTEE REPORT BY REPRESENTATIVES NANCY DICK AND BETTY ORTEN	
PERSONAL STATEMENT BY SENATOR ROBERT ALLSHOUSE	

The state Equal Rights Amendment, which took effect on January 11, 1973, adds a new Section 29 to Article II of the Colorado Constitution. The new language reads as follows:

ARTICLE II, SECTION 29. Equality of the sexes. Equality of rights under the law shall not be denied or abridged by the state of Colorado or any of its political subdivisions on account of sex.

Committee Charge

House Joint Resolution 1046 of the 1975 session of the Colorado General Assembly directed the Legislative Council to appoint a committee to study the following:

- the necessity for statutory changes to comply with the Colorado Equal Rights Amendment;
- the effects of any such changes;
- the necessity for changes in state governmental regulations to comply with the Colorado Equal Rights Amendment;
- the effects of any such changes;
- which branch of state government should prescribe laws and regulations for the governance of behavior related to equality of the sexes, if the proposed federal Equal Rights Amendment is fully ratified;
- the issue of states' rights under the proposed federal Equal Rights Amendment;
- the potential effects of the state and federal Equal Rights Amendments on freedom of religion;
- the potential effects of the state and federal Equal Rights Amendments on separation of the sexes in public facilities;
- the potential effects of the state and federal Equal Rights Amendments on the employment of men and women;
- judicial standards of review under the state and federal Equal Rights Amendments;
- the potential effects of the state and federal Equal Rights Amendments on internal family roles;

INTRODUCTION

The Proposed Federal Equal Rights Amendment

On March 22, 1972, the United States Senate adopted a resolution proposing the federal Equal Rights Amendment for ratification by the individual state legislatures. The resolution had previously been adopted by the United States House of Representatives on October 12, 1971.

An amendment to the United States Constitution must be ratified by three-fourths of the fifty state legislatures in order to take effect. At the time of this report, 34 of the required 38 state legislatures have ratified the proposed federal Equal Rights Amendment (although the state legislatures in Nebraska and Tennessee have taken official action intended to rescind their states' ratifications of the amendment).

The Colorado General Assembly ratified the proposed federal Equal Rights Amendment during its 1972 session (see House Concurrent Resolution 1017, 1972 session).

The text of the proposed federal Equal Rights Amendment is as follows:

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

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

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

The Colorado Equal Rights Amendment

During its 1972 session, at which it ratified the proposed federal Equal Rights Amendment, the Colorado General Assembly referred to the people a similar amendment to the Colorado Constitution (see House Concurrent Resolution 1006, 1972 session). Amendments to the state constitution may be proposed by the state legislature but must be approved by the voters at a general election.

At the November, 1972, general election, the proposed Equal Rights Amendment to the Colorado Constitution was adopted by a vote of 531,415 to 295,254.

- the potential effects of the state and federal Equal Rights Amendments on the activities of private institutions;
- the potential effects of the state and federal Equal Rights Amendments on the "rights of children"; and
- the potential effects of the state and federal Equal Rights Amendments on the right to privacy.

The interim Committee on the Equal Rights Amendments, in its attempt to meet the charge of House Joint Resolution 1046, held a total of nine meetings during the 1975 interim. Eight of these meetings were devoted to the receipt of testimony from over 100 witnesses, including government officials, legislators from other states, private attorneys, labor officials, educators, religious leaders, authors, physicians, psychiatrists, psychologists, sociologists, representatives of private institutions and organizations, political party officials, and concerned citizens. The members of the committee take this opportunity to thank each of the witnesses for his assistance in fulfilling the committee's charge.

Statutory Analysis - Colorado Revised Statutes 1973

In its efforts to determine statutory changes necessary for compliance with the Colorado Equal Rights Amendment, the committee directed the staffs of the Legislative Council and the Legislative Drafting Office to conduct a computerized search of Colorado Revised Statutes 1973 and to analyse the statutes identified through the computerized search. The purpose of this analysis was to delineate the following categories of Colorado statutes:

- statutes which explicitly treat one sex differently from the other;
- statutes which contain sex distinctions based on physical characteristics unique to one sex;
- statutes which are sex-neutral in their terms;
- statutes which prohibit discrimination, but which do not include sex as a basis for the prohibition;
- statutes which prohibit discrimination on the basis of sex;
- statutes which provide for the construction of gender-based language; and

- statutes which contain the "prudent man" rule.

The analysis made no judgment that particular statutes constituted denial or abridgement of rights on the basis of sex - the statutes were isolated and analysed solely on the basis of their treatment of one sex in a different manner than the other or on the basis of their sex-neutrality. (Similarly, the identification of a sex-neutral statute was not intended to imply that its application or administration occurs in a sex-neutral fashion.)

The members of the committee employed the computer-based statutory analysis in conjunction with the testimony received during the initial eight committee meetings to develop the following committee findings and recommendations.

Committee Findings and Recommendations

At the ninth and final meeting of the committee, two opposing reports were presented for review. One of the reports had been written by Senator Joe Schieffelin, and the other by Representatives Nancy Dick and Betty Orten.

The proposed report by Senator Schieffelin opposes the state and federal Equal Rights Amendments and is intended to "articulate the concerns which exist about the Equal Rights Amendments and to show that the concerns have merit". The basic recommendation of the Schieffelin proposed report is that a citizen initiative drive be conducted prior to the 1976 general election campaign to place the question of the repeal of the state Equal Rights Amendment before the voters at that election, and that the 1977 session of the Colorado General Assembly consider the results of the vote on this question in its evaluation of a resolution to rescind Colorado's ratification of the federal Equal Rights Amendment.

The proposed report by Representatives Dick and Orten favors the state and federal Equal Rights Amendments and concludes that "the compelling evidence necessary to justify the repeal of the state Equal Rights Amendment and the rescission of Colorado's ratification of the federal Equal Rights Amendment has not and cannot be presented". The basic recommendation of the Dick-Orten proposed report is that "any effort to repeal the state Equal Rights Amendment be strongly resisted and that any efforts to rescind Colorado's ratification of the federal Equal Rights Amendment be similarly rejected".

Neither proposed report was specifically adopted by the full committee. The committee, however, took the following actions:

(1) The committee recommends that a citizen initiative drive be conducted to place the question of the repeal of the state Equal Rights Amendment on the ballot at the 1976 general election.

(2) The committee transmits to the Legislative Council both the Schieffelin and the Dick-Orten proposed reports, considering them illustrative of the opposing viewpoints on the Equal Rights Amendments.

(3) The committee supports the federal Equal Rights Amendment.

(4) The committee supports the state Equal Rights Amendment.

The remainder of this report transmits the Schieffelin and Dick-Orten reports. In addition, a personal statement of Senator Robert Allshouse in opposition to the Equal Rights Amendments is transmitted.

PROPOSED COMMITTEE REPORT

**COMMITTEE ON THE
EQUAL RIGHTS AMENDMENTS**

**SENATOR JOE SCHIEFFELIN
November 6, 1975**

TABLE OF CONTENTS

	<u>Page</u>
Forsword.....	1
America's and Colorado's Goals.....	2
Misconceptions Concerning the Equal Rights Amendments.....	3
The Equal Rights Amendments as Threats to the Family, to Motherhood, and to the Baby Through Early Childhood.....	5
The Equal Rights Amendments as Threats to the Freedom of Religion.....	7
The Equal Rights Amendments as Threats to Privacy.....	11
The Equal Rights Amendments and Ignoring the Laws of Nature.....	14
The Federal Equal Rights Amendment as a Threat to States' Rights.....	17
The Equal Rights Amendments and the Leadership Vacuum.....	20
The Equal Rights Amendments and Being Femi- nine.....	21
The Colorado Equal Rights Amendment and Required Statutory Change.....	22
Conclusion.....	25

America's and Colorado's Goals

The debate over the Equal Rights Amendments has clouded the issue of what should be the proper goals of all Americans. There is, however, one goal on which both proponents and opponents of the amendments agree. This goal is stated in the United States Declaration of Independence - after stating that it is necessary for "one people...to assume among the powers of the earth, the separate and equal station to which the laws of nature and nature's God entitle them", the declaration states further that:

We hold these truths to be self-evident: - that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men...

To secure "unalienable rights" is one goal on which all can agree.

There is, however, wide disagreement on another goal. It is best illustrated by asking the question: "What unalienable rights are to be secured?" Proponents of the Equal Rights Amendments suggest that these rights ought to be "equal". (See the discussion under "the second misconception" on page 4 of this report.)

It should be asked, nonetheless: "Since when was America's goal to be equal?" Instead, America's goal has been to provide a country in which aspirations are not limited to equality, but to superiority. No team likes a tie - it wants to win. No employee wants to remain in his or her position forever - he or she wants to be promoted and, hopefully, some day, to be boss. Our country does not want to be merely "equal" to any other country.

The goal is to excel, and we honor and monetarily reward those who do excel. Thus far, those Americans who have been capable of doing so have excelled - and our country has excelled as a result. Do we jeopardize the excellence of our country when we change our goal from excelling to equalizing, from excellence to equality? America's goal is the "right to excel" and not the right to be equal. The United States Constitution, as expressed in its Preamble, was intended to "secure the blessings of liberty to ourselves and our posterity", and the "right to excel" is such a blessing and should not be changed. This right, as the rights enumerated in the constitution's Bill of Rights, should be secured.

FOREWORD

The Committee on the Equal Rights Amendments would like to thank the more than 100 witnesses who testified before it concerning the ramifications of the state and federal Equal Rights Amendments. The testimony presented to the committee showed clearly that no one knows what those ramifications will be. The testimony was, however, very helpful to the committee in crystallizing the issues which arise from the amendments.

This report attempts to articulate the concerns which exist about the Equal Rights Amendments and to show that the concerns have merit.

It is true that testimony and statistics presented to the committee show that sex bias is still present in certain aspects of society. However, the existing pattern of a law-by-law, case-by-case eradication of such inequities, as acknowledged by proponents of the Equal Rights Amendments, should be noted. This approach to the elimination of sex bias is fairer and less disruptive to society than is the process of constitutional amendment, since some sex differences should be reflected in law.

The remainder of this report makes the case for this statement.

The process of the securing of rights has continued for two hundred years and is continuously articulated by the Congress and the courts. The securing of rights is a continuous process, since the "right to excel" must continually be updated in language to reflect the words and value systems of each generation. As illustrated by the Declaration of Independence and the United States Constitution, we continue to be involved in the "pursuit of happiness", and this pursuit leads us into debates about human rights and how they can be achieved.

Non-governmental institutions, as well as governments, have been important in securing the unalienable rights of Americans. The two most important such institutions are the family and the Church. Indeed, the Declaration of Independence specifies that it is not the government which bestows unalienable rights, but rather that men are "endowed by their Creator" with such rights. The declaration also acknowledges the importance of the "laws of nature" and, by extension, the importance of the family and of separate sexes, which are natural phenomena.

It is instructive to note that the Declaration of Independence uses the phrase "separate and equal station" - this phrase is important in determining which approach should be used to secure unalienable rights in America. We know that many laws have been enacted by Congress in the last two hundred years and by the Colorado General Assembly in the last one hundred years to articulate and secure these rights.

The question is whether new constitutional language, such as that contained in the Equal Rights Amendments, will secure these rights more quickly than careful review and possible revision of existing laws. Will such constitutional amendments create more problems than they solve?

This report maintains that the Equal Rights Amendments will not do the job. In fact, the amendments will disrupt two immensely important societal institutions, the family and the Church, while the present system of securing unalienable rights does not result in this disruption.

Misconceptions Concerning the Equal Rights Amendments

The first misconception. Proponents of the Equal Rights Amendments maintain that the amendments will provide immediate relief to employees who feel that they are being discriminated against because of their sex. This is, however, not the case. Legal opinion presented to the committee indicated that new legislation, and possibly new governmental agencies, will be

necessary for the implementation of the amendments (in spite of the fact that testimony before the Legislative Council interim Committee on State Affairs during the 1975 interim indicated that three separate federal agencies and three separate state agencies are presently involved in efforts to insure equality of employment: the federal Equal Employment Opportunity Commission; the Wage and Hour Division of the U.S. Department of Labor; the Office of Federal Contract Compliance of the U.S. Department of Labor; the Colorado state Department of Personnel; the Colorado Commission on Civil Rights; and the Colorado state Department of Labor and Employment). In addition, substantial judicial interpretation is necessary to determine what the amendments really mean.

The second misconception. The proponents of the Equal Rights Amendments assume that the debate concerning these amendments can proceed from common definitions of the words "equal" and "equality". These common definitions, however, simply do not exist. Testimony presented to the committee indicated tremendous confusion about the meanings of these terms: at various times, the terms were used to refer to equal opportunity, equal physical facilities, equal dollars for each recipient of governmental benefits, equal dollars for each sex-segregated program, equal treatment, equal employment, and equal services. (A witness before the committee explained that the meaning of the word "equality" in interpretations of constitutional language takes different forms - equal treatment under law by number, by need, or by merit or ability. 1/)

Not only does confusion exist as to the meanings of the terms "equal" and "equality", but confusion exists as to what these terms do not mean. The report of the Committee on the Judiciary of the United States Senate on the federal Equal Rights Amendment stated: "'Equality' does not mean 'sameness'." 2/ The United States Supreme Court has declared that "(s)eparate educational facilities are inherently unequal". 3/ The Congressional debates on the federal Equal Rights Amendment did not clarify the meanings of "equal" and "equality", and subsequent debates about the amendment have been based on widely varying concepts of the meanings of the terms.

Because no common definition can be reached for the terms "equal" and "equality" under the state and federal Equal Rights Amendments, the courts will be forced to provide definitions for these terms. This will be an example of legislation by judicial opinion (as is forced busing for purposes of racial desegregation).

The third misconception. It is widely believed that ratification of the federal Equal Rights Amendment will solve

the entire range of sex discrimination problems. However, as the president of the National Organization for Women (NOW) found in her October, 1975, tour of the Soviet Union, an Equal Rights Amendment does not necessarily raise the status of women. The president of this organization obviously found the United States to be preferable to the Soviet Union in terms of women's rights, in spite of the fact that the Soviet Union's constitution includes an Equal Rights Amendment, adopted in 1936, which reads as follows:

Article 122. Women in the USSR are accorded all rights on an equal footing with men in all spheres of economic, government, cultural, political, and other social activity. 4/

The People's Republic of China has had a similarly worded Equal Rights Amendment in its constitution since 1954. 5/

The Equal Rights Amendments as Threats to the Family, to Motherhood, and to the Baby through Early Childhood

The testimony presented to the committee concerning the medical, psychological, and sociological aspects of the Equal Rights Amendments was often conflicting. It is clear from that testimony, however, that the amendments will effect changes in the traditional American family as it has been valued for over 200 years. Changes will also be effected in the traditional role of the mother and in traditional methods of raising children. There was disagreement among the witnesses before the committee about the positive or negative nature of these changes. This report contends that the changes will be negative.

Most witnesses favoring the Equal Rights Amendments stressed the roles of women in the commercial world. Even when these witnesses spoke about women as mothers, it was asserted that this maternal role is temporary and that the need exists for women to enter the commercial world both before and after motherhood. This view seemed to stress the desirability of a mother returning to the work force as soon as possible after the birth of her child. A great deal of testimony focused on the significant numbers of women in the work force and the relatively few working women who occupy highly paid positions. Similar testimony indicated that a significant percentage of women will enter the work force at some time in their lives. This focus on women in the labor force implies that the Equal Rights Amendments will be effective in improving conditions for women in the commercial world, an argument refuted in the discussion of "the first misconception" on page 3 of this report. Nonetheless, the

message of this argument is loud and clear to young women - the implication is that it is degrading to plan a career as a wife and mother. In fact, it is intimated that the career of wife and mother will interfere with success in the commercial world, through loss of seniority, retirement benefits, and possibilities for promotion.

Such arguments recognize that the word "equal" and the word "mother" clash. A woman simply cannot be a mother and be equal to a man who cannot be a mother. This is a physical impossibility and a contradiction of the laws of nature, which are recognized in the Declaration of Independence. It appears that motherhood must give way to equality.

The committee conducted an analysis of Colorado statutes, using "key-words" intended to highlight sex distinctions in the law. The words "mother", "maternal", and "maternity" were included. Must we ignore such words in our state laws? If so, are we not ignoring the laws of nature? Are we not also glorifying those activities which will discourage young women from becoming mothers, and are we not jeopardizing the survival of Americans?

Presently, the role of the mother is not ignored in state law - the statutes recognize the unique role of the woman as mother and provide some financial and legal protection for her. This report, however, contends that the Equal Rights Amendments take us in the wrong direction regarding mothers. Instead of eliminating from state law all references to motherhood, we should be adding statutory benefits for the woman who choose to be mothers. (Testimony before this committee and before the Legislative Council interim Committee on State Affairs indicated the need for changes in federal law to provide Social Security protection for women who choose to be housewives and mothers during their lifetimes.) Instead, the Equal Rights Amendments eliminate protection for the role of the mother. What will be the reaction of young women to this effect of the amendments? They will probably choose to stay at work and avoid motherhood altogether.

Proponents of the Equal Rights Amendments assert that the responsibilities of mothering can be shared with the father, with siblings, and with the community. However, it is clear that the division of the responsibilities of mothering results in a weaker child, as illustrated by testimony presented to the committee by physicians, psychologists, and psychiatrists. This testimony indicated that babies, from birth through early childhood, need a constant, caring, loving mother at home. A constant, caring, loving father would be second best, and a constant, caring, loving "other adult" would be third best. The testimony indicated that many, and possibly most, child

care centers, with their high turnover of indifferent employees, do not produce the constant, caring, loving, single care-taker so necessary for healthy growth in early childhood. 6/

Do infants and young children have constitutional rights specifically concerning their youthful status? They do not. Nonetheless, every parent realizes that babies and young children have certain unwritten rights, including the natural right to the presence of a loving mother.

However, the thrust of the Equal Rights Amendments, as discussed above, is to downgrade the role of the mother and to encourage women to substitute economically rewarding careers for motherhood. The mother, or any woman contemplating motherhood, is forced into a position of conflict among values, with natural and existing statutory law suggesting that she take one course, and the Equal Rights Amendments suggesting another. This conflict among values should never arise, and does not under our existing system of identifying and addressing societal problems involving human rights through legislation rather than through constitutional amendments.

One witness before the committee was particularly critical of the proposed federal Equal Rights Amendment and its effects on marriages of ten years or more. She speculated that the amendment will alter the terms of the "marriage contract" in such marriages. In these marriages, the wife has been supported by her husband under this "contract", and the obligation for support will disappear after ratification of the federal amendment. 7/ No other witness addressed this question - the effect of the Equal Rights Amendments on middle-aged and older married women. In conjunction with the questions concerning the negative effects of the Equal Rights Amendments on the family and the role of the mother, this question raises a serious challenge to the overall societal effects of the amendments.

The Equal Rights Amendments seem to present a philosophy of motherhood, family, and the rights of children which is radically different from that presently held by most Americans. This change in philosophy is not desirable. Our present system of dealing with sex discrimination on a case-by-case basis is preferable to the approach of the Equal Rights Amendments.

The Equal Rights Amendments as Threats to the Freedom of Religion

The hearings conducted by the committee concerning the

effects of the Equal Rights Amendments on religious practice and doctrine showed clearly that approximately half of the religious community believes that the Bible teaches that men and women are not only different physiologically, but also have different life roles. These roles are different and not equal, and no constitutional declaration will change this basic fact.

The Equal Rights Amendments will, however, place the members of many churches in a very uncomfortable position, in which the church teaches them one thing and the supreme law of the land states another. There is real fear, although conflicting legal opinion, that the amendments will jeopardize the tax-exempt status of many churches. This danger also extends to church-run enterprises, such as hospitals. The effects of the Equal Rights Amendments on religion will be very bad for America.

It is revealing to examine related testimony from the committee's hearings:

"A human law can never make equal that which is not equal... It is both a law of God and a law of nature that man is not the same as a woman... Passing a law will never put a man in the maternity ward to bear a child nor place him in the home to rear the children. Laws can never successfully change the role of woman in society... If the intent of the Equal Rights Amendment is an attempt to eliminate the obvious differences between men and women or to change the divine role of man and woman in the home and family, it will place the nation in the unfavorable position of being against divine law." 8/

"For Bible-believing Christians, any law which ignores the fact that God created people in two sexes removes the basis for self-image and Christian identity... For a woman to try to live as a man or to ignore any differences between herself and man is, in our opinion, to miss God's best for her and to rob society of her greatest possible contribution... We do not believe that any group of people should be discriminated against, but we do feel that the law should allow for them to be distinguishable... The concepts of husband and wife, mother and father, are very important to the Christian religion... The point is, for the state, through the wording of its laws or decisions of its courts, to seek to erase these values from the books and recognize no differences is to remove from us the very basis upon which we understand God and use to teach our children about their relationship to him." 9/

"God, in His infinite wisdom, has created man and woman. He assigned roles to each which cannot be interchanged. He

ardless of how hard we strive to achieve equal rights, we cannot alter the physiological difference in men and women and the special place each has in the home and society." 10/

"We feel that this amendment takes away many of our God given rights as women rather than helping us." 11/

"I, for one, do not have any desire for the rights and obligations of a man. I would like the right to act and be treated as a woman." 12/

"No Catholic spokesman would argue against protections of what are the true rights of women. The departure comes in interpreting or defining those rights. For example, the Church maintains that no one has the right to be a priest, neither male nor female. The Holy Orders are a privilege granted by God upon those He calls through the Church... Not until our day has any proposal been made, however, that would interfere with such doctrinal teachings as they bear upon members of the Catholic Church and its authorities. The ERA would with certainty do just that." 13/

"(S)ex differentiation is both important and eternal... This differentiation is reflected not only in obvious physical characteristics, but also in the different responsibilities given to a man and woman by their Creator... Their family roles are equally honorable but are not the same. One is incomplete without the other... (M)arriage and the family unit are important - and eternal... The home is the first and most effective place for children to learn the lessons of life... Nothing can take the place of home in rearing and teaching children, and 'no other success can compensate for failure in the home'... One inherent function of the law is to teach. The law sets forth the acceptable norms and standards of a society, and when the law changes dramatically, the standards change. If laws that enable women 'to perform their duties as homemakers or mothers' and laws that fix a father's responsibility to support his family are done away with under ERA, this fact alone may well create a socio-moral climate that will make it difficult for members of my Church to maintain the differentiation of sex roles and the cherishing of children in strong homes, which are central to our religious practices." 14/

"I believe that the Equal Rights Amendment encourages adults - men and women - to be demanding of rights and divisive in spirit, rather than to be sacrificing with an eye toward creating unified and nurturing homes." 15/

Depth of feeling is evident in these quotations from committee testimony. These opinions, however, were not shared by other witnesses, who interpreted different meanings from

the Bible and who took different attitudes toward life. Note the following:

"(T)here is in Presbyterian belief no special right attached to motherhood. Presbyterians do place high value on the function of parenting. In this the father, the mother, and the community share... The function of parenting or the nurture of children has not been held in the Scriptures as a specifically female function." 16/

"Here, a knowledge of the Hebrew and the flow of the chapter makes it clear that the creation of humans - which is the generic meaning of the interpretation of 'man' - was in two sexes - equally... Because the simply stated amendment which is proposed is consistent with and a proper conclusion from these first verses, we are bound to support and encourage that amendment...there are different roles in family life. These roles, however, are not fixed...at given times, one person must take charge and then another." 17/

Efforts in support of the Equal Rights Amendment are "a vital part of our ministry to the world". 18/

"Support for the Equal Rights Amendment is based on Christian convictions about the basic equality of persons before God and in relation to one another. Women and men are understood as having been created in the image of God. All persons are regarded as being of equal value in the sight of God." 19/

"Be it is, even while respecting the rights of individuals to their own positions on this issue and recognizing that the full spectrum of positions is likely to be found among United Methodist members, nonetheless, the official position of the United Methodist Church...is a vigorous commitment to witness and to work for the ratification of the Equal Rights Amendment." 20/

"We affirm women and men to be equal in every aspect of our common life." 21/

"We believe that the consequences of passing such an amendment would be overwhelmingly positive, releasing the untapped talents and energies of a portion of American society to the betterment of all." 22/

The sincerity of the conflicting statements presented to the committee concerning the religious aspects of the Equal Rights Amendment is obvious. This report maintains that any constitutional amendment which can be interpreted in such a

wide variety of ways in relation to one of America's key institutions, the Church, is bad law.

Furthermore, constitutional amendments which force citizens into practices which are contrary to their religious beliefs violate the spirit of the 1st Amendment to the United States Constitution, which guarantees freedom of religion. It will be up to the courts to interpret whether or not the Equal Rights Amendments violate the 1st Amendment's guarantee of religious freedom. There is no doubt, however, that, for many people, the Equal Rights Amendments violate the spirit of the 1st Amendment, which reads as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

The Equal Rights Amendments are threats to the freedom of religion.

The Equal Rights Amendments as Threats to Privacy

It is clear from testimony presented to the committee that no fundamental national document - the Declaration of Independence, the United States Constitution, or a decision of the United States Supreme Court - guarantees a general right to privacy. A 1965 Supreme Court decision ^{23/} did provide a right to privacy in the use of contraceptives, but that right was limited to the narrow circumstances of the particular case.

Custom, religion, and common law have developed our present concept of privacy. If expressed as a "right", the concept of privacy might be stated as "the right to be left alone with... (one's) values and concerns". ^{24/} Privacy implies the ability to get away from other people, and, in certain specific circumstances, to get away from persons of the opposite sex.

Custom and law have transferred the concept of privacy into patterns of separate treatment, including the provision of separate physical facilities for men and women. Separate treatment recognizes the different physical requirements of the sexes - separate physical facilities provided for the public are physically different, not the "same" and not "equal". This approach recognizes the wording of the Declaration of Independence in its reference to the "separate and equal station to which the laws of nature and nature's God" entitle persons.

The Supreme Court has ruled, in its landmark decision relating to racial segregation, that "separate educational facilities are inherently unequal". 25/ This decision related directly to the provision of public facilities. To assume that the court would rule differently in cases involving segregation of public facilities by sex is to defy the principle of judicial precedent, through which the court relies heavily on previous decisions.

As noted by a significant amount of committee testimony, the Equal Rights Amendments cast considerable doubt on the survival of the traditional concept of privacy. In fact, many proponents of the amendments maintain that it is traditional concepts which have resulted in sex discrimination, and that traditional approaches must therefore be changed. This argument reinforces the concern that the Equal Rights Amendments embrace a concept of privacy different from that which has been practiced heretofore.

The Report of the Joint Privileges and Election Committees of the General Assembly of the State of Virginia on Ratification of the Equal Rights Amendment to the United States Constitution (hereafter referred to as the "Virginia study") comes to this same conclusion:

...the open-ended language of the Amendment itself...suggests the conclusion that an absolute prohibition on sex-based classification would be the standard for judicial review. 26/

A flexible, common-sense standard for the elimination of sex discrimination is already available, and being used, under the equal protection clause of the 14th Amendment to the United States Constitution. Nonetheless, the proponents of the Equal Rights Amendments attack this 14th Amendment standard and suggest new constitutional language which is less flexible and more strict than that of the 14th Amendment.

This interpretation of pro-ERA reasoning led Professor Paul Freund, constitutional scholar from Harvard Law School, in testimony before the United States Senate Committee on the Judiciary in 1970, to make the following comparison of the requirements of the federal Equal Rights Amendment and the "strict scrutiny" test of the 14th Amendment for racial segregation:

The strict model of racial equality, moreover, would require that there be no segregation of

the sexes in prisons, reform schools, public restrooms, and other public facilities. 27/

Freund goes on to imply that the same would be the case under the Equal Rights Amendment, "if the law must be as undiscriminating concerning sex as it is toward race". 28/

In regard to prisons, the Virginia study comes to the same conclusion:

The major impact ERA will have on the prison system is to prohibit separate institutions and the concomitant discrepancy in treatment, facilities, and programs which are attendant to such segregation. 29/

Most such present discrepancies in treatment, facilities, and programs favor women prisoners, typically a smaller class of prisoners than men. Equalization of treatment implies either an increase of benefits to the higher level for both classes or a decrease of benefits to the lower level for both classes, causing the Virginia study to conclude that:

The economic burden involved in increasing benefits given women may be too great to justify such increase, therefore, a decrease in benefits may result in the smaller group. 30/

Testimony before the committee showed how state Equal Rights Amendments, including Colorado's, are already affecting the traditional concept of privacy. These effects are for the worse, both for the individual and for society. The testimony included documentation of the following types of everyday problems:

- men and women sharing sleeping and bathroom facilities at the California Division of Forestry's Belmont fire station; 31/
- firefighters of both sexes sharing sleeping facilities in the Cheyenne, Wyoming, fire department; 32/
- men and women sharing single motel rooms on cross-country trucking runs; 33/
- the use of a women's dressing room by men in a local Colorado department store; and 34/

- a public entity being forced to hire a male attendant for a women's bathhouse. 35/

Additional privacy questions arise in the area of law enforcement. As one committee witness asked: "Will the enforcement of police search techniques involve the removal of clothing and be performed by members of either sex without regard to the sex of the one being searched?" 36/ The Equal Rights Amendments imply that this will be the case. The implication extends to the necessity for providing non-sex-segregated facilities in hospitals and in the military forces.

Under the existing system for the elimination of sex discrimination, which uses a case-by-case approach, a court is free to use traditional norms and concepts of privacy in its decisions relating to sex discrimination. Proponents of the Equal Rights Amendments agree that progress has been made in the elimination of sex discrimination under this system. However, the Equal Rights Amendments bring under one constitutional provision all circumstances affecting the two sexes, including all circumstances relating to the traditional concept of privacy.

The committee hearings have shown that the Equal Rights Amendments will have a negative effect on the traditional concept of privacy and that a different privacy concept will evolve under the amendments. This different concept will be inevitably worse for individuals and society than the traditional concept - the change should not be allowed to occur. The effects which the Equal Rights Amendments will have on the traditional concept of privacy are valid reasons for opposition to the amendments.

The Equal Rights Amendments and Ignoring the Laws of Nature

By suggesting blanket equality of the sexes, the Equal Rights Amendments ignore the laws of nature. Medical testimony before the committee recognized physical differences between the sexes in bone mass, muscle mass, fatty tissue, ligaments, and hormones. 37/ These physical differences, which are natural phenomena, lead to different results in situations requiring physical skill or strength.

The Equal Rights Amendments, however, do not allow such differences to be reflected in law or regulation. Specific areas in which differentiation between the sexes seems logical are working conditions (particularly in industrial situations), assignments in the armed forces, athletics, and police and fire protection programs. In the past, legislatures and courts

have recognized the advisability of applying different laws and regulations to the sexes in these fields.

Working conditions. One committee witness pointed out that factories with union contracts lay workers off according to seniority systems, when such lay-offs are necessary. Lay-offs often result in job reassignments for the workers who continue to be employed in the factories, and female workers are often reassigned to jobs which require greater physical skill or strength than their previous jobs. Employers presently attempt to compensate for this type of inappropriate job reassignment, but would be unable to do so under the Equal Rights Amendments. 38/ Such inappropriate job reassignments may lead to the breakdown of the health of female workers, loss of employment because of inability to perform the new job, and ineligibility for unemployment compensation.

Another witness before the committee, testifying in favor of the Equal Rights Amendments, agreed that there is a need for protective regulations for female industrial workers and was under the impression that such regulations are allowable under the Equal Rights Amendments. 39/ No other committee witness was under this impression - others concluded that protective work rules are not allowable under the amendments. This conclusion is correct, but is bad policy and harmful for female industrial workers.

The armed forces. Testimony before the committee indicated clearly that the federal Equal Rights Amendment will require sex-neutrality in the armed forces, including sex-neutrality of military assignments. This sex-neutrality will extend to combat assignments. This conclusion was also reached in the Congressional debate on the amendment 40/ and in the Virginia study. 41/ Because of the basic agreement about this effect of the federal amendment, the committee did not deal extensively with this issue. Although the issues of female prisoners of war, treatment of such prisoners by enemy forces, and the effects of sex-integrated combat units on combat readiness were raised, they were not explored further by the committee. Many proponents of the federal amendment expressed satisfaction with the effect of the amendment on the armed forces, while opponents expressed strong disapproval.

Inequities in the eligibility of women for military service and in the treatment of military women can be corrected without a constitutional amendment which would require inappropriate blanket sex-neutrality within the armed forces.

Athletics. Testimony from the Colorado High School Activities Association, a women's coach, and several doctors was strong in opposition to the effects of the Equal Rights Amend-

wants on school athletic programs. 42/ This opposition was based in part on the Supreme Court's decision that "separate educational facilities are inherently unequal" 41/ and on recent judicial decisions in Pennsylvania and Illinois. 43/ These witnesses expressed a strong preference for the retention of separate athletic teams for male and female athletes.

Recent emphasis on women's athletics in Colorado has brought more female athletes into competition than ever before - this progress occurred without an Equal Rights Amendment. Adoption of the federal Equal Rights Amendment, or an unfavorable judicial decision under the state Equal Rights Amendment, could easily bring the increased participation of females in athletic programs to a halt.

The committee testimony in the area of athletic programs compared the quick passage of the federal Equal Rights Amendment in Congress with the three-year study which resulted in the adoption of regulations for school athletic programs by the United States Department of Health, Education, and Welfare under Title IX of the federal Education Amendments of 1972. The testimony noted that the Title IX guidelines provide flexibility in school athletic programs, particularly in regard to contact sports. However, even more flexibility is desirable, since, even in non-contact sports such as track, swimming, tennis, and golf, female athletes cannot compete effectively against male athletes. If females are to continue to have more opportunity for participation in athletic programs, they should only be required to compete against other females. If forced into sex-integrated athletic competition under the Equal Rights Amendments, very few female athletes will choose to participate.

Police and fire protection. The issue raised before the committee in relation to the effects of the Equal Rights Amendments on police and fire protection programs was the possibility that the amendments might result in the lowering or abolishing of physical standards for employment in such programs. This would be a threat to the effectiveness of the programs and to the safety of co-workers. (It should be noted that a relevant controversy occurred during the period of the committee's hearings, involving requirements for employment in the Aurora Police Department. 45/) Fear was expressed to members of the committee by relatives of male employees in police and fire departments that the employment of females in those departments might jeopardize the safety of police and fire personnel in critical situations requiring physical skill and strength. (A companion issue raised in relation to police and fire departments was that of privacy in sleeping and personal facilities - see the discussion of this issue on page 11 of this report.)

Summary. Differences between the sexes which are prescribed by the laws of nature should be recognized in the laws made by people for the governing of society. The fact that such recognition is not allowable under the Equal Rights Amendments is a valid reason for opposition to the amendments.

The Federal Equal Rights Amendment as a Threat to States' Rights

During the committee hearings, several witnesses expressed concern about Section 2 of the proposed federal Equal Rights Amendment, its enforcement clause. The clause reads as follows:

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

The concern over the amendment's enforcement clause was articulated during the Congressional debates by Congressman Edward Hutchinson:

...it is not beyond the realm of possibility that the Court may find, sometime in the future, that by this amendment, particularly the second section thereof, Congress was vested with power to take from the States the whole body of domestic relations law and perhaps part of their property law as well. These vast powers, further destroying the strength of our Federal system, would of course be exercisable by Congress only under the definitions given by the Court to the "Equality of rights" phrase. 46/

Proponents of the federal Equal Rights Amendment suggest that similar enforcement clauses exist in seven other amendments to the United States Constitution and that the amendment's enforcement clause does not represent a broad delegation of power to the federal government. However, a careful reading of these seven amendments show that in all seven cases, power was transferred from the state legislatures to the federal government. The 15th, 19th, 23rd, 24th, and 26th Amendments all deal with voting rights. Prior to their passage, the state legislatures had power to determine qualifications for voting, and, after their passage, this power shifted to a great extent to the federal government. The 13th Amendment prohibits slavery, and no state has acted in this field since the passage of the amendment. The 14th Amendment requires "equal protection of the laws" and has been the basis of substantial amounts of litigation since its

adoption; much of this litigation occurs in federal courts, shifting power away from the state legislatures.

Congressman Hutchinson observes further:

All they will have accomplished is to change the forum, from the legislature to the courts. They will transfer the power to determine public policy in this important and rather fundamental area out of the legislative branch of government, the branch most directly responsive to the public will, and place it in the judiciary, the branch least responsive, and the Federal judiciary is not reachable by the people at all. 47/

The executive branch of the federal government favors this shift of power under the federal Equal Rights Amendment. Operating under an \$80,000 budget of federal tax dollars, the Presidentially appointed Citizens' Advisory Council on the Status of Women, staffed by the United States Department of Labor, expends time and money in order to persuade the states to give up power by ratifying the federal Equal Rights Amendment. 48/ This federal agency is assisted in its efforts by the Colorado Commission on the Status of Women, a state agency composed of 49 women and one man, with an appropriation of \$24,500 for the 1975-1976 fiscal year. The chairperson of this state commission testified that one of the major priorities of the commission is continued support of the federal Equal Rights Amendment and that the commission and its staff work actively for this goal. 49/

Thus, Congress and the executive branch of the federal government, and at least one agency of the Colorado state government, actively support the ratification of the federal Equal Rights Amendment.

The legislative history of the proposed federal amendment provides additional indications that Congress clearly intended to assume traditional state powers through its ratification. Congress rejected the "Wiggins amendment" to the Equal Rights Amendment's enforcement clause, which would have stated that:

This article shall not impair the validity of any law...of any State which reasonably promoted the health and safety of the people. 50/

The Wiggins amendment would have allowed state legislatures to consider, in state law, the differences between the sexes which occur because of the laws of nature (discussed on page

14 of this report). However, Congress rejected the amendment.

At one point in the Congressional debates on the federal Equal Rights Amendment, the enforcement clause of the amendment read as follows:

Congress and the several states shall have the power, within their respective jurisdictions, to enforce this article by appropriate legislation. (Emphasis added.) 51/

This version of the enforcement clause was, however, defeated in Congress, an additional indication of its intent to be the sole legislative body involved in the implementation of the federal Equal Rights Amendment following ratification.

The only national organization which has taken a specific position on the federal Equal Rights Amendment's enforcement clause is the Daughters of the American Revolution. The DAR Continental Congress passed the following resolution on April 17, 1974:

EQUAL RIGHTS AMENDMENT - SECTION 2

Whereas Section 2 of the Equal Rights Amendment states that "Congress shall have the power to enforce by appropriate legislation the provisions of this article"; and

Whereas Section 2 violates constitutional precepts since the Constitution of the United States of America provides that general political powers are reserved to the States and delegation of such powers to the Federal Government must be well defined and strictly limited; and

Whereas in several Constitutional Amendments containing similar sections it is clear that each did transfer power from the state legislatures to the Federal Government, i.e., the 15th Amendment, the 19th Amendment, the 23rd Amendment, the 24th Amendment, and the 26th Amendment; and

Whereas the 16th Amendment gave Congress the power to levy the income tax but in the absence of provisions of Section 2 the individual states retained their power to tax; and

State legislatures are the best qualified to make their own laws constructively, already have the power to enact laws concerning the needs of women, and have made laws protecting them by providing special considerations for those needs;

RESOLVED, That the National Society, Daughters of the American Revolution, continues to oppose the Equal Rights Amendment, which removes from each state legislature and transfers to the Federal Government jurisdiction over all laws making any distinction whatsoever between sexes.

A careful reading of the Congressional debate on the proposed federal Equal Rights Amendment, an analysis of the effects of other constitutional amendments containing enforcement clauses similar to that of the Equal Rights Amendment, and the observation of federal efforts in support of the Equal Rights Amendment lead to the conclusion that the ratification of the amendment would be a willful delegation of power from the state legislatures to the federal government. A responsible state legislature should realize that this shift of power is inadvisable - it takes power away from governmental bodies close to the people and gives it to a government which is very distant from the people.

The Equal Rights Amendments and the Leadership Vacuum

This nation has been crying for new leadership. Do the Equal Rights Amendments fill this need? They do not. As we have seen in the last two and one-half years in Colorado, an Equal Rights Amendment does nothing to stem the tide of divorce, to stem the tide of criminal activities, or to stem the tide of those leaving the Church - the second most important institution in the nation and the institution the role of which is to provide a society with high moral standards. Further, the Equal Rights Amendments have a very questionable effect on society's most important institution - the family.

Very few leaders in our city councils, our state legislatures, our mayors' and governors' offices, and our boards of education are married. This is because a leader must attain stability in the community and because very few single persons do so. It is very few single persons to change communities, and they frequently do.

If the trend continues to fewer marriages and less stable families, our reservoir of potential community leaders

dwindles. This reservoir of leadership has been one of America's key resources as a nation, and to dry it up is to ask for dangerous changes. The Equal Rights Amendments contribute to this trend.

It is appropriate to ask: "Should constitutional amendments be supported if they contribute to the drying up of our leadership reservoir?" The answer is "no".

The Equal Rights Amendments and Being Feminine

The Equal Rights Amendments tell women to be feminists and to cease being feminine. They tell women to cease being women and instead to be persons. They tell women to cease being called "Miss" or "Mrs." and instead to be called the unpronounceable "Ms.". These absurdities are inevitable results of constitutional amendments which tell society that it must ignore sex differences in its laws and institutions.

The November, 1975, issue of Reader's Digest includes a condensation of an article by Professor Emeritus Jacques Barzun of Columbia University. In this article, Barzun speaks of the folly of downgrading masculinity and femininity through the use of the word "person". He asks:

Suppose you get rid of chairman and spokesman
...What will you do with minuteman or Frenchman?
"Paul Revere was a minuteperson". Honestly!

Person is not a word to cherish. In mid-career at Rome, it certainly had associations with the emptiness of a mask - persona. In French, indeed, it often means nobody: "Who's there?" - "Personne"...Sound and length unsuit it for spontaneous use in dozens of ordinary places: "Yes, it's a person-made lake." "She had to be person-handled to break up the quarrel."...Must man-of-war be warperson? 52/

This sort of semantic nonsense downgrades femininity.

Even in the field of employment - in which the proponents of the Equal Rights Amendments expect the greatest benefits - any specialized work rule or benefit which recognizes the femininity of female workers will be eliminated.

The effect of the philosophy of the downgrading of femininity on young women can be easily predicted. Even without a federal Equal Rights Amendment, the feminist movement has been successful in downgrading femininity - resulting in

fewer marriages, more divorces, and fewer babies. Testimony presented to the committee indicated that more and more women are seeking psychiatric help than ever before, although a cause and effect relationship between this trend and feminism is difficult to establish.

It is appropriate to ask: "Should constitutional amendments be supported if they cause the downgrading of femininity - are such amendments good for society?" The answer is "no".

The Colorado Equal Rights Amendment and Required Statutory Change

The committee acted on a suggestion of Lawyers for Colorado's Women 53/ and conducted a computerized search of Colorado Revised Statutes 1973. This search was intended to isolate sex distinctions in Colorado law, and was based on 33 "key-words". The search resulted in a print-out of 6,629 statutory references, although the majority of these references did not represent actual sex distinctions. A similar statute search in the State of Washington resulted in what has been reported to be a "mechanical attempt to equalize the law without regard for the policy basis for the original legislation" 54/ - the effect of this attempt to change state law was negative, and the problems inherent in the "Washington approach" should be avoided. This report recognizes, however, that this approach may be the only course open to a state legislature under the dictates of a state Equal Rights Amendment.

The committee staff analyzed the statutory references printed out by the computerized search and grouped the relevant references into seven broad classifications. Two of these are significant: "statutes which explicitly treat one sex differently from the other" and "statutes which contain sex distinctions based on physical characteristics unique to one sex". To maintain that changes in such statutory references mandated by the Equal Rights Amendments are insignificant is to ignore the facts. Examples of statutes to which change would be inappropriate are:

- (1) Section 1 of Article XVII of the state constitution, which provides that "(t)he militia of the state shall consist of all able-bodied male residents of the state between the ages of eighteen and forty-five years; except, such persons as may be exempted by the laws of the United States, or of the

state". Does the Colorado Equal Rights Amendment take precedence over this provision of the state constitution? Must it be repealed?

- (2) Sections 24-34-201 et seq., Colorado Revised Statutes 1973, which create the Colorado Commission on the Status of Women. This commission focuses on the problems of women, and its very existence appears to be unconstitutional under the state Equal Rights Amendment. Must the statute creating the commission be repealed in implementation of the Colorado Equal Rights Amendment?
- (3) The statutory presumption that the "domicile of an unemancipated minor is that of his father" under most circumstances, for purposes of classification of students for the determination of tuition rates (section 23-7-103 (1) (a), Colorado Revised Statutes 1973). If this statutory presumption must be eliminated under the state Equal Rights Amendment, how will the domicile of a student be determined, and what will be the fiscal effect on our state colleges and universities?
- (4) The inclusion of maternity benefits and surgical benefits including obstetrical care under "basic hospital and medical benefits" in the "State Employees' and Officials' Group Health Insurance Act" (section 10-8-203 (2), Colorado Revised Statutes 1973). Is the state legislature required under the Colorado Equal Rights Amendment to broaden these benefits to include paternity benefits? Must the benefits be equal?
- (5) Requirements for medical tests for German measles and syphilis, applicable to female parties to a proposed marriage and to pregnant women, respectively, and not to men (sections 14-2-106 (2) (a) and 25-4-201, Colorado Revised Statutes 1973). These requirements relate to marriage and pregnancy and are intended to eliminate certain complications of pregnancy and childbirth. They are appropriate but appear to be unconstitutional under the Colorado Equal Rights Amendments.

- (6) A provision of the Colorado Social Services Code which allows the status of "dependent child" for purposes of Aid to Dependent Children if a child "has been deprived of parental support or care by reason of... the unemployment of his father" (section 26-2-103 (4) (a), Colorado Revised Statutes 1973). Would ADC caseloads increase if the word "father" were changed to "parent" in this provision of the law? Is the legislature required to condition receipt of ADC benefits on the unemployment of both parents under this law? If so, would the incentive for ADC mothers to seek employment, even part-time employment, be eliminated? The specification of the father's unemployment in this law appears to violate the state Equal Rights Amendment.

Similar difficulties appear to exist in the state's uniform building law and its restroom requirements, in the state law allowing sex differentials in insurance rates if they are based on actuarial statistics (although the rate differentials, with one exception, favor women), in the law requiring a separate women's prison, in the Colorado Employment Security Act (which includes special provisions for pregnancy benefits), in the state's abortion law, and in the Medical Practice Act of 1951.

Past legislatures acted wisely in developing laws which recognize relevant sex differences, and their work deserves respect. Changes in such laws should be considered on a case-by-case basis. The effect of the state Equal Rights Amendment, however, is to suggest that the General Assembly change these laws on a wholesale basis, under threat of court action, without regard to the consequences for taxpayers and voters. As suggested in this report's discussion of states' rights under the federal Equal Rights Amendment (see pages 17-20 of this report), the effect of the state Equal Rights Amendment is to shift the forum for such statutory change from the state legislature to the courts.

The existing system of statutory change on a case-by-case basis is far preferable to the "Washington approach", which has a negative effect on the content and policy base of state law. Nonetheless, this approach is dictated by the state Equal Rights Amendment.

Conclusion

The committee's hearings and the testimony received during those hearings demonstrated clearly that both the Colorado Equal Rights Amendment and the federal Equal Rights Amendment will have major impacts on key American institutions. These impacts will be negative. (Even though the Colorado amendment was adopted at the 1972 general election, it remains to be comprehensively implemented by the state legislature - its negative impacts are therefore not totally evident at this time. See the discussion of required statutory changes on pages 22-24 of this report.)

In this report, the negative effects which can be expected from the Equal Rights Amendments have been discussed. These negative effects relate to:

- the family, motherhood, and the baby through early childhood;
- the freedom of religion;
- traditional concepts of privacy;
- sex differences, through the ignoring of the laws of nature (specifically in relation to working conditions, the armed forces, athletics, and police and fire protection);
- states' rights;
- leadership;
- femininity; and
- Colorado law.

In addition, three major misconceptions concerning the Equal Rights Amendments have been addressed: the effects of the amendments on employment, the meanings of the terms "equal" and "equality", and the effects of the amendments on women's rights.

The issues raised in this report were not effectively raised during the 1972 session of the General Assembly (when Colorado ratified the federal Equal Rights Amendment) and during the 1972 general election campaign (when the state Equal Rights Amendment was adopted). Therefore, a second test of the Equal Rights Amendments at the polls is necessary. The committee hearings demonstrated a more significant diversity of public opinion on the amendments and a greater public

awareness of the principles and implications of the amendments than was evident in 1972. A second citizen vote relating to the Equal Rights Amendments would:

- determine whether the public shares the concerns about the effects of the Equal Rights Amendments which have been articulated in this report, and whether the public desires the retention of the state Equal Rights Amendment in the Colorado Constitution; and
- give direction to the 1977 General Assembly in considering a resolution to rescind Colorado's ratification of the federal Equal Rights Amendment.

For these reasons, and because the present General Assembly is reluctant to address the issues of repealing the state Equal Rights Amendment and rescinding Colorado's ratification of the federal Equal Rights Amendment, the only practical method of placing these issues before the voters is a citizen initiative. The initiative is the highest expression of democracy in action - this approach should be commended.

FOOTNOTES

1. Testimony of Mr. Ed Kahn, Denver attorney and visiting lecturer in law at the University of Colorado School of Law, "Summary of Meeting: Committee on the Equal Rights Amendments", August 28, 1975, p. 1.
2. Senate Report No. 92-689, 92nd Congress, 2nd Session, March 14, 1972, p. 12.
3. Brown v. Board of Education, 347 U.S. 483 (1954) at p. 495.
4. Leslie Wolf-Phillips, ed., Constitutions of Modern States: Selected Texts and Commentary (New York: Frederick A. Praeger, 1968), p. 179.
5. Ibid., p. 10.
6. Testimony of Dr. Warren J. Gadpaille, psychiatrist and psychoanalyst, "Summary of Meeting: Committee on the Equal Rights Amendments", September 11, 1975, p. 2.
7. Testimony of Mrs. Phyllis Schlafly, "Summary of Meeting: Committee on the Equal Rights Amendments", September 23, 1975, p. 4.
8. Testimony of Dr. Glen E. Braswell, Executive Director, Colorado Baptist General Convention, "Summary of Meeting: Committee on the Equal Rights Amendments", August 28, 1975, p. 8.
9. Testimony of Mrs. Dorothy McGuire, Philosophy of Christian Womanhood, "Summary of Meeting: Committee on the Equal Rights Amendments", August 28, 1975, pp. 5-6.
10. Letter submitted to Committee on the Equal Rights Amendments by Mr. Robert Coulter, Chairman, General Conference, Church of God (Seventh Day), as reproduced in committee memorandum of August 27, 1975.
11. Letter submitted to Committee on the Equal Rights Amendments by Mrs. William E. Ulery, August 26, 1975.
12. Letter submitted to Committee on the Equal Rights Amendments by Lynn Marshall, August 28, 1975.
13. Testimony of Mr. Frank Morriss, theologian, columnist, and author for Catholic publications, "Summary of Meeting: Committee on the Equal Rights Amendments", August 28, 1975, p. 10.

14. Testimony of Ms. Janath Cannon, Counselor in General Relief Society Presidency, Church of Jesus Christ of Latter-day Saints, "Summary of Meeting: Committee on the Equal Rights Amendments", August 14, 1975, pp. 4-5.
15. Testimony of Ms. Delta Bement, President, Boulder, Colorado Relief Society, Church of Jesus Christ of Latter-day Saints, "Summary of Meeting: Committee on the Equal Rights Amendments", August 14, 1975, p. 4.
16. Testimony of the Reverend Mrs. Elizabeth Muldrow, Task Force on Women, Synod of the Rocky Mountains, United Presbyterian Church in the U.S.A., "Summary of Meeting: Committee on the Equal Rights Amendments", August 14, 1975, p. 6.
17. Testimony of the Reverend Dr. James Emerson, Moderator, Presbytery of Denver, United Presbyterian Church in the U.S.A., "Summary of Meeting: Committee on the Equal Rights Amendments", August 14, 1975, p. 5.
18. Testimony of the Reverend Ms. Janet Divas, Task Force on Women, Synod of the Rocky Mountains, United Presbyterian Church in the U.S.A., "Summary of Meeting: Committee on the Equal Rights Amendments", August 14, 1975, p. 6.
19. Testimony of Dr. Dana W. Wilbanks, representative, Cabinet of Executives, Colorado Council of Churches, "Summary of Meeting: Committee on the Equal Rights Amendments", August 28, 1975, p. 9.
20. Letter of Bishop Melvin E. Wheatley, Jr., Rocky Mountain Conference, United Methodist Church, submitted to committee by Ms. Margaret Rush, Chairperson, Commission on Status and Role of Women, Rocky Mountain Conference, United Methodist Church, "Summary of Meeting: Committee on the Equal Rights Amendments", August 14, 1975, p. 2.
21. The Book of Discipline of the United Methodist Church: 1972 (Nashville, Tennessee: The United Methodist Publishing House), p. 88. As submitted to Committee on the Equal Rights Amendments by Ms. Margaret Rush, see footnote 20.
22. Excerpt from the May, 1972, statement of the Plenary Session of the American Jewish Committee, as submitted in testimony of Ms. Betty Lande, Area Director, Colorado Chapter, American Jewish Committee, "Summary of Meeting: Committee on the Equal Rights Amendments", August 28, 1975, pp. 2-3.

23. Griswold v. Connecticut, 381 U.S. 479 (1965).
24. Testimony of Mr. William E. Young, "Summary of Meeting: Committee on the Equal Rights Amendments", October 9, 1975, pp. 5-6.
25. Brown v. Board of Education, op. cit., p. 495.
26. Report of the Joint Privileges and Elections Committees of the General Assembly to the Governor and the General Assembly of Virginia: Ratification of the Equal Rights Amendment to the Constitution of the United States of America, James M. Thomson chairman (Richmond, Virginia: Department of Purchases and Supply, 1974), p. 38.
27. Hearings Before the Committee on the Judiciary, United States Senate, Ninety-First Congress, Second Session, on S.J. Res. 61 and S.J. Res. 231, James O. Eastland, chairman (Washington, D. C.: Government Printing Office, 1970) p. 74.
28. Ibid., p. 74.
29. Report of the Joint Privileges and Elections Committees, op. cit., p. 43.
30. Ibid., p. 47.
31. "Sexes Share Bunkhouse in State's Fire Stations", Los Angeles Times, July 24, 1975, pp. 3 and 30.
32. "Press Gets Wyoming Firewoman Smoldering", The Denver Post, October 17, 1974, p. 55.
33. Affidavit to Committee on the Equal Rights Amendments, October 9, 1975; from Mrs. Trinidad Walker.
34. Letter to Committee on the Equal Rights Amendments, October 7, 1975, from Shirley Arrellano.
35. "Women's Bathhouse Attendant is Male", The Washington Post, February 23, 1975, p. A13.
36. Testimony of Mr. William E. Young, "Summary of Meeting: Committee on the Equal Rights Amendments, October 9, 1975, pp. 5-6.
37. Testimony of Dr. James Miles, Chairperson, Department of Orthopedics, School of Medicine, University of Colorado, "Summary of Meeting: Committee on the Equal Rights Amendments", September 11, 1975, p. 6.

38. Testimony of Mrs. Naomi McDaniel, National President, Women of Industry, Inc., "Summary of Meeting: Committee on the Equal Rights Amendments", July 31, 1975, pp. 3-4.
39. Testimony of Ms. Carol Roderick, Coalition of Labor Union Women, "Summary of Meeting: Committee on the Equal Rights Amendments", July 31, 1975, pp. 2-3.
40. Senate Report No. 92-689, 92nd Congress, 2nd Session, March 14, 1972, pp. 13-14, pp. 36-39.
41. Report of the Joint Privileges and Elections Committee, op. cit., pp. 47-50.
42. Testimony of Mr. Ray Ball, Director, Colorado High School Activities Association, and Ms. Sharon Wilch, Administrative Assistant, Colorado High School Activities Association, "Summary of Meeting: Committee on the Equal Rights Amendments", July 17, 1975, p. 3.
- Testimony of Dr. William Doig, family practitioner and former Little League coach and official, "Summary of Meeting: Committee on the Equal Rights Amendments", September 11, 1975, pp. 1-2.
- Testimony of Dr. Harold Evenson, orthopedic surgeon, "Summary of Meeting: Committee on the Equal Rights Amendments, October 23, 1975, p. 9.
43. Brown v. Board of Education, op. cit., p. 495.
44. Commonwealth of Pennsylvania v. Pennsylvania Interscholastic Athletic Association, No. 1526 C.D. 1973 (Commonwealth Court of Pennsylvania, filed March 19, 1975).
- Hill, et al. v. Illinois High School Association, et al., Chancery No. 73-C-151 (Circuit Court, 6th Judicial District, filed February 13, 1974).
45. "Aurora Sex Bias Case Causes Loss of Police Grant", Rocky Mountain News, September 17, 1975, p. 1.
46. House Report No. 92-359, 92nd Congress, 1st Session, July 14, 1971, pp. 14-15.
47. Ibid., pp. 13-14.
48. Phyllis Schlafly, "Section 2 of the Equal Rights Amendment", The Phyllis Schlafly Report, May, 1973, p. 2.

49. Testimony of Ms. Judy Henning, Chairperson, Commission on the Status of Women, "Summary of Meeting: Committee on the Equal Rights Amendments", July 17, 1975, p. 1.
50. Phyllis Schlafly, "Dear State Legislator: The Busk Stops With You", The Phyllis Schlafly Report, February, 1973, pp. 1-2.
51. Phyllis Schlafly, "Section 2 of the Equal Rights Amendment", The Phyllis Schlafly Report, May, 1973, p. 2.
52. Jacques Barzun, "Was Paul Revere A Minute-person?", Reader's Digest, November, 1975, pp. 123-4.
53. Testimony of Ms. Leslie Lawson, Ms. Katherine Tamblin, and Ms. Andrea Williams, Lawyers for Colorado's Women, "Summary of Meeting: Committee on the Equal Rights Amendments", July 17, 1975, pp. 3-4.
54. Colorado Legislative Drafting Office Staff, "The State of Washington's Legislative Revision of its Statutes Pursuant to the Equal Rights Amendment" (memorandum presented to the Committee on the Equal Rights Amendments), July 17, 1975, p. 1.

PROPOSED COMMITTEE REPORT

COMMITTEE ON THE
EQUAL RIGHTS AMENDMENTS

Representatives Nancy Dick
and
Betty Orten
November 6, 1975

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	1
II. Committee Findings.....	2
A. Clarification of Issues of Constitutional Law.....	2
1. The Need for the Federal Equal Rights Amendment as a Matter of Constitutional Law.....	3
2. The Standard of Review under the Federal Equal Rights Amendment.....	9
3. Rejection of the "Separate but Equal" Doctrine.....	13
4. Harmonization of Constitutional Rights.....	13
5. The State Action Concept and the Equal Rights Amendments.....	14
6. States' Rights under the Federal Equal Rights Amendment.....	17
B. The Effect of the Equal Rights Amendments on Religious Practice and Doctrine.....	19
C. The Effects of the Equal Rights Amendments on Marriage and Family Law.....	24
D. Effects of the Federal Equal Rights Amendment on the Military.....	31
E. The Effects of the Equal Rights Amendments on School and College Athletic Programs.....	37
F. The Effects of the Equal Rights Amendments on Employment.....	46
G. Effects of the Equal Rights Amendments on State Statutes which Provide Financial Benefits to "Widows".....	50

	<u>Page</u>
III. Committee Conclusions and Recommendations.....	53
A. Conclusions.....	53
1. National Uniformity of Equal Rights.....	54
2. Piecemeal Revision of Existing Laws.....	55
B. Recommendations.....	55
C. Requirements for Statutory Change.....	56
Bill A - Concerning the Employment of Women	
Bill B - Providing for Sex-Neutral Survivors' Benefits	
Bill C - Concerning Equality of Treatment of Either Sex in Certain Governmental Situations	
Bill D - Providing that Sex Shall not be a Basis for Discrimination	
Bill E - Concerning Support Orders in Paternity Proceedings, and Providing for Consideration of the Mother's Capability to Provide Support	

I. INTRODUCTION

At the 1972 general election, Colorado's voters adopted the Equal Rights Amendment to the Colorado Constitution by a margin of nearly two to one (531,415 votes in favor compared to 295,254 votes against the amendment). This overwhelming support of the state Equal Rights Amendment stood as an endorsement of the previous action of the Colorado General Assembly in ratifying the proposed Equal Rights Amendment to the United States Constitution (only one member of the state legislature opposed ratification on final vote).

Nonetheless, the committee has been asked to re-examine both the action of the Colorado electorate in adopting the state amendment and the vote of the General Assembly in ratification of the federal amendment. It is the basic premise of this report that compelling evidence must be presented to justify the reversal of a clear mandate of Colorado's voters and a decisive action of the General Assembly.

The findings in this report result from a lengthy and very careful examination of the constitutional implications of the Equal Rights Amendments and the effects which the amendments can be expected to have on religious practice and doctrine, the structure of the family, the institution of marriage, the composition of the military forces, athletic programs in schools and colleges, the employment of men and women, and certain financial benefits of government action. In addition, this report examines the desirability of national uniformity of constitutional rights, the permanent nature of constitutional amendments, the need for statutory revision in implementation of the Equal Rights Amendments, and the value of constitutional amendments as expressions of community moral and ethical standards. The report's findings in these areas are set forth below.

As a result of these findings, this report concludes that the compelling evidence necessary to justify the repeal of the state Equal Rights Amendment and the rescission of Colorado's ratification of the federal Equal Rights Amendment has not and cannot be presented. Therefore, no action should be taken to effect this repeal and rescission. This conclusion is intended as official affirmation of the principles and effects of the state and federal Equal Rights Amendments.

II. COMMITTEE FINDINGS

A. Clarification of Issues of Constitutional Law

Testimony presented to the committee indicated that there is substantial disagreement concerning the need for the federal Equal Rights Amendment as a matter of constitutional law. Some witnesses before the committee testified to the effect that the 5th and 14th Amendments to the United States Constitution presently provide a constitutional basis for protection of women's rights. Others testified that women have not achieved "equal protection of the laws" under these amendments and that the federal Equal Rights Amendment is necessary in order to achieve constitutional equality of the sexes.

Testimony also indicated that there is substantial disagreement as to how the courts will interpret the federal Equal Rights Amendment after it is ratified by 38 state legislatures and becomes the 27th Amendment to the United States Constitution. Some witnesses understood that the amendment will require an absolute interpretation by the courts, allowing for no qualifications. Other witnesses understood that there are subsidiary or collateral principles of law which the courts may use to qualify the absolute interpretation of the amendment in appropriate cases.

The purpose of this section of the report is to set forth the need for the federal Equal Rights Amendment as a matter of constitutional law and to evaluate the way in which the amendment will be interpreted by the courts after it is fully ratified. The amendment will have a distinctly legal effect on existing state law and institutions, and an understanding of the need for the amendment as a matter of constitutional law and of the way in which it will be interpreted by the courts is basic to an understanding of this legal effect.

This report maintains that an explanation of the history of the Supreme Court's treatment, under the equal protection clause of the 14th Amendment to the United States Constitution, of statutes and governmental actions based on sex distinctions will demonstrate the need for the federal Equal Rights Amendment as a matter of constitutional law.

In interpreting the federal Equal Rights Amendment, the courts will look to the legislative history of the amendment in Congress in order to discern its intent in proposing the amendment for ratification -- the general legal principles

through which the amendment will be interpreted can be derived from this legislative history. An analysis of this legislative history is necessary to reaffirm the intent and meaning of Congress in proposing the amendment and to express, for the first time in Colorado, the intent of the 1972 General Assembly in ratifying the proposed amendment. This expression of intent and meaning also applies to the Colorado Equal Rights Amendment.

1. The Need for the Federal Equal Rights Amendment as a Matter of Constitutional Law

Equal protection doctrine in constitutional law. The 14th Amendment to the United States Constitution, which was ratified in 1868, contains the "equal protection clause" which reads as follows:

No State...shall deny to any person within its jurisdiction the equal protection of the laws.

In its interpretation of this clause, the United States Supreme Court has applied two major tests: (a) the "minimum scrutiny" or "reasonableness" test; and (b) the "strict scrutiny" test.

The "minimum scrutiny" or "reasonableness" test. While a literal reading of the equal protection clause indicates that state law must be applied to all persons with strict equality, the clause in most cases requires only that state legislatures use a "reasonable" basis for their legislative classifications. This "minimum scrutiny" or "reasonableness" test includes two parts: (a) the state legislature must have a constitutionally permissible purpose in passing the challenged law; and (b) the law's classification of persons must be reasonably related to the accomplishment of this purpose. Under "minimum scrutiny", the law will be upheld if it meets these two tests. The rule is summarized as follows:

1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

2. A classification having some reasonable basis does not offend against that clause

merely because it is not made with mathematical nicety or because in practice it results in some inequality.

3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. 1/

The "minimum scrutiny" test's first requirement is almost invariably met - state governments and legislatures have extremely broad "police power" under which they may enact and enforce a wide variety of laws. Further, under the test's second requirement, a legislative classification will generally be upheld if the court can itself imagine any rational basis for the classification.

Because the court can almost always find a minimum rational basis for the adoption of a legislative classification, laws containing such classifications are almost always upheld in challenges under the equal protection clause, if the "minimum scrutiny" test is applied.

The "strict scrutiny" test for "suspect classifications" and "fundamental interests". As an alternative to the "minimum scrutiny" test under the equal protection clause, the Supreme Court has developed the "strict scrutiny" test. When this test is applied, the burden of proof for justifying a legislative classification shifts to the state. The state must demonstrate that: (a) there was a "compelling interest" for the adoption of the legislative classification in question; and (b) the classification is necessary to accomplish the state's extremely important, or "compelling" purpose.

Under the "strict scrutiny" test, the court examines the character of the legislative classification under challenge, the interests of individual persons affected by the classification, and the governmental interest supported by the classification. When the court finds that the character of the classification is "suspect" or that "fundamental" individual interests are affected by the classification, it will require that the state show a "compelling" interest in adopting the classification. 2/

Examples of individual interests which have been determined to be "fundamental", and which have triggered the application of the "strict scrutiny" test under the equal protection clause, are voting rights, procreative functions, and travel rights. Other individual interests, specifically the freedom of religion and the freedom of speech, would be likely to trigger the application of "strict scrutiny" under the equal protection clause, if the court did not interpret another provision of the United States Constitution, the 1st Amendment, to protect them. 3/

Examples of legislative classifications which have been determined to be "suspect" under the equal protection clause are classifications based on race and national ancestry. 4/

The burden of proof. Under the "minimum scrutiny" test, the citizen challenging a legislative classification must prove that it does not have a "reasonable" basis. Under the "strict scrutiny" test, the government must demonstrate a "compelling interest" in a "suspect" legislative classification. Under either test, the party which bears the burden of proof is less likely to win its case. Therefore, the "minimum scrutiny" test favors the state, and the "strict scrutiny" test favors the citizen challenging a legislative classification.

Equal protection doctrine and sex discrimination - decisions prior to 1971. Prior to 1971, the Supreme Court never held a legislative classification based on sex unconstitutional under the equal protection clause. In cases before that date, the court applied the "minimum scrutiny" test to legislative classifications based on sex, and the classifications were upheld. The two most often cited relevant cases are Goesaert v. Cleary 5/, in which a prohibition of certain women from working as barmaids was upheld, and Hoyt v. Florida 6/, in which a prohibition of jury service by women was upheld. In both instances, the legislative classification used by the state, sex, was determined to be "reasonable" and not a denial of equal protection of the laws - the classifications were justified under "minimum scrutiny".

No case alleging sex discrimination under the equal protection clause prior to 1971 resulted in a ruling by the court that a "fundamental" individual interest had been affected or that a sex-based legislative classification was "suspect".

Equal protection doctrine and sex discrimination - Reed v. Reed, 1971. In 1971, the Supreme Court was presented with an opportunity to declare a sex-based classification "suspect" and to require a state to demonstrate a "compelling" interest

in the sex-based classification. However, in Reed v. Reed 7/, a majority of the court's members chose not to apply the "strict scrutiny" test. The question at issue was the constitutionality of an Idaho statute which granted preference to males in application for letters of administration of estates. "The question presented by this case, then, is whether a difference in the sex of competing applicants for letters of administration bears a rational relationship to a state objective that is sought to be advanced by the operation of (the statute in question)" and whether the statute "...advances that objective in a manner consistent with the command of the Equal Protection Clause". 8/ The court held that the statute did not meet these criteria and was therefore unconstitutional under the "minimum scrutiny" test for equal protection of the laws. In its ruling, the court stated that the clause denies states

...the power to legislate that different treatment be accorded to persons placed by statute into different classes on the basis of criteria wholly unrelated to the objective of the statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." 9/

Although the court did not apply the "strict scrutiny" test in Reed v. Reed, some legal commentators and students of constitutional law believe that the court actually applied a standard stricter than the "minimum scrutiny" test but less strict than the "strict scrutiny" test.

Equal protection doctrine and sex discrimination - decisions after 1971. Since Reed v. Reed, the pattern of decisions of the court in cases involving sex discrimination has been erratic. Frontiero v. Richardson 10/ is considered to be the foremost decision of the court in the area of sex discrimination. At issue in Frontiero was an Air Force regulation which required proof that the husband of an Air Force woman was actually dependent upon her for financial support as a condition for dependency benefits, even though the wives of Air Force men were automatically granted the same benefits. The court found that this differential treatment of men and women violated the due process clause of the 5th Amendment to the United States Constitution. Eight of the members of the court joined in this judgment. Four of these justices agreed that "...classifications based upon sex, like classifications based upon race, alienage, and national origin, are inherently suspect and must therefore be subjected to strict judicial

scrutiny". 11/ The remaining four concurring justices, however, did not find it necessary to the judgment of the case to declare sex an "inherently suspect" legislative classification. Their reasoning was based largely on the fact that the federal Equal Rights Amendment is in the process of ratification - the four justices felt that it was an inappropriate time to declare sex a "suspect" classification.

Based on the Frontiero decision, nonetheless, it was widely believed that the court would apply the "compelling state interest" test in subsequent sex discrimination cases as strictly as it had applied that test in examining classifications based on race.

This belief was shown to be incorrect in Kahn v. Shevin. 12/ The Kahn case involved a challenge to a Florida statute which made a \$500 property tax exemption available to all widows, without regard to need or income, but not to widowers. A majority of the court applied the "minimum scrutiny" test and reasoned that the Florida statutory sex differential was allowable because of past economic discrimination against women in job and salary availability - the sex differential was determined to be a "reasonable" method for compensating for this past discrimination. The dissenting opinion in Kahn found the sex-based classification "inherently suspect" and subjected it to the "strict scrutiny" test - under that test, these dissenting justices found a "compelling state interest" for the classification but ruled that it should nonetheless have been invalidated under the equal protection clause because of the availability of a less drastic means for achieving its objective. The dissent also viewed past economic discrimination against women as a "compelling state interest" which could justify the discriminatory impact of the statute on men.

Thus, although the majority and dissenting opinions purported to apply different standards of constitutional interpretation in Kahn - the "minimum scrutiny" and "strict scrutiny" tests - both opinions viewed past sex discrimination as either a "reasonable" or "compelling" state interest in justification of a statutory sex differential.

The Kahn decision demonstrates that the view of sex based classifications as "inherently suspect" remains a minority view on the court, and that the "compelling state interest" test remains an acceptable justification for sex differentials in state law or government actions. It appears that the court is willing to apply the "compelling state interest" test far more leniently in sex discrimination cases than in challenges of racial discrimination. The Kahn decision also demonstrates

that a majority of the court is willing to uphold "benign" sex discrimination when it favors women.

Another 1974 decision, Geduldig v. Aiello, 13/ upheld a California unemployment insurance statute which excluded all disabilities related to pregnancy from unemployment coverage. The dissenting opinion in Geduldig repeated the view that sex-based classifications are "inherently suspect" and specifically viewed the majority opinion in the case as a retreat from the Reed and Frontiero decisions.

Inadequacy of the equal protection clause in sex discrimination challenges. The history of the development of equal protection doctrine in sex discrimination challenges demonstrates that the members of the Supreme Court are willing to deal with such challenges in a variety of ways under the 14th Amendment - "minimum scrutiny", "strict scrutiny", and a test mid-range between these two extremes. However, this history also demonstrates that a majority of the court has never been willing to declare sex-based classifications "inherently suspect" under the 14th Amendment's guarantee of equal protection of the laws. The 14th Amendment is, in actual interpretation by the court, inadequate as a constitutional tool for the elimination of sex discrimination through state action.

Conclusion. The assertion that the federal Equal Rights Amendment is unnecessary in light of the 14th Amendment's guarantee of equal protection of the laws does not take into account the history of equal protection doctrine in sex discrimination cases brought before the Supreme Court. The court has not applied equal protection doctrine to sex discrimination cases in a consistent or clear manner.

Only a separate constitutional amendment prohibiting the denial or abridgment of rights on the basis of sex through state action can provide an adequate constitutional basis for the elimination of sex discrimination in legal and governmental action. The federal Equal Rights Amendment offers the only certain means for achieving the goal of equality of legal rights for men and women.

In addition to its necessity as a matter of constitutional law, the federal Equal Rights Amendment is necessary to provide an impetus for broad-scale legal reform which cannot be effected by individual decisions of the courts. Litigation on a case-by-case basis is an extremely expensive and uncertain process and can achieve genuine legal reform only in terms of decades. A sex-discriminatory statute was not held unconstitutional under the 14th Amendment's equal protection clause until 103 years after the adoption of that amendment.

The federal Equal Rights Amendment will not eliminate the necessity for litigation of specific challenges to sex-discriminatory laws, but the amendment will provide a clear guide to the courts for the invalidation of statutes which abridge or deny equal application of the laws on account of sex.

2. The Standard of Review under the Federal Equal Rights Amendment

Substantial disagreement among witnesses before the committee centered around conflicting predictions of the ways in which the courts will interpret the federal Equal Rights Amendment following ratification. The courts are necessarily looked to as arbiters of the effects which the amendment will have on legal and social institutions.

This report maintains that the judicial process of determining the meanings of the amendment need not be uncertain or haphazard. The courts, in interpreting a new amendment to the United States Constitution, will look to the amendment's legislative history in Congress to discern the intent of that body for the meaning of the amendment. The courts do not operate in isolation from the rest of society. They respond to legal, social, and political interpretations in giving judicial construction to a new amendment. In construing the federal Equal Rights Amendment, the courts will give substantial weight to the Congressional interpretation of the amendment and to the interpretation of this General Assembly in ratifying the amendment and reaffirming its ratification through this report.

The legislative history of the federal Equal Rights Amendment. The legislative history of the federal Equal Rights Amendment is unusually comprehensive and clear. The history of the amendment in Congress from 1923, when it was first proposed, to 1971 is adequately set forth in an article in the Yale Law Journal, "The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women". ^{14/} This article is of particular significance because its explanation of the theory of the federal Equal Rights Amendment was expressly adopted as authoritative by Congress in the debates which led to the proposal of the amendment for ratification by the state legislatures in 1972. ^{15/}

The following Congressional reports form the core of the legislative history of the federal Equal Rights Amendment. They were developed after the Yale Law Journal article was written, and they incorporated the article's theories:

- the separate views of Congressman Don Edwards and 13 other members of the House Committee on the Judiciary in House Report No. 92-359, 92nd Congress, 1st Session (1971); and
- Senate Report No. 92-689, Senate Committee on the Judiciary, 92nd Congress, 1st Session (1972).

The Supreme Court traditionally emphasizes and defers to the understandings of Congress in adopting laws and proposing constitutional amendments. The court will accordingly recognize that Congress relied heavily on the Yale Law Journal article for its interpretation of the federal Equal Rights Amendment.

The clarity of the legislative history of the federal Equal Rights Amendment is enhanced by the fact that both houses of Congress passed the same version of the amendment. This remarkable unanimity is expressed fully in the majority report of the Senate Committee on the Judiciary, as cited above.

This report fully endorses the legislative history of the federal Equal Rights Amendment in Congress as an accurate interpretation of the intent and meaning of the amendment. This endorsement provides a basis from which the courts can analyse and interpret the amendment.

The remainder of this part of the report, dealing with additional issues of constitutional law, discusses several issues raised during the committee hearings in order to accurately set forth the legal principles involved in those issues and to develop a specific guide for interpretation of the Equal Rights Amendment.

The absolute prohibition of sex discrimination. As explained earlier in this report, the Supreme Court has never applied the equal protection clause's "strict scrutiny" test to a challenge of a legislative classification based on sex. Clearly, the federal Equal Rights Amendment will require as a minimum that the court apply this test in reviewing such classifications. However, the legislative history of the amendment demonstrates that Congress intended the court to apply an even higher standard of review - the absolute prohibition of sex-based classifications, with two well-defined exceptions. (These exceptions are discussed separately immediately below.)

The Yale Law Journal article states that the "strict scrutiny" test would not be an adequate standard of review under the federal amendment:

...it follows that the constitutional mandate must be absolute. The issue under the Equal Rights Amendment cannot be different but equal, reasonable or unreasonable classifications, suspect classification, fundamental interest, or the demands of administrative expediency. Equality of rights means that sex is not a factor. 16/

...no system of equal rights for women can be effective which attempts to litigate in each case the judgment whether the differentiation is "reasonable" or "justified" or "compelled". As a matter of constitutional mechanics, therefore, the law must start from the proposition that all differentiation is prohibited. 17/

For reasons stated earlier, this absolute prohibition of sex discrimination (as a basis for the application of the federal amendment) is preferable to the "strict scrutiny" test - this statement is supported by the legislative history of the federal Equal Rights Amendment in Congress.

The "right of privacy" qualification to the amendment's absolute prohibition of sex-based classifications. As demonstrated by the amendment's legislative history, Congress recognized the "right of privacy" doctrine, as recently developed by the Supreme Court 18/, as a major qualification to the application of the amendment's prohibition of sex-based classifications. 19/ The federal Equal Rights Amendment must take its place in the total framework of the United States Constitution. Of particular importance is the relationship of the amendment to the constitutionally guaranteed "right of privacy" - Congress recognized that the implementation of the amendment can only take place in a manner consistent with individual privacy under that constitutional guarantee.

This report recognizes that the "right of privacy" has only been specifically applied to date in cases involving contraception and abortion 20/, and that it is

...impossible to spell out in advance the precise boundaries that the courts will eventually fix in accommodating the Equal Rights Amendment and the right of privacy. In general, it can be said, however, that the privacy concept is applicable primarily in situations which involve disrobing, sleeping, or performing personal bodily functions in the presence of the other sex. 21/

In the context of the federal Equal Rights Amendment, the "right of privacy" will protect an individual's right to perform such personal functions without intrusion by members of the opposite sex where such functions are customarily performed. Further, the

...great concern over these matters expressed by opponents of the Equal Rights Amendment seems 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. 22/

The "unique physical characteristics" qualification to the amendment's absolute prohibition of sex-based classifications. The absolute standard of review which Congress intended for the court to apply in interpreting the federal Equal Rights Amendment is similarly qualified by the "unique physical characteristics" principle. 23/ Under this principle, specific laws may be based on physical factors found in only one sex - such laws will not be precluded by the absolute prohibition of sex-based classifications. Under such laws, an individual of either sex may be benefited or may be subject to a restriction because of a characteristic found in all, or some, women, but in no men, or in all, or some, men, but in no women. The law may not, however, overlook the fact that many individual characteristics are common to both sexes.

The "unique physical characteristics" principle is limited to physical characteristics and does not extend to psychological, social, or other characteristics of the sexes. Examples of laws which could constitutionally be applied only to one sex under the principle are those dealing with pregnancy and childbearing or the determination of paternity.

Congress, through its reliance on the Yale Law Journal article, declared that it was critically important to the interpretation of the amendment that any justification based on a "unique physical characteristic" be strictly scrutinized and not accepted at face value without careful analysis. Six specific and relevant factors are set forth in the legislative history 24/, which are to be examined by the courts in evaluating the defense that a "unique physical characteristic" requires a law, rule, or regulation which affects only one sex.

Summary. Two exceptions to the principle of absolute prohibition of classifications based on sex are articulated in the legislative history of the federal Equal Rights Amendment. The first is the "right of privacy" qualification, which will permit either statutes or governmental institutions to make distinctions based on sex when necessary to preserve

the individual's right to personal privacy in matters relating to bodily functions. The second exception is the "unique physical characteristics" test. This test will, in certain narrowly defined circumstances, permit laws to apply by their terms only to one sex, if those laws deal with circumstances connected with physical characteristics found only in that sex. Beyond the small number of sex-based classifications which will be justified by either the "right of privacy" qualification or the "unique physical characteristics" test, all statutes or other forms of state action subject to the amendment will be required to be completely sex-neutral.

3. Rejection of the "Separate but Equal" Doctrine

Application of the "separate but equal" doctrine under the federal Equal Rights Amendment has been authoritatively rejected by the legislative history of the amendment in Congress. ^{25/} This report endorses this expression of Congressional intent. The "separate but equal" doctrine was rejected because "separate" is in fact rarely "equal". If the doctrine were maintained under the amendment, the absolute prohibition of sex discrimination would be weakened. Continuance of the doctrine would in actuality only serve to perpetuate inequities in the provision of governmental benefits and restrictions. This issue typically arises in relation to separate men's and women's prisons, and this report takes note of efforts currently underway in Colorado to integrate correctional facilities and programs by sex. ^{26/} (The "right of privacy" qualification to absolute application of the amendment to facilities connected to disrobing, sleeping, and the performance of personal bodily functions will, of course, continue in spite of the rejection of the "separate but equal" doctrine. The rejection of the "separate but equal" doctrine may be tempered in relation to school and college athletic programs -- see pages 37-46.)

4. Harmonization of Constitutional Rights

Concern has been expressed to the committee that the federal Equal Rights Amendment (which, when ratified by the required number of state legislatures, will become the 27th Amendment to the United States Constitution) will supercede other constitutional guarantees contained in previously adopted amendments simply by virtue of the fact that it will have been added to the constitution at a later date.

It is clear, however, that the courts view the federal constitution as a whole and complete document and make every effort to harmonize its provisions with one another. Dr.

Bill Beaney, Professor of Law, University of Denver, stated before the committee that it is characteristic of Anglo-Saxon jurisprudence to deal with a "composite" of constitutional rights rather than with individual rights in isolation. 27/ Dr. Ruth Bader Ginsburg, Professor of Law, Columbia University, has stated that "the equal rights amendment is appropriately harmonized with other constitutional principles". 28/

There is no valid principle of constitutional interpretation which justifies concern that the 27th Amendment to the federal constitution will eliminate other constitutional rights simply because of the fact that it will have been adopted subsequent to the adoption of those parts of the constitution which include the other guarantees.

5. The State Action Concept and the Equal Rights Amendments

The proposed federal Equal Rights Amendment provides that equality under the law shall not be denied or abridged "by the United States or by any state". The state Equal Rights Amendment places a similar restriction on the actions of the State of Colorado and its political subdivisions. As with the 14th Amendment to the United States Constitution, therefore, the legal effect of the Equal Rights Amendments is confined to and applies only to "state action". The Supreme Court has held that the equal protection clause of the 14th Amendment does not apply to private discrimination, but only to discrimination by state governments, whether through statute, through the action of government officials, or through the actions of private entities which are so "significantly involved" with the state that their actions are tantamount to state action.

As far as the Equal Rights Amendments are concerned, the courts will have to determine what actions should be held part of the public sector, in which different treatment on account of sex is forbidden, and what actions are part of the private sector, in which different treatment on account of sex is allowed. Although it cannot be said with certainty that the state action principles developed under the 14th Amendment will be applied under the Equal Rights Amendments, they will at least have a great influence and offer some predictability as to the effect the amendments will have on various institutions and actions.

There are two major tests which the Supreme Court applies to determine whether state action is present. The first is that state action depends upon the nature and degree of state involvement. The second is that state action depends upon the nature of the function being performed. Both the

"state involvement" and the "public function" concepts lead in the same direction and ultimately to the same conclusion: "state action" takes place in the public and not in the private sector.

It is clear that in areas such as voting (already covered by the 19th Amendment to the United States Constitution), public employment, and public education, the "public function" concept requires, under the Equal Rights Amendments, that the state not discriminate on the basis of sex. However, the "public function" test has not been extensively employed under the 14th Amendment to determine whether private educational institutions, religious institutions, private single-sex clubs, banks, insurance companies, or places of public accommodation are subject to the requirement for "equal protection of the laws". The only test which appears relevant to state action doctrine under the Equal Rights Amendments is the "significant state involvement" test. ^{29/} Will, for instance, private educational institutions be held to be "significantly involved" with the state and therefore subject to the Equal Rights Amendments? A brief indication of the status of these institutions under the state action doctrine of the 14th Amendment is outlined below in an effort to apply 14th Amendment tests to the major institutions which, some have argued, will come within requirements of the Equal Rights Amendments.

Private educational institutions. As previously mentioned, there is no doubt that the amendments will eliminate discrimination on account of sex in Colorado's public schools and public university system. The question has been raised, however, as to how the amendments will effect private schools and universities. The courts have so far consistently ruled that private universities are not within the sphere of state action, regardless of the fact that they may receive funding from state and federal governments and tax exemptions of a substantial nature. In the absence of special unforeseen factors, the present court decisions on state action will apply under the Equal Rights Amendments. Therefore, private educational institutions will remain within the private sector, not subject to the constitutional requirements of the Equal Rights Amendments.

Religious institutions. As more fully discussed in a later part of this report dealing with the effect of the amendments on religious practice and doctrine, it is clear that there is less state involvement with religious institutions than with private educational institutions, because of the 1st Amendment's prohibition of the "establishment" of religion by government. The only significant involvement of the state with religious institutions is the granting of tax

exemptions for property used by the institutions. The decision of the Supreme Court in Walz v. Tax Commission of the City of New York 30/ upholding tax exemptions for religious institutions, clearly indicates that state-conferred tax exemptions alone are not sufficient to bring religious institutions within the scope of the state action doctrine.

Under the Walz decision and the traditional constitutionally insignificant state and federal involvement with religious institutions in general, the state action doctrine will not apply to religious institutions under the Equal Rights Amendments.

Banks and savings and loan associations. Although banks and savings and loan associations have never been subject to the 14th Amendment because they do not come within the scope of the state action doctrine, this report notes that Title VII of the federal Civil Rights Act of 1964 prohibits such associations from discriminating on the basis of sex in employment and that the federal Equal Credit Opportunity Act of 1974 prohibits such associations from discriminating on the basis of sex in the granting of credit. While it is doubtful that the Equal Rights Amendments will be interpreted to apply to these private institutions, it appears that federal laws enacted under other provisions of the federal constitution have already subjected these institutions to important prohibitions against sex discrimination. 31/

Insurance companies. The practices of insurance companies, under current court decisions, do not constitute state action. It appears likely that insurance companies will not be held subject to the requirements of the Equal Rights Amendments. It is noted, however, that insurance companies are subject to a variety of state laws which prohibit discrimination on the basis of sex. 32/

Private single-sex clubs. Concern was expressed to the committee that the amendments will require single-sex clubs and organizations to permit membership by persons of the presently excluded sex. Such clubs include the American Association of University Women, the Kiwanis and Rotary Clubs, Elks and Moose Lodges, Masonic Lodges, Knights of Columbus, sororities and fraternities, and many other private, single-sex clubs or organizations. It should be noted that the 1st Amendment's right to "freedom of association" must be taken into account in this context in order to protect a person's right to form or belong to an all-male or all-female club or organization, as long as those organizations are not "significantly involved" with the state. It is clear that organizations which receive no tax exemptions, which do not rely on the government for funding, which do not hold liquor or other

types of licenses issued by the state, and which do not use government facilities for their activities, are not today subject to the 14th Amendment. It can be concluded that they will therefore not be subject to the requirements of the Equal Rights Amendments.

Public accommodations. Concern was expressed to the committee over the ways in which the amendments will be interpreted in relation to places of public accommodation, such as restaurants, bars, nightclubs, hotels, apartments, and other places ostensibly open to the public but actually closed to one sex. It is concluded that places of public accommodation which are licensed by the state could be held to be so "significantly involved" with the state that their activities constitute state action for purposes of the Equal Rights Amendments. Such places of public accommodation will apparently be required to serve both sexes equally, unless there is a bona fide reason for restricting service to one sex, such as the "right of privacy" qualification as applied to a particular service. This principle is already embodied in Colorado statutes. Sections 24-34-501 (2) and (3), Colorado Revised Statutes 1973, prohibit discrimination in places of public accommodation on the basis of sex, but provide that it is not a discriminatory practice

...to restrict admission to a place of public accommodation to individuals of one sex if such restriction has a bona fide relationship to the goods, services, facilities, privileges, advantages, or accommodations of such place of public accommodation.

Summary. Since there is no evidence that the 14th Amendment principles of "state action" will not be applied to determine the scope of state action under the Equal Rights Amendments, the conclusions reached above as to which private organizations will or will not be affected by the requirements of the amendments will be valid.

6. States' Rights under the Federal Equal Rights Amendment

Section 2 of the proposed federal Equal Rights Amendment states:

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

Opponents of the amendment have characterized this enforcement clause as an invasion of states' rights; one opponent has gone

so far as to call the clause a "grab for power at the federal level". 33/ This interpretation is in error -- the correct interpretation of the federal Equal Rights Amendment's enforcement clause is set forth below.

The enforcement clause of the federal amendment does not state that only Congress has the power to enforce the provisions of the amendment. The clause gives Congress power concurrent with that of the states to implement the amendment, if it deems such implementation desirable. States will remain free under the amendment to enact or revise legislation in those areas of law constitutionally reserved for state action.

A central theory of United States constitutional law is that the federal government may exercise only those powers expressly granted to it by the constitution. Section 8 of Article I of the United States Constitution enumerates the subjects on which Congress may legislate -- this enumeration is an express granting of power to Congress. The constitution deals with states' legislative powers in precisely the opposite way. All powers not granted to the federal government are reserved for the states. This was the understanding of the framers of the federal constitution in 1787, reiterated in the 10th Amendment in 1791:

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

The legislative history of the proposed federal Equal Rights Amendment reflects this basic understanding of United States constitutional theory. In one version of the amendment, proposed in Congressional debate in 1970 and 1971, the enforcement clause was drafted as follows:

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

Both proponents and opponents of the amendment in Congress criticized this version of the enforcement clause as inappropriate and inadvisable, since it has historically been considered proper to omit reference to state enforcement powers in constitutional amendments - these powers are already set forth in the 10th Amendment.

Congress relied instead on constitutional precedent in its adoption of the present language of the amendment's en-

enforcement clause. The language of this clause is identical to that of the enforcement clause of the 14th Amendment (which requires equal protection of the laws) and is virtually the same as the language of the enforcement clauses of the 13th, 15th, 19th, 23rd, 24th, and 26th Amendments.

In addition, the language of the enforcement clause of the federal Equal Rights Amendment will confer no more power on Congress to legislate equal rights for both sexes than it now has under the enforcement clause of the 14th Amendment (identical to that of the Equal Rights Amendment). Under that amendment, Congress may define equal protection of the laws to prohibit discrimination based on sex. In fact, Congress has acted under the 14th Amendment to prohibit specific types of sex discrimination, as in Title VII of the Civil Rights Act of 1964. The enforcement clause of the federal Equal Rights Amendment cannot be said to expand a power of Congress which now exists under the 14th Amendment.

Based on the central constitutional theory of state and federal power, the express granting of enumerated powers to Congress, the reservation under the 10th Amendment of all other powers to the states, the legislative history of the federal Equal Rights Amendment, the constitutional consistency of the language of the amendment's enforcement clause, and the present power of Congress to legislate equal rights of the sexes under the 14th Amendment, it is concluded that the federal Equal Rights Amendment, through its enforcement clause, will not result in an expansion of the powers of the federal government and the invasion of states' rights.

This interpretation of the enforcement clause of the federal amendment was supported by testimony presented to the committee by a noted expert on United States constitutional law, Dr. Bill Beaney, Professor of Law, University of Denver.

B. The Effect of the Equal Rights Amendments on Religious Practice and Doctrine

Substantial concern exists about the effects which the state and federal Equal Rights Amendments might have on freedom of religion. The concern focuses on assertions that the amendments will prohibit certain churches from denying to their female members access to specified church roles and ecclesiastical positions - opponents of the amendments fear that they will lead to the forced ordination of women as religious leaders in all churches regardless of individual church doctrine. In addition, the assertion has been made that the

state and federal governments will be free under the amendments to coerce the ordination of women through the denial of income and property tax exemptions to non-complying churches.

These concerns about the effects of the Equal Rights Amendments are unfounded. This conclusion is based on an understanding of the relationships between church and state under the 1st Amendment to the United States Constitution. This understanding is set forth below.

Constitutionally-guaranteed freedom of religion. The freedom of religion clause of the 1st Amendment to the United States Constitution reads as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

The clause has been divided, for purposes of judicial decision-making, into the "establishment clause", which prohibits government establishment of religions, and the "free exercise clause", which prohibits the government from interfering in the individual's free exercise of the religion of his choice. The protections afforded to the practice of religion by the 1st Amendment are extended to cover actions of state government by the 14th Amendment to the United States Constitution, which requires that "(n)o state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States".

In general, leading judicial decisions concerning the relationships between church and state in America are based on the 1st and 14th Amendments to the federal constitution. It should be noted, however, that the Colorado Constitution includes the guarantee of religious freedom within its Bill of Rights:

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed...No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship. 35/

The distinction between governmental and private action. Neither the state nor the federal Equal Rights Amendment applies directly to the actions of churches or religious denominations. Both amendments apply only to the abridgement or denial of equal rights for the sexes through governmental ac-

tion. The federal amendment prohibits the United States government and the governments of the individual states from effecting the denial or abridgement of equality of rights; the state amendment applies the same prohibition to the governmental actions of the State of Colorado and its political subdivisions. Neither amendment can be construed to directly prohibit any action of or to place any requirement on a church or religious denomination, since neither can be considered the "state" for purposes of governmental action.

Prohibition of governmental interference in church doctrine. One of the most basic aspects of the 1st Amendment's guarantee of religious freedom is that the government may not, under any circumstances, interfere in the development and maintenance of church doctrine. The Supreme Court has declared that "both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere...the First Amendment has erected a wall between Church and State which must be kept high and impregnable". 36/ Similarly, the court has stated that

(t)here cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated...so far as the 'free exercise' of religion...(is) concerned, the separation must be complete and unequivocal...the prohibition is absolute. 37/

"The one area in which the Supreme Court makes no exceptions to state intrusion into church affairs is in matters of doctrine and decisions concerning tenets of faith." 38/ It is clear that the 1st Amendment provides an absolute protection of the right of every church and religious denomination to develop and maintain the doctrine of its choice, including the doctrine that women's rights and roles are distinct from those of men in matters of religion; the state has no role in the determination of any religious doctrine.

Prohibition of governmental interference in matters of internal church adjudication. The "high and impregnable wall" between church and state protects not only individual tenets of religious doctrine but also the decisions of internal church adjudicatory bodies based on such tenets. In a case brought under such a church decision, the Supreme Court will consider the matters decided by the highest church tribunal to be res judicata and binding on civil courts. The court has ruled that

...the rule of action which should govern the civil courts, founded in a broad and sound view

of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church tribunals to which the matter has been carried, the legal tribunals, must accept such decisions as final, and as binding on them in their application to the case before them...(I)t would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. 39/

In a challenge of an internal church decision concerning qualifications for a chaplaincy, the court declared that

(b)ecause the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them...the decisions of the proper church tribunals on matters purely ecclesiastical, are accepted in litigation before the secular courts as conclusive. 40/

The courts assume that membership in a church or religious denomination implies consent to be governed by that church or denomination in matters of doctrine:

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned ...(a)ll who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. 41/

It is clear that the 1st Amendment provides absolute protection both to church doctrine and to internal church decisions based on such doctrine, if the doctrine and decisions are not in conflict with a "compelling state interest". If a female member of a church wishes to challenge a policy of that church which excludes her from the ministry, she must do so within the church's own adjudicatory process; the civil courts could not interfere with a church decision on the or-

dination of women without making a substantial departure from judicial precedent in such matters.

Required neutrality of tax exemptions. The freedom of religion clause declares that the state has no place in the establishment or ordering of the exercise of religion. The clause does not, however, prohibit all governmental actions which affect churches and religious denominations - the Supreme Court has developed three tests which it uses to determine whether such actions are in violation of the establishment clause. These are that: (1) the governmental action must have a valid secular legislative purpose; (2) the action must be neutral among churches and denominations - its principal or primary effect must be one which neither advances nor inhibits religion; and (3) the action must not foster an "excessive entanglement" with religion. ^{42/} The establishment clause requires that "when government activities touch on the religious sphere, they must be secular in purpose, evenhanded in operation, and neutral in primary impact". ^{43/}

State and federal laws which provide income and property tax exemptions to churches and religious denominations must meet the neutrality test of the 1st Amendment's freedom of religion clause. It is clear that this test would prohibit doctrinal coercion of churches or denominations through selective or discriminatory provision of tax exemptions - the government is not free, under the establishment clause, to require the ordination of women within churches and denominations as a condition for the receipt of income and property tax exemptions.

It is important to note that the present policy of the Mormon Church does not provide equal access to the ministry for its black members. The church has not been forced to alter this policy either because of the due process requirements of the 5th Amendment to the United States Constitution or because of the 14th Amendment's requirement for equal protection of the laws. The church's tax-exempt status has similarly not been threatened by its policy concerning the rights of black members of the church. In a letter to Ms. Barbara Burton of the National League of Women Voters' Education Fund, Dr. Ruth Bader Ginsburg (Professor of Law, Columbia University) explains this situation and its implications for the federal Equal Rights Amendment:

Your letter...inquires whether ratification of ERA would affect the tax-exempt status of churches and church schools if they continued to prohibit women from becoming ministers. Based on relevant precedent and IRS practice to date, I think the answer is a clear "No".

ERA applies only when the requisite "government action" is present. In this respect, it tracks the Fifth and Fourteenth Amendments. We have at least one current example of a church that welcomes blacks as members but does not put them on a par with whites when it comes to the ministry: the Church of the Latter Day Saints. Mormon churches continue to enjoy tax exemption. If the Fifth Amendment does not affect Mormon churches now by reason of their position on blacks, neither will ERA affect them, by reason of their position on women...

It appears virtually certain that, in the event of a challenge, courts would construe ERA in a manner that avoids collision with religious doctrine and practice relating to the ministry. 44/

Conclusion. Based on an understanding of the constitutional relationships between church and state, the distinction between governmental and private action, the prohibition of governmental interference in church doctrine and in matters of internal church adjudication, and constitutional requirements for neutral application of income and property tax exemptions, it can be affirmatively stated that the state and federal Equal Rights Amendments will neither force the ordination of women in churches and religious denominations nor threaten the tax-exempt status of churches or denominations which do not ordain women. "It is absolutely clear...that the Equal Rights Amendment will not apply to private religious institutions and will not require any particular religious organization to admit women to its ministry." 45/

C. The Effects of the Equal Rights Amendments on Marriage and Family Law

Predictions of the effects of the Equal Rights Amendments on marriage, the family, the roles assumed in marriage and the family, and property and support rights within marriage and the family generated significant amounts of discussion and controversy during the committee's hearings. This report's positions on the issues raised at those hearings and the analysis of the need for change in Colorado's marital and family laws are based on the following understandings of the actual effects of the Equal Rights Amendments.

1. Stereotyped Notions of the "Traditional American Family"

Sociological studies indicate that the existing range of marital and family relationships is exceptionally wide and diverse. This range includes families with many children, childless marriages, marriages and families supported through the employment of a single spouse (male or female), marriages and families in which both spouses are employed, marriages and families divided by divorce or death, "single-person" families, extended families, families with strong inter-personal relationships, families with inconsequential personal bonds, government-assisted marriages and families, financially stable marriages and families, families headed by only one man or one woman (statistics presented to the committee showed that 6.8 million American families are headed by women 46/), and families headed by unmarried persons.

These common-sense observations lead to the conclusion that it is unrealistic to speak of the "traditional American family", a nuclear unit headed by a husband and father, as representative of all marriages and families. It is equally unrealistic to address only the effects of the Equal Rights Amendments on this "traditional American family" -- the government has the responsibility to formulate laws and constitutional principles which recognize the reality of the full range of existing marital and family relationships.

2. Application of the "State Action" Doctrine - the Private Nature of Marital and Family Relationships

As emphasized throughout this report, the Equal Rights Amendments apply only to governmental or "state action". The history and tradition of our legal and governmental systems clearly indicate that the government and the law interfere in on-going marriages and the internal affairs of marriages and families only in extreme circumstances (e.g., child abuse, criminal assault, and enforcement of compulsory school attendance laws). The sanctity of marriage is enforced by laws such as that providing for privileged communications between spouses. The roles, duties, and responsibilities of parties to an on-going marriage and members of a viable family unit are private matters to be decided only by the persons directly involved. These matters are not to be decided by government policy. Accordingly, neither the state nor the federal Equal Rights Amendment can be expected to alter on-going, internal marital or family relationships. The assertion that the amendments will result in the "breakdown of the family" is wholly unfounded. Under the amendments, the governmental policy of non-interference in such private relationships will

continue, in the absence of a violation of a "compelling state interest".

3. The Myth of the "Marriage Contract"

A witness before the committee postulated the negative effects of the federal Equal Rights Amendment on the so-called "marriage contract", through which the parties to a marriage are said to agree to their respective duties (typically, the duty of the husband to support his wife and of the wife to provide homemaking services for the husband). ^{47/} While this report does not quarrel with the rights of husband and wife to make such arrangements on a private basis, it should be noted that this type of "contract" is neither recognized in Colorado statute nor enforceable by the state. A "marriage contract", if it may be referred to in this manner, is not enforceable during an on-going marriage -- the state recognizes and enforces marital duties, for practical purposes, only upon the legal dissolution of a marriage.

The Colorado "Uniform Marriage Act" ^{48/} imposes no duties on the parties to a marriage. The "no-fault divorce law", the Colorado "Uniform Dissolution of Marriage Act" ^{49/}, includes few previously imposed marital duties. Through its creation of a single ground for divorce (the irretrievable breakdown of the marriage) the act essentially allows the parties to a marriage to decide for themselves when and why their marriage has failed. Only upon divorce may the state impose duties and obligations on the parties, and these duties and obligations are imposed in a sex-neutral manner. ^{50/}

Nonetheless, objections to the Equal Rights Amendments are raised on the grounds that they will lead to the elimination of the so-called "marriage contract" and that they will undercut the "right to support" within an on-going marriage. These objections are based on a serious misunderstanding of the nature of present marriage law.

4. Equalized Family Support Obligation

Present Colorado law places the legal obligation for support of a family on both parents -- the law is sex-neutral. ^{51/} This fact does not mean that wives are required to take paying jobs outside the home to match their husbands' financial contributions to family support on a dollar-for-dollar basis. This assertion is wholly unfounded.

The conclusion that the Equal Rights Amendments will have this effect is similarly specious. Since January, 1973,

no woman has been forced out of her home and into the labor market by the state Equal Rights Amendment -- women are presently under no legal obligation to work outside the home. The legislative history of the federal Equal Rights Amendment demonstrates clearly that the obligation for family support can be fulfilled within the home through the provision of homemaking services, just as it can be fulfilled through financial contributions from outside employment. To suggest that homemaking services performed for the family within the home will not be legally sanctioned as fulfillment of the obligation for family support is to ignore the legislative history of the amendment and the clear intent of Congress. Further, it is this suggestion, not the intent of the Equal Rights Amendments, which shows a lack of respect for the non-economic, social contributions of the homemaker to the viability of the family unit.

5. The Child Care Controversy

There is no logical connection between either of the Equal Rights Amendments and day or residential child care centers. Nothing in the amendments requires the raising of children outside the home. The fact that many women presently work outside the home and utilize child care services is entirely an economic phenomenon and is in no way related to the amendments.

Further, for those families in which child care is an economic necessity, the Equal Rights Amendments may prove to be beneficial. If the amendments are successful in improving employment opportunities for women, and if greater economic benefits accrue to working mothers as a result, their children will have access to child care facilities of higher quality than would otherwise be the case. In this circumstance, the effects of the Equal Rights Amendments on the family unit can only be considered beneficial.

6. Marriage and the On-Going, Internal Marital Relationship

The common law theory of the merger of the personality of the wife with that of the husband has been abrogated by statute in Colorado in many instances. A brief review of these laws and the attendant circumstances reveals that many of the statutory changes required by the Equal Rights Amendments have already been effected in Colorado and leads to the conclusion that any related effects of the amendments will be minimal.

Married women's domicile. Until 1969, the rule prevailed in Colorado that a wife's domicile followed that of her husband. This rule was determined to cause significant hardship, and, in 1969, the General Assembly adopted Section 14-2-210, Colorado Revised Statutes 1973, which grants women the right to choose their own domicile.

Domicile of children. One current Colorado law makes the legal domicile of an unemancipated minor that of his father and the legal domicile of an unemancipated minor of unmarried parents that of the mother. In cases in which there is no father, the legal domicile of an unemancipated minor is that of the mother. 52/ These laws appear to violate the Equal Rights Amendments, and this report recommends an appropriate change (see Bill C, on page 57). "Emancipation" usually means economic independence from one's parents. Thus, very few persons under the age of majority are in today's society emancipated. However, many such children may in fact have residences which would be their legal domiciles if the usual rules of "physical-presence-plus-intent" were applied to their situation in place of arbitrary rules. The simplest rule is to declare that the domicile of a child is with the parent who has custody of him, or where the child actually lives for the greater part of the year, if he is above the age of custody.

Marital property laws. Sections 14-2-201 et seq., Colorado Revised Statutes 1973, relate to the rights of married women and insure that married women in Colorado have precisely the same rights with reference to property as do married men and unmarried persons. Each spouse may own his or her property separate and free of legal control of the other spouse. Married women may sue and be sued, carry on any trade or business, convey lands, and make contracts.

Under the "Uniform Probate Code" 53/, either spouse may claim the "surviving spouse's" elective share of an estate, the family allowance, and the homestead allowance. A surviving spouse of either sex has rights equal to those of the other, and no change appears necessary to comply with the Equal Rights Amendments.

Surnames of married women and legitimate children. By custom, women have adopted the surnames of their husbands upon marriage. Although not statutorily required in Colorado, this custom continues. The Equal Rights Amendments may require a statutory procedure through which married women can retain their own surnames or choose other surnames. Such legislation has been introduced in several states. In the interest of identifying married couples and children, the state might require that married persons use the same surname, which could be

any legal name upon which they both agree, the surname of either of them, some combination of their surnames, or an entirely different name. A law could be enacted which simply affirms the right of married persons to retain the surnames of their birth or to use any legal names they choose. To avoid future confusion and possible litigation on the issue, serious consideration should be given to a statutory procedure for the determination of married persons' names. A similar procedure could be enacted for determining the names of legitimate children.

The effect of married women's inability to obtain credit. The merger of the wife's identity with that of her husband under common law theory made it almost impossible for a wife to obtain credit. Recent legislation in Colorado which prohibits sex and marital status discrimination in the extension of credit will obviate past problems. ^{54/} In addition, the federal Equal Credit Opportunity Act of 1974, which became effective on October 28, 1975, will enhance the opportunities of married women in the obtaining of credit. No further statutory changes are expected to arise under the Equal Rights Amendments.

Right to consortium. In Colorado, a wife has the same right to recover for loss of consortium after her husband's death as he is afforded in similar circumstances. ^{55/} No statutory change is required by the Equal Rights Amendments.

Liability for family expenses. As explained earlier, the law in Colorado makes both the husband and wife liable for family expenses and the education of the children. ^{56/} The law applies equally to both sexes and no change is required by the Equal Rights Amendments.

Right to support. As indicated above, courts universally refuse to interfere in an on-going marriage relationship to enforce the duty of one spouse to support the other spouse and their children. As also indicated above, Colorado law does not impose a special duty of support on the husband. Section 14-6-110, Colorado Revised Statutes 1973, imposes a duty on both parents to support their children. This equality of obligation is consistent with the "Uniform Dissolution of Marriage Act" ^{57/}, which states that either or both parents owe a duty of support to the children of the marriage. The criminal non-support laws also apply equally to both sexes, with the appropriate exception of the requirement for support of the mother of an illegitimate child during childbirth ^{58/}.

The age at which men and women may marry. Under Colorado law, men and women may marry at the same minimum age (18 years) without parental consent and at the age of 16 if they

have parental consent. 59/ No change is necessary to comply with the Equal Rights Amendments.

7. Dissolution of the Marriage Relationship

Maintenance. The "Uniform Dissolution of Marriage Act" is sex-neutral in its terms. Under the provisions of Section 14-10-114, Colorado Revised Statutes 1973, either spouse may be awarded maintenance (alimony) if the conditions of the law are met. No change is necessary to comply with the Equal Rights Amendment.

Child support. Both parents are obligated under Colorado divorce law to support their children after the divorce, and either parent or both may be ordered to pay reasonable or necessary support. The factors to be considered are the financial resources of the child and of the child's custodian, the standard of living the child would have enjoyed if no divorce had occurred, the physical and emotional condition of the child and his educational needs, and the financial resources and needs of the non-custodial parent. 60/ As already noted, Colorado's criminal non-support statute applies equally to both sexes. Both maintenance and support are modifiable and can be changed by the court. 61/ No change in these statutes seems necessary to comply with the Equal Rights Amendments.

Child custody. In relation to the awarding of child custody after divorce, present Colorado statutes state only that the custody award must be determined with regard to the best interests of the child. 62/ The custody award standards are sex-neutral in their terms. No change is necessary to comply with the Equal Rights Amendments.

Division of property. Section 14-10-113, Colorado Revised Statutes 1973, requires the court, in a divorce proceeding, to set apart to each spouse his own separate property and to divide the marital property without regard to marital misconduct. This division of property occurs after several factors are considered, including the contribution of each spouse to the acquisition of marital property. 63/ Specifically, the court may take into consideration the contribution of a homemaker to the family in the process for the division of marital property -- the homemaker's contribution is recognized through the granting to him or her of an interest in the property acquired during the marriage. No changes in these provisions of law are required to comply with the Equal Rights Amendments.

8. Summary

The present basic structure of Colorado marital and family law incorporates the social and economic realities of the wide range of existing patterns of marital and family interrelationships. The basis for this body of law is that the government ought not to dictate the roles and duties of marriage partners and family members -- the law recognizes that the patterns of marital and family roles, duties, and responsibilities should be determined on an individual basis by the parties directly affected, except in extreme circumstances in which it is necessary for the state to intervene. Sex-based family and marriage roles are not dictated by governmental policy but are left to the individual discretion of members of particular families and parties to particular marriages.

The present basic sex-neutrality of Colorado marriage and family law accommodates this principle of individual determination of family and marriage roles. The Equal Rights Amendments do not require significant changes in this pattern of accommodation -- the present policy of governmental non-interference may continue under the amendments. Indeed, it can reasonably be said that objections to the sex-neutrality of Colorado marital and family law (which coincides with the requirements of the Equal Rights Amendments) represent a preference for governmental coercion of set patterns of marital and family relationships -- a preference which this report rejects.

D. Effect of the Federal Equal Rights Amendment on the Military

It seems clear that ratification of the federal Equal Rights Amendment will require that "women be fully integrated into the nation's military forces".^{64/} The implications of this requirement are discussed below in terms of: (a) the basic principle of equal obligation for military service; (b) requirements for equality of conscription; (c) exemptions from and rejections for military service; (d) qualifications for specific types of military duty, including qualifications for combat duty and combat-related services; (e) equality of enlistment opportunity; (f) equality of opportunity for promotion within the military; (g) sex-integration within the military; and (h) equality of benefits related to military service.

1. Basic Principle of Equal Obligation

There is no justification for the exclusion of women, as a class, from "equally sharing the benefits and the burdens of military service". ^{65/} There is no reason for the exemption of women from a basic obligation of citizenship - military service - solely on the basis of their sex.

2. Equality of Conscription

Although the compulsory draft was ended by Congress in 1973, 18-year-old males continue to be required to register for the standby draft. Ratification of the federal Equal Rights Amendment will require that 18-year-old females also register for the standby draft, and, if compulsory conscription is reinstated following ratification, both male and female draft registrants will be subjected to induction on the same basis.

It should be noted that a relatively small percentage of draft registrants are inducted into the armed forces. There were 1.9 million men eligible for the 1971 draft call. Of these eligible draftees, only 94,000 - less than 5.0 percent - were eventually inducted into the armed forces. ^{66/} If citizens of both sexes were subject to registration and induction on the same basis, less than 2.5 percent of eligible men and 2.5 percent of eligible women would be inducted at 1971 levels (assuming equal rates of exemption from and rejection for induction and a population equally divided between males and females). If the exemption and rejection rates for eligible females were greater than for eligible males, even fewer women would be inducted.

In light of the endorsement of the principle of equal obligation for military service, this report accepts and endorses the effect which the federal Equal Rights Amendment will have in subjecting women to registration for the draft and to compulsory conscription, if reinstated, on the same basis as for men.

3. Exemptions from and Rejections for Military Service

Nothing in the federal Equal Rights Amendment will interfere with Congress' power to establish standards for the exemption from or rejection for induction of certain categories of draft registrants under a system of compulsory conscription. The amendment will require that any such exemption or rejection standards be applied equally to eligible draft registrants of both sexes.

The most obvious type of induction standard is that of age. Congress can similarly allow exemptions from induction based on parental status (all parents, the parent filling the primary child-rearing or homemaking role, or one parent in each family can be exempted). Exemptions or rejection will almost certainly be provided for medical or psychological disability, for cases of economic hardship, for employment in essential civilian occupations, and for student status.

Most significantly, rejections for military service will be provided on the basis of minimum standards of physical condition and ability. (The standards will of course be required to relate in a demonstrable way to the actual requirements of military service.) Opponents of the federal Equal Rights Amendment assert that the majority of American women are physically incapable of serving in the armed forces. If this is the case, it is reasonable to expect that adequate physical standards for induction will prevent their conscription into the military.

In 1971, more than 95.0 percent of eligible men were rejected for or exempted from induction. The standards under which they were rejected or exempted were intended to provide for the induction of only those males who were qualified, physically and otherwise, for military service. It is illogical to assume that the same type of physical standards will result in the induction of unqualified women under the federal amendment.

4. Qualifications for Specific Types of Military Duty

The federal Equal Rights Amendment will not prohibit the assignment of military women to specific roles and activities within the armed forces based on their individual physical and occupational abilities. The amendment will, in general, prohibit the exclusion of women, as a class, from military roles and activities solely on the basis of their sex. The amendment will not "require or permit women any more than men to undertake duties for which they are physically unqualified under some generally applied standard". 67/

Opponents of the federal Equal Rights Amendment have expressed concern over the possibility that military women will, under the amendment, be forced wholesale into combat and combat-related roles for which they are said to be, as a class, both physically and psychologically unsuited. On the contrary: (a) there are no roles or activities for which all women, as a class, are unsuited; and (b) the armed forces will be free, under the federal amendment, to assign to combat duty and com-

bat-related roles only those military women who are proven qualified through careful selection and training procedures.

It should be noted that, during 1971, when less than 5.0 percent of eligible men were actually inducted into the armed forces, less than 15.0 percent of those inducted were assigned to combat branches of the armed forces - less than 1.0 percent of eligible male draft registrants were assigned to combat units. 68/ It is unrealistic to assume that a greater percentage of military women than men will be eligible for and assigned to combat roles under the Equal Rights Amendment.

Further, the possibility exists that, if military women were excluded from combat roles and if that exclusion were challenged under the federal amendment, the Supreme Court might allow the exclusion because of its established reluctance to interfere in affairs of the military and of national security. The most obvious example of this "reach of military necessity" is Korematsu v. United States 69/, in which the court allowed the exclusion of Japanese-Americans from a California "military area" during World War II. This exclusion would otherwise have been invalidated under the 14th Amendment's "strict scrutiny" test because of its nature as a classification based on race; the exclusion was, however, justified by the government's "compelling interest" in national security. It is possible that the court might apply this doctrine of military necessity to the exclusion of military women from combat roles, if it were convinced that enough military women were unsuited for combat to pose a substantial hazard to the combat abilities of the armed forces.

5. Equality of Enlistment Opportunity

The federal Equal Rights Amendment will require substantial equalization of enlistment standards for male and female volunteers for military service. In general,

minimum standards with regard to age, education, and mental and physical ability would have to be identical for men and women. Both sexes would have to be subjected to the same tests, except to the extent that certain medical criteria would be permitted to deal with the unique physical characteristics of each sex. 70/

The armed forces will not be free under the amendment to establish more exacting age and parental consent requirements for female volunteers, nor to require higher scores on entrance examinations and more extensive educational credenti-

als. Requirements for special waivers for the enlistment of women with dependent children will not be allowed unless such waivers are also required for men.

It is possible, of course, that strict or literal equalization of enlistment standards will not be allowed under the federal amendment if the equalization has the practical effect of excluding large percentages of females from enlistment (e.g., unrealistic standards for height and weight applied to both men and women volunteers) unless the strictly applied identical standards can be shown to have demonstrable relationships to the ability of the volunteer to perform in the armed forces.

Similarly, the federal amendment will mandate the substantial equalization of entrance requirements for the armed forces' officer candidate schools, for ROTC programs, for the military academies, and for specialized military preparation programs.

The effect which the federal Equal Rights Amendment will have in substantially equalizing enlistment standards and entrance requirements for military schools and preparation programs is endorsed by this report.

6. Equality of Opportunity for Promotion

The federal Equal Rights Amendment will prohibit limitations on the promotion of military personnel based solely on sex, unless the limitations can be shown to be justified by the doctrine of military necessity. The prohibition will extend to separate promotion eligibility lists and procedures, limitations on the range of ranks to which military women can be promoted, limitations on the conditions under which military women can be promoted to certain ranks, and limitations on the duration of certain promotions of female personnel.

The effect which the federal Equal Rights Amendment will have in equalizing opportunity for promotion within the armed forces is endorsed by this report.

7. Sex-Integration within the Military Forces

The federal Equal Rights Amendment will, in all likelihood, require the elimination of separate women's corps, or other types of functional units, within the various branches of the military forces. The elimination of such functional units follows from the amendment's prohibition of the exclu-

sion of women, as a class, from specific military roles and activities.

Congress evidently did not intend, however, that sexual integration encompass integrated living facilities. The legislative history shows that the constitutional right to privacy was thought to permit the military to maintain separate living quarters for men and women, so that they would not be forced to undress or perform personal functions in the presence of the opposite sex. This argument is dependent on two unsettled legal conclusions: that the right to privacy protects individuals from the embarrassment that would result from forced cohabitation and that the right so interpreted extends to military personnel. Neither conclusion, however, is unreasonable. 71/

The federal Equal Rights Amendment is also likely to result in the elimination of separate programs of basic training and officers' basic training based solely on the sex of the military trainees (present training programs for men stress discipline and physical development, while those for women focus on administrative and other specialized skills).

After the ratification of the ERA the services would still be permitted to adapt basic training to probable later assignments if they so desired, but placement in a particular training program could not be based on an overbroad sex classification...A few differences in the physical training of all women might be justified by the unique physical characteristics of the sexes. But such differences would have to correlate closely with the characteristics in question and could not be based on the generalization that women are weaker than men. 72/

Similarly, the federal amendment will prohibit the exclusion of female military personnel from specific occupational specialties within the armed forces simply: (a) on the basis that the specialties are considered to be physically too strenuous for women, as a class; or (b) on the basis that particular specialties are considered to be inherently male activities.

The effects which the federal Equal Rights Amendment will have in eliminating separate functional units for women within the military forces, eliminating separate programs of

basic training, and prohibiting disparate assignments of military women to occupational specialties are endorsed by this report.

8. Equality of Benefits Related to Military Service

While it is primarily an obligation of citizenship, military service carries with it certain tangible and intangible benefits. Full integration of women into the military will have the desirable effect of extending these benefits to women, including: (a) the use of military service as "an avenue to acceptance and social betterment" 73/; (b) economic opportunity for military personnel for whom such opportunity is limited in the civilian world; (c) training in such skills as self-defense, intergroup cooperation, and leadership; (d) vocational training and other education benefits; (e) the opportunity to earn a high school or equivalency degree; (f) ROTC scholarships; (g) "GI bill" education allowances and living stipends for veterans; (h) veterans' loan, insurance, and medical programs; and (i) veterans' preference in state and federal government employment.

Another benefit...from inclusion of women as equals in the military is that millions of women who are currently drawn into early marriage by economic inferiority and by an absence of alternative roles would gain financial and educational independence by military service. (It is also possible that) military-sponsored training for formerly 'male' jobs, if widely available to both sexes by virtue of the draft, could erode the barrier of differential skills-training that now stands between many women and equal employment opportunity. 74/

The effect which the federal Equal Rights Amendment will have in extending the benefits of military service to women is endorsed by this report.

E. The Effects of the Equal Rights Amendments on School and College Athletic Programs

This report's analysis of the effects of the state and federal Equal Rights Amendments on school and colleges athletic programs is based on the following considerations: (a) the general principle of equality of opportunity for participation in athletic programs; (b) the development of case law

under the equal protection clause of the 14th Amendment to the United States Constitution in litigation involving female participation in athletic programs; (c) the requirements of Title IX of the federal Education Amendments of 1972 for school and college athletic programs; (d) the implications of the state and federal Equal Rights Amendment for such programs; (e) the question of sex-segregated and sex-integrated athletic teams; (f) the question of sex-integration in contact sports; and (g) the question of privacy in athletic facilities.

1. Principle of Equal Opportunity

This report endorses the principle that students of both sexes should have equal opportunity for participation in school and college athletic programs, based on their interest and ability to perform in such programs. There is nothing inherently characteristic of female or male students which disqualifies them from participation in any sport, and no sport is an inherently male or female activity.

2. Case Law under the Equal Protection Clause - Female Participation in Athletic Programs

A limited series of judicial decisions concerning female participation in school athletic programs has been made under the equal protection clause of the 14th Amendment to the United States Constitution. The effect of this series of decisions has been generally to enhance opportunities for female students to participate in such programs. However, the cases have been characterized by narrow circumstances and carefully proscribed rulings. The leading cases appear to be Brenden v. Independent School District 742 75/, and Gilpin v. Kansas State High School Activities Association, Inc. 76/

Brenden invalidated a rule of the Minnesota State High School League which barred female students from participation with male students in high school interscholastic athletics. The court's ruling concerned two non-contact sports (tennis, and cross-country skiing and running). The schools involved provided teams for male but not for female students. The court determined that the league rule barring female participation on these single-sex teams was a denial of equal protection of the laws under the 14th Amendment. The classification of female students as ineligible for participation in tennis and cross-country activities was held to be arbitrary and unreasonable because of the demonstrated ability of the two female plaintiffs to compete successfully in those sports - the objective of the league rule (to exclude unqualified partici-

pants from the sports) was not met by the sex-based classification. It is important to note what the Brenden decision did not do: (a) the decision did not prohibit sex-segregated teams in tennis and cross-country (since teams for both sexes had not existed in the first place); and (b) the decision did not make any ruling on the validity of excluding female students from participation in contact sports.

Having stated what this case is about, we would also like to emphasize what it is not about... we are not faced with the question of whether the schools can fulfill their responsibilities under the Equal Protection Clause by providing separate but equal facilities for females in interscholastic athletics...second, because the sports in question are clearly non-contact sports, we need not determine if the High School League would be justified in precluding females from competing with males in contact sports such as football. 77/

Gilpin involved a similar challenge to a rule of the Kansas State High School Activities Association which prohibited sex-integrated membership on athletic teams in interscholastic contests. The decision was limited to a single plaintiff and a particular non-contact sport (cross-country running). The school involved provided a cross-country program for male but not for female students. The association's rule was found to be a violation of equal protection of the laws under the 14th Amendment through reasoning similar to that of Brenden. As in that case, the court declined to rule on the question of sex-segregated teams, although a strong intimation was made that such teams would withstand scrutiny under the equal protection clause under certain circumstances:

The Court...agrees that the development of a viable girls' interscholastic athletic program is a desirable and legitimate state interest... (f)urthermore, in light of the physiological differences between males and females, the Court agrees that the separation of male and female interscholastic competition arguably bears a substantial relation to the advancement of that interest, when separate and substantially equivalent programs for males and females are in fact in existence...(a)s previously noted, however, those facts simply do not exist in this instance. 78/

Litigation under the equal protection clause of the 14th Amendment has resulted in findings that the exclusion of women

from interscholastic athletic competition is an unconstitutional denial of equal protection of the laws. "However, courts have been careful to limit findings to noncontact sports, and in several cases, to the talented women athletes who brought the action." 79/ No such litigation has resulted in a ruling that sex-segregated teams are unconstitutional under the equal protection clause.

3. Title IX Requirements for School and College Athletic Programs

The key provision of Title IX of the federal Education Amendments of 1972, which became effective on July 1, 1972, reads as follows:

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

The coverage of Title IX is quite broad - generally, the law "bars sex discrimination in the nation's elementary and secondary schools and institutions of higher education". 80/ The basic trigger for application of the law is, of course, the receipt of federal financial assistance.

Title IX and the regulations adopted by the United States Department of Health, Education, and Welfare under Title IX are not limited in scope to athletic and sports programs. Nonetheless, the law and regulations can be expected to substantially equalize opportunities for participation in athletic and sports programs in covered institutions. In determining whether equality of opportunity exists, the following factors are to be taken into account.

- the interests and abilities of both sexes in athletic and sports programs;
- instructional opportunities for non-competitive programs;
- requirements for physical education majors and for graduation in physical education;
- informal recreational opportunities;
- intramural athletic opportunities;
- provision of athletic facilities and equipment;

- medical and training services for athletic and sports programs;
- the scheduling of games and practice times;
- funding for travel and per diem allowances;
- the availability of scholarships for athletes of both sexes;
- recruitment of athletes of both sexes;
- opportunities for media coverage of athletic events;
- selection of sports, and levels of competition within sports;
- coaching and academic tutoring opportunities; and
- housing and dining facilities and services.

This report endorses the effects which Title IX can be expected to have in substantially equalizing opportunity for participation in athletic and sports programs in covered institutions.

However, two important facts about Title IX should be noted: (a) equal funding of male and female programs is not required per se - what is required is equality of opportunity for participation in such programs; and (b) sex-segregated athletic teams are not prohibited by the law and regulations except under limited circumstances:

(e)ach sex may play on separate teams where selection is based on competitive skills or the activity is a contact sport...(h)owever, in non-contact sports if the school operates only a one-sex team and has done so in the past, members of the excluded sex must be allowed to try out for the team in question. 81/

4. The Implications of the State and Federal Equal Rights Amendments for School and College Athletic Programs

The state and federal Equal Rights Amendments can be expected to further the progress toward equalization of opportunity for participation in athletic and sports programs evidenced by litigation under the equal protection clause of the 14th Amendment and by Title IX of the federal Education Amendments of 1972. The amendments provide clearer expression of

constitutionally-guaranteed equality of the sexes than has been found by the courts under the equal protection clause, and the momentum of judicial decisions furthering equality of opportunity for athletic competition will be increased by this clear expression. Similarly, the Equal Rights Amendments provide solid constitutional ground for the requirements of Title IX.

Because of the endorsement of the principle of equal opportunity for the sexes for participation in school and college athletic programs, this report endorses the effects which the Equal Rights Amendments can be expected to have in providing clear expression in the constitution of that principle and in undergirding the principles of Title IX of the Education Amendments of 1972.

5. The Question of Sex-Integrated and Sex-Segregated Athletic Teams

There exists substantial concern about the Equal Rights Amendments and the effects which the amendments are alleged to have on the concept of sex-segregated teams in school athletics. Opponents of the amendments maintain that schools and state high school athletic associations have labored over a period of years to develop strong programs of athletic competition for female students. They assert that the Equal Rights Amendments will mandate the elimination of sex-segregated athletic teams for male and female students on a wholesale basis, and that the elimination of such teams will lead to the domination of all school athletics by male students. The assertion is based on the ruling of the Supreme Court that "separate but equal" educational institutions are "inherently unequal"; the assumption is made that this ruling will be automatically applied to the concept of sex-segregated athletic teams under the Equal Rights Amendments.

Such assertions about the effects of the Equal Rights Amendments are unfounded. There is no clear evidence to support the allegation that sex-segregated athletic teams will be prohibited by the courts under either the state or the federal Equal Rights Amendment. On the contrary, the only judicial decision to date in which a state Equal Rights Amendment has been applied to a case involving school athletic teams resulted in a strong implication that sex-segregated athletic teams are allowable under that amendment.

The decision is Commonwealth v. Pennsylvania Interscholastic Athletic Association. 82/ The case involved a challenge to a rule of the association which prohibited female students from competing or practicing with male students in athletic

contests. The challenge was based on the Pennsylvania Equal Rights Amendment, which reads as follows:

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual. 83/

The association's rule was declared unconstitutional by the court because it denied to female athletes the opportunities available to males for practice and competition in interscholastic sports, a denial of "equality of rights under the law".

It is important to note, however, that the court did not rule unconstitutional the concept of sex-segregated teams in interscholastic athletics. The case was based on a situation in which a female athlete was excluded from interscholastic athletic competition solely on the basis of her sex - in effect, no opportunity for participation was provided for female students.

The PIAA seeks to justify the challenged by-law on the basis that men generally possess a higher degree of athletic ability in the traditional sports offered by most schools and that because of this, girls are given greater opportunities for participation if they compete exclusively with members of their own sex. This attempted justification can obviously have no validity with respect to those sports for which only one team exists in a school and that team's membership is limited exclusively to boys. 84/

The assertion that the Equal Rights Amendments will eliminate wholesale the possibility of maintaining sex-segregated athletic teams for female and male students in schools and colleges is simply not borne out by the only relevant judicial decision which has considered the question.

The Equal Rights Amendments are likely to require a more sophisticated pattern of athletic team composition than represented by either of the two extremes: the pattern of total sex-segregation and the pattern of total sex-integration. In Commonwealth, the court indicated that the concept of sex-segregated teams would be inadequate to provide equality of rights under the law for a limited class of female athletes, implying that a relatively broad range of team alternatives is necessary to accommodate the skill levels of all athletes, male and female:

Moreover, even where separate teams are offered for boys and girls in the same sport, the most talented girls still may be denied the right to play at that level of competition which their ability might otherwise permit them. For a girl in that position, who has been relegated to the "'girls' team", solely because of her sex, "equality under the law" has been denied. 85/

There are a number of possibilities through which patterns of team composition might satisfy the requirements of the Equal Rights Amendments:

- completely sex-segregated teams with equal funding, equipment, coaching staffs, services, and game time allotments;
- completely sex-integrated teams, with team membership based totally on athletic ability;
- teams segregated by height and weight or other relevant physical characteristics, resulting in predominately sex-segregated teams; or
- predominately sex-segregated teams, with exceptions provided for athletes of exceptional ability.

This final possibility, that of predominately sex-segregated teams with exceptions provided for very talented athletes, is the most reasonable. The important factor to be considered in choosing among the options for team composition is whether the impact of the team policy falls equally on both sexes - disproportionate effects on either sex would be prohibited.

It is this last consideration which is central to an understanding of the allegations that the Supreme Court's invalidation of "separate but equal" schools for the races must automatically be extended to cover the issue of sex-segregated teams in school and college athletics. In Brown v. Board of Education 86/, the court carefully considered the real-world practical effects of school segregation on the educational opportunities of black children (such "intangible" factors as ability to study, the ability to engage in discussion and exchange of views with students of other races, the stigma of racial separation, the enhancement of this stigma by sanction of law, and the psychological inferiority engendered by separatism were considered). The court did not rule that "separate educational facilities are inherently unequal" on a superficial basis; rather, the circumstances surrounding separation and, most importantly, the practical effects of separation were decisive in the court's ruling. It is entirely possible that,

using the same judicial yardstick of practical effect as in Brown, courts will rule under the Equal Rights Amendments that integration of athletic teams by sex is "inherently unequal" because of the possible domination of athletic programs by male students under a system of sex-integrated teams. If this is the case, a more sophisticated pattern of team composition might be required to ensure equality of opportunity for participation in athletic and sports programs.

6. The Question of Contact and Non-Contact Sports

It is clear that the Equal Rights Amendments will provide no basis for the distinction between contact and non-contact sports in matters of equality of opportunity for participation in athletic and sports programs. In Commonwealth, the court specifically included contact sports such as football and wrestling within its ruling: "it is apparent that there can be no valid reason for excepting those two sports from our order in this case". 87/ This inclusion was made by the court even though the original complaint against the association's rule had been limited to specified non-contact sports.

Nonetheless, the distinction between contact and non-contact sports will have no special significance under the range of options for team composition open to schools and colleges under the Equal Rights Amendments; as explained above, the concept of sex-segregated teams and workable variations of the concept will be allowable under the Equal Rights Amendments.

7. The Question of Privacy in Athletic Facilities

The relationship between the constitutional "right of privacy" and the requirements of the Equal Rights Amendments is discussed elsewhere in this report. (See pages 11-12.) It is clear that these two constitutional principles can be easily harmonized and that the adoption of the federal Equal Rights Amendment will not require the integration of such public facilities as restrooms and locker rooms. Accordingly, the assertion that the Equal Rights Amendments will require the integration by sex of locker rooms and showers connected with school and college athletic programs is totally unfounded.

8. Conclusion

Because of acceptance of the principle of equal

opportunity for participation in school and college athletic programs, the enhancement of such equality of opportunity by the Equal Rights Amendments, the conclusion that the concept of sex-segregated teams will not be eliminated by the amendments, the determination that the distinction between contact and non-contact sports will not be of special significance under the amendments, and the determination that the amendments will not invade the "right of privacy" in athletic facilities, this report endorses the effects which the Equal Rights Amendments can be expected to have on school and college athletic programs.

F. The Effects of the Equal Rights Amendments on Employment

That sex discrimination exists in the area of employment cannot be disputed. Constraints of space prevent the setting forth in this report of all of the available data which demonstrate that women generally occupy industrial and professional job positions inferior to those occupied by men and that women's pay is generally inferior to that of men. For those who doubt the existence of sex discrimination in employment, a review of the voluminous literature available which documents such discrimination is convincing.

Nonetheless, a number of relevant statistics which relate to the following discussion of the effects of the Equal Rights Amendments on employment are set forth. As of 1974, approximately 46 percent of all women 16 years of age and over (nearly 36 million women) were employed, and approximately 53 percent of all women between the ages of 18 and 64 were in the labor force. Approximately 13.6 million working women had children under the age of 18. Approximately 58 percent of the female labor force in 1974 were married women living with their husbands. In 1973, women earned only 57 percent of the male median annual income. Among all working-wife families, the contribution of wives' earnings was about one-fourth of family income in 1973. Today the typical woman worker is approximately 40 years old, married, and a mother. 88/

It is correct to state that the pressure to improve employment opportunity for women and to achieve better wages for women will continue, with or without the Equal Rights Amendments. This fact is based on the following analysis of current social and economic trends.

1. The extent of women's contribution to the national economy has increased considerably over the past decade, and there is every expectation that it will continue to increase.

2. The relationship between female labor force participation and the family life cycle demonstrates that more women are returning to the labor market when their children reach school age.

3. There has been increased labor force participation of younger married women, including women with pre-school children, and it is expected that this trend will continue.

These trends demonstrate that work is becoming an increasingly important part of women's entire lives and that work is not undertaken only during the period before marriage and child-rearing. The presence of children, whatever their age, is becoming less of a deterrent to female labor force participation. These increases in female labor force participation do not occur because American women have suddenly become interested in careers on a superficial basis. On the contrary, the increase in female labor force participation can be attributed to an increase in the demand for female labor coupled with the necessity for women to contribute to the financial support of the family. In other words, the increasing labor force participation of women is directly related to economic realities, specifically including inflation. Families are becoming increasingly dependent on the incomes of two wage earners.

To the extent that increased labor force participation of women continues, as social and economic trends indicate, women's job aspirations can be expected to change. If women at all stages of the family life cycle work in greater numbers, it seems inevitable that they will begin to view work less as an interlude in a life devoted to their families and more as a lifetime activity. The consequences of this situation are predictable. Women will not be satisfied with the kinds of jobs to which they are now relegated or with inadequate pay for the work they perform. This dissatisfaction can be expected to be particularly strong for those who are divorced, widowed, and separated and cannot depend on a husband for support. This group of women is increasing in number, and a low earning potential has a devastating effect on many of them and on the well-being and education of their children.

It is beyond the capability of the Colorado General Assembly to deal with the national and international fiscal and economic problems of inflation, which are said to have "forced women out of the home and into the labor market". Likewise, it is unreasonable to suggest a system of family assistance which would guarantee that women will not have to work in order to support their families. The only reasonable approach is an attempt to enact laws which prohibit the sex-discriminatory practices in the labor market which prevent women from

obtaining suitable jobs and wages. The enactment of laws which provide equal opportunity for women to participate in the labor market is a reasonable approach in dealing with the "dual role" of working mothers. This part of the report examines the adequacy of such laws and the need for other such laws and government actions.

1. Prohibition of Employment Discrimination and Protective Legislation

Title VII of the federal Civil Rights Act of 1964 89/ was enacted as a comprehensive prohibition of private acts of employment discrimination. As amended by the federal Equal Employment Opportunity Act of 1972, Title VII also now covers virtually all state and local government employees and previously exempted employees. The law also authorizes the creation of the Equal Employment Opportunity Commission (EEOC). Title VII forbids discrimination by an employer of 15 or more persons engaged in an industry affecting interstate commerce, including employment agencies and labor unions. The law permits classifications on the basis of sex only where sex is a bona fide occupational qualification.

Protective or restrictive labor laws. The discriminatory effect of state labor laws regulating women's employment became a major issue in the promulgation of EEOC regulations under Title VII. This issue also arose in the debate over the federal Equal Rights Amendment. The controversy was based in large part on conflicting ideologies about sex roles and the family and on conflicting interpretations of whether protective legislation help or hinders the quest for equality of women in employment. This debate has in fact continued since the early 1920's, after the passage of the 19th Amendment to the United States Constitution. In 1969, however, the EEOC promulgated regulations which made it clear that no restrictive or protective state law could be used as a bona fide occupational qualification in a defense to application of Title VII. The EEOC declared that such state laws, although originally enacted 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 EEOC found that such laws did not take into account the capacities, preferences, and abilities of individual females and tended to discriminate rather than protect. 90/

For all practical purposes, the debate over the validity of restrictive or protective industrial legislation for women has come to an end, although testimony before the committee demonstrated that remnants of the controversy continue to exist. Opponents of the Equal Rights Amendments continue

to raise the "protective legislation" issue, even though the issue was resolved in 1969, and accepted by both federal and state courts.

The last restrictive labor law in Colorado, which concerned maximum hours for women, was repealed in 1969. That the issue of "protective legislation" is moot is demonstrated by the fact that Colorado law does not include any "protective" labor provisions. 91/ Greater attention and efforts should be directed to legislation which will protect workers of both sexes from unhealthy or unsafe labor conditions. In this regard, it is noted that workers of both sexes are presently protected by the state's occupational safety and health law and regulations. 92/

2. Equal Pay Act

The federal Equal Pay Act of 1963 93/, which was added as an amendment to the federal Fair Labor Standards Act of 1938 94/, was designed to eliminate the widespread discriminatory practice of paying women less than men for the same work. This law requires employers to pay equal salaries to a man and woman when their jobs require equal skill, effort, and responsibility and are done under similar working conditions. Exceptions are set forth in the act. Different salaries paid to men and women do not violate the act if they are based on a merit system, a seniority system, a system measuring earnings by quality or quantity of production, or "any other factor other than sex". The provisions are enforced by the United States Labor Department's Division of Wages and Hours.

Colorado statutes also include an "equal pay law". This law provides that:

No employer shall make any discrimination in the amount or rate of wages or salary paid or to be paid his employees in any employment in this state solely on account of the sex thereof. 95/

Under this law, "employer" includes the state, counties, cities, towns, other political subdivisions, persons, corporations, partnerships, and associations. Only the employment of household and domestic servants and farm and ranch laborers is exempted from the application of the law.

Conclusion

It is recognized that the federal and state laws discussed above have provided increasing opportunities for female

participants in the labor force. However, these laws are deficient in various respects. Under both of the federal acts cited above, employers continue to devise methods of discrimination against women in employment and wages, through use of the "bona fide occupational qualification" and "business necessity" exemptions. Additionally, Title VII still exempts employers of 15 persons or less. The only significant remedy presently available for prohibiting sex discriminatory labor practices is under Title VII, which nonetheless contains a 180-day limit within which complaints must be filed.

The federal Equal Rights Amendment will provide an additional remedy for sex discrimination by state and local governments acting in their capacities as employers. Under the amendment, complainants could bring suit for damages in federal courts.

While this issue is not discussed in this report, it is suggested that additional consideration be given to state unemployment insurance statutes to determine if coverage for pregnancy and pregnancy-related disabilities is administered in a non-discriminatory manner. The Equal Rights Amendments require that related laws be sex-neutral.

The amendments will have a significant effect on the public sector labor market and employment conditions within that market by making it clear that sex discriminatory employment practices will not be permitted. If an additional effect of the amendments is to equalize pay, promotion opportunities, and employment benefits for both sexes in the private sector labor market, the amendments will have an actual beneficial effect on working women. The working women to whom this beneficial effect will apply are most often not in the labor market by choice. For these women, equalization of employment opportunities will not be a pleasant but unnecessary "fringe" benefit of incidental employment. It will, instead, be a matter of simple justice.

G. Effect of the Equal Rights Amendments on State Statutes which Provide Financial Benefits to "Widows"

Several state statutes which provide for the payment of benefits to an insured's "widow" in the event of his death or disability were identified by a statutory search undertaken by the committee. ^{96/} Provisions for the payment of similar benefits to "widowers" (or to "surviving spouses") are absent from these statutes. The statutes include, among others, those relating to the retirement of judges ^{97/}, industrial or

workmen's compensation insurance 98/, and policemen's and firemen's pensions. 99/

The application of such laws to surviving spouses of only one sex casts doubt on the validity of the laws under the equal protection clause of the 14th Amendment to the United States Constitution. Two Supreme Court decisions have held similar provisions unconstitutional under that clause. In the latest decision, Weinberger v. Wiesenfeld 100/, the Supreme Court held that a provision of the federal Social Security Act which provided survivors' benefits only to widowed mothers and not to widowed fathers of dependent children was a denial of equal protection of the laws. It is believed, therefore, that the state statutes cited above may be unconstitutional under the 14th Amendment. They are certainly invalid under the Equal Rights Amendments.

It is therefore recommended that such statutes be amended to extend the availability of survivors' benefits to both "widows and widowers" or to "surviving spouses". (See Bill B, page 56 of this report.)

III. COMMITTEE CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

With respect to the issues raised during the committee hearings concerning the Equal Rights Amendments, this report has set forth conclusions and positions in support of the amendments. The major positions and conclusions of this report can be summarized as follows.

1. The equal protection clause of the 14th Amendment to the United States Constitution has never been used by the United States Supreme Court to hold that classifications based on sex are inherently "suspect" and can be upheld only if there is a substantial and "compelling state interest" in maintaining a discriminatory law. Only a separate constitutional amendment - the federal Equal Rights Amendment - prohibiting the denial or abridgment of rights on the basis of sex through state action, can provide an adequate and clear constitutional basis for the elimination of sex discrimination in legal and governmental action. The Equal Rights Amendments offer the only certain means for achieving equality of legal rights for men and women.
2. The legislative history of the federal Equal Rights Amendment clearly provides that the courts can utilize the "right of privacy" qualification and the "unique physical characteristic" qualification to the absolute interpretation of the amendment.
3. The federal Equal Rights Amendment, through its enforcement clause, will not result in an expansion of the powers of the federal government and the invasion of states' rights.
4. Neither the state nor federal Equal Rights Amendment will force the ordination of women in churches and religious denominations or threaten the tax-exempt status of churches or denominations which do not ordain women. It is absolutely clear that the Equal Rights Amendments will not apply to religious institutions and religious practices.
5. The Equal Rights Amendments will not dictate roles in marriage and family relationships, but will rather leave the determination of those roles to the individuals involved. Likewise, the amendments

will not lead to a "breakdown of the family", since they will neither force women out of the home nor encourage husbands and fathers to abandon their families.

6. This report endorses the effect which the federal Equal Rights Amendment will have in extending the obligations and benefits of military service to women.
7. This report endorses the effects which the Equal Rights Amendments can be expected to have on school and college athletic programs.
8. This report endorses the effects which the Equal Rights Amendments can be expected to have on employment and labor laws.

In addition to the above conclusions (which indicate that the Equal Rights Amendments are necessary and that the results of the amendments will be beneficial to society), this report also concludes that the Equal Rights Amendments are necessary and desirable for the following reasons.

1. National Uniformity of Equal Rights

The 10th Amendment to the United States Constitution reserves substantial legislative powers to the governments of the fifty states. The area of law constitutionally reserved for state action is very broad, including marriage and family law, criminal law, property law, law relating to education, and law providing for the regulation of businesses and occupations. Except in those states which have placed Equal Rights Amendments in their state constitutions, there is presently no clearly-expressed constitutional guarantee that these areas of state law will not discriminate against women or men solely on the basis of sex.

However, the federal Equal Rights Amendment will apply both to the actions of the federal government and to those of the states. The federal Equal Rights Amendment provides a nationally uniform guarantee against sex discrimination through law.

This guarantee is particularly important in our highly mobile society. In 1970, the United States Bureau of the Census calculated the population of the United States (five years old and older) at 186,094,822 persons. Of this total population, 16,080,812 persons - or 8.64 percent - had moved from one state to another between 1965 and 1970. 101/ Citizens

have a right to expect that their basic legal rights and privileges will remain substantially the same when they move from one state to another.

This report endorses the effect which the federal Equal Rights Amendment will have in providing a nationally uniform guarantee of equal legal rights for the sexes.

2. Piecemeal Revision of Existing Laws

It is recognized that the objectives of both the state and federal Equal Rights Amendments could be accomplished through legislative revision of existing laws. This approach is specifically rejected, however, because such a process would require multiple actions by fifty state legislatures and the federal Congress, by the courts and executive agencies in each of these jurisdictions, and by similar government authorities in numerous political subdivisions as well. Any plan for eliminating sex discrimination must take into account the fact that legislative change alone would not provide for an adequate and clear foundation for the attainment of legal equality of the sexes. A single, consistent, coherent theory of sexual equality before the law, and a consistent application of that theory, is scarcely possible through legislative change, since the articulation of the basic policy of equality would be divided among federal, state, and local agencies. Piecemeal legislative reform has continued for the past century and has proved to be unsatisfactory. For this reason, it is concluded that only a constitutional amendment will accomplish the fundamental change and uniform theory necessary in order to eliminate sex discrimination.

Amendments to a state or federal constitution serve as moral and ethical as well as legal standards. Although the moral and ethical example set by a constitutional amendment is not its primary purpose, it is believed that desirable social change can be facilitated by this example. The state Equal Rights Amendment has, and the federal Equal Rights Amendment will have, the beneficial effect of providing society with the clear standard that rights and privileges are not to be denied to its members on the basis of their sex.

B. Recommendations

Compelling evidence in favor of the repeal of Colorado's Equal Rights Amendment and in favor of rescission of Colorado's ratification of the federal Equal Rights Amendment has not been

presented to the committee. Therefore, it is recommended that any effort to repeal the state Equal Rights Amendment be strongly resisted and that any efforts to rescind Colorado's ratification of the federal Equal Rights Amendment be similarly rejected. This report reaffirms support for both amendments.

C. Requirements for Statutory Change

As emphasized throughout this report's discussion of the effects of the state and federal Equal Rights Amendment on Colorado law, neither of the amendments will require extensive statutory revision. The bulk of Colorado Revised Statutes 1973 is presently written in a sex-neutral manner. A relatively small number of statutory changes is recommended by this report. These changes, if enacted, will bring Colorado law into substantial compliance with the state Equal Rights Amendment and with the federal Equal Rights Amendment when it is ratified.

In recommending the following bills, the rule of "expansion or nullification" of statutory obligations and benefits was used as a guide. This rule provides that: (a) if a statute provides a benefit for or places an obligation on members of one sex, but not on members of the other sex, and if that benefit or obligation is determined to be unnecessary, it should be nullified; and (b) if a statute provides a benefit for or places an obligation on members of one sex, but not on members of the other sex, and if that benefit or obligation is determined to be necessary, it should be expanded to cover members of both sexes.

The following bills are recommended for adoption by the committee:

- Bill A, which relates to the employment of women, and which removes from law special provisions requiring minimum wages and special standards of employment conditions for women workers, which extends to both sexes the requirement for separate dressing rooms when such rooms are required incident to employment, and which requires that Colorado labor employed on public works not be hired in a manner which discriminates by sex;
- Bill B, which relates to sex-neutrality of survivors' benefits, and which requires that statutorily-man-

dated survivors' benefits be provided to "surviving spouses" in a sex-neutral manner;

- Bill C, which relates to equality of treatment of either sex in certain governmental situations, and which requires equality of reporting requirements for voter registration, equality of forwarding of earnings to spouses for work performed in county jail programs, and equality of the right to participate in county jail release programs for homemakers of either sex;
- Bill D, which relates to sex as a basis of discrimination, and which amends several anti-discrimination laws to include sex as a basis for the prohibition of discrimination; and
- Bill E, which relates to support orders in paternity proceedings, and which requires that such orders take into consideration the capability of the mother to provide support.

FOOTNOTES

1. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911) at pp. 78-9.
2. Dunn v. Blumstein, 405 U.S. 330 (1972).
3. Barbara Allen Babcock, Ann E. Freedman, Eleanor Holmes Norton, and Susan C. Ross, Sex Discrimination and the Law: Causes and Remedies (Boston: Little, Brown and Company, 1975), p. 87.
4. Ibid., p. 87.
5. Goesaert v. Cleary, 335 U.S. 464 (1948).
6. Hoyt v. Florida, 368 U.S. 57 (1961).
7. Reed v. Reed, 404 U.S. 71 (1971).
8. Ibid., at p. 76.
9. Ibid., at pp. 75-76.
10. Frontiero v. Richardson, 411 U.S. 677 (1973).
11. Ibid., at p. 682.
12. Kahn v. Shevin, 416 U.S. 351 (1974).
13. Geduldig v. Aiello, 417 U.S. 484 (1974).
14. Barbara A. Brown, Thomas I. Emerson, Gail Falk, and Ann E. Freedman, "The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women", The Yale Law Journal, 80 (April, 1971), pp. 871-985.
15. Senate Report No. 92-689, Senate Committee on Judiciary, 92nd Congress, 2nd Session, March 14, 1972.
16. Brown, Emerson, Falk, and Freedman, op. cit., p. 892.
17. Ibid, p. 909.
18. Griswold v. Connecticut, 381 U.S. 479 (1965). Eisenstadt v. Baird, 405 U.S. 438 (1972). Roe v. Wade, 410 U.S. 113 (1973). Doe v. Bolton, 410 U.S. 179 (1973).
19. Senate Report No. 92-689, op. cit., p. 12.

20. See note 18.
21. Brown, Emerson, Falk, and Freedman, op. cit., p. 901.
22. Ibid., pp. 901-902.
23. Senate Report No. 92-689, op. cit., p. 12.
24. Brown, Emerson, Falk, and Freedman, op. cit., pp. 893-896.
25. Ibid., p. 902-903.
26. Letter submitted to Committee on the Equal Rights Amendments by Mr. Gerald Agee, Director, Division of Correctional Services, Colorado Department of Institutions, as reproduced in committee memorandum of October 29, 1975.
27. Testimony of Dr. Bill Beaney, Professor of Law, University of Denver, "Summary of Meeting: Committee on the Equal Rights Amendments", September 25, 1975, pp. 3-4.
28. Letter to Ms. Barbara Burton, League of Women Voters' Education Fund, Washington, D. C., from Dr. Ruth Bader Ginsburg, Professor of Law, Columbia University, June 10, 1975, as submitted to Committee on the Equal Rights Amendments by Ms. Barbara Lee, Vice-chairperson, Council on Ministry, National Episcopal Church, "Summary of Meeting: Committee on the Equal Rights Amendments", August 14, 1975, p. 5.
29. Anne K. Bingham, A Commentary on the Effect of the Equal Rights Amendment on State Laws and Institutions, Report to the California Commission on the Status of Women's Equal Rights Amendment Project, Sacramento, California, August, 1975 (Sacramento, California: California Commission on the Status of Women), p. 23.
30. Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970).
31. Bingham, op. cit., pp. 25-6.
32. Ibid., pp. 26-7.
33. Testimony of Mrs. Phyllis Schlafly, "Summary of Meeting: Committee on the Equal Rights Amendments", October 23, 1975, p. 4.

34. Testimony of Dr. Bill Beaney, Professor of Law, University of Denver, "Summary of Meeting: Committee on the Equal Rights Amendments", September 25, 1975, pp. 3-4.
35. Article II, Section 4, Colorado Constitution.
36. McCullum v. Board of Education, 333 U.S. 203 (1948) at p. 212.
37. Zorach v. Clauson, 343 U.S. 306 (1952) at p. 312.
38. Colorado Legislative Drafting Office Staff, "Freedom of Religion and State Interference" (memorandum presented to Senator Joe Schieffelin), August 13, 1975, p. 17.
39. Watson v. Jones, 13 Wallace (U.S.) 679 (1872) at pp. 727 and 729.
40. Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1 (1929) at p. 16, emphasis added.
41. Watson v. Jones, op. cit., at pp. 728-9.
42. Colorado Legislative Drafting Office Staff, op. cit., p. 10.
43. Gillette v. United States, 401 U.S. 437 (1971) at p. 450.
44. Letter to Ms. Barbara Burton, op. cit., emphasis added.
45. Bingham, op. cit., p. 25.
46. United States Department of Labor, Employment Standards Administration, Women's Bureau (1974).
47. Testimony of Mrs. Phyllis Schlafly, "Summary of Meeting: Committee on the Equal Rights Amendments", October 23, 1975, p. 4.
48. Sections 14-2-101, et seq., Colorado Revised Statutes 1973.
49. Sections 14-10-101 et seq., Colorado Revised Statutes 1973.
50. Ibid.
51. Section 14-6-110, Colorado Revised Statutes 1973.
52. Section 23-7-103 (1) (a) and (b), Colorado Revised Statutes 1973.

53. Article 10 of title 15, Colorado Revised Statutes 1973.
54. Chapter 251, Session Laws of 1973; Chapter 59, Session Laws of 1975.
55. Section 14-2-209, Colorado Revised Statutes 1973.
56. Section 14-6-110, Colorado Revised Statutes 1973.
57. Section 14-10-115, Colorado Revised Statutes 1973.
58. Section 14-6-101, Colorado Revised Statutes 1973.
59. Sections 14-2-101 et seq., Colorado Revised Statutes 1973.
60. Section 14-10-115, Colorado Revised Statutes 1973.
61. Section 14-10-122, Colorado Revised Statutes 1973.
62. Section 14-10-124, Colorado Revised Statutes 1973.
63. Section 14-10-113 (1) (a), Colorado Revised Statutes 1973.
64. Babcock, Freedman, Norton, and Ross, op. cit., p. 163.
65. Mariclaire Hale and Leo Kanowitz, "Women and the Draft: A Response to Critics of the Equal Rights Amendment", The Hastings Law Journal, 23 (November, 1971), p. 201.
66. Statement of Senator Bayh Supporting Military Service for Women, 118 Congressional Record S4389, daily edition March 21, 1972.
67. Babcock, Freedman, Norton, and Ross, op. cit., p. 164.
68. Statement of Senator Bayh, op. cit.
69. Korematsu v. United States, 323 U.S. 214 (1944).
70. Babcock, Freedman, Norton, and Ross, op. cit., p. 169.
71. Ibid., p. 171.
72. Ibid., p. 173.
73. Hale and Kanowitz, op. cit., p. 207.
74. Babcock, Freedman, Norton, and Ross, op. cit., p. 178.

75. Brenden v. Independent School District 742, 477 F. 2d 1292, 8th Circuit (1973).
76. Gilpin v. Kansas State High School Activities Association, Inc., 377 F. Supp. 1233, D. Minnesota (1974).
77. Brenden v. Independent School District 742, op. cit., at p. 1295.
78. Gilpin v. Kansas State High School Activities Association, op. cit., at pp. 1242-3, emphasis added.
79. Jean Dubofsky, Constitutional Law and Litigation. Women and Sports: Recent Developments in HEW Regulations. Report to the Colorado Affiliate of the American Civil Liberties Union, Boulder, Colorado, October 3-4, 1975 (Boulder, Colorado: Colorado Affiliate, American Civil Liberties Union, 1975), pp. 1-2.
80. Paula Herzmark, Project Director, Equal Rights for Women in Education Project, Education Commission of the States, "Summary of Title IX Coverage and Regulation", Denver, 1975, p. 1. (Mimeographed.)
81. Ibid., p. 7. Also, see Section 86.41 (b), Federal Register, Vol. 40, No. 108, p. 24142 (June 4, 1973).
82. Commonwealth of Pennsylvania v. Pennsylvania Interscholastic Athletic Association, No. 1526 C. D. 1973 (Commonwealth Court of Pennsylvania, filed March 19, 1975).
83. Article I, Section 28, Pennsylvania Constitution.
84. Commonwealth of Pennsylvania, op. cit., at p. 3, emphasis added.
85. Ibid., p. 3.
86. Brown v. Board of Education, 347 U.S. 483 (1954)..
87. Commonwealth of Pennsylvania, op. cit., at p. 4.
88. "Fact Sheet: Highlights of Women's Employment and Education", United States Department of Labor, Employment Standards Administration, Women's Bureau (May, 1975), as submitted to Committee on the Equal Rights Amendments by Ms. Sharon Menard, Chairperson, Colorado Coalition for Equal Rights, "Summary of Meeting: Committee on the Equal Rights Amendments", October 9, 1975, p. 1.
89. 42 U.S.C. § 2000 et seq.

90. 29 C.F.R. s 1604.2 (b) (1).
91. Colorado Legislative Council Staff, "Survey of Colorado Revised Statutes 1973 - Categorization of Statutes by Sex-Neutrality or Sex-Distinctions" (memorandum presented to Committee on the Equal Rights Amendments), October 3, 1975.
92. See section 8-1-107, Colorado Revised Statutes 1973.
93. 29 U.S.C. s 206 (d).
94. 29 U.S.C. § 201 et. seq.
95. Section 8-5-102, Colorado Revised Statutes 1973.
96. Colorado Legislative Council Staff, op. cit.
97. Section 24-51-612 (4) (a), Colorado Revised Statutes 1973.
98. Sections 8-43-104 and 8-50-116, Colorado Revised Statutes 1973.
99. Article 30 of title 31, Colorado Revised Statutes 1973.
100. Weinberger v. Wiesenfeld, 95 S. Ct. 1225 (1975).
101. United States Bureau of the Census, Mobility for States and the Nation, Subject Report: 1970 Census of Population (Washington, D. C.: U.S. Government Printing Office, 1973), p. 1.

A BILL FOR AN ACT

1 CONCERNING THE EMPLOYMENT OF WOMEN.

Bill Summary

(NOTE: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. 8-1-107 (2) (b), Colorado Revised Statutes 1973,
4 is amended to read:

5 8-1-107. Powers and duties of commission - powers and
6 duties of director. (2) (b) Inquire into and supervise the
7 enforcement, with respect to relations between employer and
8 employee, of the laws relating to child labor, laundries, stores,
9 factory inspection, ~~employment-of-females~~, employment offices and
10 bureaus, mining (both coal and metalliferous), and fire escapes
11 and means of egress from places of employment and all other laws
12 protecting the life, health, and safety of employees in
13 employments and places of employment;

14 SECTION 2. 8-6-101, Colorado Revised Statutes 1973, is
15 amended to read:

1 8-6-101. Legislative declaration. The welfare of the state
2 of Colorado demands that ~~women--and~~ minors be protected from
3 conditions of labor which have a pernicious effect on their
4 health and morals, and it is therefore declared, in the exercise
5 of the police and sovereign power of the state of Colorado, that
6 inadequate wages and unsanitary conditions of labor exert such
7 pernicious effect.

8 SECTION 3. 8-6-104, Colorado Revised Statutes 1973, is
9 amended to read:

10 8-6-104. Wages shall be adequate - conditions healthful and
11 moral. ~~It--is-unlawful-to-employ-women-in-any-occupation-within~~
12 ~~the-state-of-Colorado-for-wages-which-are--inadequate--to--supply~~
13 ~~the--necessary--cost--of-living-and-to-maintain-the-health-of-the~~
14 ~~women-so-employed;~~ It is unlawful to employ minors in any
15 occupation within the state of Colorado for unreasonably low
16 wages. It is unlawful to employ ~~women--or~~ minors in any
17 occupation within this state under conditions of labor
18 detrimental to their health or morals.

19 SECTION 4. 8-6-105, Colorado Revised Statutes 1973, is
20 amended to read:

21 8-6-105. Director to investigate. It is the duty of the
22 director to inquire into the wages paid to ~~women-employees--above~~
23 ~~the--age--of--eighteen--years--and~~ minor employees under eighteen
24 years of age and into the conditions of labor surrounding said
25 employees in any occupation in this state if the director has
26 reason to believe that said conditions of labor are detrimental
27 to the health or morals of said employees, or that the wages paid

1 to a substantial number of employees are inadequate to supply the
2 necessary cost of living and to maintain such employees in
3 health. At the request of not less than twenty-five persons
4 engaged in any occupation in which ~~women-or~~ minors are employed,
5 the director shall forthwith make such investigation as is
6 provided in this article. The director, at any time, may make
7 such investigation upon his own initiative.

8 SECTION 5. 8-6-106, Colorado Revised Statutes 1973, is
9 amended to read:

10 8-6-106. Determination of minimum wage and conditions. The
11 director shall determine the minimum wages sufficient for living
12 wages for ~~women-and~~ minors of ordinary ability, including minimum
13 wages sufficient for living wages, whether paid according to time
14 rate or piece rate; the minimum wages sufficient for living wages
15 for learners and apprentices; standards of conditions of labor
16 and hours of employment not detrimental to health or morals ~~for~~
17 ~~women-and~~ for minors; what are unreasonably long hours ~~for--women~~
18 ~~and~~ minors; and what are unreasonably low wages for minors in any
19 occupation in this state.

20 SECTION 6. 8-6-107, Colorado Revised Statutes 1973, is
21 amended to read:

22 8-6-107. Powers of director - duty of employer. (1) The
23 director, for the purposes of this article, has power to
24 investigate and ascertain the conditions of labor surrounding
25 said ~~women--and~~ minors and the wages of ~~women-and~~ minors in the
26 different occupations in which they are employed, whether paid by
27 time rate or piece rate, in the state of Colorado. The director

1 has power, in person or through any authorized representative, to
2 inspect and examine and make excerpts from any books, reports,
3 contracts, payrolls, documents, papers, and other records of any
4 employer of ~~women--and~~ minors that in any way pertain to the
5 question of wages of any such ~~women-workers-or~~ minor workers in
6 any of said occupations, and to require from any such employer
7 full and true statements of the wages paid to all ~~women--and~~
8 minors by any employer.

9 (2) Every employer of ~~women--and~~ minors shall keep a
10 register of the names, ages, dates of employment, and residence
11 addresses of all ~~women-and~~ minors employed. It is the duty of
12 every such employer, whether a person, firm, or corporation, to
13 furnish to the director, at his request, any reports or
14 information which the director may require to carry out the
15 purposes of this article, such reports and information to be
16 verified by the oath of the person, or a member of the firm or
17 the president, secretary, or manager of the corporation
18 furnishing the same if and when so requested by the director; and
19 the director or any authorized representative shall be allowed
20 free access to the place of business of such employer for the
21 purpose of making any investigation authorized by this article.

22 SECTION 7. 8-6-109 (1) and (2), Colorado Revised Statutes
23 1973, are amended to read:

24 8-6-109. Methods of establishing minimum wages - wage
25 board. (1) If after investigation the director is of the
26 opinion that the conditions of employment surrounding said
27 employees are detrimental to the health or morals, ~~or--that--a~~

1 substantial--number--of--women--workers--in--any--occupation--are
2 receiving-wages;-whether-by-time-rate-or-piece--rate;--inadequate
3 to--supply--the--necessary--costs--of--living-and-to-maintain-the
4 workers-in--health; the director shall proceed to establish
5 minimum wage rates either directly or by the indirect method
6 described in subsection (2) of this section. If he selects the
7 direct method, the director shall establish the minimum wage
8 rates.

9 (2) If he adopts the indirect method, the director shall
10 establish a wage board consisting of not more than three
11 representatives of employers in the occupation in question, and
12 of an equal number of persons to represent the female employees
13 in said occupation, and of an equal number of disinterested
14 persons to represent the public, and someone representing the
15 director if he so desires. The director shall name and appoint
16 all members of the wage board and designate the chairman thereof.
17 The selection of members representing employers and employees
18 shall be, so far as practicable, through election by employers
19 and employees respectively, subject to approval and selection by
20 the director. ~~At-least-one-representative-of-the--employers;--at~~
21 ~~least--one--representative--of--the--employees;--and-at-least-one~~
22 ~~representative-of-the-public-shall-be-a-woman.~~ The members of the
23 wage board shall be compensated at the same rate and fees for
24 service as jurors in courts of record, and they shall be allowed
25 their necessary traveling and clerical expenses incurred in the
26 actual performance of their duties, to be paid from the
27 appropriations for the expenses of the division.

Dick-Orten Report - Bill A

1 SECTION 8. 8-6-110, Colorado Revised Statutes 1973, is
2 amended to read:

3 8-6-110. Wage board - duties - report - quorum. The
4 director may transmit to each wage board all pertinent
5 information in his possession relative to the wages paid or
6 material to the subject of inquiry of the occupation in question.
7 Each wage board shall endeavor to determine, if requested so to
8 do by the director, the standard conditions of employment; ~~the~~
9 ~~minimum-wage,-whether-by-time-rate-or--piece--rate,-adequate--to~~
10 ~~maintain--in--health--and--to--supply--with--the--necessary--cost--of~~
11 ~~living--a--female--employee--of--ordinary--ability--in--the--occupation--in~~
12 ~~question,-or--in--any--branches--thereof;~~ suitable minimum wages,
13 graded, so far as practicable, on a rising scale toward the
14 minimum allowed experienced workers, for learners, and
15 apprentices; and suitable minimum wages for minors below the age
16 of eighteen years. When a majority of the members of a wage
17 board agree upon standard conditions of employment or minimum
18 wage board determinations, they shall report such determinations
19 to the director, together with the reasons therefor and the facts
20 relating thereto. A majority of the members of any such wage
21 board shall constitute a quorum.

22 SECTION 9. 8-6-111 (2) and (3), Colorado Revised Statutes
23 1973, are amended to read:

24 8-6-111. Director to review report. (2) After publication
25 of notice and the meeting, the director, in his discretion, may
26 make and render such an order as may be proper or necessary to
27 adopt the recommendations and carry the same into effect and

Dick-Orten Report - Bill A

1 require all employees in the occupation directly affected thereby
2 to preserve and comply with such recommendations and order. Such
3 order is effective thirty days after it is made and rendered and
4 shall be in full force and effect on and after that day. After
5 the order is effective, it is unlawful for any employer to
6 violate or disregard any of the terms of the order, ~~or--to--employ~~
7 ~~any--woman-worker-in-any-occupation-covered-by-the-order-at-lower~~
8 ~~wages-or-under-other-conditions-than-authorized-or--permitted--by~~
9 ~~the--order.~~ The director shall, as far as is practicable, mail a
10 copy of any such order to every employer affected thereby; and
11 every employer affected by the order shall keep a copy thereof
12 posted in a conspicuous place in each room of his establishment
13 in which women work.

14 (3) No such order of the director shall authorize or permit
15 the employment of any ~~woman-or~~ minor for more hours per day or
16 per week than the maximum now fixed by law.

17 SECTION 10. 8-6-116, Colorado Revised Statutes 1973, is
18 amended to read:

19 8-6-116. Violation - penalty. The minimum wages for women
20 and minors fixed by the director, as provided in this article,
21 shall be the minimum wages paid to the employees, and the payment
22 to such employees of a wage less than the minimum so fixed is
23 unlawful, and every employer or other person who, individually or
24 as an officer, agent, or employee of a corporation or other
25 person, pays or causes to be paid to any such employee a wage
26 less than the minimum is guilty of a misdemeanor and, upon
27 conviction thereof, shall be punished by a fine of not less than

1 one hundred dollars nor more than five hundred dollars, or by
2 imprisonment in the county jail for not less than thirty days nor
3 more than one year, or by both such fine and imprisonment.

4 SECTION 11. 8-6-117, Colorado Revised Statutes 1973, is
5 amended to read:

6 8-6-117. Minimum wage presumed reasonable -
7 conclusiveness. In every prosecution for the violation of any
8 provision of this article, the minimum wage established by the
9 director shall be prima facie presumed to be reasonable and
10 lawful and the wage required to be paid to ~~women-and~~ minors. The
11 findings of fact made by the director acting within his powers,
12 in the absence of fraud, shall be conclusive.

13 SECTION 12. 8-11-118 (2), Colorado Revised Statutes 1973, is
14 amended to read:

15 8-11-118. Rest rooms - dressing rooms. (2) In factories,
16 laundries, mills, and workshops and in all other places where the
17 labor performed by the operator is of such character that it
18 becomes desirable or necessary to change the clothing wholly or
19 in part before leaving the building at the close of the day's
20 work, separate dressing rooms shall be provided for ~~women-and~~
21 ~~girls~~ BOTH SEXES whenever so required by the director.

22 SECTION 13. 8-17-101, Colorado Revised Statutes 1973, is
23 amended to read:

24 8-17-101. Colorado labor shall be employed on public works.
25 Whenever any public works financed in whole or in part by funds
26 of the state, counties, school districts, or municipalities of
27 the state of Colorado are undertaken in this state, Colorado

1 labor shall be employed to perform the work to the extent of not
2 less than eighty percent of each type or class of labor in the
3 several classifications of skilled and common labor employed on
4 such project or public works. "Colorado labor" as used in this
5 article means any person who has been a bona fide resident of the
6 state of Colorado for a period of not less than one year, without
7 discrimination as to race, color, creed, SEX, or religion.

8 SECTION 14. Repeal. 8-6-113, Colorado Revised Statutes
9 1973, is repealed.

10 SECTION 15. Effective date. This act shall take effect
11 July 1, 1976.

12 SECTION 16. Safety clause. The general assembly hereby
13 finds, determines, and declares that this act is necessary for
14 the immediate preservation of the public peace, health, and
15 safety.

A BILL FOR AN ACT

1 PROVIDING FOR SEX-NEUTRAL SURVIVOR'S BENEFITS.

Bill Summary

(NOTE: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. 7-60-107 (1) (d) (III), Colorado Revised
4 Statutes 1973, is amended to read:

5 7-60-107. Partnership determined - now. (1) (d) (III).
6 As an annuity to a ~~widow~~ SURVIVING SPOUSE or representative
7 of a deceased partner;

8 SECTION 2. 8-43-104, Colorado Revised Statutes 1973,
9 as amended, is amended to read:

10 8-43-104. Acceptance as surrender of other remedies.
11 An election under the provisions of section 8-41-105 (4) and
12 compliance with the provisions of articles 40 to 54 of this
13 title, including the provisions for insurance, shall be
14 construed to be a surrender by the employer, his insurance
15 carrier, and the employee or their rights to any method,

1 form, or amount of compensation or determination thereof or
2 to any cause of action, action at law, suit in equity, or
3 statutory or common law right, remedy, or proceeding for or
4 on account of such personal injuries or death of such
5 employee other than as provided in said articles, and shall
6 be an acceptance of all the provisions of said articles, and
7 shall bind the employee himself, and, for compensation for
8 his death, shall bind his personal representatives, his
9 widow SURVIVING SPOUSE, and his next of kin, as well as the
10 employer, his insurance carrier, and those conducting their
11 business during bankruptcy or insolvency.

12 SECTION 3. 8-50-116, Colorado Revised Statutes 1973,
13 is amended to read:

14 8-50-116. Minor dependents - safeguarding payments.
15 In all cases of death where the dependents are minor
16 children, it shall be sufficient for the widow SURVIVING
17 SPOUSE or a friend to make application and claim on behalf
18 of the minor children. The director, for the purpose of
19 protecting the rights and interests of any dependent whom he
20 deems incapable of fully protecting his own interest, may
21 provide for the manner and method of safeguarding the
22 payments due such dependent in such manner as he sees fit.

23 SECTION 4. 24-51-612 (4) (a), Colorado Revised
24 Statutes 1973, is amended to read:

25 24-51-612. Heirs to receive payments, when. (4) (a)
26 On and after July 1, 1973, when any judge who is a member of
27 the retirement association has completed at least one year

1 of service under this part 6 and dies prior to eligibility
2 for retirement and leaves a ~~widow--or--in--the--case--of--a~~
3 ~~female--member--leaves--a--husband~~ SURVIVING SPOUSE, such
4 deceased member's ~~widow--or--husband,~~ ~~as--the--case--may--be,~~
5 SURVIVING SPOUSE may receive a survivor annuity in a monthly
6 amount equal to twenty-five percent of the average monthly
7 salary received by the member during any period of five
8 consecutive years of service contained within the ten years
9 of service immediately preceding his death or, if the
10 deceased member did not have ten years' service, the average
11 of the highest monthly salary received during any period of
12 five consecutive years of service, or less if less than five
13 years of service have been credited to said member. All
14 benefits set forth under this subsection (4) shall be
15 payable only so long as there has been no election under
16 subsection (1) of this section to withdraw the deceased
17 member's accumulated deductions. In the event the ~~widow--or~~
18 ~~husband~~ SURVIVING SPOUSE thereafter remarries or dies, the
19 retirement annuity shall terminate. Such benefit shall be
20 payable upon the attainment by said ~~widow--or--widower~~
21 SURVIVING SPOUSE of at least age fifty if said member had
22 fifteen years of service, or age fifty-five if said member
23 had less than fifteen but more than ten years' service, or
24 age sixty if said member had less than ten years' credited
25 service. If said ~~widow--or--widower~~ SURVIVING SPOUSE is found
26 by the board to be mentally or physically incapacitated from
27 gainful employment, the annuity shall be paid

1 notwithstanding the above age requirements. The survivor
2 annuity shall be effective from the later date of either the
3 member's death or the ~~widow's~~ SURVIVING SPOUSE'S first
4 eligibility therefor and shall be in addition to but shall
5 not be paid concurrently with the annuities provided in
6 paragraphs (b) and (c) of this subsection (4).

7 SECTION 5. 26-9-103, Colorado Revised Statutes 1973,
8 is amended to read:

9 26-9-103. Duties. It is the duty of the veterans
10 service officer and assistant to assist residents of the
11 state of Colorado who served honorably in the United States
12 army, navy, marine corps, or any other armed service of the
13 United States, or the ~~widow~~ SURVIVING SPOUSE, administrator,
14 executor, guardian, conservator, or heir of any such
15 veteran, or any other person who may have proper claim, by
16 the filing of claims for adjusted compensation, insurance,
17 pensions, compensation for disability, hospitalization,
18 vocational training, or any other benefits which such person
19 may be or may have been entitled to receive under the laws
20 of the United States or the state of Colorado by reason of
21 such service.

22 SECTION 6. 26-10-106 (1) (b) and (1) (c), Colorado
23 Revised Statutes 1973, are amended to read:

24 26-10-106. Duties. (1) (b) Render personal service
25 to members and former members, or the ~~widows~~ SURVIVING
26 SPOUSES, administrators, executors, conservators, guardians,
27 or heirs of members or former members, of the Colorado state

1 guard and the Colorado national guard in any claim they may
2 have against the state or federal government;

3 (c) Assist all discharged members of the armed forces
4 of the United States who served during any war period, the
5 widows SURVIVING SPOUSES, administrators, executors,
6 conservators, guardians, or heirs of any such veterans, or
7 any other persons who may have proper claims by filing and
8 prosecuting such claims on behalf of such persons for
9 adjusted compensation, insurance, pensions, compensation,
10 hospitalization, vocational training, education, loans,
11 readjustment allowances, or any other benefits which such
12 persons may be or may become entitled to receive under any
13 of the laws of the United States, the state of Colorado, or
14 any other state by reason of such service;

15 SECTION 7. 26-12-301 (1), Colorado Revised Statutes
16 1973, is amended to read:

17 26-12-301. The Colorado state veterans center -
18 jurisdiction. (1) The Colorado state veterans center,
19 located near Monte Vista, Colorado, referred to in this part
20 3 as the "center", as transferred to the state department by
21 the "Administrative Organization Act of 1968", is hereby
22 declared to be a state home for veterans of service in the
23 armed forces of the United States and their ~~wives-widows~~
24 ~~and--mothers~~ SPOUSES, SURVIVING SPOUSES, AND DEPENDENT
25 PARENTS. The legal effect of any statute enacted prior to
26 July 1, 1973, designating such institution as the soldiers'
27 and sailors' home or the Monte Vista golden age center, or

1 by any other name, or property rights acquired and
2 obligations incurred prior to said date under any other
3 name, shall not be impaired hereby.

4 SECTION 8. 26-12-302 (1), Colorado Revised Statutes
5 1973, is amended to read:

6 26-12-302. Duties of the executive director. (1) The
7 executive director shall adopt all policies, rules, and
8 regulations for the utilization, management, control, and
9 supervision of the center so as to provide a place of
10 residence and domiciliary care for veterans of service in
11 the armed forces of the United States and their ~~wives~~
12 ~~widows--and--mothers~~ SPOUSES, SURVIVING SPOUSES, AND
13 DEPENDENT PARENTS. The executive director shall have the
14 final authority with respect to the interpretation of
15 criteria for determining admission to and discharge from the
16 center of veterans and their wives, widows, and mothers, and
17 such decisions by the executive director on admission and
18 discharge shall be final.

19 SECTION 9. 26-12-303 (4), Colorado Revised Statutes
20 1973, is amended to read:

21 26-12-303. Eligibility for care - standards. (4) The
22 executive director shall promulgate rules and regulations
23 for the admission of the ~~wives--widows--and--mothers~~ SPOUSES,
24 SURVIVING SPOUSES, AND DEPENDENT PARENTS of veterans who are
25 eligible for occupancy in the center. Said rules and
26 regulations may deny occupancy in the center to those ~~widows~~
27 ~~and--mothers~~ SURVIVING SPOUSES AND DEPENDENT PARENTS who are

1 in good health and who are capable of properly supporting
2 themselves.

3 SECTION 10. 26-12-309 (2), Colorado Revised Statutes
4 1973, is amended to read:

5 26-12-309. burial - veterans, spouses, surviving
6 spouses, and dependent parents. (2) In accordance with
7 rules and regulations adopted by the executive director,
8 burial shall be provided at the center for any ~~wife-widow~~
9 ~~or-mother~~ SPOUSE, SURVIVING SPOUSE, OR DEPENDENT PARENT of
10 an honorably discharged veteran of any branch of the armed
11 forces of the United States who was engaged in any of its
12 wars, or who has served under conditions determined
13 comparable thereto pursuant to rules and regulations adopted
14 by the executive director, when such ~~wife-widow-or--mother~~
15 SPOUSE, SURVIVING SPOUSE, OR DEPENDENT PARENT was an
16 occupant of the center at the time of her death. All
17 necessary expenses incident to the burial and interment at
18 the center of said persons shall be paid from the estate of
19 the decedent; except that when there is no estate or the
20 estate is insufficient, the expense of burial and interment,
21 or any necessary part thereof, shall be paid from the
22 appropriation made to the center.

23 SECTION 11. 31-30-301, Colorado Revised Statutes 1973,
24 is amended to read:

25 31-30-301. Obligation of state. The general assembly
26 finds and determines that the various policemen and police
27 officers, in saving and protecting the lives and property of

1 the citizens and residents of the state of Colorado, are
2 performing state duties and are rendering services of
3 special benefit to this state and that it is the province,
4 right, and obligation of the state of Colorado to care for
5 members of the police force who are entitled to retirement
6 because of length of service or old age or because they have
7 been injured or disabled in service and also to care for the
8 ~~widows--dependent--mothers~~ SURVIVING SPOUSES, DEPENDENT
9 PARENTS, and dependant children of such policemen.

10 SECTION 12. 31-30-306, Colorado Revised Statutes 1973,
11 is amended to read:

12 31-30-306. Method of payments. The state treasurer
13 shall pay or cause to be paid all moneys so placed in said
14 policemen's pension fund, on warrants drawn as provided in
15 section 31-30-318, to the treasurers of the policemen's
16 pension funds for the use and benefit of the members, their
17 ~~widows~~ SURVIVING SPOUSES, dependent children, and dependent
18 ~~mothers~~ PARENTS, and policemen who have been members in good
19 standing of such police departments or relief associations
20 at the time of death or injury.

21 SECTION 13. 31-30-308 (2), Colorado Revised Statutes
22 1973, is amended to read:

23 31-30-308. Amount paid - examination - fund
24 insufficient. (2) If any member or officer of any police
25 department becomes mentally or physically disabled so as to
26 render necessary his retirement from service in such
27 department, said board of trustees shall retire such member

1 from service in such department, and he shall receive from
2 the pension fund an amount equal to one-half of the monthly
3 salary received by him at the time he becomes so disabled,
4 when any member of such police department or retired member
5 dies and leaves a ~~widow~~ SURVIVING SPOUSE, dependent ~~mother~~
6 PARENT, or children under the age of sixteen years,
7 surviving, the board of trustees shall authorize the payment
8 monthly from the pension fund of the sum of thirty dollars
9 to such ~~widow-or-mother~~ SURVIVING SPOUSE OR PARENT and six
10 dollars to each such minor child until he reaches the age of
11 sixteen years. No pension shall be paid to the ~~mother~~
12 DEPENDENT PARENT of the deceased member who leaves a ~~widow~~
13 SURVIVING SPOUSE, and if the ~~widow~~ SURVIVING SPOUSE of any
14 deceased member remarries, her pension shall cease.

15 SECTION 14. 31-30-313, Colorado Revised Statutes 1973,
16 is amended to read:

17 31-30-313. Fund not subject to attachment. No part of
18 such pension fund, either before or after any order for the
19 distribution thereof to the members or beneficiaries of such
20 fund or to the ~~widows~~ SURVIVING SPOUSES or guardians of any
21 such children of any such deceased, disabled, or retired
22 members of said department, shall be held, seized, taken,
23 subjected to, detained, or levied on by virtue of any
24 attachment, execution, judgment, writ, interlocutory, or
25 other order, decree, process, or proceeding of any nature
26 whatever issued out of or by any court in this or any other
27 state for the payment or satisfaction, in whole or in part,

1 of any debt, damages, claim, demand, judgment, fine, or
2 amercement of such member or his widow SURVIVING SPOUSE or
3 children or the beneficiaries of any deceased member. The
4 fund shall be sacredly kept, secured, and distributed for
5 the purpose of pensioning and protecting the persons named
6 in this part 3 and for no other purpose whatsoever, but said
7 board may annually expend such sum as it may deem proper
8 from such fund for the necessary expenses connected
9 therewith.

10 SECTION 15. 31-30-321 (1) (c), Colorado Revised
11 Statutes 1973, is amended to read:

12 31-30-321. Pensions - allowance for disability -
13 dependents - prorating. (1) (c) When any member of such
14 police department or retired member dies and leaves a
15 dependent widow SURVIVING SPOUSE, dependent mother PARENT,
16 or children under the age of sixteen years, the board of
17 trustees shall authorize the payment monthly from the
18 pension fund of an amount equal to one-fourth the monthly
19 salary received by said member of the department at the time
20 he died to such ~~widow-or-mother~~ SURVIVING SPOUSE OR PARENT
21 and an amount equal to one-eighth of the monthly salary
22 received by said member of the department at the time he
23 died to each minor child until such child reaches the age of
24 sixteen years. No pension shall be paid to the mother
25 PARENT of the deceased member who leaves a widow SURVIVING
26 SPOUSE, and if the widow SURVIVING SPOUSE of any deceased
27 member remarries, her THE pension shall cease.

1 SECTION 16. 31-30-405 (1), Colorado Revised Statutes
2 1973, is amended to read:

3 31-30-405. State treasurer to pay over funds. (1)
4 The state treasurer shall pay or cause to be paid over all,
5 moneys so placed in said firemen's pension fund on warrants
6 drawn as provided for in section 31-30-404 to the treasurers
7 of the firemen's pension funds for the use and benefit of
8 the members and their widows SURVIVING SPOUSES, dependent
9 children, and dependent mothers PARENTS in accordance with
10 the provisions of this part 4 and part 5 of this article.

11 SECTION 17. 31-30-407 (2) and (3), Colorado Revised
12 Statutes 1973, are amended to read:

13 31-30-407. Pensions - allowance for disability -
14 dependents. (2) If any member, officer, or employee of
15 said fire department dies from any cause, whether on duty or
16 not or while on the retired list, leaving a surviving widow
17 SPOUSE or dependent mother PARENT, such surviving widow
18 SPOUSE or dependent mother PARENT shall be awarded a monthly
19 annuity equal to one-third of the monthly salary of a
20 first-grade fireman at the time of his death or retirement
21 so long as the--widow SUCH SURVIVING SPOUSE or dependent
22 mother PARENT remains unmarried. No dissolution of a
23 subsequent marriage shall have the effect of reinstating
24 said widow SURVIVING SPOUSE on the pension roll or
25 authorizing the granting of a pension. No pension shall be
26 paid to the mother DEPENDENT PARENT of a deceased member,
27 officer, or employee who leaves a widow SURVIVING SPOUSE or

1 dependent children.

2 (3) In addition to the annuity set forth in subsection
3 (2) of this section, the board shall also order the payment
4 to such ~~widow~~ SURVIVING SPOUSE or the legally appointed
5 guardian of each dependent child of such deceased member,
6 officer, or employee of said fire department of a monthly
7 annuity of thirty dollars for each child, to continue until
8 such child reaches the age of eighteen years. If such ~~widow~~
9 SURVIVING SPOUSE dies or there is no surviving ~~widow~~ SPOUSE,
10 as limited and described in subsection (2) of this section,
11 but there are surviving children under eighteen years of
12 age, the board shall order a monthly payment equal to the
13 full payment to which a fireman's ~~widow~~ SURVIVING SPOUSE is
14 entitled under subsection (2) of this section to be divided
15 equally among the children or a monthly payment of thirty
16 dollars for each child, whichever total amount is greater,
17 to the guardian for said children. In no event shall such
18 surviving children of a deceased or retired fireman receive
19 an amount in excess of one-half of the current salary paid
20 to a fireman, first grade, of said department. No annuity
21 shall be paid to the ~~mother~~ DEPENDENT PARENT of a deceased
22 member, officer, or employee who leaves a child or children
23 under eighteen years of age.

24 SECTION 18. 31-30-412, Colorado Revised Statutes 1973,
25 is amended to read:

26 31-30-412. Exemption from levy. No part of such
27 pension fund, either before or after any order for

Dick-Orten Report - Bill B

1 distribution thereof to the members or beneficiaries of such
2 fund or the ~~widows~~ SURVIVING SPOUSES or guardians of any
3 children or any such deceased, disabled, or retired member,
4 officer, or employee of the fire department, shall be held,
5 seized, taken, subjected to, detained, or levied on by
6 virtue of any attachment, execution, protest, or proceeding
7 of any nature whatever issued out of or by any court in this
8 or any other state for the payment or satisfaction, in whole
9 or in part, of any debt, damages, claim, demand, judgment,
10 fine, or amercement of such member, his ~~widow~~ SURVIVING
11 SPOUSE or children, or the beneficiaries of any deceased
12 member. The fund shall be kept, secured, and distributed
13 for the purposes of pensioning and protecting the persons
14 named in this part 4 and for no other purpose whatsoever;
15 but said board may annually expend such sum as it may deem
16 proper and necessary from such fund for the necessary
17 expenses connected therewith.

18 SECTION 19. 31-30-415 (4), (6), (7), (9), and (10),
19 Colorado Revised Statutes 1973, are amended to read:

20 31-30-415. Volunteer firemen's pensions - blanket
21 insurance. (4) If any volunteer member of any fire
22 department in any municipality or fire protection district
23 dies from injuries received while in line of duty as a
24 fireman, leaving a surviving ~~widow~~ SPOUSE, it is the duty of
25 the board in said municipality or fire protection district
26 to pay his-~~widow~~ SUCH SURVIVING SPOUSE a monthly annuity in
27 such an amount as it deems proper and necessary, not to

1 exceed one hundred fifty dollars per month, or within limits
2 as are prescribed by municipal ordinance or by rules and
3 regulations of the board of the affected municipality or
4 fire protection district so long as ~~the-widow~~ SUCH SURVIVING
5 SPOUSE remains unmarried. No dissolution of a subsequent
6 marriage shall have the effect of reinstating ~~said--widow~~
7 SUCH SURVIVING SPOUSE on the pension or benefit roll or
8 authorizing the granting of a pension or benefit.

9 (5) If there is no surviving ~~widow~~ SPOUSE, as limited
10 and described in subsection (4) of this section, but there
11 is a surviving child under eighteen years of age, the said
12 board shall order a monthly payment of an annuity in such
13 amount as it deems proper or necessary, not to exceed an
14 aggregate of one hundred fifty dollars per month, or within
15 limits as prescribed by municipal ordinance or by rules and
16 regulations of the board of the affected municipality or
17 fire protection district to the guardian of said child for
18 said child, to continue until each such child reaches the
19 age of eighteen years.

20 (6) In the event there is no surviving ~~widow~~ SPOUSE,
21 as limited and described in subsection (4) of this section,
22 or child but there is a surviving dependent ~~mother~~ PARENT or
23 said deceased fireman, it is the duty of the board in said
24 municipality or fire protection district to pay the
25 dependent ~~mother~~ PARENT a monthly annuity in such an amount
26 as it deems proper and necessary, not to exceed one hundred
27 fifty dollars per month, or within limits as are prescribed

1 by municipal ordinance or by rules and regulations of the
2 board of the affected municipality or fire protection
3 district so long as the dependent ~~mother~~ PARENT remains
4 unmarried. No dissolution of a subsequent marriage shall
5 have the effect of reinstating said dependent ~~mother~~ PARENT
6 on the pension or benefit roll or authorizing the granting
7 of a pension or benefit.

8 (7) The board in any municipality or fire protection
9 district having a paid or volunteer fire department or a
10 fire department aid association is hereby authorized, with
11 the consent in writing of a majority of the members of such
12 department or association, to insure the members of such
13 paid or volunteer fire department or fire department aid
14 association by insurance policies of individual, group, or
15 blanket life, endowment, or annuity insurance, variable
16 annuity insurance, or disability or liability insurance in
17 and from companies authorized to do business in Colorado and
18 to expend any portion of such pension fund for the purpose
19 of paying the premiums on any such policies, but the
20 expending of said funds shall not impair the ability of such
21 pension funds to pay the annuities to a member, ~~widow~~
22 SURVIVING SPOUSE, dependent ~~mother~~ PARENT, or children
23 receiving such annuities.

24 (9) In the event of dissolution, for any reason, of
25 fire departments whereby the services of firemen or fire
26 departments are discontinued, the firemen or their ~~widows~~
27 SURVIVING SPOUSES, dependent ~~mothers~~ PARENTS, and children

1 receiving benefits at the time of such dissolution shall
2 continue to receive such benefits in accordance with the
3 provisions of this part 4. Assets of the pension funds
4 shall be transferred with other assets of the department and
5 shall be administered by the board of trustees of the
6 successor pension fund. In no event shall the rate of
7 compensation be altered either after commencement of
8 proceedings for dissolution has occurred or after its
9 completion. After attaining fifty years of age, any fireman
10 having accrued ten or more years of active service at the
11 time of such dissolution shall be granted an annuity,
12 prorated in accordance with the number of years of service
13 and the amount of annuity being paid for age and service
14 pensions by the board of trustees of such pension fund at
15 the time of such dissolution.

16 (10) In the event of the death of any retired,
17 pensioned volunteer fireman who leaves a surviving widow
18 SPOUSE, the board of said fund may grant an annuity in a sum
19 of money not to exceed fifty percent of the pension being
20 received at the time of the fireman's death. Said annuity
21 to the surviving widow SPOUSE shall remain in effect so long
22 as ~~the-widow~~ SUCH SPOUSE remains unmarried. No dissolution
23 of a subsequent marriage shall have the effect of
24 reinstating said pension or benefit.

25 SECTION 20. 31-30-509, Colorado Revised Statutes 1973,
26 is amended to read:

27 31-30-509. Payments to surviving spouses. If any

1 member, officer, or employee of said fire department dies
2 from any cause while in the service or while on the retired
3 list, leaving a surviving ~~widow~~ SPOUSE whom such officer,
4 member, or employee married previous to his application for
5 retirement or previous to April 5, 1945, if he was then on
6 the retired list, such marriage having been legally
7 performed by a duly authorized person, such surviving ~~widow~~
8 SPOUSE shall be awarded a monthly annuity equal to one-third
9 of the monthly salary of such member, officer, or employee
10 at the time of his death or retirement plus one-third or any
11 increase in salary and longevity or additional pay based on
12 length of service granted to firemen of the rank or
13 comparable successor rank which said member, officer, or
14 employee held in the department on the date of his death or
15 retirement so long as ~~the--widow~~ SUCH SURVIVING SPOUSE
16 remains unmarried. No dissolution of a subsequent marriage
17 shall have the effect of reinstating ~~said--widow~~ SUCH
18 SURVIVING SPOUSE on the pension roll or authorizing the
19 granting of a pension. This section shall apply alike to
20 ~~widows~~ SURVIVING SPOUSES of firemen and retired firemen who
21 die after April 11, 1947, and to ~~widows~~ SURVIVING SPOUSES of
22 firemen and retired firemen who were dead on said date, it
23 being the intent of the general assembly to provide an
24 annuity for all ~~widows~~ SURVIVING SPOUSES of firemen, which
25 annuity shall increase or decrease proportionately to any
26 increase or decrease in the current rate of pay of firemen.

27 SECTION 21. 31-30-510, Colorado Revised Statutes 1973,

1 is amended to read:

2 31-30-510. Payments to orphans. The board shall also
3 order the payment to such ~~widow~~ SURVIVING SPOUSE or the
4 legally appointed guardian of each child or such deceased
5 member, officer, or employee of said fire department a
6 monthly annuity of thirty dollars for each child, to
7 continue until such child reaches the age of eighteen years.
8 If such ~~widow~~ SURVIVING SPOUSE dies or there is no surviving
9 ~~widow~~ SPOUSE, as limited and described out such deceased
10 member, officer, or employee leaves surviving children under
11 eighteen years of age, the board shall order a monthly
12 payment equal to the full payment to which a fireman's ~~widow~~
13 SURVIVING SPOUSE is entitled under section 31-30-509 to be
14 divided equally among the children or a monthly payment of
15 thirty dollars for each child, whichever total amount is
16 greater, to the guardian of said children for said children.
17 In no event shall such surviving children of a deceased or
18 retired fireman receive an amount in excess of one-half of
19 the current salary paid to a fireman, first-grade, of said
20 department.

21 SECTION 22. 31-30-512, Colorado Revised Statutes 1973,
22 is amended to read:

23 31-30-512. Funeral expenses. When an active or
24 retired fireman dies without necessary funeral expenses, the
25 board shall appropriate from the fund a sum not exceeding
26 one hundred dollars to the ~~widow~~ SURVIVING SPOUSE or family
27 or other person paying said expenses for the purpose of

Dick-Orten Report - Bill B

1 assisting the proper burial of said deceased member.

2 SECTION 23. 31-30-513, Colorado Revised Statutes 1973,
3 is amended to read:

4 31-30-513. Person entitled to pension. No person is
5 entitled to receive any pension from said fund except
6 regularly retired officers, members, or employees of said
7 fire department and their ~~widows~~ SURVIVING SPOUSES and
8 children under the age of eighteen years.

9 SECTION 24. 31-30-601, Colorado Revised Statutes 1973,
10 is amended to read:

11 31-30-601. Creation of fund. There shall be created
12 and established in each city in this state having a
13 population of over one hundred thousand and having a paid
14 police department a pension fund for paid policemen, their
15 ~~widows~~ SURVIVING SPOUSES and dependent children under the
16 age of sixteen years, and their dependent ~~fathers--and~~
17 ~~mothers~~ PARENTS, to be known as the "policemen's pension
18 fund", referred to in this part 6 as the "fund".

19 SECTION 25. 31-30-603 (1), Colorado Revised Statutes
20 1973, is amended to read:

21 31-30-603. Pension fund - source - investment. (1)
22 There shall be levied and set apart by the governing body of
23 each city having a population of over one hundred thousand a
24 tax for the year 1914 or not exceeding one cent on each one
25 hundred dollars of valuation for assessment of taxable
26 property in such city for said year as a fund for the
27 pensioning of crippled and disabled members of the paid

1 police department, their ~~widows~~ SURVIVING SPOUSES and
2 dependent children under the age of sixteen years, and their
3 dependent ~~fathers-and-mothers~~ PARENTS. A like tax shall be
4 levied and set apart for the same purpose in each succeeding
5 year when the amount and value of property to the credit of
6 such fund falls below three hundred thousand dollars as of
7 the date of September 1. If during any year succeeding 1913
8 there is to the credit of such fund on September 1 property
9 and funds of less value than three hundred thousand dollars,
10 the governing body of such city shall levy and set apart for
11 the year succeeding a tax of one cent on each one hundred
12 dollars of valuation for assessment of the taxable property
13 in said city where said condition occurs for said year as a
14 fund for the purposes defined in this subsection (1).

15 SECTION 26. 31-30-604, Colorado Revised Statutes 1973,
16 is amended to read:

17 31-30-604. Control - assessments. The board shall
18 have exclusive control and management of the fund and all
19 moneys donated, paid, or assessed for the relief or
20 pensioning of disabled members of the police department,
21 their ~~widows~~ SURVIVING SPOUSES and dependent children under
22 the age of sixteen years, and their dependent ~~fathers-and~~
23 ~~mothers~~ PARENTS and shall assess each member of the police
24 department one percent of the salary of such member. The
25 assessment shall be deducted and withheld from the monthly
26 pay of each member so assessed and placed by the treasurer
27 of such city to the order of such board.

1 SECTION 27. 31-30-608 (2), Colorado Revised Statutes
2 1973, is amended to read:

3 31-30-608. ~~Pensions - disability - death -~~
4 ~~beneficiaries.~~ (2) Upon such retirement the board shall
5 order the payment to such disabled member of such police
6 department from such pension fund of a sum equal to one-half
7 the monthly compensation allowed to such officer, member, or
8 employee as salary at the date of his retirement. If any
9 member of said police department, while in the performance
10 of his duty, is killed, dies as a result of an injury
11 received in the line of his duty or of any disease
12 contracted by reason of his occupation, dies from any cause
13 whatever as the result of his services in said department,
14 or dies while in the service or on the retired list from any
15 cause and leaves a widow SURVIVING SPOUSE or a dependent
16 child under sixteen years surviving or, if unmarried, leaves
17 a dependent ~~father-and-mother-or-either~~ PARENTS surviving,
18 the board shall direct the payment from the fund, monthly,
19 to such widow SURVIVING SPOUSE, while unmarried, of thirty
20 dollars, and for each child, while unmarried, until he
21 reaches the age of sixteen years, six dollars, and to the
22 dependent ~~father--and--mother~~ PARENTS, if such officer,
23 member, or employee was unmarried, thirty dollars. The
24 pension to the ~~father-or-mother-or--both~~ PARENTS shall be
25 paid as follows: If the father is dead, the mother shall
26 receive the entire thirty dollars, and if the mother is
27 dead, the father shall receive the entire thirty dollars.

1 and if both are living, each shall receive fifteen dollars.

2 SECTION 28. 31-30-611, Colorado Revised Statutes 1973,
3 is amended to read:

4 31-30-611. Person entitled to pension. No person is
5 entitled to receive any pension from the fund except a
6 regularly retired member or a regular member of said police
7 department, his ~~widow~~ SURVIVING SPOUSE and dependent
8 children under the age of sixteen years, and his dependent
9 ~~father-and-mother~~ PARENTS.

10 SECTION 29. Effective date. This act shall take
11 effect July 1, 1976.

12 SECTION 30. Safety clause. The general assembly
13 hereby finds, determines, and declares that this act is
14 necessary for the immediate preservation of the public
15 peace, health, and safety.

A BILL FOR AN ACT

1 CONCERNING EQUALITY OF TREATMENT OF EITHER SEX IN CERTAIN
2 GOVERNMENTAL SITUATIONS.

Bill Summary

(NOTE: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 1-2-206 (1) (d), Colorado Revised Statutes 1973,
5 is amended to read:

6 1-2-206. Questions answered by elector. (1) (d) Whether a
7 native-born or naturalized citizen of the United States. If a
8 naturalized citizen, the applicant shall state how naturalized,
9 whether by naturalization of self, parents, or otherwise;
10 applicant shall state to his best knowledge, information, and
11 belief when self, parents, or ~~if-a-female;-when-husband~~ SPOUSE
12 was naturalized, the place and time of naturalization, and by
13 what court the naturalization papers were granted.

14 SECTION 2. 23-7-103 (3) (a), Colorado Revised Statutes
15 1973, is amended to read:

1 23-7-103. Presumptions and rules for determination of
2 status. (3) (a) The domicile of an unemancipated minor is that
3 of his ~~father; or, if no father, that of his mother;~~ PARENTS or,
4 if one parent has custody of the minor, that of such parent; or,
5 if there is a guardian of his person, that of such guardian, but
6 only if the court appointing such guardian (who has legal custody
7 of the minor child as defined in section 19-1-103 (19) (a),
8 C.R.S. 1973) certifies that the primary purpose of such
9 appointment is not to qualify such unemancipated minor as a
10 resident of this state and that his parents, if living, do not
11 provide substantial support to the minor child.

12 SECTION 3. 27-26-107 (3), Colorado Revised Statutes 1973,
13 is amended to read:

14 27-26-107. Prisoners to work - penalty. (3) Any sheriff,
15 marshal, or chief of police who fails or refuses to employ
16 prisoners so confined, without the written consent therefor of
17 the county commissioners or city council, as the case may be,
18 upon conviction shall forfeit the sum of fifty dollars for each
19 day he fails or refuses to so employ the said prisoners; but he
20 shall not be required to employ such prisoners during inclement
21 weather or upon legal holidays or Sundays. It is the duty of
22 such sheriff, marshal, or chief of police to keep an accurate
23 account of the earnings of each of said prisoners less the
24 expense of guarding, which said earnings shall be computed upon
25 the value of the work done, and report the same to the county
26 commissioners or city council, as the case may be, once each
27 month. It is the duty of the county commissioners to provide for

1 the payment out of the money so earned to the wife SPOUSE or
2 minor children, if any, of such prisoner one-half of the amount
3 so earned if such wife SPOUSE or minor children are residents of
4 the county wherein such prisoners are confined and such wife
5 SPOUSE or minor children would otherwise be a public charge.

6 SECTION 4. 27-26-108, Colorado Revised Statutes 1973, is
7 amended to read:

8 27-26-108. County to support spouse, when. When any
9 able-bodied person is confined in the county jail, having been
10 convicted of the nonsupport of his wife SPOUSE or minor children,
11 the county shall pay toward the support of such wife SPOUSE or
12 minor children not less than fifty cents nor more than one dollar
13 per day for each day such person so works if such wife SPOUSE or
14 minor children would otherwise be a public charge.

15 SECTION 5. 27-26-128 (1) (c), Colorado Revised Statutes
16 1973, is amended to read:

17 27-26-128. Employment of county jail prisoners. (1) (c)
18 Conducting his own business or other self-employed occupation
19 including ~~in--the-case-of-a-woman~~; housekeeping and attending to
20 the needs of her THE family;

21 SECTION 6. Repeal. 23-7-103 (3) (b), Colorado Revised
22 Statutes 1973, is repealed.

23 SECTION 7. Effective date. This act shall take effect July
24 1, 1976.

25 SECTION 8. Safety clause. The general assembly hereby
26 finds, determines, and declares that this act is necessary for
27 the immediate preservation of the public peace, health, and
28 safety.

A BILL FOR AN ACT

1 PROVIDING THAT SEX SHALL NOT BE A BASIS FOR DISCRIMINATION.

Bill Summary

(NOTE: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. 22-32-110 (1) (cc), and (1) (dd), Colorado
4 Revised Statutes 1973, are amended to read:

5 22-32-110. Board of education - specific powers.

6 (1) (cc) To provide, in the discretion of the local board, out
7 of federal grants made available specifically for this purpose,
8 special educational services and arrangements, such as dual
9 enrollment, educational radio and television, and mobile
10 educational services, for the benefit of educationally deprived
11 children in the district who attend nonpublic schools, without
12 the requirement of full time public school attendance, and
13 without discrimination on the ground of race, color, religion,
14 SEX, or national origin;

15 (dd) To provide, in the discretion of the local board, out

1 of federal grants made available specifically for this purpose,
2 library resources which, for the purposes of this title, mean
3 books, periodicals, documents, magnetic tapes, films, phonograph
4 records, and other related library materials and printed and
5 published instructional materials for the use and benefit of all
6 children in the district and the use of teachers to benefit all
7 children in the district, both in the public and nonpublic
8 schools, without charge and without discrimination on the ground
9 of race, color, religion, SEX, or national origin;

10 SECTION 2. 23-30-102 (2), Colorado Revised Statutes 1973,
11 is amended to read:

12 23-30-102. Board body corporate. (2) The state board of
13 agriculture has the power to lease real and personal property,
14 the ownership of which is vested in the Colorado state
15 university, for a term not to exceed eighty years to state or
16 federal governmental agencies and to persons or corporations,
17 public or private, for the construction, use, operation,
18 maintenance, and improvement of research and development
19 facilities and also, but not to be used for private profit,
20 health and recreation facilities, dormitories, and living,
21 dining, classroom, laboratory, and group housing buildings and
22 facilities. None of the property so leased or improvements
23 constructed thereon shall be used in any manner which
24 discriminates against anyone because of race, creed, color, SEX,
25 or religion. Nothing in this subsection (2) shall constitute
26 authority to lease any real property vested in the university to
27 any fraternity, sorority, or other social organization.

1 SECTION 3. 23-41-104 (2), Colorado Revised Statutes 1973,
2 is amended to read:

3 23-41-104. Control - management. (2) The board of
4 trustees has the power to lease, for terms not exceeding eighty
5 years, real or personal property, or both, to state or federal
6 governmental agencies, persons, or entities, public or private,
7 for the construction, use, operation, maintenance, and
8 improvement of research and development facilities, health and
9 recreation facilities, dormitories, and living, dining, and group
10 housing buildings and facilities or for any of such purposes and
11 to buy land and construct buildings and facilities therefor.
12 None of the grounds so leased nor any of the improvements
13 constructed thereon shall be used in any manner which
14 discriminates against anyone because of race, creed, color, SEX,
15 or religion. The board of trustees has the power to borrow money
16 in conjunction with such construction and leases and to assist in
17 effecting any of such purposes. Any actions taken prior to May
18 27, 1965, by the board of trustees consistent with any power
19 granted in this subsection (2) are ratified and validated.

20 SECTION 4. 23-50-111 (1), Colorado Revised Statutes 1973,
21 as amended, is amended to read:

22 23-50-111. Additional powers of trustees. (1) The
23 trustees of the state colleges in Colorado also have the power to
24 lease portions of the college grounds of the university of
25 southern Colorado to private persons and corporations for the
26 construction of dormitory, living, dining, or cottage buildings
27 and to rent, lease, maintain, operate, and purchase such

Dick-Orten Report - Bill D

1 buildings at such state colleges under its control, all in the
2 manner provided by and subject to the limitations contained in
3 sections 23-56-103 to 23-56-109; except that none of the grounds
4 so leased nor any of the improvements constructed thereon shall
5 be used for the purpose of housing fraternities, sororities, or
6 other such student clubs or organizations; and except that none
7 of such grounds or improvements shall be used in any manner which
8 discriminates against anyone because of race, creed, color, SEX,
9 or religion; and except that all the improvements constructed
10 thereon shall be operated and managed by said state college.

11 SECTION 5. 24-34-305 (1) (f) and (1) (i), Colorado Revised
12 Statutes 1973, are amended to read:

13 24-34-305. Powers and duties of commission. (1) (f) To
14 issue such publications and reports of investigations and
15 research as in its judgment will tend to promote good will among
16 the various racial, religious, and ethnic groups of the state and
17 which will tend to minimize or eliminate discrimination in
18 employment because of race, creed, color, SEX, national origin,
19 or ancestry. Publications of the commission circulated in
20 quantity outside the executive branch shall be issued in
21 accordance with fiscal rules promulgated by the controller
22 pursuant to the provisions of section 24-30-208.

23 (i) To make recommendations to the general assembly for
24 such further legislation concerning discrimination because of
25 race, creed, color, SEX, national origin, or ancestry as it may
26 deem necessary and desirable;

27 SECTION 6. 24-34-403 (7), Colorado Revised Statutes 1973,

1 is amended to read:

2 24-34-403. Definitions. (7) "Person" means one or more
3 individuals, partnerships, associations, corporations, legal
4 representatives, trustees, or receivers; any owner, lessee,
5 proprietor, manager, employee, or any agent of such person; and
6 the state of Colorado and all cities, towns, and political
7 subdivisions and agencies thereof, but shall not include any
8 nonprofit, fraternal, educational, or social organization or
9 club, unless such nonprofit, fraternal, educational, or social
10 organization or club has the purpose of promoting discrimination
11 in the matter of housing against any person because of race,
12 creed, color, SEX, national origin, or ancestry.

13 SECTION 7. 25-3-401 (2), Colorado Revised Statutes 1973, is
14 amended to read:

15 25-3-401. Department of health to administer plan.
16 (2) The state plan established under subsection (1) of this
17 section shall provide for adequate hospital facilities for the
18 people residing in the state, without discrimination on account
19 of race, creed, SEX, or color, and shall provide for adequate
20 hospital facilities for persons unable to pay therefor. The
21 department of health shall, after consultation with the advisory
22 council established in section 25-3-402, provide minimum
23 standards for the maintenance and operation of hospitals which
24 receive federal aid under this part 4, and compliance with such
25 standards shall be required in the case of hospitals which have
26 received federal aid under the provisions of said federal act, or
27 any amendments thereto.

Dick-Orten Report - Bill D

1 SECTION 8. Effective date. This act shall take effect July
2 1, 1976.

3 SECTION 9. Safety clause. The general assembly hereby
4 finds, determines, and declares that this act is necessary for
5 the immediate preservation of the public peace, health, and
6 safety.

A BILL FOR AN ACT

1 CONCERNING SUPPORT ORDERS IN PATERNITY PROCEEDINGS, AND PROVIDING
2 FOR CONSIDERATION OF THE MOTHER'S CAPABILITY TO PROVIDE
3 SUPPORT.

Bill Summary

(NOTE: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. 19-6-105 (3) (a), Colorado Revised Statutes
6 1973, is amended to read:

7 19-6-105. Orders. (3) (a) In a proceeding in which the
8 court has made an order declaring paternity, the court may order
9 the father to pay weekly or at other fixed periods a fair and
10 reasonable sum for the support and education of the child until
11 the child is eighteen years of age TAKING INTO CONSIDERATION THE
12 CAPABILITY OF THE MOTHER TO PROVIDE SUPPORT, or in the discretion
13 of the court until the child is twenty-one years of age, unless
14 the support order is terminated sooner because the child becomes
15 self-supporting or is legally emancipated, taking into

1 consideration those other persons legally entitled to support by
2 the father.

3 SECTION 2. Effective date. This act shall take effect July
4 1, 1976.

5 SECTION 3. Safety clause. The general assembly hereby
6 finds, determines, and declares that this act is necessary for
7 the immediate preservation of the public peace, health, and
8 safety.

**PERSONAL STATEMENT ON THE
EQUAL RIGHTS AMENDMENTS**

**Senator Robert Allshouse
November 6, 1975**

I feel like the man whose wife sent him to the store to pick up a package of "Hamburger Helper" but neglected to tell him which variety she wanted.

After he looked over the shelves stocked with hundreds of boxes of "Helper", it suddenly hit him that no matter which one he chose, he was going to ruin good hamburger.

There have been many times in the last few months when I have asked myself and others: "What in the hell am I doing on this committee?"

I look around this room and I see women on both sides of this issue, ready to do battle if necessary for their point of view.

I have witnessed the press give this committee better coverage than that given to issues which some may consider more important. I have tried to analyze the value of this committee compared with that of the other four committees of which I am a member:

- (1) the Committee on Denver Metropolitan Water (a really important committee);
- (2) the Committee on Business Affairs and Labor (which deals with issues such as reviewing the state workmen's compensation and unemployment insurance laws);
- (3) the Committee on Local Government (which is rewriting the state mining laws); and
- (4) the Committee on Education (a preponderant percentage of state funds are spent for education purposes).

On Friday when I face two committee meetings - Education and Local Government - after spending all day Thursday at the meeting of this Committee on Equal Rights Amendments, I am drained emotionally. Perhaps this committee is the most important one of all - on this point I shall try to elaborate later on.

I heard one man say there are more women than men as the major supporters of families. I know this is untrue today, but, if our divorce rate continues to climb, it could be a truism tomorrow.

People have traveled from Washington, Ohio, Arizona, Tennessee and other points to tell us what is right and what is wrong about the Equal Rights Amendments.

I have seen Representative Orten become very angry and challenge expenditures of witnesses with whom she takes issue.

I have read that Representative Taylor says we will not rescind our ratification of the federal Equal Rights Amendment, that four more states will ratify, and that this issue will become the law of the land. If so, this committee is all in vain.

I have asked women what their feelings are on this issue, and, with the exception of a very few, the great majority do not support the Equal Rights Amendments. I am not counting those who show up at these meetings.

I listen, and read everything I find on this issue, and try to muster as much foresight and common sense as I can, in trying to see the ramifications of the Equal Rights Amendments. I decided to stay on the committee and fight against another federal government takeover.

I would hope that most of us do not want the courts deciding what the 24 words of the federal Equal Rights Amendment mean, the same courts which seem most lenient and are putting hardened criminals back on our streets to commit more vicious crimes.

I'm not going to get into the issues of "restrooms", "fox holes", "child support", "heavy lifting", and so on. With the passage of the federal Equal Rights Amendment, this would be out of my hands, and the courts will make "wise" decisions on all of these issues, which will be enough to make us all cringe at the results of the amendment.

When these meetings started last summer, the biggest issue seemed to be "equal pay for equal work". As has been mentioned many times before, there is a law to correct this, the federal Equal Employment Opportunity Act of 1972, and Title VII of the federal Civil Rights Act of 1964. I simply say that the issue has been put to rest and that the federal Equal Rights Amendment will not change the situation.

"Equal rights". Looking at the word "equal" in the dictionary, the supporters of the Equal Rights Amendments gain one point: Equal- "characterized by justice, fair". But let us look at the rest of the meanings: "one having similar rank, station, talents - to become equal to, to match - equalize - to make uniform or constant".

This reads to me as coming out as one word: "average". Are the Equal Rights Amendments supporters figuring to become "average"? If so, I pity them. Keep your freedom to excel,

to create, to achieve greatness as thousands of women have done before you: Madam Curie, Amelia Earhart, Helen Keller. You could never convince me that they wanted to be average. This was long before this propoganda about the Equal Rights Amendments.

I ask you, what is to stop you in this country today? What new sunrise will the amendments give you which you do not already have today?

You want to be "equal" to men, you want to be our "average". I would simply say this to you, we are lucky if our batting average is around .250. Let us all try to excel, and you try harder if this is your desire in life, but don't try to come down to our "equal". That is not the way America became a great nation.

Let me give you some quotes from experts and just plain people. I shall start with former Senator Sam Ervin: "If women are not enjoying the full benefit of this federal and state legislation and these executive orders of federal government, it is due to a defect in enforcement rather than a want of fair laws and regulations. Since ERA is not self-enforcing, this defect in enforcement will survive ERA, and women will still have to bring suits, with no more remedies than they presently enjoy."

If the federal Equal Rights Amendment is ratified, would it deprive Congress of the powers it now has under the equal protection clause to adopt legislation which is for the benefit of women? The answer is yes!

A state legislator from Nevada: "A state legislator has no right to go to Carson City and give away to the federal government the rights of the states. It constitutes nothing short of political treason."

Hilma V. Skinner of Boulder: "The news media report 3 million divorcees are left financially stranded, destitute, since the women's movement has changed the court's view of 'women's right' to be 'equal'. It is widely recognized the movement has been a major factor in the destruction of our moral standards and our sky-rocketing crime rate."

Common Sense: "We cannot support an amendment that defies every definition of good legislation in that it does not present a clear cut solution to specific problems; an amendment that raises more questions than it answers. We cannot support an amendment that further whittles away States' rights in favor of legislation on the Federal level. We cannot commit our children to a course we cannot clearly see."

I could go on and quote hundreds of people and organizations.

We have all listened to what seems like hundreds of experts telling us what is good and bad about the Equal Rights Amendments.

Our chairman has been most fair - so darn fair that the experts have been about equally divided for and against the amendments.

Men and women of the cloth argued both ways, about the Bible and what it says or what they think it says.

Doctors have talked for and against, telling us what they think will happen if the amendments stay or go.

Learned attorneys have bombarded us with legal testimony pro and con of what they think would happen under the amendments.

With all this testimony, what do we have left? I'll tell you what is left - it is our own God-given common sense to make a decision and accept the responsibility for that decision.

One more thought before I close.

In your hands, ladies, lies the very future of this nation of ours.

Crime was never worse than today, moral values are elusive, God is a word many hesitate to use. Respect for another's body or property is at an all-time low. Divorces are running almost as high as marriages.

You have the power to change much of that in the next generation, by your close contact with your children, teaching them and loving them.

And those of you who do not want family ties with children - I ask you, what is there to stop you?

One final quote. I've quoted many others in this statement. Now I'd like to quote myself:

"The Equal Rights Amendments will do nothing to advance the cause of American women, which present laws on the books do not now do. What it will do is to let all of our irresponsible males completely off the hook as far as responsibility is concerned.

"We try to raise our children to have pride in themselves and to accept responsibility, both male and female. Are we then to tell them, as young adults, to forget what we told them when they were children - that responsibility thing is old-fashioned now. Just go out and have a ball.

"For the security of our future and our self-preservation, I sincerely feel that the uncertainty and the lack of guarantees which this vague amendment presents should give us enough concern to not want to risk our very future on its ratification.

"This has not been that difficult a decision for me to make. If we are elected to represent the majority of our citizens, then to me this is a clear cut issue."