DOCUMENT RESUME

ED 072 269 VT 018 753

TITLE Women in 1971.
INSTITUTION Citizens Advisory Council on the Status of Women, Washington, D.C.
PUB DATE Jan 72
NOTE 71p.
AVAILABLE FROM Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Y3.In8/21:2W84/971; $.40)

EDRS PRICE MF-$0.65 HC-$3.29
DESCRIPTORS *Child Care; Day Care Services; *Education; Employment Opportunities; *Equal Opportunities (Jobs); Equal Protection; Federal Government; Females; Fringe Benefits; Public School Systems; *Sex Discrimination; Supreme Court Litigation; Supreme Courts; Working Parents; *Working Women

ABSTRACT

This publication summarizes the activities during 1971 of the Citizens' Advisory Council on the Status of Women in achieving its goal to suggest, arouse public awareness and understanding, and stimulate action with private and public institutions, organization, and individuals working toward improving conditions of special concern to women. Areas of concern were: (1) appointments of women to policy posts, (2) the Equal Rights Amendment, (3) Supreme Court decisions, (4) education, (5) equal employment opportunity, (6) child care, (7) maternity benefits for employed women, and (8) National Women's Political Caucus. Some recommendations by the Council were: (1) State commissions on the status of women should review local public school systems to determine the degree of sex discrimination, (2) The Federal Government should use its influence to secure a higher priority for after-school care, making full use of existing public school facilities, (3) A woman should be appointed to the Supreme Court, and (4) the Equal Employment Opportunity Commission should expedite preparation of a model affirmative action program now underway. (SB)

WOMEN

HUMAN EQUALITY

CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN

CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN

Honorable Jacqueline G. Gutwillig, Chairman
Lt. Colonel, U.S. Army (Ret.), Regional Volunteer Advisor,
The National Foundation--March of Dimes
Arizona

Miss Virginia R. Allan
Member, Board of Regents
Eastern Michigan University
Michigan

Miss Nola A. Allen
Attorney at Law
Indiana

Dr. Margaret Long Arnold
Honorary President
General Federation of Women's Clubs
New York

Mrs. Diana G. Bethel
Executive Assistant
U.S. Citizens Committee for Free Cuba
Florida

Mrs. Lorraine L. Blair
Financial Consultant
President, Lorraine Blair, Inc.--Investments
Illinois

Dr. Rita Ricardo Campbell
Senior Fellow, Hoover Institution
California

Mrs. Julie Casterman Connor
Folk Music Entertainer & School Teacher
Arizona

Miss Sarah Jane Cunningham
Attorney at Law
Nebraska

Mrs. Mary Charles Griffin
Civic Leader & Businesswoman
North Carolina

Miss Maxine R. Hacke
Executive
Warren Petroleum Corp.
Oklahoma

Mrs. Marie Hamel
Vice President
Hamel's Dairy & Ice Cream Co., Inc.
Louisiana

Mrs. Mary J. Kyle
Editor & Publisher
Twin Cities Courier
Television Editorial Commentator
Minnesota

Miss Margaret J. Mealey
Executive Director
National Council of Catholic Women
District of Columbia

Miss Hazel Palmer
Attorney at Law
Former President, National Federation of
Business & Professional Women's Clubs
Missouri

Mrs. Sara H. Revercomb
Civic Leader & Former School Teacher
West Virginia

Honorable Patricia Saiki
Member
Hawaii State Legislature
Hawaii

Miss Rachel E. Scott
Research Department, Department of
Pediatrics
Johns Hopkins University
Maryland

Mrs. Yetta Wasserman
Civic Leader & Past President
Cleveland Section, National Council of
Jewish Women
Ohio

Mrs. Irene Wischer, President
Paladin Pipeline Co.
Sr. Director & Executive Officer
Panhandle Producing Co.
Texas

Staff

Mrs. Cathering East
Executive Secretary

Mrs. Bertha Whittaker
Management Assistant

WOMEN IN 1971

CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN

JANUARY 1972

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C., 20402 - Price 40 cents

"We have already moved vigorously against job discrimination based on sex in both the private and public sectors. For the first time, guidelines have been issued to require that Government contractors in the private sector have action plans for the hiring and promotion of women. We are committed to strong enforcement of equal employment opportunity for women under Title VII of the Civil Rights Act."

Richard M. Nixon
State of the Union Message
(Written Version)
January 20, 1972

President Nixon meets with his appointees to the Council.

November 11, 1969

Citizens' Advisory Council on the Status of Women
Washington, D.C. 20210

CHAIRMAN
Mrs. Jacqueline G. Gutwillig
Arizona

The President
The White House
Washington, D. C.

Dear Mr. President:

Being a small center of activity in the search for ways to enrich the lives of women and girls in our country has been a challenge to, and a responsibility of, your Citizens' Advisory Council on the Status of Women. The social and humanistic implications of equal legal, educational, and economic status for women has been of great concern. Although limited to two Council meetings since our previous report, the Council's work has helped guide individuals, organizations, and industry, both public and private, toward achieving your Administration's goals for equality among men and women.

Your Administration's commitment to the support of the equal rights amendment in April 1971 through a statement by the Assistant Attorney General to the House Judiciary Committee that "President Nixon and this Administration wholeheartedly support the goal of establishing equal rights for women," has been widely applauded and has strengthened the Council's endorsement of February 1970. The Council is continuing its efforts to secure passage of the equal rights amendment in Congress and will work for subsequent ratification by the States.

The Council has provided leadership for more equitable maternity leave policies for employed women in both private and public industry. Many employers across the land now have policies in conformity with the Council's recommendations. Further, courts and State fair employment agencies are giving considerable weight in their rulings to the Council's statement of principle.

Special recommendations of the Council that were forwarded directly to your office during the past year are:

— That an office of women's rights and responsibilities including all areas of society be placed under the President's proposed reorganization of the Federal Government, where it would have an important influence on Federal Government policy.

— That the advisory council of private citizens, appointed by the President as now required by Executive Order 11126, be continued, but with provision made for sufficient staff and resources to fulfill its mission.

— That the President personally recommend passage in the Congress of the equal rights amendment, H.J. Res. 208, as introduced.

— That the President appoint a woman to serve on the Supreme Court of the United States.

Among the Council's recommendations to other agencies through the Interdepartmental Committee on the Status of Women were: that the model affirmative action plan being developed by the Equal Employment Opportunity Commission, which would include affirmative action to eliminate discrimination because of sex, be expedited; that the pamphlet "Equal Job Opportunity" of the Equal Employment Opportunity Commission be withdrawn as it was directed almost exclusively toward discrimination against blacks and not other races or women; and that the affirmative action requirements of Executive Order 11246 as they relate to sex discrimination, be promptly implemented by the Labor Department.

Because of its concern for the very young persons in our country, the Council recommended that the Federal Government use its influence to encourage use of the existing public school facilities for after-school care; and that the Office of Voluntary Action either prepare a separate packet on after-school care for distribution, or supplement its excellent present day care packet with after-school care material.

Further, the Council recommended that the State commissions on the status of women and other State and local groups interested in education foster the review of local public school systems to determine the degree of sex and ethnic group discrimination in admissions to courses, in physical education facilities and coaching, in textbooks, and in promotions and appointments to administrative levels.

The Council also recommended that the Office of Education, in the Department of Health, Education, and Welfare, prepare for counselors in junior high and high schools an annotated bibliography to widen their perspectives as to employment opportunities for young people without sex stereotyping of jobs, and also an annotated bibliography of resource materials and textbooks for elementary and secondary school use in English and social studies classes.

In 1970 the Council recommended that the Office of Education collect, tabulate, and publish by sex all data relating to persons. The Council now understands that the Higher Education General Information Survey will collect this data by sex. In September 1971, the Council renewed its recommendation calling specific

attention to the need for information by sex and ethnic group in surveys of the public schools.

We are honored now to have the opportunity to submit to you this second annual report in your Administration, the sixth for the Council since its establishment in 1963.

The members of the Council are always inspired by your superior leadership and are grateful for the opportunity to serve your Administration and our country. Your continuing trust in our endeavors to help achieve human equality is our finest personal reward.

Respectfully submitted,

JACQUELINE G. GUTWILLIG
Chairman.

TABLE OF CONTENTS

WOMEN IN 1971

1971 has been a year of remarkable gains for women, a fitting year for celebration of the 50th anniversary of the suffrage amendment. The executive, legislative, and judicial branches of the Federal Government have responded positively to the urging of individuals and organizations concerned with women's status. Business leaders showed great interest in affirmative action to improve women's employment opportunities and to comply with the law. However, some businesses, universities, and newspapers were not so responsive to women's demands for legal, employment, and educational equality. Religious groups of many denominations gave increasing attention to the status of women. Research, study, and writing, coupled with better means of communication, have resulted in new perspectives. We have moved much nearer to legal equality, equal education and employment opportunity, and have reached a greater agreement on goals.

Appointments of Women to Policy Posts

President Nixon appointed Barbara Hackman Franklin to the White House staff in April to recruit women for policymaking positions in the Federal Government. The Administration has been successful in more than doubling within six months the number of women in high level Government positions. Among

the appointees was the first woman Chairman of the U.S. Tariff Commission, Catherine May Bedell, and the first woman Commissioner of the Federal Communications Commission since 1948, Charlotte Reid. Jayne Baker Spain became vice chairman of the Civil Service Commission and Ethel Bent Walsh was named to the Equal Employment Opportunity Commission. Gloria Toote became the Assistant Director of ACTION. A list of women recruited or promoted in this Administration by the White House office for full-time positions at GS-16 or above appears in Appendix A.

The White House required Federal agencies to prepare and to implement immediately affirmative action programs to eliminate discrimination in Federal employment at the middle management levels.

Equal Rights Amendment

The ranks of women seeking the equal rights amendment were reinforced by the American Association of University Women, the American Home Economics Association, the American Nurses Association, Church Women United, Common Cause, the Intercollegiate Association of Women Students, the International Association of Human Rights Agencies, the Interstate Association of Commissions on the Status of Women, National Welfare Rights Organization, and Theta Sigma Phi. The National Council of Negro Women withdrew its opposition and set up a task force to develop a position. A list of the national organizations supporting the equal rights amendment appears in Appendix B.

Hearings were held by Subcommittee No. 4 of the Judiciary Committee of the House of Representatives on March 24, 25, and 31 and April 1 and 2, on the equal rights amendment and on H.R. 916 (Mikva), a bill to carry out the recommendations of the President's Task Force on Women's Rights and Responsibilities. Subcommittee No. 4 recommended H.J. Res. 208 (Griffiths) to

the full committee without amendment. The language is as follows:

> Sec. 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.

The full committee recommended amendments to read as follows:

> Sec. 1. Equality of rights of any person under the law shall not be denied or abridged by the United States or by any State on account of sex.
>
> Sec. 2. This article shall not impair the validity of any law of the United States which exempts a person from compulsory military service or any other law of the United States or of any State which reasonably promotes the health and safety of the people.
> (Committee amendments underlined.)

After debate on October 6 and 12, the House rejected the committee's amendment by a vote of 265 to 87 and passed the equal rights amendment, H.J. Res. 208, by a vote of 354 to 23.

On November 22, 1971, the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary, adopted a substitute proposed by Senator Ervin, reading as follows:

> Sec. 1. Neither the United States nor any State shall make any legal distinction between the rights and responsibilities of male and female persons unless such distinction is based on physiological or functional differences between them.
>
> Sec. 2. The Congress shall have the power to enforce the provisions of this article by appropriate legislation.

Since this substitute negates the purpose of the amendment, proponents are urging the full committee to report the resolution with the language as passed by the House.

Opposition in the Senate will probably be based on arguments that women are protected against arbitrary discrimination by the 5th and 14th amendments, that the equal rights amendment will weaken the family by weakening the obligations of husbands to support wives and children, and that women should not be drafted for military service.

The argument that the 5th and 14th amendments protect against arbitrary or invidious discrimination overlooks the fact that proponents do not believe any discrimination because of sex is warranted. This is perhaps the basic difference, often obscured, between the opponents and proponents. The opponents believe some difference in legal treatment is permissible or even desirable (the degree of difference varies with the individual), whereas the proponents want absolute legal equality.

The difference in approach is well illustrated by attitudes toward public education. One leading opponent thought it proper for the Boston Latin schools, which are public schools, to be segregated by sex* (see p. 10). The proponents argue that separate schools are inherently unequal and not justified. The Reed decision (see p. 7) provides no reason for expecting the Supreme Court to hold that separate education is contrary to the 14th amendment.

Even if the Supreme Court should in some future litigation apply the same criteria to examining laws discriminating on the basis of sex as to those discriminating on the basis of race, proponents would not find the 5th and 14th amendments an adequate substitute for the equal rights amendment, since some differences in legal treatment would be permitted. Furthermore, Supreme Court decisions are reversible.

---

* The Boston schools are becoming co-educational as a result of a law passed by the legislature prohibiting discrimination because of sex in public schools.

The argument that the equal rights amendment will weaken the legal obligation of husbands for support is based on some incorrect assumptions about enforcement of support laws. The Council's paper on "The Equal Rights Amendment and Alimony and Child Support Laws" (see Appendix C) concludes that:

> In summary, the equal rights amendment would not deprive women of any enforceable rights of support and it would not weaken the father's obligation to support the family. Because it would require complete equality of treatment of the sexes, it might be used to require that the spouses in divided families contribute equally within their means to the support of the children so that the spouse with the children is not bearing a larger share of the responsibility for support than the other spouse.

Opposition to drafting women overlooks the fact that we are moving to a volunteer army and that the draft will be resorted to in the future only in a time of great danger to this country. As Congressman McClory pointed out in debate, young women want the opportunity to serve and denying them this right would be degrading to women. Women always have served their country when needed.

The drafting of women is not a novel idea. Near the end of World War II a bill drafting nurses was passed by the House of Representatives and had been reported favorably to the Senate. The Department of Defense notified the leadership that the authority was no longer needed as the end of the war was in sight.

The Intercollegiate Association of Women Students, the largest women's undergraduate association, has endorsed the equal rights amendment and further specifically advocated equal responsibility for women in defense of the nation.

Furthermore, military service is not an unmitigated misfortune for all; it offers unparalled opportunity for many women and men.

Benefits for veterans in training, education, and employment have certainly been a powerful influence in reducing the incidence of poverty among men and male-headed families, and the lack of such benefits for most women has been a factor in the lack of improvement in incidence of poverty among women and female-headed families.

Legally, any exception to full equality could be used by reluctant courts to justify further exceptions to the principle of equality. All the constitutional authorities supporting the equal rights amendment oppose the draft exemption amendment.

A number of law review articles published during the year included discussions of women's legal status and helped the public to understand more clearly the issues relating to women's legal rights. The Harvard Civil Rights-Civil Liberties Law Review for March 1971, Vol. 6, No. 2, had a symposium on the equal rights amendment. Most of the articles in the symposium were elaborations of testimony given by the authors in the 1970 hearings before the Senate Committee on the Judiciary, but Pauli Murray's "The Negro Woman's Stake in the Equal Rights Amendment" and Barbara Cavanagh's " 'A Little Dearer Than His Horse': Legal Stereotypes and the Feminine Personality," were new contributions.

The Valparaiso University Law Review, Vol. 5, No. 2, had a symposium on women and the law with an article on the equal rights amendment by Mary Eastwood, "The Double Standard of Justice: Women's Rights Under the Constitution." The Yale Law Journal for April 1971, Vol. 80, No. 5, had a comprehensive article by Barbara A. Brown, Thomas I. Emerson, Gail Falk, and Ann E. Freedman. Building on legal theory developed by the Council's 1970 paper and an earlier article by Murray and Eastwood,* the authors developed an authoritative analysis of the

* Murray & Eastwood, Jane Crow and the Law: Sex Discrimination and Title VII, 34 Geo. Wash. L. Rev. 232 (1965).

scope and effects of the equal rights amendment. Reprints were distributed by Congresswoman Martha Griffiths to all members of the Congress through the cooperation of the National Federation of Business and Professional Women's Clubs.

The New York Law Forum, Vol. 17, No. 2, also a symposium issue, has an informative article by Marguerite Rawalt, "Equal Justice for Women--Up-Date the Constitution." The New York University Law Review for October 1971 had an article by Professor John D. Johnston, Jr. and Charles L. Knapp on "Sex Discrimination by Law: A Study in Judicial Perspective."

Supreme Court Decisions

For several generations women have been seeking equal protection of the laws through the 5th and 14th amendments as well as through adoption of the equal rights amendment. In the past 5 years there have been several successes in the lower courts, and in 1971, the Supreme Court agreed to hear several cases.

The Supreme Court on November 22, 1971, held in Reed v. Reed that an Idaho law giving preference to males as executors of estates was invalid under the 14th amendment.* The decision was a minor victory. Women's groups seeking legal equality for women were disappointed as it did not, as requested by the plaintiffs and those filing amicus curiae briefs, apply the same criteria to judging the constitutionality of laws distinguishing on the basis of sex as the court has applied to laws distinguishing on the basis of race. The Court used the same legal doctrine to

* This was not the first time as some of the publicity stated, that the court had overturned a law making a distinction based on sex. In Adkins v. Children's Hospital, 261 U.S. 525(1923), the court held that the District of Columbia minimum wage act for women was contrary to the 5th amendment. This decision was overruled in 1937 in West Coast Hotel Co. v. Parrish, 300 U.S. 379.

overturn this law that has been used in previous decisions to uphold laws distinguishing on the basis of sex. Proponents of the equal rights amendment concluded that the decision reinforced the need for the equal rights amendment.

The Supreme Court of California in Sail'er Inn v. Kirby, 485 P. 2d 529, applied a stricter criteria than the Supreme Court in the Reed case. The Court held that a law prohibiting women from being bartenders deprived women of the protection of the 14th amendment. The Court said:

> The instant case compels the application of the strict scrutiny of review, first, because the statute limits the fundamental right of one class of persons to pursue a lawful profession, and, second, because classifications based upon sex should be treated as suspect.

The Supreme Court of the U.S. held that the District of Columbia abortion statute was not unconstitutionally vague but defined "health" liberally and placed the full burden of proving guilt on the prosecutor (United States v. Vuitch, 402 U.S. 62). The net result was that Washington hospitals and clinics, which had been operating under a lower court decision that the statute was unconstitutional, did not feel constrained to change their abortion practices.

The abortion statutes have been interpreted in the past as requiring only that the prosecutor prove that an abortion took place. The physician then had to prove that the abortion came within exceptions covered by the statutes. The Supreme Court held that physicians were not required to prove their innocence. The ruling with respect to proof is of nationwide application.

The basic constitutional issue--the right of privacy--was not considered in the Vuitch case but this issue is raised in Doe v. Bolton, a Georgia case, which is under consideration by the Court. Roe v. Wade, involving the Texas statute, which the District court held unconstitutional for "vagueness and overbreadth," is also under consideration by the Court.

Education

Members of Congress concerned with equal opportunity for women have been active in seeking to eliminate discrimination because of sex in institutions receiving Federal funds.

The Comprehensive Health Manpower Training Act of 1971 and the Nurse Training Act of 1971 prohibit discrimination because of sex in admission to colleges, schools, and training centers funded under these Acts. The purpose of the laws is to provide increased personnel for the health professions through grants, loan guarantees, and subsidies to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, public health, training centers for allied health personnel, and schools of nursing.

Both laws include the following provision:

> The Secretary [of Health, Education, and Welfare] may not enter into a contract under this title with any school unless the school furnishes assurances satisfactory to the Secretary that it will not discriminate on the basis of sex in the admission of individuals to its training programs (Sec. 110 of Public Law 92-157 and Sec. 11 of Public Law 92-158).

Higher education bills providing major financial support to all colleges and universities were passed by both the Senate and the House. The Senate bill, S. 659, as reported from the Labor and Welfare Committee, did not include any provision prohibiting discrimination because of sex. Senator Bayh proposed an amendment in the debate to prohibit discrimination in public colleges and universities at the undergraduate level and to all colleges and universities at the graduate level. A point of order was raised by Senator Talmadge as to the germaneness of the amendment. The presiding officer ruled Senator Bayh's amendment was not germane and was sustained in this rule by a vote of 50 to

32. Therefore, S. 659 passed the Senate without any prohibition against discrimination because of sex.

Title IX of H. R. 7248 (Green), the House of Representatives' higher education bill, when reported from the Education and Labor Committee, prohibited discrimination because of sex in educational programs receiving Federal financial assistance. The bill excepted single sex schools and military and religious schools and provided a transitional period for schools shifting from single sex to coeducational. An amendment to exempt undergraduate education from this prohibition was offered by Congressman Erlenborn and adopted 186 to 181. The Senate will reconsider S. 659 in the second session and will have another opportunity to include a nondiscrimination provision.

Top officers of Harvard, Smith, Yale, Princeton, and Dartmouth wrote letters opposing Title IX of H. R. 7248 on various grounds. The Association of American Universities also opposed application of the nondiscrimination provision to undergraduate schools "on the grounds that it would establish an undesirable degree and kind of Federal influence over the ability of institutions to select students. Maintenance of the appropriate degree of university control over selection of students, faculty and academic programs is essential to the maintenance of the autonomy of universities, which is in turn the key to the contributions which they can make to society." (Congressional Record for November 1, 1971, pp. E11619 to E11622.)

The presidents of New York University, University of Minnesota, Cornell University, University of Oregon, University of Virginia, University of Wisconsin, and the University of California at Berkeley, wrote Congresswoman Green disassociating themselves from the position of the Association, of which they are members. (Congressional Record for November 4, 1971, p. H10354.)

The State of Massachusetts enacted legislation prohibiting discrimination because of sex in admission to public schools or in

"obtaining the advantages, privileges and courses of study of public schools..." (Section 5, Chapter 76 of the General Laws). This is the first such law to come to our attention. The Council commends such action to other States.

Equal Employment Opportunity

Title VII of the Civil Rights Act of 1964

H. R. 1746, a bill to give the Equal Employment Opportunity Commission cease and desist authority, as it was reported from the House Education and Labor Committee, extended coverage of Title VII to public employees, teachers, and employees of firms of 8 or more employees (now 25). A substitute, proposed by Congressman Erlenborn on the floor of the House, was adopted in lieu of the committee bill by a vote of 200 to 194. The substitute provided authority for the Equal Employment Opportunity Commission and the Justice Department to enforce the Act through court suits; it did not extend coverage; it prohibited class actions; it limited back pay to two years; and it made Title VII the exclusive Federal remedy.

The Senate Labor and Welfare Committee later reported S. 2515, which is similar to the original H. R. 1746. This bill will be taken up in the Senate in the second session. If passed by the Senate, a conference committee will attempt to resolve differences.

As a result of data collected by a special task force set up by the Equal Employment Opportunity Commission, the American Telephone and Telegraph Company, the nation's largest private employer, was charged with discrimination in its treatment of women, blacks, and Spanish speaking Americans. The massive report was submitted to the Federal Communications Commission in December. The Federal Communications Commission will hold public hearings beginning January 31, 1972.

Minimum Wage and Equal Pay

The House Education and Labor Committee has reported a minimum wage bill, H. R. 7130, that would, in addition to raising the minimum wage, extend coverage to domestic employees, Federal, State, and local employees, and pre-school center employees. This bill also would extend the Equal Pay Act of 1963 to executive, professional, and administrative employees. Title IX of H. R. 7248, covered in more detail on page 10, would also extend the Equal Pay Act and would include teachers and public employees under Title VII of the Civil Rights Act of 1964.

The Senate Subcommittee on Labor has held hearings on S. 1861, a bill similar to H. R. 7130, which will probably be reported to the Senate Labor and Welfare Committee in the second session.

The reach of the Equal Pay Act was extended by a Federal District Court opinion in Hodgson v. Brookhaven General Hospital, 20 W. H. Cas. 54 (N. E. Tex. 1971). The Court applied the yardstick set by the Wheaton Glass case (see last year's report) to orderlies and nurses aides in hospitals. The employer's defense that men had to be paid higher wages because men were not available in the labor market at the rate paid to women was rejected by the Court. The case has been appealed.

In the fiscal year 1971, a total of $14,873,000 was found due under the Federal Equal Pay Law to nearly 30,000 employees, almost all of whom were women. This represented a significant increase over the $6 million found due to 18,000 employees in fiscal year 1970.

Executive Order 11246

The Department of Labor issued Revised Order No. 4, which sets forth the guidelines for the "affirmative action" Government contractors are required to take to remedy discrimination because of sex as well as race, creed, color, national origin. Order

No. 4, needed for most effective enforcement of Executive Order 11246, was issued December 1, 1971, following consultations with women's groups, employers, and union officials.

Executive Order 11246 is presently the principal remedy available to women discriminated against in staffing of colleges and universities. Charges under this order have been filed against more than 350 insitutions, of which approximately 40 have had new Government contract awards delayed. Three hundred women at the University of Wisconsin received increases in salary, and the University of Maryland and Maine have both budgeted funds for increasing women's salaries.

Affirmative Action Conferences

Management and unions showed a strong interest in identifying and correcting discriminatory employment practices. Affirmative action conferences, sponsored by the Women's Bureau, in Atlanta, Ga., Boise, Idaho, Boston, Mass., Denver, Colo., Detroit, Mich., and Kansas City, Mo., were well attended. Additional conferences, with the sponsorship or assistance of the Women's Bureau, were held in Atlanta, Ga., Birmingham, Ala., Biloxi, Miss., and Charleston, S.C.

The Urban Research Corporation held successful conferences in New York City and San Francisco. Several of the major companies held training sessions to acquaint their managers with Federal and State fair employment requirements.

Child Care

The development of high quality child development programs, in which the Council has continuing concern, received priority attention. This year saw increased support among voluntary organizations and the Congress to provide more child development centers. Senate bill S. 2007 and House bill H. R. 10351, to provide for continuation of programs authorized by the Economic

Opportunity Act, amended Title V of that Act to provide for comprehensive child development programs.

President Nixon, when vetoing the bill, stressed the need to concentrate resources on protecting children from actual suffering and deprivation, and on the need to increase free day care centers for children of low-income families as provided in the Administration's welfare reform proposals (H. R. 1).

In the veto the President applauded the liberalization of tax deductions for expenses for child care and care of disabled dependents as provided in the Revenue Act of 1971 (Public Law 92-178). The President said these increased tax deductions "will provide a significant Federal subsidy for day care in families where both parents are employed, potentially benefiting 97 percent of all such families in the country and offering parents free choice of the child care arrangements they deem best for their families. This approach reflects my conviction that the Federal Government's role wherever possible should be one of assisting parents to purchase needed day care services in the private, open market, with Federal involvement in direct provision of such services kept to an absolute minimum."

The deductions permit single heads of households and families, from low-income families to families with incomes up to $18,000, to deduct as much as $400 per month for household help to care for children or disabled dependents of any age, or for child care outside the home. For incomes above $18,000 the amount that may be deducted is decreased gradually so that persons or families with incomes of $27,600 or more have no deduction. The deduction is available only to families in which both spouses are gainfully employed or one of the spouses is disabled. The deduction is still available only to those taxpayers who itemize their personal deductions. The Senate bill had provided for the deduction as an employment-related expense, which would have made it available to taxpayers who use the standard deduction, but this provision was changed in conference.

Maternity Benefits for Employed Women

The Council's recommendation on maternity leave, set forth in full in last year's report, has provided a sound theoretical frame of reference for the many women seeking redress for inequitable treatment because of pregnancy. The recommendation was buttressed by additional supporting facts provided by the Chairman of the Council in an address to the Conference of Interstate Association of Commissions on June 19, 1971, in St. Louis, Missouri, and by a paper with information concerning cost of health insurance and temporary disability insurance (Appendix D and E). The Council's publications have been extensively used in plaintiffs' briefs in Federal and State courts, arbitration hearings, and contract negotiations.

An article by Elizabeth Duncan Koontz, Director of the Women's Bureau, relying heavily on the Council's publications, entitled "Childbirth and Child Rearing Leave: Job-Related Maternity Benefits" appeared in the New York Law Forum, Vol. 17, No. 2. This article includes a review of the State laws relating to maternity and employment and finds that: "Contrary to popular belief, the State laws singling out maternity for special treatment in employment all are exclusionary or restrictive."

The six States with temporary disability insurance laws either exclude pregnancy or place special restrictions on benefits for pregnancy. Thirty-eight States have special pregnancy disqualifications in their unemployment insurance laws, and four States prohibit by statute or regulation, the employment of women in one or more industries for specified periods preceeding and following childbirth. In the State of Washington, women employed in five industries, including office workers, are prohibited from employment for four months preceeding childbirth.

No State law provides any reemployment rights or other benefits, except that Puerto Rico requires the employer to pay the working mother one-half of her salary during an 8-week period and

provides job security. Puerto Rico, however, has a temporary disability insurance law, which excludes pregnancy from its benefits. The requirement that employers pay for maternity leave, rather than having it paid out of an insurance fund, no doubt discourages employment of women of childbearing age.

There have been other developments since the Council paper was issued. Five cases have been filed in Federal district courts by public school teachers challenging boards of education rulings requiring teachers to stop teaching at the end of the 4th and 5th month of pregnancy and forbidding their return until the beginning of the next school year. The five cases are: Cohen v. Chesterfield County Board of Education, 326 F. Supp. 1159(E. D. Va. 1971); La Fleur v. Cleveland Board of Education, 326 F. Supp. 1208 (N. D. Ohio 1971); Julia C. Ford et al v. Phenix City Board of Education (Middle District of Alabama, Northern Division); Green v. Waterford Board of Education, (District of Connecticut); and Tremonti v. Bates (Eastern District of Michigan, Southern Division). In none of the cases was the teacher guaranteed reemployment and in no case was she permitted to use her accrued paid leave.

Since teachers are excluded from Title VII of the Civil Rights Act of 1964, the teachers have had to challenge the board rules on the basis that they are denied "equal protection of the laws" guaranteed by the 14th amendment. In the Cohen case, Judge Merhige held that:

> The maternity policy of the School Board denies pregnant women such as Mrs. Cohen equal protection of the laws because it treats pregnancy differently than other medical disabilities. Because pregnancy, though unique to women, is like other medical conditions, the failure to treat it as such amounts to discrimination which is without rational basis, and therefore is violative of the equal protection clause of the Fourteenth Amendment.

In the La Fleur case the judge found that class room continuity and concern for the teacher's health and safety constituted a reasonable basis for the school board rule. Both cases have been appealed. The other three cases listed above are still pending.

The Equal Employment Opportunity Commission has taken an active role in applying Title VII to discrimination in maternity cases. The Commission filed an amicus curiae brief in Schattman v. Texas Employment Commission, in which the Federal court for the Western District of Texas held that the employer's policy compelling women employees to terminate their employment upon reaching the 8th month of pregnancy violated Title VII of the Civil Rights Act of 1964. This case is also being appealed. The Commission filed an amicus curiae brief in Vick v. Texas Employment Commission, which contests an arbitrary disqualification for pregnancy in the Texas unemployment insurance system (Civil No. 70-H-1164, S.D. Texas, filed Oct. 27, 1970). This case is still pending. The Commission has found that women employees were unlawfully discriminated against by an employer's insurance program that excluded pregnancy from the list of physical disabilities for which weekly benefits were paid (3 E. P. D. § 6221).

A number of cases involving arbitrary separation requirements and lack of reemployment rights have been filed with State fair employment agencies. In each case that has come to our attention the State agency has found th e employer's policies were discriminatory. In New Jersey, the Division on Civil Rights secured a consent order requiring the Bloomfield and New Milford boards of education to permit teachers who choose to work throughout their pregnancy to do so. Likewise, under the order, the length of time before teachers can return to work after childbirth may not be specified.

Interstate Association of Commissions on the Status of Women

The Interstate Association of Commissions on the Status of Women held its first national conference in St. Louis, June 16, 17, and 18, 1971.

The Association endorsed the equal rights amendment, the Council's maternity leave policy, upgrading and better staffing of the Women's Bureau, repeal of abortion laws, and made a number of other recommendations. A newsletter is being issued to members.

National Women's Political Caucus

On July 10, 1971, women from all parts of the country, from all economic levels, with and without party affiliation, met in Washington, D. C. and formed a National Women's Political Caucus dedicated to increasing political power of women. Caucuses have been formed in California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Minnesota, Mississippi, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Virginia, Washington, Washington, D. C., and Wisconsin.

Many working to encourage women to campaign for elected offices have noted the efforts of the women of Norway who have won elections in many local governing bodies. These Norwegian women have worked within the structure of their political parties and have organized write-in campaigns to get their candidates on the slate. The Norwegian women of all political persuasions supported the write-in campaigns with the results that their candidates gained control in the two largest cities, Oslo and Trondheim. In Oslo they won 18 of 35 Labor seats, 10 of 33 Conservative seats, and all Liberal seats.

Recommendations and Activities

Equal Rights Amendment

The Council renewed its plea for the President's personal interest and action to secure passage in the Congress of the equal rights amendment, H.J. Res. 208, as introduced.

The Council published a paper on "The Equal Rights Amendment and Alimony and Child Support Laws" (Appendix C) and continued to furnish publications and other factual information in response to inquiries from the Congress, the press, organizations, and individuals.

Discrimination in Elementary and Secondary Schools

Members of the Council have been especially concern with discrimination in public elementary and secondary education because of the wide influence it exerts on attitudes and self images of young women and young men.

The Council recommended that:

> State commissions on the status of women and other groups interested in education foster the review of local public school systems to determine the degree of sex discrimination, especially with respect to (1) schools restricted to one sex, (2) courses of study in co-educational schools restricted

to one sex, (3) the per capita expenditure of funds by sex for physical education courses and physical education extra curricular and other extra curricular activities, (4) sex stereotyping in textbooks, library books, and other curriculum aids, (5) school activities, such as hall patrols, safety squads, room chores, etc., and (6) promotion of teachers.

The Council further recommended that:

The Office of Education, Department of Health, Education, and Welfare, prepare (a) an annotated bibliography suitable for counselors in junior high and high schools to widen their perspectives as to employment opportunities for young people without sex stereotyping of jobs and (b) an annotated bibliography of resource materials and textbooks for use in elementary and secondary school teaching of English, science, and social studies classes, which would emphasize the historical and current role of women to compensate for the lack of attention in the usually assigned literature.

The Council further recommended that the Office of Education collect all data simultaneously by sex and ethnic group. The Council specifically requested that data about public elementary and secondary schools identify those that are substantially restricted to one sex or ethnic group and indicate the extent of restriction of courses to one group in schools that are integrated.

Reorganization Plan and Status of Women

The Council, after reviewing the President's regorganization plan, considered the question of functions and placement of the Women's Bureau and the Council in the proposed organizational structure. The Council did not make specific recommendations, because plans for some key, related agencies had not been made public, but did agree on certain principles:

1. An office of women's rights and responsibilities, to encompass all areas of society--including, but not limited to employment, education and training, child development, law, welfare, social security, gathering and dissemination of economic and social data, should be established.

2. The placement of this office within the structure of government should be such that it would have an important influence on government policy.

3. The office should have authority and sufficient funds to be effective.

4. An advisory council of private citizens, appointed by the President, with independent staff and resources, should be set up to advise the President, the above office, and others.

Equal Employment Opportunity

The Council made the following recommendations with respect to equal employment opportunity:

— The Equal Employment Opportunity Commission should expedite preparation of a model affirmative action program now underway and in the meantime should withdraw from distribution its publication "Equal Job Opportunity," which "unintentionally excludes sex," except in a few cursory references.

— The Secretary of Labor should take steps to ensure prompt implementation of the affirmative action requirements of Executive Order 11246 as they relate to sex discrimination. The Council noted with concern the pattern of delay which has characterized the

inclusion of sex in Executive Order 11246 since issuance of the original order omitting sex in September 1965.

The Equal Employment Opportunity Commission has not yet issued its model affirmative action program and has not withdrawn the publication "Equal Job Opportunity."

The Secretary of Labor on December 4, 1971, issued Order No. 4 revised to include affirmative action requirements with respect to sex discrimination.

After-School Care

The Council recommended that:

- The Federal Government should use its influence to secure a higher priority for after-school care, making full use of existing public school facilities.

- The Office of Voluntary Action should prepare a packet on after-school care, or supplement the present day-care packet with examples of community-developed after-school programs, such as those presently operating in Cleveland, Ohio and Flint, Michigan.

The Office of Voluntary Action replied that they would update the day-care packet as suggested by the Council.

Supreme Court

The Council took the following action:

- Prepared and dispatched to the White House a letter recommending that a woman be appointed to the Supreme Court.

Public Service Activities

Council members continued to respond generously to the many requests by press, TV, radio, and community organizations for interviews, speeches, and advice on status of women.

The Chairman was a featured speaker at the first conference of the Interstate Association on the Status of Women in St. Louis.

Requests for Council publications on the equal rights amendment and maternity leave were heavy as were requests for technical assistance from press, radio, and TV in production of programs on various aspects of status of women.

Acknowledgments

At the risk of repeating ourselves, we must again publicly express our appreciation for the help received from the White House, the Office of the Vice President, and the Departments of Labor, Health, Education, and Welfare, Justice, and Treasury.

To all the guests who appeared before the Council, we take this opportunity to thank them publicly:

Miss Sally Barre, Mary Baldwin College
Mrs. Barbara H. Franklin, Staff Assistant to the President
Mr. Harry Hogan, Counselor, Special Committee on Education, for Congresswoman Green
Miss Ann Just, Women's Action Program, Department of Health, Education, and Welfare
Honorable Elizabeth Duncan Koontz, Director, Women's Bureau, Department of Labor
Miss Xandra Kayden, Women's Action Program, Department of Health, Education, and Welfare
Miss Sally Kirkgasler, House Special Committee on Education
Mrs. Esther Lawton, President, Federally Employed Women

Mrs. Margaret Laurence, Women United
Miss Olga Madar, Vice President, United Automobile Workers
Mr. Peter Pestillo, General Electric
Miss Marguerite Rawalt, Women United
Mr. Chris Roggerson, Equal Employment Opportunity Commission
Honorable Laurence H. Silberman, Under Secretary of Labor
Dr. Jean Spencer, Assistant to the Vice President
Honorable Ethel Bent Walsh, Commissioner, Equal Employment Opportunity Commission
Mr. John Wilkins, Office of Tax Policy, Treasury Department
Miss Doris Wooton, Office of Federal Contract Compliance, Department of Labor
Dr. Edward Zigler, Director, Office of Child Development, Department of Health, Education, and Welfare

APPENDIX A

Women Appointed or Promoted by the Nixon Administration to High Level Positions (GS-16 or above) January 21, 1969 - December 1971

Bailey, Mildred C. (Brigadier General, USA)	Director, Women's Army Corps Department of Defense
Baker, Dorothea	Hearing Examiner, Office of Hearing Examiner Department of Agriculture
Banuelos, Romana	Treasurer of the United States Department of Treasury
Becker, Joanna	Rules and Regulation Counsel Office of the General Counsel Atomic Energy Commission
*Bedell, Catherine May	Chairman United States Tariff Commission
*Bentley, Helen Delich	Chairman Federal Maritime Commission
*Brooks, Mary	Director of the Mint Department of Treasury
*Brown, Vera	Director, Special Services ACTION
Brown, Virginia Mae	Commissioner Interstate Commerce Commission

*Burgess, Isabel	Member, National Transportation Safety Board Department of Transportation
Burns, Barbara	Deputy Assistant Secretary Consumer Affairs Department of Health, Education, and Welfare
Butler, Yvette	Director of Management Equal Employment Opportunity Commission
*Christian, Betty Jo	Trial Attorney, Office of General Counsel, Litigation Department Interstate Commerce Commission
Collins, Lora	Chief, Business Analysis Division Office of Business Economics Department of Commerce
*Cowden, Loretta V.	Assistant Administrator, Home Economics Extension Service Department of Agriculture.
Dahm, Margaret	Director, Office of Actuarial & Research, Unemployment Insurance Service Department of Labor
Davis, Jeanne	Executive Director National Security Council
Davis, Ruth	Director, Center for Computer Sciences and Technology National Bureau of Standards Department of Commerce

*Dias, Frances K.	Regional Director, Office of Civil Defense, Region 7, Department of the Army Department of Defense
Dillon, Dorothy	Foreign Information Specialist Latin American Branch United States Information Agency
*Dillon, Elizabeth	U.S. Minister to the International Civil Aviation Organization in Montreal
Donovan, Eileen	Ambassador, Barbados Department of State
Dunlap, Lillian (Brigadier General USA)	Chief, Army Nurse Corps Department of Defense
Ehrig, Leonore G.	Hearing Examiner, Federal Communications Commission
Eppley, Evelyn	Chairman, Board of Contract Appeals, General Services Administration
Evans, Virginia J.	Head, Tissue Culture Section Laboratory of Biology, National Institutes of Health, Department of Health, Education, and Welfare
Ferguson, Mary H.	Deputy Comptroller, Department of the Navy Department of Defense
Finkel, Dr. Marion J.	Deputy Director, Bureau of Drugs, Department of Health, Education, and Welfare

*Franklin, Barbara H.	Staff Assistant to the President The White House
Hanford, Elizabeth	Deputy Director, Office of Consumer Affairs The White House
Hanft, Ruth S.	Special Assistant to Assistant Secretary for Health and Scientific Affairs Department of Health, Education, and Welfare
*Hanks, Nancy	Chairman National Endowment for the Arts
Harris, Ruth B.	Director, Equal Employment Opportunity, National Aeronautics & Space Administration
** Hayes, Anna May (Brigadier General Ret'd)	Director, Army Nurse Corps Department of Defense
*Hitt, Patricia R.	Assistant Secretary for Community and Field Services, Department of Health, Education, and Welfare
** Hoisington, Elizabeth (Brigadier General Ret'd)	Director, Women's Army Corps Department of Defense
** Holm, Jeanne M. (Brigadier General, USAF)	Director, Women's Air Force Department of Defense
*Johnson, Marilyn	Deputy Assistant Director for Operations United States Information Agency

Johrde, Mary	Head, Office of Oceanographic Facilities and Support National Science Foundation
Juni, Sarah M.	Deputy Assistant Commissioner Social Security Administration Department of Health, Education, and Welfare
Keller, Vicki	Associate, Domestic Council The White House
*Khosrovi, Carol	Assistant Director Office of Economic Opportunity
King, Patricia	Deputy Director, Office of Civil Rights Department of Health, Education, and Welfare
Knauer, Virginia	Special Assistant to the President Director, Office of Consumer Affairs The White House
Koontz, Elizabeth Duncan	Director, Women's Bureau Department of Labor (First Black Woman)
Livers, Patricia	Regional Commissioner, Social Security Administration Department of Health, Education, and Welfare
Luhrs, Caro E.	Medical Officer, Food and Nutrition Service Department of Agriculture

*Makel, Eleanor L.	Director, Medical & Surgical Branch, National Institute of Mental Health Department of Health, Education, and Welfare
Martin, Margaret E.	Assistant Chief Labor Statistics Office of Statistical Policy Office of Management and Budget
Myers, Beverlee A.	Assistant Administrator for Resource Development Health Services & Mental Health Administration Department of Health, Education, and Welfare
Nevman, Constance	Director, VISTA ACTION
*Olmsted, Mary S.	Deputy Director of Personnel for Management & Services Department of State
Payton, Sally A.	Associate, Domestic Council The White House
Quandt, Marjorie R.	Director, Medical Administration Services Veterans' Administration
*Raulinaitis, Dr. V.B.	Director, V.A. Hospital Pittsburgh Veterans' Administration
*Regelson, Lillian	Chief of Evaluation, Planning, Research & Evaluation Division Office of Economic Opportunity

Reid, Charlotte	Commissioner, Federal Communications Commission (First Woman since 1955)
Rogers, Gladys P.	Special Assistant to the Deputy Under Secretary for Management Department of State
Rosenblatt, Joan	Chief, Statistical Engineering Section, National Bureau of Standards Department of Commerce
Sheldon, Georgiana	Deputy Director, Office of Civil Defense, Department of the Army Department of Defense
Sivard, Ruth	Chief, Economics Division U.S. Arms Control & Disarmament Agency
Spain, Jayne Baker	Vice Chairman, Civil Service Commission (First Woman in 10 years)
Spencer, Dr. Jean	Special Assistant to the Vice President The White House
Stuart, Constance	Staff Director to the First Lady The White House
*Sturtevant, Brereton	Examiner-in-Chief, Board of Patent Appeals, U.S. Patent Office Department of Commerce

Sweeney, Naomi	Assistant Chief, Office of Legislative Reference Division Office of Management & Budget
Tennant, Paula A.	Member, Board of Parole Department of Justice
*Toote, Gloria	Assistant Director for Voluntary Action Liaison ACTION
Twyman, Margaret	Director of the Secretariat to the U.S. Advisory Commission on International Educational and Cultural Affairs Department of State
Tyssowski, Mildred	Director, Division of Financial Management, Social Security Administration Department of Health, Education, and Welfare
*Uccello, Antonia	Director, Office of Consumer Affairs Department of Transportation
Underhill, Ann B.	Chief, Laboratory for Optical Astronomy, National Aeronautics and Space Administration
Walsh, Ethel Bent	Commissioner, Equal Employment Opportunity Commission
White, Barbara	Career Minister for Information U.S. Information Agency

Williams, Dr. Marjorie J.	Director, Pathological & Allied Services, Central Office Veterans' Administration
*Williams, Sarah F.	Associate Counsel, Headquarters Defense Supply Agency Department of Defense
Winchester, Lucy	Social Director The White House
Woods, Rose Mary	Personal Secretary to the President The White House

* First woman appointed to this position.

** First woman General in this Service.

List furnished by the White House

APPENDIX B

National Organizations Supporting the Equal Rights Amendment

American Association of University Women
American Association of Women Ministers
American Civil Liberties Union
American Federation of Soroptimist Clubs
Americans for Democratic Action
American Home Economics Association
American Jewish Congress
American Medical Women's Association
American Newspaper Guild
American Nurses Association
American Psychological Association
American Public Health Association
American Society of Women Accountants
Association of American Women Dentists
B'Nai B'rith Women
Church Women United
Citizens' Advisory Council on the Status of Women
Common Cause
Council for Christian Social Action, United Church of Christ
Ecumenical Task Force on Women and Religion (Catholic Caucus)
Federally Employed Women (FEW)
General Federation of Women's Clubs
Intercollegiate Association of Women Students
International Association of Human Rights Agencies
International Brotherhood of Painters and Allied Trades (AFL-CIO)
International Brotherhood of Teamsters
International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
Interstate Association of Commissions on the Status of Women
League of American Working Women

National Association of Colored Women's Clubs
National Association of Negro Business and Professional Women's Clubs
National Association of Railway Business Women
National Association of Women Deans and Counselors
National Association of Women Lawyers
National Coalition of American Nuns
National Democratic Committee
National Education Association
National Federation of Business and Professional Women's Clubs
National Federation of Republican Women's Clubs
National Organization for Women (NOW)
National Republican Committee
National Welfare Rights Organization
National Woman's Party
National Women's Political Caucus
President's Task Force on Women's Rights and Responsibilities
Professional Women's Caucus
St. Joan's Alliance of Catholic Women
Theta Sigma Phi
United Presbyterian Church
Unitarian Universalist Association
U.S. Department of Labor and the Women's Bureau
Women's Christian Temperance Union
Women's Equity Action League (WEAL)
Women's International League for Peace and Freedom
Women's Joint Legislative Committee for Equal Rights
Women United

APPENDIX C

MEMORANDUM--The Equal Rights Amendment and Alimony and Child Support Laws

The Citizens' Advisory Council on the Status of Women endorsed the equal rights amendment and published a legal memorandum in March 1970. Since that time hearings have been held in both Houses of the Federal Congress, and the amendment has been debated in both Houses and passed twice by the House of Representatives.

One of the main claims of the opponents is that the equal rights amendment will weaken men's obligation to support the family and, therefore, weaken the family. In gathering facts on this issue, the Council accumulated much surprising and disturbing information, which is not widely recognized.

While present support laws can be readily revised where necessary to conform with the equal rights amendment without weakening present obligations for support, the facts we have accumulated raise questions about the adequacy of present laws and their enforcement, which we hope those concerned with the status of women and children will study and discuss. Are the economic rights of women adequately protected during marriage? Should a woman such as Mrs. McGuire have some redress (p. 40)? When is alimony justified? In setting amount and duration of alimony, how much weight should be given to the loss of earning capacity suffered by a homemaker wife? In dividing property at divorce, should the contribution of a homemaker wife be given greater weight? What will be the effects on women and children of "no fault divorce" in a society that is still largely male oriented?

The Council hopes this paper will stimulate interest in a review and revision of each State's marriage, divorce, and support laws

to conform legally with the equal rights amendment. We also hope that teachers, counselors, and parent groups will inform themselves and their daughters of the specific facts through research in their own communities as to amounts of alimony and child support and the likelihood of collecting in cases of divorce.

The Council hopes this will be a contribution to the growing accumulation of information on the status of women.

Sincerely,

/s/ Jacqueline G. Gutwillig

JACQUELINE G. GUTWILLIG
Chairman

APPENDIX C

The Equal Rights Amendment and Alimony and Child Support Laws

One of the primary objections to the equal rights amendment cited by opponents is that it would weaken men's obligation to support the family and therefore weaken the family. They state that under present law men are required to support their wives without regard to their wives' ability to support themselves and that such laws would be invalidated under the equal rights amendment. They claim that alimony laws not permitting alimony to men would also be invalidated and that men who were paying alimony under such laws would be able to come into court and seek relief from paying alimony.

These objections are based largely on erroneous assumptions about application and enforcement of support laws and lack of knowledge of the legislative history of the equal rights amendment.

The rights to support of women and children are much more limited than is generally known and enforcement is very inadequate. A married woman living with her husband can in practice get only what he chooses to give her. The legal obligation to support can generally be enforced only through an action for separation or divorce, and the data available, although scant, indicates that in practically all cases the wife's ability to support herself is a factor in determining the amount of alimony; that alimony is granted in only a very small percentage of cases; that fathers, by and large, are contributing less than half the support of the children in divided families; and that alimony and child support awards are very difficult to collect.

Child support is usually not raised as an issue by opponents of the equal rights amendment but is covered here since the equal

rights amendment could have an influence on level of payments. Also it is not possible practically to separate alimony and child support. For tax reasons, what are in fact child support payments may be labeled alimony, and in some States alimony and child support are awarded without distinction.

This statement of legal support rights and their enforcement is based on litigated separation and divorce cases. Most settlements are arrived at voluntarily by lawyers for the parties and may be more generous than the courts would allow in contested cases for several reasons. The husband may be willing to make more generous arrangements, or he may want to avoid the publicity of a contested case. He may be induced to make a more generous arrangement than a court would allow by the need for the wife's cooperation in securing a divorce in a State where divorce is granted only for cause; the trend toward amendment of State laws to permit dissolution of marriage when the marriage is irretrievably broken will result in elimination of this leverage for wives.

The opponents are in general not deliberately misleading the Congress and the public. They are providing well for their families and believe others are and are required to by law. Many are upper middle-class and acquainted only with the facts of life of those in such economic circumstances. We have noted in reviewing some of the court cases relating to alimony and child support that very generous property, alimony, and child support settlements are made among the wealthy. However, where the divorce results in economic hardship, greater hardship is visited on the wife and children than on the husband. Cases reviewed and other materials leave the impression that in middle and lower income groups the welfare of the husband and his prospects for remarriage are given much greater weight than the wife's and children's welfare. No weight whatever is given to the adverse effect on the wife's prospects for remarriage when she is left the major responsibility for support of children.

Women Living With Their Husbands

It is true that a married woman legally has a right to be furnished "necessaries" and to charge purchases of "necessaries," but this is for most an empty right since merchants will not give her credit if her husband asks them not to.

Foote, Levy, and Sander's 1966 textbook, Cases and Materials on Family Law, p. 303, cites as its leading case on the subject of support McGuire v. McGuire, 157 Neb. 226, 59 N.W. 2d 336 (1953). This was a Nebraska case involving the wife of a well-to-do farmer. During her marriage of 34 years, the plaintiff testified she had been a "dutiful and obedient wife" who had "worked in the fields, did outside chores, cooked and attended to her household duties... raised as high as 300 chickens, sold poultry and eggs, and used the money to buy clothing, things she wanted, and for groceries." Her husband did not tolerate any charge accounts. He would give her only small amounts of money and for the last three or four years had not given her any money nor provided her with clothing except a coat a few years previous. The house had no bathroom, bathing facilities or inside toilet and no kitchen sink. Water was secured from a well. The furnace had not been in good working order for 5 or 6 years. The furniture was old, and the defendant was driving a 1929 Ford equipped with a heater which did not operate.

The District Court had required the husband to pay for certain items in the nature of improvements and repairs to the house and for furniture and appliances for the household in the amount of several thousand dollars. They had ordered the defendant to purchase a new automobile with an effective heater, required that his wife be entitled to pledge the credit of the defendant for "necessaries of life," and awarded a personal allowance in the amount of $50 a month.

The Supreme Court of Nebraska overturned the ruling, stating:

> ...to maintain an action such as the one at bar, the parties must be separated or living apart from each other.

> The living standards of a family are a matter of concern to the household, and not for the courts to determine, even though the husband's attitude toward his wife, according to his wealth and circumstances, leaves little to be said in his behalf. As long as the home is maintained and the parties are living as husband and wife it may be said that the husband is legally supporting his wife and the purpose of the marriage relation is being carried out. Public policy requires such a holding. It appears that the plaintiff is not devoid of money in her own right. She has a fair-sized bank account and is entitled to use the rent from the 80 acres of land left by her first husband, if she chooses...

Foote, Levy, and Sander commented on the McGuire case as follows (p. 308):

> ...although factual situations like that depicted in McGuire are probably not uncommon, there is a dearth of reported decisions. Why is this so? This dearth of decisions, coupled with the results of cases like McGuire, helps to explain why it is so difficult to determine the precise scope of a man's legal duty to support his wife and children while the family is united. Such support statutes as there are are characteristically unhelpful, and the extent of his obligations is commonly inferred from the results in other types of litigation, such as divorce proceedings, parents' suits under Dram Shop statutes for a child's death or injury, wrongful death actions, and criminal prosecutions or allied proceedings for nonsupport...(underlining supplied).

In a District of Columbia case the court did allow separate maintenance to a wife who was in fact living a separate life although under the same roof with her husband. The court went on to state that such situations should be given careful scrutiny so as to discourage litigation between husbands and wives who are actually

living together, although there was no language in the statute that would have precluded granting maintenance to women actually living with their husbands. Clements v. Clements, D. C. Mun. App. 184 A. 2d 195(1962).

In a review of cases listed in the annotated California code we found no support cases involving an intact family.

A recent Yale Law Journal article sums it up as follows:

> The reluctance of courts to interfere directly in an ongoing marriage relationship is a standard tenet of American jurisprudence. As a result, legal elaboration of the duties husbands and wives owe one another has taken place almost entirely in the context of the breakdown of the marriage--either voluntary breakdown through separation, desertion, or divorce, or involuntary breakdown through incapacitation or death. Any legal changes required by the equal rights amendment are thus unlikely to have a direct impact on day-to-day relationships within a marriage, because the law does not currently operate as an enforcer of a particular code of relationships between husband and wife. (The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, Brown, Emerson, Falk, and Freedman, 80 Yale L.J. 943, 1971.)

Alimony

The only nationwide study of alimony and child support was made by the Support Committee of the Family Law Section, American Bar Association in 1965, when Mrs. Una Rita Quenstedt, then chairman of the Support Committee, and Col. Carl E. Winkler, former chairman of the Support Committee, made a survey of 575 domestic relations court judges, friends of the court, and commissioners of domestic relations (Monograph No. 1). This study indicates that alimony is awarded in a very small percentage of cases. Three of the judges surveyed made the following comments (p. 3):

A California Judge: "In this county permanent alimony is given in less than 2% of all divorces, and then only where the marriage has been of long duration, and the wife is too old to be employable, the wife is ill, particularly if the husband's behavior was a contributing cause, [or] other highly unusual factors exist. Temporary alimony is given, pendente lite, or for some portion of the interlocutory period in less than 10% of all divorces, chiefly to give the wife a breathing space to find employment."

A Nevada Judge: "A healthy young woman should not be permitted to go on indefinitely living on alimony. Her outlook is more healthy and her life a good deal more full as an active member of the community and not as a kept woman."

A Massachusetts Judge: "The whole problem is one of complete frustration since no middle class person can actually afford divorce. Our only consolation is that public welfare supplies the balance but this, of course, means that the taxpayer is assuming the parental burdens. Alimony in and of itself is not too great a problem as nearly 90% of the petitioners waive it."

The Foote, Levy, and Sander textbook on family law (referred to above) found alimony "infrequently sought and even less often obtained."

Furthermore, alimony is not usually awarded without regard to the wife's ability to support herself. The wife's capacity to earn was taken into account by 98% of the judges in the Quenstedt-Winkler study. Apparently this is the general rule. American Jurisprudence states: "In determining the amount of permanent alimony the court should consider the earning capacity of the wife and the extent of her opportunity to work." 24 Am Jur 2d 633.

The precedent cases in the District of Columbia list the following as factors in determining alimony or maintenance: duration of the marriage, ages and health of the parties, respective financial

positions, both past and prospective, wife's contribution to family support and property ownership, needs of the wife, husband's ability to contribute, interest of society in preventing her from becoming a public charge, Butler v. Butler, D. C. App., 239 A. 2d 616(1968).

The last seems to be a very important criteria. In a 1966 case the District of Columbia Court of Appeals reversed a grant of $50 alimony made by the lower court, solely on finding that the wife was not likely to become a public charge. In this case there were no children and the wife had net earnings of $279.37 a month. Her husband's net earnings were $389 a month, McEachnie v. McEachnie, D. C. App., 216 A. 2d 169(1966).

In a separate maintenance case the District of Columbia Court of Appeals said: "We cannot agree that the wife's financial situation is neither a defense nor a limiting factor in defining the husband's duty. The purpose of maintenance is to prevent the wife from becoming a public charge and not to penalize the husband." Foley v. Foley, D. C. Mun. App., 184 A. 2d 853(1962).

The California marriage dissolution statute provides with respect to support that:

> ...the court may order a party to pay for the support of the other party any amount, and for such period of time, as the court may deem just and reasonable, having regard for the circumstances of the respective parties, including the duration of the marriage, and the ability of the supported spouse to engage in gainful employment without interfering with the interests of the children of the parties in the custody of such spouse...(Annotated California Code--Civil Code Section 4801).

As early as 1926 a California court gave great weight to a wife's capacity to earn, even though the wife had phlebitis and could not be on her feet. The court said:

. . where the ex-husband is earning wages by daily labor, a trial court, in awarding alimony, should not do so in a sum inducing idleness on the part of the ex-wife, Lamborn v. Lamborn, 80 C. A. 494, 251 P. 943(1926).

In 1948 the Supreme Court of California denied alimony to a wife married 36 years who had reared 8 children. She had no property or other source of income and no trade. Her husband worked as a laborer and earned from $40 to $47 per week. The judge said:

> Defendant has no ability to earn more than sufficient for his own support and maintenance. . . and has no ability to pay further for the support and maintenance of plaintiff or for her attorney's fees or court costs herein. Webber v. Webber, 33 C. 2d 153, 199 P. 2d 943(1948).

Child Support

With respect to child support, the data available indicates that payments generally are less than enough to furnish half of the support of the children. The following chart of weekly payments was submitted by a Michigan court in 1965(Quenstedt-Winkler study):

Weekly Net Income*	Number of Dependents					
	One	Two	Three	Four	Five	Six or More
$40	$10.00	$16.00	$22.00	$24.00	$24.00	$24.00
50	12.50	20.00	27.50	30.00	30.00	30.00
60	15.00	24.00	33.00	36.00	36.00	36.00
70	17.50	24.00	35.00	42.00	45.50	45.50
80	20.00	24.50	40.00	48.00	52.00	52.00
90	21.60	27.00	45.00	54.00	58.50	63.00
100	22.00	30.00	45.00	60.00	70.00	75.00
120	24.00	36.00	54.00	72.00	84.00	84.00

* After deductions for income tax, F. I. C. A., hospitalization, life insurance, union dues, and retirement plan payments.

Even these small payments are frequently not adhered to. One court commented:

> However we find that in the great number of cases we are unable to adhere to the chart because of excessive amounts of financial obligations and limited earnings; also in many cases the man has more than one family.

A Florida Judge replied to the question re support:

> As a rule of thumb, we in this circuit, allow 15 (sic) per week per child if the husband is able to pay that sum, and increase that amount proportionate to the needs and faculties where husband's take home pay exceeds $5,000 per year. In short, ... in order for a man to remain employed and produce income he must have for himself something beyond bare necessities.

A Pennsylvania Judge commented: "The Support Court usually sets the amount of a support order at the highest figure the defendant seems capable of paying. Even then the amount is usually not enough to support the wife and children on a minimal basis."

In response to the survey question "What percentage of the father's income is normally allotted for child support?"

- 27% of the judges allot 25% or less of the father's income
- 34% of the judges allot between 26-33⅓ of the father's income
- 25% of the judges allot between 34-50% of the father's income

Adele Weaver, President of the National Association of Women Lawyers, said in her testimony on the equal rights amendment before Subcommittee No. 4 of the House Judiciary Committee in 1971:

> ... But the point is that in actual practice, Mr. Wiggins, you know that most judgments for child support allow such minimal sums of $15 a week, $25 a week, $30 a week, that we know that the mother is giving at least half of or close to half of the support; the mother is actually fulfilling a coextensive duty of support to the child (p. 296 of the report of the hearings).

In a survey referred to in Foote, Levy, and Sander, page 937, made in Maryland and Ohio in the early 30's, in half the cases the weekly alimony and support payments were between $5 and $9 per week (equivalent to $11.65 and $20.97 in today's dollars). The median was $33 per month (equivalent to $76.89 today).

A divorced woman in Elyria, Ohio writes that she is a clerk-typist working fulltime with a take home pay of $310 per month. Her former husband is employed fulltime as a carpenter, earning overtime. The court awarded her $15 per week for each of two children. Her husband is $410 behind in payments, which she is unable to collect. The children have not had dental care for two years, and she finds it difficult to buy books, proper food, and clothing for the children. It is obvious her husband is not contributing half the support of the children, let alone supporting his former wife.

The average cost at 1969 prices of rearing a child in a two child urban family with both parents present range, according to Department of Agriculture estimates, from $1,400 per year on a low-cost budget in the north central area of the U.S. to $2,100 per year on a moderate-cost budget in the south.* In a divided family with the mother working food costs would be higher, and there would be added child care costs. With the earnings of women averaging 60 percent those of men, women who work to support their children are contributing by and large more than their proportionate share, even when fathers comply fully with awards.

---

* Information from Agricultural Research Service, Consumer and Food Economics Research Division, U.S. Dept. of Agriculture--excerpt from Family Economics Review, December 1970 and Talk by Jean L. Pennock at the 47th Annual Agricultural Outlook Conference, February 18, 1970.

Collection of Alimony and Child Support

The only information we could locate on collection of support money was reported by Nagel and Weitzman in "Women as Litigants" (Hastings Law Journal, November 1971). The following table from their article is based on data gathered by Kenneth Eckhardt from a sample of fathers who were ordered to pay some child support in a divorce decree in a metropolitan county in the State of Wisconsin in 1955. Row 1 shows that within one year after the divorce decree, only 38 percent of the fathers were in full compliance with the support order. Twenty percent had only partially complied, and in some cases partial compliance only constituted a single payment. Forty-two percent of the fathers made no payment at all. By the tenth year, the number of open cases had dropped from 163 to 149 as a result of the death of the father, the termination of his parental rights, or the maturity of the children. By that year, only 13 percent of the fathers were fully complying, and 79 percent of the fathers were in total non-compliance. Row 5 shows the percentage of non-paying fathers against whom legal action was taken, including those taken or instigated by welfare authorities:

Years since court order	No. of cases	Compliance			Non-paying fathers-legal action taken
		Full	Partial	No	
One	163	38%	20%	42%	19%
Two	163	28	20	52	32
Three	161	26	14	60	21
Four	161	22	11	67	18
Five	160	19	14	67	9
Six	158	17	12	71	6
Seven	157	17	12	71	4
Eight	155	17	8	75	2
Nine	155	17	8	75	0
Ten	149	13	8	79	1

Criminal Non Support Statutes

Although in practically all States husbands can be held criminally liable for non support of wife and children, most States require that the wife or children be in "destitute or necessitous circumstances" or without adequate, sufficient, or reasonable means of support. The Uniform Desertion and Non Support Act provides that the refusal to support must be without lawful excuse and wilful and that the wife or children under 16 must be in "destitute or necessitous circumstances" (the Uniform Act and most State laws are applicable to mothers who refuse to support children under 16).

As in other criminal proceedings, guilt must be established beyond a reasonable doubt and the burden of proof is on the State. The defendant is entitled to a jury trial. This type of statute is used extensively in welfare cases, mothers often being required to file complaints under criminal non support statutes as a condition of receiving public assistance. In some States the public welfare authorities are authorized to file the complaints. The extent of use or usefulness in other situations is not known. Wisconsin, the scene of the study on collection above, has a criminal non support statute very similar to the Uniform Act.

Need for Public to Have the Facts

The prevalence of mistaken ideas about a husband's responsibility for support of wife and children, which have been reinforced by opponents of the equal rights amendment, are a great disservice to the nation, particularly to its women and young girls. Many young women, relying on the belief that marriage means financial security, do not prepare themselves vocationally. Parents and counselors act on this false assumption in advising girls about their future.

The latest survey indicates that 27% of the women who entered into teenage marriages more than 20 years before the survey are

divorced as compared with 14 percent of the women who were older. * Our young women and their parents and teachers should be apprized of the facts about alimony and child support and likelihood of divorce in teenage marriages. Perhaps more of them would prepare themselves vocationally and wait until they are older for marriage.

Far more facts are needed as to awards of alimony and child support, the factors considered by judges in making the awards, and the degree of enforcement of awards made. More information is needed as to why awards are not better enforced and the efficacy of the means available, particularly the criminal non support statutes. The effects of a Wisconsin statute putting restraints on remarriage of persons not meeting their responsibilities to their lawful dependents need to be studied. Even small studies in individual communities that could be made by women's groups or law school students might lead to larger more representative studies by organizations with larger resources.

The lack of reliable information illustrates once again that we will not have a whole society equally concerned with women's and children's welfare until many more women are in positions to influence the spending of research funds and the making and enforcing of laws.

Effects of Equal Rights Amendment on Present Laws and Their Enforcement

Far from resulting in diminution of support rights for women and children, the equal rights amendment could very well result in greater rights. A case could be made under the equal rights amendment that courts must require divorced spouses to contribute in a fashion that would not leave the spouse with the children in a worse financial situation than the other spouse.

---

* U.S. Department of Commerce, Bureau of the Census, Social and Economic Variations in Marriage, Divorce, and Remarriage, 1967; P-20, No. 223.

The belief that alimony laws permitting alimony to wives would be invalidated by the courts rather than extended to men is not supported by any legal authority or the legislative history. The legislative history clearly indicates the intent of the proponents in Congress to extend alimony to men in those States now limiting alimony to women. Furthermore, in view of judges' preoccupation with keeping women from becoming public charges, it seems almost certain, should a State legislature fail to extend to men a law limiting alimony to women, that a judge would extend the law to men rather than invalidate it. If any judge should invalidate the law, it is clear that legislatures' concern for keeping women from becoming public charges would be sufficient to enact a new law applying equally to men and women.

The drafting of divorce and support laws of those States where it is required by the equal rights amendment could be an opportunity to bring the law into line with reality. Models without distinctions based on sex already exist in the Uniform Marriage and Divorce Act and the Model Penal Code. Copies may be obtained from the National Conference of Commissioners on Uniform State Laws, 1155 E. 60th Street, Chicago, Illinois 60637.

The Uniform Marriage and Divorce Act provides for maintenance to be paid from one spouse to the other if the spouse seeking maintenance lacks sufficient property to provide for reasonable needs and is unable to support himself or herself through appropriate employment or for the custodian of a child whose condition or circumstances make it appropriate that the parent not seek employment outside the home. The amount and duration of payments for maintenance are to be determined after the court considers the financial resources of the party seeking maintenance, the time necessary to acquire sufficient training to enable the party to find appropriate employment, the standard of living established during the marriage, the duration of the marriage, the age and physical and emotional condition of the spouse seeking maintenance, and the ability of the spouse from whom maintenance is sought to meet his or her own needs while making maintenance payments.

In summary, the equal rights amendment would not deprive women of any enforceable rights of support and it would not weaken the father's obligation to support the family. Because it would require complete equality of treatment of the sexes, it might be used to require that the spouses in divided families contribute equally within their means to the support of the children so that the spouse with the children is not bearing a larger share of the responsibility for support than the other spouse.

APPENDIX D

Excerpts from Address by
Jacqueline G. Gutwillig, Chairman
Citizens' Advisory Council on the Status of Women
on Council project "Job-Related Maternity Leave."
June 19, 1971
Conference of Interstate Association of Commissions
on the Status of Women
St. Louis, Missouri

...We found in our review and discussion that some semantic confusion exists because maternity leave has been a broad term to encompass not only leave for childbirth but in some contexts for the total period of pregnancy, and subsequent leave for child care. This confusion no doubt arose because in earlier years many women were required to stop work as soon as they knew they were pregnant. There are still some public school systems with this kind of requirement. Most school systems require that a teacher begin "maternity leave" at the end of the 4th or 5th month. Furthermore a few school systems still require that teachers cannot return to teach for a full year following the birth of a child. All these various kinds of leave have been referred to as maternity leave. I suspect that some of the reactions we get from employers when discussing this subject arise from this confusion.

The Council decided that for job-related purposes maternity leave should be that period of time a woman is unable to work because of childbirth or complications of pregnancy. We saw no rationality in requirements that pregnant women take leave while they are still physically able to work. Such policies no doubt are a hangover from the days, not so ancient, when pregnant women were shut up at home--when pregnancy was considered obscene. Naturally we held no brief for such views.

The subject of child rearing we felt was a separate topic that required separate treatment as both men and women have the responsibility to rear children. Therefore, rearing of children is not considered in our paper on maternity benefits.

The Council's policy relates only to the period of time a woman is unable to work because of childbirth or complications of pregnancy. I believe this is one of the most important contributions of our consideration of this issue--that is, the semantic separation of leave for childbirth from leave for child rearing.

We also found in our review of background materials that absence due to childbirth is sometimes treated as a temporary disability and sometimes as a special condition warranting special arrangements.

The Council concluded that childbirth and complications of pregnancy are temporary disabilities for employment purposes because they have all the significant characteristics of temporary disabilities--(1) loss of income due to temporary inability to perform normal job duties, and (2) medical expenses. Additionally, childbirth has two other characteristics which are associated with only the more severe temporary disabilities--hospitalization and possible death.

The theory that pregnancy is a "normal physiological condition" has been advanced as a reason for treating pregnancy as a special condition warranting special arrangements. I don't know what "normal physiological condition" means; the more one analyzes the words, the more confusing they become, but I'm sure of one thing--medical care, hospitalization, and death are not normally associated with this phrase. I also know as a fact that the results of applying this concept has generally been to deny women benefits to which they are justly entitled.

Another reason that is advanced for denying women the benefits provided for other temporary disabilities is that pregnancy is

"voluntary." We all know this is a weak rationalization. Pregnancy is very frequently not voluntary and besides temporary disability benefits are provided for other equally voluntary conditions--such as attempted suicide. Pregnancy is no more voluntary than injuries from an automobile accident while driving intoxicated and no more voluntary than the conditions associated with long term smoking.

Since we were naturally concerned with the economic impact on employers of our conclusion that childbirth is a temporary disability, we gathered all the data we could find indicating economic consequences.

We found from the annual health interview survey conducted by the Public Health Service, that in 1968 men lost on the average 5.2 days per year because of disabilities and women lost 5.9 days. In 1967, the figures were 5.3 and 5.6 days per year. In 1966, men lost more time from work than women--5.9 days for men and 5.6 days for women. These figures include time lost from work because of delivery and complications of pregnancy and the post-childbirth period.

The Public Health Service has done a special tabulation for us with a finer breakdown of disability conditions than is published in their regular material, which shows the relatively minor amount of time lost from work because of deliveries and disorders of pregnancy and the post-childbirth period. In the year July 1966 to June 1967 an average of two-tenths (.2) of a day per employed woman was lost from work for this reason. By contrast almost eight-tenths (.8) of a day was lost by women because of injuries and 1.0 days by men because of injuries. Women lost 1.3 days per year because of respiratory conditions and men lost 1.2 days. In other words, time lost from work for childbirth is only a fraction of the time lost because of other conditions.

We had a representative of a large insurance and casualty company, which writes a high proportion of health insurance and temporary disability insurance policies, present at our second

discussion on maternity leave. The company prepared estimates for us in considerable detail but I shall give you only those data and highlights that will help you understand better how we arrived at our conclusion.

Information from that company shows that the difference in cost between health insurance coverage that includes care for pregnancy and childbirth and that which does not is very small. Likewise the cost of including a maternity benefit in temporary disability insurance is small. Interestingly enough most employment-related group health insurance policies include pregnancy benefits, but pregnancy benefits are included in approximately only one-half of the temporary disability insurance policies.

A 1969 study by the Society of Actuaries of temporary disability insurance policies issued by 11 large insurance companies showed that 9,700 policies issued had some maternity benefit, whereas 10,700 did not. In other words, a little less than one-half of these group policies issued included coverage for maternity. This study did not include policies issued under State temporary disability insurance laws.

However, we were surprised to learn of the number of health insurance policies that cover the spouses of male employees for maternity benefits but exclude the female employees. A health insurance association study of employment-related group policies issued in 1969 showed that 61 percent covered maternity benefits for wives and female employees, 9 percent had coverage of wives of male employees only, and 1 percent had coverage for the female employees only. The remaining 29 percent of policies written did not cover maternity.

In recent discussions about our recommendations, we have been asked whether insurance companies will write health insurance and temporary disability insurance policies covering maternity. The answer is categorically yes. The national experts we have

been in touch with have never heard of an insurance company that would not. The general rule is that insurance companies will write any coverage the group wants. We did learn that all the temporary disability insurance policies written by one large company have had a maximum coverage of six weeks for maternity, which seems unduly short and would not be in line with our recommendation unless comparable maximum periods were set for other disabilities. We were not able to find out whether this was company policy or whether no employer or union had wanted a longer coverage.

We have also been asked whether our policy would adversely affect an employer with respect to workmen's compensation laws. The experts at the Federal Labor Department tell us that there would be no effect unless pregnant women have a higher accident rate than other employees and even then only larger employers would be affected. The cost of workmen's compensation coverage for the largest employers (about one-fourth of the total employers, employing about three-fourths of covered employees) is based in part on an experience rating, or actual costs of covering that employer. There are no known data indicating any higher accident rate for pregnant women.

In summary, the economic data we gathered concerning cost and the extent of present coverage indicated that it is entirely feasible for employers to provide the same economic benefits for absence due to childbirth as for absence due to other temporary disabilities.

. . . .

Since the paper was issued, several teachers have brought court actions to try to change the practices of school boards. In both of the cases where we have secured full information--Chesterfield County, Virginia and Cleveland, Ohio--the Council's recommendations were cited in the plaintiffs' briefs. In the Chesterfield County case, Judge Robert R. Merhige, Jr. adopted the Council's position in the following excerpt from his opinion:

> The maternity policy of the School Board denies pregnant women such as Mrs. Cohen equal protection of the laws because it treats pregnancy differently than other medical disabilities. Because pregnancy, though unique to women, is like other medical conditions, the failure to treat it as such amounts to discrimination which is without rational basis, and therefore is violative of the equal protection clause of the Fourteenth Amendment.

In an almost identical case in Cleveland, Ohio, a Federal district court judge ruled that such a provision was not a violation of the Fourteenth Amendment. This case is being appealed.

Further, our paper has been distributed at several conferences of business men which included executives from all over the country. The influence it is having is naturally very gratifying to the Council members.

APPENDIX E

Information from Insurance Industry Relating to Coverage of Childbirth in Health Insurance and Temporary Disability Insurance (Employment-Related Group Policies)

Information from a large insurance company, which writes a large percentage of health insurance and temporary disability insurance policies, shows that the difference in cost between health insurance coverage that includes care for pregnancy and childbirth and that which does not is small. Likewise, the cost of including a maternity benefit in temporary disability insurance is small. Most employment-related group health insurance policies include maternity benefits as do an estimated one-half of the temporary disability insurance policies. Special limits frequently are put on coverage of medical costs of pregnancy and childbirth and compensation for time lost from work because of childbirth and complications of pregnancy.

The Council has been given estimated premiums for a work group that is made up of 31 to 40 percent female employees. The estimated rates are the rates before discount for size; larger employers would pay less. For a typical good hospital, surgical and major medical package, the cost for coverage for a family would be about $42.00 per month if pregnancy were not included. If maternity benefits without special limits are included for female employees only (not for wives of male employees) the cost would be a little less than $1.00 per month more per employee. If the wives of employees are included this would add about $4.00 per month per employee to the cost.

The insurance company representative stressed that these figures are averages. Variations in medical costs among regions of the country and among types of industry would influence actual premiums, as well as discounts for size. The proportionate increases for pregnancy coverage, however, would be about the same whatever the basic cost.

The experts estimated that for a typical employer of 500 employees, with 31 to 40 percent female employees of an average age and marital status mix, a good hospital, surgical, major medical package without maternity coverage would have a total cost of about $194,400 per year. With full coverage for both female employees and wives of male employees, the cost would be about $212,900, or less than 10 percent difference, most of the difference being for coverage of the wives of male employees.

A surprisingly high percentage of health insurance policies cover the spouses of male employees for maternity benefits but exclude the the female employees. A Health Insurance Association study of employment-related group policies issued in 1969 showed that 61 percent covered maternity benefits for wives and female employees, 9 percent had coverage of wives of male employees only, and 1 percent had coverage for the female employees only. The remaining 29 percent of policies written did not cover maternity.

The Council has also been given estimates on cost of including maternity leave in a typical temporary disability insurance policy for an employer who has 31 to 40 percent female employees. The experts state that a $60.00 a week benefit beginning the 8th day after an accident or the onset of illness and payable for a maximum of 26 weeks, would cost close to $6.00 per month per employee without a benefit for maternity leave. The company has had experience only with coverage of maternity benefits for a maximum of 6 weeks. Such a benefit would add about 60¢ per month per employee to the cost--approximately a 10 percent increase. It was not clear as to why the policies had included only a 6 week benefit.

A 1969 study by the Society of Actuaries of temporary disability insurance policies issued by 11 large insurance companies showed that 9,700 policies issued had some maternity benefit, whereas 10,700 did not. In other words, a little less than one-half of these group policies issued included coverage for maternity. This study did not include policies issued under State temporary disability insurance laws.

In summary, the economic data available concerning cost and the extent of present coverage indicates that it is entirely feasible for employers to provide the same economic benefits for absence due to childbirth as for absence due to other temporary disabilities.

U.S. GOVERNMENT PRINTING OFFICE: 1978 O - 274 789 (61)

The Council was established by Executive Order 11126 in 1963 on the recommendation of the President's Commission on the Status of Women, whose chairman was Mrs. Eleanor Roosevelt. Miss Margaret Hickey was the first chairman, followed by Senator Maurine B. Neuberger. Mrs. Jacqueline G. Gutwillig is its third chairman. Council members are appointed by the President and serve without compensation for an indeterminate period. One of the Council's primary purposes is to suggest, to arouse public awareness and understanding, and to stimulate action with private and public institutions, organizations and individuals working for improvement of conditions of special concern to women.

The views expressed by the Council cannot be attributed to any Federal agency.