Mr. MARKHAM. Yes, Mr. Chairman. I have had experience in several States with these laws, and I find that the closer to the industry problems in the State, the more knowledgeable about them, and their laws are written in a manner which gives relief to such situations that I have cited here in my testimony.

I have not gone into a lot of other objections which have been well covered, as you know. I feel that the State experience has proven to be satisfactory, particularly in heavy industry such as I am familiar with. However, I feel that if this committee can recognize the economic realities of this situation in passing this law and make some proper definitions, we would have no objection to it being passed.

Senator MCNAMARA. You further point out, sir, that your company generally has collective bargaining arrangements with your employees that you think cover the problems of the differential paid in wages. Do you have nonunion competition that is not covered by such requirements?

Mr. MARKHAM. In the glass containing manufacturing industry, I don't believe there is any nonunion plant in the country.

Senator MCNAMARA. It is pretty generally organized?

Mr. MARKHAM. They are all organized. I might hasten to point out, as Mr. Owen who testified before me, who happens to be one of our major competitors, his ratio of female employees of about 40 percent is identical to ours. We are approximately 40 percent.

In a glass-manufacturing plant, the jobs that I was talking about in my problem are female jobs and have been since World War II, and very prevalently so. If we were to be caught with this law without some recognition of the problem, we would have to raise all of our female job rates up to the 10 men involved. There would be Owen-Illinois and other glass competitors, and not just them, who would enjoy this competitive advantage over us.

This would not be equity, because I have tried to cite a case. Here is a case of a differential based on sex as the result of conforming with the State law that prohibited women from working nights. There is no willful attempt to discriminate against females as far as pay is concerned, but this law does not recognize or make any exceptions for such situations. It says you are guilty regardless of how you got into the jam.

Senator MCNAMARA. You point out that about 40 percent of your employees are female.

Mr. MARKHAM. That is right, sir. That is just the hourly group, Mr. Chairman.

Senator MCNAMARA. Thank you very much. I am sure your testimony will be very helpful to us.

Mr. MARKHAM. Thank you.

Senator MCNAMARA. The next witness is Miss Sonia Pressman, attorney, for the American Civil Liberties Union.

I am advised by the staff that you have a prepared statement of some length. Do you wish to put it in the record?

Miss PRESSMAN. That is right. I want the entire statement to go into the record, and I will paraphrase it right now.

Senator MCNAMARA. It will be made a part of the record at this point.

(The prepared statement of Miss Pressman follows:)

PREPARED STATEMENT OF MISS SONIA PRESSMAN

Mr. Chairman and members of the committee, my name is Miss Sonia Pressman, and I am an attorney. I am accompanied by Mr. Lawrence Speiser, Director of the Washington office of the American Civil Liberties Union. We are here today on behalf of the American Civil Liberties Union in support of S. 910, which would prohibit discrimination against women by providing that they receive, for the same work as men, the same pay as men.

Our concept of civil liberties has broadened since the day when a Bill of Rights was passed to protect Americans from their Government. In those days, the primary concern in setting forth specific rights of citizens was to insure that they were to be forever free of Government encroachment; today this concern has been expanded to include an affirmative obligation on the part of the Government to protect these rights from encroachment by others. We think that the right of women to work on an equal basis with men is not among the least of these.

The administration's proposal is S. 910, introduced in the Senate by Senator McNamara, chairman of this subcommittee.

In essence, S. 910 provides that any employer of 25 or more employees who is engaged in commerce shall compensate all his employees equally for equal work on jobs requiring equal skills; it contains a 2-year period within which all wage rate differentials shall gradually be eliminated; the Secretary of Labor is given authority to prescribe regulations and conduct investigations in connection with his administration of the act; prior to taking any formal action, he is instructed to attempt to eliminate discriminatory practices by informal methods of conference, conciliation, and persuasion; only when such methods fail, and a violation is found to exist, is he authorized, after notice and hearing in accordance with the Administrative Procedure Act, to issue a cease-and-desist order requiring restitution of wages with an additional amount as liquidated damages not to exceed the back pay; he may, moreover, order the reinstatement to employment and the restitution of wages for discharge or other discrimination taken against employees for their invocation of the protections of the act. He may appeal to the Federal district court which has jurisdiction over the violation or the employer for appropriate temporary relief or a restraining order, and to secure enforcement of his orders. The employer may likewise appear to the distict court for review. Special provisions are included for those contracting with the U.S. Government in amounts exceeding $10,000.

This, then, is S. 910—a bill which is novel neither in its purposes nor in its methods. The prohibition against discrimination for unjustifiable reasons has long been a part of this Nation's heritage. The 14th amendment to our Constitution provides that no State shall deny to any person within its jurisdiction the equal protection of the laws. The Supreme Court, in interpreting that amendment, the Congress, in passing Civil Rights legislation, the municipalities and States, in enacting fair employment practices measures, all have reaffirmed the principle that discrimination for reasons of race, religion, creed, or national origins is abhorrent to our concept of democracy. S. 910 is an attempt to give to women, who constitute the majority of our population, the same rights which have already been given to our various minority groups in this limited field.

In its passage of the Wagner Act, Congress again demonstrated its opposition to discrimination for irrelevant reasons, the discrimination in that instance being based on whether or not the individual involved chose to affiliate himself with a labor organization. Congress has thus seen fit to protect the individual who voluntarily chose to affiliate himself with an organization. Shouldn't it likewise protect the individual who, without any volitional action on her part finds herself in an association—an association based on sex?

Not only do we have precedent for passage of a bill prohibiting discrimination; we even have precedent for passage of a bill providing for equal pay for women. This principle is already a part of the Federal Civil Service Law and other similar laws relating to Federal employees. Women, particularly in the professions, are drawn to Government because of its reputation for nondiscriminatory practices. We don't believe the United States has suffered for having them in its ranks. S. 910 is, then, no more than an attempt to give to women in industry and commerce those rights already enjoyed by women employed by the Federal Government.

As stated above, there is nothing novel about the procedures established in S. 910. Many of them can be traced to antecedents in other bills. The authority given to the Secretary of Labor to conduct investigations and initiate proceedings is similar to that granted to him by the Fair Labor Standards Act and by the Landrum-Griffin amendments. Similar authority is granted to Fair Employment Practices Commissions under some of the FEPC bills. In those statutes, as in S. 910, the purpose of such provisions is to guarantee that those employees, for whose benefit the particular act was passed, are actually protected by it.

Some of the FEPC legislation provides, in addition, for the investigation of complaints filed by individual employees so that the machinery of the act may be set in motion, not only upon the Secretary's intiative, but also upon the filing of an affidavit or a charge on behalf of the aggrieved party. It might be well for S. 910 to be amended so as to include this alternative method.

The restitution of wages provided for by S. 910 is familiar as a remedy for discrimination or unlawful wage patterns under the National Labor Relations Act and the Fair Labor Standards Act. The Fair Labor Standards Act, like S. 910, has provisions for the payment of liquidated damages in addition to back pay.

The provision that the Secretary first attempt to secure settlement is to be found in many of the FEPC bills. In addition, many of the FEPC statutes provide that what takes place during the conference on conciliation shall be strictly confidential. Perhaps such a clause could be inserted into S. 910 to give additional protection to employers.

One could go on and on enumerating precedents for the procedures contained in S. 910: The administrative proceeding conducted in conformance with the Administrative Procedure Act, the Secretary's right to appeal to the district courts for temporary restraining orders and enforcement of his orders, the employer's right of review, the special provisions for Government contractors—all of these may be found in one or more of the other statutes discussed above. In addition, the Fair Labor Standards Act and some of the FEPC bills carry criminal penalties with fines up to $10,000, or imprisonment, or both. Putting teeth, such as these, into S. 910, might prove an effective measure in securing compliance with its terms.

What are the arguments advanced against passage of S. 910? They appear to fall into one or more of the following categories: Women can never perform work equivalent to that of men because they are intellectually, emotionally, and physically inferior to men; even if women can perform work equal to that of men, they shouldn't receive equal pay because it costs more to employ them; and even if women can perform work equal to that of men and don't cost significantly more to employ, no Federal equal pay legislation should be passed because the development of equitable standards is being handled adequately through voluntary compliance, collective bargaining and State statutes. Let us examine these arguments.

Those who contend that women cannot perform work equivalent to that of men because of intellectual and emotional inferiority never cite statistical data. The reason for this is simple: there are none. What data there are in this area—such as those reported by Prof. Ashley Montagu in his book "The Natural Superiority of Women"—suggest that women are intellectually, emotionally, and even physically superior to men. However, we don't request, in the light of this, that legislation be passed requiring a higher wage scale for women—all we ask for is equality of treatment.

Of course, no one would claim that women can perform all jobs—such as those requiring masculine brawn—as well as men, any more than men can perform all jobs as well as women. S. 910, however, only requires equal pay for equal work and jobs requiring excessive physical strength are not equal to those that do not. Where the jobs are different, the wage scales should be different. In this century of automation in factories and white-collar work in offices, sheer force is less and less a factor in employment. Rather, it is ability and the willingness to work which count. We think women have demonstrated their equality in these areas. Thus, while we join the French in saying "Vive la difference," we must remember that "difference" isn't the significant factor in the performance of most jobs.

Those who claim that it costs more to employ women than men argue that women lose more working time through sickness or other absences, are more prone to leave employment, and are responsible for higher insurance and pension

costs. Opponents of equal pay legislation even dredge up such items as the cost of restroom facilities.[1]

With regard to absences from work and tenure of employment, the figures supplied by critics of equal pay for women are generally the result of research by the company offering them and are usually limited to the operations of that one company. Nationwide figures and studies based on nationwide representative samples conducted by impartial organizations are, however, available. While these figures vary, they generally indicate that such differences as exist in these areas between men and women are not significant.[2] In some cases, such as the number of days lost for chronic illnesses, men actually lose more work hours than women.[3] Furthermore, studies indicate that factors other than sex play an important part in determining the amount of time lost from work.[4] Obviously, this is an area where more research and indepth studies could prove useful. Suffice it to say that the information we have now does not justify the discriminatory wage scales we have now.

The field of insurance is a complicated one and many factors other than sex play a part in determining premium rates: the size of the establishment, the type of insurance—whether hospitalization, life, the characteristics of the particular fund, etc. Generally, insurers, in their initial determination of premium rates, take all pertinent factors into consideration, and arrive at a single premium rate for all employees. Although plans and rates vary considerably, it would appear that female employees may carry an additional loading factor with regard to hospitalization and pension plans, while their rate for life insurance is lower than that for men because they contribute more in premiums during their longer life span. Proponents of discriminatory wage scales derive an interesting maxim based on women's greater longevity. Since women live longer and must provide for themselves during a longer period of time, they should receive lower pay. A more reasonable approach would appear to be the acknowledgment that any insurance costs attributable to women, like any costs attributable to male employees, must be absorbed as part of the costs of production.

The same may be said about laws requiring restroom facilities for women. The statutory requirements in this area are so minimal it is difficult to believe that employers would not provide similar facilities in their absence.[5] It is in fact incredible to hear employers argue that women should be paid less because they have to use restroom facilities.[6]

The argument that women are more costly to employ is frequently capped with dire prophecies that passage of an equal pay bill will result in wholesale bankruptcies across the face of the land and mass discharges of women employees. Similar predictions were made prior to passage of the Fair Labor Standards Act. However, studies conducted since the passage of that act have shown that these claims were grossly exaggerated. There were in fact few discharges and business failures attributable to minimum wage standard requirements.

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[1] See, for example, the statement of the vice president of the Ovens-Illinois Glass Co., before the House Subcommittee on Labor.

[2] See, for example, the most recent Public Health Service study on the basis of a national sample representing the total population of the United States, which indicates that the time lost during fiscal 1960 for illness and injury was 5.6 days for women and 5.5 for men; and a 5-year study of factory workers done by the Women's Bureau of the Department of Labor for the years 1950–55, indicating that the turnover rate was 24 per thousand women to 18 per thousand men.

[3] "Economic Costs of Absenteeism Among Women," March–April 1963 issue of Progress-Health Services, Health Information Foundation, Graduate School of Business, the University of Chicago. This study indicates that during fiscal 1960 there were 137 million working days, or 3.1 days per person, lost by male employees due to chronic illness as contrasted with 58.6 million working days, or 2.6 per person, for women.

[4] For example, the "Civil Service Commission Study of Sick Leave Records for Federal Employees for 1961, indicates that as salary and position rise, the amount of time taken on sick leave diminishes. Since women today are often relegated to low-skilled jobs, it is not surprising that their sick leave time is somewhat higher than that of men.

[5] In the District of Columbia, for example, the requirements are limited to female employees of dry-cleaning and laundry establishments and prescribe minimal standards of space and facilities.

[6] Another argument made by supporters of discriminatory wage scales is contained in the statement made by the representative of the U.S. Chamber of Commerce before the House Subcommittee on Labor. This argument goes as follows: male secretaries are entitled to receive higher pay than female secretaries for equal or inferior work because employers want to retain them as permanent employees so they may be considered for advancement as supervisors. Thus, discrimination in the present is justified as a stepping stone to discrimination in the future.

Lastly, we come to the contention that even though women deserve equal pay for equal work, such matters are being handled adequately by the employers themselves, through collective bargaining, and through State action. Here again the facts belie the contention. Statistics with regard to discriminatory wage patterns in various industries and establishments indicate that employers are not uniformly following equitable pay scales voluntarily and collective bargaining is not meeting the situation because most union contracts do not contain equal pay provisions. Whether this is due to the fact that unions represent more men than women or that employers resist such clauses or a combination of these two, is unknown. Only 22 out of the 50 States have passed equal pay legislation. Many of these bills are ineffectual because of exemptions and lack of enforcement. The prospects for the passage of any such legislation by the remaining 28 States are dim.[1]

These then are the arguments in opposition to S. 910—a bill which seeks to apply to discrimination based on sex some of the same methods which have been found effective in combating discrimination based on race, religion, creed, national origin, and union membership. The marvel is not that a bill like S. 910 is up for passage by this Congress but that its merits must still be debated long after so many other similar measures have become an accepted part of the American system.

This is all the more remarkable since S. 910 is only a first step in equalizing employment opportunities for women in this country. It will of course assist the approximately 23 million employed women to secure equitable compensation on the jobs they now have. But it will not assist them in being considered on an equal basis with men when opportunities for transfers or promotions arise. It offers no relief to the millions of unemployed women of working age in this country today, many of whom remain unemployed because discriminatory employment practices based on sex are so widespread. In this era of the cold war, we cannot afford this waste of our human resources.

However, while we feel strongly that legislation which outlaws discriminatory hiring practices is just as vital as legislation which outlaws discriminatory wage policies, we support S. 910 as a move in the right direction of equalizing women's rights.

As with any socially desirable legislation, there are those who will say that Congress has no business passing laws to combat an evil that lies in the minds and hearts of people—and that we must wait until education and greater insight and, perhaps, the Messiah, will change mankind. We agree that statutes do not at the moment of their passage effectuate changes in the individuals whose conduct they attempt to regulate. But legislation does have a very definite effect on the climate of opinion, and this in turn plays upon the minds and hearts of the people. Congress has a role to play in this area. If an employer pays some of his employees less money for equal work because they belong to a union, he knows that he does so in violation of the laws of the United States. If an employer pays some of his employees less money for equal work because they are women, let him likewise know that he does so in violation of the laws of the United States.

Samuel Johnson is reported to have said in the 18th century "Nature has given woman so much power that the law cannot afford to give her more." I would ask you to consider whether, in this 20th century, it might not be more appropriate to say "Nature has given woman so much power that the law cannot afford to give her less."

Senator MCNAMARA. Will you identify the gentleman who accompanies you for the record?

[1] Those who sincerely believe in State action will have an excellent opportunity to advance their cause after passage of S. 910. Since this bill only covers employers engaged in interstate and foreign commerce and establishments with 25 or more employees, the States would do well to prescribe standards for excluded employers and establishments.

STATEMENT OF MISS SONIA PRESSMAN, ATTORNEY, AMERICAN CIVIL LIBERTIES UNION, ACCOMPANIED BY LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

Miss PRESSMAN. Yes. My name is Sonia Pressman. I am an attorney and I am accompanied by Mr. Lawrence Speiser, director of the Washington office of the American Civil Liberties Union.

Senator MCNAMARA. We are happy to have you here.

Mr. SPEISER. Thank you.

Miss PRESSMAN. We are here in support of S. 910, the administration's equal pay bill.

The prohibition against discrimination for unjustifiable reasons has long been a part of this Nation's heritage. The 14th amendment to the Constitution, the civil rights measures passed by Congress, the fair employment practices bills enacted by the States and municipalities all have reaffirmed the principle that discrimination for race, religion, creed, or national origin is abhorrent to our concept of democracy. S. 910 is an attempt to give to women who constitute the majority of our population some of the rights already enjoyed by our various minority groups.

In passing the Wagner Act, Congress demonstrated that it was opposed to discrimination against the individual who voluntarily chose to affiliate himself with a labor organization. Shouldn't it likewise protect the individual who without any volitional action on her part finds herself in an assoictaion—an association based on sex?

The Federal civil service law already provides equal pay for women in the Federal Government. S. 910 is no more than an extension of this right to women in industry and commerce.

There is nothing novel about the procedures set forth in this bill. Many of them can be traced to antecedents in other bills, such as the Fair Labor Standards Act, the Walsh-Healey public contracts law, and the National Labor Relations Act. S. 910 applies some of the methods found effective in those bills to an area where discrimination is equally invidious, discrimination based on sex. The marvel is not that a bill like S. 910 is up for passage by this Congress, but that its merits must still be debated long after so many similar measures have become an accepted part of the American system.

Let us debate them, then. What are the arguments raised in opposition to S. 910? Opponents of the bill contend that women cannot perform work equal to that of men because they are intellectually, emotionally and physically inferior to men; that, even if they could perform equally, they should not receive equal pay because it costs more to employ them; and, at any rate, no Federal legislation should be passed because equitable standards are being developed through voluntary compliance, collective bargaining, and State statutes. Let us examine these claims.

With regard to women's innate capacities, the available data—such as that reported by Prof. Ashley Montagu in his book, "The Natural Superiority of Women"—suggests that women are intellectually, emotionally, and even physically superior to men. While we don't request, in the light of this, that legislation be passed requiring a higher wage scale for women, we do ask for equality of treatment.

Of course, women cannot perform all jobs as well as men—any more than men can perform all jobs as well as women. But S. 910 only requires equal pay for equal work. Jobs that require excessive physical strength are not equal to those that do not. Moreover, in this age of automation and white-collar work, sheer force is less and less a factor in employment. Rather, it is ability, and the willingness to work which count. We think women have demonstrated their equality in these areas.

What about the argument that it costs more to employ women? With regard to absence from work and tenure of employment, nationwide studies show that such differences as exist between men and women are not significant. In some cases men actually lose more work hours than women. Furthermore, statistics indicate that factors other than sex have a vital role in determining absenteeism and labor turnover—factors such as the skill level of the job, and the employee's age, length of service, and record of job stability. While this is an area where more research and in-depth studies could prove useful, the information we have now doesn't justify the discrimination we have now.

As for insurance and pension rates, here again many factors other than sex play a part. Insurers generally consider all of these elements and then arrive at a single rate for all employees. While female employees may carry an additional loading factor for hospitalization and pension plans, their rate is generally lower for life insurance because they contribute more in premiums during their longer life span. Opponents of equal pay say that since women live longer and must provide for themselves during a longer period of time, they should receive less pay. Wouldn't it be more reasonable to acknowledge that insurance costs attributable to women employees, like other costs attributable to male employees, should be absorbed as part of the costs of production?

The same may be said about restroom facilities for women. The statutory requirements in this area are so minimal it is surprising to hear them raised as a reason for opposing equal pay. Do opponents of this bill actually contend that women should be paid less because they have to use restroom facilities?

Critics of the bill prophesy that its passage will result in wholesale bankruptcies across the face of the land and mass discharges. Similar predictions were made prior to the passage of the Fair Labor Standards Act. However, these claims were later shown to be grossly exaggerated. There were few discharges and business failures directly attributable to minimum wage standards.

Lastly, we hear the contention that equal pay is being achieved by the employers themselves, through collective bargaining, and through State action. Here again the facts belie the contention. Statistics indicate that employers are not uniformly following equitable wage scales; collective bargaining is not meeting the situation because most union contracts do not contain equal pay provisions. Whether this is due to the fact that unions represent more men than women or that employers resist such clauses is unknown. Only 22 out of the 50 States have passed equal pay bills; many of these are ineffectual because of exemptions and lack of enforcement. The prospects for the passage of legislation by the remaining 28 are dim.

These then are the arguments in opposition to S. 910—a bill that represents no more than a first step in equalizing employment opportunities for women in this country. While it will assist the approximately 23 million employed women to secure equitable compensation on the jobs they now have, it will not assist them in being considered on an equal basis when opportunities for transfers and promotions arise. It offers no relief to the millions of unemployed women of working age, many of whom remain unemployed because of discriminatory employment practices. But S. 910 is a move in the right direction and on that ground it is entitled to our support.

As with any socially desirable legislation, there are those who will say that Congress has no business passing laws to combat an evil that lies in the minds and hearts of people—and that we must wait until education and greater insight and perhaps the Messiah will change mankind. While education and understanding are vital factors in the battle against discrimination, there is something else available. As Senator Muskie stated, and I quote:

> There is also the rule of law not as a primitive force, not as a harsh master, but as a stimulus, as a prod, as a standard of conduct.
>
> We cannot legislate trust and understanding. We cannot legislate confidence. We cannot strike down fear by legislative decree. We cannot, by a stroke of the legislative pen, create love and kindness in a human heart.
>
> But we can, by wise legislation, create a climate in which men, separated by divisive differences, can learn to live together.
>
> It is possible to establish rules to prevent abuses, to restrain the impulsive, to contain and eliminate excesses, to encourage responsible attitudes, to give support to moderation.
>
> When men are equal before the law and are required to treat each other as such, they are more inclined to believe in such equality.

In the 18th century, when men were fearful of granting equality to women, Samuel Johnson said, "Nature has given woman so much power that the law cannot afford to give her more." I would ask you to consider whether, in this 20th century, it might not be more appropriate to say, "Nature has given woman so much power that the law cannot afford to give her less."

Senator McNamara. Thank you very much, Miss Pressman. I think the questions you raise are very interesting, although many of them are answered by your presentation. We will give serious consideration to them. We thank you for your very fine presentation and appreciate your appearance here today.

Miss Pressman. Thank you.

Senator McNamara. The National Council of Churches, Mr. James A. Hamilton, associate director of the Washington office.

We are glad to have you here today and I want you to proceed in your own manner.

STATEMENT OF JAMES A. HAMILTON, ASSOCIATE DIRECTOR, WASHINGTON OFFICE, NATIONAL COUNCIL OF CHURCHES

Mr. Hamilton. Thank you very much, Mr. Chairman.

Let me say we appreciate the opportunity to testify this morning. I have a very brief statement and with your permission I would like to read it.

Senator McNamara. Go right ahead, sir.