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The Equal Pay Act of 1963: A Study of Policy-Making

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by

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INTRODUCTION

1

The year 1963 was a critical time for women. In that year, the federal government embarked on a course designed to provide equality in the work place for women by enacting the Equal Pay Act of 1963. In the same year, an executive order was issued which barred discrimination against women working for the federal government; President Kennedy's Commission on the Status of Women issued its report, *American Women*, recognized as a turning point in government policy toward women; and Betty Friedan's *Feminine Mystique* exposed the anti-feminist tone of the fifties. Although the Equal Pay Act was hardly revolutionary in terms of narrowing the wage gap between men and women, it was a

marked change from past government policy which had treated women as a marginal or temporary source of labor. Government policy had been based on the assumption that women's primary role was that of wife and mother-a role which dictated they be treated with special care. The need to guard women from the hazards of the work place led to the development of laws which placed them in a separate category from men and "protected" them from employment conditions deemed unhealthful, dangerous or overly strenuous.

Actions taken in the early sixties were not necessarily based on a different view of women's proper role, they were merely responses to long term changes that had previously been ignored. Women had been slowly entering the work force, making up over one-third of all workers in 1960, yet government policy did not recognize them as permanent or equal workers. While government policy in the early sixties was not intended to encourage women to leave their homes and families and seek employment, it did attempt to give them a more equal footing in the work place. Its action was an important legitimization of women's right to work at a time when the attitude that women belonged at home was still widespread.

Importantly, though, these events occurred at a time when no organized, widespread feminist movement had yet

developed. In fact, the only group of women who labeled themselves "feminists" were the several hundred members of the National Woman's Party, whose demand for an equal rights amendment had been largely ignored by lawmakers in Washington for over forty years.[1] Instead, those who were instrumental in starting the process of change in the early sixties were women who had traditionally directed their efforts toward helping women in the lowest paying jobs shoulder the dual burden of work and family responsibilities. Basic to their thinking was the belief that a woman's primary responsibility was to her home and family. Within this limited context, changes enacted in the early sixties were not expected, or even intended by most, to lead to a fundamental change in the roles assigned to women by society. The Equal Pay Act of 1963 took place at a time when the attitudes of the past were being reexamined and modified, although not necessarily discarded entirely. There was, as yet, no outright rejection of traditional sex roles. However, a pressure was building to bring old ways of thinking into harmony with the present situation in which women could expect to work outside the home.

This paper will study the Equal Pay Act and attempt to uncover the reasons why it was able to become a legal reality in 1963. Equal pay had been proposed as early as

the nineteenth century, and agreement with the principle had developed slowly since that time. The fact that it was passed in 1963 had as much to do with political events as it had to do with the mildness of the proposal itself. Although growing support from the ever- increasing numbers of women workers was important, there were other factors without which equal pay would not have become a reality as soon as it did. Among these are the political situation in 1960, when John F. Kennedy entered office and relied upon Esther Peterson as his advisor for women's affairs. Peterson made issues facing working women into an important part of the president's policy toward women, a tactic not previously used by women who had advised former presidents. Unlike her predecessors, Peterson did not concentrate her energies on the token appointment of women in high government offices. Rather she focused on education and legislative reform, making equal pay a vital part of Kennedy's policy toward women. She was also instrumental in the appointment of the President's Commission on the Status of Women. Important as well was a change in leadership behind the scenes, where equal pay proposals had been held hostage by a hostile committee chairman. The change resulted in action finally being taken on equal pay bills--hearings were held, the bill was released from committee and was scheduled for floor debate.

The Equal Pay Act of 1963 prohibited certain employers from paying men and women unequal wages for performing equal work. However, because of the weakness of the bill which was finally passed and the limited reform it was intended to correct in the first place, its final effects were not as far reaching as was hoped for by its supporters. It partially corrected the most blatant forms of sex discrimination, those that existed when men and women performed the same jobs and received unequal rates of pay. But it failed to address the root causes of wage inequity--job segregation and the undervaluation of any work performed by women. Most women were not working side by side with men. They were doing different types of work, and were, therefore, not affected by the law. However, given the attitude of the time, which was far from being wholly supportive of working women, the act was an important indication of support for a woman's right to work. While it was generally accepted that women should be allowed to work if they wanted (i.e. needed) to, a willingness on the part of the federal government to ensure that they were treated equitably meant that they were for the first time being accepted as a permanent part of the labor force, and one which should be entitled to the same rights and privileges as other workers. The Equal Pay Act was an indicator of the dramatic changes in women's rights

that would occur within the decade. It occurred at a moment in time when decades of change had drastically altered the reality of women's lives, yet contemporary thought still clung to the outdated notion that women belonged at home, and pitied or disdained the woman who worked.

It was the first of several government regulations for women, including Title VII of the Civil Rights Act, which was passed the following year with more far-reaching implications, and Executive Order 11375, which in 1968 prohibited discrimination on the basis of sex by employers who hold contracts with the federal government.[2] Although the act did not gain a national spotlight (in fact it was supported by a relatively small group of men and women concerned with labor regulations), it was recognized as a first step in the fight for equal rights by women in Washington who would later be in the forefront of the fight for women's legislation. The Equal Pay Act was important as well because of the changes it did make for women who were under its coverage. Although these changes were relatively few, the interpretation of the act by the courts was broad. In addition, the mere presence of such a law helped eliminate unequal pay scales even in companies which were not under the jurisdiction of the law.

THE ROOTS OF THE EQUAL PAY PRINCIPLE

2

Equal pay has long been a goal of those concerned with the low wages afforded to women workers and the poor conditions under which they labored. The early struggle to develop equal pay policies, however, was not led by those seeking to improve the lot of working women, but by others whose chief motivation was the protection of male workers. The goal of equal pay has generally been put forth for three reasons: to provide justice for women, to increase consumer purchasing power and to establish wage and job stability for men.[3] Historically, the third reason has been the most important in actually effecting equal pay policies.

Attention to the problem of unequal pay surfaced sporadically in the nineteenth and 20th centuries, mainly during times of national emergency--the Civil War, World War I, the depression, World War II and the Korean War. The timing of equal pay proposals, as well as their wording and enforcement, clearly show that most policies implemented before the early sixties were designed primarily to benefit male workers. The desire was not so much to treat women fairly as it was to keep them out of the labor force, or, if that was impossible, at least ensure that their entrance would not cause an overall lowering of wages. Employers often hired women over men because women were willing to perform the same job for less money. If an employer were forced to pay a woman at the same rate paid to a man, the general consensus was that many women would lose their jobs. Their value to an employer was derived from the fact that they were bargain labor--they cost less to employ and were therefore favored.

Although providing justice for women was a genuine concern for some, the primary motivating factor for most was the preservation of the status-quo in the labor market in the face of increasing female participation. Those who did advance the equal pay argument solely on the basis of equity, for example women's groups and the Federal Women's Bureau, lacked the power to translate their goals into

victories. Unions, states and the federal government, however, did have that power and were effective in achieving equal pay laws when it was beneficial for them to do so. That they did so for reasons other than to provide equitable treatment for women workers meant that changes in policy affecting women would be limited. There were, nonetheless, a small number of women who were helped by these equal pay regulations. Early policies were also important in drawing attention to the problem of wage inequity, especially after World War II, when a growing number of people began to espouse the cause of equal pay as a means of providing justice for women, rather than for the traditional motivation of preventing degradation of male wages. However, on the whole, these policies were limited in both their intent and application.

Prior to the 1963 Equal Pay Act, policies prohibiting discrimination in pay took place on three levels, collective bargaining agreements which included equal pay clauses, state laws, and government regulations issued in times of national emergency. The earliest of these regulations were implemented during and after the Civil War by male trade unions reacting to the influx of women into traditionally "male jobs." With women receiving no more than fifty percent of the wages of men, "it was predicted that, if the trend continued, men's wages would be brought

down to the level of women's by the end of the war."[4] Although the first reaction of male workers was to attempt to force women out of the labor force, it was soon apparent that women who needed to work would continue to do so, and the only way to eliminate the threat of low wage competition they posed was to press for equal pay. One labor paper of the day, the *Boston Daily Evening Voice*, urged male trade unionists to help women organize and admitted that "Apart from the justice of our appeal on humanitarian grounds, there is a selfish motive involved, since if the women are helped to organize and raise their wages, the menace of low wage competition may well diminish."[5]

Despite some interest in obtaining equal pay regulations at that time, the instances where equal pay clauses were effective and actually helped women were limited. No doubt, the motivation of those promoting equal pay clauses had much to do with their poor performance for women, since it was men they were intended to help. Another reason for the limited benefit to women is that many union members refused to support the idea of equal pay, either because the threat of female employment in their trade seemed remote or because of a belief that men, as the primary breadwinners, should be paid more than women. In fact, the principle was so far from being

universally accepted, to say nothing of being put into practice, that an 1873 *New York Times* editorial expressed "doubts that it would be in effect by the time of the bicentennial of American Independence in 1976, to say nothing of the approaching centennial."[6] Nonetheless, clauses mandating equal pay for equal work were slowly incorporated into employer contracts, making the most headway in times when women flooded into the work force and when they began to remain there in significant numbers.

Equal pay activity at the federal level surfaced recurrently, beginning as early as 1915, when the Congressional Commission of Industrial Relations recognized the fact that "women should receive the same compensation as men for the same service," and advised legislation to enforce that principle.[7] The event that sparked an interest in equal pay was the entrance of large numbers of women into the labor force during World War I. Similar to the situation during the Civil War, there was a fear that as women entered "men's" jobs they would depress wartime and postwar rates for these jobs. A parallel concern was that returning veterans would be unable to find jobs since employers would naturally prefer to hire women who were willing to perform the same work at a lower wage. Samuel Gompers, leader of the American Federation of Labor, endorsed equal pay as a means of reducing competition with

men, claiming that it should "be a sufficient deterrent to any employer to unnecessarily bring women into industry."[8] In response, the National War Labor Board "allowed" equal pay, but only "if it shall become necessary to employ women on work ordinarily performed by men."[9] In other words, the Board was granting "men's pay" to women not for reasons having to do with fairness, but for the limited objective of keeping wage levels stable until the end of the war when women were expected to leave the work force. In 1918, the Railroad Administration and the Civil Service Commission followed the Board's lead and required equal wage compensation for men and women.

At war's end, concern for equal pay was forgotten, and did not become an issue again until the depression. During this time of high unemployment, women were expected to give up their jobs, so that full male employment could be achieved. To discourage employers from hiring women as a way of cutting costs and, therefore, depriving men of jobs, National Recovery Act codes were established which set equal wage rates for men and women in most industries. In 1934, the remaining industries were given the order that "female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees."[10]

During World War II, the need for women workers once

again caused concern for the stability of men's wages. Ambivalence regarding the payment of equal wages to women is summed up by one observer, "To pay them at a man's scale undermined the barriers that divided women's work from men's. To pay them below it undermined the value of the job and threatened men's wage scales when they returned to reclaim their jobs."[11] Despite this, a second National War Labor Board replayed the policies of the first on a larger scale. The War, Navy and Labor Departments supported equal pay, and the two former departments issued directives to enforce the policy within their establishments. The NWLB called for equal pay on a nation-wide scale in 1942, and formalized its policy in 1945 with the issuance of General Order No. 16.[12] The order, however, was non-binding and merely authorized voluntary compliance. During the course of the war, pay increases were extended to about 60,000 women through employer initiated accordance with the policy, and disputes resolved by the Board provided an additional few thousand women with equal pay protection.[13] In spite of these gains, however, the economic situation of women relative to men actually deteriorated during the war. The full time woman worker received 59% of the wages earned by her male co-worker in 1939, and that figure dropped to 55% during the war and by 1950 was only 45%.[14]

The development of state laws governing equal compensation followed a similar pattern and reinforces the fact that the main motivation behind equal pay proposals at that time was a concern for wage rate preservation. During World War I, two states adopted equal pay legislation, and by the end of World War II an additional four states had enacted such laws. These events took place in highly unionized states whose rationale for support of equal pay was summed up by one labor observer of the time:

> Even though some members of trade unions balked at the entrance of women into their industry, they recognized that...wage differentials represent a serious bone of conflict in a possible postwar era of unemployment. Not out of altruism, but out of pure self-preservation, many unions have insisted on the 'equal pay for equal work' doctrine; for where an employer can get his work done by a labor force which costs less, he is less likely to concern himself with sex, race, or religion of that labor supply.[15]

By 1963, twenty-two states had passed equal pay legislation, and bills were pending in seven more.[16] However, the effects of these laws were hardly uniform. Some were only very narrowly applied, excluding large groups of women from coverage, while others provided no means of enforcement so that they were, in effect, mere statements of support for the principle of equal pay. For

example, the laws of nine states did not create an administrative body, grant enforcement powers to an existing office or approve funds for administration.[17] In eighteen states, employers were not required to keep records, severely limiting their laws' effectiveness.[18] The Maine law did not provide for wage collection for employees who brought court action against an employer, and instituted an penalty of "not more than $200" for violation of the act.[19] In Illinois, unions were allowed to violate the act. Massachusetts, like many other states, excluded from coverage "persons employed in domestic service; agricultural service; and employees of any social club, fraternal, charitable, educational, religious, scientific, or literary association."[20]

The commit ment of the states to the goal of equal pay was obviously inadequate. In the forty years following the enactment of the first two state equal pay laws, only twenty more states had followed suit. Where laws existed at all, the coverage was limited and enforcement poor. Proponents of equal pay realized the weakness of the state laws, and had introduced national legislation as early as 1945. However, it took eighteen years of effort to gain enough support to pass an effective national law to enforce the principle of equal pay.

EQUAL PAY IN THE POST WORLD WAR II ERA

3

Starting in 1945, with the introduction of the Pepper-Morse bill, entitled the "Women's Equal Pay Act of 1945," equal pay bills were introduced into both the House and Senate in every Congress from the 79th through the 88th.[21] Until 1962, however, such bills gained little attention and few hearings. How then, did the situation change to enable equal pay to gain more attention and eventual passage? On the one hand the lobbying efforts of eighteen years may have built up enough momentum to bring about passage. There would seem to be more to the story, however, in view of the fact that equal pay proposals were virtually ignored until 1962, after which time events moved

quite quickly with hearings, debate and passage occurring in little more than a year.[22] Certainly several long-term developments helped create a climate favorable to such legislation. One factor which was absent in the earlier struggle for equal pay was an attitude of acceptance toward social justice legislation, whose roots were found in the Civil Rights Movement of the mid-fifties. This meant that demands for equal pay on the basis of equity were more likely to find a sympathetic audience in the sixties than they had previously found. Changes in patterns of women's employment were evident--their growing numbers and longer years of work force participation--and were becoming harder to ignore as it was more often realized that women were a permanent part of the labor force.

In one context, the fight for equal pay can be seen as a continuation of the debate between those advocating protective legislation for women and those who favored an equal rights amendment. Historically, both of these methods have been used in the advancement of women. The first treated women as a special class needing protection, while the second argued that no legal distinctions should be made between men and women. Since the 1920's, both of these positions had been advocated by different groups of women. The federal Women's Bureau attempted to gain special concessions for women on the grounds that they were

less able to protect themselves from exploitation and that their role as mother dictated that they be handled with care. They were joined in their efforts by middle-class women's groups who viewed themselves as humanitarians working for the less privileged working-class women. Their efforts concentrated on specific improvements, such as shorter work days and weeks, limits on the amount of weight women could lift and prohibition of dangerous or unhealthful work--improvements which brought immediate results in the lives of working-class women. Similarly, equal pay was part of the plan to uplift the conditions of employment for women who were forced to work. Advocates of protective laws were primarily concerned with women in the lowest paying jobs, who would benefit the most from the elimination of unequal pay practices, even if it meant only a wage increase of a few cents an hour.

The other group of women pursued a goal of absolute legal equality whose benefits were less apparent on the surface. The National Woman's Party supported an equal rights amendment and any other legislation that might serve the end of complete legal equality of men and women. It argued that "protective" laws were barriers to women's advancement. Women would never gain equality if they were treated as an underclass needing protection and were prohibited from holding certain jobs or working specific

hours. Since 1920, the two groups were at odds, working toward different goals, and, for the most part, achieving few results. There were a few instances in which the goals of the two groups overlapped and they worked toward the same end; for example guaranteeing independent citizenship for women married to citizens of other countries, eliminating employment discrimina-tion against married women during the depression, and opening jury service to women.[23] Equal pay was also an idea that both groups agreed upon. However, their mutual support for the equal pay principle did not result from a lessening of hostility toward each other or an attempt to work together, but from varying interpretations of what the law would mean for women. The two positions involved a fundamentally different vision of the role of women in society. The first viewed them as wives and mothers who were sometimes forced by economic circumstances to work, whether it be temporary or permanent. The second position envisioned full equality for women, not just within the work place, but within society as well. The fight for equal pay was dominated by trade union women who were keeping within the tradition of extending protection for working women, but was also joined by feminists who included equality in employment as a step in the larger fight to full equality for women.

Created as a permanent part of the Department of Labor in 1920, the Women's Bureau focused almost single-mindedly for over forty years on eliminating harsh working conditions faced by women in low-paying jobs. It fought for protective legislation, laws which restricted the number of hours women were allowed to work, mandated special rest periods for them and regulated physical conditions under which they were allowed to labor. However, due to the lack of interest directed toward women's issues by the federal government and by society in general, the battle was waged by a small number of women with a limited budget and no strong base of power. From its inception in 1920 until the time the Equal Pay Act was passed, the Bureau never employed more than seventy-five workers or was granted a budget of more than $200,000.[24] With such a chronic lack of funding and personnel the Women's Bureau was hard-pressed to carry out the duties assigned to it by Congress, which gave it the responsibility to "formulate standards and policies which shall promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment."[25]

In addition, its potential to implement change was crippled by the lack of a visible, vocal base of support. The Bureau derived its strength from the groups of women it

represented--working class women who were largely unorganized and economically weak. Programs or changes advocated for women workers were made by members of women's groups who were not often supported by groups with the most power, such as employers associations or unions.[26] The history of the Women's Bureau is, therefore, largely one of "the uses and exercises of influence and persuasion, but not power."[27] Its efforts were limited to research and education. It explored the conditions which working class women faced, gathered statistics and submitted reports, but was largely impotent as a policy creating body. In addition, its role was never taken very seriously "in a society determined to believe that women belonged at home."[28]

In the mid-fifties, the Women's Bureau changed in important ways. During a Department of Labor reorganization in 1954, Bureau employees were incorporated into the larger body and began working directly through it, rather than from the sidelines as they had in the past. Although the Bureau was not abolished, its members became responsible to other officials and its agenda was incorporated into that of the Labor Department, who could advance its goals with greater authority than could the Women's Bureau. The change was intended as a promotion "to recognize the role women played both in government and in

the American economy."[29] In 1960, Secretary of Labor Arthur Goldberg completed the change by merging several bureaus and elevating Esther Peterson to the position of Assistant Secretary for Labor Standards.[30]

At this time the Bureau, which had focused its attention on low-paying women's jobs for over thirty years, began to suddenly change to include jobs for professionals as well. Bulletins began to discuss career opportunities for women in such fields as math, science and law. Commenting on the new direction in which the Bureau was heading, former director Mary Anderson wrote in 1959, "It does nothing for women in industry. What little is done is for Business and Professional Women."[31] The change, however, was not quite so pronounced as Anderson feared. While it is true that the Bureau began reaching out to other groups of women, its fundamental ideology had not changed. Despite the changed realities of women's lives in 1960, Secretary of Labor James O'Connel was still able to state at a conference celebrating the fortieth anniversary of the Women's Bureau, "The highest calling of a woman's sex is the home."[32]

The aspirations of the Women's Bureau were made all the more difficult to reach because of their long-standing disagreement with the Woman's Party. Although the Woman's Party had a considerably smaller following than the Women's

Bureau, its arguments for an ERA were potentially devastating to the protective laws labor women had been working so hard to enact. With its roots as the militant branch of the suffrage movement, the Woman's Party had never been accepted by traditional women's groups. Composed overwhelmingly of white, upper and middle class women, the Woman's Party was the only organization which called itself feminist.[33] The vast majority of women belonging to any kind of organization or at all interested in advancing the status of women supported the policies and outlook of the Women's Bureau. The fact that the Bureau was willing to accept laws which pertained to women workers only, and not to men, alienated the Woman's Party, who opposed any legislation which treated women differently from men or assumed that they needed special protections. Consequently, for over forty years, the limited funds and energy of both groups were spent debating the most suitable course of action to uplift the condition of women.

The debate regarding equal pay must be seen in this context. Hostility between the two groups was as evident in 1960 as it was in the 1920's. The labor women saw those supporting an ERA as elitist and unconcerned with the lives of working class women. Peterson later commented, "The predominantly privileged women who supported the ERA in the early 1960's did not work with us on bread and butter

issues...and many of them were less than enthusiastic about equal pay legislation."[34]

Peterson's observation was true to some extent. Some ERA proponents, while in full agreement with the principal of equal pay, were hesitant to support anything less than a constitutional amendment guaranteeing full equality. The feeling was that enactment of an equal pay law might make the need for the ERA seem less urgent. The Woman's Party had focused almost single-mindedly since 1920 on the ERA, and were slow to support any proposal which had the potential to hinder or delay the amendment's passage. Nonetheless, members of the National Woman's Party did support the Equal Pay Act in 1962 and 1963, testifying on its behalf at congressional hearings. Pro-ERA members of Congress were in favor of the Act as well, fighting against attempts to water down the bill. Both the Woman's Party and the members of Congress, however, supported only a strict wording of the bill, putting them at odds, once again, with the Women's Bureau and its supporters who favored a broader wording.

The Women's Bureau and labor groups were attempting to extend equal pay as a protection to working women in the same way other laws protected them. Feminists supported equal pay for equal work, but didn't want the bill to be like former laws which put women in a special class. While

both groups supported equal pay, their visions of what it would mean for women were vastly different. To the Women's Bureau, equal pay was part of a plan to improve the lives of working class women; those who were forced to work by economic necessity. The Bureau still adhered to the belief that a woman's primary responsibility was to her home and family. While they were pursuing equality within the workplace, the change they envisioned was very limited. The goals of the Women's Bureau had not been designed to serve as an ideology for the general advancement of women, and they did not do so.[35] As one historian noted, "Neither the terms of the debate nor the limited context in which it was conducted had changed substantially since the 1920's; the argument between abstract equality and specific protections continued to be made by small groups of women in Washington talking mainly to themselves."[36]

Despite the stale-mate between the two groups, other events were causing equal pay to be given increased attention in the early sixties. The willingness of the Kennedy administration to support and act upon social justice legislation helped bring equal pay legislation to the fore. His President's Commission on the Status of Women publicized women's issues and brought powerful, prominent leaders into contact with the problems faced by women.

Another major factor was the steadily increasing number of women into the work force and the altered patterns of their participation. Women were no longer working only on a temporary basis between the end of their schooling and the beginning of their married lives. They were often remaining in the work force after marriage, and though many dropped out to raise children, they very frequently returned after their children were older. The difference was that they began to view paid employment as a more permanent condition of their lives than had previous generations, and, consequently, they were less willing to tolerate unfair wages. A young, single woman who saw her job as temporary was much less likely to demand higher pay than an older woman who expected to work many more years and had developed higher skills.

The increased number of working women and their heightened expectations contributed to the drive for equal pay in the sixties. As well, the working woman was gaining more acceptance in her new role than she had formerly been granted. The temporary nature of equal pay clauses during wartime reflected the commonly held view that women did not belong in paid employment. A permanent, national law would legitimize work outside the home for women. Therefore, changing attitudes toward women who worked (and mothers who worked), contributed to the altered nature of the demand

for equal pay.

In the late fifties and early sixties, there was an increasing realization that "womanpower" was becoming a vital part of the nation's economy.[37] Estimates indicated that women would have to move into the work force at a faster rate than men to meet future labor needs. Interestingly, the need for additional workers was a major reason for equal pay laws enacted earlier during times of national emergency, and had little to do with providing justice for women. Given the past success of winning equal pay legislation on the basis of the need for increased labor and the dismal record of winning legislation solely on the basis of equity, it is not surprising that proponents of equal pay brought the larger issue of national needs into consideration. Formerly, as has been noted, the desire to promote equity had taken a backseat to issues of labor needs and preservation of the male wage scale. The argument was used in the sixties that women were vital to the economic growth of the nation and needed the encouragement of non-discriminatory wages to make a maximum contribution.

While it is impossible to calculate the exact consideration given to the reasons used to justify equal pay, the desire to provide equity clearly played a more important role in the mid-twentieth century debate than it

had in earlier decades. Comparing the earlier drive for equal pay from the nineteenth century to World War II to the struggle in the 1960's, a number of changes are evident. Although there was an increased need for labor,there was no national emergency condition in 1962 which called for such brash action as equal pay. The laws that grew out of wartime needs were intended to be temporary and were discarded at wars end-an indication that they were meant to serve ends other than those being demanded by women. The equal pay movement of the sixties was intended to be permanent, which does not prove that it was motivated by egalitarian impulses, but hints that other changes were at work which had not previously been present. By 1963, almost twenty-five million women worked, comprising over a third of the labor force.[38] The sheer numbers of working women forced the issue to be regarded more seriously than in the past.

Though attitudes were being modified, they were by no means completely supportive of working women. Some proponents of equal pay were quick to point out that women worked because they had no choice, not because they wanted to. They implied or directly stated that, although women would rather be at home, outside employment was sometimes unavoidable. Speaking at hearings held on equal pay, Congresswoman Martha Griffiths (D-Mich.) noted the "vast

numbers of divorced and deserted women [who] attempt to support families."[39] Esther Peterson provided data which showed that labor force participation was higher among families in low-income groups and stated, "Widowed and separated women are often the only wage earners in the family and many single women and some married women carry the entire responsibility for family support."[40] Similarly, Chairman Adam Clayton Powell (D-NY) of the House Committee on Education and Labor commented on "the compelling reasons which force women to work."[41] By the early 1960's, however, the undeniable fact was that women were working in larger numbers than ever before and there was reason to believe their presence in the labor force would continue to increase.

During the mid-fifties and early sixties, the federal government demonstrated a willingness to examine the changing roles women were assuming in the workplace and within the home, community and larger society. The National Manpower Council studied the work patterns of women, while the President's Commission examined a number of issues faced by women, such as their legal status, educational needs, employment opportunities and role within the family. The report of the Commission, *American Women*, while not actually advocating that women leave their families and seek employment, did, nonetheless, recognize

the fact that women worked and should given equal opportunities within the workforce. It was during this time, when women's changing roles began to be examined, that Congress began to give equal pay proposals more than just a cursory look.

CONGRESS TAKES ACTION

4

In 1962, for the first time in 18 years, Congress was forced to seriously examine equal pay proposals. Equal Pay bills had been bottled up in the House Committee on Education and Labor for 8 years under the conservative chairmanship of Representative Graham Barden of North Carolina. In 1961 he was succeeded by Adam Clayton Powell (D-NY) who unexpectedly "brought a burst of activity to the committee," and placed such liberals as Edith Green (D-Oregon), James Roosevelt (D-CA) and Frank Thompson, Jr. (D-NJ) in charge of subcommittees investigating controversial social legislation.[42] Powell created three subcommittees

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on education and three on labor, which enabled him to bypass the authority of high ranking committee members who opposed legislation such as equal pay.[43] However, even liberal congressmen were not necessarily overly enthusiastic about equal pay proposals. Green, who was particularly active behind the scenes, recalled Thompson's attitude toward the bill:

> A friend of mine...was in his [Thompson's] office; he was bragging to her and said: "Come on over to my files, I want to show you something." He was very proud of the fact that he had filed this legislation not under "E" for "equal pay" but under "B" for "broads."[44]

Green no doubt had this incident in mind when she stated during House consideration of the bill, "no piece of legislation has served as the basis of so many jokes as legislation having to do with equal pay for equal work...But I must also say to my colleagues that for many millions of women throughout the Nation this is not a joke."[45] At least some men were taking the bill seriously though. Herbert Zelenko (D-N.Y.) was placed in charge of the Select Subcommittee on Labor, and under his direction equal pay took on a new life. The proposal had formerly been part of a fair employment practices bill which prohibited discrimination based on age, race,

religion, color and national ancestry, as well as sex. The section dealing with employment discrimination based on sex was removed and introduced as a separate bill by representatives Zelenko and Green, among others.[46]

In the early sixties, Congresswomen who had worked independently during the fifties began to coordinate their efforts.[47] Equal pay bills had been introduced by Congresswomen Edith Green (D-Oregon) Katharine St. George (R-N.Y.), Edna Kelly (D-N.Y.), Leonor Sullivan (D-Missouri), Jessica Weis (D-N.Y.), Martha Griffiths (D-Mich.) and Florence Dwyer (D-N.J.)[48] Another Congresswoman, Catherine May (R-Wash.), recalled that almost every day women, and sometimes men, met on the floor of the House to devise ways to get more support for the bill. Although there were no regular meetings held, May commented, "we had a women's room, just for the women members of Congress...Many times during the day we'd be in there working, several of us, and we'd talk."[49]

Both the House and the Senate held hearings in 1962. Those of the House were more extensive and included three days of testimony in Washington, D.C., and two days in New York City, while the Senate hearings consisted of written testimony. Those testifying at the March hearings were unanimously in favor of the legislation and included members of Congress, women's civic, religious and feminist

groups, and labor. They stressed the need for such legislation in order to provide justice for women workers, stabilize the work force, prevent undercutting of wages and unfair competition, enhance national prestige, increase consumer purchasing power and provide an incentive to women to reach their full potential, thereby maximizing their contribution to the health of the economy.

Interestingly, many of the same groups who supported a woman's right to equal pay were opposed to the attainment of full equality for her--the passage of the ERA. This was caused in part by the fear that protective laws would be overturned. A list of those testifying against the ERA at hearings held in 1970, a time by which many former proponents of protective laws had withdrawn their opposition and revised their views in support of full legal equality, shows that many of those who strongly supported the Equal Pay Act at the hearings were still in opposition to the ERA. These include the AFL-CIO, which had provided a major source of support for equal pay throughout the long history to enact state and federal laws, as well as unions which had sent representatives to the hearings, such as the Hotel and Restaurant Employees and Bartenders Union, the International Union of Electrical Workers, the Amalgamated Clothing Workers of America, the Communication Workers of America, the International Ladies' Garment Workers' Union,

and two women's groups, the National Council of Catholic Women and the National Council of Jewish Women.[50]

The hearings were important in demonstrating that the practice of wage discrimination based on sex was commonplace. Assistant Secretary of Labor Esther Peterson testified extensively on Labor Department research which proved the existence of unequal wage scales for men and women. Peterson gave figures showing the low income and earnings level of women as compared with men, and presented evidence that the gap was increasing. In 1960, the average woman earned 61% of the income earned by the average man. Five years earlier she had been earning 64% of his income.[51] Although Peterson was quick to note that a variety of factors contributed to wage differentials, she nonetheless believed that "persistent differences in earnings of men and women in comparable occupational classifications suggest the need for equal pay legislation as a first step toward more equitable treatment of women."[52] A survey of job hiring orders was conducted by the Women's Bureau in 1961. Its findings revealed that some employers in states without equal pay laws listed single job titles, but gave different starting rates for workers depending on their sex. For example, a dental laboratory looking for a clerk-typist offered a starting rate of $275.00 per month for men, but to women offered

only $240.00. Similarly, an insurance company looking for a bookkeeper would pay a man $400.00 per month, but would only hire a woman for $350.00.[53]

The studies conducted by the department and the body of evidence collected were important in convincing those who were sceptical about enacting an equal pay law that such a law was necessary. An important factor which created ambivalence toward equal pay proposals was the feeling that wage discrimination was not a serious or widespread problem.[54] Coupled with opposition from the business community, it was safer for lawmakers to ignore equal pay proposals. The hearings, however, shed new light on the debate by documenting the extent of wage discrimination and the broad base of support which equal pay proposals attracted.

In addition, there was a lack of opposition at the 1962 hearings. Of those present at the hearings, all were in favor. Two opposition groups, the National Association of Manufacturers and the National Chambers of Commerce, submitted letters claiming their support for the principle of equal pay, but their disapproval of a federal law to enforce that principle. No other opposition was submitted and no one was present to argue against the legislation in person, which suggests that employers' organizations did not consider it likely that equal pay legislation would

ever make it out of committee. After all, equal pay legislation had been pending for 18 years and had never made it to the floor of either chamber to be voted on. Whatever the reason, the opposition was not vocal at the 1962 hearings. A representative of the National Chamber of Commerce explained, "No one was really taking the bill very seriously, but suddenly it has become a reality."[55]

The hearings and debate show that the fight for equal pay in 1962 and 1963 was waged mainly by labor groups composed of working class women who had a limited goal in mind. While other women's groups were involved in the battle, such as the National Women's Party and the General Federation of Business and Professional Women, the larger numbers of labor women and the support they enlisted from their unions were the driving force behind the push for equal pay legislation. Important as well was the less radical nature of the union women's demand. They took pains to assure lawmakers that they were pursuing a change which involved basic fairness-not one which intended to break down barriers or alter the position of women in society or even within the work force.

The testimony of Judge Reva Beck Bosone provides a typical example of this line of thinking. Bosone believed that whether a person is male or female "should in all justice make no difference in opportunities to express

oneself as a human being" and that "If two human beings make the same contribution both should receive the same reward, the same pay."[56] Yet, at the same time she also stated, "Of course the greatest field for women is first of all the home--her family must come first."[57] Even though she believes in fair treatment in the work place, she was hardly demanding equitable treatment within society.

The hearings also demonstrated the existence of much confusion regarding what the bill was actually designed to do. The bill that was being considered would require employers engaged in interstate commerce to pay equal wages to men and women performing "work of comparable character on jobs the performance of which requires comparable skills."[58] Those testifying held widely varying interpretations of what this clause meant. Interpretations of the bill's function ranged from some who envisioned a very strict definition of equal or identical work and others who called for a whole-scale reevaluation of wage structuring. For the most part, women who testified were not demanding access to different jobs or ones with higher positions of authority. They wanted to be compensated equally for the jobs they were already performing.

Opal Greenfield, a worker at a General Electric lamp plant, testified at the hearings in 1962. Her complaint was typical of the kind of discrimination that union women

felt the equal pay act was designed to eliminate. She described the arbitrary system of job classification in which workers were categorized into job rates which were based upon sex rather that the skill or responsibility required by the work. The company used an evaluation system which put workers into rate ranges from R-9 to R-22, with women occupying the bottom four rates (with the exception of one woman in the R-13 category), while men composed the higher paying R-12 to R-22 jobs. The lowest paying male job was in the category R-12 and required no experience or training, paying $2.21 an hour. Men in this category were janitors and sweepers. In the same R-12 category women performed work that was considerably more skilled, involving a training time of three months and starting at a lower wage until the worker was proficient. Women in this category performed inspecting/quality control work and were hired at a rate of $2.035, which was increased to the full rate of $2.21 when they were determined by the foreman to be fully qualified, a period no less than three months. Ongoing training was required for the women's work to keep pace with increasing technology. In addition, R-12 was the highest category open to women. The discrepancy between difficulty of work and rate of pay was present in all categories of women's jobs as compared to those of men. The complaint being made

by Greenfield, and others like her, was that women's work was not being judged on the same scale that men's jobs were.[59]

The equity change these women were asking for was in many ways inconsistent with their demands for protective legislation. On the one hand, they were asking to be treated as equals; when they performed the same work, they wanted the same rate of pay. Yet, they were reluctant to throw away the protective laws which treated them not as equals, but as a class of workers unable to function in the work force on an equal basis with men.

In a similar testimony, Theresa Belcastro related the job classification system of a Westinghouse plant in which she worked as a quality inspector. Women in that plant were categorized into labor grades 1 through 5, while men occupied grades 6 through 14. Again there was a discrepancy between job requirements and rates of pay. The lower paying women's jobs demanded a higher degree of educational attainment and more training, skill and responsibility than many of the higher paying men's jobs. The most highly skilled women workers received only four cents more per hour than male employees performing the most menial labor. Belcastro complained that "Westinghouse had refused to...judge a woman's job on the same scale that it judges a male job."[60] She was not, however, insisting

that women be given the highest paying men's jobs, only that the classification system be changed to reflect the true worth of the work being performed by men and women. In fact, she took pains not to alienate male workers, stating, "In discussing this question of justice between male and female employees, I want to make it perfectly clear that we are not saying that the male employees are overpaid. As a matter of fact,...we think that they are underpaid. What I am saying is that there is no justice between male and female employees in terms of the wage scale when we consider the training, the skill and the value of the work that we do.[61]

That she identified the lack of justice only "in terms of the wage scale" is an important point. Obviously many other types of discrimination against women were present, but they were either not recognized as a problem needing correction, or they were intentionally avoided in order to gain the more basic measure of equal pay for equal work. Doris Duffy Boyle, who represented three women's groups at the hearings--the American Association of University Women, the National Council of Catholic Women and the National Council of Jewish Women--presented a similarly restricted vision of the fight women were waging when she stated, "much needs to be done before women are assured equality of rights as regards remuneration."[62]

The equity change being pursued was strictly confined to that of wages. However, the fact that these women were defining the type of discrimination to be eliminated reveals that they were aware that other types existed. Whatever the extent of their realization, most women were not pursuing feminist goals with the vision of complete equality of men and women in mind. Rather, they saw equal pay as a labor issue-one which followed in the path of earlier legislation geared toward making life easier for women who worked.

While the issue of equity was paramount, most witnesses also stressed other reasons for equal pay legislation. James Carey, representing the Industrial Union Department and the International Union of Electrical, Radio and Machine Workers of the AFL-CIO, justified the need for an equal pay law in terms larger than the question of fairness toward women. He pointed to the need for women workers in order to keep up with the demands of the labor force for workers, stating, "Increasingly we will have to depend on attracting and holding large numbers of women in our industry and offices."[63]

Carey interpreted the bill in a broad manner, as did many other witnesses. He identified three types of discrimination that were used against women and which would be corrected by the legislation:

1) Paying lower wages to women on the same job.
2) Changing a man's job by modifying it slightly at a much lower rate of pay for women, a rate not justified by the modification.
3) Paying women lower irrespective of the value of the work performed. This occurs in situations where men and women work in different types of jobs in the same plant.[64]

The first, most basic form of unequal pay was recognized by all who testified as a type of discrimination that equal pay was designed to remedy. The only controversy surrounding its application was the exactness of the jobs to be compared. While some envisioned only cases in which jobs were identical to be covered by the bill, others used a more liberal interpretation in which jobs were almost the same, with only slight differences. For example, Assistant Secretary of Labor Esther Peterson illustrated a typical case in her example of two drugstore workers, one male and one female. The bill would apply "If there were no differences, such as incentive pay, or experience, or length of service, or any of the other factors that are accountable...if it were identical work."[65] This was the only definition of equal pay that many legislators were willing to support, as demonstrated during Congressional consideration of the bill.

Peterson was like other witnesses though, in that she

touched upon an idea which had the potential to be revolutionary in terms of women's economic power if fully carried out. She mentioned a type of discrimination similar to that brought up by Carey's third form of unequal pay, and by other witnesses, such as Belcastro and Greenfield. Peterson was speaking of job analysis in which "the worth of the individual job was evaluated in relation to other jobs done in the same establishment and a rate was set for each job, regardless of the individual who was to do the work."[66] This would certainly apply to a much larger group of employees than would the example Peterson described earlier.

Most opposition to the bill was based on a fear that the bill might be interpreted in this manner--that is, that employers might be forced to pay women what they were worth. While some were willing to concede to equal compensation in the limited numbers of identical jobs performed by men and women, payment based on the worth of the job was virtually inconceivable. Therefore, during the course of debate on the bill amendments were added in the House and Senate which narrowed the scope of the bill and put strict limits on the types of jobs to be compared. This eliminated comparison of unrelated jobs--the type of comparison that workers such as Greenfield and Belcastro had in mind.

A fourth type of wage discrimination was identified by Congresswoman Green, that of unequal access to jobs. Green stated, "if these jobs are unavailable to them, if the equal work, itself, is unavailable, then the equal pay bill becomes almost meaningless."[67] There were two ways to make the legislation meaningful. The first was to interpret the bill in a broad manner. Most witnesses recognized that men and women were not performing the same jobs. To make the legislation relevant to a majority of women, it was necessary to be able to compare jobs that had little in common as far as actual duties, but required certain skill levels and training, or were of equal value to the employer. The second way was to eliminate the barriers that prevented women from performing the same work as men. Green was one of few women at the hearings who identified the need to enact further legislation aimed at reducing employment discrimination.

Mort Furray, representing the Hotel and Restaurant Employees and Bartenders International Union, presented a common interpretation of the bill stating, "We feel that the bill provides for equal work for the same job and we hope that this means that it is equal pay for the same worth to the employer."[68] Furray described a case of subtle wage discrimination which he believed should be corrected by the legislation. He explained that the male

job of houseman and the female job of maid involved roughly the same types of duties, yet the woman was consistently paid less in a variety of cities studied. The differential was justified on the grounds that women were unable to lift as much as men. However, in the thirty-five percent of the hotel industry that did not employ housemen, all the lifting was done by women. These women performed the duties of both housemen and maid, but were paid only the lower wage of the maid's job.[69]

In some states, however, legislation set certain limits on the number of pounds women were allowed to lift. These laws supported employers' claims that men were more valuable and deserved higher pay because they were stronger. As Furray noted, though, weight regulations were routinely ignored, at least in the Michigan hotel industry he described. In addition, some states did not have weight restrictions; these were the states in which women performed the houseman job, yet received only the wage rate assigned to the job of maid.

On May 17, the Committee favorably reported the Administration bill, H.R. 11677, after amending it to exclude companies employing fewer than twenty-five persons.[70] The Equal Pay Act of 1962 required employers engaged in interstate commerce or the production of goods for commerce to pay men and women equally for performing

work of "comparable character" on jobs requiring "comparable skills." In complying with the act, employers were barred from lowering the wages of men to match those of women. They were also prohibited from firing or discriminating against any employee who attempted action to enforce the act. It included several areas where wage differentials would be allowed. Different rates were permissible if they were based on a seniority or merit increase system, or a bona fide job classification program. Wage differentials were banned only within a single place of employment, and would not affect wage rates in different industries or parts of the country. The legislation was to be enforced by the Secretary of Labor, who would either respond to complaints made by mistreated employees or initiate an investigation without a written complaint being filed.[71]

The bill was debated on the floor of the House on July 25, during which it was amended and passed in a severely weakened form. Originally scheduled for consideration in mid-June, action was postponed by the bill's supporters in the face of opposition amendments and absenteeism in their ranks.[72] Its floor manager was Herbert Zelenko (D-N.Y.), who was joined by Edith Green (D-Oregon) and several others who were vocal in their support of a strong bill. The House debate of the Equal Pay Act of

1962 was in many ways an extension of the fight between women's groups on the most effective method of advancing the status of their sex. The argument over treating women workers as a special class needing protection or removing all legal distinctions that separated them from men was continued as various members offered amendments to alter the scope or purpose of the legislation. While certain changes were made which strengthened the bill, others were accepted which narrowed its application considerably.

Significantly, the amendment which was considered most harmful to the bill was offered by a woman, Katharine St. George (R-N.Y.) Her amendment changed the wording of the bill from equal pay "for work of comparable character on jobs the performance of which requires comparable skills" to "equal work" for jobs requiring "equal skills."[73] Defending the change, St. George stated, "the bill is to produce and foster equality. When you give this latitude by using the word 'comparable', you are destroying the main purpose of the bill."[74] St. George belonged to the small group who advocated complete equality between men and women. After being approached by women's groups in 1953, she became the first woman to introduce an Equal Rights Amendment.[75] Nearly a decade later, she wanted to be sure that the equal pay bill would be a step in that direction, stating during the floor debate, "what we really

want is equality. We do not want favors."[76]

St. George's definition of the bill intent was acceptable to those promoting the ERA line, but those supporting protective legislation envisioned the purpose of the equal pay bill differently. To them, the main function of the act was to improve the conditions of working class women's lives, not to pursue an abstract goal of total equality. Furthermore, although they wanted equality for women, they had a much more limited vision of what it meant. While St. George was adamant that women refuse special favors, that is exactly what most women had been fighting for and were continuing to fight for. Condemning the principle of protective legislation, St. George stated, "In reality by using that word [comparable] you are not giving full equality: you are making this differential which is the one thing I am not particularly anxious to see. You are going back to that good old adage that women are so weak and delicate that they need protection."[77] St. George was joined by several other Congresswomen who "expressed hope that enactment of the bill would stimulate adoption of a constitutional amendment guaranteeing equal rights to women."[78]

Opponents of the St. George amendment cared less about the actual wording of the bill and more about the practical effects the amendment would have on the strength

of the bill. Zelenko claimed the wording "would create a situation in which the law would be unenforceable."[79] Quoting the Secretary of Labor, Arthur J. Goldberg, he stated, "The language as so changed...could spell defeat for the bill's purpose...If a showing of equality was a requisite to establish the requirement of equal pay, the conscious introduction of one slight and trivial factor might be considered sufficient to justify a lower wage rate."[80] They stressed that the principal of equality was not the issue. The ability to enforce the law in the broadest manner possible was the most important thing. Supporting this view, Congressman Olsen claimed that the amendment "would require an impossible proof...to require that the work and the skill be exactly equal."[81] Responding to claims that the word "equal" would be a "legislative monstrosity," St. George facetiously noted, "we might do very well to change the wording of the Declaration of Independence where it says that all men are created free and equal and substitute the word comparable."[82]

That the amendment was supported by others whose intent was to water the bill down and not to provide "equality" made proponents of the "comparable" wording all the more suspicious of St. George and her allies. Congressman Stratton summed up the feelings of many of

those present when he stated, "I am not so much interested in the philosophical argument that has been raised...as to the relative virtue of these two words, as I am in the practical effect of the amendment if it is adopted."[83] In fact, very few members were interested in the argument over equal rights. While St. George, who was joined by Congresswoman May (R-Wash.), preferred the "equal" wording for the larger goal of full legal equality for women, most others who sided with her were interested in the practical effects of the bill. Specifically, they wanted to pass the weakest piece of legislation possible. They fought and voted for the St. George amendment not out of any commitment to women's equality, but because they were against the whole purpose of the legislation.

Another amendment accepted which limited the effect of the bill was offered by Congressman Goodell (R-N.Y.), and provided that employers be allowed to reduce wages in order to come into compliance with the act. Although the Goodell amendment was agreed to by a slim margin, it was subsequently changed the following year to prohibit reduction of wages.[84]

A potentially damaging amendment which was rejected was offered by Congressman Ashbrook (R-Ohio) and would have exempted any state with an equal pay law from adhering to the federal law. Green responded to the proposal by

noting, "If his amendment is adopted it will extend an open invitation to all of the other States in the Union to pass the most meaningless legislation they could conceive of..."[85] Green went on to observe, "I think now we see the clear picture of what the Republicans have done. They have taken out of the bill the enforcement procedure in it."[86] While this may have been true of Republican men (and Southern Democrats), Republican women were sincere in their desire for a workable equal pay law.[87] Congresswoman May, who argued for the St. George amendment, disagreed with Green stating, "It has been stated categorically that we on this side [Republicans] are trying to gut this bill. I for one do not accept that comment."[88] May went on to join Green in urging rejection of the Ashbrook amendment, claiming it would "make a mockery of this bill and would negate everything we are trying to do."[89]

Although many members of Congress attempted to dilute the bill with amendments, few urged its outright rejection. Congressman Alger was one who argued against the bill, even in an amended form. In supporting his claim that an equal pay law would be harmful to women, he used the same arguments which had been employed so long by advocates of protective legislation, stating:

> the structure of a woman's body and all her functions are designed to enable her to fulfill the reproductive processes. She cannot, therefore, stand for long periods, nor lift unusual weights, nor even engage in many of the physical activities necessary to put her on an equal basis with a man on the job without perhaps having serious effect upon her child-bearing ability.[90]

After passage in the House, the bill was sent to the Senate where it was further weakened by amendments before being approved. The main change made in the Senate was the addition of a section which exempted employers from complying with the act if they could prove unequal pay rates reflected the higher cost of employing women.[91] The bill was not passed on its own merit, but was attached as an amendment to an unrelated bill at a time when only six senators were present.[92] The original equal pay bill was not released by the Senate Committee on Education and Labor, and could not, therefore, be voted on. An equal pay provision was attached by supporters to a bill authorizing funds for foreign service buildings, but final action was blocked when Rep. Frank T. Bow (R, Ohio) objected to a unanimous consent request to send the bill to conference.[93]

1963--THE FINAL BATTLE

5

With the start of the 88th in 1963, equal pay legislation was, once again, reintroduced. The proceedings in 1963 were in many ways similar to those of the previous year. However, there were some important differences, as well. Organized opposition to the bill had been absent during the 1962 fight for passage. By the next year, though, it had mobilized and was prepared to wage a much more sophisticated battle against passage of the legislation. Throughout seven days of testimony at hearings held by the House and the Senate, opponents were effective in convincing Committee members that the equal pay bills, passed in differing versions in 1962 by both

bodies, contained serious flaws. Changes were made before the bill was released from Committee which drastically altered the scope and coverage of the final legislation. During floor debate in the House, Republicans and Southern Democrats once again attempted to water down the bill even more, while women of both parties fought against crippling amendments. The final effect was that the bill eventually approved by both bodies and signed into law only remotely resembled the bill under consideration the previous year.

During hearings held in March and April, representatives from state and national Chambers of Commerce, and from other employers associations testified against passage of an equal pay bill. In 1962, not a single opponent of equal pay legislation had troubled to show up at a hearing to express opposition to a bill and only a few had submitted written statements of disapproval, apparently assuming that equal pay legislation would continue to be ignored. In 1963, however, twelve persons argued against the legislation during the hearings, and numerous others sent in written statements of opposition. The arguments used by opponents were much more detailed in their analyses of the legislation than they had been in the previous year. In addition, opponents provided lengthy lists of specific changes they claimed would make the law more effective, but which actually would have rendered it

almost useless. For example, James E. Fagan, of the Council of State Chambers of Commerce, presented an analysis of the 'defects' of the bill and submitted an eight point plan which would have changed the enforcement procedure, leaving the bill entirely ineffective. Fagan went on to say, "I am not against equal pay for equal work and the council of the State chambers of commerce that I represent are not against that principle," prompting Edith Green (D-Oregon) to observe, "You are for the bill if there are no enforcement procedures and if it eliminates most of the persons covered."[94]

One common argument held that the enforcement procedure was dangerous, that the bill granted too much discretionary power to the Secretary of Labor. The bill allowed the Secretary to investigate claims of discrimination or to initiate investigations. The findings of the Secretary had no legal binding on employers. If, in the Secretary's opinion, a violation had occurred, an employer could either voluntarily comply with the finding by eliminating a discriminatory wage practice and restoring up to two years of lost wages, or the matter would be left to the courts to decide. The opposition claimed this method granted an unrestricted "hunting license" permitting the Secretary to enter establishments and demand employment records on whim, and creating an

"overcentralized, topheavy Government."[95] For example, W. Boyd Owen, representing Owens-Illinois Glass Co., complained of "extensive governmental intervention in labor management relations far exceeding the purported evils at which this legislation is allegedly directed." Owens claimed the Secretary would be given "virtually unlimited powers of legislation, investigation, adjudication and enforcement."[96]

A related argument held that equal pay legislation was the responsibility of the states, not the federal government. Opponents of the legislation noted that twenty-two states had enacted equal pay laws, and claimed they adequately performed the job. The state laws, however, have been shown to provide limited, spotty coverage in the fewer than half of the states which had passed them.

The legislation that was released from Committee was drastically altered from the bills which had been examined during the hearings. Its enforcement and coverage had been changed by making the act an amendment to the Fair Labor Standards Act of 1938, which enforced such provisions as minimum wages, maximum hours and overtime pay. This change was designed to make the bill more acceptable to those who opposed the legislation on the grounds of its enforcement procedures. The FLSA route would ensure a systematic method of enforcement which was familiar to employers who

were covered. However, the coverage of the bill was significantly reduced by linking it to the earlier act. While the equal pay bill approved in 1962 affected employers with over twenty-five workers, the new version exempted workers in twenty-two job categories. The exemptions included many areas of employment in which women were concentrated, such as work in hotels, restaurants, hospitals, dry cleaning establishments, agriculture, laundries, and many small retail and service establishments, as well as those in higher paying management and administrative jobs.[97] Estimates indicated that only seven million women (out of a total of 24.5 million employed in 1963) would be affected by the law.[98]

In addition, the definition of "equal" work was made more strict. The bill originally reported in 1962 prohibited wage differentials for "comparable work", which was changed to "equal work" during House debate in that year, and further restricted in 1963 to require equal pay for "equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions."[99] Unequal wage rates were allowed if they were based on a seniority or merit system, a system which measured quality or quantity of production or any other factor other than

sex.[100] These changes all occurred at the committee level, before the bill was even cleared for debate. Florence Dwyer (D-N.J.) summed up the feelings of many equal pay proponents when she stated, "I would be less then candid if I suggested that the committee bill is everything that supporters of equal pay legislation had hoped it would be."[101]

During House consideration of the bill on May 23, several amendments which would have further crippled the bill were defeated. The first, offered by John M. Ashbrook (R-Ohio), would have limited investigations of discrimination to facts set forth in writing. Ashbrook claimed his amendment was necessary in order "to prevent broad bureaucratic harassment."[102] John Bell Williams (D Miss) offered a substitute to the Ashbrook amendment to require that allegations of discrimination be made under oath. Both amendments were defeated, along with a third, offered by Paul Findley (R-Ill.), which would have allowed employers to take into account added costs associated with hiring women. The Findley amendment was opposed because its idea was already assumed to be included in the bill. The language of the bill allowed any factor other than sex to be used as a defense for wage differentials. If an employer could prove that certain workers were more costly to employ, the act was not violated.

There was no opposition to the House version of the bill in the Senate, where it was passed on May 28, and sent to the President. The Equal Pay Act of 1963 was signed into law on June 10, to become effective one year later. Supporters of the bill had mixed feelings about the final legislation. St. George (R-N.Y.) called the bill a "foot in the door," but also noted, "It is a little bit too little and, of course, it is too late. But on the other hand it is the best thing we can get at the time."[103] Edna Kelly (D-N.Y.) stated, "It is a beginning. It is operative and it is not costly. I, therefore, reluctantly accept this new approach and hope the day will soon be here when women in all industries will receive just compensation for their endeavors."[104]

Despite the fact that the legislation finally passed was rather weak, the Act turned out to be more effective than many thought possible. Although its coverage was limited (it was later amended to include more categories of workers), its enforcement where it did apply was very effective, because it used the well established machinery of the FLSA. In addition, court rulings in the early 1970's began to interpret the bill in a very broad manner. The much debated "equal work" term was not applied in as strict a manner as some had feared. Minor differences in job content did not exclude jobs from being compared,

provided the primary duties involved were substantially the same. In determining the skill of a job, mental skill was measured as well as physical strength. Court cases involved detailed analyses of working conditions and responsibilities, and thoroughly investigated seniority systems and training programs to ensure that they were legitimate, and not merely being used as a way to avoid compliance with the act.

The act, itself, was an important indication that the federal government was concerned about inequality faced by women. Although it touched only a limited area of discrimination, as Edna Kelly noted, "the barrier [was] broken."[105] Its effective enforcement did not cause women to go "stampeding back to the nest," as some opponents claimed.[106] The Equal Pay Act was the first of several laws aimed at providing equality for women, and legitimizing her right to participate on a full and equal level with men.

NOTES

1 Carl M. Brauer, "Women Activists, Southern Conservatives, and the Prohibition of Sex Discrimination in Title VII of the 1964 Civil Rights Act," *The Journal of Southern History*, XLIX, no. 1, (February, 1983), p. 39.

2 Barbara Allen Babcock, *et al.* (eds.). *Sex Discrimination and the Law: Causes and Remedies.* (Boston, 1975). Title VII is discussed on pp. 229-439. Executive Order 11375 is an amendment to Executive Order 11246, which originally applied only to discrimination on the grounds of race, color, religion and national origin, pp. 509-559.

3 Ronnie Steinberg, *Wages and Hours: Labor and Reform in Twentieth-Century America* (New Brunswick, 1982), pp. 116-17; National Manpower Council, *Womanpower* (New York, 1957), p. 345; Alice Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the United States* (New York, 1982), p. 289; Philip S. Foner, *Women and the American Labor Movement: From Colonial Times to the Eve of World War I* (New York, 1979), pp. 110-11, 126-27; Walter Fogel, *The Equal Pay Act: Implications for Comparable Worth* (New York, 1984), p. 6; Ronnie Steinberg, "'A Want of Harmony': Perspectives on Wage Discrimination and Comparable Worth," in *Comparable Worth and Wage Discrimination: Technical Possibilities and Political Realities*, ed. by Helen Remick (Philadelphia, 1984), p. 7.

4 Foner, *Women and the American Labor Movement*, p. 110.

5 Ibid, p. 111.

6 Ibid, p. 161.

7 Bureau of National Affairs, *Equal Pay for Equal Work: Federal Equal Pay Law of 1963*, 1963, p. 3.

8 Women and American Trade Unions, p. 128.

9 Bureau of National Affairs, *Equal Pay for Equal Work*, p. 3.

10 Donald Elisburg, "Equal Pay in the United States: The Development and Implementation of the Equal Pay Act of 1963," *Labor Law Journal*, vol. 29, no. 4, (April, 1978), p. 196.

11 Kessler-Harris, *Out to Work*, p. 289.

12 Bureau of National Affairs, *Equal Pay for Equal Work*, pp. 3-4.

13 Elisburg, "Equal Pay in the United States," p. 196.

14 Kessler-Harris, *Out to Work*, p.290.

15 Ronnie J. Steinberg, "'A Want of Harmony,'" p. 7.

16 U.S. Congress. House, Special Subcommittee on Labor, Committee on Education and Labor, *Hearings: Equal Pay for Equal Work*, 88th Congress, 1st Session (1963):53.

17 Ibid, pp. 39-52. States are: Arizona, Hawaii, Illinois, Maine, Michigan, Montana, Oregon, Washington and Wyoming.

18 Ibid, 39-52. States are Arizona, California, Colorado, Connecticut, Illinois, Maine, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, New York, Ohio, Oregon, Rhode Island, Washington, Wisconsin and Wyoming.

19 Ibid, p. 44.

20 Ibid, p. 44.

21 Bureau of National Affairs, *Equal Pay for Equal Work*, p. 4.

Hearings were held on equal pay bills in 1950, but the bill was not scheduled for floor debate. Until 1962, no action at all was taken on equal pay bills, although they were submitted in considerable quantity and variety. From April, 1962 to May, 1963, the House and Senate held twelve days of hearings, passed the Equal Pay Act and sent it to the President to be signed into law.

22 Leila J. Rupp, "The Women's Community in the National Woman's Party, 1945 to the 1960's," *Signs: Journal of Women in Culture and Society* vol. 10, no. 4, (1985), p. 17.

23 Judith Sealander, *As Minority Becomes Majority: Federal Reaction to the Phenomenon of Women in the Work Force, 1920-1963* (Westport, Conn., 1983), p. 9.

24 Jonathan Grossman, *The Department Labor* (New York, 1973), p. 184.

25 Patricia G. Zelman, *Women, Work and National Policy: The Kennedy-Johnson Years* (Ann Arbor, Mich., 1980), p. 157; and Sealander, *As Minority Becomes Majority*, p. 16.

26 Sealander, *As Minority Becomes Majority*, p. 153.

27 Zelman, *Women, Work and National Policy*, p. 16.

28 Sealander, *As Minority Becomes Majority*, p. 139.

29 Ibid, p. 138.

30 Ibid, p. 156.

31 Ibid, p. 139-40.

32 Brauer, "Women Activists," p. 39.; Rupp, "Women's Community."

33 Esther Peterson, "The Kennedy Commission," in *Women in Washington: Advocates for Public Policy*, ed. by Irene Tinker (Beverly Hills, 1983), p. 23.

34 Zelman, *Women, Work and National Policy*, p. 13.

35 Zelman, *Women, Work and National Policy*, p. 14.

36 National Manpower Council, *Womanpower*.

37 U.S. Congress. House, Special Subcommittee on Labor, Committee on Education and Labor, *Hearings: Equal Pay for Equal Work*, 87th Congress, 2nd Session (1962):28.

38 Ibid, p. 131.

39 Ibid, p. 28.

40 *U.S. Congressional Record*, 108:14756 (July 25, 1962).

41 George Goodwin, *The Little Legislatures: Committees of Congress* (Mass., 1970), p. 50.

42 Ibid, p. 50.

43 Fern S. Ingersoll, "Former Congresswomen Look Back," in *Women in Washington: Advocates for Public Policy*, ed. by Irene Tinker (Beverly Hills, 1983), p. 203.

44 *U.S. Congressional Record*, 108:14753 (July 25, 1962).

45 *Congressional Quarterly Almanac*, 18:519 (1962). The fair employment practices bill was never cleared for debate by the house rules committee.
Ingersoll, "Former Congresswomen Look Back," p. 201.

46 *U.S. Congressional Record*, 108:14760 (July 25, 1962).

47 Ingersoll, "Former Congresswomen Look Back," p. 203.

48 Marguerite Rawalt, "The Equal Rights Amendment," in *Women in Washington: Advocates for Public Policy*, ed. by Irene Tinker (Beverly Hills, 1983), p. 74. All of these organizations except one, the Hotel and Restaurant Employees and Bartenders Union, were on record as supporting ERA by 1978.

49 U.S. Congress. House, Special Subcommittee on Labor, Committee on Education and Labor, *Hearings: Equal Pay for Equal Work*, 87th Congress, 2nd Session (1962):30.

50 Ibid, p. 30.

51 Ibid, p. 63.

52 Zelman, *Women, Work and National Policy*, p. 13.

53 *Wall Street Journal*, August 10, 1962.

54 U.S. Congress. House, *Hearings*:139.

55 Ibid, p.139.

56 Ibid, p. 3.

57 Ibid, pp. 183-186.

58 Ibid, p.189, the full testimony of Belcastro is located on pp. 186-189.

59 Ibid, p. 189.

60 U.S. Congress. Senate, Subcommittee on Labor, Committee

on Labor and Public Welfare, *Hearings: Equal Pay Act of 1963*, 88th Congress, 1st Session (1962):86.

61 U.S. Congress. House, *Hearings*:170.

62 Ibid, p. 181.

63 Ibid, p. 82.

64 Ibid, p. 27.

65 Ibid, p. 181.

66 Ibid, p. 103.

67 Ibid, p. 108.

68 *Congressional Quarterly Weekly Report*, 20:881 (1962).

69 *Congressional Quarterly Almanac*, 18:518 (1962).

70 *New York Times*, June 16, 1962.

71 *U.S. Congressional Record*, 108:14765 (July 25, 1962).

72 Ibid, p. 14767.

73 Ingersoll, "Former Congresswomen Look Back," p. 193. ERA bills had been introduced as early as 1923, but always by men.

74 U.S. Congressional Record, 108:14768 (July 25, 1962).

75 Ibid, p. 14768.

76 *Congressional Quarterly Weekly Report*, 20:1055 (1962).

77 *U.S. Congressional Record*, 108:14768 (July 25, 1962).

78 Ibid, p. 14768.

79 Ibid, p. 14770.

80 Ibid, p.14770.

81 Ibid, p. 14771.

82 Ibid, pp. 14771-73. The amendment was passed with a sixteen vote margin--ayes 132, noes 116--deleting a section which prohibited wage reduction. New bills were introduced and passed in 1963, H.R. 6060 and S. 1409, in which the section prohibiting wage reduction was reinserted.

83 Ibid, p. 14774.

84 Ibid, p. 14774.

85 The *New York Times* noted that "Republicans were joined heavily by Southern Democrats in attempting to water down the bill," July 26, 1962.

86 *U.S. Congressional Record*, 108:14774 (July 25, 1962).

87 Ibid, p. 14774.

90 U.S. Congressional Record, 108:14776 (July 25, 1962).

91 *Congressional Quarterly Almanac*, 18:518 (1962).

92 *New York Times*, July 28, 1962.

93 Final action could have been taken if the House Rules Committee had sent out a resolution to send the bill to conference. However, because the Committee did not meet before the end of the session, the bill was effectively killed.

94 U.S. Congress. House, Special Subcommittee on Labor, Committee on Education and Labor, *Hearings: Equal Pay Act*, 88th Congress, 1st Session (1963), Fagan, p. 197, Green, p. 204.

95 Ibid, p. 162.

96 Ibid, p. 100.

97 *Congressional Quarterly Almanac*, 19:511 (1963).

98 Ibid, p. 511.

99 Ibid, p. 511.

100 Congressional Quarterly Weekly Report, 21:830 (1963).

101 U.S. Congressional Record, 109:9199 (May 23, 1963).

102 Ibid, p. 9214.

103 Ibid, p. 9193.

104 Ibid, p. 9202.

105 Ibid, p. 9202.

106 Ibid, p. 9208.

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