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DISCRIMINATION ON THE BASIS OF PREGNANCY, 1977

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 995

TO AMEND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 TO PROHIBIT SEX DISCRIMINATION ON THE BASIS OF PREGNANCY

APRIL 26, 27, AND 29, 1977



Printed for the use of the Committee on Human Resources

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U.S. GOVERNMENT PRINTING OFFICE

90-785 O WASHINGTON : 1977

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DISCRIMINATION ON THE BASIS OF PREGNANCY, 1977

TUESDAY, APRIL 26, 1977

U.S. SENATE,
SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m. in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee), presiding.

Present: Senators Williams, Javits, and Riegle.

Also present: Senator Hatch.

Staff present: Steve Paradise, general counsel, Committee on Human Resources; Maria Landolco, associate counsel; Don A. Zimmerman, minority counsel; John Rother, associate minority counsel.

The CHAIRMAN. We will come to order, please.

Today the Labor Subcommittee will begin hearings on S. 995, a bill to amend title VII of the Civil Rights Act of 1964, to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions.

We all know that this legislation was made necessary by the Supreme Court's decision last December in the case of *Gilbert* v. *The General Electric Co.* In that case the Court ruled that working women disabled by pregnancy or related conditions were not entitled by law to the same benefits as are other workers who have contracted different disabilities. The Court thereby held that title VII's prohibitions against sex discrimination in employment do not encompass discrimination based on pregnancy.

The disability plan which the Court upheld in the *Gilbert* case provided income maintenance protection for every conceivable disability from sports injuries to hair transplants. Only one class of disabilities was excluded from coverage, those related to pregnancy and childbirth. Such plans which have a negative impact on only one sex are, by definition, discriminatory. This decision came as a critical blow to working women across the country. It constitutes a major setback in the battle for women's rights and poses a serious threat to the development of antidiscrimination policies under title VII of the Civil Rights Act.

By concluding that pregnancy discrimination is not sex discrimination within the meaning of title VII, the Supreme Court disregarded the intent of Congress in enacting title VII. That intent was to protect all individuals from unjust employment discrimination, including pregnant women.

This legislation is more than strictly a women's issue. Pregnancy discrimination can have profoundly devastating effects on entire families. Nearly half our Nation's children have mothers who are in the labor force. Pregnancy discrimination has a negative impact on these children of families which must depend upon a working mother's salary for the necessities of life.

If S. 995 is not enacted countless families will be forced to suffer unjust and severe economic and social consequences. Women disabled by pregnancy and childbirth will be forced to take leave without pay. The loss of a mother s salary will make it difficult for parents to provide their children with proper nutrition and health care. For some women and their families it will mean dissipating family savings and security or being forced to go on welfare. For others, especially low income women, the loss of income will encourage abortions.

This bill is simple. It is to the point. It will add a new subsection to title VII's definitions thus making it clear that sex discrimination includes discrimination based on pregnancy, childbirth and related medical conditions. It will further require employers to treat women affected by pregnancy, childbirth or related medical conditions equally for all employment-related purposes.

S. 995 is cosponsored by 26 Senators. Three of the members of this subcommittee, Senators Pell, Riegle, and Javits are sponsors. It is our hope that the Congress will act promptly to restore basic rights to our Nation's working women and their families.

[A copy of S. 995 follows:]

95TH CONGRESS
1ST SESSION

S. 995

IN THE SENATE OF THE UNITED STATES

MARCH 15 (legislative day, FEBRUARY 21), 1977

Mr. WILLIAMS (for himself, Mr. BAYH, Mr. BROOKE, Mr. CLARK, Mr. HEINZ, Mr. JAVITS, Mr. KENNEDY, Mr. MATHIAS, Mr. MCINTYRE, Mr. PELL, and Mr. RIEGLE) introduced the following bill; which was read twice and referred to the Committee on Human Resources

A BILL

To amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 701 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe

benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703 (h) of this title shall be interpreted to permit otherwise."

The CHAIRMAN. In the course of our hearings we will hear from many individuals and groups who have a myriad of perspectives to share with the committee. We will hear from representatives of women's and civil rights groups which have played a major role in the struggle for equal rights for women in the work place; from industry groups and individual companies; from agencies of the executive branch which have the responsibility for implementing Federal laws and programs aimed at providing equal employment opportunity; and from concerned members of the general public.

We welcome the witnesses who will assist us in our deliberations on the issue which is before our committee—the recognition of working women as full and equal participants in the work place and in society.

One of the first of our Members to respond to the Supreme Court's decision last December was Senator Bayh. He suggested to me and to Senator Javits that the Supreme Court's message was clear. We need legislation and we better get on with it soon.

With this Court sitting we certainly cannot take for granted what had seemed obvious to us for many years. Legislation is necessary. Senator Bayh was one of the first to ring the bell—"Let's get on with the legislation." Senator Bayh is with us today. We would like to invite him to be the first speaker.

Senator JAVITS. I think this is another major step in the enfranchisement of women. I think that this is what the issue is all about, since pregnacy is the one major disability to which women are subject which other parts of the population are not.

Also, the argument that pregnancies may represent long-term disability and therefore, unduly tax disability plans has no real basis in fact because disability benefits are generally limited to a period of time, mostly 6 months or less. And in the case of pregnancy, they may be even further limited depending on the disability plan which the employer affords. The amount involved in money is not great. It is estimated that additional disability benefits attributable to the bill will not total more than $150 million a year in payments to pregnant employees.

But, if he does have a disability plan, there is no valid reason why this particular disability should be excluded. And yet, that is the effect of the decision of the Supreme Court. We don't argue with the Supreme Court's view of the law as it stands. Our purpose here is to change the law and make it more understanding of the human condition, more understanding of the fact that women are now really to be treated as equals in our society.

Mr. Chairman, I personally regret very much that the ERA has not been enacted. I think it is a shocking thing that we have not yet ratified this amendment. But legislation like this is one way in which, to some extent, to make up for the fact that we have not ratified the ERA.

And, finally and very importantly, ours is the only industrial country in the Western world which does not allow pregnancy disability as a form of disability. For all of those reasons I think the legislation is extremely well taken and I join the Chair in welcoming Senator Bayh.

The CHAIRMAN. Senator Bayh, we have read your statement which we received yesterday. It is excellent. You can proceed any way you want with your full statement or a summary, whichever is your pleasure.

STATEMENT OF HON. BIRCH BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator BAYH. Mr. Chairman, I very much appreciate the opportunity to be here and to join with you in initiating the study which I hope will lead to the successful legislative journey of S. 995, of which you are the principal sponsor. I am glad to join Senator Javits as a cosponsor. It is the kind of battle that we have been used to fighting together.

Let me, if I might, ask the indulgence of the Chair to have the full statement put in the record and let me take 4 or 5 minutes just to summarize one section that I think is perhaps unique.

Mr. Chairman, the *Gilbert* decision is the kind of decision that prompts some of us to say, this is why we need the equal rights amendment, so that part of our citizenry is not treated differently than others. But that has not happened yet. We are still struggling to get those three extra States and we hope and pray to get them. But until that happens, and even afterwards, I think it is important for Congress to legislate in those areas that are necessary to implement the equal rights amendment.

With your indulgence—I think we have a great tendency up here to take 15 minutes to summarize a statement that can be read in 5. Mine can, the short version, if that is all right with you.

The CHAIRMAN. That is perfectly fine. Your full statement will be included in the record.

Senator BAYH. Mr. Chairman, in handing down the decision in *Gilbert*, the court made it abundantly clear that if Congress wanted to make sure that discrimination on the basis of pregnancy was to be considered sex discrimination, it would have to make that clear by passing legislation so stating.

In other words, the Constitution, according to the court, does not now make that clear and it is up to us to do so. That is precisely what the legislation before us today does. It adds a new section to section 701 of the Civil Rights Act of 1964, specifying that for the purposes of that act, discrimination on the basis of sex shall include discrimination on the basis of pregnancy, childbirth, or related medical conditions.

What would this legislation require of the Nation's businesses? I would like to deal with that because a number of the prophets of doom say you are going to bring the wheels of industry to a close and the costs born by employers are going to be enormous. This is a red flag which is absolutely untrue.

Let me just deal with that specific, if I might.

The CHAIRMAN. I am glad you are. I know, in your full statement, you give a dramatic example of a company with which you are familiar. If we can have that, we can put to rest a lot of this loose talk that we have heard.

Senator BAYH. First and foremost, I think it is important to point out that nothing in this legislation would require a company to offer disability insurance to its employees if it is not presently doing so. The legislation would cover only those companies who are already voluntarily offering disability coverage.

Second, the legislation would require that disability based on pregnancy, childbirth, or related medical conditions be treated as any other disability under a company plan. This does not mean that a woman who has a normal pregnancy can collect benefits for the duration of her pregnancy.

Let me emphasize that. We are not providing disability payments for the duration of the pregnancy. Rather, it means that a woman could collect disability benefits for that period of time when she had been medically certified as physically unable to work due to pregnancy or a related medical condition. That period of time for women employees in most companies, experience has shown us, is between 6 and 8 weeks. And, by the way, that physically-unable-to-work definition, as we would apply it to pregnancy in this bill, is the same kind of definition that is applied before other members of the work force are permitted to draw benefits for other kinds of disabilities.

What are the consequences of requiring businesses or corporations to treat pregnancy as any other temporary disability? That is what I want to emphasize with this one particular history, if I might.

I think one of the best ways of assessing the impact of this legislation is to take a closer look at companies which already voluntarily provide such coverage to its women employees. Let's see what the record really shows, not what some of the prophets of doom suggested would happen.

One such corporation, I am proud to say, is located in my home State of Indiana, Cummins Engine, Inc. The management at Cummins has graciously provided me with some statistics on their experience which I hope will be of some use to this committee.

Cummins Engine has had a policy which provided temporary disability benefits to women workers disabled by pregnancy for approximately 5 years now, so I think that is a good period of time to look at.

When the company first extended disability benefits to its women workers disabled by pregnancy, it limited the coverage to a maximum of 4 weeks. In 1973, however, the company changed its policy so that pregnancy would be treated as any other disability under the Cummins plan and that is what we are trying to find out right now and trying to provide under the bill which the chairman and I are sponsoring.

Cummins Engine has a short-term disability payments program for each of its three groups of Columbus-based employees. These programs differ in that the hourly employees are enrolled in an insured program while salaried employees receive disability pay in the form of a salary continuation plan.

In practice, this means that hourly employees receive a flat disability benefit of approximately $100 per week for a maximum of 52 weeks. Salaried employees receive their full salary for the first 3 months of disability, 75 percent of their salary for the next 3 months and then 60 percent of their salary thereafter.

The administration of these disability plans are similar in that an employee must be under the care of a licensed physician and must furnish a statement from the physician certifying disability. Disabilities arising from pregnancy or childbirth are treated as any other medical disability under both of these plans. This is what we are looking for.

One concern that is raised by those who are fearful of requiring coverage for pregnancy-related disabilities is that women workers will abuse the system. These critics contend that women will take advantage of the liberal benefits and collect as long as 30 weeks.

The experience at Cummins shows that this is not the case for the majority of women workers who take disability coverage for pregnancy-related disabilities. The information gathered from the medical staff and doctors in the Columbus area indicate that the average length of disability for a normal childbirth was 6 to 8 weeks.

Cummins found that this normally spanned the time from approximately 2 weeks before to 4 to 6 weeks after delivery. There are instances of woman workers with complications arising from their pregnancy or childbirth which physically incapacitates these workers for longer than 8 weeks. But Cummins' records shows that this is the exception, not the rule.

Another concern that has been raised regarding this legislation, S. 995, is its potential cost to employers. In order to put the cost of this legislation in perspective, Cummins has provided me with data which we have forwarded on to the committee on their disability program for a sample year—this last year, 1976. These figures are derived from the three employee categories at Cummins: hourly employees in the shop, hourly employees in the office, and salaried employees.

The shop hourly employees are paid $100 weekly, as I mentioned a moment ago, when they are unable to work because of an accident or illness during the 1976 period, the base period which I am referring to. This group consisted of 5,428 employees, of which 235 were women and a total, Mr. Chairman, for this whole group of $4,780 was paid in weekly disability benefits to 5 employees for maternal-related disabilities over an entire year period. Two of these disabilities involved complications and extended for 10 and 20 weeks respectively, while the remaining three disabilities were for a period of 6 weeks.

The office hourly employees are paid $102 weekly when they are unable to work because of an accident or illness. During the test period of 1976, this group consisted of 1,571 employees of which 733 were women, and a total of $31,259 was paid in weekly disability payments to 41 female employees for maternity-related disabilities.

Eight of these disabilities involved complications and extended for periods ranging from 9 to 30 weeks, while the remaining 33 disabilities fell within the normal period of 6 to 8 weeks referred to earlier, which shows that the hundreds of women covered are going to take the normal amount of disability time and then, for the few that have complications, they had to be covered relative to the seriousness of the complications.

Lastly, the salaried employees are paid their full salary as I mentioned a moment ago. In this group, during 1976, 2,124 employees, which were 100 women involved, a total of $22,400 was paid in disability payments to 7 female employees for maternity-related disability.

Two of these were disabilities involving complications which extended, one for 8 months and one for 3½ months, while the remaining five disabilities fell within the normal 6 to 8 week work period.

The total benefits paid by this major corporation for hourly employees that commenced during 1976 for maternity-related disabilities was $36,039 as compared to a total of $1,300,000 in disability payments for all hourly employees. That is what I want to emphasize. Of the total disability payments, $1,300,000 paid to all of the work force in this category, $36,039 went to women who had pregnancy-related disability problems.

This means that the cost of providing pregnancy-related disability coverage was only 2.7 percent of the total cost of the benefit program for all hourly employees. So, Mr. Chairman, it seems to me there is but one of many examples that I think the committee will find where the cost has not been an overbearing or burdensome cost and I think it is a price we should pay to see that our entire work force is treated equally and women are guaranteed equal disability coverage with men.

Again, I appreciate the courtesy of the Chair and the committee for permitting me to have the opportunity to express myself here.

The CHAIRMAN. Excellent. Thank you very much. I have just one question, Senator Bayh. I know your full statement will be very useful to all members here as we develop the record and get ready to go to the floor on this legislation.

Is the company you used as the example a company you know well? It is in Indiana, am I right? Is that a self insurer of disability payments, do you know?

Senator BAYH. Mr. Chairman, I don't think we know that. Can we find that for the record, please? I just do not have the detail but we can get it for you.

The CHAIRMAN. Thank you for your immediate action and interest in bringing this legislation to the Senate.

[The prepared statement of Senator Bayh follows:]

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Prepared Statement of Senator Birch Bayh

Mr. Chairman, I want to express my appreciation for the opportunity to testify here this morning on behalf of S. 995, legislation which seeks to end discrimination against pregnant workers. I am pleased to join the distinguished Chairman of this Committee as a sponsor of S. 995, and I look forward to reviewing the testimony over the next three days in support of this legislation. This legislation was made necessary by an unfortunate decision rendered by the Supreme Court in the case of Gilbert v. General Electric 45 U.S.L.N. 4031 (1976). In handing down its decision last December, the Court declared that employment discrimination against a woman on account of pregnancy or childbirth did not constitute sex discrimination under Title VII of the Civil Rights Act of 1964. In making this finding, the Court specifically held that the General Electric Company, in denying temporary disability benefits to women unable to work due to pregnancy, childbirth, or complications thereof, was not in violation of Title VII's statutory prohibition of discrimination on the basis of sex in employment or fringe benefit plans. The Supreme Court decision in Gilbert runs directly counter to six unanimous Federal Appellate Court decisions, the sex discriminatic guidelines implementing Title VII issued by the Equal Employment Opportunity Commission and the intent of Congress in prohibiting sex discrimination in employment under the 1964 Civil Rights Act.

I. Gilbert v. General Electric

The particular issue contested in the Gilbert decision concerned the payment of temporary non-occupational disability benefits to women workers who were medically determined to be physically unable to work due to pregnancy, childbirth or related medical conditions such as miscarriage or hypertension. Temporary disability benefits are defined as payments made on a voluntary basis by companies to compensate workers for wages lost while they are physically unable to work. 63 percent of the civilian workforce has some form of temporary disability coverage. In the case of General Electric, the company voluntarily provided these benefits to all of its employees in an amount equal to 60 percent of an employee's straight time weekly wages up to a maximum benefit of $150 per week for up to 26 weeks for any one disability. The General Electric plan offered disability payments for all types of male disabilities including vasectomies, circumcisions, prostatectomies, as well as covering hair transplants, injuries incurred as a result of a fight, sports injuries, and incapacity due to alcoholism or drug abuse. Specifically excluded from coverage by the GE plan are disabilities which arise from pregnancy, childbirth or complications therefrom. Interestingly, plans such as General Electric's represent only 40 percent of all disability plans offered in the United States. 60 percent of the disability plans in this nation voluntarily cover pregnancy and childbirth. Among the companies offering the more comprehensive, non-discriminatory coverage are IBM, Firestone, Xerox Cummins Engine, Martin Marietta, and

Polaroid

The Plantiffs in the Gilbert case brought action against General Electric on the grounds that GE's disability pay excluding pregnancy and childbirth was a violation of Title VII of the Civil Rights Act which prohibits employment discrimination on the basis of sex. In support of their case, the plantiffs pointed to the sex discrimination guidelines implementing Title VII issued by the Equal Employment Opportunity Commission. According to these guidelines: "Disabilities caused by or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job related purposes temporary disabilities, and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they apply to other temporary disabilities."

Unfortunately, the Court, basing much of its argument on the Court's prior decision in Geduldig v. Aiello, 417 U.S. 484 (1974), rejected the argument that discrimination on the basis of pregnancy is discrimination against a woman on the basis of her sex. The Court in Aiello had rejected an equal protection challenge to a similar disability insurance program financed by the state of California. Holding that the same principle applied in the statutory challenge under Title VII, Justice Rehnquist stated: "As there is no proof that the package is in fact worth more to men than to women it is impossible to find any gender based discriminatory effect in this scheme because women disabled

as a result of pregnancies do not receive benefits; that is to say, gender-based discrimination does not result simply because an employer's disability benefit plan is less than all-inclusive. For all that appears, pregnancy related disabilities constitute an additional risk, unique to women, and the failure to compensate them for this risk does not destroy the presumed parity of the benefits..."

The Court's strained logic in the majority opinion was well articulated by both Justice Brennan and Stevens in their separate dissents. Commenting on the GE plan, Justice Stevens stated: "By definition such a rule discriminates on account of sex; for it is the capacity to become pregnant which primarily differentiates the female from the male."

In addition to setting a disturbing precedent for other pregnancy-related sex discrimination cases, the majority decision in Gilbert has several other far reaching consequences for working women. First, the decision permits companies to deny temporary disability payments to women who are disabled as a result of medical complications arising from pregnancy or childbirth This means that a woman who suffers from miscarriage, massive hemorrhaging , or toxemia in connection with pregnancy or childbirth can not receive disability benefits on the same basis as a man who is disabled from a hair transplant.

Second, the Gilbert decision would allow companies to deny coverage for any non-pregnancy related medical condition or accident occuring while an employee is on pregnancy leave. A spokesperson for General Electric gave a synopsis of how this policy works in testimony before the District Court. He stated

that if a male employee has taken an unpaid leave of absence, and within the first several days of this leave is struck by a car, he is provided full coverage under the GE plan. If a pregnant woman is on an unpaid leave of absence and within the first few days of her leave is struck by a car, she receives no coverage whatsoever under the disability plan.

Third, the denial of temporary disability benefits for that period when a woman is physically unable to work due to pregnancy, childbirth or related medical conditions has potentially devastating economic consequences for millions of working women. A brief look at the statistics on working mothers helps to document the importance of disability payments for these women. The number of working mothers has more than tripled since 1950. About 85 percent of all working women will be pregnant at some time during their working lives. Many of these working mothers are the heads of families. Among all families with income below the poverty level in 1974, 46 percent are headed by women; 65 percent of such minority families are headed by women.

A more vivid illustration of the economic consequences of denying disability benefits to pregnant workers is revealed in the case history of Mrs. Sherrie O'Steen, one of the plantiffs in the Gilbert case. Mrs. O'Steen went to work for General Electric at its Portsmount, Virginia plant on June 1, 1971, at which time she was given an employee handbook stating that pregnant workers would be required to go on unpaid leave at the end of their sixth month. At no time during her employment at G.E. was she told that the company's practice in this regard was held unconstitutional. She accidentally became pregnant in 1972,

Shortly thereafter, she was separated from her husband, and became the sole supporter of her two year old daughter. After going on unpaid leave, Mrs. O'Steen was forced to apply for welfare in order to continue to be able to support herself, her daughter and her unborn baby. Before she could receive her first welfare check, her electricity and gas were turned off because she could not afford to pay the bills. For the months of November and December, Mrs. O'Steen and her daughter lived without any light, heat, refrigeration, or cooking facilities. Mrs. O'Steen's nervous state over her lack of income threatened the loss of her unborn child.

II. Potential Impact of S.995

In handing down its decision in Gilbert, the Court made it clear that if the Congress wanted to make sure that discriminat on the basis of pregnancy was to be considered sex discrimination, it would have to make that clear by passing legislation so stating. That is precisely what the legislation before us today does -- it adds a new section to section 701 of the Civil Rights Act of 1964 specifying that for the purposes of that Act, discriminati on the basis of sex shall include discrimination on the basis of pregnancy, childbirth, or related medical conditions. What would this legislation require of the nation's businesses? First and foremost, nothing in this legislation would require a company to offer disability insurance to its employees if it is not presently doing so. The legislation would cover only those companies who already voluntarily offer disability coverage.

Second, the legislation would require that disability based on pregnancy, childbirth or related medical conditions be treated as any other disability under a company plan. This does not mean that a woman who has a normal pregnancy can collect benefits for the duration of her pregnancy; rather it means that a woman could collect disability benefits for that period of time when she has been medically certified as physically unable to work due to pregnancy or a related medical condition. That period of time for women employees in most companies is six to eight weeks.

What are the consequences of requiring businesses or corporations to treat pregnancy as any other temporary disability? I think one of the best ways of assessing the impact of this legislation is to take a closer look at companies which already voluntarily provide such coverage to its women employees. One such corporation is located in my own state of Indiana, Cummins Engine Inc. The management at Cummins has graciously provided me with some statistics on their experience which I hope will be of some use to this Committee.

Cummins Engine has had a policy which provided temporary disability benefits to women workers disabled by pregnancy for approximately five years now. When the company first extended disability benefits to its women workers disabled by pregnancy, it limited the coverage to a maximum of four weeks. In 1973, the Company changed this policy so that pregnancy would be treated as any other disability under the Cummins plan.

Cummins Engine has a short term disability payments program for each of its three groups of Columbus based employees. These

programs differ in that the hourly employees are enrolled in an insured program while salaried employees receive disability pay in the form of a salary continuation plan. In practice this means that hourly employees receive a flat disability benefit of approximately $100 per week for a maximum of 52 weeks. Salaried employees receive their full salary for the first three months of disability, 75% of their salary for the next three months, and then 60% thereafter.

The administration of these disability plans are similar in that an employee must be under the care of a licensed physician and must furnish a statement from the physician certifying the disability. Disabilities arising from pregnancy or childbirth are treated as any other medical disability under both of these plans.

One concern that is raised by those who are fearful of requiring coverage for pregnancy related disabilities is that women workers will abuse the system. These critics contend that women will take advantage of the liberal benefits and collect for as long as 30 weeks. The experience of Cummins shows that this is not the case for a majority of women workers who take disability coverage for pregnancy related disabilities. Information gathered from the medical staff and doctors in the Columbus area indicate that the average length of disability for normal childbirth was 6 to 8 weeks. Cummins found that this normally spanned the time from approximately 2 weeks before to 4 to 6 weeks after delivery. There are instances of women workers with complications arising from their pregnancy or childbirth which physically incapacitates these workers for longer than 8 weeks,

but Cummins' record shows this to be the exception, not the rule.

Another concern that has been raised regarding S. 995 is its potential cost to employers. In order to put the cost of this legislation in perspective, Cummins has provided me with data on their disability program for a sample year, 1976. These figures are derived from the three employee categories at Cummins, hourly employees in the shop, hourly employees in the office, and salaried employees.

The shop hourly employees are paid $100 weekly when they are unable to work because of an accident or illness. During 1976 this group consisted of 5428 employees, of which 235 were women, and a total of $4780.00 was paid in weekly disability payments to 5 female employees for maternity related disabilities. Two (2) of these disabilities involved complications and extended for 10 and 20 weeks respectively while the remaining 3 disabilities were for a period of 6 weeks.

The office hourly employees are paid $102 weekly when they are unable to work because of an accident or illness. During 1976 this group consisted of 1571 employees, of which 733 were women, and a total of $31,259 was paid in weekly disability payments to 41 female employees for maternity related disabilities. Eight (8) of these disabilities involved complications and extended for periods ranging from 9 to 30 weeks while the remaining 33 disabiliti fell within the normal 6 to 8 weeks referred to earlier.

The salaried employees are paid their full salary for the first 3 months of a disability and 75% of salary for the next 3 months. During 1976 this group consisted of 2124 employees, of

which 100 were women, and a total of $22,400 was paid in disability payments to 7 female employees for maternity related disabilities. Two (2) of these disabilities involved complications and extended for 8 months and 3½ months while the remaining 5 disabilities fell within the normal 6 to 8 week period.

The total benefits paid to hourly employees at Cummins during 1976 for maternity related disabilities was $36,039 as compared to a total of $1,300,000 in disability payments for all hourly employees. This means that the cost of providing pregnancy-related disibility coverage was only 2.7% of the total cost of the benefit program for all hourly employees.

It seems clear that Cummins Engine has found the provision of pregnancy related disability benefits to its women employees a satisfactory experience. The cost of providing such coverage has not been overbearing, and the statistics as provided by the Company show that a majority of women do not need to take more than 8 weeks of coverage. I hope the experience of Cummins Engine will help clarify for this Committee the wisdom of swift approval for S. 995.

The CHAIRMAN. Our next witness this morning is Senator Mathias.

Senator Mathias, I am very pleased to be joined with you in this legislation and am very pleased you are here this opening morning of hearings.

STATEMENT OF HON. CHARLES McC. MATHIAS, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MATHIAS. Thank you very much, Mr. Chairman. I am very pleased that the committee is giving prompt attention to what is obviously a serious problem.

I have a statement which I would like to submit for the record and just briefly touch on some of the highlights.

I believe, Mr. Chairman, that the *Gilbert* decision was a major setback to women's efforts for equity in the job market, not only in its specific application that denies disability benefits to pregnant women, but I think also in the potential for the erosion of title VII protection against sex discrimination generally.

Unless remedial legislation is enacted, employers may very well consider that they have a green light for additional classifications based on pregnancy and other sex-related discriminations as well, without any fear of being charged with violation of title VII. This would have very grave consequences for the female work force in this country.

The Court's decision in *Gilbert*, rejecting the unanimous conclusion of all six Federal courts of appeals that had previously considered the issue, repudiated guidelines promulgated by the EEOC after extensive and thorough evaluation of the issues involved.

Both the lower courts and the EEOC considered the Congress, in enacting title VII, clearly intended to eliminate employment discrimination based on sex, and, that exclusion of pregnancy-related disabilities from otherwise comprehensive disability plans constitute unlawful discrimination on the basis of sex.

Certainly, this was my interpretation of title VII when I was a Member of the House of Representatives and I voted in favor of the 1964 Civil Rights Act.

But, the Supreme Court has seen things differently. I must admit some surprise at the Court's conclusion. I thought that this was one battle in the fight for equality between the sexes that had been fought and won. But now, the ball is back in Congress. We have an opportunity within our constitutional authority to amend title VII to make clear that sex discrimination includes classifications based on pregnancy. The legislation now before your subcommittee will achieve that goal and I hope that it will receive a very prompt and favorable report.

The CHAIRMAN. With your cooperation, it certainly will be prompt.

Senator Javits?

Senator JAVITS. I would like to thank Senator Mathias. His support will be indispensable to our success and I am very hopeful for an early success.

Senator MATHIAS. Thank you.

[The prepared statement of Senator Mathias follows:]

SENATOR MATHIAS' STATEMENT BEFORE THE LABOR SUBCOMMITTEE OF THE HUMAN RESOURCES COMMITTEE ON S. 995

MR. CHAIRMAN: I AM PLEASED TO APPEAR BEFORE THE SUB-COMMITTEE TO VOICE MY SUPPORT FOR S. 995, WHICH WOULD COUNTERACT THE SUPREME COURT'S DECISION IN GENERAL ELECTRIC V. GILBERT. IN GILBERT, THE COURT HELD THAT AN EMPLOYER'S EXCLUSION OF PREGNANCY-RELATED DISABILITIES FROM COVERAGE OF AN OTHERWISE COMPREHENSIVE EMPLOYEE DISABILITY INCOME PROTECTION PLAN DOES NOT CONSTITUTE SEX DISCRIMINATION IN VIOLATION OF TITLE VII OF THE 1964 CIVIL RIGHTS ACT.

THE GILBERT DECISION WAS A MAJOR SETBACK TO WOMEN'S EFFORTS FOR EQUITY IN THE JOB-MARKET, NOT ONLY IN ITS SPECIFIC APPLICATION THAT DENIES DISABILITY BENEFITS TO PREGNANT WOMEN, BUT ALSO IN ITS POTENTIAL FOR EROSION OF TITLE VII PROTECTION AGAINST SEX DISCRIMINATION GENERALLY. UNLESS REMEDIAL LEGISLATION IS ENACTED, EMPLOYERS MAY WELL CONSIDER THAT THEY HAVE A GREEN LIGHT FOR ADDITIONAL CLASSIFICATIONS BASED ON PREGNANCY AND OTHER SEX-RELATED DISCRIMINATIONS AS WELL, WITHOUT FEAR OF VIOLATING TITLE VII. THIS WOULD HAVE GRAVE CONSEQUENCES FOR THE FEMALE WORK FORCE IN AMERICA.

THE COURT'S DECISION IN GILBERT, REJECTING THE UNANIMOUS CONCLUSION OF ALL SIX FEDERAL COURTS OF APPEALS THAT HAD PREVIOUSLY CONSIDERED THE ISSUE, REPUDIATED

GUIDELINES PROMULGATED BY THE EEOC AFTER EXTENSIVE AND THOROUGH EVALUATION OF THE ISSUES INVOLVED. BOTH THE LOWER COURTS AND THE EEOC CONSIDERED THAT CONGRESS, IN ENACTING TITLE VII, CLEARLY INTENDED TO ELIMINATE EMPLOYMENT DISCRIMINATION BASED ON SEX, AND, THAT EXCLUSION OF PREGNANCY-RELATED DISABILITIES FROM OTHERWISE COMPREHENSIVE DISABILITY PLANS CONSTITUTED UNLAWFUL DISCRIMINATION ON THE BASIS OF SEX. THIS WAS MY INTERPRETATION OF TITLE VII WHEN, AS A MEMBER OF THE HOUSE OF REPRESENTATIVES, I VOTED IN FAVOR OF THE 1964 CIVIL RIGHTS ACT.

BUT, THE SUPREME COURT HAS SEEN THINGS DIFFERENTLY. I MUST ADMIT SURPRISE AT THE COURT'S CONCLUSION. I THOUGHT THAT THIS WAS ONE BATTLE IN THE FIGHT FOR EQUALITY BETWEEN THE SEXES THAT HAD BEEN FOUGHT AND WON. NOW THE BALL IS BACK IN CONGRESS' COURT. AND, WE HAVE AN OPPORTUNITY WITHIN OUR CONSTITUTIONAL AUTHORITY TO AMEND TITLE VII TO MAKE CLEAR THAT SEX DISCRIMINATION INCLUDES CLASSIFICATIONS BASED ON PREGNANCY. THE LEGISLATION NOW BEFORE THE SUB-COMMITTEE WILL ACHIEVE THAT GOAL.

THE GILBERT DECISION EVOKED AN OUTPOURING OF CONCERN AMONG MANY AMERICANS, INCLUDING CIVIL RIGHTS AND WOMEN'S RIGHTS GROUPS. THESE GROUPS HAVE BANDED TOGETHER AND PROTESTED TO THEIR ELECTED OFFICIALS. THEIR SUCCESS IN FOCUSING NATIONAL ATTENTION ON THIS IMPORTANT ISSUE

WAS POIGNANTLY DEMONSTRATED AT THE PRESS CONFERENCE HELD LAST MONTH TO ANNOUNCE THE INTRODUCTION OF THIS REMEDIAL LEGISLATION.

I AM HOPEFUL THAT A MAJORITY OF THE CONGRESS WILL SUPPORT THIS LEGISLATION AND THUS BRING THE UNITED STATES IN LINE WITH THE POLICIES OF ALL OTHER INDUSTRIALIZED WESTERN COUNTRIES.

IN RECENT YEARS, WE HAVE SEEN A HEALTHY GROWTH OF CIVIL RIGHTS AND WOMEN'S RIGHTS THROUGHOUT OUR SOCIETY. I INTEND TO ENCOURAGE THAT GROWTH. JUSTICE DEMANDS IT.

The CHAIRMAN. Senator Kennedy, a member of this committee on Human Resources and one of the principal sponsors of this legislation is our next witness, assuming the role here this morning as one of the first witnesses in support of this legislation.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you, Mr. Chairman.

Maybe I could just file my statement so it could be printed as written.

I know I am speaking with members of this committee with whom I have had the opportunity to work on issues that have affected discrimination and discrimination against women, who have worked very carefully in the U.S. Senate over the legislative history on the issues of equity and fairness.

Mr. Chairman, in my statement I point out the two or three very basic and fundamental issues. First of all, I think there is the issue of equity which has been talked about here this morning and which I think cries out for action.

And, second, there is the issue which I think basically is a non-issue, and that is the issue of price, which I think has been seriously distorted in terms of the question which is before us involved in this legislation.

And, third, is an issue which I would like to emphasize and stress and that is the issue of health and the health care question which is involved in this particular proposal.

I can't think of anything that can be more discouraging to millions of working mothers than the fact of having to make a determination every day that they wake up if they are pregnant: should I take the time off today because I know I am going to either lose the payments, I know I am going to lose the income that is necessary to provide for my family and for my expected child?

I don't believe that in our society in the richest and most powerful Nation in the world that any mother should have to make that choice and have to make that decision. It is a choice which those of affluence and resources do not have to make. But unless we are going to accept this amendment it is a harsh choice that will have to be made by millions of working women.

You know the statistics very well, Mr. Chairman. There will be tens of millions of expectant mothers who will have to make that choice. That is bad health care policy; it is bad for the mother; it is bad for the child. You have the statistics here in terms of the incidences of mental retardation, infant mortality, child complications either from prematurity or from other factors.

It just makes absolutely no sense whatsoever. So, it is important, I think, that this particular legislation, from the health of the expectant mothers, and I think it is quite clear that the action we take can make a significant impact in improving the quality of health and relieving the kind of anxiety that expectant mothers would have without this particular proposal.

And I don't think at a time of growing kinds of mental illness where the Congress appropriates millions of dollars in terms of mental illness and legislation which has been supported by members of this committee, without this I don't know how you put a price tag on the anxiety of women who are expecting and particularly working women.

I think, on the issue of health, second, Mr. Chairman, on the issue of equity, you know the figures and statistics as well as I and the extraordinary factors which play on this particular issue that work against, discriminate against women who become pregnant in the workplace. You are familiar with the fact that cosmetic surgery is paid for, that a host of different services that are paid for in terms of men, as I know and as you know, Mr. Chairman, the incidences of cancer that result from heavy smoking or from overeating, the epidemiological evidence is clear and is convincing and compelling.

And, yet, you find that people that take voluntary action in that respect are going to be covered in terms of disability but, in this instance, unless this amendment is passed working women are not covered. It just makes absolutely no sense.

You know as well as I in terms of the statistics that men die earlier than women and yet, we don't hear any hesitancy among employers and manufacturers say we are going to cover men as well as women in terms of various kinds of disability or other kinds of life insurance.

We don't say that because the cost of disability insurance in terms of men may be higher that we are not going to cover it, or we say that it has to be covered. Everybody understands. It is a sensible and responsible way. Therefore, just on the issue of price and cost it is essential that we do likewise.

The figures are very clear, not the distorted figures of the 1,500 million. I think the estimates of 150 million are much more accurate and realistic. It is only appropriate, Mr. Chairman, that 13 years after the Civil Rights Act, that 57 years after the 19th amendment, the right to vote, and 200 years after the establishment of this Nation, which was based upon fairness and equity and equality that we take this particular action to assure equity, equality, and fairness to the millions of women who are involved in the working place of this country.

I am glad that I support this amendment and look forward to working with you for its enactment.

The CHAIRMAN. Thank you very much, Senator Kennedy.

Your full statement will appear in the record and will be useful all the way through in developing this legislation. Thank you.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR KENNEDY

I am pleased to testify today in support of S. 955, a bill which I cosponsored and which amends Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

As a result of the Supreme Court's decision in *Gilbert* v. *General Electric* on December 7, 1976, employers are not required to include coverage for pregnancy and related illnesses in their disability plans. In order to avoid the devastating effects this decision may have on the economic future of many working women and men, and their families, it is vital that the Congress quickly enact legislation that spells out clearly and simply that discrimination based on pregnancy, childbirth or related medical conditions is sex discrimination within the meaning of Title VII of the Civil Rights Act of 1964.

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The Court's opinion rejected the unanimous opinions of six Federal appelate courts and disregarded the 1972 Equal Employment Opportunity Commission guidelines that required pregnancy-related disabilities be treated the same as any other temporary disability in the allocation of disability and sick leave benefits.

I share the view expressed by Mr. Justice Brennan and Mr. Justice Marshall in their dissent in the *Gilbert* case that "a realistic understanding of conditions found in today's labor environment warrants taking pregnancy into account in fashioning disability policies." And I am confident that the majority of Congress will concur.

Forty-seven percent of the labor force in the United States today are women. Seven of every ten girls born today will at some point in their adult lives become a part of the labor force. In the past 30 years, the number of working mothers has tripled. In the past decade, women accounted for over 50 percent of the increase in the civilian labor force. Women work because they have to. Seventy percent of the women who work, over 25 million, are women who need the money to support their families, as they are either the sole wage earner, are married to husbands who earn less than $7,000 a year, or are single, divorced or widowed.

Women who work most often contribute between 20 and 40 percent of the family income; in 24 percent of all families, women contribute over 40 percent of the family income. Unfortunately, families that rely on a woman's income may suddenly find that income suddenly stopped; stopped not because the woman chose to quit—few women can choose not to work—but stopped because employers can still discriminate in the kinds of benefits they allow.

Approximately 85 percent of working women become pregnant at some point during their working lives. Of the women who are briefly disabled by their pregnancies, 60 percent return to work. At present, many of these women return to work at jobs that have not provided any disability coverage to them during the period of time they were medically certified as disabled.

Since women work to support their families, depriving them of such coverage at a time they and their families are very much in need of this coverage discriminates not only against these women but against their families as well. This discrimination handicaps children who are born into families where a paycheck—possibly the only paycheck—has arbitrarily vanished. Without the mother's salary, proper health care and nutrition may not be possible for these newborns. Without her salary, pregnant women and the mothers of young children may be forced to seek welfare or food stamps assistance, which ends up costing all of us more in the long run.

The proposed amendment, which is narrowly drawn and conforms to the 1972 guidelines of the Equal Employment Opportunities Commission published in 1972, deals with the disabilities that might arise from pregnancy. This amendment does not require all employers to provide disability insurance plans; it merely requires that employers who have disability plans for their employees treat pregnancy-related disabilities in the same fashion that all other temporary disabilities are treated with respect to benefits and leave policies.

Unless we change the law, an employer can now provide disability income protection benefits for cosmetic surgery but not provide such benefits to women whose genuine disability is pregnancy related. Without the clarification this amendment will provide, employers who normally allow for no loss in pay to an employee visiting a doctor can exclude a woman's prenatal checkups from this category. Thus, a woman loses pay for helping to ensure her health and the health of her unborn child while her co-worker who visits the doctor to contemplate cosmetic surgery does not. This is clearly discriminatory and violates the heart of the Civil Rights Act of 1974, which was intended to provide equality in the work place to all persons. Many, though not all, fringe benefit plans now follow this discriminatory pattern. The proposed amendment would allow a pregnant worker who is medically unable to perform the duties of her job the same coverage as any other disabled worker.

It is sometimes asserted that pregnancy is essentially "a voluntary condition," a "planned event." Those same terms also describe a multitude of other temporary disabilities, not only cosmetic surgery, but nonessential surgery such as a vasectomy, and could fairly describe diseases that arise from smoking cigarettes or skiing accidents. And, indeed, pregnancy or the timing of pregnancy is very definitely often involuntary and will be so long as family planning meth-

ods are imperfect, and so long as many individuals find abortion unacceptable. Even when bearing and rearing children is chosen by an individual, the temporary disability associated with the physical impact of childbirth is not voluntary for women.

As for the issue of cost, Title VII never set a price tag for equality and, until this recent decision, was never viewed as a fair way of excluding persons from the labor force. Life insurance for male employees almost certainly costs more than it does for female employees, yet any of us would agree that providing life insurance for women and not for men would be discriminatory. In any event, with respect to pregnancy disability, there is no reason to exaggerate the potential cost of such coverage to businesses—several large employers already provide such coverage on a voluntary basis and have found that doing so is cost effective. Presently, 60 percent of all women employees who have disability insurance may receive benefits in the event of disability related to pregnancy. This leaves only 40 percent uncovered. To cover these additional women would only cost $150 million a year—not $1.5 billion as has been widely publicized.

Women have made extraordinary progress in achieving equal rights in this Nation, and it is heartening that the Carter Administration has committed itself to the full achievement of equal opportunity for women. Recent setbacks in the ratification of the Equal Rights Amendment and the Supreme Court's decision in the *Gilbert* case mean that the Congress must be especially alert to ensure that its intent to halt sex discrimination is fully understood by the courts, the legislatures, and the employment, housing, banking, and education institutions of this country.

It is unfortunate that 13 years after the Civil Rights Act, 57 years after the Nineteenth Amendment gave women the right to vote, and 200 years after a revolution begun and won on the principles of individual freedom and equality of opportunity, that we find it again necesary to restate what by now should be an accepted goal of our society, that discrimination profits no one and cuts to the heart of our national purpose.

The time has come for Congress to guarantee to the 39 million working women of this Nation that sex discrimination in employment is ended. The time has come for all of us to understand that the Nation's economy and the economic resources and stability of countless families depend to a significant degree on the earnings of women who make up over 40 percent of our country's workers. The time has come to end for all time the ridiculous notion that with the tremendous challenges facing this Nation, we can any longer afford to waste, through discrimination, the wealth of talent and energy in our Nation's work force. Congress must take the responsibility of changing this situation by enacting this amendment.

The CHAIRMAN. We will now insert in the record statements of Senators Abourezk and Anderson.

[The statements referred to follow:]

STATEMENT OF SENATOR JAMES ABOUREZK
BEFORE THE SUBCOMMITTEE ON LABOR
UNITED STATES SENATE
APRIL 26, 1977

HONORABLE HARRISON A. WILLIAMS, JR., CHAIRMAN

Mr. Chairman, I am pleased to appear here today to share my views on this most important issue of human rights.

Not only working women, but all women were dealt a severe blow by the Supreme Court's decision in the case of Gilbert vs General Electric Co.

The Court's decision that private employers may refuse sick pay for pregnancy-related disabilities is appalling to me.

In arriving at its conclusion, the Court rejected the opinions of 6 Federal appellate courts and 18 Federal trial courts. It stunningly rejected the Equal Employment Opportunity Commission's guidelines on employment policies relating to pregnancy and childbirth. It seems to me that in its reasoning, the Court still has the archaic notion that women only work temporarily or supplementarily.

The family unit has undergone many changes in recent years. Approximately 46% of all women over the age of 16 are in the labor force today. There are now 39 million women who are working or seeking work and well over half of these women do so because of the basic need to support their families. If the Court's decision is left unturned, countless women and their families will be forced to suffer unjust economic, social and psychological consequences.

The action by the Court is not only a setback to the gains made by women towards equal employment opportunity, it is a setback for human rights...for this decision insidiously promulgates discrimination against women.

It is imperative that we pass this legislation to overturn the Supreme Court's decision in the Gilbert case. I therefore strongly urge that this Committee take whatever action necessary to expedite passage of S.995.

Mr. Chairman, thank you for allowing me this time.

STATEMENT OF WENDELL R. ANDERSON
BEFORE THE SUBCOMMITTEE ON LABOR
SENATE HUMAN RESOURCES COMMITTEE

ON S. 995, "A BILL TO AMEND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 TO PROHIBIT SEX DISCRIMINATION ON THE BASIS OF PREGNANCY."

April 26, 1977

Mr. Chairman, I commend the Committee's leadership in moving to correct the damage to working women and their families created by the Supreme Court decision on Gilbert v. General Electric. In recent years Congress has worked to refute stereotypes about working women and to remedy their effects. These efforts have been spurred by recognition of realities about participation of women in the work force -- that nearly half of working-age women do work, for example, and that the average worklife of the American woman is 25 years.

In addition to the enactment of Title VII of the Civil Rights Act and the Equal Employment Opportunity Act, Congress has worked to encourage flex-time to provide alternatives to working mothers of school-age children and has passed a variety of education legislation to enable women to develop marketable skills and to narrow the income gap between men and women. Once again Congress is faced with the responsibility of affirming its commitment to basic human rights and equality within the labor force. Therefore, I am pleased to add my support to the anti-discrimination provisions embodied in S. 995.

If this clarifying legislation is not enacted, millions of American women and their families will be severely affected. Women unable to work because of pregnancy and pregnancy-related conditions will be forced to take leave without pay. It could mean welfare for them, and it could force them to make decisions about terminating pregnancy that they might not otherwise make. Pregnancy <u>is</u> gender related, and the failure of companies which routinely pay benefits for

a wide range of both voluntary and involuntary disabilities to pay them for pregnancy is clearly discriminatory. Enactment of S. 995 is essential, and I will look forward to working with you, Mr. Chairman, and the members of the Committee for prompt, favorable consideration of the bill. Thank you.

The CHAIRMAN. We now will call, from the administration, witnesses from the Equal Employment Opportunity Commission, Ethel Bent Walsh, Vice Chairman, Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice. Is Mr. Days here yet? We will be happy to receive him when he does arrive. And, Alexis Herman, Director of the Women's Bureau of Employment Standards Administration, Department of Labor.

Assistant Attorney General Days will be joining you very shortly I am told. We welcome you back. We always welcome you here whether it is nomination time or now in your substantive role as witnesses on this very important legislation.

Ms. Walsh, the floor is yours.

STATEMENT OF ETHEL BENT WALSH, VICE CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ACCOMPANIED BY DREW S. DAYS III, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE; DAVID ROSE, CHIEF, EMPLOYMENT SECTION, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE; ALEXIS HERMAN, DIRECTOR, WOMEN'S BUREAU, EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR; AND MELANIE NUSSDORF, OFFICE OF THE SOLICITOR, FAIR LABOR STANDARDS, DEPARTMENT OF LABOR, A PANEL

Ms. WALSH. Thank you, Mr. Chairman.

As a woman, as a working mother and as Acting Chairman of the Equal Employment Opportunity Commission, I want to thank you for this opportunity to appear today on behalf of the Equal Employment Opportunity Commission to urge prompt passage of S. 995.

This bill amends title VII of the Civil Rights Act to define sex discrimination to include discrimination on the basis of pregnancy or childbirth. This legislation has, of course, become necessary only because of the Supreme Court's decision last term in *General Electric* v. *Gilbert*, that title VII does not prohibit any employer from refusing to pay temporary disability benefits to employees absent from work because of pregnancy-related disabilities, even though all absences caused by any other disability are covered.

The *Gilbert* decision has left a gaping hole in the protection afforded by title VII to women—discrimination on the basis of pregnancy continues to be a significant barrier to the equal participation of women in the labor force.

The Equal Employment Opportunity Commission recognized this problem in the Commission's First Annual Report, where we said that: "to carry out the congressional policy of providing truly equal employment opportunities—for women, policies would have to be devis ed which afforded female employees reasonable job protection during periods of pregnancy."

Over the next few years, the thousands of charges filed by women confirmed the wide range of discriminatory pregnancy-related practices to which women were subjected. In hiring, women were subjected to inquiries concerning their family planning intentions. Men were not.

Too often, women were totally excluded from employment because they might become or were pregnant. Even if hired a double standard prevailed—most particularly in the area of fringe benefits. Often, women were fired as soon as they became pregnant and were not rehired or, if rehired, not given credit for their past years of work.

As a result, the Commission began to issue decisions addressing the specific problems one by one. As early as mid-1969, the Commission decided that a company's termination of a female employee because she was pregnant and its refusal to rehire her were unlawful.

Six months later, the Commission found that a policy under which maternity leave is only afforded to female employees depending upon the individual circumstances did not comport with Commission policy. The Commission expressed the opinion that "to provide substantial equality of employment opportunity—there must be special recognition for absences due to pregnancy—for this reason—a leave of absence should be granted for pregnancy whether or not it is granted for illness."

In 1970, the Commission found that other variations of maternity leave policies constituted sex discrimination, and for the first time considered differential medical maternity insurance coverage for female employees and wives of male employees.

The Commission found that such a difference in the availability of insurance coverage to male and female employees constituted unlawful discrimination because of sex.

This process culminated in the Commission's issuance in 1972 of a comprehensive guideline concerning sex discrimination and employment policies related to pregnancy and childbirth. This guideline explicitly states that exclusion from initial hiring, complete or partial denial of fringe benefits, and discharge because of pregnancy violated title VII.

There can be no question that the wide range of employment policies directed at pregnant women—or at all women because they might become pregnant—constitutes one of the most significant hindrances to women's equal participation in the labor market.

Undoubtedly, some financial experts will be able to argue that it is cheaper to discriminate. Their arguments are neither relevant nor persuasive.

The millions of women in the labor force work for the same compelling economic reasons as do men. Either they are the sole wage earner, totally responsible for their own or their families' support, or they contribute to a dual income family. The effect of discriminatory pregnancy policies impacts not only on the millions of working women themselves but also on additional millions of men and children who depend on the working woman's income.

Policies which disadvantage women when they become pregnant—or even because they might become pregnant—endanger the limited financial security they now have. The loss of several weeks of disability pay to a woman and her family may be the loss of the only money coming through the door.

Even more frightening, a woman who becomes pregnant may face the permanent loss of her job. To many working women, these policies may mean having to make a choice between having a child or keeping a job.

The Supreme Court does not believe that the traditional concepts of "discrimination on the basis of sex" include refusing to pay a woman disability benefits when she misses work because of childbirth.

As a result of the December 7 decision, *General Electric* v. *Gilbert*, our Commission has been forced to take steps to dismiss pregnancy benefits allegations in Commission lawsuits.

Among those lawsuits are 26 which raise maternity benefits claims only. We are forced to seek dismissal of all 26. There were 63 suits raising multiple issues, including maternity benefits. In 59 of these suits, we have taken steps to dismiss the benefits count only, moving forward with the other issues. In the remaining four units, we plan to dismiss all counts. In summary, there are 89 suits in which we are compelled to seek dismissal of all or some of the allegations.

In addition, 17 of our pattern-or-practice charges raise maternity benefits violations. These are all multiple-issue charges, and we will remove the benefits claims only.

As a woman, as a working mother and as Acting Chairman of the Equal Employment Opportunity Commission, I consider this unconscionable.

It is abundantly clear that the passage of this bill is essential to demonstrate that Congress intends title VII's protection against sex discrimination to include protection against discrimination because of pregnancy. The Equal Employment Opportunity Commission unequivocally endorses and urges prompt passage of S. 995.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Chairman Walsh.

Ms. HERMAN. Thank you, Mr. Chairman.

Before beginning my prepared statement, I would like to introduce one of our fine attorneys from the Solicitors Office, Melanie Nussdorf.

Mr. Chairman, as Director of the Women's Bureau for the U.S. Department of Labor, an agency whose mission is to formulate standards and policies to improve and promote the welfare of working women, I welcome this opportunity to appear before you today to discuss a matter of importance to the working women of this nation and their families, the passage of S. 995.

On December 7, 1976, the U.S. Supreme Court in the case of *General Electric* v. *Gilbert*, held that the exclusion of pregnancy disability benefits from an employer's otherwise comprehensive nonoccupational disability insurance plan is not discrimination under title VII of the Civil Rights Act of 1964 in the absence of showing that the exclusion is a pretext for discriminating against women.

It is the Department of Labor's conviction that discrimination based on pregnancy is discrimination based on sex. Women should not be penalized in their conditions of employment on account of childbearing. To deny equal rights and equal benefits because of pregnancy could clearly work to the economic and employment disadvantage of many of this nation's employed and employable women and their families.

Accordingly, in view of the Supreme Court's decision in *General Electric* v. *Gilbert*, we believe that the Congress should now take steps to enact legislation which would make clear the intent of Congress that employers who have medical disability or disability income plans

must provide for disability due to pregnancy on an equal basis with other medical disabilities.

Such action would be consistent with the President's repeated expressions of his commitments to, and concerns for, American workers, American women, and American families.

The bill before the subcommittee, S. 995, would amend the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, to expand the prohibitions against employment discrimination "because of sex" or "on the basis of sex," to include discrimination based on pregnancy, childbirth, or related medical conditions.

The bill further states that women affected by pregnancy, childbirth, or other related medical conditions are to be treated the same for all employment related purposes, specifically including receipt of benefits under fringe benefits programs, as others not so affected but similar in their ability or inability to work.

The Department of Labor has studied S. 995, and we have concluded that amending title VII in this fashion is an appropriate course of action. It permits Congress to address the issue in a simple bill. We are aware that other legislation not dealing with the pregnancy disability issue has been proposed which would affect title VII and other civil rights laws in a variety of ways. S. 995 seeks to correct an injustice which should not be allowed to stand in the many months ahead during which more complex matters may be debated.

Mr. Chairman, despite some thoughts to the contrary, working mothers are seriously attached to the labor force, and in many instances they are the breadwinners for their families. Indeed, as of March 1976, about 5.4 million working women had children under the age of 6, and of these, 2.5 million had children under the age of 3.

They are not in the labor force to have a casual flirtation with the market, but to earn income. Discrimination on the basis of pregnancy makes it difficult for women to remain in the labor force and maintain the continuity of their family incomes when they have children. In many instances, the woman's earnings are essential in raising her familys' total income above the poverty level.

We should note, Mr. Chairman, that this legislation by no means introduces a new employment practice. Most States have civil rights laws comparable to title VII, and many of their administrative agencies have adopted sex discrimination guidelines similar to those struck down in *Gilbert*.

The Wisconsin Supreme Court unanimously upheld the policy position some months ago, and the highest court of New York—only days after *Gilbert* was delivered—ruled that employers subject to that State's human rights law must give equal treatment for disabilities caused by pregnancy. In several other States and the District of Columbia the civil rights agencies are not persuaded that *Gilbert* affects guidelines issued pursuant to their respective laws.

Three States have laws specifically prohibiting discrimination in employee benefits because of pregnancy. And four States that have temporary disability insurance laws provide for coverage for workers disabled by pregnancy. (California instituted pregnancy coverage after the Supreme Court indicated in 1973 that it need not do so in the case of *Aiello* v. *Geduldig*.)

In addition, some employers provided pregnancy coverage to comply with the EEOC guidelines before the *Gilbert* decision; and others' temporary disability plans include some degree of coverage for pregnancy with time or money amount limitations.

As you can see, provision of temporary disability benefits for pregnancy is in effect for many employers. However, only Congress can enact a national standard to prevent discrimination against pregnant workers where it exists.

The question of increased costs due to the legislation has been raised. These costs should not be overstated. Neither, however, should they be a deterring factor in the passage of this legislation. These costs should be seen in perspective in relation to payroll costs and the overall costs of fringe benefits and temporary disability costs.

We estimate that increased coverage of pregnancy under temporary disability plans will result in a total cost increase of about $228.9 million a year. This represents a 3.2 percent increase in the cost of temporary disability plans, amounting to only five-hundredths of 1 percent (0.05) increase in the total payroll costs of nonoccupational temporary disability benefits for employees.

In conclusion, the Department of Labor is fully committed to the principle of equal employment opportunities for women. The denial of equal employment rights constitutes a serious setback for women in their efforts to better themselves, to participate in the support of their families, and to become full, active and productive members in our society.

We look to Congress to correct this situation. In this regard, the wide diversity of women's labor, civil rights and other groups who have joined together to support this legislation should be noted as an indication of its significance. We of the Department of Labor fully endorse S. 995.

This concludes my prepared statement. You may feel free to call upon us for whatever assistance we might be able to provide you with in the future. Thank you.

The CHAIRMAN. Thank you very much, Ms. Herman.

I don't believe that Assistant Attorney General Days is here yet. I would like to just have a little dialog with you. I know some of the things he will say. He has, of course, submitted his statement, under the rules, earlier. It deals with a lot of things which should put some of the opponents a little more at ease than they are now.

The only argument that I have heard against this bill is the cost, the new cost to industry if we do clearly cover pregnancy under title VII. I will say in that regard, the opinion itself directs us to the action we are taking here today.

The Supreme Court Justice writing the majority opinion said, in part, "particularly in the case of defining the term 'discrimination,' which Congress has nowhere in title VII defined . . ." That is the approach we are taking here in this particular area of discrimination. We are amplifying the definition and saying that to withhold where all other disabilities are covered is sex discrimination. So this bill is the clearest, most direct way of doing it and it tracks with the majority opinion in *Gilbert*.

I think I am going to ask one of our new members here to analyze that opinion for us. Senator Hayakawa is our "professor in residence"

in semantics and I think he would have a field day with some of the language in that opinion. At any rate—now I see Assistant Attorney General Days is here. I know your statement does describe how a considerable part of industry now covers the disability arising out of pregnancy on the basis of what we thought was a sound foundation, that it was clear that to withhold coverage was discrimination.

That is what we all thought until December 7, 1976, when this opinion came down. On this cost factor—just one question before we get to Mr. Days—your figures, do they reflect the extent of present coverage of pregnancy and disability in industry?

Ms. HERMAN. They do reflect that, Senator, yes. I might add also that in line with our figures as to what was cited earlier in testimony, we are also taking into account here bringing up other workers who are now presently covered by some form of disability plan. I think the average coverage now is approximately 6 weeks.

We based our cost data on 7.5 weeks.

The CHAIRMAN. We might, after we hear Mr. Days, get into some suggestions that have been offered by those who are fearful of abuse as to how a period should be limited for coverage. We would like to have your ideas on some of these approaches.

Now, Assistant Attorney General Days, we welcome you.

Mr. DAYS. Senator, let me apologize for being late this morning.

I am pleased, however, to be here to testify in support of the amendment to title VII with respect to pregnancy disability. You have undoubtedly gone over the facts of the *General Electric Co.* v. *Gilbert* case. I would simply like to make some comments from the perspective of the Justice Department on the *Gilbert* case and why this piece of legislation is an important addition to Federal laws protecting rights in employment.

When the Supreme Court decided to rule in the *Gilbert* case during the past administration, the Solicitor General together with the General Counsel of the Equal Employment Opportunity Commission filed a brief as a friend of the court in which the United States argued that a disability benefits plan such as the one by *General Electric* discriminated against women on account of their sex.

The brief noted that the net result of the pregnancy exclusion was to subject only women to a substantial risk of total loss of income because of temporary medical disability. Insulating men from that risk while leaving women subject to it is necessarily discriminatory.

My immediate predecessor, Assistant Attorney General for Civil Rights, J. Stanley Pottinger, participated in oral argument before the Supreme Court in *Gilbert* in order to emphasize the view of the agencies responsible for enforcing title VII that discrimination on account of pregnancy constituted sex discrimination in violation of title VII.

I attached a copy of the brief for the United States and the EEOC to my statement.

The Supreme Court, however, disagreed. The Court ruled that an exclusion of any pregnancy disability from a disability benefits plan providing coverage for any disability to an employee is not sex discrimination under title VII of the Civil Rights Act of 1964, in absence of a showing that the exclusion is a pretext for discriminating against women.

Three justices dissented from the Court's ruling. Mr. Justice Stevens stated that the rule at issue places the risk of absence caused by pregnancy in a class by itself. By definition, such a rule discriminates on account of sex for it is the capacity to become pregnant which primarily differentiates the female from the male.

We believe that the views expressed by the dissenters, the EEOC guidelines, the courts of appeals which had reached the issue and the Department of Justice were consistent with the purpose of title VII, to remove artificial and discriminatory barriers to equal participation in the work force.

Therefore, this administration wishes to endorse and lend its support to efforts to amend title VII to carry out what we believe to have been Congress intent when it included the prohibition against sex discrimination in title VII. In other words, we continue to argue at this time before a different court the position that we presented before the Supreme Court in the *Gilbert* case.

We have a few suggestions with respect to changing various language in the bill, which I will not go into. It is in my statement. But I would like to say that we do not anticipate that legislation such as the one before the Senate will result in any long-term increase in the Federal court caseload.

To the extent that after *Gilbert* there are other questions remaining regarding discrimination on account of pregnancy, we think this legislation will aid the courts in avoiding unnecessary litigation, and after the first spate of litigation to construe this amendment to title VII we believe things will move along fairly smoothly.

In fact, as you indicated, Senator, there were many employers well on the way to complying with the interpretation of title VII prior to the *Gilbert* case and we see no reason why——

The CHAIRMAN. You made an estimate of the percentage of industry, did you not, that did cover?

Mr. DAYS. I am not certain that we made an estimate, a percentage estimate, but we do have a list that we can provide to the committee indicating at the time that *Gilbert* was argued, which employers had moved along toward complying with the earlier interpretation of title VII. It is an appendix to one of the briefs filed in the Supreme Court in the *Gilbert* case.

I believe you already asked about the cost of this legislation. We do not think that we are in the best position to address the issue of cost, but certainly feel, based upon our experience in employment discrimination litigation in the sex discrimination area that the unnecessary constriction of the work force based upon discrimination against women is a great cost to the society and that by opening up these opportunities to women who have the willingness and ability to work, and avoiding discrimination based upon the extent to which they may become pregnant would improve the economic situation not only of women but of the entire society.

This is particularly true, I might add—going outside of the comments that were submitted—with respect to minority women. The impact of discrimination in the sex area would often fall heaviest upon minority women who are required to go out and work more often than perhaps nonminority women. This was one of the interests in the case of *Phillips* v. *Martin Marietta*, the first sex discrimination case heard by the Supreme Court.

Although a white woman was involved in that case it was perceived to have impact much more significantly upon minority women.

We believe that this legislation is attractive in its simplicity and we believe that it would accomplish an exceedingly important end. As I say, discrimination based on pregnancy and related medical conditions has a dramatic negative impact on the employment opportunities and expectations of women in the national work force.

The fundamental purpose of title VII is it prohibits discrimination on account of sex to make men and women equals in the marketplace. To the extent that women employees are required to absorb economic costs and disadvantages because of pregnancy, this goal cannot be met. For this reason, I hope that Congress will act upon this legislation with dispatch.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Days.

Before I forget, I wonder if we could have the breakdown of the statistics that you have cited for our records at your convenience.

Ms. HERMAN. I will supply that for the record.

Mr. DAYS. And, Senator, I also said that I would submit that list of the employers already on the way to complying prior to *Gilbert* as part of my testimony.

The CHAIRMAN. Excellent. It would be interesting to know, and I don't know whether this could be determined in any accurate degree, whether or not any businesses canceled coverage of pregnancy following the decision. I would guess not because of contract terms, and that was only a few months ago. But just as you had to withdraw cases, I hope that companies didn't withdraw coverage because we certainly want to fill the missing language in the law to make sure that this discrimination is not permitted.

As Justice Rehnquist said, the definition of discrimination is not adequate to cover this. We thought it was so clear we didn't need to, I am sure, when we enacted this title.

Mr. Days, you have some language you suggest. They reach other aspects in a way. Isn't that conforming language so that it is clear throughout.

Mr. DAYS. That's correct.

The CHAIRMAN. But specifically on this issue, the language is clear and precise. There could not be any difference of interpretation following this if it were in title VII. Am I right?

Mr. DAYS. That's right. We simply don't want anybody to draw improper inferences from the fact that the exact language used in other places with respect to sex are not used in this amendment.

The CHAIRMAN. You mentioned that the opposition is hard to find and when you do, it is this horror of cost, the prophets of economic doom and you have dealt with that in part. Some people suggest that pregnancy coverage would lend itself to grave abuse and that would put it into prohibitive cost area. They suggest that there could be a specific time of coverage for the pregnancy period of coverage; 6 weeks.

It would seem to me that to do this would raise another question of discrimination. Do you look at it that way, Mr. Days, if you said in this particular disability it is permitted to provide coverage for only 6 weeks?

Mr. DAYS. I would agree with you, Senator. I think that certainly it is helpful to know what would be the normal period of disability associated with pregnancy but I think it would be unwise and perhaps discriminatory to put a fixed limitation upon what is identified as a medical condition that has to be defined by people who are qualified medically to address such issues.

The CHAIRMAN. And if there is danger of abuse, there is danger of abuse in any disability.

Mr. DAYS. I think that is right.

The CHAIRMAN. Therefore, medical certification of a physical condition which indicates that a person is unable to work should be adequate here as it is in all other disabilities.

Mr. DAYS. I think, if I may suggest, the discussion about potential for abuse flows from a biased perception of the female work force that in some way women are more prone to abuse these types of benefits than men are. I have had some personal experience with health insurance plans.

I once worked for General Motors and I can assure you that men are quite competent in abusing a health and welfare plan and I think it is probably unrelated to the sex of the person involved. I think all of this discussion perhaps is the result of perceiving woman workers as somehow less serious about their jobs and less concerned with developing careers than men are.

The CHAIRMAN. Senator Hatch, we have had a very illuminating panel here of witnesses.

Senator HATCH. I really feel badly that I wasn't able to be here at the outset today and so I missed much of the hearing. This subject intrigues me greatly. I want to look into it from all aspects because I am very concerned that women are being discriminated against here.

In fact, I am so concerned that I went all over my home State and asked them to consider this question and to give me their input, especially at the university. I have been receiving some input. A number of the letters I have received have indicated they are very concerned also because there are some apparent discriminatory aspects of the *GE* decision, or at least they think so and apparently the sponsors of this bill think so.

So I am still kind of looking into this to see just what is right and what are the best solutions. As I read the bill, I notice that there are no limitations at all. In other words, are there any limitations, Senator, in this as to length of time of disability on the coverage or any other limitations that would apply to this particular section?

The CHAIRMAN. Only those that we were just discussing, the same limitations that there would be in any disability case. We don't do that under this law.

Senator HATCH. I think what I am coming to, and maybe the panel can help me, is there going to be a set time for disability as a result of pregnancy? In other words, pregnancy is not an unusual thing, nor is it considered an illness, nor is it an involuntary thing in most cases. Therefore, it has some distinction from the normal disability from which many workers suffer.

On the other hand, there are disabilities from which workers suffer that could be less worthy of being subsidized through disability pay-

ments than pregnancy. But is there going to be a, say, 3-, 4-, 5-, 6-week average disability, or do we just let the woman stay off until she feels better? How do we work this out? Is it going to be on the basis of medical testimony, or should we make this clear in the bill?

I think these are questions I would like to have some input on from you experts on the panel.

The CHAIRMAN. Who wants to lead off?

Ms. WALSH. I would be delighted.

The CHAIRMAN. Chairman Walsh.

Ms. WALSH. Senator Hatch, when you talk in terms of time, and I think it is also very closely alined with the area of abuse, I would like to speak, first of all, from practical experience because I was in industry for well over 20 years and many of those years were spent in an industry that had a predominantly female work force.

Let us put pregnancy aside for the moment and talk about how you take care of disabilities of other natures and the time limitation on that is usually done by a doctor's certificate because, indeed, there is abuse from a gall bladder operation and there is abuse from a strained back. This has to do with the individual.

That same type of restriction would be placed on pregnancy as a temporary physical disability. When you talk in terms of average time, from a practical point of view when I was working with women, most of our women were married and, indeed, the amount of time that was required for physical disability due to maternity varied.

We had one woman who had a baby on Friday and was back at work on Monday, so that here again you have a matter of individuality. From the Equal Employment Opportunity Commission point of view and I believe the bill does not say—this was pointed out in earlier testimony—the bill does not say that an employer must carry coverage. It merely says that if an employer opts to carry this type of coverage, the same coverage must apply to women. This has always been the position of the Equal Employment Opportunity Commission. This is the position that we have in our guidelines.

Senator HATCH. Now let me ask you this. As I understand it, would your interpretation of this bill mean that the particular item of coverage could limit the disability time even though it might be less than other facilities might have in their particular coverage?

Ms. WALSH. Let me put it this way. It is the position of the Commission on maternity, not after the fact but before, that it is discriminatory for an employer to say a woman must leave her job at the end of 4 months, 5 months, or whatever. Our position has always been that this is an individual thing.

The woman would leave work based on her doctor's certificate, when the doctor feels that she is incapable of continuing work.

Senator HATCH. What if the plan of a particular company says that we are going to give them 3 weeks for pregnancy disability, would this bill say that that is discriminatory?

Ms. WALSH. I am not talking for the bill, but the position of the Equal Employment Opportunity Commission has always been that this is an individual situation and obviously it would differ from individual to individual.

Senator HATCH. What you seem to be saying is that the only criterion should be the doctor's certificate of recovery.

Ms. WALSH. Just as it would be, for instance, for a heart attack, as it would be for an appendectomy, as it would be for a gall bladder operation.

Senator HATCH. I see. In most all of those situations you have an average, or at least a reasonable time in which a recovery will be completed. But you are still saying it still has to be determined by the doctor's certificate rather than by, say, a set period of time so that we can prevent abuse if abuse is likely to occur?

Ms. WALSH. I think in area there would be far less abuse than has been made as an argument against this bill. It does seem to me, and it has been my experience, that women who work are working because they need the money and because they have to help support the family. The fact that there is another child to rear is a very strong motivation for getting back to work and not abusing a policy.

Senator HATCH. Of course, that is a good argument but there are many people who might argue the other way that there are many strong motivations about having disability payments. I know of people who have abused disability payments who need to work and who need 100 percent of their salary rather than the 65 or 60 percent. So there is another side of this and we should recognize that.

I think one of the biggest problems is that most people in America do not consider pregnancy a major illness. This is what I have been getting on the other side of the coin, if it is not a major illness but a voluntary natural occurrence. Shouldn't there be some sort of limitations on how much time should be taken for disability, except in extraordinary cases?

And if there were time limitations so this might be a lot more palatable. That is the thing that worries me a little bit. I don't want to see this necessarily defeated because it isn't palatable.

Mr. Days, you have a comment?

Mr. DAYS. I just want to say that I am sensitive to the Senator's concerns about abuse and perhaps it would be possible for an employer to establish some limitations but I don't believe that the limitations could be directed solely to pregnancy disability. There would have to be some determination that the plan would establish certain outer limits of coverage for a variety of operations, illnesses, and disabilities that workers might encounter as would a medical insurance schedule of operations.

Senator HATCH. This may take a completely new approach to disability insurance.

Mr. DAYS. That is right. I think the bill is concerned with the equality of treatment and if an employer wanted to establish limitations insofar as that set of limitations was nondiscriminatory and fair across the board there would be no problem.

Senator HATCH. Some people think that the only way you can prevent abuse is to have some limitations built into either the bill or the particular plan.

Mr. DAYS. I would think that having it in the bill would be very unfortunate.

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Senator HATCH. Tell me why because this is an important area and I would like to have your ideas.

Mr. DAYS. As I said earlier, I think that improperly sets pregnancy aside from other types of disability in a way that the *Gilbert* decision did, and given the facts——

Senator HATCH. Don't you agree that pregnancy isn't particularly an illness?

Mr. DAYS. I would have to indicate that——

Senator HATCH. I think it is a little bit set aside from the average illness disability that occurs in industrial work.

Mr. DAYS. I think there are enough circumstances in which complications arise related to pregnancy to put it without any problem, in the category of a type of disability like other forms of disability. One can, of course, admit that pregnancy is a natural condition and can go to term without any problems but, for example, in the *Gilbert* case, as I understand it, one of the plaintiffs developed some type of embolism that was not directly related to pregnancy but came during the leave from work due to pregnancy and that was not covered.

So I think women are placed in a situation where the benefit of the doubt is always given to the assumption that it is a natural process as opposed to looking at it on the merits and trying to determine whether in a particular circumstance situations make it more akin to what you might call a normal illness.

Senator HATCH. Even you are drawing distinctions by "kind of a disability" and "akin to a normal illness" and so forth. I think that is the real problem that rises in many minds across the country, both women and men. I have had responses from women who just think this is a terrible thing and I have had responses from, for instance, a professor of biology at the Utah State University who is a woman, who indicates that this is something that really needs to be done, and she gave a very reasoned and analytical response to my query when I was up there last week, and a quick response.

Mr. DAYS. Senator Hatch, let me give you a personal experience. My first child was born in the hospital through natural childbirth. My second child was born at home and I was the midwife, and I can assure you that there is nothing really normal about the process. It is very complicated and is——

Senator HATCH. Maybe not for you. [Laughter.]

Mr. DAYS [continuing]. Fraught with all kinds of potential for injury and disabilities.

Senator HATCH. You have had experiences many people haven't had.

Mr. DAYS. Indeed, but I was trying to share them with you.

Senator HATCH. I have had that same experience and I promise to never divulge the name of the lady who needed that assistance.

The CHAIRMAN. Well, I'll be.

Senator HATCH. Senator Williams thought that my experiences were rather limited.

[Laughter.]

Senator HATCH. I think you can see the dilemma that exists in the minds of many people in America, and presently exists in my mind. I don't like to see discrimination toward women and I want to work to try to end it. But my question is, and I think the question of many

people who take the other side, and my purpose for asking is to try and get out some answers so that we might be able to ease some of the fears and calm some of the troubled hearts in this society is that most people really don't consider pregnancy a disability or an illness or something that is not voluntarily undertaken, except in certain instances.

Mr. DAYS. Given those companies that were trying to comply with title VII as it was understood before *Gilbert*, as the list indicates that I am going to submit to the subcommittee, the average appears to be about 6 weeks that the plans gave over to pregnancy disability—8 weeks is one. The Association of Master Painters allotted 13 weeks. But I think 6 to 8 weeks is pretty much what medical experts have——

Senator HATCH. For disability in pregnancy?

Mr. DAYS. That's right.

Senator HATCH. I think you would have substantial disagreement from medical experts all over the country. I think that they would say it could take 18 months to get a woman back to her normal state before the pregnancy but she doesn't need 6 to 8 weeks to recover——

Mr. DAYS. It just reflects what employers who have studied this problem felt they could give over to this type of disability.

Senator HATCH. You are saying that you figure that this type of disability would probably have plans to write in 6 to 8 weeks?

Mr. DAYS. Yes; that's quite possible.

Senator HATCH. Will they write, say, so many weeks before and so many weeks after, do you think, or will they be just after?

Mr. DAYS. There is a problem, it seems to me, given the *Lefleur* case in the Supreme Court that identified the fact that this is a very personal matter, how long women can work prior to giving birth to a child. I suppose there could be an outside limit that employers could set; not 6 months before term, or perhaps not 4 months before term. But, of course, it would depend.

Senator HATCH. In other words, you are indicating to me there has got to be some reasonability built into this thing if only through the plans themselves.

The CHAIRMAN. Just a moment. I thought we clarified this. The "reasonability" is the medical certification as when a woman can or cannot work. That is true of all other disabilities, isn't it? If there were time built in for all disabilities, this would fall. If no times are in, it is a medical certification. It is as simple as that.

Senator HATCH. Who makes that certfication, your own doctor or the company doctor——

The CHAIRMAN. The same one that does it for the guy with a vasectomy who is out for 6 weeks.

Senator HATCH. Do you mean to tell me we give disability for vasectomies?

The CHAIRMAN. Exactly right. General Electric did. Am I right? Where is the General Electric person?

[Laughter.]

The CHAIRMAN. As a matter of fact, talking about voluntary/involuntary, I think someone laid up with a venereal disease could collect for that.

Ms. HERMAN. I think it is also important to note, Senator, in the GE plan hair transplants are covered as well.

The CHAIRMAN. Incredible. And it is true?

Ms. HERMAN. Yes.

Senator HATCH. This bill may not be granted by the Congress but we might at least discuss some of these other abuses.

[Laughter.]

The CHAIRMAN. You take that up, OK?

Senator HATCH. I am willing.

What about the situations where we have emotional difficulties that arise out of pregnancy? You would also cover those under a disability situation just like you would cover any other emotional difficulties that arose even if they did not have work-related aspects?

Mr. DAVIS. Again, it would be the equality principle.

Senator HATCH. If a plan provides that for the men and for the women, then it should provide for it in the situation of pregnancy?

Mr. DAVIS. That's right.

Senator HATCH. And that would be your position?

Mr. DAYS. Yes.

Senator HATCH. Do you think that it is the appropriate thing to put this in the civil rights act or to enact a special pregnancy bill requiring that wherever they have plans granting disability, they have to grant it for women as well, and from a pregnancy standpoint they have to be reasonably related to the type of disability grant to others under similar circumstances?

Mr. DAYS. It belongs in title VII, Senator Hatch.

Senator HATCH. Why?

Mr. DAYS. Because that piece of legislation represented, in my estimation, a determination by Congress to open opportunities up to minorities and women who had been discriminated against over many generations. It seems to me that pregnancy disability is a most modern example of that type of undue restriction upon the opportunities for women in employment.

Senator HATCH. One thing I still haven't received is an answer that would be satisfactory to some of the people who are concerned who have contacted me, and that is, how can you categorize pregnancy as an illness type disability since it is, I think we can generally say, a voluntary condition? If you could help me on that, I would appreciate it.

Ms. WALSH. Senator, may I comment on that?

We are not talking in terms of the word illness. We are talking about a temporary physical disability. We are also talking in terms of a voluntary contribution by an employer. If an employer says that there will be benefits having to do with temporary physical disability just as they did for hair transplants—I could hardly, in terms of illness, consider this illness——

Senator HATCH. Of course, I think that is immoral.

Ms. WALSH. This is a fringe benefit that is normally negotiated between an employer and a union just as the coffee break is negotiated, just as any other insurance benefits are negotiated. So we are talking in terms of a temporary physical disability. We are merely saying that if a company chooses to give this type of fringe benefit to their male employees, they better give it to the women employees too. This is the only equitable way to do it.

Senator HATCH. It looks like we don't have male employee union negotiations that are effective for women thus far.

Ms. WALSH. It has been my experience that too often negotiating teams have been made up of men rather than women in corporations and that might have something to do with it.

Senator HATCH. It seems some of these women have to start their own unions, it seems to me.

Ms. WALSH. They are.

Senator HATCH. So you would prefer to have it taken out of an illness category at all, just pure disability as defined in any particular plan?

Ms. WALSH. That's right. It is a temporary physical disability and I believe this is usually the terminology that is given.

Senator HATCH. None of you on this panel would assert that there is anything in this particular bill that would require an employer who does not otherwise have disability plans to have one?

The CHAIRMAN. That is right. That has been covered and the answer is it does not require a plan. This only applies where there is a plan.

Senator HATCH. I think you have been very helpful and I appreciate your comments. I am going to read and study everything we have got here and continue to solicit help in resolving these questions. Anything else you can send to me or assist me with, I would like to have.

[The prepared statement of Mr. Days and additional material follows:]

Department of Justice

STATEMENT

BY

DREW S. DAYS, III
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE

THE

SENATE COMMITTEE ON HUMAN RESOURCES
SUBCOMMITTEE ON LABOR
UNITED STATES SENATE

CONCERNING

THE PROPOSED AMENDMENT OF TITLE VII
OF THE CIVIL RIGHTS ACT OF 1964
TO PROHIBIT SEX DISCRIMINATION ON THE
BASIS OF PREGNANCY

ON

APRIL 26, 1977

I am pleased to appear before the Subcommittee this morning to testify on S. 995, which would amend Title VII of the Civil Rights Act of 1964 to explicitly prohibit sex discrimination in employment on the basis of pregnancy, childbirth and related medical conditions. Accompanying me here this morning are David Rose, Chief of our Employment Section in the Civil Rights Division, and Cynthia Attwood, an attorney in our Appellate Section, who have assisted in our study of the issues surrounding the proposed amendment.

The need for a bill such as S. 995 became apparent in December of last year when the Supreme Court decided General Electric Co. v. Gilbert. In that case, the Court decided that Title VII does not prohibit an employer from denying pregnant women disability benefits, although that employer provides benefits for all other disabilities including those which can be suffered only by men unless it can be shown that such a denial is a pretext for discrimination against women or has a discriminatory effect.

I would like briefly to describe the Gilbert case and the interest of the United States in it, and then to discuss the desirability of legislation to clarify what we believe was the original intent of Congress.

The Gilbert suit was brought by female employees of General Electric Company who had been denied disability benefits for pregnancy, and pregnancy related medical conditions under a disability benefit plan which covered other forms of disability. Coverage under the plan was included, among other things, for elective surgery, for disabilities resulting from an employee's commission, or attempt to commit, an assault, battery or felony. The plan also covered disabilities resulting from voluntary activities such as sports injuries or venereal disease. In short the plan was to provide a temporary source of income to employees unable to work due to physical disability, but excluded pregnancy, or pregnancy related medical problems, or even a disability not related to pregnancy, but which occurred while a female employee was on leave from her job due to pregnancy.

The district court ruled that the exclusion of pregnancy - related disabilities violated Title VII's prohibition against sex discrimination, and the court of appeals affirmed that decision. The court of appeals in the Gilbert case was not alone, as the other courts of appeals which had considered the issue had ruled that such exclusions could amount to sex discrimination in violation of Title VII.1/ In addition, Guidelines promulgated by the Equal Employment Opportunity Commission concluded that such actions constituted sex discrimination.

When the Supreme Court decided to rule on the Gilbert case during the past administration, the Solicitor General, together with the General Counsel of the Equal Employment Opportunity Commission, filed a brief as a friend of the court, in which the United States argued that a disability benefits plan such as the one by General Electric discriminated against women on account of their sex. The brief noted that the "net result of the pregnancy

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1/ Satty v. Nashville Gas Co., 11 FEB cases 1 (C.A. 6); Huchison v. Lake Oswego School District, 519 F.2d 961 (C.A. 9); Wetzel v. Liberty Mutual Insurance Company, 511 F.2d 199 (C.A. 3).

exclusion," was "to subject only women to a substantial risk of total loss of income because of temporary medical disability." "Insulating men from that risk while leaving women subject to it is necessarily discriminatory."

My immediate predecessor as Assistant Attorney General for Civil Rights, J. Stanley Pottinger, participated in oral argument before the Supreme Court in Gilbert in order to emphasize the view of the agencies responsible for enforcing Title VII, that discrimination on account of pregnancy constituted sex discrimination in violation of Title VII. I have attached a copy of the Brief for the United States and the EEOC to my statement.

The Supreme Court, however, disagreed. The court ruled that an exclusion of any pregnancy disability from a disability benefits plan providing coverage for any disability to an employee is not sex discrimination under Title VII of the Civil Rights Act of 1964, in the absence of a showing that the exclusion is a pretext for discriminating against women. Three justices dissented from the Court's ruling. Mr. Justice Stevens stated that:

> ...the rule at issue places the risk of absence caused by pregnancy in a class by itself. By definition, such a rule discriminates on account of sex; for it is the capacity to become pregnant which primarily differentiates the female from the male.

We believe that the views expressed by the dissenters, the EEOC Guidelines, the courts of appeals which had reached the issue, and the Department of Justice were consistent with the purpose of Title VII: to remove artificial and discriminatory barriers to equal participation in the work force. Therefore, this Administration wishes to endorse, and lend its support to efforts to amend Title VII to carry out what we believe to have been Congress' intent when it included the prohibition against sex discrimination in Title VII.

I believe that S. 995 is a simple, effective vehicle for achieving that end, and I would like to make a few short points about this legislation. The prohibition against discrimination contained in S. 995 would apply to all aspects of the employment process - to hiring, reinstatement rights, seniority, and other conditions of employment covered by Title VII as well as to disability benefits. The basic purpose of S. 995, therefore, is to ensure that

pregnancy related disabilities are treated the same as all other temporary disabilities. S. 995 achieves this goal by amending the definition section of Title VII, so that it is clear that for purposes of Title VII, discrimination on account of pregnancy is sex discrimination. Amendment of the definition portion of Title VII appears more appropriate than an alternative, which would be to add a new, separate prohibition to the Act. What I believe we are attempting to accomplish through this legislation is to clarify what many of us thought was the original intent of the Act.

S. 995 makes it clear that an employer could not attempt to use any interpretation of the Equal Pay Act which might be inconsistent with Title VII's amended definition of sex discrimination as a defense to a charge that he discriminated on account of pregnancy. The proposed legislation does not purport to elevate pregnancy above other employment disabilities, and require employers to assume the costs of pregnancy when they would not do so with regard to other physical disabilities. Nothing in S. 995, for example, requires an employer to have a disability plan for employees. Nor does S. 995 regulate

an employer's obligations with regard to employees' absences due to child care obligations; such absences are not due to medically determinable conditions related to pregnancy. What is required is that pregnant employees who are able to work be treated like others who are similarly able to work; and that pregnancy related disabilities be treated the same as the disabilities of other employees.

We do have one suggestion regarding the language of S. 995. Title VII refers in various places, not simply to "because of sex" and "on the basis of sex," but also to "upon the basis of sex" and "on the basis of such individual's sex." In order to ensure that this new definition of sex discrimination applies to all provisions of the Act, this subcommittee might consider including the latter two phrases.

We do not anticipate that legislation such as S. 995 will result in any long term increase in the federal court case load. To the extent that, after Gilbert, there are other questions remaining regarding discrimination on account of pregnancy, this legislation will aid the courts by clarifying the meaning of Title VII in this area.

Although there might be an initial spate of suits to enforce this amendment, we believe that because of the nature of the rights protected by it most employers will come into compliance with the amendment in a relatively short period of time, thus vitiating the need for extensive litigation. Moreover, as the bulk of the law developed prior to the Gilbert decision treated discrimination based on pregnancy as sex discrimination, many employers were already complying with the proposed legislation prior to Gilbert. The net result, we believe will be neither a substantial increase or decrease in the federal court caseload.

We do not have any hard and fast notions of the cost of this legislation to employers in terms of added disability benefit protection and so forth. We will leave that calculation to persons better able to provide such information. However, we anticipate that the nationwide cost will not be nearly as substantial as some opponents of this type of legislation have speculated. In any event the cost to the nation for this type of protection of pregnant workers is offset at the present by the artificial shrinkage of the work force and the cost women workers must

absorb as a result of discrimination against pregnant workers. We believe that cost, therefore, should not be a deterring factor in the passage of this legislation.

S. 995 is attractive in its simplicity. We believe that it would accomplish an exceedingly important end. Discrimination based on pregnancy and related medical conditions has a dramatic negative impact on the employment opportunities and expectations of women in the national workforce. The economic impact on women and their families when pregnancy temporarily disables a woman employee is as great as the impact of other temporary disabilities; and it comes just as the employee has another mouth to feed. Disability insurance plans and sick leave plans are designed to cushion the economic consequences of temporary disabilities. It is unfair to exclude a major disability suffered only by one sex, when other disabilities are covered.

The record of discrimination against women in employment is well known to this subcommittee and has not been fully eradicated. In 1956, fully employed women's earnings were 63% of men's earnings. In 1970, they had fallen to 59%.2/

2/ U.S. Department of Labor, 1975 Handbook on Women Workers, Bull. No. 297, at 4 (1975).

Women are likely to have shorter job tenure than men,3/ and are more likely to be employed part-time or part-year.4/ Although many factors contribute to these statistics, one circumstance that is likely to make it difficult for women to retain regular employment is discrimination based on pregnancy, including the unavailability of sick leave and health care benefits when they are temporarily disabled by pregnancy. Uncovered medical expenses, loss of income and employment opportunities, and limitations on reinstatement rights all operate to make women, whether pregnant, potentially pregnant, or formerly pregnant, second-class citizens in the employment sphere.

The fundamental purpose of Title VII, as it prohibits discrimination on account of sex, is to make men and women equals in the market place. To the extent that women employees are required to absorb economic costs and disadvantages because of pregnancy - this goal cannot be met.

For these reasons I hope that Congress will act upon this legislation with dispatch.

3/ Id. at 61.

4/ Id. at 51.

April 29, 1977

Honorable Harrison A. Williams, Jr.
Chairman, Committee on Human Resources
Subcommittee on Labor
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During her appearance before your Subcommittee on April 26, Ms. Alexis Herman, Director, Women's Bureau, included in her testimony the Department of Labor's estimated cost impact of S. 995 on temporary disability plans. We have discovered that in our haste to provide your Subcommittee with this information at the hearing, we made a basic miscalculation which inflated our estimate. We regret the submission of incorrect data, but are extremely pleased that our corrected estimate is much lower. The cost estimate in the testimony was based on a birth rate of 66.7 births per thousand women as applied to all women assumed to be covered under TDI plans including pregnancy benefits. However, this birth rate should have been applied only to women aged 15-44. Therefore, a more accurate cost estimate would be derived by including only that percent (68.48) of covered workers who are of child-bearing age. This correction reduces total estimated costs to $228.9 million and hence reduces the percentage comparisons as well:

CORRECTED COST ESTIMATE ON TEMPORARY DISABILITY PLANS:

1. Total cost increase of $228.9 million.

2. A cost increase for temporary disability insurance plans of 3.2 per cent.

3. An increase in total payroll cost of TDI benefits for employees of five hundreths of one per cent (0.05%).

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Again, we apoligize for the calculation error, but hope you share our satisfaction that the lower, correct cost estimate will help to discount the objections to the bill based on purely financial considerations.

Sincerely,

Nik B. Edes

Nik B. Edes
Deputy Under Secretary
for Legislation

United States Department of Justice
WASHINGTON, D.C. 20530

ASSISTANT ATTORNEY GENERAL

SENATOR WILLIAMS, N.J.
1977 MAY 11 AM 10 45

The Honorable Harrison A. Williams
Chairman
Committee on Human Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Williams:

When I testified before the Subcommittee on Labor regarding S. 995, I indicated that I would provide to you a list of employers which presently treat disabilities related to pregnancy like other temporary medical disabilities. Of course the most prominent example of such an employer is the Federal Government, which permits employees to use accrued sick leave for all disabilities including pregnancy, childbirth, and pregnancy related medical conditions. I have enclosed a copy of an appendix contained in the Supreme Court Brief for Martha V. Gilbert, et al. in General Electric Co. v. Gilbert, which lists leading firms which pay temporary disability benefits for disabilities arising out of pregnancy.

If I may be of any further assistance, please contact me.

Sincerely,

Drew S. Days, III
Assistant Attorney General
Civil Rights Division

1977 MAY 11 AM 11 33
COMMITTEE ON

APPENDIX A

Plans of "Leading Firms in a Variety of Industries" [1] Which Pay Temporary Disability Benefits for Disabilities Arising Out of Pregnancy

Source: U.S. Department of Labor, Bureau of Labor Statistics, "Digest of One-hundred Selected Health and Insurance Plans Under Collective Bargaining, 1954," Bulletin No. 1180 (June 1955); U.S. Department of Labor, Bureau of Labor Statistics, "Digest of Health and Insurance Plans" 1971 Edition (GPO 1972), Vol. II, and 1974 Edition (GPO 1975) Vol. II.

Name of Company	Digest of 100 Selected Health & Insurance Plans, 1954 [2]		Digest of Health & Insurance Plans, 1971 Edition, Volume II		Digest of Health & Insurance Plans, 1974 Edition, Volume II	
	Weeks	Page	Weeks	Page	Weeks	Page
Alum. Co. of Amer.	6	91	6	1	6	1
Amer. Can.	6	103	6	7	6	7
Amer. Seating	6	43	26	9	26	9
Amer. Standard	not listed		6	11	6	11
Amer. Sugar	6	7	not listed		not listed	
Amer. Viscose	6	67	not listed		not listed	
Amstar Corp.	6	19	6	15	6	15
Armour & Co.	6	19	8	17	8	17
Armstrong Cork	6	25	6	19	6	19
Assn. Master Painters	13	163	not listed		not listed	
Beth. Steel	6	97	6	21	6	21
Borden, Inc.	not listed		6	23	6	23
Brewers' Bd. of Trade	not listed		none		26	25
Campbell Soup	4	7	8	31	8	33
Caterpillar	6	115	6	35	6	37
Chase Brass & Copper	none	91	6	41	6	43
Chicago Lithographers	6	61	not listed		not listed	
Cluett Peabody	not listed		6	49	6	51
Colt's Mfg. Co.	6	7	not listed		not listed	
Cone Mills	6	25	6	53	6	55
Construction Ind.	not listed		13	61	13	63
Continental Can.	6	109	6	63	6	65
Crown Fellerbach	not listed		6	67	6	67
Deere & Co.	6	109	6	69	6	71
Distillery Ind.	not listed		6	73	6	75
Dow Chemical	6	61	6	79	6	79
E. I. duPont	not listed		6	97	6	85
Firestone	6	79	6	87	52	93
F.N.I.C. Corp.	not listed		not listed		6	95
Ford	6	127	6	97	6	99
Furniture Industry	6	43 [3]	6	101	6	103

2a

Name of Company	Digest of 100 Selected Health & Insurance Plans, 1954 [2]		Digest of Health & Insurance Plans, 1971 Edition, Volume II		Digest of Health & Insurance Plans, 1974 Edition, Volume II	
	Weeks	Page	Weeks	Page	Weeks	Page
GM	6	127	6	111	6	113
B F Goodrich	6	73	6	117	6	119
Greyhound	not listed		6	122	6	124
Hotel Assn. of NYC	?		6	125	6	125
Florsheim Shoe	6	79	6	135 [4]	6	139 [5]
IBM	not listed		52	143	52	143
Int'l Harvester		115 [11]	6	141	6	146
Int'l Paper	6	49	6	147	6	151
Jewerly Mftrs.	6	145 [6]	6	151	6	155
Johnson & Johnson	6	145	8	153	8	157
Kennecott Copper	6	151	6	155	6	159
Kroehler Mfg.	not listed		6	159	6	163 [7]
LTV Aerospace	not listed		6	167	52	171
Luggage & Leather Ind. [3]	6	85	6	171	6	173
Maritime Ind. [3]	none	175 [4]	6	177	6	179
Mass. Leather Mfrs. Assn.	6	85	6	181	6	183
Metalworking & Repair Services	not listed		6	187	6	189
Nabisco	6	7 [8]	6	201	6	203
Nat'l Auto Transporters Assn.	6	169	6	203	not listed	
Nat'l Steel	not listed		6	205	6	205
NY Shipping Assn.	not listed		6	207	6	207
N. Amer. Rockwell	not listed		6	211	6	211
Northwest Forest Products Assn.	not listed		6	215	6	211
Owens-Ill.	6	91	6	217	6	213
Pacific Maritime Assn.	not listed		6	221	6	221
PPG Industries	not listed		6	233	6	229
Printing Industry Lithographers	not listed		6	239	26	239
Publishers Assn. of NYC	none	61	none	243	26	239
Pullman	6	133 [9]	6	245	6	241
RCA	none	121	8	251 [7]	8	251 [7]
Retail Trade Ind.	not listed		20	257	20	257
Retail Drug Ind.	not listed		not listed		6	83
Retail, Wholesale & Warehouse Inc.	not listed		6	247	6	253
Rockwell Int'l. Corp.	not listed		not listed		6	255

3a

Name of Company	Digest of 100 Selected Health & Insurance Plans, 1954 [2]		Digest of Health & Insurance Plans, 1971 Edition, Volume II		Digest of Health & Insurance Plans, 1974 Edition, Volume II	
	Weeks	Page	Weeks	Page	Weeks	Page
Sperry Rand	6	138 [10]	6	265	6	263
Swift & Co.		18 [12]	8	277	8	273
Trucking Industry Central States	6	169	6	283	6	279
Trucking, Warehousing & Ind. W'ern States	not listed		none		6	281
TRW, Inc.	not listed		6	275	6	283
Uniroyal	not listed		6	291	6	287
United Air Lines	not listed		6	293	6	289
U S Steel	6	103	6	297	6	291
Upholstering & Allied Trades [3]	6	49	6	303	6	289
Westvaco	not listed		6	307	6	303
Wyandotte Worsted Co.	not listed		6	311	6	307

[1] The preface to U.S. Department of Labor, Bureau of Labor Statistics, Digest of Health and Insurance Plans, 1974 Edition, Vol. 1 (GPO 1975), p. iii states: "This two-volume digest, a continuation of a series begun in 1955, summarizes the principal features of selected health and insurance plans for office and nonoffice employees in the private sector of the economy. * * * The two volumes in combination present a picture of the health and insurance programs available to employees of leading firms in a variety of industries."

[2] Listing in this publication taken from column in each plan description headed "Maternity Provisions", "Accident & Sickness" sub-column. In all cases the number of weeks refers to the maximum number of weeks for which regular benefits were provided for maternity. All plans listed in columns 2 and 3 were in effect in 1954. Preface to 1954 Bulletins at iii.

[3] Various employers.

[4] There were three listings—one for each of three Florsheim units.

[5] Called "Interco Inc., The Florsheim Shoe Co."

[6] "Jewelry Industry, Assoc. Jewelers, Inc., Jewelry Crafts Assoc., & other employers."

[7] For non union salaried employees.

[8] Called "National Biscuit Co."

[9] Called "Pullman-Standard Car Mfg. Co."

[10] Called "Sperry Gyroscope Co."

[11] No number of weeks, paid in lump sum of $50.00.

[12] Covered by paid sick leave plan.

The CHAIRMAN. In that line of cosponsors I have kept a place open for you, Senator Hatch.

Senator HATCH. Let me tell you, I had a very difficult time not immediately doing that because of you, Mr. Chairman. I have deep regard for you. You have been very friendly and decent to me and I promise you that I will make the decision within the near future, and I hope that I can support it.

The CHAIRMAN. And I will say that your attendance, even though you are not on the subcommittee, is excellent. We appreciate it.

Thank you very, very much.

Dr. Andre Hellegers, professor of obstetrics and gynecology and director of the Joseph and Rose Kennedy Institute for the study of human——

Senator Hatch, I don't mind you wishing the folks goodbye but don't leave. You have got to be here.

Senator HATCH. I have to leave for a quorum but I will come back down.

The CHAIRMAN. Have you met Dr. Hellegers?

We will get underway right away Doctor because I did want Senator Hatch to have the benefit of your wisdom.

Dr. Hellegers?

STATEMENT OF ANDRE E. HELLEGERS, M.D., PROFESSOR OF OBSTETRICS AND GYNECOLOGY AND DIRECTOR OF THE JOSEPH AND ROSE KENNEDY INSTITUTE FOR THE STUDY OF HUMAN REPRODUCTION AND BIOETHICS, GEORGETOWN UNIVERSITY

Dr. HELLEGERS. Mr. Chairman and members of the committee, I am happy to testify here particularly because I am a professor of obstetrics and gynecology and I was an expert witness in the *Gilbert* and *GE* case in which I was asked precisely the kind of questions that Senator Hatch has been asking.

Let me begin by saying that I am in favor of this bill on three grounds; the one ground of justice, the second one is social good, and the third one is one of logic.

I will start off with justice. It is in fact true that pregnancy discriminates against women, or that to discriminate against pregnancy is to discriminate on this basis of sex. I think that is the most easily proven from the fact that for 25 years, as gynecologists, we have been able to change men into women and these women who have been changed surgically and with hormones, have gone on as surgically produced women to marry men.

The one thing that technology has not been able to do is to get them pregnant. It is, in other words, precisely pregnancy which is the discriminant fact between men and women, and I think Mr. Justice Stevens runs right to the core of the thing and was probably the only person in the Court who understood obstetrics and gynecology.

The superficial view of sex differences rather than seeing it in its essence, is again shown when it is argued that in omitting pregnancy benefits nothing is given to men which is not given to women. First of all, hemophilia, which is covered under disability benefit schemes, is a

disease that only men can get. It is genetically impossible for a woman to get it. But it is covered.

The CHAIRMAN. Hemophilia?

Dr. HELLEGERS. Yes, indeed. Women can be carriers of hemophilia. They cannot get the disease itself. So here is a disease for which men are covered; women are not.

But it goes further than that, Mr. Chairman. Diseases of the prostate gland are covered. Women have no prostates. Diseases of the testicles are covered. Women have no testicles. Conversely, diseases of the ovary are covered. Men have no ovaries. Diseases of the vagina are covered. Men have no vaginas.

So what has happened in the policy is quite clear. The organs have been traded off in the disability benefit plans but the function of the organs has not, and that is what then happens under all circumstances, which is, the woman is left to hold the baby, but the organs are covered, not the results of the actions of the organs, unless it be syphilis, in which case it is covered, but the pregnancy which comes from the same act that you can get the syphilis from is not covered. So I think it is quite clear throughout that it is pregnancy that is the discriminant factor between these circumstances.

I am secondly in favor of this bill on the grounds of social good, and I have attached to my testimony a table on a study that we did in the Kennedy Institute which relates income to infant outcome. It is extremely clear that as income increases prematurity decreases, in some instances by almost 50 percent.

What this means, in other words, is that the penalty of this kind of policy is paid not just by the woman, it is paid by the unborn child. One lawyer, incidentally, in one case afterwards said the women can always get aborted. I happen to be opposed to abortion. All I can say is that this is a policy which harms not only women but harms the unborn, either whether you abort or you do not abort, and markedly increases the incidence of prematurity.

That goes to the issue of cost because what it really comes down to is that you pay a penalty either before birth by keeping income up at that time, or you pay a penalty after birth in terms of facilities for the mentally retarded, learning disabilities on which millions and millions are spent in this country. In Europe it has long been decided to pay the price beforehand rather than to pay it after. In the long run it is even cheaper.

The third reason why I am in favor of this bill is one of logic. For instance, I can give you some strange examples of what happens at the present time. If you gain 30 pounds of weight by overeating, which is a voluntary action, and by that your latent diabetes or heart disease comes out, you are covered.

If you gain the same 30 pounds by pregnancy and your latent diabetes comes out, you are not covered. Intractable vomiting by real pregnancy, you are not covered. If you imagine that you are pregnant, a condition that we call pseudopregnancy, and you have intractable vomiting, you are covered. You are simply not covered for the real thing. If a man thinks that he is pregnant and develops intractable vomiting, he will be covered, but the woman with the real thing will not.

So the logic of the Supreme Court really escapes me as a physician. Here is a court which holds, Mr. Chairman, that it does not know when human life begins. On the basis of that it has ruled that you may treat the fetus in utero for abortion purposes as if it was a tumor. On the other hand, for disability benefit purposes you may not treat a fetus as a tumor because if it was a tumor you would qualify for the disability benefits.

So we have now a paradox that for abortion purposes we can consider the fetus to be a tumor, for disability benefits we cannot consider it to be a tumor.

I could go on with examples like this. We get the odd situation that if you pass a kidney stone from your ureter, a stone of one-tenth of 1 ounce, that is considered disabling. To pass a 10-pound fetus from a vagina is not considered disabling.

One can simply carry one case of illogic like this on after the other, but let me simply say that on the grounds of justice, namely discrimination with pregnancy being the discriminant fact between men and women, on the grounds of the good of the unborn and the terrible price we have to pay when we don't take care of infants before they are born, and on the grounds of logic, I would support this bill.

And I do not really think that it is very helpful to argue that the pregnancy is or is not a disease because that is a totally different philosophical matter. It is just simply that disease is a pejorative word and we have not wanted to attach to pregnancy a pejorative connotation, but factually, pregnancy is a condition recognizable by certain signs and symptoms which places a person in a category of more than average risk of an untoward event and that is precisely what all diseases are.

The CHAIRMAN. Do you think it would be better if we used disability to do a job of work?

Dr. HELLEGERS. But it is a disability which arises from a condition recognizeable by signs and symptoms, placing that person in a category of higher than average risk, which is precisely what a disease is. It matters very little whether I call it pregnancy, pneumonia, or whatever. One is a condition of the heart, the other is a condition of the lung, the third one is a condition of the uterus.

The CHAIRMAN. And doesn't this condition lend itself to medical understanding in terms of ability to work?

Dr. HELLEGERS. Absolutely.

The CHAIRMAN. And that would be the limitation on the money that would be paid.

Dr. HELLEGERS I would go one step further. I would say not only does it lend itself to that quite well but in Europe it is recognized that the picking up of abnormalcy in these circumstances can be done by midwives. You don't even need a medical diploma for it, which tells you that the abnormalities of pregnancy are more easily picked up than abnormalities in the nonpregnant state, or abnormalities of males.

We recognize it within the medical profession by having midwives in Sweden, in Switzerland, in all countries which have lower perinatal mortalities than we do.

The CHAIRMAN. Thank you very much, Doctor.

Senator Hatch, I know you have to go.

Senator HATCH. I appreciate that, Mr. Chairman.

Doctor, there still is a problem in the eyes of many people on this, and that is the problem of whether this is voluntary or involuntary.

Dr. HELLEGERS. Can I address myself to that for a moment, Senator?

Senator HATCH. I would like you to because I think we have got to answer that question. Most disease, most disability is involuntary, or at least I think in the eyes of most people who look at this particular area. This is something where people choose whether they want to have a child or whether they don't, at least in most instances, and I think that is crucial to the ultimate determination of this, or at least should be.

I would like to hear your comments in regard to that.

Dr. HELLEGERS. I have several comments on that. First of all, if you are disabled by diabetes in pregnancy it is not because you volunteered for the diabetes. If you are disabled by renal disease in pregnancy, it is not that you volunteered for the renal disease. And when it is, for instance, said that you are covered under disability benefit plans if you break your leg skiing, and it is then said that is voluntary, isn't the answer that you do not go and ski in order to break your leg? Neither do you get pregnant in order to become disabled.

Senator HATCH. But, Doctor, that is, in my opinion, not a correct analysis because most disability plans that I know of only pay for disabilities that are work related. If you are talking about Blue Cross-Blue Shield coverage, that is another matter.

Dr. HELLEGERS. Normally they will pay for heart disease even though it is not work related. They will pay for diabetes even though it is not work related.

Senator HATCH. Not where I come from. They pay for disabilities that are work related and that becomes the big problem. You are covering the whole field of medical, including Blue Cross-Blue Shield coverage.

The CHAIRMAN. I think we should clarify this. This is not workers compensation.

Senator HATCH. I understand that.

The CHAIRMAN. That is the work related condition. This is addressed to those voluntary, privately arrived at plans that cover disabilities which are not work related.

Senator HATCH. That straightens that out. I wanted to make sure that is what you meant.

Let me ask you this: You are saying, and I think the logic is a good one, that if a man breaks his leg while skiing and he is covered by this private plan that the company purchases for its employees, and it is nonwork related and he voluntarily went skiing——

Dr. HELLEGERS. But he didn't volunteer for the broken leg.

Senator HATCH [continuing]. And he didn't volunteer for a broken leg. The woman volunteers to be pregnant, and you have to admit that in the vast majority of cases there are basically no complications.

Dr. HELLEGERS. That is correct.

Senator HATCH. There are those where they do have occasionally embolisms and other problems that are complicating problems which

we would have to call extraordinary problems, wouldn't you agree with that?

Dr. HELLEGERS. Yes. I am not sure I want to use the word "extraordinary."

Senator HATCH. At least not regular problems.

Dr. HELLEGERS. Right.

Senator HATCH. So the difference still is that although the man voluntarily goes skiing he doesn't voluntarily break his leg. The woman voluntarily has a child. There is a difference, I think, logically between the two illustrations and that I think is what bothers most Americans who are concerned about this problem and whether or not this should be an across-the-board nondiscrimination type civil rights problem.

Dr. HELLEGERS. Perhaps I can help by putting it another way. In pregnancy there are two kinds of disabilities that can arise: one is what I will call the disability of labor and delivery. It doesn't help, again, to say whether it is a disease or not. Ten percent of women get operated for it. The cesarean section rate today is over 10 percent and I find it very difficult to say that you have to be put under an anesthetic in an operating room and your abdomen has to be opened, and so forth, all for a nondisease, so again, it isn't helpful. It is a condition. It is a disabling condition to have a cesarean section.

That is labor and delivery disability. There is then a set of other disabilities; heart disease, kidney disease, all sorts of things like that, to which pregnancy happens to be an incidental concomitment of pregnancy, such already-existing diseases, disqualify you from the benefits.

That is rank discrimination against the pregnant state.

Senator HATCH. I see. What problems, if any, do you foresee in treating pregnant females the same as other employees who are disabled to some extent but continue to work?

Dr. HELLEGERS. I'm sorry, I didn't catch that question.

Senator HATCH. What problems, if any, do you foresee between treating pregnant women the same as other employees who have disabilities that continue to work?

Dr. HELLEGERS. I can see none. I don't see any. I think it is just a question of having a physical exam.

Senator HATCH. Do you think there would arise a whole slew of OSHA problems, occupational safety and health problems as a result of pregnant women?

Dr. HELLEGERS. Let me put it this way: I have long been an advocate for a massive increase in research to deal with the effects of poisons, chemicals, physical or other agents on pregnant working women. However, two other things: Those agents are just as likely to affect the ovaries of nonpregnant women and there are in fact today companies that will not hire women on that specific basis.

But you never dream of thinking that the same agents may also affect the testicles of men. So if we are talking about untoward effects of industrial processes on human procreation, we have to look at the effects on testicles, the effects on ovaries and the effects on fetuses, all three, and we aren't doing much of that.

Senator HATCH. Would you accept a bill, Doctor, that requires all plans to give a minimum coverage for pregnancy disability so long as the employers and employees have the option of either providing no plan at all or canceling the existing plan if they so desire?

Dr. HELLEGERS. I couldn't respond to that because I wouldn't know what the legal implications were. I only understand ob-gyn, not law. My understanding at the present time is that this bill does not mandate disability benefits; it simply says if you have disability benefits you may not discriminate on the basis of pregnancy.

Senator HATCH. One other question. You talked a little bit about abortion. Do you think that if this bill passes it would reduce abortions in our society rather than increase them?

Dr. HELLEGERS. The numbers go somewhat like this. An abortion costs $100. A delivery costs $1,000. That is a tenfold advantage toward a delivery. You have three times as many deliveries as abortions in this country. That loads it threefold more in the direction of delivery.

Senator HATCH. Are you saying one out of every four pregnancies is an aborted one?

Dr. HELLEGERS. At the present time we have a million abortions in the country and 3.2 million deliveries, so it is about one in three, or one out of four is aborted.

Once again, the birth gets a 3 to 1 advantage. That puts it up to 30 to 1. A birth takes 9 months, an abortion, by and large, takes 3 months. If you are covered by disability benefits you are covered three times as long, in a sense, against risks in the birth groups. That brings the advantage to about 100 to 1 between the two groups.

Disability associated with abortion is 1 day, 2 days. Disability associated with pregnancy is many more than that. It puts it into the many hundred times advantage to the childbirth side. And so, whatever way you slice it, I would be sure that in the division of benefits going to abortions and benefits going to deliveries the figures are likely to be 1,000 to 1 in favor of delivery.

Senator HATCH. So you are saying that being against abortion, this would be a good bill from the standpoint of helping to encourage women to have their children and to raise them?

Dr. HELLEGERS. Absolutely. Not only am I saying that, that was one of the first reasons why I got involved in this case at all.

Senator HATCH. You are saying there is no question about that?

Dr. HELLEGERS. That's right. I wouldn't be here if I didn't think so.

Senator HATCH. So, in essence, this is an antiabortion bill in your eyes.

Dr. HELLEGERS. People don't like the antiabortion term. Let's call it a prochoice bill in which I think the choice, if it goes in any direction, is going to go in the childbirth way. And there is a reason of logic in that. People will surely much sooner spend $100 at the third month knowing that they are going to get a bill for $1,000 in the 9th month.

Senator HATCH. But if they knew that bill for $1,000 was covered they would then have the child and raise the child?

Dr. HELLEGERS. Correct, or at least have that choice without penalty and without——

Senator HATCH. Let me ask you this, Doctor: You heard some of my questions to the prior panel of experts of Government witnesses.

One of the questions I had was do you think we should have some sort of limitation in the bill as to what is reasonable, except for extraordinary situations for pregnancy disability, because you have to admit that the great majority of all pregnancies are basically uneventful?

Dr. HELLEGERS. Yes. What I would say to that is why not leave it up to the medical profession to determine whether the patient can or cannot work? That is the way we deal with nonpregnant patients. That is the way we deal with men. There is nothing magical about pregnancy that makes us suddenly incapable of saying whether somebody can work or not. We do it all the time.

Senator HATCH. I have a great deal of faith in the medical profession. I think you men do a great job and many times you are uncomplimented for it but you do a great job and I have worked a great deal with the medical profession through the years. But that is precisely what many people are concerned about, if you leave it in the hands of the doctors then sometimes the disabilities become extended rather than alleviated or shortened, and it becomes then a matter of the individual doctor who may be somebody who compassionately gives the woman much more time than she really should have.

Dr. HELLEGERS. It seems to me that I would respond in two ways. The first is a couple of lawsuits brought by firms against physicians would straighten that out very quickly. Physicians are very responsive to lawsuits.

Senator HATCH. They may not be too responsive to that suggestion.

Dr. HELLEGERS. Yes, I know.

Senator HATCH. You are saying that you believe that the medical profession will treat the disability of women in a responsible manner?

Dr. HELLEGERS. I have no question about that. And if it were an irresponsible manner, like I said, a couple of lawsuits would make him responsible very, very quickly.

Senator HATCH. I have worked an awful lot on this area, most of my legal career, and there is a wide disparity in disability pronouncements by various doctors, and I have never seen a doctor sued by a company for that disparity. Would you think it would be a wise thing to have in this type of a bill for the protection of the economic welfare, let's say, of companies all over the Nation this bill intends to impose disability coverage upon? Do you think it would be wise to maybe have independent medical analysis in the final determination of what the disability of any particular woman is?

Dr. HELLEGERS. Are you talking about who should be the doctor making the determination? I myself would have no qualms about having it be the doctor of the company.

Senator HATCH. In other words, in the case of disability you would have no qualms of having the medical determination made by the company doctor rather than by you, even though he is not an obstetrician-gyneocologist?

Dr. HELLEGERS. I am strongly in favor of free choice of physician, No. 1. And, No. 2, that he not be an obstetrician is I think absolutely not key. All countries that have better perinatal mortality figures than we have have their obstetrics in the prenatal period, precisely on these kinds of issues, done either by GP's or by midwives, which tells you precisely that this isn't as complex an issue as people think it is.

Senator HATCH. If we place this obligation, say, in the hands of the company doctor, won't there be pressure upon him to shorten the disability time, or to have a standardized time that they just automatically apply because it is easier to do?

Dr. HELLEGERS. I don't know. My own reaction, Senator, would be to say that if they were wrong too many times they would again be sued.

Senator HATCH. I think you have been very helpful to us today and I think some of your analogy is very fine. I am concerned about this problem. I think it is a wonderful thing for you to come here and give us your testimony. Thank you very much.

The CHAIRMAN. Thank you, Senator Hatch, for staying with us.

Senator Riegle has joined us.

Senator RIEGLE. Thank you, Mr. Chairman.

I don't have any questions for this witness although I do have a brief comment I would like to make. I was detained earlier today in the Commerce Committee where we had an executive session which required my attendance.

If I may, I want to just take this opportunity to add my voice to the many others who are seeking an end to the sex discriminiation based on pregnancy. We are all well aware of the social and economic obstacles faced by women who seek to participate in employment and other areas on an equal basis with men.

One of these obstacles is expressed in the recent Supreme Court decision claiming that comprehensive disability programs excluding pregnancy do not discriminate against women, they only discriminate against "pregnant persons." In title VII of the Civil Rights Act of 1964, and in our subsequent amendments to that title, we in the Congress have clearly declared that all employment discrimination based on sex is illegal. The bill we are considering today merely restates our national commitment to outlaw sex discrimination, and I hope that this reaffirmation of our stand against discrimination in whatever form will help eliminate the barriers still faced by women in many areas of American life.

I am delighted with the witnesses who come today to fortify our arguments. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Dr. Hellegers, your observations of today will be useful throughout our hearings. They will be drawn on as we consider this legislation in executive meeting of our committee and will certainly be told and retold when we go to the floor to debate. They are excellent and we are most grateful.

Senator HATCH. Could I ask one more question of the doctor?

If we are going to have disability coverage for pregnant women, I have concerns whether the certificate of determination should be made by a private physician, or by the company physician or both. I presume since you testified that you could live with either situation—in other words, either the private or the company or both, any of the three—that if the private plan of the particular employer provided that the company physician is the final determinant of recovery of the extent of disability that you would have no objection to that?

Dr. HELLEGERS. Senator, I was addressing myself to the fact that a company physician can do this just as easily as somebody else can.

There is no medical magic about it. What the issues are are free choice of physician by people. I suspect in the United States it is a legal question. I don't know. I am not sure that anybody can be forced to be treated by a particular physician, but I am the wrong person to ask the question to, because my suspicion is it is a legal issue.

Senator HATCH. Don't let me mislead you. I am saying that she is treated by her private physician, who presumably will be an obstetrician-gynecologist. If we allow the company doctor, who probably will not be, unless it is a business that has many female workers and this problem arises continuously so they can justify it, he may not have the expertise to make a determination as to the extent of disability which only an obstetrician-gynecologist may have.

This is an area where I have problems too because if we place it just in the hands of the family physician he is going to—and I have seen it happen thousands of times—always be sympathetic to whatever the complaints are of the family, or of the women. If it is placed in the hands of the company physician, he has a tendency to put this woman in the category with all other women. Since all other women may need 2 weeks before pregnancy and 2 to 2½ weeks afterward—4½ to 5 weeks—he could easily say that is the extent of disability, and that may not be right for the lady in this particular case.

What I am saying is what is the best optimum way of solving the problem and alleviating abuse, yet, taking care of the woman? Would it not be maybe a better way to have a set period that is a little more liberal than the average needed and yet, have some extraordinary provision where if you have an extraordinary difficulty the liberal average time could be extended.

Senator RIEGLE. Would the Senator yield at this time before the witness responds?

Senator HATCH. Sure.

Senator RIEGLE. I am delighted to see you becoming more liberal in the positions you take. [Laughter.]

This shows the influence being here has. I just want to say to the gentleman that I would be very much concerned about having a company physician making this judgment because I think the party that has got to make the decision—and every doctor might see it somewhat differently in the case of a given woman, but I think that the judgment has to be in terms of protecting the health of the woman. Therefore, the doctor who makes that judgment and certification ought to be one who doesn't have a competing interest.

In other words, I would be very much concerned with a company physician, who would be, in part at least, concerned about the economic impact on the company. He would not be focused solely on the health of the woman involved. I would want that judgment made by a doctor who had no conflicting loyalities but, in fact, only for the woman.

Senator HATCH. That is pretty conflicting—loyalty is the point. Sometimes doctors go beyond what they should——

The CHAIRMAN. I wonder if we could save this for when we deal in executive on that because we have Dr. Hellegers here and he has other demands upon him.

Let me make an observation.

Senator HATCH. I hope you are getting more conservative. [Laughter.]

The CHAIRMAN. Well, there is almost a basic assumption here that we are moving into an uncharted area of coverage of the disability arising out of pregnancy, which is not the case at all. All of industry, it is estimated that at least 40 percent of industry presently provides coverage for temporary disabilities which are not work related, and at least 60 percent of those employers provide in terms of disability coverage for pregnancy. We have been searching for those who will give us the horrible examples to come here and tell us, but we can't find them.

As a matter of fact, I don't believe we have any witnesses that will give us the horror story that is described here.

Dr. HELLEGERS. Senator, may I respond? I have done some obstetrics in Britain, in Holland and in Belgium and the United States. I hear the problem only in the United States. In Europe we have done it for decades, and medicine isn't that different.

The CHAIRMAN. But, at any rate, we are not entering an uncharted area of money coverage for a period of disability from employment. It is covered now. Whether it is this doctor, that doctor, a panel of doctors, I would suggest that we go with experience.

Disability plans now use medical certification. What they have done in the past evidently has worked out, and so this bill would not chart us into an area that has been unexplored as some believe. It has been explored and it is in practice.

Senator HATCH. The point I am making, Senator, is if you put this in the Civil Rights Act and you say, as you have said here today, that the private plan can determine which system—I'm just pointing out that there are a lot of conflicts here that maybe aren't being considered of which system should apply, whether it is the company doctor, the family doctor, both or a panel. You are talking about a system where we might have all kinds of civil rights suits to determine that only the family doctor can make these determinations.

I think it is better for us to consider it now and have the legislation be appropriate and proper if we are going to have it at all.

The CHAIRMAN. That is what I am saying. We have been living with this for a long time and these questions have not been major concerns. As a matter of fact, everybody thought—not everybody—but at least a substantial percentage of industry thought and acted accordingly and covered pregnancy.

Six circuit courts of appeals determined that pregnancy must be covered. Then, one day, it got to the Supreme Court and a different view results.

Senator HATCH. Apparently somebody thought enough of it to make a Supreme Court case of it and if I was GE, with the consequent cost of replacing me, I might be one of the contestants.

The CHAIRMAN. They probably felt compelled—I won't get into the——

Senator HATCH. You know it involved half a million dollars, this determination, and that is going to be passed on to the consumers. It will be passed on to everybody in America that buy products of the manufacturer so it is no small problem. On the other hand, my basic sympathy, I have to admit, is with your position.

Dr. HELLEGERS. I would again reiterate, if you do not pay the price before birth you will pay it after birth, and it will come from the same factors.

Senator HATCH. That is a very good point and I am glad you made that, and that is very complacent to me that maybe we will be saving money for society in the long run and maybe we will be helping women to be more psychologically sound in the long run by having their children rather than aborting them, and you have said you are very strongly against abortion.

The CHAIRMAN. This is a fine point to end.

Thank you very much, Doctor.

[The prepared statement of Dr. Hellegers follows:]

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April 26, 1977

TESTIMONY ON THE AMENDMENT OF TITLE VII, CIVIL RIGHTS ACT (1964), BILL S995

Andre E. Hellegers, M.D.

Professor of Obstetrics and Gynecology and Director of The Joseph and Rose Kennedy Institute for the Study of Human Reproduction and Bioethics, Georgetown University.

Mr. Chairman and members of the Committee:

I welcome the invitation to testify on this bill as a private individual. My interest in S995 stems from the fact that I was an expert witness in the case of Gilbert vs. G.E. and, from that experience, developed an interest in some medical aspects of the problem. We have done extensive research on some of the issues at The Kennedy Institute.

Let me begin by saying that I support Senate Bill 995 for 3 reasons: a reason of Justice, a reason of Social good and a reason of Logic.

I. Justice

The reason of Justice goes to the core of the matter of discrimination. It has been argued in The Supreme Court decision that omission of pregnancy disability benefits does not discriminate between the sexes. Rather it is said that it discriminates between non-pregnant women and men on the one hand and pregnant women on the other. From this view Mr. Justice Stevens dissented in his brief and cogent paragraph in which he stated, "It is in fact the capacity to become pregnant which primarily differentiates the female from the male." I think he has hit the nail on the head. As every gynecologist has known for a quarter century, it is perfectly possible thorugh surgery and hormone therapy to change men into women. On the basis of appearance alone, panels of physicians have been shown to be incapable of differentiating such surgically produced women from genetic women. The surgically produced women have married men. The one thing that technology has not been able to do is to get such "women" prenant. To say that to discriminate on the basis of pregnancy is not to discriminate on the basis of sex is to have a superficial view of the difference between the sexes. It stresses

appearance while missing out on the essence. I fully concur with Mr. Justice Stevens.

The superficial view of sex differences is again shown when it is argued that in omitting pregnancy benefits nothing is given to men which is not given to women. In fact men get things which women do not get and vice versa. Diseases of the testicle are covered as are diseases of the prostate gland yet women cannot have such diseases. Diseases of the ovary are covered as are diseases of the vagina, yet men cannot have such diseases. It is clear what happens. The diseases of male and female reproductive organs have been traded off against each other. What has not been subject to the trade is the result of the activity of these organs--pregnancy. As always the woman is left to hold the baby (or have the abortion) and the fetus is the victim of both as we shall see. Moreover hemophilia, a disease which only men can get, is covered. It is pregnancy which is discriminated against and there is a long history of it in the world.

II. Social Good

Appended to this statement is a Table from a study done at The Kennedy Institute. It gives the percentage of premature infants born to women, by size of family income. The data show the marked decrease in prematurity as income increases. The National Institute for Child Health and Human Development has estimated that prematurity costs the nation $1 billion per year. A task force report to Secretary of H.E.W. Califano puts a price tag of $130 million on each percentage point of prematurity in the nation. Those costs refer to the cost of care in hospital nurseries only. They do no reflect the well known relationship betwen premature births and subsequent central nervous system disabilities, such as mental retardation and learning defects. Its cost is immense. It has been shown, in a national study in the Netherlands, that the greatest damage, in terms of fetal loss of weight, is done in the last trimester of pregnancy when

the fetus normally gains the largest fraction of its weight. This study was done among the offspring of Dutch women who had been nutritionally deprived during the famous Dutch "Hunger Winter," that period in 1944 and 1945 when the military operation at the Nymegen and Arnhem bridges had failed ("One Bridge Too Far") and left The Northern Netherlands unliberated and with a severe food shortage.

As I said before, whether the economically deprived woman decides to have an abortion or to continue a pregnancy, it is the unborn child who stands to pay the penalty. However the nation as a whole also pays. The cost of prematurity, of mental retardation, of learning disabilities and of other handicaps is such that, as a nation, we pay either before birth or after birth. The European nations have decided long ago that it is better in terms of human cost and financial cost to pay it before birth. The U.S. has not. Any cost accounting, in terms of pregnancy disability benefits, must therefore take account of that fraction of corporate taxes, income taxes and other taxes which go toward defraying the health care costs of the after effects of suboptimal procreation. It is a matter of not being penny wise and pound foolish. On a national scale one does well to remember that today 40% of all pregnant women work and large numbers of them are heads of households or have unemployed husbands so their loss of income affects their own health and their unborn children's, at great cost to the nation, its corporations and its individuals through taxes.

III. Logic

The third reason for supporting S 995 is one of logic. It simply makes no sense to hold that if an underlying diabetes or hypertension is brought out by gaining 30 lbs. through overeating it should warrant disability benefits, but the same 30 lbs. weight gain brought on by pregnancy should not be covered.

Intractable vomiting brought on by a real pregnancy is not covered, but if you should have the same thing on the basis of a false pregnancy (a pseudo pregnancy) then you are covered. Indeed if a woman's husband thought he was pregnant and developed intractable vomiting he would be covered, but she would not if she had the real thing.

The logic of the Supreme Court escapes me as a physician. This is the Court which holds that it does not know when human life begins in the womb. For purposes of allowing abortion the Court therefore treats the fetus as if it were just a tumor. But for purposes of disability benefits, the fetus may not be treated as a tumor, for, if it were a tumor, the woman would qualify for disability benefits.

Pregnancy, it has been argued, is not a disease like others. It strikes me that no disease is like another, neither do I see why it should be helpful to call pregnancy a disease or not. At issue is whether pregnancy can be disabling. The answer to that is simple: yes it can be. It defies logic to believe that to break a leg by tripping when pregnant is less disabling than to break the same leg by tripping when one is not pregnant. And if a bleeding stomach ulcer which requires a gastrectomy is considered disabling why should a bleeding uterus requiring Cesarean Section not be considered disabling? A fecal impaction in a man can be considered disabling, a fetal one in a woman cannot. Passing a stone of 1/10th ounce from a ureter can be considered disabling; passing a 10 lb. fetus from a uterus cannot.

The paradox of course is that it is now sometimes also argued that pregnancy would disable too much. That is a highly individual matter. Women obstetricians and women pediatricians usually work right up to term and they are as expert as anyone we can find. It is sometimes held that after childbirth women cannot work for 6 weeks. This is pure convention. The 6 weeks post partum examination date

is set not because no one recovered before then, but rather because everyone is supposed to be recovered by then. It simply means that the few who have not recovered by 6 weeks need further investigation. Common sense tells us that women with small children at home are back at hard work within much less than 6 weeks. Let me simply add, Mr. Chairman, that my wife, who had 4 children under the age of 6, worked much harder 3 weeks post partum than my Secretary will work today--and my Secretary is not pregnant. And I can assure you also that the work of my wife was not of the 9 to 5 variety. At the hearings before the House Subcommittee considering this bill a 30 week period of disability was postulated. As an Obstetrician I can only visualize 2 types of cases in which that might be true. The first group would be pregnant women who have the job of being fired from a canon in a circus. I don't think the nation will be crippled by reassigning them temporarily to other, perhaps more productive, work. The other group would be those with severe heart or kidney disease, or diabetes, and I can only reiterate what I said before: it escapes me why they should be covered in the nonpregnant state, but not in the pregnant.

In summary then, Mr. Chairman, reasons of Justice, of Social Good, and of Logic require that we cease discriminating against pregnant women. We, in this generation, will benefit from it. The next generation will benefit as well as we begin to learn to protect our children before they are born. It is time, I think, for the United States to start maximizing the health of its unborn children as other industrialized nations have done for decades. It is also time to stop discriminating on the basis of sex and nothing differentiates the sexes more than pregnancy. I thank you for the opportunity to testify.

Table 8 Average birth weight and percent of births 2500 grams or less by color, family income and employment status during pregnancy: United States, 1967, 1968, and 1969 legitimate live births

Family Income and Employment Status During Pregnancy	White Mothers		Non White Mothers	
	Average Birth Weight	Percent of Births 2,500 grams or less	Average Birth Weight	Percent of Births 2,500 grams or
Under $3000	3270	8.2	3100	14.3
Not Employed	3260	8.8	3150	12.0
Employed	3300	7.1	3040	17.8
$3,000-$4,999	3290	7.9	3060	14.6
Not Employed	3280	7.8	3070	13.8
Employed	3300	8.0	3060	15.9
$5,000-$6,999	3320	5.5	3130	13.4
Not Employed	3320	5.5	3130	13.9
Employed	3310	5.4	3120	12.9
$7,000-$9,999	3320	6.2	3150	9.3
Not Employed	3330	5.4	3180	9.7
Employed	3300	7.2	3120	9.0
$10,00-$14,999	3330	6.4	3180	8.8
Not Employed	3380	4.6	3170	7.9
Employed	3290	8.1	3190	9.2
$15,000 and over	3310	6.2	3120	9.4
Not Employed	3310	6.1	*	*
Employed	3320	6.4	*	*
All Incomes	3310	6.5	3110	13.0
Not Employed	3320	6.1	3130	12.4
Employed	3300	7.2	3090	13.6

* Less than 10,000 births

The CHAIRMAN. We are pleased now to invite the spokesman from the National Association of Manufacturers, Mr. Francis T. Coleman, Esquire who is accompanied by others.

Mr. Coleman?

STATEMENT OF FRANCIS T. COLEMAN, ATTORNEY, LOOMIS, OWEN, FELLMAN AND COLEMAN, ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS (NAM), ACCOMPANIED BY JACK ERICKSON, ATTORNEY; BRENDA BALLARD, DIRECTOR OF EMPLOYEE BENEFITS AND COMPENSATION, NAM; AND ANNETTE FRIBOURG, DIRECTOR OF HUMAN RESOURCES AND EQUAL EMPLOYMENT, NAM

Mr. COLEMAN. Thank you, Mr. Chairman.

The CHAIRMAN. We will continue. Senator Riegle, could you chair? I have a phone call.

Senator RIEGLE [presiding]. We are pleased to have you before the committee today. Do you want to go ahead and identify yourselves for the record and begin your statement?

Mr. COLEMAN. Yes. My name is Francis T. Coleman and I am an attorney with the law firm of Loomis, Owen, Fellman & Coleman in Washington, D.C. With me today are Jack Erickson, who is also with our firm, Brenda Ballard, the NAM Director of Employee Benefits and Compensation, and Annette Fribourg, NAM's Director of Human Resources and Equal Employment.

I am here today to testify on behalf of the National Association of Manufacturers, a voluntary, nonprofit business organization. The NAM represents over 13,000 member companies and these companies constitute a major portion of all manufacturing business in the United States.

We would like to make our position clear at the outset. As we understand it, the purpose of this bill is to insure that pregnant workers and workers suffering from pregnancy-related disabilities do not suffer in their employment opportunities because of their medical condition. NAM is not opposed to this objective of the bill but we do have serious reservations about the method by which the bill attempts to accomplish this objective.

In this regard, our concerns track many of the concerns that Senator Hatch has expressed earlier. Our remarks this morning will be directed not only to S. 995 in its present form, but we intend to comment briefly on section 2 that was added to the companion bill in the House, since presumably this amendment will be considered by this body at some point.

With respect to S. 995 in its present form, it is our position that the language of the section is unclear and its sweep is unnecessarily broad. First, the bill speaks to pregnancy, childbirth or related medical conditions. There is no indication of what is meant by related medical conditions when applied to pregnancy or childbirth.

Would this cover such conditions as post-delivery depressions and other psychological and mental conditions arising directly or indirectly from pregnancy or childbirth? Would this bill cover leaves of

absence for abortion and the psychological ramifications resulting therefrom? What about venereal disease; is this a like or related condition?

Undoubtedly, there are many other, as yet unsuspected conditions, both physical and psychological, that would be attributed to childbirth or pregnancy which the drafters of this legislation may not yet have taken into account.

Basically, we are saying that the language is imprecise and we think that it needs further clarification and definition in this area.

This bill was introduced as a reaction to the Supreme Court decision in the *General Electric Co.* v. *Gilbert* case, The *Gilbert* case involved one company with one plan and the central issue there was related to the question of whether pregnancy should receive the same type of sickness and accident benefit plan coverage that other disabilities received under the plan.

I might add that the GE plan was considerably broad and covered practically every type of medical disabilities unlike a good many plans that other industries and other companies have adopted.

S. 995 would affect all employers, many of whom already provide coverage for pregnancy. Furthermore—and this we think is very important—it would impact not only on disability plans and programs, but on all employer-sponsored benefit plans of whatever nature, breadth and description.

If this bill was designed as a response to the *Gilbert* case, it is our position that the response misses the mark, is overly broad and not directed at the problem presented in the *Gilbert* case. In short, the broad language of section 1, in our estimation, needs to be further studied and refined before it should be adopted into law.

Examining the language of S. 995 further, we question what standard of comparability is being established. In its present form the language reads:

> Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment purposes, including receipt of benefits under fringe benefits programs as other persons not so affected but similiar in their ability or inability to work.

The bill, however, as we shall see, provides no valid standard of comparison. Many existing disability benefit programs have schedules that vary, depending on the nature of the disability. For instance, the duration of benefit payments under a plan may be 2 weeks for pneumonia and may be 6 months for a heart attack.

In other words, there is a difference in schedules of benefits depending on the type of disability that is under consideration. The benefit period is determined largely by the attending physician who certifies disability and also, to some extent by the plan's experience with an illness, the standard duration of incapacity.

Under such plans, disabilities must be treated individually. In other words, what is adequate time off for one disability may be inadequate for another type of disability. Indeed, it is the rare medical plans that cover all types of medical disorders on the same basis. A plan, for example, may require a cost sharing from the employees of 20 percent for purely physical disorders but require 50 percent cost sharing for mental disorders.

A plan may cover certain procedures if performed in the hospital while excluding those procedures if performed in the doctor's office. In short, S. 995 provides no guidance to the question, to what medical disability should pregnancy be equated?

Next, it should be noted that S. 995 impose a drastically disparate burden on employers throughout the country. The burden falls much more heavily on those employers who in the past have provided liberal disability coverage. As we read the bill, and as I think it has been acknowledged here this morning, an employer that provides no coverage for disability in general is not now under this bill required to do so for pregnancy, childbirth or related matters.

On the other hand, the employer who provides very liberal pregnancy disability coverage would now be required to continue that program. And, furthermore, an employer that had a liberal disability policy but excluded pregnancy and related conditions would now be required to provide this liberal coverage for pregnancy as well, thereby clearly increasing its overall fringe benefit cost vis a vis the employer who provided no disability coverage whatsoever.

Such a result, in our estimation, is patently inequitable. We question also the effect of the bill on contributory fringe benefit plans. Small companies often provide such plans. Suppose that a small company has agreed to share equally with its employees the expense of providing a medical plan or disability program.

With the mandate of increased coverage under this bill, costs will escalate. Will the participating employees be required to increase their contributions in accordance with their agreement to share the cost of the program, or will the employer be required to pay the entire additional cost even though it agreed to pay only a percentage of the cost?

To these and other similar questions the bill gives very little guidance.

The bill in its present form also has potential for abuse. Certainly, if a plan provides for a long range paid pregnancy leave, many employees will seek to take maximum advantage of this paid leave of absence. As the act is currently written, pregnancy disability could realistically be expected to begin with morning sickness and continue through childbirth until a physician certifies the woman as able to work.

Since doctors are inclined to listen to the patient's view of ability to work, they may have difficulty in separating her well-being from her desire to stay with the child. In this regard, also if experience with return rates is taken as a guide, many employees will accept the benefits and never return to work, thus, effectively converting a disability benefit into severence pay.

Since a substantial portion of women who avail themselves of pregnancy leave never return to work, employers under this bill may be forced to create a special termination benefit for a single class of employees, which is denied other employees.

Unlike most severence benefits, the recipients of this newly created statutory benefit may have worked for their current employer for only a relatively brief span of time. Indeed, under the proposed bill an employer may be required to hire a pregnant applicant, have her trained for a few weeks, leave on a pregnancy disability leave and never return.

We would also like to say a few words about the cost of this bill. Thus far, a number of cost-related figures have been mentioned but it is apparent that there has been an insufficient study in this area to pinpoint with any accuracy the final cost of this program. We believe there needs to be more information in this regard before enacting the sweeping coverage set forth in section 1.

As a final remark concerning the present bill, the bill provides for an immediate effective date. Obviously, this leaves no time for employers to arrange for whatever coverage will be mandated and to comply with the law. We would suggest that whatever the final outcome of this bill might be, a sufficient lead in period be provided so that employers might have time to arrange for whatever insurance coverage is ultimately to be required.

We would like to comment briefly at this point on the amendment that was introduced to the companion bill in the House, which would add a new section, section 2, to the House bill. Indeed, this may come for the consideration before this committee at some point.

It seems that everyone agrees that the bill does not require—the bill as presently drafted—does not require any employer not presently providing a fringe benefit plan to institute a plan in order to provide benefits for pregnancy, childbirth or related conditions.

What the proposed section 2 in the House bill would do, however, is to freeze the level of benefits is existing plans and require additional coverage. Such a provision, in our estimation, would be unfair, unjustified and unwise.

Some of our earlier comments also bear on this frozen benefit provision. Employees may prefer higher wages and no benefit package, or a different mix of benefits to the mix of benefits that this bill would require. Labor unions would be granted a benefit floor not subject to free collective bargaining by the bill.

Indeed, benefits for pregnancy and related conditions could well become simply tag-along items in any future negotiations concerning fringe benefits. Furthermore, those existing plans which are liberal in their general level of benefits would be required to provide over coverage to pregnancy and related disabilities in order to comply with the law.

What strikes us most about this frozen benefit provision as it appears in the House bill is its basic unfairness. Employers who provide benefits under existing plans and employees who pay into contributory plans agreed to do so based on a particular set of circumstances and assumptions. There is no dispute that additional coverage will drive cost up.

The only question is where the increase will fall in a range from moderate to astronomical. To freeze existing benefits while mandating increased benefits would shatter the underlying assumptions upon which the agreement to provide benefits was based without providing the opportunity to make a new decision based on new assumptions.

Competitors who have never provided any fringe benefits are, of course, to be rewarded for their foresight by having no increase in cost. The twofold inequity of being forced to bear costs never contemplated while competitors incur no additional costs must be apparent to everyone.

In conclusion, the fallacy of the underlying proposed legislation as we see it is the assumption that pregnancy and childbirth and related medical conditions are merely another form of physical or mental disability whose treatment can be equated to these other medical problems.

Pregnancy is a unique physiological experience. It sui generis. It simply cannot be fitted into a predesigned employee benefit package as this legislation attempts to do. In short, we would urge Congress to reject the simplistic solution to the many complex medical, psychological and sociological problems posed by the question of treatment of pregnant employees.

We urge Congress not to move with unstudied haste on this bill. The implications are enormous and we recommend that the bill be fully explored before further action is taken.

Senator RIEGLE. Thank you for your statement. Does anybody else in the group have anything they want to add or are they resource people?

Mr. COLEMAN. They are resource people primarily.

Senator RIEGLE. One of the opening comments today that I agree with was that this bill before us is not strictly a women's issue because the loss of the working mother's salary affects the whole family unit.

You stress in your testimony that it is simply not true and cannot be statistically verified that employers frequently fire pregnant workers, refuse to hire them, and deny them equal seniority and sick leave benefits.

Thousands of charges of discrimination based on pregnancy have been filed with the EEOC as vice chairman Walsh testified. The many of those that have been successfully litigated would seem to contradict your statement. I would like you to comment on that.

Mr. COLEMAN. We are not going to deny that there have been instances of discrimination against female applicants and female employees. I think the record stands otherwise. What we are taking issue with is the statement that this is overwhelmingly the case in present day society. I know the employers with which I deal on a day-to-day basis are very conscious of the equal employment laws in this area and are very cognizant of the rights of female employees.

So I think, while there has been some abuse in that area, I don't think the abuse is as widespread as that testimony to which you referred would lead one to believe.

Senator RIEGLE. How do we deal with the abuse? What is the NAM's answer to the abuse?

Mr. COLEMAN. There are existing laws under title VII which already prohibit the very type of thing you are talking about, the discrimination with respect to hiring pregnant applicants, with respect to firing female employees, with respect to a number of employment-related benefits and programs with respect to pregnant employees.

What this bill is concerned with is the medical, disability and employee benefit features as they apply to pregnant employees. And I think we have to consider the two issues differently.

I would agree with the expression that has been made earlier, but basically what we are talking about here is the medical benefit program, not necessarily an amendment to title VII or a discrimination issue.

This is really, as we see it, a question of dealing with a particular and peculiar medical problem that is unique to female employees.

Senator RIEGLE. I understand that is your position. Let me ask you this: Has the NAM done anything in particular along this line to either help discipline or put an end to the abuses in the business sector, or to try to bring along employers on some sort of a uniform basis so the problems here could be dealt with without the requirement of law?

Mr. COLEMAN. I can't speak categorically but I know that they have encouraged employers and members to provide minimum benefits for pregnancy and disabilities.

Senator RIEGLE. You say "they have encouraged." Do you mean it is the practice and policy of the NAM and there would be policy memos to that effect that would have gone out to members?

Mr. COLEMAN. I can't put my finger on such——

Senator RIEGLE. I would like you to put your finger on it because I don't want you to make the assertion here that that is being done if you can't document it. If it is being done, fine and dandy, but I want to know specifically whether it is or isn't.

Ms. BALLARD. Senator let me speak to that. It is not our function to tell our members what they should and shouldn't do in terms of setting up a personnel policy and instruction in their benefit plans. All we can do is offer policy guidance and we do have a policy statement that says discrimination against any employee on the basis of age, sex, national origin is discouraged by the NAM, and as you can see, the NAM itself hires women rather frequently.

Senator RIEGLE. Is that the extent of the policy directive though? It is a policy guideline. Can you give us a copy of that for the record?

Ms. BALLARD. Yes.

Senator RIEGLE. But it does not go to the issue of pregnancy per se, I gather from what you said. Is there a reason why it doesn't? Has some thought been given to that?

Ms. BALLARD. Our policy statements tend to be very broad and general and generally do not key in on specific problems such as pregnancy or age discrimination. It is just across-the-board discrimination.

Senator RIEGLE. You see, the reason I raised the point is that I think the argument you are advancing here would have more persuasive weight if you could point to some initiative within the NAM. You are coming before us now as an association with a collective voice. It would strengthen your case if you could indicate that there was some initiative being taken that isn't required by law to address what you yourself acknowledge is a problem and involves employer abuse. In the absence of that—when you can't give us some indication that there is some response by the NAM that can deal with this internally—it does seem to me that there is a need for a broad national effort to see that these abuses are dealt with.

Do you have anything else that has been done in this area by the NAM that you could tell us about that would give some weight to the argument you are making?

Ms. FRIBOURG. I would like to add something to what has already been said. As Miss Ballard said, we don't tell our members what they should include in their benefit plans, et cetera. But, in the overall area

of discrimination we are very actively working with our members. We were active particularly last year during the handicap regulations with the Labor Department, encouraging our members to go far in showing good faith and extending their efforts to insure the equal employment of the handicapped. That is one example. Again, we don't get involved in the specifics of an individual company's plans. Our function is to inform them as to what is happening in legislation and the trends and to educate them. We can advise them.

Senator RIEGLE. I can appreciate what you are saying. But from where I sit when the initiative is of this kind, whether with respect to the handicapped last year or with respect to matters of pregnancy this year, if it takes the pressure of a national legislative initiative to get things moving within the NAM and within your relationship with your members on these matters, that seems to make the case that the only way we are going to get some of these things dealt with and faced and corrected is under the pressure of legislative initiative.

I just think if you really want a strong case when you come here you have got to come with a case that shows that you are moving actively and unilaterally to address these things. I think it is terrific that the NAM is hiring more women, and the fact that you are both here is obviously an expression of that.

But, at the same time then, the means have to be there, by yourselves or others, to press these things so that you have got the right kind of communication going within the NAM so that all these problems shouldn't have to end up at the doorstep of Government. It would be nice if these abuses which you acknowledge could be handled in some other fashion, but apparently that has not been possible.

I am troubled about it, frankly. I wish that there were something you could show us here that would indicate there had been more initiative taken within industry to deal with and address this problem, not just at the 11th hour as sort of a reaction to legislative initiative.

Mr. COLEMAN. Senator I don't think that is exactly fair. I think, as has been indicated, the association has counseled its member companies in this area and tries to advise them. We have no——

Senator RIEGLE. Let me just stop you there because when you spoke just a minute ago, I asked what specifically there had been in the way of any kind of policy recommendations or directives, and the answer that I got was that there was a general statement to basically avoid discrimination based on race, age, or sex, and so forth. And that was basically it. I asked if it was more elaborate than that and the answer was, no, it wasn't.

I asked if it addressed pregnancy specifically; the answer was, no, it didn't. I want you to be very specific. If you have done something more than that, say so, but I don't want you to give the general impression you have done more unless you have and unless you can demonstrate it.

Mr. COLEMAN. Senator, that is why we are here today, to make sure that the legislation that is before this committee is the right legislation to address the problem adequately. One of the problems that we tried to focus on is that companies that have jumped the gun, that have been more progressive, that have been more liberal minded in this entire area, under this bill are now going to find themselves at

a tremendously competitive disadvantage over companies that have done nothing and continue to do nothing, and this is particularly true with the section 2 that has been added to the companion House bill.

Senator RIEGLE. Let me just stop you there. I don't agree with your point there. I think that a company that has moved out in this area and has provided the kind of benefits that I think are appropriate, from a cost point of view has probably been at a competitive disadvantage to those firms that have not been responsive.

So, I would think if you get some kind of uniform practice in this area that the firms that have taken the lead will actually be in a better competitive position.

Mr. COLEMAN. That is precisely our point, Senator, we think some uniform practice is necessitated. This bill, as it appears before this committee, will not create any uniform treatment of pregnancy and pregnancy-related matters. It will have a smorgasbord of payments by some employers—and I stress some employers—in the economy will have a tremendous range of varying programs under the way this bill is written.

Senator RIEGLE. But you have a tremendous range of programs now. I think you would have less of a range, frankly. It is very ununiform at the present time. You seem to be suggesting that it is all squared away permanently, and it is not.

Mr. COLEMAN. No, I am not suggesting that at all. I am just saying that if the purpose of this bill is to set up some uniform standard that would be applied to pregnancy and pregnancy-related medical matters, this bill will not accomplish that objective.

Senator RIEGLE. We could go on at great length here, but I have used my time and I want to yield to Senator Hatch. I appreciate your comments and responses.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

You indicated that not too many people have estimated the cost involved in this type of broadly drafted legislation. I agree with you. I think it is too broadly drafted. I am not sure how to limit it or make it fair or reasonable to both sides. Have you made any estimate of the cost?

Mr. COLEMAN. No, Senator, we haven't. We have attempted to get some statistics together but we are the first ones to admit that our statistics, like the other statistics that we have seen, are totally inadequate. The witnesses that have come before this committee have, on many occasions, alluded to one company or one particular company in a particular State. We don't think that is an adequate basis for a study in evaluating and estimating the cost with any type of precision. We are the first ones to admit that we do not have these statistics presently and we haven't seen any statistics we would feel would be reliable in this area.

Senator. HATCH. I have heard figures somewhere around $215 million to $500 million annually. Have you studied anything that would indicate that?

Ms. BALLARD. Senator, you have to set up your assumptions first before you can get any reliable cost data on this. There are estimates

given for the *GE* case, which I think said to include pregnancy benefits would add on $1.6 billion a year.

Senator HATCH. Annually?

Ms. BALLARD. Annually. The total expenditures, I believe, for benefits, including statutory benefits is somewhere around $240 billion, so when you cost that out it is not a great increase. But you have to set up some assumption as to how long the benefit is going to be drawn. Under this bill we can't set up an assumption. We can safely say that it will depend on the plan and the doctor.

Senator HATCH. If one doctor thinks that a disability is 6 months, and another one thinks it is 6 weeks, and another one thinks it is 4 weeks you might be stuck with all three interpretations and they might all three be valid because of varying schools of thought in the field of pregnancy.

Ms. BALLARD. If you have a plan that pays disability benefits for 52 weeks, as some of our members do, and a doctor certifies benefits payable for that length of time then that could legitimately be the assumption that could be used for that plan to add on cost.

Senator HATCH. Let me ask you this: Who is going to pay the cost? A lot of people think that the corporations are going to pay.

Mr. COLEMAN. Senator, as we pointed out, in some instances the employees themselves will pay it if they have a contributory plan. In all other instances, as we see it, the costs obviously are going to have to be passed on to the consumer.

Senator HATCH. So this could add to the cost of goods?

Mr. COLEMAN. I would certainly think so. Again, we don't have a real inflationary impact study because we have imprecise statistics, but it is obvious that the employers themselves are not going to be able to absorb this added cost without passing it on to the consuming public.

Senator HATCH. Has anybody done an inflationary impact study on the effects of this particular piece of legislation?

Mr. COLEMAN. Not to my knowledge, Senator.

Ms. BALLARD. Senator, there are some parallels, if we can get away from the disability aspects of it for a minute. We have done quite a bit of work in the problems of rising health care costs and I think the best statistic there for passing on to the consumers that General Motors is passing on something over $500 on each car and truck for health care cost.

That is a baseline figure. You can figure upward from that if they have to include substantial pregnancy benefits that they are not now paying.

Senator HATCH. I see. So, somebody has to pay these in society anyway; is that correct?

Mr. COLEMAN. That's correct. It's a question of allocation.

Senator HATCH. And how delineated that allocation is. In other words, what is there for all parties concerned.

Mr. COLEMAN. This is one of our primary objections with the bill, Senator, that I think some of the parties that appeared before this committee are under the impression that this is going to provide some type of uniform, universal, minimum assistance for pregnant females. This bill does not do that. What it does, it says that employers that

provided disability and other types of medical coverage now will have to apply those benefits to pregnancy and, as we pointed out in our testimony, not all existing benefit and disability programs are like the GE bill that they talked about in the *Gilbert* case.

There is a whole panoply of different plans that have different schedules depending on the illness, the injury, the disorder that is involved.

Senator HATCH. And if we have got to have a nondiscriminatory bill it might mean that we have just opened ourselves up to a—to use your term—"a smorgasbord of litigation."

Mr. COLEMAN. That's what I would think. If employer A's female employees are receiving 6 weeks of benefits and employer B's are receiving 26 weeks, to me there is no equity in that situation. I think a bill designed to cure the problems involved in the *Gilbert* case should address itself to the problem of pregnancy and to recognize, as you pointed out earlier, that this is a unique medical problem. It cannot be equated to a broken toe or to pneumonia or some other type of physical or mental disorder and I think we should analyze the particular nature of the disorder and try and provide for relief in that area.

Senator HATCH. Do you have any problems with this being an amendment of section 701 of the Civil Rights Act of 1964?

Mr. COLEMAN. Yes; I do. As I indicated, I think this should properly be treated as a medical disability benefit program and shouldn't be complicated by putting it under title VII. Title VII already addresses itself to many of the problems of discrimination connected with pregnancy.

Senator HATCH. Where would you put this, assuming that this——

Mr. COLEMAN. This could conceivably be amended to ERISA, or some of the other legislation in the employment benefit area, the workmen's comp area, or some other area. I don't think it properly belongs under a discrimination bill.

Senator HATCH. Could it fit under the national workmen's compensation-type statute?

Ms. BALLARD. I don't think so because we are talking about more than just work related injuries and disabilities here.

Senator HATCH. Let me ask you this: What I am concerned about is if we put it under the Civil Rights Act for something that really is a limited matter, with all of the concomitant problems that you have raised, won't we get into all kinds of litigation problems of interpretation with regard to what is discriminatory and what isn't discriminatory concerning various plans?

Mr. COLEMAN. I would certainly think so. I would think that anytime a pregnant female employee has an adverse determination with respect to her medical coverage or with respect to the length of disability that she is awarded under an existing program, that you have the potential for charges and further title VII allegations.

Senator HATCH. What about—As I interpret you, speaking for the NAM you are not so much against providing the benefit but against this broadly drafted amendment to the Civil Rights Act which opens up many doors of difficulty to the manufacturer which ultimately results in added cost to the consumer.

What suggestions would you make? How would you limit it?

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Mr. COLEMAN. This is very true, exactly what you said. We are concerned about this broad sweeping smorgasbord approach. We think you should look at the nature of the disorder and testimony has indicated that the period of disability is 6 to 7 weeks. If that is an accurate figure, let's address ourselves to that.

Senator HATCH. What about the lady that has complications, she has an embolism and added complications to that pregnancy? Let's say that totally disables her. Would she receive the full extent of disability?

Mr. COLEMAN. My response to that would be if the existing employer program provides for disability coverage and medical payments in the event of an embolism she should certainly be entitled to these benefits regardless of whether she is pregnant or not.

Senator HATCH. If a doctor says that this is an extraordinary disability that is certainly the result of pregnancy but, nevertheless disabling, aren't you stuck paying the complete amount, and shouldn't you be?

Ms. BALLAD. Senator you have to look at the way benefit plans are structured. We are talking more or less about a normal pregnancy. Embolism is a disorder in and of itself. That same woman could have an automobile accident on the way to see her doctor and be totally disabled for the rest of her life, but that would kick in to a different area of the benefit plan. It would not necessarily be covered as a normal pregnancy because it was somewhat related to.

Senator HATCH. Of course, a doctor would have to testify that she had an embolism and that was a natural concomitant of her pregnancy and there is a possibility that there is embolism in every pregnancy and delivery. That is a very real possibility in every operation.

Ms. BALLAD. It can occur separate from pregnancy, too.

Senator HATCH. It can, but if it does then that is another matter. But if it occurs as a result of the pregnancy and we have a 6- to 7-week limit on it, and I tend to favor a limit because of the abuses that occur and having spent so much time in the courts, there are a lot of abuses in or outside of the medical profession. They have to rely on the subjective statements of the patients.

And, in doing so, no good doctor with the malpractice suits hanging over their head is going to ignore the subjective complaints of the patient and say you are not sick. This is where you get into a subjective area that is a very serious area and very costly to business, to America, and maybe to the woman herself who gets away with it.

What I am saying, however, is I don't want to rely on some doctor just saying or some plan that says you only have 6 or 7 weeks and that is it, bingo, because some poor woman has an embolism that is a natural concomitant of her pregnancy. That wouldn't be fair.

Mr. COLEMAN. No; I would agree with you, Senator, agree with you very much that if there is a complication in the pregnancy that causes an extended period of disability certainly this should be covered if the employer has a program that would cover extended disability periods for complications that arise in other surgical procedures that would apply to males and females alike.

Senator HATCH. And if he doesn't she would be limited to the extent of time provided for in the——

Mr. COLEMAN. Under the existing plan.

Senator HATCH. You prefer to see a statute written that really provides for the average disability time for pregnant women?

Mr. COLEMAN. I think that's correct, Senator.

Senator HATCH. So that we avoid all of these litigation, should we say, retirement programs for lawyers that we often see in these broadly drafted bills.

Mr. COLEMAN. That's precisely correct and I think experience indicates that the period that has been selected, the 6-, 7-, 8-week period that has been selected, has been proven statistically, or any other standard that you want to us, to be inadequate. Certainly, like we do in all other pieces of labor and social legislation, we have an opportunity to come back to the Congress and say we have to adjust this. Experience has taught us that this is inadequate and we have to increase the minimum standards. That's what we are suggesting as the proper approach.

Senator HATCH. Has the NAM conducted any studies, or anybody else to determine what is fair with regard to a delineated period of disability?

Mr. COLEMAN. The statistics that we have seen in the record at the House and the ones that have been mentioned here have ran between 6 and 9 months, 6 and 9 weeks rather.

Senator HATCH. Six weeks and 9 months, that is what we are afraid of.

Mr. COLEMAN. That's what we're afraid of under the present bill. But the statistics seem to indicate, even the labor unions that are in support of this bill have come in and said that the normal period of separation from work is in the range of 6 to 7 weeks. We think that that is the problem to which we should address ourselves.

In all other medical programs, in disability programs they are geared toward the normal disability period for that particular illness or injury. They are not geared toward the abnormal situation where complications occur. Now there are major medical problems, extended leave policies that address those particular features. I think that is a separate issue.

Senator HATCH. So you are saying that if you have a 6- to 7-week period with an extraordinary provision, assuming that the plan provides for extraordinary—it is nothing new. Blue Cross-Blue Shield pays so much if you have pregnancy disability. It pays so much for that, so much for hospitalization. You are saying that is what you need to have so that business knows where it stands with regard to this; is that what you are saying?

Mr. COLEMAN. That is precisely correct. We need some uniform guidelines that are going to be universally applicable for all our employers throughout the country that will treat pregnancy as a unique situation it is and gear the legislative effort to that particular problem.

The CHAIRMAN. Many of your members do now have this coverage. Do you get this idea from your members that now cover pregnancy? Could you give us their communications; who they are, for our records, that have given you this uniformity standard? There isn't uniformity now. Coverage is arrived at between the parties through collective bargaining, the union, between labor and management.

All plans are different. I am just wondering where did uniformity come to you as representative of the NAM. Does it come from the membership, and if it does, would you tell us the companies that now cover pregnancy that give you these ideas?

Senator HATCH. And do any of these companies provide just total unlimited coverage?

The CHAIRMAN. Of course not, and that is why I just can't see why we are in all of this.

Senator HATCH. The bill does provide for that.

The CHAIRMAN. It does not. It says that pregnancy will be disability covered as other disabilities. It is as simple as that.

Mr. COLEMAN. That's the problem, which other disabilities?

The CHAIRMAN. IBM is one of your members, am I right?

Ms. BALLARD. Yes.

The CHAIRMAN. Did they give you this?

Ms. BALLARD. No.

The CHAIRMAN. I didn't think so. I think you are just building a bionic straw man. [Laughter.]

Senator HATCH. All I am saying, Senator, is that you have got to admit your bill is pretty generally drafted. I like the way it reads. It is beautiful they way it reads because it has alliteration and——

The CHAIRMAN. It does just what His Honor Justice Renquist says, if this is to be covered under sex discrimination, say so. We are saying that the definition of sex discrimination will cover pregnancy discrimination.

Ms. BALLARD. Senator, the idea for minimum standards comes really from you because it is based on the standards that are set up, the type of method used in ERISA in saying that if a company provides a pension plan that it must adhere to certain minimum standards or else they shouldn't have a plan.

The CHAIRMAN. Under the Civil Rights Act of 1964, many companies, not a majority but approaching majority, knew that when we said sex discrimination, it applied to disability payments, and pregnancy must be covered. It hasn't anything to do with ERISA, occupational safety, workers compensation. It has to do with discrimination in employment. Where a company covers disability they cannot cover everything but disability arising out of pregnancy.

Ms. BALLARD. You asked where the companies got the idea for setting minimum standards, and the response is they got the idea——

The CHAIRMAN. No; I asked where you got the idea that there should be a uniformity of coverage. Company plans all vary.

Senator HATCH. I am not sure that that is what he meant. He said that there should be a 6 or 7-week limitation period except under extraordinary situations.

The CHAIRMAN. And I am wondering whether that came from your members who have had problems with their present coverage, however they do it.

Senator HATCH. If you know.

Mr. COLEMAN. Some of our members have discussed this with us.

The CHAIRMAN. That is what I would like to have. I would like to have some of your member companies tell us what problems they faced in the coverage they have. We had a dragnet out to get people to come

in here to tell us any problems they have. We thought you were the one group that would give us some specifics. We had another representative group, the chamber of commerce. They were scheduled, but they suddenly declined to come in.

We have been searching for those who will give us the abuses that we hear about and we would like to know about it specifically.

Ms. BALLARD. Well, they are not going to be able to tell you the abuses under the plans as they are written now because they have cutoffs. Even our largest company with the most liberal plan cuts off at 12 to 13 weeks, so they can't give you any horror stories under this bill as it is written because they don't pay benefits in that way now.

The CHAIRMAN. We have tried to get companies with cutoffs, without cutoffs. We have tried to get them to come in and tell us any problems they have had under coverage of pregnancy. We have not had anyone come in to tell us.

Senator HATCH. Would you yield for a second?

Has GE ever come in and testified?

The CHAIRMAN. They have been invited; certainly. They don't want to.

Senator HATCH. We ought to call GE since they did all the work in this case, have them come in and testify on what they think of the bill. The door is open. The chairman is being as fair as I have ever seen any chairman be.

The CHAIRMAN. This invitation has gone right to the top.

Senator HATCH. Let me ask you this, Mr. Chairman: Do we intend to call any health care insurance-type witnesses? I think we ought to do that. We ought to establish whether there should be a set time here.

The CHAIRMAN. Friday we have those that fit into that category coming in.

Senator HATCH. Let's make sure we get some of those in here. I think he has raised a lot of problems in this statement that we ought to give consideration to but I think it is incumbent upon the NAM to get some expert witnesses on these problems so that we are not sitting here on some sort of an island trying to figure this all out. We want to have the best testimony we can have in America.

The CHAIRMAN. I will tell you, we have done our level best, more in this situation than we have in a lot of other bills. We have been on a constant search for months now.

[The prepared statement of Mr. Coleman follows:]

SUMMARY OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

STATEMENT ON S.995

1. The National Association of Manufacturers believes that the essential question to be asked in consideration of S.995 is how far society chooses to go in subsidizing parenthood.

2. The NAM believes that the scope of S.995 is much too sweeping and that the bill would have far-reaching, perhaps unintended, effects on employers' personnel practices and fringe benefit plans.

3. The NAM believes that Section 1, in requiring that pregnancy not only be included in fringe benefit plans but also that it be treated the same as other illnesses, has the potential for totally disrupting the operations of benefit plans. Furthermore, the language of Section 1 is likely to require over-coverage in disability and medical plans which will unnecessarily increase plan costs.

4. The NAM believes that Section 2 is, at best, superfluous since the intent of the Act is accomplished through Section 1. In mandating increased benefits and prohibiting any reduction in other benefits, Section 2 destroys the ability of companies to compete with companies which do not provide such plans.

Statement of the

National Association of Manufacturers

On S.995

Before the Subcommittee On Labor

Of the

Senate Committee On Human Resources

April 26, 1977

My name is Francis T. Coleman and I am an attorney with the firm of Loomis, Owen, Fellman and Coleman. With me today are Jack Erickson who is also an attorney with the firm, Brenda Ballard, the NAM's Director of Employee Benefits and Compensation, and Annette Fribourg, the NAM's Director of Human Resources and Equal Employment.

I am here today to testify on behalf of the National Association of Manufacturers, a voluntary, non-profit business organization. The NAM represents over 13,000 member companies and these companies constitute a major portion of all manufacturing business in the United States.

The National Association of Manufacturers has closely studied provisions of S.995 which amends Title VII of the Civil Rights Act in order to clarify the Act's provisions as they relate to pregnancy. The NAM recognizes the important contributions which women make through their work and we continue to support and encourage equal treatment of women in all phases of employment. We feel that discrimination against any employee, whether on the basis of sex, race, religion or national origin, is ultimately detrimental to business operations.

We are not here today to argue the issue of discrimination, however, for as we see it, the question of whether or not to treat pregnancy as any other disability is not necessarily a women's issue. The true decision

that must be made is how far society chooses to go in subsidizing parenthood. We are not here to say that all pregnancies are planned or that pregnancy is entirely voluntary. We have, however, moved into an era when a couple has considerable control over becoming parents. Within this climate, it is appropriate to ask how much of the economic responsibility for parenthood will be assumed by those men and women who choose to have children and how much of the responsibility will be assumed by society--either directly through taxation or indirectly through requirements placed on employers.

It is time, in dealing with social legislation, to begin setting some priorities, because it is becoming more and more apparent that we cannot do all things. In the broadest sense of the term, our resources are limited and we must begin to think in terms of where we are going and how we want to use our resources.

The issue of cost may not be a legitimate factor when balanced off against equitable treatment. However--and this has been illustrated year after year in extended debate on national health insurance--cost certainly must be considered in making important social decisions. The cost for rearing a family of four is estimated to be around $250,000 from cradle through college. The extent to which society can assume this cost is virtually unlimited. Congress could require that employers pay all of a family's medical expenses; Congress could require that employers provide disability benefits for pregnancy; Congress could require that employers provide paid leave to both mothers and fathers for child rearing; Congress could require employers to finance day-care centers; and Congress could require employers to subsidize a child's college or vocational education. But all members of Congress certainly must ask themselves if their constitutents are prepared to pay the cost for any of these requirements.

The NAM believes that S.995, in its sweeping language and broad implications, goes too far in requiring employers to assume the economic responsibilities of parenthood. And no one should be so naive to think that employers will bear the cost alone. All of their employees (either directly or indirectly), and ultimately the consumer will share the burden.

THE SCOPE OF S.995

This bill was introduced as a reaction to the Supreme Court's decision in General Electric Company vs. Gilbert. The emotionality surrounding this case has obscured a practical consideration of the merits of this legislation. We would point out that the Gilbert case involved one company with one plan and that the central issue was coverage of pregnancy under a weekly accident and sickness benefit plan.

Enactment of S.995 would affect all employers, many of whom already provide coverage for pregnancy. Furthermore, it would impact not just disability plans, but all employer-sponsored benefit plans. Consideration of this bill should be taken out of the context of the Gilbert case and it should be evaluated separately. We believe that Congress is taking a much too simplistic view of a very complex issue. In the past, we have seen other "employee protection" legislation passed. But the true impact and burdens of such legislation on business operations has been enormous. We would hope that before this happens again, serious consideration will be given both to the true need for S.995 and to the practical implications of the bill as it is currently written.

NEED FOR THE LEGISLATION?

There is a pervasive, erroneous notion that employers arbitrarily choose what they will and will not cover in employee benefit plans. The truth is that,

in providing benefits, employers generally respond to employees' needs--articulated either through collective bargaining or directly from employees. Union-free employers frequently conduct employee benefit surveys to compile realiable statistics on how employees wish the benefit dollars to be spent. This same observation can be made on employer personnel policies, i.e. they generally adhere to the needs of the employees.

In its testimony on H.R. 6075 (the House companion bill), the Campaign to End Discrimination Against Pregnant Workers stated as justification for this legislation the folTowing:

> "Employers routinely fire pregnant workers, refuse to hire them, strip them of seniority rights, and deny them sick leave and medical benefits given other workers."

This statement simply is not true today and could not be verified statistically. It is a very rare medical plan that totally excludes any coverage for pregnancy-related treatment; approximately 40 percent of disability plans in effect today provide some coverage for pregnancy; and seniority rights are usually protected through a company's leave of absence policy.

The AFL-CIO told the House Subcommittee on Employment Opportunities that:

> "Much of the disparate treatment of women in employment has come from unfounded assumptions about their lack of interest in continuing careers because at some time they are likely to become pregnant and have children."

The truth is that women who bear children have not consistently indicated such an interest in a continuing career. The best data available shows that 40 to 50 percent of women taking pregnancy leave do not return to work. When a women takes time off to have a child, there is inevitably some break in her career. But the length of that interruption has traditionally been determined to a large degree by the woman herself.

With the changing nature of the workforce and continuing problems with inflation, it becomes apparent that more women will seek coverage for pregnancy-related expenses. But the details of this coverage can much better be determined jointly by employees and employers than through legislation such as S.995, which in its presently written form will be extremely expensive to society.

PRACTICAL IMPLICATIONS OF S.995: SECTION 1

As we interpret the language of section 1 of S.995, the bill would not only require that employers cover pregnancy under disability plans (as was the issue in the Gilbert case), but that pregnancy will be covered in such plans like any other disability. Furthermore, Section 1 is susceptible to the interpretation that pregnancy must be covered under employer-sponsored medical plans and that this coverage must be equal to that for any other medical condition.

The NAM wonders if Congress really intends such sweeping legislation. If the intent of the legislation is to insure that coverage for pregnancy, childbirth, and other medical conditions be included in fringe benefit plans, then the language should be changed; because what we have now in Section 1 would do more than that. Of course, the total impact of Section 1 on benefit plans would come to light only after the employer is given the responsibility for compliance--after the massive interpretive regulations which this bill would require are promulgated--but we can already point to problems.

Disability Plans:

The duration of benefit payments under disability plans varies all over the board. Some plans only pay for a maximum of a few weeks; others pay as much as 52 weeks. Within the administration of these plans, the benefit period for disabilities also varies considerably: it may be two weeks for pneumonia and it may be six months for a heart attack. The benefit period is determined largely

by the attending physician who certifies disability and also, to some extent, by the plan's experience with an illness, i.e. the standard duration of incapacitation. Under such plans, disabilities must be treated individually. In other words, what is adequate time off for one disability may be quite inadequate for another type of disability. Therefore, adequate time off for pregnancy would not necessarily be comparable to that for a broken toe or major surgery.

Whereas all other benefit periods are related only to the ability of the employee to work, pregnancy is different. The actual disability period for the women must be separated from the subsequent needs of the child. In the hearings to date on this bill, we have heard no testimony from the medical profession which would indicate the expected duration of the leave for childbirth. There must be some guidance, some standards from the medical profession in establishing a reasonable period of disability. As the Act is currently written, pregnancy disability could realistically be expected to begin with morning sickness and continue through childbirth until a physician certifies the women as able to work. Since doctors are inclined to listen to the patient's view on ability to work, he may have difficulty separating her well-being from her desire to stay with the child.

In its testimony before the House Subcommittee on Employment Opportunities, The Campaign to End Discrimination Against Pregnant Workers stated that:

> "...all pregnant women have some period of disability, beginning in the normal pregnancy with labor itself and continuing through the normal recuperation period of 3 to 8 weeks after childbirth."

It is very unlikely, however, that under Section 1 as it is currently written such a limitation could be applied to the disability period. If a plan pays benefits to a maximum of 52 weeks and a doctor certifies the women's disability for that length of time, then under Section 1 employers would be required to pay benefits for a full year.

Also under Section 1, the term "related medical conditions" is undefined. Would post-partum depression be included? And if so, what would happen to a plan that excludes payment of mental and emotional disorders? Would the plan then have to cover all types of depression? This possibility raises the spectre of a significant portion of employees--both men and women--drawing extended benefits for emotional problems. And the potential for abuse in this area is horrendous.

Finally, there is the probability that, without some reasonable limitation on duration of benefits, an employer's disability plan could become a type of extended severance pay plan. Since 40 to 50 percent of the women who take pregnancy leave do not return to work, it can be anticipated that close to half of the disability payments will constitute severance pay. Such a situation would result in a special termination benefit for a single class of employee (pregnant women) which is denied other employees.

Medical Plans:

The language of Section 1 appears to require that medical plans provide the same coverage for maternity expenses as it does for other types of illness or injury. This requirement shows a serious lack of understanding of group medical plans. Furthermore, it promises to exacerbate the problems employers are having with health care cost escalation--a situation which is reaching crisis stage.

It is a relatively rare medical plan that covers all types of disorders and all types of services on the same basis. A plan may, for example, require a cost-sharing from the employee of 20 percent for purely physical disorders but require a 50 percent cost-sharing for mental disorders. A plan may cover certain procedures if performed in a hospital while excluding those procedures if performed in a doctor's office.

The very divergent nature of medical plan coverages makes the requirements of Section 1 virtually impossible. The first problem employers will have with Section 1 is figuring out how to alter their medical plans so that all coverages are equal. For example, will a plan which uses a surgical schedule be in violation of the Act if obstetrical procedures are reimbursed at a different rate from an appendectomy? Suppose a plan pays hospital benefits for all other disabilities up to a maximum of 180 days but limits the number of days for a normal pregnancy to 20 days? Will the plan be required to cover hospital stays for a normal pregnancy up to 180 days? These kinds of requirements would result in serious over-coverage in medical plans and would require needless increases in premiums.

Furthermore, as we interpret Section 2 (which I will discuss more fully later on), if a medical plan provides more liberal benefits for pregnancy than for other disabilities, then all benefits must be brought up to equal those for maternity. Let me give a couple of examples, suppose a plan provides first dollar coverage for doctor visits related to pregnancy but requires a $50 deductible for doctor visits related to other treatment. It appears that Section 2 would require that the deductible be totally eliminated. As another example, suppose a plan covers hospital charges for a normal pregnancy at 80% up to a maximum of $600, then after a $100 deductible pays the excess expenses at 100%. But this same plan pays hospital expenses for other disabilities at 80% up to a maximum of $2,000 and then pays 100% of the excess. In this instance, the plan would have to be completely redesigned to bring all other reimbursements in line with the more liberal pregnancy schedule. These examples are not unrealistic and the changes which would be required fly in the face of employers' efforts to rationally contain escalating health care costs through plan design.

We can also point to another problem. Some medical plans require that maternity benefits will be paid only if conception occurred after the effective date of the plan. In order to equalize treatment of pregnancy, a plan could require that all disabilities be subject to a "pre-existing conditions" provision. However, it appears that Section 2 would prohibit such an action, since this provision could have the effect of reducing benefits for other disabilities. The only thing an employer could do would be to eliminate the requirements for pregnancy, thus picking up a medical liability which was in effect before the employee came under his plan.

Effective Date:

A final general note--this bill provides no lead-in time for employers to amend their plans. Should this bill be enacted, some reasonable period must be provided for employers to set up the coverage the bill mandates. As a purely practical matter it is necessary not only to plan fiscally for the added coverage, but also to redesign plans and re-negotiate with insurance carriers, where necessary. The practical reality that these changes could not be accomplished overnight must be considered.

PRACTICAL IMPLICATIONS OF S.995: SECTION 2

I would like to comment briefly now on Section 2 of the House's companion bill H.R. 6075-- should the Senate be considering similar amendment of S.995. The practical problems resultant from Section 1 pale by comparison with those of Section 2. Indeed, if the function of S.995 is to eliminate differential treatment resulting from pregnancy, Section 2 is superflous at best: the Act's purpose is fully achieved by the first section. More accurately, Section 2 appears to have been appended as a continuous penalty to those employers foolish enough

to have offered benefit plans in the past. It says in effect that employers who yesterday excluded pregnancy from fringe benefit plans--although such treatment was fully permissible at the time--must compensate by not only adding on these new benefits but also continuing them idenfinitely into the future--this despite the fact that the employer was never obliged to provide any benefits to begin with and would not be so obliged now had he not offered benefits at all. Indeed it serves as competitive punishment to those who have afforded their employees fringe benefits vis a vis those who have provided none at all.

I have already discussed the problems of determining the level at which these benefits must be provided. Section 2 creates a further problem: that of the duration for which such benefit plans must continue. It is questionable whether the wording of Section 2 would allow even an employer whose plan has been brought into compliance ever to reduce benefits across the board. Would demonstration of imminent bankruptcy constitute acceptable grounds for benefit reduction? It is not clear. Assuming the sufficiency of dire consequences, would anything less suffice? We question seriously whether an employer could even modify a benefit package upward if such modification were to substantially reduce or eliminate one kind of benefit. We fear Section 2 will bind an employer to present benefits (plus, of course, pregnancy coverage) as a permanent minimum. Further assuming at some point an employer might be allowed to free himself from this obligation, at what date might he do so? A year later? Two? Ten? Finally, apart from the employer who seeks to change his benefit plan at some future time, what of the employer who can neither pass on nor absorb these added costs to begin with? Advocates of the bill lend assurances: the legislative language lends none.

The employer's contribution to the funding of these added benefits must, according to Section 2, be "adequate". It is possible that contribution adequacy

will require that even under contributory plans no added costs for pregnancy coverage be borne by the employee. (The illogic of such a situation goes as follows: if an employee is paying say 20% or $200 for benefits, he/she should not have to pay anything more for coverage that through hindsight should have been included initially--this, despite the fact that had the coverage been included previously the employee would have been paying 20% of the cost of pregnancy coverage as well). Thus the employer will be made to bear more than the 80% he anticipated, presumably ever after. Of course employers who, for the first time, adopt plans in the future, are free to set an 80/20 employer/employee contribution ratio--or whatever ratio they choose. Indeed the premiums of these employers need not reflect the added costs of pregnancy at all. The employers are completely free to set their contribution ratio at whatever level would yield the dollar amount which they would have paid without the inclusion of pregnancy. Seventy percent, sixty, whatever--the total cost of pregnancy can thus be borne by the employee.

Section 2 injures not only the employer, but the employee as well. It is a clear infringement of the protections provided under the Taft Hartley Act--interference with the employee's right to bargain collectively over the terms of their contracts. Beyond those employees covered by Taft Hartley, Section 2 denies all employees the right to determine whether this is in fact a benefit they want. As I discussed earlier, we believe this is a benefit more appropriately the subject of negotiation than legislation.

In sum, Section 2 may create the situation under which plans currently in effect must be amended to provide current coverages plus pregnancy coverage indefinitely into the future. Existing benefits will become a permanent minimum, and no additional employee contribution for the newly mandated coverage may be

demanded. Whether the employees want such coverage is irrelevant.

By singling out one classification of employers, Section 2 offers an arbitrary, inequitable and manifestly illogical approach to a complex situation. While supporters of the bill argue existing precedent for prohibiting any reduction of benefits, the pregnancy benefit situation is clearly distinguishable. First, the very inclusion of pregnancy benefits itself precludes any continuing effects of its ever having been excluded, and second, unlike the subject of statutory precedent, there is no legal or practical requirement that benefits be provided at all.

As an elementary rule of contracts one may void an agreement entered into in reasonable reliance upon a material misstatement of fact. We maintain that by analogy the employer who would not have provided any benefits had the ultimate costs been known, should in all fairness be allowed to discontinue his plan.

Equity and fairplay call for it. It is arbitrary and capricious discrimination against employers providing benefits in favor of employers who don't.

CONCLUSION

To summarize our position, the NAM believes that S.995 is social legislation that goes too far in requiring employers, and ultimately society, to assume the financial responsibilities of parenthood. The language of Section 1 as it relates to the coverage of pregnancy, childbirth, and related medical conditions under fringe benefit plans is much too broad and would allow employers virtually no leeway in setting realistic limitations to such coverages. We find the requirements of Section 2 to be blatantly unfair.

This bill is a simplistic approach to a complex problem affecting all of society. We urge that Congress not move with unstudied haste on this bill. The implications are enormous and we recommend that they be fully explored before this bill is put to any vote.

The CHAIRMAN. Thank you very much, Senator Hatch.

Thank you.

I wonder if I could go out of order here with Clarence Mitchell who I know has a brief statement which I have read and applaud and want to receive personally from Mr. Mitchell. The next panel might take a little longer.

Senator HATCH. Mr. Mitchell, it is great to see you.

Could I just read a letter which supports this bill that I got from one of my constituents that at this point I think makes a pretty persuasive argument? I think it might be an appropriate place to put this in. Would that be all right with you?

The CHAIRMAN. How is your time, Mr. Mitchell. This doesn't look to be a long letter.

Mr. MITCHELL. I am at your disposition.

Senator HATCH. This is a letter from Eunice Cronan, assistant professor of biology at Utah State University, Logan, Utah. This is in response to my request when I spoke up there a week ago. I asked them to—the students and the teachers—let me know what they feel on this issue because I am very concerned about it. I see lots of economic problems. I see lots of other problems, but also see discrimination to women.

She said:

> DEAR SENATOR: I have been thinking about the General Electric issue and would like you to compare these two hypothetical cases. No. 1: Female employees taking birth control pills that develop migraine headaches. Her doctor recommends that she discontinue taking the pills and have an IUD inserted. A year later she becomes pregnant.
>
> No. 2: Male employee is a high risk for a coronary. He smokes two packs of cigarettes a day. His doctor advises he stop smoking. He continues and has a heart attack. Which of these events requiring release time is voluntary? Is voluntary action the real issue.

I have raised that as one of the issues in this matter and I thought that was a persuasive letter to me. I would like to ask at this time unanimous consent that it be incorporated in the record?

The CHAIRMAN. It will be. Thank you.

STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, AND CHAIRMAN OF THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. MITCHELL. I want to thank you, Mr. Chairman, for taking me. As you have indicated, I have a brief statement. I can't resist the opportunity to appeal to Senator Hatch's sense of humor by indicating that I am a father and grandfather now, four sons and seven grandchildren.

If I had known that having a baby, even though you are only a collateral participant, is as complicated as these people have made it maybe I wouldn't have these children and grandchildren.

Listening to some of their testimony, I am beginning to wonder whether they really trust mothers per se, and what it is they've got against babies because it looks like everything suddenly comes into focus as saying you can't trust these mothers, they're going to chisel and not come back to work. They're going to hang around the house

and so far as the babies are concerned, they are going to produce so many complications just by being born maybe we may not find it feasible economically to propagate the race.

We probably have a new form of birth control, make it so expensive.

I am Clarence Mitchell, director of the Washington Bureau of the National Association for the Advancement of Colored People and chairman of the Leadership Conference on Civil Rights.

I thank you for this opportunity to testify in support of S. 995, a bill to prohibit discrimination on the basis of pregnancy, childbirth or related medical conditions.

Those of us who have supported equal employment legislation from its earliest beginnings believe that the Supreme Court majority was in error when it decided *General Electric* v. *Gilbert*. S. 995 will correct what is clearly unjust discrimination based on sex in the granting of benefits under employee disability plans.

I would just like to digress 1 minute to give this bit of history. Of course, it was long before you came to the Senate, Senator Hatch, when we were trying to get the equal employment legislation passed in 1964. The amendment prohibiting discrimination against sex was given by one of our opponents, Senator Howard Smith of the State of Virginia.

His objective was to throw us a curve, or maybe several curves by putting women in there and he thought, I guess, that we would resist it. We did not, so that I am reminded of that phrase, he who troubles his own house will inherit the wind. I think this is what is happening now to those who insisted on putting sex in there. They thought they were going to throw us into confusion but instead, they seem to have some problems with it. We don't have any problems now that it is a part of the law.

We will not burden the record with testimony that duplicates what has already been given or will be given by those who have spent much time and effort in assembling the facts. We do urge that S. 995 be passed quickly and that it be kept free from damaging amendments.

As members of this subcommittee know, there are other plans for amending title VII of the 1964 Civil Rights Act. However, we are strongly opposed to missing any other revisions of the law with S. 995. We hope to get and are working for joint administration, congressional and public interest support for strengthening amendments to title VII in a package wholly apart from the question dealt with in S. 995.

Thank you, Mr. Chairman for the opportunity.

The CHAIRMAN. Thank you very much, Mr. Mitchell. We appreciate the support for this even though a more comprehensive review is underway and more complicated. This seems rather narrowly focused on one situation and we hope to proceed without our own legislative complications.

Mr. MITCHELL. There seem to be a lot of them generated. Most of them seem to me very irrelevant.

The CHAIRMAN. It seems that way to me.

Senator HATCH. The only one that bothers me, Mr. Mitchell, is maybe there should be some limitations so people know where they stand and that does literally bother me. There are many problems that arise in this. It is a complicated area.

If we grant this particular bill we may have OSHA problems that we hadn't thought of, and maybe we should. These are questions I legitimately have and want to have answers. But since the vast majority of insurers in America put a set time because of the overwhelming mass of statistical evidence showing that pregnancy is not really a disability but a natural occurrence in the overwhelming majority of cases that perhaps there might need to be a limitation rather than an unlimited generalized bill.

I appreciate what you have said because it is typical of your advocacy for equal rights and freedoms throughout America and you know that I feel the same way as you. But I think that this is a legitimate concern because it is something people like to know, what their liabilities are rather than having them just thrown up into the air.

Assuming the bill is enacted in its present form, maybe it will prove not to be a problem anyway, but I think any reasonable person can realize, can visualize a myriad of problems coming out of such generalized bills. I don't know. This is something I am going to give every consideration to. We do need both sides and, of course, you are certainly very helpful to us here today. I appreciate it.

Mr. MITCHELL. I would just like to make this appeal to you, Senator Hatch. Basing it on the ancient religious principles in which both of us believe, we are a civilized society, and it seems to me we can't assess the cost of bringing a life into the world in terms of dollars and cents.

Senator HATCH. I agree with that.

Mr. MITCHELL. When we declare war we don't find out how much it is going to cost us to do it, we feel we have got to protect our Nation and we go to war regardless of the cost and people make sacrifices.

I think it is the same principle when you are talking about the future of the human race. We want children not only to be born but we want them to be well born. We want mothers not to be restrained from carrying on that wonderful function of producing a fellow human simply because the future is uncertain and they don't know whether they would get the kind of benefits that people might get for getting an injury on the golf course.

I think our religious principles impel us to disregard mythical considerations about cost and things of that sort, I was also distressed to hear somebody talking about the pathological complications because that is what is done whenever you come up with a request or relief on a humane basis. We are going through that right now with the Department of Health, Education and Welfare on the matter of giving relief to the handicapped under section 504 of the 1973 vocational Disability Act.

To my amazement, somebody got on the television and said in preparing these regulations we have got to think in terms of whether it would be of value to somebody who is a dope addict. That was so incredible I couldn't believe my ears because that is the kind of thing you do when you want to discredit a measure when you don't have the facts which might lead to a logical discreditation of it.

So when people come in here and talk about the possible implications of gonorrhea, embolism and all that kind of thing, I can only feel—and

I am merely giving you a man-in-the-street's reaction—that this is really a smoke screen. They don't have the facts and yet, they come in with these horror stories which have a diversionary effect. I think also, Senator Williams really put his finger on it when he said produce the names of those who agree.

I submit they will not be able to produce it and I think it is also a question of how you determine how the law is going to be enforced. We passed every amendment to the Constitution of the United States, the first 10 especially. We made than in very simple language.

Through the years we have evolved a meaning and impact of those amendments. That's the way legislation ought to be also. It seems to me you have a simple statement and then, with respect to all these complications you work that out as a matter of regulations.

If you try to meet every foreseeable problem, or every problem that is a product of a very exotic imagination, you would have a bill that stretched from this part of the room to way out there in the hall somewhere and it would never be understandable.

Senator HATCH. Your argument is maybe we need to do that in this area mostly because they have been deprived.

Mr. MITCHELL. My argument is this is simple, plain understandable English language. Let's pass it and if you have got all these things about gonorrhea, or whatever it is that you are talking about, these are things you can take care of with regulations. I doubt that they would ever arise, but if they are so concerned about it let's do that with regulations, but let's pass the simple language.

Senator HATCH. As you know, Mr. Mitchell, I have deep friendship for you and I must chastise you a little bit.

Mr. MITCHELL. Well, the Lord loveth those who chasten.

Senator HATCH. But, in any event, 3 weeks ago I asked you to help me on this. This is the first time you have helped me on this particular matter. I expect more material from you. But let me say this to you, I am very concerned about what is right.

My constituents tell me this: We are living in an overregulated society and the regulations are coming from this atmosphere around here in Washington. Sometimes the people here don't really understand what goes on elsewhere. You pass generalized bills that are just a few words long, like title IX, and the next thing you know you have got all the kinds of thousands and thousands of word regulations that weren't even contemplated by those who passed the law.

So the reason sometimes we go through the questioning is to find out just what should happen, what are the requirements. That is the purpose, I think, of the NAM coming in here. But I agree with you, we need more facts and circumstances from them and from others in the industry, and I hope GE's top people will testify here for whatever light it might be able to shed.

But, in any event, I have to go to another meeting but I stayed to hear you because I wanted to hear what you had to say and, as usual, it touched my heart. I appreciate you being here.

Mr. MITCHELL. I really thank you for staying and I would just like before you go to say this. I think that what is being offered by those who resist is something which sounds good but really has no substance.

Therefore, I hope that you will give them the opportunity to appear but wouldn't hold up the bill indefinitely while they are coming up with imaginary justifications for their position.

Senator HATCH. I can guarantee you, with our illustrious chairman we are not going to hold up any of these bills, especially this one, and I don't blame him. All I am saying is we should hear both sides and sometimes through doing that we find these things so that maybe for all Americans they work better, at least we hope so. Many times they don't but let's hope that this bill, whatever it is, is the best that we can possibly get.

Mr. MITCHELL. I believe it is and I earnestly hope it will pass with your support.

Senator HATCH. I appreciate having your input here today, and I promise you I will give it every consideration.

Mr. MITCHELL. Thank you.

Senator HATCH. Thank you.

The CHAIRMAN. That sounded almost like a classic constituent letter. [Laughter.]

Senator HATCH. I can't write these bills quite as classically as my senior Senator over here.

The CHAIRMAN. I do appreciate that history of Judge Smith's input into the 1964 act. Quite frankly, I didn't know about it. That perhaps helps us to explain why the legislative history was inadequate from Justice Rehnquist's standpoint. It was too thin. He said if it means what the plaintiffs in the *Gilbert* case said it must, then the Congress had better clearly say it. That is what we are doing now. But he did specifically say that there was a slim legislative record made on the meaning of discrimination. In terms of the specifics of that case, there wasn't any legislative record.

Mr. MITCHELL. The fact of life is, Senator, you were one of the great architects of this legislation and I am sure there was never any doubt in your mind—there certainly was never a doubt in my mind that the way you wrote the law covered this kind of situation.

Mr. Rehnquist, of course, was put on the Court to be a strict constructionist, but I think he started out to be a strict constrictionist because actually you have to really torture your mind to get the kind of conclusion that he and his colleagues had.

The CHAIRMAN. So tortured, as Justice Stevens made clear but, as I said opening today, that we can't take the obvious for granted anymore. We are going to, while that Court sits, have to be a little more precise.

Mr. MITCHELL. I commend you for what you are doing as you always deserve commendation.

The CHAIRMAN. Thank you very much.

Now, from the Campaign to End Discrimination Against Pregnant Workers, Wendy W. Williams, assistant professor of law from Georgetown and Susan Deller Ross, staff attorney of the American Civil Liberties Union.

I am sorry Senator Hatch went. I wanted Senator Hatch to be here for your testimony. He was called to Judiciary I guess, which I regret. I have no authority, but I will suggest very strongly that he read your statements.

STATEMENT OF WENDY W. WILLIAMS, ASSISTANT PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER, WASHINGTON, D.C., ACCOMPANIED BY SUSAN DELLER ROSS, COCHAIR OF THE CAMPAIGN, STAFF ATTORNEY, AMERICAN CIVIL LIBERTIES UNION, NEW YORK, N.Y.

Ms. WILLIAMS. Thank you.

Ms. ROSS. We would deeply appreciate that, Senator.

Ms. WILLIAMS. Good afternoon. My name is Wendy Williams. I am an assistant professor of law at Georgetown University Law Center here in Washington and I am very grateful for the opportunity to be able to testify in favor of Senate bill 995.

In my written submission to the subcommittee I describe in some detail the history of the treatment of pregnancy by employers in this country. From the history several things are apparent.

One is that the common thread of justification running through most policies and practices that have discriminated against all women in the labor force rested ultimately on the capacity of women to become pregnant and the roles and behavior patterns of women that were assumed to surround that fact of pregnancy.

Some of these assumptions that women would and, in fact, should get married and have children and leave the work force have led to the view that women are marginal workers not deserving of the emoluments of the "real" workers in the work force. The practices concerning pregnancy in particular arose not only out of general attitudes just described but also out of a sense of embarrassment and discomfort at the presence of pregnant women in the work force.

What rides on the passage of the Senate bill? A closer look at the policies and practices which affect pregnant working women is in order, and I should emphasize here that contrary to the previous testimony, the *Gilbert* decision wasn't just talking about disability policies. It said that pregnancy discrimination is not sex discrimination for purposes of title VII.

The starting point for analysis is that around 80 percent of all women become pregnant at some point in their work lives. Moreover, even women who don't actually become pregnant are, until they pass childbearing age, viewed by employers as potentially pregnant and all women are subject to the effects of the stereotypes that women are marginal workers with all the multifaceted consequences this has had for hiring, job assignment, promotion, pay, and fringe benefits.

The reported title VII cases reveal a whole array of ways in which assumptions about pregnancy and the resulting pregnancy rules have cut deeply against equal employment opportunity for women.

First, the cases illustrate that the assumption that women will become pregnant has been offered to justify refusal to hire or promote women to certain positions. For example, in *Cheatwood* v. *South Central Bell Telephone & Telegraph Co.*, a case from not so many years ago, the employer refused to consider any women for a particular job on the theory that most women will become pregnant and pregnant women couldn't do the job in question.

And in *Hodgson* v. *National Bank of Sioux City*, women were excluded from management training because the bank believed they would become wives and mothers and leave the company.

A still common practice in this country is the termination of women who become pregnant, or placement of these women on unpaid forced leaves of absence for significant periods of time. Termination, is, of course, a very serious setback for the working woman. Mandatory leave, in the best of circumstances, is accompanied by a guarantee of reinstatement in the employees previous job without loss of benefits.

But, more often, mandatory leaves are followed by loss of previous position, lower pay, the women don't get to come back into the same job and they lose many of the benefits they had before they left that position. Certainly, this is one of the reasons why there is an enormous wage gap in this country between men and women.

The cases are replete with examples of the problems presented by employer practices dealing with pregnancy. One example, a typical one: A school district required resignation of schoolteachers who had not yet gained tenure and became pregnant. It took 3 years to get tenure. After 2½ years of teaching a teacher became pregnant. She was discharged because of this and she was required, after childbirth when she came back, to start all over again as a new employee acquiring the full 3 years for tenure afresh.

Very importantly, some of the consequences of forced maternity leaves are carried forward over the entire work life of the working women. Among the benefits of which women are typically stripped as a result of maternity leave are accrued retirement benefits.

The woman placed on forced leave after a number of years with the company will, at the end of her work life, find that her level of retirement benefits does not reflect her actual years of service to the company and sometimes her retirement date is postponed as well.

Loss of seniority is another deprivation with permanent effects. Seniority allows senior employees to outbid junior employees for more desirable jobs and for promotions. It may also be the basis for permitting employees to qualify for training programs. It may be the basis for allowing employees to qualify for promotional examinations.

Finally, it enables a senior employee to withstand layoffs when layoffs occur, since the last hired is the first to go. The consequences of loss of previously earned seniority because of mandatory leaves is illustrated in a case which the Supreme Court has now decided to hear.

In that case, *Satty* v. *Nashville Gas*, Nora Satty came back from her forced maternity leave but was only permitted to return as a temporary worker. She bid on three permanent jobs, each of which she would have gotten if she had been able to retain her previous seniority. Without that seniority she lost each of those jobs. When her temporary job ended she was out of work.

In some, women who were terminated or placed on mandatory maternity leave may lose months or years of earned seniority placing them permanently behind their rightful place in the promotion ladders and on the pay scales of the company.

Another significant feature of mandatory maternity leaves is that they are unpaid leaves. Until recently, the able-bodied woman placed

on forced leave was not eligible for unemployment benefits although she was able and available for work. When she did become disabled and could not work she was not eligible to draw upon her company sick leave or disability program.

Unpaid maternity leave means forced loss of earning power for the entire period of the leave at the very time when the employee most needs coverage because her expenses have been increased by hospitalization and the addition of the new family member.

Many employer insurance policies don't cover hospitalization costs for childbirth to the same extent as other hospitalizations and thus, the loss of income is compounded by substantial medical bills. Even in the most favorable situations, the two income family, this means a reduction in standard of living for that family, and for women not so fortunate as to be in a two-income family, the consequences can be more dramatic.

One of the plaintiffs in the *Gilbert* case was placed on mandatory leave, her husband had left her, she had no income, her electricity was turned off, her refrigerator didn't work, she had no heat in the house, she had one 3-year-old child and a new baby that was born and she had to go on welfare in order to survive.

Finally, it should be emphasized that refusal to allow women to rely on sick leave or disability pay is not limited to disabilities accompanying normal childbirth. Rather, it is often the case that these benefits are denied for any pregnancy related disability, including complications of pregnancy, miscarriage and disabilities which are common to nonpregnant persons but are triggered or exacerbated by pregnancy. Diabetes is a common example. Embolisms are another, as was mentioned in previous testimony. The General Electric disability plan, which the Supreme Court held to be nondiscriminatory, is one example of such a total exclusion plan. The Supreme Court apparently, therefore, has said that even for disabilities which are like all other disabilities in anybody's book, it's OK to discriminate if they have some connection to pregnancy.

A necessary side effect of these punitive pregnancy policies is the burden placed upon a woman's choice to bear a child. For some women they force a choice between employment and force their termination of a pregnancy which they otherwise would not terminate.

As one judge noted:

> It cannot reasonably be argued that Congress in its enactment of title VII ever intended that an intended benficiary of that act forego a fundamental right, such as a woman's right to bear children, as a condition precedent to the enjoyment of benefits of employment free from discrimination.

A final irony in this web of disadvantages placed upon pregnant working women is that American working women, almost alone among working women of the world, face the disabilities associated with childbirth with no income protection. All the countries in Western and Eastern Europe have by law, provided income protection to working women who have children, and all but five countries in the Western Hemisphere have also so provided.

Passage of this bill would provide a tool for bringing the treatment of American women somewhat into line with the more enlightened world practices.

Finally, of course, there is the cost argument that is often brought forward by those who oppose the bill, I might add, with no substantiation and a lot of assumptions which are unwarranted. While others will delve more deeply into the cost justification, I would like to make a few general and, I think, important observations that might not otherwise come up before this committee.

The first is that history clearly demonstrates that cost was not the reason for excluding pregnancy disabilities from disability and sick leave coverage. Rather, this historical notion of women's proper place and the view of her as marginal worker explains these exclusions, and the history documents this very clearly.

The cost argument is an attempt to find, after the fact, an acceptable and neutral explanation for the exclusion which is rooted in unacceptable stereotypes and assumptions. Second, and very important, a lot of companies have tried to argue in the Supreme Court, and at least Justice Renquist found it impressive, that women already appear to take up more than their fair share of disability benefits even when pregnancy is excluded. This is dangerous and extremely misleading for two reasons:

First: Temporary disability programs are only one component of more comprehensive schemes of employee disability protection. The schemes also include worker's compensation, sick leave and permanent or long-term disability programs. While women may account for more sick leave or temporary disability days, men constitute a heavier drain on worker's comp and long-term disability programs.

Government figures show that men and women miss about the same number of days from work per year. In some years women seem to miss a few more hours; in others, men seem to miss a few more hours. The overall point is the absence nationally for men and women is equal.

Second: And importantly, temporary disability rates decline as wages rise. Low-income workers, regardless of sex, show a significantly higher disability rate than high-income workers. Since full-time women workers in this country earn on the average two-thirds of what men earn in this country it follows that women, as a group, are going to account for more short-term disability days than men do and, of course, as you would expect, a similar pattern emerges for the blacks and other minority workers who don't have the same income level that white men do.

The important point here is that individual income, not sex, is the best predictor of disability rates. Women and disproportionately among the low-income workers and that is the reason that it appears that their disability rate is higher.

Despite Justice Renquist's analysis in *Gilbert*, it's apparent, I think, that exclusion of pregnancy from disability programs discriminates against women. If the disability plan is viewed in terms of the purpose of such fringe benefits, job security and protection against unexpected loss of income due to disability, men are protected against all risks of income loss due to disability under a plan such as General Electric's while women aren't, since, if a woman's disability is in any way connected with pregnancy she faces a period of nonprotection and income loss.

And where a man and a woman working for the General Electric Co., in the same job, earning the same pay, each suffers one disability in their work life and the woman's disability is due to miscarriage, complication of pregnancy or is in some other way pregnancy related, the man will receive partial income protection under the company disability program, the woman will not.

This bill to amend title VII by making it clear that pregnancy discrimination is within, as we all thought it was, the definition of sex discrimination is the simplest and surest way to guarantee that the great mandate of title VII will be realized for working women.

It makes explicit what the EEOC and every Federal court that has considered the question, except the Supreme Court, believed was the intent of the Congress when it passed the act in 1964 and extended its provisions in 1972. This bill will make pregnancy-based discrimination subject to the same scrutiny on the same terms as other acts of sex discrimination, and of course, provides the employer with the same defense, if proven, that the act recognizes for other forms of sex discrimination.

It is obvious, but perhaps worth nothing, that while failure to pass this bill will have tremendous consequences for working women, passage of the bill imposes no new, unfamiliar or untried legal burdens upon employers or legal principles upon the courts. Until December 7, 1976, when the Supreme Court handed down the *Gilbert* decision, the Federal courts ably handled and resolved the pregnancy issues.

This bill, when it becomes law, will simply enable the courts to continue the task according to the familiar and workable principles which they have developed over the past few years, as well as inspiring employers, we would hope, to continue making the really significant and substantial progress which was evident all across this Nation leading up to the *Gilbert* decision. I strongly urge its passage.

The CHAIRMAN. Excellent. A very, very helpful statement. Thank you very much.

Miss Ross?

Ms. ROSS. Mr. Chairman, thank you for giving me the opportunity to testify before this subcommittee. My name is Susan Deller Ross and I am appearing today on behalf of the campaign to end discrimination against pregnant workers. The campaign is a broad-based group of women's rights organizations, civil rights groups, labor unions, and other public interest groups formed just 1 week after the Supreme Court handed down its decision in *GE*.

These groups were united by one concern—the realization of *Gilbert's* enormous potential for harm in eradicating the rights which women workers have fought so hard to achieve in the 13 years since Congress enacted title VII of the Civil Rights Act of 1964.

Professor Williams has just testified on the wide variety of discriminatory pregnancy policies in existence today. Employers routinely fire pregnant workers, refuse to hire them, strip them of seniority rights and deny them sick leave and medical benefits given other workers.

Such policies have a lifetime impact on women's careers. Together, they add up to one basic fact: Employers use women's role as childbearer as the central justification of and support for discrimination

against women workers. Thus, discrimination against women workers cannot be eradicated unless the root discrimination, based on pregnancy and childbirth, is also eliminated.

The campaign supports S. 995 because it will restore title VII as an effective tool in eradicating sex discrimination in employment. The proposed law does this through two simple concepts.

First, it makes clear that sex discrimination necessarily include discrimination based on pregnancy, childbirth and related medical conditions. Second, and equally important, it defines the appropriate standard for eliminating such discrimination, by providing that pregnant workers who are able to work shall be treated the same as other able workers, and that pregnant workers who are unable to work shall be treated the same as other disable workers.

The first concept seems basically self-evident. I won't go into it. The second concept—equal treatment for those who are similar in their ability or inability to work—is necessary to end the whipsaw effect to which pregnant workers are subjected.

On the other hand, they are told early in their pregnancies, when they are perfectly willing and able to work, that they are disabled and they must stay home on long unpaid leaves of absence, sacrificing pay and career opportunities that are given to other workers. On the other hand, when they are actually hospitalized or are recuperating from delivery, they are told they aren't disabled after all and they are thus denied disability and medical benefits or seniority rights which are given routinely to other disabled workers.

The point here is that no conclusion about a woman's medical ability to work can be drawn from the fact of pregnancy per se. I think this is a point that goes to one of the questions that Senator Hatch was raising. The problem is looking at pregnancy as a category rather than separating out pregnancy as it affects your ability to work or as it makes you unable to work.

Most women are able to work through most of their pregnancies and they should be allowed to work like all other able workers. This bill would allow them to do that. Contrary to what the NAM said earlier today, the bill does affect a woman's right to work. It says employers cannot hire and fire on the basis of pregnancy. It does not deal solely with medical and disability insurance, which is something I think Senator Hatch had misunderstood.

Conversely, all pregnant women have some period of medical disability, beginning in a normal pregnancy with labor itself and continuing through the normal recuperation period of 3 to 8 weeks after childbirth. These disabled women should likewise be given the same fringe benefits and seniority rights which all other medically disabled workers get.

In adopting the standard of equal treatment of those who are similar in their ability or inability to work, S. 995 incorporates the theory of the EEOC pregnancy guidelines. Those guidelines, incidentally, have been used to spell out precisely the answers to the questions Senator Hatch was raising.

For instance, in determining whether you can prevent abuse of a disability insurance program by submission of false claims by pregnant workers, the answer to that is simply what solution does the com-

pany now use to prevent abuse by other workers. If it has individual medical certification of disability by the disabled worker's doctor, it should apply the same system to pregnant workers.

We would oppose strongly any limitation of *x* numbers of weeks on pregnancy-related disability coverage, for the reason that it goes against the whole theory of this bill and is not needed. The employer can use the same protections to prevent abuse for pregnancy-related disability claims as it can use for any other disability. That is what is meant by the standard of equal treatment for those who are similar in their inability to work.

By passing this bill Congress would be affirming that the EEOC probably interpreted title VII. The campaign believes, moreover, that the EEOC exhibited great leadership and an in-depth understanding of how best to eradicate sex discrimination from the marketplace when it enacted the pregnancy guidelines in 1972.

This was demonstrated convincingly by the virtual unanimity with which the guidelines were followed. For example, the vast majority of State human rights agencies followed the EEOC's lead, often adopting the guidelines word for word as their own.

The correctness of the EEOC standard is further demonstrated by the number of States which have refused to follow the Supreme Court's lead in interpreting State human rights laws virtually identical to title VII.

In a case raising the same issue as *Gilbert*, New York State's highest court, the prestigious court of appeals, declined to follow the Supreme Court's holding, politely noting that it was "instructive" but not "binding." Through their State human rights agencies, several other States have taken the same position.

These State rulings suggest another reason for passing S. 995: to provide one uniform national policy for dealing with discrimination against pregnant workers. There are now at least 17 States, including the major industrial States of California, Connecticut, Illinois, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, and Wisconsin, requiring employers to provide the temporary disability payments to disabled pregnant workers which the Supreme Court ruled were not required by title VII.

A uniform Federal standard requiring all employers throughout the United States to observe this higher standard is essential.

The campaign also believes that a clarifying amendment to S. 995 is needed. This amendment should be the same as section 2 of the House bill sponsored by Congressman Hawkins, H.R. 6075. Section 2 of H.R. 6075 provides, in essence, that employers may not lower benefits or compensation in order to comply with title VII as amended by this bill.

This is a standard provision of antidiscrimination law, explicitly provided for in the Equal Pay Act, and routinely required in title VII case law. It is needed because some employers have threatened to deprive everyone of disability benefits rather than to provide them to disabled pregnant workers.

Obviously, the purpose of antidiscrimination laws is not to lower the living standards of all workers but rather to improve the treatment of those who have been discriminated against.

I have focused so far this morning on the importance of passing S. 995 in order to guarantee equal employment opportunity for women workers. But far more is at stake than the fate of women workers. The *Gilbert* decision contained several ominous signals for all classes protected by title VII, and it is important for Congress to send a direct signal back to the Supreme Court that it will not tolerate any erosion of title VII. Quick passage of S. 995 would convey that message.

I would like to outline very briefly some of the more troubling arguments in the *Gilbert* opinion. First, the Supreme Court announced that it would examine and rely upon "court decisions construing the equal protection clause of the 14th amendment," to determine what Congress intended in title VII's prohibition on discrimination.

This idea is patently ridiculous as to the sex discrimination provisions of title VII, for if Congress meant to incorporate equal protection doctrine into title VII in 1964, it meant to do absolutely nothing as to sex discrimination.

In 1964, the Supreme Court had an unbroken record of upholding the most blatantly sex discriminatory practices under the 14th amendment, including absolute prohibitions on women working as lawyers and bartenders. But even as to minorities today, reliance on current equal protection doctrine could be used to undermine title VII very seriously, by incorporating the necessity to prove intent to discriminate.

Second, the Supreme Court refused to follow the EEOC guidelines in part because they were not a contemporaneous interpretation of title VII. This idea is troubling not only because it leaves the agency no time to develop an understanding of how discrimination operates, but also because many of the EEOC guidelines have changed over time as the agency gained more in-depth understanding of the problem under consideration.

Indeed, the testing guidelines considered in *Griggs* itself were first issued in 1966, and then modified in 1970, prior to the Supreme Court's decision in *Griggs*.

Finally, the Court's interpretation of the Bennett amendment of section 703(h) of title VII was an extreme example of result-oriented analysis of statutory language. It ignored the plain meaning of the Bennett amendment, which simply incorporates Equal Pay Act exceptions into title VII, as Senator Dirksen explained prior to passage of the amendment.

To reach the result it wanted, the Court relied instead on a clearly erroneous statement of Senator Humphrey, who asserted after passage of the amendment that the Equal Pay Act allows employers to retire women earlier than men—a statement which is patently untrue, since the Equal Pay Act does not purport to deal with anything other than wage discrimination. Based on Senator Humphrey's erroneous views, the Court then concluded that section 703(h) allows the pregnancy based discrimination at issue in Gilbert.

The campaign believes that nothing in the explicit language or relevant legislative history of section 703(h) supports this view.

Nevertheless, the Court's strained, result-oriented analysis makes necessary the proviso in S. 995 that "nothing in section 703(h) of this

title shall be interpreted to permit [sex discrimination based on pregnancy, childbirth or related medical conditions.]"

In sum, then, the *Gilbert* decision presents enormous potential for undermining the effective enforcement of title VII for all protected classes—both women and minority groups. The campaign urges quick passage of S. 995, with strong supporting committee reports repudiating the result-oriented analysis of that decision and its apparent attempt to undermine Title VII. Both are needed in order to guarantee that title VII does not become a meaningless gesture to workers who have long been denied a fair chance to participate fully in the Nation's commerce.

Thank you.

The CHAIRMAN. Thank you very much, Miss Ross. These are comprehensive statements of great value to us and we appreciate them. Did you both appear at any point in the deliberations in the House?

Ms. Ross. Yes; we both did.

The CHAIRMAN. Did you there support the second part of the House provision?

Ms. Ross. Yes; I expressly indicated that the campaign supported section 2 in my testimony before the House committee.

The CHAIRMAN. If there are any questions that come to mind between now and when we go to the floor, can we call on you?

Ms. Ross. Certainly.

Ms. WILLIAMS. You bet.

The CHAIRMAN. Thank you very much.

[The prepared statements of Ms. Williams and Ms. Ross plus additional materials subsequently supplied follow:]

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Senate Committee on Human Resources

Labor Subcommittee

Hearings on S 995

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April 26, 1977

I am grateful for the opportunity to testify in favor of Senate Bill 995. Since 1972, as attorney for the plaintiffs in Geduldig v. Aiello, I have had the opportunity to acquaint myself in great depth with the causes and effects of discrimination because of pregnancy in the labor force. My investigation into this phenomenon has led me to conclude that equality for women in the workplaces of this country is an unattainable goal so long as employers are free to make pregnancy the basis of unfavorable and irrational treatment of working women.

On the simplest level, this bill (which I will call "the Gilbert bill") finds its justification in the observation of Justice Stevens, dissenting in General Electric Co. v. Gilbert. He said, "By definition, . . . a rule [treating pregnant women differently] discriminates on account of sex: for it is the capacity to become pregnant which primarily differentiates the female from the male." Yet, because our highest court has decided that pregnancy discrimination is not sex discrimination, either under the equal protection clause (in Geduldig v. Aiello) or under Title VII (in Gilbert), it seems appropriate today to review in some detail why this simple perception

finds support in both history and policy. It has been said that "In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes. Section 703(a)(1) subjects to scrutiny and eliminates such irrational impediments to job opportunities and enjoyment which have plagued women in the past." (Sprogis v. United Airlines, Inc., 444 F.2d 1194, 1198 (7th Cir. 1971)).

At the very core of the stereotypes which have resulted in irrational impediments to employment opportunity for women are assumptions about pregnancy - both its medical characteristics and physical effects, and, more broadly, assumptions about its implications for the role of women in society and in the labor force. Indeed, it is fair to say that most of the disadvantages imposed on women, in the workforce and elsewhere, derive from this central reality of the capacity of women to become pregnant and the real and supposed implications of this reality. The Gilbert bill is therefore essential to the fulfillment of the purposes of Title VII.

I. HISTORY

In 1908, the United States Supreme Court upheld "protective" labor laws for women workers a few years after rejecting similar protection for men, declaring that because woman is differentiated by her physical structure, the performance of maternal functions and her dependency on men from the male sex, "she is properly placed in a class by herself," for legislative purposes. (Muller v. Oregon,

208 U.S. 412). The court added that long hours of work, particularly if done standing, has injurious effects on the female body and "as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race." A companion view was that it was unseemly, indeed disgraceful, for wives to work. An author writing about women workers in 1916 stated:

> The American family standard has always been a bread-winning father, and a mother occupying herself with care of her children. Any deviation from this custom is cause for comment. Pride on the part of our native workmen serves to keep their wives out of the ranks of wage earners.

Thus, women participating in an American Institute of Banking convention in 1923 could be told that they were "merely temporary employees" in the nation's banks and businesses and that their goal should be to return home. The medical profession joined in, letting the popular view of women's maternal role shape scientific conclusions about women's health: In The Science of Health, A Reliable Family Physician, published around the turn of the century, the doctor-author concluded:

> "the platform of women's rights has not as yet been made to include as a plank the right to complete the natural sexual development--a right which implies a sufficient opportunity for the growth of the paries and the accessory reproductive organs . . . It is the unanimous experience of physicians that such cases of imperfect sexual development

> are usually found in girls with brilliant school records. The body can rarely discharge two important duties well at the same time. . . if the brain be worked continuously, the ovaries must be slighted.

Even Samuel Gompers, the father of the American Federation of Labor and a supporter of women's suffrage and equal pay for equal work, believed that the place of married women, particularly mothers, was in the home.

While these views sound quaint and antiquated today, history demonstrates that today's pregnancy policies are the direct descendants and heirs of employer policies born of those earlier views.

The notion that women belonged in the home as child bearers and tenders had several manifestations in the '20s and '30s. First, married women were often barred from employment altogether or dismissed when they became married. During the depression, whole cities campaigned against working married women and most state legislatures considered bills to restrict the employment of married women. A National Education Association study in 1930-31 revealed that 77 percent of all school systems surveyed refused to hire wives; sixty-three percent dismissed women teachers if they subsequently married. The feeling that they shouldn't really be in the labor force anyway, but should be home bearing children, or, if they were in the labor force, were not and should not be considered serious, permanent workers, made them the

natural target in a time of job scarcity.

Second, the '20s saw the beginning of the fringe benefit movement. The idea was that fringe benefit programs would attract and hold good workers by enhancing the worker's sense of security and loyalty to the company, thus ultimately benefitting the employer as well as the employee. From its inception, there was evidence that in fringe benefits, as well in other terms and conditions of employment, the employers' view of women as marginal workers whose proper and expected role was wife and mother resulted in a limitation on the benefits made available to them. Women were excluded altogether from some employer fringe benefit programs. When, for example, the General Electric Company's sickness and accident insurance plan was altered from an employee supported to contributory plan, women employees were not invited to participate. The president of General Electric explained the exclusion by saying, "Frankly, our theory had been that women did not recognize the responsibilities of life, for they probably were hoping to get married soon and leave the company." Less drastic limitations, motivated by the same general views, included the exclusion of disabilities affecting women's generative organs and pregnancy-related disabilities from disability and medical insurance programs as well as the exclusion of women from eligibility for selected types of plans (such as life insurance) within the employers general fringe benefit programs, or

an across-the-board percentage reduction of benefits to women. Given the employer assumption that women were going to be marginal workers in any event, there was no point in wasting benefits, provided for the purpose of promoting loyalty and increased production, on this unstable and unpromising group of employees.

If women were the expendable workers of the twenties and thirties, however, the Second World War, with its accompanying manpower shortage, made women workers essential to the war effort. As four and one half million women entered the war labor force, a reassessment of the policies and practices of employers was necessary. The War Manpower Commission issued a statement of policy on recruitment, training and employing of women workers which recommended, among other things, equal treatment of women workers in hiring, training and wages.

More to the point, a Children's Bureau study in late 1942 and early 1943 took a hard look at employer practices affecting women. In particular, the practice of firing women when they became pregnant was the subject of inquiry. The author of the study noted that while the reason often given for the practice was the protection of the mother and fetus, and fear of liability for miscarriage, "aesthetic and moral" qualms were often at the root of such practices. Employers expressed the view that it was "not nice" for obviously pregnant women to be working in a factory and that it had a "bad effect" on male workers, who made it a subject of frequent comment and were distracted from their work. As late as 1974, the Supreme Court noted in a footnote

to a case challenging mandatory maternity leaves in the fourth and fifth months of pregnancy that the mandatory leave rule was inspired by the school district's desire to save pregnant teachers from embarrassment at the hands of giggling school children and to insulate the children from the sight of conspicuously pregnant women.

Indeed, the idea of leaves rather than outright termination of pregnant women constituted an improvement in the treatment of women and seems to have originated during the war, based on the recommendation of the Department of Labor. As we shall see, however, mandatory leave continued, in mitigated form, many of the hardships of outright termination.

The end of the war brought with it the wholesale termination of thousands of women workers without regard to seniority or job aspirations. The first to go were married women. And, for the most part, the prewar patterns of discrimination against women workers reasserted themselves.

By the time Title VII was passed in 1964, there had been little progress in upgrading the status of women in the labor force. This was true of pregnancy treatment as well as other aspects of employment. Forty percent of all employers still did not even provide unpaid maternity leaves -- women were simply fired. Among employers who did provide a leave, more than one half forced women onto leave before the seventh month of pregnancy.

Only six percent permitted women to use their sick leave for pregnancy-related illness or disability.

The impact of Title VII upon all aspects of employment discrimination against women, including discrimination because of pregnancy, was rather dramatic. By 1973, seventy-three percent of women workers received maternity leave accompanied by reemployment rights; twenty-six percent could use sick leave for pregnancy-related illness and disability. Now, in 1977, this progress is threatened by the Gilbert decision, and only the passage of the Gilbert bill can insure continued progress.

II. IMPACT OF PREGNANCY DISCRIMINATION

From the history, several things are apparent. One is that the common thread of justification running through most policies and practices that discriminated against women in the labor force rested ultimately on the capacity and fact of pregnancy and the roles, behavior patterns and mythologies surrounding it. Another is that because of pregnancy and motherhood, women were viewed as marginal workers not deserving of the emoluments and pay of "real" workers. The practices concerning pregnancy in particular arose not only out of the general attitudes described above, but also out of a sense of embarrassment and discomfort at the presence of obviously pregnant women in the workplace.

In a 1972 opinion, Judge Haynesworth of the Fourth Circuit Court of Appeals dismissed the argument of a school teacher, Susan Cohen, that it was unconstitutional to force her to leave

her teaching job in the fifth month of pregnancy, with the following words, "No man-made law or regulation excludes males from [the experiences of pregnancy and motherhood] and no such laws can relieve females from all the burdens which naturally accompany the joys and blessings of motherhood."

With all due respect to Judge Haynesworth, it is precisely man-made laws and rules which create burdens for the working woman. The employer rule before the court in that case is a perfect illustration of the point. It was not the mandate of Mrs. Cohen's body, in its pregnant state, which caused Mrs. Cohen to be unable to continue working in the Cleveland School District. Rather, it was the employer rule which forced Mrs. Cohen, a healthy, able-bodied worker, to leave work simply because of the fact of her pregnancy.

What rides on the passage of the Gilbert bill? A closer look at the "man-made laws and regulations" which affect pregnant working women is in order.

The starting point for analysis is the fact that around 80 percent of all women become pregnant at some point in their worklives. Moreover, even women who do not actually become pregnant are, until they pass childbearing age, viewed by employers as among the potentially pregnant. Thus, all women are subject to the effects of the stereotype that women are marginal workers with the multifacited consequences this has for hiring, job

assignment, promotion, pay, and fringe benefits.

The reported Title VII cases reveal the whole array of ways in which assumptions about pregnancy and the resulting pregnancy rules have cut deeply against equal employment opportunity for women.

Earlier cases illustrated that the assumption women would become pregnant was offered to justify refusal to hire or promote into certain positions. For example, in Cheatwood v. South Central Bell Telephone & Telegraph Company, the employer refused to consider women for the job of commercial representative in part because women might become pregnant and pregnant women, according to the employer, could not perform the job in question. A more sophisticated rendition of the argument was made through the employer's expert-physician, who testified that women could not lift the weights involved in the job because of the physical and hormonal makeup of women associated with the childbearing capacity. And in Hodgson v. National Bank of Sioux City, women were excluded from management training because the bank believed they would become wives and mothers and leave the company. The cases also reveal numerous examples of termination of pregnant women. In one extreme (and very recent) case, a woman employee was told by her employer that she would have to quit work when she began to "show" because at that point she would no longer be able to comply with the employer's dress code.

Even when a woman is not terminated when she becomes pregnant, but is simply placed on mandatory unpaid maternity leave, the consequences can be serious indeed. In the best of circumstances, mandatory leave is accompanied by a guarantee of reinstatement in the employee's previous job without loss of benefits. But often, mandatory leaves are followed by loss of previous position, lower pay, and loss of seniority and other benefits. In short, the women placed on mandatory leave, like the woman who is terminated for pregnancy, often must begin again as a new hire.

The cases are replete with examples. In School District #1 v. Nilson, for example, the school district required resignation of school teachers who became pregnant prior to earning tenure. For plaintiff Nilson, who became pregnant after two and one half years of teaching, this rule meant that she must seek to be rehired after the birth of her child and begin acquiring anew the full three years which were the prerequisite for tenure.

In Wetzel v. Liberty Mutual Ins. Co., the woman fortunate enough to be rehired after birth of a child lost all credit for previous service to the company for purpose of fringe benefit eligibility. Liberty Mutual employees became eligible for temporary disability benefits after three months with the company and for long term disability benefits after five years. Under the employer pregnancy rules, a woman employee with ten years service to the company and eligible under both plans, would,

after the maternity leave, have to reacquire the right to temporary and long term disability as if she had never worked for the company.

Some of the consequences of maternity leaves are carried forward over the entire worklife of the employee. Among the benefits of which women are typically stripped as a result of maternity leave are accrued retirement benefits. The woman who took a pregnancy leave after a number of years with the company would, at the end of her worklife, find that her level of retirement benefits did not reflect her actual years of service to the company, and, sometimes, that her retirement date was postponed as well.

Loss of seniority is another deprivation with permanent effects. Seniority is often the basis for eligibility for certain benefits, such as vacation and sick leave. While the loss of these benefits has a temporary impact, the loss of competitive, as opposed to benefit, seniority may never be made up. Competitive seniority allows senior employees to outbid junior employees for more desirable jobs and for promotions. It also enables the senior employee to resist layoffs under seniority systems which provide that the last hired is the first to be fired. In Satty v. Nashville Gas, a Sixth Circuit case, the loss of seniority meant that Nora Satty ended up with no job at all. She was permitted to return to Nashville Gas after the birth of her child

but only as a temporary employee. She bid upon three permanent jobs, each of which she would have gotten had she retained her earned, pre-leave seniority. Without that seniority, she lost each of the jobs to other employees, and, when her temporary job ended, was out of work. In Zichy v. City of Philadelphia, the loss of seniority to the woman placed on leave meant ineligibility for promotional examinations upon her return. Employer rules such as those in Satty and Zichy (and these rules are typical) mean that even those women fortunate enough to remain on the payroll after their return from mandatory leaves lose months and sometimes years of seniority, placing them permanently behind their rightful place in the promotion ladders and on the pay scales of the company.

Mandatory leave is also often accompanied by the immediate termination of other benefits. One of the Gilbert plaintiffs, Emma Furch, lost her baby shortly after the commencement of her leave. Two weeks later she suffered a pulmonary embolism unrelated to the pregnancy. The company denied her claim for disability payments for the embolism on the ground that her forced pregnancy leave severed her eligibility under General Electric's disability plan. Had she been separated from work for other reasons -- such as a work stoppage, personal leave or a non-pregnancy related disability -- the plan would have covered the embolism.

Another significant feature of mandatory maternity leaves is that they are unpaid leaves. Until recently, the able-bodied woman placed on forced leave was not eligible for unemployment benefits although she was able and available for work. When she did become disabled and could not work, she was not eligible to draw upon her company sick leave or disability pay programs.

Unpaid maternity leave means forced loss of earning power for the entire period of the leave at a time when expenses are increased by the addition of the new family member. Moreover, as mentioned earlier, most employer insurance policies do not cover hospitalization costs for childbirth to the full extent hospitalization for other reasons is covered. Thus, the loss of income is compounded by the added expenses of the hospitalization for childbirth. Even in the most favorable of situations, the two income family, this means a reduction in standard of living. For some women the consequences are more dramatic. Sherrie O'Steen, one of the plaintiffs in the Gilbert case, found herself unable to provide for herself, a two year old child and her new infant. Her inability to pay utility bills resulted in the termination of her utility service. Finally, she was forced to resort to welfare for survival.

The contrast between the consequences of forced maternity leave and treating pregnancy as a disability under the Philadelphia sick leave program was summarized in Zichy as follows:

> When taking sick leave, a city employee continues to earn his or her normal salary and to accrue seniority, does not lose the privilege of taking promotional examinations for the time out, has the time credited for service and will receive the same raises as other employees in his or her classification who are not on sick leave. In addition, the employee continues to accumulate sick leave while on leave, will suffer no adverse effect on promotions, will resume the same position held prior to the commencement of such sick leave upon return, and will have no change in anniversary date of employment, pension plan, vacation time, and other fringe benefits as a result of using the sick leave.

Of course, the woman placed on mandatory maternity leave by the City of Philadelphia had none of these protections.

Thus far, I have focussed on the difference between mandatory maternity leave and disability pay or sick leave for childbirth-disability. It should be emphasized that refusal to allow women to rely upon sick leave or disability pay and full medical coverage is not limited to the disabilities accompanying normal childbirth. Rather, it is often the case that these benefits are denied for <u>any</u> pregnancy-related disability, including complications of pregnancy, miscarriage, and disabilities which are common to the non-pregnant but are triggered or excerbated by pregnancy, such as diabetes. The General Electric disability plan, held non-discriminatory by the Supreme Court, is one example of such a total exclusion plan.

A necessary side effect of these policies is the burden placed upon the woman's choice to bear a child, a right the Supreme Court has recognized to be of constitutional magnitude. The district court in Gilbert dealt directly with this effect in the context of the exclusion of pregnancy disabilities from General Electric's disability plan:

> While it is true that women may, under certain conditions, resort to an abortion . . . it cannot be reasonably argued that Congress in its enactment of Title VII ever intended that an intended beneficiary of that Act forego a fundamental right, such as a woman's right to bear children, as a condition precedent to the enjoyment of benefits of employment free from discrimination.

Thus, employer pregnancy rules not only affect the status of women workers in pervasive and permanent ways, but they can also impose on poor women the choice between employment with full earned status and benefits on the one hand and their right to procreate on the other.

The examples I have given reveal the tangible and measurable impacts of employer pregnancy rules and policies. The intangible effects of employer pregnancy policies on the women workers' psyche, motivation and commitment are incalculable. At some level, women do understand the treatment of pregnancy as a message to women workers: "You have chosen the woman's role of pregnancy and motherhood and have thereby forfeited your

place and rights in the workforce. Go home where you belong." Thus is the prophecy that women are marginal workers with no lasting commitment to the workforce reinforced, and the prophecy becomes self-fulfilling.

The encouraging (and utterly predictable) fact is that employers who have begun to treat women not as marginal and expendable workers but as full-fledged and equal members of their work forces find that workforce patterns of women change markedly. When women who become pregnant are placed on unpaid mandatory leave and lose their previous position, accrued seniority and retirement and other benefits, it is hardly surprising if they do not return after childbirth to that particular employer. If they are in the position of "starting all over again" with the employer, there is no incentive to return rather than seek work elsewhere, and return rates can be expected to be low.

It is equally predictable that workers whose pregnancies do not become the occasion for adverse treatment will come back to their employers after childbirth. One company that began treating pregnancy disabilities like other disabilities under its disability plan found that in each of three years of coverage, the women returned in greater and greater numbers, the return rate rising from 46 percent in the first year to 69% in the third year.

Of course, these figures do not include women who return to the company some time after the childbirth disability terminates. A Prentice-Hall survey in 1971 revealed that half of the plants and one-third of the office firms surveyed reported return rates after pregnancy

leave of 75 to 100 percent.

As employers discovered long ago, fringe benefits help produce a more loyal and productive workforce. (See Section I above.) The discovery that this principal applies to women as well as men is, however, a belated one. In the long run, it seems fair to predict that the cost to the employer of providing equal treatment and equal benefits to women will be more than offset by the increased stay and return rate of trained and experienced women employees.

A final irony of the web of workforce disabilities placed upon pregnant women is that American working women, alone among working women in the industrialized countries of the world, face childbirth and the accompanying inability to work unprotected by an income continuation plan. All countries of Western and Eastern Europe by law provided income protection to disabled workers including pregnant workers. Similarly, all but five of the countries in the western hemisphere provide such protection. In this country, workers rights and benefits have by and large not been a subject of social legislation, but instead have been left to management and labor in the private sector to work out through the mechanisms provided by our labor laws. Indeed, one management writer, referring to employer fringe benefit programs, has stated, "It is now meaningful to label this web of employee benefit plans 'the corporate social security system.'" I submit that it is wholly appropriate, and, indeed, in light of the abdication of responsibility by the private sector, essential, for Congress to mandate full job equality for women workers by ensuring that pregnancy discrimination, like other forms of sex discrimination, will not escape judicial scrutiny. Passage of the Gilbert bill would accomplish this goal.

III. THE COST JUSTIFICATION

A study of the labor force history of women leads overwhelmingly to one conclusion: pregnancy--potential and actual--is the core from which radiate almost all the multitude of images, suppositions, predictions, moral convictions, social preferences and stereotypes which form the justification for different and less favorable treatment of women in the workforce. It is not surprising, therefore, that as barriers to equal employment opportunity for women have gradually fallen one by one in the wake of the passage of Title VII, the disputed issues have narrowed until there is one final and decisive battleground--the treatment of pregnancy itself. It is also not surprising that the most hotly contested of the pregnancy issues is the one that involves a potential cost to employers--coverage of pregnancy-related disabilities in sick leave and disability benefit programs.

While others will delve more deeply into the cost justification now offered by employers for the pregnancy exclusion, I would like to make a few general observations.

First, history demonstrates that cost was <u>not</u> the reason for excluding pregnancy disabilities from disability and sick leave coverage. Rather, the historical notion of women's proper place and role are the origins of the exclusion. Recall the statement of General Electric Company's president explaining the exclusion of women from the disability program: "Frankly, our theory had been that women did not recognize the responsibilities of life, for they

probably were hoping to get married soon and leave the company." The point is emphasized by the wild cost estimates companies began to come up with when their pregnancy policies were challenged under Title VII. American Telephone and Telegraph Company, the single largest private employer of women, claimed, for example, that pregnancy disability coverage would cost an additional thirty-nine and one half million dollars in a single year. But this figure was based on the supposition that pregnancy disabilities would have an average duration of five and one half months. This figure is decidedly out of line with medical realities, since doctors indicate that disabilities arising from childbirth last from three to eight weeks. The highly inflated estimates offered by employers defending litigation were never the product of careful cost analysis based on sound actuarial principles. One actuary in the General Electric case admitted under oath that the problem of estimating costs was that there was no data and experience upon which to base reasonable estimates.

The companies which have, in very recent years, sought to comply with the EEOC guidelines on pregnancy have discovered the truth--while coverage of pregnancy disabilities does cost additional money (as would the inclusion of any major disability previously excluded), the cost is moderate and managable. Indeed, the Federal Reserve Bank of Boston found that treating pregnancy disabilities the same as all other disabilities would add between $.004 and $.01 to the hourly wage of its employees, representing an increased labor

cost of between 1/10 and 2/10 of one percent. In the context of general yearly wage increases of around 18 cents per hour, the cost of covering pregnancy is minor indeed.

Second, in both Geduldig and Gilbert, the Supreme Court was apparently impressed with figures submitted by defendants and amici indicating that women account for more than their "fair share" of temporary disability benefits even when the programs exclude pregnancy disabilities. And, indeed, it appears to be true that women as a group draw more heavily on temporary disability insurance programs in most companies than men do. But this is only the beginning of the inquiry.

It must first be observed that temporary disability programs are only one component in more comprehensive schemes of employee disability protection. These schemes also include worker's compensation for work-related injury and illness, sick leave, and permanent or long-term disability programs. While women may account for more sick leave and temporary disability days, men constitute a heavier drain on worker's compensation and long-term disability programs. Indeed, H.E.W. studies of time lost from work per year between 1963 and 1972--a calculation which includes days lost due to pregnancy disability--confirms this important point. Sex differences in days lost from work are minor indeed. In some of these years, women lost more time from work than men; in others, men lost more time from work. In each year the difference in time missed between men and women

was less than a single day.

A second, and at least as significant observation, is that disability rates decline as wages rise. Low income workers--regardless of sex--show a significantly higher disability rate than high income workers. While family income studies also show this inverse relationship between wages and disability rates, the wages of individuals reveal a more clear and consistent inverse relationship. Whether this is because family income is less influential in employee health than the types of jobs performed by individuals who are low income workers, or because of the psychological effects of holding less rewarding and less responsible jobs, is not known. What is clear is that individual income, not sex, is the best predictor of disability rates.

Since full time women workers earn, on the average, two thirds of what men workers earn in this country, it follows that women as a group account for more short term disability days than men do. A similar pattern, as one would predict, is apparent for black and other minority workers as compared to white workers.

Under the circumstances, it may be worth asking those companies whose representatives testify that women already receive a disproportionate share of disability payments what their average male and female wage is. It is probable that such companies do not have a sex-integrated and equal workforce.

These hearings may also present the opportunity to clear up another mystery; namely, why it is that insurance companies

oppose coverage for pregnancy-related disabilities. At first blush, their opposition would appear incongruous in light of the fact that adding disabilities means added income for insurers. It has been suggested that insurance companies are opposed to including pregnancy disabilities not as insurers, but as employers who adhere to the traditional assumptions and stereotypes about women. A look at the insurance industry's male-female employment patterns suggests that this may be the case. Indeed, the employment practices of insurance companies have been a particular cause of concern to those pursuing the goal of equal employment opportunity for women. The record in the case of Wetzel v. Liberty Mutual Insurance Company reveals a typical pattern. Women at Liberty Mutual were totally excluded from the entry level job of claims adjuster, a position at the bottom rung of the company's promotional ladder. By virtue of their exclusion from the job of claims adjuster, women were thereby excluded from promotions. Liberty Mutual also terminated women who became pregnant and stripped them of previously acquired benefits if they were rehired after childbirth. And all women employees were excluded altogether from eligibility for certain life insurance programs.

There is one final and important point to be made about the employers' cost justification. One of the fundamental principles of Title VII is that women should be treated not on the basis of characteristics generally attributed to their sex, but rather on an individual basis. Thus, a physically strong woman cannot

be excluded from a job requiring heavy lifting because the average woman is too small and too weak to do the job, without violating Title VII.

Justice Renquist, writing for the majority in Gilbert, abandons this critical principle. His view is that as long as women as a group already receive their share or more of paid temporary disability days, the exclusion of pregnancy disabilities from coverage does not violate Title VII. Extending this argument, he suggests that, for purposes of analysis, disability coverage should be considered in terms of its monetary value and viewed simply as an increment to wages. So viewed, men and women are receiving equal treatment because the value of coverage to the two groups, as groups, is similar, even though pregnancy is excluded.

This approach to the issue is dangerous to the principles of Title VII and job equality for two (related) reasons. First, it is inappropriate to convert disability fringe benefits to a monetary value and treat them as wages for purposes of analysis. They are not wages. Disability plans are sought and bargained for because they provide security against the risk of unpredictable wage loss due to disability, should that disability occur. Second, and concommitantly, to assign a monetary value and treat disability coverage as an addition to wages allows one, as it allowed the court, to bypass without analyzing the true discriminatory nature of the pregnancy disability exclusion.

Treating the disability program as part of wages, Justice Renquist was able to view all workers as receiving an an equal "raise" in their salaries. If, instead, the disability plan is viewed in terms of its purpose--job security and protection against unexpected loss of income due to disability--men are protected against all risks of income loss due to disability, while women are not, since, if a woman's disability is in any way connected with pregnancy, she faces a period of non-protection and income loss. The fact, in Gilbert, that women on the average will draw more upon the disability income protection plan if pregnancy-disabilities are included, overlooks the essential point that there is great variation among individual men and women in the number and duration of disabilities each suffers. The woman who is never disabled and the woman who is frequently disabled are treated alike and distinquished as a class from men, who themselves represent the whole spectrum from healthy to disabled. And where a man and woman, in the same job, earning the same pay, each suffers one disability of the same duration during their worklife with the company, and the woman's disability is due to a miscarriage, complication of pregnancy or is in some other way pregnancy-related, the man will receive partial income replacement under the company disability program but the woman will not.

Surely, such a result should not be permitted under Title VII, particularly where companies, joined by the insurance industry, have sought to justify such results by all-to-easy sex-based generalizations rather than looking to the real causes of higher disability incidence rates.

CONCLUSION

This bill to amend Title VII by making it clear that pregnancy discrimination is within the definition of sex discrimination is the simplist and surest way to guarantee that the great mandate of Title VII will be realized for working women. It makes explicit what the EEOC and every federal court except the Supreme Court believed was the intent of the Congress when it passed the Act in 1964 and extended its provisions in 1972. This bill will make pregnancy-based discriminations subject to the same scrutiny on the same terms as other acts of sex discrimination, and of course, provides the employer with the same defense, if proven, that the Act recognizes for other forms of sex discrimination.

It is obvious, but perhaps worth noting, that while <u>failure</u> to pass this bill will have tremendous consequences for working women, <u>passage</u> of the bill imposes no new, unfamiliar or untried legal burdens upon employers or legal principles upon the courts. Until December 7, 1976, when the Supreme Court handed down the

Gilbert decision, the federal courts ably handled and resolved the pregnancy issues. This bill, when it becomes law, will simply enable the courts to continue that task according to the familiar and workable principles which they have developed over the past few years. I urge its passage.

Testimony of Susan Deller Ross, On Behalf of the Campaign to End Discrimination Against Pregnant Workers, Before the Labor Subcommittee of the Senate Committee on Human Resources, On S.995

April 26, 1977

Mr. Chairman, thank you for giving me the opportunity to testify before this subcommittee. I am appearing today on behalf of the Campaign to End Discrimination Against Pregnant Workers. I am Co-Chair of the Campaign, and am also a staff attorney with the American Civil Liberties Union. The other Co-Chair is Ms. Ruth Weyand, who is also the Associate General Counsel of the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC.

I am pleased to testify today in support of S.995 on behalf of the Campaign. The Campaign is a broad-based coalition of women's rights organizations, civil rights groups, labor unions, and other public-interest groups, formed one week after the Supreme Court handed down its decision in General Electric Company v. Gilbert. These groups were united by one concern -- the realization of Gilbert's enormous potential for harm in eradicating the rights women workers had fought so hard to achieve in the thirteen years since Congress enacted Title VII of the Civil Rights Act of 1964.

In the Gilbert decision, the Supreme Court held that an employer policy of singling out pregnant workers for less favorable treatment than all other workers was not, on its face, sex discrimination. The specific context of the case was General Electric's policy of denying temporary disability payments to disabled pregnant workers. Since no pregnant men were given such payments, the Court reasoned that it was not sex discrimination to deny the benefits to pregnant women. The Court's logic could be extended to any disfavorable treatment of pregnant workers. And since most women workers do bear children at some point in their working lives, this one decision could thus be used to justify a whole complex of discriminatory employment practices designed to insure that women worker's role in the market place be confined to low-paying, dead-end jobs.

Professor Williams has just testified on the historical origins of such policies, and the wide variety of discriminatory pregnancy policies in existence today. Employers routinely fire pregnant workers, refuse to hire them, strip them of seniority rights, and deny them sick leave and medical benefits given other workers. Such policies have a lifetime impact on women's careers. Together, they add up to one basic fact: employers use women's role as childbearer as the central justification

of and support for discrimination against women workers. Thus, discrimination against women workers cannot be eradicated unless the root discrimination, based on pregnancy and childbirth, is also eliminated. By specifically approving this core discrimination, the Supreme Court has virtually nullified the sex discrimination provisions of Title VII. If the Gilbert decision stands, the Act is dead for women workers -- whatever their race or national origin.

The Campaign supports S. 995 because it will restore Title VII as an effective tool in eradicating sex discrimination in employment. It will reinstate what we believe Congress always intended: that all sex discrimination be eliminated, root and branch, from the market place, especially including discrimination focussed on that one condition which makes women different from men -- their childbearing capacity.

The proposed law does this through two simple concepts. First, it makes clear that sex discrimination necessarily includes discrimination based on pregnancy, childbirth, and related medical conditions. Second, it defines the appropriate standard for eliminating such discrimination, by providing that pregnant workers who are able to work

shall be treated the same as other able workers, and that pregnant workers who are unable to work shall be treated the same as other disabled workers.

The first concept seems self-evident. Classifications based on pregnancy and childbirth affect women and only women. Indeed, pregnancy and childbirth are the result of a physical structure and biological potential which, more than any other characteristic, define a person as a member of the female sex. As Justice Brennan's Gilbert dissent stated: "it offends commonsense to suggest...that a classification revolving around pregnancy is not, at the minimum, strongly 'sex-related.'"

The second concept -- equal treatment for those who are similar in their ability or inability to work -- is necessary to end the whipsaw effect pregnant workers are subjected to. On the one hand, they are told early in their pregnancies, when they are perfectly willing and able to work, that they are disabled and must stay home on long unpaid leaves of absence, sacrificing pay and career opportunities given other able workers. On the other hand, when they are actually hospitalized or are recuperating from delivery, they are told that they aren't disabled after

all and are thus denied disability and medical benefits given routinely to other disabled workers.

The point here is that no conclusions about a woman's medical ability to work can be drawn from the fact of pregnancy per se. Most women are able to work through most of their pregnancies (although less than 5% do suffer some complications that prevent them from working). Those pregnant women who are able to work should be allowed to work like all other able workers. Conversely, all pregnant women have some period of medical disability, beginning in a normal pregnancy with labor itself and continuing through the normal recuperation period of 3 to 8 weeks after childbirth. These disabled women should likewise be given the same fringe benefits all other medically disabled workers get.

In adopting the standard of equal treatment for those who are similar in their ability or inability to work, S. 995 incorporates the theory of the EEOC pregnancy guidelines which the Supreme Court declined to follow. By passing this bill, Congress would thus be affirming that the EEOC properly interpreted Title VII, and that the Supreme Court erred in failing to give the guidelines their customary "great deference."

The Campaign believes that the EEOC exhibited both great leadership and an in-depth understanding of how best to eradicate sex discrimination from the market place when it enacted the pregnancy guidelines in 1972. This was demonstrated convincingly by the virtual unanimity with which the guidelines were followed. It is well known that all six federal courts of appeals to consider the issue followed the guidelines, as did 18 federal district courts. What is perhaps less well known is that the vast majority of state human rights agencies also followed the EEOC's lead, often adopting the guidelines word for word as their own. The United States Department of Health, Education and Welfare also adopted pregnancy guidelines, interpreting Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq. (1974), which are virtually identical to the EEOC position. See Section 86.57(c), 40 Fed. Reg. 24144 (1975). Finally, the HEW guidelines were placed before Congress for a forty-five day period during which hearings were held and the content of the regulations thoroughly canvassed. By permitting the Title IX regulations to become effective without change, Congress itself plainly indicated that the EEOC had properly interpreted Congressional intent in passing Title VII.

The correctness of the EEOC standard is further demonstrated by the number of states which have refused to follow the Supreme Court's lead in interpreting state human rights laws virtually identical to Title VII. In a case raising the same issue as Gilbert, New York State's highest court, the prestigious Court of Appeals, declined to follow the Supreme Court's holding, politely noting that it was "instructive," but "not binding." Through their state human rights agencies, several other states have taken the same position, including the District of Columbia, Illinois, Kansas, Massachusetts, Michigan, New Jersey, Pennsylvania, South Dakota, and Wisconsin.

These state rulings suggest another reason for passing S.995: to provide one uniform national policy for dealing with discrimination against pregnant workers. It seems likely that many states with guidelines modeled on the EEOC standard will follow the lead of those states which have explicitly indicated that they will not follow the Gilbert decision. In addition, several states provide by statute for temporary disability coverage for pregnant workers under state disability benefit laws, including California, Hawaii, New Jersey, and Rhode Island. Four state statutes explicitly prohibit discrimination on the basis of pregnancy (Alaska, Connecticut,

Maryland, and Montana). The combined effect of all these state laws, regulations, and court rulings is to leave at least 17 states, including the major industrial states of California, Connecticut, Illinois, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, and Wisconsin, requiring employers to provide the temporary disability payments to disabled pregnant workers which the Supreme Court ruled were not required by Title VII. Such disparate treatment of women workers by state of employment is clearly arbitrary and unfair to the women who are denied benefits in the states with no coverage and also to the companies in the other states. A uniform federal standard requiring all employers throughout the United States to observe the higher standard is essential.

The Campaign also believes that a clarifying amendment to S.995 is needed. This amendment should be the same as Section 2 of the House bill sponsored by Congressman Hawkins, H.R. 6075. Section 2 of H.R. 6075 provides, in essence, that employers may not lower benefits or compensation in order to comply with Title VII, as it is amended by this bill. This is a standard provision of anti-discrimination law, explicitly provided for in the Equal Pay Act, and routinely required in Title VII case law. We believe that a specific provision to prohibit reduction of benefits or compensation is needed because some employers have threatened to deprive everyone of disability benefits rather then provide them to disabled pregnant workers.

Obviously, the purpose of anti-discrimination laws is not to lower the living standards of all workers but rather to improve the treatment of those who have been discriminated against. The clarifying amendment would guarantee this result.

In my testimony so far, I have focussed on the importance of passing S.995 in order to guarantee equal employment opportunity for women workers. But far more is at stake than the fate of women workers. The Gilbert decision contained several ominous signals for all classes protected by Title VII, and it is important for Congress to send a direct signal back to the Supreme Court that it will not tolerate any erosion of Title VII. Quick passage of S.995 would convey that message.

I would like to outline very briefly some of the more troubling arguments in the Gilbert opinion. First, the Supreme Court announced that it would examine and rely upon "court decisions construing the Equal Protection Clause of the Fourteenth Amendment," to determine what Congress intended in Title VII's prohibition on "discrimination." This idea is patently ridiculous as to the sex discrimination provisions of Title VII, for if Congress meant to incorporate equal protection doctrine into Title VII in 1964, it intended to do absolutely nothing as to sex discrimination. In 1964, the Supreme Court had an unbroken record of upholding the most blatantly sex discriminatory practices under the Fourteenth Amendment, including absolute prohibitions on women working as lawyers and bartenders. But even as

to minorities, reliance on current equal protection doctrine could be used to undermine Title VII very seriously, by incorporating the necessity to prove intent to discriminate. Compare Griggs v. Duke Power Company, 401 U.S. 424 (1971), with Washington v. Davis, 426 U.S. 229 (1976).

Second, the Supreme Court refused to follow the EEOC guidelines in part because they were not a contemporaneous interpretation of Title VII. This idea is troubling not only because it leaves the agency no time to develop an understanding of how discrimination operates, but also because many of the EEOC guidelines have changed over time as the agency gained more in-depth understanding of the problem under consideration. Indeed, the testing guidelines considered in Griggs were first issued in 1966 and then modified in 1970. Moreover, Congress itself has recognized that the process of interpretation of Title VII is necessarily an evolutionary one. The Report of the Senate Committee on Labor and Public Welfare recommending passage of amendments to strengthen Title VII enforcement summed up this perception as follows:

> In 1964, employment discrimination tended to be viewed as a series of isolated and distinguishable events, for the most part due to ill-will on the part of some identifiable individual or organization .... Experience has shown this view to be false.
>
> Employment discrimination as viewed today is a far more complex and pervasive phenomenon. Experts familiar with the subject generally describe the problem in terms of "systems" and "effects" rather than simply intentional wrongs .... In short, the problem is one whose resolution

> in many instances requires not only expert assistance, but also the technical perception that the problem exists in the first instance, and that the system complained of is unlawful.

S. Rep. No. 92-415, 92d Cong., 1st Sess., 5 (1971). See also H.R. Rep. No. 92-238, 92d Cong., 2d Sess., 8 (1971).

Finally, the Court's interpretation of the Bennett Amendment of Section 703 (h) of Title VII was an extreme example of result-oriented analysis of statutory language. It ignored the plain meaning of the Bennett Amendment, which simply incorporates Equal Pay Act exceptions into Title VII, as Senator Dirksen explained prior to passage of the amendment. See Statement of Senator Dirksen, 110 Cong. Rec. 13647 (1964). To reach the result it wanted, the Court relied instead on a clearly erroneous statement of Senator Humphrey, who asserted after passage of the amendment that the Equal Pay Act allows employers to retire women earlier than men - a statement which is patently untrue, since the Equal Pay Act does not purport to deal with anything other than wage discrimination. See Manhart v. City of Los Angeles, ____F.2d____, 13 FEP Cases 1625, 1631-1632 (9th Cir. 1976). Based on Senator Humphrey's erroneous views, the Court then concluded that Section 703(h) allows the pregnancy-based discrimination at issue in Gilbert.

The Campaign believes that nothing in the explicit language or relevant legislative history of Section 703(h) supports this view.

Nevertheless, the Court's strained, result-oriented analysis makes necessary the proviso in S.995 that "nothing in section 703(h) of this title shall be interpreted to permit [sex discrimination based on pregnancy, childbirth, or related medical conditions].

In sum, then, the Gilbert decision presents enormous potential for undermining the effective enforcement of Title VII for all protected classes -- both women and minority groups. The Campaign urges quick passage of S.995, with strong supporting Committee reports repudiating the result-oriented analysis of that decision and its apparent attempt to undermine Title VII. Both are needed in order to guarantee that Title VII does not become a meaningless gesture to workers who have long been denied a fair chance to participate fully in the nation's commerce.

Statement
of
Odessa Komer, Vice President
United Automobile, Aerospace and Agricultural Implement
Workers of America, UAW
to the
Senate Subcommittee on Labor
Of the Human Resources Committee
Hearings on S. 995

April 26, 1977

MR. CHAIRMAN: My name is Odessa Komer. I am a Vice President of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. The UAW represents approximately 1,400,000 members in the United States and Canada. Women comprise an important and growing percentage of our membership. We welcome this opportunity to present our views on proposed legislation which is vital to women workers in this country.

The UAW has long called for and worked toward an end to employment discrimination on the basis of sex. A central form of sex discrimination is employers' disparate treatment of women workers on the basis of pregnancy and childbirth. Unfortunately, the Supreme Court of the United States has not understood this, and has forced us, along with the other labor unions, to seek legislation which will overturn their decision in General Electric v. Gilbert. While that decision ruled only that an employer did not violate section 703(a)(1) of Title VII by excluding pregnancy disabilities from the risks its disability insurance income plan covered, the potential reach of the decision is dangerously broader. We do not want to wait for the Supreme Court to assure us that it is unlawful to refuse to hire a woman because she might become pregnant, or to fire her once she does.

The UAW wants an end now to all forms of discrimination on the basis of sex, and we believe this bill is an important step toward achieving that goal. This bill gives Congress the opportunity to clarify that in Title VII it meant to ban sex discrimination in employment not just when women act like men, but also when they experience the biological process that differentiates them from men as well. Most disability insurance plans already cover disabilities unique to the male reproductive system, such as prostatectomies, vasectomies and circumcisions.

Pregnant workers and workers who are new mothers are, fundamentally, workers. They should not be relegated to second class citizenship in employee rights or benefits. When they are disabled, we believe they should be treated just like other temporarily disabled workers. And when they are healthy, they should be treated just like other healthy workers. This is the very meaning on nondiscrimination.

But employers would rather set pregnant women and new mothers aside in a separate category which often strips them of their rights to full employee status and the fringe benefits that status may bring. This segregation on the basis of pregnancy and childbirth rests on unrealistic, nineteenth-century stereotypes of women. It is blatantly unjust for an employer to force a pregnant woman out of work and then deny her fringe benefits which would otherwise cover her when she is disabled, just at a time when family expenses for the new baby are mounting. These forms of discrimination must stop if we are ever to see a day of equal employment opportunity in this country.

On the pregnancy disability pay issue, opponents of this bill make predictions of a crushing cost burden on employers. They also claim that women employees will malinger after childbirth in effect to get a paid maternity leave through

disability pay. Both fears are baseless, and merely mask stereotypes about women workers.

In our own collective bargaining efforts, the UAW has negotiated with many smaller employers to gain coverage in its sickness and accident plans for pregnancy disability which is identical to coverage provided for other temporary disabilities. A few examples include our agreements with CTS Corporation, Wheelhorse Corporation, Design and Manufacturing Corp., South Bend Plastics, Arvin Industries and Eltra Corporation. These are typical American companies which supply vehicle parts; they are not the giants of industry. Nonetheless, like many other companies, they have been able to include full pregnancy disability coverage without financial difficulties. They have found the cost to be an inconsequential part of the employee benefits package, even where women of childbearing age are a very large portion of the workforce.

Similarly, the UAW estimates that changing pregnancy disability coverage from the current six weeks maximum coverage which now exists in many of our contracts, including those with Chrysler, Ford and General Motors, to full coverage would require only slight increases in employer contributions. In short, the economic debacle predicted by industry is not supported by actual costs as already experienced by some companies and as actuarially predicted for others. The huge cost predictions bythe bill's opponents also apparently ignore the steadily declining birth rate and the delay of many women to enter employment until after they have borne all their children.

The charge that women employees would abuse pregnancy disability and malinger after they have recovered is also without foundation, and fundamentally insults women workers. To collect disability pay for any temporary disability, an employee must in fact be disabled. Often, as in many UAW contracts, the employer requires verification of the employee's own doctor's conclusion of disability. If the personal physician and the company physician disagree, the dispute is resolved by an independent third medical opinion. The system thus has built-in safeguards against malingering for any type of disability, be it due to pregnancy or to back muscles being wrenched.

The concern for malingering on pregnancy disability really boils down to a perpetuation of unjust stereotypes about women workers. It is bottomed on the assumption that women workers are not really serious participants in the labor force. Women who are treated as full participants in the workforce rather than as second-class employees will react and respond as full participants. Polaroid Corporation, for example, reported a marked increase in the rate of return to work among women employees after they began covering pregnancy disability just like any other temporary disability.

In exchange for their equal efforts, women employees should be entitled to equal rewards. Those rewards must include treatment of pregnancy disability just as any other temporary disability, without reducing the other fringe benefits guaranteed under contract. 1/ For this reason, the UAW urges

1/ A suggestion has been made that an addition to the bill assuring that no employee's fringe benefits will be reduced as a consequence of compliance with this legislation would be an unconstitutional impairment of contract. If this claim were true, laws enacted by Congress calling for a minimum wage, equal pay, minimum pension plan standards and many other employment standards statutes would also have been declared unconstitutional long ago.

that the Senate adopt the version of this bill presented in H.R. 6075, which will protect workers' other benefits from being reduced.

The UAW urges passage of this legislation not just for the important purposes of disability pay, but for eliminating discrimination on the basis of pregnancy for all employment-related purposes as well. While not addressing every employment discrimination ill in society, this bill is a key tool for wiping out sex discrimination on the job. In the interests of equal job rights for all workers in America, the UAW urges quick passage of S. 995.

The CHAIRMAN. At 9:30 tomorrow we will return.

[Whereupon, at 1:10 p.m. the subcommittee recessed, to reconvene at 9:30 a.m., Wednesday, April 27, 1977.]

DISCRIMINATION ON THE BASIS OF PREGNANCY, 1977

WEDNESDAY, APRIL 27, 1977

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams, Javits, and Stafford.

Staff present: Maria Landolfo, associate subcommittee counsel; Don Zimmerman, minority counsel; and John Rother, associate minority counsel.

The CHAIRMAN. We will come to order. The hearing today is the second of 3 days of hearings on S. 995, a bill to amend title VII of the 1964 Civil Rights Act, to make it clear that discrimination on the basis of pregnancy, childbirth, or related medical conditions is sex discrimination within the meaning of that act.

Among the witnesses we will hear from today is Mr. James Ware, testifying for Commissioner John Horn, of the Department of Labor and Industry of New Jersey. I am proud to say that New Jersey is one of the States which has already mandated equal treatment for women disabled by pregnancy. I am especially proud that it is among the handful which, by statute, guarantee that pregnant workers receive income protection benefits if they become unable to work because of pregnancy or related disabilities.

I will, as we get into the hearings, describe my appreciation to the other groups that will appear, but we are particularly fortunate to have one of our sponsors to start this morning's hearings, Senator DeConcini of Arizona.

We have, it says here, 25 sponsors, and I believe it is 26, with the addition of one cosponsor, Senator Gravel, last night. So we are moving in the right direction.

We are very happy you are here this morning, Senator DeConcini.

STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Thank you, Mr. Chairman. I appreciate an opportunity to testify and to compliment you and the others who cosponsored this very important legislation. And, though it may not get the attention nationally that it ought to, it is extremely important in my opinion.

I support S. 995, a bill which will amend title VII of the Civil Rights Act of 1964, to require that disability related to pregnancy and childbirth are treated for employment-related purposes, as any other temporary disability.

This legislation is needed to fill the void which the Supreme Court interpretative decision created in the law. Simply stated, this amendment to title VII is essential to the average American family, for which the expenses of pregnancy and childbirth are exorbitant.

The U.S. Supreme Court determined last December, in *General Electric* v. *Gilbert*, that a disability plan that excludes pregnancy-related coverages from its nonoccupational sickness and accidents benefits does not violate title VII. While title VII makes it illegal to discriminate in employment on the basis of sex, and while the EEOC's guidelines specifically state that payment under a sick leave plan, "shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities," the Court found insufficient congressional authority to support the EEOC guidelines. The Court failed to give the guidelines the force of law. The passage of S. 995 will provide assurance that the work of the Equal Opportunity Commission, the Federal agency that was set up to administer title VII, is of prime importance for the preservation of equitable employment practices, particularly as to women.

Obviously, the Supreme Court, in reaching the *General Electric* v. *Gilbert* decision, determined that it was not the intent of Congress to include pregnancy-related disabilities as unlawful discrimination based on sex.

Enactment of this bill will clarify what I believe to be the original intent of the Congress—and you know, Mr. Chairman, better than I do—and follow the Court's indication that legislation is necessary to end such discrimination.

Also, several maternity leave cases are slated to come before the Court next fall. It would be unfortunate if the Court applies the *General Electric* precedent to them. Passage of S. 995 will moot these cases.

S. 995 will benefit the average American family. The *General Electric* precedent that allows exclusion of pregnancy from disability and income protection plans in effect is saying that only "the well-to-do" should be able to have children. 70 percent of the 35 million women who work do so out of economic necessity, and they are likely to be working when they become pregnant.

To many of these women and their families, the absence of a pregnancy disability policy means loss of income and, frequently, the loss of employment.

Thus, the Supreme Court, by its decision, has created a situation where it may be to a woman's fiscal advantage to terminate her pregnancy.

I would like to point out that this bill does not mandate employers to provide disability and income protection insurance; only that if such protection is afforded employees, pregnancy-related disabilities will be treated as all other disabilities. In light of this, Mr. Chairman, I am taking the liberty of suggesting that this subcommittee seriously

consider amending S. 995, so that those employers who now provide disability plans not be allowed to reduce the benefits or the compensation provided to any employee in order to comply with the provisions of title VII, as amended by this bill.

The House bill relative to amending title VII, H.R. 6075, contains a similar provision. I have included for the record such an amendment for the subcommittee's consideration, and it should be before you.

I urge members of this committee to act favorably on this bill, which will stop employers from discriminating against mothers.

And I compliment you, Mr. Chairman, for these hearings and offer my support in any manner whatsoever to see passage of this important legislation.

Thank you.

[The amendment referred to follows:]

80-785 O - 77 - 12

95th CONGRESS
1st SESSION

S. 995
H. R. _____

IN THE SENATE OF THE UNITED STATES

Referred to the Committee on _____ and ordered to be printed.

Ordered to lie on the table and to be printed.

AMENDMENT

Intended to be proposed by Mr. DeCONCINI

(Insert title of bill below)

to S. 995, a bill to amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy,

viz: At the end of the bill add the following:

Sec. 2. The amendment made by this Act shall be effective upon the date of enactment, except that an employer who, either directly or through contributions to a fringe benefit fund or insurance program, is providing benefits under a fringe benefit program which is in violation of title VII of the Civil Rights Act of 1964, as amended by this Act, shall not, either directly or by failing to contribute adequately to the fringe benefit fund or insurance program, reduce the benefits or the compensation provided to any employee in order to comply with the provisions of such title VII, as amended by this Act.

Amdt. No.

The CHAIRMAN. Well, that support is important. We appreciate it, and will call on you as we move forward in the legislative process here on this bill. Your help will be most important. Thank you very much.

Senator DECONCINI. Thank you, Mr. Chairman. I appreciate the time.

The CHAIRMAN. Good morning, Mr. Ware. I introduced you before, at the beginning here. We are delighted you are here. I know how busy the Commissioner is, and he is well-represented, I know, with your appearance here.

We welcome you and look forward to your statement. We are very proud of the situation that you are going to describe, as it is in New Jersey.

STATEMENT OF JAMES A. WARE, ASSISTANT COMMISSIONER, NEW JERSEY DEPARTMENT OF LABOR AND INDUSTRY

Mr. WARE. Thank you, Senator.

My name is James A. Ware. I am the assistant commissioner of the New Jersey Department of Labor and Industry, representing John J. Horn, our acting commissioner.

I would like to express my appreciation to the members of this subcommittee, and especially to Senator Williams, for the opportunity to explain the New Jersey temporary disability benefits program, which offers wage protection to workers unable to work because of nonwork-connected disabilities and, in particular, its enlightened treatment of pregnant claimants.

New Jersey has a unique tripartite disability insurance program which protects practically all workers who are covered by the State's unemployment compensation law.

The State plan includes all employed workers except those whose employers have exercised their option to establish private plans. Such employers provide their own insurance.

Private plans require approval by the Division of Unemployment and Disability Insurance. Approval is granted only if these plans are no more restrictive in eligibility requirements than the State plan, provide benefits at least equal to the State plan in amount and duration and do not select risks adverse to the State plan. Roughly 2½ million workers are in the State plan and ¾ million are in our private plan.

Disabled unemployed workers—those who have not been in employment for 2 weeks or longer—receive benefits under the disability during unemployment program.

No disability benefits are charged against the State's unemployment insurance fund. The State disability benefits fund, established in 1948, with $50 million in worker contributions withdrawn from the unemployment trust fund, is maintained by depositing into it State plan employer and worker contributions, interest and earnings on investments, and fines, penalties and assessments collected under provisions of the temporary disability benefits law.

All State plan benefits are paid from this fund. A small percentage is allocated to administrative costs. Currently, the balance in the fund is approximately $70 million.

Worker contributions are one-half of 1 percent of the first $5,800 of earnings in the calendar years. The present employer tax against the

$5,800 limit for each employee can vary from 0.2 percent to 0.75 percent.

New Jersey treats pregnancy as a compensable disability, but limits benefits for regular pregnancies to the 4 weeks immediately before and the 4 weeks immediately after the termination of pregnancy.

As a result of formal opinion No. 1–1975, issued by the attorney general of New Jersey in January of 1975, claims based on medical complications of pregnancy are payable as for any other claims for disability, that is, they may be payable for as many as 26 weeks. This ruling applies not only to State plan, but also to private plan and disability during unemployment claims.

I thought you would be interested in some statistics I have which can give a more graphic picture of the scope and features of our program.

The benefits paid under our State plan in 1974 were $68.6 million; private plans paid out $69 million. In 1976, it grew to $70.1 million for our State plan, and $75 million for our private plan.

Getting down to the pregnancy claims, in 1974, we had 8,056 pregnancy claims, and in 1975, 7,683 pregnancy claims, and in 1976, 5,944 claims.

In terms of benefits paid for pregnancy, in 1974, we paid $3.6 million under State plan and $4.9 million under disability during unemployment. In 1976 we paid $7.3 million under disability during unemployment and $3.3 million under the regular State plan program.

The average duration of all State plan claims in 1974 was 8.9 weeks; in 1976, 8.8 weeks. The average duration of State plan pregnancy claims in 1974 was 7.1 weeks, and in 1976, 7.3 weeks.

Average duration for pregnancy claims in the disability during unemployment program for the same periods was 7.6 weeks in 1974 and 8.6 weeks in 1976.

These figures do not include private plan information, which we are not able to compile at this time.

The average weekly benefit amount for our State plan in 1974 was $70; disability during unemployment, $67. In 1976, the State plan was $79 and disability during unemployment, $88.

The average weekly benefit amount per pregnancy claim in 1974 was $64 under our State plan and $65 under our disability during unemployment. In 1976, $76, and in 1976 for disability during unemployment, $72.

This concludes my formal statement, but I would like to add, Senator, that we are proud in New Jersey that we have had this program in existence since 1948, and it has afforded us the opportunity to insure the outlined attachment of our female workers to our labor force.

The CHAIRMAN. And the State's temporary disability fund was started with unemployment compensation fund moneys at the beginning, is that right?

Mr. WARE. Yes, it is, Senator.

The CHAIRMAN. And now it is a regular withholding employer-employee contribution to the temporary fund?

Mr. WARE. Yes, it is, and there is a balance of $70 million in that fund.

The CHAIRMAN. Evidently, the limitation of 8 weeks has worked out without problems; is that right?

Mr. WARE. That is right, Senator. There are no problems at all.

The CHAIRMAN. And how does it work when the pregnancy is complicated for some reason? Upon whose medical certification is compensation allowed to extend beyond the statutory 8 weeks?

Mr. WARE. If there is a problem or complications, we treat it as a straight disability, and the claimant can collect up to 26 weeks, and it is based on the claimant's own doctor's statement.

The CHAIRMAN. Well, that must lead to a lot of abuse, if what I heard around here yesterday has any foundation in fact.

Mr. WARE. Well, if there are any problems at all, we also have the right—or any questions—we have the right to refer the claimant to a doctor of the State's own choosing.

The CHAIRMAN. Is that done frequently?

Mr. WARE. No, it is not, Senator. Usually, pregnancy is something that is clearly discernable, and if there are problems, there are hospital records, usually, to support the doctor's statement.

We have found very little problems in that area.

The CHAIRMAN. I was amazed yesterday. One of our members here thought that this was going to lead to the greatest fraud and abuse since Watergate. It has not worked that way in New Jersey?

Mr. WARE. No, Senator. It has been in existence since 1948, and we have never had any problems in that area.

The CHAIRMAN. I did not join the clamor of apprehension yesterday, I will tell you, and it would seem to me that, just as it worked in New Jersey, that we need fear not that we are going to have a lot of new criminals, pregnant women, defrauding funds, and private plans.

Mr. WARE. As we note, we have the State plan in New Jersey, which is administered by the State government; we also have private plans, administered by private insurance carriers, and they have to meet the same requirements. And there is, to my knowledge, no problem in either area, since 1948, either on the private side or on the State side.

The CHAIRMAN. How long a period now has this been in operation?

Mr. WARE. Since 1948; that makes us 29 years old.

The CHAIRMAN. Well, that is the most compelling testimony, from experience, that we need not fear extravagant and costly fraud and abuse here.

This inclusion of pregnancy has served well, both with its double aspects, private plans, where companies wanted to go with their own plan, and within the State plan, where companies did not have a plan; is that right?

Mr. WARE. That is right.

The CHAIRMAN. I am greatly appreciative to you, to Commissioner Horn, and to the State of New Jersey, for coming on with this kind of experience, 29 years' coverage of pregnancy without problems, and evidently, not costly in any prohibitive range.

Mr. WARE. Definitely not.

The CHAIRMAN. Good. Thank you very much.

Mr. WARE. Thank you, Senator.

[Information referred to follows:]

Temporary Disability Insurance Statistics

Statistics: All Claims - Benefits Paid & Number of Claims (Fiscal Year Basis)

Benefits Paid	State Plan	Disability During Unemployment	Private Plans
1974	$68.6 million	$10.9 million	$69 million
1975	$69.5 million	$11.7 million	$75 million
1976	$70.1 million	$14.9 million	$75 million
Number of Claims			
1974	110,563	19,096	225,000 (estimate)
1975	103,312	19,234	230,000 (estimate)
1976	100,074	23,721	220,000 (estimate)

Statistics: Average Duration, Pregnancy Claims, and Average Weekly Benefits*

Pregnancy Claims	State Plan	Disability During Unemployment
1974	8,056	9,925
1975	7,683	8,233
1976	5,944	11,825
Pregnancy Benefits Paid		
1974	$3.6 million	$4.9 million
1975	$3.7 million	$4.9 million
1976	$3.3 million	$7.3 million
Average Duration All Claims		
1974	8.9 weeks	8.6 weeks
1975	9.1 weeks	8.5 weeks
1976	8.8 weeks	7.1 weeks
Average Duration Pregnancy Claims		
1974	7.1 weeks	7.6 weeks
1975	7.1 weeks	8.6 weeks
1976	7.3 weeks	8.6 weeks

	State Plan	Disability During Unemployment
Average Weekly Benefits All Claims		
1974	$70	$67
1975	$74	$72
1976	$79	$88
Average Weekly Benefits Per Pregnancy Claim		
1974	$64	$65
1975	$68	$69
1976	$76	$72

*Private Plan information is obtained from insurance companies, self-insurers, and associations in accordance with Regulations pertaining to the Temporary Disability Benefits Law. These Regulations do not currently require information in regard to pregnancy benefits, average duration of claims, or average weekly benefits.

The CHAIRMAN. Fred T. Thompson, chairman of the Labor Relations Committee of the EIA's Industrial Relations Council.

We appreciate your appearance this morning, Mr. Thompson, and look forward to your testimony.

STATEMENT OF FRED T. THOMPSON, CHAIRMAN, LABOR RELATIONS COMMITTEE, ELECTRONIC INDUSTRY ASSOCIATION INDUSTRIAL RELATIONS COUNCIL

Mr. THOMPSON. Mr. Chairman, my name is Fred Thompson. I am chairman of the Labor Relations Committee of the Electronic Industry Association's Industrial Relations Council.

I am pleased to have this opportunity today to present the views of the EIA on S. 995.

The Electronic Industries Association is a national organization, representing the electronic manufacturers of the United States. Its 275 member companies range from manufacturers of the smallest electronic part to major corporations that design and produce the most sophisticated systems used in our defense and space programs, as well as for a variety of commercial areas.

Our members account for over 80 percent of the $35 billion electronic market, and are responsible for the employment of over a million people.

The EIA supports fully the goal of equal employment opportunity for all. However, we do not feel the legislation at issue today promotes our mutual goal.

Further, we feel the provisions of S. 995 are at variance with the philosophy upon which disability benefits are based, and the collective bargaining processes established by the National Labor Relations Act.

Traditionally, the purpose of disability benefits were to enable the employee to cope with unexpected or unplanned interruptions in their work schedules, resulting in a loss of compensation.

We feel that mandatory extension of pregnancy disability benefits, for a pregnancy that may be voluntary as well as unexpected, breaks from the overriding philosophy upon which these benefits are normally based.

Further, we feel that the passage of S. 995 would be unnecessarily discriminatory against those employees, male or female, who cannot or choose not to take advantage of the benefit, for whatever reason.

Since these employees already help subsidize much of the medical costs associated with pregnancy, to call for the mandatory extension of benefits for pregnancy disability leave compounds the inequity of the circumstances.

During 1976, a large number of companies in the electronics industry concluded major labor negotiations, and the issue of pregnancy disability benefits was increasingly a subject of these negotiations.

The extension of fringe benefits such as pregnancy disability benefits has always been a factor left to the collective bargaining procedures under the NLRA.

We feel that the enactment of separate legislation making pregnancy disability benefits mandatory unnecessarily intrudes into the collective bargaining sphere, and is just one more limitation placed on the negotiating freedom of both the employer and the employee alike.

This act would establish a precedent which could lead to further Federal determinations of the distribution of personal compensation.

The passage of S. 995 would result in the renegotiation of the major labor contracts our industry has recently negotiated. Because employers have only limited resources they can commit to fringe benefit packages, this renegotiation could well result in the loss of benefits in other areas which assist the total work force, including women.

Any legislation which is passed in the area of employee benefit plans should exempt current collective bargaining agreements and contractual relationships between employees and employers.

It is the view of the Electronic Industries Association that most companies already extend benefits to cover virtually all of the medical expenses associated with the pregnancy, as well as the costs of any complications which arise therefrom.

These cost factors are amongst those on which an employer can presume some predictability. However, by extending benefits to cover personal compensation for absence due to pregnancy, the legislation introduces a new level of unassessability to the total cost of the benefit program.

As is evident by the recent hearings in the House of Representatives on similar legislation, a widely varying array of numbers are being submitted as indicative of the average length of pregnancy leave, greatly impacting estimates of the cost of implementing the subject benefit plans.

We prefer not to speculate on the total cost of implementing S. 995, but would like to submit for your consideration those factors we feel should appropriately be assessed in such an estimation.

To begin with, there is the direct cost to industry, lying primarily in increased premiums on benefit plans. According to an assessment by Traveler's Insurance Co., the addition of 6 weeks of pregnancy disability benefits to those plans which currently exclude such payments, would mean an average of 13.2-percent increase in premiums.

Further, allotting for such benefits over a 26-week period would result in a 26-percent increase in premiums, to be paid not only by the company, but by all employees. This analysis is based on the assumption of a 40-percent female work force.

Because the electronics industry utilizes an almost 60-percent female work force, these increases would likely be higher in our particular instance.

At this point, it is also relevant to emphasize another very direct cost, and that is the cost of loss of productivity. None of our members denies pregnancy leave. We surely recognize the difference in productivity between an experienced worker and a temporary replacement. And frankly, we look forward to an early return of those experienced workers who are out on leave of any kind, including pregnancy.

Unfortunately, and as you know, there is data available such as supplied in the Gilbert transcript, that in pregnancy leave situations, 40 to 50 percent of the people involved do not return from pregnancy leave, and industry is faced with a difficult and expensive task of screening and ultimately finding permanent replacements. And this cost element looms much larger in 1977 than many people would imagine.

In the end, the widely divergent perspectives on the average length of pregnancy disability are meaningless with regard to any one individual's leave of absence due to pregnancy.

One person may be actually disabled for only 1 day or 2, while another's disability may in fact extend for many weeks, even months.

The EIA feels that differences of opinion between the employer and the employee utilizing such benefits are inevitable.

In such instances, who is to be the final determinant of an appropriate length of time? As an amendment to title VII of the Civil Rights Act of 1964, the primary enforcement agency for S. 995 would be the EEOC.

In this regard, the Electronic Industries Association would like to raise several concerns. First, the method of operation utilized by the EEOC since its inception would seem to be inapplicable to controversies which would arise over the subject legislation.

We would submit that the field operatives of the Commission would be unqualified to determine the validity of either claim in a dispute on the duration over which pregnancy disability benefits should be extended.

Second, we do not believe the EEOC is administratively designed to cope with the controversies which would arise out of the mandatory extension of pregnancy disability benefits under the Civil Rights Act.

Because EEOC is facing at least a 3-year backlog in its case load disposition, we feel that any broadening of its scope of cognizance at this point in time will only serve to further the difficulties that that agency is having in effecting its current congressional mandate.

Thus, the costs of title VII litigation would increase not only for industry, but for the Government, as well.

Because of the growing trend of women joining the work force, a result of both changing roles and affirmative action, costs will inevitably rise over those estimates set forth on the basis of current statistics.

Thus, those companies taking positive action to employ a proportional number of women in their work force will be affected more dramatically by the premiums resulting from such benefits, than would companies who are delinquent in their affirmative action efforts.

Further, because fringe benefit plans are either fully or partially based on employee contributions, there would be an additional cost which would be incurred by all employees, not just those eligible for pregnancy disability benefits.

The cost to employees would result primarily from having to pay higher premium rates to cover the cost of a leave for a disability which affects a limited portion of the work force.

In addition, because companies have only limited resources which can be expended on the employee benefit programs, benefits in other areas which affect all employees, including women, might have to be limited. Thus, employees might be denied benefits which would be more pertinent to their particular circumstances.

I think one should also review this legislation from the perspective of the soaring cost of health programs throughout our country. If the administration and Congress are serious in their efforts to reduce or hold the line on increasing health costs, then passage of this bill, which guarantees increased costs—no matter whose figures you assess—is a step in the wrong direction.

Also, we would like to call to your attention an unfortunate result of the enactment of the Employee Retirement Income Security Act of 1974. Since passage of ERISA, there have been in excess of 5,035 pension plans terminated, due largely to the inability of the employers to deal with the administrative burden and additional cost of compliance with the provisions therein.

There can be no estimate of the number of retirement plans which were never initiated as a result of this legislation. By legislating the benefits which must be paid under employee benefit plans, Congress is in essence telling the employer and the employees how their benefit funds will be allocated. Thus, the employer who offers such benefits to their employees is at a distinct disadvantage.

It is unrealistic to presume that the sum of the foregoing costs will not result in the otherwise unnecessary increases in the cost of the product for the consumer, further fueling inflationary forces.

The extension of such benefits will result in more capital being tied up in providing employee fringe benefit packages, leaving fewer funds available for capital investment, which, in the end, means jobs.

Mr. Chairman, the EIA is here to present a reasoned position against passage of S. 995, not to detract from the goal of equality in the workplace for both sexes, nor to criticize the equal employment goals of the proponents.

However, after a review of the relevant testimony in the House we are disturbed that certain proponents have presented arguments based not upon substance but emotion.

For example, there was much made of the possibility that pregnant females are laid off automatically for being pregnant, and never recalled. Or, some have stated that medical coverage for other causes ceases during a pregnancy leave, or that all seniority is lost.

The EEOC already has the jurisdiction and authority to move against such practices, and in any event, the EIA supports the EEOC in this regard.

In summary, what we oppose is the enactment of a level of benefit that introduces a significant cost factor and without regard to the interest of the parties, in arriving at a benefit level satisfactory to both.

Thank you for the opportunity to present our views.

The CHAIRMAN. Thank you, Mr. Thompson.

Senator JAVITS. Mr. Chairman, I just wanted to make one observation, if I may.

The CHAIRMAN. Yes.

Senator JAVITS. I heard with interest the statement about the pension plans. Of course, no account is taken of that statement, either for the fact that there are some hundreds of thousands of those plans, and that 5,000 is a small percentage; and second, that many of those plans were not only weak but highly inequitable, and the worker was contributing with no real hope of ever getting anything back.

The CHAIRMAN. I was going to comment the same way. One of the reasons we passed ERISA, we saw a lot of plans out there which were just a hollow promise. And therefore, we felt an obligation to say if you are going to have a plan, it is going to be real. And a lot have gone out of business because they were not real; they were hollow.

But that is not what we are here for, and I realize why you said that—here is another cost.

The experience has been not nearly as costly, as difficult, as loaded with abuses as some have suggested. This is nothing pioneering, the coverage of pregnancy under temporary disability insurance programs, whether self-insured or by carrier. We have had abundant testimony that there are not any problems here in defining the fair period of disability; no greater problems than there are for any other kind of physical disability that is covered.

I know that those who have not embarked upon this have apprehensions; but those who have, as the State of New Jersey has for 29 years, have not found the problems that some feel we are walking into.

Mr. THOMPSON. I understand.

The CHAIRMAN. And on the question of the appropriate period for coverage, this is basically a medical question. While the State of New Jersey has an 8-week period, and other experience tells us that is approximately the period most pregnancy cases will present in terms of disability from employment. if there is any extension beyond that, it is a medical question of whether a complication requires an extension.

I just do not think that there is this built-in major problem that you see.

Mr. THOMPSON. Well, we had considered the fact that in fact, during some pregnancy disabilities, the disability does not run nearly to 6 weeks, for example, or to 8 weeks, but in other cases, there are not only bona fide pregnancy disabilities per se, but complicating factors. And many of our member companies cover those complicating factors; for example, a pregnancy and a subsequent hysterectomy which disables that person for a longer period of time. And we are not in opposition to this type of disability plan, but we do feel that there would be some problem as to arriving at who is right on the question of disability.

Now, if the Senate is considering limiting the period of disability under this bill, that may be a compromise that some of industry could accept—and I cannot speak for the EIA on that particular question.

The CHAIRMAN. This will be considered. Thank you very much.

Mr. THOMPSON. Thank you.

The CHAIRMAN. Our next speaker is from the New York Senate, Hon. Carol Bellamy, New York State Senator.

Senator Javits?

Senator JAVITS. Senator Bellamy, we welcome you to the committee, and especially in such a cause which interests you both as a legislator and as a woman who has taken active leadership in New York in the effort to guarantee equality in the workplace for all women.

I would like to present you to the committee as one of our fine legislators who is interested enough to come down to try to help us in your own testimony with the important bill which we have.

May I also say that right now, I have a markup on the clinical laboratories bill, downstairs. I will stay as long as I can, but I hope you will forgive me if I have to leave.

Thank you, Senator.

The CHAIRMAN. We are very pleased to have you here, Senator Bellamy, and look forward to your statement.

STATEMENT OF NEW YORK STATE SENATOR CAROL BELLAMY

Senator BELLAMY. Thank you very much, Senator Javits, Senator Williams. I appreciate the opportunity to appear before you.

I thought what I would like to do is speak briefly to the situation in the State of New York at this time, as it may reflect on the topic, and then briefly, the reasons I believe the need for the legislation to be considered.

The CHAIRMAN. What is your constituency, by the way?

Senator BELLAMY. I represent, I would say, the best district in New York. It is a portion of Manhattan and a portion of Brooklyn; it is parts of New York City.

The CHAIRMAN. Thank you.

Senator JAVITS. Really, a very central part, isn't it, Senator?

Senator BELLAMY. That is right; most of the bridges, actually.

Senator JAVITS. With a few people here and there.

Senator BELLAMY. Does an employer discriminate by disallowing two employees disabled by pregnancy or childbirth wage maintenance equivalent to what is provided to other employees disabled by non-occupational illness or injury?

The U.S. Supreme Court and New York State's highest court, the court of appeals, recently reached opposite conclusions on this question.

The court of appeals held 5 to 2 that pregnancy is a disability under State law and that pregnant employees in private industry are entitled to wage maintenance—the court had already required public employees to provide pregnancy disability benefits.

The Supreme Court, in the General Electric case held 6 to 3 that Federal law did not require such compensation.

The Supreme Court case, as obviously you are aware, involved a class action suit against the General Electric Co. by 43 female employees of the company's Salem, Va., plant on behalf of the company's 100,000 female workers.

The plaintiffs argued that exclusion of pregnancy disability benefits from the company sickness and accident insurance plan violated title VII of the Civil Rights Act of 1964.

The majority opinion of the Court held that refusing pregnancy pay is not inconsistent with the law because pregnancy is a unique condition; and that refusal to cover it is not a refusal to cover people because of their sex, but instead a refusal to cover a special condition.

The Supreme Court noted that its decision does not prevent unions from seeking pregnancy coverage through collective bargaining, nor does it bar future legislation by Congress.

The New York State Court of Appeals found that New York's human rights law, which is substantially identical with the Federal law with respect to job discrimination, does indeed require private employers to furnish disability benefits for pregnancy.

The court of appeals based its reasoning on its own decisions in the past and did not explicitly confront the Supreme Court's decision.

The Supreme Court decision was a case of construction of Federal statute and the court of appeals decision of New York statute.

As the majority opinion in the court of appeals decision noted, "the determination of the Supreme Court while instructive is not binding."

The New York Court of Appeals case involved a suit brought by the New York State Human Rights Division on behalf of three female employees of American Airlines, Brooklyn Union Gas Co., and Crouse-Irving Memorial Hospital against their employers for denial of pregnancy disability benefits.

The plaintiffs' suit was based on violation of the State's human right law. The defendents argued that the State's disability law, which required that all employers provide insurance coverage for off-the-job injuries and illness, specifically excludes pregnancy coverage; therefore, provision of pregnancy disability benefits is optional.

The majority opinion of the court of appeals ruled that the two laws establish minimum standards and that whichever statute imposes the greater obligation is the one which becomes operative. The court found the human rights law to be the operative statute. The court noted in its opinion, and I quote from the opinion, that

> The very purpose of the human rights law was by blanket description to eliminate all forms of discrimination * * * and that the legislature had not exempted the disability law from its coverage.

On the basis of the New York court's decision, all employers subject to the human rights law—those with four or more employees—will be required to provide wage maintenance for pregnancy disability to the same extent as provided for all other types of disabilities under the disability benefits law.

Under the disability law, an employer must pay a medically-certified disability worker one-half of his or her weekly salary, up to $95 for up to 26 weeks.

The court's decision does not mean that a female employee could collect merely because she is pregnant. She would have to provide medical proof by a physician authorized by the workmen's compensation board that she was totally disabled and unable to work.

The State division of human rights claims their studies indicate the average length of pregnancy disability is 6 to 8 weeks.

The New York State Disability Law requires with few exceptions all private employers contribute the cost of providing disability benefits in excess of the contribution collected by the employee. The employee contribution is set at one-half of 1 percent of the weekly wages; not to exceed 30 cents per week.

The employer may insure payment of benefits by contribution to the State insurance fund, obtaining self-insurance approval from the chairman of the workmen's compensation board, or insuring with any authorized private stock or mutual insurance company.

While the New York Court of Appeals decision has apparently judicially resolved the contradictory commands of the State's disability benefits law and its human right law, as a practical matter, the contradiction remains.

Pregnant women now find themselves in the position of being judicially guaranteed equal disability benefits but actually denied equal access.

The workmen's compensation board, with the concurrence of the Division of Human Rights, maintains that it has no statutory authority to administer pregnancy disability benefits.

The workmen's compensation board is not requiring employers to provide pregnancy benefits and claims, and it will not until the State legislature gives the board such authority.

The board is presently advising those denied such benefits that their only legal recourse is to sue their employer under the human rights law. The division of human rights has taken the position that they will enforce the court decision on a case by case basis.

The New York court's finding, based on its human rights law, raises the issue of whether the State wants to treat those employees not covered by the human rights law differently with respect to pregnancy disability benefits. Presently, employees employed by an employer with less than three employees have no legal right to pregnancy disability benefits.

It is unclear what effects these contradictions will have on implementing the court's decision.

There is no data presently in our State on how many employers provide pregnancy disability benefits voluntarily, or if such provisions are equivalent to benefits provided for other types of disabilities.

The Division of Human Rights maintains that they must be equal or they would be discriminatory. There is also no firm indication of how employers will respond to the court's decision—whether they will voluntarily implement a pregnancy disability benefits package, or take their chances and wait until an employee sues.

However, the division of human rights does report compliance and cooperation by many employers. Others threaten to litigate, and two motions to reargue are pending in the court of appeals.

The main controversial issue in providing pregnancy benefits in our State—and I suspect before all of us—has been the question of costs.

Estimates range from $13 to $100 million annually in the State, with variations resulting from different assumptions regarding benefit periods, benefit payments, and the number of claims.

Some representatives of business in New York have argued against implementation of the court of appeals decision on the basis of the anticipated costs. Their cost estimates are based on figures developed by New York State's Workmen's Compensation Board in October 1974, which provided that it would cost approximately $79 million in claims and $90 million in premium costs on an annual basis.

This very same workmen's compensation board has since warned that these estimates are too high because they assumed an unrealistic benefit period, 26 weeks, and they did not consider that some employees are already receiving pregnancy disability benefits. Such caveats do not appear to be factored into industry's cost estimates.

Business and industry are fearful that women will take the full 26 weeks allowable under New York State law. It is difficult to predict what the actual usage would be. Of the States mandating disability benefits, only Hawaii allows compensation for the same benefit period as all other disabilities.

Unfortunately, Hawaii does not monitor benefit periods by class of disability. Interestingly, the chief of the Hawaii Disability Benefits Bureau claims that there has not been a significant increase in the cost of insurance attributable to the inclusion of pregnancy coverage.

According to the Prudential Insurance Co., a major writer of disability benefit insurance, their experience in Hawaii has been that women take 4 weeks before and 4 weeks after delivery, but rarely more than 8 weeks.

According to the New York State Medical Society, a disability claim of up to 12 weeks for a normal pregnancy would be reasonable.

The usual period of disability after birth is approximately 6 to 8 weeks. The Medical Society testified before the New York State As

sembly Labor Committee in 1975 that while pregnancy disability is more subjective than many other disabilities, this should not be interpreted to mean that physicians and patients will collaborate to extend leave beyond an actual period of disablement.

The division of human rights estimates, however, that a 6- to 8-week benefit period is average and predictable. And we have heard from New Jersey. I have mentioned in my testimony that their figures indicate an average claimant uses 7.7 weeks.

On the basis of our State's division of human rights estimates, it has been suggested that costs might run from about $21 million in claims and $24 million in premium costs, to $38 million in claims and $44 million in premium costs, to $38 million in claims and $44 million in premium costs on an annual basis.

The State division discounts the argument that this added cost would drive business out of the State because 30 States already have laws or rulings requiring that when an employer offers disability benefits, this must also include benefits for pregnancy.

Having presented the foregoing statistical information and information about our State, I would like in conclusion to briefly reflect on why the need for Federal legislation to guarantee equal treatment of the pregnant worker is so painfully clear and why pregnancy discrimination is a major obstacle to equal opportunity for women.

In order to provide equal opportunity for women in the labor market, it is essential to include employer rules relating to pregnancy and childbirth within the prohibitions against sex discrimination.

Without the protective umbrella of antidiscrimination mandates, employer can, as they have done historically, refuse to hire pregnant women, fire them, force them on long, unpaid leaves of absence, wipe out their accrued seniority, sick leave, and sabbatical entitlements, and deny them medical insurance benefits.

Further, the impact of employer pregnancy rules is not limited to pregnant women workers; it might extend to any employer decision based on the possibility that a woman might become pregnant.

Most women workers can become pregnant, and this very fact influences many employer decisions. Woman's expected role as first the bearer and then the rearer of children has been the prime generator of the widespread employer discrimination against women workers that has necessitated legislative action on gender discrimination.

Employers have refused to train women for management positions on the ground that women might become pregnant. Without a stimulus to re-examine old notions, employers assume that women want to, or believe that women should, spend full time taking care of their children.

Thus, employers view these discriminatory policies as fully justified. Such customary employers beliefs blind them to the reality that a large and ever-increasing percentage of women with children are employed outside the home.

In fact, one-third of all mothers with preschool age children are in the work force, and as is the case with pregnant women, many of them work out of dire economic necessity.

In 1974, 32.4 percent of mothers with children under 3 years old were in the work force, as were 42.3 percent of mothers with children aged 3 to 5, and 53.8 percent of mothers with children aged 6 to 17.

Two-thirds of the 36 million women in the labor force work because of pressing economic need; either they are single, widowed, divorced or separated, or they have husbands earning less than $7,000 per year.

According to the Census Bureau, women appear to constitute the largest identifiable group of poor people in the Nation.

The employer view that mothers and expectant mothers are not or should not be attached to the labor market and therefore may be deprived of standard employment benefits offered other workers is not only inaccurate and unfair to women workers; it can also have severe consequences on the economic well-being of women's families.

The bind in which pregnant women find themselves was well described in a 1973 report, Hayden, Punishing Pregnancy: Discrimination in Education, Employment and Credit, Women's Rights Project, American Civil Liberties Union:

> First, a woman whose income from employment is vital to her own survival or that of her family is laid off for several months on an involuntary maternity leave. But if she looks for another job, she runs full-tilt into the wall of prejudice which decrees that pregnant women are unemployable.
>
> Then, if she turns as a last resort to unemployment benefits—to which she may have been contributing during her years as a wage earner—she is sent away because pregnancy is deemed to render her "unavailable" for employment.

This description assumes that ultimately the woman can return to her job. But employers still fire pregnant women outright. And even if a woman is lucky enough to retain her job, she may find that just when her expenses increase, her income decreases.

She receives no disability benefits to compensate for her loss of income, and she will probably find that her health insurance covers only a fraction of her medical and hospitalization costs.

Finally, she may find that she has no guarantee of returning to her former position but must take a lesser one, often at a sacrifice of all or some of her accumulated seniority.

The result of such deep and pervasive discrimination is to increase the number of women who are only marginally attached to the labor force, for women exposed to treatment which makes clear their low status in the work force sometimes fulfill the employer prophecy: they do lose interest in pursuing advancement in gainful employment because the odds agains them seem overwhelming.

Since a woman's childbearing years are also those in the careers of working people when they most frequently are establishing themselves in the labor market, developing skills, and laying the foundation for advancement, discrimination based on the view that pregnancy and work force membership do not mix can have devastating lifelong effects on working women.

As one New York court has observed in a case challenging mandatory unpaid leave for pregnant women, and I quote:

> One realizes with a shock what so many women now proclaim: old accepted rules and customs often discriminate against women in ways that have long been taken for granted or have gone unnoticed.

The refusal to grant women disabled by pregnancy benefits to which other disabled employees are entitled is just such a custom, and the New York Court of Appeals was correct to bring it to an end.

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The speedy adoption of the legislation before you is crucial in the battle to eradicate effects of sex discrimination against women workers. I urge its passage.

The CHAIRMAN. Thank you.

[Applause.]

The CHAIRMAN. Your statement of strong support will be a significant factor, moving us toward passage of this legislation.

Senator JAVITS. Senator Bellamy, I wanted to thank you too for your testimony. I think what is the most significant to me about it is the permanent sociological effect. Now, if we are going to have other States do what New York did, we are going to be in an even worse mess than if we exercise the right of Federal preemption and Federal uniformity.

I think, therefore, you have not only made a very good case for the passage of the legislation, but also for prompt action, before we get embroiled in a lot of contrary, conflicting State decisions.

So I think your testimony is very helpful and also very useful in its perception of the real difficulty of undoing the ages-old traditions about women which are completely irrelevant to the modern scence.

Thank you very much.

Senator BELLAMY. Thank you.

The CHAIRMAN. Thank you.

[The prepared statement of Senator Bellamy follows:]

STATEMENT OF NEW YORK STATE SENATOR CAROL BELLAMY IN SUPPORT OF LEGISLATION AMENDING TITLE VII TO PROHIBIT DISCRIMINATION AGAINST PREGNANT WORKERS

APRIL 27, 1977

Does an employer discriminate by disallowing to employees disabled by pregnancy or childbirth wage maintenance equivalent to what is provided to other employees disabled by non-occupational illness or injury? The United States Supreme Court and New York State's highest court, the Court of Appeals, recently reached opposite conclusions on this question. The Court of Appeals held 5 to 2 that pregnancy is a disability under State law and that pregnant employees in private industry are entitled to wage maintenance--the Court had already required public employees to provide pregnancy disability benefits. The U.S. Supreme Court, in General Electric Co. v. Gilbert, et al, held 6 to 3 that federal law did not require such compensation.

The Supreme Court case involved a class action suit against the General Electric Company by 43 female employees of the Company's Salem, Virginia plant on behalf of the company's 100,000 female workers. The plaintiffs argued that exclusion of pregnancy disability benefits from the company sickness and accident insurance plan violated Title VII of the Civil Rights Act of 1964. The Act makes it unlawful for an employer..."to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such an individual's race, color, religion, sex, or national origin." The majority opinion of the Court held that refusing pregnancy pay is not inconsistent with the law because pregnancy is a unique condition; and that refusal to cover it is not a refusal to cover people because of their sex but instead a refusal to cover a special condition. The Supreme Court noted that its decision does not prevent unions from seeking pregnancy coverage through collective bargaining nor does it bar future legislation by Congress.

The New York State Court of Appeals found that New York's Human Rights Law which is substantially identical with the federal law with respect to job discrimination, does indeed require private employers to furnish disability benefits for pregnancy. The Court of Appeals based its reasonings on its own decisions in the past, and did not explicitly confront the Supreme Court's decision. The Supreme Court decision was a case of construction of federal statute and the Court of Appeals decision of New York State statute. As the majority opinion in the Court of Appeals decision noted..."the determination of the Supreme Court while instructive is not binding...".

The New York State Court of Appeals case involved a suit brought by the New York State Human Rights Division on behalf of three female employees of American Airlines, Brooklyn Union Gas Company, and Crouse-Irving Memorial Hospital against their employers for denial of pregnancy disability benefits. The plaintiffs suit was based on violation of the State's Human Rights Law , (Section 296(1)(a), Executive Law). The defendents argued that the State's disability law (Article 9, Workmen's Compensation Law), which required that all employers provide insurance coverage for off-the-job injuries and illness, specifically excludes pregnancy coverage; therefore provision of pregnancy disability benefits is optional.

The majority opinion of the Court of Appeals ruled that the two laws establish minimum standards and that "which ever statute imposes the greater obligation is the one which becomes operative." The Court found the Human Rights Law to be the operative statute. The Court noted in its opinion that..."the very purpose of the Human Rights Law was by blanket

description to eliminate all forms of discrimination... and that the Legislature had not exempted the Disability Law from its coverage."

On the basis of the Court's decision all employers subject to the Human Rights Law--those with four or more employees--will be required to provide wage maintenance for pregnancy disability to the same extent as provided for all other types of disabilities under the Disability Benefits Law. Under the Disability Law, an employer must pay a medically certified disabled worker one-half of his of her weekly salary up to $95 for up to 26 weeks. The Court's decision does not mean that a female employee could collect merely because she is pregnant. She would have to provide medical proof by a physician authorized by the Workmen's Compensation Board that she was totally disabled and unable to work. The State Division of Human Rights claims their studies indicate the average length of pregnancy disability is 6-8 weeks.

The Disability Law requires with few exceptions, all private employers contribute the cost of providing disability benefits in excess of the contribution collected by the employee. The employee contribution is set at one-half of one percent of the weekly wages, not to exceed thirty cents per week. The employer may insure payment of benefits by:

* contribution to the State Insurance Fund;
* obtaining self-insurance approval from the chairman of the Workmen's Compensation Board;
* insuring with any authorized private stock or mutual insurance company.

Employers may offer what is referred to as statutory coverage or plan coverage. Statutory coverage refers to the minimum benefits required by law and plan coverage to a package devised by the employer and certified as equivalent to the statutory coverage by the Chairman of the Workmen's Compensation Board. Provisions of the Human Rights Law would enable women to collect pregnancy disability benefits retroactively for one year.

While the New York Court of Appeals decision has apparently judicially resolved the contradictory commands of the State's Disability Benefits Law and its Human Rights Law, as a practical matter, the contradiction remains. Pregnant women now find themselves in the position of being judicially guaranteed equal disability benefits but actually denied equal access. The Workmen's Compensation Board, with the concurrence of the Division of Human Rights, maintains that it has no statutory authority to administer pregnancy disability benefits. The Workmen's Compensation Board is not requiring employers to provide pregnancy benefits and claims, and it will not until the State Legislature gives the Board such authority. The Board is presently advising those denied such benefits that their only legal recourse is to sue their employer under the Human Rights Law. The Division of Human Rights has taken the position that they will enforce the court decision on a case-by-case basis.

Another problem raised by the Court's decision involves the State Insurance Fund which insures approximately 5.5% of all covered employees. The Fund finds itself statutorily unauthorized to write disability insurance for pregnancy.

The New York Court's finding, based on its Human Rights Law, raises the issue of whether the State wants to treat those employees not covered by the Human Rights Law differently with respect to pregnancy disability benefits--presently employees employed by an employer with less than three employees have no legal right to pregnancy disability benefits.

It is unclear what effects these contradictions will have on implementing the court's decision.

Presently, there is no data in our State on how many employers provide pregnancy disability benefits voluntarily, or if such provisions are equivalent to benefits provided for other types of disabilities. The Division of Human Rights maintains that they must be equal or they would be discriminatory. There is also no firm indication of how employers will respond to the Court's decision--whether they will voluntarily implement a pregnancy disability benefits package or take their chances and wait until an employee sues. However, the Division of Human Rights does report compliance and cooperation by many employers. Others threaten to litigate. Two motions to reargue are pending in the Court of Appeals.

The main controversial issue in providing pregnancy benefits in our State has been the question of costs. Estimates range from $13 to $100 million annually, with variations resulting from different assumptions regarding benefit periods, benefit payments and the number of claims.

Some representatives of business in New York have argued against implementation of the Court of Appeals decision on the basis of the anticipated costs. Their cost estimates are based on figures developed by New

York State's Workmen's Compensation Board in October 1974.

49,000 claims x 26 weeks x $62 weekly benefit = $79 million claims cost annually
= $90 million premium cost annually

This same Workmen's Compensation Board has since warned that these estimates are too high because they assumed an unrealistic benefit period (26 weeks) and they did not consider that some employees are already receiving pregnancy disability benefits. Such caveats do not appear to be factored into industry's cost estimates.

Business and industry are fearful that women will take the full 26 weeks allowable under New York State Law. It is difficult to predict what the actual usage would be. Of the states mandating disability benefits, only Hawaii allows compensation for the same benefit period as all other disabilities. Unfortunately, Hawaii does not monitor benefit periods by class of disability. Interestingly, the Chief of the Hawaii Disability Benefits Bureau claims that there has not been a significant increase in the cost of insurance attributable to the inclusion of pregnancy coverage. According to the Prudential Insurance Company, a major writer of disability benefit insurance, their experience in Hawaii has been that women take four weeks before and four weeks after delivery, but rarely more than eight weeks.

According to the New York State Medical Society, a disability claim of up to 12 weeks for a normal pregnancy would be reasonable. In an uncomplicated pregnancy, disability occurs near the termination of pregnancy,

during labor, delivery and puerperium. The usual period of disability after birth is approximately 6-8 weeks. The Medical Society testified before the New York State Assembly Labor Committee in 1975 that while pregnancy disability is more subjective than many other disabilities this should not be interpreted to mean that physicians and patients will collaborate to extend leave beyond an actual period of disablement.

The Divison of Human Rights estimates, however, that a 6-8 weeks benefit period is average and predictable. (In New Jersey, the experience shows that the average claimant uses 7.7 weeks.)

50,000 cases x 6 weeks x $70 weekly benefit = $21 million claims cost annually
= $24.1 million premium cost annually

50,000 cases x 8 weeks x $70 weekly benefit = $28.0 million claims cost annually
= $32.2 million premium cost annually

67,000 cases x 6 weeks x $72 weekly benefit = $28.9 million claims cost annually
= $33.3 million premium cost annually

67,000 cases x 8 weeks x $72 weekly benefit = $38.6 million claims cost annually
= $44.4 million premium cost annually

The Division discounts the argument that this added cost would drive business out of the State because 30 states already have laws or rulings requiring that when an employer offers disability benefits this must also include benefits for pregnancy.

Having presented the foregoing statistical information, I would like,

in conclusion, to briefly reflect on why the need for federal legislation to guarantee equal treatment of the pregnant worker is so painfully clear and why pregnancy discrimination is a major obstacle to equal opportunity for women.

In order to provide equal opportunity for women in the labor market, it is essential to include employer rules relating to pregnancy and childbirth within the prohibitions against sex discrimination. Without the protective umbrella of anti-discrimination mandates, employers can, as they have done historically, refuse to hire pregnant women, fire them, force them on long, unpaid leaves of absence, wipe out their accrued seniority, sick leave, and sabbatical entitlements, and deny them medical insurance benefits.

Further, the impact of employer pregnancy rules is not limited to pregnant women workers; it might extend to any employer decision based on the possibility that a woman might become pregnant. Most women workers can become pregnant, and this very fact influences many employer decisions. Woman's expected role as first the bearer and then the rearer of children has been the prime generator of the widespread employer discrimination against women workers that has necessitated legislative action on gender discrimination. Employers have refused to train women for management positions on the ground that women might become pregnant. Without a stimulus to re-examine old notions, employers assume that women want to, or believe that women should, spend full time taking care of their children. Thus employers view these discriminatory policies as fully justified. Such customary employers beliefs blind them to the reality that a large and

and ever-increasing percentage of women with children are employed outside the home. In fact, one-third of all mothers with pre-school age children are in the work force, and as is the case with pregnant women, many of them work out of dire economic necessity.

In 1974, 32.4% of mothers with children under three years old were in the work force, as were 42.3% of mothers with children aged three to five, and 53.8% of mothers with children aged six to seventeen. United States Dept. of Labor, Bureau of Labor Statistics, Summary -- Special Labor Force Report, August, 1974, Marital and Family Characteristics of Workers, March, 1974.

Two-thirds of the 36 million women in the labor force work because of pressing economic need; either they are single, widowed, divorced or separated, or they have husbands earning less than $7,000 per year. United States Dept. of Labor, Women's Bureau, Why Women Work (Rev. ed. 1975). According to the Census Bureau, women appear to constitute the largest identifiable group of poor people in the nation. United States Bureau of the Census, Female Heads (Series p-23, Report #50, 1974). The employer view that mothers and expectant mothers are not or should not be attached to the labor market and therefore may be deprived of standard employment benefits offered other workers is not only inaccurate and unfair to women workers; it can also have severe consequences on the economic well-being of women's families. This impact is most severe on minority families, since a disproportionate number of them are headed by women. (Among white families, 19.7% of all families are headed by a woman. United States Commission on Civil Rights, Women and Poverty, 52, Table 11 (1974). Among female-headed families with children under 18 years old, 36.9% of white

families were below the low-income level, as were 60% of the black families. Id. at 58, Table 19.)

The bind in which pregnant women find themselves was well-described in a 1973 report, Hayden, Punishing Pregnancy: Discrimination in Education, Employment and Credit, Women's Rights Project, American Civil Liberties Union (October, 1973) at 43-44:

> First, a woman whose income from employment is vital to her own survival or that of her family is laid off for several months on an involuntary maternity leave. But if she looks for another job, she runs full-tilt into the wall of prejudice which decrees that pregnant women are unempolyable. Then, if she turns as a last resort to unemployment benefits (to which she may have been contributing during her years as a wage earner) she is sent away because pregnancy is deemed to render her "unavailable" for employment.

This description assumes that ultimately the woman can return to her job. But employers still fire pregnant women outright. And even if a woman is lucky enough to retain her job, she may find that just when her expenses increase, her income decreases. She receives no disability benefits to compensate her for loss of income, and she will probably find that her health insurance covers only a fraction of her medical and hospitalization costs. Finally, she may find that she has no guarantee of returning to her former position but must take a lesser one, often at a sacrifice of all of some of her accumulated seniority.

The result of such deep and pervasive discrimination is to increase

the number of women who are only marginally attached to the labor force, for women exposed to treatment which makes clear their low status in the work force sometimes fulfill the employer prophecy: they do lose interest in pursuing advancement in gainful employment because the odds against them seem overwhelming. Since a woman's childbearing years are also those in the careers of working people when they most frequently are establishing themselves in the labor market, developing skills, and laying the foundation for advancement, discrimination based on the view that pregnancy and work force membership don't mix can have devastating life-long effects on working women. As one New York Court has observed in a case challenging mandatory unpaid leave for pregnant workers:

> One realizes with a shock what so many women now proclaim: old accepted rules and customs often discriminate against women in ways that have long been taken for granted or have gone unnoticed.

Green v. Waterford Board of Education, 473 F.2d 629, 634 (2d Cir. 1973). The refusal to grant women disabled by pregnancy benefits to which other disabled employees are entitled is just such a custom and the New York Court of Appeals was correct to bring it to an end. The speedy adoption of the legislation before you is crucial in the battle to eradicate effects of sex discrimination against women workers. I urge its passage.

The CHAIRMAN. Our next witness is Laurence Gold, special counsel to the AFL–CIO, accompanied by Kenneth Young, associate director of legislation, and Marsha Berzon, of the Office of General Counsel. All present and accounted for.

STATEMENT OF LAURENCE GOLD, SPECIAL COUNSEL, AFL–CIO, ACCOMPANIED BY KENNETH YOUNG, ASSOCIATE DIRECTOR OF LEGISLATION, AND MARSHA BERZON, OFFICE OF GENERAL COUNSEL

Mr. GOLD. Thank you, Mr. Chairman, Senator Javits. My name is Laurence Gold, special counsel to the AFL–CIO. With me is Kenneth Young, associate director of legislation, AFL–CIO, and Marsha Berzon of the law firm of Woll and Mayer, Washington, D.C., who represented the federation in the litigation that forms the background for the proposed legislation this subcommittee is considering.

We are here to record the federation's strong support for S. 995, the bill to help end discrimination against pregnant workers.

With the chairman's consent, we have prepared and filed a statement which we wish to have introduced into the record. In order to permit the subcommittee to keep to its schedule, I would propose merely to summarize it and answer any questions which are directed to us.

We regard this bill as simply a clarification of what those organizations like the AFL–CIO, who supported the enactment of title VII, thought that legislation accomplished.

The affirmative case for this legislation is extraordinarily clearcut and simple. And while in general we have a tendency to give short shrift to syllogisms, sometimes they do capture the truth, and the syllogism here is quite persuasive, in our view.

Title VII prohibits discrimination based on sex. Pregnant people are invariably female. Discrimination against pregnant people is therefore discrimination against women.

How this escaped the Supreme Court, only the majority can tell us. They certainly have not indicated any persuasive reasons for their inability to see the simple facts of life as all the rest of us understand them, and we believe that it is indubitably Congress function to correct mistakes of this sort which have a plain and serious deleterious effect on women.

We believe that discrimination against pregnant people is particularly serious because it is one of the most important manifestations of the sex stereotypes which have harmed women in their efforts to be treated equally as members of the work force.

The treatment of pregnancy is part of the overall stereotype that women are not interested in and should not have the opportunity to have continuing working careers. And that stereotype excuses, or has historically excused, a variety of employer tactics which limit the ability of women to get jobs, to keep jobs, and to advance in their chosen work.

It is particularly appropriate to look for a moment at the treatment of pregnancy in disability plans, both because the *Gilbert* case was a disability case, and because the present treatment of pregnancy in dis-

ability plans is a perfect example of the irrationality of this type of discrimination.

Disability insurance is intended to remove the fear of loss of income when it is most neded, to encourage employees to receive medical attention as soon as possible, thus minimizing the severity of disability and insuring maxmium productivity, to foster morale and loyalty to the company, and to provide for maximum use by supervisors of trained employees by creating a disincentive to forcing an employee able to work to stay home.

Each one of those purposes of a disability plan is furthered by covering disability due to pregnancy. And it is quite extraordinary, when one comes to think about it, how shortsighted the approach taken by too many employers is, how detrimental it is to the woman and her child, and how completely inconsistent with the whole principle of title VII, the exclusion from an otherwise all-encompassing disability plan is.

As is all too frequent the case when this matter was before the House subcommittee, the testimony against the bill was almost uniformly based on a misapprehension of what the proposal does. We therefore wish to address ourselves very briefly to the incorrect suppositions of too many of the opponents.

First, all that S. 995 does is to define as sex discrimination, discrimination based on pregnancy, childbirth, and related conditions, and to spell out the basic effect of so defining sex discrimination, namely that women affected by pregnancy, childbirth, and related conditions must be treated for all employment-related purposes as others similar in their ability or inability to work.

In other words, S. 995 is a perfect expression of the nondiscrimination principle which informs all of title VII. Therefore, under the bill, we do not believe that there is any rational argument for the proposition that an employer who does not provide disability benefits or sick leave or other such protection generally would have to provide such benefits.

Nor would benefits have to be provided on a different basis. Employers could still insist, as they do now, that such benefits are available only to employees who cannot work and not on other bases.

Nor do we think that the bill means that if an employer provides disability benefits or health benefits for some very narrow classes of disability, he must provide benefits for disabilities or medical costs due to pregnancy or childbirth. Again, the question is simply whether the exclusion is discrimination, and that would depend on the breadth and scope of the plan.

Another claim is that the bill would permit a special potential for abuse or malingering. That is a slander against women generally, and as is true of many of the charges against the bill, unfounded. If a plan requires a medical examination and medical certification for other disabilities in order to get disability payments, then those requirements could apply equally to disability based on pregnancy.

The argument that we have heard the most is that the costs which would be imposed by S. 995 are too high. We regard these cost arguments as fundamentally unsound. They are no different than arguing that the Equal Pay Act, which requires that men and women be paid

the same rate for the same work, was too costly and should not have been passed, because it required employers who were discriminating to bring the discriminating wage rate up to the level being paid the favored class for the same work.

But in addition to that, we think that the very high figures which are being floated about in an effort to defeat the bill are plainly unsound. During the *Gilbert* litigation which led to the introduction of this bill, General Electric calculated that covering pregnancy under current disability plans would cost roughly $1.845 billion. We think that the simplest examination of the method used to arrive at that figure shows that it is too high by a factor of 5.

Senator JAVITS. Mr. Chairman, could I interrupt at this point to ask one question?

The CHAIRMAN. Go ahead.

Senator JAVITS. It is a fact, is it not, that disability is based upon insurance, which is provided through written contracts; correct?

Mr. GOLD. Yes.

Senator JAVITS. And that payments are only made for the period of disability?

Mr. GOLD. Yes.

Senator JAVITS. So that the woman in question would really have to be disabled and unable to work, and whatever period that covered is the only period she would be paid for.

Mr. GOLD. That is absolutely correct.

Senator JAVITS. If a person has pneumonia, and they have a 26-week entitlement, but the pneumonia only lasts 4 weeks, the disability payment is 4 weeks; is that correct?

Mr. GOLD. That is absolutely correct.

Senator JAVITS. Therefore, the estimates of cost based upon the normal pre- and post-pregnancy period of 6 to 8 weeks is a justifiable estimate, as in 90 percent of the cases, that's what it is; correct?

Mr. GOLD. Absolutely correct.

Senator JAVITS. And in 10 percent of the cases, as with a common cold, you can develop a worse illness and also have a longer period of disability; correct?

Mr. GOLD. Right.

Senator JAVITS. So that the parallel is exact. Personally, I do not see the validity to the argument that, well, it is an indeterminate period, and some periods will be much, much longer. So they will; so will any other illness or any other incapacity or disablement. That is correct; is it not?

Mr. GOLD. Absolutely correct, Senator.

Senator JAVITS. And all these insurance contracts, collective bargaining, or any other provisions do not pay anybody for disability when they are not disabled?

Mr. GOLD. That is right. Through your statements, rather than what would have been my far less adequate testimony, you have demonstrated what was wrong with the General Electric figures. Those figures were based on a 30-week period of disability payments, and that is simply like saying that anybody who gets a common cold, if the plan permits 14 weeks of payment, will get 14 weeks of payment, even though they are not disabled for 14 weeks.

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I know, from the Daily Labor Report that Dr. Hellegers, was here yesterday. He is a gentleman who has studied the area and his studies confirmed precisely the point you made. Senator Javits, which is that the normal period of pregnancy disability in 90 to 95 percent of the cases is 6 to 8 weeks of inability to work, as opposed to merely being pregnant.

Senator JAVITS. And also, if I may, just to complete this line of questioning, disablement is a question of factual proof, correct?

Mr. GOLD. Absolutely.

Senator JAVITS. In other words, the pregnant woman is not herself the only judge of that; that is an incontestable fact.

Mr. GOLD. Absolutely. And again, to simply underline this point, a plan can properly and consistently with title VII require a doctor's certification, in order to assure that the corpus of the funds is not misused, and that requirement would apply to pregnancy, the common cold, pneumonia, or whatever illness causes the disability.

And we are not arguing that these plans should not be soundly and prudently managed. We are simply saying that they should be managed in a nondiscriminatory fashion.

Senator JAVITS. And, Mr. Chairman, if I may, one last fact. Are you in a position to say authoritatively for the AFL–CIO that that is their position in collective bargaining negotiations?

Mr. GOLD. Absolutely. Our position is that reasonable and rational means of managing the fund and assuring that people who are not disabled are not able to draw from the fund is the type of matter which should be worked out through collective bargaining and that it is sound to work it out in that fashioin.

Senator JAVITS. And that is the policy of the AFL–CIO?

Mr. GOLD. Every affiliate of the AFL–CIO conducts its own negotiations. But the overwhelming percentage of negotiated plans have safeguards in the interest of all the employees who are covered.

What this dialog has shown is that when you take into account the actual period of disability as the doctors see it, the fact that in many States, coverage of pregnancy for plans which are otherwise inclusive is already required, and the other pertinent factors, our best judgment is that the actual cost of S. 995 would be something in the area of $135 to $150 million—something like $1.50 per employee in this country. And we think that equity and nondiscrimination are beyond price, but if we have to put on a price tag, and if we have to put a price tag on assuring that women have a fair opportunity to get and keep jobs and to do so on the same basis, that that is a fair price tag.

Senator JAVITS. Do you have any figures on the relationship of that $135 million to the aggregate amount paid out in disability benefits in labor situations in the United States annually?

Mr. GOLD. Do you mean, the total paid out under disability plans?

Senator JAVITS. Yes. What percentage is that; do you have any idea?

Mr. GOLD. I do not have any figures. We can endeavor to supplement our testimony. We do note on page 13 of our testimony that the cost of this bill would be, in our judgment, something between an increase of 0.004 cents to 0.01 cents in the hourly wage rate. But in terms of what the amount being paid out under disability plans is now and how much would be required if S. 995 were passed, I am not in a position to say.

Senator JAVITS. Well, you have given us an estimate of how much coverage would cost in absolute figures. What I am trying to find out is whether it is also a minor fractional percentage relative to the total costs of all disability coverage.

The CHAIRMAN. Here is what it came to for one company in Indiana which—Senator Bayh cited—payments for pregnancy disability came to 2.7 percent of the total disability payments that were made.

Mr. GOLD. The chairman's statement illustrates an important additional point—many successful, competitive companies presently cover pregnancy in their disability plans. And it seems to us—although it is not our main interest—that one of the beneficial aspects of this legislation would be to insure that those companies which are practicing discrimination do not enjoy a competitive advantage over those companies who are not discriminating against female employees.

I wish to refer to one last issue and then conclude. On the House side, a perfecting amendment was suggested to assure that the general rule followed under title VII and the Equal Pay Act—namely, the rule that an employer cannot cure discrimination by cutting benefits or wages, but rather, has to equalize the situation of those who have been discriminated against by bringing them up to the position of people who have not been discriminated against—would be followed if S. 995 were passed.

The CHAIRMAN. This is maintenance of all other benefits; is that it?

Mr. GOLD. That is right.

The CHAIRMAN. How do they do that in the House? This is a definition that we are changing here.

Mr. GOLD. A section 2 was added to one of the bills introduced in the House, to provide that the legislation would become effective immediately, and that companies in bringing themselves into compliance could not do so by cutting wages or benefits. That was the way the objective was accomplished.

We can secure a copy of the House bill, if it is not presently before you, so that you can have the advantage of the proposal on the House side in your deliberations. And we strongly urge that a similar approach be adopted in S. 995 when it is marked up.

Thank you very much.

The CHAIRMAN. All right. Here are the Labor Department figures on cost: 4.6 percent increase in cost of temporary disability plans. And then they take that as an increase in total payroll cost, and that is the 0.07 percent payroll cost increase. That will be in the record—the Labor Department statement does includes that.

I have just one question, Mr. Gold. There have been suggestions that what this does is intrude into areas that are properly left to collective bargaining. That was a concern, I believe, of a management group or two or three, and I just wondered what you have to say about that.

Mr. GOLD. We are intrigued and amused by the solicitude of those who so rarely show any interest in collective bargaining, for completely free collective bargaining.

We would be pleased if they would support us on some of the proposals we intend to make to reform the NLRA to really improve collective bargaining.

But with all deference, we are a bit suspicious of these comments, because the plain fact of the matter is that title VII—and properly,

in our view—says that there are some matters which are outside the scope of collective bargaining, because the overall national policy is that there can be only one answer to the particular problem. What we have decided and what Congress has decided is that it is not open to the parties through collective bargaining to discriminate on the basis of sex, race, national origin, or on any of the other bases stated in title VII.

We accept that decision. We think it was a sound decision. We do not believe it is in any way inconsistent with collective bargaining to have statutes—like OSHA which sets minimum health and safety standards, and title VII which states that the parties may not discriminate. So we reject entirely the argument that this bill is in any way inconsistent with free collective bargaining.

Mr. YOUNG. Senator, if I might, I do not think anybody has accused the AFL–CIO of ever giving away its collective bargaining rights. But there are some matters of public policy which clearly come first. What we are saying is that private parties do not have the right to bargain in order to discriminate; nor do private parties have the right generally to ignore Federal law setting public policy.

The CHAIRMAN. And even as we say there cannot be this kind of discrimination, that only affixes where collective bargaining has developed a disability plan, right——

Mr. YOUNG. Right.

The CHAIRMAN [continuing]. And the plan developed is not selective. It is across-the-board coverage of disability.

Mr. GOLD. In the disability area, I believe it is absolutely essential to make the point that S. 995 would not require any company which does not have a disability plan to put one into effect, nor would it reach the situations where you have a plan which covers only one or two narrowly defined disabilities.

What we are talking about here is a plan which is discriminatory. I do not think anybody would be opposing a bill which says that if you have white employees and black employees, you cannot have a disability plan which excludes the black employees. And, what we seek here is to insure that in practical terms, you do not have disability plans which, in a significant respect, exclude female employees.

The CHAIRMAN. Exactly. Thank you.

Ms. Berzon, do you have anything supplemental?

Ms. BERZON. I would just like to mention one point in regard to costs. I saw a figure recently which was that the average wage increase per year of employees is something like 18 cents per hour. The cost of this legislation would be about 0.02 cent, at best. I think that is what the fair comparison is. In other words, the proper case is the present change in the wage fringe benefits package. And, as I have just indicated S. 995 would add very little to the present rate of change in that figure.

The CHAIRMAN. I do not know how they arrived at the figure in the State of New York, but it is interesting. The employee contribution to disability on a weekly basis is a percentage, but not more than 30 cents on a weekly basis.

I do not know what actuarial content went into that, but it struck me as the minimum amount. That goes back to 1902, Mr. Zimmerman advises me.

Ms. BERZON. The disability tax rate in California is 1 percent of payroll, and that may be a representative figure of what it costs as a percentage of payroll to provide disability plans. So that when you are saying that covering pregnancy involves an increase of 4.7 percent in the costs of disability plans, you are referring to 4.7 percent of one percent of the wage factor.

The CHAIRMAN. I understand. Excellent. Thank you very much.

[The prepared statement of Mr. Gold follows:]

TESTIMONY OF LAURENCE GOLD, SPECIAL COUNSEL, AFL-CIO,
BEFORE THE LABOR SUBCOMMITTEE OF THE SENATE HUMAN RESOURCES COMMITTEE
ON LEGISLATION TO AMEND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
TO PROHIBIT SEX DISCRIMINATION ON THE BASIS OF PREGNANCY

APRIL 27, 1977

My name is Laurence Gold, Special Counsel, AFL-CIO. With me is Kenneth Young, Associate Director of Legislation, AFL-CIO, and Marsha Berzon of the law firm of Woll and Mayer, Washington, D. C., who represented the Federation in the litigation that forms the background for the proposed legislation the Subcommittee is considering. We are here to record the Federation's strong support for S. 995, the bill to help end discrimination against pregnant workers.

I plan to discuss the AFL-CIO's interest in this proposal, why the Federation thinks the legislation is essential to help secure equality for women in the workplace, and to state our basis for discounting one of the major "objections" to the bill -- that it will substantially increase disability plan costs.

I. AFL-CIO's Interest

The AFL-CIO supports the principle of equality of opportunity in the workplace, and has worked hard to assure that employers eliminate practices which discriminate against minorities and women. To further that goal, the AFL-CIO devoted its efforts to passage of Title VII of the Civil Rights Act of 1964.

To complement our legislative program, the AFL-CIO and its affiliates have sought to further the important goal of employment equality for women through collective bargaining agreements that contain the best possible benefits -- including income support coverage -- for all workers, including pregnant workers. In those negotiations, we have found that some employers would extend coverage to pregnancy-related disabilities, but that others would do no more in this area that was required by law. Accordingly, such unions as the International Union of Electrical, Radio and Machine Workers, AFL-CIO, and the Communications Workers of America,

AFL-CIO determined to work through the courts to make clear to employers that Title VII did impose a legal requirement to treat pregnant women fairly. Those unions were in the forefront of the litigation to help secure better benefits for women, and in particular for pregnant women. The AFL-CIO too joined in that litigation by filing briefs amicus curiae in the Supreme Court in support of the position of its affiliates.

After the decision in Gilbert v. General Electric, it became clear to the AFL-CIO that legislation was needed, and needed promptly, if the goal of fair treatment for pregnant workers was to be realized. Therefore, the Federation joined with a broad-based coalition of organizations and individuals to help secure legislation clarifying that Title VII was in fact always intended to provide the protection to pregnant women for which AFL-CIO and many others had been working.

II. Why the Legislation is Important.

Ultimate equality for working women entails far more than simply eliminating "women's jobs" and "men's jobs." It means assuring that women are treated as having the same long-term interest in staying on the job as men, and in assuring that they have the same opportunity as men to keep a job. Much of the disparate treatment of women in employment has come from unfounded assumptions about their lack of interest in continuing careers because at some time they are likely to become pregnant and to have children. In fact, discrimination against women in employment revolves in large part around the pregnancy question. Failing to pass legislation to overrule the Supreme Court's decision in Gilbert v. General Electric will permit such discrimination to continue.

A. Practices Regarding Pregnancy Which Have Adversely Affected Women Workers.

Employers in the United States have in some instances sought to exclude women generally from employment on the ground that women may become pregnant, and that the pregnancy could make continuance on the job difficult. See, e.g. Cheatwood v. South Central Bell Telephone Co., 303 F. Supp. 754 (M.D. Ala. 1969). Women applying for jobs have customarily been, and still are, questioned about their marital status, and their intentions in regard to childbearing and use of birth control. Still other employers have in effect fired women at some specified stage in a pregnancy, permitting them to reapply for jobs later as new employees with attendant loss of seniority privileges and pension rights.

Of course, mandatory separation where loss of seniority is involved has ramifications beyond a temporary loss of pay. Women dependent upon their income but intending to have children may be constrained to accept less desirable jobs which do not provide for mandatory pregnancy leave. Further, if seniority is lost, a woman's entire career could be affected: there may be no job to return to when she has recovered or, if she does return to her old position, she will have a slower advancement to higher positions, because other employees hired later will have priority.

Another discriminatory employer practice affecting pregnant women is the exclusion from the provision for a certain number of absences with pay for days lost due to sickness, prohibiting use of accumulated sick leave for absences due to pregnancy, childbirth, or recovery therefrom. The obvious result of such a policy, is to cause the women affected to lose payment of wages or a portion thereof even though they return to work promptly upon recovery, and even though the effect of permitting use of accumulated sick leave on the employer is precisely what it would have been if any other disability had occurred.

The overall affect of the special disadvantages imposed on pregnant women, and women workers because they might become pregnant, is to relegate women in general, and pregnant women particularly, to a second-class status with regard to career advancement and continuity of employment and wages.

These disadvantages are particularly serious because 70% of the 35 million women who work do so out of economic necessity--they are divorced, widowed, single, or married to men who earn less than $7,000 per year and who therefore must depend on two salaries to make ends meet. Many of these women are likely to be working when they are pregnant. We know that because the number of women with preschool children who are in the workforce has steadily risen, until currently almost 40% of mothers with children under 6 work. So for financial or other reasons, women are not as much regarding child-bearing and child-rearing as cause for substantial breaks in their career, and are more than ever likely to need adequate income protection for the short time during which they are medically disabled from working.

B. Disability Benefits as an Example of Disadvantageous Treatment of Pregnant Workers.

The refusal of employers to cover pregnancy-related disabilities the same as other medical disabilities was the problem that precipitated the Gilbert case. That refusal of equal treatment is an excellent example of the irrationality of discrimination against pregnant workers, and the crippling effect of such discrimination on women workers. Employers state that both sick leave and disability insurance have certain business purposes. General Electric noted in its 1957 Annual Report that the overall purpose of benefit plans is "to attract top-quality people at all levels and encourage them to make their careers with the company".

Disability insurance is intended a) to remove the fear of loss of income when it is most needed; b) to encourage employees to receive medical attention as soon as possible, thus minimizing the severity of disabilities and assuring maximum productivity; c) to foster morale and loyalty to the company d) to provide for maximum use by supervisors of trained employees by creating a disincentive to forcing an employee able to work to stay home. (See generally D. Allen, Fringe Benefits: Wages or Social Obligations, pp. 23, 31, 33-36 (rev. ed. 1969).)

Clearly, all of these purposes apply with full force to women who are medically unable to work because of pregnancy. First, the need for assured income is if anything greater during childbirth related disabilities than during other periods an employee cannot work for physical reasons. The possibility of lost time due to physical disability is not a vague fear but certainty during the period immediately before labor begins. And, the need for assured income during the period immediately following childbirth is heightened by the need to support the new infant, and by the added cost of child-care when the woman does return to work. To assure herself of needed income, a woman intending to bear children could well choose an otherwise undesirable job providing income maintenance during pregnancy-related disabilities over a position affording better career prospects.

Second, a woman who is not covered by a disability program for the period of childbirth and recovery therefrom is likely to return to work before she is fully able to assume her former responsibilities. As a result, her performance may be impaired, with a loss of productivity which could hamper her future advancement.

Third, the exclusion of pregnancy-related disabilities is certain to make an affected woman, and indeed all women with plans to bear children, feel that they are less-valued employees, and that the employer has little regard for their careers. As a result, the

desire for advancement may be impaired, and the link to the company as a long-term employer lessened. The argument that the fact that many women who take pregnancy leave without pay fail to return to work justifies disparate treatment of pregnancy-related disabilities (see, e.g., Brief Amicus Curiae of American Life Insurance Association and Health Insurance Association of America on Behalf of Petitioner filed in the Gilbert case, at 30-31) is entirely circular. If an employer excludes such women from a program designed to promote employees' loyalty to the company, it is little wonder that they do not display that loyalty.

Finally, when the company has no responsibility for sustaining the income of a woman disabled by physiological aspects of childbirth, supervisors are encouraged to insist that she stay home, rather than accommodating the job to her condition. For example, an employer faced with the prospect of paying prolonged disability benefits to a man whose heart condition makes his stressful job impossible for him would, rationally, attempt to find a less-stressful but nonetheless productive job he can perform. If it has no such liability with regard to pregnancy-related disabilities, then in those situations in which pregnancy or complications thereof render the woman unable to perform her original job at peek efficiency, the impetus will be to put her on leave rather than retain her in another capacity. Indeed, an employer who does not provide income maintenance for pregnancy-related disabilities would be much more likely to mandate arbitrary pregnancy separation policies, since such policies would then be cost-free to the employer.

C. Effect Of The Bill

Passage of S. 995 is vitally important to end practices which seriously and adversely affect pregnant women workers just described, and to reverse the Supreme Court's ruling about pregnancy-related disability benefits in the Gilbert

case. While other witnesses will recount the legal background and effect of this bill, we would like to briefly outline our understanding of the language, because the opponents of the bill are, in our opinion, misrepresenting its effect.

S.995 is very simple - it merely defines as sex discrimination, discrimination based on pregnancy, childbirth, and related conditions, and spells out the basic effect of so defining sex discrimination - that women affected by pregnancy, childbirth, and related conditions must be treated, for all employment related purposes, as others similar in their ability or inability to work. As in the rest of Title VII, the basic principle is that of non-discrimination. That is, if an employer ordinarily permits employees to work as long as they are physically able, the employer may not discharge or place on leave pregnant women able to work; if the employer returns other workers to their jobs after a period of disability, women out due to pregnancy or childbirth-related disability must be returned to their jobs; and if an employer provides disability benefits or sick leave pay generally to employees unable to work, the same benefits must be paid to women unable to work due to pregnancy or childbirth-related disabilities.

Once the non-discrimination principle is understood, much of what is being said by opponents of the bill as regards its effects are seen to be erroneous. No employer who does not provide disability benefits or sick leave generally, will have to, because of S. 995, provide these benefits. And, no employer will have to allow pregnant women to use sick leave or receive disability benefits simply because they are pregnant; benefits need be paid only on the same terms applicable to other employees -- that is, generally, only when the employee cannot work. If a pregnant woman wishes, for reasons of her own, to stay home to prepare for childbirth or, after the child is born, to care for the child, no disability or

sick leave benefits need be paid. Thus, if an employer has a disability program which pays up to 13 weeks salary, that does not mean that pregnant women can necessarily collect for 13 weeks; since the period of disability for a normal pregnancy is 4-6 weeks, benefits will be payable only for that period.

Similarly, the bill does not mean, as we understand it, that if an employer provides disability benefits, or health benefits, for any kind of disability, he must provide benefits for disabilities or medical costs due to pregnancy or childbirth. For example, if there were a disability plan which only provided benefits for disabilities due to heart conditions or respiratory conditions, or which only provided benefits for absences of more than two months, the employer would only have to pay women absent due to pregnancy or childbirth if they otherwise met the conditions of the plan -- that is, in those examples, if they developed a heart or respiratory condition, or were disabled more than two months. For, where the benefits are only available in a few limited situations, it is not discrimination not to include pregnancy as such in those situations. To be sure, the GE disability plan, which provided payments for every disability but those related to pregnancy seems fairly typical. But that does not detract from the point just made, rather it supports the contention that this legislation is needed because employers have discriminated against pregnant women.

Further, it has been claimed that providing benefits for pregnancy-related disabilities somehow creates a special potential for abuse or malingering. But, precisely because Title VII and S. 995 rest on the non-discrimination principle, they do not limit the control of abuse or malingering as long as it is accomplished in an even-handed fashion. For example, it would be entirely lawful under S.995 for a company to premise all disability payments including those for pregnancy-related absences on the requirement that such payments are available only to those intending to return as soon as they recover. Similarly, an employer could -- and many do -- require

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examination by a company doctor to confirm the disability, and as long as all employees receiving disability benefits or sick pay are subject to this condition, such a requirement would be legal if S.995 becomes law. Further, because pregnancy and childbirth are common physiological occurences in women, the usual period of disability is fairly uniform, and it is simple to determine, on a medical basis, when the woman need no longer restrict physical activities; recovery from idiosyncratic illnesses, it would seem to us, is much harder, rather than easier, to determine.

Finally, any claim that this legislation is somehow antithetical to collective bargaining principles is utterly absurd. The labor movement is certainly protective of collective bargaining prerogatives; but we have long recognized that there are some questions which are properly matters of public policy and not of private bargaining. The support of the AFL-CIO for Title VII itself entailed exactly such a recognition -- that the right to agree to discriminate on the basis of race, religion, or sex is not a right deserving of protection. Just in the last few years this Congress has enacted two bills with AFL-CIO support -- OSHA and ERISA -- which remove from the bargaining table certain matters regarding safety and fringe benefits. S. 995 is of the same character; it would not strike any bargain for parties to collective bargaining, but it would simply place a necessary limit upon the bargain to be struck by providing that the parties cannot agree to conditions which discriminate against pregnant women.

C. Why The Cost Argument Against S. 995 Is Unsound

The argument most often raised by employers against prohibiting pregnancy-related discrimination is that the cost of equal treatment is too high. To answer that argument, at this point we wish to focus on the costs of providing the same income maintenance coverage for pregnancy-related disabilities

as is provided for all other disabilities. First, we will examine the high figures that have been suggested to show why they are just plain unrealistic, and then we will try, on the basis of the best data available to us, to estimate what the actual additionsl cost of coverage would be if this legislation passes.

I. The Unrealistic Estimates

A very high cost estimate for S. 995 has been floated around in an effort to kill the bill. It is G.E.'s estimate, introduced at the trial in the Gilbert case, of the cost for providing all U.S. employees covered for short term disability with maternity coverage on the same basis as coverage for any other disability. G.E. as the defendant in that case suggested that the increase in total benefits per year over those now provided would be $1.6 billion. To reach that figure, G.E. calculates the cost of providing pregnancy-related disability coverage to women workers with pregnancy-related disabilities, then deducts the cost of "benefits currently provided" for pregnancy related disabilities.

Although G.E.'s approach is right, the figures it uses are based on several greatly misleading assumptions. First, G.E. calculates that it would cost about $1.845 billion to provide complete coverage for pregnancy-related disabilities for an average coverage of 30 weeks. However, uncontroverted testimony in the Gilbert case showed that more than 90% of women would be disabled an average of only 6 weeks. So the G.E. figures on cost throughout the United States have to be divided by 5. (Also, some plans exclude payments for the first 8 days of disability. In such cases, women would only get paid for 5 weeks.) Even if no other adjustments were made

in the G.E. statistics, taking one-fifth of the 30 weeks cost and deducting the current costs figure puts H.R. 5055's cost at $145 million. This is a far cry from G.E.'s $1.6 billion claim.

Second, G.E. in arriving at its claim deducts $225 million for benefits now provided. But fourteen justidictions (13 states and the District of Columbia), which accounted for almost 40% of the births in the United States in 1975, now require employers to provide some kind of disability-benefits coverage for pregnancy under their own state laws. And, not all employers in those jurisdictions were, at the time G.E. made its estimate, providing such coverage. Therefore, the cost of the coverage which must be provided independent of any change in Title VII, whether or not it is being provided at this very minute, must be substantially increased. When the costs effect of these state laws is taken into account, the cost of S. 995 is further reduced.

Finally, the G.E. cost figures do not in any way take into account the extent to which eliminating pregnancy discrimination saves the employer money--by encouraging good, experienced workers to stay on the job, thereby increasing productivity and reducing costs of retraining, and reducing the likelihood that workers will use unemployment compensation. Nor does it take into account the saving to other citizens, because such benefits reduce the likelihood that workers with pregnancy-related disabilities will need to resort to unemployment compensation or welfare benefits.

Each of the miscalculations made by G.E. provides a guide for looking at the other inflated cost figures of S. 995 stated by those opposed to the bill. If correct assumptions or facts about the basic factors -- the duration of benefits, the amount

to be paid, the number of employees already covered or lawfully required to be covered by such plans -- are not used, the resulting gross "cost" figures will not be accurate.

The recurrence of industry over-estimates on cost of providing pregnancy-related disabilities coverage is apparent from statistics provided by the Society of Actuaries. Their tables show that for plans for the years 1972 through 1974, (the most recent for which figures are available), the amounts actually paid by companies of less than 1,000 employees were from 38% to 40% of the amounts that the actuaries estimated would be paid. (See Society of Actuaries Transactions, "Group Indemnity Insurance," (1976), at 244.) The wrong estimates were attributed to declining birthrates (id., at 241); those same declining birthrates will continue to affect the cost of providing disability benefits for pregnancy-related disabilities. These figures provide some guidance to what credence should be given to some of the high cost figures used as scare-tactics by employers and insurance companies.

2. What are the Actual Costs

Getting a handle on the actual increase in costs to employers of amending Title VII by S. 995 is slightly more difficult.

First, let's look at the estimates of increased cost per employee of extended coverage other than industry figures presently available. One study which has been done shows that costs annual of covering pregnancy-related disabilities under disability benefits plans may average $15 per employee using April, 1974, data. Another shows that on the basis

of 1971-72 data, expense would total about $20 per employee. Still another study shows that if costs are related to female employees only; the "unit cost" (cost per employee) would be about $41 using 1971-72 data. Finally, yet another study shows that annual costs would average approximately $40 to $50 per female employee for a paid leave of 14-16 weeks. As we have pointed out, that is about twice the average leave present experience indicates would be compensable. (See generally Kistler and McDonough, "Paid Maternity Leave -- Benefits May Justify the Cost," Labor Law Journal (December, 1975), 782, 784-5, and facts and studies cited.) Therefore, the cost per employee of the coverage which would be required is not great at all, and when compared to the cost to the employer of turnover, and the great hardship and inequity to women by not providing it, it seems even smaller.

Another way to look at the cost data is to ascertain how much passage of S. 995 would increase overall hourly wage costs. Those figures show that the increase would be miniscule -- between $.004 and $.01 to the hourly rate of employees in an affected company, or an increase to the wage bill of between one-tenth and two-tenths of one percent. (Carol Greenwald, "Maternity Leave Policy", New England Economic Review (January-February, 1973), 13, 17.)

A final method of approach is to calculate the cost impact of S. 995 on disability plans from the best available data and on the basis of the most reasonable assumptions suggested by that data. We have made that calculation and the method we used is set out in the footnote.[1/] The cost

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1/ In 1975, 1,918,214 babies were born outside the fourteen jurisdictions which already require pregnancy-related disability coverage (discussed above). We can assume that about 40% of those are born to women working during pregnancy. (See U.S. Dept. of Health, Education, and Welfare, National Center for Health Statistics Report, Series 23, No. 7, Sept. 1968, p. 16.) (That

figure we arrive at is about $1.50 per American worker or roughly $130 million in total cost. And this cost estimate does not take into account even the most obvious monetary benefits to the employer -- reduction in turnover, and reduction in tax-supported unemployment compensation and welfare costs. Certainly, the critical public goal of equal treatment for women, and the elimination of the loss of talent caused by discrimination, is worth far more than these relatively small amounts.

Indeed, we regard the emphasis on cost as itself an indication of the unwillingness of industry to commit itself to eradication of discrimination against women. For discrimination of any kind always saves money; it is necessarily cheaper to pay blacks less than whites, or women less than men, yet the cost of equality was, to our recollection, never

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assumption in turn rests on the reasonable premise that a disproportionate number of those pregnant workers don't work in the 14 jurisdictions already requiring coverage.) Thus, in 1975 there were approximately 767,285 women potentially to be covered by pregnancy-related disability benefits plans (assuming one baby per mother). Of this number we can assume that approximately 63%, or 460,371, work for employers having some form of income maintenance during temporary disabilities. (Health Insurance Institute, Source Book of Health Insurance 1972-1973, p. 25) (Again, we are assuming that there is not a disproportion of women covered by such plans in the 14 already-covered jurisdictions). Of those, approximately 40% would have maternity coverage for an average maximum of six weeks. (See Society of Actuaries Transactions, 1975 Reports (1976), pp. 241, 243-250.) That leaves 276,273 women giving birth in 1975 who worked for employers having disability plans which did not cover pregnancy. Assuming the average short term disability benefit for women in 1975 was about $78 per week, providing disability benefits for pregnancy-related disabilities for the full average period of six weeks would cost American industry roughly $130 million in increased costs.

raised as an argument against Title VII. That is because a cost saving to the employer has never been thought to justify a fundamental inequity and, as we have explained, discrimination against pregnant women is both unfair in itself and at the core of discrimination against women generally.

D. Perfecting Amendment

There is one additional point that deserves a word in conclusion. H.R. 5055, the parallel House bill, incorporates the language of S. 995 and adds a further provision as Section 2 which states that employers who are now discriminating in regard to pregnancy-related disabilities, will not be able, if this bill is enacted, to decrease, or cause to be decreased, the benefits or compensation provided to their employees generally in order to come into compliance with the new legislation. It is our understanding that this Committee is considering adding a similar Section 2 to S. 995.

I wish to take this occasion to state the AFL-CIO's support for such a perfecting amendment. The principle embodied in the amendment is incorporated in the Equal Pay Act and is the one the courts have generally followed in Title VII cases. It is evident that legislation designed to correct discrimination cannot achieve its objective if an employer who has been discriminating responds by promptly decreasing benefits or compensation. The proper rule is that such an employer must correct his wrong and put all his employees in an equal position by raising the discriminatees to the position of his other employees. Of course, such an amendment would not, as the Equal Pay Act language does not, mean that fringe benefits must remain forever at the level they were when this bill becomes law. Rather, the employer's right to lower benefits is limited only if he attempts to lower benefits "in order to comply" with the Act. This means that after he has created equality by providing women affected by pregnancy or childbirth the same benefits

provided others, he can then, either at the collective bargaining table when the contract expires or, if there is no union, after a reasonable period of time has expired, adjust or attempt to adjust the wage-fringe benefit package as may any other employer, as long as he is not motivated by a desire to discriminate but, instead, by normal business considerations.

While the proposed amendment simply states existing law explicitly, in light of the statements of some of those opposed to S. 995 that the immediate result of the bill will be to lower or eliminate the benefits and compensation of workers not presently being discriminated against, we believe it is sound to spell out the intent of the legislation.

The CHAIRMAN. Next, a panel of representatives of various unions: the IUE, the United Steelworkers, United Electrical, Radio & Machine Workers, and the Communication Workers.

I think it might be well for the reporter to have this group identified from left to right.

Mr. SPERO. I am Nathan Spero, research director, United Electrical Radio & Machine Workers of America.

Mr. BLOCK. Boris H. Block, general secretary-treasurer of the United Electrical, Radio & Machine Workers of America.

Mr. WATTS. I am Glenn Watts, president of the Communication Workers of America.

Ms. STERLING. I am Toni Sterling, representing 85 members of United Steelworkers of America, Local 65.

Mr. LYNCH. I am Leon Lynch, vice president of Human Affairs, United Steelworkers of America.

Mr. FITZMAURICE. I am David J. Fitzmaurice, president of the International Union of Electrical Workers.

Ms. WEYAND. I am Ruth Weyand, associate general counsel, International Union of Electrical, Radio & Machine Workers.

The CHAIRMAN. The order in which you speak, I will leave to you.

STATEMENT OF DAVID J. FITZMAURICE, PRESIDENT, INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS

Mr. FITZMAURICE. As indicated, I am the president of the International Union of Electrical, Radio & Machine Workers, David J. Fitzmaurice, appearing here on behalf of the union. I am accompanied by Ruth Weyand, associate general counsel of IUE.

More than 1 million women are employed in the electrical equipment manufacturing industry. No other durable goods manufacturing industry has any comparable number of women workers.

Approximately 40 percent of the workers in the electrical equipment manufacturing industry are females. Women have always been a substantial portion of the labor force in the industry.

The IUE has throughout its existence carried on an active program to protect women against discrimination because of pregnancy.

My appearance here today to urge the prompt enactment of S. 995 has been preceded by strenuous efforts by IUE at the bargaining table, before administrative agencies and in the courts, to put an end to the inequities women suffer because of pregnancy.

The IUE brought the case against GE on behalf of Martha Gilbert and all female employees of GE throughout the United States.

The Supreme Court's decision that discrimination because of pregnancy was not discrimination because of sex makes necessary the enactment of S. 995 to let the Supreme Court know that Congress did intend that its prohibition of discrimination because of sex prohibits discrimination because of pregnancy.

I am personally aware of the discrimination which women in GE plans suffer because of pregnancy, and I have supervised massive efforts of our union to correct sex discrimination because of pregnancy at the more than 600 plans whose employees we represent.

The IUE's efforts in dealing with pregnancy problems are but a part of a larger program in which the IUE has surveyed each of its

locals to ferret out all forms of race and sex discrimination, and followed up the survey with utilizing grievance and bargaining procedures to correct discrimination, and when unsuccessful there, filing of charges with administrative agencies and suits in the courts, including suits under the Equal Pay Act and title VII.

The IUE program is being followed by several other unions, and is looked upon favorably by the EEOC.

The IUE filed not only the suit against GE which went to the Supreme Court, but also filed nationwide suits alleging discrimination because of pregnancy against General Motors, Westinghouse Electric Corp., and other companies.

These cases involve both the denial of disability benefits and other forms of discrimination. For example, mandatory unpaid leave is involved in the General Motors case. Women at GM plants were routinely placed on leave without pay because of an arbitrary company rule that all pregnant women must stop work when they reached the end of the seventh month of pregnancy, even though they were willing and able to perform their regular jobs, their doctors certified them as able to work, and no GM doctor had examined them or said they were unable to continue work. The Westinghouse case involves discharges, loss of seniority, loss of seniority, loss of pension credit, loss of holidays, and a variety of other charges of discrimination, all because of pregnancy.

The IUE began long before title VII was enacted, to attempt to persuade employers to treat the disabilities arising from pregnancy the same as other disabilities.

Demands for disability benefits for pregnancy-related disabilities were made by the IUE of GE and other companies at every national negotiation beginning in 1950, with the first national agreement between IUE and GE, and continuing through the latest in 1976.

Prior to title VII, GE had discriminated against pregnant women in many ways. But after title VII was enacted, GE agreed to IUE's collective-bargaining proposal to treat disabilities from pregnancy the same as disabilities from all other causes, but with a single exception. GE refused to agree to the payment of disability benefits.

In 1966, during the first national negotiations between GE and IUE following the enactment of title VII, GE, with respect to its hospital and medical plan, agreed that maternity will be covered the same as any disability.

GE today pays the full hospital and medical costs of all deliveries of babies for wives of male employees, as well as of female employees.

The wives of male GE employees have almost 50 percent more babies than do GE's female employees. The rate of birth is 45 babies born a year to wives per 1,000 male employees; 32 a year per 1,000 female employees.

The cost to GE for babies of wives of male employees is so much greater than the cost for female employees that GE could pay each female employee 6 weeks of disability benefits plus hospital and medical expenses and still spend less money per female employee on their parenthood costs than it spends per capita on parenthood costs for male employees.

The figures demonstrating this fact are included in attachment A to my statement.

Nationwide, working women show the same markedly lower fertility than nonworking women. That is covered in attachment B.

For many employees, the absence of disability benefits is economically disastrous. One of the plaintiffs in our suit was Sherrie O'Steen, who testified before the House Committee in its hearings on April 6 on the companion House bill.

Sherrie O'Steen had no savings when she was put on unpaid leave at General Electric's Portsmouth, Va., plant. She had become unexpectedly pregnant just before her husband had left her.

She applied for welfare. Her first welfare check did not arrive until several weeks after her baby was born. The electricity in Sherrie O'Steen's house was cut off, because she could not pay her bill.

She lived with a 2-year old daughter in rural Virginia in the wintertime in an unlighted, unheated house, without cooking facilities and without refrigeration while she awaited the birth of her baby.

Sherrie O' Steen is not an isolated case.

GE pays disability benefits at the rate of 60 percent of straight time wages up to $150 per week for a maximum of 26 weeks for every period of absence due to a disability other than pregnancy or childbirth.

In my experience, there have been some claims of abuse, but these are handled by the company doctor examining the employee. At General Motors, we have an agreement that a neutral doctor passes on all disputes between the company doctor and the employee's doctor.

Applying standard collective bargaining methods for computing costs, the cost to GE of paying disability benefits for a 6-week period for all women pregnant in 1971 would have been $1\frac{7}{100}$ of a cent per hour. Computation of this figure is explained in attachment C of my statement.

Not only are the women at GE discriminated against because of their sex by the failure to pay their disability benefits when disabled by childbirth or pregnancy, but GE pays its female employes lower rates of pay than its male employees.

The average female employee at GE has equal seniority and equal education but receives $2,000 a year less pay. As Mr. Justice Brennan stated in his excellent dissenting opinion in the Gilbert case, GE formerly had a job evaluation manual which directed that women be paid two-thirds of the rate of males for equal work.

Part of the justification GE advanced for paying women lower rates was that women are worth less than males because of the additional costs involved as a result of pregnancies.

GE's failure to pay disability benefits thus penalizes women doubly: By not only being unable to maintain a portion of their incomes when disabled during pregnancy, but by receiving substantially lower wages during their entire working life at GE.

In addition to its attempts to secure disability benefits for pregnancy-related disabilities, IUE is engaged in a program to attempt to correct the wage inequality.

IUE has brought two Equal Pay Acts suits against GE, filed charges with EEOC, and has engaged an industrial engineer who is doing job evaluations at GE plants, in the interest of bringing the women's rates up to those paid males for equally evaluated work.

We have no reliable figures as to how long women at GE would be absent due to pregnancy-related disabilities, because all of GE's figures were based on forced mandatory leaves for long periods of time.

GE's medical testimony was the same as IUE's, that most women could work until childbirth and were fully recovered in 2 to 3 weeks.

The testimony of the medical profession in cases all over the country is to the same effect. Dr. William C. Keetels, one of the most prestigious obstetricians in the United States, testified that the medical profession today regarded it as desirable that pregnant women continue their usual prepregnancy activities, which means they should continue working, and were regularly fully recovered and able to resume work within 2 to 3 weeks after delivery.

The contention of employers that most females quit the labor force upon having a baby is untrue. Sixty percent of female employees at GE who were absent for childbirth were returning to work within 8 weeks after the date of the birth of their babies in 1970 and 1971, the most recent years for which we have figures.

Unlike employees who quit, women having babies, even if they do not come back to work in the first month or two after delivery, often return months or even years later.

It seems probably the percentage actually returning is substantially greater than 60 percent when those returning more than 8 weeks after childbirth are included.

We have been told by members of the staff of Polaroid that the rate of immediate return after childbirth is now 80 percent. The many employees who return a year or two or more later are not reflected in their figures.

In a 1972 survey, Prentice-Hall reported most of the women who take maternity leave come back to work.

The IUE's efforts to correct discrimination because of pregnancy at companies other than GE, GM and Westinghouse has in some instances been more successful.

Prior to the Supreme Court's decision in the *Gilbert* case, all companies having contracts with IUE had agreed that women could continue working and return to work as soon as able. Many women are now working until their babies are born. And the women are regularly reporting back to work as soon as cleared by their doctor, which is sometimes in 4 weeks, but usually not until 6 weeks.

IUE has also negotiated a number of agreements which provide the same disability benefits for women disabled by pregnancy.

I do not have a complete list, but include in attachment D to this statement a list of those of which I am aware.

The employers with whom we have entered into agreements for coverage of pregnancy-related disabilities on the same basis as other disabilities have seemed generally well pleased with the results.

My impression of the satisfaction of these employers with the results has been paralleled by studies conducted by Prentice-Hall.

Prentice-Hall conducted three surveys of employer policies with respect to pregnancy, and in 1974 reported over half the firms have already changed their policies to conform to EEOC guidelines, and almost one-fourth anticipate making further changes.

On behalf of the IUE and all of its members, I urge that this committee report S. 995 favorably. Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Fitzmaurice, and I want to thank you and your organization for the long support that you have given to this effort. We have benefited from your assistance in organizing ourselves as a committee to consider this bill through hearings. Ms. Weyand has been invaluable, and we know it, and we know that you were in the front lines here which were made necessary by the GE case, and we are in your debt. We are very grateful.

I thought I would hold any questions until we have the rest of the panel presentations.

[The prepared statement of Mr. Fitzmaurice follows:]

STATEMENT

OF THE

INTERNATIONAL UNION OF ELECTRICAL,
RADIO AND MACHINE WORKERS,
AFL-CIO-CLC

ON

S.995

PRESENTED BY

DAVID J. FITZMAURICE, PRESIDENT,
INTERNATIONAL UNION OF ELECTRICAL,
RADIO AND MACHINE WORKERS, AFL-CIO-CLC

BEFORE THE

SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON HUMAN RESOURCES
OF THE
UNITED STATES SENATE

APRIL 27, 1977

My name is David J. Fitzmaurice. I am President of the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC and appear here on behalf of the union.

More than a million women are employed in the electrical equipment manufacturing industry. No other durable goods manufacturing industry has any comparable number of women workers. Approximately 40% of the workers in the electrical equipment manufacturing industry are females and approximately 40% of the IUE's membership is female.

Women have always been a substantial portion of the labor force in this industry.

The IUE has throughout its existence carried on an active program to protect women against discrimination because of pregnancy.

My appearance here today to urge the prompt enactment of S.995 has been preceded by strenuous efforts by IUE at the bargaining table, before administrative agencies and in the courts to put an end to the inequities women suffer because of pregnancy. The IUE brought the case against GE on behalf of Martha Gilbert and all female employees of GE throughout the United States. The Supreme Court's decision that discrimination because of pregnancy was not discrimination because of sex makes necessary the enactment of S.995 to let the Supreme Court know that Congress did intend that its prohibition of discrimination because of sex prohibits discrimination because of pregnancy.

I am personally aware of the discrimination which women in GE plants suffer because of pregnancy. First, as an employee of GE, then as president of a local union representing GE workers in Cleveland, Ohio and then as a member of bargaining committees meeting with GE over the years to negotiate national agreements applicable to GE employees throughout the country, I have participated in presenting to GE the facts which document its discriminatory treatment of females because of pregnancy. And finally as a national officer of IUE, having served for eight years as International Secretary-Treasurer and now serving as International Union President, I have supervised massive efforts of our union to correct sex discrimination because of pregnancy at the more than 600 plants whose employees we represent.

History Of IUE Efforts

The IUE's efforts in dealing with pregnancy problems are but a part of a larger program in which the IUE has surveyed each of its locals to ferret out all forms of race and sex discrimination, and followed up the survey with utilizing grievance and bargaining procedures to correct discrimination, and when unsuccessful there, filing of charges with administrative agencies and suits in the courts, including suits under the Equal Pay Act and Title VII. The IUE program is being followed by several other unions, and is looked upon favorably by the EEOC.

The women in plants we represent are bitter about the treatment they receive when they become pregnant.

Our members have either individually or through the IUE filed hundreds of charges with the EEOC alleging pregnancy-related discrimination. The IUE filed not only the suit against GE which went to the Supreme Court but also filed nation-wide suits alleging discrimination because of pregnancy against General Motors, Westinghouse Electric Corporation and other smaller companies. These cases involve other forms of discrimination in addition to the denial of disability benefits. For example, mandatory unpaid leave is involved in the General Motors case. Women at GM plants were routinely placed on leave without pay because of an arbitrary Company rule that all pregnant women must stop work when they reached the end of the seventh month of pregnancy even though they were willing and able to perform their regular jobs, their doctors certified them as able to work and no GM doctor had examined them or said they were unable to continue work; the Westinghouse case involves discharges, loss of seniority, loss of pension credit, loss of holidays and a variety of other charges of discrimination, all because of pregnancy.

The IUE began long before Title VII was enacted to attempt to persuade employers to treat the disabilities arising from pregnancy the same as other disabilities. Demands for disability benefits for pregnancy-related

disabilities were made by IUE of GE at every national negotiation beginning in 1950, with the first national agreement between IUE and GE, and continuing through the last in 1976. Prior to Title VII, GE had discriminated against pregnant women in many ways. But after Title VII was enacted, GE agreed to IUE's collective bargaining proposal to treat disabilities from pregnancy the same as disabilities from all other causes, but with a single exception. GE refused to agree to the payment of disability benefits. In 1966, during the first national negotiations between GE and IUE following the enactment of Title VII, GE, with respect to its hospital and medical plan, agreed that "maternity will be covered the same as any disability." GE today pays the full hospital and medical costs of all deliveries of babies for wives of male employees as well as of female employees.

The wives of male GE employees have half again as many babies as GE's female employees. The rate of birth is 45 babies born a year to wives per 1000 male employees, 32 a year per 1000 female employees. The cost to GE for babies of wives of male employees is so much greater than the cost for female employees that GE could pay each female employee six weeks of disability benefits plus hospital and medical expenses and still spend less money per capita per female employee on procreation costs than its spends per capita on male employees. The figures demonstrating

this fact are included in Attachment A of this statement. Nationwide working women show the same markedly lower fertility than non-working women. Excerpts from Census studies confirming and explaining this fact are appended to this Statement as Attachment B.

Until a year after IUE began its suit against GE for disability benefits for pregnancy-related disabilities, GE had required women to go on unpaid leave during their sixth or seventh month of pregnancy and remain away until two months after the birth of the baby, thus imposing a four or five months unpaid leave. For many employees this period of unpaid leave was economically disastrous. One of the plaintiffs in our suit was Sherrie O'Steen, who testified before the House Committee in its hearings on April 6 on HR 5055 (Tr. p. 1-21). Sherrie O'Steen had no savings when she was put on unpaid leave at GE's Portsmouth, Virginia plant. She had become unexpectedly pregnant just before her husband had left her. She applied for welfare. Her first welfare check did not arrive until several weeks after her baby was born. The electricity in Sherrie O'Steen's house was cut off because she could not pay her bill. She lived with a two-year old daughter in rural Virginia in winter time in an unlighted, unheated house, without cooking facilities and without refrigeration while she awaited the birth of her baby.

Sherrie O'Steen is not an isolated case. Most of the women whom IUE represents work because they need the money for their own support and the support of their families. IUE member Betty Williams at the Stromberg-Carlson plant in Rochester, New York was forced to go on welfare for the first time in her life when she was placed on unpaid leave because of pregnancy. Her Blue Cross and Blue Shield was cancelled. As a result she had to give up her personal doctor and change to a free public clinic. Stromberg-Carlson pays the full Blue Cross and Blue Shield premiums throughout the period any employee is off for any disability other than pregnancy. Betty Williams' husband had lost his job due to the closing of the Beechnut plant in Rochester shortly after she became pregnant, leaving Betty Williams the sole support of her husband and their three children The IUE has secured an order from the New York State Human Rights Board providing for making Betty Williams whole for the losses she suffered and directing Stromberg-Carlson to rescind its mandatory maternity leave rules, and to provide both disability benefits and Blue Cross and Blue Shield coverage during pregnancy-related absences on a non-discriminatory basis.

Costs To GE Of Covering
Pregnancy-Related Disabilities

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GE pays disability benefits at the rate of 60% of straight time wages up to $150 per week for a maximum of 26 weeks for every period of absence due to a disability other than pregnancy or childbirth. GE admittedly pays for absences due to hair transplants, injuries incurred in fights, alcoholism, drug abuse and attempted suicides.

Applying standard collective bargaining methods for computing costs, the cost to GE of paying disability benefits for a six weeks period for all women pregnant in 1971 would have been 17/100 of a cent per hour. The figures are set forth in Attachment C of this Statement.

Not only are the women at GE discriminated against because of their sex by the failure to pay their disability benefits when disabled by childbirth or pregnancy but GE pays its female employees lower rates of pay than its male employees. The average female employee at GE has equal seniority and equal education but receives $2,000 a year less pay. As Mr. Justice Brennan stated in his excellent dissenting opinion in GE v. Gilbert and IUE, 97 S. Ct. 401, GE formerly had a job evaluation manual which directed that women be paid 2/3 of the rate of males for equal work. Part of the justification GE advanced for paying women lower rates was that women are worth less than males because of the additional costs involved as a result of pregnancies. GE's failure to pay disability benefits thus

penalizes women doubly: by not only being unable to maintain their incomes when disabled during pregnancy, but by receiving substantially lower wages during their entire working life at GE.

In addition to its attempts to secure disability benefits for pregancy-related disabilities, IUE is engaged in a program to attempt to correct the wage inequality. IUE has brought two Equal Pay Act suits against GE, filed charges with EEOC and has engaged an industrial engineer who is doing job evaluations at GE plants, in the interest of bringing the women's rates up to those paid males for equally evaluated work.

Medical Testimony As To
Duration Of Pregnancy-Related Disabilities

We have no reliable figures as to how long women at GE would be absent due to pregnancy-related disabilities because all of GE's figures were based on forced mandatory leaves for long periods of time. GE's medical testimony was the same as IUE's, that most women could work until childbirth and were fully recovered in two to three weeks. The testimony of the medical profession in cases all over the country is to the same effect. Dr. William C. Keetels, head of the Department of Obstetrics and Gynecology, University of Iowa, former president of the American College of Obstetricians and Gynecologists, and one of the most prestigious obstetricians in the United States, testified in

cases heard in Iowa that the medical profession today regarded it as desirable that pregnant women continue their usual prepregnancy activities, which means they should continue working, and were regularly fully recovered and able to resume work within two or three weeks after delivery. Dr. Keetels' testimony to this effect was set forth at pp. 51a to 56a in an appendix to the brief the IUE filed as amicus curiae in Cleveland Board of Education v. Le Fleur, 414 U.S. 632 (1974) and relied upon by the Iowa courts in Cedar Rapids School District v. Parr, 6 FEP Cases 101, 102 (Iowa Dis. Ct., Linn Counties, 1973), affd. by the Iowa Supreme Court, 227 NW 2nd 486, 12 FEP Cases 54 (1975). The medical testimony in Hanson v. Hutt, 83 Wash. 2d 195, 201, 517, P 2d 599 (1973) was summarized by the court as follows:

> "All five doctors who testified at the Commissioner's hearing concluded that 90 percent of pregnant women do not suffer from medical conditions that would impair their ability to continue working in their normal occupations. They also testified that most women can return to their jobs between 5 days and 4 weeks after delivery."

In Turner v. Department of Employment Security, 423 U.S. 44 (1975) the Supreme Court held that a presumption that a woman was disabled for six weeks after childbirth was unconstitutional as violating due process because "It cannot be doubted that a substantial number of women are fully capable of * * * resuming employment shortly after childbirth."

Of the six plaintiffs in the IUE's GE v. Gilbert case who testified in court, two had been cleared by their physicians for return to work four weeks after the date their babies were born, Erma Faye Thomas at Tyler, Texas and Mary Williams at Salem, Virginia. The plaintiffs in cases decided by the courts have often had even shorter periods of absence due to childbirth. Hutchinson v. Lake Oswego School District, 374 F. Supp. 1056, 8 FEP Cases 276 (DCD Ore. 1974), aff'd re Title VII issues of liability, 519 F.2d 961, 11 FEP Cases 161 (9th Cir. 1975), vacated and remanded 45 USLW 3462 (1977) (15 work days); Leonard v. Bd. of Ed. of Eau Claire, Wisconsin, 2 CCH-FPG 5210 (Wis. Dept. Industry Labor and Human Relations) (10 days); Liss v. School District of City of Ladue, 396 F. Supp. 1035, 11 FEP Cases 156 (DCED No. 1975) (22 work days); Danielson v. Bd. of Higher Education, 385 F. Supp. 22 24, 4 FEP Cases 885, 4 EPD ¶7773 (SDNY 1972) (12 work days).

Medical authorities are also agreed that less than five percent of pregnancies result in complications which will disable the employee from work for any substantial period before delivery. The woman with complications is a victim of illness in every sense of the word and failure to pay her disability benefits has no color of support even on employers' own theories of pregnancy being different from other sicknesses normally covered.

Rate Of Return To
Work Following Childbirth

The contention of employers that most females quit the labor force upon having a baby is untrue. Sixty percent of female employees at GE who were absent for childbirth were returning to work within 8 weeks after the date of the birth of their babies, in 1970 and 1971, the most recent years for which we have figures. Unlike employees who quit, women having babies often return months or even years later. Figures as to the number returning later than 8 weeks have been promised by GE but never supplied. It seems probable the percentage actually returning is substantially greater than 60% when those returning more than 8 weeks after childbirth are included. But even if it were only 60% this would be no basis for denying disability coverage. Since GE's turnover rate is 40%, the likelihood that a female employee absent for childbirth will be working for GE a year later is equal to that of both male and female employees not absent for pregnancy.

There are a number of major corporations where absences for pregnancy-related disabilities are covered by disability benefits on the same basis as other absences: For example, Firestone, Martin Marietta, Cummins Engine Co., IBM, Xerox, Polaroid, A.B. Dick, Prentice-Hall, and TRW. From several we have figures which show a great increase in the rate of return to work following childbirth. Xerox Corporation furnished us with figures showing an increase in rate of return

to work following childbirth from 46% in 1973 to 59% in 1974 to 69% in 1975. We have been told by members of the staff of Polaroid that the rate of immediate return after childbirth is now 80%. The many employees who return a year or two or more later are not reflected in their figures.

IUE Success In Bargaining For
Coverage Of Pregnancy-Related Disabilities

The IUE's efforts to correct discrimination because of pregnancy at companies other than GE, GM and Westinghouse has in some instances been more successful. Prior to the Supreme Court's decision in GE v. Gilbert and IUE, 97 S. Ct. 401, all companies having contracts with IUE had agreed that women could continue working and return to work as soon as able. While IUE's staff spent many hours working out collective bargaining language for resolutions of conflict by a third neutral doctor if there was disagreement between the woman's doctor and the company doctor, in practice we have had no cases involving any disagreement. Many women are now working until their babies are born. And the women are regularly reporting back to work as soon as cleared by their doctor which is sometimes in four weeks but usually not until six weeks.

Also without exception the companies with which IUE deals had agreed that women could have the same rights to retain and accrue seniority although there are many grievances, charges with state and federal agencies and some court suits still pending involving losses of seniority which occurred before

changes to accord the same seniority in the future as other disabled persons receive in order to conform to the EEOC Guidelines.

IUE has also negotiated a number of agreements which provide the same disability benefits for women disabled by pregnancy. I do not have a complete list but include in Attachment D to this Statement a list of those of which I am aware. If I learn of others before the record in these hearings is closed, I will supplement the list.

In negotiating with employers for the purpose of bringing disability benefits for pregnancy-related disabilities up to the level of other disability benefits in both duration and amount of benefit, amount wise and time wise, we encountered a great variation between insurance companies in the amount of insurance premiums quoted for groups equal as to size, age, and percentage of females. Our experience was similar to that reported in an article by Kistler and McDonough, Paid Maternity Leave - Benefits May Justify the Cost, Labor Law Journal, December 1975, pp. 782, 792, Table 2, where insurance companies quoted increased premiums ranging from 5 to 25%.

The official publication of the Society of Actuaries, Transactions, Publication Year 1976, containing 1975 Reports of Mortality and Morbidity Experience, Group Weekly Indemnity Insurance shows that the insurance industry has not revised its tables of expected number of births since the period of 1947-1949, when the birth rate reflected the baby boom which

followed World War II. The tables of expected number of claims are called tabulars. This publication, referring to the tables used by major insurance companies states that "The maternity tabulars do not reflect the substantial decline in birth rates in recent years, with the result that the actual-to-tabular ratios for maternity benefits are now down near the 40 per cent level, while the actual-to-tabular ratios for non-maternity benefits are generally near 100 percent or even higher." Table 3 - Group Weekly Indemnity Experience Groups with Less than 1,000 Employees Exposed 1970-1974 Policy Years' Experience, By Plan shows that Plans with 6 Weeks' Maternity Benefit had a ratio of actual claims on 6 weeks maternity benefits to expected claims for the year ending 1971 of 51%, 1972 of 40%, 1973 of 37% and 1974 of 42%. Table 3A, being the same table for a different group of insurance companies, showed the ratio of actual claims to expected claims for six weeks naternity for 1972 was 27%, for 1973 was 22% and for 1974 was 42%. A copy of this article is attached to this Statement as Attachment E.

The insurance industry has had virtually no experience with temporary disability benefits for pregnancy-related disabilities. Paul H. Jackson, actuary, testified in GE v. Gilbert and IUE that "there is very little actuarial experience by reason of the fact that the group business has been restricted, the maternity claims, to a six-weeks period and disability income coverage under individual policies is normally not paid when the absence is due to pregnancy" (Record as printed in Supreme Court, Vol. 11, p. 535). Jackson's estimate made in the GE case

of a $1.3 million increase in costs to provide non-discriminatory coverage for pregnancy-related disabilities rested on the assumption that 100% of the women covered by policies with a 13 weeks maximum coverage would be absent 13 weeks, and that average duration of claims under 26 week plans, would be 23 weeks and under 52 week plans would be 30 weeks (Vol. II, pp. 549, 550; Vol. III, pp. 846-847). Actuary Alexander J. Bailie in charge of group insurance for Metropolitan Life Insurance Company prepared GE Exh. 13 which made no prediction as to how long women would be absent from pregnancy-related disabilities but showed a cost of $1 billion if the average absence was 20 weeks, $1.3 billion if the absence averaged 25 weeks and $1.6 billion if the absence averaged 30 weeks (Vol. II, p. 737). The estimate of Peter M. Thexton, associate actuary, Health Insurance Association of America, made during hearings in the House on April 6, 1977 on the companion bill H.R. 5055, of an increase nationwide of costs of disability benefits of $600 million, represents a drop of a billion dollars from the Bailie figure of $1.6 billion. The differences between the figures indicate how conjectural all these figures are and that no one has any sound basis for assuming women will average more than 6 weeks absence once women are relieved of the inposition of mandatory leaves before and after childbirth.

Many of the electrical equipment manufacturers with whom IUE has entered into collective bargaining agreements for full coverage of pregnancy-related disabilities have apparently been

able to purchase insurance without indicating to us that they had any problem. Several companies however have asked us if it was acceptable to us that they become self insurers as to the coverage of pregnancy-related disabilities as they were of the opinion that they could pay all claims directly at a total cost to the employers less than the premiums quoted to them by the insurance companies. The IUE has agreed to several such arrangements. An arbitration award has recently been published which reveals that other employers and unions have made similar agreements for self insurance of the pregnancy disability claim at the same time that other disability claims were insured. Design & Mfg. Corp. and UAW Local 151, 68 LA 354 (Samuel S. Kates, arbitrator, March 14, 1977).

At least one insurance company, State Mutual Life Assurance Company of America, has recognized that employers may wish to become self insurers and has offered the public an arrangement by which the insurance company administers the program, by receiving and processing claims in a manner which appears to be the same as if the claim was insured but the employer pays all the cost of the claim plus a fee for administrative services instead of a premium.

The employers with whom we have entered into agreements for coverage of pregnancy-related disabilities on the same basis as other disabilities have seemed generally well pleased with the results. My impression of the satisfaction of these employers with the results has been paralleled by studies conducted by Prentice-Hall. Prentice-Hall has conducted three surveys of employer policies

with respect to pregnancy. The first was conducted in 1965, the second in 1972 and the third in 1973. A copy of the report of the 1973 survey is attached to this Statement as Attachment F. The results of these surveys were summarized by Prentice-Hall as follows (pp. 457, 460, 463, 465).

> "The new EEOC guidelines have spurred sweeping changes in maternity leave policies, and those changes are evident in the latest P-H survey on this important subject. The P-H research staff, in cooperation with the American Society for Personnel Administration, polled 929 companies across the country to pinpoint new trends in maternity leave policies. Results show that over half the firms have already changed their policies to conform to EEOC guidelines, and almost one-fourth anticipate making further changes.* * *
>
> "In 1965, just after Title VII took effect, P-H researchers asked over 1,000 employers about their maternity leave policies. Findings: Only 2 out of 5 offices in the 1965 survey said they granted maternity leaves. Three-fourths of the plants had leave policies, but most of these required the employee to stop working early in pregnancy; less than 20% allowed the pregnant employee herself to decide how long she wanted to continue working.* * * In 1972, shortly after the guidelines were issued, another P-H survey on maternity leave found three-fourths of all respondents had adopted maternity leave policies; 60% allowed the employee or her physician to decide how long she could stay on the job.* * *
>
> "Further changes in maternity leave policies are revealed in our current survey. According to our latest figures, 9 out of 10 respondents among both offices and plants have formal maternity leave provisions: 8 out of 10 let the employee or her doctor decide when she should quit working. * * *

"What about paying employees while they're absent during pregnancy? About three-fourths of the respondents apply their usual absence rules to pregnant employees, and an additional 8% never give sick pay, regardless of cause. But at 17% of the firms polled, sick pay is provided only for absences not related to pregnancy-- although this practice would appear to violate EEOC guidelines (see page 462). A few companies said they pay sick leave benefits only for pathological pregnancies -- those with serious medical complications. * * *

"* * * Some companies tailor their maternity leave allowances to match the disability benefits in their group insurance plan. Others tie in their allowances to state disability benefit programs.* * * Overall, about one-fifth (21%) of the firms we surveyed said they give sick pay to employees out on maternity leave.

" The duration of maternity leave benefits varies quite a bit. Just over half the employers that grant paid maternity leaves said they pay for six weeks or more before delivery; the rest pay from one to five weeks before the birth date. After the baby is born, two-thirds of these companies grant another six weeks or more of paid maternity leave; the other third pay from two to four weeks after delivery. Here's a sampling of plans and comments:

"' We grant a maximum of five paid days per year, accruable to a maximum of 20 days. We see no problem in granting it as long as it has been earned. While a pregnant (or ill) employee is on leave, she does not accrue additional sick leave credits. [Bank, Minnesota]

* * *

" The most frequent policy change reported is the switch to paid maternity leaves. Many firms told us their former policies included paid sick leave, but no pay for maternity leave; most of these companies

"said they now pay accrued sick pay to employees on maternity leave. Many have also dropped their old length-of-service requirements for maternity leave payments. Sample comments:

* * *

"' There's been a 180-degree turnaround in our policy: We now pay for maternity leaves of absence.' [Hospital, Missouri]

"'At our company, we think paid maternity leaves are a good thing -- and long overdue. [Insurance company, Nebraska]."

In the 1972 survey, Prentice-Hall reported on the high return rate. A copy of the report in the 1972 survey is attached to this Statement as Attachment G. On the subject of returns Prentice-Hall stated (p. 463):

" MOST OF THE WOMEN WHO TAKE MATERNITY LEAVES COME BACK TO WORK -- We asked survey respondents to tell us what proportion of their employees who were pregnant in 1971 quit their jobs and what proportion took a leave. Considering just those companies that had statistics available, half the plants, one-third of the office firms, and two-thirds of the hospitals said that 75% or more of the employees who were pregnant elected to take a leave. (In many of these cases, 100% of the employees took a leave.) And of this group, more than half reported a perfect score on "returns" -- that is, all the employees who elected a leave actually returned to work as scheduled."

The Bureau of National Affairs conducted a survey of Paid Leave & Leave of Absence Policies, November 1975, Personnel Policies Forum, Survey No. 111, in which it summarized the policies with respect to pregnancy as follows:

" Formal policies covering maternity leave apply to production employees in 87 percent of the PPF companies, to office employees in 91 percent, and to managerial employees in 92 percent. For both production and office groups, such policies are somewhat less common in manufacturing than in non-manufacturing or nonbusiness organizations (see Table 7).

" In some instances where there is no maternity leave policy as such, maternity benefits are provided under a sick leave policy. One respondent notes, for example, 'For all employees, maternity leave (disability due to childbirth or pregnancy) is treated under our Sick Leave provisions.' At one company with no maternity leave policy, the plant manager explains, as follows:

"We felt the best way to eliminate any sex discrimination practices with regard to maternity leaves was to get rid of the Maternity Leave Policy from our manual. We now treat a request for Maternity Leave the same as any Medical Leave request. The leave would be initiated by the employee; a Physician's statement would be needed to substantiate the illness and a leave for up to six months could be granted. Six months is the maximum leave granted for any Medical reason.

"By eliminating the Maternity Policy from our manual, our supervisors and employees (70% female) knew we were serious about our handling Maternity Leave like any other Medical Leave. So far it has worked well for us. (Small central manufacturing company)."

The extent to which these employers will continue with these non-discriminatory practices is as yet uncertain. The arbitration case previously mentioned, Design & Mfg. Co., 68 LA 854, arose when on December 9, 1976, two days after the Supreme Court decided the IUE's GE v. Gilbert case, the employer announced that disability benefits would no longer be paid for pregnancy-related disabilities. The employer argued that the collective bargaining agreement requiring such payments was entered into due to a mistake of law, namely, a supposition that the EEOC Guidelines were legal. The arbitrator rejected this argument and held that the employer was legally bound by its contract to pay benefits.

This arbitration case illustrates the urgent need for the expeditious enactment of S. 995 to prevent a retrogression in the progress which had been made under the EEOC Guidelines.

On behalf of the IUE and all of its members, I urge that this Committee report S. 995 favorably.

(Revised 5-26-77)

ATTACHMENT D

(to Statement of David J. Fitzmaurice)

LIST OF EMPLOYERS WITH WHOM INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, HAS COLLECTIVE BARGAINING AGREEMENTS PROVIDING INCOME MAINTENANCE DURING ABSENCES DUE TO PREGNANCY-RELATED DISABILITIES FOR EQUAL AMOUNTS AND SAME MAXIMUM DURATION AS COVERAGE FOR OTHER DISABILITIES

The International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC or one of its locals has collective bargaining agreements with the following employers which provide that the employer will pay temporary disability benefits for absences due to pregnancy-related disabilities in the same amounts and for the same duration as for other disabilities:

Name of Employer	Location	Maximum Duration	Range of Weekly Benefits
A & B Beacon Business Machines Corp.	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
A. E. Electronics	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
Acme Electric Co.	Cuba, N.Y.	26 weeks	60% of weekly wages but not more than $95
Acrylic Optics (and Detroit Optometric Centers)	Detroit, Mich.	26 weeks	$70 - $130
Admiral Optical Co.	Detroit, Mich.	26 weeks	$70 - $130
Aetnacraft Industries, Inc.	Brooklyn, N.Y.	26 weeks	60% of weekly wages but not more than $95
Airco Speer Carbon Graphite	St. Marys, Pa.	13 weeks	$55

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B & J Optical Services, Inc.	Lincoln Park, Okla.	26 weeks	$70 - $130
Birchbach Company Inc.	Freeport, N.Y.	26 weeks	60% of weekly wages but not more than $95
Bogen Communications Division, Lear Siegler, Inc.	Paramus, N.J.	26 weeks	2/3 of weekly wages but not more than $104
Brevel Motors Div. of McGraw-Edison Co.	Carlstadt, N.J.	26 weeks	2/3 of weekly wages but not more than $104
Cavitron Ultrasonics	Long Island City, N.Y.	26 weeks	60% of weekly wages but not more than $95
Chromalloy Corp.	Midwest City, Okla.	13 weeks	$60
Cooperative Services (also known as Detroit Coop.)	Detroit, Mich.	26 weeks	$70 - $130
Dearborn Optical Centers	Detroit, Mich.	26 weeks	$70 - $130
Duncan Electric Co.	Lafayette, Ind.	13 weeks	$35 to $50
EICO Electronic Instrument Co.	Brooklyn, N.Y.	26 weeks	60% of weekly wages but not more than $95
EON Corporation	Brooklyn, N.Y.	26 weeks	60% of weekly wages but not more than $95
Ever Ready Thermometer Co.	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
Executone, Inc.	Long Island City, N.Y.	26 weeks	60% of weekly wages but not more than $95
Fine Arts Optical Co.	Detroit, Mich.	26 weeks	$70 - $130
Foon & Cole, Optometrists	Detroit, Mich.	26 weeks	$70 - $130

Gap Instrument Corp.	Hauppauge, N.Y.	26 weeks	60% of weekly wages but not more than $95
Gem Electronic Dist. Inc.	Farmingdale, N.Y.	26 weeks	60% of weekly wages but not more than $95
General Industries	Forrest City, Ark.	26 weeks	$70
General Optical	Detroit, Mich.	26 weeks	$70 - $130
Grand Machining Co.	Detroit, Mich.	26 weeks	$90
Harrison Warehousing Inc.	Harrison, N.J.	26 weeks	2/3 of weekly wages but not more than $104
Heekin Can Div. of Diamond International	Ancor, Ohio	26 weeks	$110
Hi-Torc Department Brevel Motors	Carlstadt, N.J.	26 weeks	2/3 of weekly wages but not more than $104
Industrial Mica Corp.	Englewood, N.J.	26 weeks	2/3 of weekly wages but not more than $104
IRC Burlington Division of TRW Electronics Branch	Burlington, Iowa	13 weeks	50% of straight time wages but not less than $90 per week
ITT Electro-Products Div.	Roanoke, Va.	20 weeks	$70
James Crystal Mfg. Co.	Wyandotte, Mich.	26 weeks	$80
Lafayette Electronics Corp.	Paramus, N.J.	26 weeks	2/3 of weekly wages but not more than $104
Lafayette Radio Electronics Corp.	Syosset, N.Y.	26 weeks	60% of weekly wages but not more than $95
Laminall Plastics	Long Island City, N.Y.	26 weeks	60% of weekly wages but not more than $95

Larkin Optical	Detroit, Mich.	26 weeks	$70 - $130
Lektra Laboratories	College Point, N.Y.	26 weeks	60% of weekly wages but not more than $95
Loral Electronic Systems	Bronx, N.Y.	26 weeks	60% of weekly wages but not more than $95
Lundy Electronics & Systems, Inc.	Glen Head, N.Y.	26 weeks	60% of weekly wages but not more than $95
McNab, Inc.	Mt. Vernon, N.Y.	26 weeks	60% of weekly wages but not more than $95
Mastercraft Record Plating Co.	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
Milgray Electronics Inc.	Freeport, N.Y.	26 weeks	60% of weekly wages but not more than $95
Photovolt Corp.	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
Pontiac Coop.	Pontiac, Mich.	26 weeks	$70 - $130
Premier Metal Products Co.	Bronx, N.Y.	26 weeks	60% of weekly wages but not more than $95
Raycon Industries	Levonia, Mich.	26 weeks	$90
Robbins & Myers	Memphis, Tenn.	13 weeks	$50
Rowe International	Grand Rapids, Mich.		
Signal Transformer Co., Inc.	Inwood, N.Y.	26 weeks	$95
Thorne Optical	Detroit, Mich.	26 weeks	$70 - $130

Torch Tip	Pittsburgh, Pa.	13 weeks	$65
TRW Inc.	Philadelphia, Pa.	26 weeks	$100
Twin Valley Coop.	Battle Creek, Mich.	13 weeks	$70 - $130
United Transformer Co., A Division of TRW, Inc.	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
Wagner Electric Co.	St. Louis, Mo.	26 weeks	$120
Waldes Kohinoor, Inc.	Long Island City, N.Y.	26 weeks	60% of weekly wages but not more than $95
Wayne Optical Co.	Detroit, Mich.	26 weeks	$70 - $130
Wilco Corp.	Indianapolis, Ind.	26 weeks	$60
Wolverine Wire Products Inc.	Hazel Park, Mich.	26 weeks	66 2/3 of wages
W. D. Zobel Co.	Royal Oak, Mich.	26 weeks	66 2/3 of wages
Yardney Electric Corp.	Pawcatuck, Conn.	26 weeks	60% of weekly wages but not more than $90
Local #431, IUE, AFL-CIO-CLC	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95

The CHAIRMAN. Mr. Lynch.

STATEMENT OF LEON LYNCH, VICE PRESIDENT, HUMAN AFFAIRS, UNITED STEELWORKERS OF AMERICA

Mr. LYNCH. My name is Leon Lynch. I am vice president of human affairs of the United Steelworkers of America, AFL–CIO–CLC.

We are here today to register the steelworkers' strong support for S. 995, the bill which would put an end to an especially flagrant form of sex discrimination in the work place—one which allows pregnancy to be treated differently for fringe benefit purposes than all other disability conditions.

I am accompanied by Toni Sterling, of local union 65, United Steelworkers of America; Carl Frankel, USWA Legal Department; Tom Duzak, USWA Insurance and Pension Department; Jack Sheehan, USWA Legislative Department; and a delegation of people from Illinois and Indiana. [Applause.]

Toni Sterling will make a brief comment.

Before speaking to the merits of the proposed bill, I would like to discuss the Steelworkers' experience in dealing with the pregnancy disability issue.

I think this committee will find the account informative, as well as useful in its deliberations.

To begin with, in the four basic industries we represent—steel, nonferrous, aluminum and container—the negotiated sickness and accident disability program does not exclude, as did the General Electric plan in Gilbert, pregnancy and pregnancy-related disabilities.

Disabilities for these causes are covered. The problem is that whereas employees disabled for other causes may draw disability benefits for the duration of the disability up to a maximum of 52 weeks—104 weeks in the case of the 20-year employees under the recent basic steel settlement. Workers disabled from pregnancy or pregnancy-related causes may draw benefits for 6 weeks at most, even if their disability as defined in the program continues long thereafter.

The 6-week maximum duration for pregnancy-related disabilities is a rule among the many steelworker-represented employers who follow the pattern set by our basic industry contracts.

We began our efforts to eliminate the 6-week benefit limitation for pregnancy a number of years ago. Specifically, it began in mid-1972, on the heels of a newly-issued EEOC regulation.

We met first with the steel industry. At that meeting, the Steelworkers demanded an immediate mid-term change to eliminate the 6-week cap from the insurance program.

Our arguments were based on the requirements of the new guidelines and on the simple equity, as we saw it. Our demand was ultimately rejected by the steel industry. In terms of the present debate, the reasons given and not given for this rejection are quite enlightening.

To begin with, there was no horror story on the costs of our demand. The reason is simple. In relatively few cases does a pregnancy-related disability continue for more than 6 or 7 weeks.

Accordingly, the cents-per-hour cost of extending the benefit duration period beyond 6 weeks is minute if it is measurable at all.

Rather than costs, the steel companies hid instead behind legalism. Their chief position was that EEOC guidelines did not have the force of law.

Suits then pending would decide the issue, they said, and until that day arrived, pregnancy disability benefits would not be extended beyond the 6-week minimum.

Not unexpectedly, the other industries we approached on this issue made the same or a similar response.

If this bill becomes law, the treatment that such women receive will be equal to what others in comparable situations already receive.

If, for example, an employer maintains an income maintenance program which generally provides benefits for other medical disabilities, then he also will have to provide benefits for pregnancy-related disabilities and do so in the same measure as to benefit amount and duration.

The same for leave policies, hospital coverage, and all other fringe benefit and employment-related purposes. If, on the other hand, the employer does not maintain such programs, the law would not require that he start one.

Our sickness and accident programs are designed to provide a cushion against the economic shock brought on by temporary disabilities.

It would be perfectly obvious that the economic impact on women workers and their families is no less when it arises from pregnancy than when it arises from other causes.

Another reason to pass this bill is the need to provide one uniform national policy dealing with this issue.

The Steelworkers is party to many multistate contracts, particularly in our basic industries. One example involves a steel company with plants in New York, Pennsylvania, Indiana, and elsewhere. All those plants are covered by a single contract and a single fringe benefit program.

Let us assume three women workers employed by this steel company, one each in New York, Pennsylvania, and Indiana. They all incur a pregnancy disability which lasts 10 weeks.

As the law now stands, the two women in New York and Pennsylvania will receive benefits for the full duration of the disability, if they file charges with the State agency, while their sister in Indiana would receive benefits for only 6 weeks.

Yet, as I have indicated, all suffer the same disability and all are covered by the same sickness and accident program.

I would like to conclude with a few observations on some of the objections raised to this bill or its companion measure in the House.

The opposition describes pregnancy as generally a voluntary condition and suggests that it ought not be covered for that reason.

The distinction between voluntary and involuntary causes for disability is not persuasive. In our plans, employees are eligible for benefits if they are totally disabled as a result of sickness or accident, so as to be prevented from performing the duties of their employment.

They are not disqualified because the activity which produced the disability was one willingly or voluntarily undertaken.

I think the term, "disability" is similarly defined in many other collective bargaining agreements. Few, if any, attempt to draw a line between voluntary and involuntary causes.

Another objection is that when it comes to controlling abuses, pregnancy is somehow unique. This is the position of the chamber of commerce and echoes the difficult administration arguments made by the steel companies in the negotiations I referred to earlier.

Though put more politely, in essence, these arguments suggest that childbearing workers are more likely to malinger than their fellow workers.

There is no evidence for such an assertion, and the steelworkers urge you to reject it. Also puzzling is the chamber's statement that it is more difficult to verify disability claims in pregnancy cases than in others.

Why this is so escapes us. Is pregnancy-related disability more difficult to check than, say, back injuries, severe headaches and a host of other disabling ailments where the symptoms are subjective?

As for the chamber's reference to malpractice suits, we do not understand why doctors have any more to fear from denying pregnancy disability claims than they do from denying any other disability claims.

Mr. Chairman, I thank you for giving me this opportunity to appear in support of S. 995 on behalf of the United Steelworkers of America.

The CHAIRMAN. Thank you very much, Mr. Lynch.

[Applause.]

[The prepared statement of the United Steelworkers of America and Mr. Lynch follows:]

WALTER J. BURKE
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SECRETARY-TREASURER

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THE UNITED STEELWORKERS OF AMERICA URGES
EQUAL TREATMENT FOR PREGNANT WORKERS

April 27, 1977

The Steelworkers Union today urged Congress to outlaw the practice of companies discriminating against pregnant workers in their benefit programs. "The Steelworkers is pledged to do all it can to eliminate this injustice," said Steelworker Vice President Leon Lynch.

In testimony before the Senate Subcommittee on Labor, Lynch scored the recent Supreme Court decision which allows such discrimination as "the kind of reasoning that offends common sense....Our main concern is that the decision visits a great injustice on the child-bearing segment of the American workforce."

The union spokesman called for passage of S-995 to correct the situation. The bill, sponsored by Senator Williams (D-N.J.), and a companion bill sponsored by Congressman Hawkins (D-Calif.), would amend Title VII of the Civil Rights Act to specifically prohibit the discrimination.

"In a word," said Lynch, "all we ask is that pregnant workers receive no more, but no less than other workers.... If, for example, an employer maintains an income maintenance program which provides benefits for other medical disabilities, then he will also have to provide the same benefits for pregnancy-related disabilities."

Lynch also pointed out that "If, on the other hand, the employer does not maintain such programs, the law would not require that he start one."

Lynch described how efforts by the union to do away with the pregnancy discrimination by contract negotiations have been thwarted by the companies. Hiding behind legalisms, the companies which the Steelworkers represent have refused to modify their contracts to provide equal treatment. Instead, companies have commonly developed a pattern of avoiding the overriding problem and temporarily easing the pressure on them by settling individual claims when they were strongly challenged.

The difficulty in dealing with the discrimination through labor-management contracts has been intensified by variations in state laws. Lynch pointed out that "the lack of uniformity poisons industrial relations" regarding multi-state contracts. "Another reason to pass this bill," he said, "is the need to provide one uniform national policy dealing with the issue."

Lynch also pointed out that the increase that would be brought about by ending the pregnancy discrimination is small, and "certainly not too high to pay for equality in the workplace."

By urging passage of S-995, the Steelworkers and other supporters of the bill are only asking for legislation "to secure a promise actually made in 1964 with the enactment of Title VII of the Civil Rights Act." Lynch said that the Steelworkers "ferverently believe that S-995 is essential to secure equality of treatment for female workers."

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STATEMENT

of

LEON LYNCH, VICE PRESIDENT
HUMAN AFFAIRS
UNITED STEELWORKERS OF AMERICA

on

AMENDMENT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
TO PROHIBIT SEX DISCRIMINATION ON THE BASIS OF PREGNANCY.

S-995

before the

COMMITTEE ON HUMAN RESOURCES
Subcommittee on Labor
UNITED STATES SENATE

April 27, 1977

My name is Leon Lynch. I am Vice President, Human Affairs of the United Steelworkers of America, AFL-CIO. We are here today to register the Steelworkers' strong support for S-995, the bill which would put an end to an especially flagrant form of sex discrimination in the workplace -- one which allows pregnancy to be treated differently for fringe benefit purposes than all other disability conditions.

In the Gilbert case, with which you are all familiar, six men in the United States Supreme Court said that it is not sex discrimination to deny disability benefits to pregnant women for the reason, as I understand it, that such benefits would also be denied to pregnant men, and, thus, there is no discrimination on the basis of sex. We in the Steelworkers believe that this kind of reasoning offends common sense. We also believe -- and the vast body of legal opinion seems to agree with us -- that Gilbert represents a gross distortion of the sex discrimination provisions of Title VII. But whether Gilbert is right or wrong legally is not the most pressing issue. Our main concern is that decision visits a great injustice on the child-bearing segment of the American workforce. The Steelworkers is pledged to do all it can to eliminate this injustice. We, therefore, urge the passage of S-995.

In my testimony, I will explain the Steelworkers' interest in this legislation, our experience in dealing with employers on the pregnancy disability issue, and why we believe so fervently

that S-995 is essential to secure equality of treatment for female workers. Finally, I will respond briefly to some of the major objections I have heard raised in opposition to this bill.

A. Steelworkers' Interest

At 1,400,000 strong, the United Steelworkers of America is one of the two largest industrial unions in the United States. A common misconception is that our membership is confined to the steel industry. In truth, that industry accounts for only one-third of the Union's members. Substantial numbers work in the nonferrous metals industry, the aluminum industry, the container industry, the chemical industry and thousands of foundries, mines, manufacturing facilities and service establishments throughout the United States. In recent decades, economic pressures combined with other forces -- including the law -- have seen to it that more and more women are being hired by the employers whose workers we represent. That being so and our Union having been open to all, it follows that women are becoming a growing segment of our membership.

The Steelworkers has always been firmly committed to the principle of equality in the workplace. Indeed, "equal pay for equal work" was one of our earliest rallying cries. Over the years, we have fought hard in the plants and mills to eliminate discriminatory practices aimed at minorities. We also took our campaign to Congress where, as many of you on this Committee know, the Steelworkers was one of the key leaders in the battle to secure passage of Title VII of the Civil Rights Act of 1964.

Now, as a result of the decision in Gilbert, the Steelworkers, together with sister unions, is back, as a part of a broad coalition of organizations, to ask Congress not for a new, daring piece of legislation, but for a curative measure designed to secure a promise actually made in 1964 with the enactment of Title VII.

B. Steelworker Experience on the Pregnancy Disability Issue

Before speaking to the merits of the proposed bill, I would like to discuss the Steelworkers' experiences in dealing with the pregnancy disability issue. I think this Committee will find the account both informative and useful in its deliberations.

To begin with, in the four basic industries we represent, steel, nonferrous, aluminum and container, the negotiated sickness and accident disability program does not exclude, as did the General Electric plan in Gilbert, pregnancy and pregnancy related disabilities. Disabilities for these causes are covered. The problem is that whereas employees disabled from other causes may draw benefits for the duration of the disability up to a maximum of 52 weeks (104 weeks in the case of 20-year employees under the recent Steel Settlement), workers disabled from pregnancy or pregnancy related causes may draw benefits for six weeks at most, even if their disability, as defined in the program, continues long thereafter.

The six-week maximum duration for pregnancy related disabilities is the rule among the many Steelworker-representated

employers who follow the patterns set by our basic industry contracts. As I will discuss in more detail a little later, several years ago we began our attempts to eliminate the six-week cap because we recognized, in the words of S-995, that women affected by pregnancies, child-bearing or related medical conditions, were not being treated the same under these benefit programs as persons disabled by other conditions, at least in those cases where the pregnancy related disability lasted longer than six weeks. But women covered by these plans do have significant protection. What of the others?

As I have indicated, the Steelworkers Union represents thousands of employers scattered in various industries throughout the United States. Among them are some who, like General Electric, provide sickness and accident coverage for virtually all other causes, but provide no such benefits in the case of pregnancy caused disabilities. In such cases, the discrimination against women is obviously more pronounced an adverse impact than where six-week pregnancy benefits are provided. Finally, there are probably a handful of Steelworker-represented employers and, of course, many, many unorganized companies who provide no disability program at all for their employees. I confess that what those employers are guilty of cannot be called discrimination. They do not single out one or two groups, but instead mistreat all their employees.

As I have said, we began our efforts to eliminate the six-week benefit limitation for pregnancy a number of years ago.

Specifically, it began in mid-1972, on the heels of a newly issued EEOC regulation. That regulation expressly provided that disability caused by pregnancy had to be treated the same as any other temporary disability for purposes of sickness and accident, health and other contractual benefits or practices. (The EEOC guidelines before that had been a bit fuzzy.) In any case, sickness and accident benefits was the area in which steel and other industry-wide programs did not meet the guidelines -- because of the six-week limit on benefits. Consequently, we called for special meetings with our industry counterparts to discuss this matter. We met first with the steel industry. At that meeting, the Steelworkers demanded an immediate mid-term change to eliminate the six-week cap from the insurance program. Without going into a word-by-word replay of the meeting, I will simply report that our arguments were based on the requirements of the new guidelines and on simple equity as we saw it. In a word, there was no reason to treat pregnancy differently than other disabling conditions. Our demand was ultimately rejected by the steel industry. In terms of the present debate, the reasons given and not given for this rejection are quite enlightening.

To begin with, there was no horror story on the costs of our demand. The reason is simple. In relatively few cases does a pregnancy related disability continue for more than six or seven weeks. Accordingly, the cents-per-hour cost of extending the benefit duration period beyond six weeks is minute if it is measureable at all. Rather than costs, the steel companies hid,

instead, behind legalisms. Their chief position was that EEOC guidelines did not have the force of law. Suits then pending would decide the issue, they said, and until that day arrived, pregnancy disability benefits would not be extended beyond the six-week maximum. The companies also cited supposed "difficulties in administration" in pregnancy cases, a point to which I will return later.

Not unexpectedly, the other industries we approached on this issue made the same or a similar response.

The Steelworkers next raised the issue in 1974 when our contracts in the four basic industries expired. Again, we demanded equal treatment for workers disabled by pregnancy, and the compaines again held fast to their rejection. By that time, however, quite a few courts had ruled that salary continuance or sickness and accident programs which treated pregnancy differently than other conditions thereby violated Title VII of the Civil Rights Act. Indeed, there was hardly a dissenting judicial voice. The Steelworkers believed that these virtually unanimous decisions would surely stand up. In these circumstances, the issue did not warrant jeopardizing settlements or calling a nation-wide strike. A more reasonable course, and the one we chose, was to secure agreements to reopen negotiations on the disability benefit plan once the matter was settled in the courts, and in the meantime, advise and assist our female members who incurred lengthy pregnancy-related disabilities to take the proper steps to preserve their rights. These steps included pursuing grievances and filing charges with state and federal equal opportunity agencies.

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Certain patterns developed in company responses to sex discrimination charges filed on account of pregnancy-linked benefit denials. The most common in our experience was what I call the temporizing approach in which the company put off or avoided the overriding problem by resolving individual claims. Thus, in cases where the disability due to pregnancy lasted more than six weeks, companies would simply settle charges filed by the individuals with the EEOC or an appropriate state or local agency. The charging party was satisfied because she received the benefit for the full term of her disability. For its part, the company avoided litigation costs which far exceeded the benefits being paid. More important to the companies was the fact that the EEOC did not insist on contractual modification of the six-week benefit limit, a point we raised with the agency, but to no avail.

Sad to say, the decision in Gilbert means that companies who relied on this tactic have, for the time being, won out -- at least insofar as Title VII is concerned.

C. Why S-995 Should Be Enacted

In testimony submitted to this Committee, others have pointed out that there are approximately 35 million women in the workforce, and that contrary to some stubborn myths, the vast majority work because they have to. S-995 would guarantee that those women in the workforce who bear children will not be punished for doing so. If this bill becomes law, the treatment that such

women receive will be equal to what others in comparable circumstances already receive. If, for example, an employer maintains an income maintenance program which provides benefits for other medical disabilities, then he also will have to provide benefits for pregnancy-related disabilities and do so in the same measure as to benefit amount and duration. The same for leave policies, hospital coverage, and all other fringe benefit and employment related purposes. If, on the other hand, the employer does not maintain such programs, the law would not require that he start one.

In a word, all we ask is that pregnant workers receive no more, but no less, than other workers who have incurred a medical or physical condition which has the same impact on their ability to work as does pregnancy. I have difficulty understanding how, as a matter of fundamental fairness, anyone can oppose such a law.

Title VII had as one of its basic goals the elimination of discrimination on account of sex. In other words, the law intended for men and women to be equals in the workplace. So long as women employees are required to absorb the full economic costs of pregnancy, that equality cannot exist.

Income maintenance plans, such as our sickness and accident programs, are designed to provide a cushion against the economic shocks brought on by temporary disabilities. It should be perfectly obvious that the economic impact on women workers and their families is no less when it arises from pregnancy than when it arises from

other causes. Indeed the impact in pregnancy cases may well be greater because there is another mouth to feed and care for.

Another reason to pass this bill, touched on in earlier testimony, is the need to provide one uniform national policy dealing with the issue. In some states, the equal opportunity or human relations agencies take the position that their state laws against sex discrimination prohibit discrimination on account of pregnancy. They adhere to this view of state law notwithstanding the decision in Gilbert. New York and Pennsylvania are among the states in this group. All in all, fourteen states have laws which require employees to provide temporary disability payments to disabled pregnant workers. I would like to illustrate for you how the lack of uniformity poisons industrial relations.

The Steelworkers is party to many multi-state contracts, particularly in our basic industries. One example involves a steel company with plants in New York, Pennsylvania, Maryland, Indiana, and elsewhere. All those plants are covered by a single contract and a single fringe benefit program. Let's assume four women workers employed by this steel company, one each in New York, Pennsylvania, Maryland and Indiana. They all incur a pregnancy disability which lasts ten weeks. As the law now stands, the two women in New York and Pennsylvania will receive benefits for the full duration of the disability (if they file charges with the state agency) while their sisters in Maryland and Indiana will receive benefits for only six weeks. Yet, as I have indicated, all suffer the same disability and all are covered by the same

sickness and accident program. This problem is not unique to one steel company but recurs in virtually any contract involving multi-state facilities. I suspect that even some company industrial relations people find the situation intolerable. As a practical matter, the only way it can be cured is by enacting S-995.

I understand there has been some discussion concerning an amendment which would provide that employers who are now discriminating with respect to pregnancy related disabilities will not be able, if this bill becomes law, to decrease benefits for other employees to come into compliance. The Steelworkers would support such an amendment. The way to cure discrimination is not to lower nonvictims to the unfortunate position of the discriminatees but to raise discriminatees to the levels enjoyed by their more fortunate fellow workers. While we think this is already implicit in the bill, there is something to be said for spelling out the intent of the legislation.

D. Objections To S-995

I would like to conclude with a few observations on some of the objections raised to this bill or its companion measure in the House.

The opposition describes pregnancy as generally a "voluntary" condition and suggests that it ought not be covered for that reason. The distinction between voluntary and involuntary causes for disability is not persuasive. In our plans, employees are eligible for benefits if they are totally disabled as a result

of sickness or accident so as to be prevented from performing the duties of their employment. They are not disqualified because the activity which produced the disability was one willingly or voluntarily undertaken. I think the term "disability" is similarly defined in many other collective bargaining contracts. Few if any attempt to draw a line between voluntary and involuntary causes.

Another objection is that when it comes to controlling abuses, pregnancy is somehow unique. This is the position of the Chamber of Commerce and echoes the "difficult administration" arguments made by the steel companies in the negotiations I referred to earlier. Though put more politely, in essence, these arguments suggest that child-bearing workers are more likely to malinger than their fellow workers. There is no evidence for such an assertion and the Steelworkers urge you to reject it. Also puzzling is the Chamber's statement that it is more difficult to verify disability claims in pregnancy cases than in others. Why this is so escapes us. Is pregnancy related disability more difficult to check than, say, back injuries, severe headaches and a host of other disabling ailments where the symptoms are subjective? As for the Chamber's reference to malpractice suits, we don't understand why doctors have more to fear from denying pregnancy disability claims than they do from denying any other disability claims.

Finally, there is the allegation that the costs of this measure are too high. The cost estimate usually cited is the one which was introduced in the trial of the Gilbert case. The

testimony submitted by Larry Gold of the AFL-CIO to the House shows why this cost estimate is far out of line. This is not to say that costs will not be increased as a result of this measure. But the increase per employee or per hour of employment, the standard way of measuring employment costs, is relatively small. In any case, the price is not too high to pay for equality in the workplace.

Mr. Chairman, thank you for letting me have this opportunity to testify in support of S-995.

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The CHAIRMAN. Mr. Watts?

STATEMENT OF GLENN E. WATTS, PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA, AFL–CIO

Mr. WATTS. Thank you, Mr. Chairman. As has already been indicated, I am Glenn Watts, president of the Communications Workers of America.

This is an AFL–CIO union, representing most of the nonsupervisory employees in the Bell System and in the remainder of the telephone industry.

Slightly over half of our membership is female. I hope that there will be time for me to introduce a colleague whom I have brought along, who can give some personal testimony in this regard, Mrs. Teresa Scott, who is from Capital Heights, Md., and a member and steward of our local union here in the Washington metropolitan area, local 2336.

CWA began to bargain seriously on the issue connected with maternity disability in 1971 with the Bell System. We have had a history of approaching this problem that goes back some 30 years, but as in so many cases, the whole concept of changing the attitude, not only of ourselves but the general public, really became heightened in the 1970's.

We were unsuccessful in those efforts. At that time, the Equal Employment Opportunity Commission was considering the maternity disability guidelines. And of course, as you know, in April 1972, the Commission did in fact issue the guidelines, as contained in section 1604.10.

Very shortly thereafter, CWA filed charges before the Commission against the units of the American Telephone & Telegraph Co., with which we had contracts.

Subsequently, CWA filed the identical charges against the other telephone companies which did not treat maternity disability as other temporary disabilities.

The total of the number of charges that we filed at that time was 101.

In the several years following, CWA received more than 40 favorable determinations from the EEOC. In many instances outside of the Bell System, and among the roughly 1,800 telephone companies not directly affiliated with the Bell System, those companies put those guidelines into effect, with the proviso that they would remain in effect until such time as the court might decide otherwise. Obviously, we were disappointed with the *Gilbert* case.

Three were dismissed on technical grounds in the Bell System, because they were filed against corporate headquarters and thought not to be applicable. Other charges were dismissed because the policies were in the view of the Commission substantially in accordance with their guidelines. And the remaining charges all were in various stages of investigation on December 7, 1976, the date on which the Supreme Court issued its decision in the *Gilbert* case.

In addition to filing charges before the Commission, CWA filed eight suits in the Federal court. The cases were brought against the

A. T. & T. long lines department, New York Telephone Co., Southern Bell Telephone & Telegraph Co., South Central Bell Telephone Co., Illinois Bell Telephone Co., Southwestern Bell Telephone Co., Pacific Telephone and Telegraph Co. and the General Telephone Co. of California, which is not a part of the Bell System.

Because the *Gilbert* case had reached the Supreme Court, CWA joined in that case to present arguments. The charges filed by CWA included five subparts as the issues for the Commission to decide, as set forth in the April 1972 guidelines.

They were, first, commencement and duration of the leave; second, availability of leave extensions; third, accrual of seniority and other benefits and privileges; fourth, reinstatement; and then, most important and fifth, payment under the health or temporary disability sickness absence plan in the industry.

All of these were not and are not being applied to pregnancy-related cases on the same terms and conditions as to other temporary disability cases for illness cases other than pregnancy.

The Supreme Court's adverse decision on the *Gilbert* case appeared to negate only the last of the five subparts of our charges. However, the Court also effectively removed the underpinning of the remaining subparts of our charges.

It seems to me the same can be said of the Commission's guidelines in section 1604.10.

CWA joined in the founding of the campaign to end discrimination against pregnant workers because corrective legislation now is the only way of securing equal protection under the law for many female workers.

The legislation under consideration, S. 995, and the several companion House bills, would make clear the intention of the Congress in its enactment of title VII of the Civil Rights Act of 1964.

This new legislation, in my view, would not be an amendment of the 1964 act as such. We think the Supreme Court was in error and that the intention was already clearly stated.

The employer witnesses have offered testimony on the proposed legislation, using "worst cause" examples which border, in my opinion, on the absurd.

It is most unfortunate that we are not now hearing testimony under oath, if only to avoid the lack of concern for reality.

We have looked into the testimony before the House subcommittee on April 6, presented by the witness for the Health Insurance Association of America. The net actual cost of increased disability benefits coverage was estimated at some $611 million a year, based upon statistics that are subject to serious question.

For example, the average duration of pregnancy disability benefits in their testimony is shown as some 11.3 weeks. The source is attributed to some "experience under the Hawaii compulsory cash sickness plans and some privately insured group policies."

Perhaps the universe of experience should be somewhat wider than a cash sickness plan of a single State, if defensible evidence of cost is to be derived.

I include the chart from that insurance company testimony for whatever value it may have, and I suggest that value is to see the kind of absurd exaggerations that are included.

In its capacity as an employer, my union, CWA, has a maternity disability benefit plan which meets the requirements of the EEOC guidelines and which did not and does not cause excessive cost to our union.

Our plan, set forth in the contract with another union, the Office and Professional Employees International Union, which represents our employees in collective bargaining with CWA, treats physical inability to work because of pregnancy and childbirth the same as inability to work because of any other illness. The female employee is automatically awarded a period of hospital confinement, plus 3 weeks of recuperation.

In addition, the female employee with over 1 year of service is entitled to take additional 5 months of unpaid leave without loss of seniority, insofar as benefits are unrelated to disability.

If there is a complication involved which would require a period of time in excess of 5 weeks, then, based upon an agreement between the employee's doctor and the union's doctor, then this payment is extended to the full term of the normal illness benefits.

During that 6-month period of leave, the eligibility of pay increases and other benefits continues; the employee is entitled to return to the job held at taking leave, at the same rate of pay, plus any intervening increases.

And I just asked our secretary-treasurer to give me some precise figures. He advises me that from January 1975 through March 28, 1977, the total cost to our union for this kind of benefit for employees going on maternity leave was $8,433.81, for 9 people out of work force of 137 where the payroll runs into millions of dollars a year. And I think that this suggests reasonable costs.

If there is time later, we have done some estimates on what it might cost the Bell System, where there are something in the neighborhood of 1 million employees, with payroll that runs into the billions of dollars a year. And I can give you some statistics on that that we have estimated.

It seems to me that your committee in planning these hearings has been very kind to all of us, in giving us the time to be here today.

I would close, really, in terms of my own presentation, by saying that the typical employer policy of today on maternity disability benefits continues to be based upon false premises: First, that women are only temporary or casual parts of the work force; second, that women only work for "pin money" and not, as we find in CWA, and I think as you will find from testimony of others, for the positive contribution to the family finances; and third, that women tend not to return after maternity leave.

One fact is that more and more women are in the work force for longer periods, with many never having children, as can be seen from the declining birth rate.

Another fact is that women who do not return from maternity leave actually voluntarily relinquish the accrual of benefits to which they would otherwise be entitled had they returned. And this amounts to a substantial savings all up and down the line for employers.

The legislation that is before you and opposed by so many, it seems to me would, in fact, solve the problem for us. And I say this in particular, because while there is the potential through the process of col-

lective bargaining for protection of those that are members of unions, such protection is not available to the great mass of unemployed workers, and it is incumbent, it seems to me, upon the Congress to see that its original intention is applied to those great number of workers.

A great distinction to be kept in mind—which really tends to become lost in the millions of words—is that the disability payments period is to be restricted to the actual period of disability, and not for some extended period of otherwise lengthy maternity leaves, which are taken for what might be considered personal reasons.

Now, if there is an opportunity later, I hope there will be an opportunity for Mrs. Scott to give you some of her personal experience in this regard.

The CHAIRMAN. There will be—yes. We will, after we hear from our friends from UE.

Mr. WATTS. Thank you very much.

[The prepared statement of Mr. Watts follows:]

Testimony of
Glenn E. Watts, President,
Communications Workers of America
Before the Subcommittee on Labor,
Committee on Human Resources, U.S. Senate
April 27, 1977

Mr. Chairman, I am Glenn E. Watts, President of the Communications Workers of America, an AFL-CIO union representing most of the non-supervisory employees in the Bell System and the remainder of the telephone industry. Slightly over half of the union's membership is female.

CWA began trying to bargain on the issues connected with maternity disability in the 1971 Bell System bargaining. We were unsuccessful. At that time, the Equal Employment Opportunity Commission was considering the maternity disability guidelines. In April 1972, the Commission issued the guidelines, in Section 1604.10. A week later, CWA filed charges before the Commission against each American Telephone & Telegraph Co. unit with which we had contracts. Subsequently, CWA filed the identical charges against other telephone companies which did not treat maternity disability as any other temporary disability. The total of charges was 101.

In the several years following, CWA received more than 40 favorable determinations from EEOC offices. Three were dismissed on technical grounds because they were filed against corporate headquarters units. Two other charges were dismissed because the policies were, in the view of the Commission, substantially in accord with Commission guidelines. The remaining charges all were in various stages of investigation on December 7, 1976, the date on which the Supreme Court issued its decision in the Gilbert case.

In addition to filing charges before the Commission, CWA filed

eight suits in Federal court. The cases were brought against AT&T Long Lines, New York Telephone Co., Southern Bell Telephone & Telegraph Co., South Central Bell Telephone Co., Illinois Bell Telephone Co., Southwestern Bell Telephone Co., Pacific Telephone & Telegraph Co. and General Telephone Co. of California.

Because the Gilbert case had reached the Supreme Court, CWA filed as an amicus curiae.

The charges filed by CWA included five subparts as the issues for the Commission to decide, as set forth in the April 1972 guidelines. The subparts are first, commencement and duration of leave; second, availability of leave extensions; third, accrual of seniority and other benefits and privileges; fourth, reinstatement; and fifth, payment under health or temporary disability insurance or sick leave plan. All of these were not and are not being applied to pregnancy-related cases on the same terms and conditions as to other temporary disability cases.

The Supreme Court's adverse decision on the Gilbert case appeared to negate only the last of the five subparts of our charge. However, the Court also effectively removed the underpinning of the remaining subparts of our charges. The same can be said of the Commission's guidelines in Section 1604.10.

CWA joined in the founding of the Campaign to End Discrimination Against Pregnant Workers because corrective legislation now is the only way of securing equal protection under the law for many female workers. The legislation under consideration, S. 995 and the several companion House bills, would make clear the intention of the Congress in its enactment of Title VII of the Civil Rights Act of 1964. This new legislation, in my view, would not be an amendment of the 1964

as such. We think the Supreme Court was in error.

The employer witnesses have offered testimony on the proposed legislation using "worst cause" examples which border on the absurd. It is most unfortunate that we are not now hearing ~~sworn~~ testimony, if only to avoid the lack of concern for reality. We have looked into the testimony before the House Subcommittee on April 6, presented by the witness of the Health Insurance Association of America. The net actual cost of increased disability benefits coverage was estimated at $611 million a year, based on statistics that are subject to serious question. For example, the average duration of pregnancy disability benefits is shown as 11.3 weeks. The source is attributed to some "experience under the Hawaii compulsory cash sickness plans and some privately insured group policies." Perhaps, Mr. Chairman, the universe of experience should be somewhat wider than a cash sickness plan of a single State, if defensible evidence of cost is to be derived. I include the chart from that insurance company testimony for whatever value it may have.

In its capacity as an employer, CWA has a maternity disability benefits plan which meets the requirements of the EEOC guidelines and which did not and do not cause excessive cost to the union. Our plan, set forth in the contract with the Office and Professional Employees International Union, treats physical inability to work because of pregnancy and childbirth the same as inability to work because of illness. The female employee is automatically awarded the period of hospital confinement plus three weeks. In addition, the female employee with over one year of service is entitled to take an added five months of unpaid leave without loss of seniority. During that six-month period, eligibility for pay increases and other benefits

continues; the employee is entitled to return to the job held at the time of taking leave, at the same pay rate plus an intervening increases.

Mr. Chairman, you and the Subcommittee have been generous in giving me time here today. I would close by saying that the typical employer policy of today on maternity disability benefits continues to be based on a few false premises--- first, that women are only temporary or casual parts of the work force; second, that women only work for "pin money" and not, as we find in CWA, for the positive contribution to the family finances; and third, that women tend not to return after maternity leave. One fact is that more and more, women are in the work force for longer periods with many never having children, as can be seen in the sharply declining birth rates. Another fact is that the woman who does not return from maternity leave voluntarily relinquishes the accrual of benefits to which she would be entitled on return. The opponents of the proposed legislation would have the Congress believe that women who go on maternity leave would be paid all the while they are off the job. The distinction to be kept in mind --- which tends to become lost in the millions of words --- is that the disability payments period is to be restricted to the actual period of disability.

Health Insurors' Cost Estimates **

TABLE 3

COSTS FOR INCOME BENEFITS FOR
PREGNANCY UNDER SHORT-TERM INCOME PLANS

1.	Expected Births among employees - Table 1	1,358
2.	Percent of employees with Short-Term Benefits - Table 2 (3)	68%
3.	Expected Births among Employees with Short-Term Benefits (1) x (2)	923
4.	Average Weekly Wage applicable to (3) - Estimated as 94% of Table 2, line (4) (e)	$149
5.	Average Duration of Pregnancy Disability Benefits*	11.3 weeks
6.	Average Percent Benefits Currently Paid - Estimated	60%
7.	Total Costs - Annual Basis (3) x (4) x (5) x (6)	$932 million
8.	Percentage of Employees with Short-Term Benefits that provide Maternity - Congressional Record, S4403	60%
9.	Average Weekly Wage applicable to (8) - Estimated	$156
10.	Average Duration of Pregnancy Disability Benefits Provided	6.2 weeks
11.	Average Percentage Benefits Currently Paid - Estimated	60%
12.	Total Current Costs (3) x (8) x (9) x (10) x (11)	321 million
13.	Additional Costs to Income Benefits for Pregnancy - Annual Basis (7) - (13)	$611 million

* Based on experience under Hawaii compulsory cash sickness plans and some privately insured group policies.

** The chart above was offered to the Subcommittee on Employment Opportunities, House Committee on Education and Labor, on April 6, 1977, to illustrate costs of benefits for maternity disability coverage.

The CHAIRMAN. Mr. Block.

STATEMENT OF BORIS H. BLOCK, GENERAL SECRETARY-TREASURER, UNITED ELECTRICAL RADIO & MACHINE WORKERS OF AMERICA

Mr. BLOCK. Senator, my name is Boris H. Block. I am general secretary-treasurer of the United Electrical Radio & Machine Workers of America Union.

I am appearing here in behalf of the 165,000 men and women we represent in the electrical manufacturing industry.

We welcome the opportunity to testify before the Senate subcommittee in support of S. 995, a bill which, if enacted, would bar employers from discriminating against pregnant women by excluding them from weekly sickness and accident benefit plans.

Our interest in this legislation stems from our deep conviction that full equality is not only a fundamental democratic principle, but an absolute necessity for the preservation of the conditions of all working people.

The union I represent—UE—was born out of the need and desire of the workers in our industry to unite into one union.

Its very creation was in itself an act of repudiation of the racist, sexist, and discriminatory biases of the existing craft unions who, because of their discriminatory structures, were unable to organize the industry or properly serve the workers.

Our battle to end discrimination against working women predates title VII of the Civil Rights Act of 1964 by almost 30 years.

To date, a number of our goals to eliminate GE's discrimination against pregnant workers have been achieved.

In 1943, UE negotiated maternity leave. In 1950, UE who service credits for women on maternity leave. In 1966, following an effort of some 22 years, GE workers finally won equal treatment in the payment of medical and surgical costs for maternity.

In every negotiation since 1943, the UE-General Electric Conference Board, made up of union members from GE plants across the country, has proposed that the company cover maternity leave and pregnancy-related disabilities under the sickness and accident benefit plan.

But despite the union's persistence, the company subbornly rejected the Union's demands.

Until December 1976, the companies, by and large, were able to maintain their discriminatory practices by sheer economic power. Then came the Supreme Court decision in *Gilbert*, and that had the effect in our view of legitimizing their position—as was said earlier today by Senator Bellamy, has happened in New York—and thereby bolstering their collective bargaining posture.

While we have no intention of abandoning our responsibility at the collective bargaining table, we feel compelled to seek legislative redress by our support of S. 995.

The importance of S. 995 goes far beyond disability pay. If allowed to stand, the logic of the Supreme Court decision can be used by employers to justify discrimination against pregnant workers in other terms of employment.

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The Supreme Court ruled in *GE* v. *Gilbert* that the company's refusal to provide disability benefits to pregnant employees is not a discriminatory practice on the basis of sex and, therefore, is not a violation of title VII of the Civil Rights Act of 1964.

This decision ran counter to the EEOC guidelines and to the decisions of all six Federal courts of appeal who addressed the question.

The convoluted logic of the court majority was that since disability coverage is denied to pregnant men, denial of this benefit to pregnant women is not discriminatory.

It would be discriminatory, the court said, if it could be shown that GE specifically intended to discriminate against women.

We feel first, that exclusion of pregnancy coverage from disability plans is discrimination per se, and second, in the case of General Electric, their public record of discriminatory practices against women is so overwhelming that the court's reasoning in our view displays an incredible bias.

The company's guilt was recognized by Mr. Justice Brennan in his dissent. He said:

> The Court simply disregards a history of General Electric practices that have served to undercut the employment opportunities of women who became pregnant while employed.

The impact of S. 995 in democratizing disability plans would improve the economic situation of women and their families who have been the victims of longstanding discrimination and are at the bottom of the economic heap.

Women of childbearing age are in the labor force out of economic necessity. Their increasing participation in the labor force has continued despite childbearing. They represent 40 percent of the total work force and as such, they contribute in immense proportion to the goods and services produced in this country.

They are a source of profits to their employers. Yet they are denied insurance coverage at a time when income protection is sorely needed.

One of the key reasons for the denial of these benefits is industry's claim that the cost is excessive. The insurance industry estimates the cost of S. 995 at $1.7 billion. This figure earlier today has been correctly shown by the AFL–CIO to be greatly inflated. They put the cost at one-tenth as much, or roughly $145 million.

We are not surprised by the employers' resistance. Their reaction is quite predictable. Down through the years, the elimination of child labor, the enactment of social security, Workmen's Comp, unemployment compensation, the minimum wage, the Equal Rights Amendment, companies have always raised the hue and cry that the result would be excessive costs and would cause them harm and put them out of business.

We say, rather than posing the problem in terms of what it is going to cost the companies, it is high time that the costs have to be looked at in terms of what it is costing the people, the women who produce the goods, the women who bore the costs when they went into the factories during World War II, who were bearing the costs when Congress passed the Civil Rights Act of 1964, and when EEOC issued the 1972 guidelines.

Pregnant working women and their families continue to bear to cost today. The real question is how much longer are they to be, because of their sex, denied first class citizenship in the workplace.

Mr. Chairman, we urge this committee to act favorably on S. 995, and are prepared and anxious to assist in any possible way to achieve enactment of this legislation, which will eliminate an unconscionable discriminatory employer practice against working women.

The CHAIRMAN. Thank you, Mr. Block.

In your conclusion there, you said it was predictable, the resistance of companies to coverage. I just wanted to point out that, using corporate bond and equity ratings, do you know that some of the AAA companies in this country do cover?

Mr. BLOCK. Yes, I do; I am aware of it.

The CHAIRMAN. So there has not been a uniform and monolithic corporate resistance. Some of the companies with the greatest and highest standing on any basis do cover.

Mr. BLOCK. I must admit, Senator, that I speak with certain bias, from a point of view, based on the companies that we deal with. We address ourselves to General Electric, to Westinghouse, General Telephone & Electric, and companies of that nature.

We are aware that outfits like Xerox and companies like Polaroid and companies like General Motors and IBM do provide those benefits.

And we would hope—we would be much happier if we could, across the bargaining table, convince General Electric and Westinghouse to do this, but it has not been possible so far.

The CHAIRMAN. You, me, and all of us.

Did you have anything, Mr. Spero? Are you a team?

Mr. SPERO. Yes.

[The prepared statement of Mr. Block follows:]

STATEMENT OF BORIS H. BLOCK,

GENERAL SECRETARY-TREASURER,

UNITED ELECTRICAL, RADIO

AND MACHINE WORKERS OF AMERICA, (UE)

BEFORE THE

SENATE LABOR SUBCOMMITTEE

IN SUPPORT OF S. 995, A BILL TO

PROHIBIT SEX DISCRIMINATION ON

THE BASIS OF PREGNANCY,

APRIL 27, 1977

My name is Boris H. Block, I am General Secretary-Treasurer of the United Electrical, Radio and Machine Workers of America (UE). I speak today on behalf of the 165,000 men and women we represent in the electrical manufacturing industry who work for such major corporations as General Electric, Westinghouse, GTE-Sylvania, TRW, Honeywell, American Standard, Allen Bradley and hundreds of other companies.

UE welcomes this opportunity to testify before the Senate Subcommittee on Labor in support of the Williams-Hawkins bill which would bar employers from discriminating against pregnant employees by excluding them from weekly sickness and accident benefit plans.

Our interest in this legislation stems from our deep conviction that full equality is not only a fundamental democratic principle, but a necessity for the preservation of the conditions of all working people.

UE was born out of the desire of all workers in our industry to unite into one union. Its very creation was an act of repudiation of the racist, sexist and discriminatory biases of the existing craft unions, who because of their discriminatory structures were unable to organize the industry or properly serve the workers. Its keystone is represented in the preamble to the UE Constitution adopted at our founding convention in 1936,

> "We form an organization which unites all workers in our industry on an industrial basis, and rank and file control, regardless of craft, age, sex, nationality, race, creed or political beliefs, and pursue at all times a policy of aggressive struggle to improve our conditions."

Our battle to end discrimination against working women in general and pregnant women specifically therefore predates Title VII of the Civil Rights Act of 1964 by almost thirty years. And many of our goals to eliminate General Electric's discrimination against pregnant workers have been achieved.

In 1943, UE negotiated maternity leave. In 1950, UE won service credits for women on maternity leave. In 1966, after a 22-year effort, UE won equal treatment in the payment of medical and surgical costs for maternity.

In every negotiation since 1943, the UE-GE Conference Board, consisting of union representatives from GE plants throughout the country, proposed that the company cover maternity leave and pregnancy-related disabilities under the sickness and accident benefit plan. But despite the Union's persistence in proposing these changes from 1943 to the present, the company stubbornly rejected the Union's demands.

All of the gains we won in the past, protecting the job rights and working conditions of pregnant women, resulted from our strength in collective bargaining.

Despite our many achievements in the fight for equal rights for women, we have not been able to make substantial progress in negotiating disability coverage for pregnant women in most companies.

While up to December 1976, companies were able to maintain their discriminatory practices by sheer economic power, the Supreme Court decision in Gilbert legitimizes the companies' position and bolsters their collective bargaining posture.

While we have no intention of abandoning our responsibility at the collective bargaining table on this issue, we are also seeking legislative redress by our support of S. 995.

The import of passage of this bill goes far beyond disability pay. If allowed to stand, the logic of the Supreme Court decision can be used by employers to justify discrimination against pregnant workers in other terms of employment.

I would like to discuss why S. 995 is in keeping with the intent of Title VII; why its passage will aid in redressing the serious economic straits forced upon women and their families as a result of current discriminatory practice; and I would like to comment on the objections employers have raised in opposition to S. 995.

The Supreme Court ruled in General Electric vs. Gilbert that the company's refusal to provide disability benefits to pregnant employees is not a discriminatory practice on the basis of sex and, therefore, is not a violation of Title VII of the Civil Rights Act of 1964. This decision ran counter to the EEOC guidelines and to the decisions of all six federal Courts of Appeal who addressed the question.

The convoluted logic of the court majority was that since disability coverage is denied to pregnant men, denial of this benefit to pregnant women is not discriminatory. It would be discriminatory, the court further reasoned, if it could be shown that GE specifically intended to discriminate against women.

We feel that first, exclusion of pregnancy coverage from disability plans is discrimination, per se and secondly, in the specific case of GE, their public record of discriminatory practices against women is so overwhelming that the court's reasoning displays an incredible bias.

The General Electric booklet given to employees that describes, among other things, the weekly sickness and accident plan, specifically excludes pregnancy and pregnancy related disabilities from coverage. Of all the disabilities that could possibly befall humanity - only one is specifically excluded - and that one is fairly commonplace and occurs regularly only to women. It is preposterous to say that the exclusion of pregnancy from coverage is not discrimination against women.

The court's majority view that GE did not purposefully discriminate in excluding pregnancy from coverage contradicts the facts. Our Union is intimately familiar with the company's discriminatory practices. The record over the past 40 years is replete with the many battles our Union has had with this company to achieve non-discriminatory treatment regarding pay, seniority, maternity leave and all other conditions of employment. The record of these battles with GE has been amassed by our Union in literally hundreds of pages of documentation and has been presented to the Equal Employment Opportunity Commission.

The company's guilt was recognized by Mr. Justice Brennan in his dissent: "The Court simply disregards a history of General Electric practices that have served to undercut the employment opportunities of women who became pregnant while employed."

The impact of S. 995 in democratizing disability plans, would improve the economic situation of women and their families who have been the victims of long standing discrimination and are at the bottom of the economic heap, as the following data point out:

1. The average earnings of full-time women workers in 1974 were 57 percent those of men.

2. Nearly 3 out of 4 American women who work must work out of economic necessity. These women are married to men who earn less than $7,000 a year and women who are single or family heads.

3. As of March 1975, 82% of female family heads with children under 18 years of age earned less than $10,000. Fully two-thirds of these women family heads earned less than $7,000.

4. The number of families headed by women has been rising 5 times as fast as the number of families headed by men in the period from 1970 to 1975.

5. Child-bearing women remain in the labor force. By 1970, 1 in 3 women with children under 6 years, was in the labor force, a 66% increase since 1960. 40% of mothers who work have children who are under six years old.

The data could go on but the point is clear - women of child-bearing age are in the labor force out of economic necessity. Their increasing participation in the labor force has continued despite childbearing. They represent approximately 40% of the total work-force and as such, contribute in immense proportion to the goods and services produced in this country. They are a source of profits to their employers. Yet, they are denied insurance coverage at a time when income protection is sorely needed.

The key reason for the denial of these benefits by industry, and the root from which their opposition to S.995 springs, is their claim that the cost is excessive. The insurance industry, for example, estimates the cost of S. 995 at $1.7 billion. This figure has been correctly shown by the AFL-CIO to be greatly inflated. They put the total cost at one-tenth as much or roughly $145 million,- approximately $1.50 per worker.

Whatever the costs are, they have always been borne by working women. They bore the costs when they entered the nation's factories en masse during the second world war. Women were bearing the costs when Congress passed the Civil Rights Act of 1964 and when the EEOC issued the 1972 guidelines. Pregnant working women and their families continue to bear the cost today.

We are not surprised that the employers, who have reaped billions of dollars from their exploitation of women, complain loudly when faced with corrective legislation. Their protests of calamity also accompanied the introduction of every piece of progressive legislation to prevent employer excesses or enact social legislation, be it the abolition of child labor, the introduction of the eight-hour day, unemployment insurance, social security, minimum wages, etc.

Actually, the cost is not the issue. The real issue is the elimination of the existing discriminatory practice, and that must be done regardless of cost.

We are not asking Congress to blaze new trails. Canada, France, Great Britain, West Germany and hosts of other nations, including Upper Volta, require income disability protection for pregnant working women. It is disgraceful that the United States as the wealthiest industrial nation is not on the list.

It is high time that working women are treated as a major, essential constituent of the workforce, and not as marginal workers to be shabbily handled. The Williams-Hawkins bill would remove one of these remaining shabby discriminatory employer practices against working women.

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The CHAIRMAN. Perhaps, we will now hear from Mrs. Sterling and Mrs. Scott.

STATEMENT OF TONI STERLING, MEMBER, LOCAL 65, UNITED STEELWORKERS OF AMERICA

Mrs. STERLING. Mr. Chairman, members of the committee, my name is Toni Sterling. I, along with 6 other members, are here representing the 8,500 members of local 65, United Steelworkers of America, from Chicago.

Our local feels that this bill is a just and needed one and supports it fully. As a working mother, I find it very unjust to see many of my male fellow workers receiving full sick and disability benefits from sport injuries to hangnails for long periods of time, some extending more than 9 months.

Mr. Chairman, speaking as a steelworker, working in a field mainly composed of men, I know firsthand, from day to day experiences, when we are on our jobs, we are expected to perform in the same manner as men. We are not given any special consideration and seek none.

My main concern is to see that every working female is not treated as a second class worker because of her sex.

Motherhood is a God-given right and considered a sacred one.

We are aften endangering our lives and the lives of our unborn children by continuing to work, because we need the money or are afraid of losing our employement.

If a woman is head of a household, or if husbands' incomes are low, the woman has no choice so she continues to work.

Denying disability benefits does not only affect the woman, but the whole family unit. We are not asking for charity or welfare, but let our own work efforts pay off for us, and let us have our babies in dignity.

In closing, I would like to thank you, Mr. Chairman, and your committee, for the opportunity of allowing me to speak in behalf of my local at this hearing.

We strongly urge full and quick passage of this bill. I thank you again in behalf of Local 65, United Steelworkers of America of Chicago. [Applause.]

The CHAIRMAN. Thank you. Let me just ask one question. Now, the Steelworkers, within your bargained plan, you do have hospital benefits but for a limited time?

Mrs. STERLING. What we are receiving right now, we receive 6 weeks, regardless of when you have to take leave.

If a woman is pregnant and she has to take leave at 4 months, say, because she has high blood pressure, she still is only going to receive 6 weeks of benefits, and she will have to pick up the premium payments herself.

If she is a single woman, she will receive no benefits.

The CHAIRMAN. I missed the premium payments. Do you mean, beyond 6 weeks?

Mrs. STERLING. OK. When she takes her pregnancy leave, she will have to pay her own premium, hospital, Blue Cross and Blue Shield.

The CHAIRMAN. But if the period that she takes is the period around

the birth of the child, this is all paid, both hospital and a wage or an income benefit?

Mrs. STERLING. The income benefit is 6 weeks' sick pay; that's all, regardless of how long she is off.

The CHAIRMAN. I see. That is, I will say, a great deal more than General Electric had.

Hospital costs are covered under the General Electric plan?

Ms. WEYAND. Hospital costs are covered. That was referred to by President Fitzmaurice and Mr. Block; since 1966, since the passage of title VII, that has been covered at GE. But I must say, the situation which the last witness mentioned, of the picking up by the woman who is placed on leave, of the payment of the bill for her own premium for coverage not merely for maternity but for all hospital and medical costs, at many plants is a serious matter.

I understand that with respect to pregnant employees of major steel companies, $90 a month is the amount of the premium for Blue Cross-Blue Shield which they are sent. I tried a case against Stromberg-Carlson for the IUE, where Stromberg-Carlson, like the steel companies, paid the hospital and medical premiums of all persons during all absences when disabled by anything but pregnancy. Stromberg-Carlson and many companies pay the premiums for general hospital and Medical costs during the whole period of disability, except when an employee is absent because of pregnancy, the employer pays no premiums even for hospital and medical expenses unrelated to pregnancy.

And at Stromberg-Carlson—one of the illustrations which is contained in Mr. Fitzmaurice's statement is Betty Williams, who had to go on welfare. It is the Stromberg-Carlson plant at Rochester, N.Y.

Her husband worked for the Beechnut plant, and the Beechnut plant closed down and moved out of Rochester, just a month or two after she got pregnant. She thereby became the full support of her husband and the two children.

He had an accident during the time that they were not covered for hospital and medical expenses, which would have been covered if she had been treated like any other sick worker. The bill there was some $60 a month for premium for hospital and medical costs, and she had no income to meet the rent and the food bill, let alone carry the premium for hospital and medical expenses, when she was put off on unpaid leave.

We do have an order from the New York Human Rights Commission, telling Stromberg-Carlson to carry the hospital and medical premiums on the same basis during periods of disability from pregnancy as Stromberg-Carlson carriers the premium for other disabled employees.

But one of the things S. 995 clearly would do by putting pregnancy on a nondiscriminatory basis is assure that the companies do carry the premium for the hospital and medical expenses on the same basis for women who are disabled by pregnancy as the companies carry the premiums during absences for other illnesses, in the case of other disabilities.

And I do want to say that we are glad that the NAM thinks that employers do not discriminate against anyone because of pregnancy

these days. NAM thus recognizes such discrimination is wrong. But unfortunately the instances of this sort of discrimination are tremendous in number.

Mrs. STERLING. Mr. Chairman, may I add one more thing, please?

The CHAIRMAN. Yes.

Mrs. STERLING. There has been a lot of talk about women not returning back to work after having their babies. Most of us who are working cannot afford to stay home after we are able to return to work, because we are middle-class. We have to be able to pay to keep that child living. We cannot stay home. We have to return to work.

Senator STAFFORD. Mr. Chairman, could I ask if any of you at the table have some estimate of what it might cost if pregnancy was covered on the basis that you are recommending, nationally?

Mr. WATTS. As far as the national figures are concerned, I do not have anything except what was offered earlier by representatives of the AFL-CIO.

However, it seems to me that perhaps the Bell System, a rather large employer, with approaching 1 million employees in the country, might be a group that you could look at, and then perhaps compare my own union, where we have this kind of a program, and its cost.

We have estimated, and to be careful, we have estimated on the high side, which might be twice as much as the actual cost—and we intend to verify this. But of the Bell System, which has a payroll of some $10.5 billion a year, for those employees that are represented or eligible for union membership, the cost would not exceed—and our estimate may be twice as high as it actually is, because of several assumptions that we have used—would not exceed some $15,800,000. That is 0.15 percent of the total payroll.

I say that this may well be twice as high because of the assumptions that we use and because we assume that every employee that went on maternity leave would be replaced by another employee, at an additional cost, and that is not the case at all.

In my own union, as I mentioned earlier, where we have a work force of 137 clerical employees, between January 1975 and March 1977, 9 people took advantage of our system, which automatically provides for sickness absent salary reimbursement, for the period of confinement plus 3 weeks. That normally is about 5 weeks, in terms of application.

We have a payroll for that work force of $1,800,000 a year, and during that period of time, it cost us $8,433.

Senator STAFFORD. Could you tell me what proportion of the Bell System's employees are women?

Mr. WATTS. A little better than half.

Senator STAFFORD. Is that true in your own union, also?

Mr. WATTS. That is true with our union as well.

Senator STAFFORD. Thank you very much.

The CHAIRMAN. Now let us turn to Mrs. Scott.

STATEMENT OF TERESA SCOTT, MEMBER, LOCAL 2336, COMMUNICATIONS WORKERS OF AMERICA

Mrs. SCOTT. My name is Teresa Scott. I am a member of Communications Workers of America, and I am representing local 2336 in Washington, D.C., of which Glenn Watts is a former president.

Our president presently is Pete Catucci. We have about 4,000 members in our local.

I have been employed by the telephone company for approximately 7 years. The telephone ocmpany is one of the biggest employers of women precentagewise in the Nation.

I am a service representatives. The service representative is that cheerful person customers contact when they want telephone service.

My job is to deal with the public every day. I work for C. & P. here in the District of Columbia——

The CHAIRMAN. We are not going to charge you for that commercial, by the way. [Laughter.]

Mrs. SCOTT. Our offices are located at 1325 G Street, Northwest, which is about four blocks from the White House.

The C. & P. Telephone Co. has a rigidly enforced program to minimize absenteeism with the goal of total elimination.

My health deteriorated during my second pregnancy in 1974. I had congestive heart failure in the fifth month of pregnancy and was hospitalized as a result of my condition. The telephone company placed me on sick benefits from June of 1974 until September of 1974.

My baby was born September 6, 1974, and my benefits ceased as of that date. I was on maternity leave of absence from Spetember 6, 1974, until January 5, 1975.

I returned to work on January 6, 1975. My doctor was trying to determine how much damage was done to my heart and how long it would take before I would be completely healed. I requested and received excused time without pay to go back to the hospital for tests.

This time was not held against my attendance record. Everything seemed to be going well, but in June of 1975, I had a setback. The air was very polluted, and I developed similar symptoms that warned of a possible cardiomyopathy.

I was ordered by my doctor to stay at home for 23 working days. In September of 1975, the telephone company sent me to their medical department for evaluation. My employer stated that the company was trying to determine whether or not my absence from work due to my pregnancy-related heart condition would be held against my attendance record.

The medical department listened to my heart and gave me an EKG. They found no irregularities at that point in time, but they sent a statement to the company which said my prognosis for the future was not good, because I had a chronic chest problem.

I disputed the statement from medical. I had been under a heart specialist's care, and I had been through extensive testing. My doctor asured me that the future looked good.

In November of 1975, I came down with maxillary sinusitis, which is another condition I had had during my pregnancy. I missed nine more working days.

At this time, the district manager decided that I should be given final warning of dismissal, because I was among the 10 worst for attendance in the division.

On December 1, 1975, I was placed on final warning for my job, and naturally, I filed a grievance. Through all steps of the grievance procedure, I stated that I had had no previous warning, that my absence was related to the problems I had during my pregnancy, and that I

believed the telephone company was setting me up, because I had to use my benefits during my pregnancy.

The company came up with a phony record of four occasions that I had been warned about my attendance. The August 6, 1975, meeting that the company said took place had definitely taken place without me, because I was not at work that day.

The representative for the company told me that in 1974, I had 150 scheduled days to work, that I had missed 78, and that the company could not forgive this.

I asked the company representative if I should have wheeled my hospital bed into the office, at the expense of my life and the baby's.

His very cold reply was that not everyone in the world can meet the standards that the telephone company sets. When the company gets a case like this, it is expensive, he said.

I explained that the company had never consulted my heart doctor. In my opinion, the telephone company medical department is a farce anyway.

I feel that the doctors there do whatever the company instructs them to do, and I found proof of this when I finally met with the telephone company's medical director, Dr. Daniels, on May 6, 1976, which was 7 months after he had written a prognosis for my future.

I wanted to know how Dr. Daniels was able to diagnose my condition with no facts. He said he had made his decision based on the number of days I had missed from work. Then I told him I was pregnant for the majority of those days.

Dr. Daniels said that he did not know I had been pregnant, but if I became pregnant again, I would have the same problems.

I advised him that I could not become pregnant again, because my doctor had given me a tubal ligation. Dr. Daniels was astonished and blamed the telephone company for my phony prognosis.

The company had initiated my visit to medical, with a Bell System confidential form which stated my problem and suggested a remedy. In the Chesapeake & Potomac Co., that means a demotion or termination, even though my division's commercial manager had stated that I was an excellent service representative.

You cannot imagine the mental anguish I suffered when the telephone company put me through all this, believe me. I had already suffered enough, through all the last months of my pregnancy, fearing for my life and my child's life.

If I had not been strong, I could have had heart failure again, or even a nervous breakdown. The job was more than enough pressures; Ma Bell makes sure of that. And she has no regard for your mental or physical health.

The telephone company has the tendency to degrade you for being ill. I would like to see some of the inequities corrected that give unfair advantage to absences other than pregnancy.

I would like to thank you, Mr. Chairman, for allowing us to be here today.

The CHAIRMAN. Thank you very much, Mrs. Scott. We appreciate, President Watts, that we had this opportunity to hear one of the stories of hardship that comes out of some of the denials.

Just a few questions. These statements have been comprehensive, complete and good, and very, very helpful, uniformly. Thank you all.

I wondered if—and I think maybe you have testified—following the *Gilbert* case, have any of you noticed any changes in employer practices, in attitudes and efforts to effect disability payments and benefits?

Mr. BLOCK. Well, I think the most noticeable change seen in collective bargaining, is that the employer has not granted disability payment up until now, and he uses the argument that, "What I am doing is perfectly legal." He uses that as justification not to bargain for disability payment.

The CHAIRMAN. Prior to that in bargaining, what did you hear on this question of benefits for pregnancy?

Mr. BLOCK. In some places, we are able to negotiate. I am sorry that Senator Stafford left, because I was going to point out to him that one of the largest employers in his State, which we represent, Jones & Lamson, does pay for 6 weeks, and that company has not been hard pressed as a result of that.

We have not heard any complaint from them that they have been particularly economically disadvantaged.

The CHAIRMAN. What is that company?

Mr. BLOCK. Jones & Lamson, the machine tool company. It is an old company. The company was originally owned by the Flanders family.

The CHAIRMAN. What is the name of the company again?

Mr. BLOCK. Jones & Lamson. So that you find a mixed bag. You find there were employers before that negotiated; there are other employers who used the well-seasoned argument of, "Well, we cannot afford it; it is too costly. We do not want to get into that."

Now you run more and more into the business of employers who say, "Well, the Supreme Court has ruled on this," and they feel they have some kind of a license now.

Mr. FITZMAURICE. My observation, Senator, would be that the companies have hardened their positions, relying upon the Supreme Court decision in the case where the State law is in conflict. Whereas, our union contends that the State law prevails.

Mr. LYNCH. That has been precisely our experience. We just completed negotiations with the basic steel industry. One of the companies that has a plant in New York took the position that they would not negotiate an increase in that area. The only way we would get any additional disability benefits for pregnancy would be that we would have to file charges with the State in order to get these disability benefits increased.

So they have gotten a more rigid position since the decision.

The CHAIRMAN. Has cost been—I am sure it has been the major argument advanced by management to resist—I am right on that, am I not—no?

Mr. LYNCH. No; not in our case. In our case, it woud only mean a very minimal increase based upon the package that we already have. But the whole thing that they are saying is the EEOC did not have the power to enforce law, and it was more or less a legalistic question.

Now, that they have gotten an answer from the Supreme Court, of course, they are not going to move in that area unless we do make the amendment to title VII.

Mr. FITZMAURICE. Senator, our experience in IUE with the General Electric Co., is that GE does not raise the issue of cost.

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In 1976, the most recent negotiation on a national basis, historically, they took the same position, that they do not bargain on the costs; they bargain on the benefits. And when asked, after we made our presentation on this issue, why they would not grant it in the bargaining, they said, "It is just something we do not want to get into," and they just passed it off on that basis. So they did not raise the question of costs.

The CHAIRMAN. Yes.

Mr. BLOCK. Senator, they characterize it as some sort of a boondoggle, and that it would be a disincentive for people to work. The fact of the matter is that when you take a General Electric employee who goes out on sick benefits, he or she gets 60 percent of their pay up to the maximum of $175. And women, being on the lowest part of the economic setup in the GE Co.—just for the sake of discussion, take a woman who is making $6.25 an hour. He sick pay at 60 percent would mean that she would lose $100, would take a cut of $100 a week, being out on sick and accident benefit.

Now, the $6.25, to begin with, is not all peaches and cream. So that when you take 40 percent of that away, we fail to see where there is any kind of a disincentive for people to return to work.

We think that the statistics that have been developed show that in most cases where women, where they do have disability benefits, that they do return to work. The fact is that women work because they have to work, not because they have nothing else to do.

Mr. WATTS. Let me just add one other thought concerning costs, in that regard. In the negotiations with the Bell System in 1974, they relied heavily in their arguments to resist our proposals to include these kinds of provisions on costs.

Those costs, as we now realize, were substantially overstated, and they were in keeping with the general kinds of public statements that have been made about what the national cost would be, which I think has been pretty well demonstrated as sort of a red herring in this whole issue.

We are going back into a general round of negotiations with the Bell System this year. This item is particularly high on our agenda. I rather expect that we will achieve some success in this regard.

But I am concerned about the success itself, because the more places that we are able to get these benefits provided for people under union contract, it seems to me the less pressure there may be on getting the law amended so that the whole discriminatory feature of this thing would be kept before us.

And if we are successful in the Bell System, I would hope that there will be no diminution of interest in some action on the part of the Congress to remove the discriminatory feature as it applies to those that might not otherwise then have the same kind of benefits. And in my opinion, there is a real danger that the pressure will come off as a result of successes in other areas.

The CHAIRMAN. Have any of you been exposed to any suggestion that if this coverage comes on under law, on the question of discrimination, that other benefits for other disabilities will have to be reduced? Have you heard that?

Mr. FITZMAURICE. I have not.

Mr. LYNCH. Absolutely not, in our case.

The CHAIRMAN. You have not heard that. Now, that was an apprehension, and that is why the House, of course, has in its companion bill included a prohibition against decrease of any other benefits with the inclusion of pregnancy.

But you have not heard—this is not a problem that you have heard of in your industries?

Mr. WATTS. Has not been.

The CHAIRMAN. It sounds to me as though this kind of discrimination is not solitary, that there is still a massive hangover of discrimination against women, and this is just part of it.

Mr. WATTS. There is, indeed.

Mr. BLOCK. Absolutely.

Mrs. SCOTT. Can I add something, Mr. Chairman?

The CHAIRMAN. Yes.

Mrs. SCOTT. A fellow employee and member of Communication Workers of America was pregnant at the time that the Supreme Court passed the decision that dealt with maternity benefits. The day the Supreme Court passed the ruling, the company stopped her benefits. She was on benefits for a pregnancy-related problem; the day that the ruling came down the benefits stopped.

The CHAIRMAN. Just like that?

Mrs. SCOTT. Just like that. They called her and told her that the medical department had decided that she could go back to work, and this was the Telephone Co. Medical Department; just like that.

The CHAIRMAN. That surprises me. Even though there was a contract, the labor contract that covered part of this, they still unilaterally decided that——

Mrs. SCOTT. They also told her that if she did not report to work on January 10, she would be fired.

The CHAIRMAN. That is surprising.

Ms. WEYAND. We have in the statement of President Fitzmaurice referred to a case of the UAW, where also they had a contract that was stopped on December 9, and the arbitrator ruled that they could not stop it. The company claimed that they had entered into the contract under a mistake of law, that they thought the guidelines were valid, the Design and Engineering case.

The arbitrator ruled that they were bound by the contract, and that they could not claim mistake of law on it.

The CHAIRMAN. That might have happened if this had been brought to a decision of a judicial body, yes, but it probably was not.

Mrs. SCOTT. A grievance was processed, and the situation was corrected by the employee's personal physician, with a statement that she could not work, she was not physically able to work. So she has still got her job, and she is out on maternity leave.

The CHAIRMAN. So it was corrected, then?

Mrs. SCOTT. Right.

Mr. WATTS. If I could add just one other thought.

The CHAIRMAN. Yes.

Mr. WATTS. You raised the question as to whether or not there still is this general discrimination against women, and it is there. Historically, of course, you can go back to early days of the wage differential.

It is our opinion that those wage differentials are still heavily influenced by past practice and the hangover from the past, as to whether or not, a job is viewed as a job for women or a job for men. This is in spite of the fact that there has begun to be some crossover from those positions as a result of the EEOC primarily.

And if you experience the discussion that takes place in the processing of grievances, at the collective-bargaining table, the subtle feeling on the part of the management, which is predominantly male, if not exclusively male, as they come to the bargaining table and meet with us across the grievance table, in terms of bargaining out grievances, the idea still hangs there, that women do not need as much money, that they are secondary support for the family unit. There is disregard for the very high number of women who are heads of households. There is disregard for a true consideration of the skill required to do a job. And all kinds of roadblocks are placed in the way of women to participate fully and without discrimination in the marketplace. And this comes right directly into this area of pregnancy, and perhaps this is the one thing that is so obvious that is not yet accepted.

And I do not think that we could say too much in terms of the need for the amendment that is before the Senate and those before the House, in order to remove the discrimination regardless of any other benefits that any process produces for any employees including women.

The CHAIRMAN. This comes from people that ought to understand the economics here a little better. What this country needs is productivity, and the contribution of women to productivity is increasing, and potentially, it is really much greater.

And any of these discouraging factors just lessen the product in this country.

Ms. WEYAND. I might say that the women feel more strongly about the effect of pregnancy than any other form of discrimination that they incur.

We have at the IUE, with our 40 percent female membership, 100 complaints based on pregnancy on our records, to every 1 on promotion or equal pay or any of the other types of discrimination.

Women say, "We do not get promoted because we are told that we might get pregnant. And the jobs we ask for, they do not make us supervisors, because we might get pregnant. They do not want to give us higher paid jobs, because we might get pregnant. When they pay us lower wages, they say that it costs more to employ women because of the turnover when we are home with our children. Employers rely on pregnancy to justify all forms of discrimination against women."

And the women feel that ending discrimination because pregnancy is the key to promotions and wages. They feel that the object of this bill is not only disability benefits, but it is getting it clear that pregnancy is not a ground for discrimination.

We had equal pay cases where it took us months to get people to sign that little slip authorizing filing of suit which you have to sign to sue for equal pay. The women would use excuses not to sign, saying "Now, I may not be as good, I may not be worth as much," but when they heard that the EEOC in March 1971 had decided that an employer

could not deny disability benefits for absences due to pregnancy-related disabilities and pregnancy was a basis of sex discrimination, they agreed. And we had hundreds file charges of discrimination because of pregnancy in plants where we had trouble getting any women to sign a right to sue slip in an equal pay case. At the General Motors plant, we had 300 women ask for charge forms immediately and file them on discrimination because of pregancy. Many of these charges alleged that they were placed on mandatory leave on an arbitrary time basis during pregnancy.

We have women all over the country who, because of discrimination because of pregnancy, have lost seniority over the years that has not been restored.

Unfair treatment because of potential pregnancy, actual pregnancy or recent pregnancy touches them at every point, and they feel very, very deeply the need to say that discrimination because of pregnancy is discrimination because of sex.

Thank you.

[Applause.]

The CHAIRMAN. Jack Sheehan?

Mr. SHEEHAN. Senator, before the record closes, could I indicate that in the audience, accompanying Leon Lynch, has been this busload of Steelworker delegates from Indiana and Illinois. And in addition to local 65, we have about eight other local union people who came down here, and Roberta Wood, the chairperson of Steelworker District 31 Women's Caucus. This indicates the intensity of concern about this issue, that they made that trip all the way across the country to be here for these hearings the last few days.

[Applause.]

The CHAIRMAN. Thank you very much, Jack, and I applaud their journey here, too.

Ms. WOOD. May I just add one thing here?

I think there is a situation that would be interesting to the last point that you were making.

The CHAIRMAN. Yes. Would you identify yourself?

STATEMENT OF ROBERTA WOODS, CHAIRPERSON, UNITED STEELWORKERS OF AMERICA, DISTRICT 31, WOMEN'S CAUCUS

Ms. WOOD. My name is Roberta Wood. That is, concerning the whole question of discrimination toward women and how pregnancy is at the center of that.

We have members who work for companies that are now demanding that when they receive that little 6-week benefit, they have to come in every week to the plant medical center for an examination to prove that they are still pregnant, as if they might take advantage of the company's good will and become pregnant, just to collect the 6 weeks' pay, and then go and have their pregnancy terminated.

I think that the denial of the pregnancy benefit is a gross indignity that the women suffer. Further insult is then added by the fact that their medical benefits are cut off at the time when they need them the most.

One of my friends from my home local—who is expecting any day now and could not make the trip—asked me to bring out the point that she has been working for U.S. Steel for almost 5 years. She has never taken advantage of any medical benefits and so on, and at the time when she might need it the most, when she would go on maternity leave, her benefits would be cut off, and she would not be able to receive payment from the medical plan. This is a very important side effect of the discrimination on the sick pay and disability.

We would not like to see the bill amended in any way which would give the companies the right to limit what pregnancy leave might be in a case of complications or anything else. We think it should be treated absolutely like any other disability.

[Applause.]

The CHAIRMAN. I thank you very much.

[The prepared statement of Ms. Wood follows:]

U.S.W.A. DISTRICT 31 WOMEN'S CAUCUS

POST OFFICE BOX 2621
GARY, INDIANA 46403

My name is Roberta Wood. I am an employee at US Steel, South Works, in South Chicago, and am a Trustee of my local union, Local 65 USWA. I present this testimony as a spokesperson for the USWA District 31 Women's Caucus, a group of women steelworkers, members of various local unions of the United Steelworkers of America in the Chicago-Gary area. Our members are both local union officers and rank and filers, from basic steel, can, and fabricating plants. Our organization was formed to fight for the full equality of women steelworkers both in the workplace and in our Union.

The USWA District 31 Women's Caucus supports the passage of Senate Bill 995 as essential to assuring the equality of women workers in the work place. Where employers provide an otherwise comprehensive disability pay plan, arbitrarily excluding or limiting maternity coverage is not only a great injustice to female employees, but it places an extreme financial hardship on them and their families at just the time when they can least afford it.

Any form of discrimination against pregnant women perpetuates an overall climate of second class treatment of women workers. Therefore we warn against any "compromises" which might be proposed which would permit any special limitation of coverage. Our experience with just such a special limitation (most steel companies provide a maximum of 6 weeks maternity coverage while all other disabilities have a 52 week maximum)is that while it provides a small measure of relief, it still permits the singling out of pregnancy and pregnancy-related conditions, conditions unique to women, for discriminatory treatment, and thus gives encouragement to and condones other unjust and often illegal and certainly outrageous treatment of women workers.

Here are some examples of this from our experience: 1)During any period of unpaid maternity leave, the pregnant worker must pay her own medical insurance premiums (often adding up to several hundred dollars). Some companies even require these employees to pay such premiums during the 6 week paid period. During any other type of disability leave, the company would automatically continue insurance coverage. The net effect is that the wife of a male employee gets fuller medical coverage than an employee herself. This shocking situation is permissible because its "OK" to treat pregnancy different than other disabilities. 2) One woman, an employee of an Indiana steel mill, had a partial hysterectomy as a result of an ectopic pregnancy. She was disabled several months, but could only receive 6 weeks sick pay and had to keep up her own insurance because her disability was "pregnancy-related." 3) The practises of some steel companies forced all women to go on (unpaid) maternity leave the moment they were "suspected" of being pregnant. Some non-pregnant "suspects" were even forced out of work temporarily in this "crackdown". Thousands of dollars in wages, vacations and other benefits were lost as a result of this illegal practise. Would they have persisted in this if required to pay sick pay for all time lost? 4) The same plants have now instituted a policy of requiring women to furnish proof or submit to medical examinations every week for the six weeks of their paid leave. No such degrading demands are made on other disabled employees.

U.S.W.A. DISTRICT 31 WOMEN'S CAUCUS
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5) It must be stated that the companies for which we work have not shown themselves to share our concern for the achievement of full equality of women. On the contrary, they have proven themselves as notorious discriminators not only against minorities but also against women. In fact, only in the last few years have women even been hired in the steel industry in significant numbers, and this only under court ordered quotas of the Consent Decree. In a job situation in heavy industry such as ours, a special potential exists to deliberately assign women, in particular pregnant women, to especially difficult and dangerous jobs. If equal rights to disability were assured by the passage of this bill, there would be a strong financial incentive for companies to refrain from such practises which take advantage of a woman's child bearing role to drive her out of the work place and thwart affirmative action.

We, therefore, urge the passage of this important legislation.

The CHAIRMAN. Anything else?

[No response.]

The CHAIRMAN. We reconvene this hearing on Friday morning, at 9:30 a.m.

[Whereupon, at 12:30 p.m., the subcommittee adjourned, to reconvene Friday, April 29, 1977, at 9:30 a.m.]

DISCRIMINATION ON THE BASIS OF PREGNANCY, 1977

FRIDAY, APRIL 29, 1977

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams, Javits, and Hatch.

Staff present: Maria Landolfo, associate subcommittee counsel and John Rother, associate minority counsel.

The CHAIRMAN. We will come to order.

Today the Labor Subcommittee is holding its third and final day of hearing on S. 995, a bill to amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions.

We will focus heavily today on aspects of the cost arguments which have surfaced in the last few days. Among the witnesses today we have a representative of the State of Hawaii—a State which has a very comprehensive and successful health and disability program providing equal benefits for women disabled by pregnancy. We will also hear actuarial testimony based on projected costs.

The committee is very pleased to have with us today the Honorable Bella Abzug, speaking on behalf of the National Commission on the Observance of International Woman's Year. And we would be pleased if our former colleague, Mrs. Abzug, would come forward now and be our leadoff witness this morning.

Following that, we will have Senator Matsunaga from Hawaii.

Good morning.

STATEMENT OF BELLA S. ABZUG, PRESIDING OFFICER, NATIONAL COMMISSION ON THE OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR, DEPARTMENT OF STATE; ACCOMPANIED BY RUTH WEYAND

Mrs. ABZUG. Good morning, Mr. Chairman. I very much appreciate appearing before your committee this morning as presiding officer of the National Commission on the Observance of International Women's Year, a Commission appointed by the President with 42 members, and that is very much concerned with the general equality of women in our society. And it is, therefore, that I come to testify in support of pregnancy bill S. 995.

The purpose of this legislation is to make clear that title VII's prohibition against discrimination on the basis of sex encompasses discrimination on the basis of pregnancy. To many of us, that proposition is self-evident. To the all-male U.S. Supreme Court it was not.

The number of ways in which women have been denied job opportunities based solely on their reproductive capacities is shocking and demands redress. In the early days of interpreting title VII, the courts confronted numerous State protective labor laws which limited the number of hours a woman could work or the amount of weight she could lift. These laws were based upon stereotyped characterizations of women as being justifiably limited in their job opportunities because of their procreative roles.

These so-called protective laws were exposed as often protecting the better paying jobs for men, and have been struck down by the courts as being violative of the egalitarian principles embodied in title VII.

It is revealing that the only Supreme Court title VII sex discrimination opinion, prior to its decision in *Gilbert* v. *General Electric*, 429 U.S. 125, 13 FEP Cases 1957, December 7, 1976, also focuses on an employment policy of limiting women's employment opportunities based upon stereotypes of their material role being incompatible with employment opportunity.

In *Phillips* v. *Martin Marietta*, 400 U.S. 542, 1971, the employer theorized, without showing any factual basis for such belief, that women who are mothers of preschool age children may be unreliable as employees and can, therefore, be denied employment.

Today, more than a decade after the passage of title VII, women continue to suffer discrimination in employment because of their reproductive roles. Women are denied jobs or hired into less responsible positions because they may become pregnant.

Once employed, women who become pregnant are often forced on unpaid leave at some arbitrary point prior to the onset of labor. The effect of such a mandatory maternity leave policy is to force a woman who is willing and able to work, and who desparately needs her income, to forego wages for months.

The record in *Gilbert* v. *General Electric* amply illustrates the extended economic hardship caused by such unemployment policies. G.E. forced its pregnant employees on unpaid maternity leave at 6 months of pregnancy and refused to reinstate them for a period of 8 weeks following delivery, although the women sought reinstatement and produced medical certification of their ability to work.

Thus, the pregnant employee was forced to endure 5 months of lost income.

Pregnant women are also forced by their employers to endure diminished or nonexistent fringe benefits in terms of hospitalization and sick pay. These substantial benefits are denied pregnant women although they are routinely made available to all other employees who experience any other kind of disability, whether that disability arises as the result of an athletic injury or cosmetic surgery.

Some employers go so far as to withdraw all accumulated seniority credit from an employee who goes on leave to give birth to her child, so that she returns to employment, if a vacancy is available, as a new employee without the protection of accrued competitive seniority.

The effect of this kind of employment policy in a declining economy is often to terminate the employee. This forced disruption in continuity of employment has lasting and devastating implications for a woman's lifetime earnings capacity.

Women suffering complications of pregnancy are sometimes discharged by their employers, unlike employees experiencing any other kind of medical complication.

Pregnant women who are discriminatorily forced off their jobs by one employer are often unable to secure new employment. Until very recently, pregnant women have been unable even to obtain unemployment compensation on the theory that pregnancy is, in and of itself, irrefutable proof of a woman's unavailability for employment.

These are only a few of the more blantant examples of discriminatory employment practices which are imposed on women because of their necessary childbearing function. The more subtle and, therefore, more insidious practices, such as hiring women into less responsible and low-paid positions based on assumptions that women, because they are mothers or, may yet become mothers, and are, therefore, assumed to be less career-oriented, take an incalculable psychological and economic toll on the American working woman, whether her workplace is the executive board room or the assembly line.

By this legislation, Congress will make clear that the mere fact that the childbearing function is unique to women in no way justifies burdening women with the numerous employment policies detailed above, which have historically denied women employment opportunities.

In enacting title VII, Congress never intended that employers could force women to trade off their cherished and constitutionally protected right to bear children as a condition for enjoying the statutory protections embodied in title VII.

This legislation, by making explicit what Congress believed was already covered by its passage of title VII, will insure that such a distorted result can never again be reached through judicial misinterpretation.

The importance of insuring that women are not discriminated against workers merely because they are also childbearers is underscored by today's economic realities.

The husband and wife breadwinner family is rapidly becoming the norm; 1973 data shows that the husband was the only earner in less than three out of eight husband-wife families. Today's harsh economic realities have reduced the percentage of husband-only earners dramatically.

An even more dramatic illustration of economic need can be seen in the growing percentage of families headed by women who can ill afford disruption in their earnings for themselves and their children.

In 1973, about 6.6 million families, or 12 percent of all families in the United States, were headed by women. The median income of these families was $5,797 per year.

A related area of concern is the number of families living in poverty. In 1973, families headed by women were 12 percent of all families, but they constituted 45 percent of all low-income families.

These statistics amply illustrate the deplorable economic status of American working women. The myth, for too long, readily believed,

is that women work to buy a mink coat, a freezer, or an exotic vacation. The reality is that women work to feed and clothe and house themselves and their dependents. And they work for less pay than their male coworkers to do so.

Therefore, it is clear that the principle of this legislation, namely removing pregnancy discrimination as a barrier to women's equal treatment in the work force, is in the highest tradition of cherished American principles; equality under the law and equal justice for all.

The proposed revision to this legislation is also in accord with concepts of social justice and progressive employment practices. This proposal would require employers who have existing fringe benefits to provide benefits to pregnant employees, who previously have not been covered, without reducing the benefits or compensation provided to any other employee.

This solution to discrimination is the correct one. First, it is in accord with the broad remedial purposes of title VII, a statute which seeks to improve the terms and conditions of women and minorities, and not to cut back on benefits to a previously favored class of male employees. Moreover, it place the onus of full compliance with the law on the responsible party, the employer, rather than causing competition and dissension amongst the employees, who cannot and should not be held responsible for an employer's discriminatory practices.

Finally, Mr. Chairman, what this legislation will accomplish is already common business practice with large numbers of employers in America—Xerox, IBM, and Martin Marietta, to name a few.

The fact is that presently 60 percent of all women employees who are covered by a temporary disability plan receive benefits if they experience a disability due to pregnancy or a related condition.

This legislation will insure that the remaining 40 percent of American working women whose employers have a disability benefits plan are also entitled to have such coverage. Corporate America can absorb this expense.

In conclusion, Mr. Chairman, it is clear that if working women in America, who desperately need their income, are to be protected by title VII, then their employment rights must be protected when they are pregnant. This legislation will insure that result.

Thank you.

The CHAIRMAN. Thank you, Mrs. Abzug. Your statement is clear and commanding, and we appreciate it.

I have no questions.

I would recognize Senator Javits.

We started, Senator Javits, even though you were not here, because of our time——

Senator JAVITS. I wanted to be here for Mrs. Abzug's testimony, and I was told she would be on at 9:50. I am glad I am here in time.

It is a very forceful and very excellent statement of the case, and it is an irrefutable case.

I know your answer to this question, but I think I should ask it for the record. It is claimed by witnesses before our committee that many companies will not install disability plans, will not collectively bargain for disability plans, who otherwise would, because of this additional element of coverage and, therefore, cost.

Personally, I think if those who would refuse to initiate disability coverage due to cost prefer to do that, I think it is well worth the price for the legislation.

How do you feel?

Mrs. ABZUG. I believe that is so.

I also believe that the organized strength of the unions and their collective bargaining, as well as the organized strength and importance of women employees to industry as a whole, would really ultimately mitigate against that.

Senator JAVITS. I thoroughly agree, and we have an example of that in pensions, Senator Williams and I.

And I count it one of the proudest things I have ever done here in the Senate, and I believe he does, too; 5,000 plans were terminated; that is being shaken in front of us as some awful happening. But the fact is that more than 5,000 of these plans were valueless and deceitful.

And when you figure that we have some 350,000 good ones, I think we can afford to sacrifice the 5,000 bad ones. And I feel the same way here.

Thank you, Mr. Chairman.

Mrs. ABZUG. Thank you.

Senator JAVITS. It is a very fine statement and it is going to help us very much. It is well documented, too.

I am a lawyer and I like the annotations.

Mrs. ABZUG. Thank you very much, Senator.

The CHAIRMAN. Senator Hatch.

Senator HATCH. Mrs. Abzug, it is a pleasure to meet you for the first time. I thought your statement was fine also, and I appreciate the documentation that you have taken the time to try to put together for the effective work of this committee.

And, of course, having been in Congress, I think you understand how difficult it is sometimes.

And I think also sometimes some of us try to bring about legislative history that may or may not be helpful in future years as to the impact of the specific bill.

I say that, assuming that this bill is passed.

Now, I want to be frank and——

The CHAIRMAN. Could I interrupt?

Senator HATCH. Yes.

The CHAIRMAN. We want to get to Senator Matsunaga before our first roll call. We are out of turn now with Mrs. Abzug. I appreciate your cooperation, and I appreciate the Senator from Hawaii's cooperation. We will try to reach you, Senator, before 10 o'clock.

Senator HATCH. That will be fine.

I am concerned about this program. Frankly, I am sitting on the fence right now with the tendency to go over and lend my support to this legislation. But I do feel that we have to answer a number of questions.

And I would like to just have some of your input on this.

You state in your statement that—and this is on page 8, "Employers who have existing fringe benefits plans to provide benefits to pregnant employees, who previously have not been covered, without reducing

the benefits or compensation provided to any other employee" would be covered by this proposal.

In other words, those who do not have the plans would not be covered.

Are you aware of that?

In other words, those companies who do not have employee benefit plans, they will not be forced to grant women disability plans, although we might feel that they should be encouraged?

Mrs. ABZUG. That is correct.

Senator HATCH. You are aware then that some employers—and Senator Javits brought this forth—some employers have threatened to discontinue their plans. And, as a result, some may never institute plans who otherwise would. And some who presently have plans may alter them as a result of this legislation because of the added cost.

You are aware of that?

Mrs. ABZUG. Yes; I am aware of that.

But, as I said to Senator Javits, I think that in the last analysis, Senator, when you deal with the total work force and the important role that women are playing in that work force, I think that the cost for getting employees who can continue to make a contribution and so on—as I think they will if you provide the appropriate conditions—will ultimately be considered by most employers and by corporate industry as a whole, Senator, to be worth it.

And beyond that I think——

Senator HATCH. I hope you are right.

Mrs. ABZUG. I think that the statement that this kind of legislation would be a deterrent, I think that has been said historically in the passage of most social legislation in the history of this country.

In my experience as a lawyer representing, by the way, labor in my early days, as well as my experience throughout my career in the practice of law and then as a Member of Congress, I know that this has often been the explanation for denying equal opportunities for changes that may take place; that the burden would be so great that there will be a resistance, so to speak.

But I think——

Senator HATCH. Of course, as a former labor lawyer, even though you advocate here that with the strength of the labor unions in our society, Mrs. Abzug, they would collectively bargain these agreements into effect anyway, but you have to acknowledge as a former labor lawyer, only about 25 percent of our work force in society is controlled by labor unions.

Mrs. ABZUG. Well, I mentioned several things. I mentioned the organized strength of labor and the growing organized strength of women which I think has enormous impact, both in the political arena as well as the private sector. And we hope it does have some more. And we hope that we will be able to help to implement this legislation.

Senator HATCH. As one of the leading advocates in America for women have you estimated what this is going to cost industry in America?

You indicated in your last paragraph that corporate America can absorb these expenses, but have you——

Mrs. ABZUG. Well, I read the material in the Gilbert record and the actuarial estimates of $225 million for the fringe benefits, and I would say——

Senator HATCH. In other words, pregnancy disability alone?

Mrs. ABZUG. Yes.

And for dealing with covering 40 percent of the American women, Senator, it would be roughly, I imagine, $150 million.

Now, I think that that is a lot of money obviously, but I think——

Senator HATCH. Could I interrupt you just a second?

Some testimony that has been brought forth here said it might be as high as $215 million, but others have said it might be as high as $1.6 billion, not millions but billions.

Mrs. ABZUG. Well, I think the problem in that computation—and I read some testimony from the AFL–CIO on this and so on—that that was computed based upon a 30-week average. The average period out of work for a women for pregnancy, taking many different things into consideration is, I would say, roughly no more than 6 weeks on the average.

Some will have a shorter period of withdrawal, and others will have perhaps a longer period. But, by and large, particularly with our modern day technology, we find that 6 weeks is certainly more than adequate. So that that $1.6 billion computation is based upon a totally unreal estimate of what actually does take place.

Senator HATCH. I do not think anybody really knows. But when you said that corporate America can absorb this expense, I just wanted to say that it really is not corporate America who will.

Mrs. ABZUG. I think there is no greater investment by corporate American than its workers.

Senator HATCH. Well, you and I both agree with that, but like I say, it is not corporate America that is going to absorb the expense. It is the consuming public.

Mrs. ABZUG. That may be.

Senator HATCH. So the $1.6 billion or the $110 million, whichever it might be, we have to admit that is going to be passed on to the consumers of America.

So this legislation does have some importance here.

Mrs. ABZUG. I realize there is always a cost—sometimes not only a financial cost but even a social cost—whenever you have change and provide equality to people and make it possible for people to fulfill their constitutional rights, Senator, on all sides.

Senator HATCH. And those costs are just necessary, you think, for a great society, are they not?

Mrs. ABZUG. I think it is absolutely essential for our society.

Senator HATCH. You indicated, Mrs. Abzug, that you felt that 6 weeks would be even beyond the normal length?

Mrs. ABZUG. Well, in some cases. It depends on the individual.

Senator HATCH. I understand.

But when we talk here about having doctors do the certification of whether a woman should be offered disability, what I am concerned about is that we have had legislative history here that says that the company can negotiate with its workers any type of plan or set up any type of plan it wants to.

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And if it wants to put a 6-week provision in there, that is fine. Or if it wants to put a 2-month provision in there, that is fine, or a 2-week provision.

What do you think about that?

Mrs. ABZUG. Well, as I understand it, the amount of payment is usually based upon the disability itself and not the length of time you are out.

Senator HATCH. But the company can set the disability time through negotiations with its collective bargaining unit.

Mrs. ABZUG. I have no problem with any conditions being set by negotiation, Senator, if those conditions are nondiscriminatory.

Senator HATCH. Well, that is the problem. Because if we place this under title VII and give EEOC the power to enforce it, then what becomes nondiscriminatory then becomes a very nebulous problem.

Mrs. ABZUG. We deal with that every day.

Senator HATCH. We do, and we are going into the Federal Courts every day with it, too, because we do not write legislation correctly enough or carefully enough to be able to solve the problems. So we turn it over ot the bureaucracy and that bureaucracy writes a whole set of new regulations, and then we have court cases.

Mrs. ABZUG. Or we try to have guidelines, which, unfortunately, our illustrious Supreme Court sort of ignored in this case.

Senator HATCH. Well, let me just say this to you.

I am concerned because I think that if it is a part of a free process when business negotiates with the collective bargaining agent, or if there is no collective bargaining agent, the business institutes a plan and sets it up and puts in what it thinks is right. Then I think that ought to solve the problem unless, as I say, and this is my concern, there is a clear bad faith disruption in the approach to women under the plan.

But you would not necessarily disagree with that?

In other words, business would have the right to negotiate a plan.

Mrs. ABZUG. Well, business negotiates a lot of plans.

The CHAIRMAN. Senator, the voting bell has rung.

Thank you very, very much.

Mrs. ABZUG. I have been accompanied by Ms. Ruth Weyand.

The CHAIRMAN. She is very familiar to us.

Mrs. ABZUG. Yes; I am sure you are all familiar with her.

Thank you very much for your time. I appreciate it.

The CHAIRMAN. Next we have Senator Matsunaga.

STATEMENT OF HON. SPARK M. MATSUNAGA, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator MATSUNAGA. Thank you, Mr. Chairman.

The CHAIRMAN. Now, Senator Matsunaga, I note you will introduce Dr. Putman. We are very proud to read of Hawaii's enlightment in handling this total situation. It is a model for all our States, I would suggest, and we would be very glad to hear from you.

Senator MATSUNAGA. Thank you very much, Mr. Chairman and members of the Subcommittee on Labor.

It is my great pleasure and honor, indeed, to introduce this morning the associate dean for legal and legislative affairs of the John A. Burns School of Medicine of the University of Hawaii, Patricia K. Putman.

But, before I do that, Mr. Chairman, may I ask unanimous consent that a statement by Representative Neil Abercrombie of the State Legislature of the State of Hawaii be inserted into the hearing record immediately following the testimony of Ms. Putman?

The CHAIRMAN. That certainly will be done.

Senator MATSUNAGA. Dean Putman's contribution to the development of Hawaii's health care delivery system over the past 17 years has been incomparable.

As an attorney in the State legislative reference bureau from 1960 to 1972, Dean Putman was instrumental in the enactment of important legislation in areas as widely disparate as highway safety, landord and tenant relations, and civil rights.

Her work in the areas of health insurance and sex discrimination launched Hawaii's innovative approach to these issues.

Hawaii's health system, largely founded on Dean Putman's studies of the needs of Hawaii's residents and the solutions to their problems, as the chairman pointed out, is without equal.

Since her appointment as associate dean of the University of Hawaii's School of Medicine, Dean Putman has continued her service to the people of Hawaii by her membership on the Advisory Council on Prepaid Health Care, and as chairwoman of the University of Hawaii Commission on the Status of Women, of the chancellor's committee on academic integrity, and of the Hawaii State Advisory Committee for the U.S. Civil Rights Commission.

Mr. Chairman, I would be taking too much of your precious time if I were to mention all of Dean Putman's activities, but I think from the few that I have just related, you are able to draw some idea of the contributions she has made to Hawaii, one of which stems from her considerable expertise in the area of disability insurance coverage of pregnancy and pregnancy-related illnesses.

As a citizen of Hawaii, I am proud to present Dean Patricia Putman.

The CHAIRMAN. Thank you very much, Senator.

[The prepared statement of Senator Matsunaga along with other information supplied follows:]

STATEMENT BY SPARK MATSUNAGA, A SENATOR FROM THE STATE OF HAWAII, IN SUPPORT OF S. 995, A BILL TO PROHIBIT EMPLOYMENT DISCRIMINATION AGAINST PREGNANT WORKERS, BEFORE THE SUBCOMMITTEE ON LABOR OF THE COMMITTEE ON HUMAN RELATIONS, ON APRIL 29, 1977

Mr. Chairman, I am pleased to submit testimony to this Subcommittee in support of S. 995, a bill to prohibit employment discrimination against pregnant workers.

Having served as a member of the House of Representatives during the 88th Congress, I know that it was the intent of the Congress to prohibit this type of discrimination through the enactment of the Civil Rights Act of 1964. Apparently, the Equal Employment Opportunity Commission and several lower courts believed that to be the case also. Unfortunately, however, the Supreme Court, in its December, 1976 decision in General Electric Co. v. Gilbert, held that the exclusion of pregnancy related disability from an employee temporary disability plan does not constitute sex discrimination under Title VII of the Civil Rights Act of 1964.

It is now up to the Congress to make its original intent clear once and for all. For this reason, I am pleased to join the distinguished Chairman of the Subcommittee in sponsoring S. 995, a bill that would declare that discrimination on the basis of sex includes discrimination on the basis of pregnancy.

Opponents of this legislation have expressed grave concern about the cost to industry if pregnancy related disabilities were to be required of all employers who have a comprehensive employee temporary disability plan. To assess the impact on business let us examine the experience of states which have enacted temporary disability laws such as my own state of Hawaii. Hawaii's Temporary Disability Insurance Law, enacted in May, 1973, requires all employers to cover all disabilities from pregnancy the same way it covers disabilities from other causes. Section 392-3(5) defines disability as "total inability of an employee to perform the duties of his employment caused by sickness, pregnancy, termination of pregnancy, or accident other than a work injury." That law, however, is currently being challenged in a lawsuit brought by Standard Oil Company of California.

Material supplied to the attorneys for the respondents in General Electric Co. v. Gilbert by Mr. Orlando Watanabe, Administrator of the State of Hawaii's Department of Labor and Industrial Relations Disability Compensation Division indicates that the passage of Hawaii's state temporary disability insurance law has not resulted in any increased cost. Of the seven insurance companies which write more than 80% of the state's disability insurance, the rates from 1973 to 1975 were reduced in three companies, they went up one cent in another, and remained the same in the sixth company for which figures were provided. The cost of coverage of the female employees for all disabilities was lower in 1975 than in 1973 in four companies, up three cents in one company, and up nineteen cents in one. Separate figures for pregnancy disability coverage were not available at that time.

I am attaching to my statement a copy of Hawaii's statute and the material provided by Mr. Watanabe, mentioned above. Similar findings are included in the testimony before this Subcommittee by Patricia K. Putman, Associate Dean for Legal and Legislative Affairs of the John A. Burns School of Medicine, University of Hawaii.

Mr. Chairman, it has been suggested that amendments be proposed which would set a different limit for the duration of receipt of disability benefits for employees on disability due to pregnancy. Section 392-23 of Hawaii's Temporary Disability Insurance law provides the same maximum duration for receipt of disability benefits for all disabilities, which is 26 weeks. In my judgment, setting a different limit for payment of disability benefits for disability due to pregnancy would be discriminatory. Again looking at the material provided by Mr. Watanabe, the average duration of time employees were absent on temporary disability benefits has been going down since 1973, when Hawaii's law was enacted. In 1973 the average duration was 7.1 weeks; in 1974 it was 5.9; and in 1975, based on about 75% of annual reports, it was 5.0 weeks.

Another question which arises is how to regulate any possible abuse that could result from enactment of S. 995. Hawaii's law provides that proof of disability be "duly certified by a person licensed to practice medicine, surgery, dentistry, chiropractic or osteopathy." The enactment of Hawaii's Temporary Disability Insurance law has not resulted in the abuses many opponents of this bill fear.

There has been a major increase in the number of women in our Nation's workforce in the last several years. Nationally, the figure stands at 38%; today, in Hawaii, women constitute 41.4% of the workforce. Undoubtedly, Hawaii's present statistics foretell what will soon be the case in the rest of the Nation -- women in increasing numbers working outside of the home, and doing so over a longer worklife than previously. The economic realities of rising inflation and the increasing trend of women being the sole head of household all point in this direction. Equality in the working place is, therefore, an economic necessity for these women.

Mr. Chairman, I hope that our experience in Hawaii will convince the Subcommittee that pregnancy need not, and should not, be treated differently from other temporary disability suffered by any worker. I urge prompt and favorable action by this Subcommittee on S. 995.

HAWAII REVISED STATUTES

1975 SUPPLEMENT

VOLUME 4
TITLES 16-21, CHAPTERS 281-400

FOR USE WITH THE CORRESPONDING VOLUME
IN THE MAIN SET

PUBLISHED BY AUTHORITY

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PART I. SHORT TITLE; PURPOSE; DEFINITIONS

[§392-1] Short title. This chapter shall be known as the Hawaii Temporary Disability Insurance Law. [L 1969, c 148, pt of §1]

[§392-2] Findings and purpose. A large portion of the labor force of this State annually is disabled from pursuing gainful employment by reason of nonoccupational sickness or accident and as a result suffers serious loss of income. In approximately ten percent of the cases such sickness or accident can be expected to cause disability of more than one week's duration. More than two-fifths of the employees in private employment have either no fixed legal protection against wage loss from disabling nonoccupational sickness or accident, or only protection for a period of one work week or less; more than one-third of the workers covered by formal sick leave plans are not protected against disability extending beyond two work-weeks. Since the hardship for workers and their families mounts with the extension of the duration of the disability from whatever cause, there is a need to fill the existing gaps in protection and to provide benefits to individuals in current employment that will afford to them reasonable compensation for wage loss caused by disabling nonoccupational sickness or accident where the disability is temporary in nature and exceeds the period of one work-week. This legislation is designed not to impede the growth of voluntary plans which afford additional protection.

This chapter shall be liberally construed in the light of the stated reasons for its enactment and its declared purpose. [L 1969, c 148, pt of §1]

[§392-3] Definitions generally. As used in this chapter, unless the context clearly requires otherwise:

(1) "Benefit year" with respect to any individual means the one-year period beginning with the first day of the first week of disability with respect to which the individual first files a valid claim for temporary disability benefits. A subsequent benefit year is the one-year period following a preceding benefit year, beginning either (A) with the first day of the first week of disability with respect to which the individual files a subsequent claim for temporary disability benefits, or (B) with the first work-day following the expiration of the preceding benefit year if a disability for which temporary disability benefits are payable during the last week of the preceding benefit year continues and the individual is eligible for further benefit payments.

(2) "Contributions" means the amounts of money authorized by this chapter to be withheld from employees' wages for the payment of temporary disability benefits.

(3) "Department" means the department of labor and industrial relations.

(4) "Director" means the director of labor and industrial relations.

(5) "Disability" means total inability of an employee to perform the duties of his employment caused by sickness, pregnancy, termination of pregnancy, or accident other than a work injury as defined in section 386-3.

(6) "Employer" means any individual or type of organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who has one or more individuals in his employment during any day or portion of a day.

(7) "Employment" and "employed" means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, express or implied, with an employer, except as otherwise provided in sections 392-4 and 392-5.

(8) "Wages" means all remuneration for services from whatever source, including commissions and bonuses, and the cash value of all remuneration in any medium other than cash but not including tips or gratuities paid directly to any individual by a customer of his employer and not accounted for by the individual to his employer.

The director may issue regulations for the reasonable determination of the cash value of remuneration in any medium other than cash.

Wages do not include the amount of any payment specified in section 383-11.

(9) "Weekly benefit amount" means the amount payable under this chapter for a period of continuous disability throughout a calendar week. If the period of disability or the initial or terminal portion thereof is shorter than a calendar week, the benefit amount payable for that portion shall be the weekly

benefit amount multiplied by a factor consisting of a quotient having the number of work-days lost during the portion of the week for the enumerator and the number of regular work-days of the employee during a calendar week for the denominator. [L 1969, c 148, pt of §1; am L 1973, c 61, §1]

[§392-4] Place of performance. (a) "Employment" includes an individual's entire service, performed within or both within and without this State if:

(1) The service is localized in this State; or

(2) The service is not localized in any state but some of the service is performed in this State and (A) the individual's base of operation, or, if there is no base of operation, the place from which such service is directed or controlled, is in this State; or (B) the individual's base of operation or place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this State.

(b) The term "employment" also includes all service performed by an officer or member of the crew of an American vessel on or in connection with such vessel; provided that the operating office from which the operations of the vessel operating on navigable waters within or within and without the United States is ordinarily and regularly supervised, managed, directed, and controlled is within this State. [L 1969, c 148, pt of §1]

§392-5 Excluded services. "Employment" as defined in section 392-3 does not include the following service:

(1) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, performed in any calendar quarter by an individual if the cash remuneration paid by the employer for such service is less than $225;

(2) Service not in the course of the employer's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. An individual shall be deemed to be regularly employed to perform service not in the course of the employer's trade or business during a calendar quarter only if (A) on each of some twenty-four days during the quarter the individual performs the service for some portion of the day, or (B) the individual was regularly employed (as determined under clause (A)) by the employer in the performance of the service during the preceding calendar quarter;

(3) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;

(4) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the

catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except (A) the service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States), and (B) the service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employer who, for some portion in each of twenty different calendar weeks in either the current or preceding calendar year, had in his employ one or more persons performing the service, whether or not the weeks were consecutive and whether or not the same individuals performed the service in each week, and (C) service performed in connection with the catching or taking of salmon or halibut for commercial purposes;

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter.

(7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more such states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1954;

(8) Service with respect to which temporary disability compensation is payable for sickness under a temporary disability insurance system established by an act of Congress;

(9) Service performed in any calendar quarter in the employ of any nonprofit organization exempt from income tax under section 501 of the Internal Revenue Code of 1954, if (A) the remuneration for such service is less than $50, or (B) the service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university, or (C) the service is performed by a duly ordained, commissioned, or licensed minister or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of nonsecular duties required by the order, or (D) the service is performed for a church by an employee who fails to meet the eligibility requirements of section 392-25;

(10) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick,

accident, or other benefits to the members of the association or their dependents, if (A) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) eighty-five percent or more of its income consists of amounts collected from members and amounts contributed by the employer of the members for the sole purpose of making such payments and meeting expenses;

(11) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if (A) admission to membership in the association is limited to individuals who are officers or employees of the United States government, and (B) no part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual;

(12) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 of the Internal Revenue Code of 1954, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;

(13) Service performed in the employ of any instrumentality wholly owned by a foreign government, if: (A) the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and (B) the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;

(15) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor, if all such service performed by the individual for the employer is performed for remuneration solely by way of commission;

(16) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(17) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer

during the period covered by the employer's duly approved election, are deemed to be performed entirely within the agency's state;

(18) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation. [L 1969, c 148, pt of §1; am L 1973, c 108, §1]

§392-6 Individual in current employment. "Individual in current employment" means:

(1) An individual who performed regular service in employment immediately or not longer than two weeks prior to the onset of the sickness or to the accident causing disability and who would have continued in or resumed employment except for such disability.

(2) An individual who performed regular service in employment immediately or not longer than two weeks prior to becoming totally disabled from performing the duties of her employment because of pregnancy or termination of pregnancy and who would have continued in or resumed such employment except for such disability. [L 1969, c 148, pt of §1; am L 1973, c 61, §2]

[§392-7] Average weekly wage. The "average weekly wage" for the purpose of computing the weekly benefit amount shall be based upon the wages that the employee would receive from his employer except for his disability. In the case of salaried employees the "average weekly wage" shall be the weekly salary of the employee in the last week prior to the commencement of disability. [L 1969, c 148, pt of §1]

PART II. TEMPORARY DISABILITY BENEFITS

§392-21 Establishment of temporary disability benefits. (a) Any individual in current employment who suffers disability resulting from accident, sickness, pregnancy, or termination of pregnancy, except accident or disease connected with or resulting from employment as defined in section 386-3 or any other applicable workers' compensation law, shall be entitled to receive temporary disability benefits in the amount and manner provided in this chapter.

(b) It is the policy of this chapter that the computation and distribution of benefit payments shall correspond to the greatest extent feasible, to the employee's wage loss due to his disability; that an employee shall not be entitled to temporary disability benefits for periods of disability during which he would not have earned wages from employment according to the schedule of operations of his employer, and that an employee is entitled to benefits only for periods of disability during which, but for the disability, he would have earned wages from employment. [L 1969, c 148, pt of §1; am L 1973, c 61, § 3; am L 1975, c 41, §1]

§392-22 Weekly benefit amount. Benefits shall be computed as weekly amounts in the manner provided in this section:

(1) If the average weekly wage of the employee is less than $26, the weekly benefit amount shall be equal to the average weekly wage but not more than $14.

If the average weekly wage of the employee is $26 or more the weekly benefit amount shall be fifty-five per cent of the average weekly wage rounded off, if not a multiple of $1, to the next higher multiple of $1.

(2) If the average weekly earnings of the employee exceed an amount equal to one fifty-second of the product obtained by multiplying the amount of the average annual wage in Hawaii, as determined pursuant to section 383-22(b) by the factor 1.21, such excess shall not be included in the computation of the weekly benefit amount.

(3) Notwithstanding any provision in paragraphs (1) and (2) to the contrary, the weekly benefit amount shall not exceed the maximum weekly benefit specified in section 386-31. [L 1969, c 148, pt of §1; am L 1971, c 109, §1(a)]

[§392-23] Duration of benefit payments. Temporary disability benefits shall be payable for any period of disability following the expiration of the waiting period required in section 392-24.

The duration of benefit payments shall not exceed twenty-six weeks for any period of disability or during any benefit year. [L 1969, c 148, pt of §1]

[§392-24] Waiting period. No temporary disability benefits shall be payable during the first seven consecutive days of any period of disability. Consecutive periods of disability due to the same or related cause and not separated by an interval of more than two weeks shall be considered as a single period of disability. [L 1969, c 148, pt of §1]

[§392-25] Eligibility for benefits. An individual is eligible to receive temporary disability benefits if he has been in employment for at least fourteen weeks during each of which he has received remuneration in any form for twenty or more hours and earned wages of at least $400, during the four completed calendar quarters immediately preceding the first day of disability. [L 1969, c 148, pt of §1]

§392-26 Care by physician or equivalent required. (a) An individual shall be ineligible to receive temporary disability benefits with respect to any period during which he is not under the care of a person duly licensed to practice medicine, surgery, dentistry, chiropractic, osteopathy, or naturopathy, who shall certify, in the form and manner specified by regulation of the director, the disability of the claimant, the probable duration thereof, and such other medical facts within his knowledge as required by regulation.

(b) This section shall not apply to an individual who, pursuant to the teachings, faith, or belief of any group, depends for healing upon prayer or other spiritual means. In that case the disability, the probable duration thereof, and any other pertinent facts required to be certified by regulation of the director shall be certified, in the form and manner specified by the regulation, by a duly authorized or accredited practitioner of such group.

(c) The proof of disability duly certified by a person licensed to practice medicine, surgery, dentistry, chiropractic, or osteopathy, or an authorized or accredited practitioner of any group which depends for healing upon prayer or other spiritual means shall be submitted by such certifying person to the disabled employee within seven working days after the date on which the employee was examined and found disabled. If the certifying person fails to submit the required proof within seven working days, the director, upon notification by the insurer, may levy a penalty of $25 for each delinquent certification where the certifying person fails to show good cause for his failure to file on time. [L 1969, c 148, pt of §1; am L 1971, c 109, §1(b); am L 1973, c 172, §1; am L 1974, c 154, §1]

§392-27 Ineligibility in certain cases. An individual shall not be eligible to receive temporary disability benefits:

(1) For any period of disability during which he would be disqualified from receiving benefits under the Hawaii Employment Security Law by reason of unemployment due to a stoppage of work existing because of a labor dispute for the duration of such disqualification.

(2) If the director finds that the individual has knowingly made a false statement or representation of a fact or knowingly failed to disclose a material fact in order to obtain benefits under this chapter to which he is not otherwise entitled. The ineligibility shall be for a period determined by the director, but shall not exceed the period of disability with respect to which the false statement or representation was made or the nondisclosure occurred.

(3) For any period of disability due to wilfully and intentionally self-inflicted injury or to injury sustained in the commission of a criminal offense specified in title 38.

(4) For any day of disability during which the employee performed work for remuneration or profit, except that, if an employee returning to work suffers a relapse after performing work for less than a full day, he shall be paid benefits or be given waiting period credit, provided his wages for the partial day's work did not equal or exceed the prorated disability benefits to which he is entitled. The amount of the benefit payable is derived by subtracting the gross wages received for performing less than a full day's work, from the prorated disability benefits to which he is entitled. [L 1969, c 148, pt of §1; am L 1971, c 109, §1(c)]

[§392-28] **Duplication of benefits not permitted.** No temporary disability benefits shall be payable for any period of disability for

which the employee is entitled to receive:

(1) Weekly benefits under the Employment Security Law or similar laws of this State or of any other state or of the United States, or under any temporary disability benefits law of any other state or of the United States except as provided in section 392-66.

(2) Weekly disability insurance benefits under 42 U.S.C.A. sec. 423.

(3) Weekly benefits for total disability under the Workers' Compensation Law of this State or any other state or of the United States, except benefits for permanent partial or permanent total disability previously incurred. If the claimant does not receive benefits under such workers' compensation law and his entitlement to such benefits is seriously disputed, the employee, if otherwise eligible, shall receive temporary disability benefits under this chapter, but any insurer or employer or the special fund for disability benefits providing such benefits shall be subrogated, as hereinafter provided, to the employee's right to benefits under the workers' compensation law for the period of disability for which he received benefits under this chapter to the extent of the benefits so received.

(4) Indemnity payments for wage loss under any applicable employers' liability law of this State, or of any other state or of the United States. If an employee has received benefits under this chapter for a period of disability for which he is entitled to such indemnity payments, any insurer or employer or the special fund for disability benefits providing such benefits shall be subrogated to the employee's right to such indemnity payments in the amount of the benefits paid under this chapter as hereinafter provided. [L 1969, c 148, pt of § 1; am L 1975, c 41, §1]

[§392-29] No assignment of benefits; exemptions from attachment, etc. No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, garnishment, or any other remedy whatsoever provided for the collection of debt. No waiver of any exemption provided for in this section shall be valid. [L 1969, c 148, pt of §1]

PART III. PROVISION FOR TEMPORARY DISABILITY INSURANCE BENEFITS

§392-41 Provision for payment of benefits. (a) An employer or an association of employers shall secure temporary disability benefits to their employees in one or more of the following ways:

(1) By insuring and keeping insured the payment of temporary disability benefits with any stock, mutual, reciprocal or other insurer authorized to transact the business of disability insurance in the State; or

(2) By depositing and maintaining with the State director of finance, securities, or the bond of a surety company authorized to transact business in the State, as are satisfactory to the director securing the payment by the employer of temporary disability benefits according to the terms of this chapter; or

(3) Upon furnishing satisfactory proof to the director of his or its solvency and financial ability to pay the temporary disability benefits herein provided, no insurance or security or surety bond shall be required, and the employer shall make payments directly to his employees, as they may become entitled to receive the same under the terms and conditions of this chapter; or

(4) By a plan, entitling employees to cash benefits or wages during a period of disability, in existence on the effective date of this chapter.

(A) If the employees of an employer or any class or classes of such employees are entitled to receive disability benefits under a plan or agreement which remains in effect on January 1, 1970, the employer, subject to the requirements of this section, shall be relieved of responsibility for making provision for benefit payments required under this chapter until the earliest date, determined by the director for the purposes of this chapter, upon which the employer has the right to discontinue the plan or agreement or to discontinue his contributions toward the cost of the temporary disability benefits. Any such plan or agreement may be extended, with or without modification, by agreement or collective bargaining between an employer or employers or an association of employers and an association of employees, in which event the period for which the employer is relieved of such responsibility shall include the period of extension.

(B) Any other plan or agreement in existence on January 1, 1970 which the employer may, by his sole act, terminate at any time, or with respect to which he is not obligated to continue for any period to make contributions, may be accepted by the director as satisfying the obligation to provide for the payment of benefits under this chapter if the plan or agreement provides benefits at least as favorable as the disability benefits required by this chapter and does not require contributions of any employee or of any class or classes of employees in excess of the amount authorized in section 392-43, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the director. The director may require the employer to enter into an agreement in writing with the director that until the employer shall have filed written notice with the director of his election to terminate such plan or agreement or to discontinue making necessary contributions toward the cost of providing benefits under the plan or agreement, he will continue to provide for the payment of the disability benefits under the plan or agreement. Any plan or agreement referred to in this paragraph may be ex-

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tended, with or without modification; provided the benefits under the plan or agreement, as extended or modified, are found by the director to be at least as favorable as the disability benefits required by this chapter; or

(5) By a new plan or agreement. On or after January 1, 1970 a new plan or agreement with an insurer may be accepted by the director as satisfying the obligation to provide for the payment of benefits under this chapter if the plan or agreement provides benefits at least as favorable as the disability benefits required by this chapter and does not require contributions of any employee or of any class or classes of employees in excess of the amount authorized in section 392–43, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the director. Any such plan or agreement shall continue until written notice is filed with the director of intention to terminate the plan or agreement, and any modification of the plan or agreement shall be subject to the written approval of the director.

(b) During any period in which any plan or agreement or extension or modification thereof authorized under subsection (a)(4) or (5) provides for payments of benefits under this chapter, the responsibility of the employer and the obligations and benefits of the employees shall be as provided in the plan or agreement or its extension or modification rather than as required under this chapter; provided the employer or insurer has agreed in writing with the director to pay the assessments imposed by section 392–67.

(c) If any plan or agreement authorized under subsection (a)(4) or (5) covers less than all of the employees of a covered employer, the requirements of this chapter shall apply with respect to his remaining employees not covered under the plan or agreement.

(d) As used in subsection (a)(4) or (5), "benefits at least as favorable as the disability benefits required by this chapter" means the temporary disability benefits under any plan or agreement whose component parts (waiting period for illness, waiting period for accident, duration of benefits, and percentage of wage loss replaced) add in total to cash benefits or wages which are determined by the director to be at least as favorable as the disability benefits required by this chapter. The insurance commissioner shall establish a set of tables showing the relative value of different types of cash benefits and wages to assist the director in determining whether the cash benefits and wages under a plan are at least as favorable as the temporary disability benefits required by this chapter.

(e) Any decision of the director rendered pursuant to this section with respect to the amount of security required, refusing to permit security to be given or refusing to accept a plan or agreement as satisfying the obligation to provide for the payment of benefits under this chapter shall be subject to review on appeal in conformity with the provisions of this chapter.

(f) In order to provide the coverage required by this chapter for employers otherwise unable to obtain or provide such coverage, the insurance commissioner may, after consultation with the insurers licensed to transact the business of disability insurance in this State, ap-

prove a reasonable plan or plans for the equitable apportionment among such insurers of employer applicants for such insurance who are in good faith entitled to but are unable to procure such insurance through ordinary methods and, when such a plan has been approved, all such insurers shall subscribe thereto and participate therein; provided, however, that the commissioner shall not, for insurance issued or in connection with any such plan or plans, require or allow the use of premium rates which are either inadequate or excessive in relation to the benefits to be provided. Any employer applying for such insurance or any insured under such plan and any insurer affected may appeal to the commissioner from any ruling or decision of the manager or committee designated to operate such plan. All orders of the commissioner in connection with any such plan shall be subject to judicial review as provided in chapter 91.

(g) All insurers shall in form prescribed by the director notify employer applicants who are unable to procure the required insurance through ordinary methods, the availability of the plan described in (f) above. [L 1969, c 148, pt of §1; am L 1971, c 109, §1(d)]

§392-42 Notice of insurance. If payment of disability benefits is provided for in whole or in part by insurance pursuant to section 392-41, (a)(1), (4), or (5), the employer or insurer shall forthwith file with the director in form prescribed by the director a notice of his insurance together with a statement of benefits provided by the policy. If an employer or insurer fails to file the notice of insurance within 30 days after purchase of insurance, the director may levy a penalty of not more than $10 for each delinquent notice, unless good cause for failure to file can be shown by the employer or insurer. [L 1969, c 148, pt of §1; am L 1971, c 109, §1(e)]

§392-43 Authority to withhold contributions, rate of contribution, maximum weekly wage base. (a) Subject to the limitation set forth in subsection (b) an employer may deduct and withhold contributions, from each employee of one-half the cost but not more than .5 percent of the weekly wages earned by the employee in employment and the employer shall provide for the balance of the cost of providing temporary disability benefits under this chapter over the amount of contributions of his employees. Unless a different rule is prescribed by regulation of the director, the withholding period shall be equal to the pay period of the respective employee.

(b) Weekly wages for the purposes of this section shall not include (1) wages earned by an employee in employment during any payroll period unless, during the four completed calendar quarters immediately preceding such payroll period, he has earned wages of at least $400 and has been in employment for at least fourteen weeks during each of which he has received remuneration in any form for twenty or more hours; and (2) remuneration in excess of one fifty-second of the average annual wage in the State as determined for the preceding year pursuant to section 383-61(b) multiplied by the factor 1.21, which amount the director shall cause to be published annually prior to the first day of January following the determination.

(c) The contributions of the employees deducted and withheld from their wages by their employer shall be held in a separate fund or be paid to insurance carriers as premiums, for the purpose of providing benefits required by this chapter.

(d) The director shall have authority to prescribe by regulation the reports and information necessary to determine the cost of providing temporary disability benefits under this chapter, especially in the case of employers or employer associations providing such benefits by means of self-insurance, and to determine the procedures for the determination of such cost.

(e) An employee from whose wages amounts greater than those authorized by this chapter have been withheld by his employer shall be entitled to a refund or credit of the excess as prescribed by regulation of the director.

(f) The contributions of employees deducted and withheld in amounts greater than those authorized by this chapter, shall be deposited in the special fund for disability benefits if such employees are no longer with the employer and cannot be located. A refund of the excess shall be paid from the special fund for disability benefits to the employees when they are located or if such employees remain unlocated for a period of two years from the date of deposit, such monies shall become a part of the special fund.

(g) If an employer fails to provide coverage for his employees after deducting and withholding contributions from his employees as prescribed by this chapter, he shall deposit such contributions in the special disability fund. [L 1969, c 148, pt of §1; am L 1971, c 109, §1(f)]

§392-44 Payment of disability benefits. Benefits provided under this chapter shall be paid periodically and promptly and, except as to a contested period of disability, without any decision by the director. The first payment of benefits shall be paid within ten days, exclusive of Saturdays, Sundays and holidays, after the filing of required proof of claim. Thereafter, benefits shall be due and payable every two weeks. The director may determine that benefits may be paid monthly or semi-monthly if wages were so paid, and may authorize deviation from the foregoing requirements to facilitate prompt payment of benefits. If an employer or insurer fails to make the first payment of benefits within ten days, exclusive of Saturdays, Sundays and holidays, after the filing of required proof of claim, the director shall, unless good cause can be shown, require the employer or insurer to pay such benefits plus an additional ten per cent of the benefits due and payable to the employee. [L 1969, c 148, pt of §1; am L 1971, c 109, §1(g)]

[§392-44.5] Notice of denial. No employer or insurer shall deny disability benefits to an employee without first submitting a copy of the notice of denial to the department. The department shall review the denial within ten days of the receipt of the notice. If the department finds the denial erroneous, without proper legal basis, or without sufficient evidence to support it, the department shall request the employer or insurer to reconsider its action in denying disability benefits.

If upon reconsideration the employer or insurer again decides to deny disability benefits, the employee and the department shall be so notified. The employee shall have the right to appeal the denial of disability benefits. [L 1972, c 120, §1]

§392-45 Subrogation rights if employee entitled to workers' compensation benefits or indemnity under employers' liability acts. (a) If an individual has received temporary disability benefits under this chapter during a period of disability for which benefits for any disability under the Workers' Compensation Law of this State or of any other state or of the United States are subsequently awarded or accepted in any agreement or compromise, the employer, the association of employers, the insurer, or the special fund for disability benefits, as the case may be, providing such temporary disability benefits shall be subrogated to the individual's right to such benefits in the amount of the benefits paid under this chapter.

In the event more than one employer or insurer have subrogation rights to the employee's workers' compensation benefits, such benefits shall be divided proportionately among the employers or insurers according to the amount of benefits each employer or insurer paid under this chapter. Should the subrogated amount of either one or both employers or insurers total less than the amount of benefits that such employers or insurers paid under this chapter, neither the employee nor the special fund for disability benefits nor any other source shall be required to make up the difference.

To protect its subrogation rights to benefits payable under the Workers' Compensation Law of this State, the employer, the association of employers, the insurer, or the special fund for disability benefits, providing temporary disability benefits shall file a claim with the division of workers' compensation in the department and notify the insurer for workers' compensation or the employer, if self-insured, of its claim and thereupon the employer, the association of employers, the insurer, or the special fund for disability benefits, providing temporary disability benefits shall have a lien against the amounts payable as benefits for disability under the Workers' Compensation Law in the amount of the benefits paid under this chapter during the period for which benefits for disability under the Workers' Compensation Law have been accepted or awarded as payable. The agreement or award shall include a provision setting forth the existence and amount of such lien.

(b) If an individual has received benefits under this chapter during a period of disability for which he is entitled to receive indemnity payments for wage loss under any applicable employers' liability law of this State or of any other state or of the United States, the employer, the association of employers, the insurer, or the special fund for disability benefits, providing temporary disability benefits shall be subrogated to the individual's right to such indemnity in the amount of the benefits paid under this chapter and may assert its subrogation rights in any manner appropriate under such acts or any rule of law. [L 1969, c 148, pt of §1; am L 1971, c 109, § 1(h); am L 1975, c 41, §1]

[§392–46] Subrogation rights against third parties. If any individual who has received benefits under this chapter is entitled to recover damages from a third person who is responsible for the sickness or accident causing the disability, the employer, the association of employers, the insurer, or the special fund for disability benefits, providing disability benefits shall be subrogated to, and have a lien upon, the rights of the individual against the third party to the extent that the damages include wage loss during the period of disability for which temporary disability benefits were received in the amount of such benefits.

If the individual commences an action against such third party, the individual shall notify his employer, or the director if the individual is unemployed, of the action and the court in which it is pending. The employer, the association of employers, the insurer, or the special fund for disability benefits, providing disability benefits may join as party plaintiff or claim a lien on the amount of any judgment recovered by the individual in such action to the extent of its subrogation rights. If the individual does not commence the action within nine months after the commencement of the sickness or the date of the accident causing the disability, the employer, the association of employers, the insurer, or the special fund for disability benefits, providing temporary disability benefits may commence such action, but the individual shall be entitled to join the action and be entitled to any surplus over the amount to which the employers, the association of employers, the insurer, or the special fund for disability benefits is subrogated. [L 1969, c 148, pt of §1]

§392–47 Failure to give security for payment of benefits; penalty; injunction. If an employer fails to comply with section 392–41 he shall be subject to a penalty of not less than $25 or of $1 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought in the discretion of the director and the amount so collected shall be paid into the special fund for disability benefits created by section 392–61. The director may, however, in his discretion, for good cause shown, remit all or any part of the penalty in excess of $25, provided the employer in default forthwith complies with section 392–41.

Furthermore, if any employer is in default under section 392–41, for a period of thirty days, he may be enjoined by the circuit court of the circuit in which his principal place of business is located from carrying on his business any place in the State so long as the default continues, such action for injunction to be prosecuted by the attorney general or any county attorney if so requested by the director. [L 1969, c 148, pt of §1; am L 1971, c 109, §1(i)]

[§392–48] The insurance contract. Every policy of insurance issued by an insurer of an employer pursuant to this chapter which covers the liability of the employer for temporary disability benefits shall cover the entire liability of the employer to his employees covered by the policy or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by fil-

ing a separate claim or by making the insurer a party to the original claim, the liability of the insurer in whole or in part for the payment of the disability benefits. Payment in whole or in part of disability benefits by either the employer or the insurer shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

All insurance policies shall be approved by the insurance commissioner of the State. [L 1969, c 148, pt of §1]

[§392-49] Insolvency of employer not to release insurer. Every policy and contract of insurance issued for the purposes of this chapter shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurer from the payment of temporary disability benefits during the life of the policy or contract. [L 1969, c 148, pt of §1]

[§392-50] Cancellation of insurance contracts. No policy or contract of insurance issued by a stock company or mutual association against liability arising under this chapter shall be canceled within the time limited in the contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in the notice, has been filed with and served on the director of labor and industrial relations and the employer. [L 1969, c 148, pt of §1]

[§392-51] Failure to submit timely wage and employment information. An employer to whom an insurer has sent a request for information on wages, hours, and duration of employment regarding an employee claiming disability benefits shall complete and submit such information within seven days from the date the request was received. If the employer fails to submit such information within seven days, the director upon notification by the insurer shall levy a penalty of $10 for each delinquent request where the employer fails to show good cause for failure to file on time. [L 1973, c 9, §1]

PART IV. SPECIAL FUND FOR DISABILITY BENEFITS

[§392-61] Establishment of special fund for disability benefits. There is established in the treasury of the State, separate and apart from all public moneys or funds of the State, a special fund for disability benefits which shall be administered by the director exclusively for the purposes of this chapter. All contributions pursuant to this part shall be paid into the fund and all benefits payable under this part shall be paid from the fund. The fund shall consist of (1) all contributions collected pursuant to this part, together with any interest thereon; (2) all fines and penalties for the fund pursuant to this chapter; (3) all moneys collected by way of subrogation; (4) interest earned on any moneys in the fund; (5) any property or securities acquired

through the use of moneys belonging to the fund; (6) all earnings of such property and securities; and (7) all other moneys received for the fund from any source. [L 1969, c 148, pt of §1]

[§392-62] Management of the fund. The director of finance shall be the treasurer and custodian of the special fund for disability benefits and shall administer the fund in accordance with the directions of the director of labor and industrial relations. All moneys in the fund shall be held in trust for the purposes of this part only and shall not be expended, released, or appropriated or otherwise disposed of for any other purpose. Moneys in the fund may be deposited in any depositary bank in which general funds of the State may be deposited but such moneys shall not be commingled with other state funds and shall be maintained in separate accounts on the books of the depositary bank. Such moneys shall be secured by the depositary bank to the same extent and in the same manner as required by the general depositary law of the State; and collateral pledged for this purpose shall be kept separate and distinct from any other collateral pledged to secure other funds of the State. The director of finance shall be liable for the performance of his duties under this section as provided in chapter 37. [L 1969, c 148, pt of §1]

[§392-63] Disbursements from the fund. Expenditures of moneys in the special fund for disability benefits shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All benefits shall be paid from the fund upon warrants drawn upon the director of finance by the comptroller of the State supported by vouchers approved by the director. [L 1969, c 148, pt of §1]

[§392-64] Investment of moneys. With the approval of the department the director of finance may, from time to time, invest such moneys in the special fund for disability benefits as are in excess of the amount deemed necessary for the payment of benefits for a reasonable future period. Such moneys may be invested in bonds of any political or municipal corporation or subdivision of the State, or any of the outstanding bonds of the State, or invested in bonds or interest-bearing notes or obligations of the State (including state director of finance's warrant notes issued pursuant to chapter 40), or of the United States, or those for which the faith and credit of the United States, are pledged for the payment of principal and interest, or in federal land bank bonds or joint stock farm loan bonds. The investments shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The director of finance shall dispose of securities or other properties belonging to the fund only under the direction of the director of labor and industrial relations. [L 1969, c 148, pt of §1]

§392-65 Temporary disability benefits to be paid from the special fund for disability benefits; recovery of disability benefits.

Temporary disability benefits shall be paid from the special fund for disability benefits to individuals who become disabled when unemployed and who subsequently become ineligible for benefits under chapter 383 or 384. Benefits shall also be paid from this fund to an employee who is entitled to receive temporary disability benefits but cannot receive such benefits because of the bankruptcy of his employer or because his employer is not in compliance with this chapter. Benefits paid from the special fund to such employee may be recovered from his bankrupt or non-complying employer. The director shall institute administrative and legal actions as provided in section 392-47 to effect recovery of such benefits. [L 1969, c 148, pt of §1; am L 1971, c 109, §1(j)]

§392-66 Disability while unemployed. (a) An employee whose employment with a covered employer is terminated and who during a period of unemployment within twenty-six weeks immediately following such termination of employment becomes ineligible for benefits claimed under chapter 383 or 384 solely because of disability commencing on or after January 1, 1970, and who on the day the disability commences is not employed and is not then otherwise eligible for benefits under this chapter, shall be entitled to receive disability benefits as hereinafter provided for each week of such disability for which week he would have received unemployment insurance benefits if he were not so disabled.

(b) The weekly benefits payable to the disabled unemployed shall be the same as the benefits to which the individual would be entitled under chapter 383 or 384 except for his disability; provided that in a case of a disabled unemployed who is performing some form of less than full-time work as referred to in section 383-1(16) at the time the disability arises, he shall receive benefits which he would have been entitled to had he not been performing less than full-time work; provided, further, that benefits payable under this section shall not be payable for a period longer than twenty-six weeks from the time the above unemployed commences to receive unemployment benefits payable under chapter 383 or 384.

(c) The benefits payable under this section shall be paid by the director out of any assets in the fund created by section 392-61. The payments shall be made through employment offices, as this term is defined and used in chapter 383. The director may require an employee claiming benefits under this section to file proofs of disability and other proofs reasonably necessary for the director to make a determination of eligibility and benefit rights under this section. The director may establish reasonable procedures for determining pro rata benefits payable with respect to disability periods of less than one week. Any employee claiming benefits under this section whose claim is rejected in whole or in part by the director shall be entitled to request review and shall have all the rights with respect to disputed claims provided in this chapter. [L 1969, c 148, pt of §1; am L 1971, c 94, §1]

[§392-67] Assessments for the special fund for disability benefits. (a) Each employer shall, from July 1, 1969, to December 31, 1969, contribute to the establishment of the special fund for disability benefits at the rate of .2 percent of covered wages as defined in section 392-43. The employer shall pay such contributions to the director for a given month on or before the thirtieth day of the next succeeding month.

(b) When the balance of the special fund for disability benefits falls below $500,000 as of December 31 of any year after 1969, a levy shall be assessed and collected in the next calendar year from insurers of employers insured under section 392-41 and from all other employers not insured under section 392-41.

Each year the director shall determine the amount of the levy to be paid by each insurer or employer and shall give notice of the levy to each such insurer or employer on or before May 1 of the year in which the levy is assessed. The amount of the levy shall be paid on or before June 30 following notification.

The amount of the levy against each insurer or employer shall be determined as the product of the wages paid by the employer multiplied by a factor which is the ratio of the amount by which the balance in the special disability benefits fund was less than $500,000 on the preceding December 31 to total covered wages paid by all employers. For the purposes of this paragraph, "covered wages" means wages paid by employers during the preceding calendar year but not including wages paid to any employee in excess of the limit contained in section 392-43(b). [L 1969, c 148, pt of §1]

[§392-68] Failure to pay assessments. If an employer or insurer fails to pay the assessment required by section 392-67(a) or section 392-67(b) within 30 days after the end of the month or quarter for which payment was due, the director shall levy a penalty of at least $10 but no more than 10% of the assessment due against such employer or insurer, unless the nonpayment is excused by the director after a showing by such employer or insurer that the payment of the assessment could not be made on the date prescribed therefor owing to conditions over which he had no control and such employer or insurer forthwith complies. [L 1971, c 109, §1(k)]

[§392-69] Request for wage and employment information. An employer to whom the department has sent a request for wage and employment information for an employee claiming benefits against the special fund for disability benefits, shall complete and file such information within seven days from date the request was sent. If an employer fails to file such information in seven days, the director shall levy a penalty of not more than $10 for each delinquent request, unless the failure to file such information is excused by the director after a showing by such employer that such filing could not be made on the prescribed date therefor owing to conditions over which he had no control. [L 1971, c 109, §1 (l)]

PART V. DETERMINATIONS

A. Appeal Procedure

[§392-71] Appeal tribunal. Appeals shall be heard by an impartial referee for temporary disability benefits appeals who shall be appointed by the director and who shall serve as the appeal tribunal. [L 1969, c 148, pt of §1]

§392-72 Appeals, filing and hearing. (a) If a person disputes the amount of benefits, paid under part III or part IV, or the denial of benefits, the claimant may file an appeal, in the form and manner prescribed by regulation of the director, at the office of the department in the county in which the claimant resides or in the county in which the claimant was employed prior to his disability, within twenty days after the date of payment of such disputed benefits or the denial thereof. Notice of the appeal shall be served upon the employer or insurer or the special fund for disability benefits in the form and manner prescribed by regulation of the director.

(b) The appeal shall be heard in the county in which the appeal is filed; provided that the director may by regulation provide for good cause for the holding of a hearing in another county and may provide for the taking of depositions. Unless the appeal is withdrawn with the permission of the referee, the referee after affording the parties reasonable opportunity for a fair hearing shall make findings and conclusions and on the basis thereof affirm, modify, or deny the disputed benefits. All parties shall be promptly notified of the decision of the referee and shall be furnished with a copy of the decision and the findings and conclusions in support thereof and the decision shall be final and shall be binding unless a proceeding for judicial review is initiated pursuant to section 392-75; provided, that within the time provided for taking an appeal and prior to the filing of a notice of appeal, the referee may reopen the matter, upon application of the director or any party, or upon his own motion, and thereupon may take further evidence or may modify his decision, findings, or conclusions. In the event the matter is reopened, the referee shall render a further decision in the matter, either reaffirming or modifying his original decision, and notice shall be given thereof in the manner hereinbefore provided. The time to initiate judicial review shall run from the notice of such further decision if the matter has been reopened. [L 1969, c 148, pt of §1; am L 1973, c 62, §1]

[§392-73] Procedure. The referee shall not be bound by common law or statutory rules of evidence or by technical rules of procedure, but any hearing or appeal before the same shall be conducted in such manner as to ascertain the substantial rights of the parties. No person shall participate on behalf of the director in any case in which that person has a direct or indirect interest. A record shall be kept of all testimony and proceedings in connection with an appeal, but the testimony need not be transcribed unless further review is initiated. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the department and such fees shall be deemed part of the

expenses of administering this chapter. [L 1969, c 148, pt of §1]

[§392-74] Conclusiveness of determinations and decisions. Except insofar as reconsideration is had under section 392-79, any right, fact, or matter in issue, directly passed upon or necessarily involved in an appeal which has become final, shall be conclusive for all the purposes of this chapter. [L 1969, c 148, pt of §1]

[§392-75] Judicial review. Any party or the director may obtain judicial review of the decision of the referee in the manner provided in chapter 91, by instituting proceedings in the circuit court of the circuit in which the claimant resides or in which the claimant was last employed. The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except proceedings arising under the Employment Security Law and the Workers' Compensation Law of the State. Proceedings for review by the supreme court may be taken and had in the same manner as is provided for a review of a judgment of a circuit court. No bond shall be required as a condition of initiating a proceeding for judicial review or initiating proceedings for review by the supreme court. Upon the final termination of any judicial proceeding, the referee shall enter an order in accordance with the mandate of the court. [L 1969, c 148, pt of § 1; am L 1975, c 41, §1]

[§392-76] Representation. In any proceeding for judicial review pursuant to section 392-75, the director may be represented by the attorney general or by any qualified attorney who is employed by the department for such purpose in conformity with section 103-3. [L 1969, c 148, pt of §1]

[§392-77] Payment of benefits. Benefits shall be paid promptly in accordance with the decision. If an application for reconsideration is duly made or if judicial review is duly filed, benefits with respect to weeks of disability not in dispute and benefits payable in any amount not in dispute shall be paid promptly regardless of any reconsideration or appeal. [L 1969, c 148, pt of §1]

[§392-78] Recovery of benefits paid. (a) Any person who has received any amount as benefits under this chapter to which he was not entitled shall be liable for such amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience. Notice of a reconsideration under section 392-79 in such cases shall specify that the person is liable to repay the amount of overpaid benefits, the basis of the overpayment, and the week or weeks for which such benefits were paid.

(b) The person liable shall, in the discretion of the referee, either repay such amount or have the amount deducted from any future benefits payable under this chapter within two years after the date of

mailing of the notice of reconsideration or the final decision on an appeal from such reconsideration.

(c) In any case in which under this section an individual is liable to repay any amount, the amount shall be payable without interest. [L 1969, c 148, pt of §1]

[§392-79] Reconsideration. (a) At any time within one year from the date of a final decision with respect to wages upon which benefits are computed, the director on his own motion may reopen the decision if he finds that wages of the claimant pertinent to the decision but not considered in connection therewith have been newly discovered or that benefits have been allowed or denied or the amount of benefits have been fixed on the basis of a nondisclosure or misrepresentation of a material fact.

(b) At any time within two years from the end of any week with respect to which a final decision allowing or denying benefits has been made, the director on his own motion may reopen the decision if he finds that the benefits were allowed or denied as a result of nondisclosure or misrepresentation of a material fact.

(c) At any time within one year from the end of any week with respect to which a final decision allowing or denying benefits has been made, the director on his own motion may reopen the decision if he finds that an overpayment, due to reasons other than fraud, has occurred.

(d) In any case in which the director is authorized by this section to reopen any final decision rendered by a referee or court, the director may petition the referee or court to issue a revised decision. [L 1969, c 148, pt of §1]

[§392-80] Appeal pending when reconsideration issued. In the event that an appeal is pending as of the date a reconsideration thereof is issued, the appeal, unless withdrawn, shall be treated as an appeal from the reconsideration. [L 1969, c 148, pt of §1]

[§392-81] Notice of reconsideration. Notice of a reconsideration upon a claim shall be promptly given to the parties by delivery thereof or by mailing the notice to the last known address of each party. [L 1969, c 148, pt of §1]

B. Determinations Relating To Wage Withholding

[§392-86] Disputes between employers and employees relating to withholding of wages. In the case that there is a dispute between the employee and the employer relating to the withholding of wages as contributions for temporary disability benefits, either party may file with the director a petition for determination of the amount to be withheld.

The matter shall be determined by an officer of the department. If either party is dissatisfied with the determination, he may petition for redetermination and thereupon the petition shall be transferred to the referee. [L 1969, c 148, pt of §1]

PART VI. ENFORCEMENT

[§392-91] Enforcement by the director. The director shall enforce the provisions of this chapter. The director may appoint such assistants and such clerical, stenographic and other help as may be necessary for the proper enforcement of this chapter subject to any civil service act relating to state employees. The salaries of all the foregoing appointees and employees shall be as fixed by law.

The director may adopt, amend, or repeal such rules and regulations as he deems necessary or suitable for the proper enforcement of this chapter. [L 1969, c 148, pt of §1]

PART VII. MISCELLANEOUS PROVISIONS

[§392-101] Limitation of fees. Any individual claiming benefits in any proceeding before the department or the referee may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the department or referee, and such amount shall in no case exceed ten per cent of the total amount of benefits received as a result of such proceeding. Any person who violates this section shall, for each such offense, be fined not less than $50 nor more than $500 or imprisoned not more than six months, or both. [L 1971, c 109, §1(m)]

[CHAPTER 393]
PREPAID HEALTH CARE ACT

PART I. SHORT TITLE, PURPOSE, DEFINITIONS

SECTION

[393-1] SHORT TITLE

[393-2] FINDINGS AND PURPOSE

[393-3] DEFINITIONS GENERALLY

[393-4] PLACE OF PERFORMANCE

[393-5] EXCLUDED SERVICES

393-6 PRINCIPAL AND SECONDARY EMPLOYER DEFINED; COERCION, INTERFERENCE, ETC. PROHIBITED

[393-7] REQUIRED HEALTH CARE BENEFITS

PART II. MANDATORY COVERAGE

[393-11] COVERAGE OF REGULAR EMPLOYEES BY GROUP PREPAID HEALTH CARE PLAN

[393-12] CHOICE OF PLAN TYPE AND OF CONTRACTOR

[393-13] LIABILITY FOR PAYMENT OF PREMIUM; WITHHOLDING

[393-14] COMMENCEMENT OF COVERAGE

[393-15] CONTINUATION OF COVERAGE IN CASE OF INABILITY TO EARN WAGES

[393-16] LIABILITY OF SECONDARY EMPLOYER

[393-17] EXEMPTION OF CERTAIN EMPLOYEES

[393-18] TERMINATION OF EXEMPTION

[393-19] FREEDOM OF COLLECTIVE BARGAINING

[393-20] ADJUSTMENT OF EMPLOYER-SPONSORED PLANS

[393-21] INDIVIDUAL WAIVERS PROHIBITED; ADDITIONAL WITHHOLDING FOR DEPENDENTS

[393-22] EXEMPTION OF FOLLOWERS OF CERTAIN TEACHINGS OR BELIEFS

[393-23] JOINT PROVISION OF COVERAGE

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APPENDIX C

Letter received in response to form letter printed Gilbert original brief, pp. 47a-48a

George R. Ariyoshi
Governor

Joshua C. Agsalud
Director

Robert C. Gilkey
Deputy Director

Orlando K. Watanabe
Administrator

STATE OF HAWAII

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DISABILITY COMPENSATION DIVISION

825 MILILANI STREET
P. O. BOX 3769
HONOLULU, HAWAII 96812

November 11, 1975

Ms. Ruth Weyand
Attorney
International Union of Electrical,
Radio and Machine Workers
AFL-CIO and CLC
1126 16th Street, N. W.
Washington, D. C. 20036

Dear Ms. Weyand:

This is in response to your October 28, 1975 letter relating to questions of income maintenance for female employees disabled by pregnancy or childbirth.

Section 392-3(5) of the Hawaii Temporary Disability Insurance (TDI) Law defines disability as "total inability of an employee to perform the duties of his employment caused by sickness, *pregnancy, termination of pregnancy*, or accident other than a work injury as

defined in section 386-3 (underscoring added)." Hence, all employers subject to the TDI Law are required to pay TDI benefits to women who become disabled because of pregnancy or complication resulting from pregnancy as long as they meet the eligibility requirements of sections 392-25 and 392-26 (see enclosed lawbook). This no doubt will answer the three questions you raised in your letter.

If you have any other questions or desire further clarification regarding our pregnancy provision, please let us know.

Very truly yours,

/s/ JOSHUA C. AGSALUD
Joshua C. Agsalud, Director
Labor and Industrial Relations

Enc.

APPENDIX D

August 16, 1976

Mr. Orlando K. Watanabe
Administrator
Disability Compensation Division
825 Mililani Street, Room 201
Honolulu, Hawaii 96813

Re: General Electric Co. v. International Union of Electrical, Radio and Machine Workers, AFL-CIO, ea al.—
U.S. Supreme Ct. Case Nos. 74-589, 74-590

Dear Mr. Watanabe:

I am working with counsel for the Union in the above-entitled cases concerning the obligation of the employer to pay sickness and accident benefits to all female employees disabled by pregnancy or childbirth.

We are seeking the following information:

1. The name of all insurance companies which write coverage for purposes of the Hawaii TDI law, and the percentage of insurance coverage written by each; and

2. The number of pregnancy claims paid, and the percentage they constitute numerically, and by cost, of all claims paid.

We shall greatly appreciate your cooperation in supplying us with the foregoing information, to the extent that you have it.

Very truly yours,

/s/ Benjamin C. Sigal

BCS:ih

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APPENDIX E

George R. Ariyoshi
Governor

Joshua C. Agsalud
Director

Robert C. Gilkey
Deputy Director

Orlando K. Watanabe
Administrator

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DISABILITY COMPENSATION DIVISION
825 MILILANI STREET
P. O. BOX 3769
HONOLULU, HAWAII 96812

August 17, 1976

Mr. Benjamin C. Sigal
Shim, Sigal, Tam & Naito
Ste 300, 333 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Sigal:

Attached are one copy each of 45 insurance carriers authorized to write temporary disability insurance in Hawaii, and data on TDI contributions and benefits paid during calendar years 1970 to 1975 inclusive.

We do not have a breakdown of pregnancy benefits. As you know, our law considers pregnancy as any other disability effective May 8, 1973.

Very truly yours,

/s/ ORLANDO K. WATANABE
Orlando K. Watanabe
Administrator

OKW/cy
Att.

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APPENDIX F

Insurance companies authorized to write temporary disability insurance in Hawaii

[Data supplied by Orlando K. Watanabe, Administrator, Disability Compensation Division, Department of Labor and Industrial Relations, Hawaii]

Aetna Life Insurance Co.

Bankers Life Co.

Cal-Farm Life Insurance Co.

Connecticut General Life Insurance Co.

Continental Assurance Co.

Employer's Insurance of Wausau

First Insurance Co. of Hawaii, Ltd.

General American Life Insurance Co.

Hawaiian Insurance Companies

Hawaiian Life Insurance Co., Ltd.

Hartford Insurance Group

Industrial Indemnity Co.

Insurance Company of North America

John Hancock Mutual Life Insurance Co.

Liberty Life Assurance Company of Boston

Lumberman's Mutual Casualty Co.

Massachusetts Mutual Life Insurance Co.

Metropolitan Life Insurance Co.

New England Mutual Life Insurance Co.

North American Co. for Life & Health

New York Life Insurance Co.

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Occidental Life Insurance Co. of California
Pacific Guardian Life Insurance Co.
Pacific Insurance Co., Ltd.
The Equitable Life Assurance Society of the U.S.
The Mutual Benefit Life Insurance Co.
The Prudential Insurance Co. of America
The St. Paul Insurance Companies
Travelers Insurance Company
United Benefit Life Insurance Co.
West Coast Life Insurance Co.
Bankers National Life Insurance Co.
Crown Life Insurance Co.
Industrial Insurance Co. of Hawaii, Ltd.
Allstate Insurance Co.
Union Mutual Life Insurance Co.
Paul Revere Life Insurance Co.
Republic National Life Insurance Co.
Washington National Insurance Co.
Provident Life & Accident Insurance Co.
Northwestern National Life Insurance Co.
Central National Life Insurance Co. of Omaha
Old Security Life Insurance Co.
The Mutual Life Insurance Co. of New York
Pacific Mutual Life Insurance Co.

APPENDIX G

Data on contributions and benefits paid during calendar years 1970 to 1975 inclusive under Hawaii Temporary Disability (TDI) Law.

[Data supplied by Orlando K. Watanobe]

TDI Contributions and Benefits Paid Experience
CY 1970-75 Inclusive

Based on Annual Reports Submitted by Employers and Insurance Carrier

	1	2	3	4	5	6
	1970	1971	1972	1973	1974	*1975
Total Contributions	4,630,132	5,577,230	6,138,519	6,702,457	7,436,755	4,977,520
Employer Share	3,715,730	4,569,827	4,626,694	5,155,308	6,077,854	4,344,564
Employee Share	914,402	1,007,403	1,511,825	1,547,149	1,358,901	632,956
Total Benefits Paid	1,171,148	1,823,237	2,242,883	2,454,532	3,877,455	3,164,893
Ins. Cos. Retained	3,452,984	3,753,993	3,095,636	4,247,925	3,558,854	1,812,627
No. Persons Paid	3,474	6,752	5,860	6,332	8,954	9,054
No. Weeks Paid	22,783	31,424	36,268	44,679	52,871	45,107
Ave. Total Benefits Paid Each Person	337.12	270.02	382.74	384.64	433.04	349.56
Ave. Weekly Ben.	51.40	58.02	61.84	54.94	73.34	70.16
Ave. Duration	6.6	4.7	6.2	7.1	5.9	5.0

*Based on about 75% of annual reports.

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APPENDIX H

August 26, 1976

Mr. Orlando K. Watanabe
Administrator
Disability Compensation Division
825 Mililani Street, Room 201
Honolulu, Hawaii 96813

Dear Mr. Watanabe:

Thank you for your letter of August 17, 1976.

Enclosed herewith is a copy of four pages of a brief filed in the U.S. Supreme Court in the case of *Geduldig* v. *Aiello*, No. 73-640, which include some statements we wish to check out.

First, it states that the following insurance Companies have at least 90% of the TDI business in Hawaii:

> "Travelers Insurance Company, Industrial Indemnity Insurance Company, Pacific Insurance Company, Pacific Guardian Insurance Company, First Insurance of Hawaii, and Hawaii Insurance and Guarantee Company.

What is the exact percentage of TDI business in Hawaii these companies have at the present time?

Second, it states that only one of these companies, Industrial Indemnity, has raised its rates *at all* as a result of the amendment of May 8, 1973, requiring the inclusion of disabilities arising from normal pregnancy and childbirth. What are the facts on this point at the present time?

Your consideration is greatly appreciated.

Very truly yours,

BCS:ih
encl.

BENJAMIN C. SIGAL

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APPENDIX I

George R. Ariyoshi
Governor

Joshua C. Agsalud
Director

Robert C. Gilkey
Deputy Director

Orlando K. Watanabe
Administrator

STATE OF HAWAII

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DISABILITY COMPENSATION DIVISION
825 MILILANI STREET
P. O. BOX 3769
HONOLULU, HAWAII 96812

September 1, 1976

Benjamin C. Sigal, Esq.
Shim, Sigal, Tam & Naito
A Law Corporation
Ste 800, 333 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Sigal:

Re: Temporary Disability Insurance Experience

In response to your letter of August 26, 1976, the TDI experience of the six insurance companies named in your letter plus Hawaiian Life is as follows:

1973 - 86.3%
1974 - 87.1%
1975 - 82.9%

With respect to the rates charged by the six named carriers, since different rates are charged to different employers, a composite rate of each company and by male-female breakdown was obtained by dividing the

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total contributions paid by employers and employees by (taxable wages ÷ 100). Information is attached.

The above information was obtained from annual reports filed by TDI carriers.

Very truly yours,

/s/ ORLANDO K. WATANABE
Orlando K. Watanabe
Administrator

SS/cy
Att.

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APPENDIX J

Average rates charged by six insurance companies writing the majority of disability insurance in Hawaii, 1973-1975, under Hawaii Temporary Disability Insurance (TDI) Law.

[Data supplied by Orlando K. Watanabe]

RATES CHARGED PER $100 IN TAXABLE WAGES:

	1975	1974	1973
First Insurance	$.61	$.71	$.73
Male	.55	.73	.73
Female	.68	.69	.70
Hawaiian Insurance & Guaranty	.57	.57	.56
Male	.55	.55	.56
Female	.59	.60	.56
Industrial Indemnity	.74	.55	.54
Male	.71	.54	.52
Female	.77	.57	.58
Pacific Guardian	.60	.61	.60
Male	.59	.61	.59
Female	.61	.61	.62
Pacific Insurance	.64	.95	1.42
Male	.61	.94	1.22
Female	.67	.96	1.71
Travelers Insurance	.59	.62	.69
Male	.56	.61	.65
Female	.65	.65	.76

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APPENDIX K

FIRST INSURANCE COMPANY OF HAWAII, LTD.

January 8, 1976

Mr. Ben C. Sigal, Attorney
333 Queen Street
Suite 800
Honolulu, Hawaii 96813

Dear Mr. Sigal:

This letter will confirm the fact that First Insurance Co.'s TDI rates were not increased because of the fact that pregnancies are now a covered disability.

If we can of further service, please call.

Warm regards,

/s/ IVAN H. MIYAMOTO
Ivan H. Miyamoto,
Superintendent
Health Insurance Department

IHM:lh

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APPENDIX L

FIRST INSURANCE COMPANY OF HAWAII, LTD.

January 13, 1976

Benjamin Sigal
333 Queen Street Suite 800
Honolulu, Hawaii 96813

Dear Mr. Sigal:

On January 1, 1975 the Temporary Disability Insurance Department lowered it's rate to become more competitive with other insurers. The rate reduction applied to both male and female, but the proportionate rate reduction for each sex is unknown.

Sincerely,

/s/ NOBUO KIWADA
Nobuo Kiwada
Temporary Disability
Insurance

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APPENDIX M

PACIFIC INSURANCE COMPANY, LIMITED

Joseph E. Maxfield
Vice President

841 Bishop Street
P.O. Box 1140
Honolulu, Hawaii 96807
Telephone: 546-7283

January 12, 1976

Mr. Benjamin C. Sigal
333 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Sigal:

You recently inquired as to whether we increased our TDI rates as of the date that maternity benefits became a part of the TDI law (maternity benefits became effective May 8, 1973). At that time no change in rates took place; however, we did amend our rates upward effective January 1, 1975 as the result of poor overall loss experience during the previous year.

Very truly yours,

/s/ JOSEPH E. MAXFIELD

JEM/dls

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APPENDIX N

THE TRAVELERS

Group Department
Underwriting Division

January 27, 1976

International Union of Electrical,
Radio and Machine Workers
AFL-CIO
1126 16th St. N.W.
Washington, D.C. 20036

Re: Hawaii Temporary Disability Insurance

Dear Ms. Weyand:

In response to your inquiry date January 9, 1976, please be advised that there has been no increase in our TDI rates since 1970.

Should you have any further questions, please let me know.

Very truly yours,

/s/ Rebecca B. Mortlock
(Mrs.) Rebecca B. Mortlock
Assistant Underwriter
Group Underwriting
Division

Morbidity Experience in California and New Jersey: Effect of Sex, Age and Wage Level

There is agreement among the students of disability insurance on the observation that disability rates--relating to frequency as well as severity--vary distinctly, according to the sex, age and wage level of the covered workers. Of course, the disability measured is compensated disability.

Unfortunately, it is not easy to determine to what extent each of these three factors is responsible for the demonstrable correlation. This is due to the fact that there is a correlation between the sex of the worker and the attained wage level and that there are no recent published data on the sex, age, and wage distribution of the covered work force. Hence, it is impossible to present recent and detailed data on the effects of sex, age, and wage level on the frequency rates although the effect of these factors on average duration is capable of further significant analysis.

According to the experience compiled between 1948 and 1950 by the insurance industry under private group insurance,[32] the claim costs under a so-called 8-8-26 plan[33] for a universe consisting solely of female insured (including a six-week pregnancy coverage) were 1.89 times the claim costs incurred by a wholly male group. Under an 8-8-13 plan the corresponding ratio was 2.19. The difference in claim costs was due to higher frequency rates as well as to greater average duration of disability for the female group, although the difference in frequency rates was the primary factor for the aggregate cost difference.[34]

The analysis of the 1964 experience under the New Jersey state plan[35] shows a similar picture. Although female workers constituted only 29.9 per cent of the total covered labor force (i.e., covered by the state plan and the private plans), female claimants were responsible for 58.2 per cent of the number of all claims compensated under the state plan, for 60.6 per cent of the total number of weeks thus compensated and for 53.8 per cent of the total amount of the benefits paid under the state plan. In other words, assuming that the female component of the working force covered by the state plan has the same ratio to the male component as the female component of the total covered work force has to the male component (which is not necessarily true because of possible adverse selection),[36] the frequency rate of female claims was 138.8 per thousand as compared with 42.5 per thousand for males; in other words the frequency of female

claims was 3.3 times as high than that of male claims. If pregnancy claims are omitted, male claims constituted 44.5 per cent of the total number of claims, and female claims constituted 55.5 per cent. Translated into frequency rates, the frequency rate of male claims would remain at 42.5 per thousand, while the frequency rate for female claims would be reduced to 124.5 per thousand but still would be 2.9 times that of male claims.

Average duration of benefits paid, likewise, was more favorable for male claimants (7.9 weeks) than for female claimants (8.7 weeks, if pregnancy claims are included and 9.0 weeks, if they are excluded).

Despite the fact that male claimants had a much smaller utilization rate than female claimants and a distinctly more favorable severity experience, they received 46.2 per cent of all benefits while female claimants received 53.8 per cent. Disregarding pregnancy benefits, the male share would increase to 48.2 per cent and the female share correspondingly decrease to 51.8 per cent. The reason for the relatively greater share of the male workers in the total benefits disbursed is the higher wage level of employed men. The average weekly benefit for male claimants under the 1964 New Jersey experience was $44.86 while female recipients collected only an average weekly benefit of $34.14 ($34.07 if pregnancy coverage is eliminated).[37]

In conclusion, the New Jersey experience shows that the proportion of women workers (even disregarding the pregnancy claims) substantially affects the cost of the program. The causes may be sex, wage level, type of occupation, or a combination of all three.

The California experience for 1964 confirms many of the conclusions possible from the New Jersey experience but in some respects shows striking departures. According to the data available, the proportion of female workers in the total work force covered by the state plan in 1964 was 35.1 per cent.[38] Since the average covered employment subject to the state plan in 1964 was 4,259,300 workers, it is assumed that the average number of covered male and female workers was 2,764,290 and 1,495,010, respectively.

The experience in California in 1964 was analyzed by the Joint Committee report of 1967,[39] but the analysis was made on the basis of samples rather than the total actual experience. The ratio of male claimants to female claimants (state plan, basic claims, regular liability) was estimated as $\frac{57.71}{42.29}$.[40] The actual number of compensated claims of that type in 1964 was 382,000 (see Table 8). Hence, the

frequency rate of male claims was $\frac{382,000 \times 57.71}{2,764,290} \times 1,000 = 79.8$ per thousand, while the frequency rate of female claims was $\frac{382,000 \times 42.29}{1,495,010} \times 1,000 = 108.1$ per thousand. In other words, in California the frequency rate of claims by female workers exceeded that of male claims by only 35.5 per cent.

The average duration of basic benefit payments to employed males was calculated at 6.92 weeks while the corresponding duration for female recipients was 7.66 weeks.[41] The average weekly benefit amount of male beneficiaries was $60.69, of female beneficiaries $45.17.[42] In California, as in New Jersey, women workers' share of the total benefits paid was less than the claims ratio alone would suggest: male claimants received 62.4 per cent of all benefits paid, female claimants 37.61 per cent.

Both the California and New Jersey experiences show that age affects the average duration of benefit payments and that the age composition of the covered labor force is an important factor in the aggregate costs of disability insurance. The lengthening of the average duration of benefit payments with increasing age is observed for both male and female claims.

Table 28 shows the average duration of claims in California and New Jersey, computed by age groups and sex, with the elimination of the pregnancy claims in New Jersey. The data prove that the age of the claimants, whether male or female, bears a distinct correlation to the average duration of their claims and that the difference between male and female average durations disappears, or is the smallest, at both ends of the spectrum.

California data seem to demonstrate that there is also a correlation between age and frequency rates.[43]

It is likewise demonstrable that wage levels exert an important effect on the average duration of benefit payments or, at least, show a significant correlation with average duration. This holds true for male as well as female recipients. Both California and New Jersey data support this proposition.

The California study classified male and female recipients into workers with base period earnings of less than $4,000 and workers with base period earnings of $4,000 and more. It also divided both categories into age groups. The findings showed that the difference

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Table 28

AGE AND AVERAGE DURATION OF CLAIMS (WEEKS)
CALIFORNIA AND NEW JERSEY
EMPLOYED DISABLED
1964

	Under 25		25-44[3]		45-54		55-64		65 and Above	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
California[1]	5.14	4.69	5.68	7.17	7.06	7.96	8.94	9.16	11.81	12.59
New Jersey[2]	5.76	6.31	6.36	8.41	7.82	9.40	9.53	10.31	13.69	13.07

[1]Computed from Joint Committee on Unemployment Compensation Disability Insurance, Final Report, Table 17, at p. 80 (1967).

[2]Computed, with exclusion of pregnancy, from State of New Jersey, Department of Labor and Industry, Division of Employment Security, Temporary Disability Insurance Cases in 1964 (Research Series No. 19), Tables 23, 24, 14 and 15 (1967).

[3]The New Jersey data permit a further breakdown of the second column:

25-34		35-44	
Male	Female	Male	Female
6.00	7.80	6.58	8.71

in average duration of claims by male and female disabled in different age groups tended to be greatly minimized or even reversed if the earning levels of recipients are taken into account. The results of the California study are tabularized in Table 29. They were summarized by the report with the sentence:

> When employment status and base period wages are held constant, there is very little difference in average duration between male and female claimants.[44]

The New Jersey study presented the relation between average weekly benefits and average duration of disability for male and female recipients.[45] Again the data show that there is an inverse correlation between average weekly benefits and average durations. In other words, since the average weekly benefit depends on the wage level, the analysis proves that the claims of low-wage earners are subject to a greater average duration. Table 30 shows the relation for both male and female claimants. The values for each income level indicate the perhaps surprising result that in all wage brackets, except in the highest, the average duration of benefit payments of women is more favorable than that of men. Unfortunately, it was not possible to eliminate the pregnancy claims from the data for each category. Since, however, the eight-week limitation on pregnancy benefits tends to decrease rather than increase the average duration in categories for which the average duration without pregnancy claims exceeds eight weeks, the comparative value of the table is not affected, except perhaps in the highest wage bracket. The New Jersey data show, however, that in the highest wage bracket, only 309 out of 4,765 claims were pregnancy claims. Hence, the inclusion of this type of claim is not material. Apparently, the highest wage bracket is reached by women only at an age where pregnancies are no longer common.

Both the California and New Jersey data convincingly demonstrate that, paradoxical as it may sound, money is a more potent factor than sex in the morbidity experience. The principle unquestionably holds true with respect to severity (average duration). It appears also to apply, at least to some extent, to frequency.[46] The observed higher frequency rates for unemployed disabled likewise seem to support this supposition although the different rules as to waiting periods may weaken the force of this argument.

In the light of the arguments advanced above, the discrepancy between the California and New Jersey frequency rates for female and male claimants may become less perplexing than they are at first blush.

Table 29

EFFECT OF WAGE ON AVERAGE DURATION (WEEKS)
BY SEX AND AGE
CALIFORNIA EMPLOYED DISABLED
1964

Income	Under 25		25-44		45-54		55-64		65 and Above		Composite	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Under $4,000	5.6	4.8	7.1	7.6	8.6	8.6	10.9	9.7	13.0	12.8	8.1	8.0
$4,000 and above	4.5	4.1	5.3	6.4	6.7	7.0	8.3	8.2	11.0	11.9	6.5	6.9

Source: Joint Committee on Unemployment Compensation Disability Insurance, Final Report, Table 17, at p. 80 (1967).

EXPERIENCE

It may be recalled that in New Jersey the frequency rate of female claims more than doubled that of male claims while in California the frequency rate of female claims exceeded that of male claims by only 35 per cent.

FREQUENCY RATES

(Number of Claims per 1,000 Workers)

	Male	Female
California	79.8	108.1
New Jersey	42.5	124.5

Apparently, the higher frequency rate of male claims in California is due to the fact that California dispenses with a waiting period in hospitalization cases which are often caused by accidents. Women suffer fewer accidents than men. The higher frequency rate of female claims in New Jersey may be attributable as much to lower wage rates or age, as to sex only. In addition, factors contributing to the difference may be found in the possible adverse selection attributable to private plans, occupational conditions and climate.

Moreover, the data support a further conclusion: even if the benefit formula is not constructed in such a manner as to be weighted in favor of the low-wage earners (as is, for instance, the benefit formula under the OASDHI system), it nevertheless operates in favor of the low-income groups because these groups have a much more unfavorable experience than the insured in the higher wage brackets. A recent study by the California Department of Employment of a 1966 sample analyzing the relation between net benefit costs and contributions (loss ratios) for a sample of claimants segregated by age, sex and wage bracket[47] strikingly shows this factor.

Although the discussion of the effects of age, sex and wage level on the demands on the system has revealed perplexing and divergent factors, one conclusion seems to be inescapable:

The average duration of claims is strikingly related to the income level: the lower the income level, the longer the duration of disability. Hence, systems which limit duration significantly discriminate against low-wage earners and deny protection where it is most needed.

Table 30

NEW JERSEY

EFFECT OF WAGE (AS REFLECTED IN WEEKLY BENEFIT RATE) ON DURATION (WEEKS)
BY SEX
EMPLOYED DISABLED
1964

Sex	Under $20	$20-$24	$25-$29	$30-$34	$35-$39	$40-$44	$45-$50
Male	13.88	11.40	11.07	10.19	9.36	8.36	7.35
Female	11.03	10.02	9.54	9.12	8.24	8.00	7.72

Source: State of New Jersey, Department of Labor and Industry, Division of Employment Security, Temporary Disability Insurance Cases in 1964 (Research Series No. 19), Table 40, at p. 74 (1967).

The CHAIRMAN. We are looking forward to Dean Putman's testimony, and appreciate what she has meant to your State and to the Nation.

STATEMENT OF PATRICIA K. PUTMAN, ASSOCIATE DEAN FOR LEGAL AND LEGISLATIVE AFFAIRS, SCHOOL OF MEDICINE OF THE UNIVERSITY OF HAWAII, HONOLULU

Ms. PUTMAN. Senator Williams and members of the committee, I am touched by a complete sense of satisfaction and commitment to be here today. I do have some other figures to tell you about in the course of my testimony, so I do not want to burden you with too many right now.

But I would like to mention a few because I think they will give emphasis to what I have to say.

I am at the midpoint right now in a 10,000-mile trip. It is taking me a day and one-half. I am leaving at 3 o'clock to return home. And I am coming specifically to give this testimony today.

The CHAIRMAN. Very good. We appreciate it.

Ms. PUTMAN. The Federal legislation proposed by S. 995, to prohibit discrimination for employment-related purposes against pregnant workers on account of their pregnancy and related medical circumstances, is a matter that has been substantially resolved by Hawaii State legislation, to the great benefit of women members of the labor force who become pregnant.

I worked on this project as well as many other people, Mr. Chairman, for some 7 years, and still am involved in it.

It is my purpose this morning to tell you about Hawaii's experience in the hope it will persuade you to extend these kinds of benefits further for women across the Nation who work.

The Committee on Human Resources may find it helpful in considering S. 995 to evaluate the Hawaii experience as it relates to pregnant workers under the Hawaii Temporary Disability Insurance Law (Ch. 392, Hawaii Revised Statutes) and the Hawaii Prepaid Health Care Act (Ch. 393, Hawaii Revised Statutes).

First as to the TDI law.

The law was enacted in 1969, and we were the sixth jurisdiction in the United States to have such a law.

The TDI is intended to provide partial wage loss replacement for disability that is not work connected. It completes a triangle of unemployment-type benefits—worker's compensation relates to employment related disability; unemployment compensation relates to the vagaries of the economy; and TDI relates to the nonoccupational kind of disability.

When our law was first enacted, it did not include any provisions for pregnancy, for the basic pregnancy. It did have some provision for benefits in case of complications from pregnancy.

The basic benefit amount is 55 percent of the average weekly wage of the worker, after a 7-day waiting period. The highest benefit paid weekly at the present time is $120 a week. The average is $70.75 a week with $90 for men and $63.28 for women workers.

After the 7-day waiting period, the duration extends to 26 weeks. The reason for that limitation is that if a disability continues that long, chances are it will become a permanent disability, and the employee will be entitled to benefits under other Federal legislation.

After the law was enacted and we gained some experience, in 1973, the law was amended to extend the benefits to disability due to pregnancy, as well as disability due to sickness or accidents.

At the top of page 4 of the testimony I have submitted, I have set forth five reasons that formed the legislative intent for the amending legislation that added pregnancy as a compensable cause of disability, Mr. Chairman, to qualify for benefits under TDI.

One is that all sex discriminatory features should be removed from the State's laws.

Second, a law that discriminates in the payment of TDI benefits for a disability on the basis of its pregnancy-related cause violates the Equal Rights Amendment to the Hawaii State Constitution.

Three, other provisions in the TDI law properly and adequately includes safeguards to protect against abuse by employees claiming benefits for disability based on pregnancy, such as the required certification by a physician.

The CHAIRMAN. Could you pause?

We are in the process of a rollcall vote. I will be right back.

[Short recess.]

Ms. PUTMAN. I was reading from page 4 of the testimony about the factors that were taken into consideration in the legislative history of the measure that provided TDI benefits for pregnancy-caused disability.

Four, the TDI law should conform to Federal standards set forth in the equal employment opportunity commission guidelines pursuant to title VII of the Civil Rights Act of 1964.

Five, in view of the economic necessity for most working women to support themselves and, in many cases, to support wholly or in part their families, it causes extreme hardship if disability due to pregnancy renders them incapable of performing this function without at least a partial replacement of their wage loss. Disability due to pregnancy is not less onerous to the wage earner and her family than disability caused by sickness or accident.

I might add there that working women who are having a baby are at a point where they need not less money, which is all they get under TDI benefits, but, in fact, they need more money. But to deny them any income at all seems to me to be unconscionable.

As to the Hawaii experience, since it has been determined as a matter of State law and State policy that pregnancy disability for TDI purposes shall be treated the same as disability caused by sickness or accident, separate information is not reported or compiled to attribute the cause of the disability for which benefits are paid—whether the cause is sickness, accident, or pregnancy.

However, certain relevant information is available from the State department of labor and industrial relations, obtained from annual reports filed by TDI insurance carriers as required under the rules.

It is noted that the rule covering the periodic reporting requirements was amended, effective beginning with the report for the 1972

calendar year, to require specific information to be furnished separately for men and for women employees.

And I have set forth a chart indicating the cost per $100 of supplying the TDI insurance by the six major carriers, providing more than 80 percent of this kind of insurance in the State, from the years 1970 through 1975.

From that chart certain conclusions can be drawn:

(1) Costs for temporary disability insurance, determined on an actuarial basis, have quite consistently decreased since the law became effective.

(2) A similar decrease has occurred for the costs of such coverage for women employees.

(3) The cost differential between men and women employees is relatively modest.

(4) The effect of pregnancy disability coverage, beginning May 8, 1973, did not have the effect of increasing the cost for women employees' coverage.

(5) The increase in minimum wages in 1974 and 1975 did not, in most cases, interrupt the downward trend in the insurance costs.

With respect to the third conclusion and women employees' higher utilization rate, the Hawaii study carefully examines variability under compensated disability programs according to the factors of sex, age, and wage level of the covered employees.

I have submitted a copy of the report and of the specific pages to the committee.

It is there pointed out that the duration and frequency of claims is closely correlated with income level; the lower the income, the longer the duration of disability and the greater the frequency rate of disability claims.

The sex factor and the wage level factor tend to merge in view of women's employment pattern under which full-time year-round wage and salary income of women is 57 percent of men's income from wages and salary and under which women's employment is concentrated in low wage and salary occupations.

What was not expected, but is revealed in the data also compiled from employers' and insurance carriers' annual reports to the Department of Labor and Industrial Relations for the last full reported year, 1975, the average duration of disability periods for men exceeded that of women.

And I have set forth some other related data as to the average total benefits paid to employees—and separately for men and women employees—and also the average weekly benefits paid and the duration.

And I emphasize that the average duration for women—which is 4.4 weeks as contrasted to 5.1 weeks for men—in the case of women is based on disability due to accident and sickness as well as pregnancy.

With respect to Hawaii's Prepaid Health Care Act, this law was enacted in 1974, and is a unique and unprecedented kind of State social legislation.

By filling in the then existing gaps in prepaid health insurance coverage, the Hawaii Prepaid Care Act provides that every regular employee in the State has the protection and security of coverage under a prepaid health care plan.

The law extends coverage to every regular employee under 65 in private employment not subject to a collective bargaining agreement. Eligibility is 4 weeks of continuing employment.

The health care benefits and the plans that are required under this law may be one of two kinds—they may be a kind of plan where the employee actually receives the services from the health care plan contractor, or it may be the kind of a plan where there is reimbursement for the cost of hospital and health care.

In general, the law requires that the benefits include basic types of benefits, such as inpatient and outpatient hospital care; surgical services; medical benefits, including home, office, and hospital visits by doctors; diagnostic and therapeutic services; and maternity benefits for employees who have been covered by the prepaid health care plan for at least 9 consecutive months prior to delivery.

These minimum basic standards reflect, I think, community expectations, because they were derived by examining the most frequently occurring, most popular plans that were in existence at the time the new law was passed. So it is a community set plan in which everyone expects to have basic maternity coverage, as well as those other kinds of basic health care.

I will not go into the other details because the main point I want to emphasize in this law for this purpose today is the coverage of maternity benefits.

The Hawaii experience under this law—and I would say I have had this experience firsthand as a member of our prepaid health care advisory council—and although we have not kept a complete log on the reasons for the council's recommendations not to approve plans submitted for approval as meeting the requirements of the law, it is clear that the most frequent deficiency has been in maternity benefits.

Such reasons for disapproval of plans include the following:

There were no maternity benefits.

There were maternity benefits limited to complications of pregnancy.

There were no maternity benefits for complications of pregnancy.

There were no maternity benefits unless the employee also insures her dependents under the policy.

There were plans with excessive special deductible applied to maternity benefits.

The plans maternity benefits were ridiculously low.

In some cases there were no maternity benefits for unmarried women employees. It is interesting to note that in many of these plans there was quite adequate basic coverage for the wives of employees in their maternity coverage, but not so in every case for women employees.

It is equally clear that many working women in Hawaii now have the protection of a prepaid health care plan, in contrast to their pre-1975 situation.

In conclusion, I want to set a little more of the scene in Hawaii. The 1970 census reported that 49 percent of all females 16 years of age or older in Hawaii were either employed or seeking work, a proportion higher than that of any other State. That most recent accurate count of women in Hawaii's labor force showed that women constitute 41.4

percent of the total civilian labor force, as contrasted to women's participation rate of 38.1 percent nationally.

Indicators point to an estimated participation rate in Hawaii of 42.2 percent in 1974, and 44 percent in 1975, consistent with the pattern of Hawaii's participation rate by women in the labor force being four or more percentage points higher than the national rates.

This is even more significant when one considers that in Hawaii our population includes more men than women, which is just the contrast of the national division of the sexes in the population.

So it is that the State with the highest proportion of working women—and working wives and working mothers—in the Nation is the State that includes pregnancy benefits for them in two significant programs providing both partial wage loss replacement for periods of disability due to pregnancy and prepaid health care for hospital and medical services as a maternity benefit.

With respect to TDI, the coverage closes what would otherwise be a gap in the protection against loss of earning power that measures such as the Federal old-age, survivors, and disability insurance program, workers' compensation, and unemployment insurance are designed to afford.

With respect to prepaid health care, the coverage is a positive step to improve materially the quality of maternal and child care. In both cases, the Hawaii experiences demonstrate that nondiscrimination against pregnant workers is economically and administratively feasible.

I have got some other important data, gotten just before I left Hawaii, so I have not had time to prepare it in written form. And this relates to the birth rate in the State.

The overall birth rate for the total population is approximately 18 births per 1,000 population.

Two decades ago, that figure was 30 births per 1,000. For all women over 16, the birth rate is 70.27. If that is divided into civilian and military women—but that is really by the civilian or military status of the father—but the birth rate for civilian women, 16 years of age and over, is 61.6; for military women, it is 125.1. Those figures come from our State statistician in the State department of planning and economic development.

Our State department of health has a Hawaii health surveillance program. During the last 12 months, the birth rate of working women, age 16 and over, was 27 per 1,000.

So approximately half of the women, women 16 years of age or older, in Hawaii are in the work force and have a birth rate that is one-fourth the total birth rate of all women in that age group in the State.

The other point I would like to make to the chairman and the members of the committee is that providing this kind of equality for women is not only a benefit to those women but also to their children, to their families, and to the child that they may be bearing and will give birth to. So it is not just for women alone.

I believe that S. 995 is an admirable bill, is salutary. I wish it could go further, but perhaps it can in the future. Perhaps in the future something equivalent to Hawaii's TDI and something equivalent to our prepaid health insurance may be available to all workers across the Nation.

Thank you.

The CHAIRMAN. Thank you very much. We will now insert in the record the statement of Representative Neil Abercrombie.

[The statement referred to follows:]

HOUSE OF REPRESENTATIVES
THE NINTH LEGISLATURE

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

April 22, 1977

Room 440
548-7805

TO: Senator Harrison Williams, Jr.
Chairman, Subcommittee on Labor of the Human Resources Committee

FROM: Representative Neil Abercrombie
House of Representatives
State of Hawaii

RE: S. 995

The decision of the Supreme Court holding that private employers need not include coverage for pregnancy and childbirth in temporary disability programs is shocking and unconscionable. The exclusion of this coverage from programs which cover such medical treatments as circumcision and vasectomies is clearly discriminatory on the basis of sex.

To single out for exclusion a condition experienced by only one sex, due to biological imperatives, is as unfathomable and objectionable as would be reference to any other condition peculiar to a specific group--e.g., certain forms of cancer which have a higher incidence in some racial groupings than others. The point which should be addressed is not the particular disability, but the fact that the employee is temporarily prevented from working because of that disability.

The question before us is whether it is in the public interest to include pregnancy and childbirth benefits within the protection of the Civil Rights Act. The needs of workers in these circumstances meet, in my judgement, the necessary criteria in terms of the general health and welfare of the community as a whole. I urge you, on these grounds, to act for the passage of S. 995.

The CHAIRMAN. I apologize for the recess we had to take for the vote—well apologize is not the right word, but I do regret that our schedule is confused today due to the many votes coming so close together.

Your statement is an excellent one, and it will be placed in the record.

We have heard a great deal from others about Hawaii, but now we can hear from Hawaii.

Insurance industry spokesmen who have submitted testimony and statement to us, Ms. Putman—and you mentioned earlier you would deal with this today—they have based cost projections for pregnancy related disabilities on 11.3 weeks.

Ms. PUTMAN. Right.

The CHAIRMAN. And they cite the Hawaiian experience as the source for their figures.

Ms. PUTMAN. I saw a copy of that testimony that was presented to the House committee. I have not been able to find any source in the State of Hawaii for that.

I have given you the average duration for women in the account year of 1975 of 4.4 weeks. Now, that is for all disability lumped together.

The most recently affected conciliation between a major employer of women—and this is a public utility—and a union, Mr. Chairman, specified 6 weeks unless there are unusual circumstances for a maternity period.

I spoke to the chairperson of the medical school's department of OBGYN, who has been serving as a consultant in this area. And what is being developed is a guideline in which there will be two variables.

One will be the variable of medical complication or difficulty, and the other variable will be the nature of the woman employee's work. That is, a woman who has a normal pregnancy and has a sitdown and nonstrenuous job, chances are she would not need as long a period of disability as would a woman with complications or who had a labor-demanding kind of job.

But, at the present time, 6 weeks seem to be what generally is used. I know of no source for the 11 weeks.

The CHAIRMAN. But under the State plan there is no limitation?

Ms. PUTMAN. No; except for the 7-day waiting period and the 26-week durational maximum.

The CHAIRMAN. If there is a medical complication, the period is covered?

Ms. PUTMAN. There must be a physician's certificate.

The CHAIRMAN. There have been others that suggest that this lends itself to grave abuse; that is, to deal with this disability without a specific term for coverage of 6 or 8 weeks.

There are those who are apprehensive—and I think there is a little apprehension even on this committee with one of the members—who feels that if a time period is not stated, it will lead to, well, the mildest term is "abuse."

The anxiety is that pregnant women will be grievous malingerers.

Have you found any evidence of that kind of reprehensible conduct on their part?

Ms. PUTMAN. No, to the contrary. And the requirement of a physician's certificate, which is required not only in disability due to pregnancy, but is required in all disability cases, pertains here. And our medical community and the special society of obstetrics-gynecology physicians is being helpful in providing guidance both to employers, to unions, and to our Department of Labor.

We have not had that difficulty. There always are some "iffy" individual cases, but we have not had the kind of abuse that you speak of.

The CHAIRMAN. Well, those "iffy" questionable cases probably follow the norm of all "iffy" cases involving disability questions.

Ms. PUTMAN. That is correct. That can occur with accidents and sicknesses also.

The CHAIRMAN. Well, our objective, of course, is to see that this coverage of a disability arising out of pregnancy related problems, of course, is treated like all other disabilities.

Ms. PUTMAN. And that is what we finally have come to in the State of Hawaii.

The CHAIRMAN. And that is where you are?

Ms. PUTMAN. Yes.

The CHAIRMAN. And you have a State plan for everybody?

Ms. PUTMAN. Yes.

The CHAIRMAN. Except that companies can opt out if they privately give the same result?

Ms. PUTMAN. Yes, on an actuarial basis of equality.

The CHAIRMAN. In other words, the terms of the coverage——

Ms. PUTMAN. Have to be actuarially as good as, yes.

The CHAIRMAN. I see they have changed the rules now. That is a 10-minute period to vote, so I will have to leave.

So my other question is: Is there any evidence which would justify the fear, which is so often expressed, that women will be absent with disability more often and over a longer period of time than their male employees?

Ms. PUTMAN. It is true that there are overall more claims by women employees than by men employees, but the underlying cause of that is not their status as a woman, but it is their low-income job. Because people who have low-income jobs are disabled more frequently and generally for longer periods than those who have high incomes.

It is true, Mr. Chairman, our experiences in Hawaii as to the greater frequency, but not to the longer duration of disability.

The CHAIRMAN. I missed your last statement.

Ms. PUTMAN. In Hawaii, the average disability period for women is less than the average disability period for men.

Now, the disability is not full wage replacement. It is only 55 percent of wages and up to a given ceiling, Mr. Chairman, based on our average annual wage. So no one is going to try and get that little money when they need additional money—just for the purpose of abusing the program. And, as a matter of fact, most women work as long as they can and as long as it is medically feasible before birth, because they need the money.

The CHAIRMAN. We cannot at this point be concerned with the details of coverage.

Ms. PUTMAN. That is right.

The CHAIRMAN. We are just concerned here with the absence of discrimination.

Ms. PUTMAN. Yes.

The CHAIRMAN. So that what is good for all other disabilities must be applied and must be good for disabilities arising out of pregnancy.

Ms. PUTMAN. So if an employer required a physician's certificate for men, they also could require it for women, but they could not require it only for women employees.

The CHAIRMAN. Exactly; now, you have come a long way, and it may appear that you have been rushed here, but I am going to have to vote.

Ms. PUTMAN. I understand.

The CHAIRMAN. I appreciate your appearance so much.

Ms. PUTMAN. Thank you.

The CHAIRMAN. I know it was a very long journey. I know it has been a hardship for you perhaps, but it has been immensely valuable to our work here and, of course, the end result, which will be the establishment under law specifically of the equality that we believed was there already. Thank you.

Ms. PUTMAN. Thank you.

[The prepared statement of Ms. Putman and additional material follows:]

TESTIMONY ON S. 995, UNITED STATES SENATE COMMITTEE ON HUMAN RESOURCES

By
Patricia K. Putman, Associate Dean for Legal and Legislative Affairs
John A. Burns School of Medicine of the University of Hawaii

April 29, 1977

The Federal legislation proposed by S. 995, to prohibit discrimination for employment-related purposes against pregnant workers on account of their pregnancy and related medical circumstances, is a matter that has been substantially resolved by Hawaii state legislation, to the great benefit of women members of the labor force who become pregnant.

The Committee on Human Resources may find it helpful in considering S. 995 to evaluate the Hawaii experience as it relates to pregnant workers under the Hawaii Temporary Disability Insurance Law (Ch. 392, Hawaii Revised Statutes) and the Hawaii Prepaid Health Care Act (Ch. 393, Hawaii Revised Statutes). The following analysis briefly reviews key provisions of these two comprehensive social legislation enactments with particular attention to those provisions that are pertinent to the issue of benefits for workers affected by pregnancy, childbirth, and related medical conditions. In addition, information is offered reflecting the implementation and operation of the two programs as they deal with such employee benefits.

Both the temporary disability insurance and the prepaid health care measures were preceded by, and based largely upon the recommendations and suggested legislation of, in-depth studies that had been requested by the State Legislature.[1]

HAWAII TEMPORARY DISABILITY INSURANCE (TDI) LAW

The 1969 Act,[2] under which TDI benefits became payable for periods of disability commencing on and after January 1, 1970, made Hawaii the sixth jurisdiction[3] in the United States to provide such benefits which take the form of partial wage loss replacement for workers who are disabled for work due to nonoccupational illness or injury.

Employee Coverage. Virtually all employees in the State, except for federal workers, are covered and entitled to TDI benefits as provided in the law. The coverage extends to employees of private employers, with the same exclusions in general as are applied under the State Employment Security Law, plus state and county public employees.

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1 Act 198, Session Laws of Hawaii 1967. The two studies were authored by Stefan A. Riesenfeld, University of California Professor of Law: Temporary Disability Insurance (U. of Hawaii Legislative Reference Bureau Rep. No. 1, 1969) and Prepaid Health Care in Hawaii (U. of Hawaii Legislative Reference Bureau Rep. No. 2, 1971)

2 Act 148, Session Laws of Hawaii 1969.

3 Compulsory disability insurance laws had earlier been enacted, in chronological order, Rhode Island (1942), California (1946), New Jersey (1948), New York (1949), and Puerto Rico (1968).

Benefits. The basic benefit provided is 55 percent of the average weekly wage, after a seven-day waiting period. If the average weekly wage is less than $26, the weekly benefit is an amount equal to the average weekly wage but not more than $14. If the average weekly wage is $26 or more, the weekly benefit is 55 percent of the wage. The maximum weekly benefit is computed by a formula that features a flexible self-adjusting device -- one 52nd of 1.21 times the average annual wage (as computed under the Employment Security Law), with wages in excess of that being excluded in computing the weekly benefit amount. Under present wage distribution in Hawaii, the maximum weekly TDI benefit amount for a worker is $120; if a covered employee earns the current average weekly wage of $179.48, her or his weekly TDI benefit would be $120. The above mentioned maximum weekly benefit provision is also subject to a special limitation to assure that weekly TDI benefits for nonoccupational disability do not exceed the weekly benefit for temporary disability under the Workers' Compensation Act.

For the most recent completely reported year, 1975, the average weekly benefit under the TDI statutory requirements was $70.75. The average for men workers was $90 and for women workers, $63.28.

Duration of Benefits. After a seven-day waiting period, the duration of benefit payments is limited to 26 weeks for any period of disability or during any benefit year. The reason for the 26-week limitation is that in the majority of cases a disability which continues for that period of time will be a permanent disability and entitle the wage earner to benefits under the Federal OASDHI system.

Eligibility. To qualify for benefits, an employee must be an individual in current employment, meaning that (1) the employee performed regular service in covered employment immediately, or not longer than two weeks, prior to the onset of the disability; and (2) the employee would have continued in or resumed employment except for the disability. The employee, to be eligible for TDI benefits, must also have worked for at least fourteen weeks during the four completed calendar quarters immediately preceding the first day of disability and have received pay for twenty or more hours in each of the fourteen weeks.

The final condition of eligibility for TDI benefits is the requirement that the employee must have been under the care of a licensed physician, dentist, chiropractor, osteopath, or naturopath who is required to certify the disability, its probable duration, and other medical facts. Special procedures are provided in the case of employees who depend upon prayer or other spiritual means for healing.

Disqualification. An employee is disqualified from receiving TDI benefits on the following grounds:

1. If the employee would be disqualified under the Employment Security Law because of the labor dispute disqualification.

2. If the employee makes false statements in claiming TDI benefits.

3. If the disability is the result of wilful or intentional self-inflicted injury or is sustained in the commission of a crime.

4. If the employee performs work for remuneration during the disability period.

5. If the employee is entitled to receive during the period of disability benefits or indemnity payments for wage loss under Employment Security, Workers' Compensation, Social Security, employers' liability laws.

Provision for Payment of Benefits. An employer or an association of employers may provide for the payment of the required TDI benefits in a number of ways -- insurance with an insurance company, deposit of securities or bonds to secure the payment of benefits, self-insurance, or a plan which entitles employees to cash benefits or wages during periods of disability.

Private plans are satisfactory for compliance with the law if the Director of Labor and Industrial Relations finds that they measure up to a standard of providing benefits at least as favorable as the TDI benefits required under the law and do not require contributions of any employee or class of employees in excess of the amount authorized under the law. The statutory guidelines for interpreting the standard of "benefits at least as favorable as the disability benefits required by this chapter" are set forth as meaning the benefits under a plan whose component parts, including waiting periods, duration of benefits, and percentage of wage loss replaced, add in total to cash benefits or wages determined by the Director to be at least as favorable as the disability benefits required by the law.

Costs. The cost of providing TDI benefits is shared by the employer and the employee, in general on a fifty-fifty basis. The law authorizes employers to deduct and withhold contributions from each employee of one-half the cost, but not more than .5 percent of the weekly wages (excluding wages in excess of one 52nd of the state average annual wage multiplied by the factor 1.21) earned by the employee; the balance of the cost is paid by the employer. The maximum amount deductible currently is $1.09 per week.

Special Fund for Disability Benefits. A Special Fund for Disability Benefits is funded by assessment levied by the Director of Labor and Industrial Relations on employers and TDI insurers. The purpose of theFund is to provide for payment of TDI benefits to employees who cannot receive benefits to which they are entitled because of employer bankruptcy or non-compliance with the law and to employees who become disable when unemployed and who subsequently become ineligible for benefits under the Employment Security Law or under the Hawaii Agricultural Unemployment Compensation Law.

Disability Due to Pregnancy. Although the suggested legislation based on the research reported in the 1969 TDI Report[4] had included disability caused by normal prgenancy as a basis for TDI benefits, those provisions were deleted from the measure when it was introduced and enacted in 1969. Four years later, the TDI Law was amended[5] to provide that an employee is entitled to

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[4] Riesenfeld, Temporary Disability Insurance (U of Hawaii Legislative Reference Bureau Rep. No. 1, 1969)

[5] Act 61, Session Laws of Hawaii 1973; effective May 8, 1973.

receive TDI benefits when disability results from pregnancy or termination of pregnancy, as well as when resulting from accident or sickness. In the 1973 extension of the benefits to cases of disability resulting from pregnancy, legislative history evidences that the following factors were considered by the Hawaii Legislature:[6]

1. Sex discriminatory features should be removed from the State's laws.

2. A law that discriminates in the payment of TDI benefits for a disability on the basis of its pregnancy-related cause violates the "Equal Rights Amendment" to the State Constitution.[7]

3. Other provisions in the TDI law properly and adequately include safeguards to protect against abuse by employees claiming benefits for disability based on pregnancy, such as the required certification by a physician.

4. The TDI law should conform to federal standards set forth in the Equal Employment Opportunity Commission Guidelines pursuant to Title VII of the Civil Rights Act of 1964.[8]

5. In view of the economic necessity for most working women, to support themselves and in many cases to support wholly or in part their families, it causes extreme hardship if disability due to pregnancy renders them incapable of performing this function without at least a partial replacement of their wage loss. Disability due to pregnancy is not less onorous to the wage earner and her family than disability caused by sickness or accident.

Certain Hawaii Experience. Since it has been determined as a matter of state law that pregnancy disability for TDI purposes shall be treated the same as disability caused by sickness or accident, separate information is not reported or compiled to attribute the cause of the disability for which benefits are paid -- whether the cause is sickness, accident, or pregnancy.

However, certain relevant information is available from the State Department of Labor and Industrial Relations,[9] obtained from annual reports filed by TDI

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[6] Senate Standing Committee Reports 138 (Committee on Human Resources) and 259 (Committee on Ways and Means); House Standing Committee Report 661 (Committee on Judiciary); Conference Committee Report 10, 1973 Hawaii State Legislative Session.

[7] Article I, Section 21 of the Hawaii Constitution provides, "Equality of rights under the law shall not be denied or abridged by the State on account of sex. The legislature shall have the power to enforce by appropriate legislation, the provisions of this section."

[8] Title 29, Chapter XIV, Part 1604, Code of Federal Regulations.

[9] Orlando K. Watanabe, Administrator, Disability Compensation Division.

insurance carriers as required by Rules adopted to implement the TDI Law. It is noted that the Rule covering the periodic reporting requirements was amended, effective beginning with the report for the 1972 calendar year, to require specific information to be furnished separately for men and for women employees.

The following chart contains the average rates charged by the six insurance companies that write the majority (over eighty per cent) of temporary disability insurance in Hawaii under the TDI Law. Because different rates are charged to different employers, a composite rate of each insurer, and when available separately for men and women employees, was calculated by dividing the total contributions paid by employers and by employees by (taxable wages ÷ 100).

	1970	1971	1972	1973	1974	1975
First Insurance	$ .99	$ .91	$ .79	$ .73	$ .71	$ .61
Men			.81	.73	.73	.55
Women			.76	.70	.69	.68
Hawaiian Insurance & Guaranty	.73	.78	.64	.56	.57	.57
Men			.64	.56	.55	.55
Women			.64	.56	.60	.59
Industrial Indemnity	.92	.88	.72	.54	.55	.74
Men			.72	.52	.54	.71
Women			.73	.58	.57	.77
Pacific Guardian	.67	.73	.63	.60	.61	.60
Men			.62	.59	.61	.59
Women			.64	.62	.61	.61
Pacific Insurance	1.32	1.77	1.90	1.42	.95	.64
Men			1.53	1.22	.94	.61
Women			2.43	1.71	.96	.67
Travelers Insurance	.85	.82	.72	.69	.62	.59
Men			.67	.65	.61	.56
Women			.78	.76	.65	.65

It can thus readily be concluded that: (1) costs for temporary disability insurance, determined on an actuarial basis, have quite consistantly decreased since the law became effective; (2) a similar decrease has occurred for the costs of such coverage for women emplyees; (3) the cost differential between men and women employees is relatively modest; (4) the effect of pregnancy-disability coverage, beginning May 8, 1973, did not have the effect of increasing the cost for women employees' coverage; and (5) the increase in minimum wages in 1974 and 1975[10] did not in most cases interrupt the downward trend in the insurance costs.

With respect to the third conclusion and women employees' higher utilization rate, the Hawaii Study[11] carefully examines variability under compensated disability programs according to the factors of sex, age, and wage level of the covered employees. It is there pointed out that the duration and frequency of claims is closely correlated with income level; the lower the income, the longer the duration of disability and the greater the frequency rate of disability claims. The sex factor and the wage level factor tend to merge in view of women's employment pattern under which full-time, year-round wage and salary income of women is 57 percent of men's income from wages and salary and under which women's employment is concentrated in low wage and salary occupations.[12]

What was not expected but is revealed in the data compiled from employers' and insurance carriers' annual reports to the Department of Labor and Industrial Relation for the last full reported year, 1975, the average duration of disability periods for men exceeded that of women. Other related data are included in the following chart.

Average Total Benefit Paid to	Employees	$345.97
	Men	465.14
	Women	279.22
Average Weekly Benefit Paid to	Employees	$ 70.75
	Men	90.00
	Women	63.28
Average Duration (weeks)	Employees	4.9
	Men	5.1
	Women	4.4

The average duration figure is based on disability due to accident and sickness, as well as pregnancy.

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10 Effective July 1, 1974, the minimum hourly wage increased from $1.60 to $2.00 and July 1, 1975, from $2.00 to $2.40.

11 Riesenfeld, Temporary Disability Insurance, supra note 4 at 82 to 89.

12 1975 Handbook on Women Workers, U.S. Dept. of Labor Employment Standards Administration Women's Bureau (1975).

HAWAII PREPAID HEALTH CARE ACT

In 1974 Hawaii enacted an unprecedented kind of state social legislation. By filling in the then existing gaps in prepaid health insurance coverage the Hawaii Prepaid Health Care Act[14] provides that every regular employee in the State has the protection and security of coverage under a prepaid health care plan.

Coverage. The law extends coverage to every regular employee under 65 in private employment not subject to a collective bargaining agreement. A "regular employee" is one who works at least twenty hours a week and receives a monthly wage of 86.67 times the state minimum hourly wage ($208).

Eligibility. An employee becomes eligible for the health care benefits after four continuous weeks of employment.

Health Care Benefits and Plans. The health care plan that must be provided may be either one that obligates the prepaid health care contractor to furnish the required health care benefits or one that obligates the prepaid health care plan contractor to defray or reimburse the expenses of health care. The required benefits must be equal to, or medically reasonably substitutable for, the benefits provided by prepaid health care plans of the respective kind which have the largest number of subscribers in the State. In general, the law requires that the benefits include basic types of benefits, such as in-patient and out-patient hospital care; surgical services; medical benefits, including home, office, and hospital visits by doctors; diagnostic and therapeutic services; and maternity benefits for employees who have been covered by the prepaid health care plan for at least nine consecutive months prior to delivery.

Prepaid Health Care Advisory Council. A prepaid Health Care Advisory Council, appointed by the Director of Labor and Industrial Relations and including representatives of the medical and public health professions, consumer interests, and individuals experienced in prepaid health care protection, advises the Director in determining whether a plan provides health care benefits equal to, or medically reasonably substitutable for, the benefits provided by the two kinds of plans having respectively the largest number of subscribers in the State.

Premium Costs. The cost allocation for the prepaid health care coverage in most cases is as follows:

1. Employer contributes at least one-half of the cost of the premium,

2. Employee contributes, through payroll deductions, the balance, except

3. In no case does the employee contribute more than 1.5 per cent of wages, and

4. If the employee's contribution is less than one-half of the cost of the premium, the employer contributes the balance of the premium.

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14 Act 210, Session Laws of Hawaii 1974

A three-party contribution allocation is provided whereby premium supplementation is authorized out of state general funds for small businesses that operate on a small margin of profit.

Exemptions. The law is intended not to duplicate benefits; so exemption from coverage is provided in the following cases:

1. For a person who is a regular employee of two or more employers, only the "principal" employer is required to provide the health care plan,

2. For a person covered by health insurance under federal law,

3. For a person who is entitled to health benefits as good as those required under the Act, as a dependent of someone with a prepaid health care plan, or

4. For a person who is a recipient of public assistance or covered by a prepaid health plan under the law on medical assistance, such as a working mother entitled to aid for dependent children.

Certain Hawaii Experience. The Hawaii Prepaid Health Care Act has been in effect since January 1, 1975. From its inception, I have served as a member of the Prepaid Health Care Advisory Council. Although a complete log has not been regularly maintained on the reasons for the Council's recommendations not to approve plans submitted for approval as meeting the requirements of the law, it is clear that the most frequent deficiency has been in maternity benefits. Such reasons for disapproval of plans include:

--No maternity benefits.

--Maternity benefits limited to complications of pregnancy.

--No maternity benefits for complications of pregnancy.

--No maternity benefits unless the employee also insures her dependents under the policy.

--Excessive special deductible applied to maternity benefits.

--Low maternity benefits.

--No maternity benefits for unmarried women employees.

It is equally clear that many working women in Hawaii now have the protection of a prepaid health care plan, in contrast to their pre-1975 situation. In determining the need for such mandatory law, the study[15] established that the gap group -- those individuals under 65 in private employment not under a collective bargaining agreement -- numbered approximately 40,000 regular members of the work force. This aspect of need assessment was entirely apart from need related to those who had some coverage but far less than that

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[15] Riesenfeld, Prepaid Health Care in Hawaii, (U. of Hawaii Legislative Reference Bureau Report No. 2, 1971)

required by the law as a basic minimum. A profile of employees in the absolute gap group reflected the following characteristics: relatively young, single, healthy, employed in the retail and service trades, and including a high proportion of women.

CONCLUSION

The 1970 Census reported that 49 percent of all females sixteen years of age or older in Hawaii were either employed or seeking work, a proportion higher than that of any other State. That most recent accurate count of women in Hawaii's labor force showed that women constitute 41.4 percent of the total civilian labor force, as contrasted to women's participation rate of 38.1 percent nationally. Indicators point to an estimated participation rate in Hawaii of 42.2 percent in 1974 and 44.0 percent in 1975, consistent with the pattern of Hawaii's participation rate by women in the labor force being four or more percentage points higher than the national rates.[16]

So it is that the State with the highest proportion of working women (and working wives and working mothers) in the Nation is the State that includes pregnancy benefits for them in two significant program providing both partial wage loss replacement for periods of disability due to pregnancy and prepaid health care for hospital and medical services as a maternity benefit. With respect to TDI, the coverage closes what would otherwise be a gap in the protection against loss of earning power that measures such as the Federal Old-Age, Survivors, and Disability Insurance program, Workers' Compensation, and Unemployment Insurance are designed to afford. With respect to prepaid health care, the coverage is a positive step to improve materially the quality of maternal and child care. In both cases the Hawaii experiences demonstrate that nondiscrimination against pregnant workers is economically and administratively feasible.

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16 Sources: Employment and Training of Women in Hawaii, State of Hawaii Commission on Manpower and Full Employment, 1976; State of Hawaii Data Book, State of Hawaii Department of Planning and Economic Development, 1976

Morbidity Experience in California and New Jersey: Effect of Sex, Age and Wage Level

There is agreement among the students of disability insurance on the observation that disability rates--relating to frequency as well as severity--vary distinctly, according to the sex, age and wage level of the covered workers. Of course, the disability measured is compensated disability.

Unfortunately, it is not easy to determine to what extent each of these three factors is responsible for the demonstrable correlation. This is due to the fact that there is a correlation between the sex of the worker and the attained wage level and that there are no recent published data on the sex, age, and wage distribution of the covered work force. Hence, it is impossible to present recent and detailed data on the effects of sex, age, and wage level on the frequency rates although the effect of these factors on average duration is capable of further significant analysis.

According to the experience compiled between 1948 and 1950 by the insurance industry under private group insurance,[32] the claim costs under a so-called 8-8-26 plan[33] for a universe consisting solely of female insured (including a six-week pregnancy coverage) were 1.89 times the claim costs incurred by a wholly male group. Under an 8-8-13 plan the corresponding ratio was 2.19. The difference in claim costs was due to higher frequency rates as well as to greater average duration of disability for the female group, although the difference in frequency rates was the primary factor for the aggregate cost difference.[34]

The analysis of the 1964 experience under the New Jersey state plan[35] shows a similar picture. Although female workers constituted only 29.9 per cent of the total covered labor force (i.e., covered by the state plan and the private plans), female claimants were responsible for 58.2 per cent of the number of all claims compensated under the state plan, for 60.6 per cent of the total number of weeks thus compensated and for 53.8 per cent of the total amount of the benefits paid under the state plan. In other words, assuming that the female component of the working force covered by the state plan has the same ratio to the male component as the female component of the total covered work force has to the male component (which is not necessarily true because of possible adverse selection),[36] the frequency rate of female claims was 138.8 per thousand as compared with 42.5 per thousand for males; in other words the frequency of female

claims was 3.3 times as high than that of male claims. If pregnancy claims are omitted, male claims constituted 44.5 per cent of the total number of claims, and female claims constituted 55.5 per cent. Translated into frequency rates, the frequency rate of male claims would remain at 42.5 per thousand, while the frequency rate for female claims would be reduced to 124.5 per thousand but still would be 2.9 times that of male claims.

Average duration of benefits paid, likewise, was more favorable for male claimants (7.9 weeks) than for female claimants (8.7 weeks, if pregnancy claims are included and 9.0 weeks, if they are excluded).

Despite the fact that male claimants had a much smaller utilization rate than female claimants and a distinctly more favorable severity experience, they received 46.2 per cent of all benefits while female claimants received 53.8 per cent. Disregarding pregnancy benefits, the male share would increase to 48.2 per cent and the female share correspondingly decrease to 51.8 per cent. The reason for the relatively greater share of the male workers in the total benefits disbursed is the higher wage level of employed men. The average weekly benefit for male claimants under the 1964 New Jersey experience was $44.86 while female recipients collected only an average weekly benefit of $34.14 ($34.07 if pregnancy coverage is eliminated).[37]

In conclusion, the New Jersey experience shows that the proportion of women workers (even disregarding the pregnancy claims) substantially affects the cost of the program. The causes may be sex, wage level, type of occupation, or a combination of all three.

The California experience for 1964 confirms many of the conclusions possible from the New Jersey experience but in some respects shows striking departures. According to the data available, the proportion of female workers in the total work force covered by the state plan in 1964 was 35.1 per cent.[38] Since the average covered employment subject to the state plan in 1964 was 4,259,300 workers, it is assumed that the average number of covered male and female workers was 2,764,290 and 1,495,010, respectively.

The experience in California in 1964 was analyzed by the Joint Committee report of 1967,[39] but the analysis was made on the basis of samples rather than the total actual experience. The ratio of male claimants to female claimants (state plan, basic claims, regular liability) was estimated as $\frac{57.71}{42.29}$.[40] The actual number of compensated claims of that type in 1964 was 382,000 (see Table 8). Hence, the

frequency rate of male claims was $\frac{382,000 \times 57.71}{2,764,290} \times 1,000 = 79.8$ per thousand, while the frequency rate of female claims was $\frac{382,000 \times 42.29}{1,495,010} \times 1,000 = 108.1$ per thousand. In other words, in California the frequency rate of claims by female workers exceeded that of male claims by only 35.5 per cent.

The average duration of basic benefit payments to employed males was calculated at 6.92 weeks while the corresponding duration for female recipients was 7.66 weeks.[41] The average weekly benefit amount of male beneficiaries was $60.69, of female beneficiaries $45.17.[42] In California, as in New Jersey, women workers' share of the total benefits paid was less than the claims ratio alone would suggest: male claimants received 62.4 per cent of all benefits paid, female claimants 37.61 per cent.

Both the California and New Jersey experiences show that age affects the average duration of benefit payments and that the age composition of the covered labor force is an important factor in the aggregate costs of disability insurance. The lengthening of the average duration of benefit payments with increasing age is observed for both male and female claims.

Table 28 shows the average duration of claims in California and New Jersey, computed by age groups and sex, with the elimination of the pregnancy claims in New Jersey. The data prove that the age of the claimants, whether male or female, bears a distinct correlation to the average duration of their claims and that the difference between male and female average durations disappears, or is the smallest, at both ends of the spectrum.

California data seem to demonstrate that there is also a correlation between age and frequency rates.[43]

It is likewise demonstrable that wage levels exert an important effect on the average duration of benefit payments or, at least, show a significant correlation with average duration. This holds true for male as well as female recipients. Both California and New Jersey data support this proposition.

The California study classified male and female recipients into workers with base period earnings of less than $4,000 and workers with base period earnings of $4,000 and more. It also divided both categories into age groups. The findings showed that the difference

Table 28

AGE AND AVERAGE DURATION OF CLAIMS (WEEKS)
CALIFORNIA AND NEW JERSEY
EMPLOYED DISABLED
1964

	Under 25		25-44[3]		45-54		55-64		65 and Above	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
California[1]	5.14	4.69	5.68	7.17	7.06	7.96	8.94	9.16	11.81	12.59
New Jersey[2]	5.76	6.31	6.36	8.41	7.82	9.40	9.53	10.31	13.69	13.07

[1] Computed from Joint Committee on Unemployment Compensation Disability Insurance, Final Report, Table 17, at p. 80 (1967).

[2] Computed, with exclusion of pregnancy, from State of New Jersey, Department of Labor and Industry, Division of Employment Security, Temporary Disability Insurance Cases in 1964 (Research Series No. 19), Tables 23, 24, 14 and 15 (1967).

[3] The New Jersey data permit a further breakdown of the second column:

25-34		35-44	
Male	Female	Male	Female
6.00	7.80	6.58	8.71

in average duration of claims by male and female disabled in different age groups tended to be greatly minimized or even reversed if the earning levels of recipients are taken into account. The results of the California study are tabularized in Table 29. They were summarized by the report with the sentence:

> When employment status and base period wages are held constant, there is very little difference in average duration between male and female claimants.[44]

The New Jersey study presented the relation between average weekly benefits and average duration of disability for male and female recipients.[45] Again the data show that there is an inverse correlation between average weekly benefits and average durations. In other words, since the average weekly benefit depends on the wage level, the analysis proves that the claims of low-wage earners are subject to a greater average duration. Table 30 shows the relation for both male and female claimants. The values for each income level indicate the perhaps surprising result that in all wage brackets, except in the highest, the average duration of benefit payments of women is more favorable than that of men. Unfortunately, it was not possible to eliminate the pregnancy claims from the data for each category. Since, however, the eight-week limitation on pregnancy benefits tends to decrease rather than increase the average duration in categories for which the average duration without pregnancy claims exceeds eight weeks, the comparative value of the table is not affected, except perhaps in the highest wage bracket. The New Jersey data show, however, that in the highest wage bracket, only 309 out of 4,765 claims were pregnancy claims. Hence, the inclusion of this type of claim is not material. Apparently, the highest wage bracket is reached by women only at an age where pregnancies are no longer common.

Both the California and New Jersey data convincingly demonstrate that, paradoxical as it may sound, money is a more potent factor than sex in the morbidity experience. The principle unquestionably holds true with respect to severity (average duration). It appears also to apply, at least to some extent, to frequency.[46] The observed higher frequency rates for unemployed disabled likewise seem to support this supposition although the different rules as to waiting periods may weaken the force of this argument.

In the light of the arguments advanced above, the discrepancy between the California and New Jersey frequency rates for female and male claimants may become less perplexing than they are at first blush.

Table 29

EFFECT OF WAGE ON AVERAGE DURATION (WEEKS)
BY SEX AND AGE
CALIFORNIA EMPLOYED DISABLED
1964

Income	Under 25		25-44		45-54		55-64		65 and Above		Composite	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Under $4,000	5.6	4.8	7.1	7.6	8.6	8.6	10.9	9.7	13.0	12.8	8.1	8.0
$4,000 and above	4.5	4.1	5.3	6.4	6.7	7.0	8.3	8.2	11.0	11.9	6.5	6.9

Source: Joint Committee on Unemployment Compensation Disability Insurance, Final Report, Table 17, at p. 80 (1967).

Table 30

NEW JERSEY

EFFECT OF WAGE (AS REFLECTED IN WEEKLY BENEFIT RATE) ON DURATION (WEEKS)
BY SEX
EMPLOYED DISABLED
1964

Sex	Under $20	$20-$24	$25-$29	$30-$34	$35-$39	$40-$44	$45-$50
Male	13.88	11.40	11.07	10.19	9.36	8.36	7.35
Female	11.03	10.02	9.54	9.12	8.24	8.00	7.72

Source: State of New Jersey, Department of Labor and Industry, Division of Employment Security, Temporary Disability Insurance Cases in 1964 (Research Series No. 19), Table 40, at p. 74 (1967).

EXPERIENCE

It may be recalled that in New Jersey the frequency rate of female claims more than doubled that of male claims while in California the frequency rate of female claims exceeded that of male claims by only 35 per cent.

FREQUENCY RATES

(Number of Claims per 1,000 Workers)

	Male	Female
California	79.8	108.1
New Jersey	42.5	124.5

Apparently, the higher frequency rate of male claims in California is due to the fact that California dispenses with a waiting period in hospitalization cases which are often caused by accidents. Women suffer fewer accidents than men. The higher frequency rate of female claims in New Jersey may be attributable as much to lower wage rates or age, as to sex only. In addition, factors contributing to the difference may be found in the possible adverse selection attributable to private plans, occupational conditions and climate.

Moreover, the data support a further conclusion: even if the benefit formula is not constructed in such a manner as to be weighted in favor of the low-wage earners (as is, for instance, the benefit formula under the OASDHI system), it nevertheless operates in favor of the low-income groups because these groups have a much more unfavorable experience than the insured in the higher wage brackets. A recent study by the California Department of Employment of a 1966 sample analyzing the relation between net benefit costs and contributions (loss ratios) for a sample of claimants segregated by age, sex and wage bracket[47] strikingly shows this factor.

Although the discussion of the effects of age, sex and wage level on the demands on the system has revealed perplexing and divergent factors, one conclusion seems to be inescapable:

The average duration of claims is strikingly related to the income level: the lower the income level, the longer the duration of disability. Hence, systems which limit duration significantly discriminate against low-wage earners and deny protection where it is most needed.

The CHAIRMAN. We will recess here until I vote.

[Short recess.]

The CHAIRMAN. We will reconvene.

Senator Clark, you are a surprise witness, but a very welcome one, and you may proceed as you see fit.

STATEMENT OF HON. DICK CLARK, A U.S. SENATOR FROM THE STATE OF IOWA

Senator CLARK. Thank you very much.

The CHAIRMAN. Thank you.

Senator CLARK. Mr. Chairman, in the interest of time, I will certainly not go back through the historical antecedents or constitutional background of this legislation. I am sure that has been well established by members of the committee and the previous witness.

Let me simply say that I am cosponsoring S. 995 because it is clear to me that discriminating against working women on the narrow basis of their capacity to become pregnant is not consistent with the goals set forth in the Civil Rights Act or the Equal Pay Act or the Equal Employment Opportunity Act or, indeed, the Equal Rights Amendment—all of which have been passed by the U.S. Congress.

I want to note, incidentally, that in Iowa we are 1 of 14 States where laws exist requiring disability benefits for pregnancy.

But it is certainly true now that Congress needs to act on S. 995 to extend protections to women in all 50 States.

I think the significance of this legislation is that it deals with one of the most important causes of employment discrimination against women; namely, the age-old belief that a woman's primary role is to give birth and to care for the children.

This belief has helped to restrict women to lower paying jobs and has limited their ability to improved job status because employers do not want to take a chance on some woman that they believe will not remain with the company for a lifetime.

Also coming into play is the long held theory that women work only to earn pin money. A look at recent employment figures quickly belie such talk.

In March 1973, 42 percent of employed women were single, widowed, divorced, or separated—almost half. And in all probability they were the sole support of themselves and possibly a family.

Furthermore, one-fifth of the employed women were married to husbands who earned less than $7,000 a year. For these women, employment is an economic necessity, and income security during the pregnancy period is absolutely vital.

But the Supreme Court decreed that if these women become pregnant, they have no guarantee that their employer will not discriminate by refusing to consider their pregnancy as a disability. And although General Electric argued to the Court that the cost of including pregnancy in their disability insurance program would be unreasonably high, other corporations have not hesitated to offer a pregnancy disability plan.

The Xerox Corp., for example, indicated that with their plan, a higher percentage of women are returning to work after pregnancy,

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and also that the cost of the disability programs are in part offset by the advantages of having a trained and experienced employee back on the work force.

And although General Electric claimed to the Court that it was following the accepted insurance practice of considering pregnancy as "voluntary and desirable," the company was perfectly willing to cover the male-oriented disabilities mentioned earlier—as well as attempted suicide, athletic injuries, and cosmetic surgery like hair transplants.

Now, Mr. Chairman, I must admit a certain reluctance to tampering with such a significant and basic law as the Civil Rights Act. But clearly the intent of that law is being circumvented.

S. 995 is necessary if we are to accomplish the goals of the Civil Rights Act.

I thank you very much for hearing my testimony.

The CHAIRMAN. We appreciate it. It was very brief but very, very persuasive, and excellently thought out.

Your thoughts will be useful as we proceed toward passage of this bill.

Thank you very much.

Senator CLARK. Thank you.

[The prepared statement of Senator Clark follows:]

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TESTIMONY ON S. 995--PREGNANCY DISABILITY BENEFITS
BEFORE THE SENATE SUBCOMMITTEE ON LABOR
April 29, 1977

Mr. Chairman, I appreciate your invitation to testify before the Subcommittee today in support of S. 995, which amends the 1964 Civil Rights Act to prohibit sex discrimination on the basis of pregnancy.

The necessity for this legislation came about because the Supreme Court ruled on Dec. 6, 1976,that employers may legally exclude pregnancy benefits from company disability insurance programs.

The Court, in effect, said that while women did not have to receive pregnancy disability benefits, neither did men--and as such, a company's refusal to include pregnancy in its list of disabilities did not constitute discrimination.

Justice Rehnquist in the majority decision said that what is involved "is nothing more than an insurance package which covers some risks but excludes others.... There is no risk from which men are protected and women are not. Likewise, there is no risk from which women are protected and men are not."

The problem was, however, that virtually everything was covered in the General Electric Company's plan being challenged before the Court--except pregnancy. Interestingly, the GE plan covered such male-oriented "disabilities" as vasectomies and prostrate surgery, making it difficult to conclude that the plan did not discriminate against women.

I am co-sponsoring S. 995 because it is clear to me that discriminating against working women--on the narrow basis of their capacity to become pregnant--is not consistent with the goals set forth in the Civil Rights Act, the Equal Pay Act, the Equal Employment Opportunity Act, and the Equal Rights Amendment--all passed by the Congress of the United States.

I want to note that Iowa is one of 14 states where laws exist requiring disability benefits for pregnancy. But Congress needs to act on S. 995 to extend protection to the women in all 50 states.

The Supreme Court's decision was a reversal of unanimous rulings by six U.S. Courts of Appeals and 18 federal trial courts, as well as the guidelines of the Equal Employment Opportunity Commission.

Regardless of our feelings about the Court's reasoning in this decision, the justices did make this point clear: in order to define sex discrimination, Congress must legislatively specify its intent under Title VII of the Civil Rights Act. That is the purpose of the legislation before this Subcommittee today, and I hope the Congress acts quickly to approve it.

The significance of this legislation is that it deals with one of the most important causes of employment discrimination against women: the age-old belief that woman's primary role is to give birth and care for children. This belief has helped restrict women to lower-paying jobs and has limited their ability to improve job status, because employers don't want to take a chance on someone they believe will not remain with the company for a lifetime. Also coming into play is the long-held theory that women work only to earn "pin money". A look at recent employment figures quickly belies such talk, however. In March, 1973, 42 percent of employed women were single, widowed, divorced or separated, and in all probability the sole support for themselves and possibly for a family. Furthermore, one-fifth of the employed women were married to husbands who earned less than $7,000. For these women, employment is an economic necessity, and income security during a pregnancy period absolutely vital.

But the Supreme Court decreed that if these women become pregnant,they have no guarantee that their employer will not discriminate by refusing to consider their pregnancy as a disability.

Although General Electric argued to the Court that the cost of including pregnancy in their disability insurance program would be unreasonably high, other corporations have not hesitated to offer a pregnancy disability plan. The Xerox Corporation found that, with their plan, a higher percentage of women return to work after pregnancy, and also that the costs of the disability program are, in part, offset by the advantage of having a trained, experienced employee back on the work force.

And although General Electric claimed to the Court that it was following the accepted insurance practice of considering pregnancy as "voluntary and desirable," the company was perfectly willing to cover the male-oriented disabilities mentioned earlier as well as attempted suicides, athletic injuries and cosmetic surgery like hair transplants.

Mr. Chairman, I must admit a certain reluctance in tampering with such a significant and basic law as the Civil Rights Act, but clearly the intent of that law is being circumvented. S. 995 is necessary if we are to accomplish the goals of the Civil Rights Act.

The CHAIRMAN. Next we have the American Council of Life Insurance and the Health Insurance Association of America.

They are present, I believe.

Mr. Lazarescu from the Metropolitan Life Insurance Co., come forward. You are accompanied by others. So, if you would just introduce the panel from the life insurance world, we will be pleased to have you proceed.

STATEMENT OF ALAN E. LAZARESCU, ASSISTANT GENERAL COUNSEL, METROPOLITAN LIFE INSURANCE CO.; ACCOMPANIED BY ERWIN A. RODE, VICE PRESIDENT AND ACTUARY, PRUDENTIAL INSURANCE CO. OF AMERICA; AND PETER M. THEXTON, ASSOCIATE ACTUARY OF THE HIAA, A PANEL FROM THE AMERICAN COUNCIL OF LIFE INSURANCE AND THE HEALTH INSURANCE ASSOCIATION OF AMERICA

Mr. LAZARESCU. Good morning.

My name is Alan E. Lazarescu. I am assistant general counsel of the Metropolitan Life Insurance Co. I am accompanied by Erwin A. Rode, vice president and actuary of the Prudential Insurance Co. of America, and Peter M. Thexton, associate actuary of the Health Insurance Association of America.

We appear here today on behalf of the American Council of Life Insurance and the Health Insurance Association of America. The member companies of these associations write 93 percent of the private health insurance business written by insurance companies in the United States.

The impact of S. 995 would be to limit the options of employers and employees to choose benefit plans that suit their specific needs. The bill, if enacted in its current form, would increase the costs of existing employee benefit plans, create unfair competitive advantages and have other unfavorable effects on the development of employeee benefit plans. For these reasons, we urge that S. 995 not be enacted as proposed; but modifications are suggested in our testimony if you conclude that a bill of this nature should be enacted.

In *Gilbert* v. *General Electric Company*, the Supreme Court held that it does not constitute sex discrimination under title VII of the Civil Rights Act of 1964 for an employer not to provide pregnancy disability income benefits for female employees on the same terms and conditions as sickness and accident benefits provided to all employees. The supporters of S. 995 have stated in the Congressional Record that this bill is intended to reverse that decision by requiring employers to provide pregnancy disability income benefits on the same terms and conditions as sickness and accident benefits. It should be noted, however, that the bill, as presently drafted appears to apply not only to income replacement in the form of disability benefits but also to require the payment of medical expense benefits for the hospital and doctor bills associated with pregnancy.

Employers and employees should have the right to select, through collective bargaining or other voluntary basis, the kinds of benefits they desire.

The CHAIRMAN. Let us go back to the last statement.

What was that you just said it provides?

Mr. LAZARESCU. This bill also provides for medical benefits.

The CHAIRMAN. There is no such thing.

Mr. LAZARESCU. Yes; it does.

The way it is presently drafted, if you talk about fringe benefit plans, you have to treat pregnancy the same as any disability——

The CHAIRMAN. Exactly.

Mr. LAZARESCU [continuing]. Under fringe benefit plans.

Now, the fringe benefit plan is not for disability. It also encompasses medical expenses.

The CHAIRMAN. Where does the law say a company has to have all of these?

Mr. LAZARESCU. We are not saying that. But we are saying if a company does have a fringe benefit plan——

The CHAIRMAN. That was not what you said.

Mr. LAZARESCU. No, I think it is.

The CHAIRMAN. You said "this requires it."

It does not require a bloody thing unless coverage is there for disability.

Mr. LAZARESCU. No. What we said——

The CHAIRMAN. This is a definition.

Mr. LAZARESCU. No.

What we said though is the bill is not limited to disability insurance. If you have a fringe benefit plan, it requires that you treat pregnancy——

The CHAIRMAN. Of course. You did not have to say it. It is there on its face.

Mr. LAZARESCU. Yes, but not in the Congressional Record.

The CHAIRMAN. Proceed.

Mr. LAZARESCU. Employers and employees should have the right to select, through collective bargaining or other voluntary basis, the kinds of benefits they desire. They should be allowed to decide how the employee benefit dollar should be utilized—whether it be, for example, for pregnancy benefits, catastrophic coverages, or other forms of coverages. Today, all forms of coverage are generally sold by insurance companies. Employers and employees should continue to have the right to choose coverages according to their needs and desires.

You may find it surprising for insurance companies to oppose the mandating of pregnancy benefits——

The CHAIRMAN. Yes.

Mr. LAZARESCU [continuing]. Even though——

The CHAIRMAN. Were you asking me if I was surprised?

Mr. LAZARESCU. Yes, sir.

The CHAIRMAN. The answer is "Yes."

Mr. LAZARESCU. Yes; even though S. 995 would substantially increase our premium income.

The CHAIRMAN. That is really knocking me over and particularly coming from the greatest of all the Prudentials next to—well, Metropolitan is all right. It is an aspiring young company.

Mr. LAZARESCU. Yes, sir. Our experience in the health insurance business, however, convinces us that mandating such benefits is not desirable. The pregnancy benefit is one of the most costly types of

coverage which might be mandated. Thus, for many employers, the requirement of providing medical expense and disability income coverage for pregnancy will be extremely burdensome. Employer contributions would have to be significantly increased to cover the additional claims and the entire benefits package might become too expensive for the employer to provide. Some plans may not be adopted and existing plans may not be otherwise liberalized if S. 995 were to be enacted.

Employers with a high percentage of female employees will be forced to bear a relatively heavier cost burden than employers who have a substantially smaller percentage. These latter employers would gain considerable competitive advantage over the former.

In either case, the costs of providing the coverage envisioned by S. 995 will be borne ultimately by the general public in the form of increased prices for goods and services.

Employee benefit plans are designed to protect an individual against losses arising from an unpleasant, unforeseen, unplanned, and relatively infrequent event. All four elements are normally present in risks covered by health insurance. Replacement of loss income or reimbursement of expense usually result either from an accident or from a sickness that will be experienced by relatively few of those insured.

In contrast, pregnancy is commonly desired and generally planned. The resulting expenses are usually predictable and can generally be budgeted for. This is not to say that an employer and his employees should be prohibited from obtaining maternity benefits if they desire to do so. Such benefits are generally available and many employers provide them, usually on a limited basis.

Further, a substantial number of employees, in the case of pregnancy, do not return to work with the same employer. Virtually all employees who receive disability income benefits for sickness or injury do return to work for their employers. Thus, for a woman who leaves employment to have a child and who does not return to the work force at the time her pregnancy disability ceases, the payment of disability income benefits constitutes a form of severance pay. This is not an appropriate function of disability income plans which are designed to provide benefits to persons who are disabled due to unforeseen sickness or injury and who plan to remain in the work force.

Let me emphasize that what we have been discussing are matters relating to normal pregnancies. We do not oppose mandated coverage in medical expense as well as disability income plans for the expenses resulting from complications of pregnancy and childbirth because such conditions have insurance characteristics comparable to a sickness or an accident.

If pregnancy benefits are mandated in all employee benefit plans, then the additional annual costs of providing these benefits will be $1 billion for medical expense plans—excluding Blue Cross and similar plans—and $0.6 billion for disability income plans.

The CHAIRMAN. Now, let me understand that.

That is the total that you are talking about, or that is now not covered?

Mr. LAZARESCU. We are talking about that which is not covered, $1 billion for medical expense plans, and $0.6 billion for disability expense plans.

I would like to get into this later perhaps——

The CHAIRMAN. Well, it is later than you might appreciate, because there will be a rollcall.

So since this is the nub question, we had better deal with that, and you can spell it out from where you work.

Those figures are at variance with everything else we have here.

Mr. LAZARESCU. Yes; they are. They are considerably at variance. One of the reasons being the period of duration.

The CHAIRMAN. Yes.

Now, what period do you use?

Mr. LAZARESCU. We use 11.3.

The CHAIRMAN. That is what I mentioned to Dean Putnam from Hawaii.

Mr. LAZARESCU. That is right.

The CHAIRMAN. I anticipated that, and their experience is quite to the contrary. It shows 4.4 weeks as the average disability period for female workers in 1975.

Mr. LAZARESCU. Well, I do not think it is quite to the contrary.

What they are doing is lumping experience. They do not have a specific breakout for pregnancy disability.

What we have done here is broken out pregnancy disability. We have these figures from the leading insurer of the Hawaii temporary disability benefits law and it comes out to a duration of 11.2 weeks. Then what we have done is put in more experience, which we have here on the mainland. And it comes out to 11.3.

The mainland experience is slightly higher than the Hawaiian experience.

The CHAIRMAN. Now, there is a long, long list that we have of companies that do cover the pregnancy disability questions. I would imagine many are insured and many are self-insurers?

Mr. LAZARESCU. That is right.

The CHAIRMAN. Do you have access to their experience?

Mr. LAZARESCU. We would have access to the experience with companies which we write, Prudential writes, et cetera.

We would also have some industry experience. And the average of this experience does indicate 11.3.

Now, this is also contrary to what you would have in medical testimony because many doctors would say the period of disability should not be more than 4 or 5 or 6 weeks. And I may agree with that, but that is not what the insured experience shows.

Perhaps strictly from a medical point of view this is true, but the insured experience does not show this. And there is always a difference between the two. Disability is a subjective thing to a certain extent. And if you have a certification that you are disabled from your own physician—and incidently that is what we have here, we are talking about physician-certified disability, so this is not a figure we pulled out of the air, this is claims actually made.

The CHAIRMAN. All right.

There is something here that has to be better understood. This is not what we get from those who are paying the bill. I thought I had the list of companies here that we know cover not only the medical but also the income features for temporary disability. I do not have that though.

But this is not the experience of the people who are paying the bill for their own companies.

Now, you are paying the bill for those who are insured with you.

Do your companies insure for both elements of the disability—the medical payments and the percentage of income?

Mr. LAZARESCU. Yes; we do.

Mr. RODE. But, Senator, we insure relatively few cases that have the full maternity benefit, because this is relatively new.

Most of the cases that have a maternity benefit that we insure, Senator, have a 6-week limitation. And so we do not have a great deal of experience because there are not very many of our policyholders that provide the full disability.

The CHAIRMAN. I see.

It is a limited sample?

Mr. RODE. Well, it is a limited sample. But there are not too many companies that provide the full——

Mr. LAZARESCU. The sample is limited only to the extent that there is not that much coverage around. We feel that we have the best sample that is now available. In other words, we do not know of anybody else who has more claims than we have in our sample.

But, admittedly, this is a small sample.

The CHAIRMAN. That is the sample available to you?

Mr. LAZARESCU. Well, it would be the sample available to the industry. And I think most——

The CHAIRMAN. Well, when I say "you," I mean the industry.

Mr. LAZARESCU. Yes.

The CHAIRMAN. But the experience is a lot broader than your sample?

Mr. LAZARESCU. It may be. If you have a self-insured plan; yes.

The CHAIRMAN. And also we arrived at this through State plans.

Mr. LAZARESCU. Well, the State plans are quite limited. There is only one State plan that requires full benefits, and that is Hawaii.

We have California, which is 3 weeks before and 3 weeks after delivery. We have Rhode Island, which is a flat payment of $250. Originally, Rhode Island started off in the 1940's with treating a pregnancy disability the same as any other disability, but the claims were too high, they felt—that is, approximately 25 or 30 percent of the total claim payments—and they substantially cut it down over the years to a flat $250.

And then we have the State of New Jersey, which is 4 weeks before and 4 weeks after delivery. But that is all we have there.

Now, the other States you are talking about, Senator, to make up the 14, there are only two of them in which the highest court has ruled that you have to provide a pregnancy disability benefit. One is New York and one is Wisconsin.

The Wisconsin court left the door open and said that if you can show us the high costs, we will consider it.

In the *New York* case there is now a petition pending for rehearing.

So the law is not set in those States.

Now, the other States we are talking about, they have guidelines similar to what the EEOC had. And they have statutes similar to title VII.

The human rights agencies there have taken the EEOC position, but that is not the law of the State. And they have not been tested.

So I think when we talk about 14, it is not a true 14. We are only talking about one State which is openended, and that is Hawaii.

The CHAIRMAN. Well, I just want to make sure that we know what your statistics deal with. And as you say, it is a limited sample. It is from your coverage, which is limited coverage.

Mr. LAZARESCU. Well, I will digress from the written presentation since you have it, and I think we have somewhat covered the cost aspects, so I will not tell you how we arrived at it.

We did mention here 11.3, et cetera. But, as I say, the figures we have are $0.6 billion for disability and $1 billion for medical expense.

So I will pick that up later.

Now, the cost of the benefits to be provided as a result of S. 995——

The CHAIRMAN. By the way, and just to spell it out, what number do you use for women in the work force that would be covered?

Mr. LAZARESCU. Well, I am not quite sure I understand the question.

The CHAIRMAN. This deals with pregnancy. It only deals with women employees.

Now, how many are you talking about?

Mr. LAZARESCU. OK.

How many are we talking about?

Mr. RODE. We assume 32 million women in the work force.

The CHAIRMAN. What age do you consider as the covered age?

Mr. LAZARESCU. Well, we did break it out on table 1.

Now, in table 1, we talk about female workers, 16 to 19 years. We have a figure of 20 to 24 years, 25 to 34, 35 to 44, and at 45 and over we do not have any estimate of births because we just do not feel it is of any significance at that age statistically.

And what we have done is that we used population birth rate, and the expected births, and then we discounted that by 15 percent because generally working women have fewer children than those who are not working.

So we made an adjustment for that downward. Prior to the adjustment we came out with a figure of 1,598,000.

After the adjustment, it is 1,358,000.

The CHAIRMAN. I think this would be a convenient point to note that the Department of Labor has advised me that their cost figure that we have in our record is now to be revised because they based their figures on the total number of women in the work force. They did not do what you have done and put it into the age groups where conservatively you might expect pregnancy. So they have revised this in order to limit it to the childbearing ages of 15 to 44.

Now, how about you?

Do you use that period of 15 to 44?

Mr. LAZARESCU. Yes; we do.

The CHAIRMAN. Did you?

So we are in agreement there.

Mr. LAZARESCU. We use 16 to 44.

The CHAIRMAN. And they, with all of their national data gathering capability, they give us a total cost increase of $228.9 million. The earlier figure was $333.2 million.

And then as a percentage, as increase in the percent of total temporary disability cost, this coverage would be 3.2 percent.

Their earlier figure was 4.6.

Mr. LAZARESCU. When they give you a figure for the additional costs, I think they are probably using a 6-week duration rather than 11.3 weeks. I do not know what the duration was, but I would be guessing that.

The CHAIRMAN. It was 7½ weeks. And you are using 11 weeks?

Mr. LAZARESCU. 11.3.

The CHAIRMAN. I mention this now. Their corrected conclusions are going to appear later in the record.

Mr. THEXTON. This testimony was given Tuesday?

It is a correction to the Tuesday testimony?

The CHAIRMAN. Yes; it was Tuesday.

Mr. LAZARESCU. The cost of the benefits to be provided as a result of S. 995 are considerable. If, in the judgment of the Congress, this bill is to be enacted, then we strongly urge that the bill be amended to bring the costs closer to the cost projections of the supporters of the legislation.

First. Remove the requirement that medical expense benefits for normal pregnancy be provided on the same basis as coverage for sickness or injury. However, the benefit levels of coverage for a female employee should be the same as that of a dependent of a male employee. This requirement should cover any possible concerns over discrimination.

Second. All complications of pregnancy should be treated in the same manner as a sickness or injury under both medical expense and disability income plans.

Third. Disability income plans should be permitted to provide only limited coverage for normal pregnancy, for example, benefits for up to 6 weeks.

Fourth. Employers should be allowed to limit benefits relating to normal pregnancies to those which arise after the employee is in the employ of the employer.

With respect to proposed section 2 to the bill, this section appears to prohibit an employer from reducing the benefits or the compensation provided to any employee in order to comply with section 1, which mandates pregnancy benefits in existing plans. We are opposed to this proposed section because it would tend to cast in concrete all existing benefits and make it extremely difficult for a plan to be changed to respond to changing conditions, even in collective bargaining situations. Employers would find themselves in danger of being challenged in the courts as to whether or not a change in a plan was actually a disguised attempt to offset the cost of the pregnancy benefit. We seriously question the wisdom of this proposed section.

We thank you for this opportunity to present our views on S. 995.

The CHAIRMAN. Thank you very much.

In your statement here regarding the suggested changes in S. 995, you state "The benefit levels of coverage for a female employee should be the same as that of a dependent of a male employee. This requirement should cover any possible concerns over discrimination."

You know what that would leave us with.

Mr. LAZARESCU. Yes. What we are talking about there is a medical expense plan, and we are talking about payments for hospitals, doctor bills, et cetera.

A few years ago, many employers only provided a maternity benefit—and generally it is still on a limited basis—if you had dependent's coverage. In other words, you had to have the family unit insured.

What we are talking about here is that you do not have to have the family unit insured. If there is a single female employee or even a married female employee, she need not have dependent's coverage.

The male employee, on behalf of his wife, would have maternity coverage. The female employee would have maternity in her own right. The payments would be exactly the same.

The CHAIRMAN. So here we would have a married woman who is married to Mr. A. You would have Mr. A and Mrs. A. They both work for Company X.

Mrs. A becomes pregnant and has to take off 6 weeks. She can only collect as the wife of Mr. A.

Is that what you are saying?

Mr. LAZARESCU. No; we are not talking about disability. We are talking about medical expense.

The CHAIRMAN. But I am right though. Her coverage for that medical expense would come as the wife of Mr. A, who works in the same company?

Mr. LAZARESCU. Not necessarily. Today they have a right to choose who receives the coverage.

If you have a husband and wife working for the same employer, they can insure themselves in their own right. You only get into the dependent question when there are children involved, and then they have to choose in order to avoid duplication of coverage for the dependents. They have to decide among themselves if it is going to be the man or the woman who is going to have the dependents covered. But we are not talking about two employees of the same employer. No. She will receive the benefit in her own right.

The CHAIRMAN. You get into some awful problems here, and I do not see how that deals with elimination of discrimination. It suggests to me discrimination. And you did have problems in coverage of male employees' wives for pregnancies, but not female employees.

Mr. RODE. That is what the thing is basically directed at. The female employee gets exactly the same medical benefits in the event of her pregnancy as the——

The CHAIRMAN. As the female dependent?

Mr. RODE [continuing]. As the wife of a male employee or the child of a male employee.

Mr. LAZARESCU. Because we have to look at it in that title VII is directed at employers and employees, and we have to see if they are——

The CHAIRMAN. You arrived at that out of a judgment in court; am I right?

Mr. LAZARESCU. Yes.

The CHAIRMAN. We are arriving at our bill out of a judgment in court. We are in parity then on how we each get to where we are.

Senator HATCH. Except that they say that we are extending beyond what the court decided. If I interpret you correctly, is that what you are saying?

The CHAIRMAN. Well, we have not gotten into that subject yet.

Senator HATCH. Well, we will have to get into that. I thought you had. I thought you made that point in your statement.

Mr. LAZARESCU. Well, this legislation would——

Senator HATCH. That is OK. I will bring that up later if, in fact, it was not covered.

Mr. LAZARESCU. Well, I would like to address myself to that now, if I may.

Senator HATCH. I will bring that up with your permission.

The CHAIRMAN. The question of the Supreme Court decision?

Senator HATCH. No; whether this bill goes beyond the decision.

Mr. LAZARESCU. That this bill would go beyond simply requiring the equal treatment?

This bill would also require an increase in benefits, Senator. In other words, you could no longer use flat maternity, which is, say, $500 or $1,000 for a pregnancy. You would have to tie it in with your sickness or accident schedule.

So, yes, the effect of this is increased costs. And this is where the $1 billion figure comes from. It is raising it from the flat to a percentage of the medical expenses.

Senator HATCH. That is over and above what is presently being spent by companies who voluntarily provide coverage?

Mr. LAZARESCU. That is right. It would be $1 billion in this area in medical expense.

Senator HATCH. And that goes far beyond what the actual——

Mr. LAZARESCU. Excuse me?

Senator HATCH. It goes far beyond what the actual *General Electric* case was about?

Mr. LAZARESCU. Let me say this was not involved in the *General Electric* case.

Senator HATCH. I agree.

Mr. LAZARESCU. The only thing we had there was pregnancy disability.

But when you mentioned the court case, Senator Williams, I thought you were referring to the district court case, which is the only one that exists. And that case is *Satty* v. *Nashville Gas Co.* And that is the only one that deals directly with medical expenses.

Senator HATCH. As I understand it then, you are concerned about the breath of this legislation?

Mr. LAZARESCU. That is correct.

This legislation would not only affect employers in the disability area, it would also affect them in the medical expense area.

Senator HATCH. Are you concerned about the fact that it is an amendment to title VII of the Civil Rights Act?

Mr. LAZARESCU. I am concerned with the placement in the statute; yes.

The CHAIRMAN. Where would you rather have it?

Mr. LAZARESCU. If we are talking about pregnancy disability, perhaps a specific provision.

Senator HATCH. But where?

Mr. LAZARESCU. No; I think it should be in title VII.

The CHAIRMAN. Occupational health and safety?

I mean you have a choice.

Mr. LAZARESCU. No. I think title VII.

Senator HATCH. You would put it in title VII, but you would delineate it a little more with specificity?

Mr. LAZARESCU. That is right.

Senator HATCH. Are you worried about the EEOC's interpretation of what you have indicated is a broadly drafted bill?

Mr. LAZARESCU. No.

Senator HATCH. Or the regulations that may come up from EEOC or from anybody else who enforces it?

Mr. LAZARESCU. Well, the way I interpret this bill, it would be very broad. So I do not think I would disagree with any interpretation they came out with.

Senator HATCH. Well, I am talking about philosophically now.

What you are saying is that the bill is drafted to broadly, they could do just about anything they wanted to do?

Mr. LAZARESCU. That is right.

Senator HATCH. And they could do this in disregard of the legislative history here?

Mr. LAZARESCU. Well, the legislative history here is quite interesting because whatever you see in the Congressional Record is only directed at pregnancy disability benefits.

There is no mention made of fringe benefits. And if you see all the cost estimates, the $150 million, they specifically mention "pregnancy disability" in order to reverse *Gilbert*. You never find mention in the record when the bill was introduced, Senator, that it has broader impact.

You only find $150 million, and you do not see an estimate for medical expenses. And that is where the $1 billion figure comes in.

And then, on top of that, you have the $611 million for disability.

Senator HATCH. Well, you make a number of suggested changes here. You say:

> Remove the requirement that medical expense benefits for normal pregnancy be provided on the same basis as coverage for sickness or injury.
>
> However, the benefit levels of coverage for a female employee should be the same as that of a dependent of a male employee. This requirement should cover any possible concerns over discrimination.

What you seem to be saying there is that get it out of the area of sickness and injury, and treat it as a separate category so that we do not have to always be balancing off whether or not discrimination has occurred.

Mr. LAZARESCU. That is right.

Senator HATCH. How would this affect the insurance industry?

I understand your particular segment of that industry provides 93 percent of all the coverage in this area?

Mr. LAZARESCU. That is right.

Senator HATCH. How would this broadly drafted bill affect your industry if it becomes the law?

And let us talk specifically with regard to different categorizations of disability benefits.

Mr. LAZARESCU. With respect to $1 billion, we are talking about simply medical expenses. We are not talking about disability.

Senator HATCH. What is wrong with covering it for all medical expenses? They are presently covered for that anyway, are not the 40 percent of the companies that have plans?

Mr. LAZARESCU. I would say most plans do cover, on a limited basis, medical expenses. I would say when you are dealing with a medical expense plan, yes, but it would be on a limited basis, Senator, and would not be treated the same as a sickness or accident.

Senator HATCH. In other words, they pay so much for pregnancy?

Mr. LAZARESCU. That is right.

Senator HATCH. What you are saying is that if this bill is enacted in its present form, it will not be so much. But you will have all the myriad of problems of trying to determine where discrimination occurs as a result of different categorizations in the insurance business and where it does not?

Mr. LAZARESCU. Well, if this bill were enacted in its present form, we would be required to pay benefits on the same basis as you would for sickness or accident, be it at an 80- or 90-percent basis, considering coinsurance, et cetera.

The CHAIRMAN. Now, that is equality.

Mr. LAZARESCU. That is what you feel is equality. We look at it differently.

Title VII is aimed at employment practices, and it is aimed at treating the male and the female employees the same.

We feel that there is equal treatment when you provide the same benefits.

The CHAIRMAN. What is the schedule for some of the exclusively male-oriented disabilities?

Is there a schedule?

What if an employee has a vasectomy, what kind of coverage would that be?

Mr. LAZARESCU. What about a hysterectomy? It is the same thing.

We are separating one category—pregnancy. When we talk about voluntary illness, such as a hair transplant, well, a hair transplant—and you mentioned this—this applies equally to males and to females.

Senator HATCH. Do they really give coverage for hair transplants?

Mr. LAZARESCU. In some plans they may in the disability area—not in the medical expense area—but in the disability area they may because it is of short duration and it does not cost very much. So it is a benefit that is just thrown in.

This is different from pregnancy. This benefit costs a lot.

Senator HATCH. See what you got us into here?

The CHAIRMAN. I think you have worked yourself into some very, very strange and not very happy situations.

For instance, the woman is the employee and the husband is the dependent. He has the vasectomy and he is covered. You see?

She has the pregnancy and she is not.

Mr. LAZARESCU. And if she had a hysterectomy or whatever else she has, she is covered.

The CHAIRMAN. What happens if the hysterectomy is related to the pregnancy as a complication?

How does that get covered?

Mr. LAZARESCU. She would be covered for the hysterectomy.

Senator HATCH. What if it is an embolism as a result of pregnancy or a toxemia condition or any number of other conditions?

Mr. LAZARESCU. Now, are we talking about medical expense or disability?

We have to draw a distinction.

Senator HATCH. Both.

Mr. LAZARESCU. OK.

In the medical expense area, I would say in most plans she would be covered.

Senator HATCH. Under medical coverage, she would be covered. And under disability, she probably would not be?

Mr. LAZARESCU. It depends on the plan.

I would say in a good many she would not be. In some plans, she would.

The CHAIRMAN. How do abortions fit into this picture at all in this coverage?

Mr. LAZARESCU. You go all over the lot on that.

Some employers do have coverage for this and some employers do not.

Now, you have to distinguish between voluntary and involuntary.

On voluntary, I would say a good many do not.

On involuntary, you may have the reverse situation.

Senator HATCH. Does the insurance business treat pregnancy as a sickness or injury?

Mr. LAZARESCU. No.

Senator HATCH. How do you treat it?

Mr. LAZARESCU. As a normal physiological condition. It is treated separately.

Senator HATCH. I cannot hear you.

Mr. LAZARESCU. We treat it as a normal physiological condition, and we treat it separately. Pregnancy is not a sickness or injury. And it has traditionally been treated differently.

This is somewhat within the individual's control.

Senator HATCH. Let me go back to that other point.

You have a difficult time categorizing various types of equal treatment of injuries and illnesses.

If you categorize this as an illness or as an injury—and I think probably illness would be a little fairer—would you not have grave difficulty with the act the way it is written, Mr. Lazarescu, determining what is fair and what is equal treatment and what is nondiscriminatory?

Mr. LAZARESCU. Well, if we are talking about the disability area, there, basically, we would have to be guided by the certification from the woman's physician. He would certify that she is disabled for 11 weeks.

What concerns me about this—and I am glad you mentioned it—is let us say we do have a claim and it is a 15-week claim, and there is a certification.

Now, our medical doctors look at the claim and they say this should not be a disability of more than 8 weeks.

Now, let us say——

Senator HATCH. When you say your medical doctors, you are talking about the insurance company doctors?

Mr. LAZARESCU. The insurance company medical examiners.

Senator HATCH. And the example is that in this particular case, it should be 8 but it is 15?

Mr. LAZARESCU. Right.

And we have a certification of 15 weeks from her physician. And what concerns me here is that the EEOC would now become the tribunal to adjudicate medical claims, because you will get a claim of sex discrimination, a claim that "they have not paid me the additional 5 weeks' benefits."

And then——

Senator HATCH. And then it might be that the Federal court will become the tribuna?

Mr. LAZARESCU. It could be.

Senator HATCH. What effect on litigation do you think this would have?

Mr. LAZARESCU. I think it may substantially increase it.

Senator HATCH. And when you include those costs of litigation and the cost of $1 plus billion that you indicate, then the consumers are going to have to pay for this, the consumers throughout America are going to have to pay for this cost?

Mr. LAZARESCU. We are talking about claim costs.

Senator HATCH. You are talking about straight claim costs and not the other related costs that will be ensuing from this?

Mr. LAZARESCU. That is right.

We are not talking here about litigation costs.

Senator HATCH. Can you give me an estimate of what those costs are going to be as a result of the EEOC regulation of industry?

Mr. LAZARESCU. No, we cannot.

Senator HATCH. Would you suspect they would be low or high?

Mr. LAZARESCU. At this time I would suspect that we would have many claims in disputed areas. And I really could not answer.

Senator HATCH. Do you have any indication what it would cost per claim?

Mr. LAZARESCU. No.

Senator HATCH. Any high-low figure?

Mr. LAZARESCU. No.

Senator HATCH. OK, so it would be difficult to really estimate the cost?

Mr. LAZARESCU. That is right. That is why we have not estimated the cost.

Senator HATCH. But you would suggest they would be significant?

Mr. LAZARESCU. I would think so.

Senator HATCH. Under the way the present bill is drafted?

Mr. LAZARESCU. That is right.

Senator HATCH. Under the broad draftmanship of the present bill?

Mr. LAZARESCU. That is right.

Senator HATCH. And you suggested under No. 2, that "All complications of pregnancy should be treated in the same manner as a sickness or injury under both medical expenses and disability income plans."

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Mr. LAZARESCU. That is right.

Senator HATCH. What do you mean by that?

Mr. LAZARESCU. Well, we have only addressed ourselves to the normal pregnancy, and this is the uncomplicated pregnancy which most women have. When we are talking about a complicated pregnancy—there may be internal bleeding and things of that nature—this we think should be treated the same as a sickness.

Senator HATCH. In other words, you would give longer disability payments under a disability for extraordinary complications?

Mr. LAZARESCU. We would give the same as we would for sickness; yes.

Senator HATCH. Let me ask you this. As I have been reviewing this—and I indicated this in prior hearings—I have great sympathy toward providing these disability benefits for pregnant women in industry if it is done in a way that does not cost everybody a great amount of money, and if it is not unreasonable. Now, do you feel that with the present bill the way it is written, that it will be an incentive for most businesses to provide this type of disability coverage—that is, most businesses who do not have it right now—to provide it in the future for their women who have to work?

Mr. LAZARESCU. Well, to answer that fairly, Senator, I would have to say it would depend on the mix of employees. If you have largely a male work force, it would not cost very much. But if you turn it around and you have a high percentage of females in the work force, it may cost a lot of money and they may think twice before coming into the employee benefit plan area——

Senator HATCH. Well, let us talk about those areas where really our major concern occurs and that is where you have a substantial female work force.

Mr. LAZARESCU. Well, it is certainly another factor that they have to consider because there are high costs associated with this.

Senator HATCH. And in industry itself, the 60 percent that provides these particular benefits for women, how would you categorize the 60 percent who do provide it? Are they companies that primarily have large women work forces or small women work forces?

Mr. LAZARESCU. Well, they have built-in controls. You see when we talk about 60 percent providing these benefits, they are not open-ended benefits. There are very few that have open-ended benefits. Probably less than 1 percent.

Senator HATCH. In other words they have a delineated time for this?

Mr. LAZARESCU. Six weeks.

Senator HATCH. All of them do?

Mr. LAZARESCU. Most of them do, yes.

Senator HATCH. Is that what you are recommending, that we have a delineated time benefit situation, which would automatically prevent the wholesale abuse that some people are concerned about and yet have a provision whereby if there are extraordinary disabilities that occur as the result of extraordinary medical complications, that you would provide the extended coverage to take care of that?

Mr. LAZARESCU. That is right. Six weeks for normal pregnancy but if there are complications, then it is open-ended and treated as a sickness.

Senator HATCH. If this bill had those provisions in it, do you feel that industry would be more susceptible to providing it across the board for women?

Mr. LAZARESCU. Yes, I do.

Senator HATCH. So in other words, what you are saying is if we enact this broad bill without some sort of provisions to prevent wholesale abuse and yet take care of extraordinary medical complication situations, that we will probably not only have industries, which already have plans, reduce their plans and others who might be in the market for getting plans, not get them; but we will probably indirectly through this legislation discriminate against women all over America.

Is that what you are saying? It sounds to me like it.

Mr. LAZARESCU. Well, that is very close, yes. What we are saying is it may discourage employers who do not have plans, Senator, to adopt plans if they have a high percentage of females in their work force, because it would cost them substantially more.

Senator HATCH. Well, if we have the EEOC as the normal method of regulation and becoming dominant in this field, many companies, who have plans, might be concerned also with this broadly drafted legislation.

Would you agree with that?

Mr. LAZARESCU. They would certainly be concerned, yes.

Senator HATCH. Do you think some might even drop their plans?

Mr. LAZARESCU. They may not be able to if you get into the proposed section 2.

Senator HATCH. Of course we do not have section 2 here. I understand the House has section 2.

Mr. LAZARESCU. The proposed section 2 would prevent them from dropping the plans.

Senator HATCH. What do you feel about that?

Mr. LAZARESCU. As we said, we are definitely against proposed section 2 because we think it basically would cast in concrete existing plans and employers would be afraid to make changes.

Senator HATCH. Well, we might not have beneficial changes, which could be made, which might otherwise occur?

Mr. LAZARESCU. That is right.

Senator HATCH. And not only that but it seems to me that is another overexcess of Government regulation in an area which is very easily taken care of between negotiating parties?

Mr. LAZARESCU. I would agree.

Senator HATCH. Well, I am concerned because I think that the bill is drafted too broadly also. So I am sending a letter to the chairman and the ranking minority member and asking them to consider some of the suggestions that I have made here. And some that I am making, I think are quite important. And you might give me your ideas on them.

One of them is that I think this ought to be applied prospective and not retroactive. If we provide it retroactively, it could dislocate and create many problems in America.

Mr. LAZARESCU. I would agree.

Senator HATCH. I think we ought to have at least a lag time of approximately 1 year in order to comply with this bill. Because many plans are already in existence there will be wholesale renegotiation of

present plans which do not presently provide for pregnancy disability benefits for women.

Would you disagree with that or do you think you need more than 1 year?

Mr. LAZARESCU. Well, I do not disagree with that.

Senator HATCH. If we come right out today and say, "You have to provide it from May 1, 1977, on," what chaos would that cause an industry that presently does not have these types of plans?

Mr. LAZARESCU. I personally do not think we would be able to handle the claims and the paperwork if it were made effective immediately.

Senator HATCH. In other words, are those costs figured into the overall cost of the bill?

Mr. LAZARESCU. No; we are talking strictly claim costs.

Senator HATCH. You are talking strictly claim costs? So thus far we have the litigation problems that might arise, we have the paperwork that could happen if we do not allow at least a reasonable lag-time in which to give in order to have them comply with the law.

Mr. LAZARESCU. That is right.

Senator HATCH. And I would suggest that time lag should be a year so that the whole industry is not put off, you know, by the legislation but would be encouraged by it. Because if the legislation is good, then it would seem to me—and I think some form of this legislation would be good—then it would seem to me that we ought to make it in such a way that it will encourage business to provide the coverage for the other 40 percent that do not have the coverage. Would not you agree?

Mr. LAZARESCU. Well, as I said before, they do not have the full coverage and they do have this limited coverage. So the figure is somewhat misleading, Senator, when you say that 60 percent of the industry has the coverage. They do not have the full coverage.

Senator HATCH. In other words, there are many women in industry today that are covered as far as medical payment coverage but not disability coverages. So to say it is a flat 60 percent is a misleading statement?

Mr. LAZARESCU. Well, it is misleading in the sense that it is not openended. They are limited benefits and it is generally a 6-week benefit.

Senator HATCH. OK. Now, do you have the same trouble with the bill that I do? And that is when the sponsors start talking about "full fringe" benefits rather than "medical benefits"?

Mr. LAZARESCU. Yes.

Senator HATCH. Tell us why?

Mr. LAZARESCU. Well, we have the problem with the wording of the "fringe benefits" because as I said before, in the Congressional Record you are only talking about disability benefits, but fringe benefits are much broader than that. Fringe benefits would also go into the medical expense area and there are other areas it could go into. Our two main concerns are pregnancy in the disability area and the medical expense area.

Senator HATCH. And if we open it up to fringe benefits with EEOC rules and regulations, we might have a quagmire exist that could really discourage this coverage throughout America?

Mr. LAZARESCU. Yes.

Senator HATCH. And really indirectly discriminate against women all over America.

That is a tough statement for you to make but I will make it.

You have been concerned, as I have, about abuse because I have worked enough in the medical field and legal field to know that differing doctors interpret differing disability times?

Mr. LAZARESCU. That is right.

Senator HATCH. And as you say, although it is pretty well accepted that 6 weeks is a normal disability time and a reasonable disability time, but the average is what?

Mr. LAZARESCU. Well, I have to draw a distinction now. The medical testimony in *Gilbert*—and I do not know if you heard Dr. Hellegers' testimony——

The CHAIRMAN. Yes.

Senator HATCH. What day was that?

The CHAIRMAN. Tuesday.

Mr. LAZARESCU. Now, he is looking at it purely from a clinical point of view. He is not talking about the relationship between a doctor and a patient.

We have doctors telling us—and we have many claims that show it—that the normal period after delivery, Senator, is 6 to 8 weeks. The doctors are insisting on this. And if you go back to the doctor and say, "But if you look at such and such book, it says it is 3 weeks or something less," they say, "I don't believe it."

So what you are talking about is a minimum of 6 weeks on the back end. And what our claims experience has shown is slightly over 5 weeks before actually delivering. So we are talking slightly over 11 weeks.

Senator HATCH. This is the time they on the average take?

Mr. LAZARESCU. With a medical certification, yes, sir.

The CHAIRMAN. These figures you are using, you are using the figures for the wife of the employee and not the employee.

Mr. LAZARESCU. We are not talking about medical expense coverage of dependents. We are talking about the employee. We are talking about disability coverage, which only goes to employees.

The CHAIRMAN. You have more statistics on the wife of the employee than on the employee.

Mr. LAZARESCU. Not on disability because we do not have any disability coverage for the wives of employees.

Senator HATCH. They only have medical coverage.

Mr. LAZARESCU. We are talking disability, which covers only employees.

The CHAIRMAN. You are talking about a period here?

Mr. LAZARESCU. We are talking about a period of disability.

The CHAIRMAN. And I say you are talking about the wives of the employees and not the employees.

Mr. LAZARESCU. No; we do not cover the wives of the employees for disability.

Senator HATCH. You are talking about those who have disability plans?

Mr. LAZARESCU. We are talking about employees who have disability coverage.

The CHAIRMAN. But you cover for that period of "medical" payments. Now, that has no relationship to what you are talking about now.

Mr. LAZARESCU. No: this has no relationship because——

The CHAIRMAN. That is where your basic authority is.

Mr. LAZARESCU. No; it is not, we have no idea how long the dependent woman is disabled, because she is not covered for disability. She is covered for medical expense which has no relationship with time. We get a doctor bill and we get a hospital bill and we pay a percentage of that or we pay a flat fee.

Senator HATCH Well, let me interrupt you a second.

Mr. LAZARESCU. We are mixing up concepts.

Senator HATCH. Let me ask you this. Is 11 weeks what the average is in the industry that has this type of coverage? Because that seems awfully high to me.

Mr. LAZARESCU. From the data we have——

Senator HATCH. I am referring to an average normal pregnancy.

Mr. LAZARESCU. We are talking about——

The CHAIRMAN. Wait, is this data drawn from your coverage of insurors?

Mr. LAZARESCU. This data is from the largest carrier in the Hawaii disability field at this time, the one that has the most claims. And it is from other——

The CHAIRMAN. We have the definitive data on Hawaii because Dean Putnam came over to testify. Now, what other data are you using for this?

Mr. LAZARESCU. Now, wait, Hawaii never went into this. There was no figure mentioned. What you were talking about were, Mr. Chairman, the average durations—not for pregnancy disability—in other words, they were mixing up every disability. So that means a woman could be absent 2 days because of a backache, and that goes in there and brings down the average; and she could be out for something else, that brings down the average. And so there is the difference.

So these figures can be misleading. You have to know what causes of disability you are talking about here.

Senator HATCH. Hawaii went into all disabilities and lumped them all together, correct?

Mr. LAZARESCU. That is right.

Senator HATCH. They did not break out the disabilities for pregnancies?

Mr. LAZARESCU. A 2- or 3-day disability, that would bring down the average. And that is what they did.

Senator HATCH. Well, are you suggesting here that——

Mr. LAZARESCU. I am saying that the data that we now have, Senator, shows that this disability is 11.3 for pregnancy.

Senator HATCH. Does the insurance industry that provides coverage for those companies that already have this type of coverage, does it consider that high or low?

Mr. LAZARESCU. This is the average.

Senator HATCH. But you do not really care as long as you sell insurance?

Mr. LAZARESCU. What we are talking about is an average. This is what the figures would indicate at this time.

Senator HATCH. Now, you have indicated in your presentation here today that if we went ahead with a decent piece of legislation that would encourage companies to provide disability benefits for women voluntarily, that we should—to prevent wholesale abuse, and other difficulties, and misinterpretations by Federal regulatory agencies—put a set disability time, with a provision for extraordinary illness, or extraordinary disability caused by the ramifications or complications of pregnancy. And you indicated 6 weeks, is that right?

Mr. LAZARESCU. Yes, we indicate 6 weeks.

Senator HATCH. And you would provide for complications?

Mr. LAZARESCU. We would provide for complications, the same as for sickness.

Senator HATCH. And if you have that provision, does that not open it up for the doctor, who is a bleeding heart type doctor who always believes it takes 4 months to successfully recover from a pregnancy—regardless of how average the pregnancy is—to be able to come in and give his opinion, or should we have some other methodology for preventing abuse?

Mr. LAZARESCU. Well, we believe we would have a substantial control in that event.

Senator HATCH. How is that?

Mr. LAZARESCU. Because, you see, he would have to come forward and tell us what the complication is.

It would have to be what the medical profession consider a "complicated pregnancy."

Senator HATCH. And all he has to do is say it is one of the thousands of complications that can occur. How are you going to check him?

Mr. LAZARESCU. In that regard, if the doctor is not honest with us, we do not have any check.

The CHAIRMAN. Do you not have a check on the honesty of the doctor? And I like the phrase, "the bleeding heart doctor."

Mr. LAZARESCU. That was not mine.

Senator HATCH. Well, there are a few of them around, I want you to know. I have cross-examined some.

The CHAIRMAN. But this happens all the time, in all kinds of disability questions. If a doctor joins up in a fraud, you can check that.

Mr. LAZARESCU. Yes, but this is not necessarily a fraud, when you talk about——

The CHAIRMAN. Well, a malingerer.

Mr. LAZARESCU. Not that, either.

The CHAIRMAN. Well, a statement then.

Senator HATCH. How easy is it to prove malingering cases?

Mr. LAZARESCU. It is very difficult to control disability claims, so——

Senator HATCH. So you are saying to prevent the bleeding heart type doctor—and let us assume most of them are not that way, but there are some, and we have to acknowledge that—that you would recommend we put a reasonable provision in here of 6 weeks, even though the average is 11 weeks?

The CHAIRMAN. Except in Hawaii, where the figures show this, for the average duration in weeks for the disability payments we are talking about, all empoyees show 4.9; men, 5.4, and women, 4.4.

Now, you are saying that this lumps the back injuries with the pregnancy, and other disabilities?

Mr. LAZARESCU. That is right.

The CHAIRMAN. But the fact of the matter remains that men are higher, and they do not have the pregnancy coverage.

Mr. LAZARESCU. No, that is——

Mr. RODE. The fact is that may be higher, but their frequency is less than women.

The CHAIRMAN. I think the women are taking a bum rap here.

Mr. LAZARESCU. No, let us follow this up.

The CHAIRMAN. Because here in a State that has the broadest coverage, we see the duration of disability comes out to be lower for women than men.

Mr. LAZARESCU. You do not have frequency there.

Now, the claims costs are based on two things, frequency and duration. Knowing on without the other, does not do you any good. The Hawaii statement gives you only duration.

Senator HATCH. Are you saying that statistics are statistics, and we have to look at them closely?

Mr. LAZARESCU. You have to know exactly what statistics you are dealing with, and you have to know the meaning of them.

Senator HATCH. You are saying these are not definitive statistics as far as pregnancy is concerned?

Mr. LAZARESCU. These statistics do not show you the average duration of a pregnancy disability in the State of Hawaii. All these statistics show you is——

Senator HATCH. The average of everybody that is sick.

Mr. LAZARESCU. Well, it also shows you the average duration of female and male disability. And if you believe that statistic by itself, you would say, well, the claims cost for a female is lower than that of a male. But this is not so, because the claims cost for a female runs roughly 150 to 170 percent of the males, because they are out more often.

Senator HATCH. Now, are you trying to tell me that men and women are not equal? Is that it?

Mr. LAZARESCU. They certainly are not in this area.

Senator HATCH. Well, let we ask you this, and I think this dialog has been helpful, but again you have not answered my basic question. And you have not answered it because we have all been interrupting you.

My question is, you have indicated that experience tells you in your business that the average disability time out for a woman is 11 weeks. And that is for a working woman. That is not the wife of a husband who works.

Mr. LAZARESCU. That is correct, we would not know the duration of disability for a dependent wife.

Senator HATCH. Then why do you suggest 6 weeks?

Mr. LAZARESCU. The reason——

Senator HATCH. Why not 11 weeks?

Mr. LAZARESCU. The reason——

Senator HATCH. Tell me what benefit it is to business to have 6 weeks rather than 11 weeks, or vice versa.

Mr. LAZARESCU. The reason we are suggesting 6 weeks rather than 11 weeks is that we believe that this is consistent with medical testimony.

Senator HATCH. When you say "consistent with medical testimony," what does that mean?

Mr. LAZARESCU. For instance, you have Dr. Helligers here, and Dr. Helligers probably told you it is much less.

Senator HATCH. He also said it was 6 weeks, if my rcollection serves me correctly.

Mr. LAZARESCU. And he may have mentioned to you his operating room nurses who go out 1 day and deliver, and come back in 3 or 4 days. But that is the exception.

Senator HATCH. Mr. Chairman, was the number 6 or 7 weeks?

The CHAIRMAN. In what connection?

Senator HATCH. As far as normal pregnancy, and not extraordinary or complicated pregnancy.

The CHAIRMAN. I think some testimony has mentioned both.

Senator HATCH. Now, continue.

Mr. LAZARESCU. However, they are talking about it from a clinical and academic point of view. And if we could all agree it was a period of 6 weeks, then fine, that is what we would want to give—6 weeks. However, we are saying that the doctors, who are actually treating, they are certifying for a greater period. And that is how you get the 11.3.

Senator HATCH. In other words, you would not categorize them as "bleeding hearts," even though they certify 5 weeks longer than what almost every doctor says is a normal pregnancy time, is a normal disability period?

Mr. LAZARESCU. Well, these are treating physicians. The physician may certify disability 5 weeks before and 6 weeks after. It is hard to dispute.

Senator HATCH. What do your doctors say?

Mr. LAZARESCU. They say 6 weeks would be the normal period.

Senator HATCH. In other words, the industry doctors say 6 weeks for normal pregnancy, but you find, through experience, that because certification comes from the private obstetrician-gynecologist or physician, that it escalates to 11 weeks unnecessarily?

Mr. LAZARESCU. It does escalate to 11 weeks.

Senator HATCH. At almost double the cost, because we allow the certification to be in the hands of the private physician. Is that what you are saying?

Mr. LAZARESCU. Well, certification is in the hands of the private physician. We do not have our usual disability claims controls in the case of pregnancy. One of our usual controls is a medical examination. And we just will not examine a pregnant woman. There is a danger of infection, of possible loss of the fetus, et cetera. So we do not have the same controls in this area as we do in the other areas.

Senator HATCH. What checks do you recommend to prevent the doubling of the cost we have here?

Mr. LAZARESCU. A 6-week limitation, plus complications.

Senator HATCH. Now, what checks do you recommend to stop the "plus complications" where you have the so-called bleeding heart physician?

Mr. LAZARESCU. Well, I do not believe doctors are liars, you see.

Senator HATCH. I do not, either. When I use the term "bleeding heart," I mean that he believes, and is sympathetic to every suggested complaint.

Mr. LAZARESCU. So this gets back to what you said before, I do not believe he will miscertify any condition, Senator. He will not tell us that X, Y, Z exists in a woman if it does not.

Senator HATCH. So you feel it is not a problem, because most doctors will honestly tell you whether it is a complicated condition?

Mr. LAZARESCU. That is right.

Senator HATCH. I agree with you. That is what I wanted to bring out.

Mr. LAZARESCU. That is right.

Senator HATCH. There will be a few who might do otherwise, but the vast majority are highly professional——

Mr. LAZARESCU. They are very ethical, and will not——

The CHAIRMAN. I am a bleeding heart chairman, and the Senator from Utah has gone 25 minutes over our rule established time period, and I am very soft and sympathetic, but there comes a time when I have to stop being a bleeding heart. And the time has come, because we have three panels of witnesses here that have to be concluded in half an hour.

Senator HATCH. Could I just ask one more question?

The CHAIRMAN. I have put the tourniquet on my heart.

Senator HATCH. Let me just say this——

The CHAIRMAN. Talk with Mr. Lazarescu on the side, Senator.

We will now call our other witnesses, who are from the American Citizens——

Senator HATCH. Mr. Lazarescu, do you feel like you have been able to express all you have wanted to express?

Mr. LAZARESCU. Just about.

Senator HATCH. What do you mean by just about?

Mr. LAZARESCU. I think we have covered it all. I hope we have come across and made it clear there is a distinction between medical expense and disability, and we cannot confuse the two, because I think from some of the questioning——

Senator HATCH. Well, let me do this. Let me extend the——

The CHAIRMAN. Extend the remarks? You may.

Senator HATCH. Well, let me——

The CHAIRMAN. For the record.

Senator HATCH. Yes.

The CHAIRMAN. Really, Senator, I have been more than generous, and you will have to agree.

Senator HATCH. Let me just say this—and yes; you have been.

The CHAIRMAN. Yes; I want that on the record.

Senator HATCH. Let me say this, if you have any additional comments, or additional remarks you would like to send to us, we would be happy to put them in the record.

I think the chairman would be well disposed to do that. Because you have been the only people who have come in here and have testified, as far as I am concerned, technically, and accurately on the problems involved in this particular piece of legislation.

So whatever you have that might help us to have a more appropriate, intelligent, and scientific, and actuarial sound information, whatever materal you have for the record, we would like to get it, and I will try to get it in the record at that time.

And I would suggest that we are not trying to cut you off—because we recognize the importance of your testimony, and the importance that it has for the industry—but then we do have to move ahead.

And I agree with the chairman that we have certainly brought up a lot of issues.

Thank you.

[The prepared statement of Mr. Lazarescu follows:]

STATEMENT

OF THE

AMERICAN COUNCIL OF LIFE INSURANCE
AND THE
HEALTH INSURANCE ASSOCIATION OF AMERICA

ON

SENATE BILL 995

PRESENTED BY

ALAN E. LAZARESCU, ASSISTANT GENERAL COUNSEL
METROPOLITAN LIFE INSURANCE COMPANY

BEFORE THE

SENATE LABOR SUBCOMMITTEE
COMMITTEE ON HUMAN RESOURCES

April 29, 1977

My name is Alan E. Lazaresco. I am Assistant General Counsel of the Metropolitan Life Insurance Company. I am accompanied by Erwin A. Rody, Vice President and Actuary of the Prudential Insurance Company of America and Peter M. Thurston, Associate Actuary of the Health Insurance Association of America. We appear here today on behalf of the American Council of Life Insurance and the Health Insurance Association of America. The member companies of these associations write 93% of the private health insurance business written by insurance companies in the United States.

The impact of S. 995 would be to limit the options of employers and employees to choose benefit plans that suit their specific needs. The Bill, if enacted in its current form, would increase the costs of existing employee benefit plans, create unfair competitive advantages and have other unfavorable effects on the development of employee benefit plans. For these reasons, we urge that S. 995 not be enacted as proposed, but modifications are suggested in our testimony if you conclude that a Bill of this nature should be enacted.

In Gilbert vs. General Electric Company, the Supreme Court held that it does not constitute sex discrimination under Title VII of the Civil Rights Act of 1964 for an employer not to provide pregnancy disability income benefits for female employees on the same terms and conditions as sickness and accident benefits provided to all employees. The supporters of S. 995 have stated in the Congressional Record that this bill is intended to reverse that decision by requiring employers to provide pregnancy disability income benefits on the same terms and conditions as sickness and accident benefits. It should be noted, however, that the bill as presently

drafted appears to apply not only to income replacement in the form of disability benefits but also to require the payment of medical expense benefits for the hospital and doctor bills associated with pregnancy.

Freedom of Benefit Plan Design Should Not Be Restricted

Employers and employees should have the right to select, through collective bargaining or other voluntary basis, the kinds of benefits they desire. They should be allowed to decide how the employee benefit dollar should be utilized -- whether it be, for example, for pregnancy benefits, catastrophic coverages, or other forms of coverages. Today, all forms of coverage are generally sold by insurance companies. Employers and employees should continue to have the right to choose coverages according to their needs and desires.

Adverse Effects of S. 995 on Employee Benefit Plans

You may find it surprising for insurance companies to oppose the mandating of pregnancy benefits even though S. 995 would substantially increase our premium income. Our experience in the health insurance business, however, convinces us that mandating such benefits is not desirable. The pregnancy benefit is one of the most costly types of coverage which might be mandated. Thus, for many employers, the requirement of providing medical expense and disability income coverage for pregnancy will be extremely burdensome. Employer contributions would have to be significantly increased to cover the additional claims and the entire benefits package might become too expensive for the employer to provide. Some plans may not be adopted and existing plans may not be otherwise liberalized if S. 995 were to be enacted.

Employers with a high percentage of female employees will be forced to bear a relatively heavier cost burden than employers who have a substantially smaller percentage. These latter employers would gain a considerable competitive advantage over the former. In either case, the costs of providing the coverage envisioned by S. 995 will be borne ultimately by the general public in the form of increased prices for goods and services.

Normal Pregnancy Differs from Sickness and Accidents

Employee benefit plans are designed to protect an individual against losses arising from an unpleasant, unforseen, unplanned and relatively infrequent event. All four elements are normally present in risks covered by health insurance. Replacement of lost income or reimbursement of expense usually result either from an accident or from a sickness that will be experienced by relatively few of those insured. In contrast, pregnancy is commonly desired and generally planned. The resulting expenses are usually predictable and can generally be budgeted for. This is not to say that an employer and his employees should be prohibited from obtaining maternity benefits if they desire to do so. Such benefits are generally available and many employers provide them, usually on a limited basis.

Further, a substantial number of employees, in the case of pregnancy, do not return to work with the same employer. Virtually all employees who receive disability income benefits for sickness or injury do return to work for their employer. Thus, for a woman who leaves employment to have a child and who does not return to the work force at the time her pregnancy disability ceases, the payment of disability income benefits constitutes a form of severance pay. This is not an appropriate function of disability

income plans which are designed to provide benefits to persons who are disabled due to unforeseen sickness or injury and who plan to remain in the work force.

Distinction Between Normal Pregnancy and Complications of Pregnancy

Let me emphasize that what we have been discussing are matters relating to normal pregnancies. We do not oppose mandated coverage in medical expense as well as disability income plans for the expenses resulting from complications of pregnancy and childbirth because such conditions have insurance characteristics comparable to a sickness or an accident.

Cost Estimates of S. 995

If pregnancy benefits are mandated in all employee benefit plans, then the additional annual costs of providing these benefits will be $1.0 billion for medical expense plans (excluding Blue Cross and similar plans) and $0.6 billion for disability income plans.

1. Disability Income Plans

The elements of the disability income benefits calculation are the frequency of pregnancy, the average weekly benefit, and the percent of all workers who are female and insured, and the average number of weeks of disability caused by pregnancy. We have made appropriate adjustments for variations in frequency of pregnancy between working and non-working women and for differences in average earnings between men and women.

As indicated in Table 1, there are presently 32 million female workers, excluding agricultural, self-employed, unpaid family and private household workers. The number of births which can be expected among such workers in 1978 is 1,359,000.

In Table 2, we estimate that approximately two-thirds of the working population are covered by short-term disability income benefits. The overall average weekly wage for all employees of private establishments is estimated to be about $194 per week. For industries most likely to employ a high percentage of women, the average weekly wage ranges from $147 to $175 per week. The average weekly wage for women likely to be affected by this legislation in these industries, however, we estimate at about $149 per week.

The actual details of our calculation are shown in Table 3.

We point in particular to our estimate that the average benefit period of disability caused by pregnancy is 11.3 weeks. This number is derived from limited data derived from insured benefits paid pursuant to the Hawaii Temporary Disability Insurance Law and a small number of private group plans providing pregnancy benefits of this nature.

The additional cost for including maternity benefits in group disagility income plans is estimated to be $571 million, or an increase of about 10% of the current expenditures for accident and sickness disability income benefits.

2. Hospital-Medical Expense Plans

The elements of the hospital-medical expense plans calculation include the frequency of hospitalization for maternity, average duration of stay, the cost per day in the hospital, the average physician's bill for obstetrics and the number of women of child-bearing age in the population. Our data were compiled in connection with the New York mandatory maternity insurance benefit law (S. 10536, Chapter 843, Laws of 1976). Those data are applicable for costs in the State of New York and we adjusted them downward to compensate for the differ-

ence in benefits and relative costs between New York and nationwide.

Based on these calculations, we estimate that the additional cost of including maternity coverage on the same basis as coverage for sickness in group medical expense plans administered by insurance companies is $1.0 billion, or 5.4% in excess of what is currently being spent for this benefit. The details are shown in Table 4. This estimate excludes Blue Cross, Blue Shield, uninsured plans and other independent plans.

Suggested Changes in S. 995
to Reduce the Cost Impact

The costs of the benefits to be provided as a result of S. 995 are considerable. If in the judgement of the Congress, this bill is to be enacted, then we strongly urge that the bill be amended to bring the costs closer to the cost projections of the supporters of this legislation.

1. Remove the requirement that medical expense benefits for normal pregnancy be provided on the same basis as coverage for sickness or injury. However, the benefit levels of coverage for a female employee should be the same as that of a dependent of a male employee. This requirement should cover any possible concerns over discrimination.

2. All complications of pregnancy should be treated in the same manner as a sickness or injury under both medical expense and disability income plans.

3. Disability income plans should be permitted to provide only limited coverage for normal pregnancy, e.g., benefits for up to six weeks.

4. Employers should be allowed to limit benefits relating to normal pregnancies to those which arise after the employee is in the employ of the employer.

With respect to proposed Section 2 to the bill, this section appears to prohibit an employer from reducing the benefits or the compensation provided to any employee in order to comply with Section 1, which mandates pregnancy benefits in existing plans. We are opposed to this proposed section because it would tend to cast in concrete all existing benefits and make it extremely difficult for a plan to be changed to respond to changing conditions, even in collective bargaining situations. Employers would find themselves in danger of being challenged in the courts as to whether or not a change in a plan was actually a disguised attempt to offset the cost of the pregnancy benefit. We seriously question the wisdom of this proposed section.

We thank you for this opportunity to present our views on S. 995.

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TABLE 1

EXPECTED BIRTHS

Employed Persons excluding Agricultural, Self-employed, Unpaid Family and Private Household Workers

Age	(1) Female Workers	Population (2) Birth Rate	Expected Births
16 to 19 Years	2,768,000	59.7	165,000
20 to 24	5,313,000	120.7	641,000
25 to 34	8,160,000	87.4	713,000
35 to 44	5,950,000	13.3	79,000
45 and over	9,812,000	(3)	-
Total	32,003,000		1,598,000

Allowance for lower birth rates among employed = 15%

Expected Births among employees 1,358,000

(1) Source - U.S. Dept. of Labor - Employment and Earnings, March 1977, Vol. 24 No. 3 Table A-23

(2) 1975 Statistical abstract. Rates are per 1,000 females.

(3) Less than 1 per 1,000

TABLE 2

INCOME PROTECTION COVERAGE

		(1)
1.	Persons Protected for Short-Term Benefits - Dec. 1975	
	a. Group Policies	28,607,000
	b. Formal Paid Sick Leave Plans	19,400,000
	c. Other	2,500,000
	Total	50,507,000
		(2)
2.	Employed Persons - November 1975	74,660,000
3.	Percent of Employed with Short-Term Benefits (1) ÷ (2)	68%

4. Gross Weekly Earnings	February 1977 (3)	Calendar 1978 (4)
a. Total Private	$ 182.16	$ 194.00
b. Wholesale & Retail Trade	138.36	147.35
c. Finance, Insurance & Real Estate	164.42	175.11
d. Services	153.77	163.77
e. Weighted Average of b, c and d	149.16	158.86

(1) Source Book of Health Insurance Data 1976-1977, p. 30

(2) U.S. Dept. of Labor - Employment & Earnings, Vol. 22 No. 6 Table A-22

(3) " " " " " " Vol. 24 No. 3 " C-1

(4) 106.5% of Feb. 1977 averages, average increase from Feb. 1976 to Feb. 1977.

TABLE 3

COSTS FOR INCOME BENEFITS FOR PREGNANCY
UNDER SHORT-TERM INCOME PLANS

1.	Expected Births among employees - Table 1	1,358,000
2.	Percent of employees with Short-Term Benefits - Table 2 (3)	68%
3.	Expected Births among Employees with Short Term Benefits (1) x (2)	923,000
4.	Average Weekly Wage applicable to (3) - Estimated as 94% of Table 2, line (4) (c)	$149
5.	Average Duration of Pregnancy Disability Income Benefits°	11.3 weeks
6.	Average Percent Benefits Currently Paid - Estimated	60%
7.	Total Costs - Annual Basis (3) x (4) x (5) x (6)	$932 million
8.	Percentage of Employees with Short-Term Benefits that provide Maternity, including all California - Congressional Record, S4403	60%
9.	Average Weekly Wage applicable to (8) - Estimated	$156
10.	Average Duration of Pregnancy Disability Income Benefits Provided	6.2 weeks
11.	Average Percentage Benefits Currently Paid - Estimated	60%
12.	Total Current Costs (3) x (8) x (9) x (10) x (11)	$321 million
13.	Additional Costs to Income Benefits for Pregnancy - Annual Basis (7) - (13)	$611 million °°

° Based on experience under Hawaii compulsory cash sickness plans and some other privately insured group policies, having a one week elimination period and a 26 week or longer maximum benefit period.

°° Includes an estimated $39 million in New York and $1 million in Hawaii.

TABLE 4

COSTS FOR MEDICAL EXPENSE BENEFITS FOR PREGNANCY UNDER MEDICAL EXPENSE BENEFIT PLANS ADMINISTERED BY INSURANCE COMPANIES

			$ Million
(1)	Group Premiums in 1975		$ 13,656
(2)	Project to 1978 at 15% per year		$ 20,757
(3) (a)	Pregnancy benefits currently provided as a % of current total	5.2%	
(b)	Cost for pregnancy benefits mandated by Chapter 843 of New York Laws of 1976, as a % of current total	11.1%	
(c)	Increase in New York, (4) - (3)	5.9%	
(d)	Adjustment for unlimited hospital days instead of 4 day maximum (3.8 average ÷ 3.6 average) and higher relative level of current U.S. benefits compared to N.Y. benefits (÷ 1.15), net increase	5.4%	
4.	(2) x (3) (d)		$ 1,120 *

Notes

(1) Source: Annual Survey of HIAA published in Source Book of Health Insurance 1976-77, page 52

(2) Rough projection based on trends of last two years.

(3) Based on unpublished survey of six of eight largest insurers of persons in New York State for hospital and medical expenses. These insurers write about one-half of the total health insurance written in New York by insurance companies.

* Includes an estimated $94 million in New York and $2 million in Hawaii.

The CHAIRMAN. Next we have from the American Citizens Concerned for Life, based in Minneapolis, Minn., Ms. Jacqueline M. Nolan-Haley, special counsel.

Come up, please.

STATEMENT OF JACQUELINE M. NOLAN-HALEY, SPECIAL COUNSEL, AMERICAN CITIZENS CONCERNED FOR LIFE, INC., MINNEAPOLIS, MINN.

Ms. NOLAN-HALEY. I will be brief

The CHAIRMAN. Well, we appreciate it very much.

Ms. NOLAN-HALEY. I appear today on behalf of American Citizens Concerned for Life to record their strong support for Senate bill 995.

Although I am not a member of the organization for whom I speak, I share its concern for human life and its support for passage of this amendment.

ACCL is a national organization which seeks to promote respect for human life and to work for its enhancement. To further that goal ACCL has established priorities which include advocating legislation to protect all human life, working for programs to provide supportive services for pregnant women and their families and supporting public and private measures that enhance the dignity and value of each human person.

The Supreme Court's decision that pregnancy discrimination is not sex discrimination shows a callous disregard for women who carry human life within them.

It denies protection and economic equality to the most vulnerable members of the labor force, pregnant women. This in itself is a social evil and is sufficient reason to reverse the *Gilbert* decision by amending title VII.

However, I would like to discuss four other aspects of *Gilbert* which establish undesirable, if not dangerous social precedents.

First, *Gilbert* poses a threat to the security of the American family unit. It has a severe impact upon low-income workers who are forced to take unpaid maternity leave at precisely the time when expenses are increased.

ACCL is particularly concerned that low-income women, faced with this loss of income, will be encouraged to have abortions.

When a women is faced with losing her income for several weeks or months and perhaps with losing her job because of pregnancy, her decision to abort cannot be said to be the product of free choice but of economic coercion.

A failure to reverse *Gilbert* by amending title VII sanctions this economic coercion. The continued existence of unborn human life is then made dependent upon the outcome of a cost-benefit analysis. This is a social evil, uniquely degrading to human life and human dignity.

The second harmful aspect of *Gilbert* is that it establishes a dangerous precedent with respect to the exercise of fundamental rights—namely, that it is permissible to penalize women for exercising certain fundamental rights to the exclusion of others.

Four fundamental rights are involved in this area: The decision to procreate, the decision not to terminate a pregnancy, the decision to

prevent procreation through contraception, and the decision to terminate a pregnancy.

General Electric penalized women who chose to exercise the first two rights to the exclusion of the latter, and the Supreme Court found no objection.

The third point I would like to make is that the *Gilbert* decision goes beyond the evils of sex discrimination to a direct statement about the value of children to society. *Gilbert*, in effect, viewed children as "affordable" and "nonaffordable" commodities by telling us who could not "afford" them.

Families able to live on one salary and those willing or forced to go on welfare can afford children. But the families who must work to make ends meet, cannot. These are the families for whom a problem pregnancy can be a financial disaster. These are the families for whom a few weeks of postpartum pay is not a luxury but a necessity.

However, the Supreme Court did not see it that way. The Supreme Court saw that General Electric protected employees who were injured in sports, in fights, and in attempted suicides; employees addicted to drugs and alcohol. Yet, employees who brought children into this world could do so without any financial assistance from General Electric.

The Supreme Court saw no problem with this, and that, I submit, is an unfortunate statement of values.

Finally, ACCL objects to what it considers the foundation of the *Gilbert* ruling—that pregnancy is a voluntary and desirable condition.

The Court presumed that GE's gender-based exclusionary policy was not gender-based discrimination because pregnancy is a voluntary and desirable condition. The factual hypothesis of this presumption is neither necessarily nor universally true.

The issue is whether in fact conception and continuation of pregnancy are voluntary and desirable.

Conception is presumed to be voluntary and therefore desirable because contraception is recognized both as a fundamental right and as effective to prevent pregnancy. Continuation of pregnancy is presumed to be voluntary because discontinuation of pregnancy is legally permissible by aborting unborn children.

According to the post-trial briefs submitted by General Electric, the latter may be accomplished during a simple "lunch-hour treatment" and only Catholic women "might have possible scruples" against its use.

That contraception and abortion are recognized as fundamental rights simply does not translate into the proposition that conception and continuation of pregnancy are voluntary and desirable. Conception results both where there is an intent to conceive and where there is no intent to conceive.

Continued pregnancy results both when women desire the child in their wombs and when women do not so desire, but at the same time are not inclined to end their child's life, whether during a simple lunch-hour treatment or otherwise.

However, even assuming that conception and continuation of pregnancy are voluntary and desirable, the conclusion which the Supreme Court draws from this proposition is illogical and unjust.

General Electric's disability insurance included coverage for vasectomies—voluntary operations to achieve the desired condition of male sterility. If GE had excluded vasectomy coverage and this exclusion were challenged, the result in *Gilbert* may well have rendered passage of this amendment unnecessary.

For, it is doubtful that the Court would have concluded from the voluntariness and desirability of vasectomies, that its exclusion from disability coverage did not amount to gender-based discrimination.

In short, the *Gilbert* decision offends commonsense and common decency. At the same time it presents enormous potential for undermining the security of the family unit, the value of children to society and the exercise of fundamental, reproductive rights.

For these reasons ACCL urges that title VII be amended promptly to provide the protection and equality for pregnant women, that it was always intended to provide.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Nolan-Haley follows:]

STATEMENT OF JACQUELINE M. NOLAN-HALEY, SPECIAL COUNSEL, AMERICAN CITIZENS CONCERNED FOR LIFE, INC., BEFORE THE SENATE COMMITTEE ON HUMAN RESOURCES, SUBCOMMITTEE ON LABOR

April 29, 1977

Mr. Chairman and members of the subcommittee, thank you for this opportunity to testify today in behalf of American Citizens Concerned for Life (ACCL) to record their strong support for Senate Bill 995. I will discuss ACCL's interest in this amendment and why the amendment is essential to secure protection and economic equality for pregnant women.

ACCL is a national organization which seeks to promote respect for human life and to work for its enhancement. To further that goal ACCL has established priorities which include advocating legislation to protect all human life, working for programs to provide supportive services for pregnant women and their families and supporting public and private measures that enhance the dignity and value of each human person. Although I am not a member of the organization for whom I speak, I share its concern for human life and its support for passage of this amendment.

The Supreme Court's decision that pregnancy discrimination is not sex discrimination, whether under the equal protection clause (in Geduldig v. Aiello) or under Title VII (in Gilbert) shows a callous disregard for women who carry human life within them. After the Court's decision in Gilbert it became ap-

parent that federal legislation was necessary to eliminate the very cruel practice of taking away from pregnant women what is often their only source of income, before and after the birth of their children. Therefore, ACCL joined with a broad-based coalition to insure that this goal be realized.

ACCL urges prompt passage of this amendment for several reasons. The Supreme Court has denied protection and economic equality to the most vulnerable members of the labor force- pregnant women. This in itself is a social evil and is sufficient reason to reverse the Gilbert decision by amending Title VII. However, I would like to discuss four other aspects of Gilbert which establish undesirable, if not dangerous social precedents.

First, Gilbert poses a threat to the security of the American family unit. It has a particularly severe impact upon low-income workers who are forced to take unpaid maternity leave at a time when expenses are increased by the addition of a new family member. The plight of Sherrie O'Steen, one of the plaintiffs in Gilbert, illustrates the severity of this impact. When General Electric required that she stop working at the end of her sixth month of pregnancy, she found herself husbandless and penniless. Unable to support herself, her two year old child and her newborn infant, she was forced to apply for welfare. In the meantime,

she and her children lived without heat, light and refrigeration.

Loss of income has serious repercussions for families dependent upon a mother's earnings. ACCL agrees with Senator Harrison A. Williams that:

> "The loss of a mother's salary will have a serious effect on the family unit-------- making it difficult for parents to provide their children with proper nutrition and health care. For some women and their families, it will mean dissipating family savings and security, or being forced to go on welfare. For others--especially low income women---the loss of income will encourage abortions."

When a woman is faced with losing her income for several weeks or months and perhaps with losing her job because of pregnancy, her decision to abort cannot be said to be the product of free choice but of economic coercion. A failure to reverse Gilbert by amending Title VII sanctions this economic coercion. The continued existence of unborn human life is then made dependent upon the outcome of a cost/benefit analysis. This is a social evil, uniquely degrading to human life and human dignity.

Second, the Gilbert decision establishes a dangerous precedent with respect to the exercise of fundamental rights---- that it is permissible to penalize women for exercising certain fundamental rights to the exclusion of others. Four

fundamental rights are involved in this area: the decision to procreate, bear and beget a child; the decision not to terminate a pregnancy; the decision to prevent procreation through contraception and the decision to terminate a pregnancy. General Electric penalized women who chose to exercise the first two rights to the exclusion of the latter by denying them employment with full earned status and benefits. Although the district court in Gilbert recognized the burden that General Electric placed upon a woman's choice to bear a child-

> "While it is true that women may, under certain conditions, resort to an abortion...it cannot be reasonably argued that Congress in its enactment of Title VII ever intended that an intended beneficiary of that Act forego a fundamental right, such as a woman's right to bear children, as a condition precedent to the enjoyment of benefits of employment free from discrimination."

the Supreme Court chose to ignore it.

Third, the Gilbert decision goes beyond the evils of sex discrimination to a direct statement about the value of children to society. Gilbert, in effect, viewed children as "affordable" and "non-affordable" commodities by telling us who could not "afford" them. Families able to live on one salary and those willing or forced to go on welfare can "afford" children. But the families who must work to make ends meet, cannot. These are the families for whom a problem pregnancy

can be a financial disaster. These are the families for whom a few weeks of post-partum pay is not a luxury but a necessity. But, the Supreme Court did not see it that way. The Supreme Court saw that General Electric protected employees who were injured in sports, in fights and in attempted suicides; employees addicted to drugs and alchohol. Yet, employees who brought children into this world could do so without any financial assistance from General Electric. The Supreme Court saw no problem with this and that, is an unfortunate statement of values.

Finally, ACCL objects to what it considers the foundation of the Gilbert ruling- that pregnancy is a voluntary and desirable condition. In order to arrive at its conclusion that General Electric's exclusion of pregnancy disability benefits was not violative of Title VII, the Court had to find that this exclusion did not amount to gender based discrimination. Relying on the proposition that pregnancy is a voluntary and desirable condition, the Court presumed that GE's exclusion was not a pretext for discriminating against women and therefore not violative of Title VII. The factual hypothesis of this presumption- that pregnancy is a voluntary and desirable condition, is neither necessarily nor universally true. The issue is whether in fact conception and continuation of pregnancy are voluntary and desirable.

Conception is presumed to be voluntary and therefore desirable because contraception is recognized both as a fundamental right and as effective to prevent pregnancy. Continuation of pregnancy is presumed to be voluntary because discontinuation of pregnancy is legally permissible by aborting unborn children. According to the post-trial briefs submitted by General Electric, the latter may be accomplished during a simple "lunch hour treatment" and only Catholic women "might have possible scruples" against its use.

That contraception and abortion are recognized as fundamental rights simply does not translate into the proposition that conception and continuation of pregnancy are voluntary and desirable. Conception results both where there is an intent to conceive and where there is no intent to conceive. Continued pregnancy results both when women desire the child in their wombs and when women do not so desire, but at the same time are not inclined to end their child's life, whether during a simple "lunch hour treatment" or otherwise.

However, even assuming that conception and continuation of pregnancy are voluntary and desirable the conclusion which the Supreme Court draws from this proposition is illogical. General Electric's disability insurance included coverage for vasectomies--voluntary operations to achieve the desired condition of male sterility. If GE had excluded vasectomy coverage and this exclusion were challenged, the result in Gil-

bert may well have rendered passage of this amendment unnecessary. For, it is doubtful that the Court would have concluded from the voluntariness and desirability of vasectomies, that its exclusion from disability coverage did not amount to gender-based discrimination.

In short, the Gilbert decision offends common sense and common decency. At the same time it presents enormous potential for undermining the security of the family unit, the value of children to society and the exercise of fundamental, reproductive rights. For these reasons ACCL urges that Title VII be amended promptly to provide the protection and equality for pregnant women that it was always intended to provide.

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The CHAIRMAN. Thank you. That is an excellent statement.

I do not think I have any questions.

I am sorry that Senator Hatch was called away. He might have had some questions—maybe not. But we certainly applaud that statement, and are grateful for it. It will be helpful to all our members in considering this bill.

Next we have Ethel Rubin, from the U.S. Civil Service Commission.

I was hoping that we would not hear the buzzer, but the buzzer has just buzzed, and that means there is a vote to be taken over on the Senate floor. So I will have to excuse myself for a minute to go and vote. But I have a few minutes. I want to welcome you here.

STATEMENT OF ETHEL RUBIN, ACTUARY, U.S. CIVIL SERVICE COMMISSION, WASHINGTON, D.C., MEMBER OF THE AMERICAN ACADEMY OF ACTUARIES, ASSOCIATE OF THE SOCIETY OF ACTUARIES, ENROLLED ACTUARY UNDER ERISA, ACCOMPANIED BY MICHAEL VIRGA AND NANCY KICHAK

Ms. RUBIN. Thank you.

The CHAIRMAN. Now, I am glad to know the discipline that you come from. You are an actuary?

Ms. RUBIN. Yes; I am.

The CHAIRMAN. We need you. We need your talents in our business, because, as you have seen, if you were here, we have gotten a little bit fuzzy on this area. Perhaps you saw the confrontation?

And we really did not have a meeting of the minds. And now we are looking to you for the enlightenment that we need.

Ms. RUBIN. Thank you.

My name is Ethel Censor Rubin. I am a member of the American Academy of Actuaries, associate of the Society of Actuaries, and an enrolled actuary under the Employees Retirement Security Act of 1974.

I have been in the actuarial field for almost 25 years. Since 1967, I have been employed as an actuary in the Bureau of Retirement, Insurance and Occupational Health, at the Civil Service Commission.

The views I express here today are my own, and do not necessarily represent the views of the Commission. I am testifying as a private citizen and professional actuary.

Thank you for the invitation requesting my views on S. 995. This bill would amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

I support this legislation because it would assure that women who become pregnant or suffer from related health problems would not be precluded from health insurance and disability payments.

The CHAIRMAN. I will rush back after I vote.

[Short recess.]

Ms. RUBIN. I will take up where we left off, except I would just like to repeat that I am an actuary with the Civil Service Commission, but the views I express here today are my own, and do not necessarily represent the views of the Commission.

I am testifying as a private citizen and professional actuary.

In discussing my support of this bill, I will briefly cover the following:

One. Cost impact.

Two. Cost control.

Three. Existing coverage prior to enactment of this bill.

Four. Social impact.

I estimate the 1978 cost of income maintenance coverage for pregnancy-related disabilities attributable to this proposed legislation to be $320 million per year. The details of this calculation are shown in attachment A.

The cost of treating maternity leave as a temporary disability depends on the number of female employees, their age distribution, the age specific probability of pregnancy among employed females, and the parameters of the temporary disability plan.

One additional factor to be singled out is the strictness of control on claim payments. This will be discussed separately.

I am not in a position to determine whether industry or the economy can bear the increase in annual expenditures attributable to this bill. That decision will be made by this Congress.

I do, however, want to point out that the $320 million when distributed over the female working population represents a fringe benefit cost of $10 per female per year, or based on 2,080 hours, a cost of one-half cent per female per hour.

I have heard and read testimony claiming that the annual expense for the income maintenance during the period of disability on account of pregnancy would be substantially higher than the $320 million per year discussed above. The difference arises from the assumption as to the number of weeks a woman would be subject to disability on account of pregnancy. I assumed an average of 8 weeks in my calculations.

If S. 995 is enacted, I understand that pregnancy for fringe benefit purposes will be considered like any other disability. That is, if an employer has a medical expense plan or short-term disability plan, pregnancy related disabilities will have to be covered.

The period of disability includes only the time when a woman is certified as unable to work because of pregnancy, childbirth, or related medical conditions.

Research which I have done, as well as medical testimony presented, confirms that for most women—90 to 95 percent—this period of disability is 6 weeks or less after birth, and 0 to 2 weeks before birth.

Admittedly, some women have complications requiring a longer period of disability, some others have physically demanding jobs which would require a longer period of absence, but others work right up to delivery date, and are back on the job within 4 weeks after giving birth.

My best estimate of the true cost is therefore based on an overall average of 8 weeks, and I believe that is somewhat conservative.

It has been said that if maternity disability is covered on the same basis as other disabilities, women will collect benefits for the maximum number of weeks available under the given plan. This is equivalent to an argument stating that the average person suffering from a

broken arm will abuse the system by collecting the maximum benefit available. Both types of disabilities are medically certifiable.

Claim control for pregnancy related disability, as for any other type of disability, should be treated alike. The administrative control would be handled, as it has been in the past, by the employers and the insurance industry.

I have no doubt that some will try to abuse the system. The temporary disability plans in effect now, even without maternity coverage, are subject to some abuse. The ability to become pregnant differentiates the female from the male; the ability to abuse a system is sex neutral.

Covering pregnancy related disability in medical expenses and disability plans is not new. It appears that 16 States require substantial inclusion. These are listed in attachment B, grouped by whether legislation, court decisions, or administrative announcement subsequent to the Supreme Court decision in *Gilbert* v. *GE*, determines the extent of such coverage.

Many private employers already treat pregnancy related disability the same as any other disability. Large firms which now do so are IBM, Xerox, and Polaroid. Some of these provide very liberal benefits. There are also small firms that already do not discriminate on account of pregnancy.

The "Source Book of Health Insurance Data of 1975–76" on page 13 states:

> Public interest in disability income insurance has grown significantly in recent years. In a sense, this is the most basic coverage, for it protects earnings and hence the ability of wage earners to maintain a standard of living for themselves and their families.

The question here today, as I see it, is: Are female employees to be included or excluded from this most basic coverage?

Admittedly, there is a cost involved in including females. However, maternity leave, when treated as a temporary disability, may itself carry the positive effect of reducing turnover. The reduction in turnover cost may partially offset the increase in cost in the temporary disability plan.

For example, the rate of return of females to employment following childbirth at Xerox increased dramatically after 1972, from 46 percent in 1973 to 59 percent in 1974 to 69 percent in 1975.

Summarizing:

A. I support enactment of S. 995.

B. I estimate the increase in cost for income maintenance coverage in existing plans for pregnancy related disabilities to be $320 million per year.

C. There is no medical evidence to support an average period of pregnancy related disability exceeding 8 weeks.

D. There is no reason to believe that the administrative problem of claim control is different for pregnancy related disability than for any other disability.

E. Sixteen States already mandate pregnancy related disability coverage in medical expense and disability plans. Enactment of S. 995 would set national policy.

F. There may be offsetting benefit costs which will reduce the cost impact of this legislation.

Thank you for giving me an opportunity to testify. I will be glad to answer any questions on the testimony.

I will submit the appendixes to my statement for the record.

The CHAIRMAN. That was an excellent statement, and I thank you.

Mrs. RUBIN. Thank you.

The CHAIRMAN. I wonder if you can help clarify the reason for the great discrepancy between your cost estimates and the insurance industry, which also is actuarially oriented, and it must be——

Mrs. RUBIN. It is.

The CHAIRMAN [continuing]. What are the factors? It seems to me that their data base was limited and they put a great deal of emphasis on the experience in Hawaii. And as I got it, they misinterpreted the Hawaiian experience. But it seems to me a very small base to generalize from.

Mrs. RUBIN. Well, I really do not know that part of it because I do not have the same base that they have.

The CHAIRMAN. Well, you can speak to the base you use and that will be helpful. Because what they did was to just put it all out on the great State of Hawaii. And yours is a national basis, I assume.

Mrs. RUBIN. My assumptions were based on medical evidence, on evidence which has arisen from the plans which now have that type of benefit in it. And there are of course minor differences between our figures. But the very basic difference between the figures is my assumption of 8 weeks as an average length of disability coverage versus their assumption of 11.3 weeks.

And I personally feel that, as this goes into effect and as the women really get a foothold in the work force, my 8-week period will prove to be high.

The CHAIRMAN. And your figures are drawn from the reported figures from the Department of Labor?

Mrs. RUBIN. Figures from doctors, from Polaroid Co., from Xerox Co.

The CHAIRMAN. Two national companies?

Mrs. RUBIN. Right. They already have a—well, they have a very liberal temporary disability plan, which covers maternity on the same basis as any other disability.

The CHAIRMAN. You are remarkably close to the Labor Department's——

Mrs. RUBIN. You mean to the Labor Department's cost figures?

The CHAIRMAN. Yes.

Mrs. RUBIN. Yes; I understand that we are very close. Their assumption though was 7.5 versus my assumption of 8 weeks.

The CHAIRMAN. That is pretty close. Their information is gathered on required reporting of companies with benefit plans.

Mrs. RUBIN. I really do not know their specific data base.

The CHAIRMAN. Well, it is interesting. They have a broad base with national reporting; and you were using a more limited base of two major companies.

Mrs. RUBIN. Well, I will not say it is all that limited. I think the medical experience is the most pertinent. Since this bill would merely provide coverage during a period of certifiable disability, and if the doctors say that the average length of disability is probably around 6 weeks, then I think by using 8 weeks, Mr. Chairman, I have been

conservative. My assumption is a conservative one. And to my way of thinking, it is better founded than the 11.3 weeks.

The CHAIRMAN. All right. I hope I can keep these figures in mind because they are a rebuttable answer to some of the excesses we have heard about.

We have heard this statement here today that if there was a maximum period of time for disability, the pregnant woman would use the total period. Now, I think we have calmed down some of that kind of fear of excess, but we still have this suggestion that in this area there will be a stronger tendency by the doctors—in sympathy—to extend the period of disability.

Now, I do not know if you have heard some of that dialogue this morning. And it would seem to me that the Xerox situation suggests that if this disability is covered and insured, it will just reach that necessary period of disability. And then the return to work is remarkable.

Mrs. RUBIN. And there are offsetting costs there because it is much easier to have a person go out for a short period of time and then come back as an experienced employee, rather than having to go out and hire new persons and train them. There are significant costs involved in that. And if one offsets the hiring and training costs against the disability coverage cost, then, Mr. Chairman, I really cannot say for any one particular company which way you would come out ahead.

The CHAIRMAN. Thank you very much.

[The attachments to Mrs. Rubin's statement follow:]

Attachment A

1978 Estimated Increase in Cost to Provide Pregnancy Related Disability Coverage under Existing Short Term Disability Plans

I.	Estimated total annual cost to provide pregnancy related disability coverage under existing short-term disability plans	
	1. Number of female employees	32 million
	2. Expected birth per year among female employees	1.3 million
	3. Ratio of employees covered by short-term disability benefits	2/3
	4. Assumed average duration of pregnancy disability benefits	8 weeks
	5. Estimated weekly benefit (Average weekly wage times average short-term disability benefit percentage)	$90[A]
	6. Total estimated 1978 cost ((2)x(3)x(4)x(5))	$624 million
II.	Estimated 1978 expenditure for pregnancy related disability already covered by short term disability plans	
	1. Percentage of employees under short term disability plans that include some maternity coverage	60%

Attachment A (cont'd)

2.	Estimated 1978 weekly benefit	$90(A)
3.	Average coverage provided	6.5 weeks
4.	Estimated 1978 annual expenditure for maternity coverage (I(2)xI(3)xII(1)xII(2)xII(3))	$304 million
III 1.	Estimated increase in 1978 cost to provide pregnancy related disability coverage under existing short term disability plans (I(6)-II(4))	$320 million
2.	1978 increase expressed as annual cost per female employee (III(1)÷I(1))	$10.00
3.	Increase expressed as cents per hour per female employee (III(2)÷2080)	½ cent

Notes: (A) Applicable 1978 weekly wage - $150
Average short term disability percentage - 60%

(B) Further detail of calculation can be obtained on request.

Attachment B

16 States and D.C. as of April 11, 1977
Continue to Require Disability Benefits
for Pregnancy-Related Disabilities

Under state law it now appears that pregnancy-related disabilities will be covered for disability benefits in the following states which are grouped by whether legislation, court decisions or administrative announcement after the Supreme Court decision in the IUE's GE v. Gilbert, 91 S. Ct. 401 (1976) suit:

Legislation

Alaska
California (all complications and 3 weeks before and 3 weeks after delivery)
Connecticut
District of Columbia
Hawaii
Maryland
Montana
New Jersey (4 weeks before and 4 weeks after delivery; Insurance Commission requires all disability policies to cover complications of pregnancy)

Court Decisions After Supreme Court

New York

Agency Action After Supreme Court

Kansas (legislature approved guidelines)
Michigan
Pennsylvania (also decision of highest court on related issue before)
South Dakota
Illinois

Decision of Highest Court Prior To Supreme Court

Iowa
Massachusetts
Wisconsin

The CHAIRMAN. Now, we have as our final witness Ms. Letty Cottin Pogrebin, editor and writer for Ms. magazine.

Miss Pogrebin, you have been patient with us while we have had to start and stop and start and stop. We appreciate it.

STATEMENT OF LETTY COTTIN POGREBIN, EDITOR AND WRITER FOR MS. MAGAZINE

Ms. POGREBIN. Thank you.

The CHAIRMAN. We have had people from all over the country here today: from Hawaii, from Minneapolis. And you are from New York.

Ms. POGREBIN. Yes.

The CHAIRMAN. Very good.

Ms. POGREBIN. I am Letty Pogrebin, an editor at Ms. magazine, writer of "The Working Woman" column in the Ladies Home Journal, and author of two books about women and employment. It is perhaps relevant to add that I am also a wife and the mother of three children.

Thank you for giving me the opportunity to testify in support of a bill whose potential for life-enhancing change is both societal and intensely personal.

During these hearings, other speakers have established the awesome extent of pregnancy-related discrimination with statistics and legal arguments that need no further repetition. My purpose here today is consciousness raising. In order to legislate relief from sex discrimination with conviction and urgency, I believe that lawmakers must confront the deep cultural origins of our behavior and attitudes toward women.

The contradictions are striking: We revere motherhood, but only in its place. We romanticize the Madonna at the hearth, but when the mother-to-be is in the workplace, she is actually punished for her pregnancy. For the kind of "labor pains" that trouble the pregnant worker, an obstetrician will not help. This legislation is her only delivery.

As a woman, I find it profoundly symbolic that I am appearing before a subcommittee of a committee of 15 men, who will report to a legislative body of 100 men because of a decision handed down by a Court comprised of nine men—on an issue that affects millions of women.

It is not an unfamiliar situation. For women, life under patriarchy has often placed us in the position of pleading with men for our rights—from women's suffrage to equal pay. Women do not make the rules. Even the ones that affect us most directly. I have the feeling that if men could get pregnant, we would not be struggling for this legislation. If men could get pregnant, maternity benefits would be as sacrosanct as the G.I. bill.

But men do not get pregnant. And most women have no argument with this biological fact. We simply object to the conclusions that have been drawn from it: That anatomy is destiny, for example. Despite all the data about women's labor force participation and the number of women heads of households, the myth persists that having children is our life's work, when in most cases our work is necessary for our life and our children's.

In a patriarchy, one of the most entrenched male supremacist assumptions is that women's work is unimportant. It is considered incidental to the economy, dispensable in a tight labor market, and most of all, secondary to a woman's reproductive function.

Such assumptions have a way of reaching beyond their female targets to damage to the children they appear to champion. Though we imagine ourselves to be a child-loving society, two examples parallel to the pregnancy issue suggest otherwise:

Martin-Marietta Co. denied a job to Ida Philips, they said, not because she was a woman but because she was a woman with young children. According to their lights, such a woman regardless of her job performance or economic need, belongs at the clothesline, not at the assembly line. It took a Supreme Court decision to establish that employers cannot refuse to hire mothers of small children unless fathers of small children are likewise excluded.

In 1971, when nearly 26 million children had mothers in the labor force, then-President Nixon vetoed a child care bill on the grounds that it would "weaken" the family. He imagined that without child care centers, women would remain at home in their proper role. Invisible were the millions of mothers who worked not to weaken the family, but to strengthen it, to stave off poverty and the indignity of welfare. Invisible too, were the children, cheated of adquate care and left to fend for themselves.

Th diehard myth that mothers stay home masks the fact that millions cannot afford that option. Moreover, the notion that pregnancy automatically signals full-time motherhood and an end to job and career is not a female reality; it is a male fantasy.

Out of that fantasy spring discriminatory employment practices that seem "natural" in a culture that cannot square the identities of mother-and-worker. What this proposed legislation will do is protect the reality of women's lives with the force of law. It will prohibit employers from asking women applicants what methods of birth control they use, from refusing jobs to pregnant women who are willing and able to work, from denying training programs to women of child-bearing age, from imposing mandatory maternity leaves, or exempting pregnancy-related disabilities from insurance or sick pay plans. These employment practices contribute to the devaluation of female labor, lower a woman's long-term earning potential and interrupt her career continuum.

Some employers add insult to economic injury by claiming that a pregnant woman is an unseemly or discomforting sight in a classroom or business office. Others patronize a pregnant woman with oversolicitous concern for her "condition." In our efforts to be taken seriously as workers, women grow hoarse from citing farm workers or executives who stay on the job until their first contractions, or women athletes who compete up until the last trimester of pregnancy. But Congresswoman Pat Schroeder has the best answer. When asked how she could be both a Congressperson and a mother, she said: "I have a brain and a uterus, and I use both."

Pregnancy discrimination forces us to choose between brain and uterus; between making money and making babies; between being

productive or being reproductive. It a false dilemma. Men do not have to make this choice; they can be both parents and workers without suffering a social, personal, or economic penalty.

However, in a larger sense, men too suffer from pregnancy related discrimination. When a wife's income is lost to the household, many men feel under great pressure to advance in their jobs in order to make ends meet, or even to take on a second job. The diseases of male upward mobility take their toll in ulcers, heart attacks, and emotional stress. The fact that men die 6.7 years earlier than women is in itself an argument for relieving men's burden of sole support in a family capable of generating two incomes.

If pregnancy-related discrimination betrays a double standard toward motherhood, if it hurts not only women but husbands and children, by what leap of logic can it be justified?

One answer is, pregnancy is voluntary. Instead of responding that no contraceptive method is foolproof or that vasectomy, sports injuries, and lung cancer from smoking are also voluntary, perhaps we should be questioning the definition of "voluntary." Can pregnancy be truly voluntary for women if there is no other gender around to get pregnant in our place? If Americans have a generative conscience—if we are building a better world for our children—it becomes mandatory for some people to have those children; namely female people.

The second justification for the pregnancy exemption is the fear that women will get their doctors to falsify reports. This brings us back to square one: The double standard. How can we justify viewing mothers as pure, selfless saints in our cultural mythology, while calling them conniving cheats in the labor sphere. Employers have always suspected malingerers on disability, but until pregnancy became an issue, no one suggested cutoff dates for selected disabilities or cutbacks in workers' compensation. A nondiscriminating employer should be able to check abuses across the board without "redlining" pregnancy.

Finally, we are told that the cost of covering pregnancy related disabilities is prohibitive. Until now, when was it ever said that the cost of doing the decent thing was too steep? I was taught that our Nation would pay any price to protect our basic values. Presumably, equality of opportunity is still foremost among those values. I find it a cruel irony that America's moneymen draw the line at equality for pregnant working women and security for the children they bear and nurture.

In a week or so, we will celebrate Mother's Day with the old slogan, "Less Work for Mother." Unless this bill becomes law, that slogan will remain unfortunately and quite literally true.

Thank you.

The CHAIRMAN. Thank you for your statement. I need ask no questions. It was clear and perfect. Thank you.

Ms. POGREBIN. Thank you. It is good to be here.

The CHAIRMAN. Thank you. That concludes our hearing.

At this point I order printed all statements of those who could not attend and other pertinent material submitted for the record.

[The material referred to follows:]

S.995 - Sex Discrimination on the Basis of Pregnancy

Comments of the
AMERICAN PUBLIC HEALTH ASSOCIATION

Presented to the
Committee on Human Resources
Subcommittee on Labor

April 29, 1977

The American Public Health Association supports S.995 which prohibits discrimination based on pregnancy, child birth or related medical conditions. This legislation is necessary to overturn the recent Supreme Court decision in *General Electric v. Gilbert* which held that it is not sex discrimination within the meaning of Title VII of the 1964 Civil Rights Act to treat pregnancy and related disabilities differently than other temporary disabilities or exclude them from coverage entirely in employee insurance plans.

The proposed legislation properly amends the definition of sex discrimination in employment under Title VII to include discrimination "because of or on the basis of pregnancy, childbirth or related medical conditions." APHA feels that women who are pregnant should be treated the same for all employment purposes as other persons who are not pregnant, but who are similar in their ability or inability to work. To deny coverage for pregnancy-related disabilities is to deny the fact that these, too, are medical disabilities requiring an absence from work and loss of pay. Additionally, it should be realized that refusal to recognize the disabilities accompanying normal childbirth is frequently accompanied by a denial of any pregnancy-related disability, including complications of pregnancy, miscarriage, and disabilities which are triggered or exacerbated by pregnancy.

Most women, like most men, work because the economic wellbeing of their families depends upon the income they earn. The refusal to cover pregnancy disabilities is particularly discriminatory in the case of economically disadvantaged women, some of whom will be disabled by pregnancy and must stop working and will thereby suffer loss of vital income. Other women may be placed in a position where they may be forced to choose between the economic welfare of their families and the health and wellbeing of their child or themselves.

Evidence does not support the contention of some that pregnancy is a voluntary condition and need not be treated like other disabilities. Charles F. Westoff reported in Science, Vol. 191, January 1976 that 43 percent of the total births to married women in the U.S. during the period between 1966

and 1970 were unplanned. These figures do not account for births to unmarried women which one may assume may include a higher percentage of unplanned or unwanted pregnancies.

The purpose of a disability plan is to provide job security and protection against loss of income due to temporary disability. To exclude from this protection a disabling condition which biologically only women can encounter is to treat the working woman differently from the working man because of her sex. Such unequal treatment should not be condoned by Congress.

APHA urges Congress to act promptly on S.995 and vote favorably for its adoption.

AMERICAN VETERANS COMMITTEE

"CITIZENS FIRST, VETERANS SECOND"

NATIONAL OFFICE • 1333 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036 • 202-293-4890

SENATOR WILLIAMS, N.J.

OFFICERS

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NATIONAL BOARD

NATIONAL ADVISORY COUNCIL

May 2, 1977

Senator Harrison A. Williams
Chairman, Senate Human Resources Committee
Labor Subcommittee
Room 352, Russel Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

At its quarterly meeting on April 30, the National Board of the American Veterans Committee, Inc. (AVC) voted to send the following statement to your Subcommittee concerning S 995 now pending before the Subcommittee. AVC is a veterans organization composed of men and women who served in the military forces of the United States in World Wars I and II and the Korean and Vietnam wars.

FIRST. AVC fully supports S. 995 which would amend Title VII of the Civil Rights Act of 1964 to make clear its prohibition against sex discrimination in employment also prohibits an employer from refusing to provide a woman worker, solely because of her pregnancy and any conditions relating thereto, any disability benefits otherwise available to other workers who are disabled by other causes. We believe that the Supreme Court's decision of December 7, 1976 in General Electric v. Gilbert, which interpreted Title VII otherwise, misconstrued the Congressional intent and thereby seriously undermined the statutory prohibition against sex discrimination in employment. Discrimination against women workers on the basis of pregnancy has been, and is, the keystone of the entire structure of discriminatory treatment widely imposed on women workers and their families. So long as there is such discrimination, or the threat of such discrimination, women workers will never have equality of opportunity in employment.

Hence, we urge that S. 995 be promptly enacted to reverse the General Electric decision.

SECOND. For the following reasons, AVC supports, if it is revised as indicated below, the proposal that your Subcommittee amend this bill by adding section 2 of HR 6075 (whose first section is identical to S.995). That section 2 would prohibit an employer from reducing benefits under existing fringe benefits plans "in order to comply with" the requirement that S 995 would enact. That section 2, if adopted, would be in conformity with the similar statutory command in the Equal Pay Act of 1963

(Public Law 88-38, 77 Stat. 56, 29 U.S. Code 206 (d)(1)). It would also embody the view of many judicial decisions that discrimination should be eliminated by granting those discriminated against the same benefits that are granted to others, rather than by taking away benefits from those who previously received them. Enactment of S. 995 would probably not result in substantial likelihood of such reductions of existing fringe benefits plans, partly because of that judicial attitude, and partly because any such reductions would imperil the Company's financial interests in its labor relations much more than the Company would benefit through any savings from such reduction in fringe benefits. Nevertheless, to allay the fears expressed by some persons that such reductions might occur, and to avoid possible need to litigate the validity of any such reduction, we support adoption of section 2, if it is revised and explained as stated below.

1) There are two technical defects in section 2 of HR 6075. To correct them we recommend the following amendment, which is shown in ink on page 2 of the attached photocopy of HR 6075, and which is as follows:

The phrase "section 2000e of title 42, United States Code, and the following" appears twice in section 2. Both phrases should be deleted, and the following phrase substituted in their stead in each place: "subsection (k) of section 701 of the Civil Rights Act of 1964."

Our reason for this recommendations are as follows:

(a) The reference to "section 2000e of title 42, United States Code, and the following" incorporates all of the provisions of Title VII. Thus, section 2 would apply not only to the pregnancy-disability issue but also to all other kinds of employment fringe benefits subject to Title VII, including vacations, retirement, pensions, recreation programs, etc., etc. The Coalition to End Discrimination Against Pregnant Workers, which drafted and approved the language of S. 995 specifically decided, after extensive discussions, that the bill should deal only with the pregnancy-disability issue and should not be encumbered with other controversial issues including other discrimination matters. Although we support the total elimination of sex discrimination in all aspects of employmeht, including discrimination in all fringe benefit programs, we concur with the Coalition that this bill should deal only with pregnancy-disability. Thus the bill would avoid potential controversies concerning other areas which may endanger the bill when it comes to the House and Senate floors.

The new language we recommend ("....subsection (k) of Title VII of the Civil Rights Act of 1964....") would refer to, and incorporate, the legislative requirement in the bill that "....women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work...."

(b) The reference to "section 2000e of title 42, United States Code, and the following" is imprecise drafting, because the United States Code is not the law, but simply a codification which is only prima facie law. The reference should be to the law itself, i.e., the appropriate section of Title VII of the Civil Rights Act of 1964 which Congress enacted.

2. Some opponents of S. 995 have charged that section 2 would freeze existing fringe benefit programs and thus (a) would prevent future changes in those programs to meet changing circumstances unrelated to any discriminatory motive or effect, and (b) would adversely affect competitive relationships between those employers whose existing plans are frozen and those employers who are not subject to a frozen fringe benefits plan. We do not read section 2 as having such effects. Section 2 would simply prevent reduction of benefits solely to comply with equalization, i.e., nondiscrimination, that S. 995 would require. When nondiscrimination is attained, the employer would be able, either when modifying or renewing a collective bargaining agreement, or changing insurance plans, or otherwise, to have the fringe benefit plan modified for any valid nondiscriminatory reason, such as to achieve over-all equitable cost allocation, change insurers, modify benefits or costs, etc. --- so long as the purpose of the change is not to reduce benefits solely to comply with the nondiscrimination requirement which S. 995 will enact. To avoid the possibility of misapprehension on this matter, we recommend that the Committee Report specifically set forth that this is the Congressional understanding of section 2.

For these reasons, we urge as follows:

(1) That you report S. 995 promptly;

(2) That if you include section 2 of HR 6075, you should:
(i) modify that section as indicated in paragraph 1 above; and

(ii) clearly state in the Committee report that your Committee's understanding of section 2 is as indicated in paragraph 2 above.

We request that this letter be included in the Record of the Hearing.

Sincerely,

For the National Board of the
AMERICAN VETERANS COMMITTEE, INC.

June A. Willenz
Executive Director

Phineas Indritz
National Counsel

95TH CONGRESS
1ST SESSION

H. R. 6075

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 1977

Mr. HAWKINS (for himself, Mr. BONIOR, Mr. BRODHEAD, Mr. BRADEMAS, Mr. CARR, Mr. COHEN, Mr. CORNWELL, Mrs. FENWICK, Mr. FORD of Michigan, Mr. HEFTEL, Mr. KILDEE, Mr. MEEDS, Mr. MILLER of California, Mr. NEAL, Mr. NEDZI, Mr. NOLAN, Mr. RODINO, and Mr. TRAXLER) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title VII of the Civil Rights Act of 1964 is amended as follows:

SECTION 1. Section 701 is amended by adding thereto a new subsection (k) as follows:

"(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions, and

women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise.".

SEC. 2. The amendment made by this Act shall be effective upon the date of enactment: *Provided*, That an employer who, either directly or through contributions to a fringe benefit fund or insurance program, is providing benefits under a fringe benefit program which is in violation of ~~section 2000e of title 42, United States Code, and the following~~ SUBSECTION (k) OF SECTION 701 OF THE CIVIL RIGHTS ACT OF 1964, as amended by this Act, shall not, either directly or by failing to contribute adequately to the fringe benefit fund or insurance program, reduce the benefits or the compensation provided to any employee in order to comply with ~~the provisions of section 2000e of title 42, United States Code, and the following~~ SUBSECTION (k) OF SECTION 701 OF THE CIVIL RIGHTS ACT OF 1964, as amended by this Act.

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

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President
PETER O. STEINER
University of Michigan

General Secretary (Acting)
JORDAN E. KURLAND
Washington Office

Associate Secretary and Associate Counsel
CAROLYN I. POLONY

May 5, 1977

The Honorable Harrison A. Williams, Jr.
352 Russell Senate Office Building
Washington, D. C. 20510

Re: S. 995

Dear Senator Williams:

In 1974 the American Association of University Professors adopted a policy statement on "Leaves of Absence for Child-bearing, Child-rearing, and Family Emergencies" (attached) which recommends that higher education institutions treat illnesses caused by pregnancy or childbirth as temporary disabilities for the purpose of salary, leave, and fringe benefits. The Association endorses the position now proposed in S. 995, that the conditions for and duration of short term leaves related to pregnancy or childbirth should be analogous to those granted by an employer for other temporary disabilities.

If academic women and other working women are to be permitted, as are their male colleagues, the opportunity to enjoy both a career and family life, penalties cannot be attached to work absences caused by illnesses due to pregnancy and childbirth. Many higher education institutions have already recognized that personnel policies which treat pregnancy-related illnesses separate from other short-term physical disabilities create sex-based inequities. Temple University, for example, has a maternity leave policy for faculty which provides that compensation for maternity leave shall be treated the same as for any other temporary disability. In addition, Temple permits credit toward tenure to accumulate during maternity leave. At Rutgers University, disabilities caused or contributed to by pregnancy, miscarriage, abortion, and childbirth and recovery from those conditions are, for all job-related purposes, treated as short-term disabilities. All employment policies and practices involving commencement and duration of leave, availability of extensions, accrual of seniority and other benefits and privileges, reinstatement and payment are applied to disabilities due to pregnancy-related illnesses as they are applied to other short-term disabilities. At Northern Michigan University, female faculty members may use sick leave and short-term disability benefits when they are unable to work because of sickness or disability caused by pregnancy, miscarriage, abortion, or childbirth.

The Honorable Harrison A. Williams, Jr.

May 5, 1977
Re: S. 995

Other colleges and universities have also adopted policies similar to those described above or were in the process of considering such policies prior to the Supreme Court's determination in General Electric v. Gilbert, 492 U. S. 125 (1976), that an employer's disparate treatment of women based on illnesses related to pregnancy or childbirth is not sex discrimination under Title VII of the 1964 Civil Rights Act. The Court's interpretation of Title VII contradicted what had come to be accepted by the federal courts and agencies and by many employers as the correct application of Title VII to employment policies governing illnesses caused by pregnancy.

As discussed in more detail in the statement on "Leaves of Absence for Child-bearing, Child-rearing, and Family Emergencies," the American Association of University Professors agrees with the position that would be established by S. 995, that employment discrimination based on pregnancy or related medical conditions constitutes sex discrimination and should be prohibited by federal law.

Sincerely,

Mary Gray

Mary Gray
Chairperson, Committee W on the
Status of Women in the Academic
Profession

Enclosure

Leaves of Absence for Child-bearing, Child-rearing, and Family Emergencies

Reprinted from Summer 1973 AAUP Bulletin

The Statement which follows was prepared by the Association's Committee W on the Status of Women in the Academic Profession. It was approved for publication by the Council in April, 1973. Comments from members, chapters, and conferences will be welcome and should be submitted to the Association's Washington Office.

Introduction

The joint *Statement of Principles on Leaves of Absence*, adopted in 1972 by the American Association of University Professors and the Association of American Colleges, recommends that leaves of absence be granted for professional growth and intellectual achievement, for public or private service outside the institution, and for "illness, recovery of health, and maternity." The following statement on *Leaves of Absence for Child-bearing, Child-rearing, and Family Emergencies*, prepared by Committee W on the Status of Women in the Academic Profession, supplements and amplifies this last provision of the *Statement of Principles on Leaves of Absence*.

Purpose of the Leaves

Committee W recommends that colleges and universities provide leaves of absence to faculty members for child-bearing, child-rearing, and family emergencies. Such leaves are to assist faculty members with parental responsibilities in meeting their obligations both to their professional careers and to their families, and to prevent the loss to the institution and to the academic community of substantial professional skills.

Career patterns of academic men and women vary. Academic women differ in their desire to continue or to interrupt their professional careers during the child-bearing and child-rearing years. Couples differ in the extent to which they wish to share family responsibilities. Some faculty members may wish to take a leave of absence from their professional positions to care for their children, others wish to combine parental and professional responsibilities, while still others prefer to retain their professional affiliation on a full-time basis throughout their child-bearing and child-rearing years.

An institution's policies on faculty appointments should be sufficiently flexible to permit faculty members to combine family and career responsibilities in the manner best suited to them as professionals and parents. This flexibility requires the availability of such alternatives as longer-term leaves of absence, temporary reductions in workload with no loss of professional status, and retention of full-time affiliation throughout the child-bearing and child-rearing years.

Institutional policies which require the termination of the appointment of a woman faculty member because she becomes pregnant penalize the individual unfairly. Moreover, policies which mandate the timing and duration of a leave of absence for pregnancy and childbirth do not take cognizance of particular medical needs or individual circumstances. Institutions which customarily or by policy allow paid absences for illness or temporary disability, but which deny equivalent absences for disabilities resulting from pregnancy or childbirth, discriminate against women.[1] Allowing leaves of absence for illness or temporary disability only in cases where faculty members are themselves ill or temporarily disabled disregards the need to provide short-term care for family members in serious emergencies. In addition, it may prevent fathers from assuming responsibilities in connection with the birth of children.

Short-Term Leaves of Absences for Child-bearing and Family Emergencies

Most colleges and universities provide for paid short-term leaves of absence, through formal or informal arrangements, for faculty members who are ill or temporarily disabled. The conditions and duration of compensation for short-term leaves for pregnancy, childbirth, or family emergencies involving spouse, parents, or children, should be analogous to those for leaves granted for temporary disability or personal emergencies. The timing

[1] See the 1972 Sex Discrimination Guidelines of the Equal Employment Opportunity Commission.

and duration of absence in such cases should be determined by mutual agreement between the faculty member and the institution, and should be based on medical need, the requirements of the educational program, and individual circumstances. Compensation during short-term leaves of absence for child-bearing or the serious illness of a family member should be consistent with customary institutional practices in cases of illness or temporary disability.

Longer-Term Leaves of Absence for Child-rearing

The rearing of children should be considered appropriate grounds for a leave of absence of a semester or more, and such leaves should be available to both men and women faculty members. The timing and duration of such leaves should be determined by mutual agreement between the faculty member and the institution. Faculty members on child-rearing leaves should receive the same considerations with respect to salary increments, insurance coverage, retirement annuities, and the like, as are received by faculty members on leave for public or private service outside the institution.

The alternative of a temporarily reduced workload should be available to faculty members with child-rearing responsibilities (see Committee W's Statement on *Senior Appointments with Reduced Loads*).

Individual and institutional obligations in connection with such leaves, including the timing of a tenure decision, should be those set forth in the applicable provisions of the *Statement of Principles on Leaves of Absence*.

American Nurses' Association, Inc.
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May 13, 1977

The Honorable Harrison Williams
Chairman, Subcommittee on Labor
Senate Human Resources Committee
G237 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Williams:

The American Nurses' Association requests that you make the enclosed statement reflecting our views on, and support of, S. 995 a part of the hearing record.

The major portion of this statement represents the research efforts of one of our staff, Mr. John Friel, in preparation of an in-depth study of the GE decision for a law course at Catholic University.

We hope that the information contained in the statement will be valuable to the Labor Subcommittee in its deliberations on their legislation.

Sincerely,

Anne Zimmerman

Anne Zimmerman, R.N.
President

AZ:mw
Encl.

ANA – An Equal Opportunity Employer

AMERICAN NURSES' ASSOCIATION

Statement On

S. 995

Sex Discrimination on the Basis of Pregnancy

May 13, 1977

To

Subcommittee on Labor

Human Resources Committee

U. S. Senate

Any nation concerned with its own future must count among its highest goals that of assuring the well-being of its pregnant women and their children. Yet the prospect of good maternal-child health in America has been noticeably dampened by the recent decision of the Supreme Court in GE v. Gilbert. In ruling that, for purposes of disability benefits, employers can legally single out and discriminate against those who are disabled on account of pregnancy, the Court surely ignored Title VII of the Civil Rights Act ban on sex discrimination in employment.

The ramifications of the GE decision extend far beyond the context of the legalities of discrimination based on sex. The American Nurses' Association suggests that the GE ruling is fraught with side effects, a discussion of which is essential before any comprehensive legislative response to that ruling can be formulated. One of the most glaringly unacceptable side effects of the GE decision is the cessation of a working woman's income at that point in her life when she most urgently requires the wherewithal to secure quality health care and nutrition for herself and for her unborn child.

Legislators and others have been quick to see in the General Electric decision a serious setback, not only for the cause of equality of employment opportunity but for the cause of maternal-child health as well.

All have warned, in the strongest language, of the health hazards incident to denial of income to the pregnant woman. However, despite the fact of overwhelming recognition of the link between loss of income and inadequate access to the means of assuring good maternal child health, this link has not as yet been adequately explored. This statement will attempt to document the concrete connection between loss of income during the disabling phase of pregnancy and a deterioration of the health of the pregnant woman and of her child resulting from impaired access to a healthful life situation. An examination of the bleak economic landscape facing pregnant workers in the wake of GE, compounded by the astronomically high costs today of staying healthy point to an urgent need to legislatively counteract the Supreme Court's decision in the GE case.

Statistics show that fully 85% of all working women will become pregnant at some time during their working lives. About 44% of those pregnancies carried to term by married women alone are unplanned. Except where complications occur, the average working woman loses between six and eight weeks of work time as a result of carrying her pregnancy to term. Typically, this involves two to four weeks absence prior to delivery and four weeks absence afterward. That the loss of the average woman's income during the disabling phase of her pregnancy works a significant economic hardship can be convincingly demonstrated. Gone are the days when women worked for "pin money." Women have become a

major part of this country's work force. Currently, about 46% of all women over the age of 16 are in the labor force. There are now 39 million women who are working or seeking work. Since 1950, the greatest gains anywhere in the labor force have been registered among women 25 to 54 years of age. Most of these women work out of hard economic necessity. Seventy percent or over 25 million of the women who work, are either their family's sole wage earner, are married to husbands who earn less than $7,000 per year or are single, divorced or widowed. In 24% of all families nationwide, women contribute over 40% of the family income. One of every 10 babies is born to a woman who is divorced, widowed or single and who thus can be expected to have no income other than her own.

And, notwithstanding the importance to her family of the woman's wage, it is still generally far from an adequate one. Among full-time workers employed throughout 1974, women's median earnings were less than three-fifths those of men--$6,772 and $11,385 respectively. The median wage or salary income of year-round full-time women workers of minority races was only $6,611 in 1974 -- about 94% of white women, 73% of that of minority men and 54% of that of white men. Meanwhile, the Department of Labor has recently estimated that an urban family of four today needs $16,950 annually to maintain a moderate standard of living. In short, the typical working woman is poor, and either alone or married to a poor husband. She is also disabled due to pregnancy at least once, and more likely two or three times during her working life. The loss of a woman's income during this period of pregnancy disability -- one-sixth or more of her already inadequate annual salary -- cuts off the woman's access to such costly items as quality health care and nutrition whose importance

can be easily ignored when the landlord is threatening eviction. No society can long afford to ignore its pregnant women and their need for a milieu that is conducive in all respects to optimum good health. The damage done when a pregnant woman's health is neglected can seldom be repaired and the loss to society in terms of productivity of the offspring and possibly the expenses of institutionalization or welfare can only be imagined.

There can be no logical distinction drawn between the health of a pregnant woman and the health of her unborn child. The unborn child is for all practical purposes an extension of its mother and the state of her health determines the state of the infant's health at birth and the course of its health thereafter. Indeed, it is now generally accepted that the most important factors governing child health come into play before birth. A baby is likely to grow into a healthy child and adult when its mother:

(1) is herself in good health

(2) begins prenatal care early in her pregnancy

(3) has good nutrition during pregnancy

Lack of any or all of these conditions greatly increase the likelihood of low birth weight due to premature birth and other defects in the infant.

Low birth weight is associated with almost half of all infant deaths and substantially increases the likelihood of birth defects. About 240,000 infants are born each year at low birth weights. A fifth of them will not survive the first five months of life and those that do often sustain permanent development impairments. At least one expert has asserted that "prematurity" is responsible for a greater number of fetal and neo-natal losses than the aggregate losses associated with all other complications of pregnancy. The incidence of neurological and

psychological abnormalities occurring during the first year of life is four times as high for the smaller prematures as it is for the full-term infants.

The hard core of low birth weight babies are those weighing under 1,000 grams at birth. Only 7 of these babies are born in every 1,000 deliveries yet they represent 42% of the first week mortality. The 10% of these babies who survive suffer a "huge incidence of mental retardation, cerebral palsy, and other neurological disorders."

While low birth weight is surely the most common denominator in post-partum afflictions of infants, it is not the only problem with which the newborn may be faced. Others such as retardation, IQ deficiency and anti-social behavior will surface later in this discussion.

Studies indicate convincingly that the incidence of prematurity in the infant is most often the result of some defect in the mother's emotional or physical state.

Failure to provide the pregnant woman with a relatively stress-free environment may impact severely on child health.

Betty Ann Anderson, R.N., M.A., in an article entitled, "Interruptions in Family Health During Pregnancy,"asserted that the mother's emotional status has a direct effect on the levels of various hormones in the blood, and the fetus in turn will be affected by these hormones. Studies have indicated that if the mother is under stress, the effects of her body chemistry alter the pattern of fetal growth and in many cases there is an increased incidence of prematurity.

The American Nurses' Association has reached similar conclusions. In a May, 1974 letter to Senator Humphrey, the Association took the position that "maternal stress may result in premature birth."

Yet, the significant reduction in family income noted above would certainly be expected to produce psychological stress in the pregnant woman.

Dr. Horace E. Thompson noted that:

"only recently have we begun to realize that the outcome of a physically normal pregnancy may be influenced by many other environmental factors, such as ....economic stresses that are constantly pounding upon the strained mental and emotional stability of the pregnant woman."

Of even greater importance to the pregnant woman than a relatively stress-free environment is access to quality health care and good nutrition during pregnancy.

Low birth weight premature infants are estimated to be three times as likely when mothers have no prenatal care. One study conducted at Johns Hopkins found that the prematurity rate was 26.4% for mothers having no prenatal care, 23.7% for those with one or two visits, and 7.8% for mothers with three or more prenatal visits.

A similar study in the District of Columbia uncovered a prematurity rate of 22.7% for those who did not have prenatal care and 10.4% for those who did.

In New York City, a prematurity rate of 21.6% was found for mothers receiving no prenatal care and 7.7% for those who did.

In addition to prematurity and low birth weight, lack of prenatal care for the mother often results in needless neglect of conditions which, left untreated, contribute to the incidence of marginal or recurrent illness in the child.

Proper health care is also, of course, of paramount importance for the newborn infant itself. The President's Commission on Population Growth and the American Future stated:

> "Regular health care during the first year of life is a key to preventing or correcting illnesses that may handicap for life."

In testimony before the House Interstate and Foreign Commerce Subcommittee on Health, Dr. Wilbur Cohen, of the University of Michigan, asserted that "preventive care could do more for infants than for any other age group."

The infant's access to heath care determines whether a child grows into a healthy adult or suffers developmental disability, resulting in personal and family suffering, direct financial burdens on the community, and finally the indirect costs of impaired functioning as an adult.

Despite the importance of maternal and child health care, such care is unavailable to those who are either too poor to pay for it or too rich to qualify for government assistance.

That there is a strong connection between inadequate family income and inadequate access to health care should surprise no one. It is no secret that health care costs, from physicians' fees to hospital inpatient care expenses, have skyrocketed in recent years. While the Consumer Price Index has risen 112% since 1950, medical costs have risen 191.1% in the same period.

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Maternal and child care have not been spared these astronomical cost increases. In an article headlined "Staggering Expenses of Having a Baby," the New York Times on January 23, 1976, using statistics compiled by the United Hospital Fund, pointed out that maternity room rates in all New York City hospitals had risen in the past four years from an average of $108 per day to $161 for private accommodations, and from $86 per day to $122 for multi-bed rooms. Quoting Blue Cross/Blue Shield statistics, the Times said physician fees relative to a course of pregnancy had risen from $500 to $700 in the past four years, but that often obstetricians charge as much as $1,000.

Blue Cross, the major insurer for hospital care in the Washington area estimates that there has occurred in that area in the past year alone a 15% increase in overall hospital costs. A day in a Washington area hospital now costs $213.00.

The reasons behind hospital and physician cost increase are varied and complex yet they are a fact and they are unlikely to disappear in the foreseeable future. And, while the costs of maternal-child care climb, insurance coverage for such care, is pitifully inadequate.

The President's Commission on Population Growth and the American Future reported in 1972 that "very few private health plans pay for delivery costs or for well baby care."

Nine million Blue Cross/Blue Shield customers in southern New York state have only hospital coverage, which in the most popular plan

pays $200 toward the hospital bill. This pays on the average for one day of hospital care while the average maternity stay is four or five days. Those 5.4 million New Yorkers who also carry BC/BS physician's fee coverage receive an additional $250 toward fees which, as we have seen, range between $700 and $1,000.

And even private health insurance with its minimal aptitude for meeting the nation's maternal and child health care needs, is growing increasingly more expensive to purchase. Earlier this year Blue Cross/Blue Shield citing increased hospital costs, announced a 47% to 60% increase in its premiums nationwide. As a result of the premium rate increase, a family with 180 days of hospitalization coverage will pay, as of April 1, $857 per year instead of $549.

It is not surprising then that Social Security Administration data shows that:

> "Health insurance is inadequate to meet the medical expenses of many families. Especially at risk are the poor in the labor force; in FY 1973, only 40% had some insurance, less than 10% had insurance for non-hospital services. "

It should be clear then that inadequate financial resources during pregnancy severely limit maternal and child access to vital health services.

This strong link between low family income and inadequate access to health care has been the subject of exhaustive documentation. The National Research Council found that "poverty, and its corollary, lack of prenatal care....contributes to the incidence of....illness in the child." The Council strongly recommended that "(a) national policy for children and families should begin with a program to ensure that families have the minimum income necessary to provide adequate....care."

Limited income can also bar maternal access to the other vital ingredient for maternal and child well being: adequate nutrition. Good nutrition during pregnancy is as important as good health care, the two being complementary, each ineffective without the other.

Of the 3 million births in the United States annually, birth defects afflict 200,000 newborns and birth defects (especially mental retardation) are closely linked to maternal nutrition.

Although excellent nourishment should be available to all people all during their lives, experiments have indicated that even those females who were deprived of the benefits of good nutrition before pregnancy bore children of normal size where a program of good nourishment was begun with the onset of pregnancy.

Effects on overall growth of offspring are not the only phenomena observed when maternal malnutrition occurs. Significant metabolic changes in the progeny of malnourished animals have been noted. Metabolic imbalances are usually characterized by increased consumption relative to body weight and active tissue mass at equal age and by reduced feed-efficiency at equal body weight.

Studies have also shown in some animals that maternal malnutrition results in a reduced number of cells in the placenta and in all fetal organs that were examined, including the brain. A reduced number of brain cells, incidentally is never remedied by feeding or otherwise after birth.

Other experiments point to a measure of unpredictability with respect to the effect of maternal malnutrition on various fetal organs. In rats, maternal malnutrition has been seen to affect different fetal organs differently. For example, a greater deficit of DNA has been found in the thymus than in other organs. In view of the immunological functions of the thymus, this deficit poses the interesting question of whether maternal malnutrition may interfere with the immunity mechanism of the newborn. This may be a clue to why low birth weight human infants are prone to infection.

The effects on pregnancy of maternal nutrition have also been seen in studies of large human populations. During World War II, when pregnant women were accorded special priority under the food rationing system, the stillbirth rate fell from a previously stable figure of 38 per 1,000 live births to 28, in spite of an otherwise deteriorating physical and psychological environment.

Experience in Japan demonstrated that by 1963-64 birth weights had increased markedly from the immediate post-war period and had, in fact, surpassed the highest pre-war levels. A significant point is that during this period, socio-economic conditions including food availability, improved dramatically.

A specific way in which diet during pregnancy affects the outcome of human pregnancy is seen in the relationship between maternal weight gain and infant birth weight. A number of studies have shown a strong positive association between the total weight gain of the mother and the birth weight of the infant. Similarly, there is a strong positive association between the pre-pregnancy weight of the mother and the birth weight of the infant.

The concept has also become well-established that nutrition is related to the occurrence and course of toxemia in pregnant women.

The National Research Council in the strongest possible language urged emphasis on a single standard of high quality maternity care, including proper nutrition for all pregnant women. The Council warned officials responsible for planning and implementing food programs, especially for families with inadequate budgets, that physiological needs place infants and pregnant women in the highest priority.

And yet, when her income is not maintained during pregnancy, a woman and her child are denied access to the diet and health care they require.

It is beyond doubt that the recent Supreme Court decision in GE v. Gilbert impacts adversely on maternal and child health by restricting maternal access to adequate nutrition and health care, as well as by creating a stress situation with which the pregnant woman must cope. It is unacceptable in a nation which has always professed a strong commitment to preserving the public health to blind itself to the critical need for adequate attention to the health of the pregnant woman and her child.

The offered amendment would require that employers cease discriminating against working women under the guise of pregnancy exclusions of any kind. The amendments would prevent employers from forcing leave upon women who do not want it and from discriminating against women in hiring and promotion. But the greatest impact of the amendment would be in assuring that employers can no longer arbitrarily refuse to guarantee a woman's financial integrity during pregnancy, the most natural and socially vital of all disabilities, while cheerfully subsidizing male employees through periods of recovery from vasectomies or hair transplants.

Passage of this legislation will not alter this country's pressing need for a program of national health insurance and for a total assessment of our system for monitoring the health of our pregnant women. Our system is put to shame by those found in Sweden, Denmark, the Netherlands and even in Sierra Leone. Still, this important amendment will take a step toward guaranteeing that no pregnant female will again be forced to choose between pre-natal care and electricity.

ADVANCING VOLUNTARY LEADERSHIP IN A CHANGING WORLD

Chamber of Commerce of the United States
NATIONAL ECONOMIC DEVELOPMENT GROUP
202 659-6120

1615 H STREET, N.W.
WASHINGTON, D.C. 20062

May 12, 1977

SENATOR WILLIAMS, N.J.
1977 MAY 17 PM 5 40

Honorable Harrison A. Williams, Jr.
Chairman, Labor Subcommittee
Senate Committee on Human Resources
Washington, D. C. 20510

Re: Statement on S. 995

Dear Mr. Chairman:

The Chamber of Commerce of the United States was unable to testify on this most important legislation, but we would like to offer the enclosed statement for the record. I was able to hear some of the testimony and I am concerned about the possibility of erroneous conclusions being drawn from the testimony of Dean Putman of the University of Hawaii. The statistics might lead one to conclude that short term disability insurance in Hawaii costs more for men than for women because:

1) men receive a higher average weekly benefit, and

2) because the average duration of disability is longer for men.

All point (1) shows is that males in Hawaii have higher paying jobs than females since the rate of disability benefit is related to the individual's pay. Presumably, equal employment and equal pay laws will ultimately result in pay comparability for females at some future date. As to point (2), data indicate that although men tend to have longer disabilities, they have them less frequently than females who have shorter disabilities more often. The cost of coverage cannot be computed from Dean Putman's material because cost depends on not only on average duration of disability and average benefit paid, but also on the percentage disabled. To develop the latter figure, one must have the number of claims and the number of workers exposed to the risk of disability during the calendar year. Thus, actuaries typically produce this figure. The fact of the matter is that disability rates for women are higher because they make a greater proportion of claims.

Very truly yours,

G. Brockwel Heylin

G. Brockwel Heylin
Labor Relations Attorney
(202) 659-6103

Enclosure

STATEMENT
on
S. 995
for submission to the
SUBCOMMITTEE ON LABOR
of the
SENATE HUMAN RESOURCES COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
G. Brockwel Heylin

The following statement is submitted to the Subcommittee on behalf of the Chamber of Commerce of the United States which is the largest association of business and professional organizations in the United States. Principal spokesman for the American business community, the National Chamber represents over 3,500 trade associations and chambers of commerce. It has a direct membership of over 62,000 business firms. On behalf of the National Chamber, I wish to thank the Committee for this opportunity to present the Chamber's opposition to S. 995, a bill to prohibit employment distinctions made on the basis of pregnancy, including employee ineligibility for disability benefits for maternity related purposes.

The issue before this Subcommittee is whether to treat a natural, healthy and typically voluntary condition, pregnancy, like abnormal and undesirable conditions such as illnesses and injuries. For the reasons that will be discussed in our statement, we think the answer must be "no".

Purpose and Effect of the Bill

The bill is ostensibly designed in effect to reverse the Supreme Court decision in General Electric Co. et al v. Gilbert et al (45 U.S. Law Week 4031 (1976)) in which the present language of Title VII of the Civil Rights Act of 1964 was interpreted as not requiring the payment of sickness and accident disability benefits for pregnancy absences. S. 995 does that, of course, but the effect of the bill goes beyond Gilbert,[1/] and requires not only pay for pregnancy leave if disability coverage is provided, but also requires coverage for maternity expenses if all other employee medical/surgical problems are covered, as well as non-discrimination for pregnancy in other conditions of employment.[2/]

1/ In fact, the language is so broad--"women affected by pregnancy, childbirth or related medical conditions (emphasis added)"--that it is limited neither to employees nor to persons who are pregnant themselves, just that they be "affected."

2/ "Fringe benefit" is defined by EEOC as "medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment." 29 C.F.R. §1604.10(a)

The net effect of S. 995, by ordering non-discrimination on the basis of pregnancy, is to require employers to provide:

* Pregnancy leave of equal duration as any leave provided for illness and injury;
* Pregnancy leave pay of the same amount and duration as pay for disabilities;
* Maternity/abortion medical coverage if other medical surgical conditions are covered;[3/]
* Non-discrimination in other fringe benefits (pensions, seniority, profit sharing, etc.).

Occupational Health

S. 995 could present job health problems. For example, it requires that "women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment related purposes." This would prevent an employer from refusing certain work to a pregnant employee where such work arguably posed a threat to the health of either the mother-to-be or her unborn child. Even though the prospective mother might arguably be considered to have assumed the risk by asking to work in such circumstances, injury to the fetus might give the child a cause of action against the employer who, under the bill, would be powerless to deny the work to the child's mother during the pregnancy.

Medical Problems

Another effect of the bill would be to offer substantial opportunities for abuse of the protection S. 995 provides. The most obvious would be the fact that leave and payments for pregnancy might amount to severance pay, rather than disability pay, in many cases. Data show that about half of females taking pregnancy leave do not return to work after their babies are born, whereas almost 100% of other workers taking disability leave do return to work. The pregnancy disability benefits would become a severance pay which other (non-pregnant) employees cannot receive.

3/ This result puts employers and Congress in the middle of the "right-to-life" controversy because the language of S. 995 is broad enough to include abortion. Religious organizations in particular who are employers for Title VII purposes (i.e. Catholic school), may be particularly unhappy with mandatory abortion coverage where all other surgical/medical coverage is provided. /Although a Title VII exemption exists for religious organizations as to distinctions made on the basis of religion, there is no such exemption for sex based distinctions (§702,Civil Rights Act of 1964)/

The unique nature of pregnancy also will present problems for employers trying to control potential abuses. The fact that so many will no longer be in the workforce after giving birth could itself be the cause of abuse because an ex-employee has little to lose by claiming a disability where none exists. Insurance industry sources tell us that due to the threat of malpractice actions, and for other reasons, physicians are reluctant to reject a pregnant woman's claim of inability to work. Even if an employer wanted to have the diagnosis of inability to work confirmed by its own doctor, by the time a company medical person could examine the woman, she might be in fact unable to work. Because of the difficulty in determining the point at which a particular female is actually unable to work, it is nearly impossible to estimate accurately the cost of providing pregnancy disability pay. For this reason, industry plans and state plans typically limit coverage to a certain number of weeks.

In any event, doctors generally think in terms of medical conditions, not in terms of work capabilities; thus they could unnecessarily restrict employment possibilities of pregnant workers. During the postpartum healing period, repeated examinations to determine ability to work would increase the risk of infection to the recovering mother. (Present practice is to examine the new mother six weeks after delivery, assuming there are no complications.) All these examinations, of course, would ultimately increase already soaring medical costs.

Extent of Absence/Benefit

The bill apparently requires the same length of leave for pregnancy disability as for sickness and injury disabilities, although the average disability leave (exclusive of pregnancy) is a few weeks, even though much longer leave may be available under a plan.

Theoretically, a person who becomes ill on her second day of pregnancy could expect, depending on her employer's disability plan, months of disability leave and benefits. The experience of one large employer with 11,000 employees and a 40% female workforce with pregnancy disability coverage (in a mandatory coverage state) shows the potential for abuse and that the claim period may be longer than six weeks.[4/] Figures for 1976 showed an average claim period of 13.2 weeks, but, after disability benefit procedures were tightened up, early 1977 figures showed a 7.5 week period. An employer without a disability benefits

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4/ Fifteen weeks was the average duration of pregnancy disability based on 1,400 claims as reported in the Statistical Supplement, 1975 Annual Report, U.S. Railroad Retirement Board, Chicago, Illinois (Table C-18). A study of Xerox Corporation's experience with 631 claims during 1973-1975 showed an average pregnancy leave claim of 11.5 weeks.

plan but who allows leave for disability would be required under S. 995 to give leave to, and depending on company disability policy, to keep a position open indefinitely for, an employee on pregnancy leave. Current company policies allowing maternity leave beyond the typical period of actual disability (some policies allow as much as a year off) would come under scrutiny because they are a type of benefit not usually available for other absences, if disability becomes the standard for leave. As mentioned previously, employers not providing maternity coverage for employees while providing all other surgical/medical coverage would likely be required to furnish maternity and abortion benefits to female employees.

In some cases, people would seek a job merely to ensure coverage of their maternity expenses, since 60 to 70 percent of the plans become effective on the first day of work. To overcome this threat to plan solvency, plans might exclude either coverage of any disability for one year following initial employment or coverage of pre-existing conditions.

These are just some of the effects of the bill, but we see other serious flaws in the approach of S. 995. First, the cost of disability benefits for pregnancy would be considerable. In fact, employers having a large proportion of female employees would face such a substantial increase in disability plan expenditures that such plans might be dropped or employers would avoid entering into new plans.

Second, the high cost of the benefit would either reduce other benefits or result in an increase in total benefit cost. A reduction in benefits could deprive both pregnant and non-pregnant workers of funds needed for serious illness and/or injuries, while providing money for a typically healthy condition--pregnancy. Providing the benefit through increases in total benefit cost in employer paid plans could force prices higher, reducing the competitiveness of the employer's products or services in the market place.5/

Bureau of Labor Statistics data for 1975 showed 94,793,000 people in the U.S. workforce. Of those 37,087,000 were females and of those females 25,057,000 were of childbearing age (16-44). Actuarial figures show that the likelihood of a female of childbearing age actually having a child is about one in twenty annually. Disability insurance costs for groups greatly increase in proportion to the number of females in the workforce. The table below shows monthly rates for a typical disability plan paying $100 per week in an average workforce having 25 or more employees.

5/ In employee paid or contributory plans, employees would bear either all or part of the increase.

Table 1[6/]

Number of females in workforce	Rate without pregnancy disability	Rate with 6 weeks of pregnancy disability	Rate with unlimited pregnancy disability
0 - 11%	$ 8.00	$ 8.10	$ 8.30
21 - 31%	9.20	9.80	11.00
41 - 51%	10.50	11.60	13.80
71 - 81%	12.50	14.30	17.90
91 - 100%	13.70	15.90	20.30

/Source: Aetna Manual for disability rates, August, 1974/

Table 1 shows clearly that employers having a large proportion of female employees pay a high disability premium which would be even higher if the benefit were required for pregnancy leave. The Chamber believes that equal opportunity is the appropriate vehicle for assuring female workers better paying jobs. Unfortunately, however, some industries having a high proportion of women also tend to pay lower wages, and thus those employees would suffer a disproportionate injury if existing disability benefits were dropped or reduced leaving them to bear disability costs on their low wages. Denying a disability benefit to a higher paid employee does not have the adverse impact that denying such a benefit to a less well paid employee would have.

Cost Increases Due to S. 995

Not only would costs rise for employers having a substantial proportion of female employees, but the expense for medical and disability coverage would increase generally. Data collected for use during lower court proceedings in the Gilbert case showed that, for the plans in effect in 1973, the annual cost of adding maternity benefits of $70 per week to the sickness and accident disability income plans in effect in the United States would have been $1.35 billion, or about $6.50 from each citizen of the United States, assuming a population of 200 million. Since the average benefit has risen from $70 per week to $100, $1.7 billion would be the current approximate cost. In addition, benefit data submitted by General Electric in the Gilbert case showed that benefits received by females cost 170% of the cost of the male benefit under the existing plan which did not cover pregnancy, but that cost of benefits for females would have been 210% if six weeks maternity income was provided and from 300-330% where full maternity coverage was provided. /Brief for General Electric Company, p. 8,9, U.S. Sup. Ct. Nos. 74-1589, 1590./ Thus,

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6/ Assume average age distributions. As the age of female employees goes down, the rate goes up for pregnancy disability benefits.

under existing plans, it would seem that if distribution of benefits is a concern, males are in fact the ones suffering discrimination under current benefit plans.

Payment for Costs

If S. 995 is enacted, the anticipated increase in disability and medical costs would be at least 20% for an employer having a typical workforce as state experience infra, shows.

For example, one large employer which voluntarily added the benefit for employees at its corporate headquarters experienced an increase of 50c per month on a $2.95 base for disability coverage.

The additional costs for the benefit would have to be borne by males and by females not having children by reducing the benefit package if the employer was unable to enlarge its contribution to the plan. Or, if the contribution could be increased, the employer would pass the higher costs along to its customers and the public. If, as the House has proposed in H.R. 6075, the benefit package could not be reduced, then employers would be encouraged to "cash out" their disability plans and give workers a fixed amount to get their own coverage.

In employee paid plans or contributory plans, workers themselves would bear increased costs.

Experience with State Mandated Plans

As the attached Federal Bar Association analysis of some state pregnancy disability requirements indicates, the law in this area is in a state of flux. Thus, New Jersey has an eight week (four before delivery and four after) coverage and California has six weeks (three before delivery and three after). State figures we have obtained show that as employees become aware of sickness and accident disability coverage for normal pregnancy, the proportion of benefit attributable to pregnancy claims increases. Some states have shortened the length of the benefit for pregnancy leave, apparently due to excessive costs. The Rhode Island plan, for example, provided benefits for 14 weeks (six weeks before delivery and eight weeks after) through 1969, but was changed to a flat fee in 1970 because of fears for the fiscal integrity of the temporary disability insurance (TDI) fund. And, in Hawaii, where some witnesses before the House Employment Opportunities Subcommittee suggested there was no cost increase, Traveler's Insurance Company reported 17% of total temporary disability insurance benefits for pregnancy in 1974, 18.5% in 1975 and 21.6% in 1976. Aetna Life Insurance Company a reported 8.8% in pregnancy TDI payments in 1973 and a jump to 26.6% in 1974 and 26.7% in 1975. Metropolitan Life Insurance Company reported its Hawaiian experience in proportion of pregnancy claims to total TDI benefits as 10.93% for 1973, 29.26% for 1974, 25.0%

for 1975 and 20.8% for 1976. Thus, cost experience in Hawaii leads to the expectation of at least a 20% cost increase for pregnancy disability coverage.6/

Government Involvement in Determining Employee Benefits

S. 995 injects the government into the process of free collective bargaining under which, up to now, the amount of wages and the array of fringe benefits has been determined by employer and employees. It is not difficult to determine that by supporting this legislation, organized labor frees itself from having to bargain for the benefit.

The amount and quality of employee benefits is typically determined in accordance with industry and competitive personnel practices by non-union employers, or through collective bargaining by unionized employers. The National Labor Relations Act specifically forbids government determination of contract terms. /H.K. Porter v. N.L.R.B., 297 U.S. 99 (1970)/ S. 995, however, mandates a fringe benefit for a certain group of workers. Thus, no longer can employers and employees flexibly fashion that selection of disability benefits which they believe will most appropriately meet the needs of that particular workforce. For example, under present law, a disability plan can be as narrowly focused as desired. Thus, a program could be limited to injuries or certain illnesses, all other conditions being excluded. This makes it possible for an employer to reduce the costs of the plan. But the bill would attach expensive pregnancy disability requirements to all plans, no matter how limited the particular plan happens to be. In some cases, the plan might cover pregnancy where it fails to include what people think of as conditions more typical of sickness and accident coverage. It is true that the General Electric plan discussed in Gilbert covered virtually everything except pregnancy related conditions, but it is also true that many disability income plans are much less inclusive than the General Electric one. Mandating more inclusive plans could force some employers to drop the existing plans altogether. And freezing benefits as Section 2 of the House companion bill would do, further limits employer flexibility in selecting the best plan for its employees' needs.

6/ Although there was some testimony offered in the House hearing on the companion bill to S. 995 regarding the minimal effect on actual insurance rates of Hawaii's plan, the absence of a rate increase does not indicate that there was no cost increase. For example, an insurance company typically can absorb some cost increases without immediately passing it along to its customers. Thus, the insurer's profit may be reduced or it may return a smaller dividend on premium paid by its policy holders. But there is no "free lunch" and an increase in benefits, which maternity disability coverage certainly will mean for many employers, is obviously going to necessitate increased contributions to a plan.

Pregnancy Disability Provisions in Existing Plans

Some employers do cover pregnancy absences in their disability plans. In 1973 about 40% of the U.S. workforce under age 65, some 32 million employees, was covered by sickness and accident disability insurance. The benefit periods varied from 13 weeks (45%) to 26 weeks (50%) or 52 weeks (5%), but only 40% of the plans (covering 13 million employees) provided a pregnancy benefit, usually limited to six weeks. (General Electric brief, p. 8, U.S. Sup. Ct. No. 74-1589) But even where pregnancy coverage is provided, it is limited as to duration and usually the employee need not show disability. S. 995 on the other hand, would require both a showing of disability and that pregnancy benefits be provided for the full length of the disability. That would extend what average sickness or accident claims show is typically a two week benefit to up to 52 weeks of pregnancy benefit for the 5% of employees provided a year of disability benefits. By imposing potentially high costs on holders of plans, S. 995 acts as a disincentive for the other 60% of the employers to start a plan. The public interest would be better served by encouraging disability coverage rather than discouraging it.

The fact that some employers, usually large companies, have decided--and can afford--to provide pregnancy disability or maternity benefits does not mean that such benefits should be universally required in all employee benefit plans by statute.

Conclusion

The bill under consideration poses serious threats to the financial position of disability plans as well as potentially discouraging the creation of plans for employees who are not covered. Serious questions concerning OSHA and potential abuses of the benefit also exist. For these reasons, the Chamber of Commerce of the United States is opposed to enactment of S. 995.

Attachment

MAJOR INDUSTRIAL STATES REQUIRING COVERAGE OF PREGNANCY AS AN EMPLOYEE DISABILITY

CALIFORNIA -

Included in State FEP Guidelines and states disability law.
No Judicial ruling yet.

CONNECTICUT -

Contained in State FEP Guidelines.
State Commission assumes State law prevails over Gilbert, but no judicial ruling yet.

ILLINOIS -

Contained in State FEP Guidelines and in State Commission Rulings.
State Commission assumes State law prevails over Gilbert, but no judicial ruling yet.

MICHIGAN -

Contained in Civil Rights Department Guidelines and in the Civil Rights Department rulings.
Civil Rights Department intends to apply its guidelines notwithstanding Gilbert.

MISSOURI -

Contained in State FEP Guidelines and in State Commission Rulings.
State Commission intends to apply its guidelines notwithstanding Gilbert.

NEW JERSEY -

Contained in State FEP Guidelines and in State Commission rulings.
State Commission assumes State law prevails over Gilbert, but no judicial ruling yet.

NEW YORK -

Contained in State FEP Guidelines and in State Commission rulings.
By judicial ruling, State law prevails.

PENNSYLVANIA -

Contained in State FEP Guidelines.
State Commission assumes State law prevails over Gilbert, but no judicial ruling yet.

WISCONSIN -

Contained in State FEP Guidelines and in judicial rulings.
State statute prevails over Gilbert.

(Note: Major industrial states that do not require coverage of pregnancy as a disability include Ohio and Texas.)

90-785 O - 77 - 32

american retail federation
1616 H Street, N.W.
Washington, D.C. 20006

Statement of
AMERICAN RETAIL FEDERATION
on
S 995

Before
The Labor Subcommittee,
Committee on Human Resources

United States Senate

May 16, 1977
Washington, DC

This statement is submitted on S 995, a bill "to prohibit sex discrimination on the basis of pregnancy," including employee ineligibility for disability benefits.

The American Retail Federation is made up of state retail associations in all 50 states and the District of Columbia, and 31 national retail associations. Through these affiliates the Federation represents over a million stores, employing 13,000,000 persons, out of a total of over 14,000,000 employed in all of retailing.

At the outset, we should point out that our retailer members are particularly concerned with the effects of this legislation because retailing is a segment of the economy which employs an exceptionally large number and percentage of female employees. Department of Labor figures indicate that, as of July, 1976, 6.2 million women were employed by retailers. This figure represents almost half of the total retail work force. In the case of some of our members, the percentage of female employees is considerably higher, frequently in the area of 65% - 75%. This factor must be considered in connection with the fact that retailing is a heavily labor-intensive sector of the economy. The result is that the costs of employee benefit programs have a greater impact on retailers than on other industries.

ARF supports the principle of non-discrimination on the basis of sex in all areas of employment. We believe that any legislation designed to accomplish this goal must not unduly deprive employers of the right to design benefit plans which allocate the funds available for fringe benefit programs in such a fashion as to provide all employees with benefits most needed by them.

We do not believe that S 995 would allow an employer to do this. By requiring all plans--even those which are structured so as to provide only limited benefits--to include coverage for pregnancy, childbirth, and related conditions, the bill would deprive an employer and his employees of their right to structure a benefit plan which contains only those features deemed most essential for the protection of all employees.

S 995, as presently drafted, could result in forms of discriminiation against other employees, men and women, who are not its intended beneficiaries and, in some cases, could have an effect on child-bearing employees,which is the opposite of its presumptive goal. By regarding pregnancy and childbirth as disabilities, and by prohibiting distinctions on the basis of these "disabilities," the bill could be read as prohibiting employment practices which provide pregnant women or new mothers with benefits not available to other employees. For example, many of our retailer members' medical plans provide benefits only for catastrophic illnesses and non-elective surgery, but make an exception to this general limitation by providing medical payments for maternity costs. If such employers are required to treat pregnant workers no differently than others, this exception, from the perspective of non-pregnant workers, would be viewed as discriminatory. Similarly, some of our members allow women employees who have children to take leaves of absence for periods ranging up to one year after the birth of their child with no requirement that such employees show that the leave is medically necessary. A denial of this benefit to other employees who have not themselves given birth would be viewed as a discriminatory

practice made solely "on the basis of sex" (i.e. pregnancy) under S 995. Moreover, the bill, according to some proponents, would require that when the employee returns from her leave of absence, she would be entitled to the same salary, seniority, vacation, retirement, and other benefits as fellow employees who had continued to work, a fact which such employees might challenge if that privilege were not extended to all workers.

In short, ARF regards S 995 as a hastily-drawn solution to a problem which should be studied further. We are concerned that inadequate attention has been paid to the economic and competitive impact of this legislation on industries like retailing which stand to be most heavily affected by its requirements. We are concerned that too little consideration has been given to the medical, actuarial, and statistical factors which underlie the reluctance of many employers to provide coverage for pregnancy-related conditions. While there was testimony before the subcommittee that the average disability period for pregnant workers is 6 to 8 weeks, no explanation for this figure has been provided, nor has the effect of a statute which, in many cases, would mandate extended paid leaves, been assessed. It is not unlikely that workers' and physicians' views as to the length of a "disability" will be colored by their awareness that the worker continues to be paid during the disability period. The recent experience of one of our members bears this out. In the month following a state court decision requiring employers to include pregnancy

coverage in disability plans, that employer received five applications for maternity disability pay. The shortest period of disability claimed was thirteen weeks. The longest was nine months.

We believe that Congress should consider whether the problem which S 995 seeks to address (which the bill views as a discrimination problem, although the Supreme Court in General Electric v. Gilbert, 45 U.S.L. W. 4031, expressly held to the contrary) could not be more properly addressed through programs designed to provide incentives to coverage for pregnancy benefits in all plans, rather than prohibitions aimed only against plans which do not have such coverage.

ARF urges the Subcommittee to schedule additional hearings on S 995, allowing retailers and others to gather documentation on these matters which was not previously assembled due to the short time between the introduction of the bill and the hearings held on it. Representatives of ARF would welcome the opportunity to discuss all aspects of this legislation with the Subcommittee and its staff.

NATIONAL CONFERENCE OF CATHOLIC BISHOPS
BISHOPS' COMMITTEE FOR PRO-LIFE ACTIVITIES
1312 MASSACHUSETTS AVENUE, N.W. • WASHINGTON, D.C. 20005 • 202/659-6673

April 22, 1977

Honorable Harrison A. Williams, Jr.
Chairman, Subcommittee on Labor
Room G237
Dirksen Senate Office Building
U.S. Senate
Washington, D.C. 20515

Dear Senator Williams:

I am writing to you on behalf of the U.S. Catholic Conference in regard to the proposed amendment to Title VII of the Civil Rights Act of 1964, "To prohibit Sex Discrimination on the Basis of Pregnancy."

The issue covered by this amendment, providing disability benefits to a pregnant woman to assist her in carrying through her pregnancy and in giving birth and immediate post-natal care to her child is a matter of social justice that has impact not only for pregnant women, their families and children, but also for the entire society. The welfare of the family, and especially mothers and children, is enhanced by programs insuring proper medical treatment and care. In fact, a system of family allowances, coupled with a national health program would provide the larger context for maternal and child health care, which would also insure disability benefits for women with problems associated with pregnancy and for birth and immediate post-natal care. Such a program respects the dignity and well being of women, and also the value and welfare of children throughout the months of pregnancy as well as after birth. Particularly at this time in history, when the new medical specialty of perinatology is opening so many new avenues of improving the outcome of pregnancy and insuring the safety and well being of pregnant women and their children during pregnancy and in the months immediately after birth, this nation should provide a far broader range of benefits.

The approach in this legislation is admittedly much narrower. It simply asserts that refusal to provide disability benefits for pregnancy is discriminatory, and it thus requires employers to provide such benefits. This narrow approach fails to properly address the needs of women and children.

Another weakness of the proposed amendment is that it implicitly provides the same disability benefits for elective abortion as for pregnancy care and birth. There is no principle of social justice or human rights that justifies elective abortion, which currently accounts for the destruction of more than one million children each year. Nor is there a theory of civil rights that allows anyone to unilaterally take any action that violates the rights of another living human being.

The necessity to support the well being of mothers and their children, along with the concomitant necessity to protect human life, prompts us to suggest the adoption of language which would give affirmative support to both of these values and to the welfare of the family as a whole. The suggestion we propose is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 701 of title VII of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions, and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. Neither 'pregnancy' nor 'related medical conditions' as used in this section may be construed to include abortion."

This suggested addition is necessary to protect Church agencies from being forced by the amendment to support or provide abortion services in violation of our religious tenets and conscience convictions.

Sincerely,

James T. McHugh

Msgr. James T. McHugh
Director

JTM:tm

MURRAY W. LATIMER
Industrial Relations Consultants

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JOSEPH J. SENTURIA
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1625 K STREET, NORTHWEST
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393-2811

May 27, 1977

The Honorable Harrison Williams, Chairman
Subcommittee on Labor
Committee on Human Resources
United States Senate
Washington, D. C.

Dear Senator Williams:

As an actuary interested in health insurance, and as an individual who regards the failure of many health insurance plans to include disabilities arising out of pregnancy as improper discrimination, I have been disturbed by what I have heard as to the estimates which have been presented to your Committee on the cost as equitable treatment of pregnancy disabilities.

To those unfamiliar with aggregate costs of existing employee health insurance plans, costs may, indeed, appear large. But the addition to present costs which would result from the elimination of the widespread (though by no means universal) discrimination, seems to me to be so small as not to warrant delay in action looking to that end.

While information is not as abundant as would be desirable, there is evidence sufficient, in my opinion, to show that the benefit increase resulting in inclusion, as compensable under all employee health insurance plans, of pregnancy disabilities, would be of the order of 3.75 percent in those plans which provide temporary income benefits and 3.50 percent to the cost of hospitalization plans. The additional 3.50 percent is subject to reduction because of benefits under existing plans, the precise magnitude of which I have not the data needed to estimate. There will be additions to the cost of plans which provide or pay toward the cost of medical and other related services needed because of pregnancy. But the information to which I have access are too fragmentary for a satisfactory

MURRAY W. LATIMER

estimate. But I know of no reason to suppose that relative costs of these services for maternity cases would be any higher than those specified for those areas which I have mentioned.

A detailed memorandum giving the bases for my estimates is attached.

Sincerely yours,

Murray W. Latimer

Fellow, Conference of Actuaries
in Public Practice
Fellow, Casualty Actuarial Society
Fellow, Canadian Institute of Actuaries
Member, American Academy of Actuaries

MWL:mt

Attachment

Cost of Maternity Care under Health Insurance Plans Maintained by Employers

A large fraction of the employees in the United States has some protection against loss of income resulting from cessation of wage payments during periods of disability and against hospital, medical and related costs resulting from such disability. A recent survey showed that, at the end of 1974, the numbers of wage and salaried workers covered by various forms of health insurance providing, with the administrative or financial aid (or aid of both types) of employers, protection against wage loss and expenses of health care during periods of temporary disability to be those in the following tabulation. The percentages of covered employees to the total and total contributions are also given. 1/

Item	Number	Percentage of all wage and salaried workers	Total contributions (Thousands)
Hospitalization	57,600,000	69.9	$11,437,200
Surgical expense)	56,100,000	68.1	(
)			(7,022,400
Regular medical)	54,900,000	66.5	(
Major medical	28,200,000	34.3	4,608,500
Wage loss	31,100,000	45.9	4,205,100

It is stated that "Sick-pay benefits were given in the case of normal pregnancy by approximately 25 percent of the plans." 2/ Plans providing reimbursement for wage loss do so partly by means of sick leave, others through insurance. Whether the 25 percent relates to both types is not clear. To what extent reimbursement for hospital, medical and related expenses related to maternity are covered is not indicated, but it is certain that the proportion of all such expenses of employee participants in the plans which are reimbursed is much less than for disabilities not related to maternity. This is partly because when any reimbursement is made for wages lost by and expenses of employees incurred because of maternity it does not represent the same proportion of wage and salary loss and of expenses incurred as would be true of disabilities resulting from causes unrelated to childbirth and partly because, in most plans, none of the expenses related to pregnancy and childbirth are covered.

This memorandum is addressed to the question of what costs, in addition to those now being incurred, would be involved if all insurance plans of employers were to provide that wage losses and other costs related to disability attendant upon childbirth were to be reimbursed to the same extent as wage losses and expenses incurred in connection with any other disability. It is assumed that the standard for judging whether or not a pregnant employee or an employee who has recently given birth to a child is able to work are standards comparable to those which would apply to any other disability.

The basic statistic needed is, of course, the number of births among females who have been insured for one of the types of plans which provide some form of disability benefit or for the reimbursement of expenses incurred because of the disability (or for the required services instead of reimbursement). The Society of Actuaries has, for a number of years, published statistics relating to the frequency of benefit payments under plans which provide benefits both for temporary disability unrelated to pregnancies and a similar payment providing benefits in event of pregnancy. In the latter case, the data relate to plans providing for a 6-week benefit, irrespective of the actual duration of the disability, some of which probably had a duration of less than 6 weeks.

The most recent compilation of the Society 3/ indicated that among 2677 "experience units" (separate employers for the most part) having less than 1000 employees there was, in the three years 1972-74, assuming 6 weeks per case, an average rate of 5.05 maternity cases per 1,000 employees, male and female. Data relating to the percentages of female employees to the total in plans providing maternity benefits were last published for the years 1968-70. 4/ The data on the proportions of female participants were published in groups which were quite broad: less than 11% female, 11 to 41%; 41 to 71% and 71% and over. Assuming the average percentages of female participants for each group to be 3, 22, 50 and 80, the proportions of women in the plans providing maternity benefits was 19.47 percent as compared with (using the same assumptions) 25.03 percent for plans providing no such benefits. That is, proportions of women among the group of plans providing maternity benefits was 77.79 percent of the proportion of women in plans which did not provide such benefits. Of the exposure under the plans reported, the percentage in those plans providing maternity benefits was 45.91. Then the average proportion, which women constituted of the exposure under all reporting plans in 1968-70, was 22.48. There is a more detailed classification of the percentages of female employees covered by plans providing for temporary disability benefits (but not maternity) available for 1972-1974. The proportion of female employees is reported by 10 percent intervals (under 11 percent, 11 percent to 21 percent, and so on). Assuming that the average proportion of female employees is 2 percentage points above the minimum of the range, the overall percentage of female participants would average 22.74

percent of the total. (The assumptions used to calculate the average for 1968-1970, if applied to 1972-74 data, would produce an average of 22.87 percent of female participants.) This was a reduction of 8.6 percent from 1968-70.

The proportion of reporting plans which provided maternity benefits in 1972-1974 (as measured by the exposure) dropped to 36.75 percent from 45.91 four years earlier. This probably indicates that the samples are not equally representative. If the proportion of women in plans which provided maternity benefits was also lower by 8.6 percent than in 1968-70, the average percentage of women in such plans in 1972-74 would be 21.00. If the 1968-70 proportion of plans providing maternity benefits had continued to apply, the percentage, in 1972-74, of those employees covered by all plans providing temporary disability benefits who were women would have been 20.53.

For a population composed entirely of women having the same marital and age composition as this group, with the proportions giving birth to a child the same for plans without maternity benefits as those plans providing them, the number of such women, per 1000 women, giving birth to a child in a period of one year, would be $\frac{5.05}{(.2053)}$ or 24.60.

There is a larger proportion of women of child bearing age in the labor force than in the population as a whole. The labor force data as published include no persons under 16 years of age. For the purposes of the following tabulation, it is assumed that there were, in July, 1974, 2,044,000 women aged 15 in the population and that 30 percent of them were in the labor force. Given these assumptions, women over 65 constituted 2.66 percent of the female labor force. The total population data exclude women under 15, and assume that those at ages 15-64 constitute 97.34 percent of the total. Comparative data for July, 1974, are shown in the following tabulation:

Age Group	Total Female Population 1974 (a)	Civilian Female Labor Force (July 1, 1974) (b)	Women not in Labor Force (c)
16-19	14.54%	14.85%	14.20%
20-24	13.09	16.24	9.64
25-29	21.22	11.57	22.30
30-34		8.66	
35-39	16.50	8.41	16.06
40-44		8.49	
45-49	17.42	9.08	16.83
50-54		8.88	
55-64	14.57	11.16	18.31
65 & over	2.66	2.66	2.66
Total	100.00%	100.00%	100.00%
Total 16-44	65.35	68.22	62.20
Median age	36.6	34.7	37.2
Total number (000's)	70,691	37,012	33,679

(a) Based on 1975 Statistical Abstract of the U.S., page 7 - assumes number at age 20 to be 1,950,000, and at 15, 2,044,000.

(b) Based on data in U. S. Department of Labor - Bureau of Labor Statistics "Employment and Earnings", August, 1974, page 20 - assumes a participation rate at age 15 of 30 percent.

(c) Assuming total population data applicable to July 1.

If the fertility rates as calculated by the U. S. National Center for Health Statistics for specified groups were applicable to the women in the labor force, the fertility rate for July, 1974, for that group would have been 70.2 as compared with the applicable 68.4. [5] The percentage of the total female labor force corresponding to the 70.2 fertility rate is 4.75. That is, 4.75 percent of all women in the labor force would give birth to a child in a one-year period at the fertility level of 1974. Thus, the percentage indicated by the insured maternity benefit data, 2.46, is 51.79 percent of the percentage derived on the assumption that the female population fertility rate applies to women in the labor force. With the 68.4 fertility rate as the base, the number of children born in a year to women in the labor force having a child in a period of a year would be 4.67 percent of the number of such women, indicating that labor force fertility is 52.68 percent of that of the total population.

The general population fertility rate, by age groups, applied to women in the civilian labor force with the July, 1974 age distribution, would indicate annual births among that group of 1,773,000. If the actual rates are such as to produce 52.68 percent of this number, the total would have been 934,000. The average number of women 16 years of age and over for the year 1974 was 98.42 percent of the number in July. [6] Assuming this percentage applies at age 15 (and it is probably too high for that age), the births at the July rate are to be lowered to 919,000 as the appropriate number for the year. There were 3,160,000 [7] births in the United States in 1974, so that, if there were 919,000 born to women in the civilian labor force, there must have been 2,241,000 born to other women. This implies a fertility rate among the other women of 107.0, slightly above the total fertility rate of all women in 1964. [8]

No doubt the fertility rate among employed women has always been lower than the rate for women not in the labor force. There is some indication that this differential has been increasing. In the years 1972-1974, the amount of maternity benefits payable under insured temporary disability plans was only 38 percent of the expected for plans having a maximum duration of benefits (for a disability other than one arising out of maternity) of 13 weeks and 40 percent for plans having a maximum duration of 26 weeks. Some of this decline may be attributable to changes in industry or age distributions (though the latter would tend to increase the percentages), or to a smaller percentage of women covered (though, if expected benefits are not to lose significance) a reduction in the proportion of insured women should be reflected in the expectation. However that may be, the average fertility rate for the population averaged 109.2 in the years 1947-1949 [9] to 70.3 in 1972-74 [5], a reduction of only 36 percent, as compared with over 60 percent in the actual/expected ratio experienced by insured temporary disability income plans.

In 1975 and 1976, the fertility rate tended downwards, the preliminary rate for 1976 being 65.7.[10] However, there appears to have been an upward movement since August, 1976[11], and I leave unchanged the estimate of 919,000 as the number of births to be expected in a year from women in the civilian force at the number and age composition as of July, 1974.

The average female civilian labor force in 1976 was 7.23 percent above 1974, and the first two months of 1977 exceeded the corresponding period in 1976 by 3.91 percent.[12]. I estimate the level for 1978 to be 16 percent above that for 1974, and the number of births to women in the labor force for 1978 to be 1,066,000.

Women are, of course, now employed in almost every industry. But there are some industries in which they constitute a very large part of the labor force. The exposure, measured by dollars per week, of the weekly indemnity which would have become payable to all insured persons in these industries and trades if they were to become disabled (combined for the years 1970-1974) and the average weekly wages of employees in those same industries and trades, is shown in the following tabulation:

	Weekly Indemnity Exposed (a)	Average Weekly Wages February, 1977 (b)
Food and kindred manufacturing	$10,309	$206.19
Textile manufacturing	5,941	153.98
Apparel manufacturing	2,350	124.25
Electrical machinery, equipment and supplies manufacturing	22,429	207.95
Wholesale trade	10,774	138.18
Retail trade - general merchandise	9,993	108.70
Food stores	1,854	146.24
Apparel and accessory stores	1,623	97.53
Other retail	1,283	146.16
Finance, insurance and real estate	3,358	165.88
Services	13,733	153.97
Total and average	$83,647	$165.70

(a) Same as footnote 3/.
(b) See periodical referred to in footnote 6/, pages 94-102.

The wages are the averages for all employees, male and female, in these industries and trades. While most data are not reported separately by sex, it is the usual rule that the average compensation of women is substantially lower than for men. In the federal civil service, there is a high concentration of women in lower grades and in almost complete absence of representation at the top. 13/ Assuming that the average salary in each of three broad groups stands at the middle of the group (which means that in the classifications within these groups there is no similar concentration of women at the lower end), the average salary of women in the federal civil service would, in 1974, be 75.8 percent that of men. If this percentage applies to private industry (few, if any, of which has an organization such as the Civil Service Commission to enforce classification standards and uniformity in the classification of jobs), the average weekly wage for women in the industries in the list, for February, 1977, would be $125.60.

There is an appreciable group of women covered by disability income plans in higher wage industries, so that the $125.60 is probably an understatement. Supposing that the industries in the preceding table account for two-thirds of the women covered by temporary disability insurance, and that the remainder are mostly in other manufacturing industries (the large group of women in the communications industry is covered by uninsured temporary disability income plans) where the average weekly wage, in February, 1977, using the weekly disability income exposure for the years 1970-74 as weights, was $194.90, then the overall average wage for the industries in which women are covered for insured disability income benefits would be $175.43. Assuming the average weekly wage for women in these industries to be 75.8 percent that of men and women combined, the average for women in February, 1977 was $132.98.

Unpublished reports filed by basic steel companies with the United Steelworkers of America indicate the average weekly sick and accident benefit in 1975 to have been 42.4 percent of the average weekly wage in the basic steel industry in that year as compiled by the Bureau of Labor Statistics. Under the Steelworkers insurance agreements with the industry, benefits are fixed in terms of dollars, and in 1976, the average weekly sick and accident benefit was 39.8 percent of the average wage. Steel benefits are fixed in relation to standard wage rates which do not include incentives, and average between 50 and 60 percent of the wages calculated without regard to incentives, the higher percentage being applicable when the benefit rate is changed, the lower percentage just before a change occurs. I estimate the overall weekly benefit to be 55 percent of the average weekly wages of beneficiaries.

Because most insured temporary disability benefit plans which provide maternity benefits pay for a specified number of weeks, irrespective of the duration of the actual disability period, insurance company records do not reflect those actual periods. The records of the Hawaii compulsory sick benefit plans cover a short period and Hawaii can hardly be considered a representative state. I have used 8 weeks as appropriate for an estimate of the duration of maternity benefits. 14/

I have estimated the maternity benefits which would be paid in 1978 under plans for temporary disability benefits by combining the above facts and estimates and making certain further assumptions:

Percentage of the labor force covered by temporary disability benefit plans in 1974: 34.17, 31,100,000 covered, 91,011,000 in the civilian labor force. 15/

Assuming that the coverage of women under the plans has increased since 1974 in the same ratio as has the number of women in the labor force - 16 percent, the number of births by women covered in the plans: [.3417 (1,066,000)] - 364,000.

Assumed average weekly wage in 1978: 10 percent above level for early 1977 - $146.28.

Average benefit for period of disability:

Weekly - .55($146.28) - $80.45

Total - 8($80.45) - $643.60

Aggregate annual benefits:

($643.60) 364,000 - $234,000,000

Benefits presently being paid would be much smaller for two reasons: only 20.53 percent of the presently covered female participants are eligible for maternity benefits and the duration of benefits is six rather than eight weeks. Present benefits are thus $36,000,000.

The increase over the maternity benefits presently being paid would be $198,000,000.

Benefits under temporary disability plans in 1974 totalled $3,527,400.16/ It was assumed that the number of covered women increased between 1974 and 1978 by the same percentage as the increase in the labor force - 16 percent. An increase of 10 percent in average wages between early 1977 and the average for 1978 was assumed. This was equivalent to assuming an increase of 29 percent between the years 1974 and 1978. Given these assumptions, presumably the benefits for 1978, for plans having the 1974 provisions, would be $5,278,400,000. The $198,000,000 would add 3.75 percent to the total.

Reports to the United Steelworkers of America from basic steel companies with plans providing hospital benefits for union members and their dependents indicated an average cost of providing the hospital service specified in the plan in maternity cases was $717 in 1976, and inpatient days per confinement averaged 4.0.

The benefits under the insurance agreements between the Steelworkers and basic steel companies are superior to those in most hospitalization plans for two principal reasons: benefits under plans covering steelworkers cover a substantially larger fraction of the total costs than do most such plans, and steelworkers are concentrated in urban areas where hospital costs are significantly above average. An overall estimate for present purposes can best be made at a later stage.

The increase in the costs of maternity benefits under steel company hospitalization plans in the period 1972-76 was 64 percent, and in the two years 1972-74, 37 percent. In the same period, the average medicare bill for hospital inpatients increased 59 percent. 17/ There is no reason to expect any major differences in the rates of cost escalation as between different types of hospital care not involving use of equipment, such as kidney dialysis machines, embodying major new technological developments.

There has been some acceleration in the rate of increase in hospital costs in the last year or two, as compared with the preceding couple of years. I assume that the increase in the hospitalization benefits disbursed under employee hospitalization benefit plans between 1974 and 1978 will be 55 percent. And I estimate that the benefits under hospitalization benefit plans covering steelworkers have provided benefits sufficiently higher than average that the level of maternity benefits generally in 1978 will be 25 percent above 1976 steel maternity benefits.

On the basis of the foregoing assumptions, these figures result:

Proportion of civilian labor force covered by hospitalization benefits in 1974: 63.13 percent 18/

Number of covered births: (.6313 (1,066,000))- 673,000

Benefit per case: 1.25 ($717) - $896

Total maternity benefits in 1978 - $603,000,000

Total employee hospitalization benefits in 1974 were $11,059,000,000 19/ From 1972 to 1976, medicare costs per inpatient hospital case increased 59 percent and steelworker hospitalization costs per case rose 64 percent. For total hospitalization benefits, I estimate a 55 percent rise from 1974 to 1978. This is at the same annual rate as in the two years 1972-74. This would make total employee hospitalization benefits for maternity 3.5 percent of total hospital benefits for the 1974 coverage which covers maternity cases to an extent which I have not been able to ascertain. Thus the offset against the 3.5 percent cannot be estimated.

I have not had access to the data which would be needed to estimate cost of the services of physicians in maternity cases under employee medical care plans.

Footnotes

1/ Social Security Bulletin, September, 1976, pp. 5-8, coverage for wage losses related to private industry only.

2/ Idem, p. 17.

3/ Society of Actuaries, 1975 Reports of Mortality and Morbidity Experience, pp. 241-251.

4/ Society of Actuaries, 1971 Reports of Mortality and Morbidity Experience, pp. 190-202.

5/ See, for example, Statistical Abstract of the United States, 1976, p. 54.

6/ For the average number in 1974, see U. S. Department of Labor, Bureau of Labor Statistics "Employment and Earnings", April, 1977, p. 20.

7/ See reference in footnote 5/, p. 53.

8/ Statistical Abstract of the United States for 1970, p. 48.

9/ Historical Statistics of the U. S. - Colonial Times to 1957, p. 23.

10/ Public Health Service, Health Resources Administration, "Monthly Vital Statistics Report", April 1, 1977, p. 8. 65.7 is mean of 12 monthly figures.

11/ Idem, May 1, 1977, p. 8.

12/ See periodical referred to in footnote 6/, Department of Labor, Bureau of Labor Statistics, "Employment and Earnings", February, 1976, p. 40; March, 1976, p. 26; February, 1977, p. 24; March, 1977; p. 31.

13/ See reference in footnote 5/, p. 25.

14/ See Brief of the American Telephone Telegraph Company as Americus Curiae, General Electric v. Gilbert (and Gilbert v. General Electric) case in the Supreme Court of the U. S., October Term, 1975 (Nos. 74-1589 and 1590, pp. 6a and 6b).

15/ Reference cited in footnote 6/, p. 19.

16/ Reference cited in footnote 1/, p. 10.

17/ Social Security Bulletin, May, 1977, p. 50 and U. S. Department of Health, Education and Welfare, Social Security Administration, Monthly Benefit Statistics, May 24, 1977, Table 10.

18/ 57,600,000 covered (Social Security Bulletin, September, 1976, p. 5); 91,011,000 in civilian labor force (Department of Labor, Bureau of Labor Statistics, "Employment and Earnings", April, 1977, p. 19.

19/ Social Security Bulletin, September, 1976, p. 10.



CONTINENTAL BANK

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO • 231 SOUTH LA SALLE STREET, CHICAGO, ILLINOIS 60693

EUGENE R. CROISANT
SENIOR VICE PRESIDENT
312/828-7330

May 25, 1977

The Honorable Harrison A. Williams Jr.
Chairman, Senate Committee on Human Resources
Labor Subcommittee, Room G 237
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator:

We understand that Congress has been seeking first hand information on the impact of the proposed S.995 requirement to include coverage for maternity in company disability income plans.

We would like to share with you the results of a study we have done in this area. But first, we must point out that there are two types of group disability income plans. One type is a non-contributory plan supported totally by employer money in the form of contributions to a trust or payment of insurance premiums. The other type is a contributory plan where part of the contribution or insurance premium is paid for by employees through payroll deduction. This second type of plan is based on a principle in the tax law: income replacement benefits purchased by employee money are not taxed when paid to such employees. To tax such benefits would be double taxation by taxing earned income and later taxing benefits purchased with such individual earned income. Contributory disability income plans are designed to minimize the income tax on any benefits paid using this principle. This type of plan design provides a maximum level of benefit to employees and is a cost effective design from the standpoint of the employer. Such a design does not purchase deferred tax payments to the Federal Government but rather solely cash benefits for disabled employees. We feel this type of plan is becoming more prevalent as new disability income plans are adopted.

Since February of 1972, Continental Illinois Corporation's plan has been designed to provide tax-free benefits for almost all its employees. Our plan provides a sick pay benefit of 100 percent of salary for the first month of absence, a short-term disability income benefit of 83 percent of salary for the second through sixth months of absence and a long-term disability income benefit of 60 percent of salary thereafter until age 65, when pension benefits commence. CICorp bears the total cost of the sick pay benefit, employees provide a total funding for the short-term disability income benefit and the Corporation and employees share the cost of the long-term disability income benefit.

May 25, 1977

By including additional benefit payments for employees absent due to maternity in such a plan, substantial increases in the benefit payments from sick pay and short-term disability income segments of our plan will be necessary. Based on a study of 304 maternities occurring at Continental in 1974 and 1975, an additional $353,000 in benefits would have been paid in each year. Translating this benefit cost into additional plan funding requirements would mean the Corporation would have to pay an additional $89,400 in sick pay benefits, an 8 percent increase. Since the main impact of these claims would fall in the short-term disability income area, employees would have to pay an additional $233,000, or an 84 percent increase in payroll deductions.

What will Continental Illinois Corporation do if maternity coverage is required? We would have to do one of three things. We could increase payroll deductions by 84 percent to fund the additional benefit. Or, the Corporation could contribute the necessary $233,000 to the short-term plan to fund this benefit. However, this would mean that more than half of the short-term benefit would be taxable when paid. The third alternative is to cancel the disability income plan and substitute a benefit improvement in an unrelated area such as life insurance. Clearly in each of these three alternatives the employee loses.

How can we justify making any of these changes to our employees? In the first two alternatives women who choose not to have children and men would be required to subsidize continued salary payments for fellow women employees who become mothers. This subsidy is either in the form of additional payroll deductions or in the form of tax withholding on future benefits. Such a change would be impossible to communicate. These points illustrate why Continental Illinois Corporation agrees with others who suggest that mandatory coverage for maternity in disability plans is in itself discriminatory. It would provide a benefit for one group which does not apply to others but at the expense of those others.

What is the intent of those who sponsor this proposal? If it is their intent to provide income during maternity for all Americans who become pregnant, requiring employees to fund such a benefit in company plans will not do the job. This type of social legislation would be more properly placed in a welfare program or perhaps as an additional benefit in the Social Security Act. To require this change in employer group plans will result in discrimination and employee dissatisfaction.

Please feel free to include this information in your record of proceedings on this subject. We would be happy to provide any additional information we can concerning this issue.

Sincerely,

E R Garrett

ERC:AS

STATE OF CALIFORNIA—AGRICULTURE AND SERVICES AGENCY
EDMUND G. BROWN JR., Governor
DEPARTMENT OF INDUSTRIAL RELATIONS
FAIR EMPLOYMENT PRACTICE COMMISSION
455 GOLDEN GATE AVENUE, SAN FRANCISCO
Address reply to: FEPC, P.O. Box 603, San Francisco, CA 94101
Administrative Office 557-2000

SENATOR
NEWARK, N.J.
1977 APR 28 AM 9:41

April 20, 1977

Hon. Harrison Williams, Senator
Senate Office Building
Washington, D.C.

RE: Senate Bill 995

Dear Senator Williams:

I am pleased to advise you that on April 7, 1977, the California Fair Employment Practice Commission voted upon and unanimously passed a resolution of endorsement and support of U. S. Senate Bill 995, 95th Congress 1st Session.

We resolved to wit that because the inequitable distribution of disability benefits to persons who are directly affected by pregnancy, childbirth and related medical conditions, is a circumstance which unfairly and detrimentally segregates and treats female individuals as a class, that Title VII of the 1964 Civil Rights Act should be amended to prohibit sex discrimination on the basis of pregnancy as alluded to in S. 995.

We wish you good fortune in your management of this legislation.

Very truly yours,

John A. Martin, Jr., Chairperson
California Fair Employment Practice
Commission

JAM/vg

A DICK

SENATE
1977 FEB 29

A.B. Dick Company

5700 West Touhy Avenue
Chicago, Illinois 60648
(312) 763-1900

April 21, 1977

Senator Harrison A. Williams, Jr.
Labor Sub-Committee
Room 6237 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Williams:

Your letter of April 8, 1977 to Mr. John C. Stetson, has been referred to me for handling. We prefer not to testify personally, but do appreciate your invitation. I am happy to furnish information in response to the questions you asked.

1. Terms of your company's sick leave and disability benefit plans.

   Attached. (Also attached is a copy of our Pregnancy and Maternity Leave of Absence Policy.)

2. Number of employees covered by plans.

   5300 employees.

3. Number of female employees covered by plans.

   1500 female employees.

4. Type of work performed by covered employees.

   All categories: Factory Hourly, Clerical, Administrative.

5. Total number of employees on sick leave, annually 1972 to date.

   Exact count not available. We estimate that almost every employee had one or more days of absence due to illness.

6. Total number of employees on sick leave because of pregnancy-related disability, annually 1972 to date.

   Average of about 40 per year.

7. Average number of days of sick leave used per employee, annually 1972 to date.

   Average estimated to be about 3½-4 days.

8. Average number of days of sick leave because of pregnancy-related disabiltiy used per employee so disabled, annually 1972 to date.

   Approximately 65 (13 weeks). This does not mean that disability benefits were paid for this entire period. Actually, on the average, benefits were paid for about 6 weeks, in accordance with the Disability Income Plan.

9. Total cost of sick leave annually, 1972 to date.

   $1,142,000

10. Total cost of sick leave for pregnancy-related disabilities annually 1972 to date.

    Approximately $50,000

11. Total number of employees who returned to work after sick leave, annually 1972 to date.

    See #12 below.

12. Percentage of total on sick leave who returned to work, annually 1972 to date.

    99.7%.

13. Total number of employees on sick leave because of pregnancy-related disability who returned to work, annually 1972 to date.

    18 employees.

14. Percentage of total number of employees on sick leave because of pregnancy-related disability who returned to work annually 1972 to date.

    40%.

15. Items 4-14 for disability benefits.

    Only one Disability Plan involved.

16. Overall evaluation of effects of including pregnancy-related disabilities.

    In many cases, supervisor has experienced difficulties in maintaining work output, particularly in small departments, because of the necessity to hold open a position for a relatively long period of time, or fill it with an inexperienced temporary employee.

    Although the available benefit period undoubtedly influences the period of absence, we have not felt that there is any significant amount of abuse of the benefit. This is true because of the requirements to return to work six weeks after delivery, the policy statement of conditions for stopping work, and the need to maximize family income.

April 21, 1977

Senator Harrison A. Williams, Jr.

A significant statistic is that 60% do not return to work. It makes one question - whether this payment should be treated as a vested benefit.

Since the average period of disability payment is significantly greater for pregnancy than for other disabilities, the cost of pregnancy disability is substantial— in our case almost $1,200 per affected employee.

Sincerely,

E. F. Neas
Manager Employee Benefits

EFN/dk
attachments

Disability Income Plan (Sickness Benefits)

1. Purpose

To provide a substantial measure of protection against economic hazards of ill health and accidents.

2. Eligible

Regular full-time and regular part-time employees.

3. Qualification

Eligible employees qualify for coverage as follows:

a. Hourly paid plant employees qualify for coverage the first day following completion of one year of service. (See footnote to table below for definition of waiting period.)

b. Exempt personnel (under overtime provision of the Fair Labor Standards Act of 1938 and subsequent amendments thereto - those on the bi-weekly payrolls) qualify for coverage immediately on the date of employment.

c. Non-exempt personnel (those on the weekly Niles and field payrolls) qualify for coverage on the first day following completion of thirteen weeks of continuous service provided such employee is working on the date he qualifies for coverage. Also, if a non-exempt employee exceeds three days of absence due to illness during the initial qualifying period, the qualifying date shall be extended by the number of absent days in excess of three.

4. Schedule of Benefits

Upon certification by the Medical Department, benefits for time lost from work due to illness or injury are as follows:

A. B. DICK COMPANY

SECTION G - WAGE, SALARY AND
BENEFIT ADMINISTRATION
Page 60
Revised November 2, 1976
Disability Income Plan (continued) - Schedule of Benefits (continued)

	Weekly Rate Payrolls Bi-Weekly Rate Payrolls			*Hourly Rate Payrolls		
Years of Service	Weeks at Full Pay	Weeks at Half Pay	Total Weeks of Benefit	Weeks at Full Pay	Weeks at Half Pay	Total Weeks of Benefit
Less than 1	2	-	2	-	-	0
1 but less than 2	4	2	6	-	6	6
2 but less than 3	4	7	11	-	11	11
3 but less than 4	4	12	16	-	16	16
4 but less than 5	4	17	21	-	21	21
5 but less than 6	8	18	26	-	26	26
6 but less than 7	8	23	31	-	31	31
7 but less than 8	8	28	36	-	36	36
8 but less than 9	8	33	41	-	41	41
9 but less than 10	12	34	46	-	46	46
10 and over	12	40	52	12	40	52

* Disability payments begin on the eighth day of disability for employees with less than ten years of service.

NOTE: For work-connected disability see paragraph 11.

5. Benefit Base Pay

The amount of benefit pay is calculated from the employee's base rate pay (hourly, weekly or bi-weekly). Those employees regularly scheduled and authorized to work 40 hours per week but whose weekly rate is based on 37-1/2 hours' work will receive disability pay based on the 40-hour schedule.

6. Leave of Absence

a. Coverage is suspended during a leave of absence except as this benefit applies to employees on maternity leave of absence.

b. Upon return, employee immediately resumes eligibility previously attained.

7. Limit of Benefits

a. Successive periods of disability will be totalled to determine when an employee has received maximum benefits.

b. Requalification for maximum benefits - thirteen weeks of continuous service with absence due to illness not to exceed three working days.

Pregnancy and Maternity Leave of Absence

An employee is required to stop work when, due to pregnancy, she is advised by her doctor to stop work, becomes incapable of carrying out her normal work assignments or experiences excessive lost time. When stopping work due to pregnancy, the employee is eligible for a maternity leave of absence. Coincident with the maternity leave, and beginning when she stops work, the pregnant employee also will be eligible, as qualified by service period, for benefits under the Company's established Disability Income Plan. These benefits are available to the pregnant employee whether she chooses to accept a leave of absence or to resign her position.

Maternity benefits under the Health Care Plan are available to the female employee if she meets the qualifying conditions of the Plan.

A maternity leave of absence will start when the pregnant employee stops work, as mentioned above, and will terminate not more than six weeks after delivery unless the employee is medically incapable of resuming work as certified by her physician, who also will furnish a diagnosis of the employee's condition and her prognosis. Should this condition exist, the maternity leave of absence will be extended for the period of disability up to a maximum additional period of three months. Any disability beyond this period will be medically evaluated to determine if the employee is eligible for a Medical Leave of Absence as defined by established Company Policy, or for continued benefits (if any are available) under the Company's Disability Income Plan. Disability Income benefits received during the maternity leave are included in any calculation of total available benefits under the plan. The employee may return to work sooner than six weeks after delivery with the written consent of her doctor.

If the employee returns to work at expiration of the approved period of the maternity leave of absence (or after any extended medical leave, if granted) or before, her continuous service credit will not be affected by the leave. Should she not return to work, her separation will be made effective as of her last day of work, and continuous service credit will cease at that point. However, should this condition occur, the employee will still have the privilege of converting her Travelers coverage if she desires. Other health care and life insurance coverage will remain in effect without interruption during the leave of absence. A payroll deduction for supplemental life insurance premiums will be made upon return from maternity leave.

It is impossible for the Company to guarantee the employee her specific job will be available upon her return from maternity leave, but every effort will be made to place her in a position of like status and pay suited to her abilities and interest. See Section F for treatment in cases of lay-off and Section G for effect on vacation credit.

Firestone

VICE PRESIDENT

April 20, 1977

Senator H. A. Williams, Jr.
Chairman
United States Senate
Committee on Human Resources
Washington, DC 20510

Dear Senator Williams:

Mr. Riley, our Board Chairman, asked me to respond to your April 8 letter in which you ask either for oral testimony or a written statement from Firestone at your hearings of next week. Unfortunately it is not possible for us to appear to present oral testimony. However, it is my hope that the contents of this letter will be of use to you in your hearings.

The terms of Firestone's Accident and Sickness Benefits are as follows: If an employee is unable to work because of an accident or sickness, not covered by a Workmen's Compensation Act, the employee will receive monetary benefits dependent upon his/her present salary. The employee must be under the care of a doctor licensed to practice medicine. Benefits are payable from the first day of disability due to an accident or the eighth day of disability due to sickness, unless the patient is confined in a hospital within the first eight days of disability, in which case benefits are payable from the first day of hospital confinement. The maximum duration of benefit payments is 52 weeks for each period of disability. Benefits for disability due to pregnancy are available if the pregnancy commences while the employee is covered. Benefits are limited to six weeks for all disabilities due to any one pregnancy. There are approximately 6,900 females covered by this plan. They perform all types of work at all of our company operations.

It is extremely difficult to give you specific numbers of employees involved for the entire corporation from present date to 1972 as you requested; consequently, the numbers which follow will represent only our corporate offices in Akron, Ohio. Presently there are 1,506 female employees here.

Following are approximate figures for women taking a leave for pregnancy during the years 1972 through 1976:

1972	- 24	1975	- 27
1973	- 22	1976	- 22
1974	- 18		

THE FIRESTONE TIRE & RUBBER COMPANY · 1200 FIRESTONE PARKWAY · AKRON, OHIO 44317

We do not have figures of the numbers of those who returned after taking a leave for pregnancy except for 1976. Twelve (or 54.5%) of the 22 who took a leave for pregnancy in 1976 returned to work.

As mentioned earlier, the data required to answer your specific additional questions are not readily available. Since Firestone has not experienced any objections to our present leave-of-absence-for-pregnancy policy or benefits for disability due to pregnancy, we have not maintained data in a format that would enable us to respond directly to your questions.

I hope that the above information will be of assistance to you in your hearings. If you have any questions, please do not hesitate to telephone me at Area Code 216, 379-6362.

Sincerely yours,

J. T. Cahoon

J. T. Cahoon
Personnel & Planning

JTC:ef
CC: Mr. R. A. Riley

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JAMES M. CALLOWAY
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

May 11, 1977

1977 MAY 12 PM 3 34

The Honorable
Harrison A. Williams, Jr.
Chairman, Subcommittee on Labor
G-237 Dirksen Senate Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

Pursuant to your request for information on the financing of the disability benefits program of Cummins Engine Inc., I have enclosed a letter from Cummins explaining this facet of the company's program.

Thank you again, Mr. Chairman, for the opportunity to testify before your Subcommittee.

With kind personal regards,

Sincerely,

Birch Bayh

Cummins Engine Company, Inc.
Columbus, Indiana
47201

May 3, 1977

Honorable Birch Bayh
United States Senate
Washington, D.C. 20510

Dear Senator Bayh:

I trust you found the Cummins data on pregnancy disability insurance to be helpful.

I understand the question arose of whether the Cummins plan is self-funded. This letter is intended to respond to that question.

At the present time, the Cummins disability insurance plan has two parts, one for hourly workers and one for salaried workers.

The hourly portion is fully insured on a limited retrospective agreement with an outside insurer for the first 13 weeks; after that it is self-funded. The salaried portion is self-funded.

As of June 1, 1977, however, the funding for both the plans will change. They will both be converted to what is known as a minimum premium plan, a type of fully insured program.

Coverages provided to employees will not be affected by this change.

We would be happy to provide further information on our program if you should need it.

Sincerely yours,

J.C. Smith

J.C.Smith/dm

Manager - Government and Community Relations

Phone: 812 372 7211

VOUGHT CORPORATION

President and Chief Executive Officer

Post Office Box 5907 • Dallas, Texas 75222
Telephone (214)266-5185

May 11, 1977

The Honorable Harrison A. Williams, Jr.
Chairman, Committee on Human Resources
The United States Senate
Washington, D. C. 20510

Dear Senator Williams:

The Vought Corporation has what we believe to be an excellent health and disability benefit program for our employees. Our program includes provisions for pregnancy and childbirth of our female employees.

Insofar as our records show, we have answered every question asked of us by your committee. In some cases all data requested was not available; however, in those cases we have given you our best estimate of the impact.

The attachment responds by number to the numbered question asked in your letter of April 8 in both categories of sick leave and disability benefits. We hope these data will be beneficial to your committee's deliberations.

Sincerely,

Robert L. Kirk

attachment

Attachment

Disability Benefits Information - Vought Corporation
(Requested by United States Labor Subcommittee,
Hon. Harrison A. Williams, Jr., Chairman)

1. Employees exhaust accrued company sick leave at 100% of pay then receive group insurance disability benefits at 50% to 60% of base pay.

2. 8583 employees currently covered by plan

3. 1282 females are included.

	Sick Leave			Disability Benefits	
4.	Professional, office, clerical, laboratory and shop		15.4	Same as 4	
5.	1972	10,232	15.5	1972	3292
	1973	8,881		1973	2858
	1974	8,950		1974	2880
	1975	9,740		1975	3134
	1976	8,172		1976	2629
6.	Pregnancy Sick Leave		15.6	Pregnancy Disability	
	1972	26		1972	Same
	1973	23		1973	Same
	1974	23		1974	Same
	1975	25		1975	Same
	1976	20		1976	Same
7.	Average days of Sick Leave		15.7	Average days of Disability	
	1972	3.9		1972	5.5
	1973	4.2		1973	5.5
	1974	3.8		1974	4.8
	1975	4.3		1975	4.0
	1976	5.3		1976	4.0

Sick Leave		Disability Benefits	
8.	6 Work days (each year)	15.8	64 work days (each year)
9.	Cost annually	15.9	Cost annually
	1972 2,251,917		1972 1,588,060
	1973 2,276,253		1973 1,378,458
	1974 2,290,644		1974 1,389,191
	1975 2,973,632		1975 1,307,568
	1976 3,362,704		1976 1,268,364
10.	Cost of Sick Leave Pregnancy	15.10	Cost of Sick Leave Disability
	1972 5,720		1972 61,100
	1973 5,060		1973 54,050
	1974 5,704		1974 60,881
	1975 7,550		1975 85,512
	1976 6,040		1976 64,409
11.	Employees Returning to Work	15.11	Employees Returning to Work
	1972 10,077		1972 3,127
	1973 8,755		1973 2,715
	1974 8,854		1974 2,736
	1975 9,646		1975 2,977
	1976 8,023		1976 2,498
12.	Percentage Returning to Work	15.12	Percentage Returning to Work
	1972 98.5		1972 95.0
	1973 98.5		1973 95.0
	1974 98.9		1974 95.0
	1975 99.0		1975 95.0
	1976 98.1		1976 95.0
13.	Pregnancy Related	15.13	Pregnancy Related
	1972 13		1972 13
	1973 12		1973 12
	1974 12		1974 12
	1975 13		1975 13
	1976 10		1976 10

Sick Leave

14. Percentage Returned to Work

1972	50.0
1973	52.2
1974	52.2
1975	52.0
1976	50.0

Disability Benefits

15.14 Percentage Returned to Work

1972	50.0
1973	52.2
1974	52.2
1975	52.0
1976	50.0

16. Contributes to employee morale and does not add disproportionately to benefit costs due to small number of pregnancy - related disabilities. Small number of such disabilities due to average age of females in excess of 40 years.

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN
JENNINGS RANDOLPH, W. VA.
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S. I. HAYAKAWA, CALIF.

United States Senate

COMMITTEE ON HUMAN RESOURCES
WASHINGTON, D.C. 20510

April 8, 1977

Mr. Sol Love
President
L.P.V. Aerospace Corporation
1525 Elm Street
Dallas, Texas 75201

Dear Mr. Love:

The Senate Labor Subcommittee will hold hearings on Tuesday, April 26, 1977 and Wednesday, April 27, 1977 on S. 995, a bill to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions.

I am informed that your company provides disability benefits for pregnancy and that such coverage has not added disproportionately to benefit costs. I would be most interested in having a representative of your company appear before my Committee to testify on your experience with such benefits.

If it is not possible to have someone appear to present oral testimony, it would be very useful if the Committee could be provided with a written statement in a form which could be used for the hearings. The following information would be helpful to the Committee:

1. Terms of your company's sick leave and disability benefit plans.

2. Number of employees covered by plans.

3. Number of female employees covered by plans.

4. Type of work performed by covered employees.

5. Total number of employees on sick leave, annually 1972 to date.

6. Total number of employees on sick leave because of pregnancy-related disability, annually 1972 to date.

7. Average number of days of sick leave used per employee, annually 1972 to date.

8. Average number of days of sick leave because of pregnancy-related disability used per employee so disabled, annually 1972 to date.

9. Total cost of sick leave annually, 1972 to date.

10. Total cost of sick leave for pregnancy-related disabilities annually 1972 to date.

11. Total number of employees who returned to work after sick leave, annually 1972 to date.

12. Percentage of total on sick leave who returned to work, annually 1972 to date.

13. Total number of employees on sick leave because of pregnancy-related disability who returned to work, annually 1972 to date.

14. Percentage of total number of employees on sick leave because of pregnancy-related disability who returned to work annually 1972 to date.

15. Items 4-14 for disability benefits.

16. Overall evaluation of effects of including pregnancy-related disabilities.

17. Any other breakdowns as to data which you have available.

Of particular interest to the Committee is data concerning the cost of pregnancy coverage compared to total cost and the extent to which female workers have utilized their benefits. I would be most grateful if you could provide the Committee with as much of this information as you have available.

If you have any questions concerning the hearings, please telephone Maria Landolfo of my Labor Subcommittee staff at (202) 224-3674. I look forward to hearing from you.

With best wishes,

Sincerely,

Harrison A. Williams, Jr.
Chairman

HAW: mlw

Xerox Corporation
Stamford, Connecticut 06904
(203) 329-8711

XEROX

April 28, 1977

Senator Harrison A. Williams, Jr.
Committee On Human Resources
United States Senate
Washington, D. C. 20510

Dear Senator Williams:

Archie McCardell asked me to respond to your letter of April 8 as I am more familiar with the subject matter. We hope the data set forth below may be of assistance to you and the Committee. As noted, however, it is subject to a number of significant qualifications due to the limitations of our data systems. Because of the nature of these materials and prior commitments of our people, we elected to respond in writing.

1. The Xerox Disability Plans

Xerox has three types of "sick leave" or "disability benefit plans" covering its salaried employees in the United States. The first, the Personal Absence Plan, covers absences due to disabilities and other compelling personal reasons of less than four consecutive days. The second, the Short Term Disability Plan, covers absences due to disabilities which prevent employees from performing their regular duties for four or more consecutive work days through the end of the fifth complete consecutive calendar month. Pregnancy is an expressly recognized disabling condition under this Short Term Plan. After exhaustion of the Short Term Plan benefits, the third plan, the Long Term Disability Plan, provides coverage during the disability up to retirement age. The Personal Absence and Short Term Plans pay 100% of regular salary, and the Long Term Plan pays 70%.

These descriptions of the Plans are, obviously, greatly simplified, but we believe probably adequate

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for the purpose of your inquiries.

***

With respect to the data which follow, a few general and important qualifications are applicable: (1) we have excluded all 1972 data since we did not commence to compile information on pregnancy related leaves until 1973; (2) we are reporting only Short Term Disability Plan data since we do not compile comparable data under the Personal Absence Plan, (i.e., absences less than four consecutive days), and, since Long Term Disability data (i.e., disabilities over five consecutive months) are also not complete; and (3) we caution that even the Short Term Disability Plan data, which constitute the bases for the information below and which include pregnancy leaves, are not complete because a significant number of the shorter covered absences (i.e. those of four or a few more than four consecutive days) are not reported.

***

2. Number of Covered Employees

Approximately 42,000 employees are covered.

3. Number of Covered Female Employees

Approximately 11,000 female employees are covered.

4. Types of Work Covered

The Plans primarily cover salaried employees in the United States, including officials, managers, professionals, technicians, salesworkers, office and clerical workers.

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5. Total Numbers of Employees on Disability Leaves 1/ - Annually 1973 to Date

	Number of Employees 2/
1973 3/	5,909
1974 4/	7,028
1975	7,318
1976	7,830

1/ Short Term Disability only, i.e., more than three consecutive days. Almost all pregnancy leaves fall in this category.

2/ Data based on number of "claims" so some employees may be represented more than once.

3/ Excludes confidential payroll employees, nonrepresented hourly employees, and those employees at the El Segundo facility.

4/ Excludes nonrepresented hourly employees, and those employees at the El Segundo facility.

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6. Total Numbers of Employees on Pregnancy Disability Leaves - Annually 1973 to Date

	Number on Leave
1973	178
1974	209
1975	244
1976	291

7. Average Number of Work Days [1] Used Per Employee For Disability Leave - Annually 1973 to Date

	Average Work Days Absent-All Employees on Short Term Disability Leave
1973 [2]	13.5
1974 [3]	18.5
1975	20.1
1976	19.6

1/ Data based on "work" days, and includes first three days of each leave.

2/ Same exclusions as in #5, F.N. 3.

3/ Same exclusions as in #5, F.N. 4.

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8. Average Number of Calendar[1] Days of Pregnancy Disability Leave Per Pregnancy Disabled Employee - Annually 1973 to Date

	Average Calendar Days	Average Work Days
1973	74.8	53.4
1974	83.7	59.8
1975	80.7	57.6
1976	86.0	61.4

1/ Based on "calendar", not "work" days. Roughly, calendar days X 5/7 equals work days.

9. Total Cost of Short Term Disability Leave[1] - Annually 1973 to Date

	Total Cost
1973[2]	$3,033,016
1974[3]	6,286,846
1975	6,053,340
1976	8,201,631

1/ Again, Short Term Disability Plan data only.

2/ Same exclusions as in #5, F.N. 3.

3/ Same exclusions as in #5, F.N. 4.

XEROX

10. Total Cost of Pregnancy Disability Leaves - Annually 1973 to Date

	Total Cost
1973	$274,830
1974	442,469
1975	579,252
1976	746,542

11. and 12. Total Numbers and Percentages of Employees Who Returned to Work After Disability Leaves - Annually 1973 to Date

No figures available except for pregnancy leaves. However, based on a sampling of the opinions of personnel employees, it is believed that very few employees did not return from nonpregnancy disability leaves, perhaps 1% to 2%.

13. and 14. Total Numbers and Percentages of Employees on Pregnancy Leaves Who Returned To Work 1/ - Annually 1973 to Date

	Total Number	Percentage
1973	82	46%
1974	123	59%
1975	168	69%
1976	213	73%

1/ Does not include data concerning length of employment after return to work.

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15. Not applicable.

17. Other Relevant Data-Average Calendar Days of Absence Per Pregnancy Leave Prior to and Following Delivery - Annually 1973 to Date

	Average Days Before	Average Days After
1973	30.7	44.0
1974	36.9	46.8
1975	35.0	45.7
1976	38.5	47.5

16. Overall Evaluation of Effects of Including Pregnancy Related Disabilities

We believe it is still too early and the data too inexact to provide an accurate basis for evaluation of Xerox' treatment of pregnancy the same as other disabilities. However, based on that short experience and those inexact figures, a few rough trends have emerged:

1. Pregnancy is the cause of about 4% of all the occasions for short term disability leaves, in a work force that is about 25% female.

2. During the period 1973 through 1976, pregnancy resulted in about 12%, 10%, 10% and 12% of the short term disability total absence days in each of those years, respectively. Thus, the length of the pregnancy absence appears to be highly significant.

3. The length of the average pregnancy leave during the years 1973 through 1976 has been about 53.4, 59.8, 57.6 and 61.4 work days, as contrasted with 13.5, 18.5, 20.1 and 19.6 work days for all reasons.

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4. During that same period pregnancy has accounted for about 9%, 7%, 10% and 9% of the annual cost of all short term disability.

5. Based upon medical advice that pregnancy should disable for an average of approximately six weeks, the Xerox experience has been about double that indicated as medically necessary.

6. Based on medical advice, we understand that in the average, normal pregnancy very little time off is necessary for medical reasons prior to birth. Our experience has been a steadily increasing amount of average prenatal time off, reaching 38.5 days off in 1976, or far more than would seem to be medically necessary.

7. The rate of nonreturn after pregnancy, although it has decreased, has been of a magnitude, compared to the de minimis rate of nonreturn after other disabilities, as to constitute a major problem, to the extent that it is not merely a problem of degree, but an entirely new problem.

8. We are presently studying the available data so we may determine what, if any, controls should be imposed on pregnancy leaves. Our available data supports the conclusion that there is an obvious difference between disability leaves for pregnancy and disability leaves for other reasons.

Based on medical advice, we understand that in the average, normal pregnancy, very little time off is necessary for medical reasons prior to birth. Yet our experience has been that substantial prenatal time off has been taken. Whatever the reasons, in most cases we believe these prenatal absences are not due to physical disability. Accordingly, we believe this is a problem area that needs to be addressed.

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Another problem area is that, in the case of pregnancy, a large percentage of our female employees found it to be a natural termination point in their employment. Also, we believe some employees remained away from work for periods longer than medically necessary after delivery in order to provide extended care for their infants; thus converting the nature of the Plan into one for care of dependents as well.

If actual disability and "permanent" return to employment are valid criteria for disability payments, based on our experience, pregnancy is more apt to be the occasion for abuse of those criteria than other disabilities.

It is our tentative conclusion that there has been some abuse of our pregnancy leaves. On the average they seem to be too long, and there are too many nonreturnees as judged by the traditional criteria for paid disability leaves. Our efforts to address those factors have been hindered by the uncertainty and inconsistency in the law, both federal and state. Moreover, it would be logical to conclude that any future legislation in this area must take these obvious differences into account and must dispel some of the now outdated conceptions and traditions of pregnancy. Otherwise reasonable control of abuse will be seriously handicapped, and, in the long run, the pregnancy disability program will not be fair, effective nor a measure for sexual equality.

Sincerely,

XEROX CORPORATION

Peter A. Biggins
Manager, Corporate Benefits
and Personnel Policy

PAB:mm

TRW

EXECUTIVE OFFICES

April 22, 1977

Senator Harrison A. Williams, Jr.
Chairman, Committee on Human Resources
Washington, D.C. 20510

Dear Senator Williams:

TRW is supportive of the process for developing an equitable position on the pregnancy disability issue addressed by S. 995 which is now before your Senate Labor Subcommittee.

At the request of TRW President Ruben F. Mettler, I am sending you all the information which is available in response to your letter to Dr. Mettler.

Unfortunately, we are not in a position to furnish you with any substantive information because of the manner in which our company is structured and because of the severe time constraints on gathering the data you require.

TRW is a highly decentralized corporation which accords each of its operating groups the highest degree of autonomy in setting wage and benefits policy, operating decisions, formulating of benefits programs, negotiation of union contracts and in setting their administrative procedures. Each of these units maintains its own records in formats which meet their internal management needs. Practices vary broadly from operating group to operating group, and even within the major divisions of those operating groups.

Specifically, within the continental United States, TRW units have a total of 136 health insurance plans, and each of those 136 plans includes some form of benefit for maternity cases, although that is where the similarity ends. We have 62 plans in the corporation which are designated as "short-term" disability plans, 44 of which pay maternity benefits. Short-term disability plans required under California or other state laws are in addition to these 62 plans.

The short-term disability plans which provide maternity benefits in the same manner as any other disability are so new that we have no reliable claims information or history.

We regret, therefore, that we will not be able to comply with your detailed request for information. The data furnished above is all that is available within the committee hearing time constraints.

Sincerely,

J. E. Dunlap
Vice President
Human Relations

JED:bp

SmithKline
CORPORATION

CERTIFIED MAIL - RRR

April 22, 1977

Hon. Harrison A. Williams, Jr.
Chairman
United States Senate
Committee On Human Resources
Washington, D. C. 20510

RE: SENATE LABOR SUBCOMMITTEE HEARINGS
SEX DISCRIMINATION -- PREGNANCY/CHILDBIRTH

Dear Senator Williams:

Thank you for your recent letter advising us of the upcoming hearings on S. 995, a Bill to prohibit sex discrimination based on pregnancy and childbirth.

We have a sick pay plan that covers illness during pregnancy and a maternity leave policy which guarantees job security. Your letter, however, states that you are informed that Smith Kline & French Laboratories "provides disability benefits for pregnancy". That is inaccurate.

Therefore, we do not believe we can provide you with information in the vein that you had anticipated.

We will, of course, follow S. 995 closely. Thank you again for advising us of the hearings.

Very truly yours,

Matthew D. Clayton

Matthew D. Clayton, Esq.
Employee Relations Counsel

MDC:ic

1977 APR 25 PM 2:53



International Business Machines Corporation

1801 K St., N.W.
Washington, D.C. 20006
202/833-6000

April 7, 1977

Ms. Maria Landolfo
Counsel
Subcommittee on Labor
Committee on Human Resources
United States Senate
Washington, D. C. 20510

Dear Ms. Landolfo:

You requested information regarding IBM's practices with regard to pregnancy-related disabilities in connection with congressional hearings on this subject.

The IBM Sickness and Accident Income Plan provides a benefit equal to the employee's full regular salary beginning with the first day of absence due to disability and continuing for up to 12 months.

On April 17, 1972, the IBM Sickness and Accident Income Plan was amended so that absences due to pregnancy-related disability are now covered for benefits under the plan in the same manner as any other disability. Coverage continues until the employee has recovered from the disability caused by her pregnancy.

Some employees, who are not disabled, may wish to take a maternity leave of absence prior to becoming disabled. For those who apply, maternity leaves will be granted without pay. However, benefits equivalent to those under the IBM Sickness and Accident Income Plan will be provided from the date of admission to a hospital until recovery from the disability caused by the pregnancy.

For your further information, as of February 28, 1977, the total domestic population of IBM was 161,817. Of this total, 28,680 or 17.7% are women. Women are found in all categories of jobs, such as management, professional, sales, technicians, office-clerical, operatives and service.

I hope this information is helpful to you.

Sincerely,

Leslie D. Simon

Leslie D. Simon
Director of Public Affairs

/crl

POLAROID CORPORATION
CAMBRIDGE, MASSACHUSETTS 02139

April 19, 1977

Senator Harrison A. Williams, Jr.
United States Senate
Committee on Human Resources
Washington, D. C. 20510

Dear Senator Williams:

I regret I am unable to appear personally at the hearing on the bill to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions on April 26, and 27. However, most of the data you have requested follows. It represents our experience since the installation of our Short Term Disability program in 1973.

Polaroid's Short Term Disability Plan is a pay continuation plan. Every employee with at least one year's seniority is covered for up to one year's absence for each disability (a physical condition preventing him/her from doing any work); an employee with under one year of service is covered for up to 65 days of absence depending on length of employment.

Absences of over five consecutive days require a Physician's Statement. Payment is made only with the agreement of the Polaroid Medical Director. The Medical Director determines the appropriate length of absence for each disability based on recognized guidelines, the contents of the Physician's Statement and his judgment. Absence of under five consecutive days are paid at the discretion of the supervisor.

Presently the Plan covers almost 11,000 employees of which 3,300 are women. Included are employees in managerial, administrative, clerical, technical and semi-skilled occupations.

Annually about 2,000 employees are absent from work more than five consecutive days and file Physician's Statements. Approximately 75 employees are paid annually under the Short Term Disability Plan as a result of a pregnancy related disability.

The average length of absence for employees absent for more than five consecutive days is about seven weeks. (Note: This average does not include absence under five consecutive days.) The average length of absence due to pregnancy related disabilities is about nine weeks.

The cost of the Short Term Disability Plan to Polaroid in 1976 was just over five million dollars; the cost of the Short Term Disability benefits related to the 75 pregnancies was about $130,000.

Nearly 100% of our employees return to work from non-pregnancy related disabilities and approximately 80% return to work from pregnancy related disabilities.

Overall, there has been very little effect on our disability program as a result of paid pregnancy benefits. All female employees are aware of the pregnancy benefits provided by the plan, and so far as we know all who have been pregnant since its inception have used it.

I hope this information will be of help to you.

Sincerely,

E. G. Guilmartin

E. G. Guilmartin
Senior Manager
Corporate Benefits & Policy

EGG/aa

PRENTICE-HALL, INC.
ENGLEWOOD CLIFFS, NEW JERSEY
07632

LEO N ALBERT
VICE PRESIDENT

201-592-2060

April 26, 1977

Ms. Maria Landolso
Committee on Human Resources
Labor Subcommittee
Dirksen Building, Room G237
Washington, D.C. 20510

Dear Ms. Landolso:

Thank you for giving me the opportunity to discuss with you the letter of April 8, 1977 which Senator Williams forwarded to our Mr. Frank J. Dunnigan, President of Prentice-Hall, requesting that we consider testifying before his Committee on Bill S. 995, a Bill to prohibit sex discrimination on the basis of pregnancy, childbirth or related medical conditions.

As I explained to you, the article which appeared in the Bergen Record was inaccurate insofar as it referred to Prentice-Hall. The fact is that Prentice-Hall does not presently have a specific pregnancy benefit plan. However, we apply the same leave policy to employees who are pregnant as we do for employees who are ill. In other words, we do not discriminate between pregnancy and a broken leg. The amount of payment we make to employees for pregnancy depends on length of service and other factors which we would consider for any kind of extended absence.

I regret it will not be possible for Prentice-Hall to submit written or oral testimony to the Committee because for Prentice-Hall to advocate a partisan view (regardless of its merits), in a matter concerning which it engages as a factual reporter, has at the least, potential for impugning the objectivity of such reporting. I am certain you will appreciate that the sine qua non of our reputation as a publisher of legal developments in various areas, many of which involve highly controversial issues, is our reputation for actual objectivity and non-partisan involvement in those issues. Therefore, it would be inappropriate for Prentice-Hall to render testimony or to undertake to compile and furnish evidentiary data to be used in support of any position in the forthcoming Congressional hearings.

I sincerely hope that you may empathize with our position in this matter and we remain,

Sincerely,

Leo N. Albert

LNA/nd

cc: Mr. Frank J. Dunnigan
Mr. Milliard F. Carey

UTAH STATE UNIVERSITY · LOGAN, UTAH 84322
COLLEGE OF SCIENCE

DEPARTMENT OF BIOLOGY
UMC 55
(801) 752-4100 Ext. 7911

April 15, 1977

Senator Orrin Hatch
Republican Senator
Representing State of Utah
Washington DC.

Dear Senator:

I have been thinking about the General Electric issue and would like you to compare these two hypothetical cases

#1 Female employee is taking birth control pills but develops migraine headaches. Her doctor recommends that she discontinue taking the pills and have an IUD inserted. A year later she becomes pregnant.

#2 Male employee is a high risk for a coronary. He smokes two packs of cigarettes a day. His doctor advises that he stop smoking. He continues and has a heart attack.

Which of these events requiring release time is voluntary? Is voluntary action the real issue?

Eunice Cronin
Asst. Professor

RAUTH, J. Donald
LABOR: OFFICIAL CORRES.
S. 995, Request to Testify

April 8, 1977

Mr. J. Donald Rauth, President
Martin-Marietta Corporation
6801 Rockledge Drive
Bethesda, Maryland 20034

Dear Mr. Rauth:

The Senate Labor Subcommittee will hold hearings on Tuesday, April 26, 1977 and Wednesday, April 27, 1977 on S. 995, a bill to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions.

I am informed that your company provides disability benefits for pregnancy and that such coverage has not added disproportionately to benefit costs. I would be most interested in having a representative of your company appear before my Committee to testify on your experience with such benefits.

If it is not possible to have someone appear to present oral testimony, it would be very useful if the Committee could be provided with a written statement in a form which could be used for the hearings. The following information would be helpful to the Committee:

1. Terms of your company's sick leave and disability benefit plans.

2. Number of employees covered by plans.

3. Number of female employees covered by plans.

4. Type of work performed by covered employees.

5. Total number of employees on sick leave, annually 1972 to date.

6. Total number of employees on sick leave because of pregnancy-related disability, annually 1972 to date.

7. Average number of days of sick leave used per employee, annually 1972 to date.

8. Average number of days of sick leave because of pregnancy-related disability used per employee so disabled, annually 1972 to date.

9. Total cost of sick leave annually, 1972 to date.

10. Total cost of sick leave for pregnancy-related disabilities annually 1972 to date.

11. Total number of employees who returned to work after sick leave, annually 1972 to date.

12. Percentage of total on sick leave who returned to work, annually 1972 to date.

13. Total number of employees on sick leave because of pregnancy-related disability who returned to work, annually 1972 to date.

14. Percentage of total number of employees on sick leave because of pregnancy-related disability who returned to work annually 1972 to date.

15. Items 4-14 for disability benefits.

16. Overall evaluation of effects of including pregnancy-related disabilities.

17. Any other breakdowns as to data which you have available.

Of particular interest to the Committee is data concerning the cost of pregnancy coverage compared to total cost and the extent to which female workers have utilized their benefits. I would be most grateful if you could provide the Committee with as much of this information as you have available.

If you have any questions concerning the hearings, please telephone Maria Landolfo of my Labor Subcommittee staff at (202) 224-3674. I look forward to hearing from you.

With best wishes,

Sincerely,

Harrison A. Williams, Jr.
Chairman

HAW:mlw

May 31, 1977

SENATOR WILLIAMS, N.J.
1977 JUN -2 PM 3:39

The Honorable Harrison A. Williams, Jr.
United States Senate
Washington, D.C. 20510

Dear Senator Williams:

The National Board of the Young Women's Christian Association of the U.S.A. wishes to express to you its support for your bill, S.995, to amend Title VII of the Civil Rights Act of 1964, to prohibit sex discrimination on the basis of pregnancy. We hope that S.995 will be passed with the addition of the Section 2 now in its companion bill, HR 6075, and with no other amendments.

Our members across the nation understand this issue from their own experience. Many of us have been fired, demoted, or not hired because of pregnancy, actual or anticipated. Prospective employers have asked our childbearing plans, have denied us raises and promotion because they assumed we would not be permanent employees. We have experienced the discrimination of receiving no disability benefits when temporarily disabled by pregnancy and childbirth while our male fellow-workers received compensation during every kind of illness or disability. We are especially aware of the particularly severe impact of this discrimination upon our low-income members, forced to take unpaid maternity leave just at the time when family expenses are increased by the arrival of a new baby. Many mothers of young children, at such a time, are forced to go on welfare.

We are aware that opponents of the bill are estimating very high costs of pregnancy disability coverage. Such estimates cannot be based on precise cost-benefit analysis, since there is no data on or experience with such coverage. We believe that it will cost no more than coverage of any major disability and that these costs will be offset to great degree by the advantages of women remaining longer in their jobs and reductions in unemployment and welfare payments.

Misconceptions and prejudices about women because of their pregnancy and childbearing functions are the source of discrimination against women workers. This legislation thus addresses itself to the issue of improvement in the status of gainfully employed women in a very basic way. Its passage, we believe, is essential to the achievement of genuinely equal opportunity for women.

Sincerely yours,

Sara-Alyce P. Wright

Mrs. Sara-Alyce P. Wright
Executive Director

National Board
of the
Young Women's
Christian
Association
of the U.S.A.

600 Lexington Avenue
New York, N.Y. 10022
212-753-4700
Cable: Emcaustus, N.Y.

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...in the struggle for peace and justice, freedom and dignity for all people

State Bar of Wisconsin

INDIVIDUAL RIGHTS AND RESPONSIBILITIES SECTION

1977-78

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May 2, 1977

SENATOR WILLIAMS, N.J.

Dear Senator Williams,

I saw you Friday night on the MacNeil-Lehrer report. You were wonderful. Congratulations and keep it up. I was on your office staff from 1961 to 1964, working under Mr Dee Ames. Your discussion of disability coverage for maternity disability was very well-informed. Do you recall that when I worked on your staff, I worked part of the morning of April 9, 1964 and gave birth at 2:30 pm to a son? I returned to work after 8 weeks, and worked until Election Day, 1964.

I am now working as an Assistant City Attorney here in Madison, Wis. Among my duties are tasks relating to a sizable UMTA grant, which would not exist if it were not for your work on S. 6 - the Mass Transit bill back in 1963.

I am only writing to wish you well, but I

also wanted to remind you of an experience your own office had with maternity disability. No doubt you have had many since. Abuse of maternity coverage, if that is a problem, can be minimized by employers taking steps to humanize work hours and work places.

Sincerely,

Eunice Gibson

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

April 29, 1977

Honorable Harrison A. Williams, Jr.
Chairman, Committee on Human Resources
Subcommittee on Labor
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During her appearance before your Subcommittee on April 26, Ms. Alexis Herman, Director, Women's Bureau, included in her testimony the Department of Labor's estimated cost impact of S. 995 on temporary disability plans. We have discovered that in our haste to provide your Subcommittee with this information at the hearing, we made a basic miscalculation which inflated our estimate. We regret the submission of incorrect data, but are extremely pleased that our corrected estimate is much lower. The cost estimate in the testimony was based on a birth rate of 66.7 births per thousand women as applied to all women assumed to be covered under TDI plans including pregnancy benefits. However, this birth rate should have been applied only to women aged 15-44. Therefore, a more accurate cost estimate would be derived by including only that percent (68.48) of covered workers who are of child-bearing age. This correction reduces total estimated costs to $228.9 million and hence reduces the percentage comparisons as well:

CORRECTED COST ESTIMATE ON TEMPORARY DISABILITY PLANS:

1. Total cost increase of $228.9 million.

2. A cost increase for temporary disability insurance plans of 3.2 per cent.

3. An increase in total payroll cost of TDI benefits for employees of five hundreths of one per cent (0.05%).

Again, we apoligize for the calculation error, but hope you share our satisfaction that the lower, correct cost estimate will help to discount the objections to the bill based on purely financial considerations.

Sincerely,

Nik B. Edes
Deputy Under Secretary
for Legislation

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

25 MAY 1977

Honorable Harrison A. Williams, Jr.
Chairman
Committee on Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In response to your request of May 20, I have enclosed a copy of the cost data which were prepared on H.R. 6075 and which are equally applicable to S. 995. The data were prepared with the assistance of the Department of Commerce and reflect the government's best estimate. They cover only the estimated cost of disability payments and not any increase in medical costs which might result where employers have excluded maternity costs from their health insurance plans.

You also asked for information concerning the Department's experience under the Equal Pay Act with the proviso prohibiting employers from reducing wages in order to come into compliance. It is, of course, not possible to make any definitive statement as to what employers would have done but for this proviso. It would seem, however, based on the numerous attempts which were made to reduce wages despite this language, that a rather significant reduction in wages would have occurred. Where the reduction was attempted, it was typically applied to both men and women equally, although the individual men who had been receiving the higher rate were usually either transferred to other jobs (Hodgson v. Miller Brewing Co., 475 F.2d 221 (C.A. 7, 1972); Shultz v. Saxonberg Ceramics, 1314 E. Supp. 1135 (W.D. Pa. 1970)), or red circled (Corning Glass Works v. Brennan, 417 U.S. 188). In at least two situations the higher paid men were fired and in other cases the lower paying female jobs were integrated and the newly hired men paid the lower rate. All of these devices were held to violate the Section 6(d) proviso.

There were also some companies who attempted to reduce the wage rates of the men during the one or two-year grace period provided by the Equal Pay Act. It was the Department's position that this period only delayed enforcement and did not permit employers to reduce wages prior to the effective date of the Act.

Sincerely,

Ray Marshall

Secretary of Labor

Enclosure

ESTIMATED COST

IMPACT OF H.R. 6075

Submitted by
U.S. Department of Labor

The Department of Labor, in response to the request of Chairman Hawkins, submits this cost impact estimate for inclusion in the record. Our best estimate on the cost impact of extending the coverage of private sector temporary disability insurance to include pregnancy disability amounts to only .05% of the estimated payroll for private sector wage and salary earners covered by temporary disability insurance plans in 1976. (It should be pointed out that costs of private sector health insurance also will be affected by H.R. 6075. However, precise data on the cost impact could not be estimated reliably. A fuller explanation of the problems in this area is presented infra, p. 5.)

Our estimate assumes an average benefit period of pregnancy disability of 7.5 weeks. The estimate is also based on the fact that about 34.2 million workers in the private sector were covered by temporary disability insurance plans in 1976 and of that number, 14.5 million workers participated in plans which excluded pregnancy disability for benefit eligibility purposes.

We estimate that the cost increase of H.R. 6075 will amount to 20 cents per week per worker, for employees now covered under a TDI plan which excludes pregnancy. There will be a cost increase of 4 cents per week per worker for employees now covered under TDI plans which provide limited pregnancy disability benefits. The Department's estimate of the total cost increase (including administrative costs) is 191.5 million, or only 3.5% of total contributions required. These total dollar amounts are relevant only when compared to contributions, number of workers, or total payroll. We believe it is also essential to note that temporary disability insurance contributions represent only 1.4% of

the wage package for covered workers in private industry and H.R. 6075 will increase that percentage only to 1.50%. This total amounts to only one and a half cents per dollar of wages. 1/

It is also clear from the experience of employers already covering pregnancy disability in their TDI plans that the percentage of employees who return to their jobs after recovering from pregnancy disability improves markedly with coverage. These employers have expressed the view that the significant savings to employers in training and recruitment costs more than offset the added contributions required to cover pregnancy.

As noted above, the Department's cost estimates are based on an average disability period of 7.5 weeks. This figure, cited by the Chamber of Commerce, as the experience of a large corporate employer in 1977, was corroborated by other large employers whose plans cover pregnancy disability. While some quoted figures have been slightly higher, we believe that 7.5 weeks reflects the experience of the better administered and more tightly controlled plans. Also considered is the fact that most plans do not pay benefits until the eight day of disability.

1/ All figures, of course, are subject to the changes brought about by an expanding labor force and increases in prices and wages in subsequent years including the current year, 1977.

Alternative calculations were also made based on assumptions of 6 weeks of benefits and 9 weeks of benefits. The 6 week assumption was chosen as an approximation of the average length of benefits under plans which now provide limited pregnancy disability coverage. The 9 week assumption was included for comparison purposes. The cost estimate incorporates a 20% adjustment for administrative costs. 2/ The attached tables reflect costs both with and without this overhead assumption.

In order to determine cost impact, the Department based its estimate of TDI coverage on data from the Social Security Administration (See Table I, fn. 1) adjusted to apply to 1976, and from labor force data from the Department of Labor. We believe these data better reflect coverage than the Source Book of Health Insurance Data 1976-1977, insofar as they eliminate double counting of employees covered by more than one disability plan and eliminate private plans not covered by the proposed legislation.

Data were disaggregated by industry according to health plan estimates contained in the March 1977 Social Security Bulletin. 3/ The disaggregation by industry for TDI plans

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2/ The administrative cost adjustment is based on the average percentage difference between benefits and contributions for temporary disability insurance over the five year period from 1970-1974. See Alfred M. Skolnik, "Twenty-five years of Employee Benefit Plans", Social Security Bulletin, September 1976.

3/ See Daniel N. Price, "Private Industry Health Insurance Plans: Type of Administration and Insurer in 1974", Social Security Bulletin, March 1977.

is considered to be closely correlated to that of health plans. Industry calculations were made in order to reflect differences in plan coverage by industry, differences in the percent of women workers by industry, and differences in wage rates by industry.

In order to determine the expected number of births, the 1975 birth rate was applied to each industrial grouping for all women workers between 15 and 44 years of age covered by temporary disability insurance plans and for women covered by those TDI plans now providing limited pregnancy benefits. The high labor force participation rates of women of all ages made it reasonable not to adjust for age distribution. Similarly, differences in birth rates for women workers and other women should now be minimal with increased female participation in the labor force.

The wage data for women are based on the May 1976 Current Population Survey, which shows the latest figures available. The estimates assume that women receive 60% of their weekly earnings during the period of disability.

The expected cost increase is calculated by subtracting the cost of benefits now provided under plans covering pregnancy from total anticipated temporary disability insurance benefit payments for pregnancy disability. The payroll of private sector employees covered by TDI plans is derived from estimates of the total number of workers covered and average weekly earnings for all covered workers by industry.

Finally, the Social Security Administration's [4/] 1974 data on TDI contributions were updated to 1976, expanded to include all relevant TDI coverage, and adjusted by the Consumer Price Index. Increased costs due to expanded coverage for pregnancy benefits were then related to total contributions in order to reflect relevant impact.

The costs of private sector health insurance will also be affected by H.R. 6075. However, precise data on the cost impact of the bill with respect to health insurance plans could not be estimated reliably. Published data from the Social Security Administration with information on dependent's health care coverage are only available through 1970. [5/] Thus, this coverage would have to be extrapolated to 1976 with adjustments for the ratio in employment and significant further adjustments to assess costs for dependents, which is, of course, unnecessary in the temporary disability insurance context. Delivery and maternity hospitalization costs would also have to be gathered and these vary widely across the country. An assessment would be needed of the prevalence and completeness of maternity benefits currently offered by health plans.

4/ Alfred M. Skolnik, "Twenty-Five Years of Employee Benefit Plans", Social Security Bulletin, September 1976.

5/ See W. W. Kolodrubetz, "Two Decades of Employee Benefit Plans, 1950-70: A Review," Social Security Bulletin, April 1972.

The variations among health plans also make it extremely difficult to reach supportable estimates. For instance, certain plans exclude a variety of medical conditions including pregnancy. Many plans have a dollar cap on pregnancy payments but not on other conditions. Finally, there are plans which treat pregnancy equitably either through similar percentage payments for all conditions or through similar dollar limitations.

In summary, data limitations have made it impossible to provide the committee with cost estimates which we consider would fairly represent the impact of H.R. 6075 on health insurance.

TABLE 1

Temporary Disability Insurance Coverage
(Private Sector, 1976)

	Source of Temporary disability (short-term) coverage	Number of Workers (in millions)	Percent of Workers
(1)	Private plans [2/]	25.3	74.0
(2)	State-administered funds [2/]	8.4	24.6
(3)	Railroad Retirement Board Administered plan	.5	1.5
(4)	Total - temporary disability insurance coverage affected by HR 6075 [3/]	34.2	100.0
(5)	Temporary disability coverage now providing limited benefits for pregnancy disability [4/]	19.7	57.6
(6)	Coverage for pregnancy disability newly required under HR 6075	14.5	42.4

[1/] Data from Daniel N. Price, "Cash Benefits for Short-Term Sickness, 1948-1974, Social Security Bulletin, July 1976 and from Alfred M. Skolnick, "Twenty-five Years of Employee Benefit-Plans," Social Security Bulletin, September 1976. These data relate to private plans in 1974. The estimate in line (1) was increased by a factor of 1.039 to account for the growth in the labor force between 1974 and 1976. This growth rate was computed from "Table A1 Employment Status of the Noninstitutional Population, 1929 to date, U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings, March 1977, Vol. 24, No. 3. Includes paid sick leave plans and plans written in compliance with State temporary disability laws.

TABLE 1 (con't)

2/ Five states have temporary disability laws. California, New Jersey, and New York permit substitution of a private plan for the state plan; Hawaii has no state plan; and Rhode Island does not permit substitution. The estimate on line (2) is based on unpublished data furnished by state temporary disability offices to the Unemployment Insurance Research Office Employment Training Administration, U. S. Department of Labor.

3/ This total represents the sum of lines (1) through (3).

4/ Estimate on line (5) based on assumption that 40 percent of workers covered by weekly accident and sickness benefits for nonmaternity disabilities are also covered for maternity disabilities; and that 100 percent of workers covered by paid sick leave, state TDI plans and by the Railroad Retirement Board administered plan are covered for maternity disabilities.

TABLE 2

Workers Covered by Temporary Disability Insurance by Industry

Industry	% of Workers by Industry 1/	Temporary Disability coverage (millions of workers)	Temporary Disability coverage including pregnancy (millions of workers)
Manufacturing	52	17.78	10.24
Construction	7	2.39	1.37
Transportation	6	2.05	1.18
Communications & Public Utilities	6	2.05	1.18
Wholesale & Retail Trade	12	4.10	2.36
Finance	7	2.39	1.37
Services	6	2.05	1.18
Mining & Agriculture	4	1.37	0.79
All Industries	100	34.2 2/	19.7 2/

1/ Percentages are based on calculations in Daniel N. Price, "Private Industry Health Insurance Plans: Type of Administration and Insurer in 1974" Social Security Bulletin, March 1977, p. 17, Table 3. The percentages are based on health care plans. It is assumed that coverage for temporary disability plans parallels that of health plans to a large degree.

2/ Totals are taken from Table 1, lines (4) and (5).

TABLE 3

Women Covered by Temporary Disability Insurance by Industry

Industry	% Female employment by Industry 1/	Temporary Disability coverage (millions of women) 2/	Temporary Disability coverage including pregnancy (millions of women) 3/
Manufacturing	29.3	5.21	3.00
Construction	6.6	0.16	0.09
Transportation	17.1	0.35	0.20
Communications & Public Utilities	29.3	0.60	0.35
Wholesale & Retail Trade	43.7	1.79	1.03
Finance	52.5	1.25	0.72
Services	55.9	1.15	0.66
Mining & Agriculture	16.0	0.22	0.13
All Industries	31.4	10.74	6.19

1/ U.S. Department of Labor, Employment and Earnings March, 1977, Vol. 24. No. 3, p. 9, Table 2 "Employed Persons in Selected Industries."

2/ TDI coverage is calculated by multiplying percentage of female employment by industry, times total temporary disability insurance coverage, by industry (see Table 2).

3/ TDI coverage including pregnancy is calculated by multiplying percentage of female employment by industry times TDI coverage including pregancy by industry (see Table 2).

TABLE 4

Expected Births by Industry
(based on the 1975 birth rate of 66.7
births per 1000 women 15-44 years of age) 1/

Industry	Births for women covered by temporary disability insurance (thousands) 2/	Births for women covered by temporary disability insurance including pregnancy (thousands) 3/
Manufacturing	239	138
Construction	7	4
Transportation	16	9
Communications & Public Utilities	27	16
Wholesale & Retail Trade	82	47
Finance	57	33
Services	53	30
Mining & Agriculture	10	6
All Industries	491	283
Additional births not now covered by temporary disability insurance for pregancy	=	208

1/ U.S. Department of Health Education and Welfare, National Center for Health Statistics, Monthly Vital Statistics Report, December 30, 1976 (supplement), Vol. 25, No. 10. The 1976 rate is still preliminary.

2/ Births are calculated by multiplying the number of women under 45 years of age covered by temporary disability insurance times the 1975 birth rate. It is assumed that 68.48% of women workers are under 45 based on calculations from U.S. Department of Labor, Bureau of Labor Statistics, Office of Current Employment Analysis, unpublished data from the May 1976 Current Population Survey.

3/ Births are calculated by multiplying the number of women under 45 years of age covered by TDI including pregnancy benefits times the 1975 birth rate.

TABLE 5

Cost of Current Pregnancy Disability Insurance Coverage (at average 6 weeks) for wage replacement of 60% by Industry

Industry	Births for women covered by temporary disability insurance including pregnancy (thousands)	Average weekly earnings for women 1/	Cost of Current Disability Insurance coverage for pregnancy (millions) 2/
Manufacturing	138	135	67.1
Construction	4	149	2.1
Transportation	9	161	5.2
Communications & Public Utilities	16	191	11.0
Wholesale & Retail Trade	47	94	15.9
Finance	33	140	16.6
Services	30	143 2/	15.4
Mining & Agriculture	6	148	3.2
All Industries	283	134 (average)	136.5

Total cost for current disability including an increase of 20% for administrative costs 4/ = $163.8

1/ U.S. Department of Labor, Bureau of Labor Statistics, Office of Current Employment Analysis. Unpublished data from the May 1976 Current Population Survey. Includes both full-time and part-time workers.

2/ Excludes private household workers.

3/ The cost column equals (births) x (weekly earnings) x (60% replacement rate) x (6.2 weeks).

4/ Administrative costs are based on the average difference between benefits and contributions for temporary disability plans over a five year period. Data from Alfred M. Skolnik, "Twenty-five years of Employee Benefit Plans," Social Security Bulletin, September 1976. This figure represents the amount that plans are currently paying for pregnancy coverage, without any Federal requirement.

TABLE 6

Total costs if Temporary Disability Insurance were extended to cover pregnancy for all covered workers (wage replacement at 60%)

Industry	Births for women covered by temporary disability insurance (thousands)	Average weekly earnings 1/ for women	Costs for coverage for 6 3/ weeks (millions)	Costs for coverage for 7.5 weeks (millions)	Costs for coverage for 9 3/ weeks
Manfacturing	239	135	116.2	145.2	174.2
Construction	7	149	3.8	4.7	5.6
Transportaion	16	161	9.3	11.6	13.9
Communications & Public Utilities	27	191	18.6	23.2	27.8
Wholesale & Retail Trade	82	94	27.7	34.7	41.6
Finance	57	140	28.7	35.9	43.1
Services	53	143 2/	27.3	34.1	40.9
Mining & Agriculture	10	148	5.3	6.7	8.0
All Industries	491	134 (average)	236.0	296.1	355.3
Total cost for current disability including an increase of 20% for administrative costs		=	284.3	355.3	426.3

1/ U.S. Department of Labor, Bureau of Labor Statistics, unpublished data from the May 1976 Current Population Survey. Includes both full-time and part-time workers.

2/ Excludes private household workers.

3/ The cost columns equal (births) x (weekly earnings) x (60% replacement rate) x (weeks of disability).

4/ Administrative costs are based on the average difference between benefits and contributions for temporary disability plans over a five year period. Data from Alfred M. Skolnik, "Twenty-five years of Employee Benefit Plans," Social Security Bulletin, September 1976. This includes the $225.5 million already being incurred by plans now covering pregnancy for an overall average of 6.2 weeks.

TABLE 7

Total Estimated Payroll for Workers covered by Temporary Disability Insurance

Industry	Temporary Disability coverage (millions of workers) 1/	Average 2/ weekly earnings	Weekly Payroll for workers covered by TDI (millions)
Manufacturing	17.78	211	3751.6
Construction	2.39	246	587.9
Transportation	2.05	247	506.4
Communications & Public Utilities	2.05	247	506.4
Wholesale & Retail Trade	4.10	147	602.7
Finance	2.39	202	482.8
Services	2.05	173 3/	354.7
Mining & Agriculture	1.37	187	256.2
All Industries	34.2	206 (average)	7048.7

Total Annual payroll (weekly payroll x 52) = $366,523.4 million

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1/ See Table 2.

2/ U.S. Department of Labor, Bureau of Labor Statistics, Office of Current Employment Analysis unpublished data from the May 1976 Current Population Survey, includes both full-time and part-time men and women.

3/ Excludes private household workers.

TABLE 8

Additional Cost of Extending Temporary Disability Insurance Benefits for Pregnancy (for average periods of 6.0, 7.5 and 9.0 weeks)

Weeks of benefits	Excluding administrative cost	Including Administrative costs
	In dollar terms (millions)	
6.0	$100.4	$120.5
7.5	$159.6	$191.5
9.0	$218.8	$262.5
	As a % of Estimated Payroll	
6.0	0.027%	0.033%
7.5	0.044%	0.072%
9.0	0.060%	0.072%
	Cost per worker (14.5 million additional workers)	
6.0	$6.92/year 13¢/week	$8.31/yr. 16¢/week
	(additional cost for all 34.2 million workers for coverage above 6.0 weeks)	
7.5	$1.73/year 3¢/week	$2.08/year 4¢/week
9.0	$3.46/year 7¢/week	$4.15/year 8¢/week

1/ These figures represent the difference between coverage costs (all industries) (Table 6) and current coverage cost (all industries) (Table 5).

2/ These figures represent the difference between total costs including administrative costs (Table 6) and total costs for current pregnancy disability including administrative costs (Table 5).

Table 9

Temporary Disability Insurance Contributions
(Employer and Employee)

		(millions)
(1)	Contributions to Private Industry Temporary Disability Insurance Plans in 1974 1/	$4250.1
(2)	Total Contributions for Workers Covered by TDI in 1976 (1974 dollars--34.2 million workers) 2/	$4585.3
(3)	Total Contributions for Workers Covered by TDI in 1976 adjusted by the Consumer Price Index to represent dollars in 1976	$5292.8

Additional Costs as a Percentage of Total TDI Contribution Required 3/

Weeks of Benefits	Excluding Administrative Costs 4/	Including Administrative Costs 4/
6.0	1.9%	2.2%
7.5	2.9%	3.5%
9.0	4.0%	4.7%

1/ Alfred M. Skolnik, "Twenty-five Years of Employee Benefit Plans," Social Security Bulletin, September 1976.

2/ This figure is derived by calculating private industry contributions per worker in 1974 ($137.07) and multiplying that by the amount of private coverage in 1976. See Table 1 for coverage.

3/ The percentages reflected in this table represent the additional costs (Table 8) divided by the sum of total contributions (Table 9) plus the additional costs (Table 8).

4/ See Table 5, footnote 4 for the explanation of the administrative cost differential.

25 MAY 1977

Honorable Harrison A. Williams, Jr.
Chairman
Committee on Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In response to your request of May 20, I have enclosed a copy of the cost data which were prepared on H.R. 6075 and which are equally applicable to S. 995. The data were prepared with the assistance of the Department of Commerce and reflect the government's best estimate. They cover only the estimated cost of disability payments and not any increase in medical costs which might result where employers have excluded maternity costs from their health insurance plans.

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There were also some companies who attempted to reduce the wage rates of the men during the one or two-year grace period provided by the Equal Pay Act. It was the Department's position that this period only delayed enforcement and did not permit employers to reduce wages prior to the effective date of the Act.

Sincerely,
Signed Ray Marshall

Secretary of Labor

Enclosure

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Rm. S-2002, x37675

Table 1

Numbers of Employees Covered by Health Plans By Sex and Industry

Industry	(1) % of Workers by Industry [1]	(2) % Female Employment [2]	(3) Employee Coverage (millions) [3]	(4) Female Employee Coverage (millions) [4]	(5) Male Employee Coverage (millions) [5]
Manufacturing	52	29.3	15.34	4.49	10.85
Construction	7	6.6	2.07	0.14	1.93
Transportation	6	17.1	2.27	0.39	1.88
Communications & Public Utilities	6	29.3	1.77	0.52	1.25
Wholesale & Retail Trade	12	43.7	3.54	1.55	1.99
Finance	7	52.5	2.07	1.09	0.98
Services	6	55.9	1.77	0.99	0.78
Mining & Agriculture	4	16.0	1.18	0.19	0.99
All Industries	100	31.2	30.0 [6]	9.36	20.64

FOOTNOTES TO TABLE 1

1/ Data from Daniel N. Price, "Private Industry Health Insurance Plans: Type of Administration and Insurer in 1974", Social Security Bulletin, March 1977, p.7, Table 3.

2/ Data from U.S. Department of Labor, Employment and Earnings, March, 1977. Vol. 24, No. 3, p. 9, Table 2.

3/ Coverage by industry is calculated by multiplying private industry health plan coverage, 29.5 million workers, (see Footnote 6) times the percentage of workers by industry (column (1)).

4/ Female employee coverage is calculated by multiplying employee coverage by industry (column (3)) times percentage of female employment (column (2)). Health plan membership is thus assumed to be distributed by sex according to labor force distribution by industry. These percentages may differ if, for instance, wives choose to be covered under husband's plans or visa versa. For couples over child-bearing years this makes no difference in the calculation of expected births. For couples within child-bearing years an adjustment for overcounting is made in Table 3.

5/ Male employee coverage is calculated by subtracting female employee coverage (column (4)) from total employee coverage (column (3)).

6/ Total employee coverage (all industries) is derived from estimates of private coverage from Daniel N. Price "Private Industry Health Insurance Plans: Type of Administration and Insurer in 1974", Social Security Bulletin, March 1977. The total, which refers to 1974, was increased by a factor of 1.039 to account for labor force growth between 1974 and 1976 giving a new 1976 figure of 29.5 million workers. This was increased by 0.5 million workers to account for the Railroad Retirement Board Administered Plan.

TABLE 2
CALCULATIONS TO ARRIVE AT TOTAL
EXPECTED NUMBER OF BIRTHS COVERED
BY HEALTH PLANS ANNUALLY

MALE EMPLOYEES		FEMALE EMPLOYEES	
(1) Male Employee Coverage (All Industries)	20.64 million	(1) Female Employee Coverage (All Industries)	9.36 million
(2) Male Coverage as a % of Male Employment	35.3%	(2) Female Coverage as a % of Female Employment	24.3%
(3) % of married men expected to be married to women 16-44 years of age	49.25%	(3) % of married women employees between 16-44 years of age	37.35%
(4) Expected number of wives 16-44 years of age of male covered employees.	10.17 million	(4) Expected number of married women employees between 16-44 years of age	3.50 million
(5) % of married women 16-44 out of all women 16-44 years of age	59.92%	(5) % of married women employees 16-44 out of all women employees 16-44 years of age	55.91%
(6) Total number of women 16-44 years of age corresponding to expected number wives of male covered employees	16.97 million	(6) Number of female employees 16-44 years of age	6.26 million
(7) Birth rate of women 16-44 years of age	66.71 thousand	(7) Birth rate of women 16-44 years of age	66.71 thousand
(8) Expected births for women 16-44 corresponding to the expected number of wives	1132 thousand	(8) Expected births for women employees 16-44 years of age	418 thousand
(9) % of out-of-wedlock births	14%	(9) Percentage of out-of-wedlock births	14%
(10) Expected births to wives 16-44 years of age of male covered employees	973 thousand	(10) Expected number of births to married female employees 16-44 years of age	359 thousand

FOOTNOTES TO TABLE 2

1. See Table (1) Column (5) all industries for male employees and column (6) all industries for female employees.

2. Employment data from U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings, March 1977, Vol. 24, No. 3. Percentages calculated by dividing line (1) entries by employment data for men and women respectively.

3. Data on percentages of married men and women in the labor force derived from U.S. Department of Labor, Bureau of Labor Statistics, "Marital and Family Characteristics of the Labor Force, March 1975, "Special Labor Force Report 183. Married men expected to be married to women 16-44 years of age included all men 16 to 44 and half of the group of men aged 45-55. It is assumed that, on average, men tend to marry women somewhat younger then themselves.

4. Calculated by multiplying line (2) times line (1).

5. Data on percentages of married women derived from U.S. Department of Labor, Bureau of Labor Statistics, "Marital and Family Characteristics of the Labor Force, March 1975," Special Labor Force Report 183.

6. Calculated by dividing line (4) by line (5).

7. U.S. Department of Health, Education and Welfare, National Center for Health Statistics, Monthly Vital Statistics Report, December 30, 1976, Vol. 25, No. 10. The figure refers to 1975; the 1976 rate is still preliminary.

8. Calculated by multiplying column (7) times column (6).

9. U.S. Department of Health, Education and Welfare, National Center for Health Statistics, Monthly Vital Statistics Report, December 30, 1976, Vol. 25, No. 10. The figure refers to 1975; the 1976 rate is still preliminary. The rate applied to women employees may yield an overestimate of out-of-wedlock births. This is compensated by the subsequent underestimate of births for women employees married to male employees who also have health plan coverage. See Table (3).

10. Calculated by subtracting the product of column (8) times column (9) from column (8).

TABLE 3
Total Expected Births Per Year
for Employees Covered Under Health Plans

(1)	Expected number of wives 16-44 years of age of male covered employees.	10.17 million[1/]
(2)	Female labor force participation rate of married women 16-44 years of age.	51.09 %[2/]
(3)	Female coverage as a percent of female employment.	24.3 %[3/]
(4)	Expected number of women married to covered male employees who could be covered by their own employee health plan.	1.26 million[4/]
(5)	Expected number of births for women in line (4). (This number is thus duplicated in line (10) male and line (10) female of Table 2.)	129 thousand[5/]
(6)	Total expected births for year for employees covered under health plans.	1,262 thousand[6/]

1/ From Table (2), line (4).

2/ Data derived from U.S. Department of Labor, Bureau of Labor Statistics, "Marital and Family Characteristics of the Labor Force, March 1975," Special Labor Force Report 183.

3/ From Table (2), line (2).

4/ Calculated by multiplying line (1) times line (2) times line (3).

5/ Calculated by dividing line (4) (1.26 million women married to covered male employees) by 3.50 million married female employees (Table 2, line 4) and multiplying the resulting percentage by the 359 thousand births expected for married female employees (Table 2, line (10)). This assumes that there is no correlation between married women covered by health plans and married men covered by health plans. If, for instance, wives of men covered by health plans were more likely to be covered by health plans than women employees on average, the total number of duplicated births in Table 2, line (10) would be higher.

6/ Table 2, line (10) for male employees plus Table 2, line (10) for female employees less Table 3, line (5) - duplicated births.

The CHAIRMAN. There may be a few submissions for the record. We will keep it open briefly.

[Whereupon, at 1.05 p.m., the subcommittee adjourned subject to the call of the Chair.]

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