(Statement of Hon. Leonard Farbstein follows:)

STATEMENT BY HON. LEONARD FARBSTEIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

I should like to express my appreciation to this subcommittee for the opportunity of presenting this statement in support of the "Equal Pay Act of 1962."

First, let me commend my two esteemed colleagues, Herbert Zelenko, the chairman of this subcommittee, and the distinguished Congresswoman from Oregon, Mrs. Edith Green, for their valuable public service in introducing H.R. 10226 which is under consideration here today and companion measure H.R. 8898, introduced in the previous session of Congress. The Nation, I believe, owes them a debt of gratitude for bringing to public attention one of the grossest forms of social and economic discrimination.

Enactment of legislation providing for equal pay for equal work is a matter of simple justice. But beyond its purpose of righting a grievous wrong, H.R. 10226 has much deeper implications for our entire economy.

It has already been pointed out to this subcommittee that women presently constitute approximately one-third of our working force—a very substantial proportion, indeed, and one that will continue to grow with the years. When these women—who perform the same occupational duties but at a lower wage than the men with whom they work side by side—are deprived of the same compensation as their male counterparts, not only are their own pocketbooks seriously affected, but the communities in which they live are also adversely affected because of diminished purchasing power.

Moreover, the too widespread concept of "unequal pay for equal work" is a constant threat to many male wage earners for the simple reason that employers either tend to replace men with women workers, or fill newly created jobs with women. The absence of an equal pay law then serves as a depressant on general wage levels.

To me, such discrepancy in salary scales has been a constant reminder that for all our talk about equality and justice, we still pay homage to the long-since-outmoded concept that women are not the equals of men. And lest we forget, may I point out that not only do women make up half of our population—but that they are an increasingly influential half.

I have been much impressed, as I know has been this subcommittee, with the cogent and learned testimony of numerous witnesses who have appeared before you. Every aspect of the need for equal pay legislation has, I think, been adequately described. It is not my desire to be repetitious, but I would ask this subcommittee to consider not only these brief statements of mine but to look as well to the fact that only 22 States currently have equal pay laws. It is apparent to me, as I hope it must be to you, that there is great need for Federal equal-pay legislation inasmuch as more than half of our State legislatures have not seen fit to write such a law.

Legislation, like people, is known by the company it keeps. The fact, I think, that this bill has the enthusiastic support of the administration, of organized labor, and a distinguished list of organizations and individuals speaks extremely well for it. I am delighted to add my voice to theirs and urge a speedy and favorable report on H.R. 10226. For my part, I shall make every effort to work for ultimate passage into law of this crucial bill this year.

I thank you for your kind attention.

Mr. ZELENKO. The next witness will be the Honorable Dorothy Kenyon.

STATEMENT OF JUDGE DOROTHY KENYON, ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION

Mr. ZELENKO. Judge Kenyon, the Chair welcomes you. You have had a most distinguished career as a fighter for civil rights. I recognize you as one of our most distinguished jurists.

You have given much of yourself to the public cause. We are deeply appreciative of the fact that you have taken the time to appear before this committee today.

May I say that I know your testimony will form an integral part of the consideration of the committee on these bills. With that, we welcome you and you may proceed.

Mrs. KENYON. Thank you very much, Mr. Chairman. I am sorry I do not live in your constituency.

It is a very great honor to me to be called here today, at your invitation, to speak on these two most important measures which, of course, by the way, as I understand it, are identical.

Mr. ZELENKO. That is correct.

Mrs. KENYON. And they are indeed most important.

I also appear today at the request of the American Civil Liberties Union to state the position of the American Civil Liberties Union.

I think we are all too well acquainted with that organization and its purposes for me to go any further in respect to it. I suppose, Mr. Chairman, really the reason why I was invited was that I had the honor to be the first U.S. representative to the Commission of the United Nations on the Status of Women when it was first set up back in 1946, and that was also, as we all know, when Mrs. Roosevelt first took over the chairmanship of the Commission on Human Rights.

I served on that Commission for 3½ years during its formative period. Before that, and this goes back so far that no one here is going to know anything about it, I was on a committee appointed by the League of Nations to study the legal status of women throughout the world, and we had started in——

Mr. ZELENKO. The Chair will wish to interrupt and state after listening to you and looking at you, it could not be very far back.

Mrs. KENYON. Thank you. But it was 1939, I must say, which so many people do not seem to know so much about at all anymore.

In any event, we were preparing a comparative study of the legal status of women in both the civil and common law countries of the West and also in Moslem and Hindu law, and we were only interrupted by the arrival of Mr. Hitler who, for a moment, interrupted our work.

It was, however, picked up by the United Nations, and it has gone on ever since. Incidentally, in that connection I had the honor, as U.S. delegate, to propose the first resolution on equal pay for women that was ever introduced in the United Nations.

I recall that our State Department was not quite sure what its policy should be on the matter. I suspect it had never given the matter of equal pay a moment's thought.

But I reassured them by saying that it was a matter of fairplay, and, of course, the United States was in favor of fairplay. So I was permitted to introduce it.

I was very happy because every single one of the countries on the Commission were unanimous in their support.

As for the American Civil Liberties Union—well, I suppose I should state my qualifications as a witness in this area. I have been on its board for 32 years and have served as vice president and secretary and am now chairman of its committee on equality, which deals with discriminations of all sorts. Of course, those are mainly minority group discriminations, of course, and the group of women is peculiar, as we all know, in that it is not a minority but a very definite majority group.

I think we emphasize that to remind you legislators of it when it comes around to election time. But nevertheless, women are very seriously discriminated against even if they are a majority group, and nowhere perhaps more than in the economic field where changing economic conditions and old habits and customs clash, and women are caught in the middle.

I learned my first lessons about equal pay and frankly, I was shocked at what I learned at the United Nations. The League of Nations had not prepared me for it because there we were dealing only with laws, whereas equal pay or rather unequal pay, is not a matter of law at all but of habit and custom.

Bad habit and custom, a survival of outmoded thinking. I discovered to my surprise that it was not a phenomenon peculiar to us but was widespread throughout the world. Whatever its ancient roots or original causes, the evil was worldwide.

I remember how surprised I was to learn that Australia, which actually was one of the pioneers in women's suffrage, had imbedded in its economic system a differentiation between men's and women's rates which meant that women on the average only got two-thirds of the pay that men got.

It seemed to me incredible. But a great change occurred. That was in 1946 and 1947. A great change has come over the world's thinking since then.

Here in the United States, at the time of World War II, the National War Labor Board laid down the principle and which all of the labor unions had to comply with, that there had to be equal pay for women with men in all union contracts.

Congress later, as we know, extended the principle to Government employees. It has also, to a certain extent, been rectified in the States, although as Mrs. Roosevelt has said, it is very spotty there and a tremendous job of work must still be done on the State level.

Of course, you all know what tremendous advantages have been made on the world scene. Mrs. Tillett has told you about that.

Now for the bills themselves which make an effort to give practical form to this principle of simple justice and fair play for women; of course, we all know that you can state a principle but it is an entirely different matter to find practical form for the enforcement of the principle.

In other words, there are many rights to which we give lipservice, or give genuine support, for which there is no practical remedy.

That has been one of the great difficulties in this area of the principle of equal pay for equal work. The great problem in respect to it is how you are going to determine what you mean by equal work, and it is only when you have worked out standards for the determination of what work is comparable with what work and so one that you have a chance to develop a remedy. Standards are greatly needed. Fortunately, we were able, during these last 15 or so years to have developed for us by the International Labor Office over in Geneva, a very fine set of standards, of working standards.

There, again, I hate to indicate my own qualifications, but I again had the chance to make the first resolution, calling upon the International Labor Organization to draft a model convention containing standards appropriate for the determination of this question.

It not only obliged, but it has kept the question under major study ever since and has contributed greatly to its clarification. So we have that background of work already done in this area of determination of standards.

The way it has been described is, I think, significant, in describing it in a pamphlet recently published by the United Nations on the subject of equal pay for equal work.

The convention is described as doing this: Whatever other considerations may apply in the fixing of rates of remuneration, the principle is established that there shall be no discrimination on the ground of sex. The convention states further that where such action will assist in giving effect to the principle of equal pay, measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

This means the establishment of wage or salary rates on the basis of the characteristics and requirements of the job and irrespective of the sex of the worker. It means payment of the same rate per unit of measurement, whether pay is by time or piece rate. It means, too, the differential rates which correspond without regard to sex differences in the work to be performed shall not be regarded as being contrary to the principle of equal remuneration.

Where rates are fixed on this basis, that is, according to job content, the sex of the worker, as such, is irrelevant. Such a concept implies the abolition of traditional classification of jobs into men's work and women's work.

So with these standards in mind, the bills before us today appear to be soundly based, with sound objectives, and practical workable administrative provisions because, first, the law is a Federal law, dealing with private business engaged in interstate commerce or having contracts with Government.

No law is needed for the Federal Government, itself, because the civil service law covers Federal employees where the principle has already been enacted. This law, therefore, will merely extend the principle to private industry and commerce whether operating independently or with contractors for the Government.

Second, it is a Federal law, rather than a constitutional provision, because constitutional protections against discrimination are traditionally directed against discrimination by Government and not by individual private citizens, and, therefore, would not be deemed applicable in this case where private behavior of private citizens is concerned.

I might add that since the Supreme Court is so loath to apply the equal protection of the laws clause of the 14th amendment of the Constitution to women, except in cases where the unreasonableness of the differential law in question is so extreme as to constitute in effect irrationality. I just had a little run-in with the Supreme Court on that score with women jurors a few months ago.

Little help can be expected at this time from that quarter, but I am always hopeful about the Supreme Court and perhaps they will moderate their position a little bit. As we all know, they are now moderating it a little bit with respect to reapportionment where, again, the concept of irrationality has played a part.

For the time being, a law is obviously the quickest way to achieve the result we want.

Third, it leaves as the only remaining gap in the picture, the intrastate business, within the State, both public and private, carried on in those 28 States which have not yet enacted equal pay laws and which are beyond the reach of Federal law.

It is to be hoped that public opinion can be rallied to bring into effect equally in every part of the United States the same principle.

I have no doubt that the enactment of this Federal law will enormously accelerate that progress.

Fourth, and this, I think, is a very important matter, the law provides for its administration by the U.S. Department of Labor, the setting up of standards by that body, and the application of those standards to the facts found by that body in each case.

This insures the setting up of the best possible standards in line with the principle so carefully worked out by the Department over the years and with the work done by the ILO, much of whose work in that field is actually the product of help from the Labor Department, itself, or its representatives, who have attended meetings of the ILO in Geneva.

So I can conceive of no more competent or understanding administrative agency than our Labor Department for this task. As I say, the standards are already being worked on and formulated, and I have no doubt they are ready for immediate application.

Then the administrative steps for the application of these standards to individual cases, and their enforcement in appropriate cases where violations are found, are those which are generally accepted as the best practice; as you mentioned, Mr. Chairman, it is modeled after our FEPC laws.

It is also like our SCAD here in New York, except that I think it is perhaps a little bit better. It includes, as the standard best practice indicates is desirable, the preliminary educational methods. Once a violation is found to exist, a conference, conciliation, and attempted persuasion with legal enforcement procedures only coming after persuasion has failed, if it does, beginning, as we already mentioned, with cease and desist orders, double payment, and liquidated damages, subsequent steps to protect employees from retaliatory action or reprisals on the part of the employer, all of which is enormously important on the part of the employee, and finally the opportunity for appeal to a Federal district court.

I noticed when you were asking Mrs. Peterson the question about how the cease and desist orders were to be enforced, I see that on page 7 of the law, subdivision (c) it says:

> The Secretary shall have power to petition any United States district court within the jurisdiction of which the violation of this act occurs, where the person resides or transacts business, for the enforcement of any order issued under this section.

I have not gone any more deeply into the question of the operations of that sort of procedure, but it indicates here, I think, to a small extent, what is intended as a part of the enforcement procedures.

As you have said, the Department of Justice, of course, knows all about that and has all of the best answers. I am sure it could fill in any gaps that it might be concerned about.

All of this suggests fairplay and due process for all of the parties concerned, and would seem practical and workable as well.

It follows, as I have said, the general procedural lines of FEPC laws and our own SCAD. The only right lacking in practice is generally found to be an insubstantial one: the right of complaint by the employee.

The employee may, in theory, already have such a right now. I am not familiar with that. But it was felt by yourself, Mr. Chairman, and Mrs. Green, the introducers of the measure, that most employees would hesitate to complain for fear of reprisals, and that their best hope would be reliance upon the strong protecting arm, with its standard setting and investigatory power, of the Labor Department.

In that I heartily concur.

In conclusion, I want to go back to the simple question of fairplay, based on the constitutional principles of equal treatment and due process of law.

Whatever the original reasons for paying women less than men for doing the same work, none of them make sense nowadays and I doubt if they ever did. People should be paid on an equal basis for the work that they do, whether black or white, man or woman, no difference is tolerable.

It is a simple matter of fairplay. Women have suffered from this evil long enough. They are in industry to stay and they deserve to be treated like all other human beings in a land of freedom and equality.

In conclusion, I would like to quote one little remark of a recent case in New York State, which is nothing to be too proud about in its laws on the subject, because it has stated the principle in the labor law and has not provided any effective machinery for its enforcement.

This case, *Wilson* v. *Hacker*, which had to do with barmaids and barmen, in that case the court stated this, as what it believed was the true principle.

> Discrimination on the grounds of sex in the absence of any evidence of incompetence or bad moral character in the particular case must be condemned as a violation of the fundamental principles of American democracy. The right to be free from discriminations on class grounds is one of our fundamental freedoms.

Then the court goes on to quote the Declaration of Human Rights, which Mrs. Roosevelt had a very large part in writing. I might, myself, quote from the Charter of the United Nations, fundamental freedoms for all, without distinction as to race, sex, language, or religion.

Finally, I will bring into our support, though it is hardly needed, I think, the words of Pearl Buck, who has long been a student of this worldwide movement of women toward human dignity and freedom.

She said:

> Free men and free women working on equal terms together in all the processes of life, and what is this but democracy, for in our preoccupation with nations and peoples and races, let us remember again that there is a division still more basic than these in human society.
>
> It is the division of humanity into men and women. Men and women against each other destroy all other unity in life, but when they are for each other, when they work together, the fundamental harmony exists, the foundation on which may be built all that they desire.

Mr. Chairman, thank you very much for giving me this opportunity to come here today and to speak on this subject which is so close to

my heart. I am delighted to hear that you are pushing very hard for the success of these bills.

I hope that your efforts may be successful and that they will be speedily enacted into law. Thank you.

Mr. ZELENKO. Thank you, Judge Kenyon, for your most informative and detailed statement, particularly the legal analysis of the bill. I will call your attention to the fact that during the hearings in Washington——

Mrs. KENYON. Were they attacked? I think they are remarkably good.

Mr. ZELENKO. There was a point raised with regard to section 4 of the bill, which is the prohibition section against differential based on sex, and we felt the bill did not have any language in it to protect the situation where a higher wage of one employee, let us say a man, would be reduced so that the equality required in the bill would be met.

With that in mind, we have drafted a proposed amendment which reads as follows, and which will come at the conclusion or in the body of section 4, which will state:

Nor shall any employer reduce the wage rate of an employee for the purpose of eliminating the differential in wage rates prohibited by this section.

Mrs. KENYON. Mr. Chairman, I could not be more delighted with that. The whole difficulty with equality is that the word in itself imports no standards.

Mr. ZELENKO. The minimum would become the maximum.

Mrs. KENYON. That is right. That is a practical danger, too.

Mr. ZELENKO. We had another thought in mind. We had to protect the menfolks so that they would not come forward with a bill in a year or two to get equality, and we felt that writing this in could at least close a prospective loophole.

Does that language meet with your legal aproval?

Mrs. KENYON. I think so. I listened to it quite carefully.

Mr. ZELENKO. I will read it again.

Mrs. KENYON. When the men decide to do that, please let me know because I am for equality.

Mr. ZELENKO. I know that. The language will read:

Nor shall any employer reduce the wage rate of an employee for the purpose of eliminating the differential in wage rates prohibited by this section.

In other words, as I stated before, there shall not be a reduction in a wage to meet the equality, that is, reduce the wage of the man or a woman to meet the lower wage.

The point is that this bill will not be made into a law which will reduce the standards, but it is rather to raise them.

Mrs. KENYON. I think that is splendid. I will let the Continental Can Co. know about it right away, because there was a case decided just about 10 days ago, as you know, against the Continental Can Co. in Pennsylvania, where the wage differential had been written into the union contract.

The court declared that the existence of the law prohibiting unequal pay destroyed that contract in that respect, some. So there may be an immediate question on that score. I better tell them that the new law will cover it and they better do it up rather than down.

Mr. ZELENKO. I am sure the Continental Can Co. will be delighted to hear what took place here, but I do not think it will be persuasive until this becomes law.

Mrs. KENYON. Maybe not.

Mr. ZELENKO. Thank you.

The Chair wishes to make an announcement. Due to traffic conditions, some of our colleagues will not be here until the afternoon session. Also due to traffic conditions, one of the morning witnesses could not make an appearance, and will appear later.

The committee will now stand in recess until 2 o'clock, at which time Miss Bette Davis will be the first witness, followed by Howard Coughlin, Miss Kopelov, Miss Thomson, and perhaps the mayor, who is now scheduled for this afternoon.

We will now recess until 2 o'clock.

(Whereupon, the subcommittee recessed at 11:20 a.m., to reconvene at 2 p.m., the same day.)

AFTER RECESS

(The subcommittee reconvened at 2 p.m., Hon. Herbert Zelenko, chairman of the subcommittee, presiding.)

Mr. ZELENKO. The committee will resume.

The first witness for this afternoon will be Miss Bette Davis.

STATEMENT OF MISS BETTE DAVIS

Mr. ZELENKO. Miss Davis, we want you to make yourself very comfortable. We welcome you here as one of the great entertainers of our time. It was felt by the committee that there should be a representative of the entertainment world before this committee, representing an important area in the employment of women.

It was felt by the committee that you were the prime example, the epitome of the stage art. We are very happy to welcome you and to hear what you have to say pertaining to this legislation.

If you have a statement, you may present it at this point. I note this is your first appearance before a congressional committee.

Miss DAVIS. It is, yes.

It is an honor to appear before this distinguished body and a privilege to have a chance to speak in favor of H.R. 10226, the Equal Pay Act of 1962.

While preparing my remarks for today, I came upon an interesting statement attributed to the late author, William Beletha. Contrary to male sentimentality and psychology, he wrote, the confrontation of a hostile crowd to a woman is like a tonic. I might add this is the history of my life.

This is certainly not to suggest that I consider this august body to be in any way hostile, but the subject, itself, affects me as a tonic would, for I believe very firmly in the principle of equal pay for equal work without discrimination as to the sex of the person involved.

The only hostility I feel is toward the fact that such a principle is not an accepted part of our daily living. I regard the fact that anyone should find it necessary to plead the principle of equal pay for equal work a matter of profound wonder.