Mr. McCloy. Will the gentleman yield?

Mr. Edwards. Yes.

Mr. McCloy. I wish to concur in what you have said, Mr. Chairman, about our distinguished witness and our colleague on the committee, Barbara Jordan.

We can say that she is a "first" in very many ways, among others, the first black woman from the South who has been elected to the Congress. When we first debated this issue on the floor of the House and presented it to the American people, a very compelling statement was made by our colleague, Congresswoman Shirley Chisholm. She said that in this Nation she found that there was greater discrimination against her because she is a woman than because she is black.

I am honored to have Ms. Jordan with us this morning.

She has a very distinguished record. She is a most welcome witness at this hearing.

Thank you.

Ms. Jordan. Thank you, Mr. Chairman.

Mr. Edwards. Congresswoman Jordan, you are recognized.

TESTIMONY OF HON. BARBARA JORDAN, A REPRESENTATIVE IN THE CONGRESS OF THE UNITED STATES FROM THE 18TH CONGRESSIONAL DISTRICT OF THE STATE OF TEXAS

Ms. Jordan. Thank you for the introductory words, and I concur with them. [Laughter.] I do not ask to revise and extend my remarks in any degree.

Mr. Chairman, this is an important issue the subcommittee has before it. I recall when the equal rights amendment was approved by the Congress by the requisite two-thirds vote. I was a member of the Texas State Senate. The presiding officer of that body, Lt. Gov. Ben Barnes contemplated running for Governor at that time, and was very excited about the Congress approving the equal rights amendment.

He was so excited that he wanted Texas to be first in ratification, and when the word disseminated from the wiser heads of the Congress to the wiser heads of the Texas Legislature, we considered that amendment in short order.

We were not No. 1 in ratification, but we were one of the early States ratifying the amendment. And now we have before us a resolution to extend the time for ratification.

Why is this a unique issue? Why do we have to even try to do this? It is unique because things have occurred in the process of debating and consideration of the amendment in the various States which leads those of us, who support this extension, to believe that if more time were allowed for a full and free discussion of the issue, there may be sufficient understanding so that ratification could occur within the timeframe of the resolution before you.

What is the magic about March 22, 1979? There is no magic, Mr. Chairman, in that date. I know that all of you were here at the time—perhaps with the exception of Mr. Beilenson—when the date was placed on it.

Why? Did you think that, because other amendments that had a cutoff of 7 years, that you would tack it onto this bill. Was any real
thought given to that? Or was this just an artificial and arbitrary deadline that you said maybe this will be enough time?

The Congress decreed that limit, then, for consideration to be 7 years. It could very easily have been 2 years, 10 years, 20 years. It could have been either of those times; but you chose "7."

Why? Because other amendments included a limitation date of 7 years. We have heard discussions about "7 years" being "traditional." There is nothing traditional about that 7 years, Mr. Chairman and members of the committee, and only 4 of the 26 amendments to the Constitution have those 7 years.

Is that long enough to make it custom, to make it tradition? There has not, in anything I have read, been a full, indepth, and thoughtful discussion about why "7 years," because no one really knows.

There was no clear rationale about that. So we have 7 years in the 18th amendment, in the 20th, in the 21st, and in the 22d, but that's all.

The first time 7 years was put on, on the 18th amendment in 1917, the case which was brought in consideration of the efficacy of the 18th amendment was brought because the plaintiff in that case, Mr. Dillion in this instance, said Congress had done something that it shouldn't do; that it was strange, and different.

Here we had all of these preceding 17 amendments with no time limit on them, and then Congress on the 18th says, "7 years." The Court did not deal with the "7." The Court, in considering the matter, said: Congress has the authority—not only the "authority," but the responsibility and the duty—to place a time limit on a constitutional amendment, if it does so desire; that only the Congress had the right to set a date, if it desired.

Since this is a matter, then, which is exclusively within the domain of the Congress, then if Congress decides in the period of consideration of the issues and the debate that more time is needed for a full and free discussion of the issues, it is the Congress which may, in its authority, extend that date. And that is what we are asking you to do in this Resolution 638.

One of the arguments against extending the date: There are those that say Congress placed the initial 7 years because it sought a contemporaneous concensus of the people by the ratification deadline.

Now I would remind the committee—and knowing that you are familiar with the cases in this matter: the argument regarding "contemporaneous concensus" is used, but that is not what the Court used.

The Court said: It is assumed that the ratification dates will reflect a reasonably contemporaneous approbation of the people—"reasonably contemporaneous approbation." Does anybody on this committee feel that an additional 7 years would be violative of a reasonably contemporaneous expression of the approbation of the people?

I believe in 1986 there will be as much discussion about the matter of equal rights for women as we have in 1978. I do not feel that there can be any cessation of this issue by any date, because it is important that we discuss it fully.

We will continue to debate in Congress and the executive branch the issues which are raised by other amendments to the Constitution—amendments which have been in there for years; the 14th, for example.
The debate will not cease. It will not cease with the passage of time. We are still trying to wrestle with some interpretations of, certainly, the 14th amendment to the Constitution.

The Constitution brought to fruition and continues to govern this democratic republic.

The ideals of liberty and equality and justice were spoken very eloquently in the Declaration of Independence, but it took the Constitution to give it some structure. And I would say, Mr. Chairman and members of the committee, rather than us continuing to shout about all men and women being created equal in a natural state or under law, that we have somehow got to transpose this into the fundamental law of this country—which is the Constitution of the United States.

I favor the equal rights amendment; I always have. I favor extending the time limit for ratification. Congress can do this. Some have already said that we can do it by a simple majority. I believe that we can, and I agree with that.

This is a political question, Mr. Chairman and members of the committee. You don't have to be a very thoughtful constitutional expert to recognize that this is a political question; and it is one on which you will make a political judgment. But it is a political question which runs to the heart, the core, the absolute essence of what this republic is supposed to be about, with all people having equal names and faces, and equal opportunities to improve or to fail as they so desire.

I don't think you ought to sidestep on the issue of whether the extension of time will give greater time for rescission of ratification; that is not an issue before you. I would hope that you would hope that you would recognize that that is a separate issue; that the matter of an extension of date is a procedural detail which only we in the Congress can answer.

The amendment process is important to the entire construction—the way the Constitution was constructed. Madison thought the amendment process as set out in the Constitution—"... to be stamped with every mark of propriety. Certainly, you will do that. It guards equally against that extreme facility which would render the Constitution too mutable; and the extreme difficulty which might perpetuate its discovered faults."

It was a member of the Massachusetts Ratifying Convention who made this statement: "There is an apprehension that the liberties of the people are in danger." There are people who feel that this equal rights amendment says that the liberties of the people are in danger. Women believe—we believe—that we are due this expression of our equality.

We feel that as strongly as you gentlemen who are already there. And we want this country to speak with a final voice. And I want this committee to give the country time to speak with a final voice.

I know that this committee will not be misled by arguments which have nothing to do with the substance of the equal rights amendment. I know that you will not allow this simple amendment to become so weighted with arguments which have nothing to do with it that it destroys the opportunities for this country to speak in a loud and clear voice.

Change the rules in the middle of the game? It is no "game," Mr.
Chairman. We are talking about the rights of living, breathing, viable working human beings, individuals. We are talking about the Constitution of the United States, something which needs to be done to make it still more perfect.

It is no game. There is no game board here.

Mr. Chairman, I appeal to the committee to support this resolution because it deserves your support.

Thank you, Mr. Chairman.

Mr. Edwards. Thank you very much, Ms. Jordan.

[Applause.]

Mr. Edwards. The gentleman from Massachusetts, Mr. Drinan.

Mr. Drinan. Thank you, Mr. Chairman.

Congresswoman Jordan, I commend you upon your statement. First, taking care of a technical matter, Mr. Chairman, I move that the subcommittee permit coverage of the hearing by television, radio broadcast, and photography, pursuant to committee rule 5.

Mr. Edwards. Without objection, so ordered.

Mr. Drinan. You are, as usual, Ms. Jordan, very eloquent and persuasive. Would you sum up, or mention the strongest argument on the other side, and give some reflections on it?

What, if any, argument do they have?

Ms. Jordan. That is a question that I really can't answer, because the argument on the other side is so hollow and empty that I have difficulty—[pause—laughter]—all right.

The strongest argument on the other side, in all seriousness: The people on the other side, the people of the United States of America and of the ratified States, expected that when the Congress said, in the initial submission of the Constitution to the States, when it said: This amendment shall be effective upon the ratification of three-fourths of the several States within 7 years, that the Congress meant what it said; and that it was in reliance on that 7 years that other States went ahead and did it. And that to extend that date would be unfair to those who felt that they had only that time period.

I think that is the strongest argument. Countering that, there is nothing in the Constitution, or its history, that says once the Congress sets a deadline, that that is inviolate; that you can't change it. There is nothing which says that. If we want to make sure that we are reflecting the contemporaneous expression of the people's approval, then it would make more sense for, not the Congress which submits the amendment, but for the Congress which is in session at the point of ratification to define whether this amendment reflects the consensus or "contemporaneous expression of approval of the people" at that time.

Mr. Drinan. Would you expand a bit on the right to rescission? Because there are some members of this subcommittee, and I am certain of the House, who would feel that the Congress, if we enact 14 years instead of 7, is in fact changing the nature of the "contemporaneous" period.

Consequently, if we give it a different contemporaneous period, we should simultaneously give the right to rescind.

Ms. Jordan. I know that that is an argument which has been raised. I just give it short shrift in my testimony, because I don't feel that
that is essential to the issue, or related to the issue. But the fact is—and, Congressman Drinan, you and I know—that neither of us can sit here and state, as a flat constitutional matter, when a State can rescind, when it cannot rescind; whether extension of the time will allow greater opportunity for rescission. All we can state are what the facts now are.

And that is that this resolution has nothing to do with rescission; that rescission has been a constitutional puzzle for as long as we have been a country; that article V, the amendment article, is the one which tells us the way we should amend the Constitution, but is absolutely silent on rescission; and that nothing we do here in this resolution can affect the state of the law—as confusing and puzzling as it is now.

Mr. Drinan. That is a very fine statement. I thank you. Your testimony has been extraordinarily helpful. Thank you.

Ms. Jordan. Thank you.

Mr. Edwards. The gentleman from Illinois, Mr. McClory.

Mr. McClory. Thank you, Mr. Chairman.

I am sure that we can agree as to the eloquence of the gentlelady from Texas who has delivered a most forceful and persuasive statement here this morning.

I would like to ask a couple of questions. I will ask you a couple of questions all at once, if you don't mind, and then you can comment on them all in your response.

My first question would be: With 12, at least, of the 15 States not ratified, having sessions either this year or next year before—with ample time—March 2 next year, don't you believe that we can achieve ratification by that date?

My second question doesn't relate to the subject of rescission. I am against granting rescission, I might say, because I do not think that was contemplated by the Founding Fathers, as you yourself indicated in your testimony. We have testimony that this measure now pending before us can be amended at the time we grant the extension to provide for rescission during that same period. That definitely will be an issue on the floors of the House of Representatives and the Senate, should this measure go that far.

I am wondering if you do not think, the subject of ratification is diluted by devoting attention to this? Also would you agree that we are providing a vehicle for rescission which both you and I oppose?

Ms. Jordan. Is that the conclusion of your dual question?

Mr. McClory. Yes.

Ms. Jordan. Let's deal with the first one, Mr. McClory.

Mr. McClory. Please proceed.

Ms. Jordan. There is a possibility that this amendment could be ratified by March 22, 1979. There is that possibility. It is not assured. But it is highly unlikely.

If you can assure me that the State of Illinois is going to somehow revert from its careless ways and become champions of human rights—

Mr. McClory. I will try.

Ms. Jordan. I know you will try, but try harder. [Laughter and applause.]

Of course, I know that the gentleman from Illinois is a supporter of the equal rights amendment. I know that you have problems with
the extension, and I am going to try to help you with these problems. [Laughter.]

But what about a little insurance? Sure, we are going to keep working. All of these people you see coming here today are supporting the equal rights amendment.

You had Liz Carpenter from Texas yesterday. We are going to keep working. But just in case we don’t make it, let's not get right to the deadline and see the whole work effort destroyed so that we have to go over—

Mr. McClory. Are we not diminishing our strength on behalf of ratification by spending our time on the extension instead of devoting our full energies toward ratification now and in the next few months?

Ms. Jordan. Whether you can believe it or not, Mr. McClory, we are very versatile people and we can work on both fronts. [Applause.]

We have enough energy to spread it all around, and we will do that—in all seriousness.

Now to your second question, of rescission: The danger that you are looking at is whether this resolution, once it gets on the floor of the House of Representatives, that someone will amend it to add a rescission proviso.

We would have to talk to the Parliamentarian about whether that would be germane to the matter of the extension of ratification. I think there would be some question there. But I also know that it is clear to me from the authority I have seen, the authorities I have seen, that we can't deal with rescission in this which will be a joint resolution; that that would require, if we tried to impact on the amendment process of article V, that it would be necessary to go another route; that we couldn't do this by a resolution with a majority vote.

So I think it would fail because of that constitutional argument. And that is about as much as I can say about that.

Mr. McClory. Thank you, Mr. Chairman.

Mr. Edwards. Thank you.

The gentleman from Missouri, Mr. Volkmer.

Mr. Volkmer. I would like to ask you a few questions.

Yesterday, we had legislators from the State Legislature of Oklahoma, Arizona, Illinois, and Virginia. They testified here. Of those, two appeared to me to be opponents—Arizona and Oklahoma—of ratification, and two were proponents. However, three of the four said that they didn't feel that even with an extension that there would be any possibility in the future because of what has happened in the past, and what is occurring in those States; and that there wouldn't be much chance for ratification.

The only one that said there was was the State of Virginia. Things seem to be turning around, there. And in my own State of Missouri, I am sorry to say that it doesn't look any better—it looks worse even, in fact, than it was; 1975 was the best year, and it has gone downhill since.

Knowing that, do you think that, since Senator Eagan from Illinois who is a proponent of the ERA said words to the effect of “let this pass”; not to pass the extension—how do you feel about that, knowing
the State legislative bodies feel that way—some of them, not all of them.

Ms. Jordan. I disagree with those State legislative members and I say that they are wrong.

Mr. Volkmer. The next thing that I would like to ask: In the event that we do have this joint resolution before the House and the Senate, do you feel that it is only necessary for a majority of the members to vote? Or two-thirds?

Ms. Jordan. That is the way I feel, that only a majority would be necessary.

Mr. Volkmer. Now also, in the event that we did not extend by March 22, 1979, do you have an opinion as to whether or not thereafter the Congress could open it up again for ratification?

Ms. Jordan. Without extending the deadline? Without the passage of this resolution, could Congress wait awhile after March 1979—

Mr. Volkmer. Let's say we passed one in 1979 and it goes into effect in September or October.

Ms. Jordan. Congressman Volkmer, the time will have expired for that resolution and I do not feel that would be a viable issue for consideration by the Congress because the resolution would, for all intents and purposes, be dead.

Mr. Volkmer. Are we then supposing, then, that this resolution—is this resolution a law? Or is this resolution part of the Constitution—638!

Ms. Jordan. I do not feel it is a part of the Constitution. It is a joint resolution of the House and Senate to extend time.

Mr. Volkmer. It does not have to be signed by the President?

Ms. Jordan. No; that is what the authorities say.

Mr. Volkmer. Thank you very much.

Mr. Edwards. Thank you.

The gentleman from California, Mr. Beilensen.

Mr. Beilensen. I don't have any questions, Mr. Chairman. Thank you. I agree with everything, generally, that has been said.

Mr. Edwards. There is a quorum call before the House.

The committee will recess for 10 minutes.

Ms. Jordan, we thank you very much for your splendid testimony.

Ms. Jordan. Thank you, Mr. Chairman. [Applause.]

[Recess.]

Mr. Edwards. The subcommittee will come to order for the privilege of introducing our next witness. I have the honor of recognizing the gentleman from Illinois, Mr. Railsback.

Mr. Railsback. Mr. Chairman, thank you very much.

Phyllis, I do not always agree with you on every issue but I must say that you have been, in my opinion, active in a constructive manner in support of your beliefs. I think you have been a very articulate spokeswoman for many causes that have really been a major concern to our country. [Laughter.]

I am proud that you are from Illinois, and I am proud to introduce you to the subcommittee.

Mr. Edwards. For the second introducer, we will recognize the gentleman from Illinois, Mr. McClory.
Mr. McClory. Thank you very much, Mr. Chairman. I do want to join in welcoming a very distinguished leader, one that we do not always agree with, but one who has strong opinions and who enunciates them very clearly and articulately. She has appeared frequently on the CBS Radio Perspective with points of view which she composes and articulates very well.

She is a charming person, too, and I am happy to welcome her here this morning.

Mr. Edwards. We welcome you. You may proceed.

TESTIMONY OF PHYLLIS SCHLAFLY, NATIONAL CHAIRMAN OF "STOP ERA," CHICAGO, ILL.

Mrs. Schlafly. I would like to thank the distinguished Congressmen from the State of Illinois for the generous statements, and to return the compliment.

I am Phyllis Schlafly, the national chairman of "STOP ERA," the organization that has led the opposition to the ratification of the equal rights amendment.

I am very grateful to the chairman and the members of the subcommittee for hearing our reasons for opposing the bill to extend the deadline for ratification of the equal rights amendment.

Our reasons for opposing the bill have nothing to do with the arguments for or against ERA, and I will address myself solely to the issue of extension.

If Congress now changes the time period for ratification of the equal rights amendment, which was positively set at 7 years in House Joint Resolution 208, passed by the 92d Congress on March 22, 1972, regrettably, millions of Americans will look upon this as an unfair attempt to tamper with the U.S. Constitution.

"Tamper" is the word used by the New York Times. The Washington Post calls it "tinkering." The New Republic predicts that people will feel that ERA has been "snuck through." Dean Erwin Griswold calls it "a breach of faith." These words are only symptomatic of the intuitive feeling of the American people that the ERA proponents are trying to change our Constitution in an unfair way because they can't win if they obey the law.

The last few years have not exactly been good ones for public confidence in the institutions of our Government. Many Americans have been disillusioned by unfortunate acts of some persons in the executive branch and in the Congress, and by some decisions of the U.S. Supreme Court. But one institution of our Government has remained sacred: the U.S. Constitution.

If millions of Americans believe that the Constitution too has been tarnished, the fallout will be worse than that from Watergate. No amount of legal verbiage will be able to justify something that the American people feel is fundamentally unfair.

Not only is the move to change the ERA time period unfair, but some of the arguments presented to this subcommittee are dishonest. On November 1, 1977, Assistant Attorney General John N. Harmon, appeared before this subcommittee to present a 51-page Justice De-