

MARGOT ADLER: But is it that simple? Others say that it's not gender bias that causes the pay gap but the choices women make. Women earn less than men, the argument goes, because they choose fields that pay less, like teaching or social work. Or they work part time while raising families. The American Association of University Women recently weighed in on the pay gap debate in a study of college graduates. The study shows females just one year out of college earn 20 percent less than their male peers. Catherine Hill, the association's director of research, co-authored the report. She says that even after you factor in the differences that affect wages, there's still a 5 percent gap between what men and women earn, a gap that widens over time, a gap that she argues points to sex discrimination.

CATHERINE HILL: We looked at occupations. We looked at work experience. We looked at college. We looked at GPA. We looked at major in college. We looked at workplace flexibility. We looked at a lot of characteristics at the same time. And when we can fold for all of those together, we're still seeing something that's not explained, and that suggests that there's something else going on here.

MARGOT ADLER: I think the most fascinating part of the study is this whole idea of the wage gap that exists just one year out of college. Why did you concentrate on this and what do you think is significant about it?

CATHERINE HILL: I think it is significant that we have a wage gap so early in the career. I was surprised that among these--these are younger men and women, women in their twenties and thirties. If we are expecting the wage gap to just sort of disappear over time--I think a lot of people have this sort of assumption that over time if we just wait long enough the pay gap is going to sort of disappear as women and men make more and more similar choices as our society becomes more and more open to men and women doing different kinds of work. But what we see is that even among the sort of, this younger generation, right after school we're seeing these pay differences emerging.

MARGOT ADLER: Now isn't part of the problem that so many major in the liberal arts or in social work or in education, and they're all fields that pay less?

CATHERINE HILL: That certainly is part of the explanation, but again it's not all of the explanation. So, yes, we do see that women who major in what we call "traditionally female jobs," and I was interested to find there really is still a great deal of sex segregation in college, and, yes, that does have an influence on the pay gap, but that's not the whole answer because when you control for that finding you still see big differences. For example, women who major in biology, one year after college they're earning 75 percent as much as their male peers in biology.

MARGOT ADLER: You say that clearly part of it is choices, clearly part of it is what majors perhaps someone chooses but that there is this other part that can't be explained. And you say that that pay gap is a product of gender discrimination. How do you know that?

CATHERINE HILL: When we try to explain for all the things we know affect earnings and we can't explain some of it, that suggests that something else is going on. Now discrimination is only one of the factors it could be. We would point out that measuring discrimination is really quite difficult. It's hard to measure discrimination directly. Most people don't tell you that they're discriminating. They won't tell you they're discriminating. And they may not be aware that they're doing so. So it's something we can't measure very easily. There have been a number of studies where people have tried to do just that, tried to study discrimination directly, and some of them have made some very interesting findings. For example, when you looked at, um, in the 1990s they had to change in orchestras where people then auditioned using what they called "blind auditions" so that the musician was behind a curtain. Well, when they switched to that methodology they found that women were suddenly getting more and more offers from orchestras, but it'd be very hard to have blind auditions for most jobs. You can tell someone's gender by talking to them, by looking at them, by looking at their name. So it's a very hard thing to measure directly.

MARGOT ADLER: But you're saying that if a woman chooses a field that mostly men work in, chooses not to take time off for family, chooses to work as many hours as men, that she still wouldn't earn money on par with a man?

CATHERINE HILL: That is the conclusion from the work that we did. And it's not just the conclusion from our analysis. I would recommend people take a look at our bibliography, because we found a number of other studies that came up with the same basic result.

MARGOT ADLER: Looking at the results of the study that you did, what advice would you give to young women whose goal is to make money on par with men?

CATHERINE HILL: I would begin by looking carefully at what choice of major. I think that people should certainly push themselves to try new fields they might not be as familiar with. I would recommend that women and men pay a lot of attention to that first job; that they look, pay attention not only to the money they get at the first job but also to the content, and that they are really still building their skills and developing their skills. You know, our first job often sets the groundwork. That is so the next job and the next, your bonuses, your pay raises, are all going to be based on that first job. So the choices you make early in your career are really going to make a big difference throughout your whole career. And we hope that people will pay a lot of attention to those choices.

MARGOT ADLER: Catherine Hill is the director of research at the American Association of University Women. She co-authored the report "Behind the Pay Gap." Economist Diane Furchtgott-Roth of the Hudson Institute disputes these findings. She says the study compares apples to oranges, or in this case, nurses to neurosurgeons.

DIANE FURCHTOGOTT-ROTH: So I have the study in front of me and I'm reading off some of the categories. Business Services, Education, Finance, Insurance and Real Estate, Healthcare. Now take healthcare for example. There could be a nurse in it and there could be a neurosurgeon, and they get paid different amounts. And one is male and the other is female. But the fact they're paid different amounts isn't unfair. It's just because they have chosen different

careers and they have different amounts of training. Now, if you had a male and a female neurosurgeon who had worked for the same amount of time, had the same education, and then they got paid different amounts for the same jobs that they worked, that would be illegal. That would be discrimination. That would be unfair. But the study doesn't show that.

MARGOT ADLER: You think that two neurosurgeons would in fact be paid pretty much the same?

DIANE FURCHTOGOTT-ROTH: Well if they worked in the same place, and they had the same education, and they had the same, most importantly, accumulated hours of work experience. Now you find that when women's pay falls behind it's because as they progress more in the work force they have fewer accumulated hours of work experience than do men. This is because 80 percent of women have children at some time in their lives and they tend to either take time out of the work force or sometimes cut back on their work hours because of family concerns. Now as the difference in the accumulated hours of work experience widens, you find that women's pay widens with it. So if you had two neurosurgeons that had the same amount of time in the work force, they would be paid about the same.

MARGOT ADLER: So do you believe that if a woman had made the same choices as a man she would earn the same pay, roughly?

DIANE FURCHTOGOTT-ROTH: Absolutely. And the problem is that women don't major in the same types of fields at college. So there are more female English literature/psychology majors and more male math/physics/computer science majors. So women are at a disadvantage right there in their choice of college major. And then when women have children they take time off sometimes right after childbirth. Many also select jobs with more flexible and shorter hours. And I think that's fine. It's a fine career choice. I'm not criticizing it. Please don't mistake me, but it does mean that earnings are lower. Now the choice of more time at home and less money rather than more money and more time at the office is a perfectly valid choice for individuals, and it's not something that we need to criticize or fix with government policy.

MARGOT ADLER: Now you talk about women more often than not being the ones who take time off to raise the kids and if they leave work for a couple of years or they work part time, they'll clearly make less money. Do you think that the American work place unfairly penalizes motherhood?

DIANE FURCHTOGOTT-ROTH: No, I think that the American workplace penalizes people who don't put in as many hours and it's mothers as well as fathers. So you have a man who took every Wednesday afternoon off to go fishing or decided he was going to leave at four or five o'clock every afternoon to play golf. He would be penalized. He wouldn't get ahead as quickly as the others. Our system, whether we like it or not, rewards merit, and it rewards hours on the job and that's the way it is. Now maybe we don't want our system. Maybe we want a system where everyone's paid more or less the same. Well, the only country that has this in the western hemisphere is Cuba. And you don't see Americans rushing over to Cuba because they want to work there.

MARGOT ADLER: So do you think that the wage gap is a myth that gets propagated by the media?

DIANE FURCHTOGOTT-ROTH: The wage gap of the--that women earn, I don't know, 20 cents on the dollar yet, uh, less than men, isn't a myth, but it's caused by averaging. You take all the jobs in the economy that are held by full-time males and you compare them to all the jobs in the economy held by full-time women and you compare them and you get a difference of about, you know, twenty cents on the dollar. And that's not something that's a myth. That's a fact. But the myth is that this is caused by discrimination or this is somehow unfair.

MARGOT ADLER: So what advice would you give to a young woman whose goal was to make money completely on par with men? What choices should she make?

DIANE FURCHTOGOTT-ROTH: It's really funny you should ask, because I have a teenage daughter who next year is going to be applying to colleges and I say: Francesca, major in economics with a specialty in finance. Go be a finance professor. Then you'll be able to buy all these things that you look in the catalog and you love. And she said: But Mom, I don't want to major in finance. I'm interested in interior design. I might major in Italian. I'm interested in art. So this is the advice I would give, but I can tell you as a parent giving it to a child, the child isn't always going to want to follow. The child is going to want to just do what she wants. [MUSIC]

MARGOT ADLER: Diane Furchtogott-Roth is a senior fellow at the Hudson Institute, the co-author of two books on women in the labor force. She was also the chief economist at the U.S. Department of Labor from 2003 to 2005. [MUSIC]

MARGOT ADLER: Coming up on Justice Talking, two women leaders, a feminist and a conservative, face off on whether we really need an Equal Rights Amendment.

UNIDENTIFIED FEMALE: I think if you were to ask Martha Stewart or Oprah Winfrey if they felt that the women's equality amendment would be necessary in order to put them on equal footing with men the answer would be "no."

UNIDENTIFIED FEMALE: I bet you if you ask them were they for it they would say yes, because obviously they're in an unusual position. [MUSIC]

MARGOT ADLER: Women, equality, and the Constitution. Stay with us. [MUSIC]

MARGOT ADLER: This is Justice Talking. I'm Margot Alder. There's a renewed effort to pass a constitutional amendment that would insure equal rights for women. But do we really need it? After all, we've got women in Congress, women who are CEOs, and a woman running for President. Joining me to discuss the proposed Women's Equality Amendment are Michelle Bernard and Eleanor Smeal. Michelle Bernard is the president of the Independent Women's

Forum. She's a lawyer and she leads her organization's Iraqi Women's Democracy Initiative. Eleanor Smeal is the president of the Feminist Majority Foundation. She is the former president of the National Organization for Women where she led the drive to ratify the Equal Rights Amendment. Welcome to both of you.

MICHELLE BERNARD: Thanks.

ELEANOR SMEAL: Good to be here.

MARGOT ADLER: In March, Senator Edward Kennedy and Representative Carolyn Maloney sponsored the Women's Equality Amendment, the bill that would amend the U.S. Constitution, and it would add this key line: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." It's the same language as the old ERA. Michelle, you say this is a silly idea. Why?

MICHELLE BERNARD: Well, my question is: Is ERA really necessary today? Do we really feel that the condition that women found themselves in, for example in the early 19th century, is still the condition that women are in today? I believe that a lot of the problems that women today still face, for example, um, are taken care of and can be addressed through the equal protection clause of the 14th Amendment as well as through the Civil Rights Act of 1964.

MARGOT ADLER: Before I turn to Eleanor, let me push you a little bit on this. This line-- "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."--it's a very simple line. It seems very--

MICHELLE BERNARD: It is.

MARGOT ADLER: --very simple, and to my mind possibly very rational. What's the problem?

MICHELLE BERNARD: Well, you're absolutely right. It is very simple and when you hear the language. I mean, it's really hard to find anything objectionable with it. The one question that I ask is do we really need to amend the United States Constitution to provide women with something that is already available through the equal protection clause of the 14th Amendment as well as through the Civil Rights Act of 1964.

MARGOT ADLER: Eleanor, you tried this 30 years ago. It failed. Why now?

ELEANOR SMEAL: Because we still need it. I mean, when you ask the question why when you have the Civil Rights Act of '64 and the equal protection clause, because in reality the Civil Rights Act only covers employment and it only covers certain employers. You know, come on. It is the 21st century. Women need full, equal rights of citizenship. Where is there discrimination? Let's put it that way. We still have insurance discrimination. We still have education where we really only have a federal guaranty if there is federal funding, and that is being whittled away because it's a statute. It is not a constitutional guaranty. We still have discrimination in the military. That's legal. We still have a disparate impact on Social Security.

I could go on. And so why do we need to do this step by step and piecemeal. Give us equal protection. We think we have it. We don't.

And by the way, when it comes to the equal protection clause, it would be great if the Supreme Court would interpret that to cover women as it does African-Americans, for example, but they have said it doesn't. They said that clause wasn't intended for that reason and so they've limited us. We do not have the same guarantees and so it's time. It's way past time to give us full protection which will in fact close the gaps that we still have, not only in wages but in opportunities that are not only unnecessary and injure women but injure all people.

MARGOT ADLER: Michelle, how would you deal with that discrimination if we're not going to have a constitutional amendment? And how would you answer the things that Eleanor said about the various types of discrimination that still exist?

MICHELLE BERNARD: Well, here's something that's really interesting, that as I was listening to Eleanor speak it reminded me of a civil rights class I took when I was in law school. And our civil rights professor, who I absolutely adored, asked the question to the people in the class who were twofers like myself, and by "twofers" I mean women and African-Americans, and the question was: Do you feel more discrimination on the basis of your race or on the basis of your gender? And every single black woman in the class said that they felt more discrimination based on their race--being black--than they did on their gender. And I think that if you were to ask that question again today, you would probably still get the same answer from the majority of African-American women out there. If we look at the gains that women have made in the United States over the last century, we have the right to--not only do we have the right to vote, we have women who are members of Congress, we have a viable woman candidate running for President of the United States. We are--women are 57 percent, I think it's 57 percent, of the admissions in colleges and universities. Women are going to graduate schools. They are earning more money than ever.

I think that if you were to ask Martha Stewart or Oprah Winfrey if they felt that the women's equality amendment would be necessary in order to put them on equal footing with men the answer would be no.

ELEANOR SMEAL: I bet you if you ask them are they for it they would say yes, because obviously they're in an unusual position. We're talking about Everywoman. If you say well why not need it, and those of us who spent all these years fighting for women's rights know we need it, then what's the worry? Let us have it. [SMEAL AND BERNARD TALKING OVER EACH OTHER] And if it's not needed it didn't hurt anything. But the reality is it is needed. And you know, we're the only industrial country in the world right now that has not ratified the United Nations Convention to Eliminate All Forms of Sex Discrimination. What's--what are we holding back on and why are we setting an example when we're now sinking in equal opportunity for women? The World Economic Forum now lists us at 21 in the world, and as far you just talked about elected office, we are now something like 60th or 61st in the world, nowhere near the top on the percentage of women in our national parliament or congress or in our state legislatures. We are lagging behind; we don't need to do this. We were breaking forth but the right wing has slowed this down. This should have been ratified in the--by 1982.

MARGOT ADLER: Let me ask Michelle this: Twenty-two states already have their own versions of the ERA written into their state constitutions, and none of those states have used that to, for example, ban single-sex education. So why should we worry about a national ERA if it hasn't been a problem in state ERAs?

MICHELLE BERNARD: You know, it's an interesting question. I've got to tell you though that I--I don't know how to answer that because I think that what will happen with this amendment if it actually is passed is that what we will see is that--all amendments generally generate litigation, but I almost feel like the ERA's purpose is to generate litigation. And do we really need to amend our, you know, our Constitution in order to give someone the right to start litigating and opening up the floodgates for things that really don't need to be handled in the court system?

MARGOT ADLER: Eleanor, how would you answer that charge? I once--

ELEANOR SMEAL: Actually it would reduce litigation because it would answer the question once and for all that we are fully equal. There are no floodgates you're opening. What you're doing is you're guaranteeing to every boy and girl that the law is not going to discriminate on the basis of sex. One of the things we've learned is as we have changed the laws, and we have--I have been at this since the '70s and it's all meant more opportunity for women. It's all meant a better society. I mean, it's not just women here. It's if the mother makes more money, if she has more opportunity, if a girl gets to go to college, it improves the whole society as well as her family. That's why we think stop hesitating, pass it and let's get on with it. Let's join the rest of the world. Let's start being more like leaders, and my heavens, we should pass the United Nations Convention to Eliminate All Forms of Sex Discrimination. You do--we do things like this and we improve and empower the lot of women not only in our own country, but by setting such an example, we help woman throughout the world.

MARGOT ADLER: Let's talk practicality for a minute. Eleanor, earlier this year the Arkansas legislators tried to revive the ERA and it faltered. Isn't this a harbinger of what's to come on a national level?

ELEANOR SMEAL: Not necessarily. The country is changing and is changing rapidly in the direction of more women's rights. We certainly, as you--everybody admits, we have gained in status and in belief that discrimination is wrong. So eventually we'll get there. It's going to take time. When the Feminist Majority, which started in 1986, began, we had two women senators and fourteen members of the House. This is at the federal level. We now have 89, a combination. Well, the same thing in the state legislatures. And by and large women vote for this. So as our numbers go up, and by the way as African-American numbers go up, not one African-American voted against it. They did on one vote in Illinois, but other than that, and then they switched back to being supporters. We tend to get the African -American vote. We get the Hispanic vote. And we get women's votes. And those numbers are all going up. I contend if there wasn't gerrymandering and if African-Americans and women were represented in anywhere decent numbers, we would have already passed this the first time around.

MARGOT ADLER: Michelle, do you think that this bill has standing?

MICHELLE BERNARD: No, I don't. I mean, you know, history tells us that the first 10 amendments to the U.S. Constitution, which-- commonly referred to the Bill of Rights--required only 27 months to be passed. And you know, back in 1977 when the ERA stalled, supporters of the ERA asked Congress I think for, you know, an additional three or four years in order to get this ratified and it didn't happen. And, you know, quite frankly, whether it was President Clinton or President Bush, or a Democratic Congress as we have now, or a Republican Congress as we had, you know, until recently you don't see large numbers of people saying that passing an Equal Rights Amendment or Women's Equality Amendment is the number one issue that this country needs to be dealing with today, and that's men and women.

MARGOT ADLER: Eleanor, you're the president of the Feminist Majority Foundation. I talk to lots of women and many of them say: I believe in women's equality but I don't call myself a feminist. And that's very different than it was 25 years ago. What happened?

ELEANOR SMEAL: No it isn't. No it isn't. In fact, we have more support. If you look at the polls over time, the percentage of people, women, who call themselves feminist has gone up and now we're a majority. That's why we call ourselves the Feminist Majority. When we started this in the late '60s, early '70s we were a minority, and a very distinct minority. In fact, in those days women didn't think that--women nor men thought we should get equal pay. That's all changed. In fact, all of our issues now we're in the majority except--a solid majority--except for gay rights. And that's now climbing and it's rapidly going into the majority status, too.

MARGOT ADLER: So Michelle, do you call yourself a feminist? Do your friends call themselves feminist?

MICHELLE BERNARD: You know, most people that I--a lot of people that I know today, particularly younger women, don't use the term because, we don't know when, but one day feminism became a dirty word.

ELEANOR SMEAL: Oh that's, that's such a mythology.

MICHELLE BERNARD: We have a lot of women who are members of the Independent Women's Forum who told us that they used to be members of, for example, the National Organization for Women and then it changed when it got political. When they felt that there was an agenda that did not meet their needs they left organizations like NOW. And I think you're seeing that with a lot of younger women today. There is just, people do not--women do not want to see, to be seen as people who view themselves as victims. Are we feminist at the Independent Women's Forum? We consider ourselves feminist of the ilk of women like Elizabeth Cady Stanton and Sojourner Truth. We, I think all of us, want the same things. Where we differ is what the role of government should be in allowing women to reach their full destinies.

MARGOT ADLER: This notion that many women take equal rights for granted. Eleanor, this does make your task of promoting an equal rights amendment difficult I would think.

ELEANOR SMEAL: No, it makes it easier. When women didn't think they had a right to equal rights or they couldn't walk through that door, that women shouldn't be lawyers or shouldn't be doctors, that that should only be the--you know, that women should "marry 'em, not be 'em," it was harder. Now it's easier. People now don't have to visualize a woman doctor. They know woman doctors and dentists and attorneys. When I started we were 3 percent of the law students and 8 percent of the medical students. And we fought down the discrimination which was massive in quota systems against us. And we won. But now it's easier. When you think and know you should have equal rights, we have even more support. It is a mythology that we don't have as much support. We have far more support. We are far stronger. We now have women's studies in almost every major college in the United States. We have feminist legal theory being taught at all the major law schools. None of this existed before.

MARGOT ADLER: Michelle, you say that enough protections already exist for women under the law. It does occur to me that a law can be overturned by Congress and having a constitutional amendment seems a lot more powerful. If you believe that women should have equal rights and in fact have them, why not simply say oh, you know, maybe it's not a big deal but why not support this?

MICHELLE BERNARD: Well, to me, honestly, I have said it earlier today, I truly feel that the Constitution is a very sacred document and I don't see any reason to amend it for this purpose. You know, is this amendment truly necessary? And I just, I don't see how it is. I don't foresee a time ever when the United States Congress would overturn the Civil Rights Act of 1964 or would suddenly abolish the 14th Amendment to the Constitution. There is, we have, you know, we've got the 13th Amendment. We have the 14th Amendment. One of the things that I think this debate is about is do we really need this amendment. And I don't see it as being necessary.

MARGOT ADLER: Are there places where both of you agree? I'd like to ask both of you that.

ELEANOR SMEAL: Well, see, the argument from our opponents is now changing. They now say they are for equal rights so it just isn't necessary. By the way, you know, they didn't say this in the '70s and '80s. The opponents are now calling themselves feminists, but they have different strategies of getting to equality. That's a big improvement. I mean at least we now are all in agreement: We need to get to equality. By the way, Constitutions aren't sacred. They're man-made. In this case definitely man-made. And they can be improved and in fact have been improved. We have had other amendments to the Constitution in addition to the Bill of Rights. And if we just looked at time alone, it took us three generations of women to get the right to vote. And by the way, if that equal protection clause would have protected women, that 14th Amendment existed and yet they ruled that women couldn't vote. So basically we do need the amendment.

MARGOT ADLER: Michelle, are there places where you both agree?

MICHELLE BERNARD: I mean, I think we both, I do feel that we both absolutely want what is best for women. I think we agree that something needs to be done about the disparate impact, the negative disparate impact, that Social Security, for example, has on women. Eleanor and I have had discussions in the past about the need for women's rights, particularly women's human

rights, when we speak about women particularly in the Middle East. We agree on those issues. So, yes, there are places where we, where we reach common ground.

MARGOT ADLER: Michelle Bernard is the president of the Independent Women's Forum. She's a lawyer and leads her organization's Iraqi Women's Democracy Initiative. Eleanor Smeal is the president of the Feminist Majority Foundation. She's the former president of the National Organization for Women where she led the drive to ratify the Equal Rights Amendment. Thank you both for coming on Justice Talking.

MICHELLE BERNARD: Thank you.

ELEANOR SMEAL: Thank you. [MUSIC]

MARGOT ADLER: Coming up on Justice Talking we'll see what still drives conservative Phyllis Schlafly's 30-year fight against the ERA. We'll look at the impact of Title IX and we'll also find out why Americans are so demanding of Hillary Clinton.

UNIDENTIFIED FEMALE: They want her to be an outsider. They want her to contradict the stereotypes. They want her to be tough enough. That balancing act is something that the Cirque de Soleil couldn't pull off.

MARGOT ADLER: Is America ready for a woman in the White House? Stay with us. [MUSIC]

[MUSIC] MARGOT ADLER: This is Justice Talking, where we make the connection between law and American life. I'm Margot Adler. Today we're looking at gender equality in the U.S. Do we need a Woman's Equality Amendment to the U.S. Constitution?

One of the best known opponents to the Equal Rights Amendment in the 1970s is still trying to keep it from passing now. At 82, Phyllis Schlafly still drives her Buick each morning to the offices of the Eagle Forum in suburban St. Louis. There she waxes conservative on all issues. Her latest focus has been on immigration and so-called activist judges. But when the ERA pops up again like it has now, she's there to fight back. Here's a clip when she was actively fighting the ERA more than 30 years ago.

PHYLLIS SCHLAFLY: Our laws and customs then make it the financial obligation of the husband to provide the support. It is his obligation and his sole obligation, and this is exactly and precisely what we will lose if the Equal Rights Amendment is passed.

MARGOT ADLER: Tom Weber recently visited with Phyllis Schlafly in St. Louis.

TOM WEBER: Phyllis Schlafly definitely has a look: hair perfect, dress modest, makeup tasteful, and throw in a necklace and maybe a few more wrinkles as she approaches her 83rd

birthday. She's a small woman who exudes confidence as she points out all the awards and photos on her walls.

PHYLLIS SCHLAFLY: We have--there's a picture of Ronald Reagan and me in the Oval Office. That's a very special picture.

TOM WEBER: Right above the photo is a tie from the days when thin was in and a note from the wearer, then governor Ronald Reagan.

PHYLLIS SCHLAFLY: And he wrote on it: "If you're like me you will only wear this now and then. I'm not against ties. I just don't like dressing up. -Ronald Reagan."

TOM WEBER: Phyllis Schlafly is the face and driving force behind the Eagle Forum, where our interview takes place. She founded it in the '70s to advocate conservative views at a time when conservatives were still learning how to organize. The forum has about a half million dollar budget, but the key is the grassroots volunteers in all 50 states. A monthly newsletter called "Phyllis Schlafly Reports" still goes out. So does a syndicated column as well as daily three-minute commentaries that air on more than 400 radio stations.

UNIDENTIFIED MALE: This is the Phyllis Schlafly Report. Mrs. Schlafly is an articulate spokesman--

TOM WEBER: And she's been fighting the ERA for more than a generation.

PHYLLIS SCHLAFLY: The advocates of the Equal Rights Amendment haven't gotten over their defeat. The amendment was debated for three, 10 years in this country and rejected. And they keep trying. It's been introduced every year in Congress and has gone nowhere.

TOM WEBER: But Schlafly is not overly worried that the ERA will ever be ratified.

PHYLLIS SCHLAFLY: The feminist ideology is based on the notion that God goofed in making us of two different kinds and it's up to them to remedy his mistake. Or should I say her mistake? And I don't think that is going to sell.

TOM WEBER: You just get the sense that she loves political fights. Born and raised in St. Louis, her mother was the family's breadwinner during the Depression after her father lost his job. Her political life started in the 1940s, right after getting a Master's from Harvard. She helped a Republican in St. Louis win a seat in Congress. Then she focused her efforts on the issue of the growing threat of the Soviet Union.

PHYLLIS SCHLAFLY: And then one day somebody gave me the Equal Rights Amendment and said you have to take a look at this. And when I did I discovered it was just a fraud. It pretended to benefit women but it had absolutely no benefit and a lot of handicaps.

TOM WEBER: Schlafly then and now argues the ERA would end Social Security benefits for homemakers and widows. Also, what's so wrong with treating men and women differently?

They are after all different. And her thinking has evolved as newer issues grab the spotlight. Her list of reasons to oppose the ERA now includes her belief that it would legalize same-sex marriage.

UNIDENTIFIED MALE: There's no doubt in my mind that without Phyllis Schlafly, ERA would have passed.

TOM WEBER: That's Don Critchlow, a professor at St. Louis University who's last book explores not just Schlafly but how Schlafly's side won in the ten year battle over the ERA. And even after all these years Critchlow says Schlafly still speaks to the conservative right.

DON CRITCHLOW: And so she might appear under the radar if you're looking at who's appearing on nightly news. But I think last year, if I recall correctly, she gave over 300 campus lectures. She's still a voice that's out there.

TOM WEBER: Even supporters of the ERA concede that point. Dawn Clark Netch was a state senator when the ERA debate was at its hottest in Illinois.

DAWN CLARK NETCH: You know, a few marchers here and there really isn't what produces votes. It's getting out there and talking to people who will then talk to their legislators, and they had done a good deal of that. They had, I think, out-strategized, if you will.

TOM WEBER: And in that regard, Phyllis Schlafly's legacy will be as much about getting people involved as it was fighting the ERA.

PHYLLIS SCHLAFLY: Oh yeah, those are my campaign buttons that I've collected. They all go back to Bob Taft in 1952.

TOM WEBER: Back in her office, Schlafly has a phone interview in a few minutes. A reporter is calling for her reaction to the pet food contamination scare. And she just lost a button on her dress. But that's all in a day's work, and at this point she's planning to have a lot more of them.

PHYLLIS SCHLAFLY: Oh no, no. Why would I stop? We have a great thing going.

TOM WEBER: For NPR's Justice Talking, I'm Tom Weber in St. Louis. [MUSIC]

MARGOT ADLER: Though the ERA never became law, a federal law passed in 1972 changed the course of history for women: Title IX. And though many associate it with women's opportunities in sports, its reach is much further than that. It prohibits discrimination on the basis of sex in all federally funded schools and colleges. In addition to athletics it covers all educational programs, everything from job training to military training and educational programs in prison.

To get a sense of how it works, I talked with Erin Busuvis, an assistant professor of law at the Western New England College School of Law. She helps write the Title IX Blog, a website offering daily updates about Title IX. I asked Erin how Title IX has evolved since it was made into law in 1972.

ERIN BUSUVIS: After Title IX was passed in 1972 there was a lot of debate and as a result of the debate a lot of inactivity in terms of trying--of schools trying to strive for Title IX compliance. Because it was unclear how Title IX would apply, schools sort of were able to throw up their hands and say well once you get it sorted out then we'll start to get to work in terms of compliance. And so for much of the '70s you can see that schools really weren't striving for compliance, at least in the context of athletics.

And then in the '80s somebody got the idea that as a matter of statutory interpretation, Title IX shouldn't apply to athletics. Basically the argument was that only the actual program within the school that's receiving federal funds should have to comply with Title IX, not the entire school. And so while this legal theory made its way up the courts in the 1980s again schools were using that as an opportunity to say no we don't have to comply with Title IX.

What happened then was that the Supreme Court in 1984 agreed with that argument and held that schools didn't have to comply with Title IX except for the actual specific program that was receiving federal funding. And it took an act of Congress in 1987 to reverse that Supreme Court decision, and once that happened, then again schools were back to realizing that they would have to comply with Title IX. But now we've sort of wasted two decades.

MARGOT ADLER: So you're saying that really we didn't have compliance with Title IX until the late '80s?

ERIN BUSUVIS: You know, exactly. And actually some people would put that start date even later and this is why: because it wasn't until 1992 that the Supreme Court said that people who sued for violations of Title IX could get damages.

MARGOT ADLER: Am I right to believe that Title IX doesn't apply to football? I heard that somewhere.

ERIN BUSUVIS: Football has an interesting relationship with Title IX because schools that are striving for compliance with that first prong--in other words, schools that want to show that their percentage of female athletes is the same as their percentage of female students--have a hard time meeting that test when they have a football team. So what that means is that you have to add a lot of sports for women in order to start to rival that large number that's created on the men's side when football is involved, or you have to start trimming other sports that are already on the men's side.

MARGOT ADLER: So that's why there have been lots of articles blaming Title IX for decisions to end college sports teams.

ERIN BUSUVIS: Right.

MARGOT ADLER: And also, mostly men's but also some women's teams. And is Title IX the problem or is this sort of a subterfuge because of budget cuts, because of other things, or because of football?

ERIN BUSUVIS: Well I definitely believe that it is a subterfuge because of other things. I definitely believe that Title IX is not the reason why schools cut teams. I think Title IX has something to say about which teams get cut. And all it says on that score is that if you're already giving a disproportionately fewer number of opportunities to women than men, when it comes to cuts you can't make that situation worse for women. So if you're not in compliance with the first prong you have to cut men's teams first if you're going to cut.

MARGOT ADLER: Erin Busuvis is an assistant professor of law at the Western New England College School of Law. She helps write the Title IX Blog, a website offering daily updates about Title IX. Thank you so much for coming on the show. [MUSIC]

ERIN BUSUVIS: Well thank you for having me.

MARGOT ADLER: You can find a link to Erin Busuvis' Title IX Blog at our website, justicetalking.org. [MUSIC]

MARGOT ADLER: One of the tangible ways we can see the strides women have made in the U.S. is by the number of women who hold political office.

To talk with me about women in politics is Marie Wilson. She's the founder and president of The White House Project, an organization that works to train more women leaders in America. She's the author of "Closing the Leadership Gap: Why Women Can and Must Help Run the World." Welcome.

MARIE WILSON: Thank you.

MARGOT ADLER: Women have made some tremendous gains in U.S. politics in the past couple of years. We have Hillary Clinton running for President and Nancy Pelosi is the first female speaker of the House of Representatives. But then when you look at it differently, the United States ranks something like 68th in the world when it comes to women represented in national parliaments. How would you rank the state of women in politics in the U.S.?

MARIE WILSON: Well, Margot, I'd give us a yea/boo. What the yea part is, of course, is what you've already mentioned, that we do have the first female speaker of the House, that we do have the leading contender for the President on the Democratic party side. But if you look at overall not only our rank internationally but what's happened with regard to the slow pace of the pipeline, we are not good. We finally after 10 years moved up a one notch in the state houses. We were at 21 percent of the state houses for about 10 years, thanks to, actually, term limits, which didn't work well for women. So we got up to 22 percent and we do hold more positions

of power in the state houses but the overall ranking of women, the overall participation of women, is not good. But let me give the caveat to that by saying what is happening--and I'm on the ground in several states with The White House Project listening to this--is illustrated by a panel just yesterday in Colorado where four elected women sat up there and said, wow, is it ever an advantage to be a woman, the first time since we've been doing these trainings for close to a thousand women to run for office that I've ever heard woman after woman say, boy, is it an advantage right now. And I actually think the tide is turning and that women are really more and more running, and more of us are helping them to get into political life and into politics.

MARGOT ADLER: There is this notion that female candidates face a double bind, that they have to adopt characteristics associated with masculinity to appear as a credible leader. Then they risk criticism that they're not acting like a woman. Do you think this argument still holds a lot of weight today?

MARIE WILSON: I think that argument is as strong as it's ever been because we remain balanced in that whole area of women in the public and private, and you don't see it any more clearly, Margot, than you see it with Hillary Clinton. If you watch it at the way it's dealing--being dealt with right now, she has to conform to the stereotypes about women. People want her to be so warm, so personable, you know, they want her--I almost think the "I'm sorry bit" is as much about what you're supposed to do as their concern about the war, and her vote on it is that of course she should say she's sorry. But you also want her--they want her to be an outsider. They want her to contradict the stereotypes. They want her to be tough enough. That balancing act is something that the Cirque de Soleil couldn't pull off, you know, because it is really hard. And she is, she is kind of the epitome of the fact that that's still in place. It doesn't mean it can't be done, but it is really tough. And the higher you get, the governorships, you know, the presidency, or the speaker of the House, the tougher it gets. What you have seen that's kind of tipping right now is the fact that women have been more willing to bring that mother/private, you know, "I'm a soft person" in without risking quite so much. Like Pelosi surrounding herself with her children and grandchildren.

MARGOT ADLER: Of course after she was--

MARIE WILSON: After she was elected.

MARGOT ADLER: --after she was made Speaker, right?

MARIE WILSON: Yeah, you didn't see them.

MARGOT ADLER: I mean, I bet she didn't do it before.

MARIE WILSON: Darlin', she didn't. But she did do it afterwards. And the fact that in her first appearance she did, that is a kind of nod to the fact that it's easier to do it now. But you look at Pelosi herself, I mean, part of it is we are so ambivalent about ambitious women because, again, that's the tougher part, and Pelosi herself only ran for office to start with because she made a promise to the dying man who she replaced.

MARGOT ADLER: Now polls have shown that a majority of Americans say they'd be comfortable with a woman president. At the same time it's been said that female candidates are more highly scrutinized than men. Let's talk a little bit about, you know, the public and their own insecurity that they have about a woman being the commander in chief.

MARIE WILSON: It has not been normal up till now to see a woman leading on the tougher issues of security and foreign policy. Because Madeleine Albright and Condoleezza Rice-- regardless of how you feel about their performance or politics, whatever side you're on there-- because they've been in power in that area for so long now there has been a shift. We feel that's the reason for the kind of shift of trust for women in that area, so that the Roper polls we've been doing for the last few years have shown a consistent trust by the voters. They now trust women, by the way, more than men in the domestic issues, but half the voters trust women at the same level or more than men on homeland security, foreign policy, and the economy. Now that doesn't mean they'll get in the voting booth and suddenly go, ah, you know, we never did this before. But it's a different ball game.

MARGOT ADLER: Marie Wilson is the founder and president of The White House Project and author of "Closing the Leadership Gap: Why Women Can and Must Help Run the World." Thank you so much for coming on our show.

MARIE WILSON: Thank you. [MUSIC]

MARGOT ADLER: Ah, I've just got to ask you my quick pet peeve question. I only have like a minute left. Why all this stuff in the press about their clothes? [LAUGHS]

MARIE WILSON: Okay--

MARGOT ADLER: I just know I could never run for office because I don't care about fashion!

MARIE WILSON: [LAUGHS] Unfortunately, we'd have to dress you. We would, Margot, and I would be the first to do it because I'd love to see you in office.

MARGOT ADLER: Well, I'm not planning to run for office. I'm going to keep on hosting Justice Talking. That's our show for today. Thanks for listening. [MUSIC]

To learn more about the Women's Equality Amendment and other issues we've talked about today, go to our website, justicetalking.org. While you're there let us know what you think. You can also check out our blog.

You can also podcast our show. Thanks for joining me. I hope you'll tune in next week. I'm Margot Adler. [MUSIC]
