

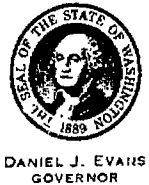


OFFICE OF THE GOVERNOR

Washington State Women's Council

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GOVERNOR

Monday, March 25, 1973

WHAT HAPPENED WITH THE ERA?

All of you by now know of The Incident. On March 21, the Equal Rights Amendment was scheduled for floor debate and, hopefully, the final vote, on the Senate calendar. During a joint session of the Senate and the House to honor Lt. Richard Brunhaver, a recently released prisoner of war, two women originally wearing ERA signs did not stand and applaud with the rest of the crowd. The media has sufficiently covered the resulting explosive anger on the part of the legislators, and the feeling on behalf of many that the vote on the ERA might be fatally affected by the incident. On the Senate floor that day, Senator Mardesich moved to postpone action on the ERA, and put the matter on the next day's calendar. This move had the full approval of Senator Fleming, who was to be in charge of the floor debate for the measure. When the Senate reconvened on March 22, it was to the surprise of everyone that Senator Mardesich pushed the Equal Rights Amendment up for consideration as the first item for the day.

Senator Metcalf rose to attempt to amend the constitutional amendment, a move to kill ratification of the federal ERA. He moved that in Section 2 of the amendment, that instead of "Congress" having the "power to enforce, by appropriate legislation, the provisions of this article," that "and the states" be added. A complex discussion followed, with Senators Guess and Rasmussen supporting Senator Metcalf's point, and Senator Washington challenging it. Lt. Gov. Cherberg ruled that an attempt to change the wording would change the scope and intent of the constitutional amendment, which would be "appropriate in Congress, but not here." After this ruling Senator Metcalf rose to make another amendment. The same questions had to be dealt with. Senator Washington questioned it as a point of order. Senator Guess asked President Cherberg to reconsider his ruling. Senator Francis pointed out that there was no provision in the U.S. Constitution for "conditional ratification." Senator Atwood disagreed. Senator Murray supported President Cherberg's decision. Lt. Gov. Cherberg stood firm in his ruling, while reminding the body that the Senate could challenge his ruling and overrule it by majority vote. Senator Francis made the usual motion to advance the Equal Rights Amendment from second to third reading. More discussion followed regarding whether or not the ERA could be amended, with Lt. Gov. Cherberg's standing firm. Senator Durkan repeated Senator Francis's motion to advance to third reading, which had been overlooked in the heat and complexity of the parliamentary discussion. At that point the bill was advanced to third reading. Significant was the fact that no challenge of this took place; no one asked that a vote, necessitating a 2/3 majority, be taken. Thus the ERA was saved from being referred back to Rules. It was now up for final passage.

Senator Francis stood, pointing out the desirability of traveling to other states and being assured of the same equality that the citizens of the State of Washington are guaranteed under HJR 61. He then dealt with the argument that Senator Metcalf had raised regarding the wording of Section 2 of the Equal Rights Amendment where, according to Senator Metcalf, Congress preempts the states' powers. Senator Francis refuted this by pointing out that Congress, unlike the states, only has power when it is expressly delegated, and that the present wording of the proposed 27th Amendment to the U.S. Constitution is the same wording as the 13th, 14th, 15th, 19th, 23rd, 24th, and 26th Amendments of our Constitution. States enjoy the power concurrently, but need not be specifically mentioned. He ended his remarks with assuring the body that "men and women will remain the same."

Senator Clarke stood to oppose ratification of the ERA. "My argument will be the same as if I were defending my wife in court." While asserting that he believed in equality for the professional woman, he argued that housewives, such as his wife, should be entitled to some special protections in court. He claimed that in the situation of a divorce in the case of a middle-aged couple, HJR 10 would make it very difficult for the judge to rule that the husband still has the obligation to support his wife. He basically wanted housewives "to be perpetuated in the preferential situation."

Senator Bottiger rose to point out his basic objection to ratification of the Equal Rights Amendment, raising the point of cost of the effect of the ERA on social security. He quoted Congresswoman Martha Griffiths, saying that the initial cost is estimated at \$1 billion. He ended his comments with the question, "Have you been given enough answers?"

Senator Dore then rose to speak, pointing out how difficult the vote was for many of the senators. He then analyzed the process by which he had made up his mind. First he had asked himself, "How would this expand HJR 61?" He realized that it would have no impact. He then came to the conclusion that there were two major differences: (1) the draft, which is now null and void, (2) social security, for which consideration of the cost impact should be secondary to the equal treatment of citizens. Therefore he felt that no substantial impact on expansion would be felt. The big impact would not be in this state, but in the fact that "we're voting on expanding equality nationwide." It is for that reason that Senator Dore said, "I will vote to ratify the ERA today."

Senator Washington then rose to speak. He acknowledged the many genuinely felt fears on the part of those against the Amendment. He addressed himself to the fears expressed by Senator Clarke, and pointed to a Florida case where roles were reversed; the woman was the professional, the man was not. The husband got the children, and the wife had to contribute support. He said, "I submit that the courts will use the same test," and felt that therefore the ERA should not be threatening. He had no fears that the courts will take away rights that people already had. He then addressed himself to religious fears, primarily those of the man's being the head of the household. He pointed to the phrase "equal protection under the law." (emphasis added) He claimed that within the home context, many men and women lose nothing; that is not a sphere of the law. Thus HJR 10 will "not invade the home." In closing he said, "When I go back to my district, I can reassure them that their fears are unfounded."

Senator Rasmussen rose to point out that no statements in the debate would change anyone's vote, but that persons standing were giving reasons for the way they were going to vote. He then quoted from a Human Rights Commission statement regarding rulings against sex discrimination in employment. He claimed that "this is working," that women in this state are assured equal treatment, and that no federal ERA was needed. Then he expressed his "main concern." "We're going to force other states to have equal rights." He then asked senators to look at Nebraska, which had rescinded, but cannot legally rescind. He pointed out that legislatures cannot change their minds, once having ratified. Since "we still have six years," he urged that ratification not take place that day.

Senator Ted Peterson stood. His opening remark was, "I am voting no on immediate ratification, even though I believe in HJR 61." He said the support for this measure was "a little overwhelming in my district," and said, "People expect me to represent them down here." But he claimed his no vote would be vindicated in the future. He went on to say that he believed God placed woman a step above man, in fact, three steps above man. He claimed to be against immediate ratification and urged other senators to vote against it for the reason that there are six more years to take this step. He then referred to the P.O.W. incident.

Next Senator Metcalf rose. He objected to imposing on other states an Equal Rights Amendment. Then he claimed Senator Dore was wrong, that the military is, indeed, a big consideration. He felt that "had the draft been included in the vote regarding HJR 61, it would certainly not have passed." He then took issue with Senator Francis regarding the wording of other constitutional amendments. He claimed that there were 31 senators who wanted to vote against ratification of the Equal Rights Amendment, and then stressed that he felt there were many senators who did not have the guts to vote against it; "Most are putting their political futures ahead of their conscience." He ended his remarks by quoting Shakespeare's Julius Caesar, "The fault (dear Brutus) lies not in the stars, but in ourselves, that we are underlings."

Senator Henry then got up and injected a friendly note of humor into the discussion. He claimed to feel like a two-handed hitchhiker on this issue, that the women "should have a few rights," (gestured with his thumb to right) "and a few lefts" (gestured with his thumb to left) as well. (This does not come through well in print, but it had people on the Senate floor and in the galleries laughing in a jocular manner.) He then cleverly reversed the arguments against ratification because of having another six years' time in which to ratify, claiming that the ERA was like an "ingrown toenail"; "it's not fatal," but it can be very aggravating. He did

not want to mess around another six years, and urged immediate ratification.

Senator Murray rose, and made further factual remarks regarding constitutional grants of powers, and the wording of the present Equal Rights Amendment. In reference to Senator Clarke's remarks, he said that housewives being trained only as housewives was virtually a thing of the past; women comprise a major part of the work force. He ended up saying that "times are changing." He claimed that the day has come when there will be an Equal Rights Amendment, and urged ratification for "legislative efficiency."

Then Senator Fleming rose. He addressed himself to many of the objections that had been raised on the part of opponents. He began by saying that "because of sex, no one should be considered unequal." He claimed that this amendment would not disallow any woman from doing what she's been doing in the past. In respect to the draft he asked, "Why should it not apply to women? They already serve." He empathized briefly with Senator Clarke, saying, "I can understand your concern, since your district is Mercer Island." But he claimed that protections are between a husband and a wife, not being affected by an Equal Rights Amendment. Dealing with the social security issue, he emphasized that most of the areas in social security have already been equalized, and are already in effect. It took \$10 billion for this, and no great stir was made regarding cost then. The cost in relative terms of the remaining aspects of the social security laws being brought into conformity with the federal ERA was not great, and should not be of primary concern. In responding to Senator Peterson's remarks he claimed, "This does not mean you cannot continue to have your women above you...However, if there are women who do not want to be on that pedestal, who want to ride side by side with you, that is a personal decision. Women should be permitted to ride side by side." Before sitting down, he yielded with two questions to Senator Francis. Senator Francis dealt once again with the social security issue, in terms of its cost, and then stated that he finally understood Senator Metcalf's belief that states would have no authority if Section 2 remained intact, but Senator Francis did not agree with Senator Metcalf's interpretation, and believed the states will have concurrent authority to enforce the provisions of the ERA.

Senator Talley then rose to say, "I move we either take a break or take a vote." Lt. Gov. Cherberg selected taking a vote.

The votes were as follows: Yes: Bailey, Canfield, Connor, Donohue, Dore, Fleming, Francis, Gardner, Grant, Greive, Henry, Herr, Jolly, Jones, Knoblauch, Lewis (Harry), Marsh, Matson, Murray, Odegaard, Peterson (Lowell), Ridder, Sandison, Scott, Stortini, Talley, Walgren, Washington, Woody. No: Atwood, Bottiger, Clarke, Day, Durkan, Guess, Keefe, Lewis (Bob), Mardesich, Metcalf, Newschwander, Peterson (Ted), Rasmussen, Sellar, Twigg, Van Hollebeke, Wanamaker, Whetzel, Mattingly. Excused: Woodall. YEAS: 29 NAYS: 19 EXCUSED: 1 25 yes votes were needed.

Allow me one overall impression comparing this debate to that regarding HJR 61 last year. I felt the caliber was on a significantly higher level. Much more education has taken place regarding the Equal Rights Amendment. The debate was concerned with the issues of the matter, and not clearly irrelevant situations.

After the final vote I got a telephone call from Martha Griffith's office in Washington, D.C. in order to confirm whether we ratified, and also to point out the fact that March 22 marked the anniversary of Congress's passing the ERA last year, passing it to the other states for ratification, and Hawaii's being the first state to ratify on that very day. So Washington State became the 30th state to ratify the federal ERA on the first anniversary of Congress's passing it on to the states! (The media has been saying we are the 29th state, simply because they do not count Nebraska, since it has rescinded.)

Since there have been many questions about whether a state can rescind or not, let me say a few words on the matter. In the only U.S. Supreme Court case ruling on the issue whether a state which has ratified a constitutional amendment may de-ratify or rescind its action, (Coleman vs. Mill, 1939) the court held that this was a "political question" which could not be decided by the court. It ruled that the ultimate authority to decide whether a state's rescission or prior ratification was valid was Congress. Two precedents have been set. In two cases the issue has been squarely decided by Congress, and both times Congress held that a state could not reject its prior ratification of a proposed constitutional amendment.

In 1868, both Ohio and New Jersey attempted to withdraw their ratification of the 14th Amendment, which provided that no state could deny to any citizen either the equal protection of the laws or due process of law. Congress refused to accept these rescissions, and listed the two states as having ratified the amendment. There were then 37 states, and so 28 states were required to approve an amendment. Exactly 28 states approved the 14th Amendment, if Ohio and New Jersey were counted. Two years later, in 1870, New York attempted to rescind its earlier ratification of the 15th Amendment, which provided that no state could infringe the voting rights of its citizens. Once again, Congress rejected New York's attempt to take back its ratification, and it listed New York as one of the states that had ratified the amendment in the official promulgation.

In looking back on the gargantuan efforts on behalf of thousands of individuals, I am awed by how the pieces of the puzzle have fitted into place. I will not try to thank everyone at this moment, partially because once the ERA was ratified, I promptly succumbed to the flu, (which I still have) but also because I am genuinely afraid of omitting mentioning someone who deserves every bit as much credit as those persons who automatically leap to my mind.

Let me just mention one person who **MUST** be thanked; Sue VanMeter, my friend, my assistant.

I think this Effort proved that women can Work Together, emphasizing those goals which unite us, instead of dwelling on those issues on which we disagree.

It would be very, very nice to thank the legislators, who seldom receive thanks, but are often criticized. And notice, please, such matters as even though Senator Atwood voted against the ERA on the floor, without his consistent support to vote it out of Rules, the matter would have been killed in that Rules graveyard. My personal recommendation would be not to vilify anyone. Remember that while Senator Bottiger voted against the ERA, he was the prime sponsor of the companion measure of HB 404, which will affect countless lives in the State of Washington of women who encounter problems in credit. Legislators who are foes on some issue, are friends on others.

OTHER IMPORTANT MATTERS

The existence of the Washington State Women's Council is still very much in question. HB 1059, which would make it statutory, is still in the House State Government Committee. Now would be the time for you to express your opinion regarding the value of the continuation of the Council. Members of the Committee include:

District	Name	Phone	District	Name	Phone
32	Al Williams, Chairman	753-7926	22	John Hendricks	753-7884
1	Rick S. Bender	7978	3	Margaret Hurley	7808
49	Albert Bauer	7864	6	Jerry Kopet	7822
45	Alan Bluechel	7800	31	King Lysen	7922
33	John Cunningham	7936	39	Charles Moon	7954
12	Bob Curtis	7844	32	Robert Perry	7980
2	Wayne Ehlers	7824	41	William Polk	7962
30	Robert Gaines	7842	18	Alan Thompson	7870

Letters or telegrams may be addressed c/o House of Representatives, Olympia 98504.

Many persons pledged their commitment to work not only for the passage of the ratification of the federal ERA, but the expansion of the industrial welfare orders to insure that men, as well as women and children, are protected in working conditions. This, as you know, has been a genuinely felt concern of opponents of the ERA, including many labor unions. Now is the opportunity to prove the authentic commitment on the part of proponents of the ERA to work in behalf of insuring that protections be extended to men. HB 962 is in the House Rules Committee, and the companion measure, SB 2463, is in the Senate Rules Committee. If you wish to let your concerns be known regarding this legislation, contact Committee members. In the House: Sawyer (25), O'Brien (35), Anderson (19), Berentson (40), Charette (19), Chatalas (35), Conner (24), Flanagan (13), Gallagher (29), Jastad (20), Jueling (28), May (3), Morrison (15), Newhouse (15), Swayze (26), Thompson (18).

In the Senate: Bailey (19), Bottiger (2), Henry (17), Herr (31), Keefe (3), Mardesich (38), Marsh (49), Talley (18), Atwood (42), Guess (6), Peterson, Ted (44), Woodall (15), Lewis, H. (22).