

HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE  
March 9, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman John Scully in room 436 of the Capitol Building at 8:00 a.m. on Friday, March 9th. All members were present except the following, who came in later, Representatives Teague, Holmes, Rosenthal, Eudaily, Daily and Representative Seifert was excused.

Scheduled for hearing were Senate Bills 348, 482 and 519. SJR 12 will be heard in the Highway Auditorium at 9:00 a.m. and the committee will then return to the Judiciary Room for hearing of two more bills, House Bill 899 and House Joint Resolution 52.

SENATE BILL NO. 519: Senator Towe. This bill would regulate electioneering on election day and provide for penalties. This was introduced as a committee bill. What it does is that two years ago in the recode bill in the Senate, on election it inadvertently repealed two sections of the law. I was amazed that we had repealed those laws and didn't realize what had happened. We have changed this to make it much narrower than the old law. He read through parts of the bill and explained. The significant part here in addition to the misdemeanor section, a successful candidate who is adjudicated guilty of violating this section may be removed from office. This was used in Harper vs Lombardy. I don't think it was intended to be taken out, the change was in a recode bill.

MIKE MELOY: In opposition to section 2, contrary to what Senator Towe says it is patently unconstitutional. There was a case in 1948 and then there was a later case in which the Supreme Court said that you cannot stop a person from making a statement before he makes it. The law may provide a remedy and that is the doctrine of prior restraint. For that reason we would oppose the bill as it presently reads with section 2.

SENATOR TOWE: No one raised any constitutional question that the New York Times vs Sullivan would not apply.

REPRESENTATIVE KEMMIS: Talking to Mr. Meloy, I wonder if you can explain, how any criminal liability can be not of prior restraint. Discussion followed.

MR. MELOY: A political libel statute would be a more specific statement of that. Then followed discussion about the constitutionality. Several comments were made about the responsibility of the news media. Mr. Meloy said that the restraint would still be the same.

REPRESENTATIVE KEMMIS: In section 1, where it says it is unlawful for someone to place an advertisement on election day, would you clarify that. Senator Towe answered, there must be an affirmative decision to run it on election day. General discussion followed.

With no further discussion and no questions the hearing closed on Senate Bill No. 519.

SENATE BILL NO. 348: Senator Van Valkenburg. This bill would provide for damages in wrongful death actions. The major change is on lines 18 of page 1 through line 2 of page 2. Lines 15 through 17 says that an individual who has already a right to sue in a wrongful death case may plead but limits it to the parents, spouse or child of the decedent. The reason that I am asking to add the additional language is that the law has created a considerable injustice in granting these damages when they ought to be considered. The law has not changed in the wrongful death case.

MIKE MELOY: Montana Trial Lawyers. The additional language with the exception of subsection (1) is not allowable in Montana. You will note that the Senate struck lines 18 and 19. In order to conform 2 through 4 with the existing law that was changed. At that time pain and suffering was not considered. He went on to talk about the survival.

GLEN DRAKE, OPPONENT: American Insurance Association. I think Senate Bill 348 does enlarge the scope of damages considerably and the committee should be aware, and he read the jury instructions for wrongful death action. This bill enlarges considerably the instructions I just read because it gives to an heir not only the right to recover that which they would receive from the deceased person but that would include all the money that he might have made throughout his lifetime. If the purpose of this bill is to increase jury awards in wrongful death actions then I think you should be aware of the outcome of the bill. On line 13, you might discuss changing the word "shall" to "may". Testimony attached.

SENATOR VAN VALKENBURG: I think Mr. Drake is wrong when he says "must". We are talking about loss of income to the heirs here. In talking with insurance people I have found that auto insurance in Montana is more profitable than anywhere.

REPRESENTATIVE KEMMIS: He asked about survival action.

ME. MELOY: But that would be only if the person lives. Whereupon Mr. Kemmis said, what if the person had lived. If the survivor had paid for the expenses is that why you would want it in there. On line 21 I am confused by what that means, the expected earnings of the decedent.

MIKE MELOY: A wrongful death action is brought by the heirs, and when the question goes to the jury the question is what would the heir lose. The key words are compensation for reasonably expected loss of income.

There was no other discussion and the hearing closed on Senate Bill No. 348.

SENATE BILL NO. 482: Senator B. Brown. This bill would provide for seizure and forfeiture of implements used in dangerous drug violations. On top of page 2, all property that is used or intended for use as a container for anything enumerating in subsection (1)(a) or (1)(b). He gave an example of a plane carrying drugs that had been apprehended and it was found that it was the very same plane that was confiscated by the Mexican government. He talked about the Townsend case. Then on the bottom of page 2, he discussed the federal statute.

REPRESENTATIVE DAY: The plane in Townsend was a rented one. He asked about the case and led a discussion on impounding of vehicles.

TOM HONZEL: County Attorneys. The items listed in section 2 of the bill, of those the most common would be motor vehicles or airplanes. There are some exceptions on page 2 starting on line 17, those exceptions go to common carriers. In the Senate Judiciary it was thought that we might have another area of exception, might be a small amount of Marijuana. We opposed an amendment where it would exempt small amounts of Marijuana, one kilogram was accepted on the floor.

REPRESENTATIVE LORY: This is 2 and 2/10th pounds.

There was discussion about the difference between misdemeanor and felony possession of Marijuana. Sixty grams is two lids and I understand you can get 40 or 50 cigarettes out of a lid. The rest of the bill sets forth the procedure. We do have another forfeiture statute in Montana.

BILL ROMINE: Montana Sheriffs and Peace Officers. We do support the bill. We have a proposed amendment concerning the procedures. They are designed to protect someone who does not know a vehicle is being used for illegal drug traffic. I hope you will consider reducing the kilogram.

There was no other discussion and the hearing closed on Senate Bill 482.

The meeting adjourned briefly so that the committee could go across to the Highway Auditorium for the hearing on Senate Joint Resolution 12.

CHAIRMAN SCULLY:

I want to give the ground rules under which we will conduct this hearing.

Each side will have 30 minutes with the proponents speaking first and the opponents speaking next, followed by questions from the committee. There will be no speaking between proponents and opponents and if the people observing interfere with anyones turn to speak they will be put out of the hearing. I will pass witness sheets and if you wish to sign your name as in favor or in opposition to the bill, please do so.

SENATE JOINT RESOLUTION 12:

Senator Galt. This resolution has been greatly misinterpreted and maligned. It deals only with the extension of time in Congress for ratification of the Equal Rights Amendment. I want to explain what the resolution will not do. It will not have any effect if 38 states ratify by March, 1979. It will not modify in any way the effect. It is a rescission. It will require the Secretary of State to reaffirm Montanas deep respect for the Constitution.

SENATOR THIESSEN:

I am here to speak in favor of SJR 12.

This resolution is not a pro or anti resolution. We have special rules regarding substance and the resolution is only one. The rules do not change because of the merits of the case before us. We are only dealing with the merits of the extension.

SENATOR MANLEY:

I am here as co-sponsor of the resolution. It is to reaffirm our own

rights.

BETTY BABCOCK:

I have been opposed to the equal rights amendment, and as chairman of the IWY

delegation to Houston from Montana I believe that I have the responsibility to provide you with the enclosed information. She presented a copy of "The Freeman Digest", with an article IWY-War on Family. You may be interested in the brief introduction on page 3 and the summary on pages 6 to 9. There is also a brief summary of "womens rights" on pages 16 and 17. I urge you to support SJR 12. Please let Montanas ratification of the ERA expire this March. Seven years is long enough.

KEN PETERSON:

I am here in support of SJR 12. He talked about the Constitution and that

the U.S. Constitution provides a clear method of amendment. He talked about why an amendment passes or fails, and the seven years. Congress extended it by a majority vote only. The correct process must be carried out by the U.S. Government. The people have the right to rely upon the integrity of the elected body.

MARY E. DOUBECK:

I support the resolution and ask your vote for it.

MARILYN CORNELIUS:

Missoula, I am really proud of the fact that the State of Montana has introduced this resolution. Our elected officials understand the need to have a 7 year limit. This is clearly an issue of states rights.

SUZANNE MORRIS:

National Right to Life Committee.

It is with a heavy heart that I stand here again, this time to testify in favor of SJR 12. I do so for two reasons, First, as president of Montana Right to Life and a member of the national board of directors, I must explain the position of the National Committee on the issue of ERA. She presented a copy of her written testimony. Exhibit #2.

MILDRED KANTOROWICZ:

I am a farm wife, mother, school teacher by profession and a volunteer member of several organizations. One is the Democratic Womens Club. We have polled our club and what I saw was a 12 to 3 vote in favor of SJR 12 and against the ERA extension. Testimony attached, Exhibit #3.

ANN ALLEN:

Great Falls. Last October another takeover of states rights was done and not a shot was fired, but more to the point, it proves that Kruschew's boast is being fulfilled a step at a time. "only when the 50 individual states lose their state rights and are broken down into an empty shell will the U.S. be overcome", is his statement. Copy of testimony attached, exhibit #4.

FLORENCE RYAN:

I live in Butte, MT and my husband is a miner and has been in the miners union for 25 years. I am a Democrat for the SJR 12, I am for women getting equal pay for equal work, but against the ERA as written, mainly because of what it will do to our constitution. I am also against Federal Intervention at state level. Exhibit #5.

CAROL WALTERS:

Billings. I am a past owner of my own business and a semi-retired Federal employee. With this background, I do know of the needs of Equality for Women. Copy of written testimony, exhibit #6.

OPAL DEMING:

Kalispell. The majority of the people voiced strong support for SJR 12. Copy of written testimony, exhibit #7.

GAYLE GORDER:

Billings. I have been actively involved as a volunteer for seven years. As much as I believe in the goals of ERA, I cannot justify the time extension for ratification. Exhibit #8.

MARJORIE VERGER:

I am from Bozeman. I am a professional Home Economist and a former member of the American Home Economics Association. I do not feel that the state leaders of the Montana Home Economists can fairly represent the entire state membership. We have not been polled to my knowledge concerning SJR 12. I support SJR 12. Exhibit #9.

CHERYL COZZENS:

I am from Billings and a speech pathologist by profession. The proponents of ERA could not get their amendment ratified in the established period of time so demanded and were granted a 3 year extension. Suppose the proponents of gun control were granted an extension of three years. If one can do it--they all can. Exhibit #10 attached.

DIANE BRIGGS:

Lima. I am a ranch wife and mother and active in civic and community affairs. I support SJR 12 and am here to represent the people of my area. We recently circulated a petition and sent a mail-a-gram to our representative. Two thirds of the people in our area signed this petition in favor of SJR 12. Exhibit #11 attached.

PATRICK SHERRILL:

I will abbreviate my testimony. I would like to leave one small challenge. This is a constitutional issue which requires sober, reflective thought. If this extension is allowed to stand it may come back and haunt you when groups begin to utilize it for their particular aims. Testimony copy attached, exhibit #12.

PAUL PISTORIA:

I campaigned on SJR 12. I was neutral before the Congress extended this 3 years. I oppose the extension.

Other copies of written testimony are attached.

OPPONENTS:

HAROLD DYE:

Missoula. I support the ERA. This resolution is a thinly disguised attempt to rescind the ERA, thus this is just a smoke screen to bamboozle this committee. You may ask why they resort to subterfuge. It is clear that this legislation has no authority to rescind this ERA. I submit to you that the need for the ERA still exists. Basically the ERA is a document that makes it clear that equal rights will not be controlled by one sex. Exhibit #30.

EMILY LORING:

This resolution has serious flaws. It purports to be a resolution that mandates. She read parts of the Constitution, and then gave an example of a case that mandated and it was found to be void. A joint resolution is not a general law. SJR 12 does not meet the requirements of state law. It is a decision of Congress to determine if a state has ratified. She went on to talk about the 1979 legislature trying to define what the 1974 legislature did. A state may not place conditions upon a federal amendment. A state cannot ratify just one paragraph of an amendment. Even if that legislature had hoped to do otherwise they could not have put any conditions on that ratification. Exhibit #31.

CAROLINE ENNIS:

Billings. As a concerned citizen I have come here to say it is time we stop hemming and hawing over Montana's ratification of the Equal Rights Amendment. Since out and out rescission measures have gotten nowhere, the small but determined group of opponents has introduced a new scheme for dumping the Equal Rights Amendment. The will of Montanaans is for the equality of all before the law. Let's continue our efforts to see that that right is extended to our citizens who need these rights. Copy of testimony attached, exhibit #20.

BARBARA SCHILLING:

My husband, family, and I operate a cattle ranch 26 miles south of Big Timber. I am opposed to SJR 12 for the simple reason that I support the Equal Rights Amendment. Any way it is rationalized, a vote for SJR 12 is a vote against equality of rights, and a vote against this move to rescind is a vote reaffirming support of equality. We know from history that without a Constitutional guarantee of freedom there is no guarantee. State legislatures are whimsical entities, and are often less concerned with the rights of those they represent than they are with undoing the work of a previous session as though it were a game of "King of the Mountain." In the words of John Locke, whose "Treatise of Civil Government, 1690", was an inspiration to our founding fathers, "I have truly no property in that which another can by right take away from me when he pleases, against my will." She went on to quote William O. Douglas, former U. S. Supreme Court Justice. Copy of testimony attached, exhibit #21.

SENATOR ROBERT BROWN:

I am here in opposition to SJR 12, and I am directing my remarks today, particularly to the Republican members of the Committee. The Democratic National Committee and the Republican National Committee both have stated they are in support of the Equal Rights Amendment. On an occasion such as this, it is worthwhile to keep things in perspective. There is no better way to do so than by looking at history. Our Constitution did not grant to women the right to vote, leaving it up to the states. Only one state, New Jersey, granted that right. They then took it away in 1807. And there ensued a struggle for women's suffrage lasting almost 120 years.

The territory of Wyoming was first - after New Jersey - to grant voting rights to women, in 1869. Montana battled the question for 20 years, finally granting full voting privileges to women on November 3, 1914. The 19th amendment to the U.S. Constitution was adopted in 1920, granting full voting privileges to women in all states - 113 years after New Jersey took the right away. The comparisons between the fight for the right to vote and the fight for equal rights are many. Historical notes from the Montana struggle for suffrage are revealing. The historical parallel between that day and this are striking. The point, of course, is that the "anti's" of that day were wrong. The decision to allow women to vote, after a struggle of 120 years has

been adjudged by history to be correct, proper, and right. The same terms can be used to describe the Equal Rights Amendment. And, the proposed amendment is in keeping with the spirit of the rest of the Constitution.

I have a few notes taken from the works of Doris Buck Ward in 1974.

According to Ward's research the suffrage amendment was always considered a hot potato and few wanted to debate it in either the Senate or the House. The galleries were always packed with women when the votes came up and hearing rooms were often filled to overflowing. I quote from the Helena Record in 1901, "It might be a good plan for these women who are so busy saving the country and helping the almighty with free advice to turn their attention to their homes and see if they can't find room for improvement there." From the Libby News, 1903, "The better class of women especially the home women do not want it. As a general rule, it is only favored by a lot of gadabouts, women who neglect their home duties to run around peddling neighborhood gossip and who generally take a large interest in other peoples affairs." From the Anti-suffrage group in 1914, "Few Montana women want the ballot. Why should Montana where the laws for protection of women and children are excellent take the burden of women suffrage on her shoulders in order to make it easier for Eastern women to obtain the ballot." According to Ward, the votes included both Republican and Democrats with no clear party lines. There was also a strain of religious fundamentalism thwarting the work of the feminists and there were also militant feminists who made the fight tough. It was not until November 1914, that women won the vote in Montana and then only with the help of Jeannette Rankin, and many of the suffrage organization who had been working on the issue since 1895.

I was a member of the House of Representatives when Montana's ratification of the Equal Rights Amendment was adopted by that body in 1973. We did not consider the seven year provision in our ratification. The question as to ratification conditional on a time limitation did not arise in 1973. But James Madison, one of the authors of our Constitution, clarified this point in the Federalist papers in 1788. The Constitution provides a means to repeal Constitutional amendments, but it does not provide for rescinding them. When New York and Ohio attempted to rescind their prior ratification of the 14th amendment following the Civil War, Congress turned them down.

Finally, SJR 12 pretends to nullify an act of Congress. My personal view is that the decision by Congress to extend the time period for ratification of the ERA was unfair - there is no question - however, that Congress has the power to extend, the power of the Constitution.

The fights on the floor of both chambers were often emotional and it appears clear that the Senate and Representatives dreaded the appearance of



the suffrage issue as it came up each session. The comparisons between what happened then and what is going on now are many. But, of course, the most significant is that the vote to broaden the rights of women which finally carried the day has been historically adjudged correct. At some point the history of the ERA battle will also be written and it would be unfortunate to see Montana after all these years at last go on record in opposition to the legal reforms mandated by the Equal Rights Amendment. In 1788, on July 20, James Madison said and I quote, "The Constitution requires an adoption in toto and forever. It has been so adopted by the other states. An adoption for a limited time would be as defective as an adoption of some of the articles only. In short any condition whatever must viciate the ratification."

FRANCES ELGIN:

Attorney from Billings. I represent the Montana Equal Rights Counsel. We have over 1200 members in Montana. We strongly support your rejection of SJR 12.

NANCY HOTCHKISS:

American Association of University Women. We have over 1,000 members in Montana. We continue to support equality and values based on justice. We join in opposition because we believe in liberty and justice for all.

PAT SYISS:

Montana Home Economists Association. We strongly support the ERA. We do not view the amendment as a threat to family structure. We recommend that SJR 12 do not pass. We believe that the ERA is long overdue.

SALLY JORDAN:

Retail Clerks Union and Chairman of the Montana State Democratic Central Committee. Montana has traditionally given equal rights to all. This resolution is clearly unconstitutional. Copy of written testimony attached, exhibit #22.

VIRGINIA KNIGHT:

Attorney, Womens Law Section of the Montana Bar, explained the attempt to rescind.

JIM MURRAY:

AFL-CIO. I address this committee to reaffirm the longstanding position of the Montana State AFL-CIO and the National AFL-CIO in support of the ratification of the Equal Rights Amendment to the United States Constitution. For the sake of all Montanans, we urge you to vote against this updated attempt to rescind Montana's commitment to equal rights for all U.S. citizens, and to put this issue to rest. Copy of testimony attached, exhibit #23.

SISTER CATHERINE:

Great Falls. We support the Equal Rights Amendment and are publicly on record as doing so.

Copies of written testimony attached  
as follows:

Rev. Gary Jepsen, exhibit #24  
Joanne Dodd, exhibit #25  
Phillip Campbell, exhibit #26  
League of Women Voters, exhibit #27  
Common Cause, exhibit #28  
Congressional Record, exhibit #29  
Resolution, No. 004, 1974, exhibit #30

SENATOR GALT:

None of these speakers are even addressing the resolution. We feel that it is a violation of Congress. After some discussion, very brief, and no questions, the hearing closed on SJR 12.

After a short recess, so the committee could return to Room 436, the hearing convened on House Joint Resolution 52.

HOUSE JOINT RESOLUTION NO. 52: Representative Scully. This resolution is in support of the continued freedom of the 17 million people of the Republic of China on Taiwan. He read a resolution introduced in the United States House of Representatives John Ashbrook.

REPRESENTATIVE KEMMIS:

I think that the question with China and whether we are going to recognize the Peoples Republic of China has always been that we have diplomatic relations. I think the time has come and long since gone that we have to recognize that government that rules such a large amount of people.

REPRESENTATIVE CURTISS:

I don't think it is a question of judging one or the other.

REPRESENTATIVE ROTH:

I certainly approve of this resolution and I think we should stand by our treaties. I move the adoption of the resolution. The motion carried with Representatives Kemmis, Uhde, and Holmes voting "no".

HOUSE BILL NO. 899:

Representative Scully. This bill would suspend for two bienniums the duty of the Code Commissioner to propose cleanup legislation. There is a difference between the Code Commissioner bills and the recodification bills. All it does is suspend it for a period of four years. It would suspend it for the next two legislatures.

REPRESENTATIVE KEEDY:

I wonder about the time limit. Four years seems like it might be for too long a time. Several members expressed the same feeling about this time limit. Then followed discussion about whether the time should be reduced to two years rather than four.

After lengthy questions and tossing the subject around it was decided to postpone action until the committee had a little more time to study the time schedule.

With no further business to come before the committee the meeting

adjourned at 10:35 a.m.



John P. Scully, Chairman

Mary Ellen Connelly, Secretary