

INSURANCE AND THE EQUAL RIGHTS AMENDMENT

The 1978 Illinois Story: In the week between the successive attempts to ratify ERA June 7 and June 22, leading anti-ERA legislators, in apparent out-of-character behavior, introduced a Floor Amendment to add "sex" to a Bill that would prohibit discrimination in auto insurance prices on the basis of race and religion. From the quotations below, however, it is evident that the debate was actually staged by these anti-ERA legislators—some taking each side—in order to establish that ERA would "harm" women by prohibiting sex discrimination in insurance prices.

Note: Two pro-ERA men voted *against* this Amendment, while two pro-ERA women (Susan Catania and Paula Martin) voted *for* adding "sex" to the insurance non-discrimination Bill.

JUNE 7, 1978

Illinois House debates ERA, then fails by 6 votes to meet its self-imposed 107 vote requirement (approval by 60% of the 177 House members) for ratification of the ERA.

JUNE 14, 1978

Illinois House succeeds by exactly the 89 votes it requires (50% of the membership) to bring ERA from committee to the House floor for consideration next week.

Later in the day, during consideration of an Insurance Bill, Rep. W.D. Walsh introduces an Amendment to ban sex discrimination in auto insurance prices.

Rep. Walsh (voted **against** ERA on June 7): "My Amendment deals with the main Bill and it adds 'sex' as an item for which there can be no discrimination in rates. . . . I am very much aware of discrimination in insurance rates on the basis of sex and I refer in particular to males who are under the age of 30. . . [T]his is a worthwhile and meaningful Amendment that will end a source of discrimination that has been very difficult for a particular group of people."

Rep. T.S. Lechowicz (voted **for** ERA on June 7): "This question was raised in the Insurance Committee by Rep. Brummer (voted **against** ERA on June 7). . . . I told Rep. Brummer and I told a number of other people that asked me about my support on a similar Amendment that I would be opposed to it because I think that for one thing we should provide for some reasonable rates. There was no assurance from the insurance industry that they would lower those rates of the males . . . with the increase in the female rates on motor vehicle drivers. I strongly oppose this Amendment."

Rep. D.P. Friedrlch (voted **against** ERA on June 7): "If I understand what ERA is all about, if it passes you'll have it anyway, Rep. Lechowicz. So I would think that if you're opposed to the Walsh Amendment you'd be opposed to ERA."

Rep. D.E. Deuster (voted **against** ERA on June 7): "I rise reluctantly to oppose the Amendment offered by my good friend, Rep. Walsh, who's normally right. But this Amendment illustrates the fact . . . that every good rule has got to have some exception. And it may well be that we would like as a general rule in our society to provide that there should be no discrimination on the grounds of sex. . . . But there have got to be some exceptions and the insurance industry knows that this is one area. . . . Here is a perfect example of where sex discrimination is based on logic, common sense, reason, fairness, and justice. And I would respectfully suggest that you reject this Amendment so that our insurance companies can

continue to differentiate with the classification of sex which is an important classification and which brings equity to young women drivers in Illinois and throughout the nation."

Rep. C.W. Schuneman (voted **against** ERA on June 7): "Rep. Walsh, would this Amendment apply to life insurance or only to automobile insurance?"

Rep. Walsh: "Frankly, I'm not sure. I think that it would apply to automobile as well as to life insurance but not . . . exclusively those two. It would apply to other casualty insurance, fire, etc., in case there were some discrimination there."

Note: The Bill being debated would make the underlined addition—paralleling the U.S. Constitution's 14th Amendment prohibition of race discrimination—to paragraph below of the Insurance Statutes defining prohibited unfair practices in **automobile insurance**.

"Making or charging any rate for insurance against losses arising from the use or ownership of a motor vehicle which requires a higher premium of any person by reason of his physical handicap, race, color, religion or national origin."

The Walsh Amendment to the Bill would insert "or her" after his in "his physical handicap" and "sex" after religion.

Rep. Schuneman: "Well, I'm concerned about the fact that women do have lower rates on life insurance, for example. Would this Amendment wipe out that special right that women have?"

Rep. Walsh: "Yes."

Rep. Schuneman: "[W]omen between the ages of 30 and 64 who are the sole drivers of an automobile in a household normally have lower rates than the rest of the people. Would this wipe out that discrimination?"

Rep. Walsh: "Yes."

Rep. Schuneman: "Young teenage girls normally have lower rates than young teenage boys. Would this wipe out that discrimination?"

Rep. Walsh: "Yes."

Rep. Schuneman: "Would this do a lot of the things that ERA will do?"

Rep. Walsh: "Absolutely."

Rep. Schuneman: "Thank you."

Rep. S.K. Catania (voted **for** ERA on June 7): "I rise to congratulate Mr. Walsh on his new position on sexual equality. . . . It makes very good sense and it's a good logic to say that they [the insurance companies] can have tables establishing who's a good risk and who's a bad risk. And I think that we

ought to encourage them to do that but I think that young men who are safe drivers are just as entitled to low rates as young women. And I'm very happy to support this very good Amendment."

Rep. R.F. Tipsword (voted **against** ERA on June 7): "I understand the very good motive, I think, that the Gentleman has in presenting this Amendment. But as to insurance rates, I think they should be based upon statistical evidence and not upon the item of sex or other matters that might be considered on the basis of equality extraneous to statistical incidents of insurance claims. I urge that the Amendment be defeated."

Rep. E.F. Schlickman (voted **against** ERA on June 7): "[T]he Sponsor of this Amendment . . . should be complimented for having done more than any Member of this House has in crystallizing what the effect of ERA will be. . . . It's reasonable . . . to distinguish between males and females in determining insurance rates. . . . With the ratification of ERA that reasonable classification would not be allowed. Under ERA what the Sponsor is attempting to do by this Amendment will become the law without this Amendment. . . . I respectfully suggest that . . . we should . . . retain what is reasonable, what is fair, what is appropriate. And that's reasonable classification. And I urge a 'no' vote on this Amendment."

Rep. J.J. Wolf (voted **against** ERA on June 7): "I would like to respectfully disagree with the last Gentleman that spoke. . . . [R]ecently a Judge has ruled that the time honored and respected system of charging female life insurance policyholders a higher rate because of their longer life expectancy was unconstitutional. And if such is going to be the case it should be just as unconstitutional to charge a young driver, whether it be male or female, a different rate solely because of the sex. . . . And I would certainly support the Amendment."

Note: Two months earlier, on April 25, 1978, the United States Supreme Court announced in its split decision on *City of Los Angeles v. Manhart* that federal non discrimination law prohibits employers from requiring women to make larger contributions than men to employer-operated pension funds. The Court, however, affirmed that it was lawful for employers to set aside equal retirement contributions for each employee, and then let each retiree purchase the largest benefit which her or his accumulated contribution could command. (For the same price, insurance companies pay smaller pension benefits to women than to men.)

Rep. Walsh: "I am indeed sincere about this Amendment. I would urge that people vote 'yes.' But I would support what previous speakers have said. We are trying to do with a flyswatter what can easily be done, if indeed this group feels it should be done, what the Equal Rights Amendment, beyond any doubt, would do with an atom bomb. We could not possibly consider questions like this, insurance rates for life insurance or automobile insurance would certainly be the same for men and women because that would be a classification in the law and the Equal Rights Amendment clearly prohibits that."

Rep. B.E. Epton (voted **for** ERA on June 7): "[T]o prevent them (insurance companies) from utilizing statistics will simply add to the cost. . . . It really, contrary to the opinions expressed, has absolutely nothing to do with either sex or ERA. . . . And I would appreciate a vote against this Amendment."

Note: Some legal experts have argued that ERA would not affect sex-based pricing systems in insurance because of

absence of action by the States in regulating prices and benefits. On the other hand, recent court decisions in Pennsylvania and Massachusetts upholding bans on sex discrimination in auto insurance pricing have referenced their state ERAs.

Rep. D. Huff (voted **for** ERA on June 7) [T]he essence of discrimination, in my opinion, is the insurance companies as . . . presently . . . operating in the State of Illinois. And I don't think that any of these things that we're discussing today will have any effect until such time as they are regulated by this state. Thank you."

By a 59 "yes" to 84 "no" vote, the Illinois House fails to adopt the Walsh Amendment to add a ban on sex discrimination in auto insurance premiums to a proposed Bill, which subsequently failed to become law.

JUNE 22, 1978

Illinois House takes up ERA again, and **Rep. Deuster** uses the defeat of the Walsh Amendment on June 14 to argue the case against passing the ERA.

Rep. D.E. Deuster (voted against the Walsh Amendment on June 14): "The other day we had an Amendment concerning sex discrimination in insurance and it would have prohibited sex discrimination in insurance. And what did we do with that? We defeated that Amendment because we know, in that special area, the insurance companies had some valid reason for grouping. The Equal Rights Amendment is inflexible."

Next a proponent for ERA addresses the same subject, insurance:

Rep. P. Martin (voted **for** the Walsh Amendment on June 14): "This Constitutional Amendment will guarantee equality for women and men in employment, education, and housing. And we as women, who have to support or help to support our families, will get the fringe benefits that we do not now receive which are medical insurance, life insurance, sick leave, maternity leave and pensions. These are crucial to the health and maintenance of our families. . . .The Equal Rights Amendment will help insure . . . economic power for all of us - women and men. I urge you today, as a woman, to vote for this very human right -Equal Rights Amendment."

At the end of the debate, the Illinois House fails by 2 votes to meet its self-imposed 107 vote requirement for ratification of the ERA. Among the legislators voting against the Equal Rights Amendment are 24 who voted for the Walsh Amendment to ban sex discrimination in auto insurance prices. Led by Reps. Walsh, Schuneman, and Wolf, these 24 anti-ERA legislators staged the auto insurance debate on June 14, 1978 to show that ERA would harm women by "wiping out" sex discrimination in all insurance.

Note: The quotations are from transcriptions of debates on the House floor obtained from the Index Division of the Department of the Secretary of State. The quotations are in chronological order. All of the debaters on the Walsh Amendment, June 14, 1978 are represented by quotations. Because consideration was postponed (to allow the possibility of consideration again), there was no official roll call of the June 22, 1978 ERA vote. The unofficial tally comes from the *State Journal-Register*, 6/23/78.

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