



Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

Vol. 124

WASHINGTON, TUESDAY, AUGUST 15, 1978

No. 128

House of Representatives

REP. HOLTZMAN LEADS FIGHT FOR EQUAL RIGHTS AMENDMENT EXTENSION

(Excerpts from debate in House of Representatives on H.J. Res. 638
Extending the Time for the Ratification of the ERA)

Ms. HOLTZMAN. Mr. Speaker, I wish to thank my colleague, the gentlewoman from New York (Mrs. CHISHOLM), for permitting me to speak on the rule.

Mr. Speaker, it is not often that we are granted an opportunity to speak up for human rights and to do something about human rights. And this is that opportunity.

We celebrated only recently our country's 200th birthday. But in part, that celebration was incomplete because women were not fully protected under the Constitution.

Just a few weeks ago, in the well-known Bakke case, a Justice of the Supreme Court reiterated the fact that even though the 14th amendment requires that all persons be afforded equal protection and that all persons be afforded due process of law, that the term "persons" did not fully apply to women. Now is the opportunity to change that and to help insure that there is a fair and full debate in the States over the issues of human rights and equal rights for women.

This rule that comes before the House today is designed to do the same thing, to assure a fair and full and open debate.

The rule is an open rule. It allows two hours of debate. It allows all germane amendments. It waives no points of order. It permits full and fair debate.

Those who get up to attack the rule have made arguments that are really not accurate, I would say to my colleagues. In the first place, they claim something—it is not clear what—about rescission. In fact, amendments regarding rescission are germane. In fact, the gentleman from Illinois (Mr. RAILSBACK) withdrew his request before the Rules Committee to make his amendment specially in order, recognizing, conceding and admitting that his amendment would be germane here. It is the intention of everyone who has been connected with obtaining this rule that amendments regarding rescission should be germane, because we think the House should vote on that issue.

Those who attack this rule say, "Well, let's have a vote on two-thirds." I want to make two simple points about that. In the first place, if the previous question is defeated, the resolution that they would put in order would not allow the House to vote on the issue of two-thirds. It would mandate a two-thirds vote. The opponents of this rule will, therefore, not permit the House to vote on this issue, not one bit—and do not be fooled by that claim.

Secondly, on the two-thirds requirement, only 1 out of 11 scholars who testified before the House Judiciary Committee said it was mandatory under the Constitution. Ten out of eleven did not argue that there was any constitutional requirement for a two-thirds vote to make this resolution effective.

Mr. Speaker, I hope the rule is sustained.

Ms. HOLTZMAN. Mr. Chairman, before I begin, I wish to pay my deepest respects to the gentleman from California (Mr. EDWARDS) for the fairness and ability with which he has conducted these proceedings and for his diligence and his concern. All of us have to be deeply grateful to him. I also wish to compliment my colleagues on both sides of the aisle for their concern about this issue.

Mr. Chairman, somebody remarked recently that he was offended by this proceeding.

I just want to say that there are hundreds of thousands, millions of Americans, who are offended by the fact that women still do not have equal rights under the Constitution of the United States.

The equal rights amendment is necessary because women of the United States are still, unfortunately, subject to discrimination. They are still subject to discrimination in pay; still subject to discrimination in employment; they are still subject to discrimination throughout our society. If anybody wants to say that our present

laws protect women from discrimination in employment or in other areas, they are wrong, flat wrong.

The extension becomes necessary so that the American public can deliberate in a reasoned, reasonable manner on whether or not the Constitution of the United States should fully protect women. That is an important decision. It is a decision that will not only have a profound impact on the people of the United States, on the generations to come, but on the world itself.

I submit, and I think the Congress is well aware, that that decision has now become clouded because of an attack of lies and propaganda and denunciations, and the poor equal rights amendment has had to withstand an onslaught of the kind we have not seen leveled against any single issue.

I think it is wholly consistent with the principles on which this democracy is based that the decision on equal rights be made with an understanding of the facts so that this barrage of false propaganda can be seen for what it is, and so that the decision on equal rights can be made intelligently and rationally.

I would say to my colleagues that there is nothing more consistent with our democratic processes than permitting the decision on the equal rights amendment to be made in an informed and in a rational fashion—nothing. That is exactly what we intend to do here. To those people who say there is something unfair, I would like them to show me one time that anybody was ever hurt by the truth. All we are trying to do here is to allow sufficient debate for the truth to come out.

I say to those people who talk about constitutional impediments, they have not thoroughly listened to those people who testified, the legal scholars who testified before the House Judiciary Committee. The overwhelming number of legal scholars have testified that Congress has the power to permit the extension.

To those people who say, "Well, but this issue is not free from doubt," how many issues are there in which we can have absolute certitude? This is an issue in which we can, however, take comfort from the fact that the overwhelming majority of legal scholars support the action of the House Judiciary Committee, support the action on extension, support our denial of rescission.

And then, there are some who say, "Let's separate the extension from the equal rights amendment; they are two different things." I say to you, that is the height of sophistry, because the extension and the equal rights amendment are one and the same thing. If we want the American people to make an intelligent and informed decision on ERA then we need the extension. A vote against the extension will be a vote against the equal rights amendment.

Then, the final argument: "Well, but no other constitutional amendment took more than 3 years." I would say that those people who make that argument forget history, because the only other time we had to deal in our country's past with an issue of profound human rights resulted in a Civil War. The 14th amendment was adopted because the States were told, "Unless you ratify the 14th amendment you cannot come back into the Union." That amendment was ratified at the barrel of a gun.

We are not asking for occupying troops; we are not asking for States to be thrown out of the Union; we are not asking for anybody to point a gun at anybody else. We are just asking for time and reason and debate.

I would urge this House at this time to vote for the extension and to sustain the action of the Judiciary Committee.

Ms. HOLTZMAN. Mr. Chairman, I

move to strike the last word and I rise in opposition to the amendment.

Mr. Chairman, I strongly oppose the amendment that would permit rescissions. I do so for a number of reasons.

In the first place, I think that we need to understand that we have never in our country's history, starting from the very day that the Constitution was ratified, recognized a right to rescind or validated any rescissions. If we adopt the Railsback amendment we will be thumbing our nose at 200 years of our country's constitutional history.

Second we will be thumbing our nose at the Constitution. There are many authorities that state that rescission is not a power that can be exercised constitutionally by States. The Justice Department has reiterated this position. We have received a letter to that effect. We would be thumbing our nose at the Constitution to adopt this amendment.

Finally, we would be thumbing our nose at some very important policy considerations that lie behind the refusal of our country in its past history to recognize those rescissions. Some of those policy considerations have been enumerated, but we need to understand them clearly.

If we allow rescission now, we will be allowing it for all time. Just like the original 7-year period that was adopted to the 18th amendment. That 7-year period was accepted mindlessly at that time and it has been followed mindlessly with one exception ever since.

What does that mean? It means on every single constitutional amendment we will have there will be a question whether to ratify, and after it has been ratified whether to rescind; and whether after it has been rescinded it should be ratified, and whether after it has been ratified it should be rescinded.

We are opening up our constitutional procedures to absolute chaos. I think that would be a grave mistake. The fact that no one in our past history has recognized the right to rescind suggests that our predecessors thought it would be a grave mistake too.

The second thing we will be doing, if we permit rescissions, is to allow the State legislators to adopt amendments to the Constitution too lightly. Legislators should not be able to say: "I am up for election this year. Here we have an amendment going away, for example, with the fifth amendment to the Constitution and I can vote for it, and it will be good for my election, and some other year our State legislature or some other State legislature will bail me out."

We should not permit our constitutional processes to be lightly used—ever. I think that would be the result.

Finally, this amendment is not timely. It does not bind another Congress actions with regard to rescissions. It is purely advisory. In fact it is purely illusory.

What I am saying to you is, if you adopt the Railsback amendment you will be doing something that not only is not binding, and you will be doing something that not only is just advisory, but you will be standing precedents on their head. You will be doing something that has serious constitutional questions attached to it. You will be doing something that has a bad policy implication for the future and will create grave problems for our constitutional process.

I urge the Members to consider that this is an issue that goes beyond the equal rights amendment, this affects our constitutional amendment process. So I urge you to defeat the Railsback amendment.