

## PROGRESSIVE MINNESOTA? A PERSPECTIVE ON WOMEN’S ISSUES IN THE LEGISLATURE

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### I. INTRODUCTION

“Progressive Minnesota” has a nice ring to it—one that residents of Minnesota have all heard many times. Minnesota is a progressive state; or, Minnesota *was* a progressive state. What is a progressive state? The dictionary gives multiple definitions of “progressive”: “[c]haracterized by progress or advance (in state or condition)”; “growing, increasing, developing; usually in good sense”; “[f]avouring, advocating, or directing one’s efforts towards progress or reform, esp. in political, municipal, or social matters”; and “[c]haracterized by (the desire to promote) change, innovation, or experiment; avant-garde, advanced, ‘liberal.’”<sup>1</sup> Black’s Law Dictionary contains no definition, which may say a lot in itself.

These definitions reflect the common understanding of the

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1. 12 OXFORD ENGLISH DICTIONARY 594–95 (2d ed. 1989).

word “progressive” used in discussions of this question in political circles. Comments from two former elected officials from different parties who might have been considered progressive are informative as to the progressive ideology (or lack thereof) of Minnesota today. Former Representative Connie Morrison (R–Burnsville)<sup>2</sup> said: “I have houses in three states: New Hampshire, Arizona, and Minnesota. Minnesota *is* progressive.”<sup>3</sup> Former Representative Dee Long (DFL–Minneapolis)<sup>4</sup> said, “The current legislature would never have passed authorization for the Metropolitan Council, Superfund, Pay Equity, Parental Leave, etc., etc. etc.”<sup>5</sup>

This essay will provide some context for analyzing the question from a gender perspective. First I will discuss the makeup of the legislature,<sup>6</sup> and then I will address some of the legislation which had a significant or disproportionate impact on women.<sup>7</sup> Minnesota has long been considered a leader in pioneering legislation, and was among the first few states to adopt innovative legislation which later appeared in other states and at the federal level. Some examples that will be discussed include state and local government pay equity,<sup>8</sup> parental leave,<sup>9</sup> and domestic violence.<sup>10</sup> I will conclude with concern that Minnesota is moving away from its progressive past.<sup>11</sup>

## II. THE MAKEUP OF THE LEGISLATURE

Minnesota has not led the nation in the number of elected women officials. A look at the change in the number of women in

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2. Representative Morrison held office from 1986 to 1994. Office on the Economic Status of Women, *Women in the Minnesota Legislature by Year(s) Elected*, <http://www.commissions.leg.state.mn.us/lcesw/wmnpuboff/wmnpuboffname.htm> (last visited Nov. 11, 2006) [hereinafter *Women in the Minnesota Legislature*].

3. Interview with Connie Morrison, former Republican state representative, in Eden Prairie, Minn. (June 1, 2006).

4. Representative Long held office from 1978 to 1998. *Women in the Minnesota Legislature*, *supra* note 2.

5. Interview with Dee Long, former Democratic-Farmer-Labor state representative, in Eden Prairie, Minn. (June 1, 2006).

6. *See infra* Part II.

7. *See infra* Part III.

8. *See infra* Part III.A.

9. *See infra* Part III.B.

10. *See infra* Part III.C.

11. *See infra* Part IV.

the Minnesota legislature gives insight into the dynamic of progressivity and its changing nature in the Minnesota legislature. Between 1922 and 1972, only seventeen women served in the legislature.<sup>12</sup> Six women were elected to the Minnesota House of Representatives in 1972, a watershed year.<sup>13</sup> The first woman was elected to the Minnesota Senate in a special election in 1927 and was reelected in 1930.<sup>14</sup> The next woman was elected in a special election in 1975.<sup>15</sup>

This was the beginning of a profound change in the makeup of the Minnesota legislature. The timing is significant because although Minnesota had a long-standing reputation as a progressive state, issues affecting women had not been part of the political agenda.<sup>16</sup>

From 1972 forward, the numbers steadily increased to the present historic high of 63 women out of the 201 total members, or 31.3%.<sup>17</sup> However, there were some interesting trends. Election of women to the House remained flat from the election of 1980 to the election of 1984.<sup>18</sup> Election of women to the Senate increased, but then it too flattened from 1982 to 1986.<sup>19</sup> Increases then occurred steadily through 1992 in both Houses.<sup>20</sup> From 1992 forward, the percentages of women elected to the Senate increased more than the percentages of women elected to the House.<sup>21</sup> This is particularly important because the Senate is generally considered to be a more prestigious, powerful, and deliberative body.

In the period since 1972, only three women have held high

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12. Women in the Minnesota Legislature, *supra* note 2.

13. Representatives Linda Berglin (DFL–Minneapolis), Mary Forsythe (R–Edina), Joan Growe (DFL–Minnetonka), Phyllis Kahn (DFL–Minneapolis), Ernee McArthur (R–Brooklyn Center), and Helen McMillan (DFL–Rochester). *Id.*

14. Laura Naplan (Thief River Falls) was elected to fill the seat of her deceased husband. *Id.* From 1913 until 1973, Minnesota legislators were elected without party designations. Andris Straumanis, *Partisan Politics*, SESSION WEEKLY, 1992, available at <http://www.house.leg.state.mn.us/hinfo/swkly/1995-96/select/party.txt>.

15. Senator Nancy Brataas (R–Rochester). Women in the Minnesota Legislature, *supra* note 2.

16. See *infra* Part III.

17. OFFICE ON THE ECONOMIC STATUS OF WOMEN, STATUS REPORT: WOMEN IN THE MINNESOTA LEGISLATURE, 2006, available at <http://www.commissions.leg.state.mn.us/oesw/fs/womleg06.pdf>. This figure includes both general and special elections. *Id.* These numbers do not reflect the Nov. 7, 2006 elections.

18. Women in the Minnesota Legislature, *supra* note 2.

19. *Id.*

20. *Id.*

21. *Id.*

leadership positions. Representative Connie Levi (R–Dellwood) served as Majority Leader of the House of Representatives from 1985 to 1987.<sup>22</sup> Representative Ann Wynia (DFL–St. Paul) served as Majority Leader of the House in 1989 but resigned to become the Commissioner of Human Services.<sup>23</sup> Representative Dee Long (DFL–Minneapolis) succeeded Ann Wynia as Majority Leader from 1989 to 1991 and was elected Speaker of the House in 1991.<sup>24</sup> No women have held the top leadership positions in the Minnesota Senate.<sup>25</sup>

In November of 2006, Minnesota for the first time elected a woman, Amy Klobuchar (DFL), to the United States Senate.<sup>26</sup> There have been three women elected to the House of Representatives. Betty McCollum (DFL–4<sup>th</sup> Dist.) is currently serving her third term.<sup>27</sup> Michele Bachman (R–6<sup>th</sup> Dist.) was elected in 2006.<sup>28</sup> The only other woman elected to the House of Representatives, Coya Knutson, served for two terms, ending in 1954.<sup>29</sup>

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22. Minnesota House of Representatives Majority and Minority Leaders, 1901–, Minnesota Reference Library, <http://www.leg.state.mn.us/lrl/histleg/hmajmin.asp> (last visited Nov. 11, 2006).

23. *Id.*

24. *Id.* Representative Long resigned as Speaker in 1993. Grant Martin, *Term Legislator Seeks Secretary of State Position*, SESSION WEEKLY, Apr. 3, 1998, at 19, available at <http://www.house.leg.state.mn.us/hinfo/swkly/1997-98/SW1198.pdf> (last visited Nov. 11, 2006).

25. *See* Senate Leadership, Minnesota Legislative Reference Library, <http://www.leg.state.mn.us/lrl/histleg/histdat.asp> (last visited Nov. 11, 2006).

26. Before that, Minnesota had never elected a woman to the U.S. Senate. *See* The United States Senate, Women in the Senate, [http://www.senate.gov/artandhistory/history/common/briefing/women\\_senators.htm](http://www.senate.gov/artandhistory/history/common/briefing/women_senators.htm) (listing one senator from Minnesota, Muriel Humphrey, who was appointed to serve out her husband's term after he died) (last visited Nov. 11, 2006).

27. Congresswoman Betty McCollum, <http://www.mccollum.house.gov/> (follow "About Betty" hyperlink) (last visited Nov. 11, 2006). She was reelected in Nov. 2006.

28. *See* Minnesota Secretary of State, Unofficial Results General Election Nov. 7, 2006, <http://electionresults.sos.state.mn.us/20061107/> (last visited Nov. 18, 2006).

29. Biographical Directory of the United States Congress, Coya Gjesdal Knutson, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=K000300> (last visited Nov. 11, 2006). Coya Knutson, a Democrat from Oklee, Minnesota, was elected in 1950 and reelected in 1952. *Id.* She angered party leaders by not supporting their choice for President, so they orchestrated a letter written by her alcoholic husband asking her to come home. GRETCHEN URNESS BEITO, COYA COME HOME: A CONGRESSWOMAN'S JOURNEY 211, 237 (1990). The letter, known as the "Coya Come Home" letter, was published in the newspaper, and Knutson lost her next election. *Id.* at 236, 277.

### III. LEGISLATION WITH PARTICULAR IMPACT ON WOMEN

The expanding numbers of women in the legislature set the stage for changes in legislation. With greater numbers of women, the Minnesota legislature began to respond to women's concerns. It established an office in the Department of Corrections to develop responses to the crime of sexual assault.<sup>30</sup> In 1976, responding to a strong effort by the seven women in the legislature (six in the House and one in the Senate) and women's groups that had become politically active and visible, the legislature created the Council on the Economic Status of Women.<sup>31</sup> This was the first acknowledgment by the legislature that there were matters affecting women that were not being considered or discussed or decided by their elected representatives. Minnesota was the only state choosing to pursue the strategy of using a legislative council to identify and promote solutions at the state level. The legislature held hearings on the matter of sex discrimination in employment in Minnesota.<sup>32</sup>

There were several other factors that converged in 1972 to propel a progressive women's agenda to the forefront. Congress

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30. The Program for Victims of Sexual Assault was established in 1975. Minnesota Coalition Against Sexual Assault, History of MNCASA, [http://www.mncasa.org/who\\_history.html](http://www.mncasa.org/who_history.html) (last visited Nov. 11, 2006). Currently, the Office of Justice Programs, in the Department of Public Safety, works with victims of violent crime, including sexual assault. See Minnesota Office of Justice Programs, <http://www.ojp.state.mn.us> (last visited Nov. 11, 2006). For legislative summaries, see Office on the Economic Status of Women, Legislative Session Summaries, <http://www.commissions.leg.state.mn.us/oesw/legsum/index.htm> (providing summaries dating back to 1977, some of which contain information on this program) (last visited Nov. 11, 2006).

31. Act of April 19, 1976, ch. 337, § 1, subdiv. 1, 1976 Minn. Laws 1343, 1343 (formerly codified as amended at MINN. STAT. § 3.9222 (2004), *repealed by* Act of June 3, 2005, ch. 156, art. 2, § 52, 2005 Minn. Laws 1628, 1677). The council has been renamed the Office on the Economic Status of Women and aligned under the Legislative Coordinating Commission. MINN. STAT. § 3.303, subdiv. 7 (Supp. 2005).

32. The Council on the Economic Status of Women held hearings in the State Office Building. The Council included ten legislative members, appointed by their respective bodies, and eight members of the public, appointed by the governor. Act of April 19, 1976, ch. 337, § 1, subdiv. 2, 1976 Minn. Laws 1343, 1343. The Council was the forerunner of the Commission on the Economic Status of Women, MINN. STAT. § 3.9222 (2004) (*repealed by* Act of June 3, 2005, ch. 156, art. 2, § 52, 2005 Minn. Laws 1628, 1677), and the Office on the Economic Status of Women, MINN. STAT. § 3.303 (2004 & Supp. 2005). Hearing files and tapes are available at the Office on the Economic Status of Women.

passed Title VII of the Civil Rights Act of 1964,<sup>33</sup> prohibiting sex discrimination in employment, and actions started to flow from the complaints that had begun to surface. In 1972, Congress adopted Title IX of the Education Amendments of 1972,<sup>34</sup> prohibiting sex discrimination in all education programs receiving federal funds. Title IX added strength to the promotion of eliminating discrimination based on sex. The Equal Rights Amendment<sup>35</sup> had been passed by Congress and was in the ratification process in the states. Minnesota ratified the Equal Rights Amendment in Minnesota in 1973.<sup>36</sup> The women's movement was gaining momentum and bringing attention to the previously unstated concerns of women on a variety of issues.

Several of the laws passed during the 1970s and 1980s support the assertion that Minnesota is, or was, a progressive state. A striking example can be seen from the history of landmark legislation passed in 1982, the State Government Pay Equity Act.<sup>37</sup> "Pay equity" or "comparable worth," two interchangeable terms, refer to a method of objectively evaluating jobs that are different, but comparable.<sup>38</sup>

#### A. *Pay Equity*

The road to enactment of the law began in the state of Washington where, in 1974, a state study of jobs identified pay inequities within the ranks of state employees.<sup>39</sup> Washington did not address the issue, and in 1981 the American Federation of State, County and Municipal Employees (AFSCME) sued the state for gender discrimination in pay.<sup>40</sup> After years of litigation, the

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33. Pub. L. No. 88-352, 78 Stat. 253, 253-66 (1964) (codified as amended at 42 U.S.C. §§ 2000e-1-2000e-17 (2004)).

34. Pub. L. No. 92-318, 86 Stat. 235, 304-12 (1972) (codified as amended at 20 U.S.C. §§ 1681-1688 (2004)).

35. H.R.J. Res. 208, 92d Cong., 2d Sess., 86 Stat. 1523 (1972).

36. H. Res. 1, 68th Leg., Reg. Sess., 1973 Minn. Laws 2465 (Minn. 1973).

37. Act of March 23, 1982, ch. 634, §§ 1-8, 1982 Minn. Laws 1559, 1559-60 (current version at §§ MINN STAT. 43A.01, .02, .05, .18 (2004)).

38. See Department of Employee Relations, Pay Equity/Comparable Worth, <http://www.doer.state.mn.us/lr-peqty/lr-peqty.htm> (last visited Nov. 11, 2006).

39. See NORMAN D. WILLIS & ASSOCIATES, STATE OF WASHINGTON COMPARABLE WORTH STUDY (1974). For general information about the genesis of the study and the subsequent history of comparable worth in Washington, see Washington Federation of State Employees, Comparable Worth History, <http://web.wfse.org/cw.htm> (last visited Nov. 11, 2006).

40. Am. Fed'n of State, County & Mun. Employees v. Washington, 578 F.

parties settled, achieving pay equity for state employees.

In 1977, the Minnesota legislature commissioned a study of all job classifications in Minnesota state government.<sup>41</sup> The original intention of the study was not to compare male and female jobs.<sup>42</sup> The state of Minnesota used a system developed by Hay Associates, a management consulting firm, to evaluate jobs.<sup>43</sup> A job evaluation system is a method used to make comparisons between jobs in a particular workplace, using objective criteria to make those comparisons. Job evaluation is a tool used by many employers to determine wage levels. This information is not usually shared with employees. The methodology typically used looks at four factors: skill, effort, responsibility, and working conditions.<sup>44</sup> Terminology may vary among different job evaluation systems, but most value skill, or “know-how,” most highly.<sup>45</sup>

The results of the study were presented at a hearing before the Council on the Economic Status of Women.<sup>46</sup> The Council's charge was to study issues related to the economic status of women, including “job and promotion opportunities and laws and business practices constituting barriers to the full participation by women in the economy,” and to make recommendations to the legislature for needed changes.<sup>47</sup> The Council prepared a report showing the disparities in pay that were revealed in the Hay Associates job evaluation study.<sup>48</sup> The results were dramatic. The study clearly showed disparities in pay for jobs with equivalent rankings between

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Supp. 846 (W.D. Wash. 1983), *rev'd*, 770 F.2d 1401 (9th Cir. 1985), *reh'g denied*, 813 F.2d 1034 (9th Cir. 1987) (dismissed because settlement was reached).

41. J.R. Bratkovich, *Preface* to STATE OF MINNESOTA PUBLIC EMPLOYMENT STUDY: CRITIQUE OF MINNESOTA'S STATE PERSONNEL POSITION CLASSIFICATION PLAN (1978).

42. *Id.* at 1 (“This study was not designed to determine whether each individual employee in the State is currently correctly classified but rather it is concerned with the policies, regulations and processes which govern the Position Classification Plan to ensure that the correct mechanisms are appropriately applied in achieving the intended results of sound position classification concepts.”).

43. *Id.* at 2.

44. COMM'N ON THE ECON. STATUS OF WOMEN, PAY EQUITY: THE MINNESOTA EXPERIENCE 9 (1988). Hay Associates also looked at four factors: “know-how,” “problem-solving,” “accountability,” and “working conditions.” In addition, Hay Associates looked at subfactors within each factor. *Id.*

45. *Id.*

46. *See supra* notes 31–32 and accompanying text.

47. Act of April 19, 1976, ch. 337, § 1, subdiv. 3, 1976 Minn. Laws. 1343 (formerly codified as modified at MINN. STAT. § 3.9222 (2004)).

48. MINNESOTA COUNCIL ON THE ECONOMIC STATUS OF WOMEN, TASK FORCE ON PAY EQUITY, PAY EQUITY AND PUBLIC EMPLOYMENT 14 (1982).

those jobs performed primarily by men and those performed primarily by women. In fact, in no instance was a job performed primarily by women ranked higher, or even equal, to the next closest job performed primarily by men.<sup>49</sup> The male jobs always paid more.<sup>50</sup> Based on this information, legislation was proposed to eliminate the disparities in pay over a four-year period (two budget cycles).<sup>51</sup> Funds to pay for the pay differentials would be appropriated by the legislature as part of the salary supplement negotiated with state employee unions and used to fund increases in employee wages for the biennium.<sup>52</sup> This kind of legislation was ground-breaking. Other than the attempt in the state of Washington, it had not been done anywhere else in the country, and has not to this day.

The legislation went far beyond the concept of equal pay for equal work. The Equal Pay Act of 1963<sup>53</sup> had become well accepted. But that term referred to two people doing exactly the same job. No one would think that two people doing the same job should be paid differently based on their sex. In fact, the problem highlighted in the job evaluation study was that, primarily, men were doing “men’s jobs” and women were doing “women’s jobs.”<sup>54</sup> This was the concept of pay equity or comparable worth.

But the legislature did not see it as particularly radical. The numbers were so persuasive that it was viewed as an issue of fairness. The data showed that the pay differentials were gender-based. The legislature was persuaded by the data to take action. Lopsided majorities in both houses adopted the legislation, and the governor signed it into law.<sup>55</sup>

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49. *Pay Equity*, NEWSLETTER (Minn. Council on the Econ. Status of Women, St. Paul, Minn.), April 1982, at 2, available at <http://www.commissions.leg.state.mn.us/oesw/legsum/1982April.pdf>.

50. *Id.*

51. H.F. 2005, 72d Leg., 1st Sess. (Minn. 1982). Introduced by Reps. Simoneau, Greenfield, Rodriguez, Luknic, and Pogemiller on Feb. 11, 1982 as H.F. 2005. The bill was designed to amend Minnesota Statutes 1981 Supplemental sections 43A.01, 43A.02, and 43A.18 subdiv. 8. *Id.*

52. Act of March 23, 1982, ch. 634, § 8, 1982 Minn. Laws 1559, 1561.

53. Pub. L. No. 88-38, 77 Stat. 56 (1963) (codified as amended at 29 U.S.C.A. § 206, subdiv. (d) (1996)).

54. COMM’N ON THE ECON. STATUS OF WOMEN, PAY EQUITY: THE MINNESOTA EXPERIENCE 9 (1994), available at <http://www.commissions.leg.state.mn.us/lcesw/payequity/payequity.pdf> [hereinafter 1994 PAY EQUITY].

55. Act of March 23, 1982, ch. 634, §§ 1–5, 7, 1982 Minn. Laws 1559, 1559–60 (codified at MINN. STAT. § 43A.01–02, 43A.18, subdiv. 8 (2004)). The bill sped through the chambers to a quick passage. After introduction on Feb. 11, 1982, it

The implementation of the law was carried out carefully. In order to eliminate the wage disparities, the underlying premise was that no employee would receive a reduction in pay.<sup>56</sup> Each state employee whose pay had been undervalued received an increase in base pay. Both men and women in the underpaid classes received the increases.<sup>57</sup>

Based on the success of the State Government Pay Equity Act, and a continuing concern over gender disparities in the pay of public employees, members of the Commission on the Economic Status of Women (a change in the structure and the name was made in 1983)<sup>58</sup> decided it was time to move forward with similar action for local units of state government. The Local Government Pay Equity Act was adopted in 1984.<sup>59</sup> This act had far broader implications, and was far more complicated in its implementation for several reasons. The act required local units of government to conduct job studies.<sup>60</sup>

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went to the House Committee on Governmental Operations. 3 JOURNAL OF THE HOUSE, 72d Leg., at 5343 (Minn. 1982). That committee reported back on February 24 with some amendments. *Id.* at 5679–81. After a second hearing, the bill was referred to the Committee on Appropriations. *Id.* at 5799. That committee reported back on March 8 with minor amendments and a recommendation that the bill pass. 4 JOURNAL OF THE HOUSE, 72d Leg. at 6827–28. On March 9, the Rules Committee designated H.F. 2005 as a special order for the day. *Id.* at 6863. When it was brought before the full House, one member offered a minor amendment from the floor, which passed. *Id.* at 6921. H.F. 2005 passed in a roll call vote by a margin of 100–13. *Id.* at 6922. It passed the full Senate by March 13, *id.* at 8178–79, and the Governor signed it into law on March 23. *Id.* at 8284.

56. *E.g.*, MINN. STAT. § 43A.18, subdiv. 8 (requiring that total compensation for state employment positions be reasonably comparable among similar positions requiring similar skill, effort, responsibility, and working conditions).

57. Approximately 8,500 employees in 200 female-dominated classes received pay equity increases. 1994 PAY EQUITY, *supra* note 54, at 15. Seventy-five percent of the pay adjustments went to clerical workers and health care workers. *Id.* About ten percent of those receiving increases were men in female-dominated jobs. *Id.* The estimated average pay equity increase was \$2,200. *Id.* at 16. This was an increase in base pay. The law requires continued monitoring to ensure that pay equity is maintained in state government. *Id.*

58. MINN. STAT. § 3.9222 (2004), *repealed by* Act of June 3, 2005, ch. 156, art. 2, § 52(a), 2005 Minn. Laws 1628, 1677.

59. Act of May 2, 1984, ch. 651, 1984 Minn. Laws 1896 (codified at MINN. STAT. § 471.991–.999 (2004)).

60. *Id.* § 4, 1984 Minn. Laws at 1898 (codified at MINN. STAT. § 471.994 (2004)). The current law requires every government to “use a job evaluation system in order to determine the comparable worth value of the work performed by each class of its employees.” MINN. STAT. § 471.994 (2004). Furthermore, the law now also provides for changes in the workplace by mandating updates to

Local units of government were reluctant to conduct job evaluation studies. They were concerned about the cost and feared that if the study showed disparities based on gender, they would be subject to legal action. In addition, many local units of government, particularly small municipalities, had never established job descriptions for the various positions.

The proposed statutory definition of local unit of government was broad. It included any public entity that hired employees, ranging from school districts, cities, and counties, to soil and water conservation boards and municipal nursing homes.<sup>61</sup> Local units of government did not receive an appropriation from the state to pay for increases in wages for their employees. Hence, any pay disparities that the study might later reveal would have to be paid for by the local units of government themselves. Unions feared the law would interfere with their ability to bargain. Some local units of government liked the idea that the costs of pay equity might give them a better bargaining position when the union asked for increases, since the local unit of government could show that the money all had to be spent on pay equity.

The provisions of the law were incremental. The first requirement was that local government units submit a job study to the Department of Employee Relations by a designed date.<sup>62</sup> However, the local units of government ignored the requirement and no reports were submitted. Finally, an amendment was added to education-funding bills that required all school districts to report by a certain date or lose a certain amount of their appropriation.<sup>63</sup> Every school district reported by the designated date. Since that tactic proved successful, a similar requirement was placed on all other local units in the next legislative session.<sup>64</sup>

By this time, it was clear that the legislation would have to be mandatory if it was going to be successful. Once the reports were submitted, the legislation was amended to require that local units

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account for new employee classes and any changes affecting the comparable worth of existing classes. *Id.*

61. MINN. STAT. § 471.992, subdiv. 1 (2004) (stating that all local governments must establish equitable compensation to eliminate wage disparities in public employment positions).

62. Act of May 2, 1984, ch. 651, § 10, 1984 Minn. Laws 1896, 1899 (codified at MINN. STAT. § 471.9981, subdiv. 5(a) (2004)).

63. *Legislative Summary 1987*, NEWSLETTER (Comm'n on the Econ. Status of Women, St. Paul, MN), June 1987, at 2, available at <http://www.commissions.leg.state.mn.us/oesw/legsum/1987June.pdf> (last visited Nov. 11, 2006).

64. Act of April 28, 1988, ch. 702, § 15, 1988 Minn. Laws 1547, 1560-62.

of government eliminate wage disparities.<sup>65</sup> Because some local units of government were essentially ignoring the law, an implementation deadline was established in 1988 legislation with a final completion date of 1991.<sup>66</sup>

The Department of Employee Relations (DOER), which was designated to oversee the implementation, developed a statistical analysis of the wage disparities to determine if the local unit of government was in compliance with the law, and financial penalties were included in the law for those local units of government that failed to comply with the provisions.<sup>67</sup> The DOER established the position of pay equity coordinator to provide oversight and technical assistance to ensure compliance with the law.<sup>68</sup> Tools were developed by the DOER to make the process easier. A three year reporting cycle was established to make the review process more efficient and to allow for negotiations when noncompliance was determined.<sup>69</sup> At the present time, there is 99% compliance with the Act.<sup>70</sup>

Over the years, there has been dissatisfaction with the burdens imposed by the Local Government Pay Equity Act. In recent years, there have been continuing efforts to weaken the requirements of the law, some of which have been adopted. For example, the 2003 legislature placed a two-year moratorium on pay equity reporting for all local units of government.<sup>71</sup> In addition, the reporting period was expanded from three years to five years.<sup>72</sup> In effect, the expansion of the reporting period meant that some units of

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65. Act of April 26, 1990, ch. 512, § 2–4, 1990 Minn. Laws 1299, 1299–1300.

66. Act of April 28, 1988, ch. 702, § 15, 1988 Minn. Laws 1547, 1560–61 (codified at MINN. STAT. 471.9981, subdiv. 1 (2004)).

67. *Id.*, 1988 Minn. Laws at 1560–62 (codified at MINN. STAT. § 471.9981, subdiv. 6 (2004)).

68. DEPT. OF EMPLOYEE RELATIONS, MINNESOTA LOCAL GOVERNMENT PAY EQUITY COMPLIANCE REPORT 3 (2006), available at <http://www.doer.state.mn.us/lr-peqty/payequity.pdf>.

69. See MINN. R. 3920.1300, subp. 2 (2005).

70. DEPT. OF EMPLOYEE RELATIONS, MINNESOTA LOCAL GOVERNMENT PAY EQUITY COMPLIANCE REPORT 1 (2005). Early reports submitted by local governments showed similar results. “Fifty-eight percent of those reporting identified inequities in their workforce. . . . The average increase needed to achieve equity was estimated at \$200 per eligible employee per month. Occupational groups with the largest numbers of employees eligible for pay equity increases were clerical workers, food service workers, and school aides.” 1994 PAY EQUITY, *supra* note 54, at 14.

71. Act of May 28, 2003, ch. 1, art. 2, § 112, 2003 Minn. Laws, 1st Spec. Sess. 1297, 1371.

72. *Id.*

government would not report for seven years. The effect of this seemingly technical change was to extend the period in which inequities could continue by a considerable length of time. Employees who are entitled to pay equity increases do not receive any retroactive increase. Attempts to negotiate less harmful changes were unsuccessful. The 2005 legislature, after considerable pressure from advocacy groups, changed the five-year reporting cycle back to three years.<sup>73</sup> It is this writer's opinion that if this law had been proposed for the first time in the current legislative climate, it probably would not have passed. This "unfunded mandate" that has resulted in substantial pay increases for undervalued positions would not be adopted.

*B. Domestic Violence*

In 1979, Minnesota was the second state in the country to adopt a law creating a civil process for obtaining a restraining order without first requiring the filing of a petition for marriage dissolution.<sup>74</sup> The restraining order, called an Order for Protection, is now available in every state in the country and is starting to be available in courts around the world.

Minnesota's legislation was groundbreaking in many aspects. It was recognition by the legal system that domestic violence was not permissible and would not be ignored. It was a process that did not require the victim of abuse to flee from her home in order to be safe, and facilitated access to court without the need for an attorney. It required the community to acknowledge the existence of domestic violence. It was a new idea for many legislators, particularly for those who had not experienced domestic violence within their families or their communities. Most gratifying was the willingness to look at new ideas, new solutions, and new approaches to confronting societal problems.

The most dramatic remedy provided by the new legislation was the ability of a judge to remove an abuser from the home, based solely on the sworn statement of the abuse victim, until a court hearing could be held.<sup>75</sup> After a court hearing, the court had

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73. Act of June 30, 2005, ch. 1, art. 4, § 113, 2005 Minn. Laws 1st Spec. Sess. 1983, 2258-59.

74. Domestic Abuse Act, ch. 214, § 1, subdiv. 4, 1979 Minn. Laws 414, 415 (codified at MINN. STAT. § 518B.01 (2004)).

75. *Id.* subdivs. 4(b), 6(b), 1979 Minn. Laws at 415 (codified at MINN. STAT. § 518B.01, subdiv. 4(b), 6(a)(2) (2004)).

authority to remove a person from the home for up to one year, as well as providing other relief, as necessary.<sup>76</sup> This was dramatic. Similar *ex parte* provisions were upheld in Pennsylvania before Minnesota passed its legislation in 1979.<sup>77</sup>

### C. Parental Leave

The term “parental leave” is currently part of the general political vocabulary when discussing various provisions relating to employment and the particular needs of women. But it was not always so. When the issue first appeared at the legislative table, it came after some initial actions in the private workplace. Large companies were beginning to provide parental leave as one item in a package of benefits for their long-term employees, based on seniority. Parental leave had long been common in many European countries; in fact, many had very generous parental leaves.<sup>78</sup> It was not (and still is not) commonly part of a benefit package provided to employees, although many professional and unionized employees are able to negotiate this kind of benefit. Some unions had begun to negotiate provisions for maternity leave in their contracts.

The distinction between maternity leave and parental leave is critical. Maternity leave is a benefit provided to a woman who has given birth, and it guarantees her return to a job after a specified period of time. Parental leave is leave provided to either or both parents after the birth or adoption of a child. Parental leave was a new concept with far-reaching impact.

The real impetus for taking legislative action came after women began calling their legislators to complain: they thought they had left their jobs temporarily to give birth and recover from the delivery, but were shocked to discover when they sought to

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76. *Id.* subdiv. 6(f), 1979 Minn. Laws at 415 (codified at MINN. STAT. § 518B.01 subdiv. 6(2), 6(12)(b) (2004)).

77. *See Boyle v. Boyle*, 12 Pa. D. & C.3d 767, 779 (Pa. Com. Pl. 1979). This is a case with no precedential value. It was heard in the Court of Common Pleas, but the language was very strong. The court found that the provisions of the Pennsylvania Protection from Abuse Act bore a real and substantial relationship to the purpose of protecting abuse and was a valid exercise of the state's police power. *Id.* at 770–71. Further, the court ruled that a constitutional challenge regarding a spouse's exclusion from jointly held property for a temporary period without an opportunity to be heard would not prevail. *Id.* at 773.

78. *See generally* Lucinda M. Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118, 1125 (1986).

return to work, even as little as two weeks later, that the job was no longer available.

Members of the Minnesota State Legislature were also shocked when they learned that Minnesota employers were refusing to take back good employees who had become parents. But the road was not without obstacles. The notion of parental leave was perhaps more “progressive” than many were willing to accept. The bill, as introduced, provided for one year of unpaid leave upon the birth or adoption of a child.<sup>79</sup> There was never an expectation that it was possible for parental leave to be successfully adopted with this proposal, but it was a starting point. The bill was quickly amended to provide for a six-month leave.<sup>80</sup> When the negotiations became serious, the lobbyists for the business community made an offer: if the bill could be limited to maternity leave, they would be willing to accept a three-month unpaid leave. If it was going to be parental leave, then six weeks was the limit. Some legislators expressed the fear that adopting this kind of legislation would make it difficult for women to be hired because of the employer’s fear of having to comply with the law if the employee became pregnant. This framed the nub of the issue.

Ultimately, advocates for parental leave argued that the way to make real change in the way we view the roles of work and family, and of women and men, is to have policies that support the notion that both parents are responsible for child-rearing and both parents are critical to a child’s development. With increasing numbers of women in the workforce, parental leave promised to be a policy that could make a positive statement about the responsibility of employers to accommodate that philosophy. Thus, it was critical to make parental leave, rather than maternity leave, the law. Accordingly, Minnesota became the first state in the country to adopt a parental leave law.<sup>81</sup> Ironically, and sadly, even six weeks of unpaid leave was more than many workers could afford to use.

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79. H.R. 234, 75th Leg., Reg. Sess. (Minn. 1987), in *JOURNAL OF THE HOUSE*, 75th Leg., at 1228 (1987).

80. *JOURNAL OF THE HOUSE*, 75th Leg., at 1784 (Minn. 1987).

81. Senator Ellen Anderson, *Parental Leave: Time to Strengthen*, WITH EQUAL RIGHT, January 2003, available at [http://www.mwlawyers.org/sen\\_anderson\\_article.htm](http://www.mwlawyers.org/sen_anderson_article.htm). See Act of June 2, 1987, ch. 359, 1987 Minn. Laws 2471, 2471 (codified at MINN. STAT. §§ 181.940–44 (2004)).

## IV. THE END OF PROGRESSIVISM IN MINNESOTA?

Minnesota's parental leave law was adopted in 1987.<sup>82</sup> Several years later, in 1993, Congress adopted the Family and Medical Leave Act, which provided coverage for medical leave as well as for birth or adoption.<sup>83</sup> While the period of leave in the federal law was longer, Minnesota's law covered more employees.<sup>84</sup> Would Minnesota's landmark "progressive" parental leave legislation pass in the current legislature? I think not. The philosophy is not one popularly subscribed to in the current political climate. In addition, such legislation is seen as another mandate, this time on small employers. Arguments that were persuasive twenty years ago are not given the same serious consideration today.

Minnesota is moving away from its progressive reputation. Despite increasing numbers of women, and perhaps because of the broader representation that women bring to the legislature, a backlash has developed. Some women do not want to appear to support "women's" (you could call them "progressive") issues. Some see that they have made great strides, as have many women and girls, and believe that the battles for gender equality are over. This attitude is increasingly expressed when suggestions are made that the work toward equality for women is not completed. Hence, there has emerged a view that there is no need to focus on matters that have a disproportionate impact on women. Some feel that the balance has tilted too far in favor of women, and that they must protect the interests of boys and men.

In order to gain leadership positions and restore the progressive agenda, there must be a "critical mass" of female legislators.<sup>85</sup> Despite the fact that women are moving into positions

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82. Act of June 2, 1987, ch. 359, 1987 Minn. Laws 2471, 2471.

83. Family and Medical Leave Act, Pub. L. No. 103-3, 107 Stat. 6, 9 (1993) (codified at 29 U.S.C. § 2611 (2000)).

84. Compare 29 U.S.C. § 2612(a)(1) (2000), with MINN. STAT. § 181.941, subdiv. 1 (2004). The federal law covered employers with fifty or more employees. 29 U.S.C. § 2611(4)(A)(i) (2000). Minnesota's law covered employers with twenty-one or more full time equivalents. MINN. STAT. § 181.940, subdiv. 3 (2004). Since the vast majority of employers in the state are small, the Minnesota law covered many more employees, although by no means did the law cover enough. Minnesota's law also provided for unpaid time off for school conferences or other school activities and for the use of employee sick leave to care for a sick child. MINN. STAT. §§ 181.9412, subdiv. 2, 181.9413(a) (2004). Here again, we learned that sick leave is not a universal benefit afforded to employees generally.

85. One legislator, Mindy Greiling (DFL-Roseville) explained that "[t]here's a Rutgers study that shows if women are 40 percent of an institution, they change

of leadership and are working hard, they are still outside the circles of power. Hard work is not enough to move women into powerful leadership positions. Ambition and opportunity are also necessary. Women are often unwilling to act on their ambitions until they have completed the policy agenda or the goals for the current office. Men often describe themselves as opportunistic, and women think of themselves as task-oriented. Because seniority is such an important factor in accessing political power, women have only recently reached the necessary longevity in office that would open the doors to the highest levels of leadership within the legislature.

The late 1970s and the 1980s were also the time when much of the progressive legislation affecting women was passed. A remarkable number of changes were made, some relatively minor, others more significant and comprehensive. These changes included removal of gender references throughout the statutes, particularly those which had a substantive and discriminatory effect in areas such as inheritance, insurance, and marriage dissolution laws.<sup>86</sup> In addition, amendments were made to laws ranging from prohibition of discrimination in the extension of credit, to the prohibition of discriminatory rules in membership in private golf courses.<sup>87</sup> Criminal statutes relating to sexual assault were rewritten, marriage was no longer a defense in criminal sexual assault cases, and services for victims were established and developed. A groundbreaking program providing subsidized child care was established, acknowledging the rapid increase in the numbers of women, especially mothers, in the state labor workforce. Shelters and services for battered women appeared on the scene. Here too, Minnesota was the first state in the country to establish a shelter for battered women.<sup>88</sup>

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the institution. . . . Less than 40 percent, the institution changes them.” Doug Grow, *Women Politicos Did Their Best in Fighting Twins Ballpark Plan*, STAR TRIB. (Minneapolis), May 23, 2006, at 1B.

86. See MINN. STAT. § 14.47, subdiv. 5 (2004) (giving revisor of the statutes power to remove gender references).

87. See, e.g. MINN. STAT. § 363A.16 (2004) (unfair discriminatory practice in the extension of credit); *id.* § 273.112 (withholding valuation and tax deferment from golf courses that discriminate on the basis of sex).

88. Women’s Advocates, Inc., Domestic Abuse Fact Sheet, The Facts, <http://www.wadvocates.org/> (follow “Domestic Abuse Fact Sheet” hyperlink; then follow “The Facts” hyperlink) (last visited Nov. 11, 2006). The first battered women’s shelter in the country, Women’s Advocates, was established in St Paul, Minnesota in 1974. *Id.*

Although the number of women in the legislature has continued to increase, and many women now serve as chairs of significant committees, the rate of consideration and adoption of progressive legislation has declined, and there have been cutbacks and retrenchment in previously adopted legislation. Whether this is the result of a broader representation of women that includes many women who are not particularly or ideologically identified with progressive issues, or whether the era of progressive agendas is waning is hard to determine. A cyclical theory of the nature of politics would say that the pendulum will swing back again and a new era of progressive work will appear. But even those who believe that there is much work left to be done will agree that much has been accomplished, and the cultural and social changes needed may require another lifetime to achieve. Time will tell.