



SENATE CONTRIBUTION

BY

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ATTORNEY- GENERAL AND MINISTER OF LEGAL AFFAIRS**

ON

THE CONSTITUTIONAL (AMENDMENT) BILLS

WEDNESDAY 9TH MARCH, 2016

Acknowledge presence of Hon. Melanie Griffin and Cleola Hamilton, Constitutional Commission, AKA Sorority and my daughters, the Great Granddaughters of Georgiana Kathleen Symonette

Madam President, I believe that ideas are part of our heritage -- that passionate beliefs can be passed from one generation to the next.

My grandmother, Georgiana Kathleen Symonette, was born in 1902, in a different time. But we share so much, including a belief that progress comes when you work for it, that, as the African proverb says, “when you pray, move your feet.” She, Eugenia Lockhart, Mary Ingraham and Mabel Walker founded the Women’s Suffrage Movement. They and their fellow Suffragettes did not wait around for change, they moved their feet – collecting signatures and organizing petitions across our islands, speaking up for what they knew to be true, which was that women deserved a right to vote. They

understood that the right to vote was at the core of citizenship and indeed, of belonging.

Today, I stand on their shoulders, here, in the Senate, where Dame Doris Johnson presided as the first female President, to speak in support of these four Bills, which will ensure that our Bahamian sons and daughters will have equal rights under our Constitution, and I do so with enormous pride and gratitude. It is an extension of the work of my grandmother, her fellow Suffragettes, and so many others.

They viewed the right to vote as an essential component of our nation's larger struggle for Majority Rule and Independence.

And today we view the right of men and women to be equal under our Constitution as yet another step forward for our great nation. It represents the full

flowering of their work. Importantly, it is a step that strengthens family life.

There were many people who worked hard – who “moved their feet” – so that we could arrive at this moment. The members of the Constitutional Commission traveled throughout The Bahamas, holding town halls and meeting with citizens, listening and learning. I thank them for their hard work in the journey to today and beyond.

The law requires that these Bills be passed by a special majority (3/4 of the *members*) of the House of Assembly and the Senate and then if passed by both Houses of Parliament by that special majority, put to a vote of the people.

The Commission’s Report states:

“The Commission is unequivocal in its view that there

ought to be no difference in the ability of Bahamian men and women to transmit their citizenship to their children and spouses. To provide for different treatment on the basis of gender is tantamount to saying that there are classes or degrees of citizenship, and that the citizenship of a woman is somehow less than that of a man. Such thinking must be relegated to the annals of history. It can have no place in a modern Bahamas.”

Madam President, I want to pause here, to consider how well and how succinctly the Commission framed what is at stake, and that is: are we ready to ensure that men and women are equal as *citizens* of The Bahamas? We already have equal *responsibilities* as citizens – if these Bills have the support of the people, we will have equal *rights* as well – for our sons and daughters.

After the Constitutional Commission made its recommendations, the Office of the Attorney General drafted the Bills, and worked with Cabinet and the

Commission to obtain their agreement to the language of the Bills. The Bills were then tabled in the House of Assembly to allow further public consultation.

In the months since the Bills were tabled, the members of the Constitutional Commission have continued to travel throughout the islands, providing information and answering questions. Many of these sessions have been televised. Bahamians take their voice and their vote seriously, and they have attended these sessions, contributed their views, asked hard questions, and shared their stories.

In my capacity as Attorney General, I consulted widely as well. I want to share one such consultation in particular today. Dr. Myles Munroe was so important, to me and to others, during the process I have described. I am proud to say that he and I were close. We asked for and expected clarity and candor from each other. He wanted equality under the law for men and

women, and he publicly led the debate on these changes with his usual integrity and passion. He made suggestions to amend the language of the Bills, which I will describe in a moment, and we adopted those suggestions. His proposal was accepted, and he supported these Bills as they are before us today. He was a patriot, and we are grateful for his service, his commitment, and his participation.

He prayed, and he moved his feet.

Others have done so as well – both the Prime Minister and the Leader of the Opposition have worked together to bring us to this day. They recognize that some things are bigger than politics, that this is a moment to unite Bahamians, and that making sure our daughters and sons have equal rights will make our families and our nation stronger.

Madam President, let us be clear: these Bills do not propose radical change. But the changes are important, and their purpose is powerful. Let us review them together:

The first bill grants the legal right to a Bahamian woman married to a non-Bahamian man to automatically pass on her Bahamian citizenship to her child, when that child is born abroad -- just as a Bahamian man married to a non-Bahamian woman currently has the legal right and privilege of doing so under the Constitution.

The second bill will enable a Bahamian woman who marries a non-Bahamian man to secure for him the same access to Bahamian citizenship – following the same steps, and subject to the same considerations, currently afforded by a Bahamian man married to a non-Bahamian woman.

The third bill will enable an unmarried Bahamian man to pass on his Bahamian citizenship to his child fathered with a non-Bahamian woman, if he is able to prove he is the father. This is a new right for men – they are gaining a right which currently belongs only to women.

The fourth bill amends Article 26 of the nation's Constitution, so that it will become unconstitutional to discriminate solely on the ground of being a man or woman. Right now, Article 26 does not allow discrimination in our laws on the basis of race or creed; this bill would additionally prohibit discrimination based on sex – being male or female.

Madam President – you can see the important matters at stake here.

Consider the injustices the first bill will address. Should a Bahamian woman – for example, one working in one of our embassies abroad, representing our nation; or a

Bahamian woman studying or working in another country; or a Bahamian female athlete, training in another country; or a Bahamian woman managing medical complications abroad with a specialist- and these are all situations drawn from real life – should any of these women be unable to pass Bahamian citizenship to their newborn babies, when those babies are born abroad?

When we pause to listen, when Bahamians share these stories with us, we know this change to our Constitution is not only just but overdue.

And consider the second bill, which allows Bahamian women the same right as Bahamian men, to extend the right to apply for citizenship to their non-Bahamian spouses. By giving this legal right to those who meet the criteria, we are enabling these men to be better husbands and fathers to the wives and children who

love them, and telling them we value their role in Bahamian families.

In The Bahamas, citizenship is one of our most precious gifts, perhaps our *most* treasured, one we do not share lightly or easily.

Bill number 2, in adding adds a new subsection (2) to Article 10 of the Constitution, makes it clear that the applicant may be denied registration as a citizen: if “there is satisfactory evidence that (i) the marriage no longer subsists; (ii) the marriage was entered into for the purpose of enabling that person to acquire citizenship of The Bahamas; or (iii) the parties of the marriage have no intention of permanently co-habiting with each other as spouses, after the marriage”.

Madam President, the Immigration Board, which is the Cabinet, grants citizenship. This is my second term as a Cabinet Minister, and I have never seen citizenship

automatically granted. Never. There is a rigorous process that must be followed – and that will continue.

The wife of Bahamian man who wishes to become a citizen must apply for citizenship, and that application must have his endorsement. Before the matter comes to the Immigration Board for consideration, the Department of Immigration conducts its due diligence, which includes: interview(s) with the wife (usually with the Bahamian husband present) and security investigations (including with Interpol). The same will apply to the husband of a Bahamian woman. The process must be followed.

As the law stands, the wife of a Bahamian man usually obtains a spousal permit annually for 5 years, after which permanent residency with the right to work may be granted. Citizenship is usually granted after permanent residence, and that process could take up to 10 years. The same will apply to the husband of a

Bahamian woman. It can hardly be said that a couple that has been married for 10 years, raised children, owns a home and contributes to society has a marriage of convenience!

Madam President, we like other societies over the world do not condone nor welcome marriages of convenience – by men or women. Last year Parliament passed an amendment to the Immigration Act that makes fraudulent marriages (marriages of convenience) illegal.

So, as well as defining a process to obtain citizenship, we in The Bahamas have made fraudulent marriages illegal.

Bill number 2 will only help *real* families.

Madam President, as I've described Bill #3 provides that where a single Bahamian man's child is born of a non-Bahamian woman, he will have the right to claim his

child as a Bahamian. Shouldn't our Constitution support fathers who want to keep their children close?

The changes proposed by these Bills are not abstractions – these are changes that will affect our friends, our families, our neighbors, our communities.

It is important to note that these provisions of prospective and not retroactive. The Prime Minister in his Communication in the House of Assembly when these Bills were tabled said: “However, I wish to announce that my government will, as a matter of administrative policy, will grant Bahamian citizenship to all applicants born abroad after July 9th, 1973 (and before the law changes) to a Bahamian-born mother and non-Bahamian father, subject of course, to the exceptions, and in accordance with the procedures, already prescribed by law.”

The fourth bill, Madam President, would make it illegal for Parliament to create new laws that discriminate solely on the basis of being a man or a woman. Just as Parliament cannot now pass laws which discriminate against people on the basis of their race, or their religion, Parliament would also be prevented from passing laws which discriminate against either men or women.

Madam President, men and women are not the same. We are different. No law or constitutional amendment can change that – and for that we thank God. But we are all citizens of one country, and we should be equal *as citizens*, equal in terms of both rights and responsibilities.

Madam President, when these Bills were first tabled in the House of Assembly, there were some concerns voiced about whether the fourth bill opened the door to same-sex marriage.

That was not the intention of the fourth bill, of course. So when those concerns were raised, we engaged one of the top constitutional lawyers in the Commonwealth and asked for an opinion regarding those concerns. The Honourable Michael Beloff Q.C., widely considered to be one of the most influential and credible constitutional experts in the world, a former President of Trinity College at Oxford, reviewed the facts, reviewed the Bills and the law, and dismissed these concerns as ill-founded. He says, “...unless and until (if ever) the Bahamian legislature chooses to enact laws legitimizing same-sex marriages, such marriages will not be recognized in law in The Bahamas”.

I am advised that there are no cases in Commonwealth countries with Westminster-style constitutions where “sex” as a ground of non-discrimination has led to recognition of same-sex marriage. No cases – none.

So the trouble for those who would raise the specter of same-sex marriage is that the facts are not cooperating.

Let me say again: same-sex marriage is now illegal under Bahamian law, and the passage of these Bills and a successful referendum will not change that.

The Matrimonial Causes Act, the law of the land in The Bahamas, states that a marriage is illegal and void unless it is between a male and a female – a man and a woman. As Michael Belhoff QC points out, the case law on the matter is captured well by the words of Lord Nicholls in Bellinger v Bellinger : “...marriage is an institution or relationship embedded in the religious and social culture of this country. It is deeply embedded as a relationship between two persons of the opposite sex”. This is settled law.

The language of the fourth bill states that “sex” shall mean male or female. If this Bill is passed by the people

in the Referendum, Parliament and the People will have made it clear - in our Constitution - that “sex” means male or female. The law of The Bahamas is clear. Your sex is determined at birth. Madam President, “sex” should not be understood to mean “sexual orientation”. Again, Michael Belhoff QC is clear on this – sex is determined at birth. If biologically/scientifically you are male or female at birth, that’s what you will be for the rest of your life, no matter how you surgically or cosmetically change your body.

Once again, the purpose of this Bill is to prevent discrimination solely on the basis of being a man or a woman – so our sons and daughters will be treated equally.

We live in a world where we cannot help but notice the legal developments which are taking place elsewhere. But the Parliament of The Bahamas has taken vigorous steps to ensure that our traditional values and

understanding of marriage (as defined in the Matrimonial Causes Act) are fully protected from any judicial incursion by **expressly** defining "sex" - being male or female, and hopefully the people of the Bahamas will also lend their stamp of approval.

I repeat, to specifically address this issue, it was the suggestion of Dr. Myles Munroe that we in our Constitution define sex as being male or female. He was satisfied by this change and supported this fourth bill.

I note, too, the many religious leaders who have stepped forward in support of these Bills. They prayed and they are moving their feet. It is my prayer that we all follow their example and not allow those whose fears have no foundation prevent us from giving our sons and daughters equal rights under our Constitution.

I also note that Sir Arthur Foulkes, one of the Fathers of our Nation, has called for the passage of these bills. Last

year in March 2015, when addressing Citizens for Constitutional Equality, Sir Arthur Foulkes said, "...I believe I share with you the firm conclusion that, despite all the talk - some of it bordering on hysterical - there is really not one good reason why all four of these Bills should not be passed by Parliament and approved by the people in a referendum...if we fail in this enterprise, The Bahamas would be listed among those backward peoples of the world who still believe that accidents of birth like colour and sex should forever assign some people to inferiority status."

Madam President, this is a time for celebration, for unity, for justice – a time to honour the courage and sacrifices of the Suffragettes and others who have helped to shape and create Bahamaland - not a time for small or fearful minds.

I believe, Madam President that in the coming weeks we will see Bahamians from all walks of life working

together to support these changes. Men and women, from the entire family of islands, young and old, neighbors and friends.

The baton has been passed to the Senate from the House of Assembly. As this leg of the race is run, I see us as the Golden Girls in Australia – we are the Debbie Fergusons, who with courage, vision and tenacity, must streak across the Parliamentary finish line and pass the baton can be passed to the Bahamian people.

Madam President, I believe that The Bahamas is defined both by its past *and* by its future. These Bills are for our grandmothers, and our forefathers, and they are for the mothers and daughters, fathers and sons, who are already with us, and they are for those not yet born, whose greatness has not yet been achieved.

Madam President, my Bible reading this morning was from Ephesians Chapter 3. Verses 20 and 21 read, “Now

to him who is able to do immeasurably more than all we ask or imagine, according to his power that is at work within us, to him be glory in the church and in Christ Jesus throughout all generations, for ever and ever! Amen.”

Today we commenced our day and this Senate meeting in prayer and calling upon “his power that is at work within us” I am asking us to move our feet.

Today the world is watching the manner of our bearing. And today in love and unity we are saying that the time has come for our sons and daughters to have equal rights under the law. As citizens, we are one Bahamas, one nation, tied together by deep bonds and shared values – one of those values *is* equal rights under the law for our sons and daughters.

God bless the Commonwealth of The Bahamas.

I so move.