
GAY

Pete Francis

Paving the way

It was September 20, 1971. John Singer and Paul Barwick, charter members of the Seattle chapter of the Gay Liberation Front—the movement's "pushy jerks," as Barwick put it—decided to apply for a marriage license even though they didn't really believe in marriage. They got the idea from Pete Francis, a progressive state senator, who took umbrage at being constantly asked whether he was gay—as if you couldn't be straight if you "stood up for all those homosexuals."

Francis as a freshman legislator in 1969. *Pete Francis*

Lloyd Hara, the youngest auditor in King County history, rejected the application with deeply mixed emotions after consulting the county prosecutor's office. Hara, 31, was a third-generation Japanese American who recoiled at "discrimination against anyone."

Singer, a former VISTA volunteer, and Barwick, a hard-nosed former military policeman, regarded the button-down gay guys in Seattle's Dorian Society "as a bunch of closet cases who were afraid to push." Not so their attorney, Pete Francis, who three years earlier had helped the Dorians incorporate. "A libertarian as much as a liberal," the lanky Stanford Law School graduate "wanted government out of private lives," Gary L. Atkins writes in *Gay Seattle*, an indispensable history of the LGBTQ community.

Facing page: John Singer and Paul Barwick apply for a marriage license at the King County Auditor's Office in 1971. *MOHAI, Seattle Post-Intelligencer Collection*

In nine eventful years as a Washington lawmaker, Francis fought for open government; opposed censorship of books and movies; reformed the juvenile and probate codes; eliminated the legal stigma of "illegitimacy," and repealed the state's draconian sodomy laws. The former Marine Corps captain bowed out in 1977 by championing a bill "to assure to all persons, regardless of their sexual orientation, protection of the laws against discrimination."

A decade later, Cal Anderson became the state's first openly gay legislator, reinvigorating the push for an LGBTQ civil rights law. Pete Francis had helped pave the way.

SEATTLE'S battleground 32nd District, stretching from Ballard to the U District, elected Francis to the House in 1968. "What an amazing, tumultuous year in American politics," Francis remembers, still marveling at his defeat of Joe McGavick, a Republican with close ties to Governor Dan Evans and Attorney General Slade Gorton.

Two years later, Francis outpolled Mary Ellen McCaffree, another Evans-Gorton ally, to keep a Senate seat to which he had been appointed.*

Pegged by caucus leadership as a go-getter, the 34-year-old freshman immediately introduced a bill to lower the age of "majority" to 18 for "all persons" for the purpose of voting, marriage, execution of wills and contracts, and jury service. Republicans controlled the House, but Francis' bill had bipartisan momentum. It was a recommendation of the Washington State Commission for Youth Involvement, a program Governor Evans established within the Office of the Secretary of State. Sam Reed, a future three-term Republican secretary of state, was then assistant secretary. He has vivid memories of working with Francis to promote the legislation during an era when change was in the air.

The bill failed to advance during the 1969 session. In 1970, however, when Francis ascended to the Democrat-controlled Senate, he shepherded it through a special session. The 18-year-old vote would not be implemented until ratification of the 26th Amendment to the U.S. Constitution in 1971.

The other provisions of Francis' bill became law, notably allowing 18-year-olds to "enter into any marriage contract without parental consent if otherwise qualified by law." Previously, a male Washingtonian under 21 needed parental consent to marry; a young woman was free to marry at 18.

Future governor Booth Gardner and George Fleming, the Senate's second

* Francis succeeded Senator Wes Uhlman, who was elected mayor of Seattle in 1969. In the 1970s, Uhlman supported the City Council's anti-discrimination ordinances for gay employment and housing rights and was the first Seattle mayor to declare Gay Pride Week.

Black member, were his important Senate allies on reform legislation, Francis remembers.

JOHN SINGER tried to sublimate his radicalism when he attended meetings of the Dorian Society. Before veering off to help organize a Seattle chapter of the Gay Liberation Front, he heard Pete Francis talk about the revised marriage law. Tellingly, Francis noted, it said otherwise qualified "*persons*" at least 18 years of age could be married. It did not stipulate that marriage meant a man and a woman.

Singer and Barwick's lawsuit against the county auditor would take three years to resolve. A lot happened in the meantime.

Pete Francis, in 1973, became chairman of the Senate Judiciary Committee and plowed ahead with an array of criminal code reform legislation endorsed by the Washington Bar Association. He zeroed in on Washington's 1909 sodomy statute. Under the letter of the law, a man and woman who engaged in oral sex could face prison. Homosexuality was even more "abhorrent." Exactingly graphic, the new law amplified an 1893 statue proscribing any "infamous and detestable crime against nature, either with mankind or with any beast." While most newspapers spared their gentle readers the sordid details of the 1909 statute, the code reviser was duty bound to codify the prohibition of any unlawful carnal knowledge of "any animal or bird," or "any male or female person" anally or "with the mouth or tongue"—consensual or not in the case of humans, and certainly in all ways with regard to hapless beasts and birds. "Attempted" intercourse with "a dead body" also constituted sodomy. And anyone guilty of any of the above was to be imprisoned "for not more than 10 years." Though the 1893 law had called for a maximum sentence of 14 years, the revised law's reduced maximum penalty "was still greater than the punishment for forcibly raping a woman, which earned only half as much time in jail," Atkins observes in *Gay Seattle*.

Thus, anything other than "missionary position" heterosexual coitus by married adults, preferably for procreation—"as God has intended," said a Seattle preacher—was an affront to moral order.

Revising the code would require 300 days of maneuvering over the next two years.

SAME-SEX marriage resurfaced in 1973 when the all-male state Senate debated ratification of the federal Equal Rights Amendment. Washington voters had narrowly approved the state's own ERA on November 7, 1972.

Francis, main sponsor of the bill to implement the federal ERA, was cross-ex-

amined by conservatives. A.L. "Slim" Rasmussen, a flinty Tacoma Democrat first elected to the Legislature in 1944, asked if the ERA could be interpreted to allow gay marriage, "which would mean the end of our civilization." (Rasmussen's distaste for "queers" was no secret.) "My silence would be acquiescence," Francis remembers, "so I said, 'No, it means equality of rights could not be denied on account of sex, as in the genders. Men and women will remain men and women. We simply all remain equal before the law.' I also thought to myself, 'It's *already* legal because of the law we passed lowering the age of majority to 18 for all persons.' In any case, I said I didn't think gay marriage would be the end of our civilization, which prompted some to claim I had disgraced the Senate."

After the House overwhelmingly ratified the federal ERA, Senate opponents led by future congressman Jack Metcalf, a "states' rights" Republican from Mukilteo, delayed a vote for nearly five weeks. Lieutenant Governor John Cherberg, the Senate president, finally ruled Metcalf's amendments out of order. "When we finally dislodged the bill from the Rules Committee, we knew we had the 25 votes we needed to prevail," Francis remembers.

With the Senate's concurrence, 29-19, Washington became the 29th state to approve the landmark constitutional amendment on March 22, 1973.

THE MARRIAGE LICENSE lawsuit filed by John Singer and Paul Barwick was not faring as well. King County Superior Court, in 1972, ruled they had provided no evidence that state law permitted the marriage of two people of the same sex, or that their constitutional rights had been abridged. Taking their case to the newly-established Washington Court of Appeals, the appellants now also argued that the trial court's rejection violated the Equal Rights Amendment.

The Court of Appeals, on May 20, 1974, flatly rejected the notion that by replacing "man" and "woman" with "persons" the Legislature had opened the door to same-sex marriage. Exhibit A, the court said, was the law relating to affidavits required for the issuance of a marriage license. It "makes reference to 'the male' and 'the female,' which clearly dispels any suggestion that the legislature intended to authorize same-sex marriages." As for the ERA, the appeals court said no court in the nation had yet ruled on the legality of same-sex marriage in light of the proposed new constitutional amendment. That said, the three-member appellate court took note of the state's contention that "there is no violation of the ERA so long as marriage licenses are denied equally to both male and female pairs"—gays and lesbians alike. Then the judges cut to the chase: Marriage, inextricably, was about procreation, a notion cited as being "as old as the book of Genesis." The

court concluded:

> It is apparent that the state's refusal to grant a license allowing the appellants to marry one another is not based upon appellants' status as males, but rather it is based upon the state's recognition that our society as a whole views marriage as the appropriate and desirable forum for procreation and the rearing of children. …The fact remains that marriage exists as a protected legal institution primarily because of societal values associated with the propagation of the human race. Further, it is apparent that no same-sex couple offers the possibility of the birth of children by their union. Thus the refusal of the state to authorize same-sex marriage results from such impossibility of reproduction rather than from an invidious discrimination "on account of sex." …In short, we hold the ERA does not require the state to authorize same-sex marriage.

There was a footnote intended as judicious:

> We are not unmindful of the fact that public attitude toward homosexuals is undergoing substantial, albeit gradual, change. …[W]e express no opinion upon the desirability of revising our marriage laws to accommodate homosexuals and include same-sex relationships within the definition of marriage. That is a question for the people to answer through the legislative process. We merely hold such a legislative change is not constitutionally required.

The Washington Supreme Court let the decision stand without review.

FRANCIS WAS BUSY on multiple fronts, pushing to open legislative committee meetings to the public; championing global population stabilization, and introducing bills to protect the free speech rights of student journalists. He agreed with Governor Evans that the drinking age should be lowered to 18, and voted for 19 as a compromise. Francis' attempts to decriminalize prostitution—the oldest "victimless crime," as he put it—generated the most uproar.

During the 1975 legislative session, he reintroduced measures to revise the criminal code. Deploying a new six-bill strategy, Francis gave the prostitution legislation a feminist twist by stipulating that men who patronized prostitutes

should be held as culpable as the women.

The bill repealing the sodomy and adultery laws was the bottleneck. Senator Jack Cunningham, a conservative Republican from Des Moines, thwarted its advance, declaring, "I'm not going to sit back and let you rewrite the Ten Commandments."

Francis jettisoned the prostitution bill, repackaged repeal of the sodomy law and repeatedly out-maneuvered Cunningham. The week-long battle of parliamentary jujitsu ended in a 28-20 victory for Francis. Governor Dan Evans, "no fan of victimless crimes," admired the Judiciary chairman's persistence. He signed the new criminal code into law. Francis' friend Charlie Brydon, a founder of the Dorian Society, hailed the change on July 1, 1976, as "a major advance for gay people in Washington."

Senator Francis with Gov. Dan Evans around 1970. *Ron Allen*

WHEN FRANCIS introduced his gay civil rights bill in 1977, discrimination against homosexuals was front-page news thanks to Anita Bryant, a former Miss America contestant singing the praises of Florida orange juice in prime-time TV commercials. When Dade County, Florida, passed a gay anti-discrimination ordinance, Bryant launched a repeal campaign. Millions of Christian conservatives enlisted in her "Save Our Children" coalition when she charged that homosexuals, unable to "reproduce," had to "recruit our children to perpetuate their lifestyle."

Francis now had 11 solid allies in the House—including four Republicans. They introduced a bill asserting that "sexuality expressed between consenting persons" was a private matter "unrelated to a person's capacity to contribute to the economic, social and cultural welfare of our state."

James Gaylord, a veteran Tacoma high school teacher fired when he admitted he had homosexual "preferences," was one of a parade of witnesses who testified before Francis' Senate Judiciary Committee. Noting that Gaylord's dismissal for

"immorality" had been upheld by the Washington Supreme Court, albeit narrowly, Francis observed that by that standard President Jimmy Carter, a graduate of the U.S. Naval Academy, wouldn't be allowed to teach in Washington schools. In an interview with *Playboy* magazine, candidate Carter admitted he had "looked on a lot of women with lust…and committed adultery in my heart many times." Charlie Brydon predicted that if all the gay teachers in the state suddenly came out and were removed from the classroom "the impact would be stunning."

Dave Kopay, an All-American running back at the University of Washington in the 1960s, told of his struggle being closeted during nine years in the National Football League. When he came out after his retirement from the NFL, being gay meant being denied a chance to become a coach, Kopay said. A lawmaker asked Kopay what caused people to be gay. "Do you ask a Black person why he's black?" Kopay said, recalling that a friend who knew his secret once asked, "Don't you wish you could change?" "And I said, 'How can you change what you are?' "

Conservative clergy and editorial writers decried "sanctioning unnatural, anti-social deviant conduct."

During breaks in the contentious hearings, reporters prodded Senator Francis to say whether he was gay. "For years, I wasn't willing to answer that question because I felt like it was nobody's business," he says today, at 88. "I'd say, 'It just doesn't matter. People's private lives are their private lives.' But they'd keep asking. My friend Wayne Ehlers, a former Speaker of the House, lobbied for the Privacy Fund, a gay rights political action committee. He's straight. I'm straight, but we had a lot of gay friends because we care about civil rights and justice. In my life I've come to realize what we need more of is people willing to get outraged at injustices being done to other people. Most people don't get outraged unless it happens to them or their group. It just kills me. I find it extremely hard to read a book like Douglas Blackmon's *Slavery by Another Name*, which details the forced labor of Black convicts in the 20th Century. Our mistreatment of Native Americans just tears me up, too."

THE 1977 gay civil rights bills never advanced beyond the Senate Judiciary and House Social and Health Services committees.

For Francis, it was more of a frustrating swan song than a last hurrah. He resigned from the Senate on January 1, 1978. He was 43, with two sons who'd soon be heading to college. He could be earning "as much as $35,000 a year" if he concentrated on his law clients, editorialists noted, lamenting the loss of such "a bright, articulate legislator." His Senate salary was $3,800 per year. "There's no

Francis today. *Pete Francis*

political position quite as bad from a financial standpoint as that of a state legislator," Francis said.

A year later, he joined Charlie Brydon and a broad coalition of other Seattleites—gay and straight—in a campaign to defeat an initiative aimed at repealing the city's anti-discrimination ordinances. Seattle became the first city in the United States to vote in favor of gay civil rights.

When Cal Anderson joined the Legislature in 1987, he introduced gay civil rights and anti-hate bills every session, his civility and parliamentary skill winning more converts with each passing year. In 1994, a year before his death from complications of AIDS, the legislation passed the House, only to fall a vote short in the Senate. No longer referenced as just "the state's first openly gay legislator," Anderson had become, in a poll of his colleagues, one of the state's most effective lawmakers, Gary Atkins wrote.

It remained for Ed Murray, Anderson's protégé and successor, to advance the rainbow colors. He succeeded, with the help of thousands upon thousands of Washingtonians who came to see, as Francis puts it, "That God must have put gay people on earth for a reason. So let's respect their integrity and autonomy as human beings instead of trying to tell them what to do and who to do it with."

Francis remained committed to human rights issues for the rest of a long career as a lawyer. He's retired now, but not retiring.

On January 31, 2006, Governor Chris Gregoire signed Murray's civil rights bill into law. It added "sexual orientation" to the existing prohibitions of discrimination in employment, housing, lending and insurance. She handed Pete Francis one of the pens.

John C. Hughes