
WOMEN'S EQUALITY AMENDMENT

(ALSO KNOWN AS THE EQUAL RIGHTS
AMENDMENT)

109TH CONGRESS

Prepared by the Office of Congresswoman Carolyn B. Maloney
March 1, 2005

WOMEN’S EQUALITY AMENDMENT

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TEXT OF THE EQUAL RIGHTS CONSTITUTIONAL AMENDMENT

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification

Congress of the United States

Washington, DC 20515

February 15, 2005

Equality begins with the Equal Rights Amendment Become an Original Cosponsor of the Women's Equality Amendment (H.J. Res. 37 in the 108th Congress)

Dear Colleague:

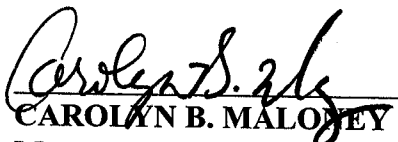
Over thirty years have elapsed since the Congress passed the Equal Rights Amendment (also known as the Women's Equality Amendment). This historic Constitutional Amendment was intended to ensure equality for women and men in all areas of society.

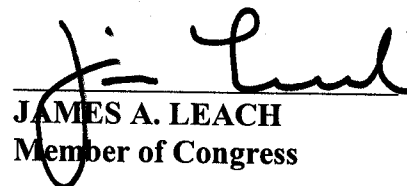
When Congress passed the ERA in 1972, it provided that the measure had to be ratified by the necessary number of states (38) within seven years. The deadline was later extended to ten years but, unfortunately, the ERA was three states shy of full ratification when the deadline passed in 1982. We believe that Congress should give the states another chance.

During the last 30 years, women have made extraordinary strides toward achieving equality-- but without the ERA, women have often been denied the ability to seek justice when they have experienced discrimination. Today, state and federal laws and policies can still perpetuate gender classifications that keep women from achieving their full potential. Passage of the ERA affirms that such classifications are unconstitutional.

If you would like to become an original cosponsor or would like more information about the ERA, please contact Karen Persis, Legislative Fellow with Rep. Maloney at x5-7944 or Mary Andrus with Rep. Leach at x5-6576.

Sincerely,


CAROLYN B. MALONEY
Member of Congress


JAMES A. LEACH
Member of Congress

The language of the Equal Rights Amendment: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article. This Amendment shall take effect two years after the date of ratification."

108TH CONGRESS SPONSORS & COSPONSORS

EQUAL RIGHTS AMENDMENT

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Prepared by the Office
 of Congresswoman
 Carolyn B. Maloney

SOME FACTS YOU SHOULD KNOW...

Throughout the mid-to-late 1900's, legislative efforts increased women's rights...but the gains were often hard won! Why is there such strong opposition to giving women the same rights as men?

- Did you know...The 19th Amendment which grants women the right to vote was slimly ratified? It came down to one single vote in the state of Tennessee.
- Did you know...The Civil Rights Act of 1964 which bans discrimination because of a person's color, race, national origin, religion, or *sex* was passed after a 75-day *filibuster* in the Senate? The debate was one of the longest in Senate history.
- With the growing attention to the importance of worldwide equal rights for women, it is OUTRAGEOUS that unlike the constitutions of over 50 nations, the United States Constitution still does not guarantee equal rights on account of sex. The following are just a few countries which have explicit statements on women's equality or non-discrimination based on gender in their constitutions:

Austria	Finland	Portugal
Bosnia and Herzegovina	Hungary	South Africa
Canada	Japan	Switzerland
Ethiopia	Madagascar	Thailand
Fiji	Mexico	Turkey

- Over thirty years have elapsed since Congress passed the Equal Rights Amendment. This historic Constitutional Amendment was intended to ensure equality for women and men in all areas of society. When Congress passed the ERA in 1972, it provided that the measure had to be ratified by the necessary number of states (38) within 7 years. (The deadline was later extended to 10 years). The ERA was only three states shy of full ratification at the 1982 deadline.
- During the last 30 years, women have made extraordinary strides toward achieving equality. The Supreme Court decision in the Virginia Military Institute case (*Virginia v. United States*) helped clarify that gender "classifications may not be used... to create or perpetuate the legal, social, and economic inferiority of women." But without the ERA, laws can still perpetuate gender classifications that keep women from achieving their full potential. Passage of the ERA is not only the constitutional affirmation of the Supreme Court's Virginia Military Institute decision, but it could potentially subject the government to a higher level of scrutiny when making classifications based on sex.
- Because of *Virginia v. United States*, the courts currently determine whether a government statute or classification is discriminatory by using a heightened standard of the intermediate scrutiny test. The intermediate scrutiny test provides that the government must prove that its classification based on sex is *substantially related to achieve an important government interest*. The passage of a constitutional amendment regarding sex discrimination would

likely raise the standard utilized by the courts from intermediate scrutiny to strict scrutiny. The strict scrutiny test, which is currently only applied to classifications based on race, national origin, and alienage, is nearly impossible to overcome. Strict scrutiny requires that the government prove the classification is *necessary to achieve a compelling government interest, with no less restrictive means to achieving that interest available*. This standard makes the government's task in justifying a classification extremely difficult, and therefore, a government classification based on sex would likely be held unconstitutional if the strict scrutiny standard were utilized.

DINGELL-MALONEY GLASS CEILING REPORT

Study shows glass ceiling is hardening, not shattering; It's time to pass the Equal Rights Amendment

The Dingell-Maloney report (2002), "A New Look at the Glass Ceiling: Where are the Women?" yielded shocking data suggesting that the "glass ceiling" in the management ranks of American companies is hardening, not shattering. The study, which was based on current census data analyzed by the GAO, contributes to a body of research contradicting conventional wisdom that the status of women in the workplace is improving. We believe this research presents the need to revisit writing equal opportunity for women into the United States Constitution. Among the survey's most telling conclusions:

- **In seven of the ten industries studied, the earnings gap between full-time women and men managers actually widened between 1995 and 2000.**
- **Full-time women managers earned less than their male counterparts in both 1995 and 2000 in all ten industries studied.**
- **Women hold a share of management jobs proportionate to their share of the industry workforce in only five of the ten industries studied.**
- **While women may hold 'management titles', the positions are often in less strategic, lower-paying areas of the company's operations.**

This study and others with similar findings, highlight the need for additional research and hearings, and regulatory and statutory changes at the federal, state and local levels. It should also be a wake-up call for corporate America to reassess its employment and promotion practices. But above all, the hardening of the glass ceiling begs something that fell three states short of ratification 20 years ago: a constitutional amendment. Passing the Women's Equality Amendment, also known as the ERA, would help set the tone for equality in the workplace by writing into the Constitution what most Americans strongly believe: that equal rights under the law shall not be denied or abridged on account of sex.

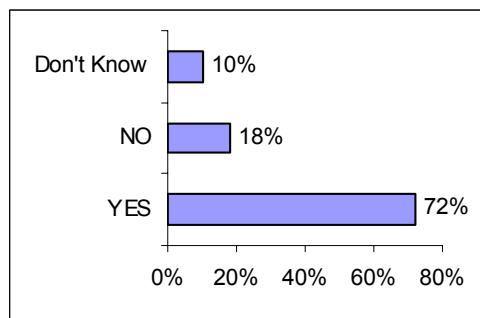
The most common argument against the Women's Equality Amendment is that women already have equal rights. We urge you to read this report (www.house.gov/maloney or www.house.gov/dingell) and decide for yourself if indeed this is the case. If you have questions, please contact Orly Isaacson with Rep. Maloney at x5-7944 or Katie Murtha with Rep. Dingell at x5-4071.

ERA PUBLIC AWARENESS POLL

In a survey of 1,002 men and women conducted by Opinion Research Corporation Caravan Services in July 2001, 500 men and 502 women were asked:

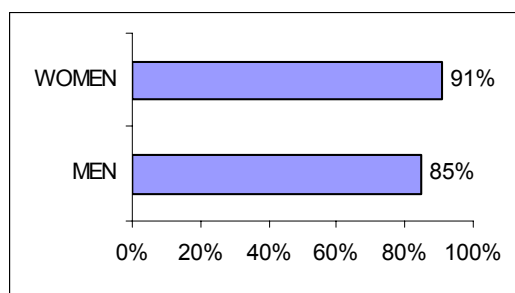
“As far as you know, does the Constitution of the United States make it clear that male and female citizens are supposed to have equal rights?”

7 out of 10 people surveyed think that the Constitution ALREADY makes it clear that male and female citizens are entitled to *equal rights*.*



“In your opinion, SHOULD the Constitution make it clear that male and female citizens are supposed to have equal rights?” Yes:

NINE out of every Ten Americans, both MEN and WOMEN believe the Constitution should state that male and female citizens are entitled to equal rights.



Although most Americans believe that women have the same rights as men under our Constitution, they are mistaken. Men’s rights are guaranteed by specific language in the Constitution. Women’s rights are secured only at the whim of Congress or state legislatures and the courts.

It is time women’s rights were embedded in the CONSTITUTION. Men do not rely on Congress to ensure them the right to life, liberty and the pursuit of happiness. Why should American women have their rights subject to the mercy of politicians or judges?

Isn’t it time that equality is guaranteed to all persons regardless of sex?

*Survey conducted by Opinion Research Corporation Caravan Services in July 2001. Sample size 1,002 adults, 500 men, 502 women. Margin of error at 95% confidence level, $\pm 3\%$ whole sample; $\pm 4\%$ for male/female respondents reported separately.

STATISTICAL SNAPSHOT OF AMERICAN WOMEN

THE EQUALITY AMENDMENT: AN IMPORTANT STEP FORWARD FOR WOMEN

WOMEN: A STATISTICAL SNAPSHOT

- There are 6 million more women in the United States than men; women are 51 percent of the population.
- 61 percent of women age 16 and over are in the civilian labor force (March 2000).
- The projected life expectancy at birth for women in 2000 is 79 years.
- 14 percent of the US military personnel are women. There are 38 women generals and flag officers serving on active duty.
- There are 62 women Members of Congress, 14 women Senators, 6 Governors, and 2 Supreme Court Justices who are women.
- 56 percent of bachelor's degrees, 57 percent of masters' degrees, 44 percent of law degrees, 41 percent of medical degrees and 41 percent of doctorates were awarded to women in 1997.
- In 1999, there were 9.1 million women-owned businesses in the United States, employing over 27.5 million people and generating 3.6 trillion in sales.

WAGE INEQUALITY PERSISTS IN THE 21ST CENTURY, AND IT AFFECTS MEN AS WELL AS WOMEN

- The gender wage gap has not changed much in recent years, and in the year 2004, women earned only 76 percent as much as men earned.
- Thirty-three million men have working wives, and married women and their families lose an average of \$4,205 a year because of women's lower wages.
- In more than one-fourth of these marriages, the wife earns more than her husband. These families are especially dependent on the wife's earnings, even though she is very likely to suffer from discrimination.
- Men's earnings are lower when they work in female-dominated occupations - by an average of \$6,259 per year.

**WOMEN HAVE MOVED INTO THE WORKFORCE,
BUT THEY HAVEN'T BEEN ALLOWED INTO THE BOARDROOM**

- Only 9 percent of board members of media, telecom, and high-tech firms are women.
- Only 3 percent of executives from media, telecom and e-companies were women with 'Clout Titles,' including Chairman, Chief Executive Officer and Vice President.
- Women-owned firms get only 2 percent of all venture capital investments.
- Only 4 percent of the highest-ranking corporate officers are women.
- Less than 3 percent of federal contracts go to women-owned firms.

**DISCRIMINATION THROUGHOUT THE LIFE CYCLE
MAKES OLDER WOMEN MORE VULNERABLE**

- The poverty rate of older women is nearly twice as high as that of older men. Nearly one in every seven women aged 75 and older is poor.
- The pension gap is even larger than the earnings gap: retired women are only half as likely as men to receive any kind of pension.

Sources: Institute for Women's Policy Research, U.S. Census Bureau, Department of Defense, National Foundation of Women Business Owners, Annenberg Public Policy Center of the University of Pennsylvania

Prepared by the Office of Congresswoman Carolyn B. Maloney
March 1, 2005

EQUAL RIGHTS AMENDMENT ENDORSEMENTS

The language of the Equal Rights Amendment:

- 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.*
- 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.*
- 3. This Amendment shall take effect two years after the day of ratification.*

4ERA	Financial Women International
African-American Women's Clergy Association	General Federation of Women's Clubs
American Civil Liberties Union	Girls Inc.
Alice Paul Centennial Foundation	HADASSAH
Alexandria Commission for Women	Idaho Women's Network
American Association of University Women	Institute for Health and Aging, University of California
Americans for Democratic Action	Institute for Women and Work, Cornell University
American Medical Women's Association	Institute for Women's Policy Research
American Nurses Association	International Black Women for Wages for Housework
American Physical Therapy Association	International Women's Democracy Center
American Women in Radio and Television	Jewish Women International
Association for Women in Science	Jewish Women's Coalition
Association of Junior Leagues International	Kentucky Pro-ERA Alliance
Black Women United for Action	League of Women Voters
Black Women's Agenda, Inc.	MANA, A National Latina Organization
Board of Church & Society of the United Methodist Church	McAuley Institute
Business and Professional Women/USA	Men's Rights, Inc., ERA Project
Catholics for a Free Choice	Michigan ERAmerica
The Center for Advancement of Public Policy	Ms. Foundation Institute
Center for the Child Care Workforce	9 to 5: National Association of Working Women
Center for Policy Alternatives	NA'AMAT USA
Center for Reproductive Law & Policy	National Abortion Federation
Center for Women's Policy Studies	National Association for Female Executives
Child Care Action Campaign	National Association for Girls and Women in Sports
Choice USA	National Association for Women in Education
Church Women United	National Association of Commissions for Women
Clearinghouse on Women's Issues	National Association of Orthopaedic Nurses
Coalition of Labor Union Women	National Center on Women and Aging
Council of Presidents	National Coalition for Women with Heart Disease
Dialogue on Diversity, Inc.	National Committee on Pay Equity
Economists' Policy Group on Women's Issues	National Council for Research on Women
Equal Rights Advocates	National Council of Jewish Women
ERA Campaign Network	
ERA Illinois	
ERA Summit	
Feminist Majority Foundation	

National Council of Negro Women	US Women Connect
National Council of Women of the United States	Veteran Feminists of America
National Council of Women's Organizations	Virginia ERA Ratification Council
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National Foundation for Women Legislators	Washington Women's Television Network
National Hispana Leadership Institute	Wider Opportunities for Women
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National Museum of Women's History	Women-Church Convergence
National Organization for Women	Women Employed
National Partnership for Women and Families	Women Executives in State Government
National Political Congress of Black Women, Inc.	Women in Government
National Woman's Party	Women Leaders Online
National Women's Conference Center, Inc.	Women, Men and Media
National Women's Conference Committee	Women's Action for New Directions
National Women's Hall of Fame	The Women's Activist Fund
National Women's Health Resource Center	Women's Bar Association of the District of Columbia
National Women's History Project	Women's Bar Association of the State of New York
National Women's Law Center	Women's Business Development Center
National Women's Political Caucus	Women's Center for Ethics in Action
NCA Union Retirees	Women's Division, United Methodist Church
Network, A National Catholic Social Justice Lobby	Women's Edge
NOW Legal Defense and Education Fund	Women's Environment and Development Organization
Older Women's League	Women's Equity Action League
Organization of Chinese American Women	Women's Information Network
Planned Parenthood Federation of America	Women's Institute for Freedom of the Press
Postpartum Support International	Women's Institute for a Secure Retirement
Radcliffe Public Policy Institute	Women's International League for Peace and Freedom
Religious Coalition for Reproductive Choice	Women's International Public Health Network
Society for Women's Health Research	Women Work! The National Network for Women's Employment
Soroptimist International of the Americas	Women's Law Center of Maryland, Inc.
The Stories Center	Women's Legal Defense Fund
Third Wave Foundation	The Women's Office of the Sisters of Charity
US Committee for UNIFEM	Women's Research and Education Institute
United Methodist Church, General Board of Church and Society	Women Studies Program at George Washington University
United Food and Commercial Workers International Union	YWCA of the USA
	ZONTA

CONSTITUTIONAL AMENDMENT PROCESS

THE EQUAL RIGHTS AMENDMENT

IT'S NOT A PART OF THE CONSTITUTION ...

HOW CAN WE CHANGE THAT?

PROCESS:

In order to amend the U.S. Constitution, we must have the consent of:

- ★ **2/3** of the members (290 in the house and 67 in the Senate) – once the ERA passes in Congress, it then goes to the States who must ratify the Constitutional Amendment;
- ★ **3/4** of the States – 38 states must ratify the ERA for it to become a part of the Constitution;
- ★ By 1982, 35 states had ratified the ERA. Indiana was the 35th State to ratify the ERA (in 1977);
- ★ Five states (Tennessee, Kentucky, Idaho, South Dakota, Nebraska) voted to withdraw their ratifications to appease anti-ERA supporters in their states; however, such rescissions are not recognized as valid based on precedent established with the ratification of the 14th and 15th Amendments.
- ★ The 15 states that never ratified the ERA are: Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

HISTORY:

- ★ Originally introduced in 1923, the ERA passed Congress in 1972. Congress initially gave the states 7 years to ratify. Congress subsequently extended the deadline by an additional 3 years, for a total of 10 years. However, by 1982, the amendment had fallen 3 states short of the 38 states necessary for ratification.
- ★ Women's rights advocate Alice Paul wrote the bill in 1923. It was introduced by Senator Curtis and Representative Anthony, both Republicans. Rep. Anthony was the nephew of suffragist Susan B. Anthony.

Prepared by the Office of Congresswoman Carolyn B. Maloney
March 1, 2005

NATIONAL COUNCIL OF WOMEN'S ORGANIZATIONS STATEMENT: WHY WE NEED THE EQUAL RIGHTS AMENDMENT

**“Equality of rights under the law shall not be denied or abridged
by the United States or by any state on account of sex.”**

We need the ERA because **we do not have it yet!** Even in the 21st century, the U.S. Constitution still does not explicitly guarantee that all of the rights it protects are held equally by all citizens without regard to sex. The first- and still the only- right that the Constitution specifically affirms as equal for women and men is the right to vote.

We need the ERA because the **14th Amendment equal protection clause has never been interpreted to grant equal rights** on the basis of sex in the same way that the Equal Rights Amendment would. The 14th Amendment has only been applied to sex discrimination since 1971, and the Supreme Court's latest decision on that issue, regarding admission of women to Virginia Military Institute, does not move beyond the traditional assumption that males hold rights and females must prove that they hold them.

We need the ERA because until we have it, women will have to continue to fight **long, expensive, and difficult political and judicial battles** to ensure that their rights are constitutionally equal to the rights automatically granted to males on the basis of sex. And in a few cases, men will have to do the same to ensure that they have equal rights with females (usually in areas of family law).

We need the ERA because we need its **protection against a rollback of the significant advances in women's rights** over the past 50 years. Congress has the power to replace existing laws by a majority vote, and even judicial precedents can be eroded or ignored by a reactionary Supreme Court responding to a conservative political agenda. With an ERA in place, progress already made in eliminating sex discrimination would be much harder to reverse.

We need an ERA because we need **a clearer federal judicial standard for deciding cases of sex discrimination.** Lower-court decisions in the various circuits and states (some with the state ERA's and some without) still reflect much confusion and inconsistency about how to deal with sex discrimination claims.

We need an ERA because we need to **improve the standing of the United States in the world community** with respect to equal justice under the law. The governing documents of many other countries specifically affirm legal equality of the sexes (however less than perfect implementation of that ideal may be). The United States' image is also tarnished by the fact that the Senate has not ratified the U.N. Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).

We need the ERA because we **need to move beyond the struggle** for it. We need to affirm the spirit and free energies of the women and men who have spent countless hours, years, and even lifetimes working for this basic human right of equal constitutional protection regardless of sex. When we can redirect that energy and those resources to work on the challenges we face in common, we will truly have fulfilled the vision of suffragist leader and ERA author Alice Paul.

*—Roberta W. Francis, NCWO ERA Task Force Chair
March 22, 2001*



Memorandum

August 19, 2004

TO: Representative Carolyn B. Maloney
Attention: Christine Corbett and Minn Elias

FROM: David C. Huckabee
Specialist in American National Government
Government and Finance Division

SUBJECT: Questions Pertaining to the Equal Rights Amendment

This memorandum responds to two of the questions Representative Maloney posed in her facsimile communication to CRS Director Daniel Mulhollan on August 18, 2004: “which states have ratified the ERA and where the ratification process stands in those states that have not ratified it,” and “what the procedure was for ratifying the Madison Amendment roughly 200 years after it was first sent to the states.” Representative Maloney’s first question pertaining to “which states have adopted Equal Rights Amendments to their constitutions, which states have ERAs pending and which states have taken no action,” will be answered by another CRS analyst.

“Which states have ratified the ERA and where the ratification process stands in those states that have not ratified it”

The Equal Rights Amendment was proposed by Congress on March 22, 1972, with a seven-year ratification deadline of March 21, 1979. On October 11, 1978, Congress extended the deadline until June 30, 1982.¹ Thirty-five states ratified the ERA, including five states that sought to have their ratifications rescinded (see table 1). All the ratifications were completed before the end of the original seven-year deadline.

¹ CRS Report 97-922 GOV, *Ratification of Amendments to the U.S. Constitution*, by David C. Huckabee, p. 4.

Table 1. States Which Ratified the Equal Rights Amendment

State	Date legislature voted to:		Ratification order (first to last)
	Ratify amendment	Seek to rescind ratification	
Alaska	04/05/72		10
California	11/13/72		22
Colorado	04/21/72		13
Connecticut	03/15/73		29
Delaware	03/23/72		3
Hawaii	03/22/72		1
Idaho	03/24/72	02/08/77	5
Indiana	01/24/77		35
Iowa	03/24/72		4
Kansas	03/28/72		6
Kentucky	06/26/72	03/16/78	20
Maine	01/18/74		31
Maryland	05/26/72		18
Massachusetts	06/21/72		19
Michigan	05/22/72		17
Minnesota	02/08/73		26
Montana	01/25/74		32
Nebraska	03/29/72	03/15/73	7
New Hampshire	03/23/72		2
New Jersey	04/17/72		12
New Mexico	02/28/73		27
New York	05/18/72		16
North Dakota	03/19/75		34
Ohio	02/07/74		33
Oregon	02/08/73		25
Pennsylvania	09/27/72		21
Rhode Island	04/14/72		11
South Dakota	02/05/73	03/01/79	24
Tennessee	04/04/72	04/23/74	9
Texas	03/30/72		8
Vermont	03/01/73		28
Washington	03/22/73		30
West Virginia	04/22/72		14
Wisconsin	04/26/72		15
Wyoming	01/26/73		23

Source: CRS Report 85-154 GOV, *The Proposed Equal Rights Amendment*, by Leslie W. Gladstone, p. 33.

Two weeks after the extended ratification deadline expired on June 30, 1982, the amendment was reintroduced in Congress², and it has been introduced in each Congress since that time. Three such measures have been introduced in 108th Congress. H.J. Res 31 (Representative Jesse Jackson, Jr.) includes a clause pertaining to reproductive rights in addition to providing that “equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.” Representative Maloney’s proposed equal rights amendment (H.J. Res. 37), and Senator Kennedy’s proposal (S.J. Res. 11) do not include a reproductive rights section. All three proposed amendments have no ratification deadlines.

In 1995, a new theory emerged in the ERA debate: Congress, having extended the deadline once, could extend it again. Thus, some ERA proponents urged the amendment’s supporters to seek to have the amendment ratified in states that had not already done so.

The legal theory underpinning this renewed ratification effort had been proposed in 1995 by three law students at T.C. Williams Law School who published a paper asserting the proposition that the acceptance by Congress of the ratification in 1992 of the 203 year-old 27th Amendment (popularly referred to as the “Madison Amendment”) could be a precedent for reviving the Equal Rights Amendment which had been assumed to have ceased to be ratifiable in 1982, with the expiration of the extended ratification period.³ This theory is now referred to as the “three-state strategy.”⁴

In the intervening years, ERA proponents have sought to have legislatures ratify the amendment. None has done so, but there has been some limited successes. In 2003, for example, a Florida Senate committee approved a measure to ratify the amendment.⁵ Also in 2003, the Illinois House of Representatives voted to ratify the ERA by a margin of 76-41.⁶

“What the procedure was for ratifying the Madison Amendment roughly 200 years after it was first sent to the states?”

As noted above, the “Madison Amendment” was proposed by Congress to the states in 1789. The text of the amendment reads as follows:

Article The Second. No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

² CRS Report 97-4 GOV, *The Equal Rights Amendment: A Chronology*, by Leslie W. Gladstone, p. 5.

³ Allison Held, Sheryl Herndon, and Daniel Stager. “The Equal Rights Amendment: Why the ERA Remains Legally Viable & Properly Before the States,” *T.C. Williams Woman Law Student’s Association*, 1995, p. 2

⁴ Marth Ezzard, “Women Need Amendment, Despite Gains,” *Atlanta Constitution*, May 6, 2003, available at [<http://www.qualrightsamendment.org/status.htm>], visited Aug. 19, 2004.

⁵ Peter Wallsten, “Florida GOP Divided over New Push to Ratify ERA,” *Miami Herald*, April 7, 2003, available at [<http://www.qualrightsamendment.org/status.htm>], visited Aug. 19, 2004.

⁶ Christi Parsons, “Measure Banning Sex Bias Goes to State Senate,” *Chicago Tribune*, May 22, 2003, available at [<http://www.qualrightsamendment.org/status.htm>], visited Aug. 19, 2004.

This proposal was one of 12 proposed by Congress on September 25, 1789 —10 of them became the Bill of Rights on December 15, 1791, when three-fourths of the states completed ratification of the proposed articles numbered three through twelve. The other amendment proposed along with the “Madison Amendment” numbered article one, pertained to how Representatives would be allocated among the states.

State ratification of the “Madison Amendment” can be divided into three periods: the initial period from 1789 until 1791, when six states approved the amendment; 1792 until 1798, when two states ratified; and, 1983 until 1992, when 33 states ratified.⁷

The only thing that might be characterized as unusual about the 1980s through early 1990s ratifications of the “Madison Amendment” is the means by which the proposal came to the attention of the individual state sponsors. In 1992, Gregory Watson, an aide to a Texas State Legislator, wrote a college paper entitled: “Can an Amendment to the United States Constitution Proposed by Congress in 1789, Which Has Never Been Ratified, Still be Ratified — Even After all These Years.” Reportedly, his political science professor disputed Mr. Watson’s theory, leading to a letter writing campaign that revived the congressional pay amendment and led to its eventual ratification.

It is interesting to note that the current effort to ratify the Equal Rights Amendment is based, in part, on the work of three law students. If the ERA is eventually ratified as the result of these students’ research, we will have another modern example of how a few people can affect history (or in Mr. Watson’s case, of how one person can make a difference).

I trust that this memorandum and accompanying reports will meet your needs in this matter. Please feel free to call me at 7-7877 if I can further assist you.

⁷ See: CRS Report 88-889 GOV, *the Constitutional Amendment to Regulate Congressional Salary Increases: a Slumbering Proposal’s New Popularity*, by David C. Huckabee, p. 2, and CRS Report 93-547, *Ratification Issues Raised by the Congressional Pay Constitutional Amendment*, by David C. Huckabee, p. 9. These archived reports are available on request from the author.

CRS Report for Congress

Received through the CRS Web

Equal Rights Amendments: State Provisions

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Summary

Twenty states adopted state equal rights amendments between 1879 and 1998. The texts of most of these amendments either are similar to the proposed federal amendment or restate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The timing of the enactment of these state amendments and the choice of wording reflect both the ebb and flow of the women's movement in the United States and the political culture of the particular states at the time of passage. A brief history of the women's rights movement as it relates to the passage of state equal rights amendments is included. The report ends with the text and the date of enactment of each amendment.

Introduction

Twenty states have adopted constitutions or constitutional amendments providing that equal rights under the law shall not be denied because of sex¹. Most of these provisions repeat the broad language of the proposed federal amendment;² in others, the wording resembles the Equal Protection Clause of the Fourteenth Amendment.³

The earliest state constitutional rights provision on record, the California provision of 1879, differs from both of these models by limiting the equal rights conferred to "entering or pursuing a business, profession, vocation, or employment." Interestingly, the other two 19th century rights provisions, those of Wyoming (1890) and Utah (1896), are broadly written to insure political and civil equality to women. Most state amendments were adopted in the 20th century, between 1971 and 1978. These years approximate the period when the federal Equal Rights Amendment (ERA) was before the states for

¹ The number of states with equal rights provisions in their constitutions has not changed since this report was first issued on June 3, 1999.

² Section 1 of the proposed federal Equal Rights Amendment reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

³ For texts of state equal rights amendments, see listing at end of this report.

ratification.⁴ Between 1978 and 1997, no state ERAs were adopted. Then in 1998 two more states, Florida and Iowa, passed amendments that have been referred to as equal rights amendments, although Florida's is called a "basic rights amendment." These new state amendments are similar in intent to a number of the other state provisions, but avoid language, such as "equality of rights," that became divisive in earlier attempts at passage.⁵

History

By the 1840s, as a result of their participation in reform movements to abolish slavery, many women began to evolve a philosophy of their own place in society and of greater rights for themselves. Until then, the question of whether, and to what extent, the status of women under the U.S. and state constitutions was different than that of men was not recognized as a public issue. Despite earlier published writings on the subject of women's status by Thomas Paine, Mary Wollstonecraft, and John Stuart Mill, as well as other American and English activists,⁶ organized political pressure on behalf of women did not emerge until the middle of the 19th century.

In 1848, a small group that was meeting in Seneca Falls, New York, to discuss "the social, civil, and religious rights of women"⁷ signed a "Declaration of Sentiments," calling for the removal of all forms of subjugation of women and demanding the right to vote and to complete equality under the law. The strategy of the early women's rights movement was to reform laws it considered unjust, but changes were slow and difficult to achieve.

Following the Civil War, all attention was focused on emancipation and suffrage for blacks, and women were advised that the times were not auspicious for pressing their concerns. When attempts to include rights for women under the post-Civil War Fourteenth and Fifteenth amendments failed, women began to work for constitutional reforms at both the state and national levels, but the primary emphasis was on the U.S. Constitution, a state-by-state effort being rejected as too lengthy. That three western territorial legislatures, far removed from the politics of the East and Midwest, enacted rights for women in the 19th century is not an anomaly. California was in the midst of a rampant expansion, and every hand was needed. Sparsely settled Wyoming was home to a few strong pro-suffrage women, backed by a sympathetic governor, who saw an opportunity for victory. In Utah, Mormon women were not asking for rights, but the issue of polygamy was delaying a much desired advancement to statehood and its promise of

⁴ The federal Equal Rights Amendment was passed on March 22, 1972. The usual 7-year period for ratification was extended by Congress on October 6, 1978, until June 30, 1982. On that date the amendment failed, since only 35 states of the 38 required had ratified it.

⁵ See Lee Rood, "Nineties-style Feminism a Low-Key Affair," *Des Moines Register*, Nov. 27, 1998, p. 1, and Jeff Kunerth, "Voters Go for Most Revisions on the Ballot," *Orlando Sentinel*, November 4, 1998, p. D1.

⁶ For Thomas Paine, see *Pennsylvania Magazine*, August 1775, p. 363. For Mary Wollstonecraft, see Miriam Schneir, ed., *A Vindication of the Rights of Woman* (New York: Vintage, 1972), pp. 5-16. For John Stuart Mill, see Alice S. Rossi, ed., "The Subjection of Women," in *The Feminist Papers: From Adams to de Beauvoir* (New York: Columbia University Press, 1973) pp. 196-238.

⁷ Elizabeth Cady Stanton, Susan B. Anthony, and Mathilda Joslyn Gage, eds., *History of Woman Suffrage*, vol. I (New York: Arno, 1969), p. 67.

greater self-government. Mormon elders saw enfranchising women as a chance to increase their power against federal interference in governing the territory (and later the state).⁸

During the 1970s, when the federal amendment was before the states for ratification, a number of states passed state versions. These efforts were in large part an endorsement of the federal effort, but they also were intended to ensure equal rights at the state level until the time when a federal amendment might become a reality.

Some believe that a principal drawback of state ERAs is the variation in their wording, a situation that has led to differing interpretations by state courts and, therefore, a lack of uniformity of rights among states.⁹ Others regard having a state ERA, even an arguably weak one, as better than not having any legal and philosophical statement of equality on the record.

Texts of State Equal Rights Amendments¹⁰

Alaska: “No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex or national origin. The legislature shall implement this section.” Alaska Constitution, Article I, §3 (1972).

California: “A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.” California Constitution, Article I, §8 (1879).¹¹

Colorado: “Equality of rights under the law shall not be denied or abridged by the state of Colorado or any of its political subdivisions because of sex.” Colorado Constitution, Article II, §29 (1973).

Connecticut: “No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil

⁸ Mormon men assumed that Mormon women would vote in the same way as their husbands. For an account of this period, see Eleanor Flexner, *Century of Struggle: The Women's Rights Movement in the United States* (Cambridge: Belknap Press of Harvard University Press, 1959), pp. 159-163.

⁹ For a discussion of some of the legal effects of state ERAs, see Paul Benjamin Linton, “State Equal Rights Amendments: Making a Difference or Making a Statement?” *Temple Law Review*, fall 1997, pp. 907-944.

¹⁰ Sources for state texts were *ibid.*; “A Guide to Equal Rights Provisions,” *National Law Journal*, vol. 3, July 5, 1982, p. 28; and state legislative libraries in Sacramento, California, Tallahassee, Florida, and Des Moines, Iowa.

¹¹ This provision was originally article 20, §18. When the constitution was revised in 1974, it was redesignated as article I, §8. An 1974 amendment added protection for “race, creed, color, or national or ethnic origin” to the original text.

or political rights because of religion, race, color, ancestry, national origin or sex." Connecticut Constitution, Article I, §20 (1974).¹²

Florida: "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability." Florida Constitution, Article I, §2 (1998).

Hawaii: "Equality of rights under the law shall not be denied or abridged by the State on account of sex. The legislature shall have the power to enforce, by appropriate legislation, the provisions of this section." Hawaii Constitution, Article I, §3 (1972).

"No person shall be deprived of life, liberty, or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry." Hawaii Constitution, Article 1, §5 (1978).

Illinois: "All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry, and sex in the hiring and promotion practices of any employer or in the sale or rental of property."

"These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation." Illinois Constitution, Article I, §17 (1971).

"The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts." Illinois Constitution, Article I, §1 (1971).

Iowa: "All men and women are, by nature, free and equal and have certain inalienable rights — among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness." Iowa Constitution, Article I, §1 (1998).

Louisiana: "No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for a crime." Louisiana Constitution, Article I, §3 (1974).

"In access to public areas, accommodations, and facilities, every person shall be free from discrimination based on race, sex, religion, or national ancestry and from arbitrary,

¹² An amendment in 1984 added protection for "physical or mental disability."

capricious or unreasonable discrimination based on age, sex, or physical condition.” Louisiana Constitution, Article I, § 12 (1974).

Maryland: “Equality of rights under the law shall not be abridged or denied because of sex.” Maryland Constitution, Declaration of Rights, Article 46 (1972).

Massachusetts: “All people are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.” Massachusetts Constitution, Part 1, Article 1 (1976).

Montana: “The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin, or condition, or political or religious ideas.” Montana Constitution, Article II, §4 (1973).

New Hampshire: “All men have certain natural, essential and inherent rights—among which are, enjoying and defending life and liberty; acquiring, possessing, and protecting property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.” New Hampshire Constitution, Part 1, Article 2 (1974).

New Mexico: “No person shall be deprived of life, liberty or property without due process of law. Equality of rights under the law shall not be denied on account of the sex of any person.” New Mexico Constitution, Article II, §18 (1973).

Pennsylvania: “Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.” Pennsylvania Constitution, Article I, §28 (1971).

Texas: “Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.” Texas Constitution, Article I, §3a (1972).

Utah: “The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy all civil, political and religious rights and privileges.” Utah Constitution, Article IV, §1 (1896).¹³

Virginia: “The right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.” Virginia Constitution, Article I, §11 (1971).

¹³ The Territory of Utah enacted women's suffrage in 1870 and carried it into statehood in 1896.

Washington: “Equality of rights and responsibility under the law shall not be denied or abridged on account of sex.” Washington Constitution, Article XXXI, §1 (1972).

Wyoming: “In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal. Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than the individual incompetency or unworthiness duly ascertained by a court of competent jurisdiction. The rights of citizens of the state of Wyoming to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this state shall equally enjoy all civil, political and religious rights and privileges.” Wyoming Constitution, Articles I and VI (1890).¹⁴

¹⁴ The Territory of Wyoming originally granted rights to women in 1869 and carried enfranchisement into statehood in 1890.