



The Christian Civic League of Maine
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Senator Carney, Representative Harnett, and the Judiciary Committee; my name is Thomas Keith, the Policy Analyst at the Christian Civic League of Maine. Today, I strongly urge you to reject LD 344, Maine's proposed equal rights amendment.

There are two kinds of state equal rights amendments. About half are *qualified* amendments. They demand equality for women either in particular areas,¹ or with specifically enumerated rights,² or simply equality within reason.³ These amendments are tailored to fix specific problems, and thus do a lot of good in their respective states without presenting the danger of running off the rails.

LD 344 is not one of those amendments. It pursues equality *without qualification*. Unqualified amendments achieve all of the good things that qualified amendments do, but leave themselves open to an invidious extension of the text into areas of life where it would present a clear harm.

For example, New Mexico and Pennsylvania both have unqualified amendments.⁴ In New Mexico, when the legislature tried to stop using taxpayer dollars for abortions, the Supreme Court of New Mexico used its state equal rights amendment to block the attempt.⁵ The same thing happened just this last year in Pennsylvania.⁶

Now, if you believe that an unborn baby is a human life, then that should be enough for you to reject this amendment. Passing it is a vote for enshrining abortion in the state constitution. But

¹ See California "...may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex...",

² See Florida, "are equal before the law and have inalienable rights, among which are...", Iowa "All men and women are... equal and have certain inalienable rights—among which are...", Nebraska, "...in the operation of public employment, public education, or public contracting."

³ See Louisiana, "No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of... sex..."

⁴ New Mexico, "Equality of rights under law shall not be denied on account of the sex of any person." 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."

⁵ *New Mexico Right to Choose/NARAL v. Johnson*, 975 P. 2d 841 - NM: Supreme Court 1998

⁶ *ALLEGHENY REPRODUCTIVE HEALTH CENTER v. PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES*, Pa: Commonwealth Court 2021

even for those who don't, I ask you to imagine what this implies. Abortion is nowhere in the text of this amendment, but the amendment was extended to enshrine abortion in these states' constitutions.

What other areas of the lives of Maine citizens could this be extended into? The supporters of this amendment give us a clue. They tell us that this will "prohibit sex discrimination"⁷ and therefore they list other areas of life not explicitly in the amendment that "an ERA addresses"⁸ because they are examples of "discrimination."⁹

Hiring discrimination, for example, is something that they say the ERA will absolutely prohibit.¹⁰ There is no exception in the amendment, even for churches or charities that only endorse male clergy. The only current exception is statutory, and thus would be overridden by this amendment. Passing this amendment would thus be disastrous for religious charities that interact with this state government.

Trans-Exclusionary Radical Feminists could use this to exclude transgender persons from womens' sports just as easily as it might be used to include them, something that depends entirely on the Supreme Judicial Court's understanding of whether "sex" means "sexual orientation" or not.

These are harms easily mitigated by a clear delineation of what this amendment can be construed to mean, and of which areas of life this amendment extends to. But no such delineation exists in *this* amendment. If there were, this would be a different discussion. Because there is not, we should be very afraid at what this amendment might mean, because as it stands this amendment can only be passed without knowing exactly what it will do.

⁷ <https://www.equalrightsmaine.org/>

Full quote: "Closer to home, we live in a state that ratified the federal ERA in 1974 yet does not prohibit sex discrimination in its own state constitution. Only about half the States prohibit sex discrimination in their state constitutions. A Maine State ERA has been proposed again in this Maine Legislature. It came close last year, passing in the Senate with a decisive 2/3 majority but failing to get a single Republican vote in the House."

⁸ <https://www.equalrightsmaine.org/>

"These are constitutional issues women face - an ERA addresses them all."

⁹ See "Workplace Discrimination," <https://www.equalrightsmaine.org/workplace-discrimination>
"Discrimination against women for their pregnancies is sex discrimination."

¹⁰ <https://www.equalrightsmaine.org/workplace-discrimination>

"We have laws prohibiting sex discrimination in hiring and promotion..." The religious exemption here is statutory, and therefore would be overridden by this amendment. To pass this amendment is therefore to prevent churches from hiring only male clergy.

Because these potential harms outweigh the concrete goods that would be achieved, we ask this committee to reject LD 344.

Thank you.

- FL: “All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are...”
- IA: “All men and women are, by nature, free and equal, and have certain inalienable rights—among which are...”
- LA: “No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex...”
- CA: “The state shall not... grant preferential treatment to, any individual or group on the basis of... sex... in the operation of public employment, public education, or public contracting.”

Qualified (11)

- 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)
- Florida - Basic rights. 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)
- 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 crime. Louisiana Constitution, Article I, §3 (1975)
- Nebraska - (1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.[....] (3) Nothing in this section prohibits bona fide qualifications based on sex that are reasonably

necessary to the normal operation of public employment, public education, or public contracting. Nebraska Constitution, Article I, §30 (2008)

- New Jersey - Wherever in this Constitution the term "person", "persons", "people" or any personal pronoun is used, the same shall be taken to include both sexes. New Jersey Constitution, Article X, paragraph 4 (1947)
- Rhode Island - No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state. Nothing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof. Rhode Island Constitution, Article I, §2 (1986)
- 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)
- Virginia - That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts; and that 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)
- 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)

Unqualified (15)

- 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)
- 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)
 - *People v. Salinas*

- This amendment prohibits unequal treatment based exclusively on the circumstance of sex, social stereotypes connected with gender, and culturally induced dissimilarities. However, **it does not prohibit differential treatment among the sexes when, as here, that treatment is reasonably and genuinely based on physical characteristics unique to just one sex.** See, e.g., Brown, Emerson, Falk, and Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 Yale L.J. 871 (1971). In such a case, the sexes are not similarly situated and thus, equal treatment is not required.
- *Civil Rights Commission v. Traveler's Insurance Company*: However, because pregnancy is a condition unique to women, **an employer offers fewer benefits to female employees on the basis of sex when it fails to provide them insurance coverage for pregnancy while providing male employees comprehensive coverage for all conditions, including those conditions unique to men.** This disparity in the provision of comprehensive insurance benefits as a part of employment compensation constitutes discriminatory conduct on the basis of sex.
 - The argument that such a plan did not discriminate because all pregnant people are treated alike is refuted by the plan's inherently discriminatory designation of the recipient class—the exclusion of all women from reimbursement for the costs of treatment of a physiological condition affecting only women.
- 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 or political rights because of religion, race, color, ancestry, national origin or sex. Connecticut Constitution, Article I, §20 (1974)
 - [Doe v. Maher \(1986\)](#)
 - The Full Realization of Our Rights: The Right to Health in State Constitutions, 2009; Soohoo & Goldberg: The court held that **the regulation violated the women's and physicians' rights to privacy under the state constitution and violated the women's equal protection rights under the state's equal rights amendment.**
 - Invalidating Connecticut's restrictions on public funding of medically necessary abortions based on state ERA, equal protection and due process clauses
- Delaware - Equality of rights under the law shall not be denied or abridged on account of sex. Delaware Constitution, Article I, §21 (2019)
- 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 (1978)

- Illinois - 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, §18 (1970)
- Indiana - The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens. Indiana Constitution, Article 1, §23 (2018)
- Maryland – Equality of rights under the law shall not be abridged or denied because of sex. Maryland Constitution, Declaration of Rights, Article 46 (1972)
 - Rand v. Rand: Like the Supreme Court of Washington, however, we believe that the "broad, sweeping, mandatory language" of the amendment is cogent evidence that the people of Maryland are fully committed to equal rights for men and women. The adoption of the E.R.A. 516*516 in this state was intended to, and did, drastically alter traditional views of the validity of sex-based classifications.
- 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)
 - Moe v. Secretary of Administration & Finance (1981): [Struck down policy restricting public funding for abortions on the basis of the equal rights amendment]
- Montana – Individual dignity. 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 - [Natural Rights.] All men have certain natural, essential, and inherent rights - among which are, the 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 First, Article 2 (1974)
- New Mexico - No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. Equality of rights under law shall not be denied on account of the sex of any person. New Mexico Constitution, Article II, §18 (1973)
 - N.M. Right to Choose v. Johnson: [Court order, based on the ERA, forces the state to fund abortions when a] “pregnancy aggravates a pre-existing condition, makes treatment of a condition impossible, interferes with or hampers a diagnosis,

or has a profound negative impact upon the physical or mental health of an individual.”

- [Also a good case for the claim that this expands rights beyond equal protection]
- Oregon - Equality of rights under the law shall not be denied or abridged by the state of Oregon or by any political subdivision in this state on account of sex. Oregon Constitution, Article I, §46 (2014)
- 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)
 - Commonwealth v. Butler: Noting that the clear purpose of the constitutional provision was to end discriminatory treatment on account of sex, the court struck 513*513 down differential sentencing procedures for women and men.
 - ALLEGHENY REPRODUCTIVE HEALTH CENTER v. PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES: [Struck down a law preventing taxpayer funding of abortion on the grounds that it violated the equal rights amendment of PA]
- 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)
 - Mercer v. Board of Trustees: Texas case says that because a school hair policy is “facially discriminatory,” it therefore implicates the ERA
- 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)
 - Darrin v. Gould: The court there said that by ratifying "the broad, sweeping, mandatory language" of the amendment, the citizens "intended to do more than repeat what was already contained in the otherwise governing constitutional provisions, federal and state, by which discrimination based on sex was permissible under the rational relationship and strict scrutiny tests."