

Testimony of Governor Janet T. Mills
L.D. 344, Resolution, Proposing an Amendment to the Constitution of Maine to Explicitly
Prohibit Discrimination Based on the Sex of an Individual
Joint Standing Committee on Judiciary
January 11, 2022

Senator Carney, Representative Harnett, and distinguished members of the Joint Standing Committee on Judiciary. I humbly request that you vote Ought To Pass on L.D. 344, a Resolution Proposing an Amendment to the Constitution of Maine to Explicitly Prohibit Discrimination Based on the Sex of the Individual.

A favorable vote on this measure in this Committee and in the House and Senate will allow the people of Maine to vote on a measure which approximately 26 other states have now seen fit to embody in their state constitutions.

Our own state's history of constitutional amendments may be of interest to you. Without diminishing the importance of the measure before you, it is noteworthy that the people of Maine, upon request of the Legislature, have amended the Maine Constitution one hundred and seventy-four times in the past one hundred eighty-eight years.

Among the matters that have merited this level of attention, with varying degrees of gravity, are:

- residency requirements for candidates for the legislature;
- the preservation of the right to keep and bear arms;
- municipal Home Rule;
- current use valuation for taxation;
- line item veto power for budget legislation;
- protection of the revenues of the Department of Inland Fisheries and Wildlife;
- repeal of the infamous poll tax and payment in lieu of military duty (men only);
- exemptions from current use tax assessment for commercial waterfront and other properties;
- reducing the voting age and age of adulthood to twenty; and, a year later, reducing the voting age and age of adulthood to eighteen (my, how people matured in the space of a single year!);
- a change to the timing of direct initiatives for the enactment of legislation and of people's vetoes.
- changes to the year for reapportioning legislative and congressional districts;
- a measure reducing the volatility of the state pension fund

- increases to the state debt limit;
- authorization of the use of voting machines;
- a measure allowing short term debt for highway and bridge projects;
- a provision requiring a 2/3ds vote of the legislature for state mandates;
- the 26th amendment, adopted in 1883, and “prohibiting forever the manufacture, sale and keeping for sale of intoxicating liquors” (“except for medicinal and mechanical purposes and the arts!);”
- the 54th amendment, adopted fifty-one years later, repealing that same permanent prohibition on the possession of liquor;
- and most recently to assert a “right to food”.

I ask you, is any of these 174 measures more important than the granting of equal rights and protections to our citizens regardless of sex?

The measure before you should not be confused with the federal Equal Rights Amendment which engendered great debate in this body some forty-eight years ago, but has not yet become effective as the 28th Amendment to our U.S. Constitution.

Maine, however, ratified the Equal Rights Amendment to the United States Constitution on January 18, 1974, in a strongly bipartisan vote, after many other states debated and supported the same measure — a measure then strongly supported by former First Lady Betty Ford.

In line with that strong statement of 48 years ago, the current, more modest measure, does not seek federal recognition but asserts that, as a matter of state constitutional law, the principle of equal protection is worthy of preserving in our most revered instrument.

While our state and our nation unquestionably have made great progress in effectuating equal rights for women and men, that change has been piecemeal, intermittent and impermanent. And those laws, which cover discrimination only in specific areas — employment, housing, credit, public accommodation and education — are ephemeral, subject to repeal or change at the whim of any particular legislature or initiative.

It is both sad and fortuitous that our state comes so late to the game in adopting this important measure, after 26 states have already done so.

It is sad because so many states have taken the lead, without incurring irreparable damage to their cultural and historical institutions, customs and laws.

It is fortuitous because there is now an abundance of history, case law and actions on which we can judge the actual impact of such measures — including the level of scrutiny and the preservation of valued protections and customs.

In terms of the impact of this measure on Maine law, there are at least two in depth analyses — one in October 1984 by Attorney General James Tierney on two specific issues, and a 28-page impact study of February 1983 by members of the Attorney General’s professional staff. Much case law in other states since that time has demonstrated how such a constitutional amendment may be read to be consistent with other established values.

The late Justice Ruth Bader Ginsburg once said she “[w]ould like my granddaughters, when they pick up the Constitution, to see that notion — that women and men are persons of equal stature — I’d like them to see that is a basic principle of our society.”

We marked the one hundredth anniversary of women’s right to vote in 2020. We should take this opportunity to see that the right to equal protection is enshrined in the Maine Constitution so that one hundred years from now, our descendants and future citizens will say, “What was all the fuss about?”

While I will not have the privilege of signing this bill, it being a constitutional resolve destined, I hope, for wider discussion amongst the population of Maine, I cannot wait to accompany the five adult women whom I proudly call my daughters, and my two little granddaughters, to a voting booth in the fall to cast my vote so that they, and their uncles, cousins and friends will be fully protected in our most sacred document and have the equal opportunity under the law that we have all come to expect and demand.

Should equality of rights regardless of sex be preserved in the Maine Constitution? I ask you today, let the people vote.