

March 4, 2025

Senator Carney, Representative Kuhn and Honorable Members of the Judiciary Committee,

My name is Nancy Murdock and I am testifying on behalf of [Equal Rights Maine](#), which is a member of the [Maine ERA for All](#) coalition. Since 2016 our group of volunteers has first educated ourselves, then our neighbors, legislators and the general public about how we as women have been excluded from equal protection under the law. We have carefully researched how both a federal Equal Rights Amendment and a state ERA would close the gap in our constitutional rights. We are not constitutional experts, but we confer with legal experts on this subject. We are regular citizens reading our constitution as it was designed to be read by educated, engaged people, doing the work to understand it - and we find it incomplete.

Although our work began with gaining protections against *sex discrimination*, it has expanded, along with LD 260, to include all the protected categories laid out in the Maine Human Rights Act. It is clear to us that the discrimination based on sex (including gender-based discrimination, sexual violence and domestic violence), is compounded by added layers of discrimination because of race, religion, national origin, age, and disability. The importance of clarifying substantive equality in a constitution by the very classifications that have experienced the most discrimination is a fundamental aspect of equality. We may have thought it inconceivable that the Maine Human Rights Act could be overturned or weakened, but we are thinking differently now. The basic civil rights in our state belong in our constitution, not just in a law that can be voted in and out.

We understand that the 14<sup>th</sup> Amendment does not apply to sex discrimination at the level of scrutiny it does to race. That wasn't its intent. With a majority of the higher court now holding 'originalist' views, the 14<sup>th</sup> Amendment that was intended to give rights to recently freed slave men, can no longer be expected to include women in its scope. As we have looked closer at our constitutional protections, both federal and state, we are watching the battle over the 28<sup>th</sup> Amendment, the federal ERA. It is now fully ratified and has met all requirements set forth in Article V of the U.S. Constitution. It was acknowledged as such by the Biden presidency but dismissed by its opponents (due to its expired time limit, now questioned by constitutional experts as having never been legitimate). As the federal constitution doesn't functionally protect us yet, we can see how clearer and more specific protections are necessary in our own state, to maintain our democracy, as laws continue to be challenged and changed. We need a state ERA.

Equal Rights Maine has gathered hundreds of supporters during the past nine years, as we have given talks and workshops bringing to light the history of sex discrimination and the gaping hole in both our federal and state constitutions. We have studied the history and legal background of these constitutional issues. The most common reaction we

hear from Mainers is their shock that neither our U.S. Constitution nor our state constitution actually protects people from sex discrimination. Most older Americans think the federal ERA was completed 50 years ago. But it wasn't. Most younger Mainers think our constitution already protects against sex discrimination, but it doesn't. Every other developed nation in the world has constitutional rights for women and other groups clearly stated. That's what the United States has historically advised and pressured other countries to do. And yet at home, we ourselves haven't taken the step to clearly state that all of us should be treated equally under the law.

The areas of discrimination in the U.S. and in Maine that we have focused on are:

- **Equal Pay for equal work:** the gender pay gap in Maine still puts women earning 83 cents to the dollar to men for equivalent work.
- **Equal employment opportunity:** the Military is a great example of how women have been less and less excluded in the past decades, now constituting more than 16% of the nation's military service. However, the inclusion of women and other groups can decrease just as quickly in the absence of policy giving those opportunities.
- **Protection from sexual harassment and violence**, including domestic violence which disproportionately affects women (and children). Women and girls are still far too often sexually assaulted, and finding justice is rare and unreliable. Domestic violence is far too frequent and help is not always available. The federal Violence against Women Act of 1993 has never been found to be constitutionally effective, as there has been nowhere to base it in the Constitution – without the ERA.
- **Discriminatory insurance practices** like the unfair gender-rating policies that cost women an estimated \$1 billion annually, before the Affordable Care Act prohibited it in 2010. We all know how the ACA has been threatened with repeal since then.
- **Discriminatory Pension policy** and provisions for protecting elderly women from financial disadvantage as a result of years of unpaid work with family members. Elderly women are far more likely to live in poverty than elderly men.

The federal Equal Rights Amendment (the contested 28<sup>th</sup> Amendment) prohibits sex discrimination. Twenty-seven states have some version of protection against sex discrimination in their state constitutions. Two other states, Nevada and New York, have recently passed state ERAs with protections to additional categories. These recent amendments protect against discrimination by sex, race, religion, national origin, age and disability, to ensure equal rights to all people. That's the direction we are taking with **LD 260!**

The proposed amendment Resolution LD 260 mirrors the protections of Maine's civil rights law, the Maine Human Rights Act (1971). This amendment would give constitutional protection to the same categories as appear in this Act: by race, sex, religion, disability, age and national origin. It would be a bulwark of support and a guard against the repeal of our fundamental civil rights law in Maine.

This is not the first time Maine has tried to give constitutional protection to those groups that were left out of the original constitution and have been historically discriminated against. Let's look back to 1963, just before the federal Civil Rights Act of 1965, and 10 years before Maine ratified the federal ERA (1974) and enacted its own state Maine Human Rights Act (1971).

### **Section 6A (1963)**

Maine's Constitution (1820) opens with Section 1, the declaration of rights put in general terms.

SECT. 1. All men are born equally free and independent, and have certain natural, inherent and unalienable Rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness. (1820, original version)

The word 'men' was later changed to 'people' and it all sounds principled – despite the fact that for the first 100 years, more than half of those 'people' couldn't vote. Then, placed in Section 6 Rights of Persons Accused – that's right, in the criminal prosecutions section, there is a Section 6A. It goes like this:

Section 6A: Discrimination against persons prohibited. 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 that person's civil rights or be discriminated against in the exercise thereof. (1963, by Amendment 89)

This is what we are told are the 'rights' for women that we were looking for. Given the history of our nation and our state, with rights for women being given slowly and grudgingly, we did not see what we were looking for: a clear statement of rights, to prohibit sex discrimination, to be treated fairly by the law, and to be given equal standing to the men for whom this constitution was first written.

Section 6A is not adequate. But looking deeper into the history of Section 6A, we learned that it could have been very different. The Resolution that passed both chambers in the state legislature in 1963, LD 1448, passed resoundingly. It had several important words in the last sentence, '*because of race, religion, sex or ancestry*'. Those words were deleted before it went to the voters for a referendum in the fall of that year.

There is an interesting record of discussion in the legislature in June of 1963 about the deletion of those words. Those in favor of retaining the words ‘because of race, religion, sex or ancestry’, were convinced of the need to spell out these protections. They were supported by a Constitutional Commission that recommended the inclusion of the original wording, because the history of discrimination in our nation was so deep, the commissioners felt Maine needed to be very specific about how those equal rights should be granted. Those few who opposed felt that they had not seen any real discrimination in Maine, by race, sex, religion or ancestry or that it would ‘cause too many problems’ to mention those issues (like a ‘qualified young lady applying to Bowdoin College’ – a men-only institution at that time). They were unwilling to ‘clutter’ the state constitution with extra words. The excuses to deny equal rights have changed over the decades but the principle of democracy demanding them endures.

State ERAs have been underused in most states for years. However, recently there have been court cases that have turned to state ERAs for the first time. With the federal government repealing laws, the Executive branch issuing orders to ‘undo’ laws (legally or not, like the Civil Rights Act) and a Supreme Court overturning ‘settled law’ such as Roe v. Wade, state constitutions are stepping up to give protections to their people that the federal government is no longer willing to provide.

**Passing LD 260 would be a statement of principle, making it clear that discrimination against someone because of *who they are* isn’t tolerated in Maine.** We need to ensure that Maine is a state that stands for equality now and into the future.

Thank you for the opportunity to testify. **I urge you to vote “Ought to Pass” on LD260. Thank you!**

Nancy Murdock, for Equal Rights Maine

Brooklin, Maine

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LD 260

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