

CRS Report for Congress

Received through the CRS Web

Equal Rights Amendments: State Provisions

Leslie W. Gladstone
Analyst in American National Government
Domestic Social Policy Division

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.