

RESOLUTION CALLING ON THE LEGISLATURE TO PASS LD 433, THE "MAINE ERA"

WHEREAS, at the State of Maine's founding women were not recognized as citizens under the new Constitution and were unable to vote;

WHEREAS, it was not until one hundred years after Maine became a state that most women earned the right to vote through the ratification of the 19th Amendment;

WHEREAS, the right to vote remains women's only constitutionally protected right, in Maine and nationally;

WHEREAS, all other rights that women have won have come as a result of legislation, legal decisions, or regulation, and those rights are more easily reversed;

WHEREAS, Maine's legislature ratified the federal Equal Rights Amendment in a bipartisan vote in 1974;

WHEREAS, there exists no language in Maine's Constitution prohibiting discrimination on the basis of sex;

WHEREAS, the final decision of whether to amend Maine's Constitution is not in the hands of the legislature, but of the voters;

WHEREAS, an amendment passed in this session can be on the ballot on November 3, 2020;

RESOLVED: In Maine's bicentennial year, and the centennial of woman suffrage, the Town of Cape Elizabeth calls on the Maine legislature to pass LD 433, the Maine Equal Rights Amendment, which reads simply, Equality of rights under the law may not be denied or abridged by the State or any political subdivision of the State based on the sex of an individual. The legislature has the power to enforce this section by appropriate legislation.



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 433

H.P. 342

House of Representatives, January 29, 2019

RESOLUTION, Proposing an Amendment to the Constitution of Maine To Explicitly Prohibit Discrimination Based on the Sex of an Individual

Reference to the Committee on Judiciary suggested and ordered printed.

ROBERT B. HUNT
Clerk

Presented by Representative RECKITT of South Portland.

Cosponsored by Representative GROHOSKI of Ellsworth, Senators: MIRAMANT of Knox, VITELLI of Sagadahoc, Senator MILLETT of Cumberland and Representatives: ACKLEY of Monmouth, ALLEY of Beals, AUSTIN of Skowhegan, BABBIDGE of Kennebunk, BABINE of Scarborough, BAILEY of Saco, BEEBE-CENTER of Rockland, BERRY of Bowdoinham, BLUME of York, BRENNAN of Portland, BROOKS of Lewiston, BRYANT of Windham, CAIAZZO of Scarborough, CARDONE of Bangor, CARNEY of Cape Elizabeth, CLOUTIER of Lewiston, COLLINGS of Portland, COOPER of Yarmouth, COREY of Windham, CRAVEN of Lewiston, CROCKETT of Portland, CUDDY of Winterport, DAUGHTRY of Brunswick, DeCHANT of Bath, DENK of Kennebunk, DENNO of Cumberland, DEVIN of Newcastle, DODGE of Belfast, DOORE of Augusta, DOUDERA of Camden, DUNPHY of Old Town, EVANGELOS of Friendship, FARNSWORTH of Portland, FAY of Raymond, FECTEAU of Biddeford, FOLEY of Biddeford, GATTINE of Westbrook, Speaker GIDEON of Freeport, GRAMLICH of Old Orchard Beach, HANDY of Lewiston, HARNETT of Gardiner, HEPLER of Woolwich, HICKMAN of Winthrop, HOBBS of Wells, HYMANSON of York, INGWERSEN of Arundel, JORGENSEN of Portland, KESSLER of South Portland, KORNFIELD of Bangor, LANDRY of Farmington, MADIGAN of Waterville, MARTIN of Eagle Lake, MARTIN of Sinclair, MASTRACCIO of Sanford, MATLACK of St. George, MAXMIN of Nobleboro, McCREA of Fort Fairfield, McCREIGHT of Harpswell, McDONALD of Stonington, McLEAN of Gorham, MELARAGNO of Auburn, MEYER of Eliot, MOONEN of Portland, MORALES of South Portland, NADEAU of Winslow, O'NEIL of Saco, PEBWORTH of Blue Hill, PEOPLES of Westbrook, PERRY of Calais, PIERCE of Falmouth, PLUECKER of Warren, RILEY of Jay, RISEMAN of Harrison, RYKERSON of Kittery, SCHNECK of Bangor, SHARPE of Durham, SHEATS of Auburn, SKOLFIELD of Weld, STANLEY of Medway, STOVER of Boothbay, SYLVESTER of Portland, TALBOT ROSS of Portland, TEPLER of Topsham, TERRY of Gorham, TIPPING of Orono, TUCKER of Brunswick, VEROW of Brewer, WARREN of Hallowell, WHITE of Waterville, ZEIGLER of Montville, Senators: BELLOWS of Kennebec, BREEN of Cumberland, CARPENTER of Aroostook, CARSON of Cumberland, CHENETTE of York, CHIPMAN of Cumberland, CLAXTON of Androscoggin, DESCHAMBAULT of York, DIAMOND of Cumberland, DOW of Lincoln, FOLEY of York, GRATWICK of Penobscot, HERBIG of Waldo, President JACKSON of Aroostook, LAWRENCE of York, LIBBY of Androscoggin, LUCHINI of Hancock, MOORE of Washington, SANBORN, H. of Cumberland, SANBORN, L. of Cumberland.



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: (207) MAINE RELAY 711

Lois Galgay Reckitt

38 Myrtle Avenue

South Portland, ME 04106

Cell Phone: (207) 712-2474

Lois.Reckitt@legislature.maine.gov

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3/7/2019

Senator Carpenter, Representative Bailey, Members of the Judiciary Committee

I come before you today to speak in favor of LD433 – the text of which reads –

“Equality of Rights under the law may not be denied or abridged by the state or any subdivision of the state based on the sex of the individual.”

Yesterday morning in the House Chamber I sought out and found the panoramic photo of the 106th Maine Legislature. It was in the First Regular Session of the 106th Legislature in 1973 that I first appeared before this body to testify. What brought me here – scared to death – at the ripe old age of 27 was the federal Equal Rights Amendment – which had just been sent to the several states to consider its ratification.

The ERA had been introduced in Congress every year since 1923 – shortly after women were finally allowed to vote – and had taken 50 years to be officially proposed for consideration by the states. Thirty eight states would be needed. At that point in time I was the president of the Southern Maine chapter of the National Organization for Women.

I and the women around me believed it would be automatic being here today- being here today – equality under the law. Who could oppose what was so “right”? Losing that fight in 1973 was a shock – a wake up call – but being here today – in 2019 – just proves we were – and are - a determined band – fighting for justice.

So we returned in the Second Regular Session in 1974 – and against all odds – we won ratification in Maine. Unfortunately, that does the women and men in Maine little good as the federal ERA in 2019 has yet to be ratified by the necessary 38 state legislatures. An unusual time limit for ratification had been imposed by the Congress and – despite an extension of that deadline – supporters ultimately fell three states short.

So today, I come before you to give the Maine Legislature this year an opportunity to do all it can to make women and men securely equal in all aspects of Maine law.

The unfortunate and uncomfortable truth is that despite legislative and judicial rulings over the years, women remain in some respects second class citizens. Women are disproportionately poor, suffer from widespread gender-based violence, endure excessive regulation of our reproductive lives, experience sex-based pay discrimination in all occupational categories, continue to be sexually harassed and suffer discriminatory treatment by employers.

The difference in how the courts view sex discrimination means that men hold rights in our society and women must prove they share those rights. I am personally bone tired of having to demonstrate that "proof".

Twenty four states have state constitutional amendments explicitly banning sex discrimination – 8 of those states have wording exactly as I am proposing for Maine's Constitution today. Maine law, I believe, should be clear and unambiguous that sex discrimination under the law should be prohibited. To say that our state constitution already protects women in that way reminds me of the old saw that "we the people" includes all of us – when we know, when written, it did not include women, slaves or Native Americans.

Many of the changes advancing equality for women over the intervening decades have been good ones – Title VII comes to mind – but all of the changes made – in the state of Maine and the United States have been predominantly statutory – and therefore changeable by subsequent legislatures. And there is a host of other state laws and areas the state regulates such as insurance, family law, unemployment compensation and disability programs. For example, in the area of insurance, principally a state-regulated industry, women historically and still are, under gender pricing and benefits, been charged more for less coverage. The federal Affordable Care Act now prohibits gender pricing and benefits in health insurance – but it is a statute and can be repealed.

So why, at 74 years old, nearly 50 years since I first spoke here on behalf of equality, am I here today. And I am happy to stand today with Maine's first woman Governor – my friend Janet Mills. I confess for this and a variety of other reasons the stars seem aligned to me. If this bill passes now., the issue will be sent to the people this year for their consent.

And when it the referendum question passes, as I truly believe it will, women will finally achieve explicit equality in the 200th year of our state, in the 100th year of the vote for women. And what a cause for celebration that will be.



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Testimony of Governor Janet T. Mills
L.D. 433, Equal Rights Amendment to the Maine Constitution
Joint Standing Committee on Judiciary
Thursday, March 7, 2019

I appear before you humbly to request that you vote Ought To Pass on L.D. 433, 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 26 other states have now seen fit to embody in their state constitutions, as Delaware became the most recent state, on January 15th of this year, to add an Equal Rights provision in its constitution.

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-three times* in the past one hundred eighty-five 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!);"**
- **and the 54th amendment, adopted fifty-one years later, repealing that same permanent prohibition on the possession of liquor.**

I ask you, is any of these 173 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-five years ago and which has not yet been adopted by the requisite number of states in order to become the 28th amendment to the US 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 45 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 privacy and other 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.

Justice Ruth Bader Ginsburg recently 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."

Soon we will mark the one hundredth anniversary of women's right to vote. It is only fitting, in my view, to make that Year One of our right to equal protection 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.



LEGAL ADVOCATES
& DEFENDERS

for the LGBTQ Community

Testimony of GLBTQ Legal Advocates & Defenders (GLAD) and Rep. Rachel Talbot Ross
By Rep. Talbot Ross and Mary L. Bonauto, Maine attorney and resident
Joint Committee on the Judiciary
Re: LD 433 Public Hearing
March 7, 2019

Dear Chairpersons Senator Carpenter and Representative Bailey, and Members of the Joint Committee on the Judiciary:

Thank you for the opportunity to submit this testimony in support of LD 433. **Representative Talbot Ross** is in her second term representing District 40 in Portland, and serves on this Committee as well as the Joint Standing Committees of Health and Human Services. She is a 9th generation Mainer and longtime public servant who currently directs the Martin Luther King, Jr. Fellows, is president of Maine Freedom Trail, chairs the African American Collection Committee at the University of Southern Maine and serves on the Maine Advisory Committee of the U.S. Commission on Civil Rights. **GLBTQ Legal Advocates & Defenders (GLAD)** is a New England-wide legal organization, and I have been an attorney with GLAD since 1990. GLAD's legal work in Maine encompasses cases, legislation and policy related to discrimination on the basis of sexual orientation and gender identity as well as HIV status. As to litigation, GLAD has represented the parties or filed as amicus in cases such as *Doe v. Regional School Unit 26*, 2014 ME 11 (2014); *Nolan v. Labree*, 2012 ME 61 *Adoption of M.A.*, 2007 ME 123, and *C.E.W. v. D.E.W.*, 2004 ME 43.¹

We all strongly support this Resolution for a constitutional amendment to prohibit sex-based discrimination. While our State has long been committed to equality, a constitutional amendment is the strongest and most comprehensive mechanism available to ensure that myths, stereotypes and antiquated assumptions based on sex are eradicated from our law and society.

We believe this Resolution and its ratification are necessary for three reasons. First, public officials deserve clear guidance about what the law does and doesn't allow as to sex-based distinctions. Second, this Resolution vindicates Maine's vote for the ERA in 1974 and does so by amending our own Constitution to clarify that sex discrimination and the damaging stereotypes and presumed roles based on sex are matters of utmost seriousness in Maine. Third, it would confirm the common understanding that both sexual orientation and gender

¹ GLAD represented the Maines family and the Court found that Nicole Maines, who was then in fifth and sixth grades and is transgender, had the right to use the public school restroom facilities consistent with her gender identity.

March 7, 2019

identity discrimination are linked to sex and gender. Finally, while we fully and enthusiastically support this measure, we hope legislators will sponsor a Resolution at a later date to reaffirm that Maine's values also prioritize combatting racial and other types of discrimination.

First, while Maine has taken enormous strides to uproot sex-based limitations from our laws², public officials and lawmakers do not have the plain guidance about their own powers that a constitutional amendment would provide. We hope we are now far from the era when, for example, qualified women were denied police officer jobs in Auburn because of "requirements" more easily met by men but that were not job-related (e.g. prior police experience, height and weight requirements). *MHRC v. Auburn*, 408 A.2d 1253, 1264 1266 (Me. 1979). But if public officials are weighing a course of action that would create a sex-based distinction in law or in deed, this amendment provides the clarity that those officials generally may not do so, unless in that instance the different treatment or policy is based on a compelling governmental interest that is implemented as narrowly as possible to accomplish that interest.

Likewise, this amendment protects against the risk of public officials measuring individuals, or enacting laws or policies, based on personal discomfort or their own views of gender roles. *Cf. id.* at 1259 (female applicant told she should be "content that she was the mother of three sons" and another that "more than 'just a pretty face' was necessary to break up a fight."); *MHRC v. Auburn*, 425 A.2d 990, 998 (Me. 1981) (police chief commented to applicant that his department was "not ready" for a woman). In short, a constitutional command providing that "equality of rights under the law may not be denied or abridged [by the government] based on the sex of an individual" (LD 433) provides that guidance and clarity, and will go a very long way to ensuring all persons come before their government as equals without regard to sex.

Second, this Resolution and its ratification would right a wrong and provide protections Mainers approved of long ago. In January 1974, Maine became the thirty-first state to ratify the Equal Rights Amendment (the "ERA") to the Constitution of the United States. While that amendment has yet to be ratified nationally,³ it speaks to Maine's cherished values and

² The Legislature has repeatedly demonstrated its commitment to ensuring that Mainers live free from discrimination. In 1973, the Maine Human Rights Act was amended to include sex as a prohibited basis for discrimination in employment, housing, and public accommodations, along with the pre-existing classes of race, color, religion, ancestry, and national origin. Later amendments added disability, sexual orientation and gender identity, and family status. See 5 M.R.S. chapter 337. In addition, in 1987, the legislature directed that laws be drafted to cover persons and avoid pronouns whenever reasonable, and allowed the Revisor's Office to change gendered language in statutes when a bill amended a larger statute, as long as the law clearly applied to all persons. 1 M.R.S. sec. 71 (7-A) (added by Laws 1987, c. 861, secs 1-3).

³ Notably, Nevada ratified the ERA in 2017 and Illinois followed suit in 2018.

March 7, 2019

commitment to eradicating sex discrimination in our own Constitution regardless of developments on the national level.

Prohibitions against sex discrimination in state constitutions have provided a legal tool to prevent injustices. Girls in high schools have been given the opportunity to play on boys' sports teams where no equivalent girls' teams are available.⁴ Men have been given an equal opportunity to be eligible for survivors' benefits after the death of a spouse receiving workers' compensation benefits.⁵ Sons and daughters have been given the right to equal treatment with respect to the computation of their parents' welfare benefits.⁶ Country clubs that exclude women have been prevented from receiving tax benefits.⁷ These are just a few protections that have been afforded by state constitutions.

Third, in addition to protecting men and women vis-à-vis each other as "classes" or as individuals, the common understanding of "sex" includes sex stereotyping, and stereotypes are predicated on gender roles about how all men or all women should behave and present themselves. *See e.g. MHRC v. Auburn*, 408 A.2d at 1266 ("the conception of police officers as necessarily aggressive, big strong, intimidating is a sex stereotype" lacking "credible evidence" of criteria for successful police work); *Beal v. Beal*, 388 A.2d 72, 74-75 (Me. 1978) ("perceived notions" of man and women fail to justify sex-based differences disadvantaging men in alimony statute).⁸

Likewise, we believe and assume this amendment would incorporate gender identity and sexual orientation classifications, which are now commonly understood to be discriminatory based on sex both literally and by operation of sex stereotyping.⁹

⁴ *Darrin v. Gould*, 540 P.2d 882 (Wash. 1975).

⁵ *Arp v. Workers' Compensation Appeals Board*, 563 P.2d 849 (Cal. 1977).

⁶ *Page v. Welfare Commissioner*, 365 A.2d 1118 (Conn. 1976).

⁷ *Albright v. Southern Trace Country Club*, 879 So. 2d 121 (La. 2004).

⁸ The U.S. Supreme Court also ruled that sex stereotyping based on gendered expectations constitutes sex discrimination for purposes of federal anti-discrimination laws. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *id.* at 251 ("As for the relevance of sex stereotyping, we are beyond the day when an employer could evaluate employees by assuming or insisting that they match the stereotype associated with their group.").

⁹ This is not to say that "sex" and "sexual orientation" are interchangeable concepts or terms, but that an individual's sexual orientation is defined in relation to sex and that anti-gay discrimination necessarily takes account of an individual's sex. Similarly, "sex" and "gender identity" are not always the same but discrimination on the basis of an individual's gender identity will always be discrimination on the basis of that individual's sex.

To be clear about terms: “gender identity” refers to a person’s identity as male, female, or some combination, which may or may not differ from the sex they were assigned at birth. “Transgender persons” are those with a gender identity different from that assigned at their birth.¹⁰

When transgender people face discrimination for who they are, they experience sex discrimination. This is so because the very conception of a transgender person addresses a disjunction between identity and assigned sex, which is sex-based. If laws or official actions penalize a transgender person because of what is perceived of as “change of sex,” that is also sex-based, just as penalizing an employee for converting from Christianity to Judaism would be discrimination based on religion. Moreover, actions disadvantaging transgender people are also rooted in sex stereotypes about how “men” and “women” should be.¹¹

Sexual orientation is also a function of “sex” because it treats people differently based on their own sex. For example, if a woman marries a woman, or puts a picture of her wedding up at work, but is mistreated by her government employer on that basis, then she is (likely) being treated differently from how a similarly situated man would be treated for marrying a woman or putting up a picture of his wedding. Even the concept of being gay or lesbian requires taking account of a person’s sex as well as the sex of persons with whom they seek relationships. In addition, laws or official actions discriminating based on sexual orientation may be based on beliefs or stereotypes about gender norms, particularly assumptions that individuals should form heterosexual rather than same sex relationships.¹²

¹⁰ An *amici curiae* brief of the American Medical Ass’n and seven other health care organizations filed in the DC Court of Appeals in *Doe v. Trump*, No. 18-5257 (Oct. 29, 2018) explains these and other facts about being transgender. See <https://nottransmilitaryban.org/wp-content/uploads/2018/10/doe-v-trump-brief-of-ama.pdf>

¹¹ Numerous federal circuits have held that sex discrimination protections apply to transgender people, too. These include: *Doe v. Boyertown Area School Dist.*, 893 F.3d 179 (3d Cir. 2018); *EEOC v. R.G.*, 884 F.3d 560 (6th Cir. 2018); *Whitaker v. Kenosha Unified School Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017); *Glenn v. Brumby*, 663 f.3d 1312, 1316-1317 (11th Cir. 2011); *Smith v. Salem*, 378 F.3d 566, 573 (6th Cir. 2004); *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000); *Rosa v. Park West Bank*, 214 F.3d 213, 215-216 (1st Cir. 2000). NB: The Supreme Court has been asked to take the *R.G.* case, but to date the Court has not acted on that petition.

¹² Among recent leading decisions are full court rulings from the 2d and 7th Circuit Courts of Appeal. See *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (en banc), *Hively v. Ivy Tech Community College of Indiana*, 853 F.3d 339 (7th Cir. 2017). The Supreme Court has been asked to review both cases but has not accepted those petitions at this time.

March 7, 2019

By authorizing this Resolution, and should it be ratified, Maine would be proscribing all sex-based discrimination in law and governmental actions.

Lastly, there is important history about the equal protection provision of the Maine Constitution that should provide guidance for the future. The Maine Constitution currently provides that no person “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.” This provision of the Maine Constitution - art. I, § 6-A - is interpreted to prohibit discrimination to the same degree as the United States Constitution.¹³ Maine cannot control what the U.S. Supreme Court does in regard to interpreting the United States Constitution, but it can provide as a matter of Maine law the scope of lawmaking power and official action with respect to “sex,” and that sex-based distinctions will be examined in court for their necessity in serving a compelling public interest and their narrowness to make sure they sweep no more broadly than required to effectuate that interest.

At the same time, we strongly encourage further deliberation on the question of enumerated classifications in future legislatures. The original draft of art. I, § 6-A provided enumerated classifications as to “sex, race, religion and ancestry” to make specific the equal protection guarantee. Some legislators feared the consequences of outlawing sex discrimination, with one questioning whether women might present themselves for admission to Bowdoin College.¹⁴ Enumeration is an essential device that guides lawmakers and the public alike. *Romer v. Evans*, 517 U.S. 620, 628 (1996). We hope the State will embrace this when Maine, like the entire Nation, struggles with equity and discrimination based on race and national origin/ethnicity discrimination, and has a challenging history with the indigenous Indian Tribes.

Reliable research from the Pew Research Center shows that 43% of black Americans believe that “[o]ur country will not make the changes needed to give blacks equal rights with whites,” but only 11% of whites surveyed agreed with the statement.¹⁵ This disparity in perspective underscores the need for Maine, the state with the highest percentage of white residents in the country,¹⁶ to reaffirm its commitment to equality for all citizens. As Governor

¹³ See e.g. Jennifer Wriggins, Maine’s “Act to Protect Traditional Marriage and Prohibit Same-sex Marriages”: Questions of Constitutionality Under State and Federal Law, 50 Me. L. Rev. 345, 364 & n. 136 (1998) (hereafter, Wriggins, Questions of Constitutionality).

¹⁴ Wriggins, Questions of Constitutionality, at 365 & n. 141.

¹⁵ http://www.pewsocialtrends.org/wp-content/uploads/sites/3/2016/06/ST_2016.06.27_Race-Inequality-Final.pdf

¹⁶ <https://www.kff.org/other/state-indicator/distribution-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22White%22,%22sort%22:%22desc%22%7D>

March 7, 2019

Mills said in her inaugural address, “Our diversity is a virtue—one that we should harness to advance good public debate and good public policy. We welcome the voices of newcomers to the public conversation—the young, immigrants, people of different cultures, people of color, people of different orientations. All are important members of the Maine family.”¹⁷ The state will benefit from ensuring equal rights for all its citizens.

Maine should now join with the 10 other states that, in addition to guaranteeing civil rights and equal protection broadly, also specifically guarantee sex-based equality.¹⁸ Ultimately, we hope Maine will join with the 12 other states that enumerate “sex” along with other characteristics.

In sum, GLAD strongly supports the amendment to the Maine Constitution ensuring equality on the basis of sex. LD 433 offers protection against discrimination based on sex, sexual orientation, and gender identity. Enshrining the right to live free from discrimination will resonate with the people of Maine and will continue this state’s tradition of protecting its most vulnerable citizens from the harmful effects of discrimination.

Thank you for your consideration, and do not hesitate to reach out if we may be of assistance.

¹⁷ <https://bangordailynews.com/2019/01/02/politics/read-janet-mills-full-inaugural-address/>

¹⁸ The 10 states with ERA type language are Utah, Illinois, Pennsylvania, Maryland, Washington, Colorado, New Mexico, Hawaii, Oregon, Delaware. The 12 states with ERA language that also enumerate other characteristics are Wyoming, Virginia, Alaska, Texas, Montana, Connecticut, New Hampshire, Louisiana, Massachusetts, Rhode Island, California and Nebraska.