



Measure 89 --Equal Rights for Women (Initiative)

This constitutional amendment would add a section to Article I, the Bill of Rights, of the Oregon Constitution saying, "Equality of rights under the law shall not be denied or abridged by the State of Oregon or by any political subdivision of the state on account of sex."

***EASY READ GUIDE* Information**

Title: Amends Constitution: State/political subdivision shall not deny or abridge equality of rights on account of sex

The way it is now:

The United States Constitution does **not** say that women have the same rights as men. The Bill of Rights in the Oregon Constitution says that rights given to any group of citizens must belong equally to all citizens in the same situation. It does **not** say that women and men have the same rights. In the past, women have not had the same rights as men. The Oregon Supreme Court says now that women do have the same rights as men, except that women could be treated differently because of differences in their bodies.

What Measure 89 would do: This measure would add a new part about equality to the Oregon Constitution. It would say that the government of Oregon and the governments of Oregon's cities and towns couldn't take away equal rights just because someone is a woman or a man.

How much it would cost: There is no new cost.

Argument for: By putting the Equal Rights Amendment in the Oregon Constitution, we can make sure that women's equality is protected and that lawmakers and judges won't take away these rights in the future.

Argument against: We don't need to add new words about equal rights for men and women to the Oregon Constitution. Women's rights have enough protection now, because of today's laws and the careful way that Oregon courts look at cases about unequal treatment of women and men.



State of Oregon Measure 89: Equal Rights for Women

VOTERS' GUIDE INFORMATION

Official Title: Amends Constitution: State/political subdivision shall not deny or abridge equality of rights on account of sex.

Initiative: This measure is a constitutional amendment placed on the ballot by initiative petition with an estimated 118,388 valid signatures.

Financial Impact: There is no financial effect on either state or local government expenditures or revenues.

Probable Results of a YES Vote: If this measure passes, it would add a section to Article I, the Bill of Rights, of the Oregon Constitution saying, "Equality of rights under the law shall not be denied or abridged by the State of Oregon or by any political subdivision of the state on account of sex."

Probable Results of a NO Vote: If this measure fails, Oregon would retain the current prohibition on laws that treat people differently based on sex, unless justified by specific biological differences. Language explicitly prohibiting sex-based discrimination would not be added to the Oregon Constitution.

Background: The Equal Rights Amendment has its origins in the struggle for women's rights that began in 1848. In the years since then, women in the U.S. have gained many rights, including the right to vote, serve on juries, own property, and work in the same jobs as men. However, today there are still cases where women believe their rights are threatened, especially for job advancement, equal pay, and reproductive health care. The first federal Equal Rights Amendment (ERA) was written by suffragist Alice Paul in 1923 and introduced in every session of Congress until a new version (also written by Alice Paul in 1943) was passed by both houses of Congress in 1972. This version said, "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." As an amendment to the U.S. Constitution, the ERA needed ratification by three-fourths of the states, or 38 states. Oregon ratified the ERA in 1973, and 35 states had ratified it by 1977. However, it was not ratified by 38 states before June 30, 1982, the deadline set by Congress. Today there is still no Equal Rights Amendment in the U.S. Constitution.

Oregon's Constitution in Article I (the Bill of Rights) Section 20 states, "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens." There is no specific provision in the Oregon Constitution declaring that men and women should be treated equally, and, in fact, Section 20 has not been changed since the Constitution was adopted in 1859, when women had very limited rights. Beginning with a case in 1982, Oregon courts have interpreted Section 20 as providing women and men with equal rights and have held that exceptions can only be made in cases where there are "biological differences" that might justify unequal treatment (such as providing pregnancy leave to working mothers). Oregon courts have applied the highest standard of strict scrutiny to any case involving sex discrimination and have continued the protections against sex discrimination through case law (law established by previous cases). Strict scrutiny means that a court considers a policy or law invalid unless the government can demonstrate that it has a compelling interest to justify it.



League of Women Voters Oregon General-election Ballot Measures 2014

The Proposal: The 2014 Equal Rights Amendment to the Oregon Constitution has three parts:
"The Constitution of the State of Oregon is amended by creating a new Section 46 to be added to and made a part of Article I, such section to read:

SECTION 46.

- (1) 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.
- (2) The Legislative Assembly shall have the power to enforce, by appropriate legislation, the provisions of this section.
- (3) Nothing in this section shall diminish a right otherwise available to persons under Section 20 of this Article or any other provision of this Constitution."

The first two parts essentially echo the federal Equal Rights Amendment that Congress passed in 1972 with appropriate adaptations for the state. The third part of the Oregon ERA was included to ensure that our Constitution will continue to protect other disadvantaged groups against discrimination, even if they are not explicitly identified.

Supporters Say:

- An Equal Rights Amendment must be added to the Oregon Constitution to protect women against sex discrimination. As the Attorney General's Certified Ballot Title Summary states, no current provision in the Constitution expressly prohibits discrimination based on a person's sex.
- Four former Oregon Supreme Court Justices felt compelled to respond to opposition statements with an open letter saying that the opponents are mistaken. Oregon's protections against sex discrimination are not as strong as they could be, because they are the result of case law and because of the exception for "biological differences."
- The former Supreme Court Justices, the Ballot Title, and Legislative Counsel also affirm that ERA will not diminish the rights that are currently in the Oregon Constitution for other groups. All citizens would continue to have the same legal rights to protection against discrimination they have now.
- The former Supreme Court Justices said, "We believe that passage of the Oregon ERA will acknowledge the contributions and importance of more than 50% of our citizens by finally providing women express recognition in our state's most important document, its constitution."

Opponents Say:

- This amendment is not necessary. The rights of all women and men are already protected by Article I, Section 20, of the Oregon Constitution, along with the Oregon Supreme Court's application of the highest standard of strict scrutiny to cases involving unequal treatment on account of sex.
- Amendments to the Oregon Bill of Rights should only be made if they would add protections that are not already guaranteed. Constitutional changes should either advance rights that are not already protected or end an injustice permitted under current law. This state ERA does neither.
- Protecting rights in a piecemeal fashion, especially for purely symbolic effect, may mean that groups with less money and political clout will be left out. The fundamental liberties guaranteed by the Oregon Bill of Rights will be most secure if the rights of all individuals and classes of persons receive the same strong protections.
- Passage of the Equal Rights Amendment may not automatically guarantee equal rights for men and

women any more than the Constitution does now. The Oregon Supreme Court would ultimately have to determine the ERA's meaning.

BACKGROUND INFORMATION

The Chief Petitioners for Ballot Measure 89, the Oregon Equal Rights Amendment, were Leanne Littrell DiLorenzo, Erin Gould, and Kerry Godfrey Scroggins. The campaign supporting the measure is Vote ERA. Although the Oregon Chapter of the American Civil Liberties Union (ACLU) has written a statement opposing this measure, they are not campaigning against it. There are no statements opposing it in the *Voters' Pamphlet* and no organized campaign against it.

Opponents of Measure 89 (including the ACLU) cite Article I, Section 20 of the Oregon Constitution ("No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."), along with its current interpretation in Oregon courts and "case law"—the law established by previous cases—as the reason that adding the ERA to the Oregon Constitution is unnecessary.

The case on which this interpretation is based was *Hewitt v. SAIF*, decided in 1982. Floyd Hewett was a man who had been denied compensation after the death in an industrial accident of the mother of his child, under a law that would have provided compensation to a woman in the same circumstances.

(http://www.leagle.com/decision/19821623653P2d970_11585 "In case an unmarried man and an unmarried woman have cohabited in this state as husband and wife for over one year prior to the date of an accidental injury received by such man, and children are living as a result of that relation, the woman and the children are entitled to compensation under ORS 656.001 to 656.794 the same as if the man and woman had been legally married.") The Court decided in Hewitt's favor. (In previous sex discrimination cases, the Oregon Supreme Court had held that unequal treatment of men and women was justified.)

Ballot Measure 89 adds a new section (46) on equal rights to Article I, Bill of Rights, in the Oregon Constitution. Twenty-eight of the 45 sections in Article I, including Section 20, were in the Constitution at the time of its adoption in 1859 and have not been changed since. Supporters of the measure argue that when Article I, Section 20, was written, women in Oregon did not have equal rights and there was no intent for this section to grant them rights. The supporters' concern is that future courts could reverse recent decisions that supported equal rights, unless those rights are specifically included in the Oregon Constitution. "Oregon women are only protected by case law and legislation, both of which can be modified or overturned." (Minority Report, City Club of Portland, page 16.) <http://www.pdxcityclub.org/> or below. (City Club members adopted the Minority Report for M. 89.)

The U.S. Constitution does not have an ERA. Some organizations, such as the American Civil Liberties Union, which oppose the Oregon Equal Rights Amendment support a federal ERA. The reason for this is that the standard in Oregon courts for deciding sex discrimination cases is "strict scrutiny," while the federal court standard is less rigorous, "intermediate or heightened scrutiny." "Strict scrutiny" is the highest of three standards of review. We found no opponent who is against equal rights for women. However, in the twentieth century debate on the federal ERA, there were concerns that the ERA would harm families, would increase abortions, and cause women to be drafted. For example, see:

<http://womenshistory.about.com/od/equalrightsamendment/a/ERA-and-Families.htm>

If questions arise about the U.S. Supreme Court's "Hobby Lobby" decision (that allowed the owners of

closely held for-profit corporations to exclude certain types of health care services and products—in this case, contraceptive counseling and methods—from their employees' health insurance plans.), it is hard to speculate on how the Oregon Supreme Court might have decided. Having an ERA in Oregon may not have made a difference, if our courts were faced with a similar case. With or without an ERA, Oregon women currently have strong protections for their rights. Twenty-two other states provide for equal rights for women in their constitutions. In some states, an ERA has made a difference in court decisions on women's rights; in other states, it has not mattered.

The question of why this Equal Rights Amendment has been brought before voters now may also arise. The Minority Report in the City Club of Portland study of this measure suggests some answers. The section is entitled, "**Now is the best time to pass the Oregon ERA to clarify case law.**"

"The case of *Hewitt v. SAIF* extended the provisions of Article 1 Section 20 of the Oregon Constitution to include women (excepting for biological differences). However, Oregon women are only protected by case law and legislation, both of which can be modified or overturned. Having equality between men and women explicitly guaranteed in the Oregon Constitution preserves that equality for future generations.

"The Majority Report states concern that *Hewitt v. SAIF* could be reinterpreted to undermine the current protections of sex as a "suspect class." As stated in the Majority Discussion, constitutional lawyer Paula Abrams told your committee that, "In regards to *Hewitt*...I don't see anything but the court's hearty and continuing endorsement of the interpretation as it relates to Article I Section 20." The minority believes that this is the best possible time to adopt the ERA since the current Oregon Supreme Court justices strongly support *Hewitt v. SAIF*, which would ensure that the Supreme Court would interpret the ERA to provide the same protections.

"Judge Nancy Campbell Mead shared that the ERA adoption is extremely important both symbolically and in its strategic safeguards against future erosion of women's rights in current Oregon law. She further states, 'an ERA in Oregon's Constitution would tell lawmakers and judges that the rights that have been gained by women via case law and legislation cannot be whittled away and are important enough to justify constitutional protection.'"

Web pages with statements in support:

- <http://www.voteera.org/>
- <http://www.equalrightsamendment.org/faq.htm#q1> (addresses concerns about ERA)
- <http://www.equalrightsamendment.org/history.htm>
- <http://origin.library.constantcontact.com/download/get/file/1116509035162-36/ACLU+rebuttal+judges.pdf> (The letter from 4 former justices supporting ERA.)

Web pages with statements in opposition:

- http://www.aclu-or.org/2014BM_ERA
- <http://www.pdxcityclub.org/files/Research/BallotMeasures2014/EqualRightsAmendment-20140812.pdf>

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