It's Time to Commit to Sex Equality in Delaware

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By Alicia Kelly and Suzanne Moore

A critically important amendment to Delaware’s Constitution is necessary to provide equal protection under the law for a broad range of groups that already have been identified in Delaware’s laws as needing such protection as a result of a history of discrimination and adverse treatment.

One key aspect of this law that is long overdue and essential for equality and human dignity is a prohibition on sex discrimination.

Let us not forget that right here in the U.S., in the not too distant past, women were widely and wrongly viewed as inferior to men.

Women were placed in the same legal category as “infants and idiots.” Once married, women lost their legal identity to their husbands, as well as their ability to enter contracts and own and manage property. Women were deemed unfit for public life, including employment.

The law, including the U.S. Constitution, supported and enabled these views. For example, reflecting the deeply held norms of the time, in Bradwell v. Illinois (1873) the U.S. Supreme Court interpreted the U.S. Constitution as affording no protection against women’s exclusion from the legal profession, pronouncing that women by their very nature did not belong in the public sphere.

Stunningly, it wasn’t until 1950 that Harvard Law starting admitting women, and the last holdouts, Notre Dame and Washington and Lee, only did so in 1969, and 1972, respectively.

Progress has been made in the fight for improving the legal and social status of women. Although still far too few in numbers, women have slowly made their way into leadership positions, on corporate boards, and in elected offices.

Today, the majority of women are in the workforce, and they are there to stay, whether it is of necessity or by choice. This enables women to make important financial contributions to their families and children, as well as to provide emotional and social support.

And women are having a positive impact on our state’s economy.

Unfortunately, discrimination is still alive and well. There remains a wage gap, a sticky floor and glass ceilings. Full-time working women earn 78 cents per dollar compared to men, for African-American women, it’s 64 cents, and for Latinas, it’s even less at 53 cents.

Pregnancy discrimination means women of childbearing age are not being hired for certain jobs or are not reasonably accommodated when they become pregnant. And violence against women is at epidemic proportions; one in three women will experience violence in her lifetime, and one in five will be raped.

To address these issues, an Equal Protection Amendment to the Delaware Constitution is needed to provide a powerful moral and legal commitment to the values of equality and fairness held by Delawareans.

It affirms our belief that all people are created equal.

With such an amendment, Delaware would join 23 states that have already passed Equal Protection Acts or their equivalent. It will provide constitutional underpinning for legal efforts to counter and remedy discrimination against groups that historically have been targets of discrimination.

ERANow’s mission is to advocate for adding sex equality to the Constitutions of both Delaware and the United States. Delaware’s state-specific protection of women is especially needed now because currently there is inadequate protection for women in the United States Constitution until the ERA is passed and ratified.

Since women are not a protected class in the current system, when federal courts review sex discrimination cases, women have had varied and sometimes no success in obtaining redress.

An Equal Protection Amendment in Delaware’s Constitution will mandate treatment of sex-based laws as a suspect category, subject to the most rigorous review.

An Equal Protection Amendment should also make clear that women are equal to men by reflecting a permanent commitment to sex equality, unlike legislation that can be rolled back at any time. It can provide important guidance to decision makers in all three branches of government, legislative, executive and judicial.

Ninety-six percent of Americans polled in 2012 believe women should have equal rights. This statistic reflects something so fundamental and universally recognized that the amendment calls on those who would oppose it to come forward and justify their reasons for not supporting it.

The question is, “Why do we need an Equal Protection Amendment?”

The question is, “Why is anyone against it?”

It is past time for half of our residents to have the same rights that were granted the other half more than two centuries ago.

The time for guaranteeing equality is now.

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