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The History of Suffrage and Equal Rights Provisions in State Constitutions*

I. INTRODUCTION

Twenty years have passed since the states failed to add an equal rights amendment to the United States Constitution. Fortunately, however, the battle for women's rights has been fought and often won in state constitutions. Currently, seventeen state constitutions contain some type of equal rights provision. Two of these states, Utah and Wyoming, made these provisions part of their original constitutions in the late 1800s.

The history of the struggle for women's rights progressed largely at the state level. This comment discusses equal rights provisions in several state constitutions, focusing especially on how Wyoming and Utah women obtained the right to vote. Part II discusses women's status in the western territories during the 1800s. Part III explores how state constitutions treated equal rights provisions and women's right to vote. Part IV traces the history of efforts to enact an equal rights provision in the United States Constitution. Finally, Part V concludes that while the United States Constitution remains silent on the subject, state constitutional provisions are a beginning towards greater equal rights for women.

II. THE STATUS OF WOMEN IN THE UNITED STATES WESTERN TERRITORIES IN THE 1800S

The American West became the symbol of freedom and adventure in the 1800s.¹ Many packed their bags and headed out into the unknown looking for the American dream and the chance to make it on their own. Sadly, this search often led to initial disappointment as people encountered the harsh conditions that existed west of the Mississippi River. Before long, the West developed the reputation of a Utopian land of opportunity, as well as a wilderness "fraught with danger."² Not only

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1. SANDRA L. MYRES, *WESTERING WOMEN AND THE FRONTIER EXPERIENCE 1800-1915* 13 (1982).

2. *Id.*

was it difficult to reach this promised land, it was not easy to live in “a wilderness country unfit for human habitation.”³

The women that took part in this migration added their own ways to western life. In reviewing western women’s journals from the 1800s, historian Sandra L. Myres found that women viewed this western wilderness in diverse ways. Myres states that “[t]hey saw beauty in even the most unexpected places—in the rocks, the barren spaces, the solitude of the open prairies.”⁴ However, this beauty was mixed with unpleasantness, and “[w]omen found wilderness both attractive and repelling, inviting and desolate, both Arcadia and desert.”⁵

Like their eastern counterparts, the women who came to the western territory represented a variety of backgrounds.⁶ In spite of similarity, however, western women were viewed differently than eastern women.⁷ While eastern society defined the ideal woman as being “pious, pure, submissive, and domestic,”⁸ the harsh conditions of the West pushed women away from the traditional eastern stereotype and into new responsibilities and lifestyles.⁹ Myres notes that western women were caricatured as “‘coarse,’ ‘crude,’ ‘unlettered,’ and drudges who were both ‘slovenly’ and ‘unfeminine.’”¹⁰ Myres concludes, however, that:

Most [women] endured, indeed prevailed, and discovered a resilience, an inner store of courage and the means to overcome the obstacles presented by frontier living. Like other westering Americans, frontierswomen did what had to be done, under less-than-ideal circumstances, and they did it well. In the process, they learned new ways of doing things and new things about themselves. Despite the increasingly narrow sphere of ‘woman’s place’ in nineteenth-century America, women on the frontiers, or at least on most of them, occupied an important place within the family. Their skills as artisans and producers of domestic goods were valued ‘in a society which judged a person by immediate results rather than by wealth, family name, or social class.’ Women’s knowledge of business and the economics of frontier life often stood them in good stead when their menfolk were absent or when they were left widows. In some instances their increasingly important role within the home and in the family’s business

3. *Id.* at 15.

4. *Id.* at 36.

5. *Id.*

6. *See id.* at 1-5 for a description of the various images.

7. *Id.* at 8.

8. *Id.* at 6.

9. *Id.* at 7.

10. *Id.*

brought them new opportunities to participate in community affairs and an enlarged sphere of social and political activity as well.¹¹

As western women became more involved in their communities, it became clear that they were not losing their morality and decency as some had feared.¹² In fact, quite the opposite was occurring: western women were leaving traditional roles in order to promote morality and decency through political channels.¹³ It was in this context that women decided that they wanted a greater voice in the political process.¹⁴ Thus, the first struggle toward expanded women's rights was the battle over women's voting rights.

III. EQUAL RIGHTS AND VOTING RIGHTS PROVISIONS IN STATE CONSTITUTIONS

The western United States territories quickly became important places for female suffragists to experiment with different reforms,¹⁵ and eastern women soon became active in these territories.¹⁶ Recognizing that important political reforms might arise from the post Civil War bid to give blacks the right to vote, women increased their efforts with a focus on the western territories.¹⁷

A. Wyoming

1. Women's Right to Vote

Wyoming became the first territory and also the first state to give women the right to vote.¹⁸ This right arose despite the fact that there was no suffragist association, no suffragist campaign, and no suffragist petition to encourage the Wyoming legislators.¹⁹

In December 1869, the Wyoming Territorial Legislature enacted a statute granting women the right to vote and to hold office.²⁰ This effort was deemed a success by the Speaker of the House in Wyoming

11. *Id.* at 165-66.

12. *Id.* at 185.

13. *See generally id.*

14. *Id.* at 213.

15. *Id.* at 216.

16. *Id.* at 217.

17. *Id.* at 218.

18. *Id.* at 220.

19. *Id.*

20. BEVERLY BEETON, WOMAN SUFFRAGE IN THE AMERICAN WEST, 1869-1896 14 (1976).

who stated that it had “been productive of much good . . . and no evil.”²¹

2. *Equal Rights Provisions in the Wyoming State Constitution*

In June of 1889, during the debate over a state constitution, one hundred women gathered to demand a constitutional provision allowing women to vote.²² In a strong showing of support, the Wyoming Constitutional delegates included not only a provision providing for women’s voting rights, but also included an equal rights provision as well.²³ The people of Wyoming adopted the constitution and in 1889 Congress ratified the Wyoming constitution by a narrow margin.²⁴

Wyoming’s constitution has two equal rights provisions, both of which appeared in the original constitution. The first is found in the Declaration of Rights article and reads:

EQUAL POLITICAL RIGHTS—Since equality in the enjoyment of natural and civil rights is 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 individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.²⁵

The second provision is found in the Suffrage and Elections article. It reads:

MALE AND FEMALE CITIZENS TO ENJOY EQUAL RIGHTS—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.²⁶

21. *Id.* at 23 (quoting from DESERET NEWS, July 8, 1881).

22. *Id.* at 26.

23. Historians disagree as to why the Wyoming legislature gave women the right to vote. Myres outlines the differing theories as follows: (1) because there were so few women—1,049 females over the age of ten years old versus 6,107 males—perhaps the legislature felt that no real damage could be done; (2) the bill was passed so quickly that there was no time for the opposition to stop it; (3) the legislature wanted to promote Wyoming and bring more women into the state; (4) some legislators thought it was the right thing to do; and (5) it may have been done in an effort to embarrass the Governor, who had been appointed by the President and apparently was considered too puritanical. MYRES, *supra* note 1, at 220-21; *see* BEETON, *supra* note 20, at 13.

24. BEETON, *supra* note 20, at 27-28.

25. WYO. CONST. art. I, § 3.

26. *Id.* § 1.

3. Wyoming Cases

Since the 1950s, the Wyoming Supreme Court has continually interpreted these provisions to ensure equal civil and political rights.²⁷ Prior to 1950, however, the court was less likely to protect women's rights. For example, in an 1892 case the court rejected a male criminal defendant's challenge to his conviction. His challenge was based on the grounds that women had been excluded from the jury which convicted him.²⁸ The court held that he had been tried by a jury of his peers and it did not want to decide on the "spur of the moment" if jury duty was any more of a political or civil right than serving in the militia.²⁹ In 1950 the court reconsidered its position and stated that "women in Wyoming are men's equals before the law," and were thus entitled to serve on juries.³⁰

The court went beyond juries in the 1956 case of *Ward Terry & Company v. Hensen*,³¹ where it defined "civil rights" to include "rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc.,"³² and found that a wife is given "the right to control her own property"³³ In addition, this case represented a significant step forward for women's rights by suggesting that the protection of gender equality extends to the private sector. However, no judicial decision has yet addressed this issue.³⁴

More recently, the court used the equal rights provision to reject an argument that a husband and wife should be regarded as a single entity under a statute that precluded conflicts of interest for public office holders.³⁵ The court did so based on the notion that women enjoy a separate legal status which ensures their civil rights.³⁶

27. ROBERT V. KEITER & TIM NEWCOMB, *THE WYOMING STATE CONSTITUTION, A REFERENCE GUIDE* 149 (1993).

28. *McKinney v. State*, 30 P. 293 (Wyo. 1892).

29. *Id.* at 295.

30. *State v. Yazzie*, 218 P.2d 482 (Wyo. 1950).

31. 291 P.2d 213 (Wyo. 1956).

32. *Id.* at 454.

33. *Id.*

34. KEITER & NEWCOMB, *supra* note 27.

35. *Coyne v. State ex rel. Thomas*, 595 P.2d 970 (Wyo. 1979).

36. *Id.*

B. Utah

1. Women's Right to Vote

Utah was founded by Mormon³⁷ settlers in the mid-1800s after they had been driven from several locations throughout the East and the Midwest. These settlers ultimately moved to the western territories in an effort to find a new place where they could start their own community and freely practice their religion. By July 1847, there were almost as many women in Utah as there were men, a phenomenon unparalleled in the western United States.³⁸ Utah was settled primarily by two-parent families, and the women played key roles in their families and communities.

A few unique characteristics of Mormonism increased women's responsibilities.³⁹ Church commitments often demanded that men leave their wives to proselyte or attend to other church assignments, and plural marriage meant that men were often away taking care of other families. These factors led many women to seek outside employment.⁴⁰ Mormon women became midwives, teachers, seamstresses, hatmakers and shoemakers, produce merchants, and handmade product merchants.⁴¹

Mormon church leaders became increasingly concerned over the support needed for women in such circumstances.⁴² They also recognized the important roles women could play outside the home. In December of 1867, Brigham Young, President of the Church and Governor of the Territory, encouraged the reorganization of the Relief Society.⁴³ This society, founded earlier by the first president of the church, Joseph Smith, mobilized women for charitable purposes.⁴⁴ President Young expanded the role of the Relief Society in order to encourage education and training for women. He stated that:

Women are useful not only to sweep houses, wash dishes, make beds, and raise babies [T]hey should stand behind the counter, study laws of physics, or become good book-keepers and be able to do the

37. The term "Mormon" is commonly used to refer to members of The Church of Jesus Christ of Latter-day Saints.

38. Ann Vest Lobb & Jill Mulvay Derr, *Women in Early Utah*, in *UTAH'S HISTORY* 337 (Richard D. Poll ed. 1978).

39. *Id.* at 338.

40. *Id.*

41. *Id.*

42. *Id.* at 341.

43. *Id.*

44. *Id.*

business of any counting house, and all this to enlarge their sphere of usefulness for the benefit of society at large.⁴⁵

At the same time, however, many outside Utah and outside the Mormon Church were concerned for the welfare of the women involved in plural marriage. The Republican party, including Abraham Lincoln, touted polygamy and slavery as the "twin relics of barbarism" and vowed to do away with both of them.⁴⁶ While Utah was fighting for statehood, Congress was introducing measures to punish the men who practiced plural marriage. The first of these measures was the Anti-polygamy Act passed in 1862 which criminalized plural marriage.⁴⁷ As a result, many Mormon men, including Church leaders, were arrested, and their rights were severely limited.⁴⁸

The Cragin and Cullom bills—two pieces of legislation introduced to further fight plural marriage—were the most onerous to the Mormons.⁴⁹ These bills resulted in much concern in the Mormon community and helped push Mormon women to the forefront of controversy.

The Cragin bill was introduced in December 1869 by Senator Aaron H. Cragin of New Hampshire.⁵⁰ This legislation did eight things: First, it gave the Utah governor, who at the time was neither from Utah nor a Mormon, sole rights to appoint and commission almost all territorial officers.⁵¹ Second, it abolished the right to a trial by jury for any criminal cases arising under the Anti-Polygamy Act.⁵² Third, it became criminal for a Mormon to solemnize marriages, to counsel or advise the practice of plural marriage, or to be present during a marriage ceremony.⁵³ Fourth, the bill required the Church to report its financial status and holdings to the governor every year.⁵⁴ Fifth, it gave the United States Attorney and United States Marshals full responsibility over the territory.⁵⁵ Sixth, it took the responsibility for prisons and jails away from the territorial legislature and gave it to the governor.⁵⁶ Seventh,

45. Lobb & Derr, *supra* note 38.

46. ORSON F. WHITNEY, 2 HISTORY OF UTAH 59 (1893).

47. *Id.*

48. *See generally id.*

49. *Id.* at 391.

50. *Id.*

51. *Id.* at 392-93.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

the act repealed any other inconsistent acts.⁵⁷ Finally, it became unlawful for the legislature to hold any elections for its members or other state government officers.⁵⁸ Later, the Cullom bill was introduced by General Shelby M. Cullom of Illinois who was the House Chairman of the Committee on Territories.⁵⁹

The introduction of these bills led to a rally by Mormon women, particularly those involved in plural marriage.⁶⁰ In January 1870, between five-thousand and six-thousand women gathered in the Mormon Tabernacle to protest the Cullom bill.⁶¹ During the protest, these women proclaimed their views on plural marriage and expressed their indignation that they were being characterized in a manner that did not reflect their living conditions.⁶² They spoke not only about themselves but about their concern for their husbands' rights.⁶³

Eliza R. Snow, who would later become President of the Relief Society of the Mormon Church, gave a speech highlighting the main concerns of Mormon women. She stated:

Shall we—ought we—to be silent, when every right of citizenship, every vestige of civil and religious liberty is at stake? Are not our interests one with our brethren? Ladies, this subject as deeply interests us as them. In the Kingdom of God woman has no interest separate from those of man—all are mutual. Our enemies pretend that in Utah woman is held in a state of vassalage—that she does not act from choice, but by coercion—that we would even prefer life elsewhere, were it possible for us to make our escape. What nonsense! We all know that if we wished we could leave at any time, either to go singly or to rise *en masse*, and there is no power here that could or would wish to prevent us. I will ask this intelligent assemblage of ladies: Do you know of any place on the face of the earth where woman has more liberty, and where she enjoys such high and glorious privileges as she does here as a Latter-day Saint? No. The very idea of women here in a state of slavery is a burlesque on common sense. . . . The same spirit that prompted Herod to seek the life of Jesus, the same that drove our pilgrim fathers to this continent, and the same that urged the English government to the system of unrepresented taxation, which resulted in the independence of the American colonies, is conspicuous in those bills. If such measures are persisted in they will produce similar results. They not only

57. *Id.*

58. *Id.*

59. *Id.* at 395.

60. Lobb & Derr, *supra* note 38, at 349.

61. *Id.* at 349.

62. WHITNEY, *supra* note 46, at 395-96.

63. *Id.* at 397.

threaten extirpation to us, but they augur destruction to the government.⁶⁴

Together these women passed a resolution calling for the defeat of the Cullom and Cragin bills. Furthermore, they resolved to support both the Mormon Church and Utah's existing government.⁶⁵

This rally was only one of many held throughout the state with similar results.⁶⁶ Though these rallies surprised the rest of the world, they did little to change the outside view of Mormon women.⁶⁷ However, in the midst of this debate on plural marriage, and less than a month after the rally at the Mormon Tabernacle, the Utah Legislative Assembly granted women the right to vote. This act was approved by Acting Governor S.A. Mann on February 12, 1870,⁶⁸ making Utah the second territory to give voting rights to women.

According to Orson F. Whitney, this 1870 provision came about through the efforts of William H. Hooper, one of Utah's delegates to the U.S. House of Representatives at the time.⁶⁹ In 1869, George W. Julian of Indiana introduced a bill which would "solve the polygamic problem" by allowing Utah women to vote.⁷⁰ When Hooper asked about the bill, Julian replied that it simply provided for the empowerment of Utah women. Hooper expressed his support for the bill and, although he did not know how Church leaders felt about such legislation, told Julian that he knew of no reason why they should not also approve of the bill.⁷¹

Upon his return to Utah, Hooper spoke to Brigham Young about his conversation with Julian. Soon afterwards, a measure creating women's voting rights was introduced in the Utah Territorial Legislature.⁷² Hooper stated that this measure was "[t]o convince the country how utterly without foundation the popular assertions were concerning the women of the territory."⁷³

64. *Id.* at 398-99.

65. *Id.* at 401.

66. Lobb & Derr, *supra* note 38, at 349.

67. *Id.* at 350.

68. WHITNEY, *supra* note 46, at 402.

69. *Id.* at 402-03.

70. *Id.*

71. *Id.*

72. According to Myres, historians have suggested several theories why Mormon leaders allowed Utah women the right to vote: First, the influx of non-Mormons into the territory created a need for more Mormon voters. Second, church leaders desired to increase support for national women suffragists in Congress. Finally, Mormon leaders hoped to gain some support from liberals within the church. MYRES, *supra* note 1, at 223.

73. BEETON, *supra* note 20, at 49.

This measure was strongly supported by both non-Mormons and Mormons. Non-Mormons and anti-polygamists viewed the bill as the way for Mormon women to "break their bonds" and move out of the "slavery" created by polygamy.⁷⁴ Additionally, many women and men inside the Mormon church also supported the legislation.⁷⁵

By 1880 Charles W. Penrose, editor of the *Deseret News*, introduced legislation in the Utah Territorial Legislature that would allow women in Utah to hold political office.⁷⁶ This bill concerned Utah legislators however, because at this same time, the United States Congress was considering disenfranchising women since enfranchising women had not led to the result Congress had intended.⁷⁷ The political office bill passed through the legislature without any stated limitations, but it was clear that it was intended to apply only to school board offices and to other limited roles.⁷⁸ Shortly after the measure passed in the legislature, Utah Governor George Emory vetoed the bill.⁷⁹

Seven years later, Congress passed the Edmunds-Tucker Act⁸⁰ which disenfranchised of Utah women.⁸¹ In spite of the set-back, however, Mormon women played a key role in the national suffragist movement.⁸²

2. *Equal Rights Provision in the Utah State Constitution*

In 1895, in another bid for statehood and under an enabling act by Congress, Utah formed a state constitution. The dispute over women's political rights became a dominate issue in the Utah constitutional convention.⁸³ Most delegates favored including a provision supporting women's rights.⁸⁴ In fact, both national parties—Republican and Democrat—mentioned their support of women's rights in their platforms.⁸⁵ Apparently there was still cause for concern, however, because women suffragist leaders in the state organized against men and women who were opposed to or were wavering on the issue.⁸⁶

74. *Id.* at 7.

75. *Id.* at 46.

76. *Id.* at 93.

77. *Id.* at 94.

78. *Id.* at 95.

79. *Id.*

80. *Id.* at 116.

81. *Id.*

82. *Id.* at 124-29.

83. Lobb & Derr, *supra* note 38, at 352.

84. BEETON, *supra* note 20, at 136.

85. *Id.* at 134.

86. Jean Bickmore White, *Woman's Place is in the Constitution: The Struggle for Equal Rights in Utah in 1895*, 42 UTAH HIST. Q. 344, 348 (1974).

On March 28 a provision calling for the political rights of women was brought before the convention. The provision read:

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 equally enjoy all civil, political, and religious rights and privileges.⁸⁷

During the convention B.H. Roberts led the fight against the political rights provision, arguing that it would thwart Utah's efforts to obtain statehood.⁸⁸ He claimed that although many suffragists urged the delegates to look to Wyoming's example, other states without female suffrage could also be used as models.⁸⁹ He pointed out that many people, especially local non-Mormons, still doubted that this provision was offered in good faith.⁹⁰ He called upon the women of the territory to sacrifice their enfranchisement for statehood, declaring that doing so would be "wise and patriotic."⁹¹ Finally, he maintained that while he understood that many felt bound by pledges made to their party and to their constituents, this was an opportunity to be above politics and to unselfishly do what was right in order to gain statehood.⁹²

In contrast, the fight in favor of women's suffrage was assisted by Franklin S. Richards, a member of the Mormon Church's governing body. Richards' speech focused on the principle of liberty and the ideas of many leading scholars, lawyers, and constitutional experts who recognized the importance of voting.⁹³ To those who argued that women were too virtuous to vote, he countered:

I have never yet known a woman who felt complimented by the statement that she was too good to exercise the same rights and privileges as a man. My experience and observation lead me to believe that while men admit the superiority of women in many respects, the latter do not care so much for this admission as they do for an acknowledgement of their equality, and that equality we are bound in honor to concede. There is a world of meaning in the words of that bright woman who said "women need justice as well as love."⁹⁴

87. 1 NOTES ON THE UTAH CONSTITUTIONAL CONVENTION 421 (1898).

88. *Id.* Roberts maintained that women's suffrage was one of many possible obstacles on the path to Utah statehood. *Id.* at 422-23.

89. *Id.* at 423.

90. *Id.* at 425.

91. *Id.* at 426.

92. *Id.* at 426-28.

93. *Id.* at 437-52.

94. *Id.* at 444.

In a later speech, Roberts answered the issue on women's equality, stating:

I am not unmindful of the power and influence of women. Why, sir, I am well aware that if we men were left alone, we would soon sink into a state of barbarism. . . . I place the value of woman upon a higher pinnacle, and there is not a suffragist among you all that has a higher opinion of her and of her influence than I myself entertain. But let me say that the influence of woman as it operates upon me never came from the rostrum, it never came from the pulpit, with woman in it, it never came from the lecturer's platform, with woman speaking; it comes from the fireside, it comes from the blessed association with mothers, of sisters, of wives, of daughters, not as democrats or republicans.⁹⁵

Richards was joined by another advocate for women's rights, Orson F. Whitney. Whitney argued that:

I believe that politics can be and will be something more than a filthy pool in which depraved men love to wallow. It is a noble science—the science of government—and it has a glorious future. And I believe in a future for woman, commensurate with the progress thereby indicated. I do not believe that she was made merely for a wife, a mother, a cook, and a housekeeper. These callings, however honorable—and no one doubts that they are so—are not the sum of her capabilities. While I agree with all that is true and beautiful in the portrayals that have been made of woman's domestic virtues and the home sphere, and would be as loath as anyone to have her lose that delicacy and refinement, that femininity which has been so deservedly lauded, I do not agree that this would necessarily follow, that she could not engage in politics and still retain those lovable traits which we so much admire. I believe the day will come when through that very refinement, the elevating and ennobling influence which woman exerts, in conjunction with other agencies that are at work for the betterment of the world, all that is base and unclean in politics—which when properly understood and practiced is as high above the chicanery of the political trickster as heaven is above hades—will be “burnt and purged away,” and the great result will justify woman's present participation in the cause of reform.⁹⁶

Meanwhile, outside the convention, women and men were laboring furiously both in support of, and in opposition to, the proposal. Both

95. *Id.* at 469.

96. *Id.* at 508.

groups worked to get their petitions signed and presented to the delegates.⁹⁷

Finally after much animated debate, the political rights provision passed without amendment by a vote of seventy-five in favor, sixteen against, thirteen absent, and two paired.⁹⁸ The controversy surrounding the issue did not completely die, however, and petitions continued to be submitted.⁹⁹ On April 18 a motion to reconsider the vote was acted upon, but it failed.¹⁰⁰ A local newspaper, *The Salt Lake Tribune*, reported on April 19 that the current tally on the petitions stood at 15,366 signatures for separate submission of the proposal and 24,801 for inclusion in the constitution.¹⁰¹ Finally, on November 5, 1895, the constitution was ratified with one-fifth of the voters in opposition.¹⁰²

Women were not allowed to vote on the ratification—a result that was quickly challenged by Sarah E. Anderson. In *Anderson v. Tyree*,¹⁰³ the Utah Supreme Court held that the Enabling Act of Congress governed the ratification of the Constitution and that it only allowed for male voters.¹⁰⁴

Congress made little protest to Utah's Constitution and to the female suffrage provision.¹⁰⁵ Utah was admitted to be a state on January 4, 1896.¹⁰⁶

3. *Utah Cases*

Although the equal rights provision in the Utah Constitution focused on giving women the right to vote, its clear language also gives women equal "civil, political and religious rights."¹⁰⁷ In addition to *Tyree's* voting question, the Utah Supreme Court has examined both majority age and inheritance laws in the context of this constitutional equal rights provision.

In *Stanton v. Stanton*¹⁰⁸ the Utah Supreme Court upheld a Utah statute which provided that the age of majority in Utah was twenty-one for males and eighteen for females.¹⁰⁹ In deciding the issue, the Utah

97. White, *supra* note 86, at 361-63.

98. 1 NOTES ON THE UTAH CONSTITUTIONAL CONVENTION 804 (1898).

99. White, *supra* note 86, at 363.

100. 2 NOTES ON THE UTAH CONSTITUTIONAL CONVENTION 1150 (1898).

101. White, *supra* note 86, at 363.

102. *Id.* at 364.

103. 12 Utah 129 (Utah 1895).

104. *Id.* at 147.

105. BEETON, *supra* note 20, at 148.

106. *Id.*

107. UTAH CONST. art. IV, § 1.

108. 517 P.2d 1010 (Utah 1974), *rev'd*, 421 U.S. 7 (1975).

109. The issue was raised in the context of requiring child support payments.

court looked at whether this different treatment was reasonably related to the purposes of the act. The court focused on the differences between men and women and justified the different treatment because girls tended to mature physically, emotionally, and mentally before boys, and they also tended to marry sooner.¹¹⁰ Although these ideas somewhat archaic, the court found that they still showed a reasonable relationship between the constitution and the statute.¹¹¹ Thus, the court upheld the statute.¹¹²

The U.S. Supreme Court disagreed with the Utah Supreme Court under Fourteenth Amendment analysis.¹¹³ The U.S. Supreme Court struck down the statute, stating that even if the differences between men and women described by the Utah court were true, there was still no rational relationship between the differences and the statute.¹¹⁴

Fourteen years later, the Utah Court of Appeals examined Utah's equal rights provision in *Scheller v. Pessetto*.¹¹⁵ This case dealt with a statute that prevented fathers from inheriting from their illegitimate children unless they had openly treated the child as their own. The court held that the statute did not violate state or federal constitutions.¹¹⁶

In regard to Utah's Constitutional provision, the court of appeals discussed a 1979 A.L.R. report on state equal rights provisions which found that Utah courts had not given any force to this provision in the area of sexual discrimination.¹¹⁷ Therefore, the report concluded that Utah, as well as Wyoming, seemed to have "provided women with no rights that have not been provided in other states which have no such equal rights provisions."¹¹⁸

This led the Utah Court of Appeals to find that Utah's standard was no more strict than the federal equal protection standard, and the court applied the federal test to uphold the statute.¹¹⁹

110. 517 P.2d at 1012-13.

111. *Id.*

112. *Id.* at 1013.

113. *Stanton v. Stanton*, 421 U.S. 7 (1975).

114. *Id.* at 14.

115. 783 P.2d 70 (Utah 1989).

116. *Id.* at 77.

117. *Id.* at 76 (discussing *Annotation, Construction and Application of State Equal Rights Amendments Forbidding Determination of Rights Based on Sex*, 90 A.L.R.3d 158, 164-66).

118. *Scheller*, 783 P.2d at 76 (citing 90 A.L.R.3d 166-67).

119. *Id.* at 76.

C. *Equal Rights and Voting Rights for Women in the Other Forty-eight States*

In 1848 a women's rights convention was held in Seneca Falls, New York. This convention has traditionally been considered the founding event for the women's equality movement.¹²⁰ The convention adopted the Declaration of Sentiments which in paraphrasing the Declaration of Independence, stated: "We hold these truths to be self-evident: that all men and women are created equal."¹²¹ This declaration also recognized the right of elective franchise as an important tool in stopping the oppression of humankind.¹²² Thus, the right to vote became the starting point for equality.¹²³

Suffragists began their effort in Kansas in 1867.¹²⁴ However, as discussed above, their first victories were in the western territories with Wyoming and then Utah. Victories in Colorado and Idaho soon followed, making a total of four states which recognized woman suffrage by 1886.¹²⁵ However another fourteen years would pass before another state would give women the right to vote.¹²⁶

In 1910, Washington granted voting rights to women.¹²⁷ California followed in 1911, and Arizona, Kansas, and Oregon were added in 1912.¹²⁸ In 1913, suffragists won their first bid east of the Mississippi when Illinois passed legislation supporting women's voting rights.¹²⁹ However, because Illinois was the only eastern state to pass such legislation, suffragists considered it a hollow victory and did not see a new trend beginning.¹³⁰ Soon the national suffragist organizations determined that a federal strategy might be more beneficial.¹³¹ While

120. Jennifer K. Brown, Note, *The Nineteenth Amendment and Women's Equality*, 102 YALE L.J. 2175, 2177 (1993).

121. *Id.*

122. *Id.* at 2177-78.

123. *Id.* at 2178.

124. STEVEN M. BUECHLER, *WOMEN'S MOVEMENT IN THE UNITED STATES: WOMAN SUFFRAGE, EQUAL RIGHTS, AND BEYOND* 48 (1990).

125. *Id.* at 54.

126. *Id.*

127. *Id.* at 56.

128. *Id.*

129. *Id.*

130. *Id.*

131. For more details on how a federal strategy evolved, see the discussion in BUECHLER, *supra* note 124, at 56-61.

this strategy was being developed, seven other states granted women the right to vote in 1917, including New York.¹³²

Finally, Congress decided to amend the United States Constitution, and on January 10, 1918, the House passed the Nineteenth Amendment by the requisite two-thirds majority.¹³³ The Senate initially defeated the measure, but full congressional passage came on June 4, 1919.¹³⁴ Complete ratification by the states occurred quickly, concluding three months later on August 26, 1919. In 1920, the Nineteenth Amendment was added to the Constitution. This amendment reads:

The right of citizens of the United States to vote shall not be abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.¹³⁵

Unlike the voting rights provisions in the Utah and Wyoming constitutions, the voting rights granted in the United States Constitution, and other state constitutions do not include equal rights provisions. In fact, not until the 1970s would another state include an equal rights amendment in a state constitution.¹³⁶

Today, seventeen state constitutions contain equal rights provisions. The following is a brief survey of these provisions.

Alaska: The 1972 amendment prohibits denial of "the enjoyment of any civil or political right because of race, color, creed, sex or national origin."¹³⁷ In *Plas v. State*,¹³⁸ the court established that gender-based discrimination must be rationally justified by a legislative end.¹³⁹

Colorado: The amendment was adopted in 1972. It prohibits governmental deprivation of rights "on account of sex."¹⁴⁰ The Colorado Supreme Court has held that this does not prohibit different treatment among the sexes when it is "reasonably and genuinely based on physical characteristics unique to just one sex."¹⁴¹ In another case, the court stated that "while we agree with defendant that legislative classifications predicated on sexual status must receive the closest judicial

132. BUECHLER, *supra* note 124, at 60. The other states were Ohio, Indiana, Rhode Island, Nebraska, Michigan, and North Dakota.

133. *Id.*

134. *Id.*

135. U.S. CONST. amend. XIX.

136. Robert F. Williams, *Equality Guarantees in State Constitutional Law*, 63 TEX. L. REV. 1195, 1212 (1985).

137. ALASKA CONST. art. I, § 3.

138. 598 P.2d 966 (Alaska 1979).

139. *Id.* at 968.

140. COLO. CONST. art. II, § 29.

141. *People v. Salinas*, 551 P.2d 703, 706 (Colo. 1976).

scrutiny, we conclude that section 40-3-402(1)(a) passed constitutional muster under that test."¹⁴²

Connecticut: In 1974 Connecticut added sex as a protected class under its equal protection clause.¹⁴³ However, the Connecticut Supreme Court has thus far only applied the federal equal protection standards in its review of problematic statutes.¹⁴⁴

Hawaii: Hawaii approved an equal rights amendment in 1972 which prohibits state action that denies or abridges rights on account of sex.¹⁴⁵ Hawaii also has another provision in the constitution, added in 1968, which focuses on "equal protection" and "due process."¹⁴⁶ In *Holdman v. Olim*,¹⁴⁷ the state supreme court implied that the strict scrutiny standard applied, although the court did not explicitly define its limits.¹⁴⁸

Illinois: Illinois adopted a new state constitution in 1970 which includes an equal protection clause specifically listing sex as a class.¹⁴⁹ The Illinois Supreme Court has stated that this provision requires the court to consider sex classifications as suspect, and thus, relevant statutes must withstand strict scrutiny.¹⁵⁰

Louisiana: Louisiana's constitution includes a 1974 amendment which forbids arbitrary, capricious, or unreasonable discrimination against a person for a number of reasons, including sex.¹⁵¹ The state supreme court has held that this provision is deserving of equal protection analysis instead of the strict scrutiny employed in equal rights cases.¹⁵²

Maryland: The Maryland amendment was approved in 1972 and states explicitly that "[e]quality of rights under the law shall not be abridged or denied because of sex."¹⁵³ The Maryland Supreme Court has held that this clear language mandates that sex cannot be used as a basis for discrimination.¹⁵⁴ In a later case, the court confirmed this strict standard and stated that gender-based distinctions were now absolutely forbidden.¹⁵⁵

142. *People v. Barger*, 550 P.2d 1281, 1283 (Colo. 1976).

143. CONN. CONST. art. I, § 20.

144. *See Lockwood v. Killian*, 375 A.2d 998, 1001 (Conn. 1977).

145. HAW. CONST. art. I, § 4.

146. *Id.* § 21.

147. 581 P.2d 1164 (Haw. 1978).

148. *Id.* at 1168-69.

149. ILL. CONST. art. I, § 18.

150. *People v. Boyer*, 321 N.E.2d 312, 314. (Ill. 1974).

151. LA. CONST. art. 1, § 3.

152. *See Williams v. Williams*, 331 So. 2d 438 (La. 1976).

153. MD. CONST. art. 46.

154. *Rand v. Rand*, 374 A.2d 900, 902-03 (Md. 1977).

155. *Coleman v. Maryland*, 377 A.2d 553, 556 (Md. 1977).

Massachusetts: The Massachusetts constitutional provision, included in 1976, is also explicit.¹⁵⁶ This has led the state supreme court to apply the strict scrutiny standard.¹⁵⁷

Montana: In 1973 Montana amended its constitution to prevent public and private entities from discriminating against a 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."¹⁵⁸ This language is unique to any other such provision.¹⁵⁹ In applying this provision, the state supreme court has applied U.S. Supreme Court Fourteenth Amendment analysis and looked to see if a classification rests upon a reasonable basis and is not essentially arbitrary.¹⁶⁰

New Hampshire: This state's provision, added in 1974, is clearly an equal rights provision.¹⁶¹ In *Buckner v. Buckner*,¹⁶² the court simply stated that this provision prohibits discrimination on account of sex.¹⁶³

New Mexico: New Mexico amended its constitution in 1973 to say that "[e]quality of rights under law shall not be denied on account of the sex of any person."¹⁶⁴ There are no cases establishing a standard of review.

Pennsylvania: In 1971, Pennsylvania amended its constitution to prohibit denial of rights based on sex.¹⁶⁵ The Pennsylvania Supreme Court has been aggressive in its application of this provision. In *Henderson v. Henderson*,¹⁶⁶ the court stated the following:

The thrust of the Equal Rights Amendment is to insure equality of rights under the law and to eliminate sex as a basis for distinction. The sex of citizens of this Commonwealth is no longer a permissible factor in the determination of their legal rights and legal responsibilities. The law will not impose different benefits or different burdens upon the members of a society based on the fact that they may be man or woman.¹⁶⁷

156. MASS. CONST. art. I.

157. See *Commonwealth v. King*, 372 N.E.2d 196 (Mass. 1977).

158. MONT. CONST. art. II, § 4.

159. Dawn-Marie Driscoll & Barbara J. Rouse, *Through a Glass Darkly: A Look at State Equal Rights Amendments*, 12 SUFFOLK U. L. REV. 1282, 1297 (1977).

160. See *State v. Craig*, 545 P.2d 649 (Mont. 1976).

161. N.H. CONST. pt. 1, art. 2.

162. 415 A.2d 871 (N.H. 1980).

163. *Id.* at 872.

164. N.M. CONST. art. II, § 18.

165. PA. CONST. art. 1, § 28.

166. 327 A.2d 60 (Pa. 1974).

167. *Id.* at 62.

Texas: Texas added an equal rights amendment in 1972.¹⁶⁸ The explicit language of this provision has led the Texas Civil Court of Appeals to make sex a suspect classification.¹⁶⁹

Virginia: Virginia's constitutional provision limits government discrimination based upon a number of categories, including sex.¹⁷⁰ This provision also states as an exception that "mere separation of the sexes shall not be considered discrimination."¹⁷¹ The state supreme court held that this constitutional provision was no broader than the equal protection clause of the U.S. Constitution's Fourteenth Amendment.¹⁷²

Washington: Washington's provision, added in 1972, states that "[e]quality of rights and responsibility under the law shall not be denied or abridged on account of sex."¹⁷³ The Washington Supreme Court held in *Darrin v. Gould*¹⁷⁴ that discrimination on account of sex was forbidden.¹⁷⁵

IV. EFFORTS TO OBTAIN AN EQUAL RIGHTS PROVISION IN THE UNITED STATES CONSTITUTION

Three years after the passage of the Nineteenth Amendment to the U.S. Constitution, an Equal Rights Amendment was introduced in Congress.¹⁷⁶ This provision provided:

Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction. Congress shall have power to enforce this article by appropriate legislation.¹⁷⁷

This proposed amendment was never seriously considered until after World War II, although it was introduced during every succeeding Congress until 1971, and twelve hearings were held on the proposal between 1924 and 1971.¹⁷⁸ In 1950 and 1953, the U.S. Senate approved an equal rights amendment; however, both times Senator Hayden amended it with language that virtually nullified the amendment. The Hayden language read: "The provisions of this article shall not be

168. TEX. CONST. art. I, § 3a.

169. See *Mercer v. Board of Trustees*, 538 S.W.2d 201 (Tex. Civ. App. 1976).

170. VA. CONST. art. I, § 11.

171. *Archer v. Mayes*, 194 S.E.2d 707, 711 (Va. 1973).

172. *Id.*

173. WASH. CONST. art. XXXI, § 1.

174. 540 P.2d 882 (Wash. 1975).

175. *Id.* at 885.

176. REX E. LEE, A LAWYER LOOKS AT THE EQUAL RIGHTS AMENDMENT 33 (1980).

177. *Id.* at 34.

178. *Id.*

construed to impair any rights, benefits, or exemptions conferred by law upon person of the female sex."¹⁷⁹

Finally, during the early 1970s, advocates for the amendment renewed their efforts¹⁸⁰ and the House approved the measure on October 12, 1971, by a vote of 354 to twenty-four.¹⁸¹ After a fight in the Senate over possible changes, the original resolution was passed on March 22, 1972, by a vote of 84 to eight.¹⁸²

The amendment next moved to the states for ratification. Hawaii became the first state to ratify the amendment within hours of the Senate vote.¹⁸³ During 1972, twenty-one additional states ratified the amendment. Eight more followed in 1973; three more in 1974; one in 1975; and one in 1977.¹⁸⁴ Eventually, however, five states voted to rescind their original ratifications.¹⁸⁵ The seven-year period for ratification expired on March 22, 1979,¹⁸⁶ and the amendment died with thirty of the thirty-eight required ratifications.¹⁸⁷ On October 6, 1978, both houses of Congress voted to extend the time period for ratification an additional three years until June 30, 1982.¹⁸⁸ The amendment never passed.

V. CONCLUSION

Women have vigorously fought to ensure and expand their legal rights through the constitutional process at both the federal and state levels. Although the United States' Constitution is still silent on the subject of equal rights for women, seventeen state provisions have provided specific protections for women.¹⁸⁹ Wyoming and Utah were the first states to understand the need for equal rights; however, their courts have not aggressively interpreted these provisions—even when the

179. *Id.*

180. *Id.* at 35.

181. *Id.* at 36.

182. *Id.*

183. *Id.* at 37.

184. *Id.* The states that ratified it are Hawaii, Alaska, California, Colorado, Delaware, Idaho, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Tennessee, Texas, West Virginia, Wisconsin, Connecticut, Minnesota, New Mexico, Oregon, South Dakota, Vermont, Washington, Wyoming, Maine, Montana, Ohio, North Dakota, and Indiana. *Id.*

185. *Id.* at 35. These states were Nebraska in 1973, Tennessee in 1974, Idaho in 1977, Kentucky in 1978, and South Dakota in 1979. *Id.*

186. *Id.* at 38.

187. *Id.*

188. *Id.*

189. Other states have adopted statutes, but those statutes are beyond the scope of this Comment.

language has been explicit. Nevertheless state constitutions should not be ignored as important and progressive tools for fighting sex-based discrimination.

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