

Testimony of Erin Gould in favor of HJR 35, House Rules Committee, June 12, 2013

Mr. Chair, members of the committee, for the record my name is Erin Gould. I am a civil litigation attorney from Eugene, Oregon and a member of the advisory board for VoteERA.org.

I want to thank the House Rules Committee for holding a hearing and work session for HJR 35. It is an honor to be here today testifying in support of this resolution.

It is time for an Equal Rights Amendment to be stated clearly in the Oregon Constitution. As an attorney who has spent a lot of time reading and interpreting case law, I know that there is no better way to establish a legal standard for analyzing the rights of our citizens than for it to be stated clearly in the constitution. The state constitution is our legal foundation. All law, statute or case law, stems from that document. HJR 35, if approved by the voters, would make clear in the state constitution, with little room for interpretation, that any discrimination or classifications based on sex are inherently suspect and any challenge to government action creating such a classification will be analyzed with strict scrutiny.

While it's true that Oregon has had favorable case law precedent, more should be done to clearly establish ERA protection against sex based classifications. In 1982, the late Justice Betty Roberts, a pioneer and champion for women's equality in Oregon, wrote the important opinion *Hewitt v. SAIF*. In that opinion, Justice Roberts established a strict scrutiny standard for gender based classifications in case law. In her memoir, *With Grit and By Grace*, she states that her intent with that legal opinion was to establish an ERA for the state of Oregon.

As critical and important as this opinion is, case law precedent is only as effective as the judge interpreting it - it is not written in stone. It's hard to imagine, but when Justice Roberts was a legislator and fighting for federal ratification of the ERA and a state ERA, the idea that males and females should be equal in the eyes of the law was not a given. Her decision in *Hewitt* was a creative way to establish what the legislature should have done at the time. Also, the *Hewitt* decision created strict scrutiny for gender-based classifications, not sex-based classification. With evolved discourse, we know that sex and gender are not interchangeable. HJR 35 contains more inclusive language.

The purpose of HJR 35 is to complete the work of Justice Roberts and so many others. Why not strengthen our legal foundation, our constitution? If the intent of Justice Roberts was to establish, through caselaw, a state ERA, then there is no reason not to do just that. The intent behind that opinion should be codified in our state constitution: it should be written in stone.

I urge your "aye" vote, and I welcome any questions. Thank you.