

STATEMENT OF PROFESSOR ROBERT A. SEDLER TO THE MICHIGAN HOUSE JUDICIARY  
COMMITTEE IN SUPPORT OF HJR GG

MEMBERS OF THE COMMITTEE:

I am submitting this statement in support of HJR GG, which would amend the anti-discrimination clause of the Michigan Constitution 1963, Art. I, sec. 2, to prohibit discrimination in the enjoyment or exercise of civil or political rights on the basis of sex.

I have been a constitutional law professor at Wayne State University Law School since 1977, and have published extensively and commented on both the Constitution of the United States and the Michigan Constitution 1963. Just as the United States Constitution represents a compact between the People of the United States and their government, so too the Michigan Constitution 1963 represents a compact between the People of Michigan and their government. In Article I: Declaration of Rights, the People of Michigan have set forth the rights of the People that are entitled to constitutional protection and have commanded the agencies of their government to respect these rights.

Art.I, sec. 2 contains both an equal protection provision and a non-discrimination provision. It guarantees all persons the equal protection of the laws, but goes further and specifically provides that no person shall be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. In 1963, the drafters of the Michigan Constitution wanted to prevent discrimination on the basis of religion, race, color or national origin because these were the forms of discrimination that had come to the fore at that time. At that time, it is fair to say that there was no concept of discrimination on the basis of sex being unconstitutional. To the contrary, discrimination on the basis of sex was considered to be "reasonable," because then there were stereotypical notions of men and women and their respective societal roles. Men were to be the "breadwinners" and the "societal leaders" while women were to "stay at home" and perform the role of "wife and mother." It was not until the 1970's that the United States Supreme Court held that discrimination on the basis of sex could be violative of the Fourteenth Amendment's equal protection clause.

In the American constitutional system, the states are sovereign, and the states may provide greater protection for individual rights than is provided by the United States Constitution. The purpose of the anti-discrimination provision of Art. I, sec. 2 was to provide greater constitutional protection against discrimination on the basis of religion, race, color or national origin than was provided by the equal protection clause of the Fourteenth Amendment and by the equal protection clause of Art.I, sec.2. In American society today, there is now recognition that equality between men and women is an important constitutional value and that the government should not discriminate against women or against men because of stereotypical notions of men and women and their respective societal roles.

While the Fourteenth Amendment's equal protection clause renders unconstitutional some forms of sex discrimination, the Fourteenth Amendment is only the floor and not the ceiling. Just as the anti-discrimination provision of Art. 1, sec. 2 provides greater protection against discrimination on the basis of religion, race, color or national origin than is provided by the Fourteenth Amendment's equal protection clause, it should also provide greater protection against discrimination on the basis of sex than is provided by the Fourteenth Amendment's equal protection clause. In this way, the non-discrimination provision of Art. 1, sec. 2 will become fully operative in the Michigan of today, and will ensure that women and men are treated equally in all respects by the State of Michigan.

For these reasons, I would strongly urge the House Judiciary Committee to adopt HJR GG and add "sex" to the anti-discrimination clause of Art. 1, sec.2 of the Michigan Constitution 1963.

Thank you for your consideration of this communication.

Sincerely,

Robert A. Sedler