

BECAUSE ERA HARMS OUR UNBORN CHILDREN

by Elise Bouc, Eagle Forum Leader, Stop ERA

The Equal Rights Amendment is a poorly worded proposed amendment to the U.S. Constitution that would restrict all laws and practices that make any distinctions based on gender or sex. While we believe in equal opportunity for men and women, we also recognize that there are situations where we must make distinctions based on our biological differences. It is foolish to deny biology in pursuit of “equality.” If the ERA ever becomes part of our constitution, men and women could not be treated differently, even if the different treatment is due to physical differences such as pregnancy.

ERA would harm unborn children:

Since abortion is unique to women, any attempt to restrict a woman’s access to abortion is seen, under the rules of the ERA, as a form of sex discrimination — because women are being singled out for a characteristic that is unique to them, and they are being treated differently based on that physical characteristic (in this case the ability to become pregnant). Therefore any abortion restrictions would be overturned by the ERA since it prohibits sex discrimination. In addition, since medical procedures unique to men are funded by Medic-

aid (such as circumcision and prostatectomies), then abortion which is unique to women, would also receive Medicaid funding under ERA.

Some of the states with state ERAs have already used their ERAs to mandate Medicaid funding for elective abortions and overturn abortion restrictions:

- The New Mexico Supreme Court unanimously ruled that under their state ERA since only women undergo abortions, the denial of taxpayer funding for abortions is “sex discrimination” (*N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 1998). As a result, New Mexico now provides Medicaid funding for elective abortions.

- A Connecticut Superior court ruled that the state’s policy of paying for abortions only in cases of rape or incest, or to save the life of the mother violated the Connecticut ERA. “Since only women become pregnant, discrimination against pregnancy by not funding abortion . . . is sex-oriented discrimination,” the court ruled. The court ordered the state to pay for any abortion which a doctor deems advisable for any reason relating to “physical and/or psychological health” (*Doe v. Maher*, 515 A.2d 134 (Conn Super. Ct. 1986)). This ruling was final. As a result, women only have to claim that their unintended pregnancy is causing depression or stress in order to receive Medicaid funding for elective abortions.

- The Montana Supreme Court struck down a statute prohibiting non-physicians from performing abortions. The majority opinion cited state ERA language in the state constitution in support of its decision (par. 72 of the opinion). Article II, sec. 4, provides, in part, “Neither the state nor any person . . . shall discriminate against any

person in the exercise of his civil or political rights on account of . . . sex” (*Armstrong v. State of Montana*, 1999).

Using this same ‘sex discrimination’ logic, legal scholars have stated that the ERA would:

- Eliminate all abortion restrictions including the partial birth abortion ban, third trimester abortions, and parental notification of minors seeking abortions, and overturn the Hyde Amendment, which restricts federal funding for abortions.

- Mandate expanded taxpayer funding for abortions.

- End conscience clauses for nurses, doctors and hospitals who do not want to participate in performing abortions. Courts do not allow conscience clauses in race discrimination, and they would not be able to allow it under ERA.

- Threaten the tax exemptions of private pro-life religious schools who discourage abortion through their teaching practices.

- ERA would provide a new basis in the Constitution for a right to abortion. *Roe v. Wade* is based on weak reasoning founded on an unwritten “right to privacy” assumption. As public sentiment grows in opposition to abortion, there is hope that the Supreme Court could reverse the *Roe v. Wade* decision. The ERA would destroy that hope because the ERA would insert a written, defined right based on sex discrimination into the U.S. Constitution. 



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