



P.O. Box 511
Chicago, Illinois 60690

312-422-9300
Fax 312-422-9302

www.IllinoisRightToLife.org

Legislators must be urged to vote “NO” on Senate Joint Resolution Constitutional Amendment 4 (SJRC 4) the so-called Equal Rights Amendment (ERA) because of its Abortion impact that will have court required House Bill 40s for every state in the Union and prohibit the federal Hyde Amendment language. Please read on.

SJRC 4 states in its ARTICLE:

Section 1. Equality of rights under law shall not be denied or abridged by the United States or any State on account of sex.

Section 2. The Congress shall have the power to enforce by appropriate legislation the provisions of this article.

.....

The ERA will harm unborn children

Since abortion is unique to women, any attempt to restrict a woman’s access to abortion would be seen, under the rules of the ERA, as a form of sex discrimination. As a result, abortion restrictions would be overturned. In addition, since medical procedures unique to men are funded by Medicaid (such as circumcision and prostatectomies), then abortion which is unique to women, must also receive Medicaid funding under ERA requirements. This would force every state in the Union to have a House Bill 40 requirement and force the U.S. Congress to require abortions to be funded under the Medicaid program (thus, removing the Hyde Amendment language prohibition on federal funds paying for abortions.).

This concern became a reality in New Mexico, which has a state ERA with similar wording to the proposed federal ERA.

- 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). The decision was based solely on the state ERA. As a result, New Mexico now provides Medicaid funding for elective abortions.
- Also, in Connecticut, the Superior Court ruled that the State ERA requires Connecticut taxpayers to pay for abortions, stating: "Since only women become pregnant, discrimination against

pregnancy by not funding abortions . . . is sex-oriented discrimination. . . The court concludes that the regulation that restricts the funding for abortions . . . violates Connecticut's Equal Rights Amendment." (*Doe v. Maher*, April 9, 1986)

Using this same logic, legal scholars have reasoned that the ERA would:

- Eliminate all abortion restrictions including the partial birth abortion ban, third trimester abortions, and parental notification of minors seeking 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 the ERA.
- Threaten tax exemptions of private religious schools that do not believe in abortion and discourage it with their students with respect to their teaching practices.
- ERA would provide a new basis in the Constitution for the abortion right. *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 Constitution.

A national ERA would overturn the Hyde Amendment

In *Harris v. McRae*, the Supreme Court narrowly held by a vote of 5-4 that no constitutionally protected fundamental right was abridged by the Hyde Amendment's restriction on Medicaid funding for abortions. If the Supreme Court had been held to the constitutional sex-discrimination restrictions of the ERA, the Hyde Amendment would have been overturned.

Legal scholars and abortion advocacy groups have made statements that support the belief that the ERA would support abortion rights:

Anne Freedman, Rutgers Law Professor, and proponent of the ERA reasoned that physical differences could not be used to justify different treatment between sexes under an ERA: "To treat people differently on account of characteristics unique to one sex is to treat them differently on account of their sex." (Senate Judiciary Subcommittee Hearing regarding impact of ERA on abortion, Jan. 24, 1984)

Thomas Emerson, Yale Law Professor, and proponent of the ERA stated that the ERA would "have an important effect in strengthening abortion rights for women." (Senate Judiciary Subcommittee Hearing regarding impact of ERA on abortion, Jan. 24, 1984)

Pro-Abortion groups, including Planned Parenthood, NARAL, the ACLU, the Center for Reproductive Law and Policy, and the NOW Legal Defense and Education Fund have all submitted legal briefs stating that the ERA supports abortion rights (*N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 1998).