Illinois: Because the ERA Harms Our Unborn Children

Senate Joint Resolution Constitutional Amendment 75 (ERA – SJRCA 75) 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 Equal Rights Amendment (ERA – SJRCA75) is a poorly worded amendment to the U.S. Constitution that would restrict all laws and practices that make any distinctions based on gender. Under the ERA men and women could not be treated differently, even if the different treatment is due to physical differences.

The ERA will harm our 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 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.

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.
- Mandate tax payer 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 the ERA.
- Threaten tax exemptions of private religious schools who 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)

Rex Lee, former Solicitor General of the United States : "any chances for correction [of the Supreme Court's abortion decisions] would surely be destroyed by passage of the ERA, which would also seal the fate of the few remaining peripheral abortion questions, such as spousal and parental notification of the abortion decision and post-viability (late-term) abortion regulation (A Lawyer Looks at the ERA, 1980)."

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).

<u>An abortion neutral amendment to the ERA has been repeatedly rejected:</u>

All attempts to insert language into the ERA that would guarantee the ERA would not support abortion rights or abortion funding have been rejected by the supporters of the ERA. Their rejection makes it clear that they intend to use the ERA to support abortion rights.

Rep. James Sensenbrener of Wisconsin recommended the following amendment to the ERA: *"Nothing in this Article shall be construed to grant or secure any right relating to abortion or the funding thereof."* This amendment has been repeatedly rejected by ERA supporters.

During Senate Hearings on the ERA, Senator Orrin Hatch stated, "The way to resolve the disagreement over whether the ERA will impact abortion is to add one simple line to the equal rights amendment stating that nothing in this article will affect abortion funding or abortion rights. But, every time we raise this suggestion the people who say the equal rights amendment will not affect abortion refuse to consider qualifying language to be added. They say they will fight it." (Senate Judiciary Subcommittee Hearing regarding impact of ERA on abortion, Jan. 24, 1984)

In regards to an abortion-neutral clause, Cardinal Bernardin of the Chicago Diocese wrote, "There are serious grounds for concern that the Equal Rights Amendment, as it now stands, would be read by the courts as guaranteeing a "right" to abortion and a "right" to tax funds for abortion. Since this is so, there is a need to amend the amendment to make sure it does not happen (Chicago Catholic, Feb. 24,1984)." The National Council of Catholic Bishops repeated this concern, announcing that they would oppose the ERA without an anti-abortion clause (National Catholic Register, Mar. 11, 1984).

The ERA would tie state legislators' hands in their ability to curtail and restrict abortions and leave the issue open to federal judicial mandate.

Section 2 of the ERA requires that Congress be given the power to enact the provisions of the ERA. As a result, states would lose their legislative abilities to curtail and restrict abortions. Such a transfer would place sensitive abortion issues under the rule of a national government and the federal courts. The federal government is far less responsive to individuals than the state legislatures.

History of the ERA

The federal Equal Rights Amendment (ERA) was passed out of Congress in 1972 with a 7 year time limit. Only 35 of the 38 required states passed the ERA before the 7 year deadline expired in 1979. People initially supported the ERA because they believed it would give women equal rights, However, once people understood the problems with the poorly written language of the ERA, and the resultant harm that would be done to women, their children, and our society, support for the amendment quickly disappeared. The supporters of the ERA have now developed a complex legal argument in which they claim that the time deadline of 1979 can be extended. They are working to get three more states to ratify the ERA, and then they will take it to Congress and ask Congress to retroactively extend the time deadline. If this is done, the ERA could become a binding national constitutional amendment. The Illinois Senate just recently passed it, and it could come up for a vote by the House shortly.

The Equal Rights Amendment as it now stands, will have a negative impact on our unborn children and all abortion restrictions.