

The Equal Rights Amendment (ERA) and Abortion

Quotes from Pro-Abortion Groups:

The ERA could be used to permanently **overturn pro-life laws** and require legal abortion until birth for any reason, **without limits on taxpayer funding**, throughout the nation.

NARAL Pro-Choice America: “With its ratification, the ERA would reinforce the constitutional right to abortion by clarifying that the sexes have equal rights, which would require judges to strike down anti-abortion laws because they violate both the constitutional right to privacy and sexual equality.”¹

NARAL Pro-Choice America: “The ERA will help protect women’s rights to... abortion. With five anti-choice justices on the Supreme Court and *Roe v. Wade* on the chopping block, it’s more important than ever that we codify women’s bodily autonomy in our laws.”²

National Organization for Women (NOW): “An ERA –properly interpreted – could negate the hundreds of laws that have been passed restricting access to abortion care and contraception.”³

Senior Counsel, National Women’s Law Center: “The ERA would help create a basis to challenge abortion restrictions. We see the ERA as another tool that would strengthen our existing protections.”⁴

Emily Martin (general counsel for the National Women’s Law Center) said that the ERA would enable courts to rule that restrictions on abortion “perpetuate gender inequality.”⁵

Erin Matson (co-director of Reproaction): “Abortion restrictions amount to sex discrimination because they single out people for unfair treatment on the basis of sex, and a federal ERA could provide a backstop to fight the wave of restrictions on abortion.”⁶

Erin Matson (co-director of Reproaction): “In a 1986 case in Connecticut and a 1999 case in New Mexico, ERAs adopted into state constitutions were cited when striking down restrictions on funding for abortions.”

Planned Parenthood/Women’s Law Project say past ruling that state ban on government funding of elective abortion is consistent with ERA “is contrary to a modern understanding” of ERA.⁷

¹ “ERA Y-E-S.” NARAL Pro-Choice America. https://www.prochoiceamerica.org/campaign/era_yes/

² The ERA, Explained! NARAL Pro-Choice America. April 10, 2019.

<https://www.youtube.com/watch?v=3dWijNfiX5U&feature=youtu.be>

³ “Is the Equal Rights Amendment Relevant in the 21st Century?” National Organization for Women (NOW).

<https://now.org/resource/is-the-equal-rights-amendment-relevant-in-the-21st-century/>

⁴ National Women’s Law Center. May 1, 2019. <https://nwc.org/nwc-in-the-press/republicans-want-to-make-a-debate-over-discrimination-into-an-abortion-battle/>

⁵ Rankin, Sarah and David Crary. “Lawmakers pledge ERA will pass in Virginia. Then what?” January 1, 2020.

<https://apnews.com/959a29cfbdc59029bba9e97887331f07>

⁶ Matson, Erin. “Abortion Rights Opponents Are Terrified of the Equal Rights Amendment.” Rewire. January 21, 2020.

<https://rewire.news/article/2020/01/21/abortion-rights-opponents-are-terrified-of-the-equal-rights-amendment/>

⁷ “[Allegheny Reproductive Health Center v. Pa. Department of Human Services](#).” Women’s Law Project. Pg. 2.

Ongoing litigation in Pennsylvania and past cases in New Mexico and Connecticut demonstrate that the ERA could **require taxpayer-funded abortion on demand**:

Pennsylvania [Ongoing Lawsuit]:

- **Background:**
 - Abortion providers (including Planned Parenthood) are suing Pennsylvania *because state Medicaid does not pay for elective abortions*. The abortion providers claim this violates the Pennsylvania Equal Rights Amendment. *Note: the abortion providers are represented by the [Women's Law Project](#).*⁸
- **Planned Parenthood/Women's Law Project:** The “central claims” of the brief “are that the abortion coverage ban violates the Equal Rights Amendment and equal protection provisions of the Pennsylvania Constitution.”
- **Susan J. Frietsche (senior staff attorney at the Women's Law Project):** “Pennsylvania’s ban on Medicaid coverage of abortion is a decades-long injustice that deprives low-income women of reproductive health care in violation of the state Constitution’s Equal Rights Amendment,”
- **Susan J. Frietsche (senior staff attorney at the Women's Law Project):** “The coverage ban discriminates on the basis of sex because Medicaid comprehensively covers men’s health care but not women’s. It inflicts severe harm on women because of their reproductive capacity, and it does so in service to discredited sex-role stereotypes that continue to limit women’s equal participation in society.”
- **Planned Parenthood/ Women's Law Project Brief:**
 - “By singling out and excluding abortions from Medical Assistance, women throughout this Commonwealth are denied coverage for essential health care services solely on the basis of their sex.”
 - “Because the Pennsylvania coverage ban improperly discriminates against women based on their sex without sufficient justification, the ban... violates women’s constitutional right to equality of rights under the law, as guaranteed by [the Pennsylvania ERA].”

New Mexico [1998]

- This lawsuit was brought by Planned Parenthood against the state.
- The Supreme Court of New Mexico ruled unanimously that **the state was required to fund abortions** based *solely* on the state ERA.

⁸ “Allegheny Reproductive Health Center v. Pa. Department of Human Services.” Women’s Law Project. <https://www.womenslawproject.org/project/allegheny-reproductive-health-center-v-pa-department-of-human-services-medicare-case/>

- It found that the law “undoubtedly singles out for less favorable treatment a gender-linked condition that is unique to women” and therefore “violates the Equal Rights Amendment.”⁹

Connecticut [1986]

- **Background:** The plaintiffs challenged a Connecticut Medicaid’s refusal to pay for elective abortion, claiming that it violated the Connecticut Equal Rights Amendment.
- **The Court agreed:** “It is therefore clear, under the Connecticut ERA, that the regulation excepting medically necessary abortions from the medicaid [sic] program discriminates against women.”¹⁰

Quotes from Third-Party Reporting:

David Crary, Associated Press: “Another subplot in this year’s abortion drama involves the Equal Rights Amendment... Abortion-rights supporters are eager to nullify the [ERA ratification] deadline and get the amendment ratified so it could be used to overturn state laws restricting abortion. Abortion opponents cite that stance in arguing that the deadline should be enforced and the ERA sidelined.”¹¹

Noah Feldman (Harvard Law Professor): ... “[I]t’s not implausible that a newly ratified ERA could be used by pro-choice advocates to make a fresh constitutional case for abortion rights. If the current Supreme Court reverses *Roe v. Wade* — a possibility that must be taken very seriously — then new constitutional arguments will be needed... The ERA could provide the basis for an updated version of that argument, because anti-abortion laws can be said to target women in particular.”¹²

Alexis McGill Johnson (quoted by Politico): “Advocates for the ERA acknowledge that abortion needs to be part of the conversation. Any debate over women’s rights, they say, must also address control over when and whether to have children. *‘There are no equal rights for women without access to abortion, plain and simple,’* said Alexis McGill Johnson, acting president and CEO of Planned Parenthood.”¹³

National Women’s Law Center (quoted by Politico): “...some anti-abortion groups including the NRLC say they would be neutral on the amendment if it included language explicitly stating that it doesn’t apply to abortion. ERA supporters say such a carve-out is a nonstarter. ‘The ability of women to participate equally and the idea of equality in our economy is fundamentally bound up with the ability to access reproductive rights,’ said Fatima Goss Graves, the president of the National Women’s Law Center.”¹⁴

⁹ New Mexico Right to Choose/NARAL v. Johnson. 1998. <https://law.justia.com/cases/new-mexico/supreme-court/1998/23239-0-0.html>

¹⁰ Doe v. Maher, 515 A.2d 134 (Conn. Super. Ct. 1986). <https://www.courtlistener.com/opinion/3349959/doe-v-maher/>

¹¹ Crary, David. “Supreme Court Case Looms Large for Rivals in the Abortion Debate.” Associated Press in the [Washington Times](https://www.nytimes.com/2020/01/21/us/politics/supreme-court-abortion-debate.html), January 21, 2020.

¹² Feldman, Noah. “The Equal Rights Amendment Could Still Do Some Good.” February 15, 2020. Yahoo Finance.

https://finance.yahoo.com/news/equal-rights-amendment-could-still-130014475.html?soc_src=social-sh&soc_trk=tw

¹³ Mueller, Eleanor and Alice Miranda Ollstein. “How the debate over the ERA became a fight over abortion.” *Politico*. February 11, 2020. <https://www.politico.com/news/2020/02/11/abortion-equal-rights-amendment-113505>

¹⁴ Ibid.

Julie Suk (quoted by Politico): CUNY professor Julie Suk, often cited as an expert in comparative constitutional law who is writing a book on the ERA, agreed ... 'That is an argument that I think is a persuasive argument, and some state Supreme Courts have been persuaded by that argument, but there are also arguments on the other side....My own view as a legal thinker is that the right to make decisions about reproductive health care, including abortion, is central to any understanding of gender equality,' Suk said. 'I'm not saying it's unlikely to be the law of the land, but I'm saying it's not a certainty that the ERA would lead to abortion funding.'"¹⁵

The Daily Beast, quoting Jennifer Weiss-Wolf (Vice President, Brennan Center for Justice): "Both the basis of the privacy argument and even the technical, technological underpinnings of [Roe] always seemed likely to expire." ... "Technology was always going to move us to a place where the trimester framework didn't make sense." ... "If you were rooted in an equality argument, those things would not matter," she said.¹⁶

Daily Beast follows by explaining, "The Equal Rights Amendment, which would prohibit sex discrimination the way the Constitution currently prohibits discrimination based on race, religion and national origin, could do just that."¹⁷

Pete Williams, NBC News: "The ERA has been embraced by advocates of abortion rights. NARAL Pro-Choice America has said it would 'reinforce the constitutional right to abortion' and 'require judges to strike down anti-abortion laws.' Abortion opponents agree with that analysis... 'It would nullify any federal or state restrictions, even on partial-birth or third-trimester abortions,' the National Right to Life Committee said."

Sady Doyle, Elle Magazine: "Questions of discrimination -- like... legal abortion... often come down to the Supreme Court... It would be reassuring, to say the least, if those justices were forced to rule that laws which discriminate against women's healthcare are unconstitutional."¹⁸

Daily Kos: "Ratifying the Equal Rights Amendment... would...expand reproductive rights..."

V: 03/05/2020

¹⁵ Ibid.

¹⁶ Russell-Kraft, Stephanie. "Wanna Save Roe v. Wade? Don't Look To The Courts." July 30, 2018. <https://www.thedailybeast.com/wanna-save-roe-v-wade-dont-look-to-the-courts>

¹⁷ Ibid.

¹⁸ Doyle, Sady. "The ERA Is Suddenly Within Reach. Does It Matter?" Elle Magazine. June 1, 2018. <https://www.elle.com/culture/career-politics/a20980485/equal-rights-amendment-ratify-illinois/>

Quotes from Pro-Life Groups:

National Right to Life (NRLC): “under this doctrine . . . it would nullify any federal or state restrictions even on partial-birth abortions or third trimester abortions (since these too are sought only by women).”¹⁹ “the proposed federal ERA would invalidate the federal Hyde Amendment and all state restrictions on tax-funded abortions.”²⁰

Susan B. Anthony List: “Any law limiting abortion or imposing upon it such conditions as a funding limit will be struck down as violating the amendment’s plain language.”²¹

March for Life Action: “Since their inception these ‘equal rights amendments’ (ERAs) have been used to further the scourge of abortion through the court systems.”²² “It is with little doubt that if such language was enshrined in the United States Constitution it would be of great harm to taxpayers and lead to the elimination of most, if not all, pro-life protections in current law.”²³

U.S. Conference of Catholic Bishops: “One consequence of the ERA would be the likely requirement of federal funding for abortions. At least two states have construed their own equal rights amendments, with language analogous to that of the federal ERA, to require government funding of abortion.” “Arguments have been proffered that the federal ERA would... restrain the ability of the federal and state governments to enact other measures regulating abortion, such as third-trimester or partial birth abortion bans, parental consent, informed consent, conscience-related exemptions, and other provisions.”²⁴

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¹⁹ Letter to the U.S. House of Representatives. National Right to Life Committee. January 27, 2020.

²⁰ Ibid.

²¹ Score Letter. Susan B. Anthony List. November 12, 2019.

²² Score Letter. March for Life Action. January 31, 2020.

²³ Ibid.

²⁴ Letter to U.S. House of Representatives. United States Conference of Catholic Bishops. February 6, 2020.