FAMILY ISSUE FACT SHEET

NO. 2019-01 (UPDATED MARCH 21, 2019)

SCR 1006/SCR 1009/HCR 2030 RATIFICATION; EQUAL RIGHTS AMENDMENT

EXECUTIVE SUMMARY

The Equal Rights Amendment (ERA) is an amendment to the United States Constitution proposed in the 1970's. The amendment reads:

> *Section 1: Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.*
>
> *Section 2: The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.*
>
> *Section 3: This amendment shall take effect two years after the date of ratification.*

Proponents argue the ERA is necessary to ensure equal rights and equal pay for women. Although these goals are laudable, the Arizona Legislature should not ratify the ERA.

First, the ERA is unnecessary because the Fifth and Fourteenth Amendments *already* guarantee equal protection under the law, and countless federal, state, and local laws *already* prohibit sex discrimination and unequal pay. Second, the ERA could enshrine the right to an abortion in the U.S. Constitution; state courts have already used their state ERAs to strike down abortion restrictions. Third, the deadline to ratify the ERA was 1982, so any attempt to ratify the ERA is futile and it would likely embroil the state in lengthy and expensive court cases.

BACKGROUND

Congress passed the Equal Rights Amendment in 1972 and was ratified by 35 states, three states short of the 38 states required for ratification by the Congress-imposed extended deadline of 1982. The original deadline had been 1979.

As the negative consequences became clear, five states repealed their ratification. Now, long after the deadlines have passed, a new movement is pushing for ratification, claiming that there is legal precedent to ratify the amendment beyond the deadline.

Illinois ratified the amendment in 2018, making it the 37th state to do so. Arizona and Virginia are two of the targeted states to become the 38th state needed for ratification.

Contact: Cathi Herrod, President, Center for Arizona Policy, Inc.

REASONS TO OPPOSE THE ERA

1. **The ERA is completely unnecessary:**

    a. The Fifth and Fourteenth Amendments in the U.S. Constitution *already* provide equal protection under the law for women.

    b. Countless federal, state, and local laws *already* prohibit sex discrimination.

    c. Federal laws — the Equal Pay Act, the Civil Rights Act, and the Lilly Ledbetter Fair Pay Act — and Arizona's Equal Wages law *already* prohibit pay discrimination based on sex. If the ERA is ratified, Congress could potentially pass laws requiring equal pay, but it has already done so *many times*.

2. **The ERA could enshrine the right to an abortion in the U.S. Constitution:**

    a. State courts in Connecticut and New Mexico have used their state ERA's to strike down prohibitions on taxpayer-funded abortions. *See Doe v. Maher*, 40 Conn. Sup. 394 (1986); *New Mexico Right to Choose/NARAL v. Johnson*, 975 P.2d 841 (N.M. 1998).

    b. On January 16, 2019, Planned Parenthood filed a lawsuit in Pennsylvania challenging the state's ban on abortion coverage in its Medicaid program, arguing it violates the state's ERA because men receive comprehensive coverage without restriction, but women do not because they can get pregnant. *Allegheny Reproductive Health Center, Planned Parenthood et al. v. Pennsylvania Department of Human Services, et al*.

    c. In "Is the Equal Rights Amendment Relevant in the 21st Century?", the National Organization for Women (NOW) states that "an ERA –properly interpreted – could negate the hundreds of laws that have been passed restricting access to abortion care and contraception. Denial of legal and appropriate medical care for women – and only women – is sex discrimination and a powerful ERA should recognize and prohibit that most harmful of discriminatory actions."

    d. In a March 13, 2019 fundraising email from NARAL Pro-Choice America, Jennifer Warburton— Director of Government Relations— wrote, "In order to protect our reproductive freedom today it's essential we pass the newly re-introduced bill to ratify the ERA. With its ratification, the ERA would reinforce the constitutional right to an abortion by clarifying that the sexes have equal rights, which would require

judges to strike down anti-abortion laws because they violate the constitutional right to privacy and sexual equality."

3. The congressionally imposed deadline to ratify the ERA was 1982:

a. Any attempt to ratify the ERA is a futile exercise. Congress put a deadline on the ratification for a reason and it cannot be simply set aside. When the ratification deadline passed, the U.S. Supreme Court dismissed all cases related to the ERA because they became moot. *Nat'l Org. for Women, Inc. v. Idaho*, 459 U.S. 809, 809 (1982).

b. If Arizona ratifies the ERA and becomes the 38th and last state needed to ratify, it would likely embroil Arizona in lengthy and expensive court cases.

CONCLUSION

The Arizona Legislature should not ratify the Equal Rights Amendment. The Fifth and Fourteenth Amendments already guarantee equal protection under the law, and countless federal, state, and local laws already prohibit sex discrimination and unequal pay. Moreover, the ERA could enshrine the right to an abortion in the U.S. Constitution, and it would likely embroil Arizona in lengthy and expensive court cases because the ratification deadline was 1982.

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