

Testimony of Minnesota Citizens Concerned for Life
4249 Nicollet Avenue South
Minneapolis, MN 55409

To Minnesota House Judiciary Committee Hearing

Feb. 1, 2022

Pro-lifers are strong supporters of equal rights, and in fact, that is the reason we are pro-life—we believe that all humans, regardless of circumstance, race, gender, religious belief, disability, age, stage of development, sexual orientation or any other difference, should all be afforded equal rights under the law.

However, equal rights amendments have a history of discriminating against less developed humans - those yet to be born - and we do object to this. ERAs have been used in multiple states to rule as unconstitutional various pro-life laws (examples: New Mexico, Connecticut).

For decades, many prominent pro-abortion organizations have argued that the proper legal interpretation of the language contained in the 1972 ERA, which is very similar to Minnesota's proposed ERA and the ERAs adopted by some states is to invalidate all restrictions on taxpayer-funded abortions – and also to invalidate virtually any other law that distinguishes between abortion and other “medical procedures.”

The legal argument essentially is this: Only females seek abortions, so any governmental policy that restricts access to abortion, or that treats abortion differently from procedures performed on men is, on its face, an abridgement of rights “on account of sex,” which is precisely what the ERA forbids.

A 1998 ruling by the New Mexico Supreme Court provides the clearest demonstration of the very real power of this legal argument. New Mexico adopted an ERA to its state constitution that is very similar to the proposal in Minnesota. The New Mexico ERA says, “Equality of rights under law shall not be denied on account of the sex of any person.”

In a 5-0 ruling, the New Mexico Supreme Court agreed that the state's refusal to fund elective abortions violated the state ERA. The court ordered the state to pay for all so-called “medically necessary” abortions. Within the context of abortion law, “medically necessary” is a legal term of art that simply means that the abortion was performed by a licensed professional. Thus, the order actually requires the state to pay for abortion on demand for Medicaid-eligible women.

Writing for the court, Justice Pamela Minzner wrote that denying funding for abortions “undoubtedly singles out for less favorable treatment a gender-linked condition that is unique to women.”

That ruling was based entirely on the state ERA.

By using the logic of the New Mexico court in regards to the ERA, even restrictions on late abortions or parental notification laws could be a form of illegal sex discrimination.

Similar justification was used in Connecticut to require the state to fund abortions. These rulings validate years of warnings from MCCL and our national affiliate, National Right to Life, that ERAs can be used as powerful pro-abortion legal weapons, unless they are suitably amended.

MCCL has long advocated making proposed ERAs abortion-neutral. Adding the language “Nothing in this article [the ERA] shall be construed to grant, secure, or deny any right relating to abortion or the funding thereof” would be an “abortion neutralization” amendment that would remove any need for opposition by pro-life groups like MCCL. But for all the reasons stated above, MCCL and Minnesota’s pro-life community strongly oppose an ERA that is not abortion neutral.