national RIGHT TO LIFE committee, inc.

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To: Legislators, journalists, and other interested persons

From: National Right to Life Committee (NRLC), Washington, D.C., 202-626-8820

Re: Attempt to resurrect the federal ERA heats up in the Arkansas legislature

Date: Wednesday, February 7, 2007

The State Agencies & Governmental Affairs Committee of the Arkansas House will hold a hearing today (February 7, 2007) and vote on HJR 1002, a resolution that supporters claim would make Arkansas the 36th state to ratify the federal "Equal Rights Amendment" submitted to the states by Congress in 1972.

A majority of the House has cosponsored the resolution, but some sponsors are now having second thoughts as they learn of serious problems in both the process behind and the substance of the resolution.

"THREE-STATE STRATEGY"

HJR 1002 is part of the so-called "three-state strategy," which is based on the premise that the U.S. Supreme Court was wrong in 1982 when it said that the 1972 ERA was dead because it had not obtained the 38 states required for ratification by the deadline established by Congress. A national organizer for the "three-state" campaign is quoted in the *Kansas City Star* (February 7) explaining, "This is very much under the radar." According to the national pro-ERA newsletter "The ERA Campaigner" (Jan. 31), "The hopes of ERA supporters all over the country are now high that the Arkansas legislature will ratify the ERA within the next few weeks."

The "three-state strategy" is an attempt to evade the requirements for amending the federal Constitution. While the 27th Amendment (dealing with congressional pay raises) was deemed ratified after 203 years, Congress did not attach a deadline to that amendment. In contrast, when Congress proposed the federal ERA in 1972, it attached a seven-year deadline -- and 26 of the ratifying state legislatures explicitly referred to that deadline in their ratifying resolutions. (Moreover, five of the 35 ratifying state legislatures rescinded their ratifications before the deadline.)

Despite these facts, if three states adopt resolutions such as HJR 1002, Congress would be forced to vote on whether to declare the 1972 ERA as ratified. Whatever Congress does, the issues would ultimately be presented to the U.S. Supreme Court.

Similar ratification resolutions have been introduced this year in a number of other states that never ratified the 1972 ERA, including Arizona, Florida, Illinois, Missouri, and Mississippi.

THE ERA-ABORTION CONNECTION – NOT JUST THEORETICAL

The National Right to Life Committee (NRLC) and its state affiliates, including Arkansas Right to Life, are opposed to HJR 1002 and similar "resurrection resolutions" because the sweeping language of the proposed 1972 federal ERA would be used as a legal weapon against virtually all laws that regulate abortion, including laws that have survived scrutiny by the federal courts under *Roe v. Wade*. In fact, state ERAs with similar language have already been used for such purposes in several states. For example, two states, Connecticut and New Mexico, are now under ERA-based court orders to pay for abortions under their state-funded Medicaid programs.

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New Mexico in 1973 adopted a state ERA ("Equality of rights under law shall not be denied on account of the sex of any person") virtually identical to the 1972 federal proposal. In 1998, every justice on the New Mexico Supreme Court agreed that the state ERA makes it unconstitutional for the state Medicaid program to refuse to fund "medically necessary" abortions (which merely means, abortions performed by licensed medical professionals) if procedures sought by men (e.g., prostate surgery) are funded. *(NM Right to Choose / NARAL v. Johnson*, No. 1999-NMSC-005 – you can read or download the ruling here: http://www.nrlc.org/Federal/era/Index.html)

The New Mexico Supreme Court ruling (1) was based entirely on the ERA; (2) was unanimous; and (3) was a complete adoption of the legal interpretation of ERA urged on the court by NARAL, Planned Parenthood, NARAL, the ACLU, NOW, the League of Women Voters, and other pro-ERA groups in briefs. Writing for the unanimous court, Justice Pamela Minzner wrote that "there is no comparable restriction on medically necessary services relating to physical characteristics or conditions that are unique to men. . . . [the restriction on funding abortions] undoubtedly singles out for less favorable treatment a gender-linked condition that is unique to women." This same analysis – that limits on abortion are by definition a form of sex discrimination and therefore impermissible under ERA – can be used to invalidate any federal or state restrictions that are specific to abortion, even limits on partial-birth abortions and third-trimester abortions (since these are sought "only by women"); federal and state "conscience laws" that protect medical professionals, and parental notification and consent laws. In fact, the ACLU "Reproductive Freedom Project" has published a booklet that encourages pro-abortion lawyers to use state ERAs as legal weapons against state parental notification and consent laws.

For additional documentation on both the deadline issue and the ERA-abortion connection, please see the documents posted on the NRLC website here: http://www.nrlc.org/Federal/era/Index.html

INTERVIEWS AVAILABLE

Douglas Johnson, director of the National Right to Life legislative office in Washington, D.C., is available for interviews regarding the national effort to "resurrect" the long-expired 1972 ERA, and regarding the way in which ERAs and the abortion issue intersect. For over 20 years, Mr. Johnson has been a nationally recognized authority on the relationship between ERAs and abortion-related laws. He has authored such articles as "Aborting the ERA" (*American Politics* magazine), "E.R.A. and Abortion: Really Separate Issues?" (*America* magazine), and "New Mexico Supreme Court Says State ERA Requires State to Pay for Elective Abortions" (*National Right to Life News*, Dec. 10, 1998). Mr. Johnson, who has participated in debates on numerous nationally broadcast radio programs, including NPR's "The Diane Rehm Show" and "To the Point," welcomes opportunities to debate both the process and substance of the proposed Arkansas ERA resolution with pro-ERA spokespersons.

"We'd like to see more candor by the pro-ERA side in Arkansas," Johnson commented. "In other states, major national pro-ERA organizations have argued in court that laws limiting tax-funded abortions or requiring parental consent for minors' abortions violate ERAs -- so they should stop telling Arkansas legislators that the ERA has no connection to abortion. Arkansas lawmakers also need to know that the U.S. Supreme Court declared the 1972 ERA dead decades ago, so the current effort is an attempt to evade the proper constitutional amendment process."

To request an interview or to schedule a broadcast appearance by Mr. Johnson, please call the NRLC Federal Legislation Department at 202-626-8820, or send e-mail to Legfederal@aol.com.