Saying the Equal Rights Amendment would not affect abortion is wrong

By Douglas Johnson

THE March 31 editorial in favor of a resolution in the Missouri Legislature to resurrect the Equal Rights Amendment proposed by Congress in 1972 referred to "hoary, scare stories," among these the argument that the "ERA will lead to taxpayer-financed abortions." The editorial writer asserted that there is "no evidence" for such an "emotional" claim, and suggested it was invented by ERA opponents "to short-circuit rational debate."

That is a serious charge. But the editorial was no example of "rational debate." It ignored substantial and concrete evidence that the specific ERA language could have a sweeping pro-abortion impact.

COUNTERPOINT

In fact, many prominent pro-abortion organizations such as the ACLU have argued for years that the proper legal interpretation of the language of the 1972 ERA, and similar language in the ERAs adopted by some states, is to invalidate all restrictions on taxpayer-funded abortions — and to invalidate virtually any law that distinguishes between abortion and other "medical procedures."

Their legal argument boils down to this: Only females seek abortions, so any government policy that restricts access to abortion, or that treats abortion differently from procedures performed on men is, on its face, an abridgment 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 and most recent demonstration of the very real power of this legal argument. Every justice on the New Mexico Supreme Court agreed that the classic ERA language in its state constitution mandates taxpayer-funding of abortions. The unanimous court held that a state ban on tax-funded abortions "undoubtedly singles out for less favorable treatment a gender-linked condition that is unique to women."

The lawsuit that urged the court to adopt the doctrine that the ERA mandated state-funded abortion was filed by the state affiliates of the National Abortion and Reproductive Rights Action League and Planned Parenthood. Supporting briefs were filed by such major national groups as the ACLU, the Center for Reproductive Law & Policy and the NOW Legal Defense and Education Fund, and by the state's Women's Bar Association, Public Health Association and League of Women Voters.

When questioned about the New Mexico ruling, some ERA supporters respond that the U.S. Supreme Court has previously reviewed abortion-related restrictions under a "privacy right" analysis, and has ruled (5-4, in 1980) that this "privacy right" does not invalidate a law (the Hyde Amendment) restricting federal Medicaid funding of abortion. The proposed federal ERA would not "change" these past "privacy" rulings, they assert.

This response begs the question. The U.S. Supreme Court's rulings were reached under a Constitution that lacks the ERA's absolute prohibition on laws that diminish "equality of rights . . . on account of sex." The real question is how that ERA language would be used in future cases involving abortion-related laws, including laws restricting state taxpayer funding of abortions, banning partial-birth abortion, protecting conscience rights of pro-life medical providers and requiring parental notification for minors' abortions.

Since 1983, the National Right to Life Committee has insisted on an "abortion-neutralization amendment" to any federal ERA. The amendment would add the sentence, "Nothing in this (ERA) article shall be construed to grant, secure or deny any right relating to abortion or the funding thereof."

Pro-abortion and many pro-ERA groups strongly oppose this revision. It is pretty clear why.

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