national RIGHT TO LIFE committee, inc.

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February 15, 2003

Re: "Equal Rights Amendment" and Abortion

Dear Member of Congress:

According to a recently published report, Congresswoman Carolyn Maloney and Congressman Jim Leach are seeking cosponsors for a new resolution to add the "Equal Rights Amendment" to the Constitution. For the reasons explained below, the National Right to Life Committee (NRLC) urges you not to cosponsor or otherwise support the Maloney-Leach resolution in its current form.

Leading pro-abortion groups – including NARAL, the ACLU, and Planned Parenthood -- have strongly urged state courts to construe state ERAs to require tax-funded abortion on demand. They have had some successes, most recently in the New Mexico Supreme Court, which ruled unanimously that the state ERA requires tax-funding of abortion. You can read the New Mexico Supreme Court ruling and other documentation on the ERA-abortion connection on the NRLC website at www.nrlc.org/Federal/ERA/Index.html.

The Maloney resolution would add to the Constitution the following prohibition, "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." This is very similar to the language of the ERA which New Mexico added to its state constitution in 1973, which says, "Equality of rights under law shall not be denied on account of the sex of any person." **On November 25, 1998, the New Mexico Supreme Court -- by a vote of 5-0 -- ruled that such language prohibits the state from restricting abortion differently from "medically necessary procedures" sought by men, and the court ordered the state to pay for elective abortions under the state's Medicaid program.** (*NM Right to Choose / NARAL v. Johnson*, No. 1999-NMSC-005)

In its ruling, the court merely adopted the construction of the ERA urged upon it by Planned Parenthood, the National Abortion and Reproductive Rights Action League, the ACLU, the Center for Reproductive Law and Policy, and the NOW Legal Defense and Education Fund. The doctrine that the ERA language invalidates limitations on tax-funded abortion was also supported in briefs filed by the state Women's Bar Association, Public Health Association, and League of Women Voters.

These briefs, and a court's agreement with their argument, should not come as any surprise to knowledgeable observers. During the 1970s and 1980s, many pro-ERA polemicists insisted that there was "no connection" between ERAs and abortion, but NRLC warned

otherwise. As we predicted, pro-abortion advocacy groups have increasingly employed the ERA-abortion argument in state courts, and in New Mexico we see the devastating result of enacting an ERA that does not include explicit abortion-neutral language.

If any law that treats abortion any differently from any other "medical procedure" is deemed to violate the "standard" ERA language, such as that proposed by Congresswoman Maloney, then no significant limitation on abortion would survive under such an ERA. Under this doctrine, the proposed federal ERA would invalidate the federal Hyde Amendment and all state restrictions on tax-funded abortions. Likewise, it would nullify any federal or state restrictions even on partial-birth abortions or third-trimester abortions (since these are sought "only by women"). Also vulnerable would be federal and state "conscience laws," which allow government-supported medical facilities and personnel -- including religiously affiliated hospitals -- to refuse to participate in abortions.

All of these results could be avoided if the following **abortion-neutralization amendment** -- originally proposed by Congressman Sensenbrenner in 1983 -- is added:

> **"Nothing in this article [the ERA] shall be construed to grant, secure, or deny any right relating to abortion or the funding thereof."**

This proposed revision would *not* change the current legal status of abortion, nor would it permit the ERA itself to be employed for anti-abortion purposes. Rather, the revision would simply make the ERA itself *neutral* regarding abortion policy. NRLC would withdraw its opposition to the proposed federal ERA if this abortion-neutral amendment was added.

Finally, for the same reasons that we oppose the Maloney-Leach resolution, we ask you not to cosponsor H. Res. 38, an odd measure sponsored by Congressman Robert Andrews. H. Res. 38 expresses the view that Congress should declare the original ERA submitted to the states in 1972 to be ratified, if three more states now declare it to be ratified -- even though the legal deadline for ratification passed without ratification by the required 38 states.

Sincerely,

Douglas Johnson
Legislative Director

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