

A. ERA FAQ'S:

- a. **Currently 26 states – a majority of states – have an Equal Rights Amendment.**
- b. **The word “sex” appears in 22 of those 26 states’ constitutions. Keep in mind the word gender defines sex, and the word sex defines gender: they are interchangeable in the courts.**
- c. **The use of the word “sex” has long been determined to refer to all, as underscored by the recent TITLE VII Supreme Court decision, where Justice Neil Gorsuch reasoned: “It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer’s mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no other reason than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague ... The affected employee’s sex is a but-for cause of his discharge.”**
- d. **Most state ERAs have been around for 40 years. The oldest, in California, has been around for 140 years. We are not entering untrodden territory: this proves there is nothing apocalyptic about the ERA.**
- e. **An ERA in the Minnesota Constitution would prohibit laws and policies based on historical stereotypes. The ERA neither desires nor purports to ignore that there are physical differences between men and women, but we know from the briefest of historical reviews that stereotypes about women have formed the basis for limiting their role in society. For example, in the U.S. Supreme Court case of Myra Bradwell v. State of Illinois (1873), Bradwell was denied the right to practice law in Illinois because “[t]he natural and proper timidity and delicacy which belongs**

to the female sex evidently unfits it for many of the occupations of civil life ...". In 1914, a New Mexico court noted that in the old common law "women were incapable mentally of exercising judgment and discretion and were classed with children, lunatics, idiots, and aliens." Similar stereotypes had to be overcome to win the 19th Amendment - a woman's right to vote; to serve as jurors; to own property; to inherit equally; to serve in public office; to own credit cards; and the list goes on.

- f. Why do we need an ERA? One answer is because of state laws and originalists' interpretations. Some originalists like Supreme Court Justice Neil Gorsuch and the Late Justice Antonin Scalia interpret the words of the Constitution as they were understood at the time. Example of 'originalism': State of South Carolina in *Boergerfell v. Hodges* 2015: The state argued against same-sex marriage and in doing so the state took several swipes at the Equal Protection Clause as part of the 14th Amendment and at the rights of women. If the ERA was in the constitution, we would not have to rely on the 14th Amendment and interpretations of its original intent from the year 1868.

B. REASONS for the ERA:

1. The ERA in our state constitution would provide the constitutional basis that give women victimized by gender-based violence legal recourse in our courts. *In 2000, the Supreme Court struck down the provision of the Violence Against Women Act that had enabled college freshman, Christy Brzonkala, to bring a case against the varsity football players who raped her. The Supreme Court held that this kind of case did not fall within the scope of the Commerce Clause of the Constitution (the Constitutional basis on which the Violence Against Women Act had been passed) and so there was no constitutional basis for the law.*

- 2. The ERA would provide a constitutional basis for claims of gender-based violence. In 2005, the Supreme Court denied justice to Jessica Gonzales, whose three daughters were killed when the police failed to enforce a court order of protection against her husband. The Supreme Court held that there was no constitutional basis for her claim because her order of protection was not a property right covered by the protection of the Due Process Clause.**
- 3. The ERA could help set more realistic legal standards for sex discrimination at work, so it would be more possible to prove. In 2011, the Supreme Court ruled against Betty Dukes in the Walmart case, noting that even if statistics established a pattern of lower pay and slower promotion in every one of Walmart's 3,400 stores, it would not be enough to justify a class action by women who worked at Walmart unless there was an express policy of discrimination. The lower salaries and lesser advancement by women across the country resulting from discretionary manager employment decisions and the so-called "Walmart Way", a culture infused with sex discrimination, were found to be beyond the reach of the courts.**
- 4. The ERA could change outcomes which depend on the legislative loophole of a "factor other than sex" to uphold unequal pay for equal work and perpetuate pay inequity. In 1982, Lola Kouba lost her case against Allstate Insurance Company. She and her colleagues were doing the exact same job, but her guaranteed minimum salary was \$825/week while their guaranteed minimum salary was \$1000/week. Allstate argued successfully that it was not discriminatory to pay Kouba less because she had been earning less in her prior job than her male colleagues had earned in their prior jobs. Her lower prior salary was found by the court to be a "factor other than sex"—one of the exceptions in the Equal Pay Act and Title VII of the Civil Rights Act, which**

- prohibit wage discrimination on the basis of sex. Relying on this case, in 2013, a court dismissed the same claim by Tracy Rexroat who worked for the Arizona Department of Education where she earned \$17,000/year less than her male colleagues.*
- 5. The ERA would help ensure that women can work safely and continue to earn needed income during their pregnancy.** *Peggy Young was forced out of work by UPS during her pregnancy. UPS was not legally required to reassign her temporarily to a job that did not require heavy lifting in the same way UPS is legally required to temporarily reassign workers with job-related injuries. UPS routinely offers its drivers who lose their licenses due to drunk driving temporary reassignment to jobs that do not involve driving. The ERA would help require employers to make reasonable accommodations for pregnant women in the workplace, in the same way they are required to make reasonable accommodations in the workplace for people with disabilities. Doris Garcia, a pregnant worker, was fired by Chipotle for taking too many bathroom breaks and keeping a water bottle handy while at work. For the first time in her life, she was forced to seek public assistance. Doris does not have the same legal right to reasonable accommodations that people with disabilities have under the law.*
- 6. The ERA would have obligated the Supreme Court to consider the discriminatory impact of Hobby Lobby's claim to religious freedom on the women employed by the company.** *In the 2014 Hobby Lobby case, the Supreme Court held that an employer had the right to deny women employees access to contraceptives through health insurance. The decision, which does not consider the negative impact of this policy on women's health and wellbeing, did not use the word "discrimination" even once.*

- 7. The ERA would require the Supreme Court to use the higher standard of “strict scrutiny” rather than “intermediate scrutiny” in sex discrimination cases, similar to the standard used in racial and religious discrimination cases.** *In 2001, the Supreme Court ruled that Tuan Ahn Nguyen was subject to deportation from the US after he was convicted of a criminal offense. Nguyen, born in Vietnam to a Vietnamese mother and an American father, did not have a lifelong right to US citizenship, which he would have had if he had been born to an American mother. Despite the efforts of his father, who had raised Tuan as a single parent in the US, the Supreme Court upheld the law that gives American fathers lesser rights to confer citizenship on their American children than American mothers have. The Court used a standard of review for sex discrimination known as “intermediate scrutiny”, where the interest of the government must be found “important” and the law under review must be found “substantially related” to that interest. For cases involving race and religion, a higher standard of review known as “strict scrutiny” is used by the Supreme Court, a “compelling” interest is required and the law under review must be seen as “necessary”.*
- 8. The ERA would ensure legal protection gaps are covered.** *There are many laws in place that provide protection from discrimination for women in schools, in employment, during pregnancy and in many other walks of life. However, these laws are not comprehensive in their scope or their application. Title VII of the Civil Rights Act is limited, for example, to workplaces with 15 or more employees, which leaves those who work for small companies completely unprotected. Title IX, which addresses discrimination in education, only applies to educational institutions that receive federal funding, not to private schools like one called St. Paul’s, where the “Senior Salute” ritual has encouraged sexual assault.*

9. The ERA would catch Minnesota up to the majority of states and help establish the US as a global leader on women's rights. We cannot hope for our country to be a true global leader on women's rights when we lack legal recognition of women's equality not only in our international legal commitments but also in our own state and federal constitutions. The US is one of only seven countries in the world that has not ratified the international bill of rights for women - known as CEDAW.

C. To Opponents - Truth is not a fungible concept. Pushbacks:

- a. ON Public Funding for Abortion:** NO STATE ERA HAS RESULTED IN THE EXPANSION OF ABORTION. Medicaid benefits come from a combination of federal and state funds. Federal benefits are the minimum, and a state may add to those benefits. The federal government pays for abortions only when the life of the mother is at risk, or in cases of rape or incest. Most states have chosen not to expand abortion benefits. **Regarding the New Mexico Case- which Antis like to bring up:** NM chose years ago to expand Medicaid benefits to include health-threatening, pregnancy-related medical conditions. That particular case was an attempt to rollback the list of covered conditions. The court blocked the rollback because men's medically necessary needs were fully covered, and that case would have resulted in a program that does not apply the same standard of medical necessity to both men and women.
- b. ON Sex-segregated prisons:** There are privacy & safety considerations that justify separate prisons. The ERA does not state that women & men must be treated identically: it means there must be a compelling, rational basis for the different treatment.
- c. ON Equal participation in the Military:** Service in the military is voluntary. Congress has always had the authority to decide whether to draft women and

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men. They came close to doing so during WWII, but chose not to. At any time, Congress can make that call.

- d. ON Threatening family life: Former Supreme Court Justice Sandra Day O'Connor said, "I do not share the concern expressed by some that it's ratification would threaten family life... the ERA recognizes the fundamental dignity and individuality of each human being." She was a Republican member of the AZ legislature who was the first legislator to introduce the ERA into Arizona.
- e. ON women in sports: Privacy & safety considerations are taken into consideration in court decisions; they will be weighed in issues that concern the health and wellbeing of those involved.
- f. ON LGBTQIA & Transgender rights: The ERA can be used by all, including men, women, non-binary Transgender individuals – it means the law will be applied equally as it relates to discrimination on the basis of gender/sex because all means all. So, when it come to the law, the real question is: Who do you want to discriminate against?