Testimony in Support of SCR 4010

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February 5, 2021

Good morning Chairman Vedaa and members of the Senate Government and Veterans Affairs Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying on behalf of our organization and its constituents across North Dakota for you to please render a "DO PASS" on Senate Concurrent Resolution 4010.

The Federal Equal Rights Amendment was submitted to the states for ratification in 1972 with a seven-year deadline. In 1972, federal and state laws were still woefully inadequate in protecting women, though with the earlier passage of women's suffrage and the Civil Rights Act of 1964 the ball was already rolling. Still, in 1972, schools could discriminate against girls, refuse to offer girl athletic programs or extracurricular activities. Women could be fired for becoming pregnant, couldn't attend military academies, and didn't necessarily have the right to sit on juries.

Against this landscape, North Dakota ratified the Federal ERA[1] in 1975. But since ratification, the legal protections of women in the law have cascaded into a significant collection of rights.

In 1972, Title IX was passed, ensuring equal protection and access for girls and women in school academics and athletics. In 1975, the Supreme Court held that the exclusion of women from juries was unconstitutional.[2] In 1978, the Pregnancy Discrimination Act protect employed pregnant women. Legal protections for women from sexual harassment, discrimination in schools, and domestic violence were instituted. Women's rights regarding jury-duty, military service and family leave were codified. Today, the law unequivocally protects women.[3] And all of this happened without a federal ERA. In other words, women and men have achieved equal legal rights through alternate means, in absence of the 1972 Equal Rights Amendment.

Further, we often hear about the pay gap between sexes as evidence for an ERA, as I'm sure you will encounter in testimony opposed to this resolution. However, one of the most recent comprehensive studies from Pew Research Center, a nationally respected firm, noted that, "Much of the gap has been explained by measurable factors such as educational attainment, occupational segregation and work experience."[4]

So, what do supporters of the ERA really want? Looking at state-level ERAs provides ample evidence. ERA language offers "equal rights" which leaves a blank slate for courts to essentially erase protections for women from the law and make-up rights out of thin air. That may sound extreme, but it has already been happening.

In Maryland, the Court of Appeals held a husband was no longer required to pay alimony, because a law compelling such payments violated the state's ERA, placing a husband and wife in an unequal position.[5] Under a Pennsylvania ERA, the courts found a father did not have to pay child support for his children because, they claimed, it placed mothers and fathers in an unequal position.[6] There are quite a few more examples of courts erasing the legal protections women have obtained simply because of state-level ERAs.

Biology is not bigotry. Our society and laws should acknowledge and respect valid sex-based distinctions. For example, pregnancy accommodations can only apply to women, because only women get pregnant. It's absurd to say that because pregnancy accommodations can't also apply to men, this is discrimination so it should be erased. But this is the effect of the ERA in our modern political landscape.

In addition, and probably most egregiously, some states have found a Constitutional right to abortion within the language of their ERAs, arguing that to not provide abortions is sex-based discrimination.[7] Again, this is an example of an ERA being used to force so called "rights" into the law.

This is all to say nothing of when courts choose to interpret the word "sex" to mean gender. Some state legislatures and courts have decided wherever prohibitions on sex-discrimination appear in the law, sex should also be interpreted to mean gender.[8] This means a man, who says he is a woman, will be entitled to all the protections women have from male discrimination. This man will suddenly have the constitutional right to enter women's bathrooms, play on women's sports teams, gain admission into women's clubs, and earn women's scholarships. Programs that were designed to allow women the same opportunities as men. Men are literally stealing opportunities away from women under their state ERAs.

And this was all prior to the *Bostock v. Clayton County* case and President Biden's recent Executive Orders, which both underscore the urgency of this situation. It is precisely why we are, for example, currently considering legislation such as the Fairness in Girls' Sports bill (HB 1298) this session. To add yet another confirmation of these unfortunate actions with ratification of the ERA would be disastrous.

The radical language of the ERA is no longer in the interest of protecting a woman or her unique place in the law. Five other states have rescinded their ratification; Idaho, Kentucky, Nebraska, South Dakota, and Tennessee, bringing the number of states who do not support the Federal ERA to 18.[9]

On a personal level, my wife and daughter have certainly benefited from all the anti-discrimination laws enacted over the past 50 years, and I'm very thankful for that. They have had equal job opportunities, equal academic opportunities, been protected from sexual harassment, and many more positives. However, this was without any ERA being in place. I would be the first to admit that there are areas of life where sex discrimination still exists, but the sweeping and ambiguous language in the proposed federal ERA is going to cause a significant undermining of pro-life and pro-family values as it is interpreted by activist courts.

We agree North Dakota should have no part in the experiment that is being pushed on us. The Federal ERA would erase women's status in the law by ignoring necessary factual differences between the sexes, and potentially be used to require every state to provide a right to abortion. We support this resolution that declares that North Dakotans no longer need nor want a Federal ERA.

Therefore, I respectfully ask that you please vote Senate Concurrent Resolution 4010 out of committee with a "DO PASS" recommendation. Thank you for the opportunity to testify and I am now happy to stand for any questions.

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[1] Senate Concurrent Resolution No. 4007 (44th Legislative Assembly). 1975; Of Note House Concurrent Resolution No. 3032 (2007) was a resolution reconfirming ND commitment to the ratification of the federal ERA.
[2] *Taylor v. Louisiana*, 419 U.S. 522 (1975).
[3] Pregnancy Discrimination Act (Pub. L. 95-555).
[4] https://www.pewresearch.org/fact-tank/2019/03/22/gender-pay-gap-facts/
[5] *Coleman v. State*, 37 Md. App. 322 (1977) (holding: To require a husband to pay alimony but not a wife was a distinction based solely upon sex and a violation of the sates ERA).
[6] *Conway v. Dana*, 456 Pa. 536 (1974) *see also* Albert Einstein Medical Center v. Nathan 1978 Pa. Dist. & Cnty. Dec. LEXIS 421 (1978) finding similarly that a husband should not be liable for a wife's hospital bills.
[7] *New Mexico Right to Choose/NARAL v. Johnson*, Supreme Court of New Mexico. November 25, 1998.
[8] Phyllis A. Dow, *Sexual Equality, the Era and the Court - A Tale of Two Failures*, 13 N.M. L. Rev. 53 (1983).
[9] 13 States have not ratified: AL, AZ, AR, FL, GA, LA, MS, MO, NC, OK, SC, UT, VA