ERACOALITION FUND FOR WOMEN'S EQUALITY

Ten Ways in Which the ERA Could Have Made a Difference

1. **The ERA would give Congress the constitutional basis to pass a law that gives women victimized by gender based violence legal recourse in the federal 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 loop hole 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.

6. **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.

7. **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 well being, did not use the word "discrimination" even once.

8. **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".

9. **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 St. Paul's, where the "Senior Salute" ritual has encouraged sexual assault.

10. **The ERA would 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 rights not only in our international legal commitments but also in our own Constitution. The US is one of only seven countries in the world that has not ratified the international bill of rights for women. As Justice Antonin Scalia has said, "Certainly the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn't." With an ERA, equal rights would be extended to women not just to vote (established by the 19th amendment) but also to all other rights.