



## Equal Rights Amendment

### Myths... and Facts

Through the years various groups and individuals have perpetuated the following myths regarding the Equal Rights Amendment:

**MYTH: The ERA will mean that women will be drafted!**

**FACT:** Congress already has the power to draft women into the armed services. Article I, section 8 of the Constitution gives Congress the power to raise armies but does not specify gender or age limitations.

**MYTH: The ERA will guarantee same sex marriages!**

**FACT:** The Equal Rights Amendment does not concern gender preferences nor sexual orientation. The Equal Rights Amendment says only that "equality of rights under the law shall not be denied because of sex." In this regard, sex means gender, just as it does in the 19th Amendment (which gave women the right to vote). Sexual orientation and sexual preferences do not fall under either the meaning or the intent of the ERA.

In a 1974 decision, *Singer v Hara*, the Supreme Court in Washington state rejected the arguments by same sex couples that their state ERA granted same sex marriage. Recently, in same sex marriage cases in Massachusetts(2003) and in Washington (2006), both state Supreme Courts rejected claims by gay marriage attorneys that their state ERA supported same sex marriage.

**MYTH: The ERA will mean that women can demand state funded abortions!**

**FACT:** The Equal Rights Amendment does not guarantee any rights not already in the Constitution. The Equal Rights Amendment simply says that the rights contained in the Constitution apply equally to men and women.

Abortion became a legal medical procedure in the United States because of a Supreme Court decision (*Roe v Wade*). Linking the ERA to abortion has been tried and has failed on numerous occasions. In cases where a state has been ordered to pay for a medically necessary abortion for a woman financially unable to obtain private medical services, the court's decisions have cited the "right of equal protection" and the "right to privacy," not their state Equal Rights Amendment.

**MYTH: What about unisex toilets?**

**FACT:** Once again a baseless myth. There are no laws against unisex toilets. Many restaurants and all planes have unisex toilets. Our right-to-privacy laws protect us from having to share toilet facilities simultaneously with members of the opposite sex.

**MYTH: We don't need the Equal Rights Amendment because women have equal rights under the 14th Amendment .**

FACT: The 14th Amendment gives no guarantees of equal rights to women. In fact, though it was passed to insure that former slaves were given equal protection under the law, black women were excluded from these rights, as were all white women. The 14th Amendment was not applied to a case involving sex discrimination until the 1970s when it was used in a case concerning equal pay. So while the 14th Amendment has occasionally been interpreted to benefit women, it offers them no guarantees.

MYTH: An amendment to the Constitution is unnecessary; there are laws against sex discrimination.

FACT: Equality of women and men is a fundamental human right and should be codified in our Constitution. The only right that the Constitution guarantees for women is the right to vote.

Laws are not guarantees. Laws can be eroded, amended or repealed, in many states by a margin of one vote. An amendment is necessary to insure that sex discrimination laws cannot be overturned or misinterpreted. But even laws meant to protect women from sex discrimination can discriminate based on sex. Although employees discriminated against because of their race or religion can avail themselves of a federal law providing unlimited recovery with no caps on damages (42 U.S.C. Sec. 1981), there is no comparable federal statute providing unlimited recovery for employees discriminated against because of gender. The cap on punitive damages because of sex discrimination is \$300,000, which is not enough to serve as a deterrent.

Clearly, laws have not protected women from sex discrimination in employment. The largest class action lawsuit in the history of this country is currently in the Court of Appeals. This case involves 2 million women who are suing Wal-Mart for sex discrimination. Cases of discrimination because of pregnancy have increased dramatically over the last few years. And women still on average make 75 cents for every dollar men make.

Recent studies have shown that women with 4-year degrees, on average earn less than men with high school diplomas. Women with Masters degrees earn less than men with 4-year degrees.

The Equal Rights Amendment would place sex discrimination in the same legal class as discrimination based on race and religion. This means that those accused of sex discrimination would have to prove why it was justified, rather than require the victim to prove that it occurred. This would greatly improve women's chances of winning sex discrimination cases and would act as a deterrent.

MYTH: Only women are discriminated against because of their gender.

FACT: Although the impact of the ERA will be greatest for women, there are laws and practices that discriminate against men. For instance, children born overseas to American women are automatically given American citizenship, whereas the children born overseas to American men are not. In the areas of child custody and child support, men are more often discriminated against than women. And it has been shown that in some cases, men working in predominantly female jobs make less money than their female peers.

MYTH: What are the other effects the ERA would have?

FACT: The ERA would effect sex discrimination in insurance, Social Security, and pensions where women are penalized because of their gender and their positions in society as homemakers and care givers.

MYTH: Are there any other effects that the ERA might have on society?

FACT: In the 1960s the Civil Rights Act empowered African Americans and helped to change their status in American society; consequently our society no longer tolerates racism. Like the Civil Rights Act, the Equal Rights Amendment will provide the legal muscle that is needed to begin to eliminate sex discrimination in our society.