

# Maine Policy Review

---

Volume 28 | Issue 2

---

2019

## The Hobby Lobby Case and Arguments around an Equal Rights Amendment

Madeleine Archer

Follow this and additional works at: <https://digitalcommons.library.umaine.edu/mpr>



Part of the [Gender and Sexuality Commons](#), and the [Politics and Social Change Commons](#)

---

### Recommended Citation

Archer, Madeleine. "The Hobby Lobby Case and Arguments around an Equal Rights Amendment." *Maine Policy Review* 28.2 (2019) : 60 -61, <https://digitalcommons.library.umaine.edu/mpr/vol28/iss2/9>.

This Essay is brought to you for free and open access by DigitalCommons@UMaine.

# Margaret Chase Smith Library 2019 Essay Contest

Each year the Margaret Chase Smith Library sponsors an essay contest for high school seniors. The essay prompt for 2019 asked students to assess the arguments for and against an Equal Rights Amendment.

## FIRST-PLACE ESSAY

### The Hobby Lobby Case and Arguments around an Equal Rights Amendment

by Madeleine Archer

In September 2012, the Green family, acting as representatives for Hobby Lobby Stores, Inc., sued Katherine Sebelius, the Secretary of the Department of Health and Human Services, challenging the Affordable Care Act regulation that employment health plans cover certain types of contraception. The Greens claimed that providing such coverage violated the Christian beliefs by which they operated their company, which, unlike religious nonprofits, was not exempt from this requirement. In 2014, the Supreme Court ruled five to four in favor of Hobby Lobby, citing the Religious Freedom Restoration Act of 1993 and allowing closely held for-profit companies to deny employees health coverage of contraceptives in accordance with their owners' religious beliefs. All three female justices dissented.

The Supreme Court could not have reached its decision—one that likely causes far more damage to working women than it would have done to religious freedom—if an Equal Rights Amendment were in place. Giving business owners the opportunity to cite personal beliefs as justification for depriving women of a product that is in many cases a necessity reflects an

alarming trend in the interpretation of the Constitution: corporations qualify as “persons” under the Fourteenth Amendment, but it would appear that women do not.

According to the Alice Paul Institute, the Equal Rights Amendment to the Constitution would ensure that “equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex” (<http://www.alicepaul.org/era/history/>). This addition would invalidate the reasoning by which the Supreme Court reached their conclusion in *Burwell v. Hobby Lobby Stores, Inc.*, which was summarized by Justice Antonin Scalia as being that “the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn’t.” (Oyez n.d.). In short, the new amendment would eliminate the argument that the federal government cannot stop discrimination on the basis of sex, so it is therefore acceptable.

Similarly flawed reasoning seems to form the bedrock of most arguments against the Equal Rights Amendment, and opponents such as Phyllis Schlafly of STOP ERA have historically relied on visceral and value-laden appeals. These

include the old standbys of theological outrage, unsubstantiated claims about biology, and threats of societal collapse, as well as criticisms of the proposed amendment that are demonstrably unhinged from reality.

The first of these tactics, theological arguments, is most commonly used amongst conservative Christians, who claim that the amendment would go in opposition to God’s will and design for men and women. Not only does this belief hold for a minority of Christians, but the feelings of one religious group should not extend policy to the 30 percent of Americans who are not part of it (Pew 2015). More importantly, as a secular document, the Constitution does not exist for Christians alone; it exists to establish the rights of all US citizens, one of which guarantees the right for anyone to practice their religion, regardless of what it is.

Following similar reasoning, some conservatives argue that the proposed Equal Rights Amendment does not account for the biological differences between the sexes, and their inherently masculine or feminine characters. Aside from being scientifically unenlightened, this anti-egalitarian view ignores that, for the most part, women are held to exactly the same laws as men. If anything, as in the Hobby Lobby case and the myriad of other measures restricting access to reproductive health services, women are held to more high-stakes, sex-specific laws that often make it harder for them to exist as members of a free, just, and equal society.

The third argument that is pervasive amongst retrogressive discussions about feminist issues—and that is often applied to the Equal Rights Amendment—is that extending more rights towards women will upset the existing social

order. Over the decades, its conservative opponents have argued that the amendment would remove all restrictions on abortion (DeMarco 2018) and that it would force states to legalize marriage between women. This argument does not question the validity of a society where women are not held as equals; in fact, it holds that a place where they have fewer rights than men is a better one, an idea that has no place in modern society, least of all a society that touts liberty and equality as its leading principles.

The last argument used by opponents of the Equal Rights Amendment is criticism of it—and of its supporters—that is often unsubstantiated. This often takes the form of dividing women into anti- and pro-ERA groups and labelling them as good and bad, respectively. Such a tactic damages any hope of consensus on other topics among women and attempts to pit women against each other to distract from meaningful discussion. Another common criticism—and misconception—is that the amendment would negate previous policies that are designed to protect women. This is simply not true. Groups such as the Eagle Forum claim that it would require women to “be drafted and placed on front line combat in equal ratios to men” (Eagle Forum 2019) and that it would not allow women to be financially dependent on their spouse. Furthermore, the forum argues that the amendment would remove gender designations for bathrooms, locker rooms, and jails, putting women and girls at risk. Finally, they argue that it would place too much power in the hands of the federal government, as if the 27 other amendments do not. All of these arguments are demonstrably false, even reading from the language of the amendment itself.

The arguments against it bring this essay to what the Equal Rights Amendment does and contains.

The Equal Rights Amendment says nothing about military service or alimony, and it certainly takes no stance on removing signs on bathroom doors. It never even mentions women, because the amendment is purely focused on equality for all Americans. It is not designed to pander to any religious group, and it does not take into account any imaginary differences between men and women. It does not aim to upend society, but it leaves that option open if society should need upending. These are points that it holds in common with the Constitution of the United States, a document that is designed to be revised so that it can best serve the people. What the Equal Rights Amendment does do is to try to guarantee that both sexes have equal rights under the Constitution and to end the willing misinterpretation of the Constitution in ways that disadvantage half of the population. And in a society where women’s wellbeing takes the back seat to the antiquated religious values of companies, it is sorely needed. 🐉

#### REFERENCES

- DeMarco, Michael. 2018. *An Analysis of Arguments against the ERA*. Mount Laurel, NJ: Alice Paul Institute. <https://www.alicepaul.org/wp-content/uploads/2019/05/ERA-Anti-ERA-Arguments-08-2018.pdf>
- Eagle Forum. 2019. “10 Reasons to Oppose the Equal Rights Amendment.” Alton, IL: Eagle Forum. <https://eagleforum.org/topics/era/10-reasons-to-oppose-equal-rights-amendment.html>
- Oyez. n.d. “Burwell v. Hobby Lobby Stores.” <https://www.oyez.org/cases/2013/13-354> [Accessed March 20 2019]
- Pew Research Center. 2015. *America’s Changing Religious Landscape*. Washington, DC: Pew. <https://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/>



**Madeleine Archer** moved to Maine from the United Kingdom in 2012 and recently graduated from Lincoln Academy in Newcastle,

where she was a leading member of the Model UN, climate action, and outing clubs. She plans to pursue oceanography or marine biology following a gap year spent studying oceanic upwellings around Peru and the Canary Islands.