The Crimson
Abortion Link Endangers ERA Ratification

By [Linda S. Drucker](#)

September 30, 1980

Massachusetts feminists are invoking the state's Equal Rights Amendment to strike down a state law denying women Medicaid funding for abortions--a move that may so link the two issues that it could jeopardize the federal ERA's chances for ratification.

A lawsuit brought by the Massachusetts Civil Liberties Union contends that because pregnancy is "gender-specific," any restriction of state funding for abortions automatically discriminates against women--and therefore violates the state's ERA.

"You don't see the legislature cutting off funds for prostate operations," Karen Hudner, a Civil Liberties Union lobbyist, said yesterday.

The case, now pending before the Supreme Judicial Court, is the first time a legal link between the ERA and abortion funding has been invoked in court, Jean Marshall Crawford, a spokesman for the National Organization for Women, said yesterday.

When the state ERA was before the legislature in 1975, its proponents had, in fact, maintained that the measure was unrelated to abortion. A pamphlet published by the Committee to Ratify the Massachusetts ERA listed abortion as an area of "non-impact."

To pacify the qualms of some anti-abortion groups, ERA supporters solicited a legal opinion from Laurence H. Tribe '62, professor of Law, which said, "If the Supreme Court were to retreat from some of the implications of [its 1973 decision legalizing abortion], the resulting expansion in state power over abortions would in no way be impeded by the proposed ERA."

When the Supreme Court upheld the Hyde Amendment, which limits federal funding of abortions, it paved the way for similar decisions by the states.

And now, Tribe and others who denied the ERA would affect abortion funding, are saying, "The state ERA says what the court says it means and not what anyone promised it might mean."

The bill being challenged, which was passed by the legislature earlier this year, denies women Medicaid funding for abortions unless their lives are endangered by continuing the pregnancy.

Crawford calls the bill "one of the most restrictive pieces of anti-abortion legislation in the country

"Even the federal Hyde amendment permits funding in the case of incest or rape," she added.

A spokesman for a local anti-abortion group said that the state move to link the ERA to abortion funding would "kill the ERA nationally."

"Even if the judges do not buy their reasoning, in states that have not ratified the ERA legislators will say, 'Okay, it failed in Massachusetts, but that's no guarantee it won't work elsewhere,'" Henry C. Luthin, an attorney for Massachusetts Citizens for Life, said yesterday.

But Ethel Klein, assistant professor of Government, who teaches "The Politics of Women's Liberation," says that the suit will have little effect because the two issues have always been "implicitly linked."

"This case is only a legal argument validating a symbolic argument that has already been accepted," Klein said yesterday.

Besides, Hudner said, "While we discussed the political ramifications, when the lives of poor women who need abortions are at stake, we have no alternative. We have to marshall every argument."

The Civil Liberties Union also contends that the bill violates the "equal protection" provision of the state constitution because it discriminates against the poor.

"We are hoping it is this--and not the ERA argument--that the judge uses to back up his opinion," Hudner said yesterday.

The state is paying for Medicaid abortions until the ruling--which cannot be appealed--is issued within a few weeks.

All people are born free and equal and have certain natural essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting propert; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin.