



NEW YORK STATE  
BAR ASSOCIATION

Resolution and Reports of the New  
York State Bar Association  
**Women in Law Section**  
**Supporting Reproductive**  
**Health-Care Rights and**  
**Reproductive Autonomy and**  
**the New York State Equal Rights**  
**Amendment**

November 2022

The views expressed in this report are solely those of the Task Force/Committee and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.

## NEW YORK STATE BAR ASSOCIATION

### Resolution Adopted by the House of Delegates on \_\_\_\_\_

WHEREAS, the New York State Legislature has found that “comprehensive reproductive health care is a fundamental component of every individual's health, privacy and equality”<sup>1</sup> and that “New Yorkers deserve a constitution that recognizes that every person is entitled to equal rights and justice under the law regardless of who they are, whom they love, or what their families look like”;<sup>2</sup> and

WHEREAS, effective January 22, 2019, New York State enacted S.240/A.21,<sup>3</sup> which amended the New York State Public Health Law, Education Law, and Penal Law, and added new Article 25-A, the Reproductive Health Act, to the New York State Public Health Law<sup>4</sup>; and

WHEREAS, on June 13, 2022, New York State enacted six laws (together, the “June 13, 2022, Legislative Package”)<sup>5</sup> to protect patients and providers in anticipation of the U.S. Supreme Court’s final decision in *Dobbs v. Jackson Women’s Health Organization*, as follows: (i) S.9039A/A.10094A Establishes a Cause of Action for Unlawful Interference with Protected Rights; (ii) S.9077A/A.10372A Relates to Legal Protection for Abortion Service Providers; (iii) S.9079B/A.9687B Prohibits Misconduct Charges Against Healthcare Practitioners for Providing Reproductive Health Services to Patients Who Reside in States Where Such Services Are Illegal; (iv) S.9080B/A.9718B Prohibits Medical Malpractice Insurance Companies from Taking Adverse Action Against a Reproductive Healthcare Provider Who Provides Legal Care; (v) S.9384A/A.9818A Includes Abortion Providers and Patients in the Address Confidentiality Program; and (vi) S.470/A.5499 Authorizes a Study to Examine Unmet Health and Resource Needs and Impact of Limited Service Pregnancy Centers; and

WHEREAS, on June 24, 2022, the U.S. Supreme Court issued its decision in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, 597 U.S. \_\_ (2022), overturning *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*, cases which had recognized a right to abortion under the U.S. Constitution; and

WHEREAS, on January 21, 2022, the Executive Committee of the New York State Bar Association adopted an affirmative legislative proposal in support of passage of New York State Senate Bill S.1268, which proposed an amendment to Article 1 of the New York State Constitution in relation to equality of rights and protection against discrimination,<sup>6</sup> and the New York State Bar

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<sup>1</sup> <https://www.nysenate.gov/legislation/laws/PBH/2599-AA>.

<sup>2</sup> <https://www.nysenate.gov/legislation/bills/2021/s51002>.

<sup>3</sup> <https://www.nysenate.gov/legislation/bills/2019/s240>.

<sup>4</sup> <https://www.nysenate.gov/legislation/laws/PBH/A25-A>.

<sup>5</sup> <https://www.governor.ny.gov/news/governor-hochul-signs-nation-leading-legislative-package-protect-abortion-and-reproductive>.

<sup>6</sup> <https://www.nysenate.gov/legislation/bills/2021/S1268>.

Association had previously in 2019 adopted support for proposed equality amendments to the New York State Constitution and an Equal Rights Amendment to the U.S. Constitution; and

WHEREAS, on July 1, 2022, the New York State Senate and Assembly passed S.51002, a concurrent resolution of the Senate and Assembly proposing an amendment to Section 11 of Article 1 of the New York State Constitution in relation to equal protection,<sup>7</sup>

WHEREAS, federal legislation, titled the Women’s Health Protection Act of 2022,<sup>8</sup> has been proposed in the U.S. Senate and House of Representatives, to prohibit governmental restrictions on the provision of, and access to, abortion services; and

WHEREAS, federal legislation has been proposed that would ban abortion nationwide and/or diminish the current protections under New York law;

NOW, THEREFORE,

IT IS RESOLVED, that the New York State Bar Association supports the rights of individuals to choose legal reproductive health care, including abortion; and it is

FURTHER RESOLVED, that the New York State Bar Association supports the amendments to New York State Public Health Law, Education Law, and Penal Law, as enacted in New York State by the signing of S.240/A.21 in 2019; and it is

FURTHER RESOLVED, that the New York State Bar Association supports N.Y. Public Health Law Article 25-A as enacted in 2019; and it is

FURTHER RESOLVED, that the New York State Bar Association supports the June 13, 2022, Legislative Package, as enacted by New York State and supports the policies and intent of the legislative package enacted; and it is

FURTHER RESOLVED, that the New York State Bar Association supports S.51002 of 2022, as passed by the New York State Senate and Assembly, and as policy the proposal codified in this concurrent resolution to amend Section 11 of Article 1 of the New York State Constitution in relation to equal protection; and it is

FURTHER RESOLVED, that the New York State Bar Association supports passage of the Women’s Health Protection Act of 2022, and supports the policies and intent of this bill; and it is

FURTHER RESOLVED, that the New York State Bar Association opposes passage of laws that would ban abortion nationwide and/or diminish the current protections under New York law; and it is

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<sup>7</sup> <https://www.nysenate.gov/legislation/bills/2021/s51002>.

<sup>8</sup> <https://www.congress.gov/bill/117th-congress/senate-bill/4132>.

FURTHER RESOLVED, that the New York State Bar Association approves the report and recommendations of the Women in the Law Section; and it is

FURTHER RESOLVED, that the officers of the Association are hereby authorized to take such other and further action as may be necessary to implement this resolution.

# SECOND AMENDED REPORT OF THE NYSBA WOMEN IN LAW SECTION IN SUPPORT OF ITS PROPOSED RESOLUTION SUPPORTING REPRODUCTIVE HEALTH-CARE RIGHTS AND REPRODUCTIVE AUTONOMY AND THE NEW YORK STATE EQUAL RIGHTS AMENDMENT<sup>1</sup>

October 24, 2022

## I. INTRODUCTION

On June 24, 2022, the United States Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. (2022), overturning *Roe v. Wade*, 410 U.S. 113 (1973). When the *Dobbs* decision was leaked and then issued, overturning millions of Americans' constitutional right to abortion, bar associations across New York and the country issued strong statements in opposition to *Dobbs* and the potential impacts on other rights at stake (e.g., contraception access, same-sex relationships, and same-sex marriage). However, one prominent bar association – the New York State Bar Association (NYSBA or the Association) – could not speak as the Association on this important issue because it does not have a policy on reproductive health care.

The U.S. Supreme Court in *Dobbs* held that reproductive rights are a legislative issue.<sup>2</sup> NYSBA's mission statement makes clear:

Our mission is to *shape the development of law*, educate and inform the public, and respond to the demands of our diverse and ever-changing legal profession. *NYSBA advocates for state and federal legislation and works tirelessly to promote equal access to justice for all.*<sup>3</sup>

### Why Support this Proposal Now?

As a result of *Dobbs*, there are now, or soon will be, laws on the federal and New York State (NYS) level that need the immediate attention of the Association.

New York State has supported the right to reproductive health care, including abortion, for more than 50 years. NYS recently updated its laws with the Reproductive Health Act of 2019. NYS reaffirmed its commitment to reproductive health care and health-care providers in June 2022, when the New York Governor signed into law six pieces of legislation protecting reproductive and

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<sup>1</sup> This report amends the Report of the NYSBA Women in Law Section (WILS) in Support of its Proposed Resolution Supporting Abortion Rights and the New York State Equal Rights Amendment, dated August 22, 2022, and its amended report dated August 26, 2022.

<sup>2</sup> *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. \_\_ (2022), slip op. at 69. In July 2022, in *Dobbs*, the U.S. Supreme Court held that “the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.”

<sup>3</sup> See <https://nysba.org/about/> (emphasis added).

abortion rights for all.<sup>4</sup> However, the *Dobbs* decision paves the way for federal and state legislation that would place existing NYS reproductive health care rights at risk.

On the state level, we ask NYSBA to advocate for the current version of the Equality Amendment (ERA) to the NYS Constitution, S.51002. Since 2019, NYSBA consistently has adopted as policy three prior versions of the NY ERA legislation.<sup>5</sup> In 2019, NYSBA also adopted the Federal ERA as a policy of the association. The New York State ERA currently pending, S.51002, is a concurrent resolution of the Senate and Assembly proposing an amendment to Section 11 of Article 1 of the New York State Constitution in relation to equal protection and includes protections for reproductive health care and autonomy.<sup>6</sup> On July 1, 2022, the New York Legislature passed this version of the ERA to the NYS Constitution. The process for amending the NYS Constitution requires the ERA amendment to pass two separate legislative sessions and then be approved by referendum. This means the ERA will be on the State legislative agenda again in 2023 and, assuming it is passed again, it must then be approved by the voters, presumably in 2024.

On the federal level, bills were proposed that would impose nationwide restrictions on reproductive health care rights including abortion. If a nationwide abortion law passes, it would severely restrict, if not eliminate, the rights we have held under New York state law for over 50 years.

As detailed more fully below, the threats to women's and girls' health care and family planning are real. A majority of Americans support the right to choose, including in states where abortion has been strictly curtailed.<sup>7</sup> NYSBA cannot advocate on this important issue if it does not have a

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<sup>4</sup> These laws are: S.9039A/A.10094A (Establishes a Cause of Action for Unlawful Interference with Protected Rights); S.9077A/A.10372A (Relates to Legal Protection for Abortion Service Providers); S.9079B/A.9687B (Prohibits Misconduct Charges Against Healthcare Practitioners for Providing Reproductive Health Services to Patients Who Reside in States Where Such Services Are Illegal); S.9080B/A.9718B (Prohibits Medical Malpractice Insurance Companies from Taking Adverse Action Against a Reproductive Healthcare Provider Who Provides Legal Care); S.9384A/A.9818A (Includes Abortion Providers and Patients in the Address Confidentiality Program); and S.470/A.5499 (Authorizes a Study to Examine Unmet Health and Resource Needs and Impact of Limited Service Pregnancy Centers). See <https://www.governor.ny.gov/news/governor-hochul-signs-nation-leading-legislative-package-protect-abortion-and-reproductive> (attached as Exhibit A).

<sup>5</sup> See Exhibit B: <https://nysba.org/app/uploads/2020/03/19-20NYSBA11.pdf> (New York State Bar Association #11 Memorandum in Support of the 2019 ERA bill (prohibiting discrimination against a person based on “sex” and “pregnancy,” among other protected categories, circulated to the NYSBA Legislature on Feb. 28, 2019)); Women in Law Section Updated Memorandum in Support of Equal Rights Amendment to the New York State Constitution, Bills A.271 and A.272/S.517 (Feb. 6, 2019) (prohibiting discrimination against a person based on “sex” and “pregnancy”); Resolution of the Women in Law Section Supporting the New York State Equal Rights Amendment (S.1268) (Sept. 24, 2021) (prohibiting discrimination against a person based on “sex” and “pregnancy and pregnancy outcomes”, among other protected categories)).

<sup>6</sup> <https://www.nysenate.gov/legislation/bills/2021/s51002>.

<sup>7</sup> See New York State Bar Association's Women in Law Section Issues Statement on the Supreme Court's Decision in *Dobbs* Overturning *Roe v. Wade*, n.4, <https://nysba.org/new-york-state-bar-associations-women-in-law-section-issues-statement-on-the-supreme-courts-decision-in-dobbs-overturning-roe-v-wade/>.

policy. For this reason, it is critical that NYSBA adopt a policy supporting reproductive health care, including abortion, and reproductive autonomy.

As lawyers we are sworn to uphold the law. As leaders of the state bar, we are duty bound to raise our voices and advocate when individuals, including our members, are not treated equally under the law. Recently, the President of NYSBA, Sherry Levin Wallach, Esq., spoke of the importance of the need to act:

It is more important than ever that we seize every opportunity to work together. In light of the *Dobbs* decision, I believe that we have an obligation to act. As a leader for women and for equal rights for all, this section has a vital role to play. We must see this as the opportunity it is, we are in the right place at the right time. Because it's not just reproductive rights, but all our rights that are in jeopardy.<sup>8</sup>

The Women in Law Section urges NYSBA to adopt WILS' Report and Resolution Supporting Reproductive Health-Care Rights and Reproductive Autonomy and the current New York State ERA, so that we can maintain these important existing NYS health-care laws and preserve our right to reproductive health care and reproductive autonomy. This includes:

- (i) recognition of the rights of individuals to access legal reproductive health care, including abortion;
- (ii) support for amendments to the NYS Public Health Law, Education Law, and Penal Law, as enacted in NYS by the signing of S.240/A.21 in 2019;<sup>9</sup>
- (iii) support for N.Y. Public Health Law Article 25-A as enacted in 2019;<sup>10</sup>
- (iv) support for the June 13, 2022, Legislative Package as enacted by New York State<sup>11</sup> and support for the policies and intent of the legislative package enacted (*see* Exhibit A for summaries of the June 13, 2022 Laws);
- (v) support for S.51002<sup>12</sup> of 2022, the NYS Equal Rights Amendment (ERA), as passed by the New York State Senate and Assembly, and as policy the proposal codified

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<sup>8</sup> <https://nysba.org/dobbs-decision-presents-wide-ranging-ramifications-for-womens-rights/>.

<sup>9</sup> <https://www.nysenate.gov/legislation/bills/2019/s240>.

<sup>10</sup> <https://www.nysenate.gov/legislation/laws/PBH/A25-A>.

<sup>11</sup> *See* n.4, *supra*.

<sup>12</sup> *See* <https://www.nysenate.gov/legislation/bills/2021/s51002>.

in this concurrent resolution to amend Section 11 of Article 1 of the New York State Constitution in relation to equal protection;

- (vi) support, as a federal legislative priority, for passage of the Women’s Health Protection Act of 2022<sup>13</sup> and support for the policies and intent of this bill; and
- (vii) opposition to laws that would ban abortion nationwide and/or diminish the current protections under New York law.

## **II. NYSBA SHOULD SUPPORT REPRODUCTIVE HEALTH CARE RIGHTS INCLUDING THE RIGHT TO CHOOSE ABORTION**

When the Supreme Court issued its decision in *Dobbs*, WILS drafted a statement in opposition and, in doing so, learned that NYSBA does not have any policy regarding reproductive health-care rights, including abortion rights. As a result, WILS has prepared this report and the accompanying resolution asking NYSBA to adopt a policy supporting reproductive health-care rights.

### **A. Many Bar and Medical Associations Support Reproductive Health-Care Rights**

Bar associations across the country, including the American Bar Association<sup>14</sup> (ABA), the National Association of Women Lawyers<sup>15</sup> (NAWL), the Women's Bar Association of the State of New York<sup>16</sup> (WBASNY), New York County Lawyers Association<sup>17</sup> (NYCLA) and the NY City Bar Association<sup>18</sup> expressed their opposition to the *Dobbs* decision and their support for reproductive health care and abortion rights. Associations of medical professionals, including the American Medical Association<sup>19</sup> (AMA), the American College of Obstetricians and Gynecologists (ACOG), the American Academy of Pediatrics, and the American Academy of

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<sup>13</sup> See <https://www.congress.gov/bill/117th-congress/house-bill/8296> (emphasis added).

<sup>14</sup> <https://www.abajournal.com/web/article/aba-stands-up-for-abortion-same-sex-marriage-and-contraceptive-rights>; see also <https://www.americanbar.org/news/abanews/aba-news-archives/2022/08/aba-reaffirms-support-reproductive-rights/>.

<sup>15</sup> <https://www.nawl.org/page/reproductive-justice>.

<sup>16</sup> <https://rcwba.org/wbasny-supports-a-womans-right-to-make-her-own-reproductive-healthcare-decisions-and-strongly-opposes-the-leaked-united-states-supreme-courts-draft-decision-in-the-dobbs-v-jackson-w/>.

<sup>17</sup> [https://www.nycla.org/pdf/NYCLA%20Statement%20on%20SCOTUS%20Ruling%20re%20Dobbs%20\(1\).pdf](https://www.nycla.org/pdf/NYCLA%20Statement%20on%20SCOTUS%20Ruling%20re%20Dobbs%20(1).pdf).

<sup>18</sup> <https://www.nycbar.org/media-listing/media/detail/supreme-courts-overruling-of-roe-and-casey>.

<sup>19</sup> <https://www.ama-assn.org/about/leadership/dobbs-ruling-assault-reproductive-health-safe-medical-practice>.



Family Physicians, also issued statements opposing the *Dobbs* decision and supporting abortion rights.<sup>20</sup> As reported in the news,

The American College of Obstetricians and Gynecologists' position on abortion is that it should be legal and available to patients with healthy pregnancies up to fetal viability (when the fetus has a chance of surviving outside of the uterus). While it's generally understood to occur around 23 weeks, fetal viability is ultimately a "medical determination," according to the ACOG, and it may vary pregnancy to pregnancy.<sup>21</sup>

The various positions of the ABA, NAWL, WBASNY, ACOG, AMA, American Academy of Pediatrics, and American Academy of Family Physicians include: (i) abortion is health care; (ii) abortion bans pose an existential threat to the health, safety, and well-being of women, children, all child-bearing persons, and their families; and (iii) abortion bans are inequitable and perpetuate inequities.<sup>22</sup>

As we said in our own WILS statement in reaction to the *Dobbs* ruling,

The majority's decision . . . intentionally disregards the importance of women's autonomy over their lives, physical selves, and well-being. It takes away from women and all childbearing persons the right to make decisions about their own bodies, reproductive freedom, and healthcare. It subverts women's status as equal citizens under the law and the right to privacy and liberty under the 14th Amendment.<sup>23</sup>

## **B. NYS Has Supported Abortion Rights for Over 50 Years**

In New York State, abortion has been legal since 1970. New York expanded abortion rights in 2019.<sup>24</sup> In June of this year, in response to the leaked draft decision in *Dobbs*, NYS enacted legislation, including the June 13, 2022 Legislative Package, to expand abortion access within the

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<sup>20</sup>See, e.g., <https://www.cnet.com/health/medical/the-medical-community-says-abortion-access-is-health-care-heres-why/>; see also <https://www.aap.org/en/news-room/news-releases/aap/2022/aap-statement-on-supreme-court-decision-in-dobbs-v-jackson-womens-health-organization/>.

<sup>21</sup> *Id.*

<sup>22</sup> See n. 14, 15, 16, 19 and 20.

<sup>23</sup> See <https://nysba.org/new-york-state-bar-associations-women-in-law-section-issues-statement-on-the-supreme-courts-decision-in-dobbs-overturning-roe-v-wade/>.

<sup>24</sup> See <https://www.nysenate.gov/legislation/bills/2019/s240>; <https://www.nysenate.gov/legislation/laws/PBH/A25-A>.

State of New York, to help protect persons who travel here for abortion services, and to protect health-care providers who provide abortion services in the State.

As set forth above, NYS has introduced several ERA proposals. Following *Dobbs*, the NYS ERA proposal was modified once more to explicitly include a person’s “reproductive healthcare and autonomy” as a protected classification. To avoid any confusion, the bill’s sponsors made clear what this means in their supporting memorandum:

*It is not possible to achieve sex equality while prosecutors and state agencies single out pregnant people for punishment because of their pregnancy, the outcomes of their pregnancies and their reproductive healthcare decision making. And because the right to abortion is central to a pregnant person's equality, this amendment clarifies that any action that discriminates against a person based on their pregnancy, pregnancy outcome, reproductive healthcare, or reproductive autonomy is a sex-based classification. This is critical given the Supreme Court's recission of the constitutional right to abortion care. As one protected pregnancy outcome, abortion care is a fundamental right that is integral to a person's reproductive autonomy. Indeed, reproductive autonomy is the power to decide and control one's own contraceptive use, pregnancy, and childbearing. For example, people with reproductive autonomy can control whether and when to become pregnant, whether and when to use contraception, which method to use, whether and when to continue a pregnancy, and decisions in childbirth. And this is consistent with our state's long history of protecting bodily autonomy long enshrined in our common law, as established in 1914 with Justice Cardozo's famous articulation of the doctrine in *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 129-130 (1914) that every human being of adult years and sound mind has a right to determine what shall be done with his own body. The State shall further not use its police power or power of the purse to burden, limit, or favor any type of reproductive decision making at the expense of other outcomes, and, as consistent with section 17 of this article, shall guarantee rights and access to reproductive healthcare services.<sup>25</sup>*

On July 1, 2022, the New York Legislature passed this version of the ERA to the NYS Constitution, which would add “reproductive rights and autonomy” as a protected category.<sup>26</sup> As noted above, the ERA will be on the State legislative agenda again in 2023 and, assuming it is passed again, will go to a referendum, presumably in 2024.

Elsewhere in the United States, however, some states began to enact or trigger abortion bans. Within weeks, in some instances days, after the Court issued the *Dobbs* decision, ten states enacted laws banning almost all abortions, four states enacted laws banning abortion after six weeks, and

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<sup>25</sup> Sponsor Memo, <https://www.nysenate.gov/legislation/bills/2021/S51002> (emphasis added).

<sup>26</sup> <https://www.nysenate.gov/legislation/bills/2021/S51002>.

additional bans have been enacted or are about to be triggered.<sup>27</sup> Some states make no exceptions for victims of rape or incest.<sup>28</sup> The status of abortion in each state is constantly changing.<sup>29</sup>

WILS urges NYSBA to adopt as policy and legislative proposal Senate Bill S51002,<sup>30</sup> the ERA to the NYS Constitution that was passed by the State's Senate and Assembly on July 1, 2022, and as policy the proposal codified in this concurrent resolution to amend Section 11 of Article 1 of the New York State Constitution in relation to equal protection.

### C. Abortion Is Health Care

Abortion bans cannot stop tragic medical complications and violent criminal behavior. Soon after the first abortion bans went into effect, we began to read reports of their dreadful effects on women and children across the United States.

- In Ohio, a ten-year-old rape victim had to travel to Indiana for an abortion (before Indiana imposed its own abortion ban).<sup>31</sup>
- In Tennessee, doctors canceled an abortion while the patient was in the procedure room, despite acknowledging that the fetus was not viable, forcing her to travel to Georgia to terminate her pregnancy.<sup>32</sup>
- In Louisiana, a woman carrying a fetus that was missing part of its skull and would not survive, was denied an abortion in her home state.<sup>33</sup>
- In Texas and Wisconsin, women carrying non-viable fetuses were forced to wait until they showed signs of life-threatening infections before doctors would terminate the pregnancies.<sup>34</sup>

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<sup>27</sup> See <https://www.cnn.com/2022/08/25/politics/abortion-access-trigger-laws-idaho-tennessee-texas/index.html> (published Aug. 25, 2022).

<sup>28</sup> See <https://www.chicagotribune.com/nation-world/ct-aud-nw-abortion-conservatives-supreme-court-20220506-zdfjsw4cveora32emjhu3m4x4-story.html> (published May 6, 2022).

<sup>29</sup> See <https://www.washingtonpost.com/politics/2022/06/24/abortion-state-laws-criminalization-roc/>.

<sup>30</sup> See <https://www.nysenate.gov/legislation/bills/2021/s51002>.

<sup>31</sup> See <https://www.cnn.com/2022/07/14/us/indiana-ag-ohio-rape-victim/index.html> (published July 15, 2022); see also <https://www.cincinnati.com/story/news/2022/09/27/affidavits-2-more-raped-minors-were-denied-ohio-abortions/69520380007/>.

<sup>32</sup> <https://www.nytimes.com/2022/08/01/us/abortion-journey-crossing-states.html>.

<sup>33</sup> <https://news.yahoo.com/louisiana-mother-said-she-denied-003726187.html> (published Aug. 16, 2022).

<sup>34</sup> <https://www.nbcnews.com/health/health-news/abortion-laws-texas-wisconsin-forcing-pregnant-women-wait-care-rcna41678> (published Aug. 8, 2022).

- Patients of child-bearing age who are suffering from painful and often debilitating rheumatoid arthritis have been denied prescriptions for essential medications because they may cause abortions.<sup>35</sup>
- In states that prevent pregnant women from getting a divorce, pregnant women could not free themselves of abusive spouses.<sup>36</sup>

These types of patients were denied or are being denied basic health care. Before *Dobbs*, treating physicians could have recommended and performed abortions, if appropriate, for victims of incest and rape, or where the abortion was in the best interest of the physical and mental health of the patient.

But as states have been imposing abortion bans and restrictions, medical professionals and facilities are now refusing to perform abortions or are delaying them until later than otherwise medically advisable.

As health care is delayed, the dangers to a pregnant person increase.<sup>37</sup> A procedure that should be done as soon as the problem is diagnosed is postponed for days or weeks, as doctors are forced by law to wait for the worst outcomes. Care is often delayed even for persons with the financial means and ability to travel to other states for abortions, because it takes time to schedule appointments in other states, schedule time off from their jobs, arrange care for children or other family members at home, and, for some, raise funds needed for the costs of travel, hotel stays, and medical care.

Abortion bans are also causing medical professionals and facilities to refuse to perform necessary procedures to end ectopic pregnancies.<sup>38</sup> According to medical professionals, an ectopic pregnancy is not viable, and is a life-threatening condition that requires emergency treatment. An ectopic pregnancy is also a serious risk to the pregnant person. Yet, due to the repressive laws imposed by certain state abortion bans, doctors in those states are forced to wait until their patients

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<sup>35</sup> <https://www.washingtonpost.com/health/2022/08/08/abortion-bans-methotrexate-mifepristone-rheumatoid-arthritis/>; <https://www.reuters.com/world/us/state-abortion-bans-prevent-women-getting-essential-medication-2022-07-14/>.

<sup>36</sup> <https://www.austinchronicle.com/news/2022-08-05/texans-cant-divorce-while-pregnant-can-use-ivf-for-now/>; <https://www.msn.com/en-us/news/us/women-in-missouri-cant-get-a-divorce-while-pregnant-many-fear-what-this-means-post-roe/ar-AAZMpIB>.

<sup>37</sup> See, e.g. n. 33.

<sup>38</sup> <https://my.clevelandclinic.org/health/diseases/9687-ectopic-pregnancy> (an ectopic pregnancy is “a pregnancy that happens outside of the uterus.... This is a life-threatening condition. *An ectopic pregnancy is not a pregnancy that can be carried to term* (till birth) and can be dangerous for the mother if not treated right away.”) (emphasis added).

exhibit life-threatening symptoms before they can provide the care needed to end those pregnancies.<sup>39</sup>

Medical professionals in states with abortion bans are delaying or refusing to perform procedures that would be standard medical care for women and childbearing persons who have miscarriages.<sup>40</sup>

And medical professionals face grave concerns over what might be permissible in treating pregnant persons with cancer, when treatments can unintentionally end pregnancies.<sup>41</sup>

Forcing minors to carry a pregnancy to term is especially cruel and is profoundly unacceptable in cases of rape and incest. A forced pregnancy effectively means ending the minor's childhood. For example, in August 2022, "a Florida court of appeal upheld a decision stating a 16-year-old could not get an abortion because she lacked the maturity to make a decision, even after the parentless minor said she was not ready to have the child and was still in school."<sup>42</sup> In some cases, children who are pregnant leave school due to the shame and burdens of the pregnancy. Others may leave school to start working in order to pay for the costs of medical care and childcare, while still being a child themselves. Either way, the loss of educational opportunities will affect their lifetime earnings and potential. Further, some pregnant minors will be forced into marriage, which often means victims are forced to marry their rapist and will be vulnerable to further victimization by sexual assault, abuse and domestic violence.<sup>43</sup>

The right to reproductive healthcare and autonomy includes more than the right to an abortion. Abortion bans are also causing medical professionals and pharmacies to stop prescribing or dispensing medications to persons of child-bearing age with serious health conditions such as cancer and rheumatoid arthritis, because the medications may cause abortions.<sup>44</sup>

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<sup>39</sup> <https://www.wired.com/story/the-fall-of-roe-makes-complex-pregnancies-even-riskier/> (published Aug, 8, 2022).

<sup>40</sup> <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html> (published July 17, 2022).

<sup>41</sup><https://www.bloomberg.com/news/articles/2022-06-24/overturning-roe-can-impact-therapy-for-cancer-miscarriage> (published June 24, 2022); <https://abcnews.go.com/Health/pregnant-women-cancer-doctors-fear-abortion-bans-death/story?id=85948248> (published July 19, 2022).

<sup>42</sup> See "Florida court says teen isn't mature enough to get an abortion." The teen, identified only as Jane Doe 22-B, has no parents. [https://apple.news/AdFRONuIkQbq\\_WA3ZgBxLhQ](https://apple.news/AdFRONuIkQbq_WA3ZgBxLhQ) (published on August 16, 2022).

<sup>43</sup> See "Unintended Pregnancy and Its Adverse Social and Economic Consequences on Health System: A Narrative Review Article," at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4449999/> and "Economic burden of unintended pregnancy in the United States," <https://www.rtihs.org/publications/economic-burden-unintended-pregnancy-united-states>.

<sup>44</sup> See <https://www.washingtonpost.com/health/2022/08/08/abortion-bans-methotrexate-mifepristone-rheumatoid-arthritis/> (published Aug. 8, 2022); <https://www.reuters.com/world/us/state-abortion-bans-prevent-women-getting-essential-medication-2022-07-14/>.

The right to reproductive health care and autonomy also includes the rights to access contraceptives and fertility treatments, which are rights that could be placed at risk by any restriction or ban on abortion. There are grave concerns that laws that ban abortion at the moment of conception could deprive persons of the ability to build a family using in vitro fertilization (IVF).<sup>45</sup> IVF helps many people start their families, including couples who are infertile, and "people who have cancer or have other reasons that they want to preserve their fertility for the future," as well as "same-sex couples, transgender patients, and patients with a wide range of health challenges, such as uterine abnormalities and recurrent pregnancy loss... However, if new laws specify that embryos are protected from the time of fertilization, then that could create a significant problem for patients."<sup>46</sup>

#### **D. Abortion Bans Place Medical Professionals at Risk**

Medical professionals are acutely aware that the potential repercussions for violating state abortion bans are harsh: they could face criminal and/or financial penalties, lose their licenses to practice medicine and jeopardize their professional reputation. For example, the Indiana doctor who treated the 10-year-old rape victim from Ohio was investigated by the Indiana's Attorney General's office, even though the procedure was legal in Indiana at the time of the treatment.<sup>47</sup> Even where abortion bans have exceptions for the life of the mother, "doctors say that what constitutes imminent death has remained vague under the laws, which could put pregnant patients in grave danger."<sup>48</sup>

Health-care providers know when abortions are medically necessary. Yet in some states, doctors are told to consult with their attorneys for clarity.<sup>49</sup> Physicians know when to recommend ending a pregnancy before the patient becomes severely ill, or is at risk of bleeding to death, losing organ function, permanently damaging reproductive health, or worse. But due to vague and draconian laws, doctors are sending pregnant persons home to wait until they are at imminent risk of death before they are willing to perform abortions, if ever.

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<sup>45</sup> See <https://www.medpagetoday.com/special-reports/exclusives/100028> (In the IVF process, embryos "that have not progressed to a state that is normal" before implantation are typically discarded, and there may be additional embryos with chromosomal abnormalities "that are discarded or donated to research. Providers are able to determine which fertilized eggs are likely to go on to a pregnancy and which are not.").

<sup>46</sup> *Id.*

<sup>47</sup> <https://www.theguardian.com/us-news/2022/jul/27/indiana-investigates-abortion-doctor-10-year-old-rape-victim>.

<sup>48</sup> <https://www.nbcnews.com/health/health-news/abortion-laws-texas-wisconsin-forcing-pregnant-women-wait-care-rna41678>.

<sup>49</sup> <https://www.wvno.org/news/2022-07-28/louisiana-doctors-confused-about-abortion-law-advised-by-state-board-to-consult-with-lawyer>.

## E. Abortion Bans Exacerbate Inequity and Inequality

Abortion bans will not end abortions. They did not do so prior to 1973 and they will not do so today. Persons who need an abortion for medical reasons or other reproductive health reasons will find a way. Some will choose medication abortions, at least while such methods are legal. Persons who cannot afford or obtain medication abortions may attempt dangerous methods such as counterfeit medications, herbal supplements, and even, horribly, the methods used before *Roe*: hangers or knitting needles. Others may travel to states where abortion is accessible.<sup>50</sup>

Not everyone has the means or support system to make the trip to the nearest state where abortion is accessible. Some persons cannot take time away from their jobs without losing pay or risking getting fired. Some are caring for children or other family members at home and will need to find caregivers to take care of their families during their absence. Some do not have a relative or friend who can accompany them to care for them after the procedure. Some do not have the financial means to pay for gas, carfare, flights, hotels, medical care, post-surgical care, and other costs of out-of-state abortions. Abortions later in pregnancy may require two trips to the medical provider. This means that all these issues – taking time off, finding caregivers, travel, and medical costs – are likely to be more burdensome. And, where anesthesia or other sedatives are involved, hospitals and clinics are unlikely to proceed unless the patient has arranged for someone to pick them up and care for them afterward.

Persons with means and a support network are more likely to be able to travel to states where abortions are accessible. But this may be difficult, if not impossible, for others. Women without the means or support to obtain reproductive health care may be forced to carry their pregnancies to term or forced to find other, potentially dangerous, methods to terminate their pregnancies. Abortion bans thus exacerbate inequity and inequality, and deny women and all child-bearing persons equal protection under the law.

Those most impacted by abortion bans are those already impacted by lack of access to health care. They also face poverty and issues of bias in the health-care system.<sup>51</sup> A 2018 study by the American Journal of Public Health reached this conclusion: “[w]omen denied an abortion were more likely than were women who received an abortion to experience economic hardship and insecurity lasting years.”<sup>52</sup> In other words, the cycle of poverty is perpetuated.

We live in a nation where there is no safety net for families. We have no universal health care, no universal childcare, and no nationwide paid family or medical leave. Millions of women and their

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<sup>50</sup> <https://www.msn.com/en-us/travel/news/it-is-ridiculous-its-a-lot-texas-women-describe-traveling-to-new-mexico-for-abortions/ar-AA116ADC> (published Aug. 25, 2022).

<sup>51</sup> <https://abcnews.go.com/Health/abortion-restrictions-disproportionately-impact-people-color/story?id=84467809>; <https://www.npr.org/2022/08/18/1111344810/abortion-ban-states-social-safety-net-health-outcomes>.

<sup>52</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5803812/>.



partners have relied upon *Roe* and *Casey* for family and life planning and for health care decisions.<sup>53</sup>

Forced pregnancies can have negative consequences not only for the person forced to carry the pregnancy to term, but also for their family members. They may lose income during any time that the pregnant family member must take unpaid leave for medical care, pregnancy-related conditions, childbirth, and recovery. They may be pushed into poverty, or further into poverty, with the addition of another child in the family. They may not have the funds to pay for the costs of prenatal care, childbirth, and other pregnancy-related medical conditions, especially if the pregnancy causes the mother to suffer severe or life-threatening medical conditions. And, in the worst-case scenario, the mother could die.

And make no mistake, abortion bans are a matter of economic and health justice that disproportionately impact people of color.

While maternal mortality has increased among all races of U.S. women over the past 20 years, recent CDC data shows that U.S. Black women are three times more likely to “die from a pregnancy-related cause” than their White counterparts. Studies show that even when Black and White women have similar incomes, prenatal care and other health indicators, Black women have a higher risk of pregnancy-related death.<sup>54</sup>

With ectopic pregnancies ranking as the fifth highest cause of maternal death for Black women, the delays in care caused by abortion bans as noted above will undoubtedly increase the risk of death for Black women.<sup>55</sup> With higher rates of pregnancy complications, increased difficulties in accessing contraception, issues of bias in receiving health care and lower rates of insurance coverage, the likely outcome is that Black women, along with many women of color including Latinx and Indigenous women, as well as women and all child-bearing persons who are experiencing poverty, will be most directly and negatively impacted by losing access to abortion as a reproductive health option.

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<sup>53</sup> <https://nysba.org/new-york-state-bar-associations-women-in-law-section-issues-statement-on-the-supreme-courts-decision-in-dobbs-overturning-roe-v-wade/>.

<sup>54</sup> <https://www.washingtonpost.com/politics/2022/06/25/dobbs-roe-black-racism-disparate-maternal-health/>; *see* <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/maternal-mortality-rates-2020.htm>.

<sup>55</sup> *Id.*; *see* <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2021.306375>.



## **F. Abortion Bans Violate Religious Freedoms**

Abortion bans also violate persons' freedom of religion.<sup>56</sup> There are many religions that permit abortions for reasons that are not permitted by many state abortion laws, including the physical and mental health of the mother. Each pregnant person should have the option to follow their own religion and spiritual beliefs and consult with religious or spiritual leaders of their choosing when deciding whether to abort a pregnancy. An abortion ban, by making the decision for everyone regardless of their personal religious and spiritual beliefs, deprives persons of their religious freedoms.<sup>57</sup>

## **G. Abortion Must Be Kept Legal and Safe**

Pregnancy is dangerous, and there are many medical reasons why abortion may be the best option for the health and well-being of the pregnant person. There is no one list that could account for all the scenarios in which abortion is the safer choice.

As the ACOG said in 2017:

Induced abortion is an essential component of women's health care. Like all medical matters, decisions regarding abortion should be made by patients in consultation with their healthcare providers and without undue interference by outside parties. Like all patients, women obtaining abortions are entitled to privacy, dignity, respect, and support.

Many factors influence or necessitate a woman's decision to have an abortion. They include but are not limited to, contraceptive failure, barriers to contraceptive use and access, rape, incest, intimate partner violence, fetal anomalies, illness during pregnancy, and exposure to teratogenic medications.

Pregnancy complications, including placental abruption, bleeding from placenta previa, preeclampsia or eclampsia, and cardiac or

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<sup>56</sup> <https://verdict.justia.com/2022/06/29/the-roadmap-for-pregnant-girls-and-women-to-assert-their-religious-liberty-to-invalidate-abortion-bans>; <https://www.nbcnews.com/news/us-news/religions-support-abortion-rights-leaders-are-speaking-rcna27194>.

<sup>57</sup> See, e.g., <https://religionnews.com/2022/10/07/3-jewish-women-file-suit-against-kentucky-abortion-bans-on-religious-grounds/>; <https://www.azmirror.com/2022/08/25/jewish-congregations-mount-legal-challenges-to-state-abortion-bans/>; see also *Jane Doe No. 1 v. Attorney General of Indiana*, 2022 WL 5237133, at \*3-9 (S.D. Ind. Sept. 26, 2022) (Indiana fetal disposition law, requiring healthcare facilities to bury or cremate fetal tissue and prohibiting them from incinerating the tissue as medical waste, violates the Free Exercise clause because it burdens plaintiffs' sincerely held religious and moral beliefs of treating aborted fetuses as medical waste).

renal conditions, may be so severe that abortion is the only measure to preserve a woman's health or save her life.<sup>58</sup>

Moreover, as detailed above, abortion bans threaten the ability of persons to access life-saving medications, to make reproductive health choices involving contraception and in vitro fertilization, and to exercise their religious freedom.

As a result, we cannot support policies or laws that ban abortions even if they provide for exceptions (which some state abortion bans do not) in cases of rape, incest, fetal non-viability, or serious and life-threatening health conditions of the mother. Rather, each pregnant person should have the right to assess their own situation and needs, the right to choose to consult with their own medical provider, religious advisor, and/or family member, and the right to choose whether to continue or terminate a pregnancy.

Laws that prohibit abortion after 6 weeks, or even until 15 weeks of pregnancy, are not the answer. Significantly, these laws often start the count as of the pregnant person's last menstrual cycle, which is before conception.<sup>59</sup> Six weeks later, a woman may be prohibited from having an abortion before she even knows that she is pregnant.<sup>60</sup> At 15 weeks, a woman may know that she is pregnant but not have had the opportunity to seek prenatal care to evaluate her own health and the health of the fetus. She may not have had the time to take whatever steps she needs to decide whether to continue with the pregnancy. She or the fetus may not yet have developed medical complications that would make continuing with the pregnancy a danger to her own health or lead to a determination that the fetus is not viable. Persons with forced pregnancies often cannot, or do not, obtain prenatal care, thus endangering their own health and that of the child. And women who travel for abortions may have those procedures later in their pregnancies, increasing any health risks.

For these reasons, we believe that New York's law is the best model to protect reproductive rights and health-care providers. The Reproductive Health Act of 2019 removed abortion from the criminal code and broadened abortion rights.<sup>61</sup> New York law permits abortion up to and including 24 weeks of pregnancy (the estimated time of fetal viability). After 24 weeks, pregnant persons can still have access to health care, including an abortion, if the patient's health or pregnancy is at risk.<sup>62</sup>

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<sup>58</sup> <https://www.acog.org/advocacy/facts-are-important/abortion-is-healthcare>.

<sup>59</sup> <https://flo.health/pregnancy/week-by-week/gestational-age>.

<sup>60</sup> <https://www.npr.org/2021/09/01/1033171800/texas-abortion-ban-supreme-court->.

<sup>61</sup> <https://www.nysenate.gov/legislation/bills/2019/s240>; <https://www.nysenate.gov/legislation/laws/PBH/A25-A>.

<sup>62</sup> <https://www.ny.gov/programs/abortion-new-york-state-know-your-rights>; <https://ag.ny.gov/sites/default/files/abortion-laws-english.pdf>.

## H. We Cannot Take Our Reproductive Rights for Granted

We cannot discount the significant chance that, even in New York, our rights may be in jeopardy. The *Dobbs* decision, by removing the federal Constitutional protection for abortion, cleared the path to a potential national abortion ban. Such a ban could pre-empt the laws of our State and other states that protect abortion rights, overruling the choice of the people.<sup>63</sup> Anti-abortion politicians in Congress have made clear their interest in enacting such a law, were they to control Congress. Pro-choice leaders in Congress recognized this risk when they brought to a vote a law that would have codified *Roe* nationwide.<sup>64</sup> Our State Legislature responded to *Dobbs* when it voted in favor of amending the NYS Constitution to add protected categories including protection for reproductive health care and autonomy.<sup>65</sup>

The risks to our reproductive rights and health-care rights are too great to sit on the sidelines. New York must adopt the ERA to the State Constitution to add “reproductive rights and autonomy” as a protected category. In addition, we must vigorously support a national law protecting reproductive health-care rights, and strenuously oppose any national law banning abortion.

To achieve these goals, it is imperative that the New York State Bar Association engage its advocacy and lobbying efforts on behalf of the ERA and federal reproductive health-care rights, including abortion rights, and reproductive autonomy.

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<sup>63</sup> As we recently saw in Kansas, when the people are asked to vote for or against abortion rights, they overwhelmingly choose to protect abortion rights. See <https://news.yahoo.com/kansas-abortion-protections-results-constitutional-amendment-024132082.html> (published Aug, 2, 2022).

Polls show that a majority of Americans support a woman’s right to choose, including in states where abortion has been strictly curtailed. See, e.g., <https://news.yahoo.com/cbs-news-poll-americans-react-130011112.html> (published June 26, 2022); <https://www.houstonpublicmedia.org/articles/news/health-science/2022/05/04/424672/poll-shows-majority-of-texas-voters-would-oppose-overturning-roe-v-wade/> (published May 4, 2022).

<sup>64</sup> <https://www.congress.gov/bill/117th-congress/house-bill/8296>.

<sup>65</sup> <https://www.nysenate.gov/legislation/bills/2021/s51002>.

### III. CONCLUSION

For the foregoing reasons, WILS strongly urges NYSBA to adopt WILS' Report and Resolution Supporting Reproductive Health-Care Rights and Reproductive Autonomy, including Abortion Rights, and the current New York State Equal Rights Amendment (ERA), so that we can maintain these important existing NYS health-care laws and preserve our right to reproductive health care and reproductive autonomy. This includes:

- (i) recognizing the rights of individuals to access legal reproductive health care, including abortion;
- (ii) support for amendments to the NYS Public Health Law, Education Law, and Penal Law, as enacted in NYS by the signing of S.240/A.21 in 2019;
- (iii) support for N.Y. Public Health Law Article 25-A as enacted in 2019;
- (iv) support for the June 13, 2022, Legislative Package as enacted by New York State and support for the policies and intent of the legislative package enacted (*see* Exhibit A for summaries of the June 13, 2022 Laws);
- (v) support for S.51002 of 2022, the NYS Equal Rights Amendment (ERA), as passed by the New York State Senate and Assembly, and as policy the proposal codified in this concurrent resolution to amend Section 11 of Article 1 of the New York State Constitution in relation to equal protection;
- (vi) support for passage of the Women's Health Protection Act of 2022 and for the policies and intent of this bill;
- (vii) opposition to laws that would ban abortion nationwide and/or diminish the current protections under New York law; and
- (viii) authorization for the officers of the Association to take such other and further action as may be necessary to implement this resolution.

Submitted by:

NYSBA Women in Law Section  
October 24, 2022

# **Exhibit A**

GOV RNOR  
KATHY HOCHUL

JUNE 13, 2022 Albany, NY

## Governor Hochul Signs Nation-Leading Legislative Package to Protect Abortion and Reproductive Rights for All

REPRODUCTIVE HEALTH (/KEYIIIDIID.AIEIRODUiffImwomtfLEGISrmtQRDS/WOMEN)  
HEALTH)

Comprehensive Six-Bill Package Protects Both Patients and Providers in Anticipation of Final Decision by Supreme Court on Dobbs v. Jackson

S.9039A/A.10094A Establishes a Cause of Action for Unlawful Interference with Protected Rights

S.9077A/A.10372A Relates to Legal Protection for Abortion Service Providers

S.9079B/ A.9687B Prohibits Misconduct Charges Against Healthcare Practitioners for Providing Reproductive Health Services to Patients Who Reside in States Where Such Services Are Illegal

## **S.90808/A.97188 Prohibits Medical Malpractice Insurance Companies from Taking Adverse Action Against a Reproductive Healthcare Provider Who Provides Legal Care**

## **S.9384A/A.9818A Includes Abortion Providers and Patients in the Address Confidentiality Program**

## **S.470/A.5499 Authorizes a Study to Examine Unmet Health and Resource Needs and Impact of Limited Service Pregnancy Centers**

Governor Kathy Hochul today signed a nation-leading legislative package to immediately protect the rights of patients and empower reproductive healthcare providers in anticipation of a final decision by the Supreme Court on abortion access. The legislation takes specific actions to address a variety of legal concerns unleashed by the Supreme Court's leaked opinion on *Dobbs v. Jackson*, which would overturn the landmark decision of *Roe v. Wade* on the eve of its 50th anniversary. Governor Hochul signed the bills at the historic Great Hall of Cooper Union, while flanked by Senate Majority Leader Andrea Stewart-Cousins, Speaker Carl Heastie, key partners in the state legislature, as well as abortion and reproductive healthcare providers and advocates.

"Reproductive rights are human rights, and today we are signing landmark legislation to further protect them and all who wish to access them in New York State. The women of New York will never be subjected to government mandated pregnancies. Not here. Not now. Not ever,"

**Governor Hochul said.** "Today, we are taking action to protect our service providers from the retaliatory actions of anti-abortion states and ensure that New York will always be a safe harbor for those seeking reproductive healthcare. New York has always been a beacon for those yearning to be free. And I want the world to hear - loud and clear - that will not change."

<https://www.youtube.com/embed/wx6EXENuvL8>

AUDIO

PHOTOS

"New York refuses to sit back and allow the Supreme Court to reverse years of progress by taking away a woman's right to make choices about her own body," **said Lieutenant Governor Antonio Delgado.** "We will provide a safe haven for women in New York with this nation leading package of legislation signed into law today which protects a patient's rights and empowers reproductive healthcare providers. New York will never stop fighting to make sure that women who are seeking safe, accessible abortion services receive them."

**Majority Leader Andrea Stewart Cousins said,** "The leaked Supreme Court opinion to overturn Roe v. Wade sent shockwaves throughout the nation. Taking away the right to safe and legal abortion care will harm women's health and relegate women to second-class citizens with no right to bodily autonomy. Since gaining the Senate Majority in 2019, the Democratic Majority has been actively working to safeguard the reproductive rights of New Yorkers, and we will once again lead the way to guarantee reproductive rights and protect New York women from harmful policies implemented around the country. Thank you to Governor Hochul, Speaker Heastie, and all of my members in the Democratic Conference for ensuring our rights remain safe."

**Assembly Speaker Carl Heastie said,** "Reproductive health care decisions should be made between a patient and their doctor. The bills being signed into law today will ensure that the medical professionals that provide these critical and lifesaving practices are protected from retaliation by states that are restricting those rights. Thank you to Governor Hochul, Senate Majority Leader Stewart-Cousins and my Assembly Majority colleagues for working together to get this done. We will keep fighting to protect women's bodily autonomy, their right to make their own health care decisions, and the doctors and nurses and everyone that ensures that women have access to reproductive healthcare."

**State Health Commissioner Dr. Mary T. Bassett said,** "New York has done much to enshrine abortion rights into law, and for that I am grateful and proud. Safe abortions protect our medical and physical well-being, and provide us with the choice of autonomy and intervention, but are also filtered through the inequities of our society and this will be particularly true among Black, Brown, and Indigenous people as these new barriers will mean less access for communities of color and those who are low income further entrenching long standing inequities. Today's bill signings further preserve those rights, strengthen those protections, and provide access to services that would otherwise be denied, and so I want to thank Governor Hochul, Leader Stewart-Cousins and Speaker Heastie for their leadership and efforts to make certain New York remains a beacon of hope, a safe harbor, a sanctuary for all."

**Legislation S.9039A/A.10094A** establishes a cause of action for unlawful interference with protected rights. This will allow individuals to bring a claim against someone who has sued them or brought charges against them for facilitating, aiding, or obtaining reproductive health or endocrine care services in accordance with New York State Law.

**Legislation S.9077A/A.10372A** aims to provide certain legal protections for abortion service providers, those who assist someone else in obtaining an abortion, or individuals who self-



manage an abortion. This bill provides those protections by creating a statutory exception for the extradition of abortion-related offenses, prohibiting courts from cooperating with out-of-state civil and criminal cases that stem from abortions that took place legally within their borders, and providing judicial protections by prohibiting law enforcement from cooperating with anti-abortion states' investigations regarding abortions that took place legally.

***The women of New York will never be subjected to government mandated pregnancies. Not here. Not now. Not ever.***

## **Governor Kathy Hochul**

**Legislation S.9079B/A.9687B** prohibits professional misconduct charges against healthcare practitioners on the basis that such healthcare practitioner, acting within their scope of practice, performed, recommended or provided reproductive healthcare services for a patient who resides in a state where such services are illegal.

**Legislation S.9080B/A.9718B** prohibits medical malpractice insurance companies from taking any adverse action against an abortion or reproductive healthcare provider who performs an abortion or provides reproductive healthcare that is legal in the state of New York on someone who is from out of state.

**Legislation S.9384A/A.9818A** allows reproductive healthcare services providers, employees, volunteers, patients, or immediate family members of reproductive healthcare services providers to enroll in the State's address confidentiality program to protect themselves from threats.

**Legislation S.470/A.5499** directs the New York State Department of Health commissioner to conduct a study and issue a report examining the unmet health and resource needs facing pregnant people in New York and the impact of limited service pregnancy centers. This ensures New Yorkers have access to information and resources necessary to have healthy pregnancies with positive outcomes.

**State Senator Alessandra Biaggi said,** "Today, New York is one step closer to becoming a true sanctuary state for those seeking healthcare no matter the circumstances. While other states are looking to criminalize abortion and gender-affirming care, New York continues to reaffirm its commitment to reproductive justice and serve as a model for the rest of our nation. The **FIRE HATE** Act will protect individuals who come to New York to receive an abortion or gender-affirming care- ensuring that everyone, regardless of background, always has the right to care. I'd like to thank Governor Hochul, Assemblymember Burdick, and my Legislative colleagues for

prioritizing this crucial legislation and ensuring that New York remains a safe haven for reproductive care."

**State Senator Cordell Cleare said,** "As Chair of the Senate Women's Issues Committee-I am very proud that today, our State takes a number of proactive steps to ensure that we protect the fundamental human rights of health, safety and choice as it relates to reproductive healthcare. These collective measures, including my Address Confidentiality Bill (S.9384-A) will work together to ensure that New York is a safe haven for equity, justice and equal rights and outcomes for all."

**State Senator Michelle Hinchey said,** "With the Supreme Court poised to overturn Roe and swift action by states across our country to criminalize reproductive healthcare, we are fighting to ensure that no matter what happens at the federal level, New York is a safe place for everyone providing and seeking an abortion here. I'm proud to sponsor a bill as part of this critical package of legislation that protects medical practitioners from retaliatory actions if they perform an abortion for a patient whose home state has made this vital healthcare illegal. I will always fight to protect and expand access to reproductive healthcare, and I'm proud to stand with my colleagues and Governor Hochul today to affirm that every person in need of an abortion can find one safely here in New York."

**State Senator Brad Holyman said,** "Today, New York leads the nation protecting bodily autonomy. Reproductive rights are under attack nationwide, but the bills Governor Hochul is signing today ensure New Yorkers will have the right to make the best choice for them and their families and our state will become a safe haven for women across the country to exercise that right. I am proud my Limited Services Pregnancy Center bill with Assemblymember Glick, S.470, has been enacted as part of this package. The bill directs the Commissioner of Health to study and report on unlicensed, often misleading facilities that offer pregnancy-related services but don't provide or refer for comprehensive reproductive healthcare. These centers are often more interested in pushing their own agenda than doing what's best for their patient's health, and they waste precious time for pregnant people who may consider abortion. This bill will help identify the unmet health and resource needs facing pregnant people in New York and the impact of these centers on their ability to obtain, accurate, non-coercive healthcare information and timely access to services."

**State Senator Anna Kaplan said,** "With the fate of Roe hanging in the balance, red states across the country are salivating at the opportunity to restrict women's access to reproductive healthcare, with many declaring war on doctors who provide reproductive health services. Here in New York, we're standing up for the rights of women to access reproductive healthcare, and we're standing up for the rights of doctors to provide the services women rely on - no matter what happens at the Supreme Court. My bill will protect doctors from frivolous attacks by shameless anti-choice laws in red states, and it will ensure that women subjected to draconian restrictions on their bodies can find safe haven in New York and access health services here

without endangering the medical professionals treating them. I'm proud to be the sponsor of this legislation along with my partner Assemblymember Linda Rosenthal, and I'm grateful for the leadership of Governor Kathy Hochul in ensuring that reproductive rights in New York are protected no matter what."

**State Senator Liz Krueger said,** "Every day we get closer to a radical extremist Supreme Court issuing their final opinion overturning 50 years of protection for abortion rights. It is now more vital than ever that we use every available option to counter this assault on Americans' rights to make the most personal decisions about their own bodies and to access necessary reproductive healthcare services. New York must ensure abortion access both to New Yorkers and refugees from other states who are being denied their basic rights, and we must offer all the protection we can for New York healthcare providers against abhorrent and regressive laws in other states that seek to punish them for providing legal abortion services in New York. The bills that Governor Hochul is signing today are an important first step in making New York a safe haven for those in need of abortion care, those who help them, and those who provide that much-needed care."

**Assemblymember Chris Burdick said,** "New York must stand together with those who come here from states that are hostile to basic healthcare rights. The FIRE HATE Act will protect them from those attempting to intimidate and harass them with litigation in their home states. Plain and simple, it is an infringement on the rights established in New York law to interfere with anyone attempting to come here for reproductive or gender affirming healthcare. The FIRE HATE Act, which establishes a cause of action for interfering with these protected rights, is critical to people who simply want control over their own bodies."

**Assemblymember Deborah Glick said,** "I'm glad to see Governor Hochul sign my bill with Senator Hoylman, A.5499/S.470, which directs the NYS Department of Health to conduct a study on the prevalence of limited service pregnancy centers, sometimes called 'fake clinics.' The decision to keep or terminate a pregnancy may be the most challenging decision a person makes in their life. Pregnant New Yorkers must be able to make this complex and deeply personal decision with the help of a licensed medical professional, and free from fear, intimidation, and misinformation. The information collected under this legislation will help us to ensure pregnant New Yorkers have access to quality healthcare. I'm so grateful to stand with my colleagues in NYS government who are committed to protecting people's basic human rights."

**Assemblymember Charles Lavine said,** "Abortion service providers are being unjustly targeted by anti-abortion laws around the country, but in New York we are working to protect them. By providing legal protections for providers, we can rest assured that safe, regulated abortions are accessible for those who need them. Thank you to my partners in the Senate and Assembly for making this law, and to Governor Hochul for working tirelessly to solidify the rights of New Yorkers."

**Assemblymember Amy Paulin said,** "Healthcare workers, including those providing abortion care, should not be subjected to harassment, intimidation, stalking or violence, which is happening with increasing frequency nationwide. We need to protect and empower our reproductive healthcare workers who are working hard to give women the healthcare they need. Allowing them the ability to protect their identity in the face of today's local and national anti-abortion campaigns gives these workers a critical tool for their safety and security. I thank Governor Hochul for signing this bill into law, which gives protection for our reproductive healthcare workers so they can continue to give the best care possible to the women of New York State."

**Assemblymember Linda Rosenthal said,** "Across the country, a woman's right to safe and legal abortion is under attack. As some states work to block access to safe abortions and deprive women of the right to make their own healthcare decisions, and in anticipation of the US Supreme Court's decision striking down Roe, New York State is pushing back and doing everything in our power to safeguard abortion access. I thank Governor Hochul for signing this reproductive rights package into law, including my two bills to protect healthcare providers against professional discipline measures and adverse actions affecting medical malpractice insurance. With these laws, New York's healthcare professionals can continue to provide abortion and reproductive healthcare services for all women, including the many who will be traveling here from out of state, without fear of consequence, no matter the decision that is ultimately handed down by the Supreme Court."

## Contact the Governor's Press Office

### I. Contact us by phone:

Albany: (518) 474 - 8418  
New York City: (212) 681 - 4640

### II Contact us by email:

[Press.Office@exec.ny.gov](mailto:Press.Office@exec.ny.gov)

## Translations

Arabic Translation  
1/4y.11 ] 4Jill

**A. DOWNLOAD**

**Exhibit B**

**Resolution of the Women in Law Section Supporting the New York State Proposed Equal Rights  
Amendment (S1268)**

The Women in Law Section of the New York State Bar Association resolves to support the passage of New York State Equal Rights Amendment legislation (51268) ("ERA"), which proposes adding the following new Section 19 to Article I of the New York State Constitution:

**Section 1. Resolved (if the Assembly concur), That article 1 of the constitution be amended by adding a new section 19 to read as follows:**

**§ 19. (a) No person shall be denied equal rights under the laws of this state or any subdivision thereof based on that person's race, color, ethnicity, national origin, disability, or sex including pregnancy and pregnancy outcomes, sexual orientation, gender identity, and gender expression.**

**(b) No government entity, nor any entity acting in concert with or on behalf of the government, nor any entity in its provision of public accommodations, employment, or personnel practices shall discriminate against any person in either intent or effect based on the characteristics listed in subdivision (a) of this section.**

**c) No government entity, nor any entity acting in concert with or on behalf of the government, nor any entity in the provision of public accommodations, employment, or personnel practices shall discriminate against any person based on that person's religion. In interpreting this section, the courts shall analyze claims of religious discrimination under the same analysis and standards applied to claims under section three of this article.**

**(d) Nothing in this section shall invalidate or prevent the adoption of any law, regulation, program, or practice that is designed to remedy or ameliorate demonstrated past discrimination on the basis of a characteristic listed in this section.**

**(e) This section shall be self-executing. The legislature may expand upon the entitlement to equal rights and freedom from discrimination hereby secured.**

The Executive Committee of the Women in Law Section voted unanimously, with one abstention, in favor of supporting the ERA on May 11, 2021. By adding "sex" to the State Constitution as a protected category, we ensure that "sex" will be given the same status as race, color, creed and religion. The broad language of 51268 also protects gender, sexual orientation and pregnancy, in addition to other important characteristics.

It is time to enact an ERA to the New York Constitution.

The Women in Law Section hereby requests that the Executive Committee of the New York State Bar Association adopt the ERA as policy and support passage of 51268. Neither the United States Constitution nor the New York Constitution guarantee women equal rights to men. Indeed, the only right specifically

granted women in the U.S. Constitution is the right to vote. At the state level, New York is not among the 22 states that already have some form of explicit protection against sex discrimination in their state constitutions.

The primary purpose of an Equal Rights Amendment is to embed equality for women as a fundamental right in the Constitution. Today, under both federal and New York law, the right of women to be free of discrimination exists only through a patchwork of laws and legal interpretation, subject to the vagaries of jurists and lawmakers. The ERA would codify sex discrimination as legally coequal with discrimination based on race, color, creed, and religion. It would provide women with better footing in cases of discrimination in public education, divorce, child custody, domestic violence and sexual assault cases. It would strengthen employment laws relating to the prevention of sex discrimination in hiring, firing, promotion and benefits, and discrimination against pregnant women. It would also help bring about equal pay for equal work, which is important because, despite decades of Title VII, women, including women attorneys, are still not paid the same amount for work as their male counterparts. Without these fundamental protections written into in the New York State Constitution, women will continue to not be fully recognized as equal citizens in this country and state. Our State and Federal Constitutions should proclaim that it is women's fundamental right to be treated equal to men under the law.

New York's legislature has tried to pass an equal rights amendment multiple times, but the bill stalled each time. To add an amendment to the state constitution, the Legislature must pass the amendment twice in two consecutive legislative sessions. This year is the second year of the current 2-year legislative session. If the ERA is passed in 2022, it would allow the amendment to receive second passage in the 2023-2024 legislative session. If the ERA does not pass both chambers of the Legislature this year, the earliest the amendment could then be passed would be 2025, four years from now. Therefore, it is critical we support the ERA this year to avoid delaying this necessary amendment by another 2 years.

Accordingly, the Women in Law Section **SUPPORTS** passage of the ERA, 51268.

**Resolution of the Women in Law Section Supporting the New York State Proposed Equal Rights  
Amendment (S1268)**

The Women in Law Section of the New York State Bar Association resolves to support the passage of proposed New York State Equal Rights Amendment legislation (51268) ("ERA"), which proposes adding insert Description of the following new section 19 to Article I of the New York State Constitution):

**Section 1. Resolved (if the Assembly concur), That article 1 of the constitution be amended by adding a new section 19 to read as follows:**

**§ 19. (a) No person shall be denied equal rights under the laws of this state or any subdivision thereof based on that person's race, color, ethnicity, national origin, disability, pr sex including pregnancy and pregnancy outcomes, sexual orientation, gender identity, and gender expression.**

(b) No government entity, nor any entity acting in concert with or on behalf of the government, nor any entity in its provision of public accommodations, employment, or personnel practices shall discriminate against any person in either intent or effect based on the characteristics listed in subdivision (a) of this section.

(c) No government entity, nor any entity acting in concert with or on behalf of the government, nor any entity in the provision of public accommodations, employment, or personnel practices shall discriminate against any person based on that person's religion. In interpreting this section, the courts shall analyze claims of religious discrimination under the same analysis and standards applied to claims under section three of this article.

(d) Nothing in this section shall invalidate or prevent the adoption of any law, regulation, program, or practice that is designed to remedy or ameliorate demonstrated past discrimination on the basis of a characteristic listed in this section.

(e) This section shall be self-executing. The legislature may expand upon the entitlement to equal rights and freedom from discrimination hereby secured.

The Executive Committee of the Women in Law Section *voted* unanimously, with one abstention, in favor of supporting the ERA on May 11, 2021. By adding "sex" to the State Constitution as a protected category, we ensure that "sex" will be given the same status as race, color, creed and religion and the broad language of 51268 also protects gender, sexual orientation and pregnancy, in addition to other important characteristics.

How is the!!\_!? time to enact an ERA to the New York Constitution.

The Women in Law Section hereby requests that the Executive Committee of the New York State Bar Association adopt the ERA as policy and support passage of 51268. Neither the United States Constitution nor the New York Constitution guarantee women equal rights to men. Indeed, the only right specifically granted women in the U.S. Constitution is the right to *vote*. At the state level, New York is not among the 22 states that already have some form of explicit protection against sex discrimination in their state

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**Commented [CCA2]:** Removed references to A760 to avoid confusion, since the Assembly version was amended in a manner we oppose.

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constitutions. New York's legislature has worked to pass an equal rights amendment multiple times, but the bill stalled each time.

The primary purpose of an Equal Rights Amendment is to embed in the Constitution equality for women as a fundamental right in the Constitution. Today, under both federal and iff New York the right of women to be free of discrimination exists only through a patchwork of laws and legal interpretation, subject to the vagaries of jurists and lawmakers. The ERA would odify sex discrimination fil...legally coequal with discrimination based on race, color, creed, and religion. It would provide women with better footing in cases of discrimination in public education, divorce, child custody, domestic violence and sexual assault cases. It would strengthen employment laws relating to the prevention of sex discrimination in hiring, firing, promotion and benefits, and help we: 1eAt felicies that discriminatione against pregnant women. It would also help bring about equal pay for equal work, which is important because, despite decades of Title VII, women, including women attorneys, are still not paid the same amount for work as their male counterparts. Without these fundamental protections written into in the New York State Constitution, providing women with constitutional equality, women will continue to be not -ae-fully recognized as equal citizens in this country and state. Our State and Federal Constitutions should proclaim that it is women's fundamental right to be treated equal to men under the law.

New York's legislature has triedwefkeG to pass an equal rights amendment multiple times, but the bill has stalled each time. To add an amendment to the state constitution, the Legislature must pass thea constitutional amendment twice in two consecutive legislative sessions. This year is the second year of the current 2-year legislative session. If the ERA is passed in 2022, it would allow the amendment to receive second passage in the 2023-2024 legislative session. If the ERA does not pass both chambers of the Legislature this year, the earliest the amendment could then be passed would be realiw d is 2025. four years from now. Therefore, it is critical we support the ERA this year to avoid delaying this necessary amendment by another 2 years.

~~The primary purpose of an Equal Rights Amendment is to embed in the Constitution equality for women as a fundamental right. Today, under both federal law and in New York, the right of women to be free of discrimination exists only through a patchwork of laws and legal interpretation, subject to the vagaries of jurists and lawmakers. The ERA would make sex discrimination legally coequal with discrimination based on race, color, creed, and religion. It would provide women with better standing in cases of discrimination in public education, divorce, child custody, domestic violence and sexual assault. It would strengthen employment laws relating to the prevention of sex discrimination in hiring, firing, promotion and benefits; and help prevent policies that discriminate against pregnant women.; and It would also help bring about equal pay for equal work, which is important because, despite decades of Title VII, women, including women attorneys, are still not paid the same amount for work as their male counterparts. Without these fundamental protections in the New York State Constitution providing women with constitutional equality, women will not be fully recognized as equal citizens in this country and state. Our State and Federal Constitutions should proclaim that it is women's fundamental right to be treated equal to men under the law.~~

Accordingly, the Women in Law Section **SUPPORTS** passage of the ERA, 51268.

## Memorandum in Support

NYSBA #11

February 26, 2019

S. 3249  
A. 271

By: Sen. Salazar  
By: M of A Seawright  
Senate Committee: Judiciary  
Assembly Committee: Judiciary

S. 517  
A. 272

By: Sen. Kruegar  
By: M of A Seawright  
Senate Committee: Judiciary  
Assembly Committee: Judiciary

### **THE NEW YORK STATE BAR ASSOCIATION** **SUPPORTS PASSAGE OF THE STATE EQUAL RIGHTS AMENDMENT**

The New York State Bar Association (NYSBA), through its Women in Law Section (WILS), supports the passage of A.271/S.3249, which proposes adding “sex” to the list of enumerated protected classes in Section 11 of Article 1 of the New York State Constitution:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, sex, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.<sup>1</sup>

By adding “sex” to the State Constitution as a protected category, we ensure that “sex” will be given the same status as race, color, creed, and religion.

Governor Andrew Cuomo included first passage of the state ERA in his 2019 budget proposal, providing that, “[e]nactment of this bill is necessary to implement the FY2020 Executive Budget as agency operations for the Division of Human Rights are dependent upon a clear definition of protected classes.”<sup>2</sup>

Additionally, NYSBA supports A.272/S.517,<sup>3</sup> which is broader in scope than A.271/S.3249 and would prohibit denial of equality of rights on the basis of “race, color, creed,

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<sup>1</sup> A271 is sponsored by Seawright. See [https://nyassembly.gov/leg/?default\\_fld=&bn=A00271&Summary=Y&Actions=Y&Memo=Y](https://nyassembly.gov/leg/?default_fld=&bn=A00271&Summary=Y&Actions=Y&Memo=Y)

<sup>2</sup> FY2020 New York State Executive Budget, Equal Rights Amendment, Concurrent Resolution, Memorandum in Support, Governor Andrew Cuomo.

<sup>3</sup> A272/S517 is a concurrent resolution of the Assembly and Senate. A272 is sponsored by Assemblyperson Seawright. See <https://www.nysenate.gov/legislation/bills/2019/A272>. S517 is sponsored by Senator Krueger and co-sponsored by Senators Bailey, Benjamin,

religion, national origin, citizenship, marital status, age, gender, sex, pregnancy, sexual orientation, gender identity or expression, military status, physical or mental disability, other immutable or ascriptive characteristic, or like grounds for discrimination.”<sup>4</sup>

While the narrower A.271/S.3249 would protect women, the broader A.272/S.517 would also protect gender, sexual orientation and pregnancy, in addition to other important characteristics.

Now is the time to enact an Equal Rights Amendment to the New York Constitution.

## **Background**

Neither the U.S. Constitution nor the New York Constitution guarantee women equal rights to men. About the U.S. Constitution, Justice Antonin Scalia famously once remarked:

Certainly the [U.S.] Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn't.<sup>5</sup>

In fact, the only right specifically guaranteed to women in the U.S. Constitution is in the 19th Amendment's right to vote.

Since the birth of the women's movement in Seneca Falls, New York, in 1848, when Elizabeth Cady Stanton introduced the “Declaration of Sentiments” by proclaiming, “All men and women are created equal,” women have been fighting for constitutional equal rights.<sup>6</sup> Following passage of the 19th Amendment, Alice Paul, lawyer and suffragist, proposed a federal equal rights amendment in 1923 to ensure constitutional equality for all. That amendment read, “Men and women shall have equal rights throughout the United States and in every place subject to its jurisdiction.”<sup>7</sup>

In the 1970s, Congress finally passed the Equal Rights for Women Amendment (“ERA”). To become a constitutional Amendment, two-thirds – or 38 – states needed to ratify the ERA within a Congressionally-imposed seven-year timeframe. New York ratified the ERA on May 18, 1972. By 1977, 35 states had ratified the Amendment, but opposition to the ERA had heated up.<sup>8</sup> New York's own Representative Elizabeth Holtzman proposed a strategy to extend the deadline, but even with the new 1982 deadline, the ERA was still three states short of

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Biaggi, Breslin, Carlucci, Comrie, Hoylman, Jackson, Kaplan, Mayer, Metzger, Parker, Persaud, Sanders, Sepulveda, Serrano and Stavisky.

<sup>4</sup> <https://www.nysenate.gov/legislation/bills/2019/s517>

A272/S517, Jan. 9, 2019.

<sup>5</sup> Interview with Justice Scalia, *California Lawyer* (January 2011).

<sup>6</sup> See Elizabeth Cady Stanton, “Declaration of Sentiments,” <https://www.historyisaweapon.com/defcon1/stantonsent.html> .

<sup>7</sup> J. Neuwirth & M. Tormey, “The Time is Now for the Equal Rights Amendment” *Women@Forbes* (Mar. 7, 2018, 1:44PM).

<sup>8</sup> “The Proposed Equal Rights Amendment: Contemporary Ratification Issues,” Congressional Research Services, R42979, p.15 (July 2018). Five states (Idaho, Kentucky, Nebraska, Tennessee and South Dakota) have since attempted to rescind their support (in Kentucky, the Acting Governor vetoed the rescinding resolution), but most legal scholars do not think states have the legal capacity to rescind. The states which have ratified the ERA are Hawaii (March 22, 1972), New Hampshire (March 23, 1972), Delaware (March 23, 1972), Iowa (March 24, 1972), *Idaho* (March 24, 1972), Kansas (March 28, 1972), Nebraska (March 29, 1972), Texas (March 30, 1972), Tennessee (April 4, 1972), Alaska (April 5, 1972), Rhode Island (April 14, 1972), New Jersey (April 17, 1972), Colorado (April 21, 1972), West Virginia (April 22, 1972), Wisconsin (April 26, 1972), New York (May 18, 1972), Michigan (May 22, 1972), Maryland (May 26, 1972), Massachusetts (June 21, 1972), Kentucky (June 26, 1972), Pennsylvania (September 27, 1972), California (November 13, 1972), Wyoming (January 26, 1973), South Dakota (February 5, 1973), Oregon (February 8, 1973), Minnesota (February 8, 1973), New Mexico (February 28, 1973), Vermont (March 1, 1973), Connecticut (March 15, 1973), Washington (March 22, 1973), Maine (January 18, 1974), Montana (January 25, 1974), Ohio (February 7, 1974), North Dakota (March 19, 1975), Indiana (January 18, 1977), Nevada (March 22, 2017), Illinois (May 30, 2018).

ratification. More recently, in 2017, Nevada, and in 2018, Illinois, also ratified the ERA,<sup>9</sup> leaving ratification short by one state.<sup>10</sup> Although polls indicate that up to 94% of Americans “support enshrining this right to equality in the highest law of the land,”<sup>11</sup> the hurdles to amending the U.S. Constitution— 1) lifting of the 1982 deadline and ratification by one more state (“single state strategy”), or 2) a vote by two-thirds of the House of Representatives and the Senate or a constitutional convention called for by two-thirds of the state legislatures (“fresh start strategy”)—have been and remain daunting.

At the state level, New York is not among the 22 states that already have some form of explicit protection against sex discrimination in their state constitutions.<sup>12</sup> New York’s legislature has worked to pass an equal rights amendment multiple times, most recently in 2018, but the bill stalled in the Senate Judiciary Committee.<sup>13</sup> With a one-party Governor and Legislature currently in session, a New York ERA has a stronger likelihood of passing this legislative session.

### **Equality Under the Law**

The primary purpose of an Equal Rights Amendment is to embed in the Constitution equality for women as a fundamental right.<sup>14</sup> Today, under federal law and in New York, the right of women to be free of discrimination exists only through a patchwork of laws and legal interpretation, subject to fickle jurists and lawmakers. The Fifth and Fourteenth Amendments to the U.S. Constitution promise equal protection under the law and have been extended to sex discrimination by courts, but are limited to federal or state governmental action (respectively), and classifications based on sex are subject only to intermediate scrutiny (i.e., law must be substantially related to achieving an important government objective).<sup>15</sup> Title VII of the Civil Rights Act of 1964 prohibits employers with 15 or more employees from discriminating based on the sex of a job applicant or employee, leaving out hundreds of thousands of small business employees.<sup>16</sup> Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs, but only when the educational program is the recipient of federal funding.<sup>17</sup>

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<sup>9</sup> Id.

<sup>10</sup> It is unclear whether post-1982 ratifications are constitutionally acceptable or if a “fresh start” of the process will be required by Congress. Congress members Jackie Speier and Carolyn Maloney have introduced legislation to lift the 1982 ratification deadline. ERA Coalition Press Release (Jan. 29, 2019). See also Congressional Research Service, supra, p. 16. Rep. Maloney (D-N.Y.) has reintroduced a federal ERA at least 11 times without traction. In support of an ERA she states, “U.S. women lack the tools they need to demand equal treatment in a variety of areas, including pensions, taxes and law enforcement. Women lag behind men in clout positions, including board and executive positions. The wage gap has been virtually unchanged for more than 20 years.” (citations omitted).

<sup>11</sup> Women@Forbes, supra.

<sup>12</sup> See Wharton, Linda J., “State Equal Rights Amendments Revisited: Evaluating their Effectiveness in Advancing Protection Against Sex Discrimination,” (2005) 36 Rutgers LJ 1201-1292 at 1202, and the Appendix setting out the text of state equal rights amendments. See also Linton, P., “State Equal Rights Amendments: Making a Difference or Making a Statement?” (1997) 70 Temple L.R. 907-944 at 908.

<sup>13</sup> See <https://www.nysenate.gov/legislation/bills/2017/a7990>.

<sup>14</sup> See S. Russell-Kraft, “Why the Equal Rights Amendment Still Matters,” The New Republic, (June 14, 2018) (“[T]he ERA is not just a relic of second-wave feminism. It is still necessary today, as equality for women is not enshrined in the Constitution; it is merely a matter of legal interpretation.”).

<sup>15</sup> “Sex Discrimination and the United States Supreme Court: Developments in the Law,” Congressional Research Service, RL30253, p.1 (Dec. 2015).

<sup>16</sup> Id., p.6-17. Hundreds of thousands probably underrepresents that actual number by hundreds of thousands. See “Small Business Profile,” U.S. Small Business Admin, Office of Advocacy (2018) (estimating that of the 56.8 million people employed by small business, 17.3 percent, or 9.8 million, are employed by businesses with 19 or fewer employees).

<sup>17</sup> Id., p.17-20.

Protections against discrimination on the basis of sex are more robust in New York. The New York State Human Rights Law (codified as N.Y. Executive Law, Article 15) prohibits discrimination in the workplace (as of March 2018, by employers of any size), in housing and in places of public accommodation.<sup>18</sup> The Equal Pay Act prohibits employers from paying employees of one sex less than employees of the opposite sex for work at the same establishment where the work requires equal skill, effort and responsibility, and is performed under similar working conditions.<sup>19</sup> In March 2018, the New York Legislature bolstered the sexual harassment laws by adopting a revision of state laws to ban most nondisclosure agreements and mandatory arbitration of sexual harassment complaints, and requiring government employees found responsible for committing harassment to refund taxpayer-financed payouts.<sup>20</sup>

New York City has expanded protections for women even further, banning prospective employers from inquiring about salary history, strengthening anti-harassment laws, and prohibiting gender-based discrimination in the workplace regardless of the employer's size.

### **Analysis**

Even today, however, with fresh legislation aimed at expanding protections for women, not all women in New York State or City who are discriminated against are protected. The protections that exist are piecemeal, not comprehensive, and, importantly, not unassailable by future courts and lawmakers.

NYSBA agrees with the reasoning in the sponsor's justification in support of A.272/S.517, which underscores key points why this ERA Bill should be enacted. They include:

- Equal rights for women are noticeably absent from the list of protected categories.
- Most New Yorkers assume incorrectly that the State Constitution already provides equal rights to women.
- We can build on the momentum from the New York State Assembly's 2017 passage of a resolution with bi-partisan support and without negative votes calling on Congress to pass the federal ERA.

Further, and critically, a state ERA would help to prevent rollback of women's rights in education, health, employment, and domestic violence at the federal level from affecting women in New York.<sup>21</sup> It would clarify the legal status of sex discrimination for the courts and make sex discrimination legally coequal with discrimination based on race, color, creed, and religion. It would provide women with better standing in cases of discrimination in public education, divorce, child custody, domestic violence and sexual assault.<sup>22</sup> It would give weight to employment laws relating to the prevention of sex discrimination in hiring, firing, promotions and benefits.<sup>23</sup> It would help prevent policies that discriminate against pregnant women. It

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<sup>18</sup> NY Exec. Law Sec. 290 *et seq.*

<sup>19</sup> NY Labor Law Sec. 194 *et seq.*

<sup>20</sup> V. Wang, "New York Rewrites Harassment Laws, but Some Say the Changes Fall Short," NY Times (March 30, 2018).

<sup>21</sup> "Need for Equal Rights Amendment for Women Highlighted This Women's History Month" Queens Gazette (Mar. 14, 2018).

<sup>22</sup> Id.

<sup>23</sup> Id.

would help bring about equal pay for equal work, important because, despite decades of Title VII,<sup>24</sup> women, including women attorneys, are still not paid the same amount for the same work as their male counterparts.<sup>25</sup>

In short, we need these fundamental protections enshrined in an Equal Rights Amendment to the State Constitution. As long as women do not have constitutional equality, women will not be fully recognized as equal citizens in this country and state – despite the fact that we are expected to contribute our fair share to government and public services through local, state, and federal taxes.

If either the narrower Bill A.271/S.3249 or the broader A.272/S.517 Bill pass in New York State, not only will the women of our state be better protected than they are now, it may also encourage more states to support constitutional protection of women from discrimination and aid in the passage of a federal ERA.

The time is ripe to pass a state ERA.

### **Conclusion**

Our State and Federal Constitutions should proclaim that it is women’s fundamental right to be treated equal to men under the law. Despite this state’s ratification of the federal ERA in 1972, the New York Constitution still does not protect women from sex discrimination as it protects against discrimination based on race, color, creed and religion. If either the narrower A271 or broader A.272/S.517 New York State Bill passes, a state ERA would give women much better protection from discrimination than they have now in a wider variety of contexts, provide a backbone to legal disputes regarding equal pay, and assist victims of sex discrimination to address the harm.

Based on the foregoing, the NYSBA **SUPPORTS** passage of A.271/S.3249, which proposes adding “sex” to the list of enumerated protected classes in Section 11 of Article 1 of the New York State Constitution or, in the alternative, the broader A.272/S.517, which provides protection to more categories of persons.

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<sup>24</sup> See e.g., *Int’l. Union of Machinists & Eng’rs v. NLRB*, 427 U.S. 1323 (1975); *County of Washington v. Gunther*, 452 U.S. 161 (1981); *Am. Fed’n of State, Cnty., & Municipal Emps., v. Washington*, 770 F.2d 1401, 1407 (9<sup>th</sup> Cir. 1985), cited by MacKinnon, Catherine A. at 575, n.28.

<sup>25</sup> Data released by Governor Andrew M. Cuomo’s office on January 10, 2017, shows that women in New York State earn 87 cents on the dollar in comparison to what men earn. Women of color, compared to white men, fare worse: African-American women earn on average 69 cents on the dollar and Latinas 58 cents on the dollar. A study in August 2016, commissioned by New York City public advocate Letitia James adds that women in New York State earn some \$20 billion less than men annually. In New York City, women are paid nearly \$6 billion less than men annually.

**This Report was Adopted as Policy by NYSBA Executive Committee in February 2019.**

To: NYSBA Executive Committee

From: Women in Law Section

Date: February 6, 2019

Re: Updated Memorandum in Support of Equal Rights Amendment to the New York State Constitution, Bills A271 and A272/S517

The Women in Law Section (WILS) supports the passage of A271 (Seawright), which proposes adding “sex” to the list of enumerated protected classes in Section 11 of Article 1 of the New York State Constitution:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, sex, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.<sup>1</sup>

By adding “sex” to the State Constitution as a protected category, we ensure that “sex” will be given the same status as race, color, creed, and religion.

Governor Andrew Cuomo included first passage of the state ERA, specifically A271, in his 2019 budget proposal, providing that, “[e]nactment of this bill is necessary to implement the FY2020 Executive Budget as agency operations for the Division of Human Rights are dependent upon a clear definition of protected classes.”<sup>2</sup>

Additionally, WILS also supports A272 (Seawright)/S517 (Krueger),<sup>3</sup> which is broader in scope than A271 and would prohibit denial of equality of rights on the basis of “race, color, creed, religion, national origin, citizenship, marital status, age, gender, sex, pregnancy, sexual orientation, gender identity or expression, military status, physical or mental disability, other immutable or ascriptive characteristic, or like grounds for discrimination.”<sup>4</sup>

While the narrower A271 would protect women, the broader A272/S517 would also protect gender, sexual orientation and pregnancy, in addition to other important characteristics.

Now is the time to enact an Equal Rights Amendment to the New York Constitution.

## Background

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<sup>1</sup> A271 is sponsored by Seawright and cosponsored by Fernandez, Weprin and Otis. See [https://nyassembly.gov/leg/?default\\_fld=&bn=A00271&Summary=Y&Actions=Y&Memo=Y](https://nyassembly.gov/leg/?default_fld=&bn=A00271&Summary=Y&Actions=Y&Memo=Y)

<sup>2</sup> FY2020 New York State Executive Budget, Equal Rights Amendment, Concurrent Resolution, Memorandum in Support, Governor Andrew Cuomo.

<sup>3</sup> A272/S517 is a concurrent resolution of the Assembly and Senate. A272 is sponsored by Assemblyperson Seawright and co-sponsored by Assemblyperson Otis. See <https://www.nysenate.gov/legislation/bills/2019/A272>. S517 is sponsored by Senator Krueger and co-sponsored by Senators Bailey, Benjamin, Biaggi, Breslin, Carlucci, Comrie, Hoylman, Jackson, Kaplan, Mayer, Metzger, Parker, Persaud, Sanders, Sepulveda, Serrano and Stavisky. <https://www.nysenate.gov/legislation/bills/2019/s517>

<sup>4</sup> A272/S517, Jan. 9, 2019.

Neither the U.S. Constitution nor the New York Constitution guarantee women equal rights to men. About the U.S. Constitution, Justice Antonin Scalia famously once remarked:

Certainly the [U.S.] Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn't.<sup>5</sup>

In fact, the only right specifically guaranteed to women in the U.S. Constitution is in the 19th Amendment's right to vote.

Since the birth of the women's movement in Seneca Falls, New York, in 1848, when Elizabeth Cady Stanton introduced the "Declaration of Sentiments" by proclaiming, "All men and women are created equal," women have been fighting for constitutional equal rights.<sup>6</sup> Following passage of the 19th Amendment, Alice Paul, lawyer and suffragist, proposed a federal equal rights amendment in 1923 to ensure constitutional equality for all. That amendment read, "Men and women shall have equal rights throughout the United States and in every place subject to its jurisdiction."<sup>7</sup>

In the 1970s, Congress finally passed the Equal Rights for Women Amendment ("ERA"). To become a constitutional Amendment, two-thirds – or 38 – states needed to ratify the ERA within a Congressionally-imposed seven-year timeframe. New York ratified the ERA on May 18, 1972. By 1977, 35 states had ratified the Amendment, but opposition to the ERA had heated up.<sup>8</sup> New York's own Representative Elizabeth Holtzman proposed a strategy to extend the deadline, but even with the new 1982 deadline, the ERA was still three states short of ratification. More recently, in 2017, Nevada, and in 2018, Illinois, also ratified the ERA,<sup>9</sup> leaving ratification short by one state.<sup>10</sup> Although polls indicate that up to 94% of Americans "support enshrining this right to equality in the highest law of the land,"<sup>11</sup> the hurdles to amending the U.S. Constitution— 1) lifting of the 1982 deadline and ratification by one more state ("single state strategy"), or 2) a vote by two-thirds of the House of Representatives and the Senate or a constitutional convention called for by two-thirds of the state legislatures ("fresh start strategy")—have been and remain daunting.

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<sup>5</sup> Interview with Justice Scalia, *California Lawyer* (January 2011).

<sup>6</sup> See Elizabeth Cady Stanton, "Declaration of Sentiments," <https://www.historyisaweapon.com/defcon1/stantonsent.html>.

<sup>7</sup> J. Neuwirth & M. Tormey, "The Time is Now for the Equal Rights Amendment" *Women@Forbes* (Mar. 7, 2018, 1:44PM).

<sup>8</sup> "The Proposed Equal Rights Amendment: Contemporary Ratification Issues," Congressional Research Services, R42979, p.15 (July 2018). Five states (Idaho, Kentucky, Nebraska, Tennessee and South Dakota) have since attempted to rescind their support (in Kentucky, the Acting Governor vetoed the rescinding resolution), but most legal scholars do not think states have the legal capacity to rescind. The states which have ratified the ERA are Hawaii (March 22, 1972), New Hampshire (March 23, 1972), Delaware (March 23, 1972), Iowa (March 24, 1972), *Idaho* (March 24, 1972), Kansas (March 28, 1972), Nebraska (March 29, 1972), Texas (March 30, 1972), Tennessee (April 4, 1972), Alaska (April 5, 1972), Rhode Island (April 14, 1972), New Jersey (April 17, 1972), Colorado (April 21, 1972), West Virginia (April 22, 1972), Wisconsin (April 26, 1972), New York (May 18, 1972), Michigan (May 22, 1972), Maryland (May 26, 1972), Massachusetts (June 21, 1972), Kentucky (June 26, 1972), Pennsylvania (September 27, 1972), California (November 13, 1972), Wyoming (January 26, 1973), South Dakota (February 5, 1973), Oregon (February 8, 1973), Minnesota (February 8, 1973), New Mexico (February 28, 1973), Vermont (March 1, 1973), Connecticut (March 15, 1973), Washington (March 22, 1973), Maine (January 18, 1974), Montana (January 25, 1974), Ohio (February 7, 1974), North Dakota (March 19, 1975), Indiana (January 18, 1977), Nevada (March 22, 2017), Illinois (May 30, 2018).

<sup>9</sup> *Id.*

<sup>10</sup> It is unclear whether post-1982 ratifications are constitutionally acceptable or if a "fresh start" of the process will be required by Congress. Congress members Jackie Speier and Carolyn Maloney have introduced legislation to lift the 1982 ratification deadline. ERA Coalition Press Release (Jan. 29, 2019). See also Congressional Research Service, *supra*, p. 16. Rep. Maloney (D-N.Y.) has reintroduced a federal ERA at least 11 times without traction. In support of an ERA she states, "U.S. women lack the tools they need to demand equal treatment in a variety of areas, including pensions, taxes and law enforcement. Women lag behind men in clout positions, including board and executive positions. The wage gap has been virtually unchanged for more than 20 years." (citations omitted).

<sup>11</sup> *Women@Forbes*, *supra*.



At the state level, New York is not among the 22 states that already have some form of explicit protection against sex discrimination in their state constitutions.<sup>12</sup> New York’s legislature has worked to pass an equal rights amendment multiple times, most recently in 2018, but the bill stalled in the Senate Judiciary Committee.<sup>13</sup> With a one-party Governor and Legislature currently in session, a New York ERA has a stronger likelihood of passing this legislative session.

### Equality Under the Law

The primary purpose of an Equal Rights Amendment is to embed in the Constitution equality for women as a fundamental right.<sup>14</sup> Today, under federal law and in New York, the right of women to be free of discrimination exists only through a patchwork of laws and legal interpretation, subject to fickle jurists and lawmakers. The Fifth and Fourteenth Amendments to the U.S. Constitution promise equal protection under the law and have been extended to sex discrimination by courts, but are limited to federal or state governmental action (respectively), and classifications based on sex are subject only to intermediate scrutiny (i.e., law must be substantially related to achieving an important government objective).<sup>15</sup> Title VII of the Civil Rights Act of 1964 prohibits employers with 15 or more employees from discriminating based on the sex of a job applicant or employee, leaving out hundreds of thousands of small business employees.<sup>16</sup> Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs, but only when the educational program is the recipient of federal funding.<sup>17</sup>

Protections against discrimination on the basis of sex are more robust in New York. The New York State Human Rights Law (codified as N.Y. Executive Law, Article 15) prohibits discrimination in the workplace (as of March 2018, by employers of any size), in housing and in places of public accommodation.<sup>18</sup> The Equal Pay Act prohibits employers from paying employees of one sex less than employees of the opposite sex for work at the same establishment where the work requires equal skill, effort and responsibility, and is performed under similar working conditions.<sup>19</sup> In March 2018, the New York Legislature bolstered the sexual harassment laws by adopting a revision of state laws to ban most nondisclosure agreements and mandatory arbitration of sexual harassment complaints, and requiring government employees found responsible for committing harassment to refund taxpayer-financed payouts.<sup>20</sup>

New York City has expanded protections for women even further, banning prospective employers from inquiring about salary history, strengthening anti-harassment laws, and prohibiting gender-based discrimination in the workplace regardless of the employer’s size.

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<sup>12</sup> See Wharton, Linda J., “State Equal Rights Amendments Revisited: Evaluating their Effectiveness in Advancing Protection Against Sex Discrimination,” (2005) 36 Rutgers LJ 1201-1292 at 1202, and the Appendix setting out the text of state equal rights amendments. See also Linton, P., “State Equal Rights Amendments: Making a Difference or Making a Statement?” (1997) 70 Temple L.R. 907-944 at 908.

<sup>13</sup> See <https://www.nysenate.gov/legislation/bills/2017/a7990>.

<sup>14</sup> See S. Russell-Kraft, “Why the Equal Rights Amendment Still Matters,” *The New Republic*, (June 14, 2018) (“[T]he ERA is not just a relic of second-wave feminism. It is still necessary today, as equality for women is not enshrined in the Constitution; it is merely a matter of legal interpretation.”).

<sup>15</sup> “Sex Discrimination and the United States Supreme Court: Developments in the Law,” Congressional Research Service, RL30253, p.1 (Dec. 2015).

<sup>16</sup> *Id.*, p.6-17. Hundreds of thousands probably underrepresents that actual number by hundreds of thousands. See “Small Business Profile,” U.S. Small Business Admin, Office of Advocacy (2018) (estimating that of the 56.8 million people employed by small business, 17.3 percent, or 9.8 million, are employed by businesses with 19 or fewer employees).

<sup>17</sup> *Id.*, p.17-20.

<sup>18</sup> NY Exec. Law Sec. 290 *et seq.*

<sup>19</sup> NY Labor Law Sec. 194 *et seq.*

<sup>20</sup> V. Wang, “New York Rewrites Harassment Laws, but Some Say the Changes Fall Short,” NY Times (March 30, 2018).

## Analysis

Even today, however, with fresh legislation aimed at expanding protections for women, not all women in New York State or City who are discriminated against are protected. The protections that exist are piecemeal, not comprehensive, and, importantly, not unassailable by future courts and lawmakers.

WILS agrees with the reasoning in Senator Seawright’s justification in support of A272, which underscores key points why this ERA Bill should be enacted. They include:

- Equal rights for women are noticeably absent from the list of protected categories.
- Most New Yorkers assume incorrectly that the State Constitution already provides equal rights to women.
- We can build on the momentum from the New York State Assembly’s 2017 passage of a resolution with bi-partisan support and without negative votes calling on Congress to pass the federal ERA.

Further, and critically, a state ERA would help to prevent rollback of women’s rights in education, health, employment, and domestic violence at the federal level from affecting women in New York.<sup>21</sup> It would clarify the legal status of sex discrimination for the courts and make sex discrimination legally coequal with discrimination based on race, color, creed, and religion. It would provide women with better standing in cases of discrimination in public education, divorce, child custody, domestic violence and sexual assault.<sup>22</sup> It would give weight to employment laws relating to the prevention of sex discrimination in hiring, firing, promotions and benefits.<sup>23</sup> It would help prevent policies that discriminate against pregnant women. It would help bring about equal pay for equal work, important because, despite decades of Title VII,<sup>24</sup> women, including women attorneys, are still not paid the same amount for the same work as their male counterparts.<sup>25</sup>

In short, we need these fundamental protections enshrined in an Equal Rights Amendment to the State Constitution. As long as women do not have constitutional equality, women will not be fully recognized as equal citizens in this country and state – despite the fact that we are expected to contribute our fair share to government and public services through local, state, and federal taxes.

If either the narrower Bill A271 or the broader A272/S517 Bill pass in New York State, not only will the women of our state be better protected than they are now, it may also encourage more states to support constitutional protection of women from discrimination and aid in the passage of a federal ERA.

The time is ripe to pass a state ERA.

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<sup>21</sup> “Need for Equal Rights Amendment for Women Highlighted This Women’s History Month” Queens Gazette (Mar. 14, 2018).

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> See e.g., *Cnty. Of Washington v. Gunther*, 452 U.S. 161 (1981); *Am. Fed’n of State, Cnty., & Municipal Emps., v. Washington*, 770

<sup>25</sup> *F2d. 1401, 1407 (9<sup>th</sup> Cir. 1985)*, cited by MacKinnon, Catherine A. at 575, n.28.

<sup>25</sup> Data released by Governor Andrew M. Cuomo’s office on January 10, 2017, shows that women in New York State earn 87 cents on the dollar in comparison to what men earn. Women of color, compared to white men, fare worse: African-American women earn on average 69 cents on the dollar and Latinas 58 cents on the dollar. A study in August 2016, commissioned by New York City public advocate Letitia James adds that women in New York State earn some \$20 billion less than men annually. In New York City, women are paid nearly \$6 billion less than men annually.

## Conclusion

Our State and Federal Constitutions should proclaim that it is women's fundamental right to be treated equal to men under the law. Despite this state's ratification of the federal ERA in 1972, the New York Constitution still does not protect women from sex discrimination as it protects against discrimination based on race, color, creed and religion. If either the narrower A271 or broader A272/S517 New York State Bill passes, a state ERA would give women much better protection from discrimination than they have now in a wider variety of contexts, provide a backbone to legal disputes regarding equal pay, and assist victims of sex discrimination to address the harm.

Further, we recommend that the State Bar Association should also take this opportunity to establish policy that the U.S. Constitution should ensure that no person shall because of sex be subjected to any discrimination.

For the foregoing reasons, the Women in Law Section recommends the support and passage of A271, which proposes adding "sex" to the list of enumerated protected classes in Section 11 of Article 1 of the New York State Constitution or, in the alternative, the broader A272/S517, which provides protection to more categories of persons.

Submitted by:

Susan L. Harper, Chair  
Women in Law Section

Denise Bricker & Sarah Simpson  
Co-Chairs, Legislative Affairs Committee  
Women in Law Section

Date: February 6, 2019



NEW YORK STATE BAR ASSOCIATION

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PRESIDENT'S COMMITTEE ON ACCESS TO JUSTICE

October 14, 2022

TO: Women in Law Section

FROM: President's Committee on Access to Justice

RE: Support of the Resolution of the Women in Law Section

The President's Committee on Access to Justice has reviewed the resolution and report of the Women in Law Section supporting abortion rights and the New York State Equal Rights Amendment. The Committee fully supports the resolution to the extent that the recommendations contained therein would advance access to justice.

**From:** [Brandon Lee Wolff](#)  
**To:** [reportsgroup](#)  
**Subject:** YLS  
**Date:** Tuesday, October 4, 2022 10:35:09 PM

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The Young Lawyers Section supports the Women in Law Section resolution and report.

Sincerely,

Brandon Lee Wolff  
Chair, Young Lawyers Section



**LABOR AND EMPLOYMENT LAW SECTION**

TO: NYSBA Reports Group

FROM: NYSBA Labor & Employment Law Section

DATE: October 19, 2022

The Labor & Employment Law Section supports the Women in Law Section in its request of the New York State Bar Association to adopt as Association policy (1) support for the rights of individuals to access legal reproductive health care including abortion; (2) support for the laws of the State of New York that have codified the rights of individuals to access legal reproductive health care including abortion; (3) as state legislative priority, support for New York State Senate Bill S.51002, the Equal Rights Amendment to the New York State Constitution; and (4) as federal legislative priority, support for a bill such as the Women's Health Protection Act of 2022 that codifies the rights of individuals to access legal reproductive health care including abortion. The foregoing motion was adopted unanimously at the LELS Executive Committee meeting held on September 18, 2022.

Robert L. Boreanaz,  
Chair, Labor & Employment Law Section

**From:** [Filabi, Azish](#)  
**To:** [reportsgroup](#)  
**Cc:** [Sheryl Galler](#); [Jay L Himes](#); [Forgea, Carra](#); "[diane.oconnell@ocolegal.com](#)"; [T. Andrew Brown](#)  
**Subject:** Women in Law Section Resolution  
**Date:** Friday, October 21, 2022 12:01:17 PM

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Dear Reports Group,

I'm pleased to share that at its October 12 Executive Committee meeting the NYSBA International Section Executive Committee passed a motion in support of the *Women in Law Section Report & Resolution Supporting Abortion Rights and the New York State Equal Rights Amendment*. Our delegates to the upcoming House of Delegates meeting (cc'd here) will be voting in support of this item.

My best,

Azish Filabi

Chair, International Section

**Azish Filabi**  
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**NYSBA FAMILY LAW SECTION  
MEMORANDUM SUPPORTING THE REPORT OF THE WOMEN IN LAW SECTION  
ENTITLED “SUPPORTING ABORTION RIGHTS AND THE NEW YORK STATE  
EQUAL RIGHTS AMENDMENT”**

October 20, 2022

WHEREAS, the Women in Law Section of the New York State Bar Association has requested the support of the Family Law Section for its report entitled “Supporting Abortion Rights and the New York State Equal Rights Amendment”;

**NOW, THEREFORE,**

IT IS RESOLVED, that the Family Law Section of the New York State Bar Association supports the proposals set forth in the report of the Women in Law Section entitled “Supporting Abortion Rights and the New York State Equal Rights Amendment” and joins the Women in Law Section in requesting that the New York State Bar Association adopt the proposed resolution.

Memorandum prepared by:  
Chair of the Section:

Erik Kristensen, Esq.  
Joan Adams, Esq.



**NYSBA COMMITTEE ON DIVERSITY, EQUITY, AND INCLUSION  
MEMORANDUM SUPPORTING THE REPORT OF THE WOMEN IN LAW SECTION  
ENTITLED “SUPPORTING ABORTION RIGHTS AND THE NEW YORK STATE  
EQUAL RIGHTS AMENDMENT”**

October 25, 2022

WHEREAS, the Women in Law Section of the New York State Bar Association has requested the support of the Committee on Diversity, Equity, and Inclusion for its report entitled “Supporting Abortion Rights and the New York State Equal Rights Amendment”;

**NOW, THEREFORE,**

IT IS RESOLVED, that the Committee on Diversity, Equity, and Inclusion of the New York State Bar Association supports the proposals set forth in the report of the Women in Law Section entitled “Supporting Abortion Rights and the New York State Equal Rights Amendment” and joins the Women in Law Section in requesting that the New York State Bar Association adopt the proposed resolution.

Memorandum prepared by:

Samuel W. Buchbauer, Esq.

Co-Chairs of the Committee:

Nihla Sikkander, Esq.  
Samuel W. Buchbauer, Esq.