



Constitutional Peril in New York: The Legal and Policy Implications of Enshrining a Right to Abortion in New York’s Constitution

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Introduction

Across the nation, state ballot boxes have become a battleground for life. In the wake of *Dobbs v. Jackson Women's Health Organization*,⁴ pro-abortion activists have sought to contrive state constitutional protection for elective abortion. These efforts pose a serious threat to pro-life laws and the protection of preborn human beings, women, and adolescent girls. Both Michigan and Ohio are harrowing examples of the impact pro-abortion ballot measures have on life-affirming policies. In 2022, Michigan residents voted to enshrine a “right” to elective abortion in their state constitution. In the following year, Ohioans passed a similar amendment. Since then, both states have seen challenges to life-affirming laws in the legislature and the courts. For example, following the constitutional amendment in Michigan, the legislature sought to repeal numerous protections for women and preborn children, including the state’s ban on partial-birth abortions, informed consent safeguards, and provisions requiring abortion facilities to be licensed and operated under necessary health and safety standards.

This November, New York faces a similar ballot initiative entitled, the “New York Equal Protection of Law Amendment” (“ERA”). The ballot initiative seeks to amend the New York constitution to add “ethnicity, national origin, age, disability, . . . or sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy” as protected classes under the state’s equal protection clause.⁵ Further, the amendment prohibits the state from enacting “any law, regulation, program, or practice that is designed to prevent or dismantle discrimination on the basis of a characteristic listed in this section...”⁶

Unlike citizens of other states facing abortion ballot initiatives, New Yorkers are being asked to declare that a person’s decision to terminate a human life in the womb constitutes a protected class – meaning any action by the state, such as ensuring a woman is fully informed about the procedure or crafting health and safety requirements for abortion facilities, would be an act of discrimination. Note, for a second, this newly formed protected class for abortion would stand alone among those already crafted or being joined with it. It is the only protected class that involves the act of terminating another human being – thereby denying any protections the aborted child may have enjoyed, such as protections against discrimination on the basis of race, gender, religion, etc.

Although New York’s current law is egregious in that it includes a broad post-viability exception allowing the abortionist to determine an abortion “is necessary to protect the patient’s life or health”⁷, it pales in comparison to the ERA’s mandated reckless abandonment of human life.

⁴ *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

⁵ New York equal Protection of Law Amendment (New York 2024).

⁶ *Id.*

⁷ N.Y. Pub. Health Law § 2599-bb (Consol. 2024).

The consequences of the unrelenting power of defining a decision as a protected class must disabuse New Yorkers of the amendment's attempts to disguise abortion as healthcare. As discussed below in Section V, abortion is not healthcare. It is the intentional destruction of innocent preborn human life. Additionally, as the Supreme Court acknowledges in *Dobbs v. Jackson Women's Health Organization*, states have a legitimate interest in preserving prenatal life, mitigating fetal pain, and protecting maternal health.⁸ The ERA asks voters to tell New York to do the opposite.

The ERA's fallout would be devastating, especially for the welfare of New York women and their preborn children. The ERA enshrines abortion-on-demand throughout pregnancy into the constitution, increases the number of coerced abortions in New York, and furthers the harmful and false narrative that abortion is necessary for women to have equality and success in America. The ERA allows abortion activists to turn New York into a permanent abortion destination that endangers the health and safety of its residents both inside and outside the womb.

I. The ERA Makes Abortion a Protected Class

The ERA is incredibly deceptive. By combining a right to abortion along with other sensitive areas such as "ethnicity, national origin, age, disability, . . . [and] pregnancy,"⁹ the ERA places unfettered abortion on the same legal and moral plane as age, ethnicity, and other well-recognized bases for protection.

The ERA is clear in this deception by slipping in the phrase "reproductive healthcare and autonomy."¹⁰ This phrase can easily be expanded to all "matters relating to [women's] pregnancies, including prenatal care, childbirth, postpartum care, birth control, vasectomies and tubal ligations, abortion and abortion care, and care for miscarriages and infertility."¹¹ This vague and broad language may easily be expanded to all matters related to pregnancy.¹² If this amendment is enacted, it will change the face of the entire reproductive process and how it is regulated in New York.

New York currently has very few limits on abortion. However, if abortion becomes not just a constitutional right, but also a protected class, it will be virtually impossible to enact commonsense legislation that seeks to protect women and preborn children from abortion violence. No other element of the law receives more scrutiny or is more closely guarded than a protected class. By installing abortion as a fundamental right and the decision to have an abortion as a protected class, New Yorkers would enshrine abortion into their community and culture in an indelible way.

⁸ *Dobbs*, 142 S. Ct. at 2284.

⁹ New York Equal Protection of Law Amendment (New York 2024).

¹⁰ *Id.*

¹¹ [*Nevadans for Reprod. Freedom v. Washington*, No. 23 OC 00115 1B, 8 \(Nev. Jud. D. Ct. Nov. 23, 2023\), rev'd 546 P.3d 801 \(Nev. 2024\).](#)

¹² New York equal Protection of Law Amendment (New York 2024).

II. The ERA Provides Constitutional Protection for Abortion-on-Demand Throughout Pregnancy.

Passage of the ERA effectuates abortion-on-demand up until a preborn baby’s birth date as a constitutional right. It lifts the veneer of abortionists having to attempt to find a “necessary” reason for a late-term elective abortion under New York’s current law, which seemingly prohibits abortion after twenty-four weeks, but still allows for a broad “health” exception.¹³ Courts, including the U.S. Supreme Court, have broadly interpreted this health exception. In *Doe v. Bolton*¹⁴, which was the companion case to *Roe*, the Supreme Court defined “health” in abortion laws as “*all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the well-being of the patient. All these factors may relate to health.*”¹⁵ Thus, according to this definition, the word “health” in the abortion context “means emotional well-being without limits.”¹⁶ “Any potential emotional reservation a woman has about being pregnant can be deemed, at the discretion of the abortion provider, a threat to her ‘health,’ and thus a reason to ignore any abortion prohibition after fetal viability.”¹⁷ Consequently, the “health” exception the Court contrived in *Doe* “swallowed the supposed ability of the states to prohibit abortion after fetal viability.”¹⁸

Under New York’s broad health exception, if a pregnancy is affecting a woman’s “emotional well-being” for whatever reason, she can have an abortion up to the date of her unborn child’s birth. The abortionist simply has to find the abortion “necessary” to protect the patient’s “health”. Thus, under New York’s current law, a woman can obtain a late term abortion for any foreseeable social reason.

Although it is a common misconception that abortions performed under a health exception, or late-term abortions, are only performed in rare circumstances for medically necessary reasons, as the American Association of Pro-Life Obstetricians and Gynecologists (“AAPLOG”) states, “most abortions are done for social reasons.”¹⁹ “Overall, common exceptions to abortion restrictions are estimated to account for less than five percent of all abortions meaning that 95 percent of abortions are for elective or unspecified reasons.”²⁰ Dr. James Studnicki published a similar outcome in *Health Services Research and Managerial Epidemiology* regarding late-term abortions. As he says,

¹³ N.Y. Pub. Health Law § 2599-bb (The statutory language is specific that “there is an absence of fetal viability, or the abortion is necessary to protect the patient’s life or health.”).

¹⁴ 410 U.S. 179, 192 (1973).

¹⁵ *Id.*

¹⁶ Clarke D. Forsythe, *ABUSE OF DISCRETION: THE INSIDE STORY OF ROE V. WADE* 8 (2013).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *STATE RESTRICTIONS ON ABORTION: EVIDENCE-BASED GUIDANCE FOR POLICYMAKERS*, Comm. Op. 10, at 10 (updated Sept. 2022).

²⁰ *The Assault on Reproductive Rights in a Post-Dobbs America: Hearing before the S. Comm. on the Jud.*, 118th Cong. 15 (2023) (written testimony of Monique Chireau Wubbenhorst, MD, MPH).

[t]he Guttmacher Institute has provided a number of reports over 2 decades which have identified the reasons why women choose abortion, and they have consistently reported that childbearing would interfere with their education, work, and ability to care for existing dependents; would be a financial burden; and would disrupt partner relationships.²¹

Accordingly, most abortions occur for elective reasons of the mother, not because of either the baby's or the mother's medical condition.

Furthermore, it is estimated that abortionists perform around 10,000 abortions at 21 weeks' gestation or later each year.²² However, the number of late-term abortion is likely significantly higher given that the Centers for Disease Control and Prevention's ("CDC") data is limited by voluntary state reporting and abortion destination states, such as California and Maryland, refuse to provide any data to the CDC.²³ Under New York's current abortion law, women are already subjected to late-term abortion procedures. The ERA promotes the increase of late-term abortions by providing constitutional protection in addition to statutory protection for elective abortion throughout all nine months of pregnancy. Not only does this place more women at risk of suffering severe and life-threatening complications, but it also subjects her preborn child to painful abortion procedures. Passing the ERA is not in the best interest of women and only deepens the abortion industry's pockets while subjecting more women to dangerous late-term abortions that threaten their physical and emotional well-being.

a. Late-Term Abortions Carry Higher Risks of Health Complications.

By backstopping late-term abortions in the state, the ERA puts more women at risk of suffering severe and life-threatening complications. Abortions carry a higher medical risk when done later in pregnancy. Even Planned Parenthood, the largest abortion business in the United States, agrees that abortion becomes riskier later in pregnancy. On its national website, Planned Parenthood states: "The chances of problems gets higher the later you get the abortion, and if you have sedation or general anesthesia," which would be necessary for an abortion at or after 20 weeks of gestation.²⁴

Gestational age is the strongest risk factor for abortion-related mortality, and the incidence of major complications is significantly higher after 20 weeks' gestation.²⁵ For example, compared to an abortion at 8 weeks' gestation, the relative risk of mortality

²¹ James Studnicki, *Late-Term Abortion and Medical Necessity: A Failure of Science*, HEALTH SERVS. RSCH. & MANAGERIAL EPIDEMIOLOGY, Apr. 9, 2019, at 1, 1.

²² Guttmacher Institute, *Induced Abortion in the United States*, GUTTMACHER (2019), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>.

²³ See *Questions and Answers on Late-Term Abortion*, CHARLOTTE LOZIER INST. (May 16, 2022), <https://lozierinstitute.org/questions-and-answers-on-late-term-abortion/>.

²⁴ See Planned Parenthood, *How Safe Is an In-Clinic Abortion?*, <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-safe-is-an-in-clinic-abortion> (last visited Oct. 20, 2023).

²⁵ Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 OBSTETRICS & GYNECOLOGY 729, 731 (2004).

increases exponentially (by 38 percent for each additional week) at higher gestational ages.²⁶ Further, researchers have concluded that it may not be possible to reduce the risk of death in later-term abortions because of the “inherently greater technical complexity of later abortions.”²⁷ This is because later-term abortions need to dilate the cervix to a greater degree, and the increased blood flow predisposes women to hemorrhage, and the myometrium relaxes and is more subject to perforation.²⁸

Later-term abortions also pose an increased risk to the woman’s physical and mental health. Some immediate complications from abortion include blood clots, hemorrhaging, incomplete abortions, infection, and injury to the cervix and other organs.²⁹ Immediate complications affect approximately 10% of women undergoing abortion, and approximately one-fifth of these complications are life-threatening.³⁰ If the ERA is passed, it affords constitutional protection for abortion-on-demand, and as a result, more women will experience life-threatening complications from late-term abortions.

b. The ERA Furthers the Psychological Harm of Abortion on Women.

Amending New York’s constitution to enshrine a “right” to abortion and categorize it as a protected class will result in more women suffering post-abortive psychological harms. “[P]regnancy loss (natural or induced) is associated with an increased risk of mental health problems.”³¹ “Research on mental health subsequent to early pregnancy loss as a result of elective induced abortions has historically been polarized, but recent research indicates an increased correlation to the genesis or exacerbation of substance abuse and affective disorders including suicidal ideation.”³²

Scholarship shows “that the emotional reaction or grief experience related to miscarriage and abortion can be prolonged, afflict mental health, and/or impact intimate or parental relationships.”³³ In fact, a recent 2023 study found that American “women whose first pregnancy ends in induced abortion are significantly more likely than women whose first pregnancy ends in a live birth to experience mental health problems throughout their reproductive years.”³⁴ Similarly, “[s]everal recent international studies have demonstrated that repetitive early pregnancy loss, including both miscarriage and induced abortions, is

²⁶ *Id.* at 731; PRO. ETHICS COMM. OF AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *Induced Abortion & the Increased Risk of Maternal Mortality*, Comm. Op. 6 (Aug. 13, 2019).

²⁷ Bartlett, *supra* note 28, at 735.

²⁸ *Id.*

²⁹ See Planned Parenthood, *supra* note 27.

³⁰ REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION 48 (2005).

³¹ David C. Reardon & Christopher Craver, *Effects of Pregnancy Loss on Subsequent Postpartum Mental Health: A Prospective Longitudinal Cohort Study*, 18 INT’L J. ENV’T RSCH. & PUB. HEALTH 1, 1 (2021).

³² Kathryn R. Grauerholz et al. *Uncovering Prolonged Grief Reactions Subsequent to a Reproductive Loss: Implications for the Primary Care Provider*, 12 FRONTIERS IN PSYCH. 1, 2 (2021).

³³ *Id.*

³⁴ James Studnicki et al., *A Cohort Study of Mental Health Services Utilization Following a First Pregnancy Abortion or Birth*, 15 INT’L J. WOMEN’S HEALTH 955, 959 (2023).

associated with increased levels of distress, depression, anxiety, and reduced quality of life scores in social and mental health categories.”³⁵

The ERA permits dangerous abortion procedures on women and young girls that negatively impact their mental and emotional well-being. By authorizing protected status for abortion-on-demand, the rates of mental health issues—such as depression, anxiety, and suicidal ideation—will increase and diminish their overall quality of life.

c. The ERA Subjects Preborn Children to Painful Abortion Procedures.

In addition to harming women’s physical and mental health, abortion also subjects preborn children to fetal pain. There is ample research on fetal pain in the 50 years after *Roe*. As one example, in 2019, scientists found evidence of fetal pain as early as 12 weeks’ gestation.³⁶ “Pain receptors (nociceptors) begin forming at seven weeks’ gestational age, with the nerves linking pain receptors to the pain-sensing part of the brain, the thalamus, forming at 12 weeks.”³⁷ Furthermore, by twelve weeks’ gestation almost every organ and tissue has formed in a preborn baby³⁸ and the baby has arms, legs, fingers, toes, a face, and eyelids.³⁹

A 2010 study found that “the earlier infants are delivered, the stronger their response to pain”⁴⁰ because the “neural mechanisms that inhibit pain sensations do not begin to develop until 34–36 weeks[] and are not complete until a significant time after birth.”⁴¹ As a result, preborn children display a “hyperresponsiveness” to pain.⁴² According to one group of fetal surgery experts, “[t]he administration of anesthesia directly to the fetus is critical in open fetal surgery procedures.”⁴³

Given the medical advancements in fetal medicine and the evidence of fetal pain early in a pregnancy, it is well within the state’s legitimate interests to enact laws that preserve prenatal life as well as minimize fetal pain as much as possible.⁴⁴ However, the ERA’s passage impedes New York’s ability to enact or maintain any gestational limit on abortion

³⁵ Grauerholz, *supra* note 35; see, e.g., Louis Jacob et al., *Association Between Induced Abortion, Spontaneous Abortion, and Infertility Respectively and the Risk of Psychiatric Disorders in 57,770 Women Followed in Gynecological Practices in Germany*, 251 J. AFFECTIVE DISORDERS 107, 111 (2019) (finding “[a] positive relationship between induced abortion . . . and psychiatric disorders”).

³⁶ Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 J. MED. ETHICS 3 (2020).

³⁷ 12 Facts at 12 Weeks, CHARLOTTE LOZIER INST. (Apr. 25, 2023), <https://lozierinstitute.org/12-facts-at-12-weeks/>.

³⁸ Thomas Sadler, *MEDICAL EMBRYOLOGY* 14th ed. (2019).

³⁹ Carnegie Stage 23 Introduction, VIRTUAL HUM. EMBRYO: DIGITALLY REPRODUCED EMBRYONIC MORPHOLOGY, <https://www.ehd.org/virtual-human-embryo/intro.php?stage=23> (last visited Apr. 25, 2024).

⁴⁰ Lina K. Badr et al., *Determinants of Premature Infant Pain Responses to Heel Sticks*, 36 PEDIATRIC NURSING 129 (2010).

⁴¹ *Fact Sheet: Science of Fetal Pain*, CHARLOTTE LOZIER INST. (Sept. 2022), https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#_ednref14.

⁴² Christine Greco & Soorena Khojasteh, *Pediatric, Infant, and Fetal Pain*, CASE STUDIES PAIN MGMT. 379 (2014).

⁴³ Maria J. Mayorga-Buiza et al., *Management of Fetal Pain During Invasive Fetal Procedures. Lessons Learned from a Sentinel Event*, 31 EUROPEAN J. ANAESTHESIOLOGY 188 (2014).

⁴⁴ See *Dobbs*, 142 S. Ct. at 2284.

whatsoever. Abortion activists may argue that such laws are discriminatory because they interfere with a woman’s constitutional protected “right” to abortion, even though such laws further the state’s legitimate interest to preserve prenatal life and mitigate fetal pain. This leads to abortion activists challenging and seeking the removal of existing life-affirming protections for preborn children.

III. Passage of the ERA Denies New Yorkers’ the Ability to Protect Pregnant Women, and Preborn Children.

The ERA impedes the state from passing any future protections for women, adolescent girls, and preborn children by treating abortion as a protected class. ERA appears to impose a strict scrutiny standard on abortion regulations, similar to the Supreme Court in *Roe*. Specifically, ERA prohibits the state from regulating abortion unless the state demonstrates that it is not “interfer[ing] with, limit[ing], or deny[ing] the civil rights of any person based” on the protected classes.⁴⁵ Strict scrutiny is the highest and strictest standard a court uses when reviewing the constitutionality of a challenged law. Courts apply strict scrutiny when analyzing laws that restrict constitutionally guaranteed rights. Under this standard, courts require states to demonstrate that they have a compelling governmental interest to restrict the constitutional right and did so through the least restrictive means possible. In *Roe*, the Supreme Court found that restrictions on abortion require strict scrutiny review because abortion was a purported fundamental right.⁴⁶ The Supreme Court quickly found strict scrutiny was unworkable in the abortion context, and discarded this approach in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, although it implemented the equally unworkable “undue burden” standard.⁴⁷ Later, the Supreme Court in *Dobbs* overturned *Roe* and *Casey* entirely, holding that there is no right to abortion in the U.S. Constitution.⁴⁸

Accordingly, the *Dobbs* Court applied the lowest standard of review, known as “rational basis review.” Under this standard, if the law is rationally related to a legitimate governmental interest, the law is permissible. *Dobbs* acknowledges that states have legitimate governmental interests in regulating abortion in order to protect maternal health and safety, to preserve prenatal life, to mitigate fetal pain, to prohibit barbaric medical procedures, to preserve the integrity of the medical profession, and prevent discrimination on the basis of race, sex, or disability.⁴⁹ However, despite the Supreme Court overturn of *Roe*, ERA’s use of the phrase, “discrimination,” implicates strict scrutiny review. In doing so, ERA imposes the highest standard of review on laws regulating abortion in New York that the Supreme Court has disavowed twice—first in *Casey*, then in *Dobbs*. This makes it difficult for

⁴⁵ New York equal Protection of Law Amendment (New York 2024).

⁴⁶ *Roe v. Wade*, 410 U.S. 113 (1973).

⁴⁷ 505 U.S. 833 (1992).

⁴⁸ *Dobbs*, 142 S. Ct. at 2284.

⁴⁹ *Id.*

New York to pass any protections for women and preborn children even though these laws further the state's legitimate interests to do so.

Michigan residents are currently facing a similar challenge. Only one year after the residents voted to amend their constitution to enshrine a right to abortion, the legislature is seeking to repeal virtually all pro-life policies in the state, such as their informed consent process, licensing requirements for abortion clinics, abortion reporting requirements, prohibitions on gruesome partial-birth abortions, etc. Some of the language in Michigan's abortion amendment is similar to the language in ERA. Michigan's abortion amendment allows for a broad exception for late-term abortions to protect a woman's "physical or mental health," and prohibits the state from regulating abortion unless "justified by a compelling state interest achieved by the least restrictive means."⁵⁰ Yet, New York's exception is even broader because it uses the word, "health," rather than qualifying it to just the physical or mental health of the woman. Thus, the ramifications of New York passing ERA may be enshrining into its constitution even more devastating effects than those seen in Michigan.

IV. The ERA Enables Sex-traffickers and Abusers to Coerce Victims into Having Abortions Against their Will.

The ERA subjects women to coerced abortions while protecting their abusers. Under the ERA, New York would face high barriers to implementing policies to prohibit a sex trafficker or abusive partner from bringing their victim to an abortion clinic to have an abortion, if it is the woman who asks for the abortion. Such efforts as parental involvement and anti-coercion policies would face challenges for "interfering" with a woman's "reproductive intentions."⁵¹ Further, the ERA may lead to abortion activists challenging and eliminating New York's current laws on limiting abortion after 24 weeks' gestation,⁵² and the conscientious protections for those unwilling to provide abortions⁵³ for being discriminatory. As a result, ERA strips New York women of necessary safeguards for authentic choice and increases the number of coerced abortions.

Sadly, many women have coerced abortions. For example, a woman seeking an abortion may be facing intimate partner violence (IPV). There are "[h]igh rates of physical, sexual, and emotional IPV . . . among women seeking a[n abortion]."⁵⁴ For women seeking abortion, the prevalence of IPV is nearly three times greater than women continuing a pregnancy.⁵⁵ Post-abortive IPV victims also have a "significant association" with

⁵⁰ MICH. CONST. art. I, § 28.

⁵¹ Similar policies have been challenged in Michigan and Ohio.

⁵² N.Y. Pub. Health Law §§ 2599-BB.

⁵³ N.Y. Civil Rights Law § 79-i (Consol. 2024).

⁵⁴ Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLOS MED. 1, 15 (Jan. 2014).

⁵⁵ COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (Feb. 2013).

“psychosocial problems including depression, suicidal ideation, stress, and disturbing thoughts.”⁵⁶

Similarly, intimate partners, family members, and sex traffickers may be asserting reproductive control over the woman, which are “actions that interfere with a woman’s reproductive intentions.”⁵⁷ In the context of abortion, reproductive control not only produces coerced abortions or continued pregnancies, but it also affects whether the pregnancy was intended in the first place.⁵⁸ Reproductive control is a prevalent issue for women. “As many as one-quarter of women of reproductive age attending for sexual and reproductive health services give a history of ever having suffered [reproductive control].”⁵⁹

There are several studies that highlight the prevalence of coerced abortions. A recent peer-reviewed study showed that 43% of post-abortive women described their abortion as “accepted but inconsistent with their values and preferences,” while 24% indicated their abortion was “unwanted or coerced.”⁶⁰ Similarly, another study found that 61% of women reported experiencing “high levels of pressure” to abort from “male partners, family members, other persons, financial concerns, and other circumstances.”⁶¹ This study found that:

These pressures [to abort] . . . are strongly associated with more negative emotions about [a woman’s] abortion; more disruptions of their daily life, work, or relationships; more frequent . . . intrusive thoughts about their abortions; more frequent feelings of loss, grief, or sadness about their abortion; . . . [and] a perceived decline in their overall mental health that they attribute to their abortions . . .⁶²

Furthermore, victims of sex-trafficking are among the number of women who experience reproductive control. A 2014 study on the health consequences for sex-trafficking victims found that 66 sex-trafficking victims had a total of 114 abortions, “[w]ithout accounting for possible underreporting.”⁶³ “The [sex-trafficking] survivors in this study [] reported that they often did not freely choose the abortions they had while being trafficked.”⁶⁴ A majority of the 66 sex-trafficking victims “indicated that one or more of their abortions was at least partly forced upon them.”⁶⁵ Given the prevalence of coerced abortions

⁵⁶ Hall, *supra* note 57, at 11.

⁵⁷ Sam Rowlands & Susan Walker, *Reproductive Control by Others: Means, Perpetrators and Effects*, 45 *BMJ SEXUAL & REPROD. HEALTH* 61, 62, 65 (2019).

⁵⁸ *Id.* at 62–63.

⁵⁹ *Id.* at 62.

⁶⁰ David C. Reardon et al., *The Effects of Abortion Decision Rightness and Decision Type on Women’s Satisfaction and Mental Health*, *CUREUS*, May 11, 2023, at 1.

⁶¹ David C. Reardon & Tessa Longbons, *Effects of Pressure to Abort on Women’s Emotional Responses and Mental Health*, *CUREUS*, Jan. 31, 2023, at 1.

⁶² *Id.* at 1.

⁶³ Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 *ANNALS HEALTH L.* 61, 73 (2014).

⁶⁴ *Id.*

⁶⁵ *Id.*

among sex-trafficking victims, the authors of the study note how “[h]ealthcare providers can play a crucial role in the trafficking rescue process by identifying possible victims and following up on those suspicions with careful, strategic questions, and actions that catalyze rescue or help create exist strategies.”⁶⁶

Despite the prevalence of coercive abuse among women seeking abortions, ERA prohibits New York from penalizing, prohibiting, or interfering with abusers or sex traffickers who are “assisting” a woman seeking an abortion. If the state wants to enact additional laws to protect women against coerced abortions, it can only do so by demonstrating that it is not “discrimination.”⁶⁷ New York will have a hard time meeting this standard, especially with the ERA’s use of vague terms like “widely accepted and evidence-based standards of care.” Abortion activists often use these phrases in favor of abortion. For example, the American College of Obstetricians and Gynecologists’ (ACOG) abortion policy states, “[a]ll people should have access to the full spectrum of comprehensive, *evidence-based health care*. Abortion is an essential component of comprehensive, *evidence-based health care*.”⁶⁸ Given that abortion activists purport that abortion is “evidenced-based” care, they may argue that any limitation on abortion, even coerced abortions, fails to “advance the individual’s health in accordance with widely accepted and evidence-based standards of care” and would qualify as discrimination against abortion autonomy.

Currently, Michigan’s legislature is seeking to repeal a Michigan law that requires doctors to screen for coercion and provide victims of coercive abuse with helpful resources. Proponents of the repeal argue that the law creates barriers to women’s access to abortion. Thus, because abortion activists consider abortion as evidence-based care and see any law that limits abortions as a burden on women, New York will likely not meet ERA’s standard to enact laws that would protect against coercive abuse.

If ERA is passed, abortion activists may seek to challenge and eliminate critical protections for women experiencing IPV or reproductive control. They may also challenge any attempt to enact new laws to protect against coercive abuse, arguing that such laws create “barriers” to abortion and constitute discrimination. Removing protections against coerced abortions incentivizes abusers to continue forcing women to obtain abortions in order to cover up their violent acts, leaving women unprotected, victimized, and silenced.

V. The ERA Furthers the False Narrative that Abortion is Necessary for Women’s Equality in American Society.

⁶⁶ *Id.* at 84.

⁶⁷ New York equal Protection of Law Amendment (New York 2024).

⁶⁸ *Abortion Policy*, ACOG, <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2022/abortion-policy> (last updated May 2022) (emphasis added).

By purporting that there should be and is a “right” to abortion on demand, ERA furthers the narrative that women need abortion in order to obtain success and equality in American society. This belief is unfounded and is anti-woman.

First, as stated above, the language used in the ERA is deceptive and does not describe the reality of what abortion is. Abortion is not healthcare. It is the intentional destruction of innocent preborn human life. According to the American Association of Pro-life Obstetricians and Gynecologists (“AAPLOG”), “elective abortion is defined as those drugs or procedures used with the primary intent to end the life of the human being in the womb.”⁶⁹ Elective abortions are not medically required, as AAPLOG explains, “[e]lective’ . . . refers to inductions done in the absence of some condition of the mother or the fetus which requires separation of the two in order to protect the life of one or the other (or both).”⁷⁰ Indeed, “there is no medical indication for elective induced abortion, since it cures no medical disease.”⁷¹

Additionally, abortion activists often imply that pregnancy is some sort of illness or disability, rather than a natural physiological process that many women experience. As AAPLOG notes, “[p]regnancy is not a disease, and the killing of human beings in utero is not medical care.”⁷² Further, “[t]o date, the medical literature offers no support for the claim that abortion improves mental health or offers protection to mental health. In fact, there is evidence to the contrary.”⁷³ Despite these evident truths, abortion activists continue to push false narratives about pregnancy and women’s alleged “need” for abortion. However, the evidence abortion activists rely upon, which “claim[s] to show that abortion has facilitated women’s health and equality is feeble and/or scientifically invalid.”⁷⁴ Indeed, women are harmed by “the repetition and acceptance of the ‘equality’ argument for favoring legal abortion,” because it “easily communicates that women’s pregnancy and parenting is a disability most females suffer. It explicitly or implicitly assumes that the male body and reproductive model is the norm, to which women should conform in order to achieve ‘agreed’ measures of success.”⁷⁵

Pregnancy is neither an illness nor a disability, and to imply that it is such results in discriminatory treatment towards women. “A system that undervalues both mothering and fathering severely disadvantages women as well as men and children, and interferes with

⁶⁹ AAPLOG Statement: Clarification of Abortion Restrictions, AM. ASS’N PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS (July 14, 2022), <https://aaplog.org/aaplog-statement-clarification-of-abortion-restrictions/>.

⁷⁰ Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Concluding Pregnancy Ethically*, Prac. Guideline No. 10, at 5 (Aug. 2022).

⁷¹ Pro. Ethics Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Hippocratic Objection to Killing Human Beings in Medical Practice*, Comm. Op. No. 1, at 8 (May 8, 2017).

⁷² *Id.*

⁷³ Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *supra* note 73, at 5.

⁷⁴ Helen M. Alvare, *Nearly 50 Years Post-Roe v. Wade and Nearing its End: What is the Evidence that Abortion Advances Women’s Health and Equality*, 35 Regent L. R. 165, 216 (Feb. 2022).

⁷⁵ *Id.* at 213.

children receiving the care they require.”⁷⁶ Additionally, this leads to both a “public and private resistance to accommodating motherhood in employment,” which “leads to additional disadvantages for women. For example, discrimination on the basis of pregnancy and motherhood has succeeded outright discrimination on the basis of sex.”⁷⁷ Women deserve better than to have the abortion industry subject them to deceptive language surrounding abortion, which is a life-altering—and at times, life-threatening—decision. The ERA furthers the abortion industry’s lies and efforts to mask the realities of abortion, which is to the detriment of women’s health, safety, and socioeconomic success and equality in America by embedding these principles into the New York constitution.

Conclusion

Affording protected status to abortion-on-demand in New York’s constitution will negatively impact the welfare of women and preborn children in New York. The ERA targets and undermines life-affirming policies by contriving abortions-on-demand into the constitution under the guise of equal protection for other groups needing protection, such as racial minorities and persons with disabilities. New York’s strong anti-life policies will be enshrined into New York’s constitution, which will create a culture that threatens the health and safety of New York residents both inside and outside the womb. Further, having a constitutionally protected “right” to abortion will make it extremely difficult for New York to enact any future protections for women and girls seeking abortion, which subject women to an unregulated, dangerous abortion industry. This amendment does not give “freedom” to women but hands control to self-interested abortionists who financially benefit from abortion-on-demand as well as to sex-traffickers and abusers who seek to cover up their crimes by forcing their victims to obtain abortions. Abortion is not healthcare, and contriving a state constitutional right to abortion will be disastrous for New York.

⁷⁶ *Id.* at 214.

⁷⁷ *Id.* at 216.