



NEW YORK STATE
BAR ASSOCIATION

Resolution and Reports of the New York State Bar Association **Women in Law Section – Supporting Abortion Rights 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 _____

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”¹ 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”²; and

WHEREAS, effective January 22, 2019, New York State enacted S.240/A.21³, 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 Law⁴; and

WHEREAS, on June 13, 2022, New York State enacted six laws (together, the “June 13, 2022, Legislative Package”)⁵ 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*, which cases 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 a policy supporting New York State Senate Bill S.1268, which proposed an

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

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

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

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

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

amendment to Article 1 of the New York State Constitution in relation to equality of rights and protection against discrimination⁶; 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 protection⁷, and

WHEREAS, federal legislation, the Women’s Health Protection Act of 2022⁸, 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;

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 S.240/A.21, as enacted by New York State; and it is

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

FURTHER RESOLVED, that the New York State Bar Association supports S.51002, as passed by the New York State Senate and Assembly; and it is

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

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.

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

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

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

AMENDED REPORT OF THE NYSBA WOMEN IN LAW SECTION IN SUPPORT OF ITS PROPOSED RESOLUTION SUPPORTING ABORTION RIGHTS AND THE NEW YORK STATE EQUAL RIGHTS AMENDMENT¹

August 26, 2022

I. INTRODUCTION

The Women in Law Section (“WILS”) of the New York State Bar Association (“NYSBA” or the “Association”) submits this report in support of its request that NYSBA adopt as an Association-wide policy:

- (i) support for the rights of individuals to access legal reproductive health care including abortion;
- (ii) support for the laws of New York State (“NYS” or the “State”) that have codified the right to reproductive healthcare including abortion, ensure that abortion remains safe, legal, and accessible for all who need it, and protect providers of reproductive healthcare, including but not limited to:
 - a. S.240/A.21, as enacted by New York State;
 - b. N.Y. Public Health Law Article 25-A; and
 - c. the June 13 Legislative Package by New York State²;
- (iii) as a state legislative priority, support for Senate Bill S51002, the Equal Rights Amendment (“ERA”) to the NYS Constitution, that was passed by the State’s Senate and Assembly on July 1, 2022³;
- (iv) as a federal legislative priority, support for a law such as the Women’s Health Protection Act of 2022⁴ that would guarantee reproductive health and abortion rights nationwide; and

¹ This report amends the Report of the NYSBA Women in Law Section in Support of Its Proposed Resolution Supporting Abortion Rights and the New York State Equal Rights Amendment, dated August 22, 2022.

² <https://www.governor.ny.gov/news/governor-hochul-signs-nation-leading-legislative-package-protect-abortion-and-reproductive> (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)

³ <https://www.nysenate.gov/legislation/bills/2021/s51002>

⁴ <https://www.congress.gov/bill/117th-congress/house-bill/8296>

- (v) as a federal legislative priority, opposition to any law that would ban abortion nationwide.

II. NYSBA SHOULD SUPPORT REPRODUCTIVE RIGHTS INCLUDING THE RIGHT TO CHOOSE ABORTION

Background

On June 24, 2022, the United States Supreme Court issued a 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).

Bar associations across the country, including the American Bar Association (“ABA”), the National Association of Women Lawyers (“NAWL”), and the Women's Bar Association of the State of New York (“WBASNY”), expressed their opposition to the *Dobbs* decision and their support for reproductive and abortion rights.⁵ Associations of medical professionals, including the American College of Obstetricians and Gynecologists (ACOG), the American Medical Association, the American Academy of Pediatrics, and the American Academy of Family Physicians, also issued statements opposing the *Dobbs* decision and supporting abortion rights.⁶ 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.⁷

The position of these associations and communities of lawyers and medical professionals is that (i) abortion is healthcare; (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.

We agree. As we said in our own statement by the Women in Law Section in reaction to the *Dobbs* ruling,

⁵ Copies of these position statements, resolutions and any other information requested to assist the EC and HOD shall be made available upon request.

⁶ <https://www.cnet.com/health/medical/the-medical-community-says-abortion-access-is-health-care-heres-why/>

⁷ <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/>

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.⁸

The law of the State of New York, where abortion has been legal since 1970, agrees as well. New York expanded abortion rights in 2019.⁹ In June of this year, in response to the leaked draft decision in *Dobbs*, NYS enacted legislation, including the June 13 Legislative Package, to expand abortion access here, help protect persons who travel here for abortion services, and protect healthcare providers who provide abortion services in the State.

Also this year, New York passed its first Equal Rights Amendment (“ERA”) to the State Constitution to add “reproductive rights and autonomy” as a protected category.¹⁰

Elsewhere in the United States, however, states began to enact or trigger abortion bans. Within weeks, or even 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 additional bans have been enacted or are about to be triggered.¹¹ Some states make no exceptions for victims of rape or incest.¹²

⁸ <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/>

⁹ <https://www.nysenate.gov/legislation/bills/2019/s240>; <https://www.nysenate.gov/legislation/laws/PBH/A25-A>

¹⁰ In or about January 2022, NYSBA’s Executive Committee adopted as policy its support for a previous version of the ERA that had been proposed as Senate Bill S1268.

There are two key differences between S1268 and S51002:

- (i) S51002, unlike the earlier bill, would add “reproductive healthcare and autonomy” as a protected category, thereby creating a constitutional right to reproductive healthcare including abortion.
- (ii) S51002 would add the new protected categories to Article I, thereby granting the new protected categories the same level of protection as rights that are already protected in the constitution, such as race, color, creed, and religion. This second point allowed some religious organizations to drop their opposition to the version of the ERA that was Senate Bill S1268.

For the reasons that NYSBA adopted the ERA in January 2022 and for the reasons set forth in this report, we ask NYSBA to adopt as policy its support for the ERA that is S51002.

¹¹ <https://www.cnn.com/2022/08/25/politics/abortion-access-trigger-laws-idaho-tennessee-texas/index.html> (published Aug. 25, 2022)

¹² <https://www.chicagotribune.com/nation-world/ct-aud-nw-abortion-conservatives-supreme-court-20220506-zdfjsw4cveora32emjhu3m4x4-story.html> (published May 6, 2022)

Abortion Is Healthcare

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).¹³
- 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.¹⁴
- 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.¹⁵
- 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.¹⁶
- 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.¹⁷
- In states that prevent pregnant women from getting a divorce, pregnant women could not free themselves of abusive spouses.¹⁸

Each of these patients was denied or is being denied basic healthcare. Before *Dobbs*, these doctors would have recommended and performed abortions 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 refusing to perform abortions or are delaying them until later than medically advisable. Medical professionals are well aware that the potential repercussions for violating state abortion

¹³ <https://www.cnn.com/2022/07/14/us/indiana-ag-ohio-rape-victim/index.html> (published July 15, 2022)

¹⁴ <https://news.yahoo.com/theyre-just-going-let-die-182653375.html> (published Aug. 1, 2022)

¹⁵ <https://news.yahoo.com/louisiana-mother-said-she-denied-003726187.html> (published Aug. 16, 2022)

¹⁶ <https://www.nbcnews.com/health/health-news/abortion-laws-texas-wisconsin-forcing-pregnant-women-wait-care-rcna41678> (published Aug. 8, 2022)

¹⁷ <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/>

¹⁸ <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>

bans are harsh: they could face financial penalties and/or criminal penalties and lose their licenses to practice medicine.

As one news report explained: “while all of [the 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.”¹⁹

Health care providers know when abortions are medically necessary. Yet in some states, doctors are told to consult with their attorneys for clarity.²⁰ 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.

As healthcare is delayed, the dangers to pregnant persons increase. 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 Endanger Adults and Minors

Abortion bans are also causing medical professionals and facilities to refuse to perform necessary procedures to end ectopic pregnancies. According to medical professionals, an ectopic pregnancy is not viable, and is a life-threatening condition that requires emergency treatment.²¹ An ectopic pregnancy is also a serious risk to the pregnant person. Yet, due to the draconian laws imposed by state abortion bans, doctors in those states are forced to wait until their patients

¹⁹ <https://www.nbcnews.com/health/health-news/abortion-laws-texas-wisconsin-forcing-pregnant-women-wait-care-rcna41678>

²⁰ <https://www.wvno.org/news/2022-07-28/louisiana-doctors-confused-about-abortion-law-advised-by-state-board-to-consult-with-lawyer>

²¹ <https://my.clevelandclinic.org/health/diseases/9687-ectopic-pregnancy>,

An ectopic pregnancy is a pregnancy that happens outside of the uterus. This happens when a fertilized egg implants in a structure that can't support its growth. An ectopic pregnancy often happens in the fallopian tube (a pair of structures that connect the ovaries and uterus). In rare cases, an ectopic pregnancy can occur on an ovary or in the abdominal cavity.

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.²²

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.²³

And medical professionals face grave concerns over what might be permissible in treating pregnant persons with cancer, when treatments can unintentionally end pregnancies.²⁴

Forcing minors to carry a pregnancy to term is especially cruel. A forced pregnancy effectively means ending the minor's childhood. 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 potential. Some pregnant minors will be forced into marriage, which often means victims are forced to marry their rapist and often will be further victimized by domestic violence.

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.²⁵

And there are grave concerns that laws that ban abortion at the moment of conception could be used to deprive persons of the ability to build a family using in vitro fertilization (IVF).²⁶

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

²² <https://www.wired.com/story/the-fall-of-roe-makes-complex-pregnancies-even-riskier/> (published Aug, 8, 2022)

²³ <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html> (published July 17, 2022)

²⁴ <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)

²⁵ <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/>

²⁶ <https://www.medpagetoday.com/special-reports/exclusives/100028>

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.²⁷

Not everyone has the means or support system to make the trip. Some persons cannot take time off 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 higher. 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 will 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 healthcare may be forced to carry their pregnancies to term or forced to find other, potentially dangerous, methods to terminate their pregnancies. Abortion bans 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, poverty, and issues of bias in the health care system.²⁸ 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.”²⁹ In other words, the cycle of poverty is perpetuated.

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 family could lose their loved one.

²⁷ <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)

²⁸ <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>

²⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5803812/>

And make no mistake, abortion bans are a matter of economic and health justice that disproportionately impacts 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.”³⁰

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.³¹ With higher rates of pregnancy complications, increased difficulties in accessing contraception, issues of bias in receiving healthcare 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 impacted by losing access to abortion as a reproductive health option.

Abortion Bans Violate Religious Freedoms

Abortion bans also violate persons’ freedom of religion.³² 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. The abortion ban, by making the decision for everyone regardless of their personal religious and spiritual beliefs, is depriving persons of their religious freedoms.

Abortion Is Healthcare and 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:

³⁰ <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>

³¹ *Id.*, see <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2021.306375>

³² <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>

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 renal conditions, may be so severe that abortion is the only measure to preserve a woman's health or save her life.³³

Moreover, abortion bans are threatening the ability of persons to access life-saving medications, the ability of persons to make reproductive health choices involving contraception and in vitro fertilization, and the ability of persons 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 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. The laws tend to start the count as of the pregnant person's last menstrual cycle, which is before conception. Six weeks later, a woman may be prohibited from having an abortion before she even knows that she is pregnant. 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

³³ <https://www.acog.org/advocacy/facts-are-important/abortion-is-healthcare>

who travel for abortions 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 healthcare providers. The Reproductive Health Act of 2019 removed abortion from the criminal code and broadened abortion rights.³⁴ 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 healthcare, including an abortion, if the patient’s health or pregnancy is at risk.³⁵

But 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 potential path to a national abortion ban. Such a ban might pre-empt the laws of our State and other states that protect abortion rights, overruling the choice of the people.³⁶ 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.³⁷ Our State Legislature recognized this risk in July 2022 when, after many years of debate over proposed ERA bills, the Legislature voted in favor of amending the State Constitution to add protected categories including protection for reproductive healthcare and autonomy.³⁸

The risks to our reproductive rights and healthcare 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 healthcare rights, and strenuously oppose any national law banning abortion.

³⁴ <https://www.nysenate.gov/legislation/bills/2019/s240>; <https://www.nysenate.gov/legislation/laws/PBH/A25-A>

³⁵ <https://www.ny.gov/programs/abortion-new-york-state-know-your-rights>;
<https://ag.ny.gov/sites/default/files/abortion-laws-english.pdf>

³⁶ 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. <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).

³⁷ <https://www.congress.gov/bill/117th-congress/house-bill/8296>

³⁸ <https://www.nysenate.gov/legislation/bills/2021/s51002>

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 abortion rights.

III. CONCLUSION

For the foregoing reasons, we ask NYSBA to support WILS' resolution and adopt as its policy: (i) support for reproductive healthcare and abortion rights; (ii) support for NYS laws that protect abortion rights; (iii) support for the Equal Rights Amendment to New York's Constitution that passed as S51002; (iv) support for a federal law protecting reproductive healthcare rights; and (v) opposition to any federal law banning abortion.