TESTIMONY OF JACQUELINE M. EBANKS
EXECUTIVE DIRECTOR, COMMISSION ON GENDER EQUITY

Good Morning, Chair Rosenthal.

I am Jacqueline Ebanks, Executive Director of the Commission on Gender Equity (CGE). In this role I also serve as an advisor to the Mayor and First Lady on policies and issues impacting gender equity in New York City.

Established in 2015 and codified into law in 2016, the Commission on Gender Equity works with city agencies to remove institutional barriers to equity and to establish inclusive policies and practices which ensure that all New Yorkers, regardless of gender identity or expression:

- have opportunities to be economically secure
- have access to quality and affordable health care
- have full autonomy over their reproductive lives and
- live safely in their homes and communities

I am pleased to represent the Administration today in support of Resolution 84 which urges the New York State Legislature to pass and the Governor to sign the Reproductive Health Act in the upcoming legislative session.

In a recently filed amicus brief, in the U. S. Supreme Court case of *Whole Woman's Health et al v. Kirk Cole, M.D. Commissioner of the Texas Department of State Health Services et al,* New York City's leadership in the fight for reproductive freedom was described as follows:

"Before the constitutional right to abortion was established, New York City was one of the few places where women could obtain safe and legal abortions. Hundreds of thousands of women from all over the country, including over 3,400 from Texas, traveled to New York City seeking access to abortion services." [1]

The brief further states that, "before New York State became one of the first jurisdictions in the United States to legalize abortions; New York City faced a public health crisis. An estimated 50,000 women were having clandestine

[1] Whole Woman's Health et al...p 2

abortions every year. As a consequence, abortion-related deaths and complications were commonplace. That changed in 1970, when New York State liberalized its laws to allow abortions up to 24 weeks after conception, or at any time thereafter to protect a woman's life."[2]

The de Blasio Administration remains committed to implementing holistic and inclusionary reproductive justice policies and services. And, since 2014, the Administration has ensured that the City's "11 hospitals—within its Health + Hospital network—provide expert prenatal care, labor and delivery services, family planning, comprehensive gynecological services, women's health and primary care outpatient medical support for women at every stage of life."[3]

Also since 2014, the de Blasio administration and this City Council has, through various legislative, programmatic, and advocacy actions:

- increased access to contraceptives, including emergency contraception
- created the Sexual Health Education Task Force to develop strategies for implementing comprehensive sexual health education in New York City public schools
- offered comprehensive and confidential care for women, including contraceptive counseling, management of pregnancy loss, and elective pregnancy termination in a safe and supportive environment
- and, as noted above, filed amicus briefs to protect reproductive freedom whenever it is threatened in the nation

While NYC continues to expand and support comprehensive reproductive health care, the Trump Administration continues its attack on reproductive health care programs at the federal level. Such was the case on June 1, 2018 when the Trump Administration proposed significant and detrimental changes to the Title X Family Planning Program. In response to these proposed changes, Mayor de Blasio, along with 79 mayors from across the nation, sent a letter expressing "vehement opposition to the implementation of a domestic "gag rule" on the Title X family planning program."[4] Additionally, NYC Deputy Mayor for Health and Human Services, Dr. Herminia Palacio, submitted the Administration's detailed objections to the proposed changes during the public comment period. The Mayors' letter

[2] Ibid, p 7
[3] https://www.nychealthandhospitals.org/services/obstetrics-gynecology/
[4] Letter to DHHS Secretary Alex Azar, June 5, 2018

and Dr. Palacio's comments are attached to this testimony. In the wake of these proposed changes, NYC continues to advocate for maintaining full appropriation of Title X funds.

Clearly, current trends place the nation on the precipice of returning to an era when a woman's right to make her own reproductive decision belonged to everyone else but her. These trends are exacerbated by the complete and willful ignorance to the reproductive rights of transgender and gender non-conforming Americans.

Given these sobering realities—from proposed changes to Title X funding, to the possible appointment of another Supreme Court Justice opposed to Roe v. Wade, to the fact that several states have enacted laws limiting women's reproductive rights, to the denial of reproductive rights and competent medical care for transgender and gender non-conforming Americans—it is incumbent upon the NYS legislature to secure reproductive justice for all New Yorkers.

Therefore, it is with great urgency that the Commission on Gender Equity supports the NYS Reproductive Health Act.

The City has supported the Reproductive Health Act in past years and again submitted, in 2018, a Memorandum of Support to the New York State Legislature because "the Act would:

- bring New York State into compliance with constitutional law... by providing a pregnant individual with the explicit right to access the care necessary when their health is at risk or the fetus is not viable, and

- prohibit the prosecution of health care professionals that provide abortion services, ensuring that a fear of prosecution is not a barrier to care,

- remove the state abortion law out of the Penal Code and place into the Public Health Law—sending an important signal to medical providers that they need not fear criminal prosecution for treating a patient whose pregnancy is endangering their health.[5]

[5] Office of the Mayor, Memorandum in Support of Reproductive Health Act, May 31, 2018

The City's Memorandum in Support is also attached to this testimony.

It is also important to note that the Reproductive Health Act underscores the importance of access to contraception in securing reproductive rights for all New Yorkers by asserting, in its statement of policy, that "it is the public Policy of the State of New York that every individual has the fundamental right to choose or refuse contraception."[6]

Passing and signing the Reproductive Health Act into law is essential to ensuring the reproductive rights and economic well-being of New Yorkers. As Supreme Court Associate Justice Ruth Bader Ginsburg writes, in her Hobby Lobby dissent, "the ability of women to participate equally in the economic and social life of the nation has been facilitated by their ability to control their reproductive lives."[7]

If NYS wants to remain of beacon of Progressivism in this nation, and the globe, it must lead by providing New Yorkers full autonomy over their reproductive lives. As First Lady Chirlane McCray stated, "Reproductive health is not a privilege. It is a right protected by the Constitution."

Resolution 84 calls upon New York State to assert its leadership for reproductive justice and to protect a woman's right to choose.

The de Blasio Administration applauds the City Council for considering Resolution 84 and supports its passage. Thank you.

[6] Reproductive Health Act, NYS.

[7] Burwell v. Hobby Lobby Stores, Inc., 573 U.S.__, 61 (2014).

The Honorable Secretary Alex Azar
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue S.W.
Washington, D.C. 20204

June 5, 2018

Dear Secretary Azar,

We, the undersigned mayors, lead over 75 cities across the United States, representing big cities as well as rural areas and more than 32 million Americans. We write on behalf of these communities and families to express our vehement opposition to the implementation of a domestic "gag rule" on the Title X family planning program. By prohibiting health care providers in the program from referring their patients for abortion, this policy would deny people the information they need to make their own informed health care decisions. On top of banning information on abortion, the domestic gag rule is also designed to make it impossible for Planned Parenthood health centers and other specialized reproductive health care providers to serve patients in the program, which would mean patients in communities across the country would lose access to basic health care. The gag rule would have a devastating impact on women and families in our communities.

Title X is the nation's only program dedicated to providing affordable birth control and reproductive health care to people with low incomes or who are otherwise underserved. Every year, more than four million women, men, and young people go to Title X-funded health centers for basic, confidential preventive health care, including cancer screenings, birth control, sexually transmitted infection (STI) screenings, pregnancy testing, and annual exams.

Forty-one percent of people who receive care under Title X are served at Planned Parenthood health centers. Planned Parenthood is one of the largest providers of high-quality reproductive health care in the United States. An estimated one in five women in this country relies on Planned Parenthood in her lifetime. Planned Parenthood provides comprehensive family planning, cervical and breast cancer screenings, testing and treatment for sexually transmitted infections (STIs), and annual exams. Nearly 2.4 million women, men, and young people rely on Planned Parenthood, more than one third of whom are people of color. Because of the role Planned Parenthood plays in communities across the country, and because of the role it has played in the lives of millions of Americans, people overwhelmingly support Planned Parenthood and strongly oppose efforts to prevent patients from accessing accurate medical information at its health centers.

Making it impossible for Planned Parenthood to keep seeing Title X patients and preventing all Title X-funded providers from offering critical information to patients would have serious

consequences and an extraordinarily harmful impact on communities in our cities and and across the nation. The reality is that if this blatant administrative attack on reproductive health is implemented, millions of people will lose access to health care and be unaware of the services available to them — some of those services are lifesaving. That is why mayors are standing in support of health care access for all people, and urging you to cease any plans to implement a gag rule that would deny preventive care and access to information to guide optimal health care decisions for millions of Americans.

No one knows better than mayors how devastating it would be to take away access to health care and information from the people that we are honored to represent. If all Title X patients are blocked from receiving the full scope of medical information, it would be an attack on the well-being and economic security of those who already face barriers to accessing health care and need it most. People go to Planned Parenthood and other Title X centers because they know they will find health care professionals who are compassionate experts dedicated to reproductive and preventive health care. We know our communities, and we know they rely on the trusted care provided through the Title X program. It would be nothing short of disastrous for the millions of people who access care through the Title X program to lose access to the providers that they trust and to the expert information that directly impacts their bodies and lives. We urge you to withdraw the rule and not move forward with this harmful policy and instead put the lives and health of people in this country first and foremost.

Sincerely,

Mayor Coral J. Evans, City of Flagstaff, AZ

Mayor Greg Stanton, City of Phoenix, AZ

Mayor Jonathan Rothschild, City of Tucson, AZ

Mayor Chris Canning, City of Calistoga, CA

Mayor Mary Casillas Salas, City of Chula Vista, CA

Mayor Steven A. Hernandez, City of Coachella, CA

Mayor Andre Quintero, City of El Monte, CA

Mayor Robert Garcia, City of Long Beach, CA

Mayor Eric Garcetti, City of Los Angeles, CA

Mayor Jill Techel, City of Napa, CA

Mayor Libby Schaaf, City of Oakland, CA

Mayor Michael M. Vargas, City of Perris, CA

Mayor Darrell Steinberg, City of Sacramento, CA

Mayor Alan Galbraith, City of Saint Helena, CA

Mayor Mark Farrell, City of San Francisco, CA

Mayor Sam Liccardo, City of San Jose, CA

Mayor Miguel Pulido, City of Santa Ana, CA

Mayor Michael Tubbs, City of Stockton, CA

Mayor John Heilman, City of West Hollywood, CA

Mayor Luke A. Bronin, City of Hartford, CT

Mayor Toni N. Harp, City of New Haven, CT

Mayor Muriel Bowser, City of Washington, DC

Mayor Polly Sierer, City of Newark, DE

Mayor Michael S. Purzycki, City of Wilmington, DE

Mayor Buddy Dyer, City of Orlando, FL

Mayor Andrew D. Gillum, City of Tallahassee, FL

Mayor John Hamilton, City of Bloomington, IN

Mayor LaToya Cantrell, City of New Orleans, LA

Mayor Martin J. Walsh, City of Boston, MA

Mayor Edward M. Estes, City of Glenarden, MD

Mayor Jacob Frey, City of Minneapolis, MN

Mayor Melvin Carter, City of Saint Paul, MN

Mayor Lyda Krewson, City of St Louis, MO

Mayor Esther E. Manheimer , City of Asheville, NC

Mayor Pam Hemminger, City of Chapel Hill, NC

Mayor Steve Schewel, City of Durham, NC

Mayor Eulis A. Willis, City of Navassa, NC

Mayor Joyce Craig, City of Manchester, NH

Mayor Ravi S. Bhalla, City of Hoboken, NJ

Mayor Steven Fulop, City of Jersey City, NJ

Mayor Timothy P. Dougherty, City of Morristown, NJ

Mayor Ras J. Baraka, City of Newark, NJ

Mayor Bill de Blasio, City of New York, NY

Mayor Steve Patterson, City of Athens, OH

Mayor Nan Whaley, City of Dayton, OH

Mayor John Stromberg, City of Ashland, OR

Mayor Lucy Vinis, City of Eugene, OR

Mayor Chuck Bennett, City of Salem, OR

Mayor Dwan B Walker, City of Aliquippa, PA

Mayor Jeanne Sorg, City of Ambler, PA

Mayor Emily Marburger, City of Bellevue, PA

Mayor John Fetterman, City of Braddock, PA

Mayor Aidsand F Wright-Riggins, City of Collegeville, PA

Mayor Ron Strouse, City of Doylestown, PA

Mayor Eric Papenfuse, City of Harrisburg, PA

Mayor Nancy Guenst, City of Hatboro, PA

Mayor Brian Spoales, City of Millvale, PA

Mayor Jim Kenney, City of Philadelphia, PA

Mayor Bill Peduto, City of Pittsburgh, PA

Mayor Stephanie A. Henrick, City of Pottstown, PA

Mayor Matthew V. Rudzki, City of Sharpsburg, PA

Mayor Tarah Probst, City of Stroudsburg, PA

Mayor Tim Kearney, City of Swarthmore, PA

Mayor Kelley Kelley, City of Turtle Creek, PA

Mayor William A. Dennon, City of Upland Borough, PA

Mayor Dianne Herrin, City of West Chester, PA

Mayor Marita Garrett, City of Wilkinsburg, PA

Mayor Steve Adler, City of Austin, TX

Mayor Mike Rawlings, City of Dallas, TX

Mayor Sylvester Turner, City of Houston, TX

Mayor McKinley L. Price, DDS, City of Newport News, VA

Mayor Levar M. Stoney, City of Richmond, VA

Mayor Kelli Linville, City of Bellingham, WA

Mayor Cassie Franklin, City of Everett, WA

Mayor Amy Walen, City of Kirkland, WA

Mayor Andy Ryder, City of Lacey, WA

Mayor Jennifer Gregerson, City of Mukilteo, WA

Mayor Jenny A. Durkan, City of Seattle, WA

Mayor Will Hall, City of Shoreline, WA

Mayor Jackie Biskupski, City of Salt Lake City, UT

OFFICE OF THE MAYOR
THE CITY OF NEW YORK

HERMINIA PALACIO, MD, MPH
DEPUTY MAYOR FOR HEALTH AND HUMAN SERVICES

July 30, 2018

Via electronic submission

RE: HHS–OS–2018–0008, Proposed Rule for Compliance With Statutory Program Integrity Requirements

Dear Secretary Azar, Senior Advisor Huber, and Deputy Assistant Secretary Foley:

The City of New York and its public hospital system, NYC Health + Hospitals, submit these comments in response to the Department of Health and Human Services' (HHS) proposed rule entitled Compliance with Statutory Program Integrity Requirements, which was published in the Federal Register on June 1, 2018.[i] The proposed rule would significantly and detrimentally alter the Title X Family Planning Program (Title X), which has provided vital sexual and reproductive health services to people across the country for more than 40 years. Title X is a widely respected and successful program that has maintained bipartisan support for decades.

Through Title X funding, New Yorkers have access to pregnancy testing and options counseling, gynecological care, HIV and STI testing, cancer screenings, contraception counseling, educational resources, and other critical health care services. There are 22 Title X funded organizations in New York City that operate over 50 health centers throughout the five boroughs and that collectively provide services to 150,000 people in New York City. These 22 organizations received $27.3 million dollars in Title X funding from 2012-2015. Of those 22 organizations, 10 are a part of NYC Health + Hospitals, the largest public health care system in the United States, which provides services to more than one million New Yorkers annually.

As the nation's largest city, home to 8.6 million people, and the public health care system charged with their care, we write to express our vehement opposition to this proposed rule and to emphasize the negative impact this rule would have on how New Yorkers access free, low-cost and unbiased healthcare. Specifically, the proposed rule would unethically obstruct the core health care provider-patient relationship and deny Title X patients information they need to stay healthy. Secondly, the design makes it impossible for vital reproductive health-focused providers, like Planned Parenthood health centers, to continue to serve people through the program. Further, the proposed rule would undermine Title X's goals of providing comprehensive sexual and reproductive health services to people with low incomes, the uninsured, or those unable to use their insurance due to confidentiality constraints, and its explicit purpose to "make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services...".[ii] Finally, the rule would exacerbate existing health disparities. The combined result of these changes would be disastrous for the public health of the people in New York City.

I. The Proposed Rule would unethically obstruct the health care provider-patient relationship and deny patients information that they need to make the best decisions for themselves and their families.

The proposed rule would ban Title X providers from giving people full information about their health care options. Specifically, the proposed rule would eliminate the existing requirement that patients be provided with counseling and referrals upon request for the full range of pregnancy options, including prenatal care and delivery; infant care, foster care, or adoption; and abortion.[iii] That requirement would be replaced with a complete ban on health care providers giving abortion referrals.[iv] Many experts call this provision a gag rule, since it would restrict providers from speaking freely with their patients. The gag rule violates core ethical standards and undermines the patient-provider relationship.

Significantly, this proposal directly conflicts with the requirements of medical professional associations, including the American College of Obstetricians and Gynecologists and the American College of Physicians, which assert that patients should receive complete and accurate information to inform their health care decisions.[v] Similarly, the American Medical Association states in its Code of Medical Ethics that providers must "present relevant information accurately and sensitively, in keeping with the patient's preferences" and that "withholding information without the patient's knowledge or consent is ethically unacceptable."[vi,vii] The Code of Ethics for Nursing stipulates that patients must be given "accurate, complete, and understandable information in a manner that facilitates an informed decision." That is why both the American Medical Association and the American Nurses Association, among others, have publicly announced their strong objection to the gag rule.[viii,ix]

This opposition is especially salient because, in addition to the prohibition on abortion referral, the proposed rule eliminates longstanding requirements guaranteeing patients in Title X programs information about all of their health care options, including family planning and contraception, abortion, prenatal care and delivery, and adoption. . Title X regulations currently direct Title X programs to "[o]ffer pregnant women the opportunity to be provided information and counseling" on all pregnancy options.[x] All such counseling must be neutral, factual, and nondirective.[xi] The proposed rule would eliminate the options counseling requirement in its entirety. Gag orders that restrict the ability of health care providers to explain all options to their patients and refer them – whatever their health care needs – compromise this relationship and force physicians and nurses to withhold information that their patients need to make decisions about their care.

This is problematic for at least two reasons. First, the proposed rule contemplates that some providers would not provide this counseling for asserted religious or moral reasons, but it does not contain any requirement that those providers advise patients of their refusal. Therefore, patients will not even know if they are getting incomplete information. Second, even for providers who want to offer their patients information about all of their health care options, the proposed rule creates confusion. While the preamble includes language stating that doctors (and only doctors) could continue to offer nondirective counseling on abortion as a health care option, the operative language of the rule is completely silent on the subject. This silence, combined with the prohibition on referrals, means that providers may not understand whether, or who, can provide abortion counseling to patients who request it.

This could mean that patients who are not aware of the full range of their pregnancy options will experience delays and increased expenses in receiving care. In many cases, delay will effectively mean denial, particularly where time is of the essence or locating a suitable alternate provider is not feasible. The denial of care will be the end of the road in many patients' search for treatment, which could lead to unintended pregnancies, disease transmission and medical complications. An increase in unintended pregnancy and teen pregnancy rates could reverse the recent declines observed nationally.[xii,xiii] For nearly two decades, Title X law has been clear: health care providers cannot withhold information from you about your pregnancy options. This rule means they can.

In short, this rule conflicts with a fundamental principle that guides health care providers every day: patients' needs are paramount and providers have an ethical obligation to put the needs of patients first. Honest, unfiltered conversations between patients and their health care providers are essential to providing high-quality medical care. The prohibition on abortion referrals violates medical ethics and leaves providers in the position of not providing the best level of medical care or no longer participating in the Title X program, thereby potentially leaving their patients without access to care at all.

II. The Proposed Rule makes it impossible for vital specialized reproductive health providers to continue to participate in the Title X program, leaving thousands of people in New York City with nowhere to go for critical care.

The Hyde Amendment already requires providers to separate Title X and abortion-related activities, including abortion referrals[xiv]. The proposed rule goes further by setting untenable new physical and financial compliance standards, making it impossible for vital reproductive health-focused providers, like Planned Parenthood health centers, to continue to serve patients through Title X funding.

The rule would grant broad discretion to HHS to evaluate an individual Title X recipient's compliance with these new physical and financial separation standard by instructing HHS to employ a "facts and circumstances" test in order to determine whether a Title X project has achieved "objective integrity and independence" from abortion-related activities.[xv] In its analysis, the agency would be required to consider at least four factors:

- The existence of separate, accurate accounting records;
- The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, shared phone numbers, email addresses, educational services, and websites) in which prohibited activities occur and the extent of such prohibited activities;
- The existence of separate personnel, electronic or paper-based health care records, and workstations; and
- The extent to which signs and other forms of identification of the Title X project are present, and signs and material referencing or promoting abortion are absent.[xvi]

These factors reverse HHS' longstanding interpretation that, "[i]f a Title X grantee can demonstrate [separation] by its financial records, counseling and service protocols, administrative procedures, and other means . . . , then it is hard to see what additional statutory protection is afforded by the imposition of a requirement for 'physical' separation."[xvii] A notice issued by HHS in 2000 further made clear that Title X service sites could use common waiting rooms, staff, and filing systems for abortion-related activities and Title X project activities.[xviii] Providers have thus made capital, staffing, and financial investments based on this Federal guidance.

With this proposed change, one ne major provider of women's health services in New York City indicated that a dozen of its facilities would need to undertake significant capital and operational expense in order to comply with this proposed standard, and even that may not be enough to meet the ambiguous standards set forth in this proposal. HHS fails to justify why this reversal is warranted. Even so, HHS states that the standard still may not go far enough in separating Title X services from abortion, as "the 2000 Regulations neither adequately reflect nor further the text and purpose of section 1008 [, the existing separation requirements."[xix] The existing separation requirements are more than sufficient, and we strongly believe that no additional requirements are necessary.

These provisions completely ignore that specialized providers have for decades played an important – and irreplaceable role – in the Title X program. These provisions remake the Title X network, push out reproductive health-focused providers and bring in providers that do not focus on reproductive health care. Shifting funding from Title X providers to other types of providers could further strain the already frayed network of safety net providers. Federally Qualified Health Centers (FQHCs) as well as other women's health centers throughout the country themselves have said there is no way they could fill the gap if providers currently receiving Title X funding were no longer allowed to serve these patients.[xx] Yet all evidence shows that other providers in the state, such as FQHCs, would have to do just that, to significantly increase the number of patients receiving contraception services in order to meet the patient needs that will be created by the impact of this proposed rule. Providers that have even less experience and capacity to provide a broad range of family planning care will likely be even less able to fill this gap, and patients will be left without the services they need. Any available services will be subject to longer wait times, which could retard access to many procedures for which testing and treatment should be offered within days. HHS should evaluate this dangerous impact on providers and the patients they serve.

This is critical, in that Title X is the only federally funded family planning grant program dedicated to providing sexual and reproductive health services to low-income and uninsured individuals. Presently, the Title X program provides $286 million in grants to 4,000 diverse providers nationwide. Among the network of Title X providers across the country and particularly in NYC, Planned Parenthood plays a critical and outsized role in the Title X program. Nationwide, Planned Parenthood health centers serve more than 40 percent of Title X patients. In New York City, Planned Parenthood's five health centers serve over 60,000 patients. Eliminating Planned Parenthood from the Title X program would leave many people without access to care.

In states that have eliminated Planned Parenthood from their family planning programs, the public health results have been disastrous. For instance, a recent study in the New England Journal of Medicine showed that blocking patients from going to Planned Parenthood in Texas had serious public health consequences.[xxi] The study found a 35 percent decline in women in publicly funded programs using the most effective methods of birth control. Further, denying women access to the contraceptive care that they needed led to a dramatic 27 percent increase in births among women who had previously accessed injectable contraception through those programs. Moreover, public health officials across the country, including leadership from the National Coalition of STD Directors, fear a domestic gag rule, "could cripple federal efforts to stop a dramatic increase in sexually transmitted [infections] in the U.S."[xxii] Rates of sexually transmitted infections are increasing in New York City as well; between 2015 and 2016, rates of chlamydia, gonorrhea, and primary and secondary syphilis increased by six, 13 and 27 percent, respectively. Now is not the time to restrict access to sexual health services.

III. The Proposed Rule would radically change the Title X program, adversely impacting the health of the people in New York City.

The proposed rule fundamentally threatens Title X program protections that are designed to ensure access to the full range of contraceptive methods. Currently, Title X projects must, by statute and regulation, offer a broad range of acceptable and effective family planning methods and services.[xxiii] Access to "the full range of FDA-approved contraceptive methods" has also been deemed an essential feature of quality family planning by the U.S. Office of Population Affairs, which administers Title X, and the Centers for Disease Control and Prevention in their authoritative clinical guidelines for quality care.[xxiv] While HHS alone cannot alter the statutory requirement that Title X projects offer "a broad range of acceptable and effective family planning methods and services," the proposed rule goes out of its way to emphasize that "projects are not required to provide every acceptable and effective family planning method or service," giving Title X projects authority to exclude methods or services of their choosing.[xxv,xxvi] Moreover, the proposed rule would remove the requirement that family planning methods available from Title X projects must be "medically approved."[xxvii]

All people seeking care in Title X programs are legally entitled to access the contraceptive method that works best for their individual circumstances, and that requires access to all methods of contraception. Indeed, this was the very purpose of the Title X program in the first place. At the time of its passage, Congress stated that Title X's purpose was "making *comprehensive* voluntary family planning services readily available to all persons desiring such services."[xxviii] Collectively, these proposed changes will undermine that objective, allowing Title X programs to deny patients access to the full complement of effective contraceptive methods, and eliminate this guarantee. We are very concerned that this lowering of the threshold for participation in Title X will result in organizations with little or no experience providing sexual and reproductive health care participating in the program, which would inevitably reduce access to a broad range of contraceptive methods for patients.

The United States is currently experiencing a 30-year low in unintended pregnancy and an all-time low in teen pregnancy. In New York City, the pregnancy rate among NYC adolescents age 15-19 decreased by 60% from 2000 to 2015. These results have been achieved in large part due to access to affordable contraception - in particular the most effective methods of contraception - including through programs like Title X. This rule threatens to turn back the progress that has been made. Research has shown that the decrease in adolescent pregnancy rates is attributed to increased use of contraception.[xxix] We should not walk back that progress.

IV. The Proposed Rule would adversely impact the economic stability of individuals served by Title X, and worsen existing racial health disparities, leaving communities that already face unequal distribution of resources and worse health outcomes with even less access to care

All of the harmful impacts laid out above will fall most heavily on the people who are most in need of comprehensive, affordable reproductive and sexual health care services. Because of decades of systemic racism, the people served by the Title X program are more likely to be people of color and to face language barriers and other obstacles to care. In New York City, approximately 91% of the 150,000 individuals served annually by Title X providers are women, 60% have incomes below the federal poverty line, and 32% lack health insurance. For individuals served by Planned Parenthood in New York City, 60% are either Black or Latinx, 66% of patients have incomes at or below the federal poverty level (FPL), of which 43% are uninsured, and about 10% have limited English proficiency[xxx,xxxi].

Particularly in light of the federal administration's recent actions to fundamentally alter the existing health insurance system, it is of paramount importance that low income and uninsured individuals have access to a wide range of providers that offer comprehensive services. As a result of the impending elimination of the individual mandate penalty in 2019, the potential expansion of religious and moral exemptions to the contraceptive mandate (pending judicial allowance), and the promotion of health plans that are not required to cover the full range of Affordable Care Act's services, the demand for Title X program services is likely to rise. Given that this rule will reduce the network of providers that offer necessary services, it will create a strain on the remaining providers who may not be able to sufficiently meet the demand for care and ultimately decrease care for patients.

It is critical to note that Title X providers offer much more than contraceptive services. The proposed rule could reduce access to providers with advanced competency in serving community members whose reproductive health needs often go overlooked or unaddressed, such as low-income Lesbian, Gay, Bisexual, Transgender, Non-binary and Intersex people. Other essential services, including screening for sexually transmitted infections (STI) and HIV, breast and cervical cancer screenings, and blood pressure and diabetes screenings, will also be compromised for low-income or uninsured people, and people who require confidential services, if the proposed rule were to go in effect. This could lead to an increase in the number of STI/HIV cases that go undetected and therefore an increase in health complications, such as infertility in the case of untreated STIs.

Overlaid with the impacts noted above is the fact that pregnancy, delivery and early childhood-related care is very expensive, especially compared to many other family planning services offered by Title X providers. Pregnancies can impose a significant financial burden, particularly on low income and uninsured individuals and families. Thus, decreasing access to a full range of family planning services perpetuates the cycle of poverty that NYC agencies strive to break. Moreover, as of 2016, over a third of Title X patients were Medicaid recipients. Recent analyses have shown that, $1 invested in Title X saves more than $7 in Medicaid-related costs, thereby saving taxpayer contributions towards Medicaid.[xxxii] As a result, the proposed rule could impose additional strain on the Medicaid system by tipping the ratio of services towards more pregnancy-related care rather than cost-effective family planning services.[xxxiii]

This proposed rule will deny millions of people access to the best possible care through experienced providers and to all methods of contraception and other critical services including breast and cervical cancer screenings, pregnancy testing and counseling, and HIV and STI testing and treatment. This is particularly dangerous for women and communities of color who have historically been denied equitable health care and depend on Title X funded services for access to high-quality and unbiased care. This proposed rule would build upon a shameful history – including the nonconsensual syphilis testing in Tuskeegee and forced sterilization of Black and Latinx women – of the government threatening Black and Latinx individuals' claim to bodily autonomy and perpetuating harm Loss of Title X services will exacerbate disparities and result in premature death for those in for already medically underserved communities facing so many other socially-determined threats to their health.

In short, the proposed rule would gravely harm the people that we serve, especially Black and Latinx women, and would exacerbate existing disparities that decades of racially-biased policies have created. We strongly urge you to not finalize the proposed rule, for the sake of public health.

Sincerely,

Herminia Palacio, MD, MPH

[i] Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. 25,502 (proposed Jun. 1, 2018) (to be codified at 42 C.F.R. pt. 59).
[ii] PHS Act sec. 1001(a); 42 U.S.C. 300(a)
[iii] 42 C.F.R. § 59.5(a)(5).
[iv] Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,531.
[v] Kinsey Hasstedt, *Unbiased Information on and Referral for All Pregnancy Options Are Essential to Informed Consent in Reproductive Health Care*, Guttmacher Institute (Jan. 2018), available at https://www.guttmacher.org/gpr/2018/01/unbiased-information-and-referral-all-pregnancy-options-are-essential-informed-consent.
[vi] American Medical Association, Code of Medical Ethics Opinion 2.1.1, Informed Consent, available at https://www.ama-assn.org/delivering-care/informed-consent.
[vii] American Medical Association, Code of Medicaid Ethics Opinion 2.1.3, Withholding Information from Patients, available at https://www.ama-assn.org/delivering-care/withholding-information-patients.
[viii] American Medical Association, AMA Response to Administration's Attack on Family Planning Services (May 23, 2018), available at https://www.ama-assn.org/ama-response-administrations-attack-family-planning-services.
[ix] American Nurses Association, ANA Condemns Title X Funding Cuts Proposed by the Trump Administration (May 22, 2018), available at https://www.nursingworld.org/news/news-releases/2018/ANA-condemns-title-x-funding-cuts--proposed-by-the-trump-administration/.
[x] 42 C.F.R. § 59.5(a)(5).
[xi] *Id.*
[xii] Finer LB, Zolna MR. Declines in Unintended Pregnancy in the United States, 2008-2011. *The New England Journal of Medicine.* 2016;374(9):843-852.
[xiii] https://citylimits.org/2016/10/05/nycs-drop-in-teen-pregnancy-has-a-thousand-fathers-and-mothers/
[xiv] Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,532.
[xv] Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,532.
[xvi] *Id.*
[xvii] Standards of Compliance for Abortion Related Services in Family Planning Services Projects, 65 Fed. Reg. 41,270, 41,276 (Jul. 3, 2000).
[xviii] Provision of Abortion-Related Services in Family Planning Projects, 65 Fed. Reg. 41,281, 41,282 (Jul. 3, 2000).
[xix] Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,507
[xx] McCammon, S. (2017, March 07). Public Clinics Fear Federal Cuts To Planned Parenthood Would Strand Patients. Retrieved from https://www.npr.org/sections/health-shots/2017/03/07/519017520/public-clinics-fear-federal-cuts-to-planned-parenthood-would-strand-patients
[xxi] Amanda J. Stevenson et al. "Effect of Removal of Planned Parenthood from the Texas Women's Health Program," New England Journal of Medicine, Vol. 374, available at http://www.nejm.org/doi/full/10.1056/NEJMsa1511902#t=article.
[xxii] Michelle Andrews, Trump's Redirection Of Family Planning Funds Could Undercut STD Fight, NPR (June 12, 2018), available at https://www.npr.org/sections/health-shots/2018/06/12/618902785/trumps-redirection-of-family-planning-funds-could-undercut-std-fight
[xxiii] 42 U.S.C. § 300(a); 42 C.F.R. § 59.5(a)(1). While the entire project is held to the "broad range" standard under the current rules, each participating entity is not. So "[i]f an organization offers only a single method of family planning, it may participate as part of a project as long as the entire project offers a broad range of family planning services."
[xxiv] Department of Health and Human Services and Centers for Disease Control and Prevention, *Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs*, 2, (Apr. 2014), available at https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf.
[xxv] cite.
[xxvi] Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,530.
[xxvii] *Id.* at 25,530.
[xxviii] Pub. L. No. 91-572, § 2(1); see S. Rep. No. 91-1004, at 2 (1970) (emphasis added)..
[xxix] Lindberg, L., Santelli, J., & Desai, S. (2016). Understanding the Decline in Adolescent Fertility in the United States, 2007-2012. *Journal of Adolescent Health*, 59, 577-583.
[xxx] Sasha Ingber, *Kenyan Clinic Rejects Trump Abortion Policy, Loses $2 Million In U.S. Aid*, NPR (May 2, 2018), https://www.npr.org/sections/goatsandsoda/2018/05/02/604425181/kenyan-clinic-rejects-trump-abortion-policy-loses-2-million-in-u-s-aid.
[xxxi] Kinsey Hasstedt, *A Domestic Gag rule and More: The Administration's Proposed Changes to Title X,* GUTTMACHER INST., https://www.guttmacher.org/article/2018/06/domestic-gag-rule-and-more-administrations-proposed-changes-title-x.
[xxxii] Letter to HHS from United States Senators and Members of Congress, https://www.warren.senate.gov/imo/media/doc/2018.05.14%20Letter%20to%20HHS%20Opposing%20Domestic%20Gag%20on%20Title%20X.pdf.
[xxxiii] US Department of Health and Human Services (2017). Title X Family Planning Annual Report: 2016 National Summary. Available at https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2016-national.pdf

SENATE COMMITTEE AGENDA

SIMONIA O. BROWN
Director
State Legislative Affairs

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MEMORANDUM IN SUPPORT

LEGISLATIVE REFERENCE S.2796 – by Senator Krueger – Health Committee
A.1748 – M. of A. Glick – passed

TITLE **AN ACT** to amend the public health law, in relation to enacting the reproductive health act and revising existing provisions of law regarding abortion; to amend the penal law, the criminal procedure law, the county law and the judiciary law, in relation to abortion; to repeal certain provisions of the public health law relating to abortion; to repeal certain provisions of the education law relating to the sale of contraceptives; and to repeal certain provisions of the penal law relating to abortion

SUMMARY OF PROVISIONS
The bill would amend state laws regarding abortion. It would create a new article of the Public Health Law, stating that an abortion may be performed by a licensed, certified, or authorized practitioner within 24 weeks from the commencement of pregnancy, or there is an absence of fetal viability, or at any time when necessary to protect a patient's life or health. Relevant sections of the Penal Law, Public Health Law, and Education Law are repealed to clarify the scope of the constitutionally-protected right to an abortion.

REASONS FOR SUPPORT
The Office of the Mayor strongly supports the Reproductive Services Act ("the Act"), which would safeguard the rights of women and those seeking access to reproductive care, including transgender and gender non-binary people, in accessing safe and legal abortion, a critical component of comprehensive reproductive health care. This fundamental right, although protected by the United States Constitution, is vulnerable to dilution or even elimination. New York State, a state that has historically protected the right to choose, must ensure that its laws preserve this right for women and those seeking abortion services as we face the potential demise of federal protections.

The existing New York State abortion law, which predates *Roe v. Wade*, allows abortion care after 24 weeks only when necessary to preserve an individual's life. Yet under *Roe v. Wade*, abortion care is legal beyond 24 weeks when necessary to preserve not just a pregnant person's life but also their health, as well as in cases where the fetus is not viable. The Act would bring New York State law into compliance with constitutional law, clarifying the law for providers and hospital risk management personnel, by providing a pregnant individual with the explicit right to access the care necessary when their health is at risk or the fetus is not viable. Additionally, the Act would prohibit the prosecution of health care professionals that provide abortion services, ensuring that a fear of prosecution is not a barrier to care.

The Act would also move state abortion law out of the Penal Code and into the Public Health Law, which sends an important signal to medical providers that they need not fear criminal prosecution for treating a patient whose pregnancy is endangering their health. Additionally, the proposed repeal of Sections 125.40 and 125.45 of the Penal Law would eliminate those provisions that make New York one of the few remaining states where an individual who receives abortion services is subject to criminal sanctions for self-abortion.

In order to maintain New York's place as a national leader in the protection of women's rights, and the rights of all people seeking access to safe abortion services, the Reproductive Services Act must become law.

Accordingly, the Mayor urges the earliest possible favorable consideration of this proposal by the Legislature.

Respectfully submitted,

SIMONIA O. BROWN
Director

CT/TD: 5/31/18

Testimony of Marisa Nadas, MD MPH

Before

The New York City Council Committee on Women

Regarding

Res. 84-2018

"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

Thank you Councilmember Rosenthal for convening this hearing today, and thank you Public Advocate James for introducing the resolution before the committee. As an OBGYN and a fellow of Physicians for Reproductive Health, who cares for New Yorkersa every day, I am pleased to support Res. No. 84 - Urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act.

Access to reproductive health services, including abortion care, is vital to a woman's overall health and wellbeing as well as to the health of her family. We need the Reproductive Health Act to align New York's abortion law with federal protections and current medical practice, clarifying that medical professionals may provide patients with the care they need.

Currently, New York regulates abortion in the criminal code. This is a problem. It means that medical professionals can be deterred from providing medically-indicated care. New York law does not include an explicit provision that allows for abortion care throughout pregnancy when a woman's health is at risk, as protected by *Roe v.Wade*. The same goes for when a devastating fetal abnormality exists, which is a situation in which abortion is an option under federal protections. Every pregnancy is different. At times patients face serious obstetric complications or life-threatening illnesses later in pregnancy. In these devastating circumstances, abortion care may be the safest path forward. However, because current law deters doctors from providing care, our patients can be forced to leave the state to get the care they need, even when their health is severely compromised. Traveling out of state for care is an enormous additional burden on top of what, for many, has already been a difficult experience. In circumstances where these patients cannot afford to travel, health care providers' hands are tied, and the health of women and families is at risk unnecessarily.

Let me give you an example. A patient of mine, I will call her Ashley, was pregnant with her third child. She also suffered from lupus. She presented to the hospital in kidney failure and received outstanding care as a multidisciplinary team worked to control her lupus and reverse her kidney failure. However, the weeks passed and her kidneys did not recover. Pregnancy is known to be hard on the kidneys, and it was determined by her medical team that her kidney function would not recover until the pregnancy ended. If this went on too long, it was possible she would never regain kidney function, and therefore be on dialysis for the rest of her life. She chose to terminate her pregnancy, and I was able to assist her with this during the second trimester. However, had this complication presented later in the pregnancy, or the course of illness been more insidious, she could easily have surpassed the gestational age limit laid out in New York law, and as her provider I would not have been protected under state law to provide abortion care.

This intrusion into the provider-patient relationship is cruel and dangerous. As health care providers, we best serve our patients when we can act according to scientific evidence and our best medical judgment. In cases of health risks and fetal conditions detected later in pregnancy, our patients – who are often struggling with complicated decisions – need access to the best care for their individual circumstances. It is time for New York law to be consistent with Supreme Court precedent. The Reproductive Health Act would move the regulation of abortion care out of the criminal code, align New York law with protections established in *Roe v. Wade*, and clarify that doctors may provide care later in pregnancy when a woman faces a pregnancy with severe complications.

The Reproductive Health Act also improves access to safe abortion care by making clear that trained, licensed advanced practice clinicians (APCs), such as nurse practitioners, physician assistants and licensed midwives, may perform early abortion care within their scope of practice. When our law was enacted in 1970, APCs did not play the critical role in health care delivery that they do today – in fact, in 1970 these professions had not been established in New York law. Research has shown that trained and qualified APCs can safely provide early abortions.[i] Medical and public health associations such as the American Congress of Obstetricians and Gynecologists[ii], the American Public Health Association[iii], the American College of Nurse-Midwives[iv], the National Abortion Federation[v], and Physicians for Reproductive Health all support the provision of early abortion care by APCs. The impact of this policy change could be dramatic for patients' ability to access abortion care, especially those in rural areas who already have difficulty accessing health care.

In the face of dire threats to abortion access on the federal level, it is more crucial now than ever to protect New Yorkers' health and rights.I urge the Committee to pass this resolution calling on New York State to pass this important legislation.

Sincerely,

Marisa Nadas, MD MPH

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[i] Weitz, T. A., Taylor, D., Desai, S., Upadhyay, U. D., Waldman, J., Battistelli, M. F., & Drey, E. A. (2013). Safety of Aspiration Abortion Performed by Nurse Practitioners, Certified Nurse Midwives, and Physician Assistants Under a California Legal Waiver. American Journal of Public Health, 103(3), 454–461. http://doi.org/10.2105/AJPH.2012.301159

[ii] Abortion Training and Education. Committee Opinion No. 612. American College of Obstetricians and Gynecologists. Obstet Gynecol 2014;124:1055–9.

[iii] Provision of Abortion Care by Advanced Practice Nurses and Physician Assistants. Policy No. 20112. American Public Health Association. Accessed from https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/28/16/00/provision-of-abortion-care-by-advanced-practice-nurses-and-physician-assistants.

[iv] Midwives as Abortion Providers. American College of Nurse-Midwives. Accessed from http://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000314/ps-midwives-as-abortion-providers-final-19-mar-18.pdf.

[v] Timeline of Work to Enhance the Role of Certified Nurse-Midwives (CNMs), Nurse Practitioners (NPs), and Physician Assistants (PAs) in Abortion Care. Accessed from the National Abortion Federation at https://www.prochoice.org/pubs_research/publications/downloads/cfc/abstracts/APCTimeline_0306.pdf.

Testimony of SIA Legal Team

Before The New York City Council Committee on Women

Regarding Res. 84-2018

"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

My name is Farah Diaz-Tello, and I am an attorney for the SIA Legal Team, an organization that transforms the legal landscape to ensure that people who end their own pregnancies can do so with dignity and without punishment. I am here to support Resolution 84, urging the New York State Legislature to pass the Reproductive Health Act.

When I describe the work that the SIA Legal Team does to keep people from going to jail for ending a pregnancy, many people assume this only arises in states that are aggressively hostile to abortion rights. They usually don't expect that the threat of jail time for having an abortion exists right here in New York.

Of the many deficiencies with New York's laws regarding abortion discussed by the advocates testifying here today, what most sets it at the back of the pack among states is the pair of provisions in the Penal Law criminalizing self-managed abortion (which the statutes refer to as 'self-abortion').[1]

It may come as a surprise to hear that self-managed abortion still happens, and isn't a relic of a pre-*Roe* past. The truth is that there are many people who end their own pregnancies for a variety of reasons. These range from lack of access to clinics, fear of being harassed by protesters, or suspicions of the health care system based on histories of unconsented medical testing, to a preference for a more private, self-directed experience in the comfort of one's home. Self-managed abortion has always existed, and the advent of medications that can safely and reliably end a pregnancy has made the possibility of a private, satisfying experience more attainable than ever before. Unfortunately as the medical risks of self-managed abortion wane, the emerging risk is the threat of imprisonment.

New York is one of only seven states that criminalizes self-managed abortion.[2] In fact, of those seven, it is one of only four that considers its statute enforceable.[3] This is a lamentable state of affairs for a state trying to position itself as a progressive leader.

Lawmakers often ask *how many* women have been arrested for ending a pregnancy in New York State, as though there is a particular tipping point after which the law can be deemed unjust. Perhaps the more important question is: how many women have to through the humiliation of arrest and

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[1] N.Y. Penal Law § 125.50 ("A female is guilty of self-abortion in the second degree when, being pregnant, she commits or submits to an abortional act upon herself, unless such abortional act is justifiable . . . ."); *and* N.Y. Penal Law § 125.55 ("A female is guilty of self-abortion in the first degree when, being pregnant for more than twenty-four weeks, she commits or submits to an abortion act upon herself which causes her miscarriage, unless such abortional act is justified . . .")

[2] SIA Legal Team, *Roe's Unfinished Promise: Decriminalizing Abortion Once and for All* 8-12 (2018).

[3] *McCormack v. Hiedeman*, 694 F.3d 1004, 1015 (9th Cir. 2012) (invalidating Idaho's law penalizing women who end their own pregnancies as an undue burden on the right to seek abortion, potentially affecting Arizona and Nevada's similar laws); *See Delaware Women's Health Org. v. Wier*, 441 F. Supp. 497, 499 n.9 (D. Del. 1977); Statement of Policy, Att'y Gen. of Del. (Mar. 24, 1977) (declaring 11 Del. Code § 652, which criminalizes self-abortion, unconstitutional under *Roe* and declaring that it would not be enforced); *Henrie v. Derryberry*, 358 F. Supp. 719 (N.D. Okla. 1973) (declaring 21 Okla. Stat. § 862, which criminalizes women who "solicit" or "submit to" abortions unconstitutional).

interrogation for ending a pregnancy before our lawmakers will recognize the folly and danger of using the criminal law to punish people for reproductive self-care?

The difference between a safe self-managed abortion and a dangerous one can be distilled to two factors: access to information about the process, and access to medical assistance in the event something goes wrong. Criminalization undermines both, making people afraid to share and seek information about self-managed abortion, and driving them away from seeking medical care out of fear that seeking help will expose them to the threat of arrest.

The question I wish our lawmakers would ask is: *who suffers* when New York makes abortion a crime?

Women like Yaribely Almonte, a Washington Heights woman who was arrested in 2011 after she admitted to police that she drank an herbal tea in an effort to end a pregnancy.[4] Or like Katrina Pierce, a mother and domestic violence survivor from West Monroe who took a handful of over-the-counter headache medicine in an apparently unsuccessful attempt to cause a miscarriage, only to be charged with a crime for it.[5]

But it's *also* women like Jennifer Jorgensen, who was convicted of manslaughter because she was in a car accident at 7 months pregnant and lost her baby due to a premature emergency delivery. The prosecutor in her case argued that the existence of the self-abortion law permits them to charge women with crimes if they do – or fail to do – something that results in the loss of their pregnancy. Fortunately, her conviction was overturned, preventing years of separation from her children. But, ominously, the Court of Appeals Judge who filed a dissent in her case suggested that if she had not consented to the emergency C-section, she could have been charged with criminal abortion.[6]

And it's also women like Rinat Dray, who was forced to undergo a cesarean section against her will. The hospital that subjected her to the forcible surgery has argued that New York's "self-abortion" provision justifies its actions and empowers them to prevent risk to a fetus by any means necessary, even if that means cutting into an unwilling woman.[7]

The pattern that emerges from the cases the SIA Legal Team has documented and assisted in is that when the state can punish someone for ending a pregnancy, prosecutors will find any reason to do so.

With a President who has publicly said that there has to be "some kind of punishment" for people who have abortions,[8] and promised Supreme Court nominees who will deliver on the promise to consign *Roe v. Wade* to the "ash heap of history,"[9] it is more important than ever to ensure that no New Yorker has to risk jail to care for their own health.

Thanks to the New York City Council and Public Advocate James for your leadership on this critical issue. SIA Legal Team supports the adoption of Resolution 84, and passage of the Reproductive Health Act.

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[4] *NYPD: Manhattan Woman Charged With Performing Self-Abortion*, CBS N.Y., (Dec. 1, 2011, 8:30 PM), http://cbsloc.al/2pxAnrZ.

[5] Pedro Ramirez III, *Self Abortion: Woman took Tylenol, Motrin*, Syracuse.com, Apr. 12, 2007, http://bit.ly/2r8Yy3d.

[6] *People v. Jorgensen*, 41 N.E.3d 778 (N.Y. 2015).

[7] *See Dray v. Staten Island University Hospital et al.*, No. 2015-12064/12068 (2015).

[8] Matt Flegenheimer & Maggie Haberman, *Donald Trump, Abortion Foe, Eyes Punishment for Women, Then Recants,* The NY Times, Mar. 30, 2016. http://nyti.ms/2qQ5qTO.

[9] Seema Mehta, *Roe vs. Wade will be Overturned if Donald Trump Wins, Mike Pence Says*, Los Angeles Times, July 29, 2016 http://lat.ms/2ptHMI2.

Testimony of Cynthia Soohoo
on behalf of the Human Rights and Gender Justice Clinic
City University of New York Law School
before the
New York City Council Committee on Women
concerning
Res. 84-2018
"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."
September 20, 2018

Thank you to Councilmember Rosenthal for convening this hearing today, and thank you Public Advocate James for introducing the resolution before the committee.

My name is Cynthia Soohoo and I am the Co-Director of the Human Rights and Gender Justice Clinic at CUNY School of Law. Our clinic has documented laws used to criminally prosecute women for ending their own pregnancies in the U.S. and critiqued why such laws violate the human rights of women.

We strongly support Resolution 84 calling on New York State to pass the Reproductive Health Act.

As others have testified, in many ways, New York was a trailblazer in recognizing women's right to access reproductive health care. New York City has also been a strong champion for women's human rights, including its cooperation with UN Women to implement the international Convention on the Elimination of Discrimination Against Women.

However, after the Supreme Court's recognition of the right to safe and legal abortion in *Roe v. Wade*, New York State failed to update its laws to repeal criminal abortion provisions. As a result, we've relied on prosecutors to exercise restraint and recognize that criminally prosecuting women for abortion is unconstitutional and violates women's human rights.

Unfortunately, as our clinic has documented in New York and other states, prosecutors continue to use pre-*Roe* laws like those in New York to criminally prosecute women for ending their own pregnancies, including in 2011, the prosecution of a New York City woman for allegedly drinking an herbal tea to induce an abortion.

Given current uncertainty about the direction of the Supreme Court, it is imperative for New Yorkers to ensure that our laws reflect our values and commitment to reproductive rights -- and in particular that no one should be arrested and imprisoned for ending their own pregnancy.

Recognizing the fundamental rights at stake, international human rights experts condemn laws that criminalize women for ending their pregnancies and consistently call on countries to repeal such laws. Indeed, in 2017, the United Nations Working Group on Discrimination Against Women called on New York to pass the Reproductive Health Act.

The findings of international human rights experts confirm what our Supreme Court has said and what most New Yorkers already know: the ability to decide whether or not to end a pregnancy is central to the right to dignity and bodily autonomy. This includes the right to make personal decisions about the course of one's life and the right to control their own body. Human rights experts have also recognized that imposing criminal penalties on abortion constitutes discrimination against women and is a form of gender-based violence.

The experience of other countries with criminal abortion laws is instructive. In countries like El Salvador, emergency rooms and other medical settings have become sites of arrest and interrogation, subjecting women suspected of ending their pregnancies to mistreatment and prosecution -- including women who suffered spontaneous miscarriages and stillbirths. While El Salvador seems far away, in recent years in the U.S., there have been multiple criminal prosecutions of women who sought medical care following complications from an abortion or miscarriage. These laws deter women from receiving medical care for fear of prosecution. Because of the real world health consequences, human rights experts have recognized that criminal abortion laws can violate women's right to health.

Further, denial of abortion access can inflict grievous physical and mental harm on women. Human rights experts have recognized that when pregnancy endangers a woman's health or is the result of rape or incest or where the fetus has a condition inconsistent with survival, denying a woman the ability to have an abortion violates her right to health and to be free from torture and cruel, inhuman and degrading treatment.

The Reproductive Health Act provides the opportunity for New York to once again become a leader in protecting the human rights of women. We strongly support this resolution and encourage passage of the Act.

Attachment: 2017 HRGJ & SIA Legal Team Letter to the WGDAW

Abortion Decriminalization Efforts in New York State

The right to abortion is protected by the U.S. Constitution; nevertheless, women have been arrested and punished for ending their own pregnancies in many states. The issue has become increasingly pressing given the hostility of the new administration and its emboldening effect on lawmakers and prosecutors at the state level. The SIA Legal Team and the City University of New York School of Law Human Rights and Gender Justice Clinic will be submitting a report that provides a nationwide landscape shortly. We submit this advance information to alert the Working Group to a timely and ongoing legal reform in New York.

New York typifies the two-tiered system of care that arises when self-induced abortion is criminalized. New York has long been considered a leader in protecting reproductive rights within its borders, placing relatively few restrictions on clinics, and providing Medicaid funding for elective abortions. It was one of the first states to liberalize its abortion laws in 1970, three years before *Roe v. Wade*, the U.S. Supreme Court case articulating constitutional protections for the right to end a pregnancy.[1] But women who engage in self-care when clinic-based abortion is inaccessible or unacceptable face the possibility of investigation, arrest, and jail.

New York's law has failed to keep pace with evolving understandings of reproductive autonomy under both the U.S. Constitution and international law. It is now dangerously out of date because it criminalizes women who self-induce abortions at any stage of pregnancy and health care providers who perform abortions after 24 weeks' gestation even in cases where the pregnancy endangers the woman's health or the fetus is not viable. A proposal known as the **Reproductive Health Act**, currently awaiting approval by the state Senate[2] after having been approved by the state Assembly in January of this year, would rectify these concerns and ensure that abortion is treated as a health issue instead of a crime. We urge the Working Group to support the legislation as a necessary measure to respect, protect and ensure women's right to non-discrimination, autonomy, privacy and health.

New York's Penal Law Criminalizes Self-Induced Abortion

[1] 410 U.S. 113 (1973).

[2] NY S2796 (attached).

Under New York Law, abortion is governed by the Penal Law, and all legal abortions are treated as mere exceptions to the crime. Submitting to an abortion that does not comply with legal requirements or attempting to end one's own pregnancy is criminal self-abortion.[3] Self-abortion is a misdemeanor, and can carry a penalty of up to a year in jail if performed after 24 weeks' gestation. Further, under this anachronistic statute, the abortion does not have to be successful, and the person does not have to be pregnant. All that is necessary is an act committed *with the intent* to cause a miscarriage.

There have only been a handful of publicly reported arrests under this law, but some have taken place in recent history, and have disproportionately affected women of color. For example, a Manhattan woman was arrested in 2011 after she admitted to drinking an herbal tea to end her pregnancy.[4] Fortunately, charges were dropped after the medical examiner was unable to find evidence that the tea caused her stillbirth.[5] In 2007, a survivor of domestic abuse was charged with attempted self-abortion after overdosing on over-the-counter headache medicine in an alleged attempt to end her pregnancy.[6] Another case involved a woman who, in desperation to end her pregnancy, cut herself in the abdomen with a scalpel.[7] Rather than receiving compassionate care for her obvious mental distress, she was charged with a series of felonies before pleading guilty to attempted self-abortion. Simply having such a law on the books is a threat, and politically-motivated prosecutors have shown their willingness to use arcane laws to punish women.

Such arrests typically target the women most marginalized in American society, especially low-income women and women of color. These women are the ones most

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[3] N.Y. Penal Law § 125.50 ("A female is guilty of self-abortion in the second degree when, being pregnant, she commits or submits to an abortional act upon herself, unless such abortional act is justifiable . . . ."); *and* N.Y. Penal Law § 125.55 ("A female is guilty of self-abortion in the first degree when, being pregnant for more than twenty-four weeks, she commits or submits to an abortion act upon herself which causes her miscarriage, unless such abortional act is justified . . .") (both attached).

[4] *NYPD: Manhattan Woman Charged With Performing Self-Abortion*, CBS N.Y., (Dec. 1, 2011, 8:30 PM), http://cbsloc.al/2pxAnrZ.

[5] Carla Zanoni & Shayna Jacobs, *DA Drops Self-Abortion Charges Against Washington Heights Mother*, DNAInfo, (Jan. 3, 2012), http://dnain.fo/2qpsCbL.

[6] Pedro Ramirez III, *Self Abortion: Woman took Tylenol, Motrin*, Syracuse.com, Apr. 12, 2007, http://bit.ly/2r8Yy3d.

[7] *Mother Cleared In Homicide Case*, NY Times, Nov. 5, 1984, http://nyti.ms/2qDiMPa.

likely to have factors — such as a lack of money, childcare, transportation, or legal immigrant status, or a mistrust of the medical system — that push or pull them toward self-induced abortion.

New York's Self-Abortion Law Threatens Women's Health and Corrodes the Law

The threat posed by New York's self-abortion law is not limited to people who end their pregnancies. Because spontaneous and prompted miscarriages are identical, for every person ensnared in the legal system for a prompted miscarriage, it is likely that another will be held under suspicion for an unintended pregnancy loss. In other states, this has meant that women believed to have done something to cause a miscarriage are treated as suspects when they seek help, have their confidential medical information turned over to law enforcement, and are interrogated in health care settings.

Criminalization of self-induced abortion has also had unintended consequences for women who want to carry their pregnancies to term. Within just the past two years, the self-abortion law has been cited to justify forced cesareans on unconsenting women[8] and criminal prosecution for neonatal losses after automobile accidents.[9]

Perhaps most importantly, human rights bodies and experts have repeatedly acknowledged that criminalization of abortion is ineffective at stopping the practice, it merely pushes women further away from medical care. The same is true for self-induced abortion: women who fear arrest are reluctant to openly seek information prior to self-induction or to seek help if they experience complications after self-induction because of the possibility of arrest. They may delay care until complications are unmanageable, or forego care altogether, leading to devastating outcomes that could have been prevented with timely medical support.

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[8] *See Dray v. Staten Island University Hospital et al.*, No. 2015-12064/12068 (2015). The hospital in this ongoing case has cited the self-abortion law to point to a state interest in the protection of fetal life that justifies private parties in nullifying the constitutional and common law right to medical decision making and performing explicitly unconsented surgeries without color of law.

[9] *People v. Jorgensen*, 41 N.E.3d 778 (N.Y. 2015). The prosecutor in this case pointed to the self-abortion law to argue in favor of applying manslaughter charges to a woman involved in a car accident whose baby died shortly after emergency delivery. New York's high court overturned the conviction, but a dissenting judge noted that if the woman had not consented to the emergency cesarean delivery, she could have been charged with self-abortion in the first degree.

New York's Abortion Law Criminalizes Abortion Providers Who Perform Abortions Necessary to Preserve a Woman's Health or in Cases Where the Fetus is Not Viable

In addition to criminalizing self-induced abortions, New York's law criminalizes performing abortions after 24 weeks' gestation unless the life of the pregnant woman is at risk. Physicians face the threat of felony prosecution if they run afoul of the law, creating fear and doubt when providing care to women at later gestations.

In practical terms, the means that health care providers are unable to perform abortions for women who have conditions that are harmful but survivable, and cannot help women carrying fetuses with anomalies incompatible with life. Women in need of such abortions after 24 weeks' gestation must travel at their own expense to a state where later abortions are permitted.

New York's Abortion Law Has Been Acknowledged as Unconstitutional

New York's law was passed before *Roe v. Wade*. Despite the fact that it does not comport with current constitutional standards, it has not been amended. For instance, it criminalizes all abortions performed after 24 weeks' gestation unless necessary to save the patient's life, whereas the U.S. Supreme Court has ruled that any abortion regulations must provide for abortions to protect the patient's life *and health*.[10] In September of 2016, Attorney General Eric Schneiderman issued a formal opinion stating that the abortion law must be interpreted to include the exceptions required by the U.S. Constitution,[11] prompting the current reform.

The self-abortion law is likely similarly unconstitutional. A federal appeals court examining a similar law criminalizing people who submit to "illegal abortions" ruled it an unconstitutional undue burden on the right to end a pregnancy.[12] This case is not

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[10] *Roe v. Wade*, 410 U.S. 113 (1973).

[11] N.Y. Op. Att'y Gen. No. 2016-F1 (Sep. 7, 2016) ("To accord with precedent of the United States Supreme Court, Penal Law § 125.05 must be read to include an exception to preserve a pregnant woman's health and to allow an abortion of a nonviable fetus after 24 weeks.")

[12] *McCormack v. Hiedeman*, 694 F.3d 1004 (9th Cir. 2012) (invalidating a law that applied felony charges to "submitting" to an abortion that does not meet legal requirements as well as ending one's own

precedent that must be followed by New York courts, but is a strong indication of what might happen if this law were challenged. Unfortunately, challenging the constitutionality of a criminal statute in court is difficult, and most often requires that a person be arrested or place themself at risk of arrest.

Effect of the Proposed Reform

The current legislative proposal, known as the Reproductive Health Act, would remove references to abortion and self-abortion from the Penal Law. It would also create a statute in the Public Health Law governing abortion provision, and include a statement of policy acknowledging that "comprehensive reproductive health care, including contraception and abortion, is a fundamental component of a woman's health, privacy and equality." This change would permit abortion to be regulated as a health procedure and remove the threat of criminalization both for women who end their own pregnancies, and for health care providers who perform them. This would bring New York's law into compliance with federal standards laid out by U.S. Supreme Court jurisprudence.

Recommendation

- **New York should reform its abortion law by adopting the Reproductive Health Act (AB 1748/ SB 2796), which would repeal the crimes of self-abortion in the first and second degree and abortion in the first and second degree from the Penal Law, permitting abortion to be regulated as a health matter rather than a crime.**

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pregnancy, holding that requiring women to know whether their abortion providers are compliant with the law poses an unconstitutional undue burden on the right to abortion).

NEW YORK CITY BAR

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TESTIMONY OF THE SEX AND LAW COMMITTEE

NEW YORK CITY COUNCIL COMMITTEE ON WOMEN "OVERSIGHT - ABORTION AND REPRODUCTIVE RIGHTS"

September 20, 2018

Reform of New York's Abortion Laws is Long Overdue

The Sex and Law Committee of the New York City Bar Association ("City Bar"), appreciates the opportunity to provide testimony regarding women's reproductive rights in New York. The City Bar has a long-standing commitment to upholding the principles of individual liberty and tradition of supporting the constitutionally-protected freedom to make private health care decisions and reproductive choices. The City Bar has authored amicus briefs in landmark reproductive rights cases before the United States Supreme Court,[1] opposed legislation that would limit abortion rights,[2] and issued reports in support of the Reproductive Health Act and similar legislation several times over the years. The City Bar reaffirms this commitment by supporting City Council Resolution 84, urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act.

New York State was once a leader in ensuring legal protection for the right to make decisions about pregnancy, reforming its abortion laws three years prior to *Roe v. Wade*.[3] The 1970 reform partially decriminalized abortion, permitting procedures within 24 weeks of commencement of pregnancy, or in cases where continued pregnancy poses a risk to the life of the pregnant individual.[4] While partial decriminalization was considered progressive at the time, New York's laws now lag behind, operating under an archaic presumption that abortion is a criminal act except under certain circumstances. Abortion laws that regulate health care procedures through the criminal code are deficient, both constitutionally and morally.

As in all other areas pertaining to a person's health, medical providers must be able to provide abortion care within their best judgment and the standards of their profession without fear of potential prosecution. So, too, should New Yorkers feel secure that they will be able to get the health care they need within our state's borders throughout pregnancy. And no one should be vulnerable to arrest and criminal charges for deciding to end their own pregnancy. To ensure that this is the reality for the people of New York, the Legislature must adopt the Reproductive Health Act.[5] The New York City Bar Association therefore supports City Council Resolution 84.

Overview of the Reproductive Health Act

The Reproductive Health Act ("the Act") removes provisions governing abortion and self-abortion from the New York State Penal Law, as well as sale of contraceptives, and places them where they belong: in the Public Health Law.[6] It further addresses a vexing gap that fails to take into account abortions later in pregnancy that are necessary for women's health or when the pregnancy is not viable. And, finally, it clears the way for advanced practice clinicians (APCs) – nurse practitioners, nurse midwives, and physician assistants – acting within the scope of their practice to perform early abortions or when the fetus is not viable or the abortion is necessary to protect a patient's life or health.[7]

Importantly, the Act affirmatively recognizes, at this crucial point in American history, "that comprehensive reproductive health care, including contraception and abortion, is a fundamental component of a woman's health, privacy and equality." Accordingly, it codifies, for the first time in New York, "that every individual possesses a fundamental right of privacy and equality with respect to their personal reproductive decisions and should be able to safely effectuate those decisions, including by seeking and obtaining abortion care, free from discrimination in the provision of health care."[8] The Act further provides that laws and regulations governing abortion must be in furtherance of a legitimate interest in protecting women's health, and should not burden abortion access, in accordance with Supreme Court precedent, as set forth most recently in *Whole Women's Health v. Hellerstedt.*[9]

The Need for the Reproductive Health Act

The U.S. Supreme Court has long recognized a fundamental privacy right in matters "relating to procreation, childbirth, child rearing, and family relationships,"[10] which was later held to encompass decisions regarding contraception and whether to continue or terminate a pregnancy.[11] New York State, too, has long recognized that reproductive choice and the right to bodily integrity are fundamental rights subject to strict scrutiny.[12]

Currently, New York law treats abortion as a crime by default, carving out exceptions for abortions performed by a doctor within the first 24 weeks from the commencement of pregnancy, or in cases where, in the reasonable medical judgment of a physician, the abortion is necessary to protect the pregnant woman's life.[13] The persistence of the regulation of abortion in New York's Penal Law has the extraordinary effect of targeting not only health care professionals who provide abortions, but women who engage in self-directed care, for risk of prosecution based solely upon the type of medical care at issue — a phenomenon which is otherwise unprecedented in New York law. No New Yorker should fear prosecution for needing an abortion, whatever the circumstances, and no health care provider should fear prosecution for providing it within their best medical judgment.

Although the law enacted in 1970 includes an exception for performance of an abortion after 24 weeks when a woman's *life* is at risk, the law currently does not contain an exception for women's *health*, or for cases of fetal nonviability. Accordingly, it fails to comply with United States Supreme Court precedent requiring that statutes governing abortion permit abortion *at any time* prior to fetal viability or in cases where a woman's health is at risk.[14] Thus, although the

existing Penal Law provisions operate with the effect of permitting abortions performed up until 24 weeks of pregnancy, the lack of these explicit exceptions in the context of a criminal provision has a chilling effect when it comes to pregnancies near or beyond 24 weeks. Fearing prosecution, and in the absence of an explicit exception for health or nonviability, most providers will not provide abortions under those circumstances. This has resulted in a significant obstacle for women who find themselves in the tragic circumstances of needing an abortion later in pregnancy due to a severe fetal anomaly or a risk to their own health. Women have had to travel out of state in order to obtain the care they need, often at great financial cost and further risk to their health. Clearly, under this scheme, women without financial resources may be left with no safe options. The Reproductive Health Act would remove these obstacles by creating an explicit authorization of abortion after 24 weeks when a woman's health is at risk or a fetus is not viable.

Among the many outdated and harmful facets of New York's abortion-related penal laws, the continued criminalization of self-abortion stands as an outlier in the nation. At common law, even where abortion was considered a crime, it was not a crime that a woman could commit upon herself. To treat it as such, the Florida Supreme Court warned, would "abrogate willy-nilly a centuries-old principle of the common law—which is grounded in the wisdom of experience and has been adopted by the legislature—and install in its place a contrary rule bristling with red flags and followed by no other court in the nation."[15] New York is one of only seven states that elected to break with that tradition. Even among these outliers, the Ninth Circuit has ruled at least one self-abortion ban unconstitutional,[16] another has been declared unenforceable by the state Attorney General,[17] and a third has been declared unconstitutional by a federal district court[18] — calling into question the constitutionality of the remaining few. New York's self-abortion provision, though potentially unconstitutional, is not inert: it has led to arrests within the past decade.[19]

Of further note, the current law authorizes abortions performed only by a "physician." However, the law's enactment predates advances in the intervening decades in the provision of routine medical care by advanced practice clinicians ("APCs"). By only authorizing abortions performed by a "physician" the law has placed an obstacle in the path of APCs acting in their lawful scope of practice in the provision of early, non-surgical abortion. There is no valid medical justification for a physician-only limitation, as leading medical associations have endorsed the provision of abortion by appropriately trained APCs.[20] Clarifying this legal ambiguity is critical, particularly in rural areas of the state where providers are few and far between. The Act accordingly modernizes the language by authorizing provision of abortion by any "health care practitioner licensed, certified, or authorized under [the Education Law], acting within his or her lawful scope of practice." This will treat the provision of abortion consistently with the regulation of the provision of all other forms of health care routinely provided by APCs in accordance with their training and scope of practice.

Finally, New York's law contains archaic provisions that have since become obsolete or been held unconstitutional by subsequent Supreme Court decisions, including the criminal ban on the sale of contraceptives to minors[21] and the requirement that second trimester abortions be provided in hospitals.[22] The Act conforms New York's law to current jurisprudence by repealing these obsolete provisions, which are not currently followed in practice.

Given the shift in U.S. Supreme Court abortion jurisprudence in recent years, and the ongoing shift in the composition of the Supreme Court itself, it is more important than ever that the State of New York update its laws regulating reproductive health.[23] For this reason as well, New York's reproductive health law should be strengthened and updated so it can stand on its own right.[24]

The New York City Bar praises the City Council for standing up for the reproductive rights of all New Yorkers, and joins in its call for the Legislature's swift passage of the Reproductive Health Act. Thank you for considering this testimony.

Sex and Law Committee
Mirah Curzer and Melissa Lee, Co-Chairs

[1] Including *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), and most recently, *Whole Women's Health v. Hellerstedt*, 579 U.S. ___ (2016).

[2] *See* City Bar's report, "Anti-Abortion Proposals Before the 97th Congress" (submitted by the Committee on Federal Legislation), The Record, Vol. 37 (1982); New York City Bar Association Report on Legislation, Assembly Bill 8875, dated as of June 1998.

[3] 410 U.S. 113 (1973).

[4] *See* N.Y. Penal Law §§ 125.40, 125.45 (defining crimes of abortion in the first and second degrees, with exceptions for when "such abortional act is justifiable"); § 125.05(3) (defining "justifiable" abortion as abortions occurring "(a) under [the physician's] reasonable belief that such is necessary to preserve [the pregnant woman's] life, or, (b) within twenty-four weeks from commencement of her pregnancy").

[5] *See* Report on legislation by the Sex and Law Committee and the Health Law Committee in support of the Reproductive Health Act (A.1748/S.2796), June 2017, https://s3.amazonaws.com/documents.nycbar.org/files/2017166-ReproductiveHealthAct.pdf.

[6] The Act removes the regulation of abortion from New York Penal Law – and makes it a matter of public health – by repealing sections of the penal law that criminalize abortion and self-abortion and adding Article 25-A to the New York Public Health Law.

[7] In using this language, the Act preserves the 24-week threshold that providers have become accustomed to, but carves out explicit exceptions for health and fetal non-viability.

[8] *See* Act, § 1.

[9] 579 U.S. ___ (2016).

[10] *Zablocki v. Redhail*, 434 U.S. 374, 383-386 (1978); *see also Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (recognizing the right to procreate as "one of the basic civil rights of man . . . fundamental to the very existence and survival of the race."); Carey, 431 U.S. at 685 (recognizing a fundamental right to privacy in matters of marriage and procreation).

[11] *See Griswold v. Connecticut*, 381 U.S. 479, 485-486 (1965) (recognizing the fundamental right of married persons to purchase and use contraceptives); *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (extending right to use contraceptives to unmarried persons, and stating that "[i]f the right to privacy means anything, it is the right . . . to be free from unwarranted state intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."); *Roe*, 410 U.S. at 153 (recognizing right to privacy encompassed abortion decision); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992) (upholding core principle of *Roe*).

[12] *Hope v. Perales*, 83 N.Y.2d 563 (1994); 67; *Rivers v. Katz*, 67 N.Y.2d 485, 495 N.E.2d 337 (1986) (recognizing right to determine the course of one's own medical treatment); *cf. In re Storar*, 52 N.Y.2d 363, 376 (1981), *superseded on other grounds by statute* (recognizing common-law right to determine the course of one's medical treatment).

[13] *See* N.Y. Penal Law §§ 125.40, 120.45; 120.25(3).

[14] *See Roe*, 410 U.S. at 163-64 ("If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life *or health* of the mother.") (emphasis added); *Doe v. Bolton*, 410 U.S. 179, 192 (1973) (defining "health" to include "all factors – physical, emotional, psychological, familial, and the woman's age – relevant to the well-being of the patient."); *Casey*, 505 U.S. at 878-79 (affirming "*Roe*'s holding that 'subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'") (*quoting Roe*, 410 U.S. at 164-65); *Stenberg v. Carhart*, 530 U.S. 914, 921 (2000) (same); *but c.f. Gonzales v. Carhart*, 550 U.S. 124, 166-67 (2007) (upholding the federal Partial Birth Abortion Act's ban on a particular abortion procedure, despite the law's lack of a health exception, but noting the availability of alternative procedures to terminate the pregnancy should the women's health require it).

[15] *See, e.g., State v Ashley*, 701 So. 2d 338, 342-43 (Fla. 1997). *See also Hillman v. State*, 232 Ga. App. 741, 503 S.E.2d 610 (1998) (refusing to extend Georgia's felony abortion statute to abrogate the common law principle that the woman who had the abortion was neither accomplice nor perpetrator); *State v. Carey*, 76 Conn. 342, 56 A. 632, 636 (1904) ("At common law an operation on the body of a woman quick with child, with intent thereby to cause her miscarriage, was an indictable offense, but it was not an offense in her to so treat her own body, or to assent to such treatment from another").

[16] *McCormack v. Hiedeman*, 694 F.3d 1004, 1015 (9th Cir. 2012) (invalidating Idaho's law penalizing women who end their own pregnancies as an undue burden on the right to seek abortion, potentially affecting Arizona and Nevada's similar laws).

[17] *See Delaware Women's Health Org. v. Wier*, 441 F. Supp. 497, 499 n.9 (D. Del. 1977); Statement of Policy, Att'y Gen. of Del. (Mar. 24, 1977) (declaring 11 Del. Code § 652, which criminalizes self-abortion, unconstitutional under *Roe* and declaring that it would not be enforced).

[18] *Henrie v. Derryberry*, 358 F. Supp. 719 (N.D. Okla. 1973) (declaring 21 Okla. Stat. § 862, which criminalizes women who "solicit" or "submit to" abortions unconstitutional).

[19] *See, e.g. NYPD: Manhattan Woman Charged With Performing Self-Abortion*, CBS N.Y., (Dec. 1, 2011, 8:30 PM), http://cbsloc.al/2pxAnrZ; Pedro Ramirez III, *Self Abortion: Woman took Tylenol, Motrin*, Syracuse.com, Apr. 12, 2007, http://bit.ly/2r8Yy3d (all links last visited September 18, 2018).

[20] The provision of abortion care by appropriately trained clinicians has been endorsed by: American College of Obstetricians and Gynecologists (http://bit.ly/2s1WM4O), the American Public Health Association (http://bit.ly/2rbxzkl), the International Confederation of Midwives (http://bit.ly/2r1hFtp), and Physicians for Reproductive Health (https://prh.org/abortion/), among others. *See also* Nat'l Abortion Federation & Clinicians for Choice, *Role of CNMs, NPs, and PAs in Abortion Care*, http://bit.ly/2skPx8K (collecting policy statements).

[21] N.Y. Educ. L. §6811; *See Carey v. Population Serv. Int'l*, 431 U.S. 678 (1977) (striking down a ban on the sale of contraceptives to minors as unconstitutional).

[22] N.Y. Pub. Health L. § 4164; *Akron v. Akron Ctr. for Reproductive Health*, 62 U.S. 416 (1983) (striking down second trimester hospitalization requirement); *Thornburgh v. Am. Coll. of Obstetricians & Gynecologists*, 476 U.S. 747, 771 (1986) *overruled on other grounds by Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

[23] *Compare Gonzales*, 550 U.S. at 166-67 (discussed *supra* at n. 15) *with Stenberg*, 530 U.S. at 945-46 (striking down a similar Nebraska "partial-birth" abortion ban for vagueness and for failing to provide a health exception).

[24] Should New York adopt the Act, it will join at least seven other states that have adopted reproductive rights laws generally protecting the right of a woman to obtain an abortion either before fetal viability or, in the case of post-fetal viability, to protect the life or health of the pregnant woman. *See* Appendix A.

APPENDIX A

Reproductive Rights Laws In Other States

CALIFORNIA

Cal. Health and Safety Code § 123462. *Legislative findings and declarations*
The legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the State of California that:
(a) Every individual has the fundamental right to choose or refuse birth control.
(b) Every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article.
(c) The state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose to obtain an abortion, except as specifically permitted by this article.

Health and Safety Code §123466. *Denial or interference with a woman's right*
The state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman.

CONNECTICUT

Conn. Gen. Stat. Ann. § 19a-602. *Termination of pregnancy prior to viability. Abortion after viability prohibited; exception*
Termination of pregnancy prior to viability. Abortion after viability prohibited; exception.
(a) The decision to terminate a pregnancy prior to the viability of the fetus shall be solely that of the pregnant woman in consultation with her physician.
(b) No abortion may be performed upon a pregnant woman after viability of the fetus except when necessary to preserve the life or health of the pregnant woman

HAWAII

Haw. Rev. Stat. § 453-16.*Intentional termination of pregnancy; penalties; refusal to perform.*
(a) No abortion shall be performed in this state unless:
1. The abortion is performed by a licensed physician or surgeon, or by a licensed osteopathic physician and surgeon; and
2. The abortion is performed in a hospital licensed by the department of health or operated by the federal government or an agency thereof, or in a clinic or physician's or osteopathic physician's office.

(b) Abortion shall mean an operation to intentionally terminate the pregnancy of a nonviable fetus. The termination of a pregnancy of a viable fetus is not included in this section.
(c) The State shall not deny or interfere with a female's right to choose or obtain an abortion of a nonviable fetus or an abortion that is necessary to protect the life or health of the female.
(d) Any person who knowingly violates subsection (a) shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(e) Nothing in this section shall require any hospital or any person to participate in an abortion nor shall any hospital or any person be liable for a refusal.

MAINE

Me. Rev. Stat. Ann. tit. 22 § 1598. *Abortions*

1. *Policy.* It is the public policy of the State that the State not restrict a woman's exercise of her private decision to terminate a pregnancy before viability except as provided in section 1597-A. After viability an abortion may be performed only when it is necessary to preserve the life or health of the mother. It is also the public policy of the State that all abortions may be performed only by a physician.

2. *Definitions.* As used in this section, unless the context otherwise indicates, the following terms shall have the following meanings.

A. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical or by the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus.

B. "Viability" means the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life-supportive systems.

3. *Persons who may perform abortions; penalties.*

A. Only a person licensed under Title 32, chapter 36 or chapter 48, to practice medicine in Maine as a medical or osteopathic physician, may perform an abortion on another person.

B. Any person not so licensed who knowingly performs an abortion on another person or any person who knowingly assists a nonlicensed person to perform an abortion on another person is guilty of a Class C crime.

4. *Abortions after viability; criminal liability.* A person who performs an abortion after viability is guilty of a Class D crime if:

A. He knowingly disregarded the viability of the fetus; and

B. He knew that the abortion was not necessary for the preservation of the life or health of the mother.

MARYLAND

Md. Code Ann. Health Gen. § 20-209. *State interference with abortions*

(a) *Viable defined* - In this section, "viable" means that stage when, in the best medical judgment of the attending physician based on the particular facts of the case before the physician, there is a reasonable likelihood of the fetus's sustained survival outside the womb.

(b) *In general* - Except as otherwise provided in this subtitle, the State may not interfere with the decision of a woman to terminate a pregnancy:

1. Before the fetus is viable; or
2. At any time during the woman's pregnancy, if:
   i. The termination procedure is necessary to protect the life or health of the woman; or
   ii. The fetus is affected by genetic defect or serious deformity or abnormality.

(c) *Regulations* - The Department may adopt regulations that:

1. Are both necessary and the least intrusive method to protect the life or health of the woman; and

2. Are not inconsistent with established medical practice.

(d) *Liability.*- The physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion under this section made in good faith and in the physician's best medical judgment in accordance with accepted standards of medical practice.

NEVADA

Nev. Rev. Stat. Ann. § 442.250. *Conditions under which abortion is permitted.*

1. No abortion may be performed in this state unless the abortion is performed:

a. By a physician licensed to practice in this state or by a physician in the employ of the government of the United States who:

i. Exercises his best clinical judgment in the light of all attendant circumstances including the accepted professional standards of medical practice in determining whether to perform an abortion; and

ii. Performs the abortion in a manner consistent with accepted medical practices and procedures in the community.

b. Within 24 weeks after the commencement of the pregnancy.

c. After the 24th week of pregnancy only if the physician has reasonable cause to believe that an abortion currently is necessary to preserve the life or health of the pregnant woman.

2. All abortions performed after the 24th week of pregnancy or performed when, in the judgment of the attending physician, there is a reasonable likelihood of the sustained survival of the fetus outside of the womb by natural or artificial supportive systems must be performed in a hospital licensed under chapter 449 of NRS.

3. Before performing an abortion pursuant to subsection 2, the attending physician shall enter in the permanent records of the patient the facts on which he based his best clinical judgment that there is a substantial risk that continuance of the pregnancy would endanger the life of the patient or would gravely impair the physical or mental health of the patient.

WASHINGTON

Wash. Rev. Code Ann. § 9.02.100. *Reproductive privacy -- Public policy.*

The sovereign people hereby declare that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the state of Washington that:

(1) Every individual has the fundamental right to choose or refuse birth control;

(2) Every woman has the fundamental right to choose or refuse to have an abortion, except as specifically limited by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902;

(3) Except as specifically permitted by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902, the state shall not deny or interfere with a woman's fundamental right to choose or refuse to have an abortion; and

(4) The state shall not discriminate against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information.

Rev. Code Ann. § 9.02.110. *Right to have and provide.*

The state may not deny or interfere with a woman's right to choose to have an abortion prior to viability of the fetus, or to protect her life or health.

A physician may terminate and a health care provider may assist a physician in terminating a pregnancy as permitted by this section.

Rev. Code Ann. § 9.02.140. *State regulation.*
Any regulation promulgated by the state relating to abortion shall be valid only if:
(1) The regulation is medically necessary to protect the life or health of the woman terminating her pregnancy,
(2) The regulation is consistent with established medical practice, and
(3) Of the available alternatives, the regulation imposes the least restrictions on the woman's right to have an abortion as defined by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902.

Rev. Code Ann. § 9.02.160. *State-provided benefits.*
If the state provides, directly or by contract, maternity care benefits, services, or information to women through any program administered or funded in whole or in part by the state, the state shall also provide women otherwise eligible for any such program with substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies.

FOR THE RECORD

RAISING WOMEN'S VOICES
for the health care we need

September 20, 2018

Raising Women's Voices-New York
475 Riverside Drive, Suite 1600
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Testimony of Ann Danforth, LMSW
On behalf of Raising Women's Voices-New York
Before
The New York City Council Committee on Women
Regarding
Res. 84-2018
"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

Thank you Council Member Rosenthal for convening this hearing today, and thank you Public Advocate James for introducing the resolution before the committee. My name is Ann Danforth and I am here on behalf of Raising Women's Voices-New York. Our organization is the New York State coordinator for a national initiative called Raising Women's Voices for the Health Care We Need. Raising Women's Voices-New York is also a member of the steering committee of Health Care for All New York, a statewide coalition of more than 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers.

Raising Women's Voices is fighting hard to protect women's health care from attacks at the federal level. One of our strategies is to enact state-level protections, such as the proposed Reproductive Health Act. Our Raising Women's Voices regional coordinators in states like Massachusetts, Rhode Island and New Mexico have been pushing for similar bills that would decriminalize abortion in their state. Recently, our Boston-based regional coordinator, NARAL Pro-Choice Massachusetts, helped advocate for the successful adoption of a bill that repeals a number of harmful, outdated statutes, including laws that criminalize abortion and distributing information about abortion. Massachusetts serves as an example of how neighboring blue states like New York can act now to make sure women continue to have access to abortion without fear of punishment, regardless of what happens at the federal level.

As an organization committed to improving reproductive health coverage and access for *all* women, Raising Women's Voices-New York is in strong support of the resolution before you, which calls on the New York State Legislature to pass the Reproductive Health Act. Raising Women's Voices-New York has a special mission of engaging individuals who are not often invited into health policy discussions: women of color, low-income women, immigrant women, young women, and LGBTQ people. As an organization with both a national and New York focus, and with expertise in both consumer health advocacy and women's health, we are uniquely positioned to comment upon the importance of these protections. We believe the Reproductive Health Act is much-needed legislation that would update and improve New York's outdated laws around abortion, and particularly protect low-income women and women of color.

New York must continue to lead the nation in its support and expansion of access to reproductive health care. The Reproductive Health Act will build on the progressive history of New York – a state that legalized abortion three years prior to *Roe v. Wade*. It will help address the resulting inconsistencies between state and federal law by bringing New York State law in line with the federal standard.

The Reproductive Health Act would move New York's abortion law from the criminal code to the health code, where it belongs. In addition to protecting health care providers from prosecution, this bill would no longer criminalize women who self-manage their abortions. The bill would also help protect individuals facing major health complications late in pregnancy, and recognize advanced practice providers who perform abortions within their scope of practice, helping to expand access to abortion for New Yorkers.

The Reproductive Health Act has passed the New York State Assembly numerous times, but continues to be blocked by the Senate. In the face of ongoing federal attacks that threaten to undermine our rights and access to reproductive health care, the State Legislature must pass the Reproductive Health Act immediately. I thank the New York City Council and Public Advocate James for championing the rights of New York women and urging the legislature to pass this important piece of legislation.

NCJW|NY
National Council of Jewish Women New York

Testimony of National Council of Jewish Women New York

Before

The New York City Council Committee on Women

Regarding

Res. 84-2018

"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

Thank you Public Advocate James for introducing the resolution before the committee, and thank you Councilmember Rosenthal for convening this hearing today. My name is Andrea Salwen Kopel and I am the Executive Director of National Council of Jewish Women New York. NCJW NY is a grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW NY strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms.

The resolution before you calls on the New York State Legislature to pass the Reproductive Health Act (RHA), legislation that would update New York's laws around abortion. I come here today to testify in strong support of the RHA and of this resolution.

Recognizing the importance of updating New York's antiquated abortion law, NCJW NY has been a longtime supporter of the Reproductive Health Act. When New York passed its current abortion law in 1970, it was a leader in the movement of securing women the access to safe abortion services. But the

law is now outdated and in desperate need of updates to ensure that New Yorkers are receiving critically needed care. During these uncertain times for reproductive rights in America, New York State must take the important step of passing the Reproductive Health Act to protect New Yorkers abortion rights.

First and foremost, our abortion law needs to be moved out of the criminal code and into the health code, protecting healthcare providers from prosecution and regulating abortion as the mainstream medical procedure it is. In addition, New York State must also recognize that there are now a variety of trained professionals who are able to provide abortion services. These additional providers, whom the RHA would allow to preform abortion care, will increase access to this time sensitive care. Lastly, we must eliminate time restrictions on abortion in New York if a woman's health is at risk or if she receives the devastating news that the pregnancy is no longer viable. No woman should have to leave our state to get an abortion in these circumstances, which adds to the financial and emotional stress of an already difficult time.

NCJW NY is committed to creating a world where all people, regardless of race, class, gender, sexuality, ability, or immigration status, have the right to build their families and live their lives with dignity. Our Jewish values teach us that our reproductive freedoms are integrally bound to our religious liberty. We are committed to advancing the goals of reproductive justice, such that all people can make their own moral decisions about their bodies, health, and family, informed by their own faiths. This is why we will continue to work with our partners in this fight to finally see the Reproductive Health Act passed and signed into law.

Once again, we thank the Public Advocate and the Committee on Women for expressing its support for the passage of the Reproductive Health Act and hope to see the Resolution swiftly passed by the full City Council. Thank you.

Testimony of WHARR

Before

The New York City Council Committee on Women

Regarding

Res. 84-2018

"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

Thank you Councilmember Rosenthal for convening this hearing today, and thank you Public Advocate James for introducing the resolution before the committee. My name is Jessie Losch and I am a co-chair of WHARR, the Women's Health and Reproductive Rights advocacy group of Get Organized Brooklyn. I am also a preschool teacher and interpreter for survivors of human trafficking.

The resolution before you calls on the New York State Legislature to pass the Reproductive Health Act (RHA), legislation which would update and improve New York's antiquated laws around abortion. I strongly support the RHA and this resolution.

New York has a storied history as a haven for those who most need help, and that includes its legislation on reproductive care. When New York State legalized abortion back in 1970, it did so three years before the U.S. Supreme Court followed suit nationally through Roe v. Wade. We set the tone and raised the bar. However, the state has not updated its abortion law since 1970, creating a dangerous inconsistency between state and federal law, and leaving both providers and women unprotected from criminal penalty.

The RHA would move our abortion law from the criminal code to the health code, better protecting healthcare providers from prosecution and regulating abortion as the medical procedure it is. It would better protect individuals facing major health complications late in pregnancy by creating a health exception to the ban on abortions after 24 weeks. It would also recognize advanced practice providers like nurse practitioners and physicians' assistants who perform abortions within their scope of practice. Finally, it would no longer criminalize women who self-manage their abortions.

WHARR is a multi-generational group comprised of women who carry the stories of their friends and relatives forced to seek abortions in the years before Roe brought them out of the shadows, and girls who are now facing a future that looks terrifyingly similar. Thinking of WHARR, and of the trafficking survivors I get to speak to, I realized how many stories I have that would show the necessity of the RHA. But in my few minutes here I want to share with you the story of a mother in the preschool where I teach. Rachel's twin boys were two when she got pregnant- with another boy, to her husband's delight- and everything was wonderful through the first five months and a baby shower. Her twins were thrilled to be "big brudders." Then, at a routine ultrasound, it was discovered that the fetus had no lymphatic and renal systems and was relying on Rachel's own. Should she carry to term, he would live a few hours before dying from the buildup of poisons that these systems would normally filter out. On top of that, Rachel and her husband were told, they were at the very end of the time period where termination was

legal, and had one day to make this decision. They were forced to grieve a wanted pregnancy, make decisions and appointments, not to mention find childcare and explanations to their twins, in one day- because the law has yet to catch up with the times. The RHA would have saved them from so much needless grief.

The State Assembly has passed this bill many times, but it has been blocked time and again in the New York State Senate by anti-choice leadership. With our rights under attack at the federal level and states around the country restricting abortion access, we cannot afford to waste any more time. We need both houses of the legislature to pass this legislation as soon as they begin session in January. This must be a top priority. I thank the New York City Council and Public Advocate James for taking a stand and urging your colleagues in Albany to pass the Reproductive Health Act.

Testimony of: The Door Adolescent Health Center

Before

The New York City Council Committee on Women

Regarding

Res. 84-2018

"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

Thank you Councilmember Rosenthal for convening this hearing today, and thank you Public Advocate James for introducing the resolution before the committee. My name is Justine Kahn, Special Assistant to the Executive Director at The Door. I am representing The Door's Adolescent Health Center.

The Door's mission is to empower young people to reach their potential by providing comprehensive youth development services in a diverse and caring environment. Since 1972, The Door has helped a rapidly growing population of young people in New York City gain the tools they need to become successful, in school, in work, and in life. Each year, The Door serves 11,000 young people from all over New York City, with a wide range of services including reproductive health care and education, mental health counseling and crisis assistance, legal assistance, career and education services, supportive housing, sports and recreational activities, arts, and nutritious meals - all under one roof.

The Door is unique in its ability to meet the complex needs of New York City's disconnected youth. No other organization provides the range of services we do, all in one place.

The resolution before you calls on the New York State Legislature to pass the Reproductive Health Act (RHA), legislation which would update and improve New York's antiquated laws around abortion. I strongly support the RHA and this resolution.

New York has previously been a trailblazer when it comes to the pursuit of access to reproductive health care. New York State legalized abortion in 1970, three years before the U.S. Supreme Court did so nationally through Roe v. Wade. However, the state has not updated its abortion law in the ensuing decades, creating an inconsistency between state and federal law, and leaving both providers and women unprotected from criminal penalty.

The Door agrees that in passing the RHA, and thereby moving our abortion law from the criminal code to the health code, regulating abortion as the medical procedure it is, New York would be better protecting its residents. It would be protecting its healthcare providers from prosecution. It would recognize and protect advanced practice providers who perform abortions within their scope of practice. It would be protecting individuals facing major health complications late in pregnancy by creating an exception to the ban on abortions after 24 weeks. It would no longer criminalize women who self-manage their abortions. It would protect women from having to travel out of state for care or waiting until their health was in jeopardy during a pregnancy to have access to abortion. All of which could be possible should the Trump administration overturn Roe.

The State Assembly has passed this bill many times, but it has been blocked time and again in the New York State Senate by anti-choice leadership. With our rights under attack at the federal level and states around the country restricting abortion access, we cannot afford to waste any more time. We need both houses of the legislature to pass this act as soon as they begin session in January. This must be a top priority. I thank the New York City Council and Public Advocate James for taking a stand and urging your colleagues in Albany to pass the Reproductive Health Act.

I would like to say thank you to the council and bill sponsor for hearing my testimony today.

National Advocates for Pregnant Women

N A P W

National Advocates for Pregnant Women

Testimony Before the New York City Council Committee on Women
Chair Helen Rosenthal
In Support of Res. 84-2018
"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

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Good morning. My name is Emily Gertz and I am the Deputy Director at National Advocates for Pregnant Women. I am pleased to be here today to represent National Advocates for Pregnant Women and glad to join fellow activists, allies and New York City Council members in their support of the proposed New York State Reproductive Health Act.

National Advocates for Pregnant Women is a non-profit organization founded in 2001 that uses legal advocacy, public education and organizing to secure the civil and human rights of all pregnant women including those most likely to be targeted for arrest - low-income women, women of color and women who use drugs. We seek to ensure that no person is punished for being pregnant, or for any outcome of their pregnancy, whether they have an abortion, experience a pregnancy loss, or deliver a baby.

We strongly agree with Public Advocate James and Council Members Rosenthal, Brannan, Ayala and Rivera that it is essential for the New York State legislature to pass the Reproductive Health Act. As indicated in the City Council resolution, now more than ever the legal right to abortion is under threat. It is critical that New York secure women's health, rights and justice by repealing archaic sections of New York's Penal Law that if left in place leave women open to criminal prosecution for obtaining an abortion.

As you know, the Penal Law still includes two specific provisions (P.L. 125.50 and 125.55) that explicitly permit criminal punishment of women who have abortions. Those criminal statutes have long been inconsistent with New York's commitment to women's health, rights and dignity, and should be repealed. The laws were enacted before the U.S. Supreme Court decided *Roe v. Wade and* make New York one of just a handful of states that clearly authorize punishment of women themselves (not only doctors or other third parties) for abortion.

Authorizing the arrest of women for "self-abortion" is wrong. It would be a mistake, however, to think that New York's criminal law targeting women who have abortions only affects women who seek to end their pregnancies. In truth, New York's criminal abortion law already impacts pregnant New Yorkers in other situations by reinforcing the dangerous idea that fetuses have completely separate rights that the State may rely on to deprive pregnant women of *their* civil rights. For example, it has been used to justify forced surgery on pregnant women who have no interest in ending their pregnancy.

Ms. Rinat Dray, who herself has appeared in front of this committee in support of a New York City maternal mortality and morbidity review panel, is one such woman. In 2010 Ms. Dray was pregnant with her third child. Hoping to avoid a third cesarean section which is major abdominal surgery, Ms. Dray researched a hospital and physician who would support her in her desire for a Vaginal Birth After Cesarean (VBAC). She chose Staten Island University Hospital, part of the Northwell Health System. Her chosen physician was not on duty the day that she went into labor and instead, Ms. Dray was seen by an attending physician who opposed her desire for vaginal delivery and continuously pressured her to have cesarean surgery. When she consistently and clearly refused, the doctor engaged the Director of Maternal Fetal Medicine and hospital counsel who collectively decided to override her decision. The doctor's note in her

medical chart reads "The woman has decision capacity. I have chosen to override her refusal to have a c-section." Ms. Dray was wheeled to the operating room where surgery was performed on her.

The hospital has a policy that is not public, that was called upon when making this decision against Ms. Dray. The policy singles out pregnant women and authorizes doctors to override their wishes without even seeking a court order. In doing so they ignore pregnant patients right to medical decision making, a right that is well established under New York law, and deny the individual pregnant woman numerous civil rights including the right to due process, to bodily integrity, and fundamental liberty.

Since Roe v. Wade was decided in 1973, abortion opponents around the country have worked tirelessly to restrict abortion by establishing separate rights for fertilized eggs, embryos and fetuses. As Ms. Dray has sought legal redress for the violations she experienced, the largest health care provider and private employer in New York State – Northwell Health System, has consistently defended Staten Island University Hospital doctors' decisions to force Ms. Dray to undergo unconsented to surgery on the basis of protecting fetal rights. And New York's antiquated criminal abortion law was specifically referenced at the trial court level. In a decision restricting Ms. Dray's claims, the trial court judge stated, "[New York] recognizes an interest in the protection of a viable fetus by retaining the crimes of abortion and self-abortion. . ." In other words, because New York retains these criminal laws, there is a point in pregnancy when women may effectively lose their civil and human rights, including the right to bodily integrity and medical decision making.

Another example of how New York's criminal "self-abortion" law was used in a context other than abortion is the case of Jennifer Jorgensen. In that case, the criminal abortion law was used to justify a manslaughter prosecution. Ms. Jorgensen was a pregnant woman who lost her pregnancy after a car accident, and she was wrongfully charged with and convicted of manslaughter of her fetus. Fortunately, a majority of the New York Court of Appeals reversed her conviction and issued a clear ruling that New York's manslaughter law does not permit the punishment of women based on the outcomes of their pregnancies. If there were any doubt about the connection between the criminal abortion law, this prosecution, and Ms. Dray's experience, in a dissenting opinion in this same case, one judge theorized that a woman who refuses cesarean surgery and then experienced a stillbirth -- *"conceivably could [be] charged with . . . abortion* in the second degree . . . or abortion in the first degree . . ." People v. Jorgensen, Slip. Op. 7-8 (October 22, 2015).

New York State will protect more than a woman's right to obtain safe abortion by passing the Reproductive Health Act. The Reproductive Health Act will protect all pregnant women whether they have an abortion, go to term as Ms. Dray did, or experience a pregnancy loss as Ms. Jorgensen did. All pregnant women in New York should be able to trust the government to protect their rights no matter what the outcome of that pregnancy is.

Thank you for the opportunity to submit this testimony.

National Institute for Reproductive Health

Testimony of the National Institute for Reproductive Health

Before

The New York City Council Committee on Women

Regarding

Res. 84-2018

"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

Thank you to Councilmember Rosenthal, Public Advocate James, and all the committee members for holding this important hearing today. My name is Emily Kadar and I represent the National Institute for Reproductive Health (NIRH). At NIRH, we build power at the state and local level to change public policy, galvanize public support, and normalize women's decisions about abortion and contraception.

As one of the organizations leading the fight to decriminalize abortion in New York State, NIRH strongly supports the resolution calling upon our state legislature to pass the Reproductive Health Act (RHA).

The City Council understands that the Trump-Pence Administration is determined to institute draconian policies restricting access to abortion and reproductive, and that the nomination of Brett Kavanaugh to the Supreme Court threatens to undo any federal protection of abortion rights. Given this immediate and very real risk, the state legislature must take action to update New York's abortion law by passing the Reproductive Health Act. Our state still treats abortion like a crime, rather than health care, and there is too much at stake to maintain the status quo for yet another legislative session.

Because our laws regulating abortion are so outdated, pregnant women who have serious complications later in pregnancy are sometimes forced to leave New York in order to get the safe, legal abortion care they need. Passing the RHA would mean these women could be cared

for in their home state. New York state law also contains a Civil War-era criminal prohibition on self-abortion, meaning that women who end their own pregnancies face potential arrest, prosecution, and jail time. As a result, women who have ended their own pregnancies in New York have been arrested and charged under New York's criminal abortion statute. No woman should fear arrest or jail for ending her own pregnancy.

Our laws must allow women and health care providers to make decisions free from fear of financial burden, forced out-of-state travel, and criminal prosecution. The RHA clearly repeals outdated and unconstitutional criminal prohibitions on abortion, and moves the regulation of abortion out of the penal code and into the public health law, where it belongs.

The RHA also ensures that qualified health care providers, including Advanced Practice Clinicians (APCs) like nurse practitioners and physicians' assistances can provide abortion services within their expertise and training. The 1970 abortion law only references physicians as providing abortion care because the practice of medicine was limited to doctors at the time. Almost 50 years later, the medical field has changed dramatically and we seek care from different types of medical professionals. Our law must reflect that reality. Clarifying the legal ability of trained and qualified APCs to provide early abortion care, as the RHA does, will increase patient access to safe and affordable health care.

The State Assembly has passed this bill many times, but it has been blocked time and again in the New York State Senate by anti-choice leadership. With our rights under attack at the federal level and states around the country restricting abortion access, we cannot afford to waste any more time. We need both houses of the legislature to pass this legislation as soon as they begin session in January. This must be a top priority. I thank the New York City Council and Public Advocate James for taking a stand and urging your colleagues in Albany to pass the Reproductive Health Act.

Testimony of Laura Riker, on behalf of the Reproductive Health Access Project
Before
The New York City Council Committee on Women
Regarding
Res. 84-2018
"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."
September 20, 2018

Thank you, Councilmember Rosenthal, for convening this hearing today, and thank you, Public Advocate James for introducing this important resolution before the committee. My name is Laura Riker and I am the Senior Program Manager at the Reproductive Health Access Project (RHAP).

We are a national nonprofit organization that trains and supports clinicians to provide reproductive health care. We focus on three key areas: abortion, contraception, and miscarriage care. Our organization is based in New York and we work extensively throughout the state. Because our work focuses on primary care and primary care clinicians, we see firsthand how uneven access to abortion care is for people in different parts of the state.

Primary care providers are the main providers of health care in rural and underserved parts of New York.[1] I work with providers in parts of the state where access to specialized reproductive health care is severely limited, forcing many women in New York to travel for hours in order to get the care that they need. Additionally, lack of abortion training for these clinician populations directly impacts the ability of women in these areas to access abortion care within their own communities.

Currently, there are 34 family medicine residency programs in New York State.[2] Of these, only 5 provide comprehensive abortion training.[3] They are all in Albany or New York City. None of these family medicine residency programs are in state-funded universities or public hospitals. Access to training for non-physician clinicians in New York State is even more limited.

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[1] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2231638/#CR6

[2] https://nf.aafp.org/Directories/Residency/Results

[3] http://rhedi.org/education/residency-training/#integratedprograms

Overwhelming evidence has shown that with proper training, early term abortions can be safely provided in an office-based setting.[4] Our organization works to fill in the training gaps for these post-residency clinicians. Just last month, we hosted a medication abortion training in New York City, which drew a large audience of nurse practitioners, nurse-midwives, students, and family physicians who are fired up and committed to integrating medication abortion into their clinics. One attendee shared that as a future Family Nurse Practitioner, attending this training would help her protect the autonomy and self-determination of her patients, making her a better provider. I hear clinician stories like this every single day.

The Reproductive Health Access Project works towards a future where abortion care is mainstreamed into routine health care, available in primary care settings like community health centers and publicly-funded clinics. Being able to offer same-day, in-office abortion services to women across the state is critical for not only maintaining but also improving access. The Reproductive Health Act would help to ensure that clinicians in our state are able to receive the training they need to provide the services their patients deserve.

With our rights under attack at the federal level, and states around the country restricting access to abortion services, we need both houses of the New York State legislature to act now. This must be a top priority.

On behalf of the Reproductive Health Access Project and our statewide network of primary care clinicians, I thank the New York City Council and Public Advocate James for taking a stand and urging your Albany colleagues to pass the Reproductive Health Act in January.

[4] https://www.nap.edu/catalog/24950/the-safety-and-quality-of-abortion-care-in-the-united-states

CENTER FOR REPRODUCTIVE RIGHTS

Testimony of the Center for Reproductive Rights

Before

The New York City Council Committee on Women

Regarding

Res. 84-2018

"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

Thank you Councilmember Rosenthal for convening this hearing today, and thank you Public Advocate James for introducing the resolution before the committee. My name is Ashley Gray and I am the State Advocacy Adviser at the Center for Reproductive Rights. The Center for Reproductive Rights is a legal advocacy organization dedicated to protecting the rights of women to access safe and legal abortion and other reproductive health care. For nearly 25 years, we have successfully defended abortion access throughout the United States, including winning the landmark case *Whole Woman's Health v. Hellerstedt*, in which the U.S. Supreme Court reaffirmed the Constitution's robust protections for a woman's decision to have an abortion.

The resolution before you calls on the New York State Legislature to pass the Reproductive Health Act (RHA), legislation which would update and improve New York's antiquated laws around abortion. The Center strongly supports the RHA and this resolution.

New York has led the country when it comes to the pursuit of access to reproductive health care. Now more than ever, it needs to take steps to protect and increase access to abortion. *Roe v. Wade*—the landmark Supreme Court case establishing access to abortion as a constitutional right—has been settled law for over 45 years, yet remains under constant attack. President Trump promised that he will only appoint Supreme Court Justices who will overturn *Roe*, and with the nomination of Judge Kavanaugh, we can assume he made good on that promise. We may now face the greatest threat to reproductive rights in more than a generation.

Many provisions in the Reproductive Health Act are even more urgent and relevant in this landscape. The Reproductive Health Act affirms the right to privacy in New York law, removes outdated criminal penalties – including for self-induction – and clarifies that Advanced Practice Clinicians like Nurse Practitioners and Physicians Assistants can provide abortion care within

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their scope of practice. These medical professionals fill a critical coverage gap in rural areas of the state and would increase the number of providers to assist with a potential influx of patients from other states if access to abortion is restricted in the future. The World Health Organization and the American College of Obstetricians and Gynecologists supports APCS providing abortion care and several research studies show that first-trimester abortion services provided by APCs are as safe as obtaining them from a physician trained in abortion care.[i] Furthermore, provision of abortion services by APCs has actually been shown to increase continuity of care, facilitate earlier diagnosis and termination of unintended pregnancies and increase the health and wellbeing of women.[ii]

Removing abortion from the criminal code is a crucial step in recognizing that abortion is healthcare, not a crime. It is urgent to remove language that could be used to criminalize women who self-manage their abortions as such language is disproportionately used against women of color and women from low-income backgrounds. Abortion is healthcare that must be accessible to all residents of New York, without fear of prosecution.

This must be a top priority. I thank the New York City Council and Public Advocate James for taking a stand and urging your colleagues in Albany to pass the Reproductive Health Act.

Sincerely,

Ashley Gray
State Advocacy Adviser
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York NY 10038

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[i] ACOG Committee Opinion Number 612, November 2014, Reaffirmed 2017; Safety and acceptability of NPsCNMs, and PAs as abortion providers. ANSIRH. 2017. Jun, [February 2, 2018]. https://www.ansirh.org/sites/default/files/publications/files/safety_of_nps_cnms_and_pas_as_abortion_providers.pdf ; Weitz TA, Taylor D, Desai S, et al. Safety of aspiration abortion performed by nurse practitioners, certified nurse midwives, and physician assistants under a California legal waiver. Am J Public Health. 2013;103(3):454–461. [PMC free article] [PubMed]; de la Salut OM World Health Organization, WHO, UNAIDS, author. Safe Abortion: Technical and Policy Guidance for Health Systems. World Health Organization; 2003.

[ii] Advancing Scope of Practice for Advanced Practice Clinicians: More Than a Matter of Access. [April 11, 2018]. http://www.arhp.org/Publications-and-Resources/Contraception-Journal/August-2009. [PubMed]

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Testimony of Planned Parenthood of New York City
Before The New York City Council Committee on Women
Regarding Abortion and Reproductive Rights

September 20, 2018

Good Morning. My name is Rebecca Donn, WHNP, and I am the Director of Quality Management at Planned Parenthood of New York City. I am pleased to submit testimony for today's public hearing on abortion and reproductive rights. Thank you to the Speaker Corey Johnson, Public Advocate Letitia James, and Council Members Brannan, Rosenthal, Ayala, and Rivera for introducing this important Resolution to call on the New York State Legislature to pass and the Governor to sign the Reproductive Health Act (RHA).

Planned Parenthood of New York City has been a leading provider of sexual and reproductive health services in New York City for more than 100 years, reaching approximately 85,000 New Yorkers annually through our clinical and education programs. PPNYC provides health services including birth control; emergency contraception; gynecological care (including cervical and breast cancer screenings); colposcopy; male reproductive health exams; testing, counseling, and treatment for sexually transmitted infections; the HPV vaccine; HIV testing and counseling; pregnancy testing, options counseling and abortion. We also provide PrEP and PEP, transgender hormone therapy, vasectomies, and, recently, menopausal hormonal therapy. We are a trusted name in health care because of our commitment to comprehensive, inclusive care. Our doors are open to all New Yorkers regardless of income, gender, insurance, or immigration status and we believe that high quality health care is a human right every person deserves.

As Director of Quality Management at PPNYC, I ensure the quality of our services by performing audits, reviewing incident reports, training new clinicians, updating our clinicians on changes in our Medical Standards & Guidelines and helping to implement new services at our health centers. I also train new medication abortion providers and physician fellows, and periodically provide health services. Prior to serving in this role, I was a Nurse Practitioner at PPNYC for eleven years and served as the Lead Clinician at our Bronx Health Center. Before joining PPNYC, I worked at Planned Parenthood Hudson Peconic (PPHP), an affiliate serving communities in Suffolk, Westchester, and Rockland counties. In my years of experience as a provider for two different Planned Parenthood affiliates, I have seen firsthand the barriers that New Yorkers face when accessing abortion and sexual and reproductive health care. Patients frequently encounter protestors who physically block health center entrances or use harassment

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or intimidation to deter them from accessing the health care they need. Crisis pregnancy centers masquerading as legitimate health care providers deceive New Yorkers who are trying to access care using a range of tactics, including misleading and medically inaccurate messaging, both in-person and online, and failing to post disclosures stating that they do not have licensed medical providers onsite. PPNYC provides care, no matter what, as a response to broader barriers to accessing health care that exist across the state, including insurance coverage, immigration status, and ability to pay. In the face of these and other challenges, it is critical that we work to protect and expand access to abortion and sexual and reproductive health services for all New Yorkers. This starts with passing the Reproductive Health Act.

It is important that all people have access to safe and legal abortion and that our laws uphold their right to make the best decisions about their futures. In the United States, one in four women will have an abortion in her lifetime[1]. However, access to this vital care is shrinking nationally. In the last ten years, states have enacted more than 300 laws restricting abortion, accounting for 30% of abortion restriction laws since Roe v. Wade[2]. In 2014, 44% of counties in New York State had no abortion clinic, which translates to 10% of all women living in New York with limited access to care[3]. Despite being among the first states to legalize abortion in 1970, three years before the landmark Supreme Court decision, Roe v. Wade, legalized abortion across the country, New York's outdated law poses several barriers that prevent some people from seeking the abortion care they need.

The Reproductive Health Act guarantees a person's right to make personal, private decisions about their reproductive health. New York's statute does not reflect constitutionally-protected care for pregnant people to get an abortion if needed later in their term and often forces people to travel out of state to seek this care. The RHA aligns New York's abortion law with the standard of Roe v. Wade that protects a person's ability to access abortion throughout their pregnancy if their life or health is at risk or if the fetus is not viable. It decriminalizes abortion by taking it out of the penal code and moving it into public health law, where it belongs. It also clarifies the legal ability of qualified Advanced Practice Clinicians (APCs), like physician assistants and nurse practitioners, to provide abortion services within their scope of expertise, by allowing more providers to deliver this care, we will increase access to safe and affordable abortion and fill the coverage gap in underserved areas. In these ways, the RHA affirms that New York State law

[1] "Abortion Is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates." Guttmacher Institute, 22 Nov. 2017, www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates

[2] "State Facts About Abortion: New York." Guttmacher Institute, 23 May 2018, www.guttmacher.org/fact-sheet/state-facts-about-abortion-new-york#7a

[3] "State Facts About Abortion: New York." Guttmacher Institute, 23 May 2018, www.guttmacher.org/fact-sheet/state-facts-about-abortion-new-york#7a

26 Bleecker Street
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recognizes a fundamental right of privacy and equality, which will protect New Yorkers from hostile laws aimed at severely limiting abortion access.

For several legislative sessions, Planned Parenthood of New York City has joined thousands of patients, providers, activists, and partner organizations in calling for New York State to pass the Reproductive Health Act. Each year, hundreds of advocates have convened on our Day of Action in Albany to meet with legislators on both sides of the aisle, to convey the importance of passing this legislation. While the New York State Assembly has repeatedly passed the RHA, it has stalled in the State Senate. We hope that after the election this November, we will have secured a pro-sexual and reproductive health majority in the New York State Senate and will finally see the passage and signing of the RHA, reflecting the overwhelming support across the state for the bill.

With sexual and reproductive rights under unprecedented attack nationally, it is vital that we secure and protect access to abortion in New York. In just the past few months, we have fought back against attempts to weaken Title X, the nation's only federally funded grant program dedicated to providing sexual and reproductive health care to low-income and uninsured individuals, the imposition of a domestic "gag rule" that would prevent providers from counseling their patients on all of their options and referring them to abortion services, and Supreme Court cases upholding the ability of fake clinics and protestors to lie to and prevent patients from accessing care. Although many state legislators never believed that Roe v. Wade would be overturned, we are now in the midst of confirmation hearings for a Supreme Court nominee, Brett Kavanaugh, who will all but surely work to dismantle the protections of Roe v. Wade and severely restrict abortion access if he joins the court. Our state legislators must recognize the urgency of this moment and take action now. In the face of attacks on reproductive health across the country, New York must stand up as a leader and ensure that all people are able to make the best health care decisions for themselves and their families here in New York and for those who may have to come here to seek care.

PPNYC applauds the Public Advocate and the City Council for introducing this Resolution, and the Committee on Women for holding this hearing. We urge the City Council to pass Resolution #0084. Thank you for the opportunity to submit testimony on this important issue.

###

Since 1916, Planned Parenthood of New York City (PPNYC) has been an advocate for and provider of sexual and reproductive health services and education for New Yorkers. Through a threefold mission of clinical services, education, and advocacy, PPNYC is bringing better health

and more fulfilling lives to each new generation of New Yorkers. As a voice for sexual and reproductive health equity, PPNYC supports legislation and policies to ensure that all New Yorkers will have access to the full range of sexual and reproductive health care services and information.

Testimony of The Brigid Alliance
Before
The New York City Council Committee on Women
Regarding
Res. 84-2018
"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."
September 20, 2018

Thank you Councilmember Rosenthal for convening this hearing today, and thank you Public Advocate James for introducing the resolution before the committee. My name is Odile Schalit and I offer testimony today in support of Resolution 84, urging passage of the Reproductive Health Act. I do so with many years of experience working with individuals seeking abortion care - as a full-spectrum Doula, Social Worker, and currently as the Director of the Brigid Alliance.

The Brigid Alliance is a support service that provides assistance to people who are forced to travel to seek abortion care. We help individuals cover the considerable costs for transportation and housing, provide funds for gas and tolls, and refer people to local practical support networks where they exist.

Over my career I have assisted countless numbers of women in accessing abortion care. This experience has shown me the enormous barriers women face in doing so in New York State.

The law, as it stands, has resulted in gross inequity for and inordinate burden to New York State women. This is due to the gestational limitation, the restrictions on who may provide abortion services and the pervasive fear of persecution.

While it may seem unbelievable to us here in New York City, many women in New York State live in hostile environments where it is hard to identify and access trustworthy, supportive providers who offer a full spectrum of care. Given these barriers, the reproductive destinies of these individuals vary widely.

Some of these women will pursue their care, often taking long treks from upstate New York to New York City, an often unfamiliar voyage. They will leave children, jobs, partners, dependents behind; they will be forced to disclose their very personal experience and needs to unsupportive individuals; they will be burdened with the myriad financial costs of travel (**gas**, **tolls**, **parking**, **bus/train/plane tickets**, **hotels**, **meals**, **medications**, **childcare**). All of these additional burdens have the potential of creating emotional stress for these women, which may even force them to abandon their plans to find the most appropriate care for themselves. All of which could have been avoided if there existed safe, supportive and expert care in their local area.

Because of the gestational limit, others will have to leave New York state and travel even further, across state lines. Many of these individuals are faced with the deeply complicated experience of grief that comes from discovering a fetal anomaly or a health issue that

complicates the viability of a wanted pregnancy or the safety of a mother. It is unnecessary and cruel to cause this additional pain by forcing such a person to surmount the even greater logistical challenges of traveling to the few who provide this care: in Maryland, Boulder, and New Mexico.

Out of fear, lack of information, advocacy or support, **many others** will not pursue care at all and will continue unintended, undesired or unsafe pregnancies.

And none of this begins to properly touch upon the complex nature and additional barriers of seeking abortion services as a person alone, a trauma survivor, a trans person, a minor, an immigrant, or a survivor of ongoing abuse.

What happens when these folks do get to their destination of care? They are often in a place they've never been before. Faced with the discomfort of displacement. They are staying in hotels or with perfect strangers - volunteers who with kindness and generosity, facing their own burdens, share their homes with these women, providing them meals and comfort while they await their medical services.

And who else does this impact? Independent abortion providers, social workers, case managers, advocates, volunteers, local Planned Parenthoods, health care providers, administrators, and the many, many abortion funds and other organizations that have been established to meet this need.

This limited access to local care, this stigmatization of abortion and abortion provision and these gestational restrictions have become such a considerable issue that the organization I work with now was founded. But there is no way that networks of, albeit incredible and impactful, grassroots organizations and kind strangers can meet the level of need that currently exists, and is likely to exist in a future without *Roe v. Wade*.

The Brigid Alliance is proud to provide this support. But simply put, we shouldn't exist.

We need this revision to the law.

I thank the City Council and Public Advocate James for taking a stand on behalf of New York Women and calling upon the Legislature to finally pass the Reproductive Health Act. The Brigid Alliance strongly supports Resolution 84.

Testimony of: Garin Marschall

Before

The New York City Council Committee on Women

Regarding

Res. 84-2018

"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

Thank you Councilmember Rosenthal for convening this hearing today, and thank you Public Advocate James for introducing the resolution before the committee. My name is Garin Marschall and I am a patient advocate for the decriminalization of abortion in New York State, and for the RHA.

The resolution before you calls on the New York State Legislature to pass the Reproductive Health Act (RHA), legislation, which would decriminalize abortion in New York. I strongly support this resolution.

In 2016 my wife and I found out, thirty weeks into a pregnancy, that it was not viable. The baby, if born, would not be able to breathe. If my wife carried the doomed pregnancy to term, she would be risking her own health. We decided to terminate the pregnancy.

We then found out about the state's outdated, unconstitutional abortion law. We were past it's 24-week cut-off, and no provider in the state would be able to provide care. At 32 weeks' gestation, we flew to Colorado to get an abortion. It was an awful, painful burden to have to endure.

Most people pay $25-30,000 for the whole procedure, and they are rarely reimbursed for even a fraction of that by insurance providers. As you can imagine, this, along with travel costs and the time it takes, results in delays or denials of care for those without resources to leave the state for an abortion.

This is, quite simply, a violation of protections afforded by the Supreme Court at the hand of the state. This has persisted due to political dynamics in Albany that have failed patient after patient. If the bill had been fixed years ago when it was first before the state legislature, a number of families, including mine, could have gotten care a mile away from home instead of flying across the country and paying a fortune.

Criminalizing abortion contributes to stigma and shame around abortion. It is important for New York City, and New York State, to stand with patients and acknowledge that abortion is not a crime, that it should not be regulated in the criminal code. The regulation of abortion, and any other medical matter, should be based on evidence-based criteria, not religious ideology or political gamesmanship. Pregnancy and pregnant people's lives are often complicated. We need a law that reflects that.

I thank the New York City Council and Public Advocate James for taking a stand and urging your colleagues in Albany to pass the Reproductive Health Act, and quickly, before others are affected.

Respectfully,

Garin Marschall, Patient Advocate

Testimony of: Erika Christensen

Before

The New York City Council Committee on Women

Regarding

Res. 84-2018

"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

Thank you Councilmember Rosenthal for convening this hearing today, and thank you Public Advocate James for introducing the resolution before the committee. My name is Erika Christensen and I am a patient advocate for the decriminalization of abortion in New York State.

The resolution before you calls on the New York State Legislature to pass the Reproductive Health Act (RHA), legislation, which would update and improve New York's cruel and unconstitutional abortion law. I strongly support the RHA and this resolution.

This bill is incredibly important to me and to my family. Two years ago I terminated a pregnancy at 32 weeks when we found out it was not viable; that if I carried to term, I would give birth to a baby who would not be able to breathe.

But we were shocked to learn that in New York State, abortion is in the criminal code with a 24-week cutoff. This means that right now, New Yorkers are forced to carry pregnancies that are not viable and pregnancies that threaten their health.

Our trauma and grief were compounded by having to get on a plane and fly across the country and pay a fortune to mercifully end my pregnancy. And we were lucky because we could afford to do that.

When we hear anti-choice zealots talking about "abortion on demand," about "abortion up until the ninth month," about the monsters that would do that, *they are talking about people like me*; ordinary people who make the right decision for themselves and for their families.

We have talked to members of the New York State Senate, even the most conservative. When we've shared our story we have represented not only our own experience with the law, we have included the experiences of many other families who have entrusted us with their stories from around the state. Yet the RHA was blocked time and again by anti-choice leadership. Most frustratingly over the course of this past session, we continued to meet patients forced to travel out of state for critical abortion care. Each one reminded us of the urgent need to pass this bill and our unique responsibility to make sure it happens. This must be a top priority. The women and families of New York State cannot wait.

I thank the New York City Council and Public Advocate James for taking a stand and urging your colleagues in Albany to pass the Reproductive Health Act.

Respectfully,

Erika Christensen, Patient Advocate

PEER HEALTH EXCHANGE

Testimony of Tashiana Diaz

on behalf of Peer Health Exchange

Before

The New York City Council Committee on Women

Regarding

Res. 84-2018

"Resolution urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act."

September 20, 2018

Thank you Councilmember Rosenthal for convening this hearing today, and thank you Public Advocate James for introducing the resolution before the committee. My name is Tashiana Diaz and I am the NYC Associate Program Director for Peer Health Exchange. Peer Health Exchange (PHE) empowers young people with the knowledge, skills, and resources to make healthy decisions. We do this by training college volunteers to teach a skills-based health curriculum in public schools, focusing on sexual health, mental health, and substance misuse prevention. In addition to addressing topics such as consent and refusal skills, we also teach young people how to access their school-based health center or local community clinic for health care. After receiving our curriculum, 86% of 9th graders know how to access contraception vs. 65% that have not received PHE.

The resolution before you calls on the New York State Legislature to pass the Reproductive Health Act (RHA), legislation which would update and improve New York's antiquated laws around abortion. I strongly support the RHA and this resolution.

At 20 years old, while I was nearing the end of college, I got pregnant. It was a terrifying experience: not only was I still in school and 100% incapable of raising a child on my own, but I was in an abusive relationship with the man who got me pregnant. Because of my lack of knowledge of sexual health resources, I didn't seek out help. Once I was sure I was pregnant, however, I was able to reluctantly get my mother involved and get an abortion at a hospital by applying for an emergency Medicaid. Without that option, I would have been stuck in an abusive partnership and definitely not be in the place I am today. Continued access to these resources will possibly give young women like myself the option to not be forced to stay with their abuser. Also having programs like Peer Health Exchange who educate young people on consent, and agency to make healthy decisions could also help in finding resources before it's too late.

New York has previously been a trailblazer when it comes to the pursuit of access to reproductive health care. However, the state has allowed for abortion to be categorized as criminal, rather than a critical procedure in women's health care, for far too long.

The RHA would move our abortion law from the criminal code to the health code, better protecting healthcare providers from prosecution and regulating abortion as the medical procedure it is.

The State Assembly has passed this bill many times, but it has been blocked time and again in the New York State Senate by anti-choice leadership. With our rights under attack at the federal level and states around the country restricting abortion access, we cannot afford to waste any more time. We need both houses of the legislature to pass this legislation as soon as they begin session in January. This must be a top priority. I thank the New York City Council and Public Advocate James for taking a stand and urging your colleagues in Albany to pass the Reproductive Health Act.

#VOTEPROCHOICE

New York City Council Committee on Women
Testimony of
Heidi L. Sieck
CEO/Co-Founder, #VOTEPROCHOCIE
9/20/18

My name is Heidi Sieck, and I'm the CEO and co-founder of #VOTEPROCHOICE, a nationwide political engagement project engaging millions of prochoice voters by providing the largest progressive prochoice voter guide in the nation and working to elect hundreds of prochoice champions in every election everywhere - particularly where reproductive freedom is at stake.

And let me be clear. Reproductive freedom is at stake.

I've been fighting the fight for reproductive freedom for 30 years since my first political job at Planned Parenthood of Lincoln, Nebraska. It's been a perilous journey of more losses than wins. But today we search for bright spots - and I hope we can find some here in New York.

Before creating #VOTEPROCHOICE in 2016, I was president of the San Francisco Political Women's Committee, where I co-founded the San Francisco Women's Policy Summit with then newly elected District Attorney Kamala Harris. We evolved into a coalition of elected officials, traditional women's rights and reproductive rights groups but also progressive organizations like labor unions and party leaders. We worked together to create gender equity and expanded reproductive rights in San Francisco -- including the anti-crisis pregnancy center marketing legislation that was recently overturned by the Supreme Court recently. (Sigh) The National Institute for Reproductive Health Local Repro Index recently found San Francisco to be the most prochoice city in America due almost entirely to

the coalition work we did over a decade ago. New York is a strong prochoice city as well and together we can make it even more so.

Later, I went to Ohio in 2012 to work with NARAL Prochoice Ohio and the Obama campaign to organize prochoice women voters for the presidential and state elections - and if you recall, the women of Cleveland were responsible for electing the president that year.

Which led me to New York, in 2013, where I was a bit dumbfounded to discover the state of reproductive freedom in this state and the gaps that New York state law still had. There's definitely more work to be done to support reproductive rights in Albany. That is why I am so grateful for this hearing and the leadership of the elected officials in New York City.

It is critical to pass this resolution resoundingly and urge the state legislature to pass and the Governor to sign the Reproductive Health Act.

Because reproductive freedom is at stake in America right now.. In fact, our basic freedom is at stake. Period.

Let's talk about the big picture. In 1973, the Supreme Court confirmed what women throughout history have always known: the choices we make for our bodies are ours alone. Everyone deserves to create a thriving family that is authentic to them in a community that is authentic to them. That is FREEDOM.

But make no mistake: Brett Kavanaugh's nomination to the Supreme Court currently being considered by the Senate Judiciary Committee is a grave, grave threat to this basic freedom.

Kavanaugh is a conservative, antichoice, right wing judge who will overturn Roe v Wade and let this orange tinted Russian asset in the White House get away with every crime he has committed. God forbid we don't prevail in stopping this confirmation, there are 13 pieces of legislation currently headed for the Supreme Court that gut Roe by the spring. Four states

currently have trigger bans - that upon Roe v Wade being overturned, abortion becomes illegal. For example, Louisiana law today states that 10 days after Roe is overturned, people assisting or providing an abortion will be fined $100,000, charged with a felony, and sentenced to 10 years of hard labor.

That should send shudders down the spine of everyone sitting in elected office in New York. We must do whatever it takes to shore up our state laws to make sure every protection possible is in place for the ominous reality.

Now, people may think that our state of New York is a bastion of reproductive freedom -- so we don't need to worry.

That used to be true nearly 50 years ago when New York decriminalized abortion in 1970 before Roe v Wade was decided.

Women used to come to New York for safe care. Now they sometimes have to leave because New York State law does not fully protect reproductive freedom - particularly after 24 weeks. Women with unviable pregnancies or fetal anomalies have to leave the state for care, making an awful situation even more awful. This is unacceptable and dangerous. And we've had enough.

Women's lives are at risk. Families are being traumatized. We've waited years, and years, and years for this to be passed - there is to much at stake to wait another moment.

There is so much that New York can do as a city to improve access to reproductive freedom, and I look forward to working with all of you to make that so. However, to start at the foundation, we must pass the Reproductive Health Act now. We must pass the Comprehensive Contraceptive Coverage Act now. Immediately.

And that's not all. With a sexist bigot in the White House, we need to elect prochoice leaders in every single level of government.

We need to elect prochoice judges, prochoice school boards, prochoice sheriff's, prochoice district attorneys, prochoice City Council members, prochoice State Senators, prochoice Congress members, and a prochoice President!

Let's pass the Reproductive Health Act. Let's demand that EVERY elected official at EVERY level of government fight for our reproductive freedom.

Neil Calman, MD
President & CEO
The Institute for Family Health
Testimony in Support of Res 84 - Urging the New York State Legislature to pass and the Governor to sign the Reproductive Health Act
September 20, 2018

I am the CEO of the Institute for Family Health, one of the largest networks of community health centers in New York State. We operate 30 centers located in the Bronx, Manhattan, Brooklyn, and the Hudson Valley. We employ family physicians, nurse practitioners and physician assistants who provide primary care for 117,000 patients annually. A majority of our patients are on Medicaid or are uninsured.

The New York State Reproductive Health Act would end confusion about whether or not fully trained nurse practitioners and physician assistants can legally provide abortions or not. For our patients, who are often reluctant to take days off from work, who often do not travel outside of their neighborhoods for medical care, and who have come to trust their primary care clinician, being able to access abortion care in our offices is critical. And that care is often provided by NPs and PAs.

Our providers care for women from many cultures, some of whom would never go to an abortion clinic. Prior to providing abortions in our health centers, when we referred women elsewhere, they often came back to us months later, still pregnant and having received no prenatal care. Births of unwanted children are associated with inadequate prenatal care, substance abuse, and multiple poor birth outcomes.

The ability of our patients to get a medication abortion in one of our centers affirms their right to determine their own family size and decide when they are able to care for more children. The current threat to Roe v. Wade threatens access to abortion care unless the Reproductive Health Act is passed in New York State.

Our centers do not provide a high volume of abortions; rather, abortions, when appropriate, are provided as a small part of the primary care our patients need, alongside contraception, diabetes care, maternity care, infant care and care for the elderly. It makes no sense to separate the ability to give women five pills to end an unwanted pregnancy from the full spectrum of primary care.

The earlier in pregnancy a woman accesses an abortion, the safer it is. Women in low-income communities, like the ones we serve, deserve to have the same access to early and safe abortion care that anyone else would have. Data shows that maternal mortality is higher among the poor and women of color; this reality we certainly get worse if we should lose the provisions of Roe v. Wade and New York State has not passed the Reproductive Health Act.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: GANIN MARSCHALL

Address: 1169 GREENE AVE #1 BROOKLYN, NY 11221

I represent: MYSELF

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Ashley Gray

Address: 1115 Broadway 3B 11106

I represent: Center for Reproductive Rights

Address: 199 Water St. 22nd fl.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: 9/20/2018

(PLEASE PRINT)

Name: Prof. Cynthia Soohoo

Address: 211 North End Av, NYC

I represent: Human Rights & Gender Justice Clinic @

Address: CUNY Law School

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: 9/20/2018

(PLEASE PRINT)

Name: MELISSA UPRETI

Address: 97 HOWARD PARK DRIVE, TENAFLY NJ 07670

I represent: UN Working Group on Discrimination against women

Address: OHCHR, Geneva, Switzerland

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 84

☑ in favor ☐ in opposition

Date: 9/20/18

(PLEASE PRINT)

Name: Farah Diaz-Tello

Address: 72-36 112th St. #601, Forest Hills 11375

I represent: SIA Legal Team

Address: PO Box 94, Calistoga, CA

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 84-2018

☑ in favor ☐ in opposition

Date: 9/20/18

(PLEASE PRINT)

Name: Ann Danforth

Address: 50 Greene Ave #1C Brooklyn NY 11238

I represent: Raising Women's Voices-NY

Address: 475 Riverside Dr Ste 1600 NY, NY 10115

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 84-2018

☑ in favor ☐ in opposition

Date: Sept. 20, 2018

(PLEASE PRINT)

Name: Andrea Salwen Kopel

Address: 241 W. 72nd St. New York, NY 10023

I represent: National Council of Jewish Women New York

Address: 241 W. 72nd St. New York NY 10023

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 84

☑ in favor ☐ in opposition

Date: 09/20/2018

(PLEASE PRINT)

Name: Odile Schalit

Address: 167 Adelphi St #3, Brooklyn, NY 11205

I represent: The Brigid Alliance

Address: PO Box 58, Planetarium Station, NY NY 10024

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 84-2018

☑ in favor ☐ in opposition

Date: 9.20.18

(PLEASE PRINT)

Name: Justine Kahn

Address: _____

I represent: The Door - A Center of Alternatives

Address: 555 Broome St

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 84-2018

☑ in favor ☐ in opposition

Date: 20 Sept, 2018

(PLEASE PRINT)

Name: Jessie Losch

Address: 728 5th Avenue Apt 13 Brooklyn 11232

I represent: WHARR

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 0084-2018

☑ in favor ☐ in opposition

Date: 9/20/18

(PLEASE PRINT)

Name: Mirah Curzer

Address: 633A Baltic St, Brooklyn, NY 11217

I represent: New York City Bar Association

Address: 44 W 44th St, New York, NY

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 84

☑ in favor ☐ in opposition

Date: 9/20/18

(PLEASE PRINT)

Name: MARISA NADAS, MD, MPH

Address: 24 BENNETT AVE, #25B, NEW YORK, NY 10033

I represent: Physicians for Reproductive Health

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 0084

☑ in favor ☐ in opposition

Date: 9/20/18

(PLEASE PRINT)

Name: Rebecca Dunn

Address: _____

I represent: Planned Parenthood of New York City

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: 9/20/18

(PLEASE PRINT)

Name: Laura Riker

Address: 426 E. Parkway #II Brooklyn, NY 11225

I represent: Reproductive Health Access Project

Address: 545 8th Ave #2120, New York NY 10018

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 84

☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Jacqueline M. Ebanks

Address: _____

I represent: Commission on Gender Equity

Address: 253 Broadway, NY NY 10007

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: HEIDI SIEGK (seck)

Address: 201 East 86th

I represent: #VOTEPROCHOICE

Address: NY, NY

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Emily Gertz

Address: 70 Park Terrace E. #4L NYC, NY 10034

I represent: National Advocates for Pregnant Women

Address: 975 6th Ave, Suite 1607 NYC, NY 10001

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Liz Krueger

Address: 211 E 43rd St.

I represent: NY State Senator

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 84-2018

☑ in favor ☐ in opposition

Date: September 20, 2018

(PLEASE PRINT)

Name: Jashiara Diaz

Address: 3273 Parkside Place Apt 3F Bronx, NY 10469

I represent: Peer Health Exchange

Address: 55 Exchange Place Suite 405 NY, NY 10005

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 84

☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Emily Kadar

Address: 14 Wall St

I represent: National Inst. for Reproductive Health

Address: _____

Please complete this card and return to the Sergeant-at-Arms