

Analysis of Governor Cuomo's Women's Equality Act Abortion Language
(Program Bill # 9, Part J, Pages 58 and 59)

1. Late-term abortions

The bill would expand the authority for late-term abortions on demand by:

- Explicitly repealing the Penal Law requirement that late term abortions can only be done after 24 weeks of pregnancy to preserve the life of the mother, and specifically permitting late-term abortions if necessary to preserve the mother's "health";
- Specifically citing Roe v. Wade as the definition of abortion rights, since that decision incorporated a definition of the word "health" so broad as to include "all factors -- physical, emotional, psychological, familial, and the woman's age -- relevant to the wellbeing of the patient." In essence, that would authorize abortion for any reason at all up to the moment of birth.
- Permitting abortion of any child who is not "viable," a term left undefined in the bill, leaving it entirely in the discretion of an abortionist to determine that key factor.

2. Non-physicians performing abortions

This bill would permit non-doctors to perform surgical abortions, including late-term abortions, by:

- Explicitly repealing the "duly licensed physician" requirement in current Penal Law;
- Implicitly empowering the Health Department with unlimited discretion to define who can perform abortions, by making reference to abortions permitted under the Education Law. That statute gives the Health Department the unreviewable authority to define the "scope of practice" for health professionals.
- In fact, the proposal is broader than the original Reproductive Health Act, which required that abortions be done by a "qualified, licensed health care practitioner" who was "acting within the scope of his or her practice." The new language accomplishes the same result with even less limitations.

3. Unborn victims of crime

The bill would immunize from criminal prosecution any person who directly tries to cause the death of an unborn child, for example, in cases of domestic violence against pregnant women, by:

- Explicitly repealing the current Penal Law crime and penalty for coerced or involuntary abortions;
- Removing the requirement that any abortion must be done with maternal consent.

4. Future regulation of abortion

The proposal would severely limit the ability of the state or local governments to regulate the practice of abortion by:

- Using the standard of Roe v. Wade, thus permanently codifying a version of abortion law that is much broader than current federal law. Using the legal standard of Roe v. Wade, lower courts routinely struck down virtually all regulations of abortion, both pre- and post-viability. But later U.S. Supreme Court decisions (e.g. Planned Parenthood v. Casey, 1992) have applied a different legal standard under which lower courts have upheld reasonable restrictions on abortion. The Governor's bill imbeds only Roe v. Wade into state statute, not prevailing federal abortion law. Thus reasonable regulations on abortion, such as informed consent requirements and parental notification for a minor's abortion decision, which have been upheld as constitutional, would be highly unlikely to withstand a New York court challenge under the Governor's bill.

5. Conscience protections

The proposal would add nothing to give additional protection to conscience rights, and its expansion of abortion rights would further endanger such rights by:

- Failing to define "health care provider" with regard to conscience protections, making it impossible to ascertain if it applies to individuals (doctors, nurses) or institutions (hospitals) or both.
- This lack of clarity also means that non-medical institutions, such as Catholic schools and other charities, could be compelled by state regulators to counsel or refer people for abortion, or risk losing state contracts and licenses that are necessary for them to operate.

June 4, 2013