



With so much of the country turning back the clock on our movement toward justice, it is imperative that New York has a constitution that reflects true and lasting equality for all of our communities.

New York State must pass an Equality Amendment (**S.8797, Krueger/A.10468, Seawright**) and amend our state constitution to comprehensively prohibit discrimination based on a person's race, ethnicity, national origin, disability, and sex — including pregnancy and pregnancy outcomes, sexual orientation, gender identity, and gender expression. Importantly, the Equality Amendment would prohibit both intentional discrimination and policies that, even if neutral in theory, have a uniquely negative impact on particular communities. This type of discrimination is called disparate impact discrimination.

Critically, by prohibiting this kind of impact-based discrimination, S.8797/A.10468 would provide a legal path to dismantling structural discrimination, which is particularly important for shifting longstanding institutional racism. Prohibiting impact-based discrimination is not new; in fact, this standard exists in federal statutes and in New York City's Human Rights Law. And it is more important than ever to include a disparate impact analysis in an Equality Amendment so that our state's constitution contains a lasting, fundamental promise of equality for all — a pathway to real accountability and healing.

A disparate impact standard would ensure courts take a hard look at laws and policies that appear neutral but that uniquely and disproportionately impact members of a protected class.



SOME EXAMPLES WOULD INCLUDE:

- 1. Automated criminal sentencing algorithms** that base the length of sentencing on information such as previous arrests, age, and employment, which lead to higher sentences for people who are Black and Brown;
- 2. State practices** that take into account the sexual orientation of a parent when deciding appropriate child custody;
- 3. Businesses or places of public accommodation** with dress codes and admittance policies that are designed or applied to target styles of clothing or hairstyles associated with a protected race or ethnicity, or that police clothing or hairstyles based on gender;
- 4. Zoning rules** that ban unrelated roommates from living together, or nuisance laws that penalize victims of domestic violence for seeking police assistance;
- 5. Health care policies that reinforce racial disparities in maternal health outcomes.** These include limiting access to support people – like relatives or doulas – during labor and delivery or punishing people based on what setting they choose to have a baby;
- 6. Rules or policies that bar access to housing** for people with criminal convictions;
- 7. Carceral settings that refuse to treat people according to their gender identities;**
- 8. Property tax-based school funding systems** that result in significant inequalities in the financial resources available for “property-poor” school districts – fueling racial disparities in education;
- 9. Proof-of-identity requirements** for driver’s licenses, state identification cards, or public services that are more difficult for people from certain countries to meet.

An Equality Amendment is a critical tool for dismantling structural discrimination, and preventing more of it in the future.
