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) 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 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.