May 31, 2022

Dear Legislative Leadership,

In weeks the Supreme Court is poised to roll back the constitutional right to abortion, stripping this fundamental right from millions. To think this is the only hard fought right at risk under this Supreme Court would be to ignore the obvious. Efforts to ban abortion and criminalize pregnancy outcomes are intrinsically connected to systemic racism and other forms of discrimination that obstruct the pursuit of true equality for all. As a state and as a nation, we continue to grapple with the profound impacts of systemic discrimination. In this time of deep reckoning around racial and reproductive justice, we must boldly pursue a broad and inclusive equality amendment to our state constitution, shaping our foundational document to truly reflect and protect us all.

We urge you to begin this critical process by passing S.8797A(Krueger)/A.10468A (Seawright) in the final days of this legislative session. Failure to do so would not be just a missed opportunity, it would be a failure of meaningful action at a time when New Yorkers are demanding equality and justice under our law.

Today, our state constitutional prohibitions on discrimination are wholly inadequate in both who they protect, and in the ability to redress discrimination when it has occurred. The Equality Amendment would broaden those who would be protected against discrimination to include groups that have historically been marginalized, reflecting our current understanding of discrimination in the 21st century, and our commitment to a more diverse and inclusive New York. This critically includes prohibiting discrimination on the basis of sex, including pregnancy and pregnancy outcomes, at a time when our federal courts are poised to eviscerate reproductive freedom, and individuals are at continued risk of discrimination and criminalization for their pregnancy outcomes.

Of equal importance to expanding those who are protected is the need to ensure that our constitution is not just a statement against discrimination, but a functional tool to combat it. We must push further beyond the current framework of solely prohibiting acts of intentional discrimination and include policies that have a discriminatory impact. Including a disparate impact standard in our state Equality Amendment enables us to directly challenge the deeply rooted systems of discrimination, and provides the teeth needed to effectively address discrimination when it occurs.

S.8797A/A.10468A has been thoughtfully constructed by legal experts to address the blatant and unacceptable gaps in our constitution today, while maintaining the robust and important protections that currently exist for religious freedom. Disrupting that careful balance by including a disparate impact statement for religion in our state constitution would be regressive and deeply problematic. It would lose the support of our organizations, and others who have fought tirelessly to prevent policies that would enable an individual’s religious beliefs from infringing on the rights of others.
As we contend with the harsh impacts of systemic discrimination, and the unsettling reality that the federal courts are no longer a backstop for protecting our freedoms, we must advance short- and long-term solutions. The Equality Amendment as currently drafted reflects the intersectional realities of discrimination and puts New York in the position to be a national model for how we advance equality. While other measures for protecting and advancing reproductive freedom in the face of a bleak national landscape are important, failure to begin the process of amending our constitution, fortifying state protections for reproductive freedom, will be a failure to meet the moment we are facing.

S.8797A/A.10468A is the progression of the important work New York has done to advance equality for all and a critical response to the challenges we continue to face in this pursuit. We urge passage of the Equality Amendment this session. Any delay in extending the protections of our constitution to those it currently fails to protect is unacceptable.

Sincerely,

Georgana Hanson, Interim President and CEO, Planned Parenthood Empire State Acts
Donna Lieberman, Executive Director, New York Civil Liberties Union
Andrea Miller, President, National Institute for Reproductive Health Action Fund