



Legislative Affairs
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2021-2022 Legislative Memorandum

**Subject: Relates to establishing the abortion access fund and allowing taxpayers to make gifts to the fund
S. 758 (Biaggi) / A. 1926 (Reyes)**

Position: SUPPORT

The ability to control our reproductive lives – including the ability to end a pregnancy – is a cornerstone of women’s health care and equality.¹ From partially decriminalizing abortion in 1970, three years before *Roe v. Wade*, to requiring Medicaid² and private insurers³ to cover abortion, to enacting the Reproductive Health Act in 2019, New York has a long legacy of supporting access to abortion care. New York now has the opportunity to underscore its commitment to abortion access by establishing an abortion access fund.

The NYCLU supports S. 758 (Biaggi)/A. 1926 (Reyes), which would establish an abortion access fund and allow taxpayers to donate a portion of their state tax refunds to provide logistical and financial assistance to individuals who need abortion care. The fund would be administered by one of New York’s existing non-profit abortion funds,⁴ which would be selected through a competitive grant process.

Abortion is basic health care. Unfortunately, despite New York’s favorable laws and the existence of non-profit abortion funds, abortion care remains cost-prohibitive for too many people. Some have health insurance that is not regulated by the state and does not cover

¹ The use of the term “women” in this memo is meant to capture anyone who is in need of abortion care, regardless of their gender identity, including, but not limited to, transgender and non-binary men. This memo uses the word “women” to recognize that restrictions on abortion are rooted in discrimination on the basis of sex.

² NEW YORK STATE MEDICAID PROGRAM, POLICY GUIDELINES MANUAL FOR ARTICLE 28 CERTIFIED CLINICS (2007) (Medicaid in New York state covers all medically necessary care, including medically necessary abortion care and rightfully recognizes that when a patient and their medical provider determine that the patient needs to end a pregnancy, it qualifies as a medically necessary abortion. To this end, the Medicaid Policy Guidelines make clear that “the determination that an abortion is medically necessary “is a professional judgment that may be exercised in the light of all factors - physical, emotional, psychological, familial and the woman's age - relevant to the well-being of the patient” (quoting *Doe v. Bolton*, 410 U.S. 179 (1973))).

³ N.Y. Ins. Law § 3216(i)(36) (McKinney) (effective Jan. 2023); N.Y. Ins. Law § 3221(k)(22) (McKinney) (effective Jan. 2023); N.Y. Ins. Law § 4303(ss) (McKinney) (effective Jan. 2023).

⁴ See generally NAT’L NETWORK OF ABORTION FUNDS, 2020, <https://abortionfunds.org/about/>.

abortion. Others must take time off from work, arrange and pay for childcare, and travel many miles to seek care; some require lodging overnight. With the Supreme Court poised to overturn *Roe v. Wade*, the number of people who will need support to travel to New York for care is expected to balloon. Contributions to the abortion access fund could be used to meet these needs and make access to care a reality for those who need it.

Of equal importance, creating an abortion access fund will help to normalize abortion as health care. There are currently around twenty voluntary contribution funds to which New Yorkers may contribute on their taxes. Many of them address unmet health needs, including funds responding to Alzheimer's disease, breast cancer, lupus, prostate cancer, and women's cancers.⁵ Including abortion among the voluntary tax contribution funds will underscore both the importance of abortion access to the state and the fact that abortion is necessary and under-funded health care.

Ultimately, no one should have to rely on a voluntary tax contribution fund to be able to afford health care, but until that becomes reality, the abortion access fund will fill a gap, will make clear the state's support for abortion, and will build on the Reproductive Health Act's legacy. The New York legislature should pass, and the Governor should sign, S. 758/A. 1926.

⁵ See *Personal Income Tax Voluntary Contributions Beginning Fiscal Year 1983*, NEW YORK STATE OFFICE OF TECHNOLOGY SERVICES, <https://data.ny.gov/Government-Finance/Personal-Income-Tax-Total-Voluntary-Contributions-/xtjb-hmaq> (last visited Mar. 19, 2020).