# New York's Devious and Dangerous Prop. 1

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Mary Grabar October 25, 2024

The ballot initiative is more than effort to constitutionally "enshrine abortion rights," it is an attempt to erode religious freedom and parental rights.

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On November 17, 2023, Democrat New York Gov. Kathy Hochul signed into law the Plain Language bill —a bill that allows a summary of a proposed amendment be put on the ballot instead of the full amendment. Also, the summary must be written at an eighth grade reading level or lower.

This election will be the first to implement the summary rule. New York voters will be asked to vote "Yes" or "No" on Proposal Number One — but only the summary of Part A will be printed on the ballot. If the voter has been paying only casual attention, they may think that they are protecting abortion rights. The actual legal language of Prop. 1 does not even include words specifically about abortion. Its protections go far beyond codifying abortion protections in the state constitution. It will upend state law and constitutional protections for equal rights currently in place and destroy the traditionally neutral standards of American law that safeguard other freedoms. Many voters will be voting blind.

The Prop. 1 journey began in July 2022 when Hochul called a special session of the state legislature to protect abortion rights. The urgency was necessitated by the Supreme Court *Dobbs v. Jackson Women's Health Organization* decision in June that overturned *Roe v. Wade*. To further emphasize how grave the New York Democrats viewed the *Dobbs* decision, both Democrat-controlled chambers voted on the same day to approve the proposed amendment.

This rush presented the first hurdle for Prop. 1 to overcome. The method by which Prop. 1 was passed by the state legislature is unconstitutional, according to civil rights attorney and Brownstone Institute fellow Bobbie Anne Cox. Cox initially fought Prop. 1 in court and won. She later lost on appeal — in the same court that overturned her previous win against the COVID-inspired quarantine executive order that allowed state health officials to send New Yorkers to "quarantine camps" without due process or diagnosis of a communicable disease.

As Cox's lawsuit pointed out, by calling for state legislators to vote on the proposed amendment immediately after it was first introduced, Hochul violated the law. In order for amendments to be placed on the New York ballot, they are required to be introduced in both chambers of the state legislature, then reviewed by the state attorney general within twenty days of introduction, and then they can be voted on and approved by the state legislature to

be placed on the ballot. However, in this case, New York Attorney Gen. Letitia James gave her opinion on July 6 — that is five days *after* the proposed amendment was already voted on by legislators and approved for placement on the ballot.

Cox also raised concerns about the timing of the vote — Hochul called for a vote on the Friday before the Fourth of July weekend. Additionally, the proposal was not placed on the ballot in 2023, as would be the normal course of events. Instead, it is placed on this year's ballot — a presidential election year that typically sees higher voter turnout and is more focused on national issues than state ballot initiatives. **(LISTEN FOR MORE: *The Spectator P.M.* Ep. 86: Liberals Seek to Enshrine Wokeness in New York's Constitution)**

## What will New York voters see on the ballot?

This November, New Yorkers will find on their ballots, Proposal Number One, in the following new summarized format:

> **Amendment to Protect Against Unequal Treatment**
>
> This proposal would protect against unequal treatment based on ethnicity, national origin, age, disability, and sex, including sexual orientation, gender identity and pregnancy and against unequal treatment based on reproductive healthcare and autonomy.
>
> A "YES" vote puts these protections in the New York State Constitution.
>
> A "NO" vote leaves these protections out of the New York State Constitution.

The State Board of Elections website does, however, post the full amendment, with new language underlined and deleted language in brackets. It reads:

> A. No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, ethnicity, national origin, age, disability, creed [or], religion, or sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, be subjected to any discrimination in [his or her] their civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state, pursuant to law.

## Is Prop. 1 needed to protect access to abortions?

Notably, although pregnancy and pregnancy outcomes are included, there is no mention of abortion. Cam Macdonald, an adjunct fellow at the Empire Center, writes that the proposal "does not add any new rights or protect any existing rights in the state Constitution … any

change to current abortion rights in New York would require another step — a law passed by the Legislature or a Court of Appeals ruling striking down the state's existing law."

Macdonald contrasts New York's Prop. 1 with abortion amendments already passed in Michigan and Ohio in response to the *Dobbs* decision. These basically restore the "reproductive freedoms" of *Roe v. Wade* in their states. However, both states provide for laws restricting abortion after fetal viability — with the exception of a medical opinion pertaining to the life or health of the mother.

However, through the state's 2019 Reproductive Health Act, New York has already adopted and codified even more expansive abortion allowances than *Roe v. Wade* permitted. As a result, Macdonald says, "[T]here are no practical limitations on abortion in New York if a health care practitioner wants to perform the procedure." The *Dobbs* decision already does not impact abortion rights in New York up to 24 weeks from the beginning of pregnancy. Macdonald goes on to state that, if Prop. 1 is approved, "a successful challenge based on reproductive autonomy to the existing 24 week milestone could leave New York with no restrictions on abortion on its books."

Yet, the proposal is being sold by New York Democrats as a way to "Protect Abortion & Our Freedoms" — at least according to their lawn signs. Acting as an activist instead of a chief legal officer, Attorney Gen. James penned a *USA Today* op-ed that claimed Prop. 1 — or what she calls the Equal Rights Act — was intended to protect against "anti-choice forces … already at work in New York." She spoke at a September 28 rally in Yonkers encouraging voters to approve the ballot measure. Meanwhile, Gov. Hochul continues to campaign for abortion rights, saying recently that it would "enshrine abortion rights in our state Constitution, protecting them from ultra-conservative state legislators, members of Congress, justices, and presidential hopefuls who want to dismantle those freedoms."

## New Protected Categories

If Prop. 1 is approved in November, there will be 12 new protected classes: ethnicity, national origin, age, disability, sex, sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, reproductive healthcare, and reproductive autonomy.

Cox and other opponents of Prop. 1 note that the 12 new categories will likely interfere with expansive protections already in place for New Yorkers on the basis of race, color, creed, or religion — protections that have been in place since 1938 and amended in 2001 with gender-neutral language. Cox warns that the the language in the unnecessary amendment is so broad it opens the door to other severe consequences.

For example, the inclusion of "age" in the protected classes may result in the end of statutory rape laws. Or, the voting age could be abolished based on the claim that the current law requiring voters to be at least 18 years old is discriminatory. Ending alleged "age"

discrimination could also allow minors to purchase alcohol and cannabis products, while threatening senior discounts, senior housing, and laws against elder abuse.

Currently a bill in Committee at both chambers (Senate Bill S8352, Assembly Bill A6761) calls for allowing children to make their own medical decisions. However, adopting Prop. 1 in November would bypass the bill and give children the c*onstitutional* right to make their own medical decisions under the "gender identity" or "gender expression" protected categories.

According to Macdonald, the New York State Education Department, in their 2023 Legal Update and Best Practices entitled "Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students," already "recommends schools use a Gender Support Plan, which can be 'used to help schools create a shared understanding among students, school staff and parents/guardians (only with student permission), about the ways in which the student's authentic gender will be recognized and supported at school.'"

Michele Sterlace-Accorsi, an attorney and consultant with the Coalition to Protect Kids, maintains that Prop. 1 "deprive[s] parents of authority to make life-altering decisions for their children." This includes transgender medical interventions. Her group and others call Prop. 1 the "Parent Replacement Act."

Additionally, under the Prop. 1 "gender identity" protected class, boys and men could compete with girls and women in school sports and share locker rooms and restroom spaces. Currently in Nevada, which passed a similarly worded amendment, there are problems with males wanting to participate in female sports

Cox also warns that the inclusion of "national origin" as a protected class could have ramifications on future elections because it prohibits discrimination by the state. "National origin" could be interpreted to apply to foreigners or non-citizens and illegal immigrants and grant them voting rights and access to state services.

Overall, Prop.1 has further reaching consequences than just "enshrining abortion protections." It would threaten free speech, religious freedom, and parental rights.

## The Missing Part B

Cornell University law professor William Jacobson, who is working against the Prop. 1 through his Equal Protection Project, sees even greater danger from Part B — which does not appear on the ballot in any form — because it would fundamentally change the law. In April, Jacobson, reproduced the language of Part B and bolded the especially concerning part:

> **Nothing in this section shall invalidate or prevent the adoption of any law, regulations, program, or practice that is designed to prevent or dismantle discrimination** on the basis of a characteristic listed in this section, nor shall any characteristic listed in this section be interpreted to interfere with, limit, or deny the civil rights of any person based upon any other characteristic identified in this section.

Jacobson cautioned that Part B would have a "possibly disastrous impact on the cause of nondiscrimination, as already embodied in the NY State Constitution … and numerous state and local laws." Furthermore, he says, "It would create a loophole allowing persons engaging in objectively discriminatory programs and practices to claim that the motivation was to 'dismantle discrimination.'" Jacobson warns that, "If adopted, Prop One would embed racial retribution in the form of reverse racism, critical race theory and diversity, equity and inclusion principles into the state Constitution, without most voters realizing its far-reaching effects."

*Ms. Magazine*, a feminist news magazine, triumphantly declares that Prop. 1 goes far beyond abortion rights. In its recent "Explainer," originally published by The ERA Project at Columbia Law School, it lauds Prop. 1 for allowing "for a modern approach to equality that addresses the impacts of intersectional discrimination …. [and] will distinguish New York constitutional law from the 'neutral' approach to equality developed under the federal Constitution."

## Abolishing Rights

In 2022, during the debate in the New York Assembly over the approval for Prop. 1, Assemblymember Andy Goodell and Rebecca Seawright had an informative exchange that underscores the fact that the purpose of Prop.1 is more than an effort to protect New Yorkers' ability to get an abortion on demand. Cam Macdonald summarizes the exchange perfectly in his Empire Center report:

> Assemblymember Andy Goodell asked the resolution's sponsor, Rebecca Seawright, whether single-sex activities would violate the equal rights amendment's prohibition on discrimination based on sexual orientation or gender identity. She answered that the amendment "follows the New York State Human Rights Law." She also confirmed that the Human Rights Law already covered everything in the language of the proposed amendment. Yet the amendment is necessary, according to Seawright, to "embed [the Human Rights Law] in the Constitution."
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> Goodell then asked Seawright whether the amendment eliminates exceptions for religious groups like the Roman Catholic church to discriminate against women seeking abortions at Catholic hospitals. Her answer was no. But then Goodell pressed Seawright on religious exceptions for employer-provided health insurance covering abortions and contraceptives. Seawright answered, "So we're not changing any of those laws; it would be a matter of litigation."

## Prop. 1 Proponents

According to the *New York Times*, the pro-Prop. 1 coalition includes the ballot issue committee, New Yorkers for Equal Rights, New York Civil Liberties Union, New York Immigration Coalition, 1199 S.E.I.U. and the N.A.A.C.P.

Proponents of the amendment are flush with cash. Former U.S. Rep. Carolyn Maloney, now the president of the New York chapter of the National Organization for Women, set a $20 million fundraising goal in support of Prop. 1. Gov. Hochul plans to spend more than $1 million from the state Democratic Party. Prop. 1 cosponsor State Sen. Liz Krueger donated $5,000. According to *Ballotpedia,* New Yorkers for Equal Rights has received over $5 million in 2024, with most of it coming from the ACLU and Planned Parenthood.

On the other side, the Coalition to Protect Kids–New York has raised a fraction of that, $369,178.26, to defeat the amendment.

If Prop. 1 is successful in New York, then the same language could find its way on to other state ballots across the country — even the U.S. Constitution. Indeed, cosponsor Assemblywoman Rebecca A. Seawright, was "[i]nspired to renew the movement for the federal Equal Rights Amendment to guarantee that our rights are anchored in our state and U.S. constitutions."

If this happens it will be even worse than the "ERA" defeated by Phyllis Schlafly.

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