

Explainer on “Proposal One”: The New York Equal Rights Amendment on the Ballot

Appearing as “Proposal One” on the 2024 ballot, the New York Equal Rights Amendment (ERA), will add expansive protections against discrimination to the state constitution. New York has made dramatic advances in equal rights without an ERA, but that hard-fought progress can be rolled back at any moment by the changing tides of politics. The New York ERA has the potential to launch state-wide efforts to repair structural inequality. This modern approach to constitutional equality will “go above and beyond the protections of the Federal Constitution.”¹ The New York ERA’s explicit protections will provide a strong constitutional foundation for an intersectional equality framework that protects the rights of all New Yorkers.



How will the New York ERA change the state constitution?

The New York ERA will make the state’s constitutional equality provisions the most expansive and inclusive in the country. The New York ERA will amend Article I, Section 11, of the New York Constitution, known as New York’s Bill of Rights. This Bill of Rights currently bars discrimination by government actors on the basis of race and religion. If voters approve Proposal One, the New York ERA will expand that list to include ethnicity, national origin, age, disability, and sex—including sexual orientation, gender identity, gender expression, pregnancy and pregnancy outcomes, reproductive healthcare and autonomy. This list ensures protections for abortion rights and LGBTQIA+ rights.



How can the New York ERA address structural and systemic discrimination?

The New York ERA allows for a modern approach to equality that addresses the impacts of intersectional discrimination. New York’s proposed ERA includes a wide range of people who experience discrimination. New York’s legislature expressed an intention for New York’s Constitution to adopt a “modern vision of equality” and recognize that “many individuals are

¹ Sponsor Mem., S.B. S108A (N.Y. 2023).

themselves members of numerous communities, identities, and protected classes, and true equality and justice demand protections that recognize the interconnected nature of discrimination.”² This awareness of “interconnected” discrimination improves on the current framework that ranks and silos individual forms of discrimination. Instead of addressing *either* racial discrimination *or* sex discrimination, an intersectional approach to equality addresses the compounding effects of both.

Under the New York ERA, substantive equality measures could dismantle existing inequalities and transform the equality landscape for the better. This will distinguish New York constitutional law from the “neutral” approach to equality developed under the federal Constitution where policies intended to remedy existing discrimination are struck down as unconstitutional discrimination if they classify on the basis of protected identifiers, like race and sex.³ Instead, the legislature approved the New York ERA to guarantee “the validity of efforts to prevent or dismantle structural forms of inequality or discrimination against protected classes.”⁴



Will the New York ERA protect reproductive rights?

Yes, the New York ERA protects abortion rights and other reproductive rights. It explicitly bars discrimination on the basis of pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy. These constitutional protections are important because, while New York is considered a [“very protective”](#) state for abortion, anti-choice efforts persist. Indeed, abortion was in New York's criminal code until 2019.⁵ By explicitly including pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy under the umbrella of sex discrimination, the New York ERA will protect against efforts to penalize and control people over their reproductive choices.

² Sponsor Mem., S.B. S108A (N.Y. 2023).

³ See *The Sex Equality Gap*, THE ERA PROJECT (2023), <https://gender-sexuality.law.columbia.edu/content/sex-equality-gap-paper>.

⁴ Sponsor Mem., S.B. S108A (N.Y. 2023) (“The amendment achieves this by clarifying that it operates only to “invalidate or prevent the adoption of” state actions that do not serve such a remedial purpose.”).

⁵ Reproductive Health Act of 2019, S. 240, 2019-2020 Reg. Sess. (N.Y. 2019) repealing New York Penal Law §§ 125.40, 125.45, 125.50, 120.55 and 125.60 and amending the article heading of Article 125).



Will the New York ERA protect the rights and freedoms of the LGBTQIA+ community?

Yes, the New York ERA bars discrimination on the basis of sex, sexual orientation, gender identity, and gender expression. This expansive definition of sex is consistent with a Supreme Court decision recognizing that a federal law prohibiting sex discrimination in employment includes sexual orientation and gender identity discrimination.⁶ Still, the New York ERA's explicit protections will guard against narrower interpretations that exclude LGBTQIA+ people.



Will the New York ERA undermine or weaken parental rights?

The New York ERA will not change the existing fundamental rights that parents have to make decisions about the care and upbringing of children. Rather, the New York ERA could bolster existing parental rights by prohibiting discriminatory interference with families and parental decision-making. The potential of the New York ERA to address intersectional forms of discrimination is particularly significant for parents whose rights are threatened on the basis of one or more protected characteristics, including race, disability, and sex. Finally, the New York ERA's comprehensive protection of abortion and reproductive rights can and should be understood to include the rights to decide if, when, and *how* to parent.

About The ERA Project

[The ERA Project](#) at Columbia Law School's Center for Gender and Sexuality Law is a law and policy think tank established in January 2021 to develop academically rigorous research, policy papers, expert guidance, and strategic leadership on the Equal Rights Amendment (ERA) to the U.S. Constitution, and on the role of the ERA in advancing the larger cause of gender-based justice.

⁶ Bostock v. Clayton County, 140 S. Ct. 1731 (2020).