

February 4, 2026

**MEMORANDUM IN SUPPORT OF THE
NEW YORK MATERNAL HEALTH, DIGNITY, AND CONSENT ACT
A.860 (Rosenthal)/S.845 (Salazar)**

Dear Assemblymember Linda B. Rosenthal,

The Maternal Health, Dignity, and Consent Act prohibits drug, cannabis, or alcohol testing and screening of pregnant or postpartum individuals and newborns unless the individual consents and testing or screening is within the scope of medical care, or is necessary for a medical emergency. The Center for Reproductive Rights supports this important legislation and urges the New York Legislature to pass it.

The Center for Reproductive Rights (“the Center”) is a global legal organization that uses the power of the law to advance reproductive rights as fundamental human rights around the world. Since 1992, our litigation, legal policy, and advocacy work—combined with unparalleled expertise in constitutional, international, and comparative human rights law—has transformed how reproductive rights are understood by courts, governments, and human rights bodies. In the United States, the Center has litigated and appeared as amici before the Supreme Court in dozens of cases addressing critical reproductive health and constitutional issues, including as counsel for respondent in *Dobbs v. Jackson Women’s Health Organization*. In New York, the Center has worked extensively with civil society and government partners to improve pregnant people’s rights, resources, and health outcomes, including by serving on the NYC Maternal Mortality and Morbidity Review Committee and the New York Maternal Mortality and Morbidity Advisory Committee.

New York values reproductive rights and must vigilantly protect them.

In 2022, the federal constitutional right to abortion was eliminated in *Dobbs v. Jackson Women’s Health Organization* and more than twenty-five states now ban or severely restrict abortion.¹ Egregious attempts to punish pregnant people have escalated, subjecting them to surveillance, suspicion, and shaming, including for actions and decisions that are legal.² The targeting and scrutiny of

¹ See *After Roe Fell*, Center for Reproductive Rights, January 3, 2025, <https://reproductiverights.org/maps/abortion-laws-by-state/>.

² See Laura Huss et al., *If/When/How, Self-Care, Criminalized: The Criminalization of*

pregnant people in the post-*Dobbs* landscape goes beyond abortion, and rights-based legal protections must too.³

In this hostile landscape, New York stands out for its demonstrated commitment to protecting the dignity, autonomy, privacy, and health of pregnant people. For instance, in recent years, the New York State legislature has passed bills shielding providers who prescribe medication abortion and ensuring that patients' reproductive health information cannot be sold without their consent.⁴

New Yorkers themselves have also demanded stronger legal guarantees. In 2024, voters approved the Equal Rights Amendment, expanding protections against discrimination in the New York constitution. As a result, Article 1, § 11, which guarantees individuals equal protection of the law, now states that “*No person shall, because of race, color, ethnicity, national origin, age, disability, creed, religion, or sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, be subjected to any discrimination in their civil rights [...].*”⁵

Despite these efforts, significant gaps remain. New Yorkers have a right to understand and agree to medical procedures and should not lose those fundamental rights when they become pregnant. Nevertheless, patients in New York remain at risk of unconsented drug testing when they seek out pregnancy-related health care. And while New York's public health and civil rights laws address informed consent, health care providers still screen and test pregnant,

Self-Managed Abortion from 2000 to 2020 (October 2023) (documenting the patterns of criminalization of abortion and pregnancy outcomes and their long-lasting consequences in cases from 2000-2020), <https://ifwhenhow.org/wpcontent/uploads/2023/10/Self-Care-Criminalized-2023-Report.pdf>.

³ See, e.g., Brianna Bailey, The Marshall Project, *Medical Marijuana Is Legal, But Oklahoma Is Charging Women for Using It While Pregnant* (Feb. 14, 2024), <https://www.themarshallproject.org/2024/02/14/oklahoma-pregnant-women-marijuanachild-abuse>.

⁴ In 2025, the legislature advanced multiple bills related to reproductive health and privacy. See The New York Senate, *New York State Senate Expands Reproductive Protections, Women's Health, and Privacy*, (Jan 21, 2025), <https://www.nysenate.gov/newsroom/press-releases/2025/new-york-state-senate-expands-reproductive-protections-womens-health>. Among them, S.36A/A.2145 permits prescription labels for mifepristone, misoprostol, and their generic alternatives to include the name of the prescribing health care practice instead of the name of the prescriber at the prescriber's request. This bill was passed by the legislature and signed by the Governor; Another, S.929/A.2141 aimed to provide for the protection of health information. It was passed by the legislature and vetoed by the Governor.

⁵ New York State Const. art. 1, §11(a).

birthing, and newly postpartum individuals and their newborns for drugs without it.⁶

Denying informed consent to pregnant, birthing, and postpartum people undermines maternal health and exacerbates inequities.

The informed consent process—in which a health care provider discloses risks, benefits, and alternatives to a patient so that they may evaluate options and accept or refuse a treatment, procedure, or intervention—is a core feature of ethical, effective health care and a human right.⁷ The normalization of nonconsensual practices in maternity care settings reflects deeply ingrained gender stereotypes, and often racial and economic discrimination as well.⁸ When individuals cannot rely on the health care system to treat them with the transparency, respect, and dignified care they deserve, it impacts health outcomes. Patients who don't trust their providers may be less likely to follow treatment advice, and some may avoid seeking care at all. Providers themselves know this. The American College of Obstetricians & Gynecologists recommends that “testing be performed only with the patient’s consent” and acknowledges that “obtaining prenatal care, staying connected to the health care system, and being able to speak openly with a physician about drug problems helps improve birth outcomes.”⁹ In a state where nearly 40 people die each year from pregnancy-related causes and Black women are five times more likely to die than white women, denying informed consent to patients seeking maternal health care is not only counterproductive, but harmful.¹⁰

⁶ In 2020, NYC’s public hospitals changed their policy and now require written consent before testing pregnant patients for drugs. While this change in practice was a welcome improvement, upholding pregnant people’s rights to informed consent and non-discrimination should be mandatory, not optional. Yasmeen Khan, Gothamist, *NYC Will End Practice of Drug Testing Pregnant Patients Without Written Consent* (Nov. 17, 2020), <https://gothamist.com/news/nyc-will-end-practice-drug-testing-pregnant-patients-without-written-consent>.

⁷ See United Nations University, International Institute for Global Health, *The notion of consent in the UN Treaty Bodies’ general comments and jurisprudence* (2023), at 30, https://collections.unu.edu/eserv/UNU:9585/The_notion_of_consent_in_UN_Treaty_Bodies.pdf (analyzing international human rights standards on informed consent, including autonomous and informed decision-making in the sexual and reproductive health care context).

⁸ One in five birthing people report mistreatment during maternity care in the U.S. and 40% of Black, Hispanic, and multi-racial people report discrimination. Youstra Mohamoud et al., *Vital Signs: Maternity Care Experiences—United States, April 2023*, CDC, Morb Mortal Wkly Rep (Sept. 2023), https://www.cdc.gov/mmwr/volumes/72/wr/mm7235e1.htm?s_cid=mm7235e1_w.

⁹ American College of Obstetricians & Gynecologists, Policy Priorities, *Substance Use Disorder in Pregnancy*, <https://www.acog.org/advocacy/policy-priorities/substance-use-disorder-in-pregnancy>.

¹⁰ See New York State Dept. of Health, Maternal Mortality Review Board, *New York State Report on Pregnancy-Associated Deaths in 2018-2020* (2023) at 2, https://www.health.ny.gov/community/adults/women/maternal_mortality/docs/maternal_mortality_review_2018-2020.pdf.

Race, class, and gender biases also contribute to inequities in the family policing or “child welfare” system.¹¹ In New York, Black and Brown families are overrepresented at every stage of the process and are often reported to the Administration for Children’s Services (“ACS”), investigated, and separated based on conditions of poverty.¹² Unconsented drug testing in maternity care settings helps drive biased reporting to ACS, as low-income women of color are disproportionately affected by “test and report” practices.¹³ In places that have voluntarily stopped non-consensual drug testing—including some NYC hospitals—unnecessary reports to child welfare authorities have dropped, without increasing harm to infant health.¹⁴ Indeed, in many cases, drug tests are unreliable, medically unnecessary, and do not change the treatment recommended by health care providers.¹⁵

The Maternal Health, Dignity, and Consent Act reinforces a standard of respectful maternity care that pregnant, birthing, and postpartum people in New York should already be receiving, but are too often denied. It reminds health care providers and facilities that pregnant patients have equal rights and establishes the conditions necessary for them to safely seek care and discuss sensitive topics with their health care providers. Now, more than ever, New Yorkers need assurances that seeking health care will result in health care—not surveillance and punishment, or the medically unnecessary collection of “evidence” that may later be used against them.

For these reasons, the Center for Reproductive Rights appreciates the leadership of Assemblymember Rosenthal and Senator Salazar on this issue and respectfully urges the legislature and Governor Hochul to pass and sign this legislation. *For questions or more information please contact Senior Staff Attorney Pilar Herrero at pherrero@reprorights.org.*

¹¹ More than half of all Black children in the U.S. will experience a child protective services investigation. Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, *Am J Public Health* (2017) <https://pmc.ncbi.nlm.nih.gov/articles/PMC5227926/>.

¹² New York Civil Liberties Union (NYCLU), *Racism at Every Stage: Data Shows How NYC’s Administration for Children’s Services Discriminates Against Black and Brown Families*, (June 20, 2023) <https://www.nyclu.org/report/racism-every-stage-data-shows-how-nycs-administration-childrens-services-discriminates>.

¹³ *Id.*

¹⁴ Shoshana Walter, *Why Some Doctors Are Pushing to End Routine Drug Testing During Childbirth*, *Reveal* (April 2, 2025) <https://revealnews.org/article/end-drug-testing-pregnant-patients-newborns/>; New York City Family Policy Project, *Newborns and Infants 2023*, <https://familypolicynyc.org/data-brief/newborns-and-infants-2023/>.

¹⁵ Walter, *supra* note 14.