

## REPRODUCTIVE CHOICES

The League of Women Voters of the United States believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual to make reproductive choices. Statement of Position on Public Policy on Reproductive Choices, as Announced by National Board, January 1983. (LWVUS *Impact on Issues*, 2010-2012, p.25)

Using this position, LWVNYS has vigorously opposed:

- Attempts to encroach upon a woman's (including a minor) right to control her reproductive health
- Measures that would make reproductive health services more difficult to obtain
- Measures that would defund reproductive health programs or that would exclude reproductive health coverage from medical insurance.

### Recent League Activity

In 2011 the League supported passage of the Reproductive Health Act, (S.2844/A.6112) developed to update New York's law with respect to reproductive health by enshrining the woman's right to choose articulated in Roe v. Wade in state law. It would:

- Guarantee a woman's right to control her reproductive health
- Ensure that a woman will be able to have an abortion if her health is endangered
- Takes abortion out of the penal code, and regulates it as a matter of public health and medical practice
- Protect the fundamental right of a woman and her doctor to make private medical decisions
- Guarantees everyone the right to use or refuse contraception.

In his 2013 State of the State address, Governor Cuomo included passage of the Reproductive Health Act as part of his 10 point Women's Equality Agenda (later the Women's Equality Act)t. As the 2013 legislative session continued, the reproductive health provision in the Women's Equality Act (WEA), morphed slightly from the RHA. The Women's Equality Act would ensure that a woman can access abortion care in New York State when her health is at risk by:

- Codifying in New York State law the 1973 Supreme Court decision in Roe v. Wade;
- Ensuring that a woman in New York can get an abortion within 24 weeks of pregnancy, or when necessary to protect her life or health;
- Ensuring that physicians operating within their scope of practice cannot be criminally prosecuted in New York for providing such care; and
- Retaining those provisions in state law that allow the state to prosecute those who harm pregnant women.

The League lobbied extensively for passage of the WEA, but it did not pass during the 2013 legislative session. For a complete narrative on the League's advocacy on WEA, please see the *Women's Issues* section

The League has also supported passage of the "public university emergency contraception act"; which requires every college and university of the state university of New York and the city university of New York to provide emergency contraception to any student requesting it. This bill has been introduced in the legislature numerous times since 2007, the latest being 2011.

In addition, the League has supported the passage of the "unintended pregnancy prevention act"; which would increase access to emergency contraception by allowing women direct and immediate access to emergency contraception from a pharmacist, registered nurse or licensed midwife, using a non-patient specific order written by a licensed medical provider.

### **Past League Activity**

In support of this position, the League of Women Voters of New York State has vigorously lobbied to assure that the right to privacy continues to extend to minors by opposing legislation before the New York State Legislature requiring parental consent/notification for minors under the age of 18 seeking to obtain an abortion. In late June of 1995, the Senate passed a parental notification bill, which lowered the age for notification to two parents of those minors who have not yet attained the age of 16. The vote was 32-20, thus putting on record Senators who had never previously voted on this issue. These minor's bills have consistently been held (no action) in the Assembly Health Committee.

The League has also worked to prevent further erosion of a woman's right to reproductive choice in opposing a bill, first introduced in the 1994 legislative session, which would require a 24-hour waiting period after the first visit before an abortion and require "informed consent." Informed consent is currently done as standard medical procedure, and as such, bills requiring further information are viewed by the League as tantamount to biased counseling. Requiring women to delay exercising their reproductive choice option, absent any legitimate health concern, is not justified. Particularly for many rural women who must travel to a facility, the 24-hour provision would create significant obstacles and increase the potential for harassment. The delay may also cause more women to have second trimester abortions that are much riskier than ones performed earlier in a pregnancy. In 1994, the League successfully lobbied to hold this bill in the Assembly Health committee. In the 1995 session, this bill did not come before the Health committee in either house.

### **Medicaid Funding of Abortions**

The League believes that low-income women should have the same access to legal medical procedures for which income-independent women are able to pay. From 1978 through 1997, the League lobbied against attempts to withdraw this funding in New York State. The 1995 budget negotiations included language that would mandate family planning counseling before a Medicaid funded abortion. The League opposed this budget language and, as a result of vigorous lobbying, it was not included as part of the budget. The League has and will continue to monitor this very important right for low-income women. (During every budget vote, anti-abortion legislators have unsuccessfully attempted to delete Medicaid funding from the state's budget.

Medicaid funding for women of low income was included in the "bare-bones" budget passed in August 2001.

Medicaid funding for women of low income has not been an issue during 2002 or 2003 budget mainly due to the large state budget deficits and the need by legislators not to provide any other issue for holding up the agreed to budget. Of particular note, during the 2005 legislative session the Senate took

up the issue of Medicaid funding fully two-months after the budget was passed. The debate on this issue was extremely anti-woman and done primarily to appease the Conservative party and the Catholic conference. The Assembly did not address any abortion related legislation. Medicaid funding for low-income abortions was not addressed during the budget in late March 2007. However, the Senate introduced it in late May 2007. It passed the Senate only and was judged non-germane in the Assembly. No action on any other reproductive choice legislation was taken in the 2006 or 2007 session.

### **LWVNYS a Plaintiff in Hope v. Perales**

In September 1990, the LWVNYS joined as a lead plaintiff with the New York Civil Liberties Union, family planning clinics, religious organizations, and others in a lawsuit against the New York State Department of Social Services and the Department of Health. The suit challenged abortion discrimination in prenatal care legislation enacted by New York State in 1989. The state League supported the original intent of the legislation that provides prenatal services to poor women but argued that the New York State Constitution does not permit the state to condition the funding of pregnancy related health care to the waiver of the right of reproductive choice. A June 1991 New York State Supreme Court ruling in the case recognized a New York State constitutional right to abortion and to the funding of abortion services under the expanded Medicaid program. The plaintiffs had hoped for an immediate appeal to the Court of Appeals (the highest court in the state); however, the Court of Appeals decided in September 1991 that the case should first proceed through the lower appellate process, based on the premise that a positive outcome of this slower process would result in a firmer legal footing for a final appeal to the Court of Appeals. In April 1993, the Appellate Court ruled 4-1 to uphold the lower court decision in Hope v. Perales. (*See Medicaid Funding of Abortion under Social Policy section.*)

In May 1994, the NYS Court of Appeals in a narrowly drawn decision ruled that abortion services do not have to be funded under the expanded Medicaid prenatal care program. Although this decision was not the outcome the League had hoped for, the judges did not rule on the constitutionality of a right to privacy in reproductive choices in NYS. As a test case on the right to privacy in the NYS constitution, Hope v. Perales was perhaps not the most appropriate vehicle. In the future, another case may arise which will establish this important right in the state constitution.

In 1996, legislation was introduced to ban catastrophic late-stage abortion procedures in New York State (also called "partial birth abortion"). A physician performing this procedure could be subject to Class E felony charges, fines and imprisonment for a minimum of two years. In New York State, an abortion is legal if done within the first 20 weeks of pregnancy; however, under Supreme Court ruling, Roe vs. Wade, there is a compelling state interest in the third trimester, which begins after 24 weeks. After that a termination of pregnancy is allowed only to save the life or health of the mother, or if the fetus is incapable of sustaining life outside the womb. This legislation passed the Senate but was not addressed in the Assembly during the regular session. In December 1996, a special session was held; "partial birth abortion" legislation, in the form of a hostile amendment, was attached to a League-supported ballot access extender bill. The Assembly Speaker allowed Assembly member Eric Vitaliano of Staten Island to attach this amendment. The amendment was defeated on the issue of germaneness with debate on the floor tightly controlled by the Speaker.

In the 1997 session, this legislation again passed in the Senate but was held in the Assembly Health Committee. This extremely emotional issue promises to resurface next year, in one form or another.

Medical experts note the procedure should be only performed to save the health of the mother, to assure her continued fertility, and when the fetus has such severe abnormalities that it is incompatible with life outside the womb. Women with healthy fetuses are not considered by the medical community to be eligible for this procedure.

All other barriers to reproductive choice were defeated in the Assembly Health Committee. Medicaid funding for abortion for low-income women continues to be funded. (See Access to Health Care, in this publication for more information on clinic access and Medicaid funding for abortion.)

The 1998 session saw the Senate again pass the so called “partial birth abortion” legislation in the same form as 1997. The vote remained the same, however, the debate was shorter and less emotional, because every state in the nation that has passed similar legislation has had it ruled unconstitutional, this bill has become little more than a political necessity by the Senate Republicans for the continued support of the State Conservative Party. The legislation was held in the Assembly Health Committee.

Again, in the 1999 legislative session, the Senate passed “partial birth abortion” legislation early in the session. Late in the session, the Assembly Republican Minority Leader, under pressure from the Conservation Party, used a Motion to Discharge to bring the Senate bill to the floor of the Assembly for a vote. The motion was ruled out of order by the chair (President Protem of Assembly) and the vote taken was a vote to sustain the ruling of the chair. This issue has become a very political issue having to do with election politics and nothing to do with the merits of the bill. A woman’s health, future fertility, or even her life has long since been swallowed up in political maneuverings. The League will continue to lobby against this harmful legislation. No other anti-abortion legislation was passed through committee by either the Senate or Assembly.

During the 2000 legislative session, an election year, the Senate passed the so-called “partial-birth” abortion bill yet again. However, it was not addressed in the Assembly. No other legislation eroding a woman’s access to reproductive health was addressed in that session.

However, in the 2001 session, new legislation was introduced known as the “unborn victims” bill. This measure would establish criminal penalties for “death” of a fetus during an attack on a pregnant woman. Although this bill may sound reasonable, it is in reality a back door way of creating personhood for a fetus. This legislation did not move in either house.

During the legislative sessions of 2002 and 2003, the Senate again passed the “partial birth abortion” bill but in 2003 session, the bill passed with fewer votes. In 2003, the Senate also passed its version of the “unborn victims” bill. However, no action has been taken on either pieces of this legislation in the New York State Assembly. 2004-2005 session saw no legislative action from either Senate or Assembly on “partial birth abortion” legislation or “unborn victims” legislation.

The good news for the 2003 session was the passage of legislation to provide emergency contraception to rape victims. This legislation signed by Governor George Pataki requires hospitals to counsel rape survivors about the use of emergency contraception to prevent pregnancy and offer the medication on-site. Emergency contraception, also known as the “morning after pill,” is not the same as RU-486 and does not disrupt or harm an established pregnancy. Emergency contraception is not needed if a woman was already pregnant prior to being raped, so the new law does not require hospitals to dispense emergency contraception in such circumstances.

In 2004, the League successfully opposed measures which would have encroached on a woman's right to choose, including parental notification bills, a bill requiring a 24-hour waiting period before a woman could obtain an abortion. These bills were both held in the Assembly Health Committee although they passed in the state Senate.

In 2005, the League successfully lobbied for the Unintended Pregnancy Prevention Act, passed in both the Assembly and Senate, only to be vetoed by Governor Pataki, who was believed to have been pandering to the Religious right in an attempt to burnish his credentials for a Presidential bid. The measure would enable a physician to write a standing non-patient specific prescription to a pharmacy for emergency contraception allowing women to obtain this type of contraception within 72-hours of intercourse without the need for a prior doctor's appointment. In 2007, the League again lobbied for this legislation, the bill did pass the Assembly, but saw no action in the Senate.

In both 2006 and 2007 the League lobbied vigorously with Family Planning Advocates in support of the Healthy Teens Act, introduced in the Assembly by Gottfried and in the Senate in 2007 by Winner. It would have established a grant program through the Department of Health to fund age-appropriate sex education. In 2007, this bill passed the Assembly and was referred to the Senate Health Committee.

January 2007 saw a new administration come into Albany. Governor Eliot Spitzer had campaigned on the right to privacy and full access for women to reproductive health. In late March, Governor Eliot Spitzer spoke at the annual Family Planning Advocates Conference and reaffirmed his commitment to safe, legal abortion and to making privacy in reproductive choices a guaranteed right in New York State. The Governor introduced a program bill which the League supported which would have established a fundamental statutory right to privacy in making personal reproductive decisions, decriminalized abortion and updated New York law to embody Roe v. Wade protections in state legislation. Unfortunately, neither the Senate nor the Assembly introduced this legislation indicating that this would become a bill for political haymaking in the election year of 2008.

In mid April 2007 the United State Supreme Court upheld by a 5-4 decision on an abortion ban which had been passed by Congress and signed into law by President Bush in 2003. This law also known as "partial birth abortion" bans a medical procedure found necessary and proper in certain situations by the American College of Obstetricians and Gynecologists. This ruling affects a method that doctors use to terminate pregnancy – and makes no exceptions for a woman's health or fetal anomalies. This dangerous law was opposed by major medical associations including the American College of Obstetricians and Gynecologists (ACOG), the American Nurses Association and the American Public Health Association.