

S 51002 STEWART-COUSINS Same as **A 41002**

Rules (Seawright)

ON FILE: 07/01/22 Constitution, Concurrent Resolutions to Amend

TITLE....Relates to equal protection

07/01/22 REFERRED TO RULES

07/01/22 TO ATTORNEY-GENERAL FOR
OPINION

07/01/22 ORDERED TO THIRD READING CAL.2

07/01/22 PASSED SENATE

07/01/22 DELIVERED TO ASSEMBLY

07/01/22 referred to judiciary

07/01/22 substituted for a41002

07/01/22 ordered to third reading rules cal.2

07/01/22 message of necessity - 3 day message

07/01/22 passed assembly

07/01/22 returned to senate

07/05/22 DELIVERED TO SECRETARY OF
STATE**A41002 Rules (Seawright)** Same as **S 51002**

STEWART-COUSINS

Constitution, Concurrent Resolutions to Amend

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07/01/22 reported referred to rules

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07/01/22 substituted by s51002

S51002 STEWART-COUSINS

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STATE[07/01/22](#) S51002 Assembly Vote Yes: 95 No : 45[07/01/22](#) S51002 Senate Vote Aye: 49 Nay: 14[Go to Top of Page](#)**Floor Votes:**

07/01/22 S51002 Assembly Vote Yes: 95 No : 45

Yes Abbate	Yes Abinanti	Yes Anderson	No Angelino
No Ashby	Yes Aubry	No Barclay	ER Barnwell
Yes Barrett	Yes Benedetto	Yes Bichotte Hermelyn	No Blankenbush
No Brabenec	Yes Braunstein	Yes Bronson	No Brown E
No Brown K	Yes Burdick	Yes Burgos	Yes Burke
No Buttenschon	No Byrne	No Byrnes	Yes Cahill
Yes Carroll	Yes Chandler- Waterman	Yes Clark	Yes Colton
Yes Conrad	Yes Cook	Yes Cruz	Yes Cunningham
ER Cusick	Yes Cymbrowitz	Yes Darling	Yes Davila
Yes De Los Santos	No DeStefano	Yes Dickens	ER Dilan

Yes	Dinowitz	No	DiPietro	No	Durso	ER	Eichenstein
Yes	Englebright	Yes	Epstein	Yes	Fahy	Yes	Fall
Yes	Fernandez	No	Fitzpatrick	Yes	Forrest	No	Friend
Yes	Frontus	Yes	Galef	ER	Gallagher	No	Gallahan
No	Gandolfo	Yes	Gibbs	No	Giglio JA	No	Giglio JM
Yes	Glick	Yes	Gonzalez-Rojas	No	Goodell	Yes	Gottfried
Yes	Griffin	Yes	Gunther A	No	Hawley	Yes	Hevesi
Yes	Hunter	Yes	Hyndman	Yes	Jackson	Yes	Jacobson
Yes	Jean-Pierre	No	Jensen	Yes	Jones	Yes	Joyner
Yes	Kelles	Yes	Kim	No	Lalor	Yes	Lavine
No	Lawler	No	Lemondes	Yes	Lucas	Yes	Lunsford
Yes	Lupardo	Yes	Magnarelli	Yes	Mamdani	No	Manktelow
Yes	McDonald	No	McDonough	Yes	McMahon	ER	Meeks
No	Mikulin	No	Miller B	Yes	Mitaynes	No	Montesano
No	Morinello	Yes	Niou	Yes	Nolan	No	Norris
Yes	O'Donnell	Yes	Otis	No	Palmesano	Yes	Paulin
Yes	Peoples-Stokes	ER	Pheffer Amato	Yes	Pretlow	Yes	Quart
No	Ra	Yes	Rajkumar	Yes	Ramos	No	Reilly
Yes	Reyes	Yes	Rivera J	Yes	Rivera JD	ER	Rosenthal D
Yes	Rosenthal L	ER	Rozic	No	Salka	Yes	Santabarbara
Yes	Sayegh	No	Schmitt	Yes	Seawright	ER	Septimo
Yes	Sillitti	Yes	Simon	No	Simpson	No	Smith
No	Smullen	Yes	Solages	Yes	Steck	Yes	Stern
Yes	Stirpe	No	Tague	No	Tannousis	Yes	Tapia
No	Taylor	Yes	Thiele	Yes	Vanel	No	Walczyk
Yes	Walker	Yes	Wallace	No	Walsh	Yes	Weinstein
Yes	Weprin	Yes	Williams	Yes	Woerner	Yes	Zebrowski K
Yes	Zinerman	Yes	Mr. Speaker				

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Floor Votes:

07/01/22 S51002 Senate Vote Aye: 49 Nay: 14

Aye	Addabbo	Nay	Akshar	Aye	Bailey	Aye	Biaggi
Nay	Borrello	Aye	Boyle	Aye	Breslin	Aye	Brisport
Aye	Brooks	Aye	Brouk	Aye	Cleare	Aye	Comrie
Aye	Cooney	Nay	Felder	Nay	Gallivan	Aye	Gaughran
Aye	Gianaris	Aye	Gounardes	Nay	Griffo	Aye	Harckham
Nay	Helming	Aye	Hinchey	Aye	Hoylman	Aye	Jackson
Nay	Jordan	Aye	Kaminsky	Aye	Kaplan	Aye	Kavanagh
Aye	Kennedy	Aye	Krueger	Nay	Lanza	Aye	Liu
Aye	Mannion	Aye	Martucci	Aye	Mattera	Aye	May
Aye	Mayer	Aye	Myrie	Nay	Oberacker	Nay	O'Mara
Nay	Ortt	Aye	Palumbo	Aye	Parker	Aye	Persaud
Aye	Ramos	Aye	Rath	Aye	Reichlin-Melnick	Nay	Ritchie

Aye	Rivera	Aye	Ryan	Aye	Salazar	Aye	Sanders
Aye	Savino	Aye	Sepulveda	Aye	Serino	Aye	Serrano
Aye	Skoufis	Aye	Stavisky	Nay	Stec	Aye	Stewart- Cousins
Nay	Tedisco	Aye	Thomas	Aye	Weik		

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S51002

SPONSOR: STEWART-COUSINS

TITLE OF BILL:

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing an amendment to section 11 of article 1 of the constitution, in relation to equal protection

PURPOSE:

New Yorkers deserve a constitution that recognizes that every person is entitled to equal rights and justice under the law regardless of who they are, whom they love, or what their families look like. Because the New York Constitution's Bill of Rights does not currently contain a comprehensive equal rights provision, a constitutional amendment is necessary to realize the promise of legal equality and justice for all New Yorkers.

Our modern vision of equality demands comprehensive equal protection. Indeed, many individuals are themselves members of numerous communities, identities, and protected classes, and true equality and justice demand protections that recognize the interconnected nature of discrimination. The amendment is our opportunity to ensure that New York's constitutional language reflects that commitment to full equality and justice before the law - by providing legal protections that go above and beyond the protections of the federal Constitution.

The purpose of this amendment is to ensure that our state constitution extends to all New Yorkers the equality right to be free from discrimination, and in particular those who have faced severe and pervasive injustice. It does so by expanding the list of classes protected by the New York Constitution in recognition of the need for comprehensive and intersectional equality under the law.

SUMMARY OF PROVISION:

This section makes clear that no person shall be subjected to discrimination on account of their race, color, ethnicity, national origin, disability, creed, religion, or sex including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, reproductive healthcare and reproductive autonomy.

The section applies to discrimination in any "civil rights," and the courts have made clear that all governmental action is covered by article 11's coverage. See generally *Dorsey vs. Stuyvesant Corp.*, 299 N.Y. 512 (N.Y. 1949); 87 N.E.2d 541. And by extending coverage to all government actions "pursuant to law," the amendment's coverage extends to any action with force of law, including action by the executive or legislative branch, local governments, or any subdivision thereof.

Discrimination with respect to, for instance, disability or pregnancy

would include the failure to provide reasonable accommodations. This amendment is intended to promote equality of opportunity for people with disabilities both by banning disability discrimination and by affording enforceable legal rights to people with disabilities. The term "disability" means a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or a record of such an impairment or a condition regarded by others as such an impairment. No person because of disability should be subjected to any discrimination, including but not limited to actions which prevent them exercising their right to live in the community, to lead an independent life, and to be free from institutionalization. Discrimination with respect to, for instance, disability or pregnancy would include the failure to provide reasonable accommodations.

Further, by including a prohibition on sex discrimination, this amendment inherently prohibits discrimination on the basis of pregnancy, pregnancy outcomes, and reproductive healthcare and reproductive autonomy. The amendment's explicit clarification however is critical. While federal courts, Congress, and the EEOC have recognized that sex discrimination includes discrimination based on pregnancy (including abortion), a lack of clarity on whether pregnancy discrimination transgresses the federal constitution still exists. See e.g. *Geduldig v. Aiello*, 417 U.S. 484 (1974). This translates into New York law as well. For example, New York State courts have failed to recognize the New York State Patient Bill of Rights as applying to pregnant patients, as well as constitutional and common law protections to privacy, bodily integrity, and medical decision-making throughout pregnancy. See, e.g., *Dray v. Staten Island University Hospital*, Order, Genine Edwards, Supreme Court of the State of New York, Kings County, October 4, 2019. And increasingly across the country in virtually every state, including New York, women face criminal and civil consequences in relationship to their pregnancies and pregnancy outcomes, including abortions, miscarriages, stillbirths, or other adverse outcomes. This is particularly important for women at the intersection of multiple marginalized identities, namely Black women and women of color, who are not only wrongly seen as less deserving of or fit for motherhood but further experience disproportionate discrimination in our criminal law system and health disparities likely to lead to adverse outcomes that put them under scrutiny and surveillance.

It is not possible to achieve sex equality while prosecutors and state agencies single out pregnant people for punishment because of their pregnancy, the outcomes of their pregnancies and their reproductive healthcare decision making. And because the right to abortion is central to a pregnant person's equality, this amendment clarifies that any action that discriminates against a person based on their pregnancy, pregnancy outcome, reproductive healthcare, or reproductive autonomy is a sex-based classification. This is critical given the Supreme Court's recission of the constitutional right to abortion care. As one protected pregnancy outcome, abortion care is a fundamental right that is integral to a person's reproductive autonomy. Indeed, reproductive autonomy is the power to decide and control one's own contraceptive use, pregnancy, and childbearing. For example, people with reproductive autonomy can control whether and when to become pregnant, whether and when to use contraception, which method to use, whether and when to continue a pregnancy, and decisions in childbirth. And this is consistent with our state's long history of protecting bodily autonomy long enshrined in our common law, as established in 1914 with Justice Cardozo's famous articulation of the doctrine in *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 129-130 (1914) that every human being of adult years and sound mind has a right to determine what shall be done with his own body. The State shall further not use its police power or power of the purse to burden, limit, or favor any type of reproductive decision

making at the expense of other outcomes, and, as consistent with section 17 of this article, shall guarantee rights and access to reproductive healthcare services.

Further, this amendment makes explicit that people are protected on the basis of their sexual orientation, gender identity, and gender expression. The Supreme Court further telegraphed the future erosion of these rights in the *Dobbs v. Jackson Women's Health Organization* decision, making it critical to explicitly name these protections in our state's equal protection provision.

Freedom of belief, expression and religious liberty are fundamental components of America's democracy. This framework is intended to complement, and be analyzed consistently with, our New York State Constitution's existing protections for speech, belief, and religious liberty and practice under Section three of our state Constitution.

This section further protects the validity of efforts to prevent or dismantle structural forms of inequality and discrimination on the basis of a protected characteristic. It specifies that the legislature retains the power to enhance the constitution's equal protection guarantee with appropriate legislation designed to achieve the full equal rights of any class listed in this section.

EXISTING LAW:

JUSTIFICATION:

The concept of equality under the law is a foundational principle of our democracy, but our understanding of which groups deserve and receive legal protections has changed dramatically over our history. The New York Constitution was last amended to address this topic in 1938 when section 11 was first adopted, prior to the civil rights movement, the movement for gender justice, the LGBTQ movement, the disability rights movement and the many developments in anti-discrimination law. As a beacon of our future, New York's Constitution must reflect our broad conception of justice, equal rights and protections against discrimination.

FISCAL IMPLICATIONS:

To Be Determined