



State of the State Address Fact Sheet: **Reproductive Health and Privacy Protection Act**

“We must also make a commitment to women’s health. Given the continued efforts at the federal level to dismantle protections for women’s reproductive health and privacy, I ask you to pass the Reproductive Health and Privacy Protection Act.”

-Governor Eliot Spitzer (January 9, 2008)

The Challenge

- The Bush Administration’s federal courts continue to roll back protections to women’s reproductive and privacy rights. In April 2007, the Supreme Court issued a decision that flew in the face of 35 years of Supreme Court precedent upholding a woman’s right to choose. In *Gonzalez v. Carhart* and *Gonzalez v. Planned Parenthood*, the Court upheld a 2003 congressional act which prohibited certain types of abortions performed in the second trimester, but made no exception for situations when a woman’s health is at risk.
- Currently, there is no affirmative statement of reproductive rights in State law, and instead the statutory contours of legal abortion are found only in negative form, in the Penal Law. Further, existing law in New York is outdated and certain provisions are unconstitutional, as they do not reflect the protections delineated in the United States Supreme Court’s landmark 1973 decision in *Roe v. Wade* and in subsequent decisions.
- For example, existing Penal Law provisions would criminalize abortions performed after fetal viability even when necessary to protect a woman’s health, which contradicts *Roe v. Wade*. Similarly, State law requires that two physicians be present at an abortion performed after viability, but does not make an exception if the delay caused by waiting for a second physician’s arrival could endanger the woman’s life or health. This contradicts other Supreme Court precedent.

Our Approach

- The Governor will once again submit the “Reproductive Health and Privacy Protection Act.” The Act contains an affirmative statement of reproductive rights making it clear that in New York all individuals have the right to use or refuse contraceptives and that every female has the right to carry a pregnancy to term, or to terminate a pregnancy prior to viability or whenever necessary to protect her life or health.
- The Act updates and modernizes current law, which now regulates abortions by reference to weeks of pregnancy, in favor of the pre- and post-viability standard first drawn in *Roe v. Wade*. The Act also inserts into statute an emergency exception to the second physician requirement to ensure that a woman’s health or life will not be endangered by delay.
- While the State cannot prevent the federal government from enforcing the 2003 federal enactment upheld in *Gonzalez v. Carhart* and *Gonzalez v. Planned Parenthood*, the Act ensures that even if the Supreme Court overturns the right to choose recognized in *Roe* and related cases, the right of women in New York to make personal reproductive decisions will be protected.