

# The Reproductive Health Act:

**FACT VS FICTION**

The proposed Reproductive Health Act (RHA) (Bill S.240 – Krueger, Stewart-Cousins/A.1748 – Glick, Heastie)<sup>1</sup> addresses the controversial and emotionally-charged topic of abortion. The RHA is expected to be voted upon early in the 2019-2020 legislative session.

Unfortunately, many misconceptions exist regarding the RHA. This flyer is designed to dispel those misconceptions so that readers may gain an accurate understanding of the bill's provisions.

## **RHA FICTION**

The RHA would simply codify the 1973 U.S. Supreme Court decision in *Roe v. Wade*.

## **RHA FACT**

The RHA goes far, far beyond what *Roe v. Wade* requires. The *Roe* decision and later Supreme Court decisions on abortion hold that states may not place undue burdens upon access to pre-viability abortions, but may regulate post-viability abortions so long as abortion remains available to protect a woman's life or health. The RHA, on the other hand, would allow certain non-physicians to perform abortions;<sup>2</sup> would repeal two laws that punish persons who harm pregnant women in an attempt to cause miscarriages;<sup>3</sup> and would repeal a law that guarantees access to medical care for viable babies born alive as a result of late-term abortion procedures.<sup>4</sup> Nothing in *Roe* or in subsequent Supreme Court cases requires any of this. The claim that the RHA would codify *Roe* distorts and minimizes the true scope and impact of the bill.

# THE REPRODUCTIVE HEALTH ACT:

**FACT** vs **FICTION**

## **RHA FICTION**

The RHA would prevent abortion from being banned by the Supreme Court.

## **RHA FACT**

If *Roe v. Wade* were overturned by the Supreme Court, abortion would not be banned in the State of New York. Rather, the question of the legality of abortion would be left to New York (and other states) to decide. Here in New York, a 1970 state law legalized abortion before *Roe* was ever decided. If *Roe* were overturned, abortion would remain legal here under that 1970 law.

## **RHA FICTION**

The RHA does not open the door to elective abortions in the third trimester.

## **RHA FACT**

Currently, New York bans third-trimester abortions except when a woman's life is endangered by the continuation of her pregnancy.<sup>5</sup> The RHA would make such abortions legal in two situations: (a) when "there is an absence of fetal viability;" or (b) when an abortion is "necessary to protect the patient's life or **health**" (emphasis added).<sup>6</sup> Existing court decisions make it clear that broad health exceptions like the one contained in the RHA effectively legalize abortion for any reason whatsoever.<sup>7</sup> While federal courts might allow greater access to third-trimester abortion in New York if a lawsuit were filed, the question has never been decided. In practical terms, the RHA would clearly and unequivocally open the door to elective abortion at any stage of pregnancy—including the third trimester.

As stated above, the RHA would also repeal existing protections for viable babies born alive as a result of late-term abortion procedures.

<sup>1</sup> See <https://www.nysenate.gov/legislation/bills/2019/s240>.

<sup>2</sup> Section Seven of the RHA would repeal Penal Law § 125.05(3), which provides that abortions shall be performed by licensed physicians. Section Two of the RHA would add a new § 2599-BB(1) to the Public Health Law; that section would provide, in pertinent part, as follows: "A health care practitioner licensed, certified, or authorized under Title Eight of the Education Law, acting within his or her lawful scope of practice, may perform an abortion..." Examples of health care professionals licensed, certified, or authorized under Title Eight of the Education Law include physician assistants, nurses, nurse practitioners, and midwives.

<sup>3</sup> Section Five of the RHA would repeal Penal Law §§ 125.05(2), 125.40, and 125.45. These statutes ban forced abortions and assaults upon women with the intent of causing miscarriages. While other existing laws could be used to prosecute these types of offenses against women, no other laws can be used to prosecute them as crimes against fetuses.

<sup>4</sup> Section Three of the RHA would repeal Public Health Law § 4164. Public Health Law § 4164 reads, in pertinent part, as follows: "When an abortion is to be performed after the twentieth week of

pregnancy, a physician other than the physician performing the abortion shall be in attendance to take control of and to provide immediate medical care for any live birth that is the result of the abortion... Such child shall be accorded **immediate legal protection** under the laws of the state of New York..." (emphasis added).

<sup>5</sup> See N.Y. Penal Law § 125.05(3). Then-New York Attorney General Eric Schneiderman issued a 2016 opinion in which he asserted that the U.S. Constitution requires the State of New York to allow third-trimester abortions under a broad health exception. (See [https://ag.ny.gov/sites/default/files/abortion\\_opinion\\_2016-f1.pdf](https://ag.ny.gov/sites/default/files/abortion_opinion_2016-f1.pdf)). The RHA would expand upon the Schneiderman opinion by placing this broad exception within New York's statutes.

<sup>6</sup> See Section Two of the RHA, which would add a new § 2599-BB(1) to the N.Y. Public Health Law.

<sup>7</sup> See *Doe vs. Bolton*, 410 U.S. 179, 192 (1973) ("medical judgment may be exercised in the light of all factors - physical, emotional, psychological, familial, and the woman's age - relevant to the well-being of the patient. All these factors may relate to health").