

NY voters will decide Proposition 1

What would it actually do?

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ALBANY (TNS) — Some supporters of a ballot proposal in New York this year say it would codify abortion laws in the state constitution, while many opponents claim it would allow children to undergo surgery without the knowledge of their parents.

But neither claim is true. The proposal itself would not give anyone in New York additional rights or protections that don't already exist in state law.

If voters approve the proposal, nondiscrimination protections in the state constitution would be expanded for the first time since 1938. That's when civil rights protections were first enshrined in the state's founding document.

The current language protects against discrimination based on four factors: race, color, creed or religion.

"No person shall, because of race, color, creed or religion, be subjected to any discrimination in their civil rights," reads the current text in the state constitution.

The proposed amendment would expand that protection based on several new categories: ethnicity, disability, age, national origin, sex, sexual orientation, gender identity or expression, pregnancy or pregnancy outcomes and reproductive health care and autonomy.

All the proposed amendment would do on paper is add those categories to the four protections already in the state constitution since 1938.

But widespread claims of how that text should be interpreted have offered starkly different and, at times, misleading scenarios for voters to navigate ahead of the November election.

CHANGING LAWS AND ABORTION

Nothing in New York — including state laws and regulations — would change if the amendment is approved by voters.

That's because each of the proposed protections already exist in state law. The amendment would do no more than copy them into the state constitution.

"Enshrining these protections in the state constitution would ensure that current laws cannot be rolled back or are not dependent on who is in the state Legislature or governor's mansion," said Jennifer Weiss-Wolf, executive director of the Birnbaum Women's Leadership Center at the NYU School of Law.

State law and the state constitution are changed in different ways. State law changes when the governor signs a bill approved by the state Senate and Assembly. That can happen within a single day if a bill is expedited.

An amendment to the state constitution doesn't involve the governor. The Legislature has to pass the measure twice — once during the course of a legislative session and a second time when a new Legislature takes office after the next election.

The amendment is then placed on the ballot for consideration by voters. That's where this year's ballot proposal currently stands.

Supporters of the amendment, largely Democrats, have tried to garner support by focusing largely on its language around abortion.

That word won't be on the ballot. Pregnancy outcomes and reproductive health care and autonomy refer to abortion instead. Supporters had sought to convince the state Board of Elections to instead use "abortion," but were unsuccessful.

Among the loudest proponents of the ballot proposal — called the Equal Rights Amendment by supporters — has been Gov. Kathy Hochul.

After news broke that the U.S. Supreme Court would hear a case on medication abortion, Hochul lauded how voters in New York would get a chance to consider the amendment during an appearance on CNN in December.

"As soon as we heard about Dobbs, I convened the Legislature in an emergency session," Hochul said. "I said, 'let's get this codified not just in state law, but enshrined in our state constitution.'"

State law currently protects the right to an abortion for any reason up to 24 weeks of pregnancy. After that, an abortion is only allowed if a doctor determines the fetus is no longer viable or the health or life of the mother is at risk.

But that's not what would be codified in the state constitution if voters approve the amendment, said Katharine Bodde, an attorney with the New York Civil Liberties Union.

"We would be clarifying that prohibition on abortion or any barriers to access would be prohibited sex discrimination under the law," Bodde said. "This would prohibit the government from passing laws or policies that limit access to abortion care."

Access to abortion would not change in New York if the amendment is approved. Abortion after 24 weeks would still have the same restrictions.

But it would be a lot harder for the state to restrict access to abortion. That would only be possible through federal law or if another amendment is sent to voters that would undo what's on the ballot this year — if it passes.

State Sen. Liz Krueger, a Democrat who sponsored the amendment, said it wasn't until *Roe v. Wade* was overturned in 2022 that lawmakers got serious about sending the proposal to voters.

"The fall of *Roe v. Wade* was a wake-up call for us all — showing us our rights are never as secure as we might believe," Krueger said. "Prop 1 will guarantee our reproductive freedoms — so that no matter who is in office, New Yorkers can get the care they want and need."

Abortion in New York also would not change if voters reject the amendment; the laws on the books right now would remain.

The only way access to abortion would change if the amendment's defeated would be through federal law change or if the state Legislature restricts or expands the law.

TRANSGENDER SURGERY FOR CHILDREN

Opponents have claimed the amendment would allow children to receive gender-affirming care, including surgery, without their parents' consent.

"Something as basic and important as gender changing surgeries and procedures — this law would prohibit schools from communicating that to their parents," state Sen. Dan Stec said at a rally opposing the amendment in September.

The claim has two parts: that children will be able to secretly receive surgeries or other medical care without involving their parents and that schools will help facilitate and coordinate those procedures.

“They’re going to sign them up, all those treatments will be covered under New York state Medicaid now even though your child may also still remain on private health insurance,” said Liz Joy, a former Capital Region candidate for Congress, at a rally in August.

Teachers in New York cannot sign children up for Medicaid. If they’re already enrolled, it doesn’t matter — teachers can’t direct a student’s health care. Medicaid reimburses schools for some services provided to students with disabilities.

It’s true that schools would not be allowed to let parents know when a child comes out as transgender or part of the LGBTQ+ community — but that’s already the case.

The state Education Department issued guidance last year that prohibits school personnel from sharing that information with parents without the student’s consent. It’s intended to protect students who may otherwise face violence at home because of their identity.

“When we disown someone, we’re really setting them up for failure,” said Elisa Crespo, executive director of the New Pride Agenda, an LGBTQ+ advocacy group. “So many of the homeless youth population identify as queer and transgender.”

But that guidance does not give teachers any additional power over that student’s health care decisions.

“The suggestion that our school communities are covertly arranging for gender-affirming medical care, including surgery, is absurd,” said J.P. O’Hare, communications director for the state Education Department.

The amendment also wouldn’t grant children the ability to seek their own health care without the consent of their parents.

That’s only allowed under a very narrow set of conditions, according to state Public Health Law. It would have to be a medical emergency or the child would have to either be pregnant or legally emancipated from their parents.

Like the state’s abortion law, that would remain the case regardless of what happens with the amendment in November.

That means nothing would change for health care providers like Callen-Lorde, which specializes in LGBTQ+ health care in New York City.

“To all the New York families who are already involved in making health care decisions for your children, I want to say very clearly that gender-affirming care (like most other health care decisions for children) requires your consent now, and Prop 1 will not change that,” said Patrick McGovern, the CEO of Callen-Lorde.

That includes the full spectrum of gender-affirming care. Surgery is rare for children, according to a study from the Harvard T.H. Chan School of Public Health published in July.

Other care, like puberty blockers and hormonal treatment, is more common but still requires consent from the child’s parent or guardian.

Advocates for transgender people aren’t trying to change that. Elisa Crespo, executive director of the New Pride Agenda, an LGBTQ+ advocacy group, said opponents of the amendment have misled the public about what transgender people actually experience.

“These are decisions that should happen between a doctor and an individual and their parents,” Crespo said. “If people are making these types of claims, they need to be able to back it up with proof.”

Opponents have also warned that the amendment could allow children to play on sports teams that don’t match their biological sex, but that’s already protected under state law.

“New York state has long protected against discrimination based on gender identity and expression,” Bodde said. “That’s in our Human Rights Law.”

THE LEGAL THEORY

There is no way to prove what the long-term implications of the amendment could be but that would be decided by the courts, if at all.

The amendment could be used in a discrimination lawsuit, though one could also be filed under the state Human Rights Law. But the outcome of that lawsuit could decide how the amendment is interpreted.

That’s how opponents have framed the amendment: as opening the door to different legal interpretations of what it means to discriminate against a certain protected class.

Those same opponents have argued that the amendment would allow children to seek their own gender-affirming care because of how it would also protect against age discrimination.

Bobbie Ann Cox, a civil rights attorney, argued that courts would be forced to side with children if their parents brought a lawsuit to prevent them from receiving gender-affirming care.

“They’re not going to win if they challenge that because the constitution in New York state will now say that you can’t discriminate against your child no matter how little they are,” Cox said.

That category, and others, could also conflict with each other if the amendment passes, opponents have said.

If someone sues for alleged discrimination but the other party claims discrimination based on a different factor, that would lead to a confusing web of litigation that sets an unclear precedent when it’s resolved, Cox said.

“If this happens, it will cause protected classes, new and old, to be pitted against one another,” Cox said. “We will see lawsuits popping up all over the state where you have one protected class fighting against another to say who’s more protected.”

Former U.S. Rep. Lee Zeldin, a Republican who nearly defeated Hochul in the 2022 race for governor, has led the charge against the amendment in recent months.

“We just encourage New Yorkers to read it for themselves,” Zeldin said at a rally in September. “You don’t want New Yorkers to be blindsided.”

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