

**Proposition One New York State:  
A Critical Analysis**

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On Election Day, November 5, voters in New York State will cast their ballot for Proposition One. It would amend section 11 of article 1 of the New York State Constitution in two ways: Paragraph A would offer equal protection before the law to eleven new demographic categories; Paragraph B would revise the legal meaning of discrimination.

New Yorkers, like all Americans, are naturally supportive of liberty and equality, so when they are asked to vote for an initiative that is nominally supportive of these ends, they are inclined to do so. But in this case, voters would not be inclined to support Prop One if they really knew what it entails.

Those who champion Prop One are telling the public that it is needed because abortion rights are under attack. They manifestly are not under attack in New York State, but abortion-rights activists know that this is a hot button issue in many parts of the country—abortion is on the ballot in ten states—therefore they reason that if it is on the ballot, it will galvanize supporters to turn out on Election Day.

This is only one aspect of what is in reality a huge stealth campaign. Those behind Prop One have a very different agenda. *Their real goal is to undermine parental rights, eviscerate religious liberty and legalize selective discrimination.*

Currently, the New York State Constitution says that no one can be subjected to discrimination on the basis of race, color, creed or religion.

Paragraph A of Prop One would add the following demographic categories: age, sex, gender identity, gender expression, and reproductive healthcare and autonomy. The implications are dramatic.

## **Age**

To most people, age discrimination refers exclusively to older adults. To be sure, the rights of the elderly figure prominently in this discussion, but to children's rights advocates, those at the opposite end of the spectrum, namely minors, can also lay claim to being victims of discrimination. This is where Prop One can create enormous problems.

According to Beatrice and Ronald Gross, two of the leading children's rights advocates, the movement to liberate children was launched "to rectify the shameful conditions that lead to the damage and death of so many children." They claim that "young people are the most oppressed of all minorities. They are discriminated against on the basis of age in everything from movie admissions to sex. They are traditionally the subjects of ridicule, humiliation, and mental torture in homes, schools, and other institutions."

The idea that children are oppressed begs the question: Who are the oppressors? Adults, of course, especially parents. Those who champion the rights of minors do so at the direct expense of parental rights. That is not unintentional.

Among the advocacy groups promoting Prop One are the New York Civil Liberties Union (NYCLU) and Planned Parenthood of Greater New York.

The latter has long argued that minors have rights against their parents in making decisions about their sex life that most parents would find appalling. It has a special section on its website “For Teens” that provides confidential health services. The NYCLU has a booklet, “Teenagers, Health Care and The Law: A Guide to Minors’ Rights in New York State,” that is even more specific.

If Prop One becomes law, minors will be able to checkmate their parents whenever they claim that their rights are being encroached upon. Ditto for teachers who are accused of infringing on the rights of students (e.g., disciplinary measures). The kids will no doubt find public defense lawyers ready to come to their aid.

One organization that is not fooled by these advocacy organizations is the Autism Action Network. It is opposed to Prop One “because confusing how ‘age’ is treated under the law in the current climate will inevitably be used to weaken parents’ rights over our children.”

It explicitly opposes the ambitions of one of the amendment’s most influential supporters, State Sen. Liz Krueger. She is described as “one of the leading advocates for diminishing parental rights to make medical decisions for our children, and for allowing schools and other entities

to have access to children without parental knowledge or consent.”

Autism Action Network is not exaggerating. One of the primary reasons why “age” was included in the list of characteristics that should not be subject to discrimination is to undercut parental rights in the name of liberating minors. The consequences should be plain.

## Sex

There are many laws on the books that already protect women from discrimination, which explains why there is no major push for more such laws. Still, some will say there’s no harm in including sex as a protected category in Prop One. But the fact is women have already said “No” to this proposal.

In 1975, voters in New York and New Jersey were given the opportunity to vote on the Equal Rights Amendment. The representatives in these two states, mostly men, had already voted to support this amendment, but when the vote was taken, it was defeated. As Linda Greenhouse of the *New York Times* noted, it was women, not men, who were responsible for the defeat. In short, New York women did not want to jeopardize their current status in law by living under a statute that could potentially work against their best interests.



## **Gender Identity and Gender Expression**

Adding gender identity and gender expression to the list of protected categories would seriously impact on parental rights and religious liberty.

The medical literature continues to grow concerning the long-term consequences of sex transitioning. Minors who transition, mostly girls who seek to be boys, are suffering from serious mental health problems and need to be treated accordingly. Transgender persons suffer from high rates of depression, anxiety, suicidal ideation, and suicide. Prop One would enable young people to skirt the scrutiny of their parents by accessing therapists and medical professionals behind their back in their quest to transition. They could claim they are being discriminated against on the basis of age.

What would happen to a teacher if he told the parents of a student who was ready to take puberty blockers, or undergo chemical castration, about their child's decision? He would be fired. This is not a matter of speculation.

Last year, Kathy McCord was fired as a student counselor from an Indiana high school for openly condemning a secret transgender policy that kept parents in the dark about their children's "gender transition."

In the state of Washington, a young girl wanted to get sex-reassignment surgery behind the back of her parents, but the parents found out anyway. They learned that if their

daughter wanted to flee and move to a home with a family that agreed to take her in, she could do so. Moreover, the host family was under no legal obligation to inform her parents that she was about to have her genitals amputated.

This is exactly the kind of thing that could happen under Prop One.

It gets worse. States are effectively kidnapping children in service to the pernicious ideology of transgenderism. And if it can happen in Montana, it can happen in New York.

Krista and Todd Kolstad have a sexually confused daughter, Jennifer, who mistakenly thinks she is a boy. Jen had suicidal thoughts and when her family found out about it, Child and Family Services (CFS) were called to deal with her condition. Bullied at school, her parents moved her to another school district, doing everything they could to stabilize the situation. But CFS was unimpressed. They took Jen from them because they refused to affirm her delusional state.

Look for more such cases if Prop One wins.

If Prop one succeeds, there would be no stopping biological males from competing in women's sports, effectively destroying them. The guys could also use the locker rooms and shower facilities with the girls, and no one could stop them. If a coach complained, he could be fired.

Travis Allen is a girls' soccer coach at a public school in Vermont. He was suspended from his job without pay because he complained about a male student roaming around the girls' locker room. His daughter, who is on the volleyball team, also spoke out about this incident. She saw the male student in the locker room and publicly stated how uncomfortable she was with this situation; she and the boy were both fourteen. But she was the one who was suspended for complaining. The school dropped the suspension after her parents filed a lawsuit. But if Prop One succeeds, the school could win.

In the name of gender expression, teachers could be required to address gender confused students by their choice of pronouns. In other words, a boy who thinks he is a girl could assert his gender expression rights by demanding that his teacher refer to him as “she” or “her.” For that matter, he may want to be called “they” or “them,” and his teacher would have to oblige.

This is not an exaggeration. Some schools, like one in Colorado, already have policies that assure this outcome. “Transgender and non-binary students have the right to discuss and express their gender identity and expression openly and to decide which, with whom, and how much to share their private information.”

Frederick Short knows all about this issue. He learned that at Cherry Hill West High School in New Jersey, where he sent his children, that they adopted a novel policy. “A transgender student shall be addressed at school by the name

and pronoun chosen by the student, regardless of whether a legal name change or change in official school records has occurred.”

Short objected to the policy and was told that was too bad. So he sued. Expect more such cases.

## **Reproductive Healthcare and Autonomy**

Reproductive healthcare, as interpreted by activists, means abortion-on-demand, without any restrictions. Parental rights would be non-existent—their daughters could get an abortion without their consent and at any time during pregnancy.

Establishing a right to healthcare autonomy clearly means that assisted suicide will become a reality. Even in cases where the patient is not suffering from a terminal disease, or where death does not appear to be imminent, the right to autonomy would give those who are merely despondent a right to die.

This policy is rife for abuse. Unethical doctors, relatives and insurance agents stand to benefit, all in the name of “helping” the patient. This is a slope so slippery that it would become more like a sheet of ice.

## **Religious Liberty Issues**

The impact of Prop One on religious individuals and institutions would be disastrous. Whenever religious rights

conflict with the new categories of rights enumerated in the amendment, they would be in serious trouble.

Kimberly Wolf Price is the chief strategy and diversity officer at Bond Schoeneck & King and is active in several legal organizations promoting the Diversity, Equity and Inclusion agenda. She contends that Paragraph B of the amendment “states directly that nothing in the amendment is intended to diminish existing protections” outlined in New York State law and the U.S. Constitution.

It says nothing of the sort. That is her very generous reading of Paragraph B. More important, it cannot be denied that the new category of rights mentioned in Paragraph A are on a collision course with the state’s interest in religious liberty, thus putting religious rights in jeopardy. It must also be said that the amendment does not say a word about religious exemptions, and that is telling.

We know from past experience where this will lead. In 1993, the Congress overwhelmingly passed the Religious Freedom Restoration Act (RFRA), a central piece of federal legislation that advanced religious liberty. Because there have been many instances, typically involving gender identity, where these two rights conflict, there was an attempt in 2018 by prominent senators to amend RFRA to prevent the law from being used to secure religious liberty when LGBTQ rights were extant.

In short, those who are supporting the LGBTQ agenda have made it plain that religious liberty should take a back

seat to their interests. Indeed, the Equality Act, a radical federal statute that is still being pursued, literally calls for an exemption from RFRA, thus negating religious liberty concerns altogether.

There is no shortage of organizations that take direct aim at religious exemptions, in general. They would definitely be mobilized if Prop One prevails. Prominent among them is the Rights, Faith, and Democracy Collaborative, the parent company of which is the Proteus Fund.

Funding this initiative are the Alki Fund of the Rockefeller Family Fund, the Arcus Foundation, the Evelyn and Walter Haas, Jr. Fund, the Gill Foundation, the Groundswell Fund, the Irving Harris Foundation, the Moriah Fund, the Overbrook Foundation, and many anonymous donors.

Offering intellectual support to the war on religious exemptions is the Law, Rights & Religion Project of Columbia Law School. It is no friend of religious exemptions, claiming they have created a “parade of horrors.”

There are several issues affecting religious liberty where Prop One advocates will be very busy. One of them is adoption.

Advocates of Prop One say this is a bogus issue, citing the 9-0 victory in the Supreme Court in 2021. In that

ruling it was decided that Catholic foster care agencies can reject gay couples from adopting children. The agency, the high court said, only sought “an accommodation that will allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs; it does not seek to impose those beliefs on anyone else.”

This ruling was significant, but so was the ruling in Massachusetts two years later. Mike and Kelly Burke were denied the right to be foster parents because they hold to Catholic views on sexual orientation and gender dysphoria. They said they would love any child, no matter what the sexual orientation or gender identity problems the child may have. But that was not enough to satisfy the militant secularists at the Department of Children and Families. This matter is still before the courts.

It’s a sure bet that if this issue were to arise in New York, it won’t be enough to satisfy government agents under Prop One. Religious liberty will be challenged, if not defeated.

Also last year, a Christian mother of five in Oregon wanted to adopt two children but was denied when she admitted that her religious beliefs would not allow her to take a minor to receive cross-hormone injections. This case is also tied up in the courts. Prop One would ensure a similar outcome.

Marriage, as understood by Christians, would also be impacted under Prop One.

For example, in 2021 the Religious Exemption Accountability Project sued the United States Department of Justice to block students from using federal funds (including scholarships and grants) towards religious schools that (a) believe marriage is the union of one man and one woman (b) believe sex is reserved for that union, and (c) believe that there are meaningful and enduring differences between the sexes. We can expect similar lawsuits if Prop One wins.

Catholic schools across the nation have been hit with a wave of lawsuits by homosexual teachers who claim to be married. Though eventually they do not succeed, Prop One would inspire more attacks on the right of Catholic schools to hold teachers accountable; they voluntarily sign a contract respecting the teachings of the Catholic Church.

Similarly, there have been several attempts to force Catholic doctors and hospitals to perform sex-reassignment surgery, in direct violation of Catholic teachings. This right not to cooperate is under attack by the Biden-Harris administration, which has directed the Department of Health and Human Services to go after Catholic individuals and institutions. Prop One would egg them on.

Consequently, Prop One would trigger an avalanche of lawsuits directed at Catholics and Catholic entities.

### ***Paragraph B***

This section of the amendment would make it easy to discriminate against white people. It says that the



discriminations banned in Paragraph A are permitted if the discrimination is done to “prevent or dismantle discrimination.” To put it differently, it could be okay to discriminate against white applicants for a job if by doing so it would enhance the chances of people of color landing the position. Some advocates have already said that black New Yorkers may not have to pay income taxes under this rule.

It could also be used to discriminate against Asians, even though they qualify as a “people of color.” It could be argued that because Asians are more successful in school and in the workplace than African Americans are, they can legitimately be discriminated against in getting into select high schools and in obtaining jobs in elite corporations.

Once the principal is established that not all forms of discrimination are objectionable, the door is open to widespread abuse. So-called reverse discrimination is no less invidious than any other expression of discrimination.

## **Conclusion**

Prop One is being promoted as an amendment that would advance the cause of civil rights. Wrong. This is a stealth campaign. It would seriously undermine parental rights, eviscerate religious liberty and legalize selective discrimination. Vote “No” on this ballot initiative.

## **NOTES**



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