“A New York Vision for Reproductive Rights”

Today I will present a vision for the future of reproductive rights in New York. But let me begin simply by thanking you – Kelli, your staff, board of directors, and all of your active members. You are the ones on the front lines of a struggle that is enormously important to the people of New York, and I want to thank you for all you are doing to protect the rights of women in our state.

Indeed, recent events have made it clear that your work is now more important than ever. For all people who care about reproductive rights – indeed, for all people who care about core values such as respect for the law; respect for scientifically-based medicine; and respect for the right to privacy – this is a pivotal moment in our history.

Over 30 years ago, the United States Supreme Court enshrined the basic right to privacy in *Roe v. Wade*. There was a solid Constitutional foundation for that decision. And, since then, the foundation has been time-tested. Precedent after precedent has continued to reaffirm a woman’s fundamental right to control her own reproductive health.

That is why, last week, we were dismayed to read a Supreme Court decision that undermined this fundamental right.

What concerns me most about the *Gonzales* decision is the precedent it sets going forward and the message it sends to our courts and to the people across this country:

That, despite established legal precedent to the contrary, there may be circumstances in which legislatures can now regulate abortion without protecting and guaranteeing a woman’s health;

And that rather than defer to the expert knowledge of scientists and doctors, it is now acceptable to defer to Congressional testimony that has more to do with politics than with science. Indeed, this continues an unfortunate trend – in both the current administration and the courts – of choosing dogma over fact.

A woman’s decision about where and when to bear a child is fundamentally a personal decision. And to the extent that it is a health care decision, it is one that should be made between a woman and her doctor. Like any health care decision, it must be informed by the morals and values of the individual, and the empirical truths of science and medicine.

The *Gonzales* decision was wrong because it took the opposite approach.

Rather than respect the morals and values of individual women, it imposed its own moral vision. Justice Ginsburg questioned this approach eloquently in her dissent, when she wrote that the obligation of the Court is not to “mandate our own moral code,” but to “define the liberty of all.” The paternalism of the Court’s majority was mistaken and based upon antiquated notions of the role of women in society.

And rather than respect scientific evidence, the *Gonzales* decision relied on Congressional findings that ignored expert opinions of doctors and scientists, replacing them with their own visions of scientific truth.

Congress's justification for the so-called "Partial-Birth Abortion Ban Act" in 2003 rested on what they claimed was a scientific consensus that the banned procedure was never medically necessary. Congress also claimed that there was no evidence the banned procedure could be safer in some instances for a woman than other procedures.

But both of these "findings" are based upon Congressional testimony that does not withstand scrutiny.

Indeed, in crafting this legislation, Congress relied on the testimony of just six doctors, none of whom had ever performed the procedure Congress sought to ban and some of whom did not even provide abortion services at all. These six doctors supposedly formed the "consensus" for the entire health care community.

Never mind the mountain of medical and scientific evidence mounted against the ban – evidence from a long list of physicians, who safely practice the procedure, along with distinguished professional medical associations such as the American College of Obstetricians and Gynecologists and the American Public Health Association. This evidence showed that pregnant women's health would be jeopardized by banning this procedure, which in some circumstances is medically preferable to its alternatives.

Never mind that the district courts that held the Act unconstitutional "heard more evidence" during their trials "than Congress heard over the span of eight years," as Justice Ginsberg points out.

The Supreme Court majority cast aside this body of overwhelming medical evidence in favor of the testimony of six selectively chosen witnesses.

In this circumstance, as is too often the case, scientific evidence lost, and the moral imposition of a few won.

So, even though the *Gonzales* decision does not represent the overturning of *Roe v. Wade*, it shows that the Supreme Court is willing to eviscerate solid legal precedent; to ignore scientific truth; and to impose its own moral order instead.

These trends represent dark clouds on the horizon for every person who cares about women's health. Not only is the future of *Roe v. Wade* threatened, but other cases that have protected a woman's right to choose and her right to privacy could be in jeopardy as well.

That is why it is incredibly important for states to take a close look at the protections provided by their own abortion statutes. At a time when the future of *Roe* is uncertain,

states must ensure that their protections of reproductive rights are as robust as they can possibly be.

That brings me back to my vision for the future of reproductive rights in New York. As Governor, I will ensure that even as the Supreme Court continues to dismantle the rights of women, we will take action to protect those rights here in our state.

To that end, I am announcing today that I will introduce the Reproductive Health and Privacy Protection Act. This legislation would enshrine the protections of *Roe v. Wade* into New York State law.

Most New Yorkers assume that this kind of legislation is superfluous – that a woman's right to choose is already safely and thoroughly ensconced in state law. But that is not the case.

The current statute has been around since 1970. It preceded *Roe v. Wade*, and at the time, was groundbreaking. But over the years, after *Roe* was issued and federal Constitutional law evolved, our law became outdated.

Consider the fact that abortion is criminalized under our state's homicide statutes – and abortion is the only medical procedure for which this is the case. Or, that once we read the statute, we realized that the "right" that New York law supposedly protects is defined in the negative. The only way to determine your right is to look at what is prohibited and work backwards to infer what is protected. Finally, even the most basic protections that most people assume already exist – such as a woman's right to have an abortion when her health is at stake – are not currently part of New York law.

Our bill would change state law to protect those rights – so, no matter what happens in Washington, women in New York will continue to have the right to make their own health care choices.

Let me describe exactly what our bill would do.

First, our bill would make an affirmative statement in New York law that enshrines a woman's fundamental right to control her own reproductive health.

Second, our bill would establish protections similar to those afforded by *Roe* – that a pregnant woman has the right to an abortion in two circumstances: first, prior to the viability of the fetus, and second, at any time when necessary to protect her life or her health.

Third, our bill would prohibit the state from discriminating against the exercise of reproductive rights in the provision of benefits, facilities, services or information – a provision that would ensure the continuation of public funding for reproductive health services.

Fourth, our bill would remove New York's reproductive choice statutes from its homicide laws, where they reside – therefore decriminalizing consensual abortions and leaving the regulation of this field to regulatory and professional disciplines.

And fifth, our bill would codify within New York law the existing federal right to contraception, and repeal an archaic and unconstitutional New York statute that criminalizes, among other things, providing non-prescription contraception to minors.

But passage of this legislation will be an uphill battle, because there are some in Albany who do not understand the urgency of what needs to be done. Therefore, starting today, we must work together to make every New Yorker aware of what's at stake and what New Yorkers could lose if these rights are not enshrined in New York law.

As the far-right majority on the Supreme Court undermines *Roe*, states will take one of two paths.

Many states will act to compromise a woman's right to choose. Since 1995 alone, state legislatures have passed 380 measures restricting abortion. The Center for Reproductive Rights found that in 30 states, women are at risk of losing their right to choose altogether.

Other states will take action to protect a woman's fundamental rights. This is the path that New York State has historically taken.

We are the birthplace of the women's suffrage movement and the movement to increase educational opportunities for women – and, yes, the birthplace of the reproductive rights movement, which began here with Margaret Sanger.

By enshrining these protections in New York law, we will continue that legacy. We will ensure that from now on, whatever happens in Washington, women in New York will have the right to make these most personal of health care decisions without fear of politicians or judges making those choices for them.

Thank you.