

OPINION

NY should solidify reproductive rights

Abortion statutes need updating to protect against potential post-Roe era

BY KATHLEEN RICE

Our state laws should be living, breathing reflections of our values as New Yorkers. When our laws no longer meet that requirement, we should not let them sit on the books as reminders of a bygone era. We should change them, or get rid of them altogether. After all, the most important influence on our system's search for justice is the legal code that guides it.

Outdated legislation can retain its power for a variety of reasons. It can be the result of underperforming legislatures, or it can be made irrelevant by dramatic changes in the way we live. As is the case with New York's 1970s state abortion laws, antiquated legislation can also stay on the books because superseding federal courts allow policymakers and law enforcers to mostly ignore it.

There are real problems with keeping outmoded laws on the books. The laws could send the wrong policy message and provide the wrong forum for regula-

tion in the modern era. The old legislation could also be used as a new tool by an overzealous enforcer with an agenda looking to creatively shirk the modern will of the people. Or, in the case of outdated state laws, the old rules could be made relevant if previously superseding and more modern federal authority is dissolved.

In the case of our mostly dormant state abortion laws, New York women face all three threats to the reproductive health rights we achieved more than 40 years ago.

Reproductive rights have been largely secure in our country since the Supreme Court's landmark 1973 ruling in *Roe v. Wade*. Three years earlier, New York became one of the first states to pass legislation legalizing abortion. Those state laws — weaker than *Roe*'s protections — remain on the books today, collecting considerable dust under the umbrella of the federal ruling.

While the *Roe* decision contin-



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ues to endure, the delicate balance of the Supreme Court shouldn't be relied upon to safeguard the rights of New York women. Our State Legislature must once again act pre-emptively to keep abortions safe and legal in New York should our now-arcane state abortion laws ever again represent controlling authority.

While New York was once a pioneer on the issue, the legislative victories of the 1970s were limited to clumsy amendments and exemptions to broader state law prohibiting homicide. The amendments that passed for progress four decades ago don't represent our values in 2012.

For instance, current state laws — which would become relevant once again in a post-*Roe* world — don't protect the rights of a woman whose health is in danger during the later stages of her pregnancy. They also fail to protect doctors who provide care to women during these dangerous situations. If these were ever again the controlling laws of the land they could seriously jeopardize the health of New York women, and they could present grave legal ambiguity to doctors doing their jobs. This must change.

The answer isn't to further amend New York's mostly gutted criminal law banning abortion. The answer is to codify the

rights and regulations of *Roe* in state public health law. Our reproductive health rights shouldn't be passive exemptions to criminal code. They should be affirmative confirmations of our belief in the importance of healthy women and families.

These commonsense updates to state law would also give New York women and doctors an added layer of protection from potentially overzealous prosecutors interested in creatively using the arcane laws to apply their personal ideologies. This risk of prosecutorial activism would be even higher should *Roe* be reversed.

By affirmatively solidifying our reproductive health rights in state law, we will uphold these important values. By removing outdated state laws, we can better provide clarity for our medical community, and we can guard against activist prosecutors. In tandem, these crucial steps will allow us to insulate our rights from the precarious balance of the Supreme Court and the blowing winds of national politics.



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