



**THE EQUAL PROTECTION PROJECT**  
**A Project of the Legal Insurrection Foundation**  
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The non-profit Equal Protection Project ([EqualProtect.org](http://EqualProtect.org)) is devoted to opposing racism and racial discrimination in all forms. EqualProtect.org believes there is no ‘good’ form of racism, and the remedy for racism never is more racism. EqualProtect.org has undertaken dozens of legal actions seeking to uphold the principle of equal protection of the laws.

EqualProtect.org opposes the proposed Equal Rights Amendment to the New York State Constitution because it would embed reverse-discrimination and tenets of Critical Race Theory and Diversity, Equity, and Inclusion into the NY State Constitution, damaging preexisting antidiscrimination efforts by creating a legal loophole based on the motivation for discrimination.

The NY Equal Rights Amendment currently scheduled to be on the ballot in November 2024 consists of two distinct provisions amending Section 11, Article 1 of the NY State Constitution ([Senate Bill S51002](#), capitalized text are changes from prior law, bold emphasis added):

11. A. No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, ETHNICITY, NATIONAL ORIGIN, AGE, DISABILITY, creed [or], religion, OR SEX, INCLUDING SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, PREGNANCY, PREGNANCY OUTCOMES, AND REPRODUCTIVE HEALTHCARE AND AUTONOMY, be subjected to any discrimination in [his or her] THEIR civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state, PURSUANT TO LAW.

**B. NOTHING IN THIS SECTION SHALL INVALIDATE OR PREVENT THE ADOPTION OF ANY LAW, REGULATION, PROGRAM, OR PRACTICE THAT IS DESIGNED TO PREVENT OR DISMANTLE DISCRIMINATION ON THE BASIS OF A CHARACTERISTIC LISTED IN THIS SECTION, NOR SHALL ANY**

CHARACTERISTIC LISTED IN THIS SECTION BE INTERPRETED TO INTERFERE WITH, LIMIT, OR DENY THE CIVIL RIGHTS OF ANY PERSON BASED UPON ANY OTHER CHARACTERISTIC IDENTIFIED IN THIS SECTION.

Paragraph A, which expands the protected categories, has raised concerns about the usurpation of parental rights, and [opposition is organizing](#) on that basis. EPP shares those concerns but is sounding the alarm as to the troubling language in Paragraph B, which upends current NY constitutional and legislative protections.

It is alarming that Paragraph B has not received any public attention for its possibly disastrous impact on the cause of nondiscrimination, as already embodied in the NY State Constitution (before the amendment) and numerous state and local laws. E.g. [NY Human Rights Law](#) and [NYC Human Rights Law](#).

Under Paragraph B, discrimination becomes a NY State constitutional right provided the discrimination is “designed to prevent or dismantle discrimination.” This embeds what is commonly referred to as “reverse discrimination” into the NY State Constitution. Discrimination against certain groups in order to protect other groups would be exempt from the sweeping protections of the current constitution and Paragraph A of the Amendment. Arguably, this would mean that the NY and NYC Human Rights Laws would be preempted merely by claiming the motivation was to “dismantle discrimination.”

The exemption under Paragraph B would severely damage efforts at fighting discrimination. It would create a loophole allowing persons engaging in objectively discriminatory programs and practices to claim that the motivation was to “dismantle discrimination.” This is the language of Critical Race Theory and Diversity, Equity and Inclusion, and would create a DEI exception to the anti-discrimination laws in NY State. Such ideologies have no place in the NY Constitution and are contrary to our tradition of protecting individuals from invidious discrimination based on immutable characteristics.

While New Yorkers still would have federal constitutional protections, the statutory and administrative protections specific to New York may be unavailable depending on which group is the target of discrimination and the motive of the person or entity discriminating. This may put the New York Constitution in conflict with existing New York laws and regulations and with federal equal protection law, which does not permit racial discrimination in order to “prevent or dismantle discrimination.” See, e.g. *Students for Fair Admissions v. Harvard* (U.S. Supreme Court 2023).

At best, the provisions of paragraph B of the proposed constitutional amendment have not been well thought out and were rushed through the Senate and Assembly. Just as likely, paragraph B was a very well thought out subterfuge to enshrine CRT/DEI into the state constitution. Either way, this constitutional amendment may cause lasting harm to the effort at protecting New Yorkers from racial and other forms of discrimination.

Accordingly, the Equal Protection Project opposes this ballot initiative.