



February 5, 2019

Keather Papa
FOIL Counsel
Acting Records Access Officer
Executive Chamber
State Capitol
Albany, NY 12224

RE: FOIL Request for: Records Regarding Communications Concerning Reproductive Health Act Between the Governor and/or Other Executive Chamber Employees, the New York Department of Health, the New York Legislature and Reproductive Health Act Advocates

Dear Ms. Papa:

This letter is a request ("Request") in accordance with the New York Freedom of Information Law ("FOIL"), N.Y. Pub. Off. Law §§ 84-90.

The Request is made by the American Center for Law and Justice (ACLJ)¹ on behalf of itself and over 4,000 of its members residing in New York who object to, and demand accountability for, New York's recent passage of the Reproductive Health Act, which will allow unrestricted abortion up through the end of the third trimester.

To summarize, this Request seeks (1) records regarding communications concerning the Reproductive Health Act had between Governor Andrew Cuomo, Lt. Governor Kathy Hochul (or their staff), and the New York state legislature or Reproductive Health Act advocates; and (2) records regarding communications concerning the Reproductive Health Act had between the New York Department of Health and Governor Cuomo or Lt. Governor Kathy Hochul (or their staff), the New York state legislature, or Reproductive Health Act advocates. This Request also seeks (3) any other records of which the Executive Chamber or Department of Health are custodians which concern the Reproductive Health Act.

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity concerning abortion and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

Background

On January 22, 2019, New York Governor Andrew Cuomo signed into law the Reproductive Health Act (RHA), which had been passed by the New York legislature (S. 240; A. 21).

According to Planned Parenthood of New York City:

Planned Parenthood of New York City applauds advocates and the New York State Legislature who today moved our state forward with milestone legislation securing sexual and reproductive health care and rights, including passing a groundbreaking bill updating New York's abortion law for the first time since the law was originally passed in 1970.²

And according to Laura McQuade, President and CEO, Planned Parenthood of New York City:

Planned Parenthood of New York City celebrates today's historic passage of three critical pieces of legislation that secure and expand New Yorkers' access to comprehensive sexual and reproductive health care and protect their right to make their own personal decisions about their health, futures, and lives. With passage of the Reproductive Health Act, Comprehensive Contraceptive Coverage Act, and the Boss Bill, New York can finally grow to be a model of what sexual and reproductive health care should be, especially with mounting attacks on our health and rights from Washington. We thank the Senate and Assembly leadership, Senate Majority Leader Andrea Stewart-Cousins and Assembly Speaker Carl E. Heastie, and the sponsors Assemblymember Deborah Glick and Senator Liz Krueger for their tireless advocacy on these issues.³

According to its website, support for the RHA was identified as one of PPNYC's Legislative and Policy Agenda items.⁴

Passage of the RHA was also praised by the NYCLU: "For the past decade the NYCLU has been asking for the legislature to pass the Reproductive Health Act, which strengthens New York's flawed abortion law. Today, they finally did it."⁵

According to the NIRH Action Fund, "We passed the Reproductive Health Act!"⁶

² Carrie Mumah, *New York Passes Historic Abortion Law on Roe v. Wade Anniversary*, PLANNED PARENTHOOD OF N.Y.C. (Jan. 23, 2019), <https://www.plannedparenthood.org/planned-parenthood-new-york-city/newsroom/new-york-passes-historic-abortion-law-on-roe-v-wade-anniversary>.

³ *Id.*

⁴ *PPNYC's Legislative and Policy Agenda*, PLANNED PARENTHOOD OF N.Y.C., <https://www.plannedparenthood.org/planned-parenthood-new-york-city/our-issues/ppnycs-legislative-and-policy-agenda#Abortion%20Access> (last visited Feb. 4, 2019).

⁵ Donna Lieberman, *Huge Wins for Reproductive Justice, Voting Rights and Trans New Yorkers*, NYCLU (Jan. 22, 2019), <https://www.nyclu.org/en/news/huge-wins-reproductive-justice-voting-rights-and-trans-new-yorkers>.

⁶ NIRH ACTION FUND, <https://www.nirhaction.org> (last visited Feb. 4, 2019).

Those present at the table during Governor Cuomo’s signing ceremony included Lt. Governor Kathy Hochul, attorney Sarah Weddington, and representatives from RHAvotes, the National Institute for Reproductive Health (NIRH), and the NYCLU.⁷

According to a piece posted by Politico.com, while Governor Cuomo “has long supported the RHA, and in 2013 included it as one plank of a 10-point Women’s Equality agenda. It stalled in the Senate.”⁸ Governor Cuomo began pressuring New York Senate Republicans to pass the RHA and his increase in pressure came amid “rising pressure from progressive groups.”⁹ “‘We’re on the precipice of overturning *Roe v. Wade*,’ Cuomo said at a community center on Manhattan’s Lower East Side, flanked by abortion rights groups.”¹⁰

According to another source: “Soon after the midterms in November, R.H.A. advocates—representatives from the National Institute for Reproductive Health, the N.Y.C.L.U., and other organizations—met with the bill’s sponsors, the state assemblywoman Deborah Glick and the state senator Liz Krueger. The R.H.A. was nearly certain to pass, and yet the situation was delicate.”¹¹ And, on January 7, 2019, while the bills were pending,

Cuomo said he wanted the reproductive rights protections approved within the first 30 days of the new year and threatened to not approve the state’s budget in April if the bills aren’t passed by then. Last week, state Democrats reintroduced the bills and vowed pass them by Jan. 22 — the anniversary of *Roe v. Wade*.¹²

“[Hillary] Clinton, appearing with the governor at a rally at Barnard College in Manhattan, said the Senate and Assembly, which are now both controlled by Democrats, should waste no time in approving the legislative packages.”¹³ “Gov. Andrew Cuomo and Hillary Clinton on Monday called on the New York State Legislature to quickly pass long-stalled bills that would bolster reproductive rights — and the governor said he would push for a constitutional amendment that would protect a woman’s right to choose.”¹⁴

Abortion advocate NARAL Pro Choice America also praised passage of the RHA:

“We celebrate today’s victory knowing that it would never have been possible without the tireless work of tenacious volunteers and countless activists, as well as the persistence of leaders in the state government,” said NARAL New York Action Council Director Hannah Smolar. “We applaud Governor Cuomo, Senate Majority

⁷ RHA VOTE.COM, <https://www.rhavote.com> (last visited Feb. 4, 2019).

⁸ Jimmy Vielkind, *Cuomo Turns to Abortion Rights Ahead of Trump’s Court Pick*, POLITICO NEW YORK (July 9, 2018), <https://www.politico.com/states/new-york/albany/story/2018/07/09/cuomo-turns-to-abortion-rights-ahead-of-trumps-court-pick-501611>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Jia Tolentino, *How Abortion Law in New York Will Change, and How it Won’t*, NEW YORKER (Jan. 19, 2019), <https://www.newyorker.com/news/news-desk/how-abortion-law-in-new-york-will-change-and-how-it-wont>.

¹² Ivan Pereira, *Clinton, Cuomo Call on Legislature to Pass Reproductive Rights Bills*, AM NEW YORK (Jan. 7, 2019), <https://www.amny.com/news/clinton-cuomo-abortion-rights-1.25657795>.

¹³ *Id.*

¹⁴ *Id.*

Leader Andrea Stewart-Cousins, and Speaker Carl Heastie for making reproductive freedom a legislative priority. Because our volunteers and many others drove electoral wins in the NY State Senate in 2018, we are now seeing the power of coordinated, progressive activism. I am inspired by years of dedication from so many people fighting to protect and expand reproductive freedom, and hope that other states follow the example we've put forward."

Pro-choice electoral gains in the 2018 election were pivotal in making the passage of the RHA possible, including the defeat of State Senator Jeff Klein, who led the now-defunct Independent Democratic Conference (OIDC) that caucused with Republicans and prevented Democratic legislation from passing in the State Senate. NARAL proudly endorsed and supported Alessandra Biaggi for NY State Senate in her successful run to defeat Klein and secure a pro-choice majority in the NY Senate.¹⁵

REQUESTS

For purposes of this Request, all terms used herein have the meaning given pursuant to N.Y. Pub. Off. Law § 87. Specifically:

- The term "'State legislature' means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof."¹⁶
- The Term "'Agency' means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature."¹⁷
- The term, "'Record' means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes."¹⁸

For purposes of each request described herein, the record requested includes, but is not limited to, any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, state-operated electronic mail or message accounts, non-state-operated electronic mail or message accounts, personal electronic mail or message accounts, agency servers, or non-agency servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency

¹⁵ *New York Once Again Becomes a Leader in Reproductive Rights, Set the Example for Other States to Follow*, NARAL PRO-CHOICE AMERICA (Jan. 22, 2019), <https://www.prochoiceamerica.org/2019/01/22/naral-applauds-ny-reproductive-health-act/>.

¹⁶ N.Y. PUB. OFF. LAW § 86(2) (2017).

¹⁷ *Id.* at § 86(3).

¹⁸ *Id.* at § 86(4).

account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 1, 2017, through the date of receipt of this Request.

Pursuant to the New York Freedom of Information Law, N.Y. Pub. Off. Law § 84 *et seq.*, the ACLJ requests an opportunity to inspect or obtain copies of the following records:

1. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Governor Andrew Cuomo or his staff, Lt. Governor Kathy Hochul or her staff, or any other Executive Chamber appointee, staff, employee or agent, that are or concern in any way communications with any person or organization advocating for the Reproductive Health Act signed into law by Governor Cuomo on January 22, 2019, its passage, or the language of any provision contained in the Act at any stage of its development in the state legislature.
2. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any Department of Health appointee, staff, employee or agent, that are or concern in any way communications with any person or organization advocating for the Reproductive Health Act signed into law by Governor Cuomo on January 22, 2019, its passage, or the language of any provision contained in the Act at any stage of its development in the state legislature.
3. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Governor Andrew Cuomo or his staff, Lt. Governor Kathy Hochul or her staff, or any other Executive Chamber appointee, staff, employee or agent, that are from or regard any person at or on behalf of any Planned Parenthood entity; the National Institute for Reproductive Freedom (NIRF); NARAL Pro-Choice America; National Organization for Women New York (NOW); or, the New York Civil Liberties Union (NYCLU) – and which relate to the Reproductive Health Act or its passage in any way.
4. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Governor Andrew Cuomo or his staff, Lt. Governor Kathy Hochul or her staff, or any other Executive Chamber appointee, staff, employee or agent, that concern or regard in any way the impact that the Reproductive Health Act signed into law by Governor Cuomo on January 22, 2019, could, would, or should have on the health, safety or wellbeing of any woman.
5. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any Department of Health appointee, staff, employee or agent, that concern or regard in any way the impact that the Reproductive Health Act signed into law by Governor Cuomo on January 22, 2019, could, would, or should have on the health, safety or wellbeing of any woman.
6. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any New York agency that concern or in any way discuss the Reproductive Health Act signed into law by Governor Cuomo on January 22, 2019, which are not otherwise described in the requests set forth herein.

Conclusion

If this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by the FOIL, the custodian agency support all denials by reference to specific FOIL exemptions and provide any statutorily or judicially required explanatory information.

As the New York legislature has recognized:

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.¹⁹

Accordingly, and with the legislatively pronounced spirit of the FOIL in mind, the ACLJ requests an opportunity to inspect or obtain copies of the public records described herein.

If there are any fees for searching or copying these records, please inform the ACLJ if the cost will exceed \$500. However, the ACLJ respectfully requests a waiver of all fees because the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the process leading to the passage of the Reproductive Health Act on January 22, 2019, as well as the organizations influencing its language and passage. The passage of the Reproductive Health Act is unquestionably the subject of significant media reporting nationwide. The ACLJ will disseminate the records requested to the public via multiple media platforms and, as such, the records are requested for news gathering purposes. This information is not being sought for commercial purposes.

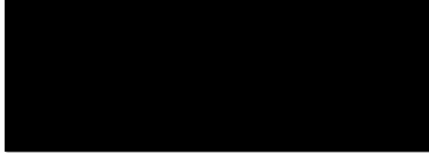
As you know, the New York Freedom of Information Law requires a response time of five (5) business days, as set forth in § 87(3)(a). If access to the records requested herein by the ACLJ will take longer than the five (5) business days, pursuant to § 87(3)(a), please contact the undersigned to advise when copies or the opportunity to inspect will be made available.

If you deny any or all of this request, please cite each specific exemption upon which you base the refusal to release the information in whole or in part, and notify me of any specific appeal procedures available by law.

¹⁹ *Id.* at § 84.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Abigail Southerland, Senior Litigation Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jordan Sekulow in cursive script.

Jordan Sekulow
Executive Director

Handwritten signature of Abigail Southerland in cursive script.

Abigail Southerland
Senior Litigation Counsel

Handwritten signature of Benjamin P. Sisney in cursive script.

Benjamin P. Sisney
Senior Litigation Counsel