NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on a proposal to amend the Code of Judicial Conduct, the Rules of Professional Conduct, and the Statement of Clients Rights, to adopt language contained in the Equal Rights Amendment

Date: November 17, 2025

The Administrative Board of the Courts is seeking public comment on a proposal to amend Section 100.3(B) of the Code of Judicial Conduct, Rule 8.4(g) of the Rules of Professional Conduct, and Section 1210.1(10) of the Statement of Clients Rights, to conform those provisions to the language contained in the Equal Rights Amendment (ERA) that was adopted by the voters in 2025.

In particular, this proposal, which initially was recommended by the Westchester County Bar Association ("WCBA") would make the following changes:

- amend Section 100.3(B) of the Code of Judicial Conduct by: (1) adding to paragraph 4 references to ethnicity, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy; and (2) adding to paragraph 5 those same references, as well as references to gender identity and gender expression;

- amend Rule 8.4(g) of the Rules of Professional Conduct by adding references to pregnancy outcomes, and reproductive healthcare and autonomy; and

- amend Section 1210.1(10) of the Statement of Client's Rights by adding references to ethnicity, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy.

WCBA notes that for many years the Rules of Professional Conduct, Code of Judicial Conduct and Statement of Client Rights have banned forms of discrimination based on enumerated protected classes, but the ERA added protected classes that are not yet covered by those provisions. As a result, WCBA recommends that these rules now be amended to incorporate the new protected classes that the ERA has now added to the New York State

Constitution.

The proposed amendments are attached as Exhibit A, and the WCBA letter and accompanying report are attached as Exhibit B.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than December 29, 2025.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

Proposed Amendments

Paragraphs 4 and 5 of subdivision (B) of Section 100.3 of the Code of Judicial Conduct (22 NYCRR § 100.3(B)) are hereby amended to read as follows (additions are underscored, deletions are ~~stricken~~):

§ 100.3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

* * * * *

(B) Adjudicative Responsibilities.

* * * * *

(4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, ethnicity, sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, ethnicity, sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, ethnicity, sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding.

* * * * *

Paragraph (g) of Rule 8.4 of the Rules of Professional Conduct (22 NYCRR Part 1200) is hereby amended to read as follows (additions are underscored, deletions are ~~stricken~~):

Rule 8.4. Misconduct

A lawyer or law firm shall not:

* * * * *

(g) engage in conduct in the practice of law that the lawyer or law firm knows or reasonably should know constitutes:

(1) unlawful discrimination, or

(2) harassment, whether or not unlawful, on the basis of one or more of the following protected categories: race, color, sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, religion, national origin, ethnicity, disability, age, ~~sexual orientation, gender identity, gender expression,~~ marital status, status as a member of the military, or status as a military veteran.

(3) "Harassment" for purposes of this Rule, means physical contact, verbal conduct, and/or nonverbal conduct such as gestures or facial expressions that is:
a. directed at an individual or specific individuals; and
b. derogatory or demeaning.

Conduct that a reasonable person would consider as petty slights or trivial inconveniences does not rise to the level of harassment under this Rule.

* * * * *

Subdivision 10 of Section 1210.1 of the Statement of Clients Rights (22 NYCRR Part 1210) is hereby amended to read as follows (additions are underscored, deletions are ~~stricken~~):

§ 1210.1. Posting

Every attorney with an office located in the State of New York shall insure that there is posted in that office, in a manner visible to clients of the attorney, a statement of client's rights in the form set forth below. Attorneys in offices that provide legal services without fee may delete from the statement those provisions dealing with fees. The statement shall contain the following:

STATEMENT OF CLIENTS RIGHTS

* * * * *

10. You may not be refused representation on the basis of race, creed, color, ethnicity, religion, sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, age, national origin, or disability.

EXHIBIT B

Hon. Rowan D. Wilson
Chief Judge, State of New York
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Hon. Joseph A. Zayas
Chief Administrative Judge
New York State Unified Court System
25 Beaver Street
New York, New York 10004

Re: **Proposed Amendments to Rules 8.4(g)(2), 100.3(B)(4)-(5) and 1210.1**
Conforming to the Equal Rights Amendment to the New York Constitution

July 16, 2025

Dear Chief Judge Wilson and Chief Administrative Judge Zayas:

We write on behalf of the Westchester County Bar Association to propose amendments to New York's attorney and judicial conduct rules so they conform to the Equal Rights Amendment ("ERA") to the New York State Constitution.

As you know, the ERA greatly expanded the enumerated protected classes under the Civil Rights Clause (*see* NY Const, art I, § 11[a]). While anti-discrimination rules already included some of the classifications that the ERA newly accorded state constitutional protection, the ERA added other classes and subclasses – ethnicity, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy – yet to receive full inclusion in New York's attorney and judicial ethics regimes.

Historically the Judiciary has integrated legislative anti-discrimination reforms into New York's ethics rules. With the ERA, that time has come again, bolstered by an overwhelming vote of the people, at a moment in national jurisprudence when it is all the more important for Bench and Bar to articulate, clearly and decisively, what equal justice under law must mean.

Attached please find the Report of our Committee on Ethics and Professionalism, endorsed by our Board of Directors, which we also have taken the liberty to forward to the New York State Bar Association Committee on Standards of Atttorney Conduct. We commend these materials for what we hope will be prompt and decisive action by the Judiciary.

Thank you very much for your consideration and leadership.

Brian Cohen

Brian Cohen, Esq.
President

David Evan Markus, Esq.
Executive Committee & Ethics Chair

EQUAL RIGHTS, EQUAL ETHICS:
ETHICS REFORM FOR NEW YORK'S E.R.A. ERA

Report of the Westchester County Bar Association

to the

Chief Judge of the State of New York
Chief Administrative Judge of the Courts
Administrative Board of the Courts

proposing amendments to
New York State's Attorney and Judicial Ethics Rules
in light of the
Equal Rights Amendment to the New York State Constitution

June 2025

Westchester County Bar Association
Committee on Ethics and Professionalism
Task Force on Ethics and the ERA

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Referee, N.Y. Supreme Court, 9th J.D.

Ariel S. Zitrin, Esq.
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EXECUTIVE SUMMARY

On November 5, 2024, New York voters approved Proposition 1, popularly known as the Equal Rights Amendment ("ERA") to the New York Constitution, by a 14-point margin.[1] Among the most expansive constitutional civil rights provisions among the 50 states,[2] the ERA extended the New York Constitution's civil rights guarantees against discrimination on the basis of "ethnicity, national origin, age, disability … [and] sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy."[3]

Time will test the ERA's reach and effect. One implication, however, already is clear. With the ERA, the New York Constitution has outpaced the state's attorney and judicial ethics rules on key measures of equality and inclusion – particularly those for women and LGBT New Yorkers. The Rules of Professional Conduct,[4] Rules Governing Judicial Conduct[5] and Statement of Client Rights[6] long have banned forms of discrimination based on enumerated protected classes. The ERA added protected classes that the Rules of Professional Conduct, Rules Governing Judicial Conduct and Statement of Client Rights do not yet reflect. Ethics rules governing Bench and Bar now must catch up to New York's governing charter and to the strong majority of New York's voters who ratified the ERA.

For many reasons – legal and institutional, as well as educational – we believe it is important not only that the Bench and Bar speedily align New York's ethics rules with the Constitution's expansion of protected classes, but also that they make a publicly visible point of doing so. ERA-conforming amendments are necessary to redress unintended exclusion and potential confusion. Accordingly, this Report proposes amendments to Rules 8.4(g)(2) (attorney

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[1] *See* N.Y. State Bd. of Elections, "2024 General Election Results," *available at* https://elections.ny.gov/certified-november-5-2024-general-election-results-approved-12092024 (accessed May 23, 2025).

[2] *See* Markus, D. "Attorney Ethics and New York's Equal Rights Amendment: What Must Change?" *Ethics Corner*. 12 Westchester Lawyer 1:12 (Jan. 2025).

[3] N.Y. Const., art. I, § 11(a).

[4] *See generally* 22 N.Y.C.R.R. [Joint Rules of the Appellate Division] pt. 1200.

[5] *See generally* 22 N.Y.C.R.R. [Rules of the Chief Administrative Judge] §§ 100.0, *et seq.*

[6] *See* 22 N.Y.C.R.R. [Joint Rules of the Appellate Division] § 1210.1.

discrimination), 100.3(B)(4)-(5) (judicial adjudicative responsibilities) and 1210.1 (Statement of Client's Rights), to align each with the ERA's expanded list of protected classes. Because each rule already includes numerous protected classes, the needed amendments vary slightly for each. We respectfully ask the Chief Judge, Chief Administrative Judge and Administrative Board of the Courts to invoke their regulatory powers[7] to promulgate these conforming amendments as quickly as possible, as a matter of constitutional law and settled New York policy.

As importantly, conforming amendments offer a window of opportunity to uplift and educate the public about equal justice generally and the ERA's changes particularly. To that end, we respectfully ask the Judiciary to make strategic use of its institutional powers to make the conforming ethics amendments in a manner that raises their profile, organizes public attention, and inspires the Bar and allied justice stakeholders to amplify the message. After all, the ultimate vindications of equal justice initiatives do not lie in legal enforcement mechanisms, important as they can be to remedy violations and do justice in individual cases. Rather, the true "success" of equal justice lies in embedding those values so deeply in the fabric of society, and so inspiring New Yorkers to fulfill those values, that the need for enforcement becomes rare – and we might dare hope, ultimately disappears. Appropriately toned publicity for ERA-conforming ethics amendments aligns with this purpose.

We recognize that the ERA is likely to be the subject of common law development. Even so, the reforms we propose need not and should not wait. Newly protected classes have waited long enough, and their constitutional protections are the law of this land. However the common law might construe the ERA in the years ahead, mapping New York's attorney and judicial ethics rules to the ERA's requirements would not prejudge or prejudice any legal issue that might arise in the fullness of time. Ultimately such questions, in our view, concern means – not ends.

We also recognize that the U.S. Supreme Court has construed the First Amendment to limit state civil rights laws against encroachment on federal speech and religious liberty rights in certain employment contexts.[8] Even if courts similarly might limit the ERA's effects on judicial and attorney ethics – a prospect we believe unlikely based on current law – we do not perceive

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[7] *See e.g.* N.Y. Const., art. VI, § 20(b); Judiciary Law §§ 90 (attorneys), 212(2)(b) (judges).

[8] *See e.g. 303 Creative, LLC v. Elenis,* 600 U.S. 570 (2023); *Masterpiece Cakeshop, Inc. v. Colorado Civ. Rights Comm.*, 584 U.S. 617 (2018).

that this possibility should inhibit or delay New York from conforming its attorney and judicial ethics rules to the ERA's plain language.

Since the republic's early years, New York has been a national leader in advancing the administration of justice. The people of New York, in their wisdom, have constitutionalized new equal rights protections. We ask our Judiciary's leaders to pick up where the people left off and conform New York's ethics rules accordingly.

We thank Chief Judge Wilson, Chief Administrative Judge Zayas and the Presiding Justices of the Appellate Divisions for their continued leadership of Bench and Bar toward the truly equal and inclusive society under law that is the ERA's purpose and goal. We stand ready to partner with the Judiciary in fulfilling the ERA's vision for an ever more equal and ethical New York.

RECUSAL NOTE

Hon. David Fuller (Justice Court, Village of Tuckahoe) and Marvin Ray Raskin, Esq., recused from participation in this matter.

ACKNOWLEDGMENTS

This Report arises from the Westchester County Bar Association ("WCBA") Committee on Ethics and Professionalism's Task Force on Ethics and the ERA, which was convened after the ERA became law. The WCBA expresses its appreciation to the Task Force and wider Committee for its vision and hard work bringing forward this Report and its Recommendations.

WCBA's focus on the ERA began soon after the 2023 Legislature gave second passage, and sharpened in 2024 as challenges to the then-forthcoming referendum made their way through the courts. Once the referendum was firmly on the 2024 ballot, WCBA held a three-part CLE series entitled "Equal Rights / Equal Justice 2024" examining the then-proposed ERA as to disability law, LGBTQ+ law, and the law of gender and reproduction. This series also suggested potential impacts on attorney and judicial ethics. While this Report does not represent the views of the CLE presenters, the WCBA thanks all of them for their expertise and perspectives in helping shape the civic space from which the ERA and ultimately this Report emerged:

Katharine Bodde, Esq.
Co-Director of Policy
New York Civil Liberties Union

Natanya Briendel, Esq.
Supervising Attorney
Pace Women's Justice Center

Alex Elegudin, Esq.
Chief Accessibility Officer (ret.)
Metropolitan Transportation Authority

Travis England, Esq.
Deputy Chief, Civil Rights Bureau
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Jeremiah Frei-Pearson, Esq.
Partner, Finkelstein Blankinship
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Frei-Pearson & Garber

David Evan Markus, Esq.
Referee, N.Y. Supreme Court, 9th J.D. &
Chair, Cmte. on Ethics & Professionalism

WCBA also extends its gratitude to the CLE series co-sponsors – the Hudson Valley Hispanic Bar Association, LGBT Bar Association of Greater New York, Westchester Black Bar Association, Westchester Women's Bar Association, and Pace Women's Justice Center – for their partnership in these programs and in our shared equal-justice mission.

EQUAL RIGHTS, EQUAL ETHICS:
ETHICS REFORM FOR NEW YORK'S E.R.A. ERA

Based on the Equal Rights Amendment to the New York Constitution that became effective on January 1, 2025, this Report proposes conforming amendments to Rule 100.3(B)(4)-(5) of the Rules Governing Judicial Conduct, Rule 8.4(g)(2) of the Rules of Professional Conduct, and Rule 1210.1 of the Joint Rules of the Appellate Division setting forth New York's Statement of Client's Rights.

The ERA opens a gap between New York's constitutional anti-discrimination guarantees and several New York judicial and attorney ethics rules that state non-discrimination mandates now less inclusive than the ERA. Conforming changes are necessary to close these gaps, avoid potential legal and policy confusion, and vindicate the ERA's purpose to rid New York of invidious discrimination. The Judiciary's elemental role to ensure equal justice under law requires that Bench and Bar conform to the ERA promptly and completely.

This Report begins with a nutshell history of the ERA, followed by analysis of the three sets of rules changes we recommend, and concludes with brief review of how applicable federal law potentially intersects with the ERA-conforming amendments we propose.

I. Prelude to the ERA: A First Century's Nutshell History

What became New York's ERA arose from fully 100 years of pre-history.

On December 13, 1923, U.S. Representative Daniel Read Anthony, Jr., of Kansas – nephew of New York suffragist Susan B. Anthony – introduced in Congress the first federal equal rights measure: "Men an[d] women shall have equal rights throughout the United States and every place subject to its jurisdiction."[9] Despite the measure's reintroduction in nearly every congressional term for 50 years, only in 1972 did Congress pass a constitutional ban on sex discrimination and submit it to the states for ratification.[10] The measure failed to obtain timely assent by the states, and modern efforts to revive it failed.[11]

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[9] *See* U.S. House J. Res. 75, 68th Cong., 1st Sess. (1923).

[10] *See* 86 Stat. 1523-1524, 92nd Cong., 2d Sess. (1972).

[11] By the extended ratification deadline of 1982, only 35 of the necessary 38 states had ratified. After Virginia became the 38th state to ratify in 2020, Virginia joined Illinois and

The national movement to constitutionalize gender equality reached New York, with an equal lack of success. In the early 1970s, the Legislature gave final passage to a proposed amendment to the New York Constitution in alignment with the proposed federal equivalent. By then, New York's Human Rights Law of 1951 ("HRL")[12] already set a national benchmark for statutory anti-discrimination in public accommodations, employment, contracts and other economic and government contexts.[13] The Legislature, however, apparently was more eager than voters to amend the New York Constitution. In 1975, voters turned down the Legislature's proposed equal rights amendment to the New York Constitution by a 14-point margin, a result that pundits attributed to an insufficiently supportive female vote.[14]

Prominent efforts to reboot an equal rights measure for New York began in 2017, when Governor Andrew Cuomo called for a constitutional amendment that would, in his view, protect abortion rights against potential federal incursion.[15] Governor Cuomo repeated this call in his 2019 State of the State Address.[16] Days later, both Houses of the Legislature passed the New York State Reproductive Health Act confirming women's reproductive health options in statute.[17] Resting on this statutory reform, the Legislature took no action on Governor Cuomo's call to constitutionalize reproductive rights.

By then, the civil rights provisions of the New York Constitution had laid unchanged for 80 years. Other than a measure making the New York Constitution gender neutral in 2001, the New York Constitution's equal protection and civil rights language remained as they were in

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Nevada in petitioning the Archivist of the United States to formally publish the amendment as ratified. The Archivist declined, and litigation to compel failed. *See Illinois v. Ferriero*, 60 F.4th 704 (D.C. Cir. 2023). While American Bar Association nevertheless resolved that the federal measure had become law, *see* Amer. Bar Assn. Res. 601-2024, no court has yet agreed.

[12] *See generally* Executive Law art. 15.

[13] *See* Executive Law § 296.

[14] *See* L. Greenhouse, "Defeat of Equal Rights Bills Traced to Women's Votes." N.Y. Times (Nov. 6, 1975), at A1.

[15] *See* L. Brody, "New York Gov. Cuomo Wants to Amend State Constitution to Protect Abortion Rights," The Wall Street Journal (Jan. 30, 2017).

[16] *See* J. Campbell, "Andrew Cuomo Wants to Make Abortion a Constitutional Right in New York," Rochester Democrat & Chronicle (Jan. 7, 2019).

[17] *See generally* Public Health Law art. 25-A.

1938 when the New York Constitution took its current form. At that time, voters established the Constitution's dual regime guaranteeing "equal protection of the laws" alongside a separate Civil Rights Clause banning public or private discrimination in civil rights "because of race, color, creed or religion."[18]

While courts consistently deemed New York's Equal Protection Clause to be coextensive with its federal equivalent,[19] the Civil Rights Clause has accorded greater protections for its enumerated protected classes – albeit with a catch. Only against government is the Civil Rights Clause directly enforceable: enabling legislation is necessary to authorize enforcement actions against non-public defendants.[20] Generally speaking, the Human Rights Law ("HRL") supplies this authority for actions and proceedings to enforce the Constitution's anti-discrimination protections in contexts of private employment, public accommodations, housing and contracts.[21]

Over the decades, as New York lawmakers determined to expand civil rights protections to more enumerated classes, the primary method was statutory rather than constitutional. The HRL evolved to include then-nonconstitutional protected classes including age, gender, disability and family status.[22] In recent decades, the Sexual Orientation Non-Discrimination Act ("SONDA"),[23] New York State Reproductive Health Act,[24] and Gender Expression Non-Discrimination Act ("GENDA")[25] continued New York's expansion of civil rights, generally centering on the HRL. Except as to the failed gender-related constitutional proposal of the 1970s, however, the Legislature did not meaningfully advance measures to constitutionalize any of these protections.

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[18] N.Y. Const. (1938), art. I, former § 11; *compare* U.S. Const., amend. XIV, § 1.

[19] *See People v. Kern*, 75 N.Y.2d 638, 651 (1990); *Dorsey v Stuyvesant Town Corp.*, 299 N.Y. 512, 531 (1949).

[20] *See e.g. Brown v. State of New York*, 89 N.Y.2d 172, 190 (1996); *Kern*, 75 N.Y.2d at 651; *Dorsey*, 299 N.Y. at 531.

[21] *See e.g.* Executive Law §§ 296-297; *see also* Civil Rights Law § 40-c.

[22] *See id.*

[23] *See* L. 2002, ch. 2, §§ 5-13.

[24] *See* L. 2019, ch. 1.

[25] *See* L. 2019, ch. 8.

Apparent legislative satisfaction with New York's constitutional status quo ended in 2022. On June 24, 2022, the U.S. Supreme Court overruled federal constitutional protections of abortion rights.[26] That same day, Governor Kathy Hochul, who succeeded to office 10 months earlier, publicly announced that New York would remain what she called a "safe harbor" state,[27] and she called an extraordinary session of the Legislature to make it so.

One week later, on July 1, 2022, the New York Senate voted 49-14 to give first passage to a constitutional amendment adding "pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy" as examples of "sex" discrimination under the Civil Rights Clause.[28] The Assembly followed suit that same day, by vote of 98-43.[29] Second passage followed on January 24, 2023: the Senate by vote of 43-20,[30] and the Assembly by vote of 97-46.[31]

Though passed under the banner of resurrecting *Roe* under New York law, the proposal was far broader: it added to the Civil Rights Clause new protected classes of "ethnicity," "national origin, "age," "disability," and "sex including sexual orientation, gender identity [and] gender expression." Of these, the Legislature's memorandum in support memorialized focus on the rights of disabled persons[32] and LGBT persons,[33] but primarily focused on abortion and

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[26] *See Dobbs v. Jackson Women's Health Org.,* 597 US 215 (2022), *overruling Planned Parenthood v. Casey*, 505 U.S. 833 (1992) *and Roe v. Wade*, 410 U.S. 113 (1973).

[27] *See* J. Mays, *et al.*, "Gov. Hochul Calls Decision Overturning Roe 'Repulsive at Every Level.'" N.Y. Times (Jun. 22, 2022), at A1.

[28] *See* 2022 N.Y. Senate Bill S.51002.

[29] *See* 2022 N.Y. Assembly Bill A.41002.

[30] *See* 2023 N.Y. Senate Bill S.108.

[31] *See* 2023 N.Y. Assembly Bill A.1283.

[32] *See* Sponsor's Mem, N.Y. Senate Bill S.108 ("This amendment is intended to promote equality of opportunity for people with disabilities both by banning disability discrimination and by affording enforceable legal rights to people with disabilities.... No person because of disability should be subjected to any discrimination, including but not limited to actions which prevent them exercising their right to live in the community, to lead an independent life, and to be free from institutionalization. Discrimination with respect to, for instance, disability or pregnancy would include the failure to provide reasonable accommodations").

[33] *See id.* ("[T]his amendment makes explicit that people are protected on the basis of their sexual orientation, gender identity, and gender expression. The Supreme Court telegraphed the future erosion of these rights in the federal context in *Dobbs v. Jackson Women's Health Organization*, making it critical to explicitly name these rights in our State Constitution. If, for example, the protections of *Lawrence v. Texas* were overturned by the federal courts, this

reproductive autonomy. The public record includes little contemporaneous focus on or debate about the ERA's other enumerated protected classes and civil rights interests, perhaps because lawmakers did not envision federal rollback of civil rights based on those valences of identity.

Once a referendum question to adopt ERA was added to the November 2024 ballot, lawsuits unsuccessfully tried to block it[34] and then alter the ballot language.[35] Ultimately neither challenge substantially succeeded – but the referendum itself did. On November 5, 2024, 62.2% of eligible New Yorkers voted, casting nearly 13 million ballots, and ratified Proposition 1 adopting the ERA as part of the New York Constitution. The measure's 14-point approval margin,[36] which bested the 12-point margin for New York's election for presidential electors, inverted the 1975 measure's defeat by an equal 14-point margin.

II. From Equal to Effective: The Ethics Implications of the ERA

With the ERA in place, New York now has among the most expansive constitutional civil rights provisions among the 50 states. Article 1, section 11(a), of the New York Constitution, as amended by the ERA, now reads as follows:

> 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, religion, or sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, be subjected to any discrimination in their civil rights by any other person or by any firm, corporation, or

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amendment would prohibit the adoption of laws, policies, or practices in New York that target people for discrimination or criminal prosecution based on their sexual orientation…").

[34] On October 30, 2023, the Senate minority leader and other challengers alleged that the Legislature violated the Constitution's mandate to obtain the Attorney General's opinion about a proposed constitutional amendment before voting on it. *See* N.Y. Const., art. XIX, § 1. Supreme Court agreed and removed the referendum from the 2024 ballot. *See Byrne v. Senate*, 2024 N.Y. Slip Op. 24136 (Sup. Ct. Livingston Co. 2024). The Appellate Division reversed, finding that the suit was untimely under the four-month limitation period for a challenge to legislative procedure. *See Byrne,* 228 A.D.3d 1363 (4th Dept. 2022). On direct appeal, the Court of Appeals dismissed on grounds that the challengers failed to establish aggrievement or any substantial constitutional question. *See Byrne,* 41 N.Y.3d 1022 (2024).

[35] *See Fernandez v. N.Y. State Bd. of Elec.*, 83 Misc. 3d 1270 (Sup. Ct. Albany Co. 2024).

[36] *See* N.Y. State Bd. of Elections, "2024 General Election Results," *supra* n.1.

institution, or by the state or any agency or subdivision of the state, pursuant to law.

The ERA's full legal effect will take time to fully discern. The ERA itself does not define its protected classes, so courts ultimately will decide whether to supply their own definitions or construe the ERA by reference to statutory class definitions existing when voters ratified it.[37] Yet already we know that the ERA amplifies New York's historical call to pluralism, equal inclusion and genuine belonging. In this vital cause, Bench and Bar have special roles to play – starting with the ERA's potential implications for the Bench and Bar themselves. For courts and lawyers as employers and managers, the HRL's existing employment discrimination prohibitions already broadly reflect the ERA's newly protected classes,[38] and thus the ERA is unlikely to substantially affect employment law and contract law as they affect the practice of law.

As to the ERA's ethics implications for Bench and Bar, however, the ERA risks uncertainty unless the Judiciary acts in its administrative capacity to update New York's ethics rules accordingly. The reason is not ambiguity as to the definition or scope of the ERA's protections, or how the common law might evolve them, but rather the typical means of how civil rights reform impulses propagate among and between the branches of government.

Over the decades, the Judiciary generally has followed New York's pulses of civil rights reform in each major instance. SONDA and GENDA, among numerous statutory rounds of reform, prominently amplified civil rights in New York and, in key legal and political ways, prepared the way for constitutional reform via the ERA.[39] Befitting the Judiciary's pivotal role in the rule of law, judicial and attorney ethics rules generally kept pace. For instance, just months after GENDA became law in 2019, the Chief Administrative Judge amended Rules 100.2(D) and 100.3(B) to include "gender identity" and "gender expression" among the banned forms of discrimination for judges.[40] Overall parallelism between statutory, constitutional and

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[37] *See e.g.* Executive Law § 292(8) ("national origin"), (21) ("disability"), (27) ("sexual orientation"), (35) ("gender identity or expression"); *see also* Executive Law § 292(21-f) ("pregnancy-related condition"); Public Health Law art. 25-A (Reproductive Health Act).

[38] *See e.g.* Executive Law §§ 291(1); 296(1), (3)(a).

[39] Indeed, during the ERA's ratification debates, proponents and opponents generally agreed that the ERA mainly would align the Civil Rights Clause with the HRL.

[40] Interestingly, however, the corresponding attorney conduct rules were amended in 2018. *See* N.Y. Reg., July 18, 2018, at 83.

ethics rules ensured legal consistency among them, and positioned the Judiciary as amplifying a purposeful parity of equal-rights values and policy among the co-equal branches of government.

The ERA now occasions a next opportunity – and corresponding need – to harmonize the ethics rules governing Bench and Bar with both the law of the land and the public's commanding vote to extend the Empire State's leadership in civil rights protection.

1. Judicial Adjudicative Responsibilities – Rule 100.3(B)(4)-(5)

Rule 100.3(B)(4)-(5) bans judges from manifesting enumerated forms of prejudice and bias, and requires them to stop prejudice and bias occurring before them. As most recently amended in 2019, the rule already includes the ERA's newly added classes of age, disability, LGBT status, and gender identity and expression, but not its newly added protected class of "ethnicity" or "pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy" as subcategories of "sex" discrimination.

Conforming Rule 100.3(B) to the ERA would require adjustment as follows:

> (4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, ethnicity, sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.
>
> (5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, ethnicity, sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, ethnicity, sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding.

We believe these conforming amendments are necessary. Prominent ethics cases have read "ethnicity" into Rule 100.3(B)(4) governing judicial bias,[41] but to date there has been no such decisional guidance under Rule 100.3(B)(5) where an attorney manifests "ethnic" prejudice before a tribunal. Adding "ethnicity" to Rule 100.3(B) would ensure general alignment with the ERA, and offer clarity and consistency concerning the impermissibility of "ethnic" bias as between judicial conduct itself under Rule 100.3(B)(4) and judicial supervision of others' conduct under Rule 100.3(B)(5).

Addition of the ERA's "sex"-related amendments to Rule 100.3(B)(4)-(5) is particularly necessary because the ERA newly illegalized public discrimination on the basis of "pregnancy, pregnancy outcomes or reproductive healthcare or autonomy." A judge or quasi-judicial officer who publicly speaks, writes or acts in a manner manifesting bias or prejudice on these grounds – or allows an attorney or direct staff report to do so – now would violate the Constitution, without any express predicate in New York's ethics rules.

While hopefully it is unimaginable that any judge or quasi-judicial officer might violate a ban against bias or prejudice on axes of pregnancy or reproduction, it is equally unthinkable that any such direct constitutional violation should not implicate a corresponding ethics violation. The Constitution now treats discrimination on the basis of pregnancy or reproduction on terms equal to discrimination on the basis of race, LGBT status, gender identity or expression, age, and disability. So too must New York's judicial ethics rules.

Even the leading counterarguments against making these conforming ethics amendments instead favor them. One argument is that pregnancy and reproductive healthcare are uniquely personal matters that evoke emotional complexity, and therefore the ethics rules should steer clear of them. Family and matrimonial dockets, however, often intersect pregnancy, reproduction and reproductive healthcare; these issues also conceivably might arise in other case types. Precisely so, it is proper and necessary for the Rules Governing Judicial Conduct to address potential bias and prejudice on these grounds.

A second counter-argument centers on the ERA's exact language categorizing pregnancy and reproduction discrimination. By its terms, the ERA does not create new protected classes for

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[41] *See Matter of Mulroy*, 94 N.Y.2d 652, 656-657 (2000); *Matter of Schiff*, 83 N.Y.2d 689, 692-693 (1994); *see also Thompson v. Off. of Court Admin.*, 78 Misc. 3d 440, 449-450 (Sup. Ct. Kings Co. 2022).

pregnancy status or reproductive health choices, outcomes or autonomy, but rather "include[es]" them within a constitutional definition of "sex" alongside LGBT status, gender identity and gender expression. Because Rule 100.3(B) already includes "sex" as a prohibited basis for discrimination, the counterargument goes, Rule 100.3(B) might be left unamended and its reference of "sex" applied expansively to include the ERA's subcategories by implication. Ethics rules, however, should be clear, not implicit, and must not be left open to reasonably different interpretations. As Rule 100.3(B) includes only some of the ERA's subcategories (e.g. LGBT, gender identity and expression) but uses the ERA's same "sex" referent, conforming amendments are vital to avoid potential confusion.

We note that the second proposed set of adjustments to Rule 100.3(B)(5) includes "gender identity" and "gender expression," which the Judiciary omitted from the 2019 ethics amendments after GENDA. We believe this omission should be rectified. "Gender identity" and "gender expression" might well be issues in a proceeding and, if so, legitimate advocacy about them when a case implicates them should be permitted without automatically raising a potential ethics concern for the attorney or judge.

We also note that these conforming amendments reflect a subtle nomenclature change to how Rule 100.3(B) treats sexual orientation, gender identity and gender expression – albeit not a change that, we believe, would have substantive ethics implications. The current rule treats each of LGBT status, gender identity and gender expression as a standalone protected class – for this purpose, on equal terms to race and age. The ERA, however, constitutionalizes LGBT status, gender identity and gender expression as subcategories of "sex," not as standalone classes of their own. This constitutional choice, we understand, reflects the Legislature's intention to resolve, for purposes of New York law, a debate about whether pregnancy and reproductive autonomy discrimination is "on the basis of sex." In answering that question in the affirmative, the ERA also brought all sex- and gender-related matters of identity and expression into the protected class of "sex."

We do not believe that the Judiciary in its administrative capacity should be perceived to take a volitional position on such matters. Such choices are the province of the Legislature and the voters. Precisely so, the Judiciary should hew exactly to the ERA language, if for no other reason than that the Legislature and the voters so determined. It would be untoward for the Judiciary to keep the current language of Rule 100.3(B)(4)-(5) and thereby invite a

misperception that the Judiciary's institutional view for purpose of ethics law differs from the New York Constitution itself.

2. Attorney Conduct Prejudice to the Administration of Justice – Rule 8.4(g)

Most recently amended in 2018,[42] Rule 8.4(g) – the attorney conduct rule most analogous to Rule 100.3(B)(5) – bars lawyers and law firms from "unlawful" discrimination or harassment on enumerated grounds. Like Rule 100.3(B)(3), Rule 8.4(g) already includes sexual orientation, gender identity, gender expression, ethnicity and pregnancy. It does not yet, however, include the ERA's newly added elements of "pregnancy outcomes, and reproductive healthcare and autonomy" as subcategories of "sex" discrimination.

Adapting Rule 8.4(g) to the ERA would require adjustment as follows:

> A lawyer or law firm shall not: …
>
> (g) engage in conduct in the practice of law that the lawyer or law firm knows or reasonably should know constitutes (1) unlawful discrimination, or (2) harassment, whether or not unlawful, on the basis of one or more of the following protected categories: race, color, sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, religion, national origin, ethnicity, disability, age, ~~sexual orientation, gender identity, gender expression,~~ marital status, status as a member of the military, or status as a military veteran."

As with the proposed conforming amendments to Rule 100.3(B), this proposed Rule 8.4(g) amendment would adopt the ERA's re-classification of discrimination and harassment on the basis of LGBT status, gender identity and gender expression as incidents of "sex" discrimination. This parallel adjustment is necessary for the same reasons described above.

Importantly, adoption of the ERA's additions for "pregnancy outcomes and reproductive autonomy" would sidestep, for attorney ethics purposes, the complexity of a potentially open question of law. While the HRL already bans discrimination on the basis of "pregnancy-related conditions" subject to reasonable accommodation,[43] only time will tell if the HRL will be

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[42] *See* N.Y. Reg., June 20, 2018, at 73.

[43] *See generally* Simon's N.Y. Rules of Professional Conduct Ann. § 8.4:50 (24th ed. 2024); E. Yaroshefsky, "The Long Road to New York's Anti-Discrimination and Anti-Harassment Ethics Rule," 50 Hofstra L. Rev. 627, 637 (2022).

amended or construed to encompass "pregnancy outcomes" and "reproductive healthcare and autonomy." Absent such a statutory predicate, it is unclear whether such discrimination would be "unlawful" within the meaning of Rule 8.4(g)(1).

This observation may appear odd, because the Constitution is New York's supreme law of the land and therefore the ERA's definition of what constitutes "sex" discrimination would appear to govern. However, while the ERA applies directly to judges and courts because their acts directly constitute State action, and the Civil Rights Clause embedding the ERA is directly applicable and enforceable against the State, the Civil Rights Clause is enforceable against private entitles only to the extent that the Legislature "elsewhere declared" a legal mechanism for such enforcement.[44] Because law firms and private-sector attorneys generally do not engage in State action merely by practicing law, arguably the ERA itself does not render any discrimination by such private-sector actors "unlawful" for purposes of Rule 8.4(g)(1).

For this reason, it is necessary that Rule 8.4(g)(2) be amended specifically to reflect the ERA's full intended reach. Any other result could invite private-sector attorneys and firms to actively discriminate, even harass, women on the basis of pregnancy outcomes and reproductive healthcare choices, without necessarily violating Rule 8.4(g). Given the ERA's plain language and intent, this result should be unthinkable, particularly by means of a loophole that the Judiciary can and should easily avoid by adopting the ERA's language.

We note that there exists some thinking in the ethics arena that incidents of attorney discrimination and harassment not expressly enumerated under Rule 8.4(g) nevertheless might be actionable either as conduct substantially impairing the administration of justice under Rule 8.4(d) and/or conduct that "adversely reflects on the lawyer's fitness as a lawyer" under Rule 8.4(h). As such, the thinking goes, attorney discrimination and harassment on the basis of "pregnancy outcomes" and "reproductive healthcare and autonomy" could come under Rule 8.4(d) and Rule 8.4(h) as well, without need of a specific ERA-conforming amendment to Rule 8.4(g). Even if so, however, in the same spirit that we urge the Judiciary to be crystal clear that the definition of judicial bias on the basis of "sex" extends to all of the ERA's subcategories, we likewise urge the Judiciary to be equally clear as to attorney conduct rather than rely on implicit

[44] *See Kern*, 75 N.Y.2d at 651; *Dorsey*, 299 N.Y. at 531.

approaches. Such clarity arguably is even more important and necessary for attorney conduct given the absence of State action in the private-sector legal context.

Much as with the judicial ethics amendments, conforming amendments to Rule 8.4(g) would serve an important educational function. In this area, the Bar as well as the Bench should lead – and be publicly seen to lead. The Bar has promises to keep with women who, as a class, historically have experienced exhaustively documented discrimination by the Bar and within the Bar. It would be improper, even perverse, were these anti-discrimination promises to extend to "pregnancy," as they now do under the existing Rule 8.4(g), but not specifically reach "pregnancy outcomes" and "reproductive healthcare and autonomy" as the ERA has stated New York policy and supreme law to require. The only solution is to graft the ERA's language into Rule 8.4(g) verbatim.

3. New York Statement of Client Rights – Rule 1210.1

As most recently amended in 2018,[45] Rule 1210.1 of the Joint Rules of the Appellate Division sets forth the Statement of Client Rights that New York attorneys must post. Evoking the express discrimination prohibitions of Rule 8.4(g), Rule 1210.1 requires this posting to notify clients and prospective clients that the attorney may not refuse them representation on a list of enumerated grounds. The current rule already includes a number of the ERA's newly added classes but, like Rule 100.3(B), excludes "ethnicity" as a protected class along with "pregnancy outcomes, and reproductive healthcare and autonomy" as subcategories of "sex" discrimination.

Adapting Rule 1210.1 to the ERA[46] would require adjustment as follows:

> 10. You may not be refused representation on the basis of race, creed, color, ethnicity, sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, age, national origin, or disability.

By adopting the ERA language, this amendment would mirror the proposed realignments of Rule 100.3(B) and Rule 8.4(g) for the ERA's re-characterization the "sex" protected class.

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[45] *See* N.Y. Reg., June 20, 2018, at 73.

[46] Rule 1210.1 does not currently extend the representation-refusal ban to the Rule 8.4(g) grounds of "marital status, status as a member of the military, or status as a military veteran" – matters that the ERA does not address and therefore are beyond the scope of this Report.

Because the Statement of Client Rights is the most public facing of the ethics rules that the ERA implicates, a conforming amendment to Rule 1210.1 perhaps is the most important of the three in fulfilling the ERA's public education interest.

III. Supremacy and Regulatory Issues

Several recent U.S. Supreme Court cases have stated limited First Amendment free-exercise exceptions to state civil rights enforcement. Even so, we believe that those cases – and potentially others that might follow in their wake – raise no barrier to the ERA-conforming ethics amendments we recommend. To the contrary, we believe that these ERA-conforming amendments are all the more necessary in light of these federal cases, given the Legislature's stated view (and the pre-referendum public discourse amplifying the view) that New York should raise its constitutional bar to the extent possible in light of federal developments.

In 2018, the U.S. Supreme Court in *Masterpiece Cakeshop* held that a Colorado civil rights commission charged with enforcing an anti-discrimination statute impermissibly acted with hostility against a business owner who refused on sincerely held religious grounds to sell a wedding cake to a same-sex couple, and therefore the commission's order that the owner must do so violated the owner's rights under the Free Exercise Clause.[47] Five years later in 2023, in *303 Creative*, the U.S. Supreme Court extended *Masterpiece Cakeshop* to hold that, even without the enforcement authority's animus to religion, the Colorado anti-antidiscrimination statute could not authorize coercion of a business owner to create a same-sex couple's wedding website if the owner's sincerely held religious beliefs oppose same-sex marriage.[48] In so holding, the *303 Creative* Court expressly narrated that, in public accommodation contexts, state anti-discrimination statutes are subject to First Amendment limitations.[49]

Masterpiece Cakeshop and particularly *303 Creative* might presage as-applied limitations on ERA enforcement as against members of the general public where a core First Amendment speech or religion right is proffered in defense. We do not foresee, however, similar restraints on judicial or attorney ethics enforcement because well-settled law allows enhanced government

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[47] *See Masterpiece Cakeshop*, 584 U.S. at 635-637.

[48] *See 303 Creative*, 600 U.S. at 588-590.

[49] *See id.*

restrictions – and thus correspondingly laxer First Amendment protections – for speech by judges[50] and attorneys,[51] to vindicate the public interest in their activities and the ethical comportment of the Third Branch and officers of the court. Whether before *303 Creative* or since, we are aware of no case elevating a judge's religious convictions over the ethical mandates and prohibitions of judicial office, such that a judge could assert a sincerely held religious view as a successful affirmative defense to a judicial misconduct proceeding. We cannot imagine, for instance, that a facially neutral ethics rule of general judicial applicability – for instance, a rule against invidious bias on the basis of race or gender – constitutionally would fall to a judge's assertion that their religion mandates such bias from the bench, or in hiring, or in other conduct that the Rules Governing Judicial Conduct regulates. Nor could we imagine a rule or policy by which a judge approaching the prospect of manifesting such invidious bias should insist on do so claiming religious liberty, rather than recuse to avoid the reality or appearance of impropriety.[52] As the Court of Appeals puts it, "a judge's obligation to disqualify herself [or himself] based on the [mere] appearance of impropriety has long been in place and has not been dependent on the nature of the proceeding."[53] Any other result would risk public confidence in the courts and, in adjudications, raise serious due process concerns about tribunal neutrality.

As for attorney conduct, the single ethics case nationally applying *303 Creative* – a Third Department matter – rejected an attorney's free-speech challenge to discipline sanction arising from discovery noncompliance.[54] To date, there is no authority anywhere in the nation as to any potentially more targeted *303 Creative* implications for attorney ethics where a lawyer declines to represent a client, or withdraws from a representation, on enumerated protected-class grounds.

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[50] *See In re Watson*, 100 N.Y.2d 290 (2003) (upholding Rule 100.5 pledges or promises ban against First Amendment challenge).

[51] *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1051 (1991); *Matter of Giuliani*, 197 A.D.3d 1, 7 (1st Dept. 2021); *see also Matter of Rowe*, 80 N.Y.2d 336, 342 (1992).

[52] *See generally U.S. Electronics v. Sirius Satellite Radio, Inc.*, 17 N.Y.3d 912, 913-914 (2011), *following Commonwealth Coatings Corp. v. Continental Cas. Co.*, 393 U.S. 145, 150 (1968); *Doyle v. State Commn. on Judicial Conduct*, 23 N.Y.3d 656, (2014); *Matter of Emory CC*, 199 A.D.2d 932, 934 (3d Dept. 1993), *lv. dismissed* 83 N.Y.2d 837 (1994); Judiciary Law § 9; 22 N.Y.C.R.R. [Rules Governing Judicial Conduct] § 100.3(C).

[53] *Doyle*, 23 N.Y.3d at 660.

[54] *See Matter of Rosenberg*, 221 A.D.3d 1131 (3d Dept. 2023).

While it is beyond this Report's scope to anticipate how future courts might weigh such challenges, the law's historically higher standards for attorney conduct suggests that *303 Creative* might operate at most on the margin of Rule 8.4(g) enforcement. As such, we do not perceive a prudential First Amendment basis to withhold ERA-conforming amendments. To the contrary, we believe that the ERA-conforming amendments, especially as to Rule 8.4(g), are all the more important given *303 Creative*, lest judicial inaction mis-signal to the Bar that the ERA ought not apply to attorney representations.

We emphasize that the conforming amendments we propose do not seek to diminish personal liberty, including religious liberty. Like the ERA itself, they do not aim to regulate conscience, or to override religion or faith generally. Rather, these amendments – no less and no more than the existing Rules Governing Judicial Conduct, ban enumerated forms of bias and discrimination in the public square committed or tolerated by judges as public officials in the exercise of public power. Similarly, we underscore that no authority supports the view that a judge necessarily gives up all constitutional rights by taking the bench or joining the bar. For instance, in 2002 the U.S. Supreme Court struck down a Minnesota judicial ethics ban on elective judicial candidates "announcing" their views on issues that might come before them, finding that the free speech restriction designed to protect judicial neutrality was not narrowly tailored and thus failed strict scrutiny.[55] We perceive no creditable basis under current law to challenge the proposed ERA-conforming amendments on First Amendment grounds in ways that would not be fatal to the Rule 100.3 project of banning discrimination and bias in the courts.

We also note the importance of making these ERA-conforming Rule 8.4(g) changes given a perceived circularity in existing law. Rule 8.4(g)(4)(a) insulates a lawyer's decision to "accept, decline, or withdraw from a representation," and exempts it from the Rule 8.4(g)(1) ban on "unlawful discrimination" in the practice of law – but only to the extent that the attorney's declination or withdrawal is "consistent with these Rules [of Professional Conduct]."[56] As numerous commentators have noted, this recursive feature of Rule 8.4(g)(4)(a) fuels uncertainty

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[55] *See Republican Party of Minnesota v. White*, 536 U.S. 765 (2002).

[56] 22 N.Y.C.R.R. [Rules of Professional Conduct] § 1200, rule 8.4(g)(4).

about the attorney discipline implications of "discriminatory" case or client selection.[57] The ERA only heightens this uncertainty absent ERA-conforming adjustments.

IV. CONCLUSION

Since the republic's early years, New York has been a national leader in modernizing the law and the administration of justice. With the Equal Rights Amendment to the New York Constitution, the Legislature and the people of New York, in their collective wisdom, determined to elevate and expand equal rights protections for a wide array of newly protected classes. Much as past phases of civil rights reform inspired the Judiciary to conform judicial and attorney ethics rules to those reform impulses, with the ERA that time has come again.

We ask our Judiciary's leaders to incorporate the ERA's expansion of constitutional rights against discrimination by conforming the Rules Governing Judicial Conduct, Rules of Professional Conduct and Statement of Client Rights as soon as possible. Given the Judiciary's unique power to uplift equal justice for Bench, Bar and allied justice stakeholders, we also ask the Judiciary to make these ERA-conforming changes in as public and prominent a manner as possible.

We thank Chief Judge Wilson, Chief Administrative Judge Zayas and the Presiding Justices of the Appellate Divisions for their continued leadership of Bench and Bar. We stand ready to partner in fulfilling the ERA's vision for an equal and ethical New York.

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[57] *See* Simon's, *supra* n.43, § 8.4.60; N.Y. State Bar Opn. 1111 (2017); N. Maurer, "Ethical Issues in Representing Clients with Diminished Capacity," in *Disability Law and Practice: Special Education, Assistive Technology and Vocational Rehabilitation* (2013); N.Y. City Bar Opn. 1995-12 (1995).