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**The City of New York
Community Board 8 Manhattan
Women & Families Committee Meeting
May 16, 2023, 6:30 pm on Zoom**

CB8M Members in Attendance: Vanessa Aronson, Elizabeth Ashby, Gayle Baron, Lori Bores, Alida Camp, Saundra Coleman, Rebecca Dangoor, Rita Popper, Peggy Price, Russell Squire.

Public Member in Attendance: Susan Evans.

1. Forum: The Battle to Preserve Access to Abortion Pill Mifepristone

Nationally, as challenges mount to accessing abortion pill, mifepristone, some states, including New York, are fighting this threat to a woman's right to choose.

That was among the key takeaways at a forum on preserving access to abortion pill, mifepristone. Speakers at that program, sponsored by CB8's Women & Families Committee, included New York State Assembly Member Rebecca Seawright, Law Professor Susan Appleton of Washington University and Jenna Lauter, a fellow at the New York Civil Liberties Union.

Nationwide, more than 50% of all U.S. abortions are done through medication, speakers, including AM Seawright, pointed out. The two-drug formula, of mifepristone and misoprostol, has long been shown to be safe and effective. Indeed, the FDA approved mifepristone 23 years ago.

However, a federal court case originating in Texas recently revoked the FDA's approval of mifepristone and required it to be taken off the market. Subsequently, the Supreme Court temporarily stayed that ruling, and at this writing, the case is awaiting a decision by the Fifth Circuit Court of Appeals in New Orleans. Many believe the mifepristone case will end up back in the Supreme Court.

To AM Seawright, the case is "an unprecedented and egregious use of judicial activism."

Although any ban on abortion medication would penalize women, overall, it would most harm those who are poor, marginalized and/or residents of rural areas. In addition, it could discourage the development of new medications, the speakers warned.

How will the mifepristone case play out? According to Prof. Appleton, that's currently "hard to predict." Citing the array of countervailing forces, she noted that "notwithstanding the anti-abortion stance of the High Court, that body is also pro-business." Another wrinkle: "Some of the justices, in particular, Justice Kavanaugh, seem truly committed to a state-by-state regime. That would allow patients in abortion-hostile states the freedom to travel to welcoming states for an abortion without penalty." She believes "Kavanaugh would not want to see the drug's availability suspended nationwide."

Beyond questions about mifepristone's legality, the distribution of the drug also has come under fire. After the Supreme Court overturned *Roe vs. Wade* last year, anti-abortionists felt empowered to resurrect the long-dormant Comstock Act. That 19th Century anti-abortion measure bars the mailing of "obscene, lewd or lascivious" materials, such as pornography, or anything that would prevent conception or cause an abortion. According to Prof. Appleton, "because the Comstock Law is still on the books," the Texas federal court believes "it means the FDA never had the authority to approve medication abortion in the first place." Rebutting that view, Dept. of Justice has said the Comstock Law applies only to illegal abortions.

Other obstacles to a safe, legal medication abortion include a new rise in legislation punishing those who manage their own abortion care. According to one survey, Oklahoma, South Carolina, and Nevada all criminalize self-managed abortions. However, questions have arisen over which state law applies. Would it be the law in the patient's home state, or the law in the pill provider's home state, or would it be the law in the state where a woman took the first of two abortion pills, or the law in the state where she ingested the second abortion pill (misoprostol)?

Prof. Appleton said some states, such as Massachusetts, plan to stockpile abortion pills in advance of any final court ruling on their legality. But she warned about stockpiling pills with limited shelf-life, since the pills' potency may not last. Another option: some have suggested individuals could use the pills without having taken a pregnancy test in the event of a missed period. That way, they could say they weren't intentionally limited a pregnancy."

However, Prof. Appleton believes that "our best hope" for preserving access to abortion medication lies with the FDA and federal regulations. But there's no guarantees: "We'll have to see how hospitable the Supreme Court is to that."

AM Seawright pointed out that "the fight is far from over." And the impact of it far-reaching: "The court rulings raise questions not only about the future of the abortion pill but also the federal government's authority to approve and regulate drugs in general." It raises concerns that manufacturers might avoid bringing controversial drugs to market if they fear the medicines later could be banned.

Nonetheless, Ms. Seawright touted New York State's sterling record preserving abortion rights. Specifically, she hailed the state's 2019 passage of the Reproductive Health Act as "a major achievement for New Yorkers." She also cited January's passage—for which she was the Assembly's lead sponsor--of the Equal Rights Amendment to the state's Constitution. New Yorkers will vote on that provision in November, 2024.

She also noted that New York's reproductive health care system is facing unprecedented pressure. She cited increased reimbursement rates for reproductive health providers as other states banned abortion and closed clinics. To address this problem—and help ensure access to abortion—the state has increased Medicaid reimbursements rates for health providers. Moreover, insurers must include recognized abortion medications as part of their abortion coverage even if the FDA approval of the pills is revoked. In addition, NY Gov. Hochul has recently signed legislation to provide abortion drugs on all SUNY and CUNY campuses. In addition, the state has increased access to hormonal contraception by allowing pharmacists to prescribe this medication. As the Assembly Member concluded, "Here in New York, we stand ready to respond to any barriers between New Yorkers and the health care they deserve," the Assembly Member said.

Jenna Lauter, of the New York Civil Liberties Union, (NYCLU) discussed her organization's work to protect and expand abortion rights in New York State.

She explained how the Texas case could impact New York. The FDA has no mechanism to approve the use of mifepristone in one state but not in another. The drug's approval could be revoked, nationally, creating a major disruption to marginalized and rural communities, as noted by AM Seawright and Prof. Appleton. Such patients would be forced to travel out-of-state, straining a host state's funds and creating delays, given the time needed to schedule procedures. To address the potentially increased demand, Gov. Hochul is stockpiling a 5-year supply of mifepristone.

Ms. Lauter noted that even if the drug does not continue to have FDA approval, its use in NYS is unlikely to create a major legal issue. She said the NYCLU is working behind the scenes with the legislature to address abortion rights legislation. In NYS's budget, language provides for insurance coverage both for brand name and generic abortion medications, and for patients and providers, even if the drugs' primary use is not for abortions. In addition, a bill that has already been signed into law provides for abortions on SUNY and CUNY campuses, or by providers who are off-campus.

Ms. Lauter urged New Yorkers to support the following pending legislation:

The Reproductive Freedom and Equity Act to create sustainability of funding for patients coming from outside New York.

A draft bill to force hospitals to become more transparent regarding their policies that exclude abortions.

Extension of abortion protections beyond MDs and PAs to clinicians, including midwives and nurses.

Legislation to ensure the privacy of abortion information, reducing the risk that this information could harm abortion providers.

Ms. Lauter concluded on a hopeful note by reiterating AM Seawright's comments on the proposed ERA amendment: If passed by New York State's voters in 2024, it would codify abortion protections in New York State's Constitution.

P. Gayle Baron, Margaret Price, Co-Chairs