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**COMMITTEE ON CIVIL RIGHTS  
STATEMENT IN SUPPORT OF INT. NO. 826-A**

**NEW YORK CITY COUNCIL  
APRIL 1, 2009**

The New York City Bar Association, including the Civil Rights Committee, appreciates the opportunity to submit this statement in support of Introductory Bill No. 826-A, the Access to Reproductive Health Care Facilities Act (the “Clinic Access Bill”). The City Bar believes that this proposed legislation appropriately balances protection for protesters’ rights of peaceful expression against the rights of clinic patients, doctors, and other staff to access and deliver health care services without being subjected to threatening harassment or physical assault.

The Clinic Access Bill strengthens existing city law in several crucial respects. First, under current law prosecutors must prove that protest activities are undertaken with the specific intent to prevent a patient from obtaining, or clinic staff from rendering, reproductive health care services – a nearly impossible element of proof that has prevented meaningful enforcement. Intro. 826 would eliminate that statutory element and instead require proof that obstruction of or interference with a clinic be undertaken knowingly. Second, the bill would close a current legislative gap by expanding the definition of protected premises to include the parking lots, driveways, entryways, and exits of reproductive health care facilities. Clinic operators, patients, and building owners have a private right of action to enforce the law, including by requesting injunctive relief, and the City may likewise initiate a civil enforcement action to prevent or cure violations.

The Clinic Access Bill would address existing statutory ambiguity by clearly defining prohibited conduct as: obstructing clinic access, including by unwanted physical contact; engaging in a course of conduct of threatening physical harm; or physically damaging or

interfering with the operations of a clinic. The bill would also prohibit following and harassing any individual within 15 feet of a reproductive health clinic. Importantly, New York courts have been consistent in limiting the definition of harassment to offensive touching or other physical contact, *see, e.g., People v. Bartkow*, 96 N.Y.2d 770 (Ct. App. 2001), or express or implied threats of physical violence or harm, *see People v. Hogan*, 664 N.Y.S.2d 204 (N.Y.C. Crim. Ct. 1997). *See also People v. Dietze*, 550 N.Y.S.2d 595 (Ct. App. 1989) (“[A]ny proscription of pure speech must be sharply limited to words which, by their utterance alone, inflict injury or tend naturally to evoke immediate violence or other breach of the peace”). Thus, protesters would continue to be permitted to communicate with and distribute printed materials to clinic patients, and speech alone could not base an actionable complaint under the law.

In sum, the Clinic Access Bill and settled New York law safeguard clinic protesters’ First Amendment rights of free expression, while ensuring that patients and providers of reproductive health services are protected from threats and violence. Accordingly, the New York City Bar Association supports the Clinic Access Bill and encourages the City Council to enact the legislation as proposed.