

centerforconstitutionalrights
on the front lines for social justice

March 16, 2011

Memorandum in Support -----

S323 – introduced by Senator Montgomery

A1008 – introduced by Assembly member Clark

An Act to amend the civil practice law and rules and the criminal procedure law, in relation to the use in evidence of the fact of possession of a condom.

A Statement in Support:

The Center for Constitutional Rights (“CCR”) urges New York state legislators to support S323/A1008 to bar prosecutors from introducing condoms as evidence of prostitution and the other enumerated offenses. This legislation is critical to create effective public health policy, increase community trust in law enforcement, and protect individual rights.

The Center for Constitutional Rights is a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. CCR engages in litigation and the production of publications and education materials in the area of reproductive rights, policing and the criminal justice system. CCR is lead plaintiffs’ counsel in a federal class action lawsuit challenging the constitutionality of the stop-and-frisk practices of the New York City Police Department.

Through our litigation and partnership with community-based and advocacy organizations, it has come to our attention that NYPD officers frequently confiscate condoms in the possession of those they allege or profile as illegal sex workers. Often, these arrests appear to be motivated by the officers’ racial, gender and class prejudices. During court proceedings, prosecutors rely on the possession of condoms as evidence of, among other charges, illegal prostitution and sex work. As a result, we are concerned that many sex workers and youth who are targeted by law enforcement do not carry condoms out of fear of arrest and prosecution thus potentially exposing them to a known and deadly health risk. Likewise, many adult businesses refuse to provide the free condoms distributed by the New York City Departmental of Health and Mental Hygiene as they fear they will be accused of allowing illicit sexual activity on their premises.

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The distribution and encouraged use of condoms has been an integral part of the City's efforts to fight and prevent the spread of sexually transmitted infections and diseases, as well as unwanted pregnancies. The City of New York has distributed free condoms since 1971. This effort expanded in the 1980's as the HIV/AIDS epidemic hit New York City. Most recently, in 2007, the City launched its NYC Condom campaign, setting a national precedent by distributing "a *Lifestyles* condom in a chic, branded Gotham wrapper aimed at catching the public's eye and increasing free condom awareness and use in NYC."¹ In 2007, the City distributed more than 36 million condoms throughout the five boroughs.² The admission of condom possession as evidence in civil and criminal proceedings runs against the 38-year long effort of the City of New York to promote the use of condoms and squanders the money the City has used for this effort. It is entirely ludicrous that the possession of condoms, something that the City of New York distributes for free, could be introduced as evidence of illegal sex work.

New York State and its agents should not criminalize or make evidence of a crime that which is essentially a lifesaving device for millions of New Yorkers. Condoms are not contraband and are unlike ordinary objects that are evidence of a crime when stolen or used in furtherance of an illegal act. They are, in fact, the opposite. Safe sex is not criminal. The overriding public health policy goals of preventing or reducing the spread of sexually transmitted disease and infections are severely undermined by the current law.

Passage of this legislation is the only responsible, logical, right and just thing to do to promote the health and safety of all New Yorkers.

¹ For more information on the City of New York's condom campaigns, visit:
<http://www.nyc.gov/html/doh/html/condoms/condoms.shtml>

² See "N.Y.C. Condoms in Translation" by Sewell Chan. February 13, 2008, *The New York Times* "City Room" online section: <http://cityroom.blogs.nytimes.com/2008/02/13/nyc-condoms-in-translation/>