



**Testimony of Carmelyn P. Malalis  
Commissioner and Chair  
New York City Commission on Human Rights  
Before the Committee on Civil Rights  
March 22, 2017**

Good afternoon, Chair Mealy, and members of the Civil Rights Committee, and thank you for convening today's hearing. I am Carmelyn P. Malalis, Commissioner and Chair of the New York City Commission on Human Rights. Today I am joined by Brittney Saunders, Deputy Commissioner for Strategic Initiatives, and Dana Sussman, Deputy Commissioner for Intergovernmental Affairs and Policy.

Just last month, I celebrated my two-year anniversary as Commissioner and Chair of the Commission, and I am incredibly proud of what our team has accomplished in this short period. In preparation for today's hearing, I took the opportunity to reflect on the work of the agency in this last calendar year, and can say that 2016 was nothing short of a transformational year for the agency. We built on the accomplishments of 2015 and continued to expand the agency's reach, strategic enforcement, and public education efforts. The Commission continued to fill key positions with top-notch personnel across the agency. I am happy to report that New York City has no shortage of people interested in standing up for vulnerable communities and fighting for human rights. When we have job vacancies, the application pools have been competitive; applicants with a demonstrated commitment to social justice seem eager to contribute to the work of the agency. Our talented and mission-driven staff enabled the agency to continue an ambitious pace of activity in calendar year 2016. We engaged in strategic enforcement efforts, utilizing our testing capabilities and filing more pattern and practice cases. We resolved complaints with more damages for and penalties on behalf of New Yorkers. We created new and ground-breaking programming to reach more communities across New York City. We continued to increase our staff's language capacity to better reflect the City we serve. When I first arrived at the Commission in 2015, only six languages were spoken across the agency. By prioritizing language access, we now have a staff that speak 29 different languages to reflect our emphasis on hiring culturally and linguistically competent staff who reflect the diversity of New York City. The Commission built on its major media campaigns of 2015 – on the Stop Credit Discrimination in Employment Act and the Fair Chance Act – by launching a nationally-recognized and award-winning campaign on bathroom access in June 2016, "Look Past Pink & Blue," #BeYouNYC, in the face of the passage of transphobic and discriminatory laws across the country. As the xenophobic and Islamophobic rhetoric heated up during the election cycle, the Commission responded with a social media campaign, "I Am Muslim NYC," in September 2016, to stand with Muslim New Yorkers and remind everyone that they are protected from discrimination in New York City. We doubled down on our investment in community and ethnic media to expand our reach, investing about 80% of our newspaper and radio ad buys in such media. After the presidential election, the Commission

quickly reassessed priorities; we held eight listening sessions with advocates on immigrants' rights, workers' rights, LGBTQ issues, racial justice, and faith leaders from across the City, reallocated resources, and launched several new initiatives in response to the needs of the communities with which we work and revamped our media outreach efforts including issuing new multilingual materials and a digital, mobile and ethnic media campaign on discriminatory harassment protections. In order to appropriately support the work I have described, we also overhauled the Commission's technological infrastructure and upgraded our technology in all areas.

Given that I am reporting on the developments at the Commission since we last met in March 2016, I am focusing my comments – unless otherwise noted – on the Commission's work and accomplishments from calendar year 2016, consistent with the data captured in our 2016 annual report as per the agency's statutory reporting requirements. This annual report was sent to the Council on March 1, 2017. I note that the calendar year is the period we are statutorily required to report on, which is a different period than that covered in the Mayor's Management Report, which captures data based on the fiscal year.

### **Staff and Personnel**

Thanks to the Council's and the Administration's continued support for the Commission, the Commission expanded our staff to fill nearly all of our allocated lines in 2016. Moving the Commission's Central Office from 100 Gold Street to its current temporary location at 22 Reade enabled the Commission the fill lines added to the agency as part of the Fiscal Year 2015 budget. When I began my tenure in February 2015, we had a headcount of 56. As of today, the Commission has grown to a staff of approximately 107, which is just 23 hires away from the Commission's full capacity of 130 lines. The only unfilled positions are the result of regular turnover, or were recently added to the Commission's budget through the January 2017 budget process. We have added staff in all areas of the Commission, including the Law Enforcement Bureau and Community Relations Bureau, and we have also added staff to key departments that we created when we revamped our infrastructure in 2015, including the Office of the Chair, Office of Communications and Marketing, the General Counsel's Office, Operations, and the Human Resources Department. In 2016, we also hired a Director for the Office of Mediation and Conflict Resolution, which we re-opened in 2015. The director is Liz Champnoi, a well-known mediator and arbitrator with expertise in building and implementing mediation programs.

In the Law Enforcement Bureau, we now have 29 current or incoming attorneys with a caseload and a total of 23 staff attorneys. In 2016, the Commission hired 19 new people into the bureau, including seven attorneys, one Assistant Commissioner, one Supervising Attorney, three Human Rights Specialists, one Infoline Director, three administrative support personnel, one full-time Testing Coordinator, and two part-time testers. As of today, we have 4 unfilled attorney lines as the result of attrition, and we have already extended offers for 3 of those lines. Under the supervision of Assistant Commissioner Sapna Raj, we have expanded our testing program to

include a testing coordinator, part-time testers, and administrative staff. As you can see from our annual report, this expansion has allowed us to complete over 557 tests in 2016 alone. We also built up our Infoline team to respond to the over 60% increase in inquiries the Commission experienced in calendar year 2016. The Commission now has a Director of Infoline and five Infoline specialists answering and returning calls, making referrals, and setting appointments for intake with Law Enforcement Bureau attorneys.

In the Community Relations Bureau, we now have a total of 29 Human Rights Specialists, including our Community Service Center Directors. In 2016, the Commission hired 10 new staff into the bureau, including nine Human Rights Specialists and one Managing Director. As of today, we have only eight unfilled lines for Human Rights Specialists and management staff in the bureau because of attrition, and expect to extend offers to hire for those lines within the coming weeks. We have thoughtfully grown this bureau to take into account the developing needs of our local communities given pressures they are feeling locally and nationally. With this in mind, we added a lead advisor for Muslim, South Asian, and Arab Communities, a position that we believe is unique for a city agency and demonstrates this agency's commitment to reaching some of the most vulnerable and targeted communities. Lead Advisor Rama Issa speaks four languages, including Arabic, comes most recently from the Arab-American Family Service Center and the Mayor's Fund, and has worked tirelessly to deepen the Commission's relationships and credibility with Muslim, South Asian, and Arab communities. As a result of our programming and focused relationship-building in this area, we have been able to create important strategic partnerships at a time when these communities are facing incredible hatred and uncertainty. In fact, I am proud that our work has been recognized by many advocates, including the Muslim Bar Association of New York (MuBANY), which is honoring the Commission on Human Rights with its Advocate of the Year Award next month. We have hired Human Rights Specialists for all five community service centers, which are located in each borough, who bring deep connections to diverse communities throughout the City, fluency in multiple languages, and cultural competency to reflect the communities of those boroughs.

Other areas of the agency have also been edified in calendar year 2016 to accomplish the mandates of the Commission. As you are aware from my prior testimony, we established the Office of the Chair to coordinate the administrative, legislative, administrative, and policy functions of the agency. Mses. Saunders and Sussman and I sit in this office. Consolidating those functions within the Office of the Chair has allowed the agency to play a more active role in legislative and policy discussions within the Administration and with the Council and public constituents. It also helps us to ensure that policy decisions communicated across the agency are consistent, whether made through the adjudicatory or rulemaking process. In this past year, we continued to strengthen these functions by adding a Deputy Commissioner for Strategic Initiatives, Ms. Saunders' role, as well as an Associate Policy Counsel and Policy Analyst, focusing on a mixture of policy development, interagency engagement, adjudication of appeals and decisions and orders, legislation, rules, regulations, and legal enforcement guidance. There are now four attorneys and a policy analyst working with me and my assistant in this office.

As our Law Enforcement and Community Relations Bureaus expanded to near-full capacity, we also continued to invest in the other areas of the agency that support and help to amplify their work. We continued to empower our Office of Communications and Marketing, which we established at the agency in 2015. Deputy Commissioner Carmen Boon has built a reliable infrastructure for this office and has strategically developed the capacity of the team with the addition of a Deputy Press Secretary to build on our robust 2015 press outreach and media relations and do more focused outreach to community and ethnic radio stations, newspapers and content vertical websites and a Communications and Marketing Coordinator to project manage media campaign production including procurement and contracts with MWBE media vendors, among other tasks

In calendar year 2016, we also brought on a Chief Information Officer and technology support staff to create a functional IT team focused on upgrading the Commission's systems to help us keep pace with the increasing demands on our agency. I am very proud to announce that we are nearly complete in our transition from the Commission's outdated case tracking and data management systems to a new, dynamic system that is scheduled to go live next month. This was an enormous undertaking that required extensive planning and developing with our Law Enforcement Bureau staff, our IT staff, DOITT and other City partners.

Finally, the General Counsel's Office added two assistant general counsels and the Operations Department created in 2015 added a budget analyst in 2016.

### **The Law Enforcement Bureau**

2016 was an incredibly busy year for the Commission's Law Enforcement Bureau. Building on a 30% increase in complaints filed in 2015, the Commission surpassed its 2015 numbers by filing 883 complaints in 2016. The Commission also fielded over 8,000 inquiries from the public, a 60% increase from the previous year and a testament to the outreach and communications work of the agency.

In the past year, the Commission significantly stepped up its affirmative investigation powers to initiate its own investigations into violations of the NYC Human Rights Law through information provided anonymously by members of the public or when the media or community stakeholders report information about general trends of discrimination. The Commission-initiated investigations that account for 426 potential violations, with some overlapping areas of protection. In employment, the majority of Commission-initiated investigations focused on violations of the Fair Chance Act (190); and in housing, the majority of Commission-initiated investigations focused on lawful source of income discrimination (137), a major priority of the Commission.

Similarly, the Commission significantly expanded its testing program in 2016 and undertook both matched pair tests and unmatched tests, far surpassing the statutory requirements placed on it in 2015, requiring five matched pair tests in housing and five matched pair tests in employment. In the context of employment, the Commission completed 289 total tests, of which



16 were matched pair tests: 235 tests based on conviction and/or arrest record discrimination and identified 148 instances of discrimination; 16 tests in the area of credit history and uncovered 16 instances of discrimination; 24 tests in the area of race, of which 12 were matched pair tests; and identified no instances of discrimination; and 12 tests in the area of gender, of which 4 were matched pair tests, and identified three instances of discrimination. In housing, the Commission completed 257 tests, of which 74 were matched pair tests, and the Commission focused its tests on lawful source of income discrimination and discrimination based on gender identity and/or expression. The Commission completed 210 tests in lawful source of income, of which 74 were matched pair tests, uncovering 53 instances of discrimination. With respect to discrimination based on gender identity and/or expression, the Commission completed 47 tests and identified 22 instances of discrimination.

The Law Enforcement Bureau continued to implement changes in 2016 to further the promise that the Commission on Human Rights should serve as an equivalent venue for justice to state or federal court. This work required raising the standard for investigations, conducting in-depth investigations to identify pattern and practice violations, and obtaining respondents' full compliance with all areas of the City Human Rights Law. The Commission is also dedicated to ensuring that complainants' recoveries, through settlement, conciliation, or litigation, are equivalent to what they would receive if they chose to litigate their claim in state or federal court. As a result, the Law Enforcement Bureau may choose to hold cases open longer to garner a broader impact. This has caused the case processing time to increase from 420 days in 2015 to 536 days in 2016, but it has also resulted in increased penalties and damages recovered, systemic policy changes implemented, and more cases settled. While the case processing time has increased, the Commission closed more cases in 2016 – 436 – than in previous years, of which 121 were settlements through the Commission's conciliation process. The following are just a few highlights:

- **Nationwide Employer Settles Criminal Record Discrimination Case for \$50,000 in Damages, \$15,000 in Civil Penalties, and Training for 10,000 Employees**

An employee filed a complaint against his employer after he was denied a position in the financial services industry because of his conviction record. The convictions consisted of four minor traffic violations and a misdemeanor in 2000. After investigation, the Law Enforcement Bureau issued a determination of probable cause and referred the case to OATH for a trial. Respondents, the Complainant and the Commission entered into a conciliation agreement requiring the employer to pay \$50,000 in damages to the Complainant and a \$15,000 civil penalty, and to train managerial, supervisory, and personnel staff regarding the New York City Human Rights Law generally, and the Fair Chance Act specifically. As a result, nearly 10,000 employees will be trained on the City Human Rights Law.

- **Design Company Pays \$85,000 to Employee and \$15,000 in Civil Penalties in Pregnancy Discrimination Case**

A former designer filed a complaint against a design company and its owners alleging discrimination on the basis of gender and disability because she had been treated adversely and ultimately terminated because she was pregnant. The Law Enforcement Bureau determined that the respondents had discriminated against the employee by removing her from most of her job duties, forcing her to take leave, changing her pay to an hourly rate rather than a salary, and terminating her. The parties entered into a conciliation agreement requiring Respondents to pay the complainant \$85,000 in back pay and emotional distress damages; pay a civil penalty of \$15,000 to the City of New York; and attend a training on the City Human Rights Law.

- **Queens Medical Practice Pays \$95,000 for Refusing To Accommodate Employee Healing from Surgery**

A former employee filed a complaint against a doctor's office in Flushing, alleging marital status, disability, and associational discrimination, because the practice's president and manager repeatedly refused to give the employee time off to recover from surgery, ultimately demoted her to part-time hours, and fired her when she asked for another disability-related accommodation. The employee also alleged that the president and manager made disparaging remarks about her marital status and refused to let her take her son to the doctor. The Law Enforcement Bureau conducted an investigation and found probable cause to believe discrimination occurred. The medical practice and the Commission entered into a conciliation agreement requiring that the practice pay \$70,000 to the complainant in back pay and emotional distress damages; pay a civil penalty of \$25,000 to the City of New York; provide anti-discrimination training to all personnel; update its employment policies and procedures to comply with the City Human Rights Law; and display copies of the Commission's "Notice of Rights" and "Pregnancy and Employment Rights" posters in prominent areas at its place of business.

- **Brokerage Firm Settles Source of Income Discrimination Case by Instituting Companywide Policy Reforms and Compensating the Prospective Tenant**

A prospective tenant who received housing assistance through the HIV/AIDS Services Administration (HASA) filed a claim against a real estate brokerage firm, alleging source of income discrimination. The Law Enforcement Bureau conducted an investigation and found that a broker had informed the complainant that an apartment was unavailable because the landlord would not accept his HASA voucher. The Bureau facilitated a conciliation agreement between the parties which required the brokerage firm to make companywide reforms, including revamping their employment, housing and public accommodations policies; training all employees on the City Human Rights Law; and informing the public about their rights under the law, including adding a webpage to their company website listing their policies concerning the City Human Rights Law. In addition, the complainant received \$5,000 compensation for emotional distress damages.

- **Store Settles Disability Accommodation Case Involving Service Dog for \$55,000**

A member of the public who has disabilities and uses a service dog filed a claim against a public accommodation because staff of the store refused to allow her to shop in the store with her service dog. The Law Enforcement Bureau conducted an investigation and issued a finding of probable cause to credit the allegations of discrimination. The parties entered into a conciliation agreement requiring the respondent to pay \$27,500 in damages to the complainant, pay \$27,500 in civil penalties, attend anti-discrimination training, create a store policy ensuring compliance with the City Human Rights Law, and post the policy.

### **The Community Relations Bureau**

Our Community Service Centers (CSCs), located in all five boroughs, with our Manhattan office co-housed at 22 Reade Street, work actively with local communities, community leaders, community boards, houses of worship, elected officials, small businesses, community-based organizations, and schools to provide vital know-your-rights and know-your-obligations information in a variety of delivery mechanisms. We host quarterly trainings and workshops in our CSCs, and we also provide trainings tailored in content and language to audiences based on the needs of their communities. In 2016, we expanded our training and educational curriculum to include 11 trainings on different areas of our law. In addition to expanding our rights and obligations-focused trainings, we are also continuing to expand our work to foster mutual understanding and respect across cultures and identities, through the Commission's first cultural competency training, Working with Transgender Individuals, in partnership with the LGBT Community Center, and the development of a new workshop with the NYU Islamic Center called Understanding Islam and Combating Islamophobia, which we are currently rolling out to our sister agencies. More trainings in this vein are in development, including one on Discrimination Based on Race and Color, which will challenge participants to confront issues of institutionalized racism and think about how people can stand up for racial justice in their own lives.

Our Community Relations Bureau also regularly hosts listening sessions and community roundtables to better understand the needs of the communities in each borough. In 2016, the bureau worked closely with the Mayor's Community Affairs Unit and Office of Immigrant Affairs to coordinate outreach efforts and more efficiently deliver important information and resources to various communities across the five boroughs.

### **Communications and Marketing**

The Commission's Communications team works tirelessly to strategically communicate the work of the Commission to reach the broadest and most diverse audiences possible. In 2016, the Communications team increased the Commission's social media presence dramatically across all platforms – on Facebook by over 400 percent; on Twitter with an increase in followers by 50 percent and impressions by almost 400 percent, and on Instagram with an increase in followers by over 300 percent. The Commission invested almost 80 percent of its total annual radio and

newspaper ad budget in community and ethnic media. The Commission's work was featured in over 500 news media story placements, including close to 60 stories and op-ed placements in ethnic media.

As I mentioned earlier, we are particularly proud of the Commission's #BeYouNYC campaign, which launched in June 2016 on subways cars, bus shelters, phone booths, ethnic and community newspapers, social media across various platforms, and digital banner advertisement in targeted media. The campaign asked New Yorkers to "Look Past Pink and Blue," and informed New Yorkers to "Use the restroom consistent with who you are." As the first campaign of its kind in the country, it garnered multiple industry awards, including the top prize in the government/politics category at the 2016 Shorty Social Good Awards, and was heralded by our community partners at the LGBT Community Center, the Anti-Violence Project, the ACLU's LGBT Rights Project, TLDEF, GMHC, and TransLatina Network, among many others, as groundbreaking and vital to transgender and gender non-conforming communities. The campaign built on the Commission's work in drafting and implementing Executive Order 16, which was signed by the Mayor in March 2016, reiterating the right of all New Yorkers who work for the City and who use City services to be able to access the bathroom or other single-sex facility aligned with their gender identity or expression, requiring all City agencies to post signage developed by the Commission with DCAS, and to train all frontline and supervisory staff on the both the Executive Order and on inclusion and diversity of transgender experiences and communities. The Commission worked closely with DCAS to develop the training and roll it out to City agencies.

As Islamophobic and xenophobic rhetoric continued to dominate the political climate throughout the summer, as it does to this day, the Commission responded in kind with its #IAmMuslimNYC social media campaign in September 2016 featuring some of the City's Muslim community. The objective of the campaign was to convey two messages: 1) Muslim New Yorkers, New York City has your back – you are vital and appreciated in our communities; and 2) to those that would deign discriminate against our Muslim brothers and sisters, you will face consequences under our law – the Commission on Human Rights will hold you accountable. The Commission also launched several key publications, including a pamphlet available in 11 languages regarding protections against religious discrimination, and one-pagers identifying the ten things you need to know if you are a Muslim New Yorker or perceived as such and the five things all New Yorkers should know about Discriminatory Harassment. The online campaign was executed across Facebook, Twitter, and Instagram featuring real New Yorkers. It generated millions of impressions and dozens of stories in print and online news outlets, and in ethnic and community media.

In 2016, the Communications team also planned and coordinated outreach on a variety of human rights-related issues, including, but not limited to Mayor de Blasio's Executive Order on Single Sex Facilities; fair housing protections in NYC; domestic violence protections in housing and employment; reaching Spanish-speaking New Yorkers; protections and accommodations for people with disabilities; and discriminatory harassment across a variety of platforms that include



digital and mobile; traditional; emergent; ethnic and community media; and public transportation and neighborhood store front ads.

### **Office of the Chair**

As I mentioned, the Office of the Chair (“OC”) is responsible for setting the general policy direction for the agency and supporting the Administration in its continuous efforts to advance initiatives aimed at equality and equity for all New Yorkers. In its increased capacity, the OC has ramped up its engagement efforts by, among others, increasing its technical support to sister agencies and elected officials on human rights related efforts, responding to inquiries from the public and ensuring general accessibility of our materials, advancing legislation that addresses gaps in existing protections under the City Human Rights Law, and creating tailored training and know your rights materials that are accessible and relevant to historically underserved communities in NYC.

In calendar year 2016, the OC worked closely with City Council, advocates and other relevant stakeholders on developing, reviewing, and negotiating important legislation aimed at strengthening protections under the City Human Rights Law. In January 2016, protections were added to prevent employment discrimination based on an individual’s actual or perceived status as a caregiver, supporting workers’ ability to provide necessary care for their family members without fear of negative repercussions at work. The City Human Rights Law was also amended to allow for an award of attorney’s fees in administrative proceedings before the Commission and for the recovery of expert fees and other costs in civil actions. The City Council also repealed antiquated language regarding protections against discrimination on the basis of sexual orientation, and clarified the strong, liberal standard under which the City Human Rights Law should be applied.

The City Human Rights Law was also amended to bolster protections in the public accommodations context by expanding coverage to the acts of franchisors, franchisees, and lessors of public accommodations. New protections were also added to make housing discrimination based on an individual’s status as a victim of domestic violence or stalking unlawful. In addition, measures were passed that expanded the circumstances in which it is considered unlawful discrimination to misrepresent the availability of a job, housing accommodation, or other benefit for discriminatory reasons. Finally, the law was amended to create an express cause of action for employers and principals whose employees or agents are subjected to unlawful discriminatory practices.

In our continuing efforts to provide transparency and clarity on the law, the Commission published know your rights and know your obligations fact sheets and FAQs on the new areas of substantive protections. The Commission also published its fourth legal enforcement guidance document, following the three released in 2015, focusing on pregnancy discrimination. The guidance has been well-received by attorneys who represent both employers, who appreciate the

transparency, and workers, who are gratified to have guidance that so clearly articulates their rights in this important and often misunderstood area of the law. Lastly, the OC held its first public hearing on proposed substantive rules in the Commission's history, relating to protections under the Fair Chance Act.

With our increased capacity, the OC has worked with many City agencies this past year to provide support in drafting training and policy materials, strengthening internal and external anti-discrimination guidelines, and implementing new provisions of the City Human Rights Law. In addition, the OC partnered with DOHMH and DCAS to issue comments calling on the FDA to eliminate its discriminatory blood donor deferral policy that prohibits men who have had sex with men in the past 12 months from donating blood. The OC also worked extensively with sister agencies, City Hall, and Corporation Counsel, in developing Executive Order 16, which was signed by Mayor de Blasio in March 2016, ensuring that all City employees and members of the public have access to the single-sex facility that corresponds with their gender identity and/or gender expression.

The OC also published four Decisions and Orders in 2016, in keeping with the Commission's promise to be transparent in its enforcement and provide guidance to advocates and litigants before the Commission on how cases are evaluated. The cases are outlined in the Annual Report but range from source of income discrimination by a large real estate broker, in which the Commission ordered a civil penalty of \$100,000 and a case where a taxi driver engaged in discriminatory conduct towards two lesbian passengers, in which the Commission considered a restorative justice approach to penalties and ordered the Respondent to perform community service in lieu of a payment of a fine.

### **Post-Election Response**

We recognized immediately after the presidential election in November 2016 that our work had to change dramatically. The Commission provides a uniquely important service, as a resource and a venue of justice for vulnerable New Yorkers, whether it is because of their immigration status, race, religion, national origin, disability, pregnancy, or gender identity. We shifted priorities in the wake of the post-election climate to respond to the needs of communities most vulnerable to hostility, Islamophobia, anti-Semitism, misogyny, xenophobia, bias incidents, hate crimes, and feelings of fear and uncertainty. Throughout December 2016 and January 2017, the Commission convened eight thematic listening sessions with leaders from community-based organizations focusing on workers' rights, LGBTQ rights, racial justice, immigrants' rights, and faith leaders to hear directly about the needs of their communities, create partnerships, and leverage resources. Also in December 2016, the Commission announced an expansion of its Infoline by reallocating existing resources to add additional operators who can help victims of discrimination file claims, inform them of protections under the City Human Rights Law, and answer and refer questions on immigration matters. The Commission also launched a bias response team in December 2016 which consists of a team of multilingual community outreach staff responsible for

reaching out to victims of bias-based incidents to address the incidents, inform them of their rights, liaise with the NYPD where appropriate, and provide affected communities with know-your-rights information and resources. Because many reports of discrimination and hate have occurred in or near transit stations, the Commission, with support from the Mayor's Office of Immigrant Affairs, Community Affairs Unit, Public Engagement Unit, and the Department of Consumer Affairs, conducted a subway outreach and visibility day on December 20, 2016, at eight major transit hubs in the five boroughs, distributing multilingual information on religious protections under the City Human Rights Law as well as a new bilingual English-Spanish fact sheet on discriminatory harassment that we launched immediately after the election. To support these efforts, the Commission also launched a landing page at [NYC.gov/NYCValues](http://NYC.gov/NYCValues) as a one-stop venue for information and resources for concerned communities along with a Google, Facebook, mobile apps, and ethnic media ad campaign promoting protections against discriminatory harassment which garnered millions of impressions.

## Budget

The Commission's annual budget for Fiscal Year 2017 was approximately \$12,123,998 in City tax-levy money, \$170,750 in additional grant funding through a contract with the EEOC pursuant to our workshare agreement, and \$24,996 pursuant to a grant from DORIS to update our document retention policies. The Mayor's Preliminary Budget (tax-levy) for Fiscal Year 2018 provides for a budget of \$11,443,000.

As I have described, 2016 was an incredibly productive year as we work to reclaim the agency's promise as a true venue for justice and a resource for all New Yorkers. The Commission is filing more cases, mandating broader compliance, and deploying testing to root out pattern and practice discrimination. The Commission is reaching more communities through culturally and linguistically appropriate outreach efforts, creative programming, and groundbreaking communications and marketing campaigns and materials. The Commission is developing policy that serves a model for other jurisdictions, building coalitions, and earning credibility with communities across the city. We know we have a lot more work to do, but I and my staff are more committed than ever to fulfill this agency's mission to protect all New Yorkers, regardless of race, color, immigration status, gender identity, gender, disability, religion, or any other protected category, from discrimination, harassment, and injustice.

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Thank you for convening this hearing, and thank you for your support of the Commission as we continue to rebuild and reinvigorate it. I look forward to your questions.

TESTIMONY OF MIRIAM F. CLARK, ESQ., OF THE NATIONAL EMPLOYMENT  
LAWYERS ASSOCIATION/NEW YORK (NELA/NY)

BEFORE THE COMMITTEE ON CIVIL RIGHTS OF THE NEW YORK CITY COUNCIL  
HEARING ON THE BUDGET OF THE NEW YORK CITY COMMISSION ON HUMAN  
RIGHTS,

MARCH 22, 2017

My name is Miriam F. Clark, and I am President-elect of NELA/NY. NELA/NY, the National Employment Lawyers Association, New York Affiliate, is a bar association for employment lawyers dedicated to the protection of individual employees' rights, and the promotion of more effective legal protections for employees in the workplace. Our several hundred members represent, exclusively or primarily, individual employees in labor, employment, and civil rights matters.

The employees' rights attorneys who make up NELA/NY have long been thankful for the New York City Commission on Human Rights and the wonderful work they do making New York City a fair place to live and to work. The Commission provides recourse for citizens of New York City who have been discriminated against, and offers a powerful disincentive to employers who might otherwise discriminate. It enforces the New York City Human Rights Law, one of the nation's most comprehensive pieces of civil rights legislation. Its work is especially important for the thousands of employees who face discrimination, harassment and retaliation in their New York City workplaces, but who cannot afford to hire attorneys to protect their rights.

In the face of the new Administration, it appears that the Commission is going to have to step up to protect the civil rights of New Yorkers, since there is every indication that the Federal Government will be stepping down. The New York City Commission on Human Rights has long been underfunded. When the Federal Government was seen as our partner in combating



discrimination and hate-based harassment, this underfunding was not the absolute emergency that it is today. Not only has the new Administration made it clear that we can no longer rely on the Federal Government to support anti-discrimination laws, but this past year has seen a unique and frightening upswing in hate-based discrimination and harassment, both nationwide and in our beloved city.

In the face of these challenges, the City Commission will need the support of the City of New York as never before. We ask that the Commission's budget be increased, so that the citizens of our great city can be protected from the unique and disturbing challenges we are currently facing.

# **GENDER EQUALITY LAW CENTER**

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## **WRITTEN STATEMENT SUBMITTED TO THE NEW YORK CITY COUNCIL COMMITTEE ON CIVIL RIGHTS BUDGET HEARING for the NEW YORK CITY COMMISSION ON HUMAN RIGHTS**

**Submitted by Allegra L. Fishel, Founder and Executive Director  
Gender Equality Law Center ("GELC")**

### **INTRODUCTION AND BACKGROUND**

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The Gender Equality Law Center ("GELC") is a 501(c)(3) nonprofit public interest law firm and advocacy organization. Our mission is to advance laws and policies to combat gender-based discrimination in all areas of public and private life through a combination of litigation, legislative reform work, legal mentoring and training, and public education. Our work seeks to break down barriers that limit equal opportunities for all individuals impacted by gender-based discrimination and/or stereotyping, but our litigation efforts focus on working with low and modest income individuals who would otherwise not be able to secure a lawyer. With the recent addition of our free intake hotline and monthly clinic, we have sought to increase this access.

We submit this statement in support of our request that the City Council increase the budget of the New York City Commission on Human Rights ("NYCCHR," "the Commission," or "the Agency") to fund a staffing level that

can meaningfully handle the increase in discrimination and bias complaints. In conjunction with various coalitions and nonprofits, we request that the City Council restore the Commission's budget to its pre- Giuliani and Bloomberg administration funding levels, approximately 18 million dollars for Fiscal Year 2018.

### **Access to Justice**

The NYC Human Rights Law ("NYCHRL") is one of – if not the – broadest, most comprehensive civil rights statutes in the Country. It covers more categories of discrimination and contains more avenues for proving liability than federal law and most state and local laws. But a good piece of legislation without proper enforcement mechanisms undermines and devalues the very purpose of protective legislation. The Commission plays a vital role in enforcement of this law and for this reason it is critical that its funding is increased to secure the mandate and charter of the NYCHRL.

The majority of complainants filing at the Commission are unrepresented by counsel. Unlike litigating in state or federal court, where having a lawyer is practically mandatory to navigate the process, pro se individuals have a viable shot at having their complaints handled appropriately and effectively at the Commission, because the process is initiated and controlled to a great extent by the Commission and not by private parties. This is true from intake (the Commission will help you draft an initial complaint) through being represented before an Administrative Law Judge at the Office of Administrative Trials and

Hearings ("OATH"). Therefore, a complainant without counsel does not face the same disparity they would if litigating in a court setting.

The need for a robust Commission – with significant funding has never been more pressing. As the Commission effectively communicates the broad coverage of its law to residents of this City, the demand for its services have increased significantly. For instance, in 2015 intake was up 30% over the previous year.<sup>1</sup> And, in this time where so many vulnerable groups are fearful for their safety and protection, reports of discrimination and bias crimes have increased drastically since November of 2016.<sup>2</sup>

Funding for the Commission in the early 1990s, adjusted for inflation, totaled just over 18 million dollars.<sup>3</sup> This was at a time when the Commission was viewed as being most effective, but where increased demands due to fear mongering and dangerous national rhetoric did not exist, as it does currently. At that optimal period, the Agency was staffed with almost 240 employees. By contrast, the amount proposed by Mayor de Blasio for Fiscal Year 2018 is merely 11.4 million dollars and the number of staff is nearly half. The result being that processing times are extended and investigations delayed because the Agency

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<sup>1</sup> See March 17, 2017 letter to Speaker Melissa Mark-Viverito from the New York City Commission on Human Rights Working Group (a collation of civil rights lawyers, bar associations, nonprofits and government agencies). We believe this letter is being introduced at the hearing today by other organizations testifying before the Civil Rights Committee, however if the Committee cannot locate the letter, we are happy to submit another copy.

<sup>2</sup> Reports of discrimination are up 60% since November of 2016 alone.

<sup>3</sup> See note 1.



simply cannot handle its increasing caseload. Notably, the Agency's caseload increased over 30% in 2015 from the previous year and continues to increase.

### **Ensuring Professional Staff Are Hired, Trained and Retained**

Hiring at the Commission has increased over the past two years, and a talented, dedicated group of professionals now staff a variety of law enforcement and community outreach positions. However, many positions remain unfilled. The Mayor's current 11.4 million dollar proposal, a funding cut from Fiscal Year 2017, could cause the Commission to reduce its current level of services, not expand them, as is urgently needed to address the increased reports of discrimination. It is imperative that the Commission be given a budget that enables it to hire culturally competent, professional staff with the skills to educate, investigate and prosecute so as to fulfill the Commission's mandate.

In addition to potential increased delays in investigating and prosecuting complaints of discrimination, the Agency is already currently understaffed. An example of this is the Commission's newly reinstated Mediation program. This program offers a unique opportunity for parties to settle early on before both parties' positions become polarized. Informal dispute resolution is the most effective process for resolution when resolving job-related conflicts where the individual is still employed, or where reinstatement to a job or housing opportunity is a desired outcome; and it provides faster relief for Complainants who may need monetary relief sooner than later. Critically, it enables the Commission to move cases along to resolution more quickly and act more

efficiently by redistributing resources to investigating and remedying more complex or egregious cases of discrimination.

The current Mediation Program, however, is staffed by a single person who cannot possibly have the bandwidth to mediate more than a few cases at any given time. To make this program meaningful, several mediators would need to be hired to handle an appropriate caseload, thereby accomplishing the goals of any viable informal dispute resolution program.

### **Preserving the Credibility and Viability of the Commission**

To remain a viable forum in which cases will be filed, investigated and aggressively prosecuted, the Commission must be able to continue to grow, expand its programs and staff, and become even more visible to New York City residents, particularly those within disenfranchised communities. Given the vulnerable state of civil rights protections at the federal level, this requires an elevated commitment to funding by the City Council.

Moreover, since 2016, attorneys who practice before the Commission are entitled to seek attorneys' fees. As such, more private civil rights lawyers have been willing to represent complainants before the Agency. To maintain this forum as a viable choice for private counsel, the Agency must have professional staff that can understand the law, interact with lawyers and be able to timely meet deadlines. There can be no doubt that with private counsel involved, cases will settle earlier and at least some of the investigation work can be guided by Complainant's counsel, thereby freeing up internal Commission

resources. Nonetheless, even with some of the work being done by the private bar, significantly delayed investigation times, less sophisticated Commission staff, an underfunded Mediation Program and other deficits will almost certainly cause private lawyers not to file cases at the Commission. Even more troubling is that these same lawyers will not necessarily bring these cases in state or federal court, unless their clients can pay them or they have large earnings thereby increasing the possibility of a significant contingency award. In turn, further limiting access to justice to low income complainants who could benefit from being represented before the Commission.

As a member of the private civil rights bar for the past twenty years, I can unequivocally represent to the City Council that neither I, my partners and colleagues at the law firms which I worked, nor the significant network of civil rights lawyers I continue to work with, would have considered filing with the Commission before Commissioner Malalis was appointed and the Agency was revamped. In part the change is due to the increase in funding since 2015, demonstrating the clear correlation between enhanced financial support and increased efficacy. But without significant additional funding the Agency is truly in jeopardy of slipping backwards.

#### **THE CITY COUNCIL SHOULD ALLOCATE A SIGNIFICANT INCREASE IN FUNDING TO THE COMMISSISON FOR FISCAL YEAR 2018**

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Since 2015, the City's budget for the Commission has nearly doubled from six million to 12.1 million, but as stated above, it is not enough. Not only does

New York City still receive less funding per fiscal year than similar cities with smaller populations, but at a time when Our City is deeply concerned about the civil right of its residents – even calling for New York City to be a place of sanctuary – there is tremendous need for the Commission to be on high alert and running at its maximum capacity. GELC strongly urges the City Council to authorize a significant increase in the Commission's budget from the 12.1 million dollars allocated for Fiscal Year 2017. At a minimum that amount should reach the Dinkins' Administration's budget for the Agency. Adjusted for inflation that sum would be 18.1 million dollars. During that period, largely believed to be the heyday of the Commission, the Agency employed just under 240 staff, while today it employs nearly half that number (122). Without significant increases in the Commission's budget, when compared with increased demands, the Commission will be unable to fulfill its critically important mandate to serve the residents of this City.





**Testimony by N. Isabelle Figaro, Legal Services NYC – Brooklyn Legal Services before the  
New York City Council Committee March 22, 2017**

Good afternoon Council Members and esteemed colleagues,

My name is Isabelle Figaro, and I am an advocate in the Education Unit at Brooklyn Legal Services. I would like to thank New York City Council for inviting us to comment on the proposed budget for the New York City Commission on Human Rights. Legal Services NYC is truly impressed by the efforts of the Human Rights Commission to redress the most critical issues of civil and human rights facing our City. In light of Legal Services NYC's mission towards racial and social justice, we recognize that racial discrimination and segregation in New York City are issues that greatly affect our work and our clients, especially with respect to public education.

LSNYC's Education advocates assist New York City public school students and their families in a range of areas including race, disability, and other discrimination. Through our local offices, we assist hundreds of families every year with disability and education matters. Our clients are largely low-income people of color who live in under-resourced communities. Over 90% of our student clients are children of color and/or immigrants, ranging in age from 3 to 21. As a part of my job, I represent these students in disciplinary and special education hearings. Most of my clients attend schools that are deeply impacted by segregation and its accompanying disparities. In New York City, over 60% of public school students attend schools that are more than 90% non-white.<sup>1</sup> Segregation in schools is an issue that sits squarely at the intersection of the issues faced by their communities. We are thrilled that the budget committee is taking these important issues into consideration in deciding to allocate additional funds to the Commission.

By funding demographic reporting that many in the city, and perhaps even in this room, have worked to develop, we have come to better understand the link between race and harm to NYC's students. For example, statistics show that students of color are suspended at disproportionate rates and for longer periods of time than white students. In addition, not only are black and Latino students overwhelmingly more likely to be suspended than their counterparts, they are also more likely to be suspended for minor offenses such as "insubordination" and the use of profanity, even though the discipline code itself discourages suspension in such instances.<sup>2</sup> Yet, despite these disparities, segregation often remains an elephant in the room, uncomfortably absent from direct confrontation. But when my black, thirteen-year-old client calls me the night before a disciplinary hearing and genuinely asks,

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<sup>1</sup> 32BJ SEIU. Falling Further Apart: Decaying schools in New York City's Poorest Neighborhoods.  
<http://www.seiu32bj.org/falling-further-apart-decaying-schools-in-new-york-citys-poorest-neighborhoods/>

<sup>2</sup> NYCLU. (2011). Education interrupted: The growing use of suspensions in New York City's public schools.

“What is the use of me standing up for myself anyway? I’ll just get blamed for something else. That’s just the type of school I go to,” it is clear that even the students I represent are acutely aware of the way structural segregation impacts their lives.

Both within the state and across the country, New York City strives to serve as an exemplar in public education. With over a million students, New York City’s public school system is the largest, and among the most diverse in the world. However, New York City is still one of the most segregated school districts in the U.S.

Legal Services NYC is aware of Intro 1378, a bill proposed by Council Members Ritchie Torres and Brad Lander, among others, that would create an office of school integration within the City Human Rights Commission and introduce reporting requirements to study the prevalence and impact of segregation in New York City Schools. This bill appears to bridge the gap between existing demographic reporting and the issue of segregation that it highlights.

Echoing the comments of my Legal Services colleague, Nicole Salk, we applaud and support the efforts of the City Human Rights Commission to redress and give voice to the most critical civil rights issues facing New Yorkers, including segregation in public education. In particular, if Intro 1378 passes, the Commission will be tasked with the crucial job of researching and reporting on school segregation – a substantial undertaking. Empowered by the standards and framework of the New York City Human Rights Law, the City Human Rights Commission is uniquely poised to excavate the policies and practices that maintain structural and functional segregation in one of the most diverse cities in the world, and to effectuate the City’s stated goal of promoting diversity in education. Sufficient funding will ensure that the Commission is resourced to carry out the research and reporting that the bill requires effectively.

We thank New York City Council for soliciting comments on the proposed budget. Should you have any questions or require any further information, please do not hesitate to contact us. I am more than happy to provide my contact information following this session.

Thank you, and we appreciate your work.

**Brooklyn Legal Services**  
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Direct Line: 718-233-6397 Email: [veronicac@sbis.org](mailto:veronicac@sbis.org)  
Meghan Faux, Acting Project Director

Towards Justice and dignity for all – Por la Justicia y Dignidad de Todos



March 17, 2017

Melissa Mark-Viverito  
Speaker, New York City Council  
City Hall  
New York, New York

Dear Speaker Mark-Viverito:

We write on behalf of the New York City Human Rights Law Working Group, a coalition of civil rights and legal services organizations that seek to improve the effectiveness of the New York City Commission on Human Rights.<sup>1</sup> For most working and poor residents of our city, who may not be able to afford private attorneys to represent them in court, the Commission is the only place that they can turn when they face discrimination on the job, in the search for housing, in places of public accommodation, and elsewhere. The Commission has not only the mandate to prosecute their complaints, but also the unique ability to offer broad and effective remedies to discrimination that are not available under state or federal law.

A strong Commission is more important now than ever before. As President Trump and his administration continue to attack the values of inclusion and diversity that our city cherishes, we need the Commission to operate at full capacity. We need it at full strength to combat disturbing new expressions of discrimination and hate-based harassment that the inauguration rallied in. Furthermore, as federal enforcement of anti-discrimination laws is weakened or even imperiled, we need a strong and fully funded Commission to promote and protect the civil rights of our residents. And we need the Commission to fulfill its unique mandate to enforce the New York City Human Rights Law (NYCHRL), a law that is much broader than federal counterparts, and provides far more comprehensive protection for vulnerable populations. If the NYCHRL is

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<sup>1</sup> The New York City Human Rights Law Working Group includes program directors, staff attorneys, and community advocates from A Better Balance, Anti-Discrimination Center, Bronx Defenders, Columbia Law School Human Rights Institute, Community Service Society of New York, Gender Equality Law Center, Latino Justice PRLDEF, Legal Services NYC, The Legal Aid Society, Legal Action Center, Make the Road New York, New York Lawyers for the Public Interest, New York Legal Assistance Group, and the Urban Justice Center.

to have the impact the Council intends, you must ensure that the agency tasked with enforcing it has the resources necessary to fulfill its mission.

Commission operations have greatly improved under the de Blasio administration, notably with the appointment of Commissioner Carmelyn Malalis and increased funding from the City Council. During this period, the Commission has been able to expand its law enforcement staff and to hire and train additional employees. The Commission has also issued strong legal enforcement guidance in areas such as pregnancy and gender identity/expression accommodation/discrimination, and has taken a commanding lead in community action and public education, notably mounting a vigorous campaign to ensure New Yorkers are aware of new protections against employment discrimination on the basis of credit and criminal records. It has also resurrected a mediation program, taken on affirmative litigation initiatives, created a new bias testing program and started an anti-hate-bias project, anticipating an increased number of hate-bias complaints flowing into the Commission following last year's Presidential election. The Agency is also committed to proactively conducting ongoing training for respondents to remediate discriminatory conduct.

For the first time in many years, the Commission is seen as a viable place for people to lodge complaints about discrimination and to receive meaningful redress. But more must be done.

While doing significant work to fulfill its mission within its current budget, the Commission remains seriously underfunded. Without an increase in funding it cannot be expected to meet its mandate and the goals that have been outlined under Commissioner Malalis' progressive and expansive new charter. Even with recent increases, the Mayor's budget proposal for the Commission in fiscal year 2018 (\$11.4 million) is still only about 62% of its 1991 funding level (which would be \$18,323,468 adjusted for inflation). In the early 1990s, the Commission employed 239 staff members.<sup>2</sup> By comparison, the Commission's current number of employees is just 122. Moreover, the 2017 budget allocated to the City Commission is significantly below what other cities allocate to ensure that their local human rights commissions can effectively and comprehensively enforce local laws. For instance, San Francisco,<sup>3</sup> Washington, DC,<sup>4</sup> and Seattle<sup>5</sup> all with much smaller populations than New York City, fund their human rights commissions at a significantly higher level than New York City does, notwithstanding that we have a significantly larger population than any of these cities.

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<sup>2</sup> Eisha Wright, "Report on the Fiscal 2016 Preliminary Budget and the Fiscal 2015 Preliminary Mayor's Management Report: Commission on Human Rights," The Council of the City of New York, Finance Division, March 16, 2015, available at <http://council.nyc.gov/budget/wp-content/uploads/sites/54/2015/06/fy2016-hrc.pdf>.

<sup>3</sup> Data on the San Francisco Human Rights Commission was sent via email from San Francisco Human Rights Commission staff to JoAnn Kamuf Ward, Mar. 1, 2017.

<sup>4</sup> Information on the Washington, D.C. Office of Human Rights is available at [http://cfo.dc.gov/sites/default/files/dc/sites/mayormb/publication/attachments/hm\\_ohr\\_chapter\\_2017m.pdf](http://cfo.dc.gov/sites/default/files/dc/sites/mayormb/publication/attachments/hm_ohr_chapter_2017m.pdf).

<sup>5</sup> Information on the Seattle Office of Civil Rights is available at <http://www.seattle.gov/financedepartment/17proposedbudget/documents/OCR.pdf>.



And demand is up. In 2016 alone<sup>6</sup> there was a 60% increase in the number of people who reported discrimination to the Commission, building on a 30% increase in filed cases in 2015. Moreover, 436 Commission-initiated investigations were undertaken to root out discrimination across the City.<sup>7</sup> We can only expect that those numbers will rise as the current federal administration takes shape, and without additional funding, the Commission will be unable to effectively and efficiently handle its increased caseload in a timely manner. As things stand, because of the rise in numbers of complaints, the time period for investigating a filed discrimination case is longer now than it was two years ago, resulting in claimants having to wait longer for justice. Moreover, while the mediation program at the Commission has been reestablished, there is currently only one paid mediator on staff. With additional mediation staff, many more cases could be effectively resolved at an early stage in the process, thereby freeing up resources to prosecute more systemic and complex cases.

As civil rights advocates we applaud the Administration's support of the Commission and the Commission's commitment to a robust and ambitious agenda. But this commitment requires an adequate number of experienced, knowledgeable staff, staff that the Commission currently does not have the resources to hire.

Robust funding for and staffing of the Commission are essential for enforcement of the NYCHRL. This year we face a fundamentally altered national environment that requires even bolder commitments from our local government to meet new challenges. An increase in the Commission's budget by \$6.2 million, for a total of \$18.3 million, would finally restore the agency to its 1991-level and capacity so as to ensure that the New York City Human Rights Commission is able to provide the level of enforcement, investigation, and advice that this City and its residents deserve. For more information, please contact Nicole Salk, Legal Services NYC, at (718) 237-5544.

Very truly yours,

New York City Human Rights Law Working Group

The following organizations join this letter: A Better Balance, Community Service Society of New York, The Dugger Law Firm PLLC, Gender Equality Law Center, Legal Action Center, The Legal Aid Society, Legal Services NYC, Nela/NY, Make the Road NY, New York Lawyers for the Public Interest, Urban Justice Center, and Vocal-NY.

cc: Public Advocate Letitia James, Councilmember Brad Lander, and Acting Counsel to Mayor DeBlasio Paul Rodriguez.

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<sup>6</sup> The Commission uses a calendar year as its annual year.

<sup>7</sup> "2016 Highlights: New York City Commission on Human Rights," 2, available at [https://www1.nyc.gov/assets/cchr/downloads/pdf/2016\\_Highlights\\_.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/2016_Highlights_.pdf).

Testimony by Nicole Salk, Senior Staff Attorney, Legal Services NYC – Brooklyn Legal Services before the New York City Council Committee March 22, 2017

My name is Nicole Salk. I am a Senior Staff Attorney in the Workers' Rights and Benefits Unit at Brooklyn Legal Services. Brooklyn Legal Services (BLS) is part of Legal Services NYC, which is the largest civil legal services provider in the country and is dedicated to fighting poverty and seeking justice for more than 80,000 low-income New Yorkers annually. As part of my job, I provide advice and representation to low-wage workers who have experienced employment discrimination.

Legal Services NYC is part of the New York City Human Rights Law Working Group, a coalition of legal services organizations and civil rights advocates which formed in 2014 to address the New York City Commission on Human Rights' failure to effectively enforce the New York City Human Rights Law. Thankfully, due to the hard work of many people here today, the Commission has turned around completely. The City Council, under the leadership of Speaker Mark-Viverito, increased the Commission's budget from the unmanageably low levels of funding it suffered under previous administrations. Mayor DiBlasio also appointed the fantastic Carmelyn Malalis to be Commissioner and to head the agency. The new leadership and increased funding allowed the near-dormant Commission on Human Rights to turn around and begin energetically enforcing one of the most progressive municipal civil rights statutes in the country.

Whereas even just a few years ago, one would be hard pressed to find lawyers who would trust a client's case to the Commission, these days complaints filed at the Commission are soaring. Individuals without representation are filing complaints, thanks to the outreach the Commission staff has engaged in, and lawyers – including many at Legal Services NYC – are

now taking full advantage of the Commission's ability to help redress some of the most severe civil rights violations. With Commissioner Malalis' leadership, the Commission now has a reputation for being an agency where complaints that have been filed will be fairly investigated and decided upon.

However, the Commission is a victim of its own success. Due to the large numbers of complaints now being filed – 883 in 2016 alone –, resources are stretched thin and many cases are taking far too long to be processed and resolved. In addition, the Commission has only one mediator and thus many cases which could otherwise have been quickly resolved to the satisfaction of all parties are now taking months, if not a year or more, before being resolved.

The issue is not just about processing and settlement times. What is needed is a real investment in an institution that will fully enforce the best anti-discrimination law in the country. By initiating complaints based on a pattern and practice of discrimination and starting a testing program, the Commission is having a broader impact. By issuing groundbreaking guidelines on pregnancy, criminal record and credit report discrimination as well as gender identity/gender expression enforcement guidance, the Commission is taking the lead in interpreting the law for the Courts and discouraging unlawful discrimination. In this time of heightened threats and hateful harassment against immigrant, Muslim, Jewish, and trans New Yorkers throughout this City, the Commission has been at the forefront in protecting *all* New Yorkers, proactively engaging in a media campaign and offering multi-lingual public education materials and information about unlawful discriminatory harassment.

But with just 44 staff in the law enforcement bureau, the Commission does not have the resources it needs to maintain its enforcement efforts and function effectively, especially given the population of New York City, the increase in xenophobia and discriminatory harassment we

have seen in recent months, and the continually increasing number of complaints the Commission receives and which it is dedicated to fully investigating.

As outlined in the NYCHRL working group letter emailed to Speaker Viverito last week (attached to this testimony), an increase in the budget by \$6.2 million for a total of \$18.3 million would restore the Commission to its 1991 level adjusted for inflation. The reason we use the 1991 funding levels as a comparison is because after that time, under the Giuliani administration, funding was gutted for the Commission.

In a time where we are seeing a huge uptick in the numbers of hate crimes, and unprecedented levels of racism, islamaphobia, anti-semitism, homophobia, transphobia, and xenophobia, the city needs to invest in an institution whose prime mission is to fight for civil rights and against discrimination. Low-income and working people do not have the money to pay attorneys and thus, effectively, do not have access to redress discrimination in the courts. Given President Trump's attacks on the same vulnerable communities that the NYCHRL protects, the EEOC will likely not be a place that victims of discrimination can go for relief. In addition, the NYC Human Rights Law is far broader and provides much more comprehensive protections for vulnerable populations than under Federal law. The need for increased resources for the Commission cannot be greater than it is now.

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## **TESTIMONY OF MAKE THE ROAD NEW YORK**

### **New York City Council, Committee on Civil Rights**

### **Hearing on the NYC Human Rights Commission**

**March 22, 2017**

My name is Cristobal Gutierrez and I am an employment legal advocate with Make the Road NY, an organization that builds power in Latino and working class communities to achieve dignity and justice through organizing, policy innovation, education, and services. We are based in three immigrant communities in New York City – Jackson Heights, Queens; Bushwick, Brooklyn; and Port Richmond, Staten Island – as well as in Suffolk County. Our Workplace Justice Project supports low-wage workers to combat the exploitation they face daily on the job through an integrated strategy of popular education and Know Your Rights (KYR) training through workshops, individual counseling and advocacy. MRNY's community education and legal support work are crafted to arm impacted community members with the knowledge, tools, and skills they need to tackle the problems they face.

As an organization, we congratulate and thank the Civil Rights Committee and the Speaker's office for continuing to strengthen our city's Human Rights Law to make it one of the strongest in the country. Our City continues to be recognized and serves as a model throughout the country for our progressive rules, including the Human Rights Law and its application. For instance, the Human Rights Campaign has given New York City a perfect score in LGBT Inclusivity. Our city's bold work to protect the rights of transgender individuals and to protect against discrimination based on gender identity have served as models and, more importantly, have made our LGBTQI community feel safer amidst local hate crimes as well as hateful rhetoric on the national stage.

The country has radically changed since we last gave testimony before this Committee regarding the budget of the City's Human Rights Commission. The resentment of many segments of our population has come to light, and white supremacist and xenophobic ideology is no longer hidden in the dark. Immigrants, muslims, women, and LGBTQI communities are under attack. We are seeing increased discrimination and violence against society's most vulnerable members. We thank the City Council for its tireless efforts to strengthen the City's Human Rights Law and call on you now to increase funding for the Commission, so that our law can be properly enforced and the language of the law can become a reality for all New Yorkers.

The City Commission's work to enforce the broad protections of the New York City Human Rights law is more critical than ever. Federal agencies that enforce federal anti-discrimination statutes, like the Civil Rights Act, are likely to be defunded and redirected under the current administration. Meanwhile the Commission will be working to enforce the City law which provides New Yorkers with heightened protections against discrimination as compared to its federal counterparts. For example, the City Law protects New Yorkers from discrimination based on sexual orientation, gender identity, criminal

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records history, credit history, domestic violence status --none of these categories are protected under federal anti-discrimination statutes.

Since the Council's infusion of new funding for the Commission nearly two years ago, we have seen the agency transform. For the first time in decades, we and our allies across the poverty law community, routinely file complaints at the Commission on behalf of clients who have suffered unlawful discrimination no longer worrying whether the complaints will be fairly adjudicated. The agency is responsive and involved. The agency has shown leadership on educating NYC communities about the law and its expansive reach. The agency has continually asked to meet with experts in the field to learn about new patterns of discrimination and where they can work collaboratively with advocates engaged with these issues. We have a highly functional agency but it needs more funding desperately.

At this critical moment, the City Commission on Human Rights is considerably understaffed: it is still roughly 50% below the number of staff, especially enforcement personnel, that the Commission had in 1991, despite the fact that New York City's population has increased by 1.6 million since that time. And meanwhile, hate crimes and discriminatory actions are on the rise. The Commission is in dire need of more enforcement personnel to adjudicate the large number of complaints coming in and to ensure that the New York City Human Rights Law remains a meaningful tool to protect New Yorkers from discrimination.

While it is a positive sign for the agency that more people are coming forward to report discrimination, the agency is not adequately staffed to handle the flow of complaints. While the Commission now fully and thoroughly investigates filed complaints, because of understaffing, the Commission is taking well over a year to conclude its investigations.

Notwithstanding the thorough work the Commission is doing, it is likely that if the reports continue to increase, the delay in adjudication will be even greater. Management-side employment lawyers are well aware of the delays at the Commission and they are less likely to settle cases because they know the Commission is not able to promptly find probable cause. As advocates, we have experienced this unwillingness to reach settlements and we can imagine that for cases filed pro se, which are the majority of cases, the employer's willingness to settle is even less common. Without sufficient resources to enforce the law, the law is less effective in protecting our clients.

Recently, a young man told us that his former employer had threatened to call immigration authorities to report him because he had gone to work for a competitor, in front of a crowd of spectators in the street. We have seen a spike in sexual harassment cases of undocumented women, where supervisors think that they can get away with more if the worker may be undocumented, because immigrant workers are scared to come forward in this political moment. We have seen the police treating trans women who have been victims of hate crimes with total disrespect -- including the denial of language access services and refusing to use their preferred gender pronouns. These stories demonstrate how immigrant community members are the targets of attacks in the wake of hateful rhetoric coming out of Washington. Inoperative state agencies have also rendered them increasingly vulnerable and scared to fight for their rights. If we do not take action and drastically increase the funds for our city agency that enforces our very broad human rights law, we are allowing employers, landlords and others to discriminate by failing to enforce our City's Human Rights Law when it is needed most.

Our organization congratulates Commissioner Malalis on the accomplishments she has made over the past two years. Our members and clients have benefited enormously from the agency's improvements. We ask this Committee to continue its efforts to broaden protections for discrimination victims by seeking an increase in the Commission's budget of \$6.2 Million dollars.

Thank you for your attention.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 3/22/17

(PLEASE PRINT)

Name: Cristobal Gutierrez

Address: 92-10 Roosevelt Ave. Jackson Heights

I represent: Make the Road (same as above)

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 3/22/2017

(PLEASE PRINT)

Name: Allegra L. Fisher / Gender Equality Law Center

Address: 546 President Street 3rd Fl.

I represent: Gender Equality Law Center

Address: same address

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 3/22/17

(PLEASE PRINT)

Name: NICOLE SALK L SANCHEZ BROOKLYN

Address: 105 COURT ST. BROOKLYN LEAD

I represent: LEGAL SERVICES NYC

Address: BROOKLYN LEGAL SERVICE

(718) 237-5544

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

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☐ in favor ☐ in opposition

Date: 3/22/17

**(PLEASE PRINT)**

Name: D. Isabelle Figaro

Address: \_\_\_\_\_

I represent: Legal Services NYC

Address: dfigaro@LSNYC.ORG

**Please complete this card and return to the Sergeant-at-Arms**

**THE COUNCIL  
THE CITY OF NEW YORK**

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☐ in favor ☐ in opposition

Date: \_\_\_\_\_

**(PLEASE PRINT)**

Name: Carmelyn P. Malalis

Address: 22 Rusk St

I represent: NYC CHR

Address: \_\_\_\_\_

**Please complete this card and return to the Sergeant-at-Arms**

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

**(PLEASE PRINT)**

Name: Brittany Jade - Saunders

Address: 22 Peule St

I represent: NYCCHR

Address: \_\_\_\_\_

*Please complete this card and return to the Sergeant-at-Arms*

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

**(PLEASE PRINT)**

Name: Dore Sussman

Address: 22 Peule St

I represent: NYCCHR

Address: \_\_\_\_\_

*Please complete this card and return to the Sergeant-at-Arms*