

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY

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September 15, 2010

Start: 10:15 am

Recess: 11:32 am

HELD AT: Committee Room
250 Broadway, 14th Floor

B E F O R E:

PETER F. VALLONE, JR.
Chairperson

COUNCIL MEMBERS:

Helen D. Foster
Daniel R. Garodnick
James F. Gennaro
Vincent J. Gentile
Daniel J. Halloran III
Eric A. Ulrich
David G. Greenfield
Brad Lander

A P P E A R A N C E S (CONTINUED)

Arkadi Gerney
First Deputy Criminal Justice Coordinator
NYC Mayor's Office

Megan Meadows
Former Student
Virginia Tech

Jackie Hilly
Executive Director
New Yorkers Against Gun Violence

CHAIRPERSON VALLONE: Welcome everyone to our first Public Safety Committee hearing after our short summer break. It's good to see everyone.

Today, we'll be discussing Intro 313, which is a bill which would adjust the fees for permits and licenses for guns, but more importantly, would create a new law, making it a misdemeanor to carry a gun outside of the home while intoxicated. One would think that would be the law right now but it's not.

For illustrative purposes, let's think of Plaxico Burress case. If that had been a legal gun and he was getting drunker and drunker in the club, there is no law against and there's nothing anyone could have done until the gun went off, and that's what we don't want to see happen. We don't want to see people with what's obviously a deadly weapon, carrying it while intoxicated. You can't drive while intoxicated; you shouldn't be able to carry a gun while intoxicated.

This is not the first time this committee has held a hearing regarding improper gun use. In 2006, we passed a series of bills I

1
2 was a co-sponsor of, including laws creating a gun
3 offender registry, a law to prevent the theft of
4 firearms from licensed firearm dealers, to prevent
5 firearms trafficking, to regulate guns that appear
6 to be toys. These laws have kept our city safe
7 from gun violence. We've also recently passed
8 laws requiring reports on the number on times that
9 police discharge their firearms and the number of
10 illegally confiscated firearms in the NYPD.

11 I just listed a bunch of laws that
12 we did and I think it's a good time to welcome Ed
13 Main [phonetic] from London. He's a council
14 member from London who's on the Public Safety
15 Committee there. I think they call it something a
16 little bit differently. But if you want a list of
17 all the laws that I just mentioned that might be
18 good laws for London, just let us know. Thank you
19 for coming all the way from London to see how we
20 operate here in New York City.

21 The first part of the legislation
22 creates a more sophisticated scheme for the fees
23 involved in gun permits and licenses. Instead of
24 the one size fits all that exists now, it's going
25 to now more accurately reflect the amount of work

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2 the city has to do when it comes to these gun
3 licenses and renewal licenses. So most of the
4 fees will be reduced as a result of this
5 adjustment, which is rare. We rarely hold
6 hearings on reducing fees. This is one of the
7 few.

8 The second part of the legislation,
9 as I said, creates the crime of carrying a gun
10 while intoxicated. Alcohol and guns are a toxic
11 mix. Just like getting behind the wheel of a car,
12 we don't want people walking around drunk with a
13 gun.

14 A similar bill was introduced in
15 Albany. Now, what happened here, the way this
16 bill wound up before us today is it was the
17 Mayor's idea to bring this bill to Albany. It's a
18 good idea; it's a good bill. He invited me to the
19 press conference up in the Bronx. The two
20 sponsors were there. I think it was Jose Peralta
21 in the Senate and Jeff Klein in the Assembly.

22 After they spoke, I got up and
23 said, you know what, it's a great bill, but as
24 most of us know, Albany's the place most great
25 bills go to die. So I will introduce it at a city

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2 level to make sure that it gets done. I
3 introduced the request for legislation immediately
4 thereafter.

5 A few months after that, what I
6 said came true and the Mayor came to me and said,
7 "Can we introduce this bill?" I said I already
8 started working on it, but no problem, it'll be at
9 the Mayor's request and we'll get this done in the
10 City Council and we'll show them how to pass good
11 legislation up in Albany. I'm sure they'll follow
12 us at some point. It always happens.

13 So that's what we're going to do
14 today. We're going to start the process on this
15 bill. We hope to move quickly on it. The Mayor
16 supports it. I believe the Speaker supports it
17 and almost all the witnesses who are here today
18 will support it.

19 So we're going to start today with
20 Arkadi, is it Gerney, is that how you pronounce,
21 first Deputy Criminal Justice Coordinator and
22 Special Advisor to the Mayor. We have your
23 testimony. I appreciate you being here today and
24 the floor is yours.

25 ARKADI GERNEY: Good morning,

Chairperson Vallone and members of the Council.

CHAIRPERSON VALLONE: I'm not sure
your mike's on.

ARKADI GERNEY: I think it's on
now. Good morning, Chairperson Vallone and
members of the Council. As you said, my name is
Arkadi Gerney. I'm City's First Deputy Criminal
Justice Coordinator and Special Advisor to the
Mayor. Thank you for the opportunity today to
discuss Intro 313, the Mayor's proposal to combat
the abuse of gun licenses by making it a crime to
carry a gun while intoxicated and by revising the
fee schedule for gun licenses.

I should begin by noting that we
worked with the NYPD throughout the development of
this legislation and they very strongly support
the final version before you today. Before we get
into the specifics of the bill, I'd like to update
you on the City's efforts against violent crime
and illegal guns.

Working closely with the City
Council, the City has achieved success through a
four-pronged strategy against illegal guns:
innovative local and state legislation; smarter

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2 and more coordinated enforcement; path breaking
3 litigation and investigations; and nationwide
4 coalition-building. Our legislative initiatives
5 included the country's first local Gun Offender
6 Registration Act which the Chairperson mentioned.
7 That law requires convicted gun felons to report
8 for four years after release so that the NYPD can
9 continue to track them.

10 Since the Council enacted that
11 legislation, several other cities and counties
12 from Utica to Chicago to Baltimore have emulated
13 it. The City benefited greatly in enacting that
14 law from thoughtful consideration by this
15 committee and in particular from the leadership of
16 Chairperson Vallone. Chairperson Vallone, who has
17 made illegal guns one of his top priorities,
18 sponsored the Gun Offender Registration Act along
19 with the Speaker.

20 Meanwhile, the City has fought hard
21 for commonsense laws in Albany. For example, in
22 2006 the City spearheaded the push to pass the
23 nation's toughest law on carrying a loaded illegal
24 handgun, three and a half years mandatory minimum
25 sentence for that dangerous crime.

Another law enacted in 2008 at the City's urging requires that the state share records on seriously mentally ill people with the FBI so they can be prevented from buying a gun in the state or elsewhere. As a result, the number of mental health records that New York State has submitted to the National Instant Criminal Background Check System grew from one record in 2006 to more than 151,000 records in 2010.

To toughen enforcement, NYPD has created a Firearms Suppression Division that brings together enforcement units from throughout the department and collects information on gun arrests to track down the sources of guns. That division includes the Gun Offender Monitoring Unit, which enforces the Gun Offender Registration Act.

Also, NYPD held nine gun buybacks between July 2008 and May of this year. They took nearly 6,000 guns off the streets of all five boroughs, in cooperation with DAs, the Bronx borough president, and the houses of worship.

The City also filed innovative suits against twenty-seven out-of-state gun

dealers that were among the top sources of guns found at New York City crime scenes. The vast majority of those gun dealers have settled with the City, and a Johns Hopkins study of those dealers have showed a 75 percent decrease in their share of crime guns that ended up in New York City crimes that originated from those dealers shortly after being sold.

Finally, we have built a nationwide coalition of Mayors Against Illegal Guns. The coalition started with just 15 mayors in April 2006. It now numbers over 500 mayors from every corner of the country, from both political parties.

Mayors Against Illegal Guns led the fight last summer to defeat the Thune Amendment, a measure that would have undermined state concealed carry laws. The coalition has helped modify the Tiahrt Amendments to free up gun trafficking data to local police and it's created a landmark partnership with Wal-Mart on gun sales practices. Wal-Mart is the nation's largest gun-seller.

That four-pronged strategy, together with the outstanding work of the NYPD,

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2 has contributed to real successes against illegal
3 guns and violent crime. Just this week the FBI
4 released its final Uniform Crime Report for 2009,
5 confirming that the City had only 471 homicides
6 last year. That's the fewest since comparable
7 records have been kept, and a 27 percent drop
8 since 2001, when we had 649 murders. New York
9 City remains the safest big city in America,
10 according to the FBI's report on rates of serious
11 crime.

12 Today's legislation is part of a
13 package of improvements to the City's system for
14 licensing guns that Mayor Bloomberg and Police
15 Commissioner Kelly announced in May. Under state
16 and local law, the New York City Police Department
17 issues licenses for handguns, rifles, and
18 shotguns.

19 The NYPD offers several types of
20 licenses, depending both on the weapons covered
21 and on how the weapons can be used. In
22 particular, some people are licensed to carry a
23 concealed weapon, while others are licensed only
24 to keep a weapon at their home or place of
25 business.

The administration's changes are designed to improve public safety and to make the investigation process more effective for all types of licenses. With these changes, the NYPD is taking advantage of new technology, focusing its review of license applicants who are most likely to present a danger, and removing unnecessary red tape that slows down our investigators.

The City has already put into effect several of the improvements that could be done without legislation. In particular, enhanced technology and oversight in the overall application process have allowed NYPD to focus more investigative resources on applicants who merit closer scrutiny and in the process it's cut the average time to review applications for handguns in the home from 20 weeks in 2007 to 11 weeks in 2009.

Furthermore, the NYPD now accepts payment by credit card rather than just requiring money orders. Licensing offices are now open late one night a week, to make the process more convenient for working New Yorkers. And NYPD has issued a draft regulation that will enact the two

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2 other elements of the package. That regulation
3 will offer more detailed examples of the
4 eligibility standards and will remove the current
5 notarization requirement since the in-person
6 visits and modern technology enable NYPD to verify
7 the identity of license applicants.

8 Some of the improvements in the
9 licensure system, however, require local
10 legislation. In particular, we need a local law
11 to make clear that even someone licensed to carry
12 a gun should not do so while they are intoxicated.
13 That's just commonsense. If automobiles are
14 dangerous with a drunken driver behind the wheel,
15 it should be obvious the principle applies when
16 somebody carries a gun while intoxicated and it
17 should be subject to tough penalties.

18 Accordingly, Mayor Bloomberg called
19 for such a law in 2009. This legislation,
20 introduced by Chairperson Vallone among others,
21 will fulfill the pledge. It will prohibit people
22 from carrying a gun if they are so drunk that
23 under state law they would not be allowed to
24 drive. Violation will be a misdemeanor punishable
25 by up to a year in jail or a fine of up to \$10,000,

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2 or both. It will also be grounds for revocation
3 of a gun license.

4 To enforce that requirement, NYPD
5 officers who encounter someone who is carrying a
6 gun outside their home and who appears to be drunk
7 can require that that person to take a
8 Breathalyzer test. Nineteen states already have
9 similar laws. For example, Alaska makes it a
10 misdemeanor to have a gun in one's immediate
11 possession or in one's car while impaired.

12 The other improvements in our
13 licensing system that requires local legislation
14 is a revised fee schedule. This legislation
15 reflects NYPD's focus on license applicants who
16 merit enhanced reviews. Under current law, a
17 license to keep a handgun in the home costs as
18 much as a license to carry one, even though carry
19 license applications require more extensive
20 scrutiny from the NYPD. Similarly, renewing a
21 license currently costs the same as getting the
22 original one, even though renewals generally
23 require less investigation. This bill will
24 replace that flat fee structure with a graduated
25 set of fees that reflects the varying costs for

the City of issuing different types of licenses.

Thank you, again, for the opportunity to discuss the proposed legislation. This bill, together with other improvements that are already being enacted, will improve public safety, save the City money, and save time for responsible, law-abiding New Yorkers who wish to own a gun. Thank you.

CHAIRPERSON VALLONE: Thank you very much. I agree; I think this is a commonsense bill and I think most people would. We do have some testimony submitted by the New York State Rifle and Pistol Association which doesn't support this. They support the lower fees, although they believe the fee is unconstitutional. They believe that this is not a problem right now. Now, I agree, luckily it hasn't been a huge problem. But again, this was the Mayor's idea. What was the impetus for this bill?

ARKADI GERNEY: Well, Chairperson, I think the example that you raised, the Plaxico Burress case points out the kind of situation that this bill is designed to prevent.

CHAIRPERSON VALLONE: Just one

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2 second. I just want to recognize that we have
3 been joined by former prosecutor and committee
4 member Vincent Gentile, who is going to vote and
5 will be back very soon.

6 ARKADI GERNEY: That case I think
7 is an example of the kind of situation you want to
8 avoid. You certainly want to make sure that
9 people who are carrying a gun in the city have a
10 license to do so and have been thoroughly reviewed
11 by the NYPD. But once somebody has that license,
12 it should be a license to carry a gun, not a
13 license to carry a gun while drunk. Someone who's
14 intoxicated with a firearm is a danger to
15 themselves and a danger to others. It's
16 commonsense that if you can't drive a car when
17 you're intoxicated, you shouldn't be carrying a
18 gun.

19 CHAIRPERSON VALLONE: As I
20 explained to our London visitor earlier, this is
21 the first hearing on this and there may be some
22 changes one way or the other. One of the things
23 we wanted to ask you about is the fact that this
24 bill makes it illegal to carry a gun whether or
25 not that gun is loaded while you're intoxicated.

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2 Why was that put into the bill? Why would an
3 unloaded gun while drunk be illegal? Not that I
4 oppose it, I just want your thinking on that
5 matter.

6 ARKADI GERNEY: It's already a
7 crime to carry an unloaded gun without a license.
8 It's not as serious a crime as carrying a loaded
9 gun, but it's already a crime. Someone who's
10 intoxicated with an unloaded gun can be a danger
11 to themselves and others.

12 For example, it puts the NYPD in a
13 terribly difficult position if they encounter
14 someone who is intoxicated and waving a gun
15 around. The NYPD will not know if that gun is
16 loaded or unloaded. That person may end up
17 getting themselves shot or putting other people at
18 risk.

19 Also, an unloaded gun can be used
20 in the commission of a crime. If someone is
21 intoxicated with an unloaded gun and goes into a
22 bodega and threatens someone and tries to get
23 money. It's certainly something that can be used
24 in the commission of a crime.

25 CHAIRPERSON VALLONE: In March,

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2 actually not directly on point, but a drunk with a
3 fake gun was killed for waving that gun around, by
4 police officers who shot him. So that's
5 indicative of the problems you can run into while
6 drunk with a fake or unloaded gun. I've got a lot
7 more questions on this topic.

8 We've been joined by Council Member
9 Dan Halloran who wants to follow up on that issue.

10 COUNCIL MEMBER HALLORAN: Let's go
11 back to your testimony just a moment ago because I
12 find it kind of incredible. It's your testimony
13 that having the unloaded weapon may be used in the
14 commission of a crime. What are the statistics to
15 demonstrate that licensed gun holders in New York
16 have committed any crimes with licensed guns? Can
17 you provide any? Because my understanding from
18 the Police Department, it's less than .1 percent.
19 So that argument is both specious and completely
20 off-point.

21 Second of all, you do realize that
22 if you make it illegal for an unloaded gun to be
23 carried 80 percent of our police officers will be
24 violating this law.

25 ARKADI GERNEY: While drunk?

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2 COUNCIL MEMBER HALLORAN: While
3 drunk, that's correct. Because I don't know about
4 you and police officers you've been around. But
5 when I left the police department, we would go
6 after our tour to the local bar and hang out for
7 about four hours.

8 I don't remember there being any
9 issues with any police officers then. But based
10 on this law, you will now create issues. If we're
11 going to enforce the law, we're going to enforce
12 it against every citizen and that includes our
13 police officers.

14 So you tell me how this is going to
15 apply to the Police Department of the City of New
16 York.

17 ARKADI GERNEY: Well the Police
18 Department already has careful regulations that
19 deal with Police Department employees, police
20 officers who would carry a gun while intoxicated.
21 For example, if a police officer fires a gun,
22 there's an automatic breathalyzer test. If you're
23 on duty, in uniform, police officers are not
24 allowed to consume any alcohol. If they are on
25 duty, out of uniform, they can consume up to two

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2 drinks. And if they are off duty, they are
3 required while carrying a gun to always be fit for
4 duty.

5 COUNCIL MEMBER HALLORAN: Let me
6 stop you right there. Let me stop you right
7 there. You just said the department regulations
8 say that you may have two drinks while off duty
9 carrying a weapon.

10 ARKADI GERNEY: No, on duty.

11 COUNCIL MEMBER HALLORAN: On duty,
12 carrying a weapon. Can you tell me what the blood
13 alcohol content for two drinks for a person who
14 weighs 100 pounds is? Because I'm a criminal
15 defense lawyer and I'm here to tell you it's
16 legally intoxicated. So don't come here and
17 preach to us about statistics that you know are
18 fabricated.

19 CHAIRPERSON VALLONE: Let me just
20 jump in for a second because you didn't get to
21 this point yet. This bill does not apply to
22 police officers because of state exemptions that
23 exist.

24 COUNCIL MEMBER HALLORAN: That's
25 correct.

CHAIRPERSON VALLONE: This bill does not apply to police officers. By the way, I don't know what 80 percent you're hanging around with, but the cops I hang around with aren't drunk while off duty.

COUNCIL MEMBER HALLORAN: I didn't say drunk, Mr. Chairman.

CHAIRPERSON VALLONE: Okay.

COUNCIL MEMBER HALLORAN: I didn't say drunk. I said they will go out and have drinks after work.

CHAIRPERSON VALLONE: Okay, big difference.

COUNCIL MEMBER HALLORAN: And there's a big difference.

ARKADI GERNEY: But a police officer, under the current rules, who violates the alcohol policy can be subject to discipline, can lose their jobs. So there are penalties right now for police officers who drink and carry guns.

Right now, however, for people who are not police officers, there are no penalties and that puts New York City far out of line with other states around the country.

There are a whole bunch of states that have a strong commitment to gun rights: Alaska, Missouri, Texas, many other states around the country that have tough laws when it comes to carrying a gun when you're intoxicated.

In a number of those states it's not a misdemeanor to carry a gun while intoxicated, it's a felony. You do it in Rhode Island you could go into prison for up to five years.

So this law would bring us into conformance with many states around the country, including states that had a strong tradition of gun rights. It would just get the commonsense idea out there that if you're going to carry a gun you should not be drinking. If you're going to be drinking, you shouldn't be carrying a gun.

COUNCIL MEMBER HALLORAN: Those states have loaded firearm requirements, not unloaded.

ARKADI GERNEY: Some of those states have unloaded firearm requirements.

COUNCIL MEMBER HALLORAN: Can you explain to me why carrying an unloaded gun by a

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2 licensed New Yorker is more likely to result in
3 crime? Can you point to any statistic that says
4 licensed gun owners in New York commit crimes with
5 those guns? Can you point to any?

6 ARKADI GERNEY: Chairperson Vallone
7 just mentioned a case earlier.

8 COUNCIL MEMBER HALLORAN: Of a fake
9 gun?

10 ARKADI GERNEY: Of a fake gun or an
11 unloaded gun. The situation it puts a police
12 officer in is very similar. For example, this
13 Council and the City put into law in 2006, a law
14 having to do with fake guns that look real. If
15 you're a police officer and you've got something
16 that looks very much like a glock pointing at you,
17 it's going to be impossible for you determine, if
18 it looks incredibly real, is it a real gun, is it
19 a fake gun, is it a loaded gun, is it an unloaded
20 gun. When that happens, it puts a police officer
21 at risk and it also puts the person carrying that
22 unloaded gun or the fake gun at risk.

23 So it makes sense for it to be
24 illegal to carry a fake gun that looks exactly
25 like a real gun. That's why the City Council and

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2 the City passed that law. It makes sense to make
3 it illegal for a drunk person to carry an unloaded
4 gun. If you want to carry an unloaded gun and you
5 have a license, that's something that you're
6 certainly welcome to do. Just don't get drunk.
7 If you want to get drunk, don't carry a gun.

8 COUNCIL MEMBER HALLORAN: Now that
9 you've answered the question you hoped I asked,
10 could you please answer the question I did. Can
11 you point to any statistic that indicates licensed
12 gun owners in the City of New York have committed
13 crimes with those guns, period?

14 ARKADI GERNEY: The Chairperson
15 mentioned a case.

16 COUNCIL MEMBER HALLORAN: A case.

17 ARKADI GERNEY: I'm sure that if we
18 looked at it, we could find other cases.

19 COUNCIL MEMBER HALLORAN: Okay.
20 Would you agree with me that it would be all over
21 the headlines, especially given this Mayor's stand
22 on guns in general, if there was any significant
23 use of licensed registered firearms in the City of
24 New York by people who are licensed and
25 registered, any commissions of crimes with those

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2 guns? Don't you think that would be painted all
3 over the newspapers in this city, given our
4 Mayor's stance on guns? Isn't this just a
5 reaction to the fact that Heller v. Washington has
6 now been applied to the states and you are
7 scrambling to revamp policy because you know with
8 the way the laws were drafted in this city and
9 enforced in this city would never survive
10 constitutional muster, given those decisions?

11 ARKADI GERNEY: The case that
12 you're referring, the McDonald case, came down
13 after this package of improvements to the
14 licensing system was announced by the Mayor and
15 the police commissioner. Do licensed gun owners
16 commit crimes from time to time? Yes. Do they do
17 so at a reasonably low rate? That's true as well.
18 But sometimes there's also accidents and suicides
19 and that often happens--

20 COUNCIL MEMBER HALLORAN:
21 [interposing] Should we outlaw ropes and knives
22 then? Is that next? We should do that? Most
23 suicides actually are done by hanging. So by your
24 logic then, we should outlaw ropes?

25 ARKADI GERNEY: In the United

1
2 States, most suicides are by gun. In New York, a
3 lower percentage of suicides are by gun. What we
4 are outlawing would be to bring New York City's
5 laws into conformity with a standard that many
6 other states that have liberal gun carrying and
7 liberal gun possession laws, nonetheless have
8 these requirements that you not be intoxicated
9 while you carry a gun.

10 That applies to not being
11 intoxicated while operating certain kinds of
12 equipment. It applies to other kinds of things.
13 It certainly applies to driving. We wouldn't want
14 people behind the wheel of a car when they're
15 intoxicated. We wouldn't want them carrying a gun
16 for their safety and for the safety of others
17 while they're intoxicated.

18 COUNCIL MEMBER HALLORAN: You don't
19 think that if someone goes out drinking and
20 doesn't expect to drink as much as they did, that
21 them unloading the gun but simply having the gun
22 in and of itself shows responsibility?

23 ARKADI GERNEY: I think it's not a
24 good idea and I think the purpose of this
25 legislation is it's not a good idea to have a gun

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2 and carry a gun and get intoxicated. If somebody
3 is in a bar, even if their gun is unloaded and
4 they get in a confrontation and decide to wave
5 around an unloaded gun, they could be putting
6 themselves at great risk. They might make
7 decisions while intoxicated that in a sober state
8 they don't make.

9 We know from our review of other
10 crime in New York that 70 percent of the time
11 people commit crimes they are under the influence
12 of alcohol or a controlled substance. People make
13 decisions while intoxicated, and this law, by the
14 way, applies also to carrying a gun while under
15 the influence of illegal drugs.

16 We know that people make decisions
17 while they're intoxicated or under the influence
18 of drugs they otherwise wouldn't make. When they
19 make those decisions, they can put the public at
20 risk and they can put themselves at risk.

21 COUNCIL MEMBER HALLORAN: You don't
22 think that there are going to be unintended
23 consequences of this legislation, such as the
24 types of things that I've envisioned? Don't you
25 see a direct parallel between saying, by your

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2 logic then, anybody whose drunk should not carry
3 the keys to a car? Because, theoretically, and as
4 the Mayor has so pointedly called it a weapon when
5 drinking and driving, therefore there is the same
6 potential in an unloaded gun that there is in
7 having the keys to your car while you're
8 intoxicated?

9 Are we next going to go into our
10 citizen's pockets in bars to make sure that they
11 don't have car keys on them because our nanny
12 state needs to know everything they do, regulate
13 everything they do and tell them what's best for
14 them because certainly the city knows better than
15 they do when they've had enough to drink?

16 ARKADI GERNEY: With respect,
17 Council Member, I don't think the analogy makes
18 any sense.

19 COUNCIL MEMBER HALLORAN: Of course
20 you don't.

21 ARKADI GERNEY: If you're
22 intoxicated and you're waving around the keys to
23 your car, I think it's unlikely that an NYPD
24 officer who comes across you is going to--

25 COUNCIL MEMBER HALLORAN:

1 [interposing] Excuse me. Show me one statistic.
2 Show me one piece of data that indicates licensed
3 gun owners in New York City have ever done what
4 you're claiming they do. Show me any
5 statistically significant study. Show me anything
6 that shows more than once in the eight million
7 people of the City of New York, the 400,000
8 licensed gun holders over the last 20 years, how
9 many times it's happened. Answer that question.
10 How many times has it happened?
11

12 CHAIRPERSON VALLONE: Council
13 Member, he had answered that question and it
14 wasn't an answer that was acceptable to you or I.
15 Apparently they don't have any statistics and I
16 agree with you that's because it doesn't happen.
17 But he was answering your analogy about the keys,
18 and I'd like to actually give him a chance to
19 finish that.

20 COUNCIL MEMBER HALLORAN: Sure.

21 CHAIRPERSON VALLONE: Let me say, I
22 agree with you 100 percent when it comes to
23 licensed gun owners that they don't commit any
24 crime. I think his inability to give you a
25 statistic on that bears that out. In fact, last

night, licensed gun owner--

COUNCIL MEMBER HALLORAN:

[interposing] Stops a crime.

CHAIRPERSON VALLONE: --defending

his property--

COUNCIL MEMBER HALLORAN:

[interposing] That's correct.

CHAIRPERSON VALLONE: --stopped a

burglary.

COUNCIL MEMBER HALLORAN: That was

going to be my next line. What if he was in his

house drinking? Would he be arrested now?

CHAIRPERSON VALLONE: No, it

doesn't apply in the home. It doesn't apply to

police officers. So I do want him to answer your

key analogy and move on from the--

COUNCIL MEMBER HALLORAN:

[interposing] Thank you, Mr. Chairman. I will

yield back after the answer.

CHAIRPERSON VALLONE: Thanks.

ARKADI GERNEY: I'll answer the key

analogy in a moment. I do want to say that it is

the belief of the city that the vast majority of

licensed gun owners are law-abiding citizens and

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2 that Americans have a right to have guns and that
3 the city respects those rights. Though I would
4 say that from time to time licensed gun owners do
5 commit crimes and we can certainly provide for the
6 record for the committee some instances of when
7 that's happened.

8 As to the analogy, someone waving
9 around keys to a car while intoxicated does not
10 create a public safety risk. Someone waving
11 around a gun while intoxicated or going into a
12 bodega and trying to hold it up while intoxicated
13 does create a public safety risk and risk
14 especially to the person who's doing that. So I
15 think the analogy doesn't quite work.

16 COUNCIL MEMBER HALLORAN: I said I
17 would yield back.

18 CHAIRPERSON VALLONE: Thank you,
19 Council Member. I guess I know better than to
20 yield to you early. But no, I'm glad we fleshed
21 out the fact that it doesn't apply to police
22 officers. Law-abiding gun owners, of which I am
23 one, do not commit crimes. I don't have a carry
24 permit to walk around, so we don't have to worry
25 about me under this bill.

COUNCIL MEMBER HALLORAN: [off mic]

CHAIRPERSON VALLONE: You're probably right. So one of the things we do need to discuss though and reasonable people can disagree with the unloaded aspect of this. Another aspect of this that might be controversial is the very large fine. Now, an A misdemeanor the maximum fine would be \$1,000. Because this is an unclassified A, the maximum fine is \$10,000. Now even I can agree that's a little much, but that's what's in the bill right now. I believe Dan Halloran will probably think that fine's a little high. So what is your thinking behind that very large fine?

ARKADI GERNEY: Well I think the city and the police department, which endorsed the legislation; I think that we are comfortable with the fine and comfortable with up to a year in prison. We think this is a very serious offense and the penalty would not put New York City at the top of the range of potential penalties for committing this kind of a criminal act. It would put New York City right in the middle of the range of where other states and localities are that have

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these kinds of laws.

As I said, in a number of other states, it is a felony to carry a gun while intoxicated. If you do this in Rhode Island, you could go to prison for up to five years.

CHAIRPERSON VALLONE: Can you talk also about the part of the bill which would be a crime just to refuse a test while you're carrying?

ARKADI GERNEY: The way the bill is written, it's modeled exactly on how the driving while intoxicated law works in the state, so all of the provisions of the bill are modeled on that. The idea is that you want to put police officers and the driving public or the gun carrying public in exactly the same position and the same sorts of expectations. So the ability of the police officers if they notice somebody shows signs of intoxication to do a breathalyzer test or demand a breathalyzer test is exactly analogous with how it works with driving while intoxicated.

CHAIRPERSON VALLONE: In driving while intoxicated, you lose your license for six months, immediately for refusing the test.

ARKADI GERNEY: I believe that you

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can also go to jail.

CHAIRPERSON VALLONE: You can if there are other indicia of being drunk, not just for refusing the test. Am I correct, Dan?

COUNCIL MEMBER HALLORAN: That's correct. That's absolutely correct.

CHAIRPERSON VALLONE: Are you a former prosecutor too?

COUNCIL MEMBER HALLORAN: Yeah.

CHAIRPERSON VALLONE: We have three former prosecutors up here. So that is a concern if this bill reads solely for refusing without any other indicia for being drunk, that would be a crime. Is that the way the bill reads right now?

ARKADI GERNEY: My understanding of the bill is that in order to demand the test, there has to be some indicia of intoxication.

CHAIRPERSON VALLONE: We'll take a look at that. While we do, I'm going to turn the floor over to Council Member Gentile for some follow-up questions.

COUNCIL MEMBER GENTILE: Thank you, Mr. Chairman. Mr. Gerney, I may have missed this because I stepped out of the room, but what is the

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2 rationale for the decrease in the fees?

3 ARKADI GERNEY: The rationale is to
4 schedule the fees to be consistent with the
5 investigative requirements of the different
6 license types. So a new carry permit, which
7 typically will require more investigation than the
8 renewal of a long gun permit. So across the
9 board, the fees have gone down somewhat. But the
10 fees vary now by license type. That reflects a
11 review that was done to look at the investigative
12 requirements for each license type.

13 COUNCIL MEMBER GENTILE: I'm not
14 sure what that means that it reflects the
15 investigation requirements. How do you calculate
16 that in terms of a fee?

17 ARKADI GERNEY: You look at what is
18 the process. What was done was that NYPD and OMB
19 looked at the process that they have for each type
20 of license and a review for each type of license
21 and what's required to do the review. Based on
22 looking at the man hours involved across the
23 board, they were able to estimate how much review
24 is required for one type of application and how
25 much is required for another type of application.

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2 So for example, a new permit where
3 the police department is looking at someone for
4 the first time will typically require less
5 investigation than a renewal.

6 COUNCIL MEMBER GENTILE: So what
7 you're saying is that the fees as they stand now
8 are arbitrary?

9 ARKADI GERNEY: No. I'm saying
10 that the fees as they stand now were also based on
11 an OMB review. The fees as they stand now are
12 completely consistent with the city's rules on
13 setting fees. By doing what we're proposing to do
14 with the legislation is we're making the fees more
15 finely tailored to the different types of
16 investigations for different types of
17 applications.

18 It's not a requirement that the
19 city do so, but by doing so, we're able to offer
20 the public a more graduated set of fees. You can
21 slice and dice things different ways. This is an
22 attempt to look at the investigations. Not every
23 renewal investigation will take the same amount of
24 time. So there are some renewal investigations
25 that might merit more investigation. But what was

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2 done here was to look at each type here, look at
3 the typical requirements and let's come up with a
4 graduated set of fees that at a more granular
5 level reflects the investigation required.

6 COUNCIL MEMBER GENTILE: My concern
7 is can you state then categorically that the fees
8 that have been charged up to now do not violate
9 the City Charter on fees being tied to the type of
10 activity involved?

11 ARKADI GERNEY: Yes.

12 COUNCIL MEMBER GENTILE: You can
13 say that the fees now are not violative of the
14 City Charter in that regard?

15 ARKADI GERNEY: Yes.

16 COUNCIL MEMBER GENTILE: What
17 you're doing now in this legislation is not to fix
18 something that should have never been in the first
19 place?

20 ARKADI GERNEY: What we're doing
21 now is we're going above and beyond to provide a
22 more granular set of fees.

23 COUNCIL MEMBER GENTILE: I want to
24 establish that these fees currently are in keeping
25 with the current wording of the City Charter that

they have to reflect the actual service provided.

ARKADI GERNEY: Yes, that's my understanding. Yes.

CHAIRPERSON VALLONE: Can I get a definition of granular? I don't know what that means actually. I'm just kidding, thanks. While you're thinking, let me jump in.

COUNCIL MEMBER GENTILE: Okay.

CHAIRPERSON VALLONE: I did find what you stated in the law that it has to reasonably appear to the officer that such person is in an intoxicated condition to possess the gun and then refuse to submit to a breathalyzer to be the crime. Now here's the problem: when it comes to DWI, you lose your license for six months immediately for the refusal to take the test. But then it's not a crime until they go to court and prove beyond a reasonable doubt you were drunk. Here the way I read it, it's a crime just to reasonably appear to be in an intoxicated condition and refuse to take the test. I don't know if even you guys have thought this through completely, but that is something that we clearly would need to change, just for court challenge

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2 reasons. I don't think you can make it a crime to
3 reasonably appear to be drunk. That's not a
4 standard you can make a crime and refuse to take a
5 test. So that's something we would have to change
6 down the road.

7 So I think everybody was right.
8 They do have to appear to be drunk before they
9 refused. But as Dan Halloran would say, that's
10 not enough to convict someone of a crime, to
11 reasonably appear to be drunk and refuse to submit
12 to a test. So, just to clarify what the law
13 actually says. Go ahead.

14 COUNCIL MEMBER GENTILE: Thank you,
15 Mr. Chair.

16 CHAIRPERSON VALLONE: I don't know
17 if you heard that, Dan, but we just went through
18 what I mentioned to you that we don't believe you
19 can even, if you wanted to on a constitutional
20 basis, make it a crime to reasonable appear to be
21 drunk and refuse to take a test. That's something
22 that we have to change.

23 COUNCIL MEMBER HALLORAN:
24 Absolutely. Thank you, Mr. Chairman. I
25 appreciate you asking.

COUNCIL MEMBER GENTILE: Mr.

Gerney, I see that the law sets up what I guess are new rebuttable presumptions here on a three-tiered basis. Now .08 of blood alcohol content is the legal point of intoxication. Am I correct?

ARKADI GERNEY: Yes.

COUNCIL MEMBER GENTILE: Okay.

Now, I'm just curious where these three levels come from. Because you start off with rebuttable presumptions at .05 shall create a rebuttable presumption that the ability of the person to possess a firearm was not impaired. Then you go to the next level, anything less than .07 is a rebuttable presumption that a person was not in an intoxicated position. Then you go from .07 to .08 which is the legal level. How do you come up with those rebuttable presumptions?

ARKADI GERNEY: My understanding is that those rebuttable presumptions mirror exactly the state's law on driving while intoxicated. The purpose of this legislation as conceived I think is to mirror the driving while intoxicated standards. That that will make it, I think, easier for police officers and the public to

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2 understand what the law is and to realize that
3 you're in the same position if you're carrying a
4 gun as you would be driving a car and the same
5 kinds of requirements and the same kinds of blood
6 alcohol levels apply in both situations.

7 COUNCIL MEMBER GENTILE: So this
8 mirrors exactly what the DWI laws are?

9 ARKADI GERNEY: That's my
10 understanding, yes.

11 COUNCIL MEMBER GENTILE: Thank you,
12 Mr. Chair.

13 COUNCIL MEMBER HALLORAN: Mr.
14 Chair? Let me follow that up. You say it mirrors
15 the DWI laws. So then there is a violation for
16 possessing a firearm while ability impaired, not a
17 misdemeanor? Because that's what the VTL does.
18 It says that if you are intoxicated, it starts off
19 as a misdemeanor unless you're a recidivist in
20 which case it could be elevated to a felony unless
21 there are aggravating circumstances, which could
22 also make it a felony. However, if you're in the
23 quantum of impaired, .6 to .8, you are committing
24 an infraction, a violation and not a crime. Is
25 there a provision for a violation for the impaired

possession?

ARKADI GERNEY: My understanding is the tiers of the presumptions mirror the state law. Whether the penalty exactly mirrors the state law, obviously with dealing with a city ordinance and dealing with state law, there are different potential penalties. But the purpose of the legislation is to mirror the state law on driving while intoxicated.

Certainly, the chairperson and other members of the committee have raised issues about what should be the penalty for refusing the breathalyzer. I think the concept is that there should be a penalty for refusing the breathalyzer to create an incentive, as there is in the context of drunk driving, for the person to cooperate with the police.

We think that the way that this is set up makes sense, but certainly if the committee has other ideas or other kinds of penalties or incentives that you could create to cooperate, I think certainly that's something that the committee in its prerogative can look at.

COUNCIL MEMBER HALLORAN: Again,

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2 you've not answered my question by providing a
3 very lengthy answer. It's a very simple question.
4 Does this legislation that you've proposed mirror
5 the legislation of the State of New York Vehicle
6 and Traffic Law Section 1192 wherein it provides a
7 misdemeanor for offenses related to intoxication
8 and a violation, not a crime, related to impaired
9 possession? Yes or no?

10 ARKADI GERNEY: As I said in my
11 answer, the purpose to the law is to mirror where
12 possible the--

13 COUNCIL MEMBER HALLORAN:
14 [interposing] Mr. Chairman, could you direct the
15 witness to simply answer my yes or no question?
16 Is there an impaired provision that is a violation
17 or not? That's all I'm asking. It's a very
18 simple question.

19 ARKADI GERNEY: The penalties don't
20 match the state law. Not every word matches the
21 state law, but the purpose is to mirror the
22 provisions of the state law. As I said in my
23 answer before, if there are different penalties,
24 different outcomes that the committee wants to
25 consider, certainly that's at the committee's

prerogative.

COUNCIL MEMBER HALLORAN: Is that an admission that there is no violation offense? I mean, I'm just not sure that that's what I'm hearing. I certainly know that if I were in a courtroom, the judge would direct you to actually answer my question. I know we're not in a courtroom, but this will be as soon as you enact it. So I would like to make sure that it survives little things like constitution scrutiny, like complying with federal and state laws and certainly the McDonald and Heller decisions, which are now applicable to the several states. Thankfully, it's about time that the Bill of Rights is actually uniformly applied.

So assuming that there is no violation provision, which apparently is what you're saying, do you really sit here and say to us that this is a fair mirror as an offense to the statute you're touting as your poster boy for this process, which is the DWI law, which acknowledges that there is a significant difference, in fact, one a criminal act and one a non-criminal act between impairment and intoxication? Would you

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2 say that that's accurate?

3 ARKADI GERNEY: I understand that
4 the committee person would like a one-word answer.
5 I've given this answer many times. The purpose of
6 the legislation is to mirror to the extent
7 possible the state DWI laws. There are some
8 differences in it, certainly at the committee's
9 prerogative to think about different kinds of
10 penalties for different kinds of infractions or
11 violations.

12 CHAIRPERSON VALLONE: Can I jump
13 in--

14 COUNCIL MEMBER HALLORAN:
15 [interposing] Let's be careful because you just
16 used two legally significant terms which are not
17 in this statute. As Councilman Vallone, being a
18 former prosecutor and currently an attorney is
19 well aware, an infraction and a violation are not
20 criminal offenses. Someone does not get a rap
21 sheet as a result for committing of an infraction
22 or a violation. Your legislation, proposed as it
23 is, would criminalize behavior that even if you
24 were driving a car in the state would not be
25 criminal. So let's be careful when we start

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2 making new classes of criminals in our fair city
3 over words, because words are important.

4 CHAIRPERSON VALLONE: Thank you,
5 Council Member, much of what you said is 100
6 percent correct. In fact, the witness said that
7 they want to have some penalty for refusing to
8 cooperate with the police when it comes to a
9 breathalyzer and a penalty does exist on a DWI
10 while driving. But the penalty there is a loss of
11 license for six months and almost everybody knows
12 about that at this point. The penalty here I
13 don't believe is intentional. I think we found it
14 and we're going to fix it because that's our job
15 as the Public Safety Committee.

16 COUNCIL MEMBER HALLORAN: I'm glad
17 you believe it wasn't intentional. I don't. I
18 believe it was absolutely intentional.

19 CHAIRPERSON VALLONE: Okay. All
20 right--

21 COUNCIL MEMBER HALLORAN:
22 [interposing] Mr. Chairman, if I could just say, I
23 believe that this administration is only
24 responsive, and when you said before that you
25 changed these fees pre-the decision in McDonald,

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2 you're absolutely right, but while it was pending
3 with the Supreme Court where every legal pundit in
4 this country said that this court was going to
5 rule in favor of McDonald and grant him the
6 overturning of the local law. And that was post-
7 Heller where it was very clear where the law was
8 going.

9 That's why this is being done.
10 Make no mistake about it, you are reacting to the
11 fact that the Supreme Court is legislating in this
12 venue for the first time in a very long time in a
13 way completely antithetical to the mission and
14 objectives you guys have had. Sorry, Mr.
15 Chairman.

16 CHAIRPERSON VALLONE: Apology
17 accepted. Two different issues, the drunk
18 carrying while intoxicated has had nothing to do
19 with the McDonald case actually, which applied the
20 Heller law to the states. I agree with you, I
21 think this is obviously a reaction to that case.
22 Be that as it may, it is. I'm sure, for reasons
23 you're well aware, can't sit here and say that.
24 So we could belabor this point all afternoon, but
25 we won't go any further.

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2 The penalty as it exists now, as I
3 was getting to, for refusal to take a test appears
4 to be a year in jail and a \$10,000 fine. That is
5 going to be changed. We can't allow a citizen who
6 isn't aware of this law who refuses to take a test
7 to face those sorts of penalties. But that'll be
8 changed. That's our job. Every law that's ever
9 passed this committee has withstood judicial
10 scrutiny. I'm pretty proud of that record and
11 we'll continue to do that.

12 We've been joined by some other
13 esteemed members, Council Member Garodnick,
14 Greenfield, Lander, Ulrich and I think Foster also
15 walked in. Do you guys have any questions to ask
16 before we move on to New Yorkers Against Gun
17 Violence? Anybody?

18 I had some more, but nothing
19 anywhere near as interesting as what we've just
20 discussed. So I'm not going to keep you on the
21 stand all morning. I do want to hear from New
22 Yorkers Against Gun Violence who has also brought
23 someone to testify from Virginia Tech. So we're
24 interested in hearing from them.

25 But we are absolutely going to make

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2 some amendments to this. I support the goal of
3 this law. It's a great goal. It's to prevent
4 people from carrying while intoxicated. As all of
5 us I think have admitted, this isn't something
6 that's been a huge problem. But when we legislate
7 before a problem, we often are told why are you
8 doing this, and then when we wait until it
9 happens, then we're yelled at, why didn't you do
10 anything about this, why didn't you prevent this
11 from happening? So that's what we're trying to do
12 as the Public Safety Committee is prevent a
13 potential crime from happening.

14 So we are going to thank you for
15 your testimony and move on to the next witness.
16 Then we're going to work with you to make these
17 amendments, which I'm sure support at the end of
18 the day.

19 ARKADI GERNEY: Thank you very
20 much.

21 CHAIRPERSON VALLONE: Now we're
22 going to call New Yorkers Against Gun Violence,
23 Jackie Hilly, who is also going to bring up Megan
24 Meadows, who is a former student at Virginia Tech.
25 I think I said New Yorkers Against Gun Violence.

JACKIE HILLY: Right.

CHAIRPERSON VALLONE: Okay. I don't want to get that one wrong.

JACKIE HILLY: No.

CHAIRPERSON VALLONE: Thank you for coming in.

JACKIE HILLY: Good morning, members of the City Council. I'm going to just suggest that Ms. Meadows deliver her testimony first because I know she has to leave by 11:30. I have a little more time in case you want ask any questions.

CHAIRPERSON VALLONE: That's fine. Thank you, Ms. Meadows.

MEGAN MEADOWS: Hi. Good morning, Chairman Vallone, and esteemed members of the Public Safety Committee. I am Megan Meadows. I'm a New York City citizen. I'm here today to support Intro 313, which prohibits the use of a firearm while under the influence.

I myself know what it feels like to lose a loved one to a firearm, as my dear friend Reema Samaha's life was cut short when she was brutally murdered at Virginia Tech on April 16,

2007. Reema, an innocent 18-year-old girl with a fervor for life beyond imagination, fell victim to the horrible mix of mental instability and guns. I support any commonsense law, such as this one, that could prevent anyone from ever losing their life or the life of their loved one as a result of gun violence.

According to the Journal of Studies on Alcohol, "alcohol facilitates aggression by disrupting higher-order cognitive functions important in maintaining inhibitory control over behavior and increasing psychological and physiological arousal." When someone is under the influence, it can be equated to a hindrance of mental capability, such as the Virginia Tech shooter. And someone in possession of a gun in these conditions is an obvious hazard to the public's safety.

In addition to the known effects of alcohol on aggression, according to the National Institute of Alcohol Abuse and Alcoholism, as we've already stated here today, "Research has demonstrated a consistent relationship between alcohol use and violent behavior, such as rape,

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2 assault, domestic violence, and murder." The
3 correlation between alcohol and crime is already
4 apparent, but adding firearms to this equation
5 produces inherently lethal results.

6 The nature of this law is to
7 protect the right of the public to be safe, not to
8 hinder the constitutional rights of gun owners, as
9 it clearly states it would apply everywhere other
10 than in the home. The sole purpose is to maintain
11 a safe environment for the masses, and the
12 citizens of New York City surely have this right.

13 I thank you very much for your
14 time, and strongly urge you to remember the
15 millions of precious lives lost from gun violence
16 as you support Intro 313.

17 CHAIRPERSON VALLONE: You have to
18 leave right now, Megan? Does anyone have any
19 questions for Megan before we let her go? Megan,
20 thank you, for taking time out of your schedule to
21 come down today; I appreciate you sharing your
22 thoughts with us. We'll work with you when you
23 have some more time. Jackie?

24 JACKIE HILLY: Good morning, and
25 thank you again, Chairman Vallone and other

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2 honorable members who are there today from the
3 Public Safety Commission. My name is Jackie Hilly
4 and I am the Executive Director of New Yorkers
5 Against Gun Violence. Our agency is a statewide
6 organization that advocates at the local, state
7 and national levels for laws, policies and
8 practices to protect all New York State residents
9 and particularly youth from gun violence. I am
10 here today to present testimony related to the
11 Committee's agenda item Intro 313.

12 You've already heard New York City
13 is the safest big city in the country and safer
14 than many smaller cities around the country, and
15 do in large measure to the efforts that have been
16 put into law in the City Council and because of
17 the work of the New York City Police Department.

18 We are also, however, unique when
19 compared to other cities around the country
20 because we have more than eight million residents
21 living in a very small area, which comes to about
22 27,000 residents per square mile. So we are
23 unique in the proximity that we share with each
24 other and congestion is frequently a problem for,
25 or can be a problem, or poses problems, or things

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2 that we should consider for cars, pedestrians,
3 subway riders, park users and school children in
4 our city.

5 Into 313 is a sensible response to
6 this congestion in New York City and it considers
7 public safety first. I have no position
8 whatsoever on the fees relative to the different
9 procedures that are followed by the city. I do
10 know that members of the public who have addressed
11 this before will probably be happy to find that
12 their fees are lower.

13 We do, however, enthusiastically
14 support the second half, which would make
15 residents of New York City safer in public places
16 where they can enjoy the benefits of living in New
17 York without the fear that they might be injured
18 accidentally or unintentionally because of a
19 person who possesses a weapon, even if they
20 possess it legally, but they possess it while in a
21 drunk state.

22 I will point out to the committee
23 that the legislation here specifically refers to
24 public places and that's an important distinction
25 that I'd like to draw. In fact, the Heller case

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2 draws that distinction as well by saying that the
3 right to possession, which was established to be
4 an individual right under the Heller case, is a
5 right to possess in your own home for self-
6 defense. It was reiterated again in the McDonald
7 case with respect to the city of Chicago.

8 So the first thing that I did when
9 I looked at this law was to say well what other
10 indications of alcohol, alcohol abuse and drug
11 abuse do we have in terms of the way that our law
12 deals with it.

13 We do know that alcohol is a
14 national problem and in cities like New York where
15 people live in close quarters on the streets and
16 in their homes, excessive alcohol consumption can
17 affect us all, as does mental illness, whether
18 it's people pushing people into the subway because
19 they're mentally ill or other things. We live in
20 closer proximity to each other. That's one of the
21 reasons I think this is a sensible law for New
22 York.

23 We do know from studies of alcohol
24 abuse that the brain experiences significant
25 impairment to regions of the brain and the body as

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2 a result of alcohol impairment and intoxication.
3 There is the loss of reason, the loss of motor
4 skills, there are slower reaction times. It
5 includes impaired, slurred or blurry vision or
6 distance judgment and a general degeneration of
7 muscle coordination control and balance as you
8 move through the different stages of impairment
9 and intoxication that we just heard about.

10 So that's one thing that I looked
11 at and then the other thing I looked at was the
12 Brady Background Checks. Now, since the Brady
13 Background Checks have been law in our country, it
14 has been a really common and uncontroversial
15 objective of our policies to keep firearms away
16 from people who are deemed to be at a higher risk
17 of injuring either themselves or other people.

18 So under that system we disqualify
19 people who are too young or people who have shown
20 by prior acts, being convicted of a felony, one of
21 those, or being subject to a domestic violence
22 order of protection, that they are more likely to
23 run the risk of injuring themselves or others. We
24 also exclude people who are adjudicated mentally
25 ill. The whole purpose of that system is to say

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2 when you exercise constitutional rights, you also
3 exercise responsibility. If you don't exercise
4 responsibility, then we will prevent you or
5 temporarily disable you from exercising those
6 constitutional rights.

7 In fact, in the Heller case and the
8 McDonald cases, which were recently heralded by
9 all kinds of press, Justice Scalia, who is
10 probably the most conservative jurist to come
11 along in a very, very long time, specifically
12 said, in both of those cases, and it was
13 reiterated in the second case. He said that the
14 right to bear arms "was not a right to keep and
15 carry any weapon whatsoever in any manner
16 whatsoever and for whatever purpose" and nothing
17 in this opinion should be taken to cast doubt on
18 our longstanding prohibitions for the possession
19 of firearms by felons or the mentally ill, or laws
20 "forbidding the carrying of firearms in sensitive
21 places such as government and school buildings or
22 laws imposing conditions and qualifications on the
23 sale of arms."

24 So, what I derive from that
25 decision is that under the Brady Background

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2 systems, one of the important facts is that you
3 will carry weapons and you will exercise other
4 rights related to the weapons in a responsible
5 manner. Indeed, one of the prohibited groups
6 under the Brady Background Check system is an
7 unlawful user or person addicted to controlled
8 substances.

9 So when you look at alcohol and
10 drugs in other areas, you will see that more than
11 one-third of the traffic fatalities in the United
12 States are by law-abiding citizens who check their
13 reasonable and their thought process when they get
14 into a car drunk and they put the public at grave
15 risk. In our city, for example, they put
16 pedestrians and we've had lots of evidence of cars
17 that have gone on 42nd Street and killed innocent
18 people. We are really establishing the same kind
19 of behavior for people who possess guns while they
20 are drunk or impaired outside the home. I really
21 can't stress that. This law in no way in any part
22 does anything in any way to intrude upon the
23 rights of people who possess guns in their home,
24 whether or not they're drunk.

25 It's when you enter, just like if

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2 you sat in your car and you were drunk in your
3 driveway, nobody would stop you. But once you
4 take to the public roads, just like once you take
5 to the public streets or you're on the subway or
6 you're in Macy's where there are other thousands
7 of people, once you begin that process, you are
8 putting public safety at risk because you have
9 reduced, voluntarily, your own ability to
10 reasonably manage and possess a gun in a lawful
11 way.

12 So I would say that the
13 constitution does guarantee rights to the citizens
14 but no right is absolute. There are many evidence
15 of the Bill of Rights where you can't yell fire in
16 a crowded movie theater, et cetera, et cetera.
17 This is one more recognition of the fact that this
18 right would be reasonably limited in a way that
19 protects public safety.

20 I thank you for this opportunity
21 and would be happy to respond to any questions.

22 CHAIRPERSON VALLONE: Thank you,
23 Jackie. You and I discussed something before you
24 testified and we did find out that it actually
25 happened. I'm sure this has nothing to do with

1
2 why Dan Halloran is asking these questions, but
3 there was a Mt. Vernon council candidate in August
4 of 2009 who was found passed out, drunk, with a
5 gun in his waistband. It wasn't New York City,
6 but these kind of things do happen.

7 COUNCIL MEMBER HALLORAN: They
8 happen.

9 CHAIRPERSON VALLONE: Huh? They do
10 happen.

11 JACKIE HILLY: I also just think
12 that case, for me, says that one of the reasons I
13 think in public--if you lose possession of your
14 gun in your home and you're drunk, no one is going
15 to find it except your family member, which
16 hopefully won't be your child. But if you lose
17 possession of your gun and you're on the street,
18 that council member, for example, someone could
19 have taken the gun. So then you're kind of adding
20 one more gun to the illegal market, which is
21 obviously something that we would like not to
22 happen because we have plenty of illegal guns
23 coming here already.

24 CHAIRPERSON VALLONE: Thank you.
25 We've been joined by Council Member Gennaro, who

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2 is in a meeting and will come back. I've got some
3 questions, but I refuse to learn from my mistakes
4 and I'm going to yield to Dan Halloran who's got,
5 I think, a minor problem with something you may
6 have said. Please be civil, Dan.

7 COUNCIL MEMBER HALLORAN: A couple
8 of things. It's just me. Let me just ask you, do
9 you actually possess a law degree?

10 JACKIE HILLY: Yes.

11 COUNCIL MEMBER HALLORAN: Okay.
12 Your interpretation of the Heller decision that
13 you stated says that the Heller decision is
14 focused solely on the home. The right of the
15 people to keep and bear arms shall not be
16 infringed as a textual reading of the constitution
17 and applicability to the several states as being
18 incorporated by the Bill of Rights. That's not
19 your interpretation of what the Supreme Court said
20 in the McDonald decision?

21 JACKIE HILLY: Well, I think the
22 Supreme Court said a lot of things in the McDonald
23 decision. I didn't follow--

24 COUNCIL MEMBER HALLORAN:
25 [interposing] Let's just stick to the majorities

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2 actual holding and not what you hope the dicta
3 might have said. Let's look at the holding. Did
4 not Justice Scalia in writing for the majority say
5 that the Second Amendment is in fact a
6 constitutional right? Its placement in the Bill
7 of Rights makes it, in fact, applicable to the
8 several states, its plain meaning in words are
9 applicable here. That's not Justice Scalia's
10 statement in that decision?

11 JACKIE HILLY: Well I don't have
12 the statement in front of me, but I'll tell you
13 what I believe is the basic holding of Heller. I
14 think the basic holding of Heller, and the
15 argument was that there was the state's right to
16 possess weapons vis-à-vis the federal government
17 and that argument which was made on behalf of many
18 gun violence prevention was rejected. The holding
19 was instead that yes, there is underlying and
20 subsumed into that state's right an individual
21 right to bear arms in your home and that that
22 right--

23 COUNCIL MEMBER HALLORAN:

24 [interposing] In your home.

25 JACKIE HILLY: --could be

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regulated. Well, once you--

COUNCIL MEMBER HALLORAN:

[interposing] I'm sorry.

JACKIE HILLY: Let me just finish

my--

COUNCIL MEMBER HALLORAN:

[interposing] Could you tell me where in Justice Scalia's decision it says that it's applicable solely to your home because that's not the plain text of his holding nor is it the interpretative method that's been applied to any right articulated in the Bill of Rights.

So then you only have a right to be secure in your person in possessions in your home, not on the street. So we can dispose of the stop and frisk laws because they don't apply? We can get rid of your right to counsel as long as you're not in your house? Is that really what you're saying, because I don't think it's what you're saying?

JACKIE HILLY: No, that's not what I'm saying and I'm not sure about the reference to the right to counsel either.

COUNCIL MEMBER HALLORAN: They're

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2 all parts of the Bill of Rights in case you
3 weren't aware.

4 JACKIE HILLY: No, no, no, I'm very
5 aware that they're parts of the Bill of Rights.
6 What I'm saying is that the Heller case, as it is
7 projected and talked about, is you have a right to
8 bear arms in your home which is the fundamental
9 underlying basis that Scalia and all the other
10 justices that talked about it, that's where the
11 right originates. They go back to the colonial
12 times. If you read the decision and you read all
13 the material behind that, they talked about many
14 different ways in which militias were formed and
15 the people possessed their homes and guns in their
16 homes.

17 I'm not just saying you can only
18 possess guns in your home. What I'm saying is
19 that you have a fundamental right, that the right
20 is based upon the fact that you have a right to
21 possess a gun in your home for self-defense.
22 That's the underlying premise which was the new
23 law and any of these comments that I have made
24 with respect to the way in which Heller was
25 interpreted, when those statements were reaffirmed

1
2 in McDonald, they were specifically quoted in
3 McDonald by Justice Alito in the majority opinion
4 which makes it no longer dicta.

5 I agree with you that at one point
6 it might have been dicta when it was in Heller,
7 but once it was reiterated and those exact pieces
8 of language were restated by Justice Alito, then
9 it became non-dicta but part of the holding of the
10 case and law. So when I say that those rights
11 could be limited, that is the law of the land now,
12 according to Heller and McDonald.

13 COUNCIL MEMBER HALLORAN: Now you
14 also indicated in drawing your analogy between
15 people who get into cars and have accidents,
16 they're licensed. You understand that driving is
17 a privilege and not a right, unlike gun ownership
18 which is, in fact, a right. So there is a
19 significant legal difference between regulating a
20 privilege which driving is and regulating a right
21 which exists in the constitution. You do
22 understand there's a difference?

23 JACKIE HILLY: I understand the
24 difference and as a matter of fact, that I think
25 that I would argue that the right to drive is very

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2 much connected to the right of free assembly in
3 where I want to go.

4 COUNCIL MEMBER HALLORAN: You don't
5 have a right to drive. The State of New York, and
6 this is well settled law, says you have a
7 privilege to drive granted to you by the State of
8 New York. You do not have a right. So you're a
9 lawyer. I'm sure you're legally savvy enough to
10 understand the difference between a right and a
11 privilege and you know that driving is a privilege
12 in the State of New York and not a right. You're
13 aware of that as a lawyer, right?

14 JACKIE HILLY: I'll take your word
15 for that right now.

16 COUNCIL MEMBER HALLORAN: So you
17 don't know that?

18 JACKIE HILLY: No, I'm not--

19 COUNCIL MEMBER HALLORAN:
20 [interposing] So you don't know that the state has
21 the right to put you through the paces to go take
22 a driver's test, to fill out a bunch of forms, to
23 pay an exorbitant fee and to--

24 CHAIRPERSON VALLONE: [interposing]
25 Dan, we're going to need to go back to this law.

I'm going to actually ask you to step it down a little bit.

COUNCIL MEMBER HALLORAN:

Congestion, you indicated that congestion is one of the reasons. So, constitutional rights should be limited by the congestive nature of a particular municipality?

JACKIE HILLY: No, I think the reasonableness of the statute can be judged by the context in which it was enacted. Statutes that address specific concerns of different communities will vary according to different circumstances. In this case, because of the proximity in New York, I believe that congestion is an issue that should be considered.

COUNCIL MEMBER HALLORAN: Okay.

You also indicated, you talked about some of the categories for which regulation has existed. Just to briefly touch on the Virginia massacre. We are aware now in hindsight that it was the state of Virginia's failure to report the mental incompetency of Mr. Cho that resulted in that incident.

It wasn't a failure in the law; it

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2 was a failure in reporting between the state and
3 federal government. That the state of Virginia
4 failed to note that he was mentally incompetent to
5 NCIC and therefore his application for a permit
6 was not denied. That was because of inaction on
7 Virginia's part.

8 One, are you aware of that? And
9 number two, you're aware that nobody on that
10 campus based on their restriction of carry permits
11 and preventing people from carrying on campus--

12 CHAIRPERSON VALLONE: [interposing]
13 Council Member, she didn't mention Virginia Tech.
14 This is completely irrelevant. Again, if you
15 disagree with the constitutionality of this bill,
16 that's fine. We're not going to settle that here.
17 If someone challenges this bill--

18 COUNCIL MEMBER HALLORAN:
19 [interposing] I understand, Mr. Chairman.

20 CHAIRPERSON VALLONE: --after it's
21 passed. It's been passed in 19 other states and
22 I'm finding out whether it's been challenged yet
23 in any of those states. So that'll be a question
24 for the courts someday. We don't need to work out
25 in this room, whether this bill is constitutional.

COUNCIL MEMBER HALLORAN:

Understood, Mr. Chair.

CHAIRPERSON VALLONE: Whether we're allowed, whether this is a rational restriction on the Second Amendment right or whether it's not is not anything we're going to figure out today.

COUNCIL MEMBER HALLORAN: I understand. I just think that if we're going to bring up things like accidents being analogous, we need to deal with the fact that one is a privilege, one is a right. If we're going to use facts like events that took place in other locations that at least they be actually explained in the context in which they took place. That's all, Mr. Chairman. I'll yield back to you.

CHAIRPERSON VALLONE: They have determined apparently that it has been challenged in other states but has not yet successfully been challenged in any other state when it comes to the constitutionality of passing a carrying while intoxicated law. Council Member Greenfield?

COUNCIL MEMBER GREENFIELD: Thank you for your testimony today, just a couple of quick questions for you. You're the expert I

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2 guess in the field. Do we have an estimate on how
3 many illegal guns we have in the streets of New
4 York City?

5 JACKIE HILLY: I don't have an
6 estimate. I've looked at different ATF reports of
7 traced guns, which is not the complete collection
8 of guns. I know that sometimes there are upwards
9 of 5,000 a year. So I'm not really sure how that
10 relates to the city. But there are plenty of
11 illegal guns.

12 COUNCIL MEMBER GREENFIELD: I was
13 just curious about this facet. We're told there
14 are some 1.2 million firearm permits in the State
15 of New York. Roughly 36,000 in the City of New
16 York, which means the City of New York, which has
17 a population of roughly 8.4 million people, 44
18 percent of the state has roughly 4 percent of the
19 permits. We also know that we have some 30 odd
20 thousand police officers in the City of New York
21 who carry guns as well. And on occasion those
22 police officers, as we saw last week, we had an
23 officer who was convicted for driving drunk and
24 effectively killing an individual while doing so.
25 Do you believe that this law should exempt police

officers?

JACKIE HILLY: I think that there are so many different intersections of laws when it comes to police officers in terms that they have to carry their guns in certain situations and they have to be armed, that I think it's more difficult to enact a law that covers everybody when you're also covering police officers.

They also suffer greater consequences because of their behavior if they're discovered to be in a condition where they are carrying and it turns out that they're dangerous or they've lost control of their weapon or they've discharged it. So I think they have more to lose and they're already more regulated. So I'm not troubled by the fact that it does not cover police officers.

COUNCIL MEMBER GREENFIELD: For example, in the situation last week where we had the officer who was sentenced, I think, something like a whopping 90 days in prison for killing someone. That particular officer, most likely, I imagine, had a gun on him at the time and yet was not charged with that.

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2 So is it the position of New
3 Yorkers Against Gun Violence that you do not
4 believe that police officers should face the same
5 criminal penalties for carrying a gun while
6 intoxicated?

7 JACKIE HILLY: I don't have a pre-
8 established official position on that, nor does my
9 organization.

10 COUNCIL MEMBER GREENFIELD: That's
11 what I'm asking.

12 JACKIE HILLY: I would certainly
13 say that I think that police officers should be
14 held to a very, very high standard of behavior and
15 responsibility. It was my impression that they
16 are held to that standard, by the police
17 department first, and that they can suffer very
18 severe consequences if they go outside the
19 description that I've just given.

20 Whether or not this law and how it
21 intersects with the police department regulations
22 is something that I'm not really familiar with so
23 I can't say whether or not this law should also
24 cover them. But in terms of the principle, should
25 they be held to a very high standard and should

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2 they be sentenced to commensurate sentences if
3 they have the same kind of behavior? Yes, I think
4 they should be.

5 CHAIRPERSON VALLONE: Council
6 Member, if I may interrupt a second. It's a very
7 interesting question as to whether police officers
8 should be covered by this. Our counsel believes
9 that we are not able to do that based on state
10 laws that exist right now. That is not a settled
11 law, but it is the counsel's position of the City
12 Council that that's not something we would have
13 the right to do. That's why this bill does not
14 include them.

15 It would be an interesting argument
16 but apparently we're not able to do it based on
17 state law that exists right now. Again, not
18 settled, if we wanted to pass a law that might be
19 challenged on that basis, I guess we could. But
20 our counsel feels otherwise.

21 COUNCIL MEMBER GREENFIELD: I'm
22 loathe to agree with Dan Halloran, but this might
23 be one of those instances where--

24 COUNCIL MEMBER HALLORAN:
25 [interposing] I'm sorry.

COUNCIL MEMBER GREENFIELD: Yes, exactly, you're embarrassing me, Dan. But perhaps we should consider including a provision considering that they have half of the guns in New York City. I want to be clear; I think 99.99 percent of police officers are wonderful and fantastic. But even .01 percent, that leaves you with a few hundred police officers who are running around with guns who occasionally get drunk and get into mischief.

So it might be worth considering, if there's not a clear position, perhaps including them. We're going to get challenged by attorney Dan Halloran anyway, so we might as well look at another challenge and see if it holds up. If not, we could always come back and adjust the law.

But I think Jackie would agree with me that perhaps there is a value, aside from the serious consequences internally in NYPD, which obviously is you get fired. I imagine when you're driving drunk and you kill somebody, I would hope you get fired from your job. But it might be worth it having another consequence which is that you're driving drunk and you're a police officer

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2 and you have a gun, you should also face the same
3 criminal penalties as any of the other civilians
4 in New York City. Is that fair?

5 JACKIE HILLY: Yes, that's fair.

6 COUNCIL MEMBER GREENFIELD: I
7 appreciate it, Jackie, thank you.

8 CHAIRPERSON VALLONE: Thank you,
9 Council Member. Although you might be happy about
10 this, I don't believe you agree with Dan Halloran
11 because I don't think he actually thinks this
12 should apply to cops. I don't think he thinks it
13 should apply to anybody, especially not cops.

14 COUNCIL MEMBER GREENFIELD: No, I
15 mean that he would be challenging the law
16 regardless.

17 CHAIRPERSON VALLONE: Right.

18 COUNCIL MEMBER GREENFIELD: So if
19 we're already having the law challenged, I don't
20 see much to be lost in having two parts of the law
21 challenged. And if it has to be tweaked, we'll
22 bring it back. Because I think a perfect law is
23 better than a semi-perfect law.

24 CHAIRPERSON VALLONE: Just trying
25 to help you out. One interesting point you did

bring up, which does support Dan Halloran's argument, and I happen to agree with him on this, and I think you got this from Cyrus Vance's testimony. I should mention that the D.A. did submit testimony, Cyrus Vance, fully supportive of this bill. But he does say, and Council Member Greenfield did the math on this, that basically 4 percent of the permits in New York State exist in New York City.

Dan and I believe that's because New York City has been overly harsh on legal gun owners, and have prevented many people who we believe should responsibly be able to own a gun, from owning guns with past regulations. That doesn't make this a bad law. That doesn't mean everything they put in is bad. I've supported many of their past regulations on guns because I do believe you have a right to carry and that right can be responsibly regulated.

The fact that only 4 percent of those permits exist, which you brought out based on this testimony, which we didn't get a chance to ask the deputy commissioner about that, but I think we have a letter out asking for those

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2 statistics which we'll be looking for a response
3 to. So that is very interesting that it's 4
4 percent of the gun permits in the entire state are
5 here in New York City.

6 COUNCIL MEMBER HALLORAN: And we're
7 43 percent of the population of the State of New
8 York.

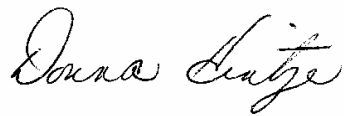
9 CHAIRPERSON VALLONE: I don't
10 believe there are any other questions for you,
11 Jackie. Let me just look. As you've, I think,
12 noticed, we are going to be moving forward with
13 this, but we are going to be moving forward with
14 some amendments to it. We'll be keeping you
15 advised of those and involved in that situation.
16 If there are no other questions for Jackie, then
17 we're going to thank you for coming down. We look
18 forward to working with you.

19 As I said, we've been given
20 testimony by D.A. Vance and from New York State
21 Rifle and Pistol Association. I gave the reason
22 before why they opposed this. Again, I think
23 today showed the value of having knowledgeable
24 members on this committee because we are going to
25 work to improve this law, make it fair and make it

2 more able to withstand constitutional challenge.
3 I don't think any of that will get a unanimous
4 vote from committee members on this bill, but it
5 will be a much fairer version once it is passed.
6 So thank you all for coming down today and we're
7 going to adjourn this meeting. Thank you.

C E R T I F I C A T E

I, Donna Hintze certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Signature_____

Date September 27, 2010