



**COMMISSION ON HUMAN RIGHTS**

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**PATRICIA L. GATLING**  
*Commissioner and Chair*

Testimony of Clifford Mulqueen  
Before the Committee on Civil Rights  
Council of the City of New York

June 30, 2011

Madam Chair, Council Members, good morning.

Thank you for giving the Commission an opportunity to testify regarding Intro #s 625 & 632 proposing changes to the New York City Human Rights Law. Specifically, Intro # 625 seeks to remove the jurisdictional minimum for Human Rights Law coverage in employment cases and Intro # 632 seeks to more clearly define undue hardship when evaluating religious accommodation cases in employment.

The Commission has no issue with either of these proposals; however, the administration has submitted some language for your consideration regarding Intro # 632 that we feel will avoid any future confusion between the two definitions of undue hardship that will exist should this proposal become law.

We look forward to working with the Committee and the Council on these and other changes to the law over the next few years.

Thank you.

**Testimony of Amardeep Singh**

**Director of Programs  
The Sikh Coalition**

*before the*

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

*On*

**Int. 0632-2011**

June 30, 2011

I would like to wholeheartedly thank the Committee on Civil Rights for the opportunity to appear before you today. I am also thankful for Chair Roses leadership of this Committee.

My name is Amardeep Singh. I am the co-founder and Director of Programs at the Sikh Coalition, the nation's largest Sikh civil rights organization, based here in New York City. Since our founding on the night of 9/11 we have been working to ensure that all New Yorkers and people living in the United States enjoy their full rights and liberties.

As a community-based civil rights organization, we deeply appreciate the work of the New York City Commission on Human Rights, and we have a stake in ensuring that the Commission is fully empowered to protect workplace religious freedom for not only Sikh Americans, but all people of faith in New York City.

**The Promise of Intro 0632-2011 or the Workplace Religious Freedom Act**

As you may be aware, Sikhs suffer high levels of employment discrimination because of their Sikh identity. In particular, the Sikh turban and beard have often become objects of societal rejection or derision, particularly after 9/11.

According to a research report issued by the Sikh Coalition in 2008 called “Making Our Voices Heard: A Civil Rights Agenda for New York City Sikhs,”<sup>1</sup> 1 in 10 Sikhs in New York City reported suffering discrimination in employment.

Most egregiously, right here in the most diverse city in the world, as a matter of Department policy, Sikhs may not work as police officers for the New York City Police Department (NYPD) unless they remove their turbans. While the NYPD has recently made a single exception for one Sikh to serve as a police officer in the city, its general policy is to force Sikhs to make the false choice between gainful employment for which they are qualified and their faith.

In this regard, I would add that as I speak, two turbaned Sikhs Army officers are serving with their fellow Sikh soldiers in Afghanistan. Both those Sikh soldiers were honored for their service by City Council Speaker Christine Quinn and Mayor Michael Bloomberg last year.

While we are encouraged by signs that the NYPD is open to changing its policy of telling qualified Sikhs to remove their turbans, it is a travesty that this policy exists. If Sikhs can serve in the heart of combat operations in Afghanistan, they can serve right here in the city were many were born and raised as proud members of the NYPD.

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<sup>1</sup> See, “Making Our Voices Heard: A Civil Rights Agenda for New York City Sikhs,” published by the Sikh Coalition, April 2008, pg. 5. Available at: <http://www.sikhcoalition.org/RaisingOurVoicesReport.pdf>

Beyond the NYPD, which is one of the city's largest employers, the Metropolitan Transit Authority has also singled out Muslim and Sikh workers for discrimination. As I speak, Sikh and Muslim workers who currently work for the Metropolitan Transit Authority (MTA) are forced to brand their religious headwear with an MTA logo. The MTA began imposing and enforcing this job requirement on only Sikh and Muslim workers a few years after 9/11.<sup>2</sup> Amazingly one the MTA workers who is being forced to brand his turban --- Kevin Harrington --- received an award from the MTA as a "hero of 9/11" for his genuine heroism in leading his passengers to safety as the operator of the Number 4 train on that fateful day. The idea that he would now need to brand his turban to do his job and be recognizable as a MTA employee, particularly given his heroism on that day, is disturbing.

So I am sure this Committee can appreciate the challenges our community faces here in the city. While private employers discriminate, the actions of government employers like the NYPD and MTA is more troubling. If government can discriminate unfairly, if government can force qualified workers to choose between their faith and their jobs, what kind of message does it send the private sector.

So today we ask that every Member of this Committee on Civil Rights support

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<sup>22</sup> After initially only requiring Sikh and Muslim workers to brand their headdress, the MTA now requires all employees to brand MTA-issued headdress with their logo. However, the MTA only enforces the branding and headwear requirements with Sikh and Muslim workers. Workers of other faiths are generally not issued citations for uniform violations.

Intro. 0632-2011, or what we like to call the Workplace Religious Freedom Act (WRFA).

Why support this Workplace Religious Freedom Act? In short it would close a big gap between the protections afforded by state law and city law for religious freedom in the workplace.

Under current city law, employers are required to make a 'reasonable accommodation' for the religious practices of their employees. However, employers like the NYPD and MTA can easily bypass this requirement by showing that such an accommodations would impose a **minimal** difficulty or expense on the employer's business.

State law however says that an employer can only request a religious request for accommodation if the request would cause a "significant difficulty or expense." The gap therefore between a "minimal" difficulty and a "significant difficulty or expense" is wide. In a city as diverse as New York, it's not right that state law on the books is more protective of religious freedom in the workplace than city law.<sup>3</sup>

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<sup>3</sup> Of note, the Local Civil Rights Restoration Act of 2005 states that the New York City Commission on Human Rights should be interpreted expansively in order to provide *as much or greater* protection for employees than exist under federal or state law. Therefore, though the Reformation Act implies that the "significant difficulty or expense" definition of undue hardship could be applied under the NYCHRL, it is completely unclear if this is happening and has not happened yet. The resultant lack of clarity empowers employers to believe that they can get away with discrimination, and creates a situation where religious employees do not understand the extent of their rights.

What we ask of you today, what this Introduction will make happen if enacted, is to simply close that gap so that our city law and our state law match each other. In doing so, you will ensure that employers like the NYPD and MTA cannot find support for irrational job discrimination in the city's law. All we therefore ask is that city law matches state law. That is it.

Finally, some may question the need for this Introduction since state law already provides strong protections for religious freedom in the workplace. It is important nonetheless that this Council support this bill for two reasons. First, passage of this bill sends a clear message to the public that our city law is will be at least as welcoming to workplace religious freedom as state law. This is an important message to send to the public from this legislative body. Second, passage of this bill will ensure that the city's Commission on Human Rights and Judges of the Office of Administrative Trials and Hearings are applying a "significant difficulty or expense" standard to religious accommodation claims and no other standard. It is critically important that the standards which our Human Rights Commission and city Judges are applying are clear. The rights of city employees who use the city agencies as avenues of relief hangs in the balance.

#### A National Movement

I would note that today proposed change in city law tracks a national movement to enhance federal employment discrimination law so that religious accommodation claims. Every year Senator John Kerry (D-MA) introduces a federal "Workplace

Religious Freedom Act.” So New York City would not be alone in this fight for ensuring the law is welcoming of religious freedom in the workplace. There is national support for this movement.

**Gap in Today’s Bill**

Finally, while supporting today’s introduction, the Sikh Coalition would like to note an important gap in today’s introduction and implore the City Council to address it.

This bill does not address the emerging issue of “workplace segregation.” Under current interpretations of employment discrimination law by some courts, an employer can lawfully segregate employees of faith out of public view if their articles of faith violate workplace uniform rules as long as they offer employee similar pay and benefits.

Consider the example of a New York City retail store with a grooming and corporate image policy forbidding facial hair. If a qualified Sikh or Muslim man applies for a sales position, the employer must reasonably accommodate the employee’s religiously-mandated beard. However, under the city’s current Human Rights Law, the employer can lawfully refuse to hire the Sikh or Muslim man for the sales position and instead only offer him a position in the stockroom, away from public view. This transfer would be completely legal because the current law says that an accommodation is reasonable if it eliminates the conflict between employment



requirements and religious practice.<sup>4</sup> So, as long as an employer offers similar pay and benefits in the stockroom, it can lawfully remove religious minorities that do not fit its 'corporate image' from the salesroom. In a sense, the city's Human Rights Law allows employers to force religious minorities to the back of the bus.

What message does this lack of clarity send to our employers, employees, and the general public? In the context of religious discrimination, including post-9/11 discrimination, keeping religious minorities – such as Muslims and Sikhs - out of public view reinforces bigoted stereotypes about what American workers are supposed to look like. This practice sends the message that certain minorities are to be feared, silenced, and unseen.

Sadly, even the New York City Metropolitan Transportation Authority (MTA) has argued that it can lawfully segregate Muslim and Sikh workers from the general public unless the workers brand their religious headdress with its logo. The MTA says that the law allows it to force these workers back to the rail yards and out of public view if they do not fit the MTA's corporate image.

The spirit of the city's anti-discrimination law is to integrate the workplace, not to segregate religious minorities. We therefore ask that the city enact a law that explicitly forbids segregation of employees from customers and the general public

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<sup>4</sup> See *Ansonia Board Of Education v. Philbrook*, 479 U.S. 60 (1986).

on the basis of image policies; uniform policies; and actual or perceived customer or public preference.

I hope you agree that in our great city separate but equal is always inherently unequal — not only in schools, but also in the workplace. Please support the millions of city residents of faith and make it clear that separation and segregation are not reasonable in New York City.

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I thank you for allowing me to appear before you today.

New York City is a shining example of religious diversity in America, and we should honor that diversity by strengthening our Human Rights Law without delay. Please pass Intro 0632-2011, the Workplace Religious Freedom Act.

Thank you.

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**HEARING OF THE COMMITTEE ON CIVIL RIGHTS  
NEW YORK CITY COUNCIL  
June 30, 2011, 10 a.m.**

Good morning, my name is Karen Cacace and I am the Supervising Attorney for the Employment Law Unit at The Legal Aid Society.

I am here to speak in favor of Council Member Rose's proposal to remove the four-employee requirement from the New York City Human Rights Law. This change will have particular import for many clients of The Legal Aid Society who are currently outside the City's discrimination protections because their employer has fewer than four employees. At the Legal Aid Society, we have seen numerous cases in which employers had only two or three workers and treated them each very differently because they are in a protected category. For example, in two cases on behalf of domestic workers, employers employed one white worker and one or two Latina workers and provided the white worker with significantly better terms and conditions of employment compared to the Latina workers, even though they all performed the same work. The employers also routinely made derogatory comments about the Latina workers. For discrimination based on race, these workers may have a claim under the pre-Title VII Civil Rights Statute 42 U.S.C. section 1981. However, this discrimination is currently legal under New York City law, and if the discrimination was based on an illegal motive other than race these workers would have no recourse.

Domestic workers now have a cause of action for sexual harassment under the State Human Rights Law thanks to the Domestic Workers Bill of Rights. However, the City Human Rights Law is expressly designed to be more expansive than the State law and has significantly more favorable standards and remedies. Other employees whose employers have fewer than four employees are vulnerable to hostile work environments, have no right to accommodations for disabilities, and are vulnerable to discrimination based on criminal record and other protected categories in the city law. We strongly urge you to make this much-needed change.

We have a former client of The Legal Aid Society here to provide her perspective as someone currently left out of protection in the City Law. I'd like to introduce Angelica Hernandez.

Angelica Hernandez

My name is Angelica Hernandez. I am a member of Domestic Workers United and a former client of The Legal Aid Society. I am here to speak in favor of the proposal to assure that the City's discrimination laws cover all employees and remove the four-employee requirement.

This is a good proposal because it will especially benefit domestic workers. Unfortunately, often our employers don't see us as employees because we work in the house. Discrimination and sexual harassment are common. Now, because of the Domestic Workers Bill of Rights, we have protection against sexual harassment. However, under the City law, we don't have that protection. We also have no right to accommodation for disabilities, or protection from other kinds of discrimination.

In my case, my employers hired me and another worker from another country to work as nannies. They treated me differently. I was discriminated against because of the country I am from. They paid her more and gave her time to rest and time to sleep while they treated me like the "girl," the "servant."

The change in the law that you are considering today will also help expand protection against retaliation, which is critical for domestic workers. Threats and intimidation are common. Many immigrant domestic workers stay in abusive situations because their employers tell them that they could be reported to Immigration if they make any claim. Many workers do not have information about their rights and continue working in fear. It is difficult to stand up for yourself when you are in the middle of the situation.

It is very important to extend the discrimination law to cover all employees for these reasons. Thank you for your consideration and I hope you take this action.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 625 Res. No. \_\_\_\_\_

in favor -  in opposition

Date: 6/30/11

(PLEASE PRINT)

Name: Angelica Hernandez

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

I represent: \_\_\_\_\_

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: \_\_\_\_\_

(PLEASE PRINT)

Name: Cliff Mulquea

Address: Deputy Commissioner

I represent: Human Rights Commission

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 625 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/30/11

(PLEASE PRINT)

Name: Karen Carace

Address: 199 Water St

I represent: The Legal Aid Society

Address: 199 Water St, 3rd fl.  
NY, NY 10038

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. 0637 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/30/11

Name: Robin Levy (PLEASE PRINT)

Address: 605 3rd Ave

I represent: Anti defamation League

Address: 605 3rd Avenue

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**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: 6-30-2011

Name: RAJINDER SINGH KHALSA (President) (PLEASE PRINT)

Address: SIKH RECOGNITION TRUST

I represent: \_\_\_\_\_

Address: 122-18, 111 AV. SO. OZONE PARK NY

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 0632 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/30/11

(PLEASE PRINT)

Name: Amardeep Singh

Address: 40 Exchange Place, Suite 727

I represent: The Sikh Coalition

Address: G

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: KEULW HARRINGTON

Address: 3975 Sedgwick Ave 11-C

I represent: TWC / Sikh Coalition

Address: 1700 B'way NY 10019

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