

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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HELD AT: Committee Room-City Hall

B E F O R E:
BEN KALLOS
Chairperson

COUNCIL MEMBERS:
Brad Lander
Mark Levine
Ritchie Torres
Margaret Chin
Steven Matteo
David G. Greenfield

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COMMITTEE ON GOVERNMENTAL OPERATIONS

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

Michael Berger
Attorney
New York City, NY

Rachel Fauss
Director of Public Policy
Citizens Union

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COMMITTEE ON GOVERNMENTAL OPERATIONS

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CHAIRPERSON KALLOS: [gavel] Good morning and welcome to the hearing of the Committee on Governmental Operations. I'm Ben Kallos and I represent the 5th Council District; the Upper East Side, Roosevelt Island, Midtown East and El Barrio.

We'll be voting on three pieces of legislation this morning, two of which were originally heard on April 25th. The first of the bills is Intro number six, sponsored by Council Member Dan Garodnick. This legislation would put an end to anonymous campaign advertisements in New York City political races. If a campaign put out an ad under this law, they need to identify themselves directly on the ad.

The second bill we are voting on today is Intro 148-A, sponsored by Council Member Brad Lander. This legislation concerns election-related advertisements and other expenditures by groups other than the campaigns themselves. Many New Yorkers saw these advertisements last year from groups with vague names like Jobs for New York or New Yorkers for Proven Leadership and some council races spending by outside groups exceeded the expenditures of the candidates themselves. Intro number 148-A would

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require additional disclosure relating to the donors behind these groups to ensure that the public is aware of who is funding the ads supporting our opposing candidates. It does this both by adding more detail disclosures of by spenders to the Campaign Finance Board and by increasing disclosure on the advertisements themselves.

The third bill is one that we have not heard before, and that is preconsidered bill relating to the Voter Guide. This bill would reduce wasteful purchasing of paper by the CFB and those elections where the only local issue on the ballot is an initiative or referendum that has not been given final approval 60 days before the election. In these instances, the CFB would put materials online rather than spending millions of dollars on paper that may never be needed.

At this time, I'd like the administration to come, but before that, I would like to recognize Council Member Brad Lander, sponsor of Introduction number 148-A for an opening statement.

COUNCIL MEMBER LANDER: Thank you very much, Chair Kallos and to the other members of the Committee. I gave a more extensive opening statement

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when we had the hearing in April on the rationale for 148-A, so then 148, discussing the need for full disclosure of contributors to independent expenditures.

As many people know, under Citizens United, even if many of us are not thrilled with it, the law of the land requires that independent expenditures can be made. As a result of that, in 2013, we saw an extensive increase in the number of independent expenditure ads; in some cases, in City Council races more money spent by independent spenders than by the candidates themselves, with vague sounding names like Jobs for New York, in a way that was very difficult for voters to get meaningful information on who was behind the information that they were receiving and while we can't, under Citizens United, put further restrictions on those ads, we can or in fact, are invited by the Supreme Court to make sure that there sunlight on them, that there is disclosure and that voters know who's paying for those ads and where they're coming from. So Intro 148 will require that the top three donors, the owner, the CEO are listed on the ad in a mail piece, as well as a URL nyc.gov/followthemoney, where voters

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can go to see who's behind those ads and who paid for them.

We heard extensive testimony in April from the good government groups, but also from some independent themselves, both on the corporate and the labor side. Thanks to that testimony, and with a lot of follow up, and I really want to give credit to the staff here, especially to counsel of the Committee, David Seitzer and our legislative director, Matt Guillam [phonetic] and the chair. Extensive changes were made from 148 to 148-A to make sure we get the balance right between disclosure and free speech. We reduced the number of donors you have to disclose from five to three, cleaned up some of the other language, clarified what needs to be said in radio ads, on television ads to make it simple to comply and also permissible under Citizens United. So I feel really good about the work we did.

A couple of additional notes: there are some questions I've received about things that will be necessary to clarify in rulemaking and we're working with the CFB. They have obviously an extensive history of providing rulemaking and guidance after the laws are passed to make sure it's

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simple. That's the goal for donors to comply, so for example, if you have three donors and you make an ad buy and the ads don't run 'til a week or two later, how can you know exactly when, so CFB is working with us to make sure that the rules make it clear and easy for people to comply. I have also heard from some of my colleagues the first version of this bill had a sentence clarifying that this independent expenditure was not authorized by a candidate. In the time since we had the first hearing, New York State has passed a law, which while it doesn't require donor disclosure, does mandate a sentence "this message was not expressly authorized or approved by any candidate, their committee or their agents," so that sentence is now required to be on all independent expenditures, which is why we've removed that similar sentence from our law, both to make sure that we're preempted by the state law and to make it as clean and as simple as possible for people to comply. Some people have flagged that the state language is a little muddy and might be cleaned up and we'll be glad to talk to the state about cleaning up that language, but it was important for our purposes that we make sure that we

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not conflict with it or add to it in ways that would provide challenges for our law.

I want to flag I've talked to a lot of my colleagues, both those who were attacked by independent expenditures in last cycle and those who were supported by independent expenditures in the last cycle, and there's broad support for providing more disclosure, making voters able to know what they're getting and moving forward to clean up our elections wherever people were, so I really appreciate the work of the staff. I just want to acknowledge Ben Smith, my policy director and Michael Freedman-Schnapp, who did a lot of work on this bill again, as I mentioned in addition to the staff of this Committee and the chair. Thank you for the indulgence, Mr. Chair, both to explain the rationale for this, but also the changes.

Oh, one other thing I just want on the legislative record as well. One other thing that this bill that does is require information reporting on... one problem with these independent expenditures is that sometimes they're essentially Shell Corporations and there's donors one, you know that are behind those Shell Corporations. This bill

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requires that the largest donors to the largest donors to the independent expenditures are identified to the CFB. That's a great step forward and I think done in a smart way. We do want to flag we are not looking to require reporting on contributions which were not for electoral purposes, but which were explicitly for some other kind of purpose, another issue that I know the CFB will address in rulemaking to make it as simple as possible to comply, but also give the disclosure necessary for us to restore New York City's elections Campaign Finance system to the best in the country, so thank you very much, Mr. Chairman.

CHAIRPERSON KALLOS: Thank you. I'd like to now call Henry Berger from the Mayor's office. On deck is Rachel FAuss from Citizens Union, their new legislative director and congratulations and I'd also like to acknowledge for the record that anyone watching this hearing today or online will be able to find testimony provided by Amy Loprest, the Executive Director for the New York City Campaign Finance Board, in the record and also at this time, I would like to recognize that we are joined by Committee

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COMMITTEE ON GOVERNMENTAL OPERATIONS

members Mark Levine and Ritchie Torres, as well as Margaret Chin and Brad Lander. Mr. Berger.

HENRY BERGER: Thank you, Chairman Kallos, council members for the opportunity to be here. First off all, I'd like to say we appreciate the extensive work that you've all been doing on these issues. I think it's very helpful and very useful as we move forward on this. I'm going to read a very short statement on the preconsidered bill on Voter Guide and I'll then be available to answer questions.

On very rare occasions, referenda are proposed for the ballot that present nearly insurmountable barriers for the Campaign Finance Board to meet its charter mandated obligation to print and mail a Voter Guide. To timely prepare a printed Voter Guide, the CFB must begin to commit resources at least 60 days prior to Election Day. This commences a process that costs the city approximately \$3 million. When a candidate from municipal office is on the ballot, the CFB knows it has to print them and mail a Voter Guide and commits the resources to do so, but when the only issue on the ballot is a referendum and that referendum has

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been submitted late in the election cycle, it may happen that 60 days before the election a determination has not been made, whether the referendum actually qualifies for the ballot. Nonetheless, pursuant to the current charter provisions, the CFB must begin to commit the resources to prepare the Voter Guide, even though there may ultimately be no referendum on the ballot, and the money spent will be wasted. This legislation provides that when it has not yet been determined that there will be a referendum on the ballot 60 days before the Election Day and there are no candidates on the ballot, the CFB will meet its obligation to inform the voters of the referendum issue, if such referendum is subsequently approved for the ballot, by posting the information on its website rather than printing and mailing a Voter Guide. In today's electronic information age, as we provide more and more information online, this is a fair allocation of limited city resources by providing necessary information to the city's voters without risking the unnecessary waste of city dollars.

If you have any questions, I'd be glad to answer them. I think this is a fairly

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straightforward bill, which deals with a fairly significant problem for the city and the CFB.

CHAIRPERSON KALLOS: Thank you for your testimony. What are the estimated cost savings if the Voter Guide is not printed and mailed to every single registered voter?

HENRY BERGER: For a simple Voter Guide, which would be short, if it's only a referendum the CFB estimates that it's about \$3 million.

CHAIRPERSON KALLOS: Thank you for the initiative in that cost savings for the taxpayers. What steps should or will the CFB be taking to ensure that the voters receive sufficient information about ballot initiatives in those years in which they do not receive a Voter Guide?

HENRY BERGER: The CFB has presented written testimony and in that testimony they state they're going to do an extensive online publication essentially of the information that would have been in the Voters' Guide.

CHAIRPERSON KALLOS: Thank you. Does anyone else have a question? I recognize Margaret Chin.

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COUNCIL MEMBER CHIN: Thank you, Chair Kallos. I'm just questioning the CFB and just I mean on a website, how do you reach out to voters who are not... who doesn't use computers and go on websites?

HENRY BERGER: Well, hopefully...

COUNCIL MEMBER CHIN: [interposing] A lot of seniors, immigrant population so how are those voters going to be able to get this information?

HENRY BERGER: There will be some loss of communication. Hopefully, the information that the CFB does provide on the website will be picked up by ERN media, by the newspapers particularly, who follow these things and that information will be available. The issue is that in most recent cases; there's this year there was a case. The most recent case was 2009 before this. There was no determination 60 days before and ultimately the matter wasn't on the ballot, so the money that was spent would've been wasted. This is a very, very rare circumstance. It has to be a confluence of essentially three things:
1. There are no candidates on the ballot and even in non-major you know, municipal election years there are frequently special elections where there are candidates on the ballot. 2. The only issue on the

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ballot is a referendum that has not been submitted... has not been cleared 60 days before and 3. The group that submitted the referendum waited essentially 'til the last minute to submit the referendum. There's a time period allocation, so for example, this year, the referendum was submitted immediately prior to July 4th, which was the last possible date that it could have been done, so it's still in process. If it had been submitted earlier, and it could've been submitted you know anytime earlier, the process would have been completed by now and we would know whether it's on the ballot or not on the ballot. So the number of times this is going to happen is we believe fleetingly rare and it's something that's entirely within the control of the group that's submitting the referendum.

COUNCIL MEMBER CHIN: I know, I

understand the... I mean the advantage of saving taxpayer dollars. That's great, but I think there needs to be more of an effort to make sure that people know that there is going to be a referendum and not just on the website and not just count on media picking it up. CFB can do more in terms of reaching out to local media, ethnic media to let

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people know that there is going to be a referendum if that's the case and also Board of Elections when they send out information telling people that there's a vote, that they need to... they could put some information on there that there's going to be voting on a referendum. So at least the information did get out to the public and not just people who you know...

HENRY BERGER: [interposing] Yep.

COUNCIL MEMBER CHIN: Are more savvy or more informed if they check out a website.

HENRY BERGER: My understanding is that the CFB is committed to doing that and that's what they've indicated in their testimony.

COUNCIL MEMBER CHIN: Okay.

HENRY BERGER: And I think that'll be helpful.

COUNCIL MEMBER CHIN: Yeah, Chair, so I think you want to make sure that that do happen. Okay, thank you very much.

CHAIRPERSON KALLOS: Council Member Chin, I promise to have an oversight hearing with the Campaign Finance Board this year and we'd welcome you to join us and that's been requested by several members of the Committee led by Council Member

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Greenfield. Does anyone else have any questions for the administration? Thank you, Mr. Berger. Ah, sure. Council Member Torres.

COUNCIL MEMBER TORRES: No, I know you're... thank you for your testimony. I know you're commenting on the bill under consideration, but why not go in the direction of publishing it online in every circumstance rather than only in circumstances in which there are no candidates on the ballot?

HENRY BERGER: Well, ultimately, that's within the power of the CFB. I would be very surprised if everything they're publishing hard copy isn't online already and will continue to be. You know, the concern in major elections is that it not be only online. I think as Council Member Chin has pointed out, not everybody has access to that and where it's clear that there's going to be a municipal matter on the ballot mailing does reach people that online doesn't reach, but you know, I think we're in a time now where we're moving more and more online, but there are occasions when I think we have to keep the hard copy available for a lot of people.

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COUNCIL MEMBER TORRES: So suppose you had a year where there were no candidates on the ballot, but you had a initiative of singular importance like term limits. Would the CFB consider not only publishing it online, but actually sending a hard copy to...

HENRY BERGER: I think that's up to the CFB to determine.

COUNCIL MEMBER TORRES: Okay, okay. That speaks to my questioning. Thank you.

CHAIRPERSON KALLOS: Thank you, Mr. Berger. At this time, I'd like to recognize Committee Member Council Member Mark Levine, who is also chair of the Jewish Caucus, where I serve as vice-chair and under the precondition that he greet Ambassador Ido Aharoni, Consul General of the great state of Israel and pass on my welcome and I believe who's also one of my constituents, so that being said, and I know that that is coming up and I'd to recognize him to vote on all items before the Committee.

COUNCIL MEMBER LEVINE: Thank you for the accommodation, Mr. Chair and Mr. Vice-Chair and I vote aye on all.

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CHAIRPERSON KALLOS: Thank you. Rachel Fauss, the new Legislative Director for Citizens Union, and congratulations on your promotion. It is well-earned, well-deserved. Thank you for your years of service. It is a pleasure to see you before this Committee in your new role.

RACHEL FAUSS: Well, thank you for that introduction. Good morning, Chair Kallos and other members of the Government Operations Committee and again, my name is Rachel Fauss and I'm the Director of Public Policy for Citizens Union. We're a independent non-partisan civic organization of members who promote good government and advanced political reform in the city and state of New York. Thank you for the opportunity to comment both on the new introduction, as well as the previous bills.

Briefly, on Intros 6 and 148-A, we were pleased to be at the press conference earlier today announcing they're passing out of Committee. Just wanted to briefly state we believe it's important that there be greater public transparency around who is spending money on campaigns and on which candidates and issues. These two bills, sponsored by Council Members Lander and Garodnick, will pull back

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the curtain and result in greater information being provided to New Yorkers. New Yorkers want to know who is behind the paid ad messages that inform and sometimes influence their thinking on candidates and issues. You know, this is an example of the Council being proactive. The election was just in 2013, but you didn't need to wait 'til 2017, so we're pleased the Council's looking at this issue and look forward to working with the CFB on the regulations.

Regarding the introduction related to the Voter Guide requirements of the Campaign Finance Board, we support the need to save taxpayer dollars by not requiring the mailing of Voter Guides to all voters on a single ballot item, which may not ultimately make it on the ballot. While we support the legislation, we ask the Council to examine legislation that was introduced in the previous session, Intro 769 of 2012, which would require the CFB to expand upon its City Voter Guide by publishing a version during state and federal election years and include information about all state and federal candidates running for election. The CFB Voter Guide is an important resource for voters during municipal elections and could play a similar role for state and

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federal elections as well. In doing so, perhaps it would have made it easier to add this year's ballot item to an already planned printed Voter Guide. To Council Member Chin's point, I think given the short time frame this year, it doesn't make sense to move forward on this initiative at this time, but given that it's an expensive proposition to mail a guide to all voters. If you're going to do it, it would make sense to get more bang for your buck and to do it for all elections to ensure that those who don't have access to the internet would be able to receive the information. And I welcome any questions you may have.

CHAIRPERSON KALLOS: Just want to echo your testimony and support for having a Voter Guide published in New York City and in fact, statewide in all elections and trying to work with whatever the right vehicle is to make sure that it is published. I think this is something that I particularly have been working on and there is a significant multi-million dollar cost in publishing it in the off years; that being said, it's probably well worth it. The bigger issue is within the Campaign Finance Board those candidates are already working with the

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Candidate Services Unit; however, Assembly, Senate and other candidates would not necessarily have that relationship and...

RACHEL FAUSS: [interposing] Right.

CHAIRPERSON KALLOS: The candidates CFB already has for compliance with their programs...

RACHEL FAUSS: [interposing] Right.

CHAIRPERSON KALLOS: So that being said, we'd still like to work on that with your institution. Do you have any concerns about the... not having the Voter guide published this year for an initiative, which may not actually be on the ballot?

RACHEL FAUSS: Well, in some ways it could be more confusing to voters to receive something in the mail that is about a proposition they can't vote on. That's something to consider. I think the important thing here is to make sure there is sufficient outreach through other means. Having worked with the Campaign Finance Board, we're confident that they'll be able to promote the issue if and when it gets on the ballot.

CHAIRPERSON KALLOS: Thank you. I just want to make sure I recognize Council Member Steve Matteo and Council Member David Greenfield, who had

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previously joined us. Does anyone have questions for Citizens Union? Thank you very much for your testimony.

RACHEL FAUSS: Thank you.

CHAIRPERSON KALLOS: Now I'd like to recognize Council Member Ritchie Torres, who will be also joining the General Consul... Consul General from Israel and I ask that you also send my regards.

COUNCIL MEMBER TORRES: Although Mark might be a better messenger, but I vote aye on all.

CHAIRPERSON KALLOS: Thank you very much.

COUNCIL MEMBER TORRES: Thank you.

[Pause]

CHAIRPERSON KALLOS: Yeah. Hm? So actually we're about to do that, so we've now heard all the testimony. Is there anyone else who wishes to make testimony? If so, you need to fill out one of these cards. Seeing no one in the audience who wants to, if you're online please feel free to submit it. We'd love to receive it. Just anything that passes here will be voted on tomorrow at the Stated, and before I ask the clerk to call the roll, I wanted to ask if anyone had any motions they wished to make. [background voice] I would love to have your comment,

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absolutely, but I'm just going to close the door on any motions hearing now and if anyone wishes to speak before they vote. I recognize Council Member Chin.

COUNCIL MEMBER CHIN: Thank you, Chair Kallos. Good morning. I just wanted to express my support for Intro 148, sponsored by Council Member Lander, which would increase the disclosure requirement for independent expenditure. This bill is about protecting voters. Lately, in campaigns, voter will get these pieces of mail that look like they came from one candidate or the other or that are blatant attack pieces. What may not be obvious to them is that these mailers are actually funded by independent expenditure and not backed by either candidate. Voter deserve to know and need to know who is actually paying for these mailers and other campaign advertisements. Keeping voters fully informed is essential to protecting our democratic process, so while I am not a Committee member and cannot vote this morning, I would like to urge my colleagues to support this. Thank you very much, Chair.

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COMMITTEE ON GOVERNMENTAL OPERATIONS

CHAIRPERSON KALLOS: Thank you and does anyone else wish to make any statements? Hearing none, I now instruct the clerk to call the roll.

COMMITTEE CLERK: William Martin, Committee Clerk, roll call vote Committee on Governmental Operations.

[Pause]

COMMITTEE CLERK: Items are coupled. Intro 6, 148-A and preconsidered Introduction. Council Member Kallos.

CHAIRPERSON KALLOS: Aye on all.

COMMITTEE CLERK: Greenfield.

COUNCIL MEMBER GREENFIELD: Thank you. Mr. Chairman. May I explain my vote?

CHAIRPERSON KALLOS: Of course.

COUNCIL MEMBER GREENFIELD: Thank you, Mr. Chairman. I do think today is a good day for democracy. Anytime we can have more transparency and disclosure we're certainly... and save money to boot, we're certainly doing something good and so I want to congratulate Council Members Lander, Garodnick and of course, yourself, Chair, for the work that you're doing. I will add though that I did have a concern about Council Member Lander's bill, 148-A. I believe

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that it's a good law, but I think it could be a better law and I think that really from my view, there's really two parts to the communication when you're doing an advertisement, whether it's on the radio or in print. The first part is you want people to know who's responsible for the advertisement and I think we're doing that today in the legislation and that's good. I think that the second part, which we could do a better job with, is who is not responsible and specifically I would have liked to have seen very clear language stating that no candidate has approved this message and there was no coordination with any candidate or their committee. However, after having extended conversations with Council Member Lander and his staff, I recognize that they have some concerns about that language in terms of as how it respects to the constitutionality of the bill and how it would impact that and while we're going to agree to disagree on whether or not, in fact, that would be constitutional, I will obtain a heavy commitment from Council Member Lander that he will work with us in the future to address these concerns, both here on the city and at the state to try to make that clear so that we have a more complete piece of legislation

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to tell us not only who is responsible, but who is also not responsible because we don't want for there to be an impression that a candidate who is supported by an IE, which we saw happen in this last cycle, when the candidates did not want the support of that IE that some people would think that there is a relationship there, in fact, that doesn't exist. So out of deference to Council Member Lander, and in consideration of his pledge to work with us on the city and state to try to improve this legislation, I vote aye on all.

COMMITTEE CLERK: Matteo.

COUNCIL MEMBER MATTEO: May I be excused to explain my vote?

CHAIRPERSON KALLOS: Of course.

COUNCIL MEMBER MATTEO: I wanted to congratulate my colleague, Brad Lander, Chair Kallos, Dan Garodnick on the passage of these bills. I do have concerns on 148-A, which I've discussed with you and Council staff and I want to echo the comments of my colleague, Council Member Greenfield. I lived... and most of... and a lot of the new freshman council members lived with third party expenditures in our campaigns and when I walked door to door and there

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were campaign literature in the mailboxes, my constituents, who didn't know where they came from and just assumed they came from me. You live it, you understand it and that is why I think the bill can be stronger and I'm in total agreement with Council Member Greenfield that we can make the language stronger. I commend the intent of the bill, but I think we just... we have to work together moving forward to make sure that you know, that no candidate did approve this message. I think that's strong language. I think it's the right language and I appreciate the commitment from the Chair and Council Member Lander to work with us moving forward. I think it's an important issue and one we need to discuss further because at the end of the day, we want to pass bills with the right intent and not cause unintended consequences and in this case, that could be confusion. So I'm going to vote yes and I look forward to continuing dialogue on the very important issue that we've raised today. Thank you.

COMMITTEE CLERK: By a vote of five in the affirmative, zero in the negative and no abstentions, all items have been adopted. Members, please sign the committee reports. Thank you.

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COMMITTEE ON GOVERNMENTAL OPERATIONS

CHAIRPERSON KALLOS: Hereby adjourn this
meeting.

[gavel]

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date 8/22/2014