

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CIVIL RIGHTS

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September 21, 2015

Start: 1:25 p.m.

Recess: 4:06 p.m.

HELD AT: Committee Room - City Hall

B E F O R E:

DARLENE MEALY

Chairperson

COUNCIL MEMBERS:

Mathieu Eugene

Daniel Dromm

Deborah L. Rose

Andy King

Inez D. Barron

Brad S. Lander

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

Dana Sussman
Special Counsel to Commissioner
NYC Commission on Human Rights

Melissa S. Woods
First Deputy Commissioner and
General Counsel
NYC Commission on Human Rights

Craig Gurian
Fair Play Legislation

Laurie Vixen
Representing Ken Kimerling
Asian American Legal Defense Fund

Demoya Gordon
Attorney
Lambda Legal

Monica Bartley
Community Outreach Organizer
Center for Independence of the Disabled
New York (CIDNY)

Maia Gooddell
MFY Legal Services

Roger Maldonado
Representing Philip Tegeler
Poverty & Race Research Action Council

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

Patrick Delintz
Representing
The Lawyers' Committee for Civil Rights
Under Law

Daniella Nenow
Attorney Representing
Disability Rights Advocates

Margaret McIntyre
Chair of Legislative Committee
NELA/NY

Martin Lockman
Policy Analyst
Representing Bertha Lewis
Founder
The Black Institute

Michael Grenert
Member
Legislative Committee
NELA/NY

Irene Jor
Organizer
National Domestic Workers Alliance
Coordinator
New York Domestic Workers Coalition

Gayle Kirshenbaum
Member
Hand in Hand

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

Hally Chu
Representative
Gale Brewer
Manhattan Borough President

Karen Cacace
Supervisor
Employment Law Unit
The Legal Aid Society

Phoebe Taubman
A Better Balance

James Arnold
Member
Executive Council of AARP

CHAIRPERSON MEALY: Ready? Good

afternoon; we're gonna open up this evenin' [sic] on Civil Rights. Good afternoon, I am Councilwoman Darlene Mealy; I'm the Chair of the New York City's Committee on Civil Rights. I'd like to introduce the other members of the Council who have joined us this afternoon; Council Member Mathieu Eugene, Council Member Andy King and our lovely counsel here today.

Today the Committee on Civil Rights will hear Introductory Bill Nos. 108-A, 104-A, 815-A and 825-A. Together these bills will amend the New York City Human Rights Law to offer more protections for the New Yorkers in the area of employment.

Intro No. 108-A would make it unlawful to discriminate against a person because of that person's responsibility as a caregiver.

Intro No. 804-A would require employers to have a good faith discussion with employees about what accommodations they need in order to perform their job.

Intro. No. 815-A expands the number of situations where it is considered unlawful to lie to someone about the availability of a job, benefit, product or the like for discriminatory reasons.

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2 Intro. No. 825-A would expand the
3 definition of employer under the Human Rights Law to
4 provide protections for domestic workers.

5 It is our hope that these bills will
6 strengthen our Human Rights Law, a law that is one of
7 the most comprehensive laws in the nation. It is
8 very important that we protect the rights of all New
9 Yorkers.

10 Today the Committee will hear testimony
11 from the Commission of the Human Rights Commission of
12 various interest groups; we hope to discuss the
13 impact that this legislation will have on all New
14 Yorkers.

15 Thank you to the Civil Rights Committee
16 staff for their hard work -- Alicia Brown, Counsel to
17 the Committee, Mu Muzla [sp?], Policy Analyst,
18 Kathleen Caruso, Legislative Analyst, Diana Decker
19 [sp?], Deputy Director of the Drafting Unit, and
20 Rachel [sic], Deputy Director of Government Community
21 Affairs.

22 Now I will turn over to my fellow council
23 members who have sponsored the bill, but none of them
24 are here right now and... [background comments] and
25 we've been joined by Council Member Inez Barron; she

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2 will be introducing her bill also. I turn the floor
3 over to Council Member Barron.

4 COUNCIL MEMBER BARRON: Thank you, Madame
5 Chair. Thank you for the opportunity to make some
6 brief comments about Intro 804. And currently we
7 know that there's a requirement for accommodations
8 for workers; what this bill does is it clarifies what
9 reasonable accommodation requirements are and what it
10 is is that the employer and the employee must engage
11 in good faith interactive discussion. It includes
12 health concerns, such as pregnancy and related
13 conditions, as well as other known disabilities, and
14 the good faith process is an interactive process;
15 that means that it's timely, it means that there if
16 flexible dialogue to determine what accommodations
17 are feasible and the time when both the employee and
18 the employer may propose alternative arrangements.

19 So the purpose of the process is to
20 identify potential accommodations and to evaluate the
21 reasonableness of those accommodations. So I am
22 pleased to be able to introduce this bill; thank the
23 Committee for having this hearing and look forward to
24 your testimony. If you see me run out, it's because
25 I'm at another committee meeting as well, which is

1 going on simultaneously, but thank you so much.

2 Thank you, Madame Chair.

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4 CHAIRPERSON MEALY: Thank you and later
5 on Debi Rose and Council Member Brad Lander will come
6 in and have a testimony. And please forgive us; we
7 do have other committee hearings that everyone is
8 going back and forth to. But before we begin, we're
9 gonna do the City Council oath.

10 Could you raise your right hand? Do
11 affirm to tell the truth, the whole truth and nothing
12 but the truth in your testimony before the Committee
13 and to respond honestly to the council members'
14 questions?

15 FEMALE VOICE: I do.

16 FEMALE VOICE: I do.

17 CHAIRPERSON MEALY: Thank you so much.
18 [background comments] We will have our Commissioner,
19 Dana Sussman's testimony.

20 DANA SUSSMAN: Thank you. Good afternoon
21 Chair Mealy and members of the Civil Rights Committee
22 and staff and thank you for convening today's
23 hearing.

24 I'm Dana Sussman, Special Counsel to the
25 Office of the Chairperson at the Commission on Human

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2 Rights. Today I'm joined by Melissa S. Woods, the
3 Commission's First Deputy Commissioner and General
4 Counsel. Commissioner and Chairperson Carmelyn
5 Malalis had planned to testify today, but
6 unfortunately are tending to a family medical
7 situation.

8 In my role as Special Counsel I have been
9 intimately involved in the Commission's legislative
10 intergovernmental affairs and am proud to be
11 representing the Commission at today's hearing.

12 Before I address the four bills that are
13 the subject of today's hearing I will first give you
14 an update on some of the changes Commissioner Malalis
15 has implemented at the Commission since the last
16 hearing in March.

17 As you know, Commissioner Malalis assumed
18 her role a little more than six months ago; since
19 then, she and our team have been hard at work
20 developing the Agency's infrastructure, on-boarding
21 talented, experienced staff, providing enhanced
22 training and development opportunities for staff
23 agency-wide and evaluating and developing the
24 Agency's internal and public-facing policies and
25 procedures. Under Commissioner Malalis' leadership

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2 and with the invaluable support of the Administration
3 and the Council, the Commission is growing and
4 developing to effectively and reliably fulfill its
5 dual mandates of one; enforcing the City's Human
6 Rights Law, one of the most expansive in the nation
7 and two; providing education, outreach, training and
8 other initiatives for the public to foster mutual
9 understanding and respect among all New Yorkers.

10 In June, Hollis Pfitsch joined us as our
11 new Deputy Commissioner for the Law Enforcement
12 Bureau, following a career devoted to representing
13 low-income New Yorkers with employment rights issues
14 under the City Human Rights Law and other laws.
15 Deputy Commissioner Pfitsch brings not only her
16 veteran experience with the City Human Rights Law and
17 a high-volume docket, but also relationships forged
18 with several community-based organizations that have
19 already been useful in the Agency's outreach efforts,
20 as is evident in the increased number of complaints
21 filed by the public. Under her leadership, the Law
22 Enforcement Bureau has created a level of supervising
23 attorneys to specialize in specific issue areas and
24 supervise agency attorneys in those areas.

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2 We have hired and on-boarded three new
3 supervising attorneys, all with significant civil
4 rights experience and community relationships in
5 their specific areas and they join the two other
6 supervising attorneys who have been with the Law
7 Enforcement Bureau over the past three to eight years
8 in other capacities.

9 The Bureau will also be on-boarding five
10 new agency attorneys this week and next. All
11 attorneys who have joined the team come with several
12 years of relevant experience, including working with
13 vulnerable populations, litigating under the City
14 Human Rights Law and handling high-volume caseloads.

15 Consistent with our effort to increase
16 internal language capabilities, many of our new hires
17 speak second and third languages in addition to
18 English.

19 About two-and-a-half months ago Pascale
20 Bernard joined the Commission as its new Deputy
21 Commissioner for the Community Relations Bureau. I
22 know that many of you and your staff know Deputy
23 Commissioner Bernard, as she has spend over a decade
24 working with the City Council Speaker's Office; most
25 recently as Deputy Director of the Community

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2 Engagement Team. Deputy Commissioner Bernard is in
3 the process of restructuring the entire bureau,
4 adding new lines of supervision and development
5 opportunities with an eye towards creating a
6 strategic plan for the Community Relations Bureau.
7 She has begun the process of hiring more staff with
8 experience in working with diverse populations and
9 underserved communities that will continue of the
10 next several months. As new staff is added you can
11 expect to see more and new initiatives coordinated
12 through the Community Relations Bureau.

13 I know that Council Member Dromm had
14 asked the Commissioner about the Commission's
15 outreach to LGBT communities at the last hearing, so
16 I will specifically mention that as an example.

17 Since the last hearing, the Community
18 Relations Bureau has added an LGBT Community Liaison
19 to its ranks. The person filling that role brings
20 years of experience serving as a liaison with LGBT
21 communities through his work at different LGBT
22 community organizations and for several local elected
23 officials. In June, Commissioner Malalis herself led
24 a roundtable discussion with transgender community
25 advocates from different organizations throughout the

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2 city to discuss ways the Commission can work with
3 their groups and others on transgender rights,
4 including enforcement actions. We are training all
5 Commission staff on cultural competency on these
6 issues and are in the process of developing a Trans
7 101 Cultural Competency Train the Trainer Workshop to
8 roll out through our borough offices to members of
9 the public. These are just some of the new
10 initiatives created to enhance the Commission's
11 outreach and programming for LGBT communities.

12 The Commission's independent Office of
13 the Chairperson has also been further developed to
14 help perform its three major functions --
15 organizational, adjudicatory and policy.

16 In its organization capacity, the Office
17 of the Chairperson oversees the administrative
18 development of the Agency and works with the Agency's
19 other commissioners on outreach initiatives.

20 In its adjudicatory capacity, the Office
21 of the Chairperson receives and reviews requests to
22 appeal the Law Enforcement Bureau's determinations of
23 no probable cause, remands appropriate matters back
24 to the Law Enforcement Bureau for continued
25 investigation or prosecution, receives and reviews De

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2 Novo reports and recommendations issued by oath
3 administrative law judges, and issues final decisions
4 and orders in administratively filed actions.

5 In its policy capacity, it develops and
6 implements the Commission's interpretive guidance on
7 the City Human Rights Law, promulgates rules and
8 regulations regarding the Commission and the City
9 Human Rights Law and works with other city agencies,
10 mayoral offices, elected officials and community
11 stakeholders on legislation and intergovernmental
12 affairs.

13 As Special Counsel in that office, I have
14 been working with the Commissioner in these areas and
15 we are in the process of hiring an agency attorney to
16 work within this office as well.

17 Commissioner Malalis also spoke about
18 connecting the work of the various parts of the
19 Agency during the last hearing. One of the
20 Commission's new initiatives that is currently being
21 run is a join project of the Community Relations
22 Bureau, the Law Enforcement Bureau and the Office of
23 the Chairperson are free, regularly scheduled
24 trainings held at each one of our borough-based
25 community service centers. These Know Your

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2 Obligations trainings were developed specifically for
3 smaller employers, housing providers and small
4 businesses. The Commission wants these groups to see
5 us as a resource and partner in strengthening their
6 businesses and develop these trainings so they can
7 learn free of charge on how to comply with the law.

8 We have also reinstated the Office of
9 Mediation Conflict Resolution to facilitate the quick
10 resolution of cases where appropriate. The
11 Commission sees this office as integral in providing
12 alternative ways of resolving enforcement actions as
13 well as helping the Law Enforcement Bureau run its
14 docket efficiently.

15 We have also created a more robust
16 General Counsel's Office to oversee a newly
17 reconstructed Human Resources Department, a growing
18 IT Department and other agency operations in addition
19 to managing all compliance and reporting
20 requirements. First Deputy Woods oversees that
21 office and with her 17 years of experience in civil
22 rights litigation and labor and employment law will
23 be providing support on policy initiatives and
24 Commission-initiated investigations where
25 appropriate.

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2 We have also created an Office of
3 Communications and Marketing to amplify the work of
4 the other parts of the Commission and increase public
5 awareness of the Commission and the City Human Rights
6 Law so that more New Yorkers can avail themselves of
7 the resources the Agency provides. Heading this
8 office is our new Executive Director of
9 Communications and Marketing, Carmen Boone [sp?], who
10 brings with her 20 years of experience in
11 communications and media relations, including 10
12 years working with New York City elected officials
13 and city agencies, including HRA, HPD and most
14 recently as an Assistant Commissioner at the
15 Department of Consumer Affairs. This office is
16 integral in providing the transparency Commissioner
17 Malalis promised when she testified in March. Now
18 important agency developments and the Agency's first
19 ever interpretive guidance are accessible to the
20 public on the Commission's website. Hopefully you've
21 also seen the fruits of this office's labor with the
22 increased visibility of the Commission on its website
23 and other digital media, new materials and
24 appearances by Commission Malalis and her staff on
25 various media outlets.

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2 Our campaign on Local Law 37, the Stop
3 Credit Discrimination in Employment Act, will be
4 visible in subways and bus shelters and on the radio,
5 in print and online in the next few weeks. Soon we
6 will also launch a similar campaign for Local Law 63,
7 the Fair Chance Act, and look forward to partnering
8 with you on these and other initiatives.

9 Commissioner Malalis has already led many
10 efforts to make the Commission a stronger, more
11 effective venue of justice for New Yorkers and is
12 determined to continue the full agency review and
13 implementation of necessary changes. She has not
14 been shy in sharing her goal of making the Commission
15 the premier civil rights and human rights agency. To
16 that end, we are continuing to work on upgrading all
17 of the Commission systems, building a new
18 Investigations Unit, revamping all Commission
19 publications, publishing enforcement guidance and
20 will be going through the rulemaking process in many
21 different areas of protection for the first time in
22 the Commission's history and making the Commission
23 processes more transparent and user-friendly for the
24 public. All of this is a brief snapshot of some of
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2 the changes that have taken place over the past six
3 months.

4 Now, turning to the subject of today's
5 hearing, Intros 108-A, 804-A, 815-A and 825-A,
6 Commissioner Malalis and her office have considered
7 each of these bills very carefully in determining the
8 Commission's position with respect to each.

9 Considerations as this Agency's role as enforcer of
10 the City's Human Rights Law, the experience of
11 veteran City Human Rights Law litigators at the
12 Commission, as well as Commissioner Malalis' previous
13 experience as an employee advocate, utilizing the
14 City Human Rights Law regularly in practice inform
15 our position on these bills.

16 First on Intro 108-A, caregiver
17 discrimination. The proposed bill will add an
18 additional protected category in employment to the
19 City Human Rights Law of caregiver status and will
20 also require employers to make reasonable
21 accommodations to caregivers so that they can satisfy
22 the essential requisites of the job where the
23 caregiver is caring for an individual with a
24 disability, caring for a child or children in
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2 facilitating involvement in education and providing
3 care in the event of a child or elder care emergency.

4 The Commission believes that people with
5 caregiving responsibilities, including both working
6 parents and people caring for parents and other loved
7 ones, should have strong workplace protection.

8 Consistent with other employment protections afforded
9 under our law, employers' focus should be on
10 qualifications and merit and not on issues or
11 characteristics personal to the employee.

12 Commissioner Malalis spent many years
13 representing workers who faced family
14 responsibilities discrimination before joining the
15 Commission and believes that additional protections
16 for workers in this area is critically important.
17 Such protections have the potential to dramatically
18 alter workplace relationships, as we have seen with
19 paid sick leave. We look forward to continuing
20 working with the Council on this bill and hearing
21 from other advocates and what they see as the
22 pressing needs for caregivers.

23 Intro 804-A, interactive process. The
24 proposed bill will define the term "good faith
25 interactive process" and will delineate a specific

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2 process that must be followed in the context of
3 determining a reasonable accommodation for a
4 disability. The bill will also identify a separate
5 violation of the City Human Rights Law where a
6 covered entity fails to engage in a good faith
7 interactive process.

8 The Commission opposes this bill.
9 Despite language in the proposed bill stating that
10 nothing contained in the subdivision shall be
11 construed to offer less protection for the rights of
12 individuals with disabilities than any applicable
13 provision of federal, state or local law, we are very
14 concerned that adopting language from federal case
15 law from the Americans with Disabilities Act, which
16 is exactly what this bill proposes to do, will only
17 serve to narrow the very expansive disability
18 provisions of the City Human Rights Law. This bill
19 also has the potential for narrowing the City Human
20 Rights Law because it fails to incorporate the
21 interactive process language in the housing and
22 public accommodations contexts or in the other
23 provisions of the law that mandate reasonable
24 accommodations, including religious accommodations
25 and accommodations for victims of domestic violence,

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2 sexual violence and stalking. Courts can read that
3 omission as intentional and find that failure to
4 engage in the interactive process in these contexts
5 is not a violation of the law or a factor to consider
6 in determining if a covered entity met its
7 obligations to provide a reasonable accommodation
8 under the law.

9 The Commission, as part of its long-term
10 strategic vision, plans to publish interpretive
11 enforcement guidance on disability rights and
12 accommodations in the coming months. Part of this
13 guidance will include specific language around
14 covered entities' obligations to work with
15 individuals with disabilities to develop reasonable
16 accommodations. We encourage the Council to take a
17 look at those materials when they are published. Our
18 intent is to provide guidance to attorneys, courts
19 and members of the public on how the disability
20 provisions of the City Human Rights Law should be
21 interpreted in this area, among others. We welcome
22 the Council's partnership and once the Commission has
23 published its guidance, we would welcome
24 opportunities to continue conversations on this
25 topic.

Moving to Intro 815-A, truthful

information and indirect discrimination. The proposed bill will make it unlawful to represent that opportunities, be it in employment, housing or public accommodations, are unavailable when they are in fact available. We support this proposal and see it as being useful in failure to hire employment cases, which are particularly challenging to prove. It is our understanding that the provisions of this bill, amending Sections 8-102 to add new Subsection 30, and 8-502 to add new Subsection h, seek to codify the ability of organizations to use testers to bring claims on behalf of violations of the law uncovered by the testers and to provide a remedy for persons who are aggrieved when their employees or agents are discriminated against.

We support this amendment and note that we currently interpret the law to cover organizational standing in which an organization brings claims under the City Human Rights Law on behalf of its members or employees.

And finally, moving to Intro 825-A, domestic workers. The proposed bill will eliminate the four employee minimum for employer coverage under

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2 the City Human Rights Law for employers of domestic
3 workers so that a domestic worker often working alone
4 or perhaps with one other worker will have protection
5 under the City Human Rights Law.

6 The Commission recognizes the unique
7 vulnerabilities that domestic workers face and
8 several members of Commissioner Malalis' staff have a
9 long history of representing domestic workers who are
10 exploited, trafficked and victims of wage theft and
11 other abuses.

12 Understanding these vulnerabilities, the
13 Commission supports the principle of expanding
14 protections for domestic workers under the City Human
15 Rights Law. We believe a good model for such
16 legislation is the New York State Domestic Worker
17 Bill of Rights, which was signed into law in 2010.
18 Among its protections had expanded coverage of the
19 New York State Human Rights Law, which also has a
20 four employee minimum, to domestic workers regardless
21 of the number of employees in specifically
22 articulated circumstances -- sexual harassment,
23 harassment on the basis of gender, race, religion or
24 national origin, including offensive or humiliating
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2 jokes or comments regarding gender, race, religion or
3 national origin.

4 The Commission supports adding
5 protections for domestic workers within a similar
6 framework and is open to considering other
7 protections that may be requested by affected
8 communities. Creating a parallel city law would
9 provide domestic workers and their advocates with
10 another venue to bring their claims -- broader
11 interpretation under the City Human Rights Law than
12 the State Human Rights Law, the possibility of higher
13 damages under the City Human Rights Law and would
14 allow the Commission's Community Relations Bureau to
15 do targeted outreach to these communities within the
16 city.

17 The Commission believes the particular
18 vulnerability of domestic workers to wage theft,
19 abuse and trafficking is a paramount concern in New
20 York City and as such warrants a policy discussion
21 between the Council, the Commission and key community
22 stakeholders on these and other issues facing this
23 community and how we can work together to address
24 them.

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2 We welcome further discussions on how to
3 protect workers and support the possibility of a
4 limited expansion of the City Human Rights Law
5 similar to what is available at the state level.

6 The Commission thanks Chair Mealy, the
7 members of the Committee; Council Member Lander for
8 calling this hearing. We look forward to continuing
9 our dialogue on how to strengthen the Commission and
10 the City Human Rights Law to ensure respect and
11 dignity for all New Yorkers. I welcome your
12 questions and comments. Thank you.

13 CHAIRPERSON MEALY: Thank you so much.
14 Before we do any questions, we're gonna let Brad
15 Lander, who just came in with us, Danny Dromm and
16 Debi Rose; Debi Rose will be the next making her
17 statement on her bill. Brad Lander... I said Brad
18 Lander... [crosstalk]

19 COUNCIL MEMBER LANDER: Okay. Very good.
20 Thank you, Madame Chair for convening this hearing
21 and Deputy Commissioner for being here and for this
22 testimony and I do, and think it was well worth
23 giving the words that you gave at the beginning of
24 your testimony; it is... we've really seen tremendous
25 change in the Commission on Human Rights under

1 Commissioner Malalis and we feel very lucky about it
2 and I think you know we dove in right away on working
3 with you to stand on proactive affirmative
4 investigations and credit check and fair chance;
5 things that this Council had been working on for a
6 long time and so was eager to move quickly on and we
7 appreciate that you and she were willing even right
8 at the beginning of her tenure to work together on it
9 and as you know, I last week or the week before was
10 with you at one of the guidance sessions on implement
11 [sic] credit check bill and the way in which you've
12 worked hard to advance that legislation and that she
13 and the Agency and you are working hard to make the
14 structural changes that you outlined in your
15 testimony are very encouraging. So I think that is
16 really well worth saying and I think it's... you know
17 we're on the path back to where that Human Rights
18 Commission can really be a venue for New Yorkers
19 whose human rights are violated to have a chance to
20 see their rights under one of the best laws in the
21 country protected and made real, and now I'm glad
22 that we're taking some next steps to update that law
23 as well; I think that we know there's a number of
24 things we can do to really keep out human rights on
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2 the cutting edge and I'm proud to be working with
3 some of my colleagues to advance it. I'll ask some
4 questions when we come back to the round of
5 questions, but it was good to hear that you or the
6 Administration is supporting 804-A, the truthful
7 information bill, which is the one I'm the lead
8 sponsor of -- did I get that wrong, 8... have the
9 numbers [background comment] always easy to remember
10 which numbers are which [sic]... 815-A, I apologize;
11 804-A is Council Member Barron's, on truthful
12 information and testing. I'll ask a few more
13 questions about that and other bills when we get
14 around to questions, but I just want to say thank you
15 to the Chair and to you.

16 CHAIRPERSON MEALY: Our former chair,
17 Debi Rose.

18 COUNCIL MEMBER ROSE: Thank you and good
19 afternoon. Thank you, Chair Mealy. Good afternoon
20 to everyone and I'd like to thank Chair Mealy for
21 allowing me to briefly speak about the two bills that
22 I've sponsored and are being discussed today; Intro
23 108-A, the caregivers discrimination bill and Intro
24 825-A, the domestic workers discrimination bill.

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2 With Intro 108-A, I am really sorry that
3 my prime co-sponsor, Manhattan Borough President Gale
4 Brewer is not able to be here today; although I know
5 that she has sent her staff, who will represent her
6 well.

7 Intro 108-A will prohibit employment
8 discrimination based on an individual's actual or
9 perceived status as a caregiver or caregiver
10 discrimination, also known as family responsibility
11 discrimination; is when employers treat employees
12 with caregiving responsibilities for children, older
13 adults or ill or disabled family members less
14 favorably than other employees. There are no
15 explicit protections under federal, state or local
16 law for workers in this position. Although there are
17 some cases where an employee can make a viable
18 argument under existing anti-discrimination laws that
19 they were discriminated against because of their
20 family responsibilities, there are no guarantees for
21 protection, or more importantly, for workplace
22 accommodations; Intro 108-A seeks to address these
23 gaps in current law.

24 This bill is important for the many
25 workers in New York City who must juggle the

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2 responsibilities of work while also acting as a
3 caregiver for children or other family members.
4 These responsibilities include pregnancy, childbirth,
5 the raising of children or taking care of a domestic
6 partner, a spouse, a child or a parent. Often these
7 workers will need to take time during the day to
8 accompany a sick child to a doctor's appointment or
9 to make a quick phone call to check in on an elderly
10 family member; no worker should be fired or punished
11 at work for fulfilling these important familial
12 obligations.

13 Under 108-A, employers will be prohibited
14 from discriminating against an employee or
15 perspective employee on the basis of his or her
16 actual or perceived status as a caregiver and would
17 require employers to make reasonable accommodations
18 to the needs of caregivers. If enacted, it would
19 prevent employment discrimination based on caregiver
20 status, similar to those that already exist against
21 workplace discrimination based on race, religion and
22 disability by requiring employers to make reasonable
23 accommodations to employees with familial
24 obligations.

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Intro 825-A. The Human Rights Law

prohibits employers from engaging in workplace discrimination. Currently this prohibition only applies to employers with four or more employees; the legislation would eliminate the exemption for employers with three or fewer persons in their employ and expand protections to include employers of domestic workers, even if only one employee is a domestic worker. I am introducing this legislation in an effort to send a message to all that discrimination in New York City will not be tolerated; additionally, it will give New Yorkers the opportunity to seek recourse if they have been discriminated against in the workplace. Domestic workers deserve the same civil rights protections as every other worker.

I look forward to hearing testimony on both of these bills and I wish to thank my staff, Alicia Brown and Sara Muna... Muna [sp?], I'm sorry and Rachel Cordero for all their work in preparation for this hearing, and I just wanna say that I'm actually chairing a Waterfronts hearing across the street, so please don't be offended if I duck out at some point. Thank you.

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2 CHAIRPERSON MEALY: Okay, since all the
3 sponsors are here, I'm gonna turn it over to Inez
4 Barron to ask question for 804-A.

5 COUNCIL MEMBER BARRON: Thank you, Madame
6 Chair. Thank you for coming and providing your
7 testimony.

8 My question concerns... the first question
9 concerns data. What population is governed by this;
10 is there a threshold that is determined to meet this
11 requirement in terms of reasonable accommodations?

12 DANA SUSSMAN: So the provisions around
13 reasonable accommodation are incorporated into the
14 City Human Rights Law, which covers very broadly
15 employers which are defined as having four or more
16 employees, as Council Member Rose just articulated..
17 [interpose]

18 COUNCIL MEMBER BARRON: Right.

19 DANA SUSSMAN: public accommodations
20 which are defined also quite broadly and housing
21 providers, which covers pretty much any type of
22 housing accommodation with very limited exceptions to
23 very small, sort of family-owned, two-unit type homes
24 where the family is living in one of the units. So
25 this would be... [crosstalk]

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COUNCIL MEMBER BARRON: Okay.

DANA SUSSMAN: this is part of those broad provisions.

COUNCIL MEMBER BARRON: Okay. So what data do you have in regards to employees who have filed complaints that they have not been offered a reasonable accommodation?

DANA SUSSMAN: I don't have that data in front of me right now; we do track our cases by type of discrimination and in what area.. [interpose]

COUNCIL MEMBER BARRON: Uhm-hm.

DANA SUSSMAN: and the top three being public accommodations, employment and housing, and we can look into getting that information to your office.

COUNCIL MEMBER BARRON: Okay, thank you; I think that would be important for us to know what is the population that we're looking at; what's the universe of people that we're looking at.

And then who determines whether or not in fact an employer has met the standard of a reasonable accommodation?

DANA SUSSMAN: So I think it varies case by case; often an employee may request or an employer

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2 under our law is often obligated to understand that
3 an employee may need a reasonable accommodation and
4 the conversation can happen internally within an
5 employer or within a housing provider and if the
6 employer has a HR department or a legal department,
7 it may come through that department. If they
8 ultimately end up at the Commission or if they file a
9 case in state or federal court, as they are allowed
10 to do, the determination would be made by the
11 Commission if they filed with the Commission or with
12 a state or federal court.

13 COUNCIL MEMBER BARRON: So are there
14 protocols, a list of protocols or is there a
15 checklist; how do we determine what is reasonable?

16 DANA SUSSMAN: One of the strengths of
17 our law is that there isn't. There are suggested
18 things that must be considered when determining what
19 an undo hardship is on an employer or a housing
20 provider or a public accommodation, and that includes
21 the size, the disruption to the operations of the
22 business; things like that. But the back and forth
23 and individualized assessment is just that; it's an
24 individualized assessment, so an undo hardship will

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2 look very different for an employer of five people
3 versus an employer of 500.

4 COUNCIL MEMBER BARRON: Okay. In your
5 testimony, on Page 8, where you discuss Intro. 804-A...

6 DANA SUSSMAN: Uhm-hm.

7 COUNCIL MEMBER BARRON: the second
8 paragraph, you have a quote. So my question is;
9 notwithstanding the quote that you cited, which
10 states, "Nothing contained in this subdivision shall
11 be construed to offer less protection for the rights
12 of individuals with disabilities than any applicable
13 provision of federal, state or local law; we are very
14 concerned that adopting language from federal case
15 law from the Americans with Disabilities Act, which
16 is exactly what this bill proposes to do, will only
17 serve to narrow the expansive disability provisions
18 of the City Human Rights Law." Notwithstanding that
19 provision; what are your concerns?

20 DANA SUSSMAN: Sure. We are very proud
21 of our Human Rights Law and seek to maintain it as a
22 strong and independent law; when language that is
23 very familiar in case law that has existed for
24 decades, in federal or state case law, is adopted or
25 incorporated into City Human Rights Law, we see a

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2 risk that judges and courts will interpret the law to
3 be parallel with federal or state protections, and
4 the 2005 Restoration Act made it very clear that the
5 City Human Rights Law should always be interpreted
6 more broadly. So we welcome a conversation about
7 what we should articulate within the disability
8 provisions of the law to enhance protections, but we
9 are concerned about adopting specific language around
10 interactive process.

11 COUNCIL MEMBER BARRON: Okay. And in
12 your last paragraph on that same page you state, "The
13 Commission, as part of its long-term strategic vision
14 plans to publish interpretive enforcement guidance on
15 disability rights and accommodations in the coming
16 months. Part of this guidance will include specific
17 language around covered entities obligations to work
18 with individuals with disabilities to develop
19 reasonable accommodations." So what on this... well
20 aside from that citing that you had in paragraph two,
21 what in this law do you object to?

22 DANA SUSSMAN: Again, we object to the
23 language of the interactive process; we also think
24 that... [crosstalk]

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2 COUNCIL MEMBER BARRON: Can you expand on
3 that; I said aside from that provision; taking that
4 out...? [crosstalk]

5 DANA SUSSMAN: Okay. Sure. We would
6 encourage a conversation with Council and with
7 stakeholders around what the process should look like
8 and thinking through, defining it in a way that
9 enhances the protections of the Human Rights Law and
10 we are engaging in a process where we are going to be
11 doing that internally by developing enforcement
12 guidance and will invite the Council and update the
13 Council as we progress on that and would love to
14 continue that conversation.

15 COUNCIL MEMBER BARRON: So as you develop
16 this internally, then you're not opposed to a law
17 which in fact makes it legal in terms of the
18 interactive process that needs to go forward?

19 DANA SUSSMAN: We're not opposed to
20 creating a... to articulating a specific process...
21 [interpose]

22 COUNCIL MEMBER BARRON: Thank you.

23 DANA SUSSMAN: You're welcome.

24 CHAIRPERSON MEALY: Okay. We'll have
25 Debi Rose on her intros.

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2 COUNCIL MEMBER ROSE: Thank you. What
3 protections does the Human Rights Law currently
4 provide for caregivers who need accommodation to take
5 care of children for educational purposes or parents
6 over 65 or to takes a family member who's dependant
7 upon or take care of a family member that dependant?

8 DANA SUSSMAN: I think you identified
9 that there are none specifically in the law; there
10 are certain ways that you can bring claims, whether
11 it's a gender stereotyping claim or a gender
12 discrimination claim; an associational disability
13 claim, for example, that already exists in the law,
14 but there are no specific protections currently in
15 the law that address these specific issues that
16 you've identified.

17 COUNCIL MEMBER ROSE: We've heard, in my
18 office, that there were criticisms that the terms and
19 definition of caregivers in this law are not clearly
20 enough defined; do you have similar concerns, and if
21 so, could you, you know explain and give us some
22 recommendations?

23 DANA SUSSMAN: We don't have specific
24 suggestions right at this moment; however we would
25 welcome conversations around clarifying some of the

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2 definitions and the times at which an employee may be
3 able to avail themselves of accommodations.

4 COUNCIL MEMBER ROSE: Do you think the
5 Administration would face any obstacles in enforcing
6 caregiver protections?

7 DANA SUSSMAN: I think that this law, as
8 we identified, would fundamentally alter workplace
9 relationships; I think it would be a major change in
10 obligations that employers must learn about and
11 establish new policies internally; I think it would
12 require some significant outreach and education for
13 employers and for employees to learn what their
14 rights are, because I think this would be a very
15 significant shift in workplace relationships and
16 accommodations for workers.

17 COUNCIL MEMBER ROSE: Do you believe...
18 well could you share with me some of the pros and
19 cons of creating a protected class for caregivers?

20 DANA SUSSMAN: I think that a lot of the...
21 Commissioner Malalis herself and a lot of her staff
22 have represented employees in our previous roles who
23 faced family responsibilities discrimination and the
24 challenge that we always faced was articulating it
25 not... as something other than family responsibilities

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2 discrimination, because that just simply didn't exist
3 specifically in the law. So there are some pros to
4 creating new protections and we support creating
5 additional protections in this area, having faced
6 that challenge of having to fit it in gender
7 discrimination or sex stereotyping or disability when
8 it didn't always perfectly fit.

9 Again, the only cons I would say is that
10 we think that this would be a fundamental shift in
11 workplace relationships and expectations in
12 adjustments and accommodations, and so I think that
13 we welcome further conversations with advocates, with
14 the Council on what this would look like, how it
15 would function, operationalize and potentially
16 clarify language around it to give further direction
17 to employers and employees.

18 COUNCIL MEMBER ROSE: So you are in
19 support of Intro 108-A, and do you anticipate any
20 problems enforcing it?

21 DANA SUSSMAN: We are in support of
22 additional protections for caregivers and for people
23 with family responsibilities; we, I think again; as
24 I've said, and I know I'm being repetitive, the
25 challenges in enforcing it, I think again, it's

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2 really.. this is the kind of law that will require
3 individuals knowing what their rights are; this is a
4 hard law to test and so I think this would really
5 rely on people self-reporting if the law is violated,
6 so we would work with our community partners and
7 Council to teach people what their rights are under
8 this law so that they can avail themselves of the
9 resources of the Commission, and similar to pregnancy
10 accommodations, these are needs that are immediate
11 and so quick intervention is going to be key in
12 enforcing this law and building a system to allow for
13 quick intervention so people can stay employed is
14 going to be essential to proper implementation.

15 COUNCIL MEMBER ROSE: So they would
16 become a protected class under the Human Rights Law?

17 DANA SUSSMAN: Right, this bill would..
18 [crosstalk]

19 COUNCIL MEMBER ROSE: Okay. Uhm-hm.

20 DANA SUSSMAN: include them as another
21 protected class.

22 COUNCIL MEMBER ROSE: And for Intro
23 825-A; are there any specific reasons domestic
24 workers should not be extended to have the same
25 protections that are afforded other employees of an

1
2 organization or a company that has more than four
3 employees?

4 DANA SUSSMAN: So any reason why they
5 should not be included?

6 COUNCIL MEMBER ROSE: Uhm-hm.

7 DANA SUSSMAN: So we are... again, many
8 members of Commission Malalis' new staff, including
9 Commissioner Malalis herself, have represented
10 domestic workers with regard to wage theft,
11 trafficking; other forms of discrimination and abuse,
12 and it has always been challenging to bring an
13 antidiscrimination claim on behalf of a domestic
14 worker because of the four employee minimum; it's
15 obvious. One thing that we just wanted to recognize
16 is that there may be concerns around hiring, and I'll
17 just give one example. An elderly woman who is
18 disabled and may need help bathing and going to the
19 bathroom and ambulating around her apartment may only
20 feel comfortable hiring a female caregiver, so we
21 just wanted to highlight some of those concerns
22 around hiring someone to take care of yourself or
23 your loved ones in their homes could be a very
24 personal and nuanced decision and we wanted to just
25 identify that as a potential concern around

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2 incorporating domestic workers into the Humans Right
3 Law.

4 COUNCIL MEMBER ROSE: So would you need
5 to change the definition of the employee, domestic
6 worker in order to enforce the Human Rights Law?

7 DANA SUSSMAN: Sure. We are eager to
8 hear from the advocates on what they would propose;
9 we've had some initial conversations several months
10 ago and we've been working with several of the
11 groups, the domestic workers groups that work in
12 these communities and so we are open to determining
13 what would be the best way to add protections under
14 the City Human Rights Law; whether it's incorporating
15 or additional protections for this specific group or
16 other ways of adding protections under the City Human
17 Rights Law.

18 COUNCIL MEMBER ROSE: 'Kay. And do you
19 have any other concerns about Intro 825-A?

20 DANA SUSSMAN: Not at this time.

21 COUNCIL MEMBER ROSE: So you'll be
22 supporting that also?

23 [laughter]

24 DANA SUSSMAN: We look forward to
25 continued conversations.

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2 COUNCIL MEMBER ROSE: Thank you very
3 much...

4 DANA SUSSMAN: Yeah.

5 COUNCIL MEMBER ROSE: Thank you, Chair.

6 CHAIRPERSON MEALY: Thank you. I'm gonna
7 have to piggyback on... you just gave the example of a
8 parent; what about childcare; could you give me an
9 example with children being discriminated against;
10 like the caregiver... want a black nanny... no, want a
11 white nanny instead of a black nanny; could you give
12 me an example of something like that in regards to
13 children?

14 DANA SUSSMAN: The one example that I can
15 identify would involve potentially... and again, we're
16 talking hypotheticals here, but perhaps a same-sex
17 couple is raising children and they have concerns
18 about certain religious groups not supporting their
19 family structure; they may not feel comfortable
20 hiring someone who is a member of a particular
21 religious group because of those concerns.

22 CHAIRPERSON MEALY: Thank you; good
23 example. Uh-oh, she would like to have a follow-up
24 question quickly... [crosstalk]

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COUNCIL MEMBER ROSE: Yeah; I'm sorry.

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Just one question... [crosstalk]

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CHAIRPERSON MEALY: Sorry, but...

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COUNCIL MEMBER ROSE: is this not covered in the New York State Domestic Workers Bill of Rights?

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DANA SUSSMAN: Hiring is not covered in the New York State Domestic Worker Bill of Rights; specific articulated situations involving harassment, sexual harassment and other forms of harassment are covered.

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CHAIRPERSON MEALY: Good question. We will have another... we will turn over to Brad Lander for questions. Thank you, Debi.

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COUNCIL MEMBER LANDER: Thank you very much, Madame Chair. Let me start with 815-A, truthful information and this employer agent or indirect discrimination, which you indicate you support, so I'm not gonna spend too much time asking questions about it, but for hearing purposes I do want to at least make sure we're on the same page with what it's about and what it does and why we think it's important.

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2 So there's two provisions to the bill;
3 one expands or broadens the existing truthful
4 information provision; right now real estate brokers
5 and sales people, it is a violation of the Human
6 Rights Law for them to lie about the availability of
7 units, but that doesn't cover many of the other areas
8 of the law, so this would expand it, for example to
9 including employment. And then the second part of
10 the bill makes it a cause of action for organizations
11 or employers of people if their employees or agents
12 are lied to, and that's particularly important in the
13 case of testing so that a testing organization,
14 whether the New York City Commission on Human Rights
15 or an independent civil rights organization doing
16 testing has the ability to bring a cause of action,
17 or may also be appropriate in a case where an
18 individual whose rights are violated for some other
19 reason is uncomfortable bringing the case but where
20 their employer is harmed and this would enable them
21 to do it. So that's the reason why I introduced the
22 bill; I just... I didn't say that in my opening
23 statement, but that's more or less as well how you
24 understand what we're trying to do here?

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2 DANA SUSSMAN: Yes, that's exactly how we
3 understand it.

4 COUNCIL MEMBER LANDER: And just speaking
5 I guess specifically as a tester organization and in
6 some cases I guess a contractor with other testing
7 organizations, can you just talk about how this would
8 expand your and their ability to identify and bring
9 cases of discrimination before the Commission?

10 DANA SUSSMAN: I think this is
11 particularly useful, and I say this as... I'm slightly
12 biased as being a former employment attorney, but in
13 employment cases where particularly failure to hire
14 cases are very challenging to prove; you have to
15 prove that someone's in a protected group, you have
16 to prove that they're qualified for the job; that
17 they didn't receive the job because of their
18 membership in a protected group, so making that
19 connection is always very challenging. I think
20 allowing us as the Commission, as a testing
21 organization to use the new language where we can do
22 a matched pair test, for example, with one member of
23 a protected group and one not; otherwise more or less
24 the same and if the employer organization represents
25 to one but not the other that something is available,

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2 then we have, right away we've met sort of the
3 standard to bring a case. So I think... the way that I
4 understand it, it would really sort of facilitate
5 those kinds of testing opportunities for the
6 Commission and other organizations.

7 COUNCIL MEMBER LANDER: Greater. And you
8 know, I guess it comes from the situation where in
9 housing, you know a steering, essentially; you know,
10 telling... [crosstalk]

11 DANA SUSSMAN: Right. Yeah.

12 COUNCIL MEMBER LANDER: an African
13 American there's no housing for rent in this
14 neighborhood... [interpose]

15 DANA SUSSMAN: Uhm-hm.

16 COUNCIL MEMBER LANDER: but building on
17 that to make it easier to prove discrimination in the
18 employment context where it can be more challenging.

19 DANA SUSSMAN: Uhm-hm.

20 COUNCIL MEMBER LANDER: Okay. And then,
21 just so I'm clear that we're in the same place on the
22 employer agent; just right now, without this law, can
23 you give me your understanding of when a person can
24 bring a claim on behalf of someone else who's
25 suffered discrimination?

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2 DANA SUSSMAN: So currently we are
3 interpreting the law as it stands now; we interpret
4 it quite broadly to include organizations that bring
5 cases on behalf of their testers and from what I
6 understand, there is good supreme court jurisprudence
7 on this that's informative on this and so we
8 currently would interpret organizational standing to
9 exist under our law, but we again see this as
10 strengthening that and give, you know, sort of
11 articulated protections in this area.

12 COUNCIL MEMBER LANDER: Great. And then
13 this law would also cover people in court as well as
14 before the Commission... [crosstalk]

15 DANA SUSSMAN: Exactly.

16 COUNCIL MEMBER LANDER: so if a judge
17 didn't interpret it with the same breadth that you
18 do... [crosstalk]

19 DANA SUSSMAN: Right.

20 COUNCIL MEMBER LANDER: this would
21 provide that additional protection. Okay, that's
22 great. Thank you; I'm encouraged by your support of
23 that; looking forward to hearing more testimony and
24 moving forward on that piece of legislation.

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1
2 Just one or two questions about other
3 bills. I was intrigued by your... the line that you
4 have about looking more deeply at domestic workers in
5 relationship to wage theft and other kinds of
6 aspects; you know, I mean I thought the exchange you
7 had, both with Council Member Rose and Council Member
8 Mealy about hiring discrimination is a complex one
9 and one we should think about; I think we could make
10 a good argument that it should not be possible for
11 people to discriminate against individuals based on
12 their race or religion or sexual orientation or
13 religious beliefs, even if they're just hiring for
14 one domestic worker; you know, though I also see that
15 it's an awfully slipper slope, you know so where we
16 wound up with... I can't remember the name of the craft
17 store that wanted to not hire any non-Christians to
18 the... [crosstalk]

19 DANA SUSSMAN: Hobby Lobby.

20 COUNCIL MEMBER LANDER: to the, you know,
21 to that senior woman who would feel more comfortable
22 with a woman bathing her, which is something that
23 it's easy for anyone to understand. So I'm in; [sic]
24 that's something useful for us to grapple with, but I
25 was also intrigued by your line that we know that's a

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2 group of people that are especially vulnerable to
3 wage theft and other kinds of abuses and if there are
4 other ideas you have for things we can be doing in
5 the Human Rights Law or in other ways to strengthen
6 those protections.

7 DANA SUSSMAN: Right, I have a sense
8 there may be some advocates who have some ideas.

9 COUNCIL MEMBER LANDER: For the hearing,
10 no?

11 [laughter]

12 DANA SUSSMAN: But I would, you know, we
13 would welcome the opportunity to again partner with
14 the community advocates who are here and who are
15 representing other groups who might not be here and
16 the Council, perhaps public hearings, things where we
17 can learn what are the priorities of those community
18 organizations; obviously we don't handle wage theft
19 within our office, but we again recognize the unique
20 role that the Commission does have and that we have a
21 Law Enforcement Bureau and a Community Relations
22 Bureau and we're more than happy to open up our
23 Community Service Centers to work with domestic
24 worker communities and groups on programming,
25 outreach; things like that. But I don't have any

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2 specific sort of legislative items to suggest right
3 now.

4 COUNCIL MEMBER LANDER: We look forward
5 to the idea of following up; we're actually doing a
6 town hall tonight in Brooklyn on wage theft for
7 freelancers, co-organized with Freelancers Union, who
8 have found that 8 out of 10 of their members who are
9 much more likely to be middle class, you know, people
10 with degrees and they often face wage theft; often
11 they don't have a contract, so how much more true for
12 domestic workers, so whether we look at requiring
13 contracts or... anyway, I look forward to that
14 conversation; I appreciate that's not the Human
15 Rights Law, but it seems a very valuable set of next
16 steps.

17 So then I just wanna ask one question
18 about how we should think about the lines around
19 caregiver accommodation, which I think is also really
20 important, but has some interesting challenges. I've
21 been working with some other members of the Council
22 and the Comptroller put out a report last week on
23 scheduling issues and the movement to make it easier
24 for workers to request a flexible schedule, have a
25 more predictable schedule and not have their lives

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2 made impossible by consistently shifting schedules,
3 by on-call scheduling. You know and obviously anyone
4 who's got caregiver responsibilities needs schedule
5 flexibility to take care of their lives; if an aging
6 parent has to go to a medical appointment and no one
7 else can take them, you need to do that; if your
8 kids, you know, you have to get... you know, there's a
9 whole set of things that we know. But I wonder... I
10 don't know whether this has been put into other
11 places, just how much accommodation or flexibility
12 the Human Rights Law might be used to seek;
13 obviously, you know if I work for an employer and
14 I've had the same schedule for some period of time
15 and then my parent is ill and now I want every
16 Thursday afternoon to be able to take off to take
17 them to a medical appointment, is that... you know I
18 need that and I wanna be able to get it; do you
19 understand that caregiver accommodation would give me
20 essentially a right to that schedule flexibility? I
21 sure shouldn't be fired for requesting it..

22 DANA SUSSMAN: Uhm-hm.

23 COUNCIL MEMBER LANDER: I sure should
24 have some opportunity to have it accommodated, but
25 you can... you know, 'cause I also see from an

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2 employer's point of view why... have we just given that
3 employee a right to shift their schedule in a way
4 that may or may not match up with the employer's
5 business, so help me understand how you see this...
6 [interpose]

7 DANA SUSSMAN: Right.

8 COUNCIL MEMBER LANDER: how you see the
9 contours of this law [sic].

10 DANA SUSSMAN: So the bill as it's
11 drafted would... it cites reasonable accommodation, so
12 we would again kind of go through the same analysis
13 that we discussed earlier on 804; it would be about
14 an individualized assessment. So if your employer
15 had 14 people in the department doing the same job as
16 you, it might not be an undo hardship for you to take
17 every Thursday off and work longer one other night of
18 the week, but if you are the only person in your role
19 at a small employer, there may be an undo hardship,
20 so it really would depend on sort of the unique
21 circumstances of your employer. It wouldn't
22 automatically give you that right, but it would frame
23 it within the broader reasonable accommodations
24 framework that we've seen in disability

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2 accommodations, religious accommodations and
3 accommodations for victims of domestic violence.

4 COUNCIL MEMBER LANDER: And that's... I
5 mean and maybe this goes to the question of Council
6 Member Barron's bill; I have to say [sic] that sounds
7 like it's in the right space, in-between... you know
8 there's these bills being put forward that would give
9 employees a right to request schedule flexibility,
10 which I guess it's nice to have the right to request
11 it without being retaliated against, but it sure
12 doesn't get you much; I mean you say, could I have
13 flexible accommoda... you know and your employer says
14 no and then you're done. So that's... that's not
15 enough employee protection, but obviously it
16 shouldn't be... can't be simply, I must, you know you
17 have to accom... you know you have to... So you know, are
18 there other... I mean I guess it sounds like the
19 Commission believes that the reasonable accommodation
20 is the right standard in a lot of cases; are there
21 other standards somewhat slightly more or less
22 stringent that we ought consider; obviously in other
23 parts of the Human Rights Law; not specifically
24 around caregiver accommodation; Council Member Barron
25 has offered one, you know what else should we be

1 looking at as we're thinking about how to...

2 [crosstalk]

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4 DANA SUSSMAN: We don't have specific
5 alternatives to propose, but I do... you know as I
6 mentioned earlier, I do think that, as I think both
7 Council Member Lander and Rose have identified, this
8 would be a real fundamental shift in obligations that
9 employers have in rights that employees have and I
10 think that it's not dissimilar to paid sick leave and
11 so I think we really need to think about the
12 parameters of the leave, or parameters of the
13 accommodation; what it would look like functionally
14 for employers; what they need to consider, you know,
15 whether... I know that some of these... there's
16 identified elder care emergencies and childcare
17 emergencies are very specifically defined in the
18 bill, and really think through how to implement
19 something like this, because you know, the disability
20 framework has been in our law for several decades,
21 but I imagine when it was originally passed it was a
22 massive shift in the rights of employees to request
23 and obtain reasonable accommodation, so I think we
24 need to look at it as a similar real fundamental
25 shift in workplace relations.

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2 COUNCIL MEMBER LANDER: I thank you for
3 that answer; I thank Council Member Rose for the
4 bill; I think this a very important set of steps for
5 New Yorkers to be able to have workplace lives that
6 fit their lives, but I think getting it right;
7 working with you to get the language in a thoughtful
8 place and creating this new piece of our law in a
9 real thoughtful way is worth doing, so I appreciate
10 your openness to doing it with us and thank Council
11 Member Rose for her bill.

12 CHAIRPERSON MEALY: Thank you. I just
13 have a couple of questions for the Administration.

14 Now that caregiver status has come up
15 now; what is the potential recourse that they have if
16 people start abusing it? Have we factored that in to
17 this at all...? [crosstalk]

18 DANA SUSSMAN: So... Uhm-hm. So employees
19 who... that is not something that I've seen addressed
20 in the bill, but something that I think warrants
21 consideration and conversation.

22 CHAIRPERSON MEALY: I must say; Council
23 Member Barron, I think that should be in there also,
24 'cause now everyone could say that they're a

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2 caregiver and employees will lose out also, so I
3 think that should have a conversation.

4 And another question; you said that your
5 campaign of Local Law 37 to Stop Credit
6 Discrimination Employment Act, will be visible in the
7 subway shelters and radio and print, online,
8 everywhere; what kind of advertisement; who are you
9 advertising with; local newspapers or New York Times?

10 DANA SUSSMAN: Uhm-hm.

11 CHAIRPERSON MEALY: Could you give us a
12 little rundown on that?

13 DANA SUSSMAN: Sure. Last week we had a
14 wraparound ad in the New York Metro that's handed out
15 at subways for free; we are launching... in the next
16 several weeks there will be newspaper ads in ethnic
17 media, so in non-English, local community newspapers;
18 there will be radio spots also in non-English
19 outlets; I believe we also have some major radio ads
20 in English, but we're also targeting mostly non-
21 English; I think in 8 to 10 languages, but I can get
22 that information to you. And the subway and bus
23 shelter ads will start in mid October and you'll see
24 our ad campaign is "You are more than your credit
25 score" in big print, so you should hopefully see that

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2 in the next couple weeks and so we've been working..
3 we also have social media advertising as well;
4 Facebook and other social media platforms where
5 there's a really high volume of people that can be
6 reached through those platforms.

7 CHAIRPERSON MEALY: And my last question.
8 I just wanna say, this is I must say the first
9 administration that just... I can say that really did
10 something from a hearing right away. I wanna thank
11 our colleague Danny Dromm; he addressed the LGBT and
12 here it is; you have that... now a committee on it, a
13 bureau of investigation on it now, a community
14 liaison in the ranks of doing it; I wanna thank you
15 for being expedient doing that and I can't say that
16 for all administrations either, so thank you Danny
17 Dromm for making sure that was top of the class; I
18 thought you would. [laughter] Okay.

19 COUNCIL MEMBER DROMM: Now that you've
20 brought it up; thank you very much, Madame Chair, and
21 I have actually met with the liaison and it was a
22 really good meeting and I've met with some of the
23 Queens folks as well who I've had a longstanding
24 relationship with and the Human Rights Commission was
25 present at 1993 LGBT pride, the first LGBT Pride

1
2 Parade in Jackson Heights in Queens and so we
3 continue that relationship. But I am very glad to
4 see the Commission take a more aggressive approach
5 toward enforcement and outreach to the LGBT
6 community, because I think for years that's something
7 that has been overlooked, so to see my name mentioned
8 in the testimony today and then putting it all
9 together and figuring out that the liaison was in my
10 office last week makes me a very happy man, so thank
11 you for doing that.

12 CHAIRPERSON MEALY: Thank you; I thought
13 you would like that. And I just wanna say, thank you
14 for the robust, the general counsel office that
15 oversees reconstruction of the Human Resources
16 Department and it's IT department and the Agency
17 questions in addition to managing all compliance and
18 reporting requirements. First Deputy Woods, we just
19 wanna say thank you for your 17 years and we're
20 looking forward to starting to really work with you
21 to make sure that everyone in this city will be
22 represented, so I would love to have a few words from
23 you... [interpose]

24 MELISSA WOODS: Well thank you. The
25 Commission; you may have heard us talk about treating

1
2 all New Yorkers with dignity and respect; we also
3 believe in treating our employees with dignity and
4 respect as well. So we are being clear about roles
5 and responsibilities; we are making sure that our
6 employees have the support structure they need and
7 we're also working really hard to make the Commission
8 a robust commission that actually can do amazing
9 work, both in our communications office and our IT
10 department, our case management; our lawyers have the
11 right tools that they need; our Community Relations
12 Bureau, you'll be seeing them out in the field with
13 CCHR paraphernalia so they can be easily identified
14 so that we can make sure that all New Yorkers really
15 know that we exist, we're a place for them to come to
16 and we're excited about the variety of improvements
17 we have in store for the future. So thank you.

18 CHAIRPERSON MEALY: I thank you also and
19 I'm looking forward to this... Human Rights to just
20 grow and be more assertive and hands-on with people;
21 I'm glad you all are coming out the streets now. So
22 without any further ado, we wanna thank you for your
23 testimony. Thank you.

24 DANA SUSSMAN: Thank you very much.

25 MELISSA WOODS: Thank you.

1
2 CHAIRPERSON MEALY: Thank you. [pause]
3 Okay, we're gonna start with Intro 815-A and we're
4 gonna have all our testimony short to three minutes.
5 So could I have Mr. Craig... Garand... Gurian from Fair
6 Play Legislation; we have Mr... [background comment]
7 Fred Freiberg from Fair House Justice Center; D.
8 Gordon from Lambda Legal and Monica Bartley, Center
9 for Independence of the Disability Act. Anyone can
10 start. [background comments] Mr. Craig... [crosstalk]

11 CRAIG GURIAN: Just wanna... Just wanna
12 give everybody...

13 CHAIRPERSON MEALY: yes, you've been a
14 diehard.

15 CRAIG GURIAN: everybody all uh settled
16 in, but uhm...

17 CHAIRPERSON MEALY: I still see the torch
18 burning.

19 CRAIG GURIAN: Good afternoon everybody.
20 Thank you, Chair Mealy. My name is Craig Gurian and
21 I'm appearing here today on behalf of Fair Play
22 Legislation. Intro. 815; it is one of a number of
23 pieces of legislation to have emerged from a broad
24 package of proposals first brought to the Council's
25 attention by Fair Play Legislation... [interpose]

1
2 CHAIRPERSON MEALY: Would you pull the
3 mic a little closer; I'm just... [crosstalk]

4 CRAIG GURIAN: Pardon?

5 CHAIRPERSON MEALY: I can't really hear
6 you.

7 CRAIG GURIAN: Oh really? No one's ever
8 said that to me [laughter] in the last 56 years, but
9 is that better?

10 CHAIRPERSON MEALY: Much better. I hope
11 my hearin' is not goin'. [laughter]

12 CRAIG GURIAN: Okay. Before I get into
13 my quick substantive spiel, I just wanna take a
14 moment in addition to thanking Committee counsel, to
15 thank Annie Decker and her team; they have, as you
16 know, gotten just an absolute deluge of proposals to
17 deal with the City Human Rights Law and I'm also told
18 that for some reason council members sometimes seek
19 to introduce non Human Rights Law legislation to slow
20 up the process and this is not by any means to say; I
21 don't want Annie to be guilty by association that we
22 agree about everything, but it's really wonderful to
23 be able to be dealing with a very, very professional
24 group and I'm grateful for that.

1
2 And then second, independent of any
3 position that the Commission has taken or will take,
4 I'll just note that I'm really pleased that
5 Commissioner Malalis has begun to assemble a very,
6 very talented group of people -- Melissa Woods and
7 Dana Sussman, of course, who you've met; also Hollis
8 Pfitsch and Katherine Greenberg and Paul Keefe, among
9 others, so I think that's a very good sign. And of
10 course we're very pleased that the Commission is
11 supporting Intro 815. Among the papers that have
12 been handed up to you is support from a couple of
13 organizations that couldn't be here today, Latino
14 Justice is one and the second, which I'm especially
15 delighted to note is the National Fair Housing
16 Alliance, the largest national fair housing
17 organization in the country, which to my knowledge,
18 it's really unprecedented for it to become involved
19 in a local piece of legislation and it's a testament
20 to how 815 can really be an example for jurisdictions
21 across the country.

22 The City Human Rights Law reflects a very
23 distinctive civil rights enforcement philosophy that
24 was enacted by the comprehensive 1991 amendments to
25 the law [bell] and the 2005 Restoration Act and I was

1
2 a principal author of both of those pieces of
3 legislation, so quickly; what are the principles?
4 Discrimination should play no role in the life of the
5 city; uncover it wherever it exists, maximize
6 coverage, maximize the means by which to hold
7 employers, housing providers and providers of public
8 accommodations accountable; minimize excuses,
9 minimize the side issues or collateral litigation;
10 get to the merits; get it covered into the act at
11 least in part on the basis of protected class status
12 and Intro 815 fits into this philosophy exactly.
13 Testing, as my colleagues will get into more detail,
14 is one of the best ways to uncover patterns of
15 discrimination. If you're an organization or an
16 entity you need to act through employees or agents,
17 that means if your employees or agents are being
18 treated unfairly when they're carrying out your work,
19 you are being treated unfairly and Intro 815 makes
20 clear that you could hold the wrongdoer responsible
21 for the harms that it does to anyone. And I think
22 that this is one of those bills where the question
23 really emerges isn't why would we prohibit this, but
24 why would we not prohibit it? There isn't any answer
25 to what would be the harm of prohibiting it; the only

1
2 time a covered entity is at risk is when it is acted
3 on the basis of protected class status, and we want
4 to have covered entities thinking maybe this isn't
5 just some vulnerable individual but there is someone
6 else behind that individual who may be able to act.
7 And this is not some unusual circumstance; a covered
8 entity should have to take into effect... if you're in
9 business, you have to take into account the fact that
10 anybody with whom you come in contact might be
11 working with or acting on behalf of someone else.
12 Intro 815 protects important longstanding civil
13 rights principles that are some of them now under
14 attack at the federal level and it's important; we've
15 done this before, to make sure that at least here in
16 New York City that protection is kept strong.

17 So I just wanna end with one
18 illustration. Take an African American electrician
19 who has his own business; he hears that some work
20 needs to be done; he goes to the site and asks to
21 perform the repair and he is told straight out, go
22 away, you're African American; I don't want you
23 working for me. He's being deprived of that business
24 and actually, under existing law, properly he could
25 complain about the discriminatory conduct and I would

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2 challenge anybody who would say that that sort of
3 thing doesn't happen today; I mean sometimes it
4 happens straight out like that; sometimes it's more
5 subtle. Now take the exact same circumstance, but
6 now it's a small business that's organized as a
7 corporation because it makes sense to be organized
8 like that, it's, you know, ABC Electrical, Inc.; it
9 employs an African American electrician as an
10 employee; that electrician... same deal, hears about
11 work to be done, goes to the site, asks to perform
12 the repair; is told go away, you're African American;
13 we're not working with you; ABC Electrical is not
14 getting the work; it's deprived of the business
15 because of race and there's no justification for not
16 holding that wrongdoer to account and Intro 815 makes
17 sure that the wrongdoer is held to account. So we're
18 glad we have the Commission's support, thank Council
19 Member Lander very much for introducing the bill and
20 hope that this will get passed promptly. [bell] Thank
21 you... [crosstalk]

22 CHAIRPERSON MEALY: Thank you. Thank
23 you. [background comment]

24 LAURIE VIXEN: Thank you Chairwoman
25 Mealy. My name is Laurie [sp?] Vixen [sp?]. Ken

1
2 Kimerling, the longtime Legal Director of Asian
3 American Legal Defense Fund was unable to be here
4 today because of a medical appointment and he asked
5 me to read his statement for him.

6 "Intro 815 sensibly clarifies the law as
7 it relates to testing and to indirect discrimination
8 and we support its passage. Persons under the City
9 Human Rights Law currently include not only natural
10 persons, but also entities like corporations as well
11 and corporations, whether for-profit or not-for-
12 profit can only act through their agents or
13 employees. Sometimes when a covered entity
14 discriminates against an employer or agent it is
15 unaware that the employee or agent is acting on
16 behalf of the employer or principal, must like the
17 example Mr. Gurian just gave, but that doesn't change
18 the result that the discrimination against the
19 employer or agent results in the rights of the
20 employer or principal being violated too. One
21 obvious example is the testing context where by
22 definition the tester must not reveal any affiliation
23 because he or she is pretending to be a regular
24 apartment seeker, but this can come up in a wide
25 range of scenarios. If a minority- or woman-owned

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2 business deploys someone to find out information
3 about the requirements of a new subcontractor and the
4 MWBE employee can't get the information because of
5 her protected class status, why on earth should
6 liability be limited to the circumstances where the
7 employee or agent has to say, by the way, I work for
8 this MWBE? Yes, under current City Human Rights Law,
9 if the wrongdoer knew of the employee's relationship
10 with the employer, it would be liable. There's no
11 reason to shield the wrongdoer if it commits the same
12 act of discrimination without knowing of the
13 relationship."

14 "In the decades I've worked in civil
15 rights," and this is Mr. Kimerling speaking, "I know
16 that the surest front [sic] of discrimination
17 defendants is the ability to avoid the merits of the
18 case and argue collateral issues. Whether the
19 discrimination is direct or indirect, there shouldn't
20 be any question that all victims have a cause of
21 action and the paragraph now, providing coverage for
22 so-called indirect discrimination is needed to take
23 an important step in doing so. One thing I have seen
24 time and time again when civil rights legislation is
25 proposed is that some people will always question the

1
2 need for the legislation or claim to be worried that
3 legislation is too open-ended, but they miss the
4 point; the law is at its best proactive and not
5 reactive. When it comes down to it, the idea isn't
6 that one particular manifestation of discrimination
7 is harmful, but rather that all discrimination is
8 harmful. While it is true that the primary [bell]
9 use of Intro 815 will be to assist testing
10 organizations to be able to prosecute the
11 discrimination they have uncovered, there is no
12 reason to limit the bill to those organizations and
13 every reason to have it available for anyone who has
14 been discriminated against indirectly." [interpose]

15 CHAIRPERSON MEALY: Okay, you... could you
16 wrap up, 'cause we really didn't call you up as of
17 yet?

18 LAURIE VIXEN: Thank you.

19 CHAIRPERSON MEALY: So thank you. And
20 please, everyone know; we only call on you; if we
21 call you, come to the mic. Thank you for your
22 testimony.

23 LAURIE VIXEN: Yes.

24

25

1
2 FRED FREIBERG: Thank you Madame Chair
3 and members of the Committee. My name is... there we
4 go... [crosstalk]

5 CHAIRPERSON MEALY: Alright; that's
6 better. I thought I was losing my... [crosstalk]

7 FRED FREIBERG: My name is Fred Freiberg;
8 I'm Executive Director of the Fair Housing Justice
9 Center and I welcome the opportunity to visit this
10 committee again and provide testimony. I will not
11 make the mistake I made last time by reading my
12 testimony, however; I'll just summarize a couple
13 points that I think are important to make.

14 We obviously do routinely conduct testing
15 in the City of New York and have done so for 10
16 years; our testing investigations have led to legal
17 challenges that have opened up tens of thousands of
18 housing opportunities to populations previously
19 excluded; we have recovered millions in damages and
20 penalties to victims of housing discrimination and
21 most importantly, we've changed the way many housing
22 providers do business. We obviously believe in
23 testing and I've testified previously about the
24 importance of testing and why it is so valuable in
25 uncovering discrimination.

1
2 rights, this is incredibly important; it can only
3 result in more vigorous enforcement aimed at
4 eradicating housing discrimination and ensuring that
5 more violators are held accountable for their
6 discriminatory conduct.

7 I was thinking of this provision, why
8 it's so important too, just on my way into City Hall
9 today and realizing that if we were having a
10 discussion about voting rights, one of the things
11 we'd probably all agree on is that voting rights as a
12 right is very sacred and we should make it as easy
13 and eliminate all the barriers and hurdles that are
14 necessary for people to exercise that right. The
15 same is true here; we have to make it as easy as
16 possible for people to exercise their fair housing
17 rights, so we also heartily support the definition
18 that's offered here for an aggrieved person. Thank
19 you very much.

20 CHAIRPERSON MEALY: Yes.

21 DEMOYA GORDON: Good afternoon. My name
22 is Demoya Gordon; I'm an attorney at Lambda Legal
23 here in New York. I would like to first thank the
24 Committee on Civil Rights for the opportunity to
25 testify before you today in support of Intro 815.

1
2 Founded in 1983, Lambda Legal is the
3 nation's oldest and largest legal organization
4 devoted to advancing the rights of lesbians, gays,
5 bisexuals, transgender people and people living with
6 HIV.

7 I'm here today to urge you to enact
8 Intro 815. This legislation is important to the LGBT
9 community, but it's also important to the civil
10 rights community more generally.

11 New York City has made tremendous
12 progress on LGBT rights, but much remains to be done.
13 Yes, there are LGBT-friendly landlords, but in many
14 areas of the city people still face discrimination
15 based on their sexual orientation or their gender
16 identity. And yes, there are LGBT-friendly
17 workplaces, but far too many LGBT employees and
18 jobseekers still deal with unfair treatment on a
19 regular basis. These burdens are even greater for
20 LGBT people who are of color, living with poverty,
21 are immigrants, have a disability or are otherwise
22 additionally underprivileged.

23 LGBT New Yorkers have to contend on a
24 daily basis with the very real risk of facing
25 discrimination or harassment while conducting

1
2 everyday activities, such as searching for a job,
3 looking for an apartment, applying for a loan or even
4 just going to the doctor.

5 So how does Intro 815 help our community?
6 First off, it helps strengthen and preserve testing
7 for discrimination, which my co-testifiers here have
8 already elaborated on, the importance of that. It's
9 a very important but underused tool to fight against
10 discrimination. Testing has traditionally been used
11 most often in the housing context, but I do believe
12 that Intro 815 would help strengthen its use in that
13 context, but also extend its use into other important
14 sectors, such as employment.

15 Intro 815 also strengthens our ability to
16 deter acts of bias; where individuals have been
17 harmed in the course of carrying out a business'
18 work, this amendment would empower that entity, which
19 in many cases will be better resourced than the
20 individual to seek redress.

21 So Intro 815 will ensure that minority-
22 and women-owned businesses and other businesses that
23 are willing to put a diverse staff to work in a
24 diverse but not always accepting city can seek legal
25 remedy for any harm that they incur due to

1
2 discrimination against their employees or their
3 agents.

4 As we sit here today, many discriminators
5 still think that they can get away with unjust
6 treatment and many people who suffer discrimination
7 still think there's nothing that they can do about
8 it.

9 To give you an idea of the extent of the
10 discrimination that LGBT New Yorkers [bell] still
11 face, Lambda Legal receives about a thousand calls
12 related to employment discrimination across the state
13 and about half of those come from people experiencing
14 discrimination right here in our city.

15 Since I think my time's up, I'll just
16 wrap up by saying; I also think it's very important
17 to emphasize the point about Intro 815 making it
18 clear that deprivation of a person's civil rights is
19 automatically an injury; that ground is potentially
20 under attack at the federal level and I think it's
21 very important for us to keep it strong here in New
22 York.

23 CHAIRPERSON MEALY: Thank you.

24 MONICA BARTLEY: Good afternoon Committee
25 Chair Mealy and other members of the committee.

1
2 Thank you for the opportunity to submit testimony on
3 behalf of CIDNY. I am Monica Bartley, Community
4 Outreach Organizer.

5 For more than 35 years CIDNY has provided
6 assistance to people with all kinds of disabilities,
7 most of whom live independently in the community; we
8 are part of the Independent Living Centers Movement.
9 The New York City Human Rights Law is a powerful law
10 that can only be strengthened by broadening its
11 reach. The right to truthful information plays a
12 significant role in protecting consumers from
13 discrimination. The original language in the New
14 York City Human Rights Law is silent as to whether
15 the actor, real estate agent, potential employer,
16 labor organization, etc. could be deceptive as to the
17 availability of housing or employment. This may seem
18 like it should be understood, but including the
19 actual act of lying would further clarify a specific
20 method that is used to discriminate. It can be
21 argued that language to refuse, withhold or deny is
22 obviously an act of deceptiveness; however, the
23 actual act of lying is not a reason to hold the actor
24 accountable. Through this amendment even the act of
25 lying that no housing or employment opportunity

1
2 exists would be found in violation of the New York
3 City Human Rights Law. I applaud the City Council
4 Civil Rights Committee for having the foresight to
5 see that as strong as a law may be, times change, as
6 do forms or actions of discriminations; actors will
7 always find a way around laws to achieve their goal;
8 therefore, laws must be fluid and amended to the
9 circumstances, and in that respect we support Intro
10 815. Thank you.

11 CHAIRPERSON MEALY: Thank you. Any
12 questions, my colleagues?

13 COUNCIL MEMBER ROSE: I do for two; for
14 Lambda and... Where are you from; I'm sorry?

15 MONICA BARTLEY: Me?

16 COUNCIL MEMBER ROSE: Your organization.

17 MONICA BARTLEY: The Center for
18 Independence of the Disabled New York (CIDNY)...
19 [crosstalk]

20 COUNCIL MEMBER ROSE: CID... soon [sic]...
21 that's what it is. Do you think Intro 815 would
22 affect you or your client's ability to prove claims
23 of discrimination under the City Human Rights Law
24 right now?

25 MONICA BARTLEY: Yes, it would.

1
2 COUNCIL MEMBER ROSE: 'Kay. Lambda... and
3 Lambda, what I really wanted to ask you was; do you
4 all send out testers yourselves to get data on
5 discrim...

6 DEMOYA GORDON: We do not send out
7 testers, Lambda Legal does not; we get most of our
8 claims just from folks calling our help desk or
9 reaching out to us some other way, but we certainly
10 support the use of testing as a very important means
11 of ferreting out discrimination, for all the reasons
12 that have already been elaborated by folks on this
13 panel and the panel before.

14 To answer your first question about will
15 it help us and others who do this work; it certainly
16 will. As I think has been alluded to before,
17 particularly in cases where there's a failure to do
18 something, like failure to hire or a failure to offer
19 someone an apartment, it's often hard.. I mean the
20 person might have a sense.. often someone calls us and
21 they have a sense, like they know in themselves that
22 this is why it happened, but they.. you know, they
23 don't have the proof and you know, we then have to
24 assess with our limited resources, is this the kinda
25 case where we think, you know if we take it to

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2 litigation we can get discovery; will we be able to
3 uncover information that will then be able to prove
4 that yes, this was the basis or not. But if you have
5 a law like this on the books that strengthens testing
6 availability, then you'll have, as the representative
7 from the Commission said, what you have then is a
8 built-in example of; okay, you have a non-protected
9 person, and a protected person and they were given
10 different information; I think that is a very strong...
11 I would argue direct [sic], but at most, very
12 compelling circumstantial evidence of discrimination
13 right there, so.

14 CHAIRPERSON MEALY: Thank you. Thank you
15 panel, we're gonna... one more question. Thank you.

16 COUNCIL MEMBER LANDER: Thank you Madame
17 Chair. First... one thing first, thanks to all of you
18 for your work to advance this bill and your presence
19 here today. I wanna call people's attention in
20 Fred's testimony to this bulleted listed on Pages 2
21 and 3 of 7 or 8 or 9 examples of specific real cases,
22 where their right to truthful information was
23 violated and all from New York City, so it's very
24 helpful 'cause I think sometimes we hear, you know
25 that's a theoretical problem that may or may not

1
2 exist and so seeing these cases right here where it
3 does and I think in all of these you can also, or at
4 least in most of them, understand why an individual
5 who wasn't part of a testing organization who is
6 subject to these things wouldn't even have any reason
7 to know they had been discriminated against and so to
8 look at it from the point of a view of a testing
9 organization, the right to truthful information is
10 really important.

11 And I just wanna ask, whoever on the
12 panel who wants to answer it; Deputy Commissioner
13 Sussman spoke to the fact that they already in many
14 cases interpret their law to provide the opportunity
15 for an organization, but my sense is that there's
16 cases in court where that is not clear or maybe even
17 cases where in past Human Rights Commission's cases
18 that hasn't been the case, so can you just clarify
19 this for me how new is this, you know, I guess here
20 in New York City or more broadly?

21 CRAIG GURIAN: Well from a housing point
22 of view it's been the law for a very long time; the
23 Supreme Court has held that for 30 years; it's in
24 jeopardy now in a case this term, as a matter of fact
25 is being heard before the Supreme Court, but as the

1
2 Chair was commenting, in terms of the change in the
3 Commission, you know, commissions change back and
4 forth and we had very long experience; the principle
5 reason that the local Civil Rights Restoration Act of
6 2005 was passed is that courts, more conservative
7 than this council or I would like, will look at
8 things and just not accept the broad interpretation.
9 It's great that the Commission is becoming more
10 involved now, but most of the action that happens
11 under the City Human Rights Law actually is in court
12 and of course anything that the Commission does is
13 not final; it has to get reviewed in court, so it's
14 very, very important to have it straight in the law;
15 it's very important to expand it to employment and
16 it's also important that this area where the
17 Commission hasn't been acting, where it's that
18 employer getting harmed by conduct against its agent
19 or employee; that's not something that the Commission
20 is doing now and that's something that 815 properly
21 adds.

22 FRED FREIBERG: I would just add that
23 the... you know the right of fair housing organizations
24 and testers to bring claims is well established, as
25 Craig mentioned in federal law; however, that

1
2 progress, as one who's been doing this work for 40
3 years, I can tell you, it's always very fragile and
4 there are efforts constantly to undermine those
5 rights.

6 I also wanna add in response to your
7 question that we have to prove diversion of resources
8 under the current framework of that law and an
9 individual has to prove that there's been some
10 injury, a psychic injury, economic, out-of-pocket
11 injuries of some kind and what you law does, it
12 really takes that away and says that's not relevant
13 here; what's relevant is discrimination occurred and
14 that can't be tolerated in 2015, and so I applaud you
15 for bringing this bill forward.

16 COUNCIL MEMBER LANDER: Thank you. Do
17 you have public accommodations examples; we've talked
18 mostly extensively about housing, we've talked
19 substantially about employment; I was just trying to
20 think... I mean I think broadly it makes sense to have
21 this cover the law, I mean you know, so we don't have
22 to really figure out all the places where people
23 could lie to you and you know, but do you have an
24 example that comes to mind or one you've seen where
25

1
2 truthful information would be valuable in the public
3 accommodations context?

4 CRAIG GURIAN: Well there could be
5 various professional clubs where there's a membership
6 issue in the terms like that, so that's one on
7 truthful information, but again, beyond the truthful
8 information piece there is also the circumstance
9 where just as somebody can go into a hardware store
10 now and not get the supplies or you know, not be
11 treated right because of race or national origin or
12 something else; that person can be going in there on
13 behalf of an employer, so it's really fully
14 applicable in that sense too.

15 COUNCIL MEMBER LANDER: Thank you.

16 FRED FREIBERG: Yeah, I would just add
17 too that the overt discrimination still does occur;
18 last week we were looking for commercial office space
19 in New York City; talked to a leading broker in town
20 who represents a national company and after I
21 explained what I wanted, they said well maybe they
22 could assign a junior associate; it's not a real big
23 contract, but they could find somebody to help us.
24 And then I said, and I was gonna call CIDNY about
25 his, because I said, "Well by the way, we have to

1
2 have an entirely accessible office," and they
3 actually said to me overtly, "We will not serve you
4 then; we will not provide services to you," period;
5 this was last week.

6 CHAIRPERSON MEALY: Wow.

7 DEMOYA GORDON: In the area of health
8 care, going to the doctor, which I think would be
9 covered as a public accommodation, what we've seen a
10 lot right now is where you have someone who's
11 transgender and needs treatment, whether it's
12 hormones or something else; typically hormones, and a
13 doctor will say, I can't do that or we don't do that
14 because your case is too special, where they will
15 prescribe the very same hormones for someone else who
16 isn't transgender. So I believe that that's the kind
17 of case where if you can prove that this doctor
18 routinely prescribes these hormones for someone who
19 isn't transgender, to me that would be an example of
20 untruthfully telling someone you can't serve them
21 based on who they are.

22 COUNCIL MEMBER LANDER: Thank you.

23 MONICA BARTLEY: One final comment. Well
24 this is something that we experience daily because of
25 over various limitations; we experience

1
2 discrimination in all forms, whether health services
3 or access to housing, it's just generally there, so
4 this law will definitely help us to protect our
5 consumers.

6 CHAIRPERSON MEALY: Thank you; this is
7 good law. And thank you and we gave you... you were
8 hands-on with helping this legislation also and we
9 wanna thank you, your tireless [sic] advocacy,
10 holding the torch; keep it going. Thank you.

11 We're gonna have our next panel. M.
12 Gooddell, MFY Legal Service; Maldonado... [background
13 comment] Roger, Poverty and Research Action Council;
14 Patrick Delintz [sp?] from Lawyers' Committee for
15 Civil Rights Law; Danielle [sic] Namala [sp?], Esq.,
16 Law Office of... ah, his own office. Thank you so
17 much. You can start, whoever's ready and you could
18 give your handouts to our sergeant at arms. Anyone
19 can start. Anyone could start. [background
20 comments] Press the button and bring the mic closer
21 to you. State your name and you may begin.

22 MAIA GOODDELL: So my name is Maia
23 Gooddell and I work for MFY Legal Services. Many of
24 you are familiar with MFY; we envision a society in
25 which no one is denied justice because he or she

1 cannot afford an attorney. To make this vision a
2 reality, for over 40 years MFY has provided free
3 legal assistance to residents of New York City on a
4 wide range of civil legal issues. We provide advice
5 and representation to more than 10,000 New Yorkers
6 per year.
7

8 And just to cut to the chase, I wanna
9 talk about the desperate need for more effective
10 enforcement in the area of employment hiring; that's
11 something that we see through the hundreds of intakes
12 that we conduct ever year in the employment area. We
13 regularly speak to New Yorkers who have been denied a
14 job despite being qualified for the position and
15 often they suspect that the reason for that was an
16 unlawful bias, but as you heard from Lambda Legal,
17 may not be able to put their finger on specific proof
18 and we have to tell them, you're out of luck; you
19 don't have good enough proof for court right now.

20 The lack of a remedy is particularly
21 frustrating to us when we suspect that a large
22 employer is engaging in systemic discrimination, but
23 we have no way to test that theory. So based on our
24 clients' individual examples as well as our
25 partnerships with retail workers advocacy groups, we

1
2 often see that in the retail industry, so we often
3 suspect that retailers are not hiring applicants of
4 color for the more desirable sales positions and
5 instead steering them to back of the house position;
6 for example, stocking merchandise, but we lack the
7 ability to prove that. Simply put, it would be a
8 game changer if MFY had the option to send those
9 clients to an advocacy organization that employed
10 testers or to partner with such an organization; by
11 passing Intro 815-A, the City Council can help
12 maximize a practical means by which illegal
13 discriminators can be held to account. Thank you.

14 CHAIRPERSON MEALY: Thank you.

15 ROGER MALDONADO: Good afternoon Chair
16 Mealy; other members of the Committee. My name is
17 Roger Maldonado; I'm here on behalf of Philip
18 Tegeler, the Executive Director of the Poverty and
19 Race Research Action Council; he unfortunately was
20 not able to be here today, but has asked me to read a
21 short statement.

22 "The Poverty and Race Research Action
23 Council (PRRAC) is a national civil rights policy
24 organization that promotes a research-based advocacy
25 strategy on structural inequality issues. PRRAC has

1
2 been particularly active in focusing on the
3 importance of place and the continuing consequences
4 of historical patterns of housing segregation and
5 development for low-income families in the areas of
6 health, education, employment and incarceration.

7 Testing is a crucial tool in the battle against the
8 housing discrimination that continues patterns of

9 segregation created decades ago and it is important

10 that we have legislative language that broadly grants

11 what is sometimes called a right to truthful

12 information independent of protected class status;

13 Intro 815 does that and we support the bill

14 wholeheartedly. This measure is particularly timely;

15 on the federal level the future of broad-standing for

16 testers is in doubt, with the Supreme Court about to

17 review the longstanding principle that someone whose

18 civil rights are violated automatically has the right

19 to sue, even if he or she hasn't suffered other

20 concrete injuries. The prospect of New York City

21 taking the lead to preserve these rights on the local

22 level is important in and of itself and as a model

23 for other localities and states to do the same. At a

24 time when the civil rights community is frequently on

1
2 the defensive, this forward-thinking bill deserves to
3 be passed without delay." Thank you.

4 CHAIRPERSON MEALY: Thank you.

5 PATRICK DELINTZ: Good afternoon. My
6 name is Patrick Delintz and I'm testifying today on
7 behalf of The Lawyers' Committee for Civil Rights
8 Under Law, who are unable to be present today and I'm
9 testifying in support of Intro 815-A.

10 The Lawyer's Committee is a nonpartisan,
11 nonprofit organization formed in 1963 at the request
12 of President John F. Kennedy to enlist the private
13 bar leadership and resources in combating racial
14 discrimination and the resulting inequality of
15 opportunity. For more than 50 years we have worked
16 to secure equal justice for all through the rule of
17 law. The Lawyers' Committee is pleased to join our
18 fellow civil rights organizations, national and
19 local, to support Intro 815. At the federal level,
20 Congress has long recognized the need for effective
21 private enforcement of civil rights protections and
22 for decades the use of testing by fair housing
23 organization has exposed discrimination that would
24 otherwise have remained hidden and unremedied and
25 explicit statutory basis for standing in testing

1 cases is important in state and local laws as well.
2
3 Indeed, the City Council's consideration of Intro 815
4 could not have come at a more opportune time. Right
5 now we and our allies are involved in a case before
6 the Supreme Court, *Spokeo v. Robins*, where the broad
7 right for standing based only on the invasion of a
8 statutorily created right is under attack; along with
9 the National Fair Housing Alliance we have filed an
10 advocates brief defending the principle of broad
11 standing. But just as those who are hostile to civil
12 rights and labor rights understand that it is
13 important to engage at all levels of government, so
14 too must those who are committed to the protection
15 and expansion of civil rights fight at the state and
16 local; Intro 815 performs exactly that function.
17 Moreover, in contrast to the housing context, there
18 has been little testing for employment discrimination
19 over the years; this has greatly hindered the ability
20 of civil rights advocates to identify and prosecute
21 patterns of discrimination in industries and sectors
22 that continue to deny African American, women and
23 other class groups a fair chance to be hired. With
24 the law, New York City will be taking the lead in
25 providing explicitly a powerful tool to help

1
2 diversify workplaces. When this legislation is
3 enacted, we hope that it will be model that can be
4 adopted by other jurisdictions around the country.
5 Over the years the civil rights legislation has
6 captured the public's attention or those bills that
7 expand the ranks of those group members that are
8 protected from discrimination; that substantive work
9 is of course enormously important, [bell] but... [bell]
10 but it turns out that the less traumatic [sic] areas,
11 the means and the methods, to be able to get into
12 court and seek redress for bias conduct is just as
13 important; it is there that the battles are fought
14 every day in court with questions of standing,
15 burdens of proof and procedure, where the promise of
16 equal rights under the law is either fulfilled or
17 stymied. This law takes an important step to
18 maximize the means and methods to vindicate civil
19 rights and we urge for prompt support, and in closing
20 I would just like to add for my own... [laugh]

21 CHAIRPERSON MEALY: You went... [sic]

22 PATRICK DELINTZ: experience as an
23 attorney who's been practicing in this jurisdiction
24 for 22 years, the importance of this law and I wish
25 you support them and it gets passed.

1
2 CHAIRPERSON MEALY: Thank you.

3 DANIELLA NENOW: Good afternoon. My name
4 is Daniella Nenow [sp?] and I'm here first to provide
5 a statement on behalf of the Disability Rights
6 Advocates. DRA is one of the leading nonprofit
7 disability rights legal centers in the nation; it's
8 mission is to advance equal rights and opportunity
9 for people with all types of disabilities nationwide.
10 DRA is run by people with disabilities, for people
11 with disabilities.

12 Now as we've heard today, people with
13 disabilities continue to face numerous barriers to
14 accessibility in housing, employment and in public
15 accommodations; it's critical that the Council act
16 now to adopt Intro 815 so that there is unmistakable
17 statutory basis for organizations to pursue
18 violations of the New York City Human Rights Law
19 across all areas of public life covered by the law.
20 Intro 815 makes an important contribution in the area
21 of legal standing to challenge conduct that violates
22 the antidiscrimination provisions of the New York
23 City Human Rights Law. This is critical because
24 basic disability rights are often unattainable
25 without court action. It's of concern that the

1 standing of civil rights organizations is currently
2 being attacked at the federal level, which you've
3 heard about today, jeopardizing future progress
4 towards equality and inclusion of New Yorkers with
5 disabilities. Individuals often lack the resources
6 to challenge discrimination in courts on their own
7 and often face retaliation if they choose to do so;
8 without the ability of organizations to make such
9 challenges, many instances of unlawful discriminatory
10 conduct will go without remedy. Intro 815 will not
11 only insulate New Yorkers against the attacks on
12 organizational standing occurring at the federal
13 level, but it will also set an example for other
14 states and localities throughout the nation that
15 independent progressive action is essential to
16 preserving our ability to vindicate our rights.

17
18 And just as a personal aside, as a
19 private practitioner with a solo practice in Queens,
20 I can tell you that Intro 815 is vital. Attorneys in
21 private practice like me often cannot take cases of
22 the kind that 815 would address because we only have
23 evidence that relates to that one client who didn't
24 get the job, whereas organizations who used testers
25

1
2 can build much stronger cases based on a larger pool
3 of rejected applicants. So please support 815.

4 CHAIRPERSON MEALY: Thank you. Any
5 questions? I have two for the lawyers. How
6 important is it if -- I guess for you all -- if
7 someone tapes discrimination themselves; how strong
8 is it for a lawyer then to help their case,
9 individual case?

10 DANIELLA NENOW: I'm happy to respond. I
11 think that for a solo practitioner like myself, like
12 I said, it's very difficult to take these cases,
13 failure to hire cases, because often, as I think was
14 expressed earlier, an individual has a hunch that
15 discrimination played a part in their failure to be
16 hired for a position, but they don't have the
17 evidence and so if you can... [crosstalk]

18 CHAIRPERSON MEALY: That's what I'm
19 talking about.

20 DANIELLA NENOW: Yeah. So if you can
21 demonstrate through testers that one applicant was
22 rejected whereas another was not and the only thing
23 that really differentiates those folks was their
24 race; then that is good evidence that can be used in
25 court that that employer... [crosstalk]

1
2 CHAIRPERSON MEALY: But I guess you
3 didn't really understand what I said.

4 DANIELLA NENOW: Sorry.

5 CHAIRPERSON MEALY: If the individual
6 tape... have a tape recorder... [sic] [crosstalk]

7 DANIELLA NENOW: Have a conversation...
8 [sic] got it.

9 CHAIRPERSON MEALY: themselves; they sent
10 an African American and a Caucasian and both of them,
11 the tapes are stating the same thing; is that not a
12 good case for an individual lawyer to take?

13 DANIELLA NENOW: I think often in our
14 world today, you know, discriminatory remarks are not
15 made in the hiring interview...

16 CHAIRPERSON MEALY: Alright, specific;
17 if... I read one of the cases that someone had in here
18 where they went to a broker, a 407-unit apartment and
19 they said there's no more vacancies and even before
20 they told them no more vacancies; they're African
21 American, they said the rent was \$5,000 a month and
22 then when the Caucasian came they said the rent was
23 only \$2,000 a month, so right there is a, to me, ABC,
24 straight case; you're telling me people who be
25 proactive and try to fight for themselves, they

1 cannot tape something like that, then come to a
2 lawyer and have a real case?
3

4 DANIELLA NENOW: I think that what's
5 missing in an individual case is that you don't have
6 the comparison.

7 CHAIRPERSON MEALY: No, I said, they...
8 [crosstalk]

9 DANIELLA NENOW: Right, you don't have...

10 CHAIRPERSON MEALY: they had someone else
11 do the same thing, but maybe a Caucasian went in and
12 they told them that now it's \$6,000 a month and here
13 it is they told the \$2,000 a month; that's... they're
14 working together, just like testers, but they're
15 doing it on their own.

16 DANIELLA NENOW: I think most individuals
17 don't have the opportunity to hire someone who could
18 go in and be a comparator.

19 CHAIRPERSON MEALY: Some people take...
20 [crosstalk]

21 DANIELLA NENOW: Maybe I'm not
22 responding...

23 CHAIRPERSON MEALY: the law into their
24 own hands and if they feel they have, they will a
25 friend; we have... African American has Caucasian

1
2 friends and they do the same thing and to me that
3 would be a compelling case for a lawyer to handle,
4 but you're saying people do not do that at all,
5 lawyers?

6 DANIELLA NENOW: Maia.

7 MAIA GOODDELL: So what I can say is that
8 in addition to the problems proving the case and it
9 sounds like you're talking about somebody who really
10 does, you know, have a lot of proof together that
11 there was discrimination... [crosstalk]

12 CHAIRPERSON MEALY: Right.

13 MAIA GOODDELL: that happened, 'cause the
14 other thing that this... [crosstalk]

15 CHAIRPERSON MEALY: They cannot bring it
16 to a lawyer? [sic]

17 MAIA GOODDELL: that this bill is to
18 clarify that just the lie, just saying that the
19 position... [crosstalk]

20 CHAIRPERSON MEALY: Oh...

21 MAIA GOODDELL: wasn't available is
22 illegal and I think that that's something that, you
23 know maybe has been there in the interpretation, but
24 it's not as clear as it should be right now in the
25

1
2 law and it's one of the things that makes the cases
3 weaker right now.

4 CHAIRPERSON MEALY: They have to depend
5 on testers and organizations. Okay. Thank you. Any
6 other questions for this panel? Thank you so much.

7 We only have two more in the next panel.

8 McIntyre... [background comment] it's Margaret
9 McIntyre; [background comment] Felix Lockman. We're
10 doing Reso 815-A. Thank you. [background comments]
11 You may start at any time. Introduce yourself.

12 MARGARET MCINTYRE: Thank you. Good
13 afternoon. My name is Margaret McIntyre; I am chair
14 of the Legislative Committee of NELA/NY, which is the
15 New York affiliate of the National Employment Lawyers
16 Association; we are a group of attorneys who
17 represent employees in all kinds of employment
18 matters. [pause] Our roughly 400 members have been
19 on the frontline of fighting in court to vindicate
20 the civil rights of New Yorkers; some of our members
21 are well-known, others never see the limelight, but
22 all of us are committed to seeing that the promise of
23 the City Human Rights Law is made real and we support
24 Intro 815-A because a failure to hire case is just
25 very chronically difficult for us to prove; I don't

1
2 wanna just repeat what's been said, but we just
3 don't... most people don't know enough to go in with
4 the tape recorder or with a friend; most people just,
5 they go in, they expected to be treated fairly and
6 then boom, they're not and then we don't have the
7 evidence to prove it. So testing is really, really
8 important; it's independent and powerful evidence of
9 discrimination.

10 The City Human Rights Law has a very
11 particular philosophy. Williams v. New York City
12 Housing Authority is the leading case that interprets
13 the City Human Rights Law in light of the 2005 Local
14 Civil Rights Restoration Act; that case explained
15 that the text and legislative history of the
16 Restoration Act represent a desire that the City
17 Human Rights Law meld the broadest vision of social
18 justice with the strongest law enforcement deterrent.
19 [pause]

20 The second part of Intro 815-A that deals
21 with so-called indirect discrimination fits perfectly
22 with the whole of the Act, and actually, to call it
23 indirect discrimination is something of a misnomer.
24 The only way an organization or other entity can act
25 is through its agents and employees, so when an agent

1
2 or an employee is discriminated against when doing
3 the organization's work, that really is a direct
4 violation.

5 And again, it is only entities that
6 engage in discrimination who [bell] are at risk here
7 and it's important that the law is passed as it is
8 and this law will change the focus away from how was
9 somebody damaged and rather back to the
10 discrimination itself is the injury. Thank you.

11 MARTIN LOCKMAN: Hello. My name is
12 Martin Lockman; I'm a Policy Analyst with The Black
13 Institute here representing Bertha Lewis, the Founder
14 of The Black Institute and I'd like to thank the
15 Committee for having me here today.

16 The Black Institute is an action think
17 tank focused on representing minority interests and
18 looking at issues from a minority point of view and
19 we're here today to speak in favor of Intro 815.

20 Others have testified about the
21 importance of testing for housing discrimination, for
22 assuring that the ability of civil rights
23 organizations to do so is preserved here in New York
24 City now that it's being challenged in the Supreme
25 Court. We wanna focus on two things; first, the

1 importance of having the law explicitly recognize
2 that there are both direct and indirect victims of
3 discrimination. Organizations and businesses can
4 only act through their employees, as was said
5 earlier, whether the entities are seeking
6 information, trying to be hired for work, get
7 supplies or engage in other activities covered by the
8 Human Rights Law. When those employees are treated
9 negatively in the course of carrying out the work of
10 the organization or business that translates into the
11 organization or business being harmed. It's not a
12 new idea that when someone's civil rights are
13 violated anyone who is harmed by that conduct has the
14 right to sue; Intro 815 vindicates this principle,
15 although it should be noted that the legislation is
16 narrowly drafted; it only applies when an employee is
17 carrying out work for an employer. One of the
18 reasons The Black Institute is so interested in
19 seeing this legislation passed is because of our work
20 with minority- and women-owned business enterprises,
21 or MWBEs. These businesses continue to face barriers
22 to equal access; sometimes that's because someone
23 with contracts to give does not pay sufficient
24 attention to expanding the pool of applicants, but
25

1
2 sometimes it's just pain old prejudice against an
3 MWBE employee who shows up wanting say to rent office
4 space. Since an employee of an MWBE doesn't carry a
5 sign around with them, does not show the organization
6 that their representing, all the discriminator knows
7 is there's someone in front of them that they don't
8 wanna deal with. The result is that the MWBE doesn't
9 get its office space and the result is caused because
10 of conduct based on protected class status. Intro
11 815 properly recognizes that the discriminator
12 shouldn't be shielded from being held accountable for
13 injury to a small business or an MWBE.

14 Our second reason is simple, as
15 Mr. Gurian mentioned earlier; the question on civil
16 rights legislation shouldn't be why do it, but rather
17 why shouldn't we do it. Whenever civil rights
18 legislation is proposed there are always those who
19 say go slow or do you really need this, but that's
20 the wrong approach and Intro 815 is a good
21 illustration of why. Why shouldn't there be explicit
22 statutory basis for testing the housing area? There
23 is no good reason. Why shouldn't we encourage civil
24 rights organizations to conduct testing in employment
25 and public accommodations too? There is no good

1
2 reason. Why shouldn't a discriminator be held
3 accountable when it's biased conduct against an
4 individual also violates the rights of the entity for
5 which they work? There is no good reason.

6 Since at least 1991, the City Human
7 Rights Law has been focused on maximizing coverage;
8 we should stay on that path and pass Intro 815.
9 Thank you.

10 CHAIRPERSON MEALY: Thank you. Any
11 questions? Thank you so much for your testimony.

12 MARGARET MCINTYRE: Thank you.

13 CHAIRPERSON MEALY: We're gonna do Intro
14 804-A. Michael Grenert. Thank you... [crosstalk]

15 MICHAEL GRENERT: Good afternoon...
16 [crosstalk]

17 CHAIRPERSON MEALY: Good afternoon.

18 MICHAEL GRENERT: I am also, like
19 Margaret McIntyre, who just testified, a member of
20 the Legislative Committee of NELA/NY, the National
21 Employment Lawyers Association, the New York Chapter;
22 we represent employees in employment litigation and
23 other matters; I'm also a member of the Board of that
24 organization and the Executive Committee. I'm here
25 to testify about 804-A and our organization is

1
2 opposed to 804-A; however, I wanna be clear that we
3 think it's a bill that has good intentions, but we're
4 concerned about potential unintended negative
5 consequences of this bill and we would like, along
6 with the Council and the Commission that testified
7 earlier along the same lines, to work with the
8 Council and Commission to try to improve this
9 proposal.

10 One of our concerns, and this echoes what
11 you heard from Miss Sussman, from the Commission
12 earlier, is that the last section of 804, while
13 again, I think of good intentions, is a bit ambiguous
14 and we're concerned that it could be used by
15 employers or potentially by judges to try to move the
16 law back to being viewed as on par with federal and
17 state law as opposed to what the Council's intention
18 has been since the Restoration Act to have it be much
19 more protective of employees than the state and
20 federal law.

21 A second concern that our organization
22 has and I think Miss Sussman of the Commission
23 alluded to this as well, is that the definition of
24 the interactive process we think could be improved
25 from this bill. We don't have a specific proposal to

1
2 make at this time, but we have some ideas for it and
3 would certainly like to meet with council members,
4 Committee members and the Commission to discuss our
5 ideas for having a stricter, more detailed definition
6 for what the good faith interactive process would
7 require.

8 The third concern we have with 804 as it
9 currently reads is that again, employers could argue
10 and judges conceivably could accept in argument that
11 if an employee complies with the requirement, if this
12 bill were to be passed, of engaging in a good faith
13 interactive process, an employer could then try to
14 use that as a defense to a claim that it failed to
15 provide a reasonable accommodation to an employee.

16 In other words, an employer might argue well, we went
17 through the correct process; even if we didn't end up
18 with the correct result of providing a proper,
19 reasonable accommodation, we complied with 804

20 [bell]. My time is up, but lastly, I would just echo
21 one other point that the Commission made regarding
22 804 as it stands now, is that it leaves out any
23 specific requirement for the interactive process in
24 the housing and public accommodation areas and we're
25 an employment organization, so we don't practice in

1
2 that area, but it does seem to undermine the
3 structure of the Human Rights Law to have similar
4 protections in all the different areas of the law.

5 And I thank the Committee for allowing me
6 to testify and for hearing the view of NELA/NY.

7 CHAIRPERSON MEALY: Now that [static]
8 mic. [laughter] Council Member Barron would like to
9 ask you some questions.

10 MICHAEL GRENERT: Sure.

11 COUNCIL MEMBER BARRON: Yes. Thank you,
12 Madame Chair. You had three points that you
13 highlighted; could you summarize them for me briefly
14 again?

15 MICHAEL GRENERT: Sure. The first point
16 was similar to what the Commission stated earlier,
17 which is that the last sentence of 804 has language
18 that says nothing contained in the subdivision shall
19 be construed to offer less protection than federal,
20 state or local law and I... [crosstalk]

21 COUNCIL MEMBER BARRON: Okay, so my
22 question to you is the same as to her. With that
23 clause being removed, what is your concern?

24 MICHAEL GRENERT: One of our other
25 concerns is that an employer could argue under 804

1
2 that if it complied with the good faith interactive
3 process, that that will be a defense to a failure to
4 provide a reasonable accommodation. In other words,
5 an employer might argue; we went through the correct
6 process; even if we didn't end up with a good result,
7 we complied with the good faith interactive process,
8 so we should not be held liable... [crosstalk]

9 COUNCIL MEMBER BARRON: This bill doesn't
10 talk about the result, it talks about establishing a
11 process, irrespective of the result.

12 MICHAEL GRENERT: That's correct and I
13 think... [crosstalk]

14 COUNCIL MEMBER BARRON: Yes.

15 MICHAEL GRENERT: we would agree, you
16 know if someone were to argue that this bill means
17 that; I would agree with you and I would take the
18 same position, but we're concerned that it might... you
19 know there are some judges over time that have had a
20 tendency to try to narrowly construe the Human Rights
21 Law and that's why the Council's had to repeatedly
22 amend it... [crosstalk]

23 COUNCIL MEMBER BARRON: Well I think that
24 gets to another point, talking about being narrowly
25 construed and it's a point that I actually think

1
2 contradicts what is said initially. You're saying
3 that it narrowly construes, but at the same time you
4 want it applied to public housing, so it seems to be
5 a contradiction of what you're saying.

6 MICHAEL GRENERT: We're saying we would
7 like it to be broadly construed..

8 COUNCIL MEMBER BARRON: Right.

9 MICHAEL GRENERT: but we're concerned
10 that some of the language may be misconstrued by
11 employers trying to convince judges to narrowly
12 construe it. I think that's what our concern is..
13 [crosstalk]

14 COUNCIL MEMBER BARRON: Well seems like..
15 okay. Seems a little circuitous in your
16 presentation. You have something you wanna add?

17 MICHAEL GRENERT: Well I think I said it
18 before, but I think on the point I was making earlier
19 is our concern.. we don't think it's the intent of the
20 bill, but our concern is that somebody might try to
21 convince a judge to misconstrue it, to allow an
22 employer to use compliance with the process to be a
23 defense to failure to provide a reasonable
24 accommodation.
25

1
2 COUNCIL MEMBER BARRON: Well once again,
3 that's not what it says; it establishes a process and
4 does not at all talk about what the outcome is. So I
5 disagree with what you're saying and I think that
6 those who talk about it's too narrow and at the same
7 time make references to have it apply to housing is a
8 contradiction. But I thank you for coming and for...
9 [crosstalk]

10 MICHAEL GRENERT: Yes. And just to be
11 clear; I do agree with you; I agree that the.. we
12 don't believe that it's the Council's intent to
13 provide that the interactive process would be a
14 defense to reasonable accommodation; we would just
15 want to modify the bill to make that 100 percent
16 clear and maybe add a sentence.

17 COUNCIL MEMBER BARRON: Thank you.

18 MICHAEL GRENERT: You're welcome.

19 COUNCIL MEMBER BARRON: Thank you, Madame
20 Chair.

21 MICHAEL GRENERT: Oh, is there any other
22 questions?

23 CHAIRPERSON MEALY: I'll let that one..
24 Thank you. [background comment] One second.
25 [pause] Yes. Just think... if it's two different

1
2 claims, is it still puttin' as a defense, you think,
3 if it's two different claims?

4 COMMITTEE COUNSEL: Would that still be a
5 concern?

6 MICHAEL GRENERT: Not sure I understand
7 the question.

8 COMMITTEE COUNSEL: When you have the
9 reasonable accommodation; these are two totally
10 separate claims, to totally separate things. Your
11 concern is with respect to being able to use one as a
12 defense to the other; if it's more clear that they're
13 totally separate, would that alleviate that concern?

14 MICHAEL GRENERT: I believe so; obviously
15 we'd have to see and discuss specific language to
16 accomplish that and that is one of our goals, is try
17 to work with the Committee and the Council to try to
18 do that, but I think if that were made explicit, yes,
19 I think that would address that concern.

20 CHAIRPERSON MEALY: Okay. Thank you.
21 Any other questions? Thank you so much for your
22 testimony.. [crosstalk]

23 MICHAEL GRENERT: Thank you.

24 CHAIRPERSON MEALY: We're gonna do Intro
25 825-A. Irene Jor... Joel from National Domestic

1
2 Workers Alliance; Gayle Kirshenbaum, Hand in Hand
3 Domestic Employers Network. Just come forward,
4 please. You may start.

5 IRENE JOR: Good afternoon. My name is
6 Irene Jor and I'm the New York Organizer for the
7 National Domestic Workers Alliance and the
8 Coordinator for the New York Domestic Workers
9 Coalition. Today I'm here to testify in support of
10 Introductory Bill No. 825-A.

11 Our New York Coalition is comprised of
12 many expert organizations that have been working with
13 domestic workers since the mid 1990s; several
14 organizations from our current coalition organized
15 for six years, so when the New York State Domestic
16 Workers Bill of Rights [sic]. Today we organize an
17 incredible range of domestic workers in the New York
18 Metropolitan area; nannies to housekeepers to elder
19 caregivers, trafficking survivors and women day
20 laborers; domestic workers who hail from all corners
21 of the world.

22 All across the domestic workers who come
23 through our doors, organizers and worker leaders have
24 observed an incredible amount of discrimination,
25 exploitation and even abuse they face in the

1
2 workplace. These instances are not unrelated to the
3 discrimination they face as women of color; immigrant
4 women who are also low-wage workers. So I wanna
5 kinda be clear; the issue is not just the industry;
6 that's a key part of it, but it's also an issue of
7 the other parts of their identity that makes these
8 cases of discrimination very frequent.

9 Thought the New York State Human Rights
10 Law protects domestic workers from sexual and other
11 forms of harassment on the job, it does not offer any
12 protection in ensuring that domestic workers are
13 treated fairly in instances of hiring and firing or
14 subject to discriminatory practices while on the job
15 that suppresses a key part of their identify of
16 physical condition. So while we agree with the
17 Commission that we would like to also see the New
18 York State Human Rights framework applied, we also
19 feel like there needs to be a broader inclusion in
20 the current New York City Human Right Law.

21 To name some examples of things that
22 we've been seeing; we have been meeting domestic
23 workers for a long time who are fired immediately
24 and/or strategically forced out of the work after
25 their employers discover they are pregnant. We often

1
2 hear of employers who have routinely coerced domestic
3 workers to submit to their requests by threatening to
4 out their immigration status. One instance we
5 learned of a domestic worker who had a partial
6 hearing disability and was fired, even though it did
7 not interfere with her agreed upon responsibilities.
8 Recently I met a domestic worker who has a difficult
9 time moving beyond the interview phase of potential
10 employers and she noticed there was discomfort on
11 their part with her Muslim identity and decision to
12 wear a hijab. The Alliance and Coalition applaud
13 City Council Member Rose and the other sponsors for
14 introducing this bill and we have great appetite to
15 work with the New York City Commission on Human
16 Rights to really implement this bill and to work with
17 the domestic worker and employer community to do so
18 effectively.

19 I would love to acknowledge and also
20 continue the rich discussion that was started around
21 sort of the questions around challenges and
22 implementing this, but I will leave it maybe for the
23 questions, but I do have some thoughts and would love
24 to share that. Thank you.

25 [bell]

1
2 GAYLE KIRSHENBAUM: Hi. Hi; thank you to
3 the members of the Committee for convening this
4 hearing. My name's Gayle Kirshenbaum; I'm a member
5 of the national leadership team of Hand in Hand, the
6 Domestic Employers Network and we're here to be clear
7 that Hand in Hand supports expanding the definition
8 of employer under the Human Rights Law to provide
9 protections for domestic workers.

10 Hand in Hand is a national network of
11 employers of nannies, house cleaners and home
12 attendants who are grounded in the conviction that
13 dignified and respectful working conditions benefit
14 worker and employer alike. Hand in Hand was
15 officially founded in 2010 by a group of domestic
16 employers and allies; however, our work engaging
17 domestic employers to ensure fair standards for
18 domestic workers began during the initial push for
19 the New York State Domestic Workers Bill of Rights.
20 During this fight we work side by side with domestic
21 workers to support the passage of the groundbreaking
22 law and have grown from a small, volunteer-led
23 organization to an organization with staff and strong
24 New York City and national member leadership. We
25 continue our work ensuring quality care for employers

1
2 and their families and fair working standards for
3 domestic workers through community organizing and
4 public education initiatives that include workshops
5 for potential and current domestic employers
6 regarding their responsibilities as employers. We
7 are strongly committed to supporting domestic
8 employers to implement a revised human rights law.
9 With the sufficient information and support, many
10 domestic employers are able to understand that their
11 homes are in fact workplaces.

12 To conclude I'm gonna read a short
13 statement from a long-time domestic employer and Hand
14 in Hand member Donna Schneiderman, a Brooklyn parent.

15 "As an employer of a long-time caregiver
16 for my two daughters, I believe strongly that
17 domestic workers do the work that make all other work
18 possible in our city. Employers may be well-
19 intentioned and want to be fair employers, but
20 without employment standards and basic legal
21 protection for these workers, sometimes basic rights
22 are overlooked or abused. Despite the success of New
23 York State being the first state to have a bill of
24 rights, there is much work to be done to raise the
25 awareness of domestic employers about their

1 obligations. As a former employer of a caregiver, I
2 encourage the City Council to include domestic
3 workers in the Human Rights Law to ensure that this
4 group can be assured that their rights will be
5 respected in the workplace and that they have the
6 same protection that all workers have. This change
7 will contribute to fair, mutually respectful
8 relationships between workers and employers in a
9 domestic workplace."
10

11 Just one final note; we agree that there
12 are certain employer concerns related to preferences
13 and needs in hiring that would need to be addressed
14 as we move forward in this process, but we believe
15 that these specific employer needs can be addressed
16 within the framework of expanding human rights
17 protections for domestic workers.

18 CHAIRPERSON MEALY: Thank you. We have
19 one question.

20 COUNCIL MEMBER LANDER: So I guess I
21 wanna ask for your thoughts on how we do that, you
22 know, the... I mean it... obviously these types of things
23 you cited in your testimony are kinds of
24 discrimination we want to prevent by law, you know,
25 and I'm okay saying to an LGBT couple, you know, you

1
2 can't discriminate against people based on their
3 religion and to a religious couple, you can't
4 discriminate against your baby's... [bell] you know,
5 your nanny based on their LGBT status. But you know
6 I think the example that Deputy Commissioner Sussman
7 gave was a good one; the elderly woman who would like
8 to be bathed by a woman, that makes sense to me;
9 these are not easy lines to draw, so I mean we have,
10 you know we don't have a human rights law that says
11 in this area it's okay to discriminate based on
12 gender, but not on religion or sexual orientation or
13 race, so you said you think it is possible for us to
14 expand human rights law protections here in a way
15 that's thoughtful about this; can you help us think
16 about how we might do that?

17 IRENE JOR: Yeah, so I'm... I don't have
18 the exact answer, but I thought through the two
19 examples that were presented and I think with the
20 elder woman who may not be comfortable with a male
21 caregiver, you know it's something I can understand
22 as a woman who has seen a lot of peers and myself
23 gone through a tradition of trauma and things having
24 to do with sexual harassment and assault, I think
25 that is a factor; right, when we seek out the type of

1
2 care we feel we need. But I do wanna recognize; a
3 lot of elder men have women caregivers and it's
4 tricky, but I think there is something about being
5 able to select the type of care where you feel like
6 it's not gonna cause you harm and I feel like that is
7 tricky; right, but I think there is work to be done
8 there or we'll never figure that out. I also wanna
9 note that 95% of domestic workers in this country are
10 women, so this issue is important, but it's actually
11 small, but we need to address it still. And I do
12 wonder how that's addressed say in home... not homecare
13 work, but agency care work, you know, 'cause maybe
14 that's where we can pull from examples around the
15 gender issue. You know and in the elder care realm,
16 it's something we're really passionate about,
17 ensuring that there's quality care, but also ensuring
18 that the way domestic workers provide care, it's also
19 just care. Just this weekend we had a training with
20 SAGE, the Services and Advocacy Group for GLBT
21 Elders, so we're training homecare workers who are
22 Latina, Afro-Caribbean, Filipina and how do you work
23 with consumers who are queer and often stay in the
24 closet because they're afraid of lash back from
25 family members and from doctors and kind of thinking

1 through domestic workers; not just treating people
2 fairly and people treating them fairly, but they're
3 an important piece of intervening to ensure that
4 other people don't face discrimination either,
5 especially in are relationships.
6

7 And in terms of the example with the
8 queer couple who may wanna hire someone that's
9 accepting of their lifestyle, I think we completely
10 understand that, but then to maybe just kind of
11 blanket statement say we won't hire anyone of those
12 religions I think is kind of a harsh one and I think
13 it's one thing if you say that versus in an interview
14 you notice something that is said that you feel like
15 could be harmful for you or your family or your
16 child. So think there are... I'm sorry; did you wanna
17 say something in response [sic]?

18 COUNCIL MEMBER LANDER: No, no, you can
19 finish.

20 IRENE JOR: Yeah, so I... you know and for
21 us, we already work with a lot of nannies, Afro-
22 Caribbean nannies, Latina nannies who do work with
23 queer families and sometimes it's an adjustment
24 because of the culture they may be from, maybe the
25 religion that they're a part of, but I think there is

1
2 incredible possibilities to open this up as a broader
3 conversation for our communities. And on our end, we
4 are doing more workforce development work and
5 teaching domestic workers and working with them to
6 figure out how to work more inclusively with many
7 different types of families and many different types
8 of cultures and traditions.

9 COUNCIL MEMBER LANDER: Alright. Well
10 let me just... So I think that all makes good sense;
11 figuring out how to make a good law is our challenge
12 and so I will just invite if there are... I mean, we've
13 got wonderful lawyers here at the Council who will
14 work on it, but if there are, you know remaining some
15 lawyers who can help us think this through, you know
16 I think some things are straightforward; like you
17 obviously could post for a nanny who was accepting
18 and embracing of LGBTQ lifestyle, like that wouldn't
19 be a violation of the law; that's something one can
20 seek without... but a few of these other issues I think
21 are hard for us to figure out how to write the law in
22 the right way; I think we might be able to agree on
23 the kinds of distinctions we would want to make, but
24 writing them in a way that makes them... in law is
25 something we're gonna have to figure out together.

1
2 So we would love to work with you and other attorneys
3 to figure out how we do that. So thank you. Thank
4 you, Madame Chair.

5 CHAIRPERSON MEALY: Thank you.

6 GAYLE KIRSHENBAUM: Thank you.

7 [background comments]

8 CHAIRPERSON MEALY: Yes. You are the
9 only ones who didn't put in your testimony; would you
10 like to have your tes... you could give it to the
11 sergeant of arms and they'll copy it and put it in
12 the record.

13 IRENE JOR: Great.

14 CHAIRPERSON MEALY: Okay? Thank you...

15 [crosstalk]

16 IRENE JOR: And we... We also had some
17 letters from worker leaders who felt really
18 passionate about this; should I also leave this with
19 my testimony...? [crosstalk]

20 CHAIRPERSON MEALY: Yes.

21 IRENE JOR: Great.

22 CHAIRPERSON MEALY: We'll all get it.

23 IRENE JOR: Great. Thank you so much.

24 CHAIRPERSON MEALY: Thank you so much.

25 Our next panel, and we... definitely the nannies; we

1
2 have to get a hold too [sic]. We have Miss Chin on
3 behalf of Gale Brewer's Office, our Borough President
4 of Manhattan... Chu? Okay. [background comment]
5 Hally Chu. We have... [background comment] she left?
6 [background comment]

7 HALLY CHU: I... Shula left, but I am
8 reading Borough President's testimony on her behalf
9 [sic]... [crosstalk]

10 CHAIRPERSON MEALY: One second; we have
11 another one; this is our last panel, Tantabaum [sic],
12 A Better Balance. Could you come forward?
13 [background comment] James Arnold, AARP, New York
14 City; Karen Casey, The Legal Aid Society. Could you
15 all come up, please? Thank you so much for your
16 patience. You may start, Miss Chu.

17 HALLY CHU: Sure. [background comments]
18 Hi, good afternoon. I am here to give Manhattan
19 Borough President Gale Brewer's testimony on her
20 behalf, so I'm just gonna read what's on record.

21 "As Gale A. Brewer and the Manhattan
22 Borough President, I thank Chair Darlene Mealy and
23 [bell] members of the Committee on Civil Rights for
24 the opportunity to testify about a Local Law to amend
25

1
2 the City's Human Rights Law in relation to caregiver
3 discrimination.

4 I am proud to have introduced Intro 108-A
5 of 2014 with my friend and colleague, Council Member
6 Debi Rose of Staten Island.

7 Intro 108-A 2014 would ban discrimination
8 against caregivers in a workplace and require that
9 employers reasonably accommodate workers with certain
10 needs related to the care of dependent people with
11 disabilities, parental involvement in a child's
12 education and childcare or eldercare emergencies.
13 This legislation was originally introduced in 2007 by
14 then Public Advocate Betsy Gotbaum and I was a
15 primary sponsor of the bill in 2012. Since then,
16 family caregiving has become more commonplace as the
17 number of families increases and older adults either
18 retire in the five boroughs or age in place.

19 In a 2013 study, the New York City
20 Department of Planning estimated the city's senior
21 population would reach 1,208,000 by 2020 and 1.4
22 million by 2040. This trend underscores the need to
23 develop public and private solutions to ensure that
24 workers with eldercare or childcare responsibilities

1
2 have equal employment opportunity and are protected
3 from discrimination in the workplace.

4 Family responsibilities discrimination
5 (FRD) is a form of employment discrimination that
6 occurs when an employee is unfairly penalized at work
7 because of his or her obligations to provide care for
8 family members. Dozens of localities in over 20
9 different states, including Chicago, Washington,
10 D.C., Atlanta, Boston and Miami Dade County, have
11 recognized the limits of existing law and prohibited
12 caregiver discrimination at the local level.

13 Thirteen states and the District of Columbia have
14 enacted laws to guarantee time off for parents to
15 attend their children's' educational events.

16 Caring for an older relative or friend or
17 for a child is now the new normal of family
18 caregiving in the United States. The 2011 Gallup-
19 Healthways Well-Being Index found that more than 1 in
20 6 Americans who work a full- or part-time job also
21 report assisting with care for an elderly or disabled
22 family member, relative or friend. AARP's website
23 features a range of helpful caregiving tools and
24 resources, including an app and I Heart Caregivers
25 story bank, reflecting the widespread nature of these

1 arrangements. Eldercare and childcare
2 responsibilities fall disproportionately not only on
3 women, but also on low-wage workers. Contrary to
4 popular belief, having family responsibilities is not
5 in and of itself a protected characteristic under
6 Federal Antidiscrimination Laws. Family caregiving
7 responsibilities at home can lead to negative
8 consequences at work. The financial impact on
9 working caregivers who leave the labor force due to
10 caregiving demands can be severe. Workers with
11 childcare or eldercare responsibilities report a kind
12 of workplace this affects that open employees to
13 discrimination. The most include arriving late,
14 leaving early or taking time off during the day to
15 provide care, but also taking a leave of absence or
16 reducing work hours from full- to part-time. An
17 estimated 10% of these family caregivers quit their
18 jobs to give care or choose early retirement.

19
20 Furthermore, FRD arises from treating
21 employees with caregiving responsibilities less
22 favorably than other employees due to unexamined
23 assumptions that their family obligations may mean
24 that they are not committed to their jobs. A Better
25 Balance's Work and Family Legal Center regularly

1
2 counsels employees with family responsibilities who
3 encounter FRD bias, including being disciplined for
4 taking personal days while non-caregiving employees
5 are not and being required to make up missed hours
6 while their non-caregiver colleagues are not. These
7 experiences have shaped the language and momentum for
8 the legislation we are discussing today and I'm proud
9 to be partners yet again with A Better Balance in
10 this important endeavor to create more equitable
11 work/life balance in our city. It is imperative that
12 employees not be penalized or lose their job due to
13 eldercare or childcare responsibilities. The City's
14 Human Rights Law explicitly prohibits discrimination
15 in employment, housing and public accommodations
16 based on race, color, creed, age, national origin,
17 alienage, or citizenship status, gender, including
18 gender identity and sexual harassment, sexual
19 orientation, disability, including pregnancy, marital
20 status and partnership status. Interns, whether paid
21 or not, are considered employees under the law, yet
22 the current law does not explicit prohibit
23 discrimination based on caregiver status; rather, FRD
24 claims are actionable only when discrimination

1
2 against family caregivers qualifies as discrimination
3 under other federal statutes.

4 Legislation to prohibit workplace
5 discrimination against family caregivers would not
6 give any group special rights; it would simply
7 require employers to treat workers with caregiving
8 responsibilities the same way that they treat other
9 employees. Thus, an employer who readily allows a
10 student's work schedule to be shaped around their
11 class schedule could not refuse to show similar
12 flexibility for an employee caring for an older adult
13 or a child; antidiscrimination law simply requires
14 equal treatment.

15 Intro 108-A would expressly prohibit
16 employment discrimination based on an individual's
17 action or perceived status as a caregiver and would
18 thereby add caregivers to the protected classes in
19 the workplace under New York City Human Rights Law.

20 The strength of our neighborhoods is
21 founded on families and friendships and the ability
22 to support the well-being and development of others.
23 These responsibilities should not expose New Yorkers
24 to discrimination or job loss.

1
2 Thank you again for the opportunity to
3 testify and to all of those who are here in support.
4 I am honored to have introduced Intro 108-A with
5 Council Member Rose and I urge the Committee to vote
6 in favor of the bill." Thank you.

7 CHAIRPERSON MEALY: Thank you. Since
8 she's such an advocate for all this legislation, we
9 gave her the opportunity, Borough President Gale
10 Brewer of Manhattan. We're gonna have The Legal Aid
11 Society next; this is Karen Cassidy.

12 KAREN CACACE: Thank you; it's Karen
13 Cacace. Thank you. And I'm the supervisor for the
14 Employment Law Unit at Legal Aid and I know the
15 council members are very familiar with the wide range
16 of services that Legal Aid provides.

17 For the Employment Law Unit, we represent
18 low-income workers in New York under almost all of
19 the employment statutes and we bring many claims
20 under the New York City Human Rights Law and we are
21 very happy to be here today to testify in favor of
22 all four of the proposals. So you'll have our
23 written testimony on that; I thought I might address
24 just some of the issues that came up, particularly in
25 the Commission's testimony earlier today.

1
2 And one of the things that we recommended
3 in our testimony was actually to eliminate the four-
4 person requirement entirely, because I think not only
5 domestic workers, but all workers are entitled to the
6 protections of the Human Rights Law and we get a lot
7 of calls from people who work in very small offices
8 and are fired because they are pregnant; because they
9 are older and we are in the position of telling them
10 there is absolutely no law in the city, state or by
11 the federal government that protects you and you can
12 be fired for that, because you were pregnant or
13 because you were old and I think that that is wrong
14 and I think that the City Council is the best place
15 to remedy that situation.

16 And just to address the issue that
17 Council Member Lander was raising about, you know, a
18 very intimate circumstance, such as a domestic
19 employee situation; is it too much to legislate that
20 you can't hire someone because of that person's sex,
21 and I think the answer is no; I think that it's
22 appropriate to legislate there, because I think if
23 you really look at an elderly person in that
24 situation, what they're looking for is somebody that
25 they are comfortable with and if they... there may very

1 well be a man that they are comfortable with and
2 there may very well be many, many women that they are
3 not comfortable with, so I really don't think when it
4 comes down to the decision that they're making is
5 actually based on the person's sex, it's based on a
6 hose of things and there's a lot of reasons not to
7 hire somebody in that sort of intimate setting, but
8 to have a blanket statement, I won't hire men I think
9 is wrong and I think the legislation would not go too
10 far if it were prohibiting that. So The Legal Aid
11 Society would definitely advocate for passing the
12 bill as it is, 825-A, but also for expanding it and
13 really just eliminating for four-person requirement
14 in the definition of an employer in the Human Rights
15 Law.
16

17 The other issue that came up was in 804-A
18 on -- and I'm sorry that Council Member Barron had to
19 go, but on the interactive requirement. I think that
20 is something that we do wanna see in the law and I'm
21 happy to talk about, if it's helpful, tweaking it or
22 working on the language so -- I mean it already says
23 that it's very clear that this is not lowering the
24 standards, it's not decreasing the protections in any
25 way, so I am not as concerned as some of the other

1
2 people that testified earlier [bell] that there would
3 be a problem with that, but the one thing I would add
4 is; I would encourage the Council to expand it to all
5 the other areas of the law where you are requiring
6 accommodations, such religion. So that in any
7 situation where the employer has to make an
8 accommodation, there is an interactive process,
9 'cause we have seen that employers don't do that and
10 it's a problem. Thank you.

11 CHAIRPERSON MEALY: Thank you.

12 PHOEBE TAUBMAN: Hi. My name is Phoebe
13 Taubman; I'm here representing A Better Balance.
14 Thank you for inviting us to testify today on Intro
15 108-A.

16 Better Balance promotes fairness in the
17 workplace, helping workers to care for their families
18 without sacrificing or risking their economic
19 security and we have a free legal clinic and hotline
20 where we hear from workers across the economic
21 spectrum who are struggling to keep jobs while
22 meeting their family caregiving responsibilities.

23 I don't wanna spend too much time on sort
24 of the data that support the need for this, as I know
25 it's in my testimony and the Borough President

1
2 looking for work and her family was really struggling
3 without that income, obviously.

4 So prohibiting employment discrimination
5 based on a worker's status as a family caregiver
6 would ensure that parents and other family members
7 are not unfairly penalized at work because of their
8 responsibilities outside of work. Clear legal
9 guidance we think is necessary because although
10 others mentioned there are some claims that some of
11 these cases might fit under, there are still many
12 gaps in the last, and a reasonable accommodation
13 provision here as well would grant caregivers the
14 same interactive process that disabled workers enjoy
15 under the City Human Rights Law, that those seeking
16 religious accommodations, pregnancy accommodations
17 and those who are victims of domestic violence at
18 seeking accommodations, so it's something employers
19 are familiar with and is very manageable.

20 As an example of somebody who would
21 benefit from this, you know we heard from a father of
22 three in New York City who just wanted to adjust his
23 schedule for a few months because he had a 20-month-
24 old who was diagnosed with Autism and wasn't eligible
25 for this Autism specialized preschool until he turned

1
2 24 months. They'd been able to work out a scenario,
3 but for those couple of months this worker wanted to
4 change his schedule to be able to care for his child
5 and the boss initially said no and the father
6 suggested working part-time for that stretch and
7 being able to shift his schedule so that his mother
8 could participate and pitch in and ultimately the
9 boss said no again; thankfully in this scenario, it
10 turned out that he was covered by FMLA Leave and
11 ultimately he had a union who was able to convince
12 his employer that he deserved this time [bell] and
13 was able to get that schedule. But for many of the
14 people we talk to, they're not covered by the FMLA
15 and they're not in a situation where they have legal
16 protections.

17 So again, we're just asking for, in the
18 case of accommodations, the ability for a worker to
19 be able to sit down and have a conversation with the
20 employer to find mutual agreement as to some way to
21 make work and family co-exist in harmony, and as the
22 Comptroller's recent report shows, lots of workers in
23 New York City are afraid to even ask for schedule
24 accommodations and so this is the anti-retaliation
25

1
2 provision here as well as the accommodations would
3 help to address that. Thank you.

4 CHAIRPERSON MEALY: I just... okay. [sic]

5 JAMES ARNOLD: Good afternoon Chair Mealy
6 and Councilman Lander. My name is James Arnold; I'm
7 a member of the Executive Council of AARP for the
8 state of New York where we have 2.6 million members,
9 750,000 of whom are in the city of New York City.
10 I'm a volunteer and we earlier had a larger number of
11 volunteers here wearing our customary red shirts and
12 I'm sorry they just didn't stick with it as they
13 should've... [crosstalk]

14 CHAIRPERSON MEALY: Yes, we apologize.

15 JAMES ARNOLD: We're here to testify in
16 support of 108-A for reasons many of which have
17 already been elaborated on, but not the least of
18 which is the aging population of New York City, where
19 we know that in a short two decades of time people
20 over the age of 65 who are here will increase from...
21 decrease rather, from 1 in 8 to 1 in 6, which will
22 show you just how, as a proportion, how much larger
23 it's getting to be of our population.

24 We did research last year because it was
25 an election year; the first time that AARP has done a

1
2 large market local research as opposed to state
3 research and we did it because we wanted to take a
4 snapshot of the profile of the over 50 voter within
5 the city of New York and we got a lot of interesting
6 data out of it, four key points which had to do with
7 caregiving and I've summarized those for you on the
8 first page and I'll just touch on them briefly.

9 Of the over 50 voters, 39% had been
10 caregivers in the past five years or they were
11 currently providing care. Of the over 50 voters,
12 they did not see their caregiving responsibilities
13 diminishing but rather 52% of them believe they were
14 likely to be providing more care within the next five
15 years. When asked the extent to which being a
16 caregiver put strain or pressure on the quality of
17 their family life, the number was 59% who said it was
18 either overwhelming or it was a very great strain on
19 their quality of life. And finally, most, a high
20 percentage, 79% of New York City voters over the age
21 of 50 said that supporting family caregivers should
22 be a top priority for New York City elected
23 officials. So this provides a little profile of what
24 the need is; what I'd like to now is give you a bit
25

1
2 of a benefit, from looking at promoting caregiving
3 and facilitating it and making it available.

4 It's a long-known fact that family
5 support is a key factor in determining whether an
6 older person's ability to remain in his or her home
7 and within the community rather than in an
8 institutional setting, such as a nursing home, the
9 care provided by family members though will come at a
10 cost, both to the caregiver and to their families.

11 It's clear to AARP to this proposal could undoubtedly
12 help caregivers in our city who help save our tax
13 dollars by assisting their loved ones in aging at
14 home and in place rather than in a more costly
15 taxpayer-funded [bell] institutional setting.

16 So research shows that age over 50 [sic]
17 are highly in favor of this and we would encourage
18 this to be adopted, though we don't have specific
19 recommendations with respect to language or
20 enforcement. Thank you very much.

21 CHAIRPERSON MEALY: Thank you. We have a
22 question... we have a couple of questions. Thank you.

23 COUNCIL MEMBER LANDER: This really is
24 more of a request for you to work with us as we go
25 forward than it is specific questions today; I

1
2 strongly support Intro 108 and I really like the ways
3 in which the reasonable accommodations standard goes
4 beyond what would be provided by a bill that just
5 offered a right to request and protection from
6 retaliation for requesting, but I think we have some
7 more collective work to do; the business community --
8 I mean we have a one-page letter here from the
9 Partnership excoriating us for even having this
10 hearing, [laughter] but they're not out here today
11 and when they understand that the Council is serious
12 about providing this human rights protection for
13 caregivers is going to come at us like a ton of
14 bricks and I think better understanding... and I think
15 what Deputy Commissioner Sussman said about this
16 being a substantial change is also true and we should
17 do better to define its contours; this is different
18 in some ways, it's not radically different from
19 religious accommodation saying I can't work on
20 Saturday or Sunday and expecting that, but it's more
21 shifting what are the contours of what reasonable
22 accommodation might be or even just how we think
23 about it is gonna be important for us to do. So I
24 just think we should do some additional work
25 together, fleshing out what we think the... and maybe

1
2 this is as a result of the cities that have already
3 done this; we could just collect a lot more
4 information on what courts or other human rights
5 commissions have found are reasonable accommodations
6 and what aren't reasonable accommodations, because I
7 think it's important for us to move forward here, but
8 I know we'll start hearing from employers saying,
9 well everyone who has the slightest shift in the
10 schedule of their childcare or their eldercare is now
11 all the time gonna come forward saying I need my
12 schedule adjusted this week because I have to go to..
13 you know, I mean... I know my own... you know look, my
14 own schedule changes every single week as a result of
15 [laughter] these obligations, so I'm sympathetic to
16 the need employees have, but how we figure out how to
17 balance between that and how employers schedule and
18 do their work is gonna be work we have to do
19 together. So let's not... I mean if you wanna say
20 something to that now I'm glad to listen, but I think
21 there's some work we'll have to do to really drill
22 down to better flesh out and understand what we think
23 the parameters of reasonable accommodation here
24 should be... [interpose]

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2 PHOEBE TAUBMAN: I would just comment to
3 say I agree with you that we can work together to
4 find ways to craft a bill that's good policy, that
5 there are competing interests that need to be
6 considered; you know in terms of flexibility,
7 obviously many employers have taken advantage of
8 demanding a lot of flexibility of their employees
9 without, you know, sort of anticipating a two-way
10 street or getting any matter of flexibility in turn
11 to their employees, so I think... you know there is
12 certainly also some protections within the standard
13 of reasonable accommodations here in terms of the
14 undo hardship standard, in turn figuring out what
15 could actually be too much in a particular situation
16 for an employer to accommodate and I know in other
17 contexts there are definitional differences too; for
18 example, in religious accommodations, part of the
19 burden is how many people are asking and how many
20 accommodations is the employer requiring to make. So
21 I think there are ways that we can discuss making it
22 a functional bill and the best policy, but the need
23 is definitely there and I think, you know, there are
24 grave economic consequences and harms to families and
25 to children when caregivers are not given that

1
2 slight, just modicum of flexibility from their
3 employers to be able to manage these dual roles that
4 so many of us have.

5 COUNCIL MEMBER LANDER: For sure. And I
6 guess maybe what I might just ask, 'cause you
7 referred in your testimony to different places around
8 the country that have adopted a provision of this
9 type; it would be great if you had the ability to
10 give us some data on, you know, what had been... you
11 know what courts or other cities' human rights
12 commissions had ruled were reasonable accommodations
13 and what [background comment] in any cases they
14 hadn't, just so we could start to understand what the
15 case law or practice as this law is starting to be
16 rolled out across the country is.

17 PHOEBE TAUBMAN: Well I think in that way
18 actually, New York would be unusual because a lot of
19 these other localities that have antidiscrimination
20 provisions, it's antidiscrimination; they don't
21 always have accommodations, so I think that is a...
22 it's... there are accommodations in many other contexts
23 that could be analogous to the situations caregivers
24 need from within our own Human Rights Law and
25 existing protections.

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2 COUNCIL MEMBER LANDER: Thank you, and I
3 think we... I certainly agree on the need to act here;
4 I just want us to be... [crosstalk]

5 PHOEBE TAUBMAN: Yeah. Sure.

6 COUNCIL MEMBER LANDER: able to act as..
7 as thoughtfully as we can, so... [crosstalk]

8 PHOEBE TAUBMAN: Absolutely.

9 COUNCIL MEMBER LANDER: thank you very
10 much.

11 CHAIRPERSON MEALY: Mr. James Arnold.
12 Okay, I just wanna thank AARP for showing up and
13 making sure that the voters, their constituent base
14 knows how they are voting and what their top priority
15 is; we wanna thank you.

16 JAMES ARNOLD: Thank you very much for
17 saying that... [interpose]

18 CHAIRPERSON MEALY: And I apologize for
19 so late; we should've let you all get on long ago,
20 'cause James came out to represent.

21 COUNCIL MEMBER LANDER: We may not have
22 made reasonable accommodations for you.

23 [laughter]

24 CHAIRPERSON MEALY: I didn't wanna say
25 that though, but we'll do better [background comment]

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2 and I wanna thank our Borough President, Gale Brewer
3 and we wanna thank you Miss Phoebe for your
4 participation in this legislation; I've gotta give
5 you kudos; that's very important; maybe Legal Aid
6 Society, you all two could talk, 'cause she really
7 put a whole lot into this legislation. So we thank
8 you all for being here on this important legislation
9 that's goin' forward and Civil Rights hearing is now
10 adjourned. Thank you.

11 [gavel]

12 [background comments]

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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 September 28, 2015