

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CIVIL RIGHTS

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December 9, 2015
Start: 1:13 p.m.
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HELD AT: 250 Broadway - Committee Rm,
14th Fl.

B E F O R E:
DARLENE MEALY
Chairperson

COUNCIL MEMBERS:
Mathieu Eugene
Daniel Dromm
Deborah L. Rose
Andy King
Brad S. Lander
Rosie Mendez

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

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[gavel]

CHAIRPERSON MEALY: Good afternoon; we're gonna start this hearing on civil rights. Good afternoon; I'm Council Member Darlene Mealy; I am the Chair of the New York City Council's Committee on Civil Rights. I'd like to introduce my colleagues and members of this committee, Mr. Andy King from the Bronx and I wanna thank our commissioner for being here and her staff.

Today the Committee on Civil Rights will hear Introductory Bill Nos. 0814, 0818, 0819, and 1012. Together these bills will amend the New York City Human Rights Law to clarify protections that already exist in the law. New York City's Human Rights Law is one of the most expansive and comprehensive human rights law in the nation and the Council aims to make this law as clear and user-friendly as possible.

The package of legislation we will hear today will make it easier not only for the general public to understand its protections, but also the employers to understand their obligations under the law.

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2 Int. No. 0818 is important because it
3 will offer more damages to plaintiffs who are found
4 to have suffered from discriminatory actions and at
5 the same time will further deter such behavior.

6 Further, while we hear more on the
7 technical changes that Introductory Bill Nos. 0814
8 and 0819 will make to the Human Rights Law, I would
9 like to highlight the significance of Introductory
10 Bill No. 1012 in particular, which is sponsored by
11 Council Speaker Melissa Mark-Viverito.

12 Council staff has worked hard on this
13 comprehensive bill which would repeal and codify the
14 Human Rights Law to make it more understandable and
15 useable by a range of groups, such as employers and
16 employees, landlords and tenants, lawyers and pro se
17 litigants and judges. Furthermore, this bill would
18 make it easier to amend the Human Rights Law in the
19 future.

20 It is our hope that these bills will make
21 the protections offered in our city's Human Rights
22 Law more accessible to New Yorkers; we know that it
23 is vital to protect the rights of all New Yorkers.
24 Today the committee will hear testimony from the
25 commissioner of Human Rights and various interest

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2 groups. We hope to discuss the impact that this
3 legislation would have on all New Yorkers.

4 Please be aware that we will likely put a
5 three-minute time limit on all testimony. I thank
6 you all for your testimony and cooperation today and
7 I have to give out some shout-outs... thank you, thank
8 you... and we've been joined by our colleague Brad
9 Lander who has sponsored and he would like to have
10 words before we have testimony from our commissioner.

11 Thank you to Civil Rights Committee staff
12 that worked hard -- Alicia Brown, Counsel to the
13 committee; I'm sorry, Policy Analyst Kathleen Caruso;
14 Wesley Jones and Juan Parks, all of whom are counsel
15 to the Drafting Unit; Annie Decker, Assistant Deputy
16 Director of the Drafting Unit, and Rachel Cordero,
17 Deputy Director of Government Affairs Division.

18 Now I would like to turn it over to
19 fellow Council Member who sponsored legislation; we
20 will start this hearing today. First we would like
21 to hear from our Council Member Brad Lander, who
22 stopped in. And before we have Brad Lander, we have
23 on our committee Debi Rose from Staten Island, the
24 island.

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2 COUNCIL MEMBER ROSE: Thank you; it took
3 this long to get here.

4 [laughter]

5 CHAIRPERSON MEALY: But thank you for
6 showing up. We now will hear a statement from our
7 colleague that sponsored legislation, Brad Lander.
8 Thank you.

9 COUNCIL MEMBER LANDER: Thank you very
10 much, Madame Chair, thank you for convening this
11 hearing and for your continued work to keep us moving
12 forward on issues of human rights and civil rights,
13 which we're making a lot of progress on in this term,
14 so it's good to be doing and I wanna join you in
15 thanking the staff, Alicia and Annie and Caitlyn
16 [sp?] and her team and Rachel, who worked on this set
17 of bills we're hearing today and more broadly, on the
18 bills to strengthen and move forward our Human Rights
19 Law. And I wanna thank the commissioner and her team
20 as well. Just in general, the energy that we've been
21 putting together and moving forward, the Commission's
22 ability to do its job; strengthen the Human Rights
23 Law; strengthen enforcement of the Human Rights Law.
24 Unfortunately there continue to be a lot of
25 violations of the Human Rights Law in New York City,

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2 so we've got our work cut out to continue, but it's a
3 good productive effort that we're making together.

4 I'm enthusiastic about all of the four
5 intros on the calendar today and I'll let my
6 colleagues speak about the others, but obviously
7 repealing this obnoxious language around sexual
8 orientation, very important and other efforts to
9 strengthen the ability to prosecute through
10 attorney's fees and to strengthen the Human Rights
11 Law itself are strong, so I'm really glad we're
12 moving forward.

13 I will offer just one word of opening
14 comments on Int. 0814 to codify and strengthen the
15 construction of the Human Rights Law and this is a
16 somewhat unusual but really important provision; New
17 York City's Human Rights Law contains within it
18 language that it needs to be construed liberally and
19 strongly and not tepidly and conservatively and that
20 has done us great good as the law has been utilized
21 and tested in court, unlike some other state and
22 federal statutes where there is a more conservative
23 interpretation; our law contains this more broad and
24 expansive interpretation that's been useful in recent
25 litigation around sexual harassment and a number of

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2 other important provisions and in some cases, and
3 especially the three cases mentioned in this
4 legislation -- Williams, Bennett and Alburio --
5 judges have used that to say we see that provision in
6 the law and we interpret it strongly; unfortunately,
7 we can't always count on that and so we don't want
8 judges in other kinds of cases to read it more
9 conservatively the way that they often read federal
10 or other state human rights laws and so Int. 0814
11 brings that analysis and those decisions into the law
12 itself to make sure it continues to be construed
13 aggressively and broadly to help us do the best we
14 can by all New Yorkers who are experiencing
15 violations of the law. So I look forward to the
16 hearing today and again, Madame Chair, thank you very
17 much for convening this.

18 CHAIRPERSON MEALY: Thank you; thank you
19 for your statement. We will now hear from our first
20 panel, the administration; we'll have Commissioner
21 Malalis, Commissioner on Human Rights, Miss Woods,
22 General Counsel and First Deputy Commissioner and D.
23 Sussman, Special Counsel, Commission on Human Rights.

24 Could you raise your right hand before?
25 We will administer the oath. Do you affirm to tell

1 the truth, the whole truth and nothing but the truth
2 in your testimony before this committee and to
3 respond honestly to council member questions?
4

5 [background comment]

6 CHAIRPERSON MEALY: I can't hear you.

7 COMMISSIONER MALALIS: I do.

8 [laughter]

9 CHAIRPERSON MEALY: Thank you so much; we
10 may begin. Thanks.

11 COMMISSIONER MALALIS: Great; thank you
12 so much. So good afternoon, Chair Mealy and members
13 of the Civil Rights Committee; it's always nice to be
14 before this body; thank you so much for having us and
15 convening today's hearing.

16 I'm Carmelyn P. Malalis; I'm the
17 Commissioner and Chair of the City Human Rights
18 Commission. Today, as you said, I'm joined by my
19 First Deputy Commissioner and General Counsel,
20 Melissa Woods and Dana Sussman, Special Counsel to
21 the Office of the Chairperson; they may also be
22 offering some remarks during questioning [sic].

23 Before I turn to the four bills that are
24 the subject of today's hearing, I want to provide
25 you, as we've been doing regularly in the spirit of

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2 transparency, with a brief update of the Commission's
3 ongoing agency restructuring and expansion.

4 So thanks to the support of the Council
5 and the administration, we have continued to build
6 our ranks with new staff members experienced in
7 working with New York City's diverse communities in
8 different languages and are using the city's
9 antidiscrimination protections to assist vulnerable
10 communities. We have also been able to further
11 develop our existing staff with training and other
12 initiatives to strengthen our own internal cultural
13 competency skills.

14 Since I testified before you in October,
15 we have on-boarded seven new agency attorneys; with
16 them, increasing our language capacity in the Law
17 Enforcement Bureau by seven languages. We've also
18 on-boarded a new and bilingual director of training
19 and development to develop and supervise our
20 Community Relations Bureau's training program, a
21 policy counsel to focus on drafting interpretive
22 legal guidance and proposed rules and provide support
23 for the Office of the Chairperson and other key staff
24 members in human resources and operations.

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2 We will be on-boarding several key staff
3 members in the new calendar year, including an
4 assistant commissioner for law enforcement who will
5 be focusing on commission-initiated investigations
6 and taking a primary role in coordinating our testing
7 program.

8 We have continued our outreach and
9 training efforts to increase visibility of the
10 protections enforced by the Commission. Two major
11 campaigns; the Stop Credit Discrimination in
12 Employment Act and the Fair Chance Act, included
13 radio ads in multiple languages on ethnic media,
14 social media ads, subway and bus shelters, PSAs, the
15 publication of interpretive legal guidance, fact
16 sheets, brochures, and regularly scheduled free
17 trainings in all five boroughs. It is my great hope
18 that everyone in this room has seen some of those ads
19 in subways and some of the public places that we've
20 had, 'cause we've put a lot of time and energy into
21 that.

22 The Commission continues to work with
23 sister agencies to cross-train staff and develop
24 strategic collaborations on education and outreach.
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2 And finally, next year we'll be unveiling
3 a new user-friendly website, with streamlined
4 procedures for submitting tips and complaints.

5 Today, as always, my testimony reflects
6 the Commission's desire to safeguard the integrity of
7 the New York City Human Rights Law in accomplishing
8 its uniquely broad and remedial purposes over and
9 above what is provided under federal or New York
10 State civil and human rights laws, a promise codified
11 in the loss construction provision as well as in the
12 Civil Rights Restoration Act of 2005. My testimony
13 also prioritizes the goals of the Commission as it
14 continues its transition and expansion with the goals
15 of creating a more credible venue of justice for all
16 New Yorkers, improving transparency of Commission
17 processes by publishing interpretive legal guidance,
18 engaging in agency rule-making and making Commission
19 materials more accessible to the public, creating an
20 efficient and effective law enforcement bureau that
21 maximizes impact through strategic enforcement and
22 developing a responsive community relations bureau
23 that educates both the small business and housing
24 provider communities on their responsibilities, as
25 well as members of the public on their rights under

1 the law. With these ends in mind, my staff and I
2 considered our conversations with colleagues in the
3 administration, our City Council colleagues,
4 community stakeholders and their advocates who would
5 be affected by the proposed legislation in
6 formulating my testimony on these four bills.

7
8 So now I turn to Int. No. 0814 in
9 relation to construction of the New York City Human
10 Rights Law.

11 The proposed bill would amend the
12 construction provision of the City Human Rights Law
13 by specifically articulating that "exceptions to and
14 exemptions from" the City Human Rights Law "shall be
15 construed narrowly in order to maximize terms [sic]
16 of discriminatory conduct." The Commission supports
17 this proposition.

18 The bill also identifies three cases; one
19 Court of Appeals decision and two Appellate Division
20 decisions as having "correctly interpreted and
21 applied" the broad construction provision under
22 Section 8-130 of the City Human Rights Law. On this
23 point, the Commission believes a more straightforward
24 approach provides greater accessibility to the
25 public.

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2 This bill serves to emphasize the mandate
3 found in the City Human Rights Law's construction
4 provision which demands broad interpretation of the
5 law. The construction provision reads: "The
6 provisions of this title shall be construed liberally
7 for the accomplishment of the uniquely broad and
8 remedial purposes thereof, regardless of whether
9 federal or New York State civil and human rights
10 laws, including those laws with provisions comparably
11 worded to provision of this title have been so
12 construed."

13 The bill is also reflective of the
14 mandate of the Civil Rights Restoration Act of 2005
15 which instructs tribunals to construe the City Human
16 Rights Law independently from similar or identical
17 provisions of New York State or federal statutes such
18 that, "similarly worded provisions of federal and
19 state civil rights laws must be considered a floor
20 below which the City Human Rights Law cannot fall,
21 rather than a ceiling above which the local law
22 cannot rise." The Commission supports broad
23 interpretation of the City Human Rights Law's
24 protections and therefore supports the intent of the
25 bill.

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2 However, codifying three judicial
3 decisions whole cloth [sic], as is also proposed in
4 this bill, may make the City Human Rights Law more
5 confusing to the general public. The Commission is
6 not aware of any other circumstance in which proposed
7 legislation has sought to codify whole judicial
8 decisions in this manner and I believe that it makes
9 the law less accessible instead of more accessible to
10 the general public. Rather than breeding [sic] a
11 straightforward statement of what is intended as
12 currently exists in the construction provision and
13 the Civil Rights Restoration Act of 2005,
14 practitioners, pro se litigants; advocates will have
15 to discern the meaning and intent of three separate
16 judicial decisions. While students are taught how to
17 read case law in law school, it is not easy for non
18 lawyers to understand judicial decisions which
19 inherently reference other judicial decisions.

20 Instead of incorporating the three
21 judicial decisions as proposed in the bill, the
22 Commission believes it can accomplish the same
23 objective of emphasizing the relevant holdings from
24 the decisions by publishing straightforward
25 information and guidance similar to what the

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2 Commission has done for the Stop Credit
3 Discrimination in Employment Act and the Fair Chance
4 Act. For these reasons, the Commission supports the
5 intent of the bill and believes there are more
6 practical and less confusing ways to accomplish the
7 intent of Int. No. 0814 than incorporating the three
8 judicial decisions into the City Human Rights Law.

9 Now turning to Int. No. 0818 in relation
10 to the provision of attorney's fees under the City
11 Human Rights Law.

12 The proposed bill will make complainant's
13 attorney's fees, expert fees and other costs
14 available at the Commission when cases are brought to
15 the Commission and are subject to a final decision
16 and order, the leaf [sic] that is not currently
17 available at the Commission.

18 The proposed bill also requires that to
19 the extent a complainant's attorney's fee award is
20 based on the attorney's hourly rate, the Commission
21 must "apply the highest hourly market rate fee
22 charged by attorneys of similar skill and experience
23 within all of the jurisdictions located within the
24 city." Because the Commission is located in
25 Manhattan and courts generally consider Manhattan

1 rates at higher levels than other jurisdictions, this
2 provision confirms that the Commission would consider
3 such levels in determining the hourly rate of
4 attorney's fees. The Commission supports this
5 provision because it represents a significant step in
6 creating a credible venue of justice for New Yorkers.
7 Currently, attorney's fees are available in state
8 court for claims under the City Human Rights Law, but
9 not at the Commission. The great majority of
10 complainants at the Commission are pro se and it is
11 hardly surprising that few attorneys in the private
12 bar bring cases to the Commission, intervene on
13 behalf of complainants or assist complainants in
14 filing claims at the Commission. Making reasonable
15 attorney's fees available for complainants' attorneys
16 where they prevail at the final state in the
17 Commission's adjudicatory process will ensure that
18 the Commission is a viable venue for justice,
19 resulting in more administrative decisions and
20 orders, addressing a wider variety of claims and
21 situations the City Human Rights Law is intended to
22 cover and will encourage the private bar to represent
23 clients with City Human Rights Law claims.
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2 The proposed bill also instructs courts
3 in cases involving the City Human Rights Law to apply
4 the "highest hourly market rate fee charged by
5 attorneys of similar skill and experience within all
6 of the jurisdictions within the city when determining
7 a reasonable hourly rate." Because this provision
8 speaks to cases brought under the City Human Rights
9 Law in state or federal court and not at the
10 Commission, the Commission does not take a position
11 on this provision.

12 Now turning to Int. No. 0819 in relation
13 to the repeal of Subdivision 16 of Section 8-107 of
14 such code relating to the applicability of provisions
15 of the Human Rights Law regarding sexual orientation.

16 The Commission wholeheartedly supports
17 this bill, which would remove antiquated language
18 regarding sexual orientation discriminations in the
19 City Human Rights Law. Specifically, the bill would
20 remove Subdivision 16 from Section 8-107 of the City
21 Human Rights Law, which among other things sought to
22 ensure that the sexual orientation discrimination
23 protections could not be construed to "make lawful
24 any act that violates the Penal Law of New York" and
25 "endorse any particular way of life." The removal of

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2 this antiquated and offensive language is long
3 overdue and the Commission strongly supports doing
4 so.

5 Turning then to Int. No. 1012 in relation
6 to repealing and replacing Title 8 of the
7 Administrative Code of the City of New York and
8 making related improvements to clarify and strengthen
9 the Human Rights Law.

10 The proposed bill will completely
11 reorganize and renumber the entire City Human Rights
12 Law, which is over 100 pages long, and will make
13 nonsubstantive changes to the law to correct
14 inconsistencies and errors.

15 The Commission supports the Council's
16 efforts to make the City Human Rights Law more
17 organized and easier to understand and wants to
18 applaud the Council and its staff for its leadership
19 in this area.

20 We look forward to a thorough examination
21 of the proposed reorganizational bill with the
22 Council external stakeholders and sister agencies to
23 ensure that the bill achieves its goal of better
24 informing New Yorkers of their rights and
25 responsibilities under the law and ensures that the

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2 reorganization does not unintentionally undermine the
3 City Human Rights Law's broad protections. So that
4 this committee understands the laudable investment of
5 time that the Council and its staff have devoted to
6 this bill and the equally important investment of
7 time and resources the Commission would need to spend
8 to make sure that there are no unintended
9 consequences in this massive undertaking, I think it
10 would be helpful to explain the impact of such a
11 reorganization on the Commission from both a
12 practical standpoint and a legal standpoint.

13 From a practical standpoint, the
14 reorganization of the law would lengthen law
15 enforcement bureau investigations during an
16 indefinite transition period while bureau attorneys
17 and Council acclimate to the new provisions. The
18 City Human Rights Law has existed for well over half
19 a century; lawyers and advocates committed to civil
20 rights and human rights have become quite familiar
21 with this provision and will understandably need some
22 time to acclimate to a different statutory schema.
23 Since the new statutory citations would not match up
24 with citations found in well-established City Human
25 Rights Law cases or other case law supporting

1 parties' positions, law enforcement bureau attorneys
2 and private litigants will need to spend more time on
3 briefings and matters generally, reconciling the
4 different statutory citations.
5

6 Also, as this committee is well aware,
7 the Commission has been undergoing its own
8 reorganization and transformation since I assumed my
9 role in February. Thanks to the investment of
10 funding and support from the Council and the
11 administration, the Commission has been in the
12 process of reviewing, revising, updating and creating
13 internal and external procedures, mechanisms,
14 programming and initiatives to better serve New York
15 City.

16 This agency-wide review process has been
17 undertaken so that the Commission can follow through
18 on its mandates of enforcing the many and broad
19 protections of the City Human Rights Law through law
20 enforcement and providing education and outreach
21 through community relations initiatives. My office,
22 the Office of the Chairperson and our Office of
23 Communications and Marketing has also been revamped
24 to amplify outreach efforts across the agency and
25 increase transparency of agency operations. Over the

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2 past eight months we've undertaken and invested in a
3 comprehensive review of legal templates, internal and
4 external trainings and procedures, guidance, the
5 agency's website, communications and public relations
6 materials and other materials and have been rapidly
7 developing new and revised content for existing
8 protections and programs, as well as new protections
9 raised by the Stop Credit Discrimination in
10 Employment Act and Fair Chance Act. In line with the
11 Commission's priority of making our materials
12 accessible to the city's diverse communities, we have
13 invested in translating many of our materials into 7
14 to 10 languages.

15 In the midst of this activity, the
16 proposed reorganization without a thorough process in
17 place will force the Commission to divert personnel,
18 time and financial resources from its agency review.
19 The Commission would need to retrain staff on the new
20 provisions and in understanding well-established case
21 law in the context of new statutory cites, update,
22 translate and republish new interpretive enforcement
23 guidance and supporting materials, update and
24 translate internal and external training materials
25 and presentations, update legal templates, forms and

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2 correspondence sent to the public and revise newly
3 developed training materials and on-boarding for
4 materials for staff.

5 As the Office of the Chairperson is
6 primed to undertake its first rule-making process in
7 several decades on the Fair Chance Act, with plans to
8 engage in rule-making in several other areas, that
9 process will also need to be put on hold if an
10 immediate reordering and reorganization of the entire
11 City Human Rights Law begins. In short, the
12 reorganization will require the Commission in this
13 pivotal time of transformational change to divert
14 resources away from its critical substantive work
15 unless there is ample time to think through the
16 reorganization and implement it.

17 The proposed bill also seeks to make some
18 nonsubstantive corrections to the City Human Rights
19 Law. The Commission supports and applauds the
20 Council's efforts to correct some of these changes
21 and wants to further the impact of the reorganization
22 by also taking the opportunity to correct many other
23 drafting errors and inconsistencies within the City
24 Human Rights Law.

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2 To this end, the Commission has
3 identified several key areas that can be corrected as
4 part of the overhaul and wants to work with the
5 Council to make sure they included in the bill. The
6 Commission also wants to work with the Council to
7 make sure that new provisions in the proposed
8 legislation do not inadvertently cause harm to the
9 City Human Rights Law. As you can see from the sheer
10 number of pages of this bill, 137, such a critical
11 undertaking warrants a long-term structured review
12 process, with input from stakeholders to ensure a
13 comprehensive review of both the reorganization
14 itself and a full accounting of the nonsubstantive
15 corrections and revisions that should not be
16 overlooked.

17 I think it is also worth noting that the
18 City Council has proposed several bills to amend the
19 City Human Rights Law. In the spirit of conserving
20 resources and efficiency, we suggest that the Council
21 consider timing some of these bills in the context of
22 this long-term reorganization to avoid duplicative
23 work in drafting and redrafting and implementing the
24 legislation.

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2 I want to reiterate that the Commission
3 appreciates the Council's work on this incredible
4 undertaking and looks forward to working with the
5 Council on this bill and specific thanks to the many
6 efforts of the Council's Drafting Unit; you've
7 already mentioned Annie and Rachel and some other
8 folks back there and we're very appreciative, 'cause
9 again, we're talking about 137 pages, so significant.
10 We are supportive of the Council's efforts to improve
11 the organization and consistency of the City Human
12 Rights Law and look forward to investing in a
13 drafting process consistent with the bill's broad
14 scope.

15 We want to map out a thoughtful process
16 to continue thinking through and revising the bill
17 over the next year so that we can work together with
18 the Council as well as stakeholders who have had an
19 interest in streamlining the City Human Rights Law
20 and making it more accessible. The Commission can
21 work with the Council in the thorough process that
22 generates regular input and feedback from community
23 stakeholders, our partners in the administration and
24 the law enforcement department in shaping the bill.

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2 The Commission thanks again this
3 committee and Chair Mealy for calling this hearing;
4 we look forward to continuing our dialogue on how to
5 strengthen the Commission and the City Human Rights
6 Law to ensure respect and dignity for all New
7 Yorkers, and with that I welcome your questions.
8 Thank you.

9 CHAIRPERSON MEALY: Thank you. We've
10 been joined by Danny Dromm and Mathieu Eugene. Since
11 this new bill is 0814, I will let our colleague Brad
12 Lander speak in regards to 0814.

13 COUNCIL MEMBER LANDER: Thank you very
14 much, Madame Chair and I'll confine my first set of
15 questions to 0814, but I'm excited to hear the full
16 dialogue on all of the bills and I'll start by saying
17 that it's good to be in an era where the problems
18 we're having are figuring out, you know, how we do
19 our work together to strengthen the law and
20 strengthen enforcement of the law, so I just wanna
21 say that again; while we're gonna be pushing on some
22 of the things that are here, your leadership in
23 restructuring and staffing up and working with us to
24 implement the Stop Credit Discrimination in
25 Employment Act and the Fair Chance Act and starting

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2 doing the proactive investigations also deeply
3 appreciated, you know, and I think of this as like,
4 it's like a friendly competition to see who can do
5 the most to strengthen the New York City Human Rights
6 Law and its enforcement and that's an awfully good
7 thing for the city and the people of the city, so..
8 [interpose]

9 COMMISSIONER MALALIS: Collaborative
10 competition. Yeah, right.

11 COUNCIL MEMBER LANDER: Collab... well, you
12 know, even if occasionally we're, you know, friendly
13 competition to do... anyway, either way is... So thank
14 you.

15 Alright. And I'm really interested in
16 the dialogue about the comprehensive redrafting, but
17 for now I'll confine my first sets of questions to
18 0814.

19 So I appreciate your concern about
20 accessibility and the people's understanding of the
21 law; I will say, you know, generally when we write
22 laws we also think about, and this is why, you know,
23 your good outreach campaign -- like my concern wasn't
24 whether people would understand the Stop Credit
25 Discrimination in Employment Act as we drafted it; it

1 was would you have a great campaign to help people
2 understand it publicly, so I appreciate the desire to
3 make sure that the communication about the law is
4 clear, but it's one sentence that refers to these
5 cases, so I guess I wanna ask less about what you
6 think about how lay people will read it and more
7 specifically, is there anything in Williams, Bennett
8 or Albunio that you have specific issues with or that
9 you would be concerned about, because part of the
10 goal is precisely to incorporate the reasoning there;
11 we have this challenge, we want it inserted [sic]
12 broadly; there's some cases where it has been there;
13 some cases where it hasn't been and a great way to
14 provide guidance to judges is to say these are the
15 ones we mean, so the goal is to incorporate for
16 judges, who have a pretty sophisticated legal
17 understanding, access to the whole reasoning in those
18 cases. So before we get to the question of how to
19 help lay people understand, that I guess you didn't
20 in your testimony speak to anything specifically in
21 those cases that you have concerns about actually
22 being identified as the proper way of legal reasoning
23 under the law, so let me just understand whether...
24 [interpose]
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COMMISSIONER MALALIS: Sure.

COUNCIL MEMBER LANDER: you do have any issues there.

COMMISSIONER MALALIS: And I'd be happy to address that.

So with the three specific cases in mind, Bennett, Williams and Alburnio, I can say that, you know the Commission does not have specific concerns about those cases; what I can say is that, you know, for especially all the attorneys in the room, it is quite often the case that one party will cite a case for one proposition and another party will cite the same case for the reverse proposition or something of that sort, because again, there are always different ways where passages from cases or sentences from cases can be characterized or reshaped or recharacterized and I think that, you know part of your question really goes to; I guess the Commission's point on this, if the objective is to really codify the reasoning of the three cases, I would just go straight to the reasoning of the three cases rather than codifying kind of whole cloth the three specific decisions, 'cause whereas it is only one sentence in the bill that refers to the cases, it

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2 still would be referring the practitioners to read
3 the three different cases and go through the three
4 different cases. And I'm confining that to... 'cause
5 we're talking about folks who are reading this with
6 legal education.

7 COUNCIL MEMBER LANDER: Right. I mean
8 look, the goal of this is to communicate to the
9 judges; let's be straightforward; I mean the goal of
10 this provision in the law is to help judges interpret
11 the law the way we believe the law should be
12 interpreted and that's a challenge we always have as
13 legislature and executive and so, you know, if we
14 think this reasoning gets it right, it's actually a
15 lot easier from a judge's point of view; a judge is
16 happier to read a precedent case than necessar... well,
17 they've gotta read the law too, but so I'm not closed
18 to the possibility of thinking about how we would
19 pull it out, but you know, the goal is to bring the
20 legal reasoning from those decisions in and cite it.
21 So one thing I'll just... if there after today's
22 hearing any specific concerns regarding the reasoning
23 in those cases, it'd be helpful to know and
24 understand that.

25 COMMISSIONER MALALIS: Sure.

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2 COUNCIL MEMBER LANDER: So that would be
3 helpful. But you don't have for today any specific
4 concerns... [crosstalk]

5 COMMISSIONER MALALIS: No.

6 COUNCIL MEMBER LANDER: that there's
7 things in those opinions that are not the way that we
8 are... [crosstalk]

9 COMMISSIONER MALALIS: No, but I would
10 say too that the position of the Commission would be
11 to generally read the City Human Rights Law broadly,
12 so... [crosstalk]

13 COUNCIL MEMBER LANDER: Well that's the
14 law and you know, so we all agree on that and the
15 goal is just to get judges to do that as consistently
16 and uniformly as possible; the goal of this
17 legislation is to help do that and if we can do that
18 without negative side effects, then I would think we
19 should do it. So I understand there could be
20 negative side effects if there are things in those
21 rulings that we're concerned about the interpretation
22 of, which you don't have today, but I'll stay open to
23 listening. I guess I'm not really sure I understand
24 the potential negative side effect of the fact that
25 lay people will not be familiar with these cases; I

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2 mean I can't imagine that really that many lay people
3 are like going through and... I mean you've provided
4 great interpretive materials and so people wanna know
5 if they have a claim, how to file a claim; they're
6 much more likely to go to your website, you know, and
7 so the odds of people thinking maybe I have a claim
8 and then going and reading the... finding the law,
9 reading the law and then even if they found this
10 sentence, just help me understand why that is... I mean
11 I agree with you, it's not the most accessible thing;
12 it won't be the most accessible sentence in New York
13 City Human Rights Law, but it's unclear to me why
14 that would ever really be a problem for anyone.

15 COMMISSIONER MALALIS: Sure. I'll say
16 too that one of the reasons we're so appreciative of
17 the Council's efforts with the reorganization bill
18 and the efforts to clarify that and make that more
19 accessible to the public is because currently the
20 great majority of complainants to come before the
21 commission are actually pro se, so they are coming
22 without representation and so they are in fact
23 looking at the law.

24 COUNCIL MEMBER LANDER: Right, but in
25 that case it wouldn't affect them at all because if

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2 they're pro se litigants before the Commission, then
3 how we're asking judges to construe the law broadly
4 is here nor there to them, so how could it create...
5 I'm just trying to understand how it could create
6 having a sentence that makes more sense to judges
7 than to lay people would create any barrier or
8 negative... any problem at all...

9 COMMISSIONER MALALIS: Well I think we
10 would... the position of the Commission would be; we
11 would generally want the public, including pro se
12 complainants, to be able to understand the law, all
13 of their rights under the law, including the
14 construction provision.

15 COUNCIL MEMBER LANDER: So I mean in gen...
16 well alright, in general I think that's a good idea,
17 but I will tell you, having passed a lot of laws,
18 there's no way we could apply that standard to the
19 entirety; sometimes we have to do things by law that
20 are not accessible to the general public when we
21 adopt some building code; the Council Member could
22 barely under... I barely understand it; I guarantee a
23 layperson can't understand it; luckily a layperson
24 doesn't have to use it to build a building, so there
25 are times when it's great to have it accessible and

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2 there are times when if there is a reason to include
3 something technical for a specific purpose within the
4 law; we live with the fact that it communicates to
5 professionals and not necessarily to lay people. So
6 we don't need to go on about it, I think I understand
7 your position and I think you hear mine; we can
8 continue this conversation after the hearing; I'll be
9 interested to hear what obviously other members of
10 the public have to... both professional and
11 nonprofessional have to say today. Alright, thank
12 you, Madame Chair.

13 CHAIRPERSON MEALY: Thank you on that.

14 Do any of my colleagues, Danny, on 0814?

15 COUNCIL MEMBER DROMM: Nothing on 0814,
16 but if I may Madame Chair, just say thank you to the
17 Chair and to the sponsor of 0819, 'cause I do have to
18 go to an Immigration Committee hearing; they're
19 hearing on the municipal identification program,
20 which is my legislation, so I need to get over there
21 as well. But it's kind of really amazing to read the
22 language that was put into the original
23 nondiscrimination bill on sexual orientation and I'm
24 so glad that you pointed out correctly how offensive
25 it is; it kind of reminds me of the days of Harvey

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2 Milk where he was accused of recruiting, you know,
3 and that just really feeds right into the whole idea
4 of being able to recruit or endorse any particular
5 behavioral way of life, so I'm really glad that
6 that's gonna be stricken hopefully from the language
7 of the Human Rights Bill. Thank you.

8 COUNCIL MEMBER LANDER: I was hoping that
9 we could put in that we do endorse it, so...

10 [crosstalk]

11 COUNCIL MEMBER DROMM: I endorse it.

12 COUNCIL MEMBER LANDER: cleaner this way,
13 so.

14 CHAIRPERSON MEALY: Yes, I just have one
15 question. Are you aware of any problems with the
16 courts failing to interpret provisions of the Human
17 Rights Law inadequately of their federal or state
18 counterparts?

19 COMMISSIONER MALALIS: You know, Chair
20 Mealy, I guess the way I would answer that question
21 is; I would probably disagree with the way that some
22 courts have interpreted the City Human Rights Law.

23 COMMISSIONER MALALIS: 'Kay, so we
24 definitely should change it to laymen terms. But and
25 I think I heard our colleague, if the judge doesn't

1
2 know, how do you think the layperson would know to
3 interpret the law, so we definitely have to do it
4 some kind of way that it'll be easier for both,
5 'cause the judges have one way and we can interpret
6 it another way, constituents; that's all I'm saying.

7 So I'm just... you understand?

8 COUNCIL MEMBER LANDER: The question was
9 actually helpful and I meant to ask it, so I mean
10 it's worth underlying that we do agree that we are
11 sometimes getting interpretations that do not reflect
12 what we believe to be the proper broad interpretation
13 of the law, so that's the goal here is to correct
14 that problem, so thank you for...

15 CHAIRPERSON MEALY: Thank you...

16 COUNCIL MEMBER LANDER: underlining...

17 CHAIRPERSON MEALY: 'cause I need to... I
18 went through something like that. Thank you.

19 COMMISSIONER MALALIS: Thank you.

20 [background comments]

21 CHAIRPERSON MEALY: I guess we are going
22 to mine, 0818. I already read... in your statement, I
23 guess we will have to talk offline; you said that
24 you're really not gonna speak on it in regards to...

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2 for the judges, I mean, for lawyers to get paid a
3 prevailing wage for a lawsuit.

4 COMMISSIONER MALALIS: Well to be clear,
5 we are supportive of the bill provisions as they
6 related to administrative actions before the
7 Commission and we just take no position with regards
8 to the provisions regarding civil actions before
9 state or federal court, since you know, they don't
10 really affect the Commission itself.

11 CHAIRPERSON MEALY: Oh okay then, thank
12 you. Alright, that bill is... so we did three already
13 and the... [interpose]

14 COUNCIL MEMBER LANDER: If I could just
15 ask one on this one; I mean, you spent a lot of your
16 life on the other side, you know, and I just... it is
17 my sense, and I wonder if it's yours as well, that
18 one challenge we have in getting good robust
19 enforcement of the law is the challenge attorneys
20 have in having confidence that they'll be able to
21 have their work paid for when they bring the cases.
22 I mean I assume it's supporting the law broadly;
23 you're generally sharing the sense that we want
24 attorneys to be able to develop a practice of taking
25 cases around the Human Rights Law and therefore to be

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2 compensated, you know, appropriately and fairly in
3 bringing those cases both before you and also in the
4 courts.

5 COMMISSIONER MALALIS: Well I absolutely
6 have appreciation and find value in legal
7 professions, as I am a part of that profession, so to
8 that point, yes.

9 COUNCIL MEMBER LANDER: Thank you.

10 CHAIRPERSON MEALY: Yes and just in case...
11 my intro is 18; this bill would amend the attorney's
12 fee provisions of the City Human Rights Law to
13 include expert fees and attorney fees awards; this
14 bill will allow the Human Rights Commission to award
15 attorney fees and complaints brought before it. This
16 bill will also direct courts and the Human Rights
17 Commission to base attorney fee awards on the highest
18 prevailing hourly market rate charge by attorneys of
19 similar skills and experience, practicing anywhere
20 within New York City and one... you have a question?
21 One thing I want... do you think there should be a cap
22 on this?

23 COMMISSIONER MALALIS: I'm sorry?

24 CHAIRPERSON MEALY: A cap.

25 COMMISSIONER MALALIS: A cap on...

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2 CHAIRPERSON MEALY: The prevailing wage
3 or any fees that an attorney would have.

4 COMMISSIONER MALALIS: You know, I
5 haven't expressed any desire for such a cap in my
6 testimony and I... you know, I wouldn't...

7 CHAIRPERSON MEALY: I was just asking, so
8 you don't say... have no real say on having a cap on
9 the fees?

10 COMMISSIONER MALALIS: Well I think that...
11 you know, as I said in my testimony, currently
12 reasonable attorney's fees are available for the same
13 types of actions filed before a different venue, so
14 if someone were to choose to elect going to a court
15 rather than coming to the Commission, attorney's fees
16 would be available; I think those same fees should be
17 available for Commission-related cases; it would help
18 strengthen our venue, the Commission.

19 [background comments]

20 CHAIRPERSON MEALY: ...mic is... oh there you
21 go. I guess my bill is okay then; we'll go forward.
22 [laughter] Thank you very much.

23 Okay. And the last one I believe my
24 colleague did speak about Int. 1012 that's redoing
25

1
2 the whole amendment of the Charter. Do you have any
3 suggestions in regards to that?

4 COMMISSIONER MALALIS: So yes. You know,
5 as I expressed in my testimony, I think that it is
6 truly an incredible undertaking, 'cause we're really
7 talking about the entire City Human Rights Law and
8 certainly a lot of work has been invested already in
9 Int. 1012. I think what we're envisioning is a
10 process where the Council staff and Commission staff
11 can work very closely with each other, as well as
12 with other sister agencies who would certainly have
13 an interest in this bill; we could work closely
14 together with community stakeholders and other legal
15 advocates who certainly have an interest in this bill
16 and through a thorough process we could determine,
17 you know what in fact we should be including in the
18 bill; we could also be making sure that we're not
19 inadvertently including a certain language that might
20 actually cause harm to the City Human Rights Law;
21 again, if we're talking about 137 pages without a
22 thorough process in place I think would be very
23 difficult to make sure that we're catching any of
24 those inadvertent errors and at the end of the day I
25 think we all want there to be a clearer, more

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2 accessible and you know, a law in which both pro se
3 litigants and folks who are represented by counsel
4 would be able to understand the provisions of the
5 City Human Rights Law more readily and in line with
6 that objective we're thinking of a longer, more
7 thorough process.

8 CHAIRPERSON MEALY: Thank you; you did
9 put that in your testimony. To make sure we avoid
10 duplicating any of the work, you have said we should
11 take a little bit more time in drafting and making
12 sure that we do not; in that spirit I thank you for
13 that; make sure it's efficient; that no one will be
14 discriminated; if you change one thing it may
15 counteract something else, so we thank you for
16 putting that in your testimony.

17 One other question I have; has the
18 Commission received any complaints about the law
19 being confused or difficult to understand?

20 COMMISSIONER MALALIS: I cannot speak to
21 any complaints that I'm aware of; during the, you
22 know, 9-10 months that I've been there on point, you
23 know I can speak to anecdotal conversations with
24 different practitioners and certainly with folks who
25 have approached the Commission and talked about their

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2 experiences before the Commission, but I'm not aware
3 of any formal complaints.

4 CHAIRPERSON MEALY: Thank you and
5 regards. Do you have a question? Brad Lander...
6 [crosstalk]

7 COUNCIL MEMBER LANDER: Yes, thank you.
8 Thank you, Madame Chair. Alright, so I appreciate
9 that, you know, a. revising the law in its entirety
10 is a bigger task than we normally do in a hearing and
11 also that your staffing up in a significant way; I
12 guess if you could say a little more about what the
13 process you envision would entail and especially how
14 long you think it would take and.. [crosstalk]

15 COMMISSIONER MALALIS: Sure. Well
16 Commission staff and you know, other involved
17 entities from the administration has already been in
18 touch actually with Council legislative staff on this
19 and the unit on thinking through how we can map out
20 that type of process. I think that in preliminary
21 conversations that there have already been, and it's
22 obvious again in this chat [sic] that there have been
23 a lot of conversations had already with different
24 legal advocates or folks who have a stake in this
25 legislation and so I think part of the process would

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2 certainly be to consolidate some of those
3 conversations to make sure we're all on the same
4 page.

5 COUNCIL MEMBER LANDER: Okay. And how
6 long a process do you think we're -- and look, you
7 know we always do two hearings on a bill, you know,
8 and part of the idea... and often until we do the first
9 hearing, even if it's been sitting around a long
10 time, no one knows we're serious and so sometimes
11 they come to the first hearing; sometimes it takes
12 the first hearing to kind of wake people up and then,
13 so... and then we'll have a second hearing which will
14 have the, you know, amended version of the bill and
15 be ready to move forward to passage, so to have a
16 process in-between our first and our second hearing
17 that enables some additional time for the
18 administration and the members of the bar and the
19 public to weigh in is great, but you know, how long
20 do you envision needing to make sure we get this
21 right?

22 COMMISSIONER MALALIS: So just
23 referencing back to my testimony, you know I
24 mentioned both kinds of ideas of economy as well as
25 efficiency, as well as the idea that I think in the

1
2 last three months we've had something like three
3 legislative hearings involving, you know, bills
4 amending the City Human Rights Law... [interpose]

5 COUNCIL MEMBER LANDER: Didn't we have
6 some before you even started? I don't know; as I
7 recall we're very eager here to keep... [crosstalk]

8 COMMISSIONER MALALIS: And so... Well I
9 think like day 10, yeah. [sic] So I think in line
10 with that just kind of thinking through what makes
11 sense as we're going forward, 'cause we have
12 obviously the bills that we've already testified on...
13 [interpose]

14 COUNCIL MEMBER LANDER: I introduced
15 another on Monday, so..

16 COMMISSIONER MALALIS: We certainly have
17 others in the future, in the near future it sounds
18 and so I think that kind of a rolling process of
19 being able to look at this particular reorg bill as
20 we're also contemplating other changes to the City
21 Human Rights Law with the bills that you're
22 referencing and that I'm mentioning, you know, I
23 think we see the process occurring over a year or so.
24 The other issue that I do wanna point out, and you
25 had mentioned this somewhat, with our agency

1 transformation; we are entering our first rule-making
2 that this agency has not done any sort of rule-making
3 in decades; that is part of our promise to the public
4 to deliver on transparency and to be responsive to
5 the public's interest in the law; we're going to be
6 doing that; we have a very ambitious schedule of
7 rule-making; we hope that Fair Chance Act will just
8 kick it off and that we will be engaging in other
9 rule-making processes. And so, you know, it's kind
10 like chicken and the egg, we don't wanna pause on
11 certain initiatives which we think are long overdue
12 for the public as we're thinking through a
13 reorganization and so again, we're hoping that over a
14 year-long process or so we'll be able to both
15 accomplish some of these new initiatives while also
16 being able to in an efficient way go through the
17 reorg bill.

18
19 COUNCIL MEMBER LANDER: Okay. Alright,
20 that's helpful; I think, you know, and I think
21 spending some time on it makes sense; to me a year
22 feels maybe like somewhat more than... my gut is we
23 could have a six-month process where we figure these
24 things out and that there be some value to you also;
25 I feel like it's fair to point out that we've got a

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2 lot of things that are in here and then a bunch of
3 other pieces that we're moving forward on and some
4 ability to corral those conversations, which is not
5 always easy when they have different council
6 sponsors, but working together to kinda have a more
7 comprehensive conversation and set a time to move
8 forward on it and get those things done would
9 probably be good for you and for us. So Madame
10 Chair, we can follow up I guess on the timeline; I
11 hope we can... I think we could do it faster than a
12 year, but I appreciate that it needs a little more
13 time than the typical time between a first and second
14 hearing.

15 CHAIRPERSON MEALY: That's good, so we're
16 gonna keep working on it. So I believe that's it of
17 the questions we have for you, Commissioner and we
18 thank you for stopping in and helping us on this
19 legislation and let's not be too fast; let's take
20 time to make sure we get it right and I thank you on
21 that.

22 COMMISSIONER MALALIS: Thanks for having
23 us.

24 CHAIRPERSON MEALY: Thank you. Now we're
25 gonna have our advocates come up. [background

1
2 comments] We have Craig Gurian, Fair Play
3 Legislation; Felix Lockman, The Black Institute;
4 Darnley Stewart; we have Karen Cacace, The Legal Aid
5 Society; could you please come up? And we have a
6 time limit, [background comments] three minutes;
7 please stay within; we will give you some leniency.
8 [background comments] Anyone may start.

9 CRAIG GURIAN: The mic on?

10 CHAIRPERSON MEALY: Yeah.

11 CRAIG GURIAN: My name is Craig Gurian;
12 I've been representing victims of discrimination for
13 27 years and I've been fighting to strengthen the
14 City Human Rights Law throughout that time. I'm
15 proud to have brought the legislative proposals that
16 have emerged as Int. Nos. 0814, 0818 and 0819 to the
17 Council and I'm pleased, Chair Mealy, that you're the
18 key sponsor of the attorney's fees bill that my old
19 friend, Councilwoman Rosie Mendez is the chief
20 sponsor of the bill that, finally, and second-class
21 status for victims of discrimination of sexual
22 orientation and that Councilman Brad Lander is the
23 chief sponsor, Int. 0814, the bill to protect and
24 expand the gains of the Restoration Act. I should
25 not for the record that I've submitted a longer,

1 much, much longer statement on behalf of Fair Play
2 Legislation and that our colleagues at the Community
3 Service Society have also submitted a statement in
4 support of Int. 0814. You're gonna hear this
5 afternoon from colleagues of mine who together have
6 more than 200 years of experience representing
7 victims of discrimination; they will go into some of
8 the key points made by the cases being incorporated
9 explicitly by Int. 0814 and you'll hear how the
10 Restoration Act and the key cases interpreting it are
11 already helping victims to vindicate their rights;
12 you'll also hear how more could be done.

14 I just wanna very, very quickly try to
15 encapsulate the philosophy of the City Human Rights
16 Law because there really is a philosophy of the City
17 Human Rights Law; there is no place for
18 discrimination at all; treat discrimination like you
19 treat other serious law enforcement problems; get to
20 the merits of the dispute and avoid diversions.

21 Now that may sound easy enough, but there
22 does continue to be judicial resistance and this
23 philosophy can only be brought into practice if
24 courts, as intended by the Restoration Act and the
25 enhanced liberal construction provision routinely get

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2 down to first principals. As I've said elsewhere,
3 judges need to realize that the City Human Rights
4 Law, although decades old, is really still at the
5 stage of early development that Federal Civil Rights
6 Law was in the late 1960s. Int. 0814 is the
7 encouragement we need to catalyze both the bar and
8 the bench into looking at all the doctrines related
9 to discrimination cases to see whether or not they're
10 being construed broadly enough.

11 Now let's not mince words about the
12 position that the Commission has taken on this bill.
13 Now I've sat here, I've praised the new Commission
14 [bell] and what they've brought, but this position
15 today against incorporating cases, including the
16 argument that, shock of shocks, three cases will have
17 to be read by advocates and judges is completely
18 disingenuous; it reflects no facts, no law, no
19 vision; it proposes exactly the kind of steps,
20 handing out a poster, that have been ineffective in
21 the past in getting judges to do the right thing and
22 in reality would deprive us of the guidance, just the
23 guidance that Int. 0814 seeks to provide, something
24 that could only be done by naming cases. Please
25 note, very clearly, there is no rule barring what

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2 0814 is doing; the Commission would've mentioned it
3 if it could've found one; there is no rule against it
4 and even though the Commission is apparently unaware
5 of it, the legislative step of identifying cases is
6 not unprecedented and even if it were, Chair Mealy,
7 even if it were, the history of the City Human Rights
8 Law is a history of taking the initiative to meet new
9 challenges with new solutions. I'd be happy to
10 respond to [background comment] any inquiries members
11 may have on this or any other point. [background
12 comment] I did just wanna take 10 seconds
13 [background comment] just... somebody's gonna be very
14 angry with me if I don't mention the... [crosstalk]

15 [background comments]

16 COUNCIL MEMBER LANDER: We'll ask you in
17 questions; let's... [crosstalk]

18 CRAIG GURIAN: Okay. Okay.

19 COUNCIL MEMBER LANDER: be fair to the
20 time... [crosstalk]

21 CHAIRPERSON MEALY: Yeah.

22 COUNCIL MEMBER LANDER: and we'll ask you
23 in questions to elaborate.

24 MARTIN LOCKMAN: Hello. My name is
25 Martin Lockman; I'm here to speak on behalf of The

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2 Black Institute and Bertha Lewis. The Black
3 Institute is a think tank focused on making sure that
4 minority and immigrant communities in New York have a
5 voice, have a policy voice.

6 The Black Institute urges the prompt
7 adaptation of Int. 0814. The passage of the
8 Restoration Act 10 years ago was a landmark act; it
9 freed New York Human Rights Law from having to be
10 constrained by what the state and what the federal
11 government were doing. Locking in the gains of the
12 cases over the past 10 years is crucial, but also
13 crucial is expanding judges in New York's ability to
14 take action in combating new types of discrimination.
15 Techniques and methods of discrimination always
16 evolve; in those circumstances we need to see the
17 courts take a more active role in combating emerging
18 problems and have both the freedom and the obligation
19 to take that role. Int. 0814 provides a clear
20 progressive path that advocates will be able to push
21 courts to pursue. For example, one of the basic
22 provisions of the Human Rights Law is prohibiting
23 employers from refusing to hire any person for
24 discriminatory reason. There are many different
25 relationships that encompass that and we wanna see

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2 the most broad interpretation of those relationships;
3 anything from part-time work to contracted work, we
4 wanna make sure that judges are taking into account
5 the most liberal interpretation possible so that all
6 New Yorkers have equal protection.

7 The key cases interpreting the
8 Restoration Act make it clear that courts are not at
9 liberty to narrow the scope of the law when there is
10 a reasonable broader interpretation available. Int.
11 0814 will ensure that the Human Rights Law will adapt
12 to changing times. Thank you.

13 CHAIRPERSON MEALY: Thank you.

14 KAREN CACACE: Hi, I'm Karen Cacace; I'm
15 the Director of the Employment Law Unit at The Legal
16 Aid Society and I know the council members are very
17 familiar with Legal Aid and our criminal practice,
18 our human rights practice and our civil rights
19 practice. And the Employment Law Unit represents
20 low-income New Yorkers in almost any type of
21 employment case, including unpaid wages, including
22 discrimination, discrimination based on criminal
23 record, leave issues under the Family and Medical
24 Leave Act, under the City's Sick Paid Leave Law, and
25 in unemployment insurance hearings before the State

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2 Department of Labor. So we applaud the City
3 Council's effort to broaden and strengthen the Human
4 Rights Law.

5 I'd like to start with the reorganization
6 and we think reorganizing for structural purposes is
7 fine and a good idea, but more importantly, we think
8 that substantive changes should be looked at, and the
9 most important one I really think, as my co-panelist
10 said, that the purpose of the law should be to
11 protect everyone from discrimination, but currently
12 it does not protect you from discrimination if you
13 work in a workplace where there are less than four
14 employees and so if you work in a small office, they
15 can say, we don't want people of that race or that
16 sexual orientation and it's not something that we
17 should have here in New York City. So we would
18 encourage the City Council, when they are doing the
19 reorganization to look at substantive changes, that
20 being the most important one and so in the written
21 testimony we have listed several other substantive
22 changes that could be made to strengthen law and
23 we're happy to have fuller discussions about those
24 provisions, but we think the four-person requirement
25 is the most important.

1
2 On the other intros, we definitely
3 support 0814; having those cases in there, I don't
4 think there's a substitute for that; I don't think
5 you're going to be able to talk about the standard
6 for proving pretext in the law in a way that a
7 layperson is going to understand and I don't think
8 there's any reason for a layperson to need to
9 understand that; the judges need to understand that
10 these are the precedential cases and that these are
11 the ones to follow; I think it is an excellent idea
12 to get those in there.

13 On 0818, on the fees, we are very much in
14 support of that and we think -- you know, Legal Aid
15 does bring cases before the Commission and we have
16 spent years litigating cases before the Commission
17 without any opportunity to recover fees; it would
18 certainly make a big difference if we were able to do
19 so and I think encourage a lot of people in the room
20 here, private lawyers, to bring cases before the
21 Commission.

22 And on 0819, absolutely we support the
23 repeal of that language; it's completely unnecessary
24 and should go. Thank you.

1
2 CHAIRPERSON MEALY: Thank you. We've
3 been joined by my colleague Rose Mendez and I know
4 she... do you mind if she says a few words in regards
5 to what you just said; I believe she did pass some
6 legislation?

7 COUNCIL MEMBER MENDEZ: No; I just wanted
8 just to talk in general, 'cause I got here late, to
9 thank you, Madame Chair for holding this hearing and
10 I wanted to thank Brad for all his work on all these
11 bills and I wanted to thank the panel and everybody
12 else who's testifying and I'm gonna be leaving
13 shortly to another meeting in my district, so I just
14 wanted to just get that on the record and thank
15 everyone.

16 CHAIRPERSON MEALY: And thank her for
17 being a prime sponsor of Int. 0819, so thank you for
18 that. And there's still one more to testify. Thank
19 you so much.

20 DARNLEY STEWART: Good afternoon Council
21 people. My name's... [crosstalk]

22 CHAIRPERSON MEALY: Good afternoon.

23 DARNLEY STEWART: Darnley Stewart; I'm Of
24 Counsel to the law firm of Outten & Golden here in
25 the city; I've been practicing employment and civil

1
2 rights law on behalf of plaintiffs for about 18
3 years; I'm speaking here on my behalf and on behalf
4 of my clients today.

5 As Councilman Lander said at the
6 beginning, this is really a unique bill and we
7 practitioners are really operating in an increasingly
8 hostile environment, led largely by our Supreme Court
9 of the United States, by the way, but where
10 protections for our clients are really being eroded
11 and the New York City Human Rights Law really stands
12 out as a beacon and really for us lucky enough to
13 practice in the city, it's really unique.

14 As a practical matter, the aggressively
15 antidiscrimination philosophy of the City Human
16 Rights Law we find to be at odds with the philosophy
17 of many judges and those judges need reminding that
18 this law is different from the federal law, and they
19 often forget, and has to be construed separately and
20 more favorably to those being discriminated against;
21 judges may not like it, but they have to follow the
22 law that this City Council has passed. And I would
23 like to give you a couple of examples from the real
24 world in connection with our own cases.

1
2 Courts still often distinguish between
3 negative actions taken against an employee because of
4 the employee's membership in a protected class and
5 focus on whether those actions have what's called a
6 materially adverse effect. But the city law has no
7 such distinction; an employer must avoid any and all
8 actions that are based on an employee's protected
9 class status, and let me give you an example. You
10 might have a male manager who doesn't wanna work with
11 a woman; he wants to talk to his buddies about Draft
12 Kings or whatever certain men wanna talk about in the
13 workplace and he takes the one woman who's working in
14 his office and he moves her to a different location
15 across town; now, she'll be making the same amount of
16 money, she'll be getting the same benefits, she'll
17 have the same title, but now she's working across
18 town and it's making her much more difficult for her
19 to pick up her kids at the right time and it's really
20 messing with her personal life. The analysis in
21 Williams would guide the court to a correct decision
22 based on the Human Rights Law that as long as there
23 is an action taken against the employee based on the
24 protected class, that's sufficient and we don't need
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2 to show material adverse effect, okay. So in that
3 instance it's really, really important.

4 Let me give you another example. We
5 often struggle with what we call pretext; is the
6 reason being given by the employer a lie; is it the
7 truth? I'll give you an example here. We are often
8 stuck with the construction of federal law which
9 says, it's not enough if you, plaintiff, can show
10 that all the reasons are lie; you need to show that
11 the real reason is discrimination; there has to be
12 statements, there has to be all sorts of really
13 powerful evidence; unconscious bias doesn't really
14 work that way... [bell] let me just finish my pretext
15 story. I represented a woman who was a teacher's
16 aide out on Long Island; she did not have the ability
17 to bring a claim under the City Human Rights Law.
18 She was in her 60s; she had worked for the school
19 district for 20 years, doing a terrific job. New
20 young principal came in; he got rid of her
21 immediately and the first reason given was because
22 her student that she was assigned to had graduated,
23 well there were younger people who were getting new
24 students even though their people had graduated;
25 that's a false reason; then they said, well we had to

1 budget cut, so we had to get rid of a certain number
2 of people. Well that wasn't true because he hired
3 back a woman who was 23 years old within a couple
4 months of firing these five people, including my
5 client. Oh well that's not true, but then it was her
6 performance; well that's not true, because look at
7 her performance reviews, they're better than these
8 much younger people. I had a problem with my case
9 because I had no age comments; I had nothing against...
10 but we knew what was going on here. Bennett would
11 say that evidence of pretext shouldn't... almost every
12 case indicate to the court that summary judgments
13 should be denied and I should have my day in court.
14 So we really, really need these cases as part of the
15 statute to lay out clearly how the statute should be
16 construed and I urge the committee to adopt Int.
17 0814.

18
19 CHAIRPERSON MEALY: Thank you; that is so
20 true. How could you really... you know what's the
21 underline, but, but hard to show. Any questions?

22 COUNCIL MEMBER LANDER: Well I promised
23 that I would ask Craig to finish the sentence that he
24 was in the middle of when we stopped him for time, so
25 I'll start there.

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CHAIRPERSON MEALY: Indeed.

CRAIG GURIAN: [background comments] The sentence I wanted to say, just on the reorg bill, was; everybody was making nice today, but let's be clear, there's been a lot of hysterical lobbying by the Commission against the reorg bill; obviously I think we all agree that a task this large is something that requires a lot of vigilance to make sure that there aren't any problems, and as our colleague said, it really is an opportunity to do more than just reorganize and to think about parts of the law that may not have worked out. For example, in 1991 we put a provision into the bill, a whole chapter of the law that gave the City's Corporation Counsel, the Law Department, the ability to bring pattern in [sic] practice investigations. So it's what, it's 24 years later and so far they've done zero...

DARNLEY STEWART: Getting closer.

CRAIG GURIAN: Right, so... Well maybe 25 years is gonna be the big thing, so [laughter]...
[crosstalk]

DARNLEY STEWART: We passed a law...

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2 CRAIG GURIAN: you know, when you're
3 doing a reorganization, part of this reorganization
4 is doing changes to the charter; why bake [sic] in
5 something that hasn't worked as opposed to saying,
6 well maybe the Commission on Human Rights is the one
7 who should be doing all of that work.

8 The only other thing I was gonna say on
9 that point before turning back I think to the issues
10 of 0814 is, you know, I'm responsible, I cop to it,
11 to some of the bad drafting that's there now, but I
12 mean it's true that in any kinda law you have
13 amendments over the period of decades; it's not an
14 unusual thing to try to get it straightened out;
15 there has been very serious work done to do this and
16 I and I know a number of my colleagues are very
17 interested in actually working on this to come up
18 with a final bill; it shouldn't take anything like a
19 year; six months is probably more like it, and I
20 think we should be able to do it. I should also
21 point out on this question that the Commission has
22 put in its testimony; I don't know if everybody
23 picked up on this, a proposal really to be slowing
24 down individual pieces of legislation; that is,
25 having an extended period of reorganization but while

1
2 you're at it, suggest the Council consider timing
3 some of these bills in the long-term.. [background
4 comment] in the context of long-term reorganization.
5 However you feel about the reorganization, that's a
6 disaster; there are bills that stand on their own and
7 need to be passed yesterday; not a year from now.

8 CHAIRPERSON MEALY: Do you think the
9 administration was talking about wait till they staff
10 up properly and then maybe?

11 CRAIG GURIAN: Well I mean, how many
12 pages of it is; it is.. you know, it is a.. [background
13 comment] it is a lot of pages, but on the other hand,
14 you know we ... [crosstalk]

15 CHAIRPERSON MEALY: They were
16 understaffed for years.

17 CRAIG GURIAN: like that's what we do;
18 you know, we read this stuff.. [crosstalk]

19 CHAIRPERSON MEALY: But can I ask you a
20 question?

21 CRAIG GURIAN: Yes, ma'am.

22 CHAIRPERSON MEALY: Do you think the
23 administration should be writing Int. 1012 instead of
24 the City Council?

25 CRAIG GURIAN: Should be.. I'm sorry?

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2 CHAIRPERSON MEALY: Redoing the whole
3 charter?

4 CRAIG GURIAN: Well I think that there
5 has been a tremendous amount of work, much of it
6 which is not at all controversial in terms of the
7 1012 rewrite, so from my point of view, what we would
8 do is that we would wind up sitting down with
9 everybody's who's interested in this and asking some
10 very basic questions; first some of the broad
11 questions; do we really wanna organize it this way;
12 then asking questions, is the language right; then
13 different people are going to have different specific
14 changes to make, whether it's covering fewer than
15 four employees or other things and that is a process
16 that can go forward; nobody's going to be happy about
17 everything. One thing that I do agree with the
18 Commission on and with the members here today is,
19 obviously we have to make sure that there is no
20 stepping backwards; that can't happen, but that's
21 something that can go forward if there are regular
22 meetings scheduled; that's really all that has to
23 happen on that point and.. Well I'll leave it there;
24 there's... [crosstalk]

25 CHAIRPERSON MEALY: Thank...

1
2 CRAIG GURIAN: a lot of things the
3 Commission said about problems with 0814 that are not
4 true.

5 CHAIRPERSON MEALY: That's good to hear.
6 And does The Black Institute agree with Int. 1012
7 also?

8 MARTIN LOCKMAN: Officially, The Black
9 Institute doesn't take a position on Int. 1012; we're
10 here to speak about the most...

11 CHAIRPERSON MEALY: Pressing one; 0814...
12 [crosstalk]

13 MARTIN LOCKMAN: yeah, 0814 in trying the
14 most broad interpretation of the City Human Rights
15 Law as possible.

16 CHAIRPERSON MEALY: Okay, thank you. And
17 my colleague Rosie Mendez has a word.

18 COUNCIL MEMBER MENDEZ: I just wanna make
19 a comment, you know. I'm, as a legislator, all for
20 codifying where we can and on occasions where I think
21 there's a benefit to having the agency make rules,
22 because there is some type of agency discretion
23 that's needed, but Miss Stewart, I think your story
24 about the teacher's aide really points to the truth
25

1
2 of why we need to codify this, so I wanna thank you
3 for being here today and giving your testimony.

4 DARNLEY STEWART: Thank you.

5 CHAIRPERSON MEALY: I wanna... yes, Brad
6 Lander.

7 COUNCIL MEMBER LANDER: Yeah and I'll
8 just... I mean so first, I wanna thank everyone for
9 their testimony and everyone for their advocacy
10 really, and Craig, give you the credit where it's due
11 on bringing a lot of these issues before us that have
12 been put in the legislation... [crosstalk]

13 CHAIRPERSON MEALY: For years.

14 COUNCIL MEMBER LANDER: today. Yes. You
15 know, whatever; one of the things we're doing in one
16 of the other bills today is cleaning, you know, what
17 was horrible drafting at the time and I guess at the
18 time they must have thought they needed to do that to
19 pass it and you know, I don't think they probably
20 need to do it at the time, but in any case, that's
21 how we work, so I have a slightly more positive view,
22 which is; it's your job to push us; it's our job to
23 push the administration and we're slowly moving the
24 ball forward, so I think we'll get them there.

1
2 See but I don't think we need a lot more
3 on 0814, because honestly, I feel like the case has
4 been made dramatically in today's hearing; I mean the
5 administration really did not have a meaningful
6 opposition; they agree that there's a problem that
7 needs to be solved; they agree with the reasoning in
8 the three bills, so their only concern that they said
9 is that the layperson won't understand what those
10 three bills are about, which is true, but again, to
11 me it's just like the fact that in bills that we have
12 on the building code, those are designed for the
13 builders, not for the residents and here this piece
14 of the legislation is designed for the judges, so I
15 think you have illustrated the specific and concrete
16 needs for it, so me I think the case is pretty well
17 made, but if there is anything else you wanna say
18 about arguments that you think we should make sure on
19 the record; things like that... [crosstalk]

20 CRAIG GURIAN: Yeah, just... just to be
21 clear, one of the bills that has done this before is
22 a pretty well-known bill, the Civil Rights Act of
23 1991, and that's not the only one. And in the
24 Commissioner's testimony she said something, you know
25 it might sound nice, but why not instead of the

1 cases, just go straight to the reasoning. Well one
2 of the things that I handed up to the panel is the
3 Williams case, all 14 pages of it, and if you look at
4 Page 6 of the Williams case, that's where the
5 interpretation on sexual harassment begins and that
6 continues through three-and-a-half more dense pages;
7 it ought to be clear that we're not just codifying
8 the holdings of the case, but the reasoning. Like,
9 there's just no way you could do it, it's not
10 practical, it's not a serious suggestion and the bill
11 should go forward as it's been drafted.

12
13 CHAIRPERSON MEALY: Thank you for all
14 your testimony. Thank you so much. [background
15 comments] Thank you.

16 The next panel, Margaret McIntyre, NELA
17 of New York; Herbert Eisenberg, self-employed
18 [background comments] for self, okay; Ryan Rasdall,
19 Lambda Legal; D. Nano, Esq., Law Office of Daniela...
20 [background comments] Dannelle. Oh, thank you.
21 [background comments] Anyone may start.

22 MARGARET MCINTYRE: Good afternoon. My
23 name's Margaret McIntyre... [crosstalk]

24 CHAIRPERSON MEALY: Good afternoon.

25

1
2 MARGARET MCINTYRE: I am speaking on
3 behalf of NELA New York, a bar association of
4 attorneys who represent employees in all kinds of
5 matters, including discrimination; I have been
6 representing victims of discrimination for 20 years.

7 On behalf of NELA New York I testified
8 today to express our strong support for Int. 0814.
9 Our members have been on the frontline of fighting in
10 court to vindicate the civil rights of New Yorkers
11 and we know how important it is for courts to
12 approach these cases with an appreciation that the
13 law must be interpreted with an understanding of how
14 important it is to rid our city of discrimination.

15 As stated in Bennett, one of the cases
16 whose interpretive guidance would be ratified by Int.
17 0814, the existence of discrimination, a profound
18 evil that New York City, as a matter of fundamental
19 public policy seeks to eliminate, demands that the
20 court's treatment of such claims maximize the ability
21 to ferret out such discrimination; not create room
22 for discriminators to avoid having to answer for
23 their actions before a jury of their peers.

24 Or, as Williams explains, there is
25 significance guidance in understanding the meaning of

1 the term "uniquely broad and remedial." For example,
2 in telling us that the City HRL is to be interpreted
3 "in line with the purposes of the fundamental
4 amendments to the law enacted in 1991," the Council's
5 committee was referring to amendments that were
6 "consistent in tone and approach;" every change
7 either expanded coverage, limited an exemption,
8 increased responsibility or broadened remedies. In
9 case after case, the balance struck by the amendments
10 favored victims and the interests of enforcement over
11 the claimed needs of covered entities in ways
12 materially different from those incorporated into
13 state and federal law.

14
15 What does this mean as a practical
16 matter? It means that courts are supposed to treat
17 the law as expansively as possible or as the Albunio
18 decision says, all of the law's provisions are to be
19 interpreted "broadly in favor of discrimination
20 plaintiffs to the extent that such a construction is
21 reasonably possible."

22 Once Int. 0814 is enacted into law there
23 will be no doubt that the interpretations set forth
24 in Albunio, Williams and Bennett must be accepted and
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2 that the roadmap set out by the cases must be
3 followed.

4 As an attorney in private practice who
5 represents employees in discrimination cases, [bell]
6 I think that it's important for the City Council to
7 know that there continue to be courts that do not
8 follow these three decisions and continue to dismiss
9 summary judgment cases that should be decided by
10 juries and... [crosstalk]

11 CHAIRPERSON MEALY: Really?

12 MARGARET MCINTYRE: we need... employees
13 need a clear signal from the City Council that
14 summary judgment is only available in rare cases
15 because juries should be deciding these cases. Thank
16 you.

17 CHAIRPERSON MEALY: Thank you.

18 HERBERT EISENBERG: Thank you Madame
19 Chair... [crosstalk]

20 CHAIRPERSON MEALY: Thank you.

21 HERBERT EISENBERG: Council Member Lander
22 and others. My name is Herbert Eisenberg; I'm a
23 partner in the law firm of Eisenberg & Schnell; I am
24 a past President of the National Employment Lawyers
25 Association, New York chapter; I sit on the National

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2 Employment Lawyers Association Executive Board
3 nationally, which is over 3,000 lawyers that do this
4 kind of work; I am a former Vice President for
5 Legislation and Public Policy with that organization.
6 I have represented countless victims of
7 discrimination and have been doing so for over 30
8 years... [crosstalk]

9 CHAIRPERSON MEALY: Thank you.

10 HERBERT EISENBERG: I'm here to express
11 my support for Int. Nos. 0814, 0818 and 0819 and I'd
12 like to explain why passage of 0814 is critical to
13 the ability of victims of discrimination to vindicate
14 their rights.

15 As you've heard and will continue to hear
16 from many of my colleagues, one must really be in
17 court regularly to see the palpable resistance to
18 interpreting our civil rights laws so they can
19 fulfill their purpose of keeping the workplace
20 discrimination free.

21 A tremendous amount of time, energy and
22 effort is spent dealing with defendants trying to
23 come up with loopholes to having the law fulfill its
24 purposes; that's one of the reasons why Int. 0814's
25 provision requiring exceptions to be interpreted

1
2 narrowly is so very important, and not only helps in
3 terms of the exceptions specifically set out in the
4 law, but it makes clear that judges should be very
5 reluctant to create or permit new exceptions or
6 exemptions on their own.

7 More generally, the provision of the law
8 explaining its liberal construction is supposed to
9 provide guidance and that provision was very
10 helpfully amended by the Restoration Act, but the
11 issue of how to interpret the statute, as discussed
12 in the committee report for the Restoration Act, has
13 only been taken up by a few cases, Williams and
14 Bennett among them. Unfortunately, this guidance is
15 really not used as frequently as it must be and those
16 cases and the statute itself must be reaffirmed.

17 One of the any important things that
18 Williams did was it pointed to important sources for
19 understanding the Restoration Act and particularly
20 for understanding the amendment to the construction
21 provision. This included the statement on the floor
22 of the Council by Council Member Palma when the
23 Council was getting ready to vote on the Restoration
24 Act; she provided examples of many cases where the
25 courts fail to fulfill the uniquely broad purposes of

1
2 the City Human Rights Law, where the courts had
3 ignored the text of the law or both and with the
4 Restoration Act, she explained these cases and others
5 like them will no longer hinder vindication of our
6 civil rights.

7 The Williams court also treated the Law
8 Review article, "A Return to the Ice on the Price,"
9 [sic] as authoritative and that article goes through
10 the legislative history of the New York Human Rights
11 Law and Williams drew on that article extensively and
12 it detailed the article's focus on the reasons for
13 and the method for interpretation of the enhanced
14 construction of the code.

15 For example, the decision cited
16 approvingly [bell] the observation that in light of
17 the enhanced liberal construction, areas of the law
18 that have been settled by virtue of interpretations
19 of federal or state will now be reopened and looked
20 at differently and independently, and it's imperative
21 that we reaffirm that for the courts.

22 Will this guarantee that the courts read
23 the New York Human Rights Law correctly? No, but it
24 will certainly be a powerful tool in the hands of
25 advocates and pro se litigants to be able to argue

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2 just how the court should approach these cases and to
3 make certain that the independent construction of our
4 New York City law is accorded the respect that it
5 deserves. Thank you.

6 CHAIRPERSON MEALY: Thank you.

7 RYAN RASDALL: Good afternoon.

8 CHAIRPERSON MEALY: Good afternoon.

9 RYAN RASDALL: My name is Ryan Rasdall; I
10 work at Lambda Legal as the Legal Assistant to the
11 Transgender Rights Project. I am here today to
12 represent Lambda Legal's testimony in support of Int.
13 Nos. 0814, 0818 and 0819.

14 Founded in 1973, Lambda Legal is the
15 oldest and largest national legal organization whose
16 mission is to achieve full recognition of the civil
17 rights of lesbians, gay men, bisexuals, transgender
18 people and those with HIV, their impact litigation,
19 education and public policy work.

20 I want first of all to note our support
21 for Int. Nos. 0819 and 0818. Int. 0819, which is
22 long overdue, finally removes the second-class status
23 of the prohibition against discrimination on the
24 basis of sexual orientation by eliminating the
25

1
2 special disclaimer enacted back when sexual
3 orientation coverage was added in the 1980s.

4 We also support the clarification to the
5 fee provision set out in Int. 0818, including the
6 provision that makes clear that a prevailing party is
7 entitled to reimbursement for expert fees.

8 Principally though, I wish to convey
9 Lambda Legal's support for Int. 0814, the amendment
10 to the construction section of the law, making
11 explicit that courts concerning [sic] the City Human
12 Rights Law must exercise independent jurisprudence;
13 that is, "maximally protective of civil rights in all
14 circumstances" is an important step forward.

15 Additionally, the provision insisting
16 that exceptions and exemptions be narrowly construed
17 as the appropriate mirror image to the existing
18 provision that covers must be broadly construed.

19 Finally, ratifying *Albunio*, *Williams* and
20 *Bennett* is very important; the guidance these cases
21 provide in terms of how to interpret the law so as to
22 properly allow plaintiffs to vindicate their rights
23 through the courts is consistent with the principals
24 the Council has previously set out. These cases
25 should be incorporated into the law so that the

1 courts and litigants have the benefit of this
2 importance guidance as additional issues emerge under
3 the City Human Rights Law. Thus, for example,
4 following the guidance of these cases would help
5 ensure that transgender people, like myself, will not
6 face undue limitations on their ability to seek
7 redress under the City Human Rights Law. Doing so
8 would also encourage judges to give due respect to
9 litigants' rights to bring these cases before a jury.
10 Additionally, it would also allow and encourage
11 courts to adopt the important guidance in Williams
12 that discrimination injuries are per se serious
13 injuries.
14

15 I urge you to pass Int. Nos. 0814, 0818
16 and 0819 to take additional steps to move the Human
17 Rights Law forward. Thank you.

18 CHAIRPERSON MEALY: Thank you.

19 DANIELA NANAU: Good afternoon. My name
20 is Daniela Nanau and I'm here on behalf of myself and
21 the clients I represent; I'm a solo practitioner in
22 Central Queens.

23 The enactment of Int. 0814 is vitally
24 important, because it will among other things codify
25 several important cases that will act as a bulwark

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2 against what you've already heard is this inclination
3 among some courts to again narrowly construe the City
4 Human Rights Law. I feel so strongly about this that
5 I came here all the way from Queens to share with you
6 information about a case that I recently litigated
7 that I think demonstrates how singularly powerful the
8 City Human Rights Law is and must remain.

9 My client; let's call him Cliff; he works
10 in a mailroom at a large company in Manhattan.

11 Cliff, unlike the other men who worked in the
12 mailroom with him did not openly engage in macho
13 behavior, such as sexual banter; instead, Cliff
14 focused on his work; he wanted to work himself to an
15 assistant manager position, so he took on every
16 single additional duty that came up and because he
17 liked to earn overtime, which allowed him to afford
18 himself fashionable sneakers and expensive clothing.

19 Cliff's focus on his attire encouraged his male
20 coworkers to verbally abuse him and I apologize in
21 advance for using this language, but this is what
22 Cliff was exposed to on a daily basis by his
23 coworkers for many years; they constantly called him
24 a faggot and girly boy and excluded him from
25 conversations because they claimed that Cliff liked

1 to sleep with boys. But Cliff is a very private
2 person and never discussed his personal relationships
3 at work with anyone, but that did not deter his
4 coworkers from subjecting him to those abusive
5 comments informed by stereotypes about the way "real
6 men behave." And Cliff's supervisor; let's call her
7 Mary; she knew about this harassment and she didn't
8 do anything to stop it; in fact, she encouraged it by
9 gossiping about Cliff's sexual orientation and
10 occasionally she would verbally abuse him, especially
11 when he got packages with sneakers in the mail and
12 told him, "Cliff, you are not a real man because this
13 is what you focus on in your spare time." Well one
14 day Cliff didn't do something that Mary directed him
15 to do in his personal time; he didn't want to donate
16 blood that day in a voluntary blood drive and Mary
17 called him a faggot in front of the entire
18 department, and it bothered one employee in
19 particular so much that she went to the HR department
20 on her own accord and reported the conduct, and when
21 the HR director came and interviewed Cliff, he
22 confirmed that Mary had subjected him to that verbal
23 abuse and other verbal abuse and he had complained,
24 but Mary did nothing ever to stop it, particularly
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2 the abuse of his coworkers. Then Mary of course
3 retaliated against Cliff by preventing him from
4 getting that promotion that he worked so hard to get
5 for many years [bell] and ultimately he was fired.

6 Let me just cut to the chase. Even
7 though, you know, a coworker of Cliff's was so
8 offended by the way that he was treated that she
9 complained about the conduct, I would not have had
10 enough evidence to make out a hostile work
11 environment complaint under the federal or state law.
12 Why? Because the coworker abuse happened first for
13 many years and then there was a pause of many months
14 and then the supervisor started abusing him and you
15 know, a crafty defense lawyer and an employer's
16 lawyer could say that that's not enough to meet the
17 severe or pervasive standard, and indeed that is what
18 happened in this case. So because of Williams, I was
19 able to file a charge of discrimination at the EOC;
20 the EOC agreed to mediate the case and what I said to
21 defense counsel is this; I said, "Maybe we will not
22 meet the severe or pervasive standard, but I will
23 definitely be able to make out a hostile work
24 environment complaint on a claim under the New York
25 City law and because the retaliation claim is strong

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2 enough under the federal law we will go before a
3 federal jury and they will hear all the claims and no
4 one will care under which statute which claim was and
5 my client will be vindicated because he will have his
6 day in court in front of a jury," and this was enough
7 to resolve the case and it resolved for six figures.
8 And I'm happy to report that Cliff is using his
9 settlement money and he returned to school to get his
10 degree so that he would never have to work in a
11 mailroom again. But the discriminatory treatment
12 that Cliff was subjected to, even though there was
13 this technical issue that could've otherwise doomed
14 his case, it was very real and the damages that he
15 suffered were very real, and so it's examples like
16 these that I think demonstrate that the city law is
17 really one of the only statutes out there that
18 actually does what it's meant to do and so it's very
19 important [background comment] that we strengthen the
20 law rather than do anything to diminish it...
21 [crosstalk]

22 CHAIRPERSON MEALY: Thanks.

23 DANIELA NANAU: and for this reason I
24 please urge you to support Int. 0814.

25

1
2 CHAIRPERSON MEALY: Thank you; now that
3 opened us up plain, bluntly. Thank you for bringing
4 that example, 'cause now I hope people in my district
5 and all over the city is listening to this; that they
6 will know, kind of realize that slight discrimination
7 could be against the law and some people did not...
8 like the young man Cliff, he did not know who to talk
9 to or where and that's why I believe our laws changed
10 it; we have to put discrimination notices up in your
11 workplace, so this was a good example; I thank you,
12 and I just wanna thank Lambda for liking my
13 legislation also; I thought all the lawyers would
14 love it, but 0814 is very important. And thank you
15 so... Would you have anything to say? Thank you.

16 COUNCIL MEMBER LANDER: I apologize, but
17 we're back and forth between a lot of things today,
18 but thank you all for your advocacy on behalf of
19 individuals and here today as well. [sic]

20 HERBERT EISENBERG: Thank you.

21 CHAIRPERSON MEALY: Wow. Thank you; that
22 was a great example. And we have our next panel --
23 Lorraine [sic] Vettters [sp?], Gender Equality Law
24 Center; Dan Alterman, NELA; Kenneth Kimerling, Asian
25 American Legal Defense, and Colleen [background

1
2 comment] Meenan; would you please come up, and anyone
3 can start.

4 [background comments]

5 CHAIRPERSON MEALY: Hello; I'm missing
6 one, but you can start; the next one will come up.
7 Thank you.

8 LAUREN VETTERS: Good afternoon, Madame
9 Chair; Committee Council members. My name is Lauren
10 Betters [background comments] and I am here on behalf
11 of the Gender Equality Law Center. Unfortunately,
12 Allegra Fishel, the Director, couldn't make it today,
13 so I'm delivering this statement on her behalf.

14 The Gender Equality Law Center is a not-
15 for-profit legal and advocacy organization that seeks
16 to break down social, economic and political barriers
17 created by gender-based discrimination and gender
18 stereotyping. Through a variety of advocacy efforts,
19 including impact litigation and legislative reform,
20 we seek to enforce and expand antidiscrimination
21 laws.

22 We support the passage of Int. No. 0814,
23 which seeks to codify three important state court
24 cases as interpreted by local Restoration Act of
25 2015. Those cases explicitly set forth the more

1
2 expansive and protective standards of proof to be
3 used in employment discrimination cases under the New
4 York City Human Rights Law.

5 Of particular importance are the holdings
6 in Williams and Bennett, which articulate a more
7 liberal antidiscrimination standard than that offered
8 under other similar federal and state
9 antidiscrimination statutes with regard to how to
10 prove a hostile work environment claim on the basis
11 of gender.

12 Although the local Restoration Act was
13 passed 10 years ago and that law clearly mandates
14 that the city law should be broadly interpreted so as
15 to fulfill the goal of eradicating employment
16 discrimination, there are relatively few legal
17 decisions interpreting how to prove a gender-based
18 hostile work environment claim under the New York
19 City Human Rights Law.

20 As a result, judges on both the state and
21 federal level frequently rely upon extensive
22 jurisprudence that already exists under federal law
23 to decide cases under the Human Rights Law. As an
24 employment discrimination and civil rights lawyer for
25 over 20 years, Miss Fishel has litigated numerous

1
2 sexual harassment cases. In doing so, she has
3 reviewed hundreds of cases decided under federal law
4 in which the focus was not to end harassment in the
5 workplace, but to determine whether such conduct met
6 an objective bar of severity or pervasiveness so as
7 to hold the employer liable.

8 Miss Fishel has had many, many plaintiffs
9 who had their cases dismissed under this standard
10 because the conduct complained of could not meet a
11 sufficiently high threshold, even when the conduct
12 was undeniably offensive to women, including sexist
13 comments, jokes, threats and obscene gestures and
14 touching. The result was that women who experienced
15 gender-based harassment were forced to either
16 continue to work under disparate circumstances or
17 were forced out of the workplace; in either case,
18 they suffered serious consequences; emotional
19 distress and/or a loss of income.

20 Both Williams and Bennett, two of the
21 cases that Int. 0814 seeks to codify, reject the
22 severe or pervasive standard [bell] set forth under
23 federal law and instead rely upon a more inclusive
24 standard with a goal of eradicating hostile work
25 environment, sexual harassment in the workplace; not

1 just limiting the most severe repetitious incidents
2 of such identifiable conduct. Under these cases, a
3 plaintiff does not need to prove that the harassment
4 was severe or pervasive, but rather that she
5 experienced offensive conduct because of her gender
6 and that her male counterparts were not forced to
7 endure the same or similar treatment. Thanks...

8 [interpose]

9
10 COUNCIL MEMBER LANDER: Thank you; can
11 you... we've got the written testimony, so if you wanna
12 summarize... [crosstalk]

13 LAUREN VETTERS: Yep, sure, sure. Thank
14 you; thank you for your time.

15 COUNCIL MEMBER LANDER: Thank you very
16 much.

17 DAN ALTERMAN: Good afternoon to you,
18 members of the City Council. My name is Dan Alterman
19 and I'm here to speak on behalf of NELA, and over the
20 last 45 years I've been doing civil rights work; I
21 have done over 8,000 cases in my time and I can
22 largely say that the strengthening of 0814 of the
23 Human Rights Law is overdue and necessary. And one
24 of the things I'd like to share with you is sometime
25 in the 70s I represented Craig Gurian, [laughter] who

1 shows that he's here today and in 1991, when he was
2 at the City Commission, he worked very hard to get a
3 law that in all of its worth was the best law in the
4 United States of America, and when judges weren't
5 following that law, and what I'm talking about is
6 discrimination is worse than an injury; it should be
7 treated as breaking one's heart; it should be treated
8 with severity; attorney's fees are a good deterrent,
9 but when the courts of this state were not supporting
10 the City Human Rights Law, Craig and his colleagues
11 went in and passed the Restoration Act. I did the
12 first case under the Restoration Act and it allowed
13 me to maintain a retaliation action on behalf of a
14 sexual harassment victim. So for me, strengthening
15 the law at this time is indicative of the
16 relationship between the three cases that were cited,
17 of course the first case, the Court of Appeals case,
18 in Albunio is by Robert Smith, a Court of Appeals
19 judge who is known for being a right-leaning judge.
20 And then the other two cases, Williams and Bennett,
21 were done by Rolando Acosta, presently on the
22 Appellate Division First Department. These cases
23 show a convergence of the law that makes
24 discrimination victims have access to courts; they
25

1
2 have access to courts so they will get, in most
3 cases, a jury trial and that is critically important
4 in moving the ball forward and moving the ball
5 forward for what needs to be done. We have the
6 greatest law in the country, in my opinion; we need
7 to strengthen it so that judges and employers reckon
8 that if they support and do not deal with
9 discrimination they will be held accountable. And
10 likewise, with the City Commission; I appreciate them
11 being here today, but we wanna go to the City
12 Commission and litigate our cases for those cases
13 that deserve it; the defense bar knows in the City
14 Commission that our cases [bell] will linger and they
15 will linger in the administrative courts, but if we
16 have an attorney's fees component it becomes the
17 stick to prevent further retaliation and to prevent
18 further injustice. If I go to the EEOC with a case
19 that's a tough case, they won't even mediate a case,
20 and in this particular instance, strengthening the
21 Human Rights Law is what's needed at the right time.

22 I use Bennett and I use Williams all the
23 time and for me it's an access to court questions.
24 When I was on judicial screening committees a few
25 years ago, there were many Supreme Court judges that

1
2 did not know the difference between the City Human
3 Rights Law and Title 7; didn't know that one was the
4 floor and one was the ceiling, they thought it was
5 both the same; that means you lose; that means you
6 lose. So to those who may be disturbed by Int.
7 0814's innovative use of the specific case law to
8 make the necessary point, I'd like to conclude by
9 saying just three things. First, as Craig said,
10 there's no prohibition against a judge's [sic]
11 guidance; second, doing so is a practical way to
12 proceed; we need to get into courts or commissions to
13 deal with discrimination and try and fight those
14 horrendous kinds of things; third, Int. 0814 provides
15 the guidance and let's not mince words; we need all
16 the help that we can get to prevent the clear and
17 direct harm that causes victims of discrimination and
18 dilution of our civil rights. Thank you very much.

19 KENNETH KIMERLING: Madame Chair; members
20 of the City Council, my name's Kenneth Kimerling; I'm
21 the Legal Director at the Asian American Legal
22 Defense Fund, and you can read it as you leave...
23 [background comments] [laughter] and I'm not gonna
24 read it to anybody else. But I just wanted to say a
25 few things; one, I've been a civil rights lawyer with

1
2 Danny for over 45 years; I've been 25 years that used
3 to be the Puerto Rican Legal Defense Fund; I've been
4 over 18 years at the Asian American Legal Defense
5 Fund; I've done housing discrimination; [interpose,
6 background comment] I've done Attica; I've done
7 voting rights; I've done employment discrimination
8 and what stands out is the Human Rights Law in the
9 city of New York; it is a beacon for the whole
10 country and the Council should be proud of its
11 efforts to continue to strengthen that law and
12 continue to make it stronger and I thank Council
13 Member Lander for his efforts in this, because he's
14 [background comment] clear and I agree with
15 everything he said in regard to the City Commission.
16 I think I was appalled, frankly, with their position
17 on 0814; there is no reason, there's nothing that
18 stands in the way of this Council enacting 0814 and
19 it's clearly needed; it is the kind of law that makes
20 the Human Rights Law have real teeth and real power
21 in the courts and it gives the guidance to the judges
22 and the litigants and even the pro se litigants. If
23 the Commission thinks they need interpretation in
24 those cases, they can write guidelines; they think
25 they have the principals, put it down; nobody's

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2 opposing that; it's just making it very clear for the
3 primary actors in this who go to court that they have
4 the tools to get the results that the Human Rights
5 Law provides. It's clear to me that 0814 is the
6 critical element in this panoply of legislation; I
7 support the other provisions, but I really wanna urge
8 the City Council and members of this committee to go
9 forth on 0814. Thank you very much.

10 CHAIRPERSON MEALY: Thank you.

11 COLLEEN MEENAN: Good afternoon council
12 members. My name is Colleen Meenan and I'm a
13 practicing attorney, 25 years in practice here in New
14 York City and I speak today on behalf of my clients
15 and all of those that can be pretty much voiceless in
16 the face of discrimination. I urge the passage as
17 well of Int. 0814 and in some ways I'm intimately
18 more familiar with some of it because I was the lead
19 trial counsel in the case of Lori Albunio; that case
20 lasted over 30 days and I'll just give you a little
21 bit of the background of that case to show you how
22 significant that case was and how significant it is
23 that you include it in the construction provision.

24 First of all, that case was brought under
25 the New York City Human Rights Law and but for the

1
2 New York City Human Rights Law, the individuals in
3 that case probably would not have had their day in
4 court and not for the liberal and broad construction
5 as well as a great judge that we had in New York
6 Supreme Court, Judge Martin Shulman, who was willing
7 to oppose the City's interpretation and he was
8 willing to rely upon the Restoration Act and the
9 interpretations of the Restoration Act and he allowed
10 that case to go before a jury and it was a hard-
11 fought case.

12 The basis of the case was that a police
13 sergeant by the name of Robert Sorrenti had applied
14 for a position working in the Youth Services Section
15 of the New York City Police Department with children.
16 Lori Albunio, who was the captain at that time, had
17 interviewed him and approved him to be promoted more
18 or less to a nice position after 20 years of service
19 working with kids and educating kids. Lieutenant Tom
20 Connors was the assistant to Albunio; she had also
21 interviewed Sorrenti and she also thought he was
22 qualified for the position. The interview was then
23 passed and Sorrenti's recommendation was passed to
24 Chief James Hall and Chief James Hall decided to
25 decline the recommendation of Sorrenti for the

1
2 position because he believed that Sorrenti was a gay
3 man and he expressed to Captain Albunio that he would
4 not be able to live with himself at night if Sorrenti
5 was given that position working with children.

6 So initially Connors came forward and
7 filed an internal complaint and that pretty much
8 ended his career; he was hopeful of moving on to the
9 Detective Division and he was denied that position;
10 pretty much they made the terms and conditions of his
11 employment so awful that he ended up retiring. Lori
12 Albunio lost her command; she was the commanding
13 officer of the Youth Services section and she was
14 transferred to a transit district [bell] in Union
15 Square where she played out the rest of her career
16 and retired, and Sorrenti ultimately retired as well.
17 And but for this law, that case would not have been
18 brought to trial and before a jury and that's all
19 most of us ask for; give us a jury; it doesn't mean
20 we win, because I've lost cases, but all I want is a
21 fair shot; all I ask for my clients is a fair shot,
22 and the work that you're doing gives us that fair
23 shot, gives us that chance; takes away the discretion
24 of a judge when it's a powerful institution or a
25 powerful employer to say that they're gonna dismiss

1 the case rather than do what's right under the law.

2 So thank you for this; it's really, really important

3 and it's really important for people that face these

4 issues; I think you understand that; just give us the

5 tools we need to get some justice and an equal

6 chance. Thank you very much.

7 CHAIRPERSON MEALY: Thank you. That was

8 awesome, every last one and I try to tell people,

9 also my constituents, someone who is fighting against

10 their employer and if you don't have an expert

11 testimony, my legislation would definitely help them

12 with that case also, so thank you.

13 DAN ALTERMAN: Just give us a chance;

14 we'll take it.

15 CHAIRPERSON MEALY: I believe you will

16 [background comments] and we're gonna work on it now.

17 Thank you so much. Thank you... [crosstalk]

18 DAN ALTERMAN: Alright. Thank you, thank

19 you Miss [sic] Chair.

20 KENNETH KIMERLING: Thank you.

21 CHAIRPERSON MEALY: Thank you for all the

22 work that you do, all of... We have one last panel --

23 Michael Grenert, NELA/New York; Brian Heller,

24 Christine Clarke Legal Service New York City; Felicia

1
2 Nastor, Esq. This is our last panel. Anyone can
3 start.

4 MICHAEL GRENERT: I guess I'll start. My
5 name is... [crosstalk]

6 CHAIRPERSON MEALY: Ah, thank you.

7 MICHAEL GRENERT: Michael Grenert; I
8 handed out testimony; I've been here once before; I'm
9 a member of the Executive Board and Legislative
10 Committee of NELA/New York, the National Employment
11 Lawyers Association, the New York chapter; we
12 represent plaintiffs and victims of discrimination in
13 these types of cases and I've also been practicing in
14 this area, representing victims of discrimination for
15 19 years.

16 On behalf of NELA/New York I wanna thank
17 the Chair for introducing Int. 0818 and I'm here
18 today to express NELA/New York's support for that
19 legislation.

20 Int. 0818 takes three important steps to
21 make it easier for victims of discrimination to
22 vindicate their rights. First, the bill provides for
23 the recovery of expert fees and other costs; it's
24 often the case that an expert's necessary, whether to
25 provide testimony as to how a victim has been

1
2 affected by the discrimination, testimony as to the
3 statistical composition of a workforce or otherwise
4 retaining one is generally an expensive proposition.
5 Without assurance that these fees will be recovered,
6 an employee or the employee's attorney may not be
7 able to retain the experts needed or may not even
8 take the case at all and with Int. 0818 this barrier
9 will be removed.

10 Secondly, the bill removes the penalty
11 currently suffered for attorneys who work in New York
12 City but who do not work in Manhattan; the Human
13 Rights Law is designed to encourage the prosecution
14 of acts of discrimination and making sure that these
15 attorneys do not have their fees reduced because of
16 where in the city they work is an important step.
17 Please remember that the fees are still being limited
18 to those charged by attorneys of similar skill and
19 experience.

20 Third, the bill deals with the fact that
21 attorney's fees are currently only available for
22 court proceedings, not administrative proceedings
23 before the Commission. There have been and will
24 continue to be reasons why many cases will be brought
25 in court, including the fact that it's only in court

1 that punitive damages are available and the fact that
2 the plaintiff has more control over proceedings in
3 court. But there are cases that should appropriately
4 be brought to the Commission and many times our
5 colleagues cannot afford to bring these cases at the
6 Commission because: 1. the damages involved are not
7 sufficient to be able to handle the case on a
8 contingency fee basis; and 2. no fees are available.
9 We anticipate that the availability of attorney's
10 fees at the Commission will encourage many more cases
11 to be filed there.
12

13 It's almost always the case that when
14 expanding the strength of a civil rights law there
15 will be people who will cry that the sky is falling
16 if these amendments are passed; we would remind the
17 committee that fees are only available when the
18 plaintiff has prevailed and discrimination has been...
19 [crosstalk]

20 CHAIRPERSON MEALY: Right, won the case.

21 MICHAEL GRENER: has been found. In
22 other words, if the case doesn't have merit; fees
23 will not be available. So the decision really comes
24 down to whether meritorious cases of discrimination
25 should be encouraged to be brought; doing so is

1
2 essential we think and Int. 0818 helps in the process
3 [bell] and we urge its passage. I will just conclude
4 by noting that, you know there might be a perception
5 that this bill is designed to help attorneys and
6 maybe it does do that, but it's principally designed
7 to help the victims of discrimination and it's
8 designed to make sure that the remedies are what are
9 known as "make whole" remedies because if a plaintiff
10 wins but has to pay, you know, \$50 or \$100,000 to pay
11 an expert... [crosstalk]

12 CHAIRPERSON MEALY: For their lawyer.

13 MICHAEL GRENERT: for example and can't
14 recover those fees, they're not gonna be completely
15 made whole for what they've suffered as a result of
16 the discrimination. Thank you.

17 CHAIRPERSON MEALY: Thank you. Kudos.

18 CHRISTINE CLARK: Good afternoon. My
19 name's Christine Clarke; I'm a Staff Attorney at
20 Legal Services NYC; I've handed out testimony, but
21 I'm just gonna sort of speed it up a little.

22 So I wanna thank the Civil Rights
23 Committee, but in particular, Council Member Mealy
24 for introducing Int. 0818 and also for all the other
25

1
2 hard work that has been going into the Human Rights
3 Law in the past year or two.

4 Legal Services NYC is the largest
5 provider of free civil legal services in the country;
6 I work in the Civil Rights Justice Initiative where
7 we represent victims of discrimination of all kinds
8 in all of the boroughs.

9 With respect to 0818, I think we all
10 understand that the reason that our civil rights laws
11 have attorney's fees attached to them is essentially
12 for two reasons; one is that our administrative
13 bodies, like the Commission on Human Rights, don't
14 have the resources to enforce a broad civil rights
15 law on behalf of everyone and so private attorneys
16 need to step into the breach and we at Legal Services
17 represent clients but also rely on the private bar to
18 represent our clients for us and we don't have
19 resources to do so.

20 The second reason we have attorney's
21 fees, of course, is to make sure that people can get
22 attorneys even if they can't afford them. We believe
23 that, you know, it's sort of a public statement that
24 meritorious discrimination claims should be brought;
25 that it's in the public good that they be brought to

1
2 enforce civil rights laws regardless of the resources
3 of the victims of discrimination.

4 So that being said, having a human rights
5 law that is enforced in federal court, at the moment,
6 in a way that encourages lawyers to bring cases in
7 Manhattan and not in Brooklyn is simply not an
8 equitable rule and the fact there happens to be two
9 federal judicial districts in New York City has
10 really no relationship to how we feel as
11 practitioners and advocates, and presumably as
12 politicians, about our Human Rights Law; it is the
13 same in Brooklyn and New York and Queens and Staten
14 Island.

15 In my previous life as a private
16 attorney, I can absolutely say that the forum rule
17 affected the kinds of cases that we took. A case in
18 Brooklyn or Queens or Staten Island had to be 30%
19 better for us to take that case than a case in
20 Manhattan because we knew we would not get paid the
21 same for all our hours of work and that is a
22 travesty. And so on behalf of all of our clients in
23 all the five boroughs, I do believe that 0818 will
24 provide a great service to victims of discrimination.
25 Thank you.

1
2 CHAIRPERSON MEALY: Thank you.

3 BRIAN HELLER: Thank you. My name's
4 Brian Heller; I'm from Schwartz & Perry; we're a firm
5 in New York City representing employees in the
6 workplace; I've been there for almost 15 years and
7 I'm a Partner.

8 I was hoping to speak today about
9 Int. 0814 and about some real life circumstances
10 we've had and how these cases, Williams, Bennett and
11 Albunio have really impacted our practice.

12 In one case we represented a woman who
13 had been sexually harassed in the most degrading way,
14 which included men in her workplace, including her
15 boss, making repeated comments about her body and the
16 body of her female coworkers; she was even told that
17 she should respect a man who was recently hired
18 because he was "male and more powerful than her."
19 She was propositioned for sex by her supervisor and
20 when she refused and protested, she was fired.
21 Remarkably, the trial court granted some readjustment
22 to the employer and dismissed the case; the trial
23 court ignored the Restoration Act and Williams and
24 dismissed them as special consideration and then
25 applied the federal standard.

1
2 We're required to appeal to the Second
3 Circuit to reverse this decision and earn the right
4 to get to a jury; we were helped or largely [sic] by
5 the fact that Bennett, while this case was pending,
6 had identified that particular decision as an example
7 of how the lower courts had failed to file the broad
8 analysis demanded by the Restoration Act. We also
9 relied on Albunio and its broad interpretation. Not
10 every client however has the resources to appeal a
11 decision that narrows the city law and Int. 0814 will
12 give plaintiffs and their counsel the authority to
13 make certain that trial judges get the interpretation
14 right in the first place.

15 To offer another example, even after
16 Bennett I found myself in front of an appellate panel
17 who did not fully appreciate the impact of the
18 Restoration Act; instead of understanding that all
19 provisions of the law must be subject to a liberal
20 construction, including the analysis that's used, the
21 panel maintained that the only way the court's
22 analysis could be changed from before the Restoration
23 Act was that the City Council actually amended the
24 city law to say so. The court relied on pre
25 Restoration Act decisions and failed to appreciate

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2 that the Restoration Act did in fact change the
3 framework for discrimination cases.

4 The fact that an appellate had this
5 problem seven years after the Restoration Act was
6 passed should demonstrate to the Council that these
7 issues, though they should be settled, remain
8 contested. We need Int. 0814 to put to rest any
9 loopholes sought to be inserted into the Restoration
10 Act and we need these decisions elevated so that
11 judges recognize their importance and their impact on
12 the city law. Thank you very much.

13 CHAIRPERSON MEALY: Thank you.

14 FELICIA NASTOR: Good afternoon; I'm
15 Felicia Nastor; I'm a solo practitioner and also
16 member of NELA/New York and a member of the Board of
17 NELA/New York. I'm here to read the testimony of
18 Rita Sethi, who could not be here today.

19 "I'm an employment lawyer and I practice
20 in the New York metropolitan area and Long Island; I
21 have been representing victims of discrimination for
22 more than 20 years. In my legal practice, the
23 Restoration Act, through the case law it has
24 generated because of its enhanced liberal
25 construction provision, has been a boon that empowers

1
2 lawyers to provide remedies to individuals who would
3 have no legal recourse for the wrongs they have
4 experienced. Most significantly for my cases has
5 been the eradication of the too strict standard of
6 severe or pervasive that was created under federal
7 law to set a threshold requirement for designating
8 workplace abuse as a hostile work environment.

9 With Williams I have not brought cases
10 that might not have survived jury scrutiny under
11 federal law. Under federal law, for example, I would
12 not have taken the risk of litigating the case where
13 a salesman was given a lap dance at an industry
14 networking conference by his female supervisor or a
15 case where a female sous chef's breast was groped by
16 a kitchen manager of a restaurant. In both
17 circumstances the conduct was clearly discriminatory
18 and thanks to the City Human Rights Law case law,
19 those are now both matters that have been able to be
20 filed.

21 The uniquely broad and remedial
22 construction required by the Restoration Act has
23 helped fight discrimination on other bases too. Last
24 year I filed a religious discrimination case under
25 city law. Under federal law the relentless

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2 proselytizing that the employee had been subjected to
3 would not be actionable because it did not entail the
4 religious denigration that the law requires to reach
5 the level of a hostile work environment. The city
6 law however provided recourse for this worker; during
7 discovery documents produced by the defendants
8 revealed religious slurs that exposed their religious
9 animus. Without the Restoration Act, this case would
10 never have been litigated; this defendant would never
11 be accountable for his actions and this employee
12 would've never been vindicated.

13 I thank the Council for having passed the
14 Restoration Act back in 2005 and I urge the Council
15 to now ensure that the best developments under the
16 Act are ratified as examples of the appropriate
17 method and approach of interpreting the City Human
18 Rights Law."

19 CHAIRPERSON MEALY: I just wanna thank
20 everyone on this important law and I really like my
21 bill, my intro... [interpose]

22 CHRISTINE CLARK: I know you mentioned
23 that you thought all the lawyers here would be for
24 it, but they probably are.

25 [laughter]

1
2 CHAIRPERSON MEALY: That's good; I really
3 appreciate that, 'cause the layman is really almost a
4 paycheck away from unemployment and then if they do
5 have a case, they would not be able to really present
6 a full presentation and now that they can have a
7 trial attorney, expert testimony, and then if they
8 win the case, that's the only time they, you know get
9 paid and I'm glad that now no matter what case, and
10 it was brought to my attention that if you do a case
11 in Brooklyn it's different wages than Manhattan; I
12 guess they feel Manhattan is it, but they don't know
13 Brooklyn is it. So we're looking forward across the
14 board that everyone will get a fair share in this New
15 York City against discrimination. So I thank you,
16 everyone for coming and advocating for the city of
17 New York and this hearing is now adjourned. Thank
18 you.

19 [gavel]

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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 December 23, 2015