

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CIVIL AND HUMAN RIGHTS

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16<sup>th</sup> Fl.

B E F O R E: MATHIEU EUGENE  
Chairperson

COUNCIL MEMBERS: Daniel Dromm  
Ben Kallos  
Brad S. Lander  
Bill Perkins  
Ydanis A. Rodriguez  
Helen K. Rosenthal

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

Diana Sussman, Deputy Commissioner for  
Intergovernmental Affairs and Policy,  
New York City Commission on Human Rights

Sarah Sanchala, Director of Government Relations  
Planned Parenthood of New York City.

2 [sound check] [pause] [background  
3 comments, pause]

4 CHAIRPERSON EUGENE: Take your seat and  
5 please. We're going to start right now. [gavel]  
6 Good morning. My name is Mathieu Eugene, and I'm the  
7 Chair of the Civil and Human Rights Committee. Today  
8 our hearing will be hearing testimony on Intro 863,  
9 which would amend the Administration Code to prohibit  
10 employment discrimination based on individual  
11 reproductive choices. This bill aims to make a  
12 number of changes. The first section of Intro 863  
13 for instance would expand the lease of protected  
14 bases by adding sexual and reproductive health  
15 decisions to the lease. Section 2 of the bill and  
16 while it expands the definition of sexual and  
17 reproductive health decisions. Under this section of  
18 bills of the bill such a decision would now be  
19 classed as indecision by employees to receive  
20 services, which are arranged for or offered or  
21 provided to an individual relating to—to the  
22 reproductive system and its functions including, but  
23 not limited to fertility related medical procedures,  
24 family planning services and counseling including but  
25 not limited to access to all already approved birth

2 control drugs and supervised emergency section,  
3 sterilization processes, pregnancy testing, section  
4 for transmitted for disease testing and treatment,  
5 abortion processes and HIV testing and counseling.  
6 By adding sexual and the parties have decision to the  
7 lease of protected integrities, this bill aims to  
8 make it unlawful for employees to discriminate  
9 against their workers actual and to see sexual-  
10 employees have choice. We look forward to hearing  
11 from the Administration under guidance and the best  
12 way to strengthen these protections. Before we  
13 begin, I would like to acknowledge the members of the  
14 committee, the members who are with us, the Council  
15 Members. We have Council Member Kallos, Council  
16 Member Rosenthal and Council Williams, the sponsor of  
17 the bill, and at this time I want to give it to  
18 Council Member Williams the opportunity to make a  
19 statement. Council Member Williams, please.

20 COUNCIL MEMBER WILLIAMS: Thank you, Mr.  
21 Chair and thank you for holding this hearing. Again,  
22 thank you Chair Eugene, Speaker Johnson, my  
23 colleagues and members of the committee and all who  
24 will be joining us today. I do want to take some  
25 personal privilege to shout out some family in the-in

2 the audience. My cousins from across the pond also  
3 know as England and my Cousin Ian and his son Joe and  
4 his girlfriend Kathryn. Welcome. I am proud that  
5 are hearing this profound bill today, which will  
6 serve to protect women and men from ever fearing  
7 whether their personal health and reproductive  
8 choices will risk their jobs. I want to thank  
9 Council Member-Majority Leader Cumbo and Council  
10 Members Rosenthal who have been working with me on  
11 this bill since last term, the end of last year  
12 actually and the Chair of the Women's committee  
13 Council Members Rivera and Chin, the Chairs of the  
14 Woman's Caucus, and Council Member Rose who are all  
15 co-primes on this bill also know as the Boss Bill to  
16 prohibit employee discrimination on the basis of  
17 sexual and reproductive health decisions. Sexual and  
18 reproductive health decisions will be defined as any  
19 decision by an employee to receive services, which  
20 are raised for or offered or provided to individuals  
21 relating to their reproduction system [coughs] and  
22 its functions including, but not limited to fertility  
23 related medical procedures, family planning and  
24 services and counseling including, but no limited to  
25 access to all medically approved birth control drugs

2 and supplies, emergency contraception, sterilization  
3 procedures, pregnancy testing, sexually transmitted  
4 disease, testing and treatment, abortion procedures  
5 and HIV testing and counseling. Throughout the  
6 country we have seen an erosion of rights and access  
7 for women, LGBT people, people with more color and  
8 our immigrant brothers and sisters and most of them  
9 are religious brothers and sisters as well. With  
10 Washington rolling back requirements for employees,  
11 it is incumbent upon us as leaders of our city, a  
12 city that serves as a beacon for protections of the  
13 most vulnerable among us to ensure that our citizens  
14 never face retaliation, to ensure that our citizens  
15 or our residents never face retaliation, unemployment  
16 or discrimination for seeking much needed sexual and  
17 reproductive healthcare. Protecting against  
18 discrimination--this discrimination is an urgent  
19 necessity, especially in the time of Trump and  
20 allowing discrimination---I would say in the time of  
21 Trump and those who support him, and allowing  
22 discrimination based on sexual and reproductive  
23 health decisions is clearly meant to deny women and  
24 all of our residents their human rights. An employer  
25 has no place in these deeply personal matters. The

2 boss has earned praised from Planned Parenthood. I  
3 want to thank them as well, and I believe they'll be  
4 testifying soon. Among other organizations, Planned  
5 Parenthood New York City President Laura McQuade is  
6 quoted in the New York Daily News: "With the Trump  
7 Administration taking direct aim at birth control  
8 access with the new rule permitting employees and  
9 universities to deny birth control for their  
10 employees, and says that it has never been more  
11 critical for New York to stand up for the  
12 reproduction-reproductive healthcare access. Birth  
13 control is essential to being able to build the  
14 families and lives we want. 90% of women use birth  
15 control during their lives. All people have a right  
16 to access to birth control regardless of who they  
17 work for." End quote. The Boss Bill is a crucial  
18 piece of legislation that will prevent any worker  
19 from discrimination and protect the human rights of  
20 this impacted by the cruelty and caprice of the Trump  
21 Administration, and the Far Right. I look forward to  
22 today's hearing as we move the ball forward for all  
23 women and men in our city. I also do want to thank  
24 Cathy Travis that came to me with many of their  
25 concerns. I told them this bill was eminently

2 important that we move forward, but we were able to  
3 work with them to address the concerns they had, and  
4 still have a bill that Planned Parenthood could be  
5 proud of. So, I'm thankful we're able to do. Thank  
6 you again to the Chair, and that's the end of my  
7 testimony—my opening statement. 7:28

8 CHAIRPERSON EUGENE: Thank you very much,  
9 Council Member Williams for sponsoring this very  
10 important bill, and I want to turn and congratulate  
11 all the sponsors and those who had—who made this  
12 possible. Thank you very much, and I want to mention  
13 also that this—today is a very busy day. I have  
14 three public hearings, two at the same time. I have  
15 to go to the other Chamber to excuse myself because  
16 the Land Use vote is being called at this time, and  
17 then another public—and I sit on all three  
18 committees, and after this one, I've got another one.  
19 So, I know this is a very important hearing, and I'm  
20 pleased to be here, and again to all of you who  
21 worked hard to make this bill possible, thank you  
22 very much. Now, we are going to call upon the  
23 Administration to testify, but before that, we are  
24 going to administer the—the oath.



2 LEGAL COUNSEL: Please raise your right  
3 hand. Do you affirm to tell the truth, the whole  
4 truth and nothing but the truth in your testimony  
5 before this committee and to respond honestly to  
6 Council Member questions?

7 DEPUTY COMMISSIONER SUSSMAN: Yes.

8 LEGAL COUNSEL: Thank you. Please state  
9 your name for the record.

10 DEPUTY COMMISSIONER SUSSMAN: Good  
11 morning. My name is Diana Sussman, Deputy  
12 Commissioner for Intergovernmental Affairs and Policy  
13 at the New York City Commission on Human Rights.  
14 Thank you, Chair Levine and the bill's sponsor,  
15 Council Member Jumaane Williams, Council Member Helen  
16 Rosenthal and Council Member Ben Kallos for being  
17 here today to discuss this bill, which protects  
18 employees from discrimination on the basis of sexual  
19 and reproductive health decisions. In my testimony I  
20 define or I-I list the definition of sexual  
21 reproductive health decisions, but it's been said  
22 already. So, I'll skip that. The Commission and the  
23 Administration support the goals of the legislation  
24 and the right to be free from discrimination based on  
25 one's decision to become pregnant, to undergo

fertility related medical procedures to terminate a pregnancy and/or to seek treatment for sexually transmitted infections including HIV-AIDS. The commission has prioritized the areas of pregnancy discrimination and disability discrimination over the last several years. The New York City Pregnant Workers Fairness Act, which created an explicit right to reason-to reasonable accommodations in the workplace for "pregnancy, child birth and related medical conditions" went into effect in 2014. The Commission has broadly interpreted these protections to include accommodations for not only pregnancy and childbirth, but infertility treatment, miscarriage, abortion, recovery from childbirth and lactation. In 2016, the Commission published legal enforcement guidance on pregnancy discrimination that explicitly clarifies the Commission's broad interpretation of these protections and provides transparency about one's rights and responsibilities under this provision of the city's Human Rights Law. The Commission's caseload of pregnancy discrimination cases has steadily increased in recent years, and the Commission has resolved several significant cases in this area. I'll share just two examples briefly

today. Earlier this year the commission settled the case on behalf of the Worker at Whole Foods for failing to accommodate her during her pregnancy. The worker had a high risk pregnancy and was advised by her doctor to work shorter shifts. Whole Foods denied her the accommodation and then terminated her when she was hospitalized with pregnancy complications. The Commission required that the employer pay the worker a total of \$35,000 in damages for both back pay and emotional distress. Nearly \$6,000 in attorney's fees to her Counsel and \$25,000 in civil penalties to the city of New York. The agreement with the Commission also requires Whole Foods to change its policies with regard to employee attendance and accommodations to comply with the City's Human Rights Law, and to train all HR employees on the updated policies. And last year the Commission resolved a case on behalf of a flight attendant who worked for Endeavor Air, which operates out of JFK, and who was denied a place to pump breast milk close to where she worked. The Commission obtained \$20,000 in emotional distress damages for the flight attendant, collected \$10,000 in civil penalties and required national policy changes on

2 pregnancy and lactation accommodations and training  
3 for its New York City based staff. The Commission is  
4 supportive of the goals that Intro 863 to the extent  
5 it comports with existing law, and is committed to  
6 ensuring that New Yorkers do not face discrimination  
7 based on their very personal choices to become  
8 pregnant, to have an abortion, to see treatment or  
9 counseling for sexually transmitted infections. The  
10 Commission recommends that the protections proposed  
11 in the bill and the context of employment be extended  
12 to housing and public accommodations. The Commission  
13 also looks forward to discussing with Council  
14 meaningful strategies for effectively notifying both  
15 covered entities of their obligations and workers and  
16 other tenants and people who frequent public  
17 accommodation of their rights under the city's Human  
18 Rights Law. We are grateful for the opportunity to  
19 be here today, and to partner with the Council to  
20 move the bill forward. Thank you for convening this—  
21 this hearing on the—on this important issue, and I  
22 look forward to your questions.

23 CHAIRPERSON EUGENE: Thank you very much.

24 Let me say that this is—this is a very important  
25 hearing because we all know that this is a human

2 right. It was right to decide about reproduction and  
3 about the—the health, the sexual health, and I think  
4 that we in the City Council and the city of New York  
5 we have a moral obligation to do everything that we  
6 can do to protect everybody regardless of, you know,  
7 the social situation. You know, the worker's  
8 positions and I think this is a very important thing  
9 that we come altogether to make sure that the right  
10 of everyone is respected with respect to the  
11 reproductive, you know, decision, and thank you again  
12 for your testimony. Let me ask you, you said that in  
13 your testimony that the Commission case will forget—  
14 with medicine discrimination cases has steadily  
15 increase in recent years, and the Commission hasn't  
16 resolved. So there were significant cases in the—  
17 could you please give us some detail about it, please  
18 and what brought about those cases?

19 DEPUTY COMMISSIONER SUSSMAN: Sure. So,  
20 the—as I mentioned, the Pregnant Worker Fairness Act,  
21 which may it explicit that pregnancy accommodations  
22 are required so long as they don't pose and undue  
23 hardship on the employer. It went into effect in  
24 2014, which gave the Commission another tool to use  
25 to ensure that people have a right to an

2 accommodation for their pregnancy in the workplace,  
3 and I think partially as a result of that—of that law  
4 passing and the expansion of the Commission's  
5 resources, we have seen an increase in cases filed at  
6 the Commission alleging pregnancy discrimination. I  
7 have some general numbers here. In 2014 and 2015,  
8 there was approximately 38 filed cases for employment  
9 discrimination, for pregnancy discrimination in  
10 employment, and then the following two years that was  
11 up to 50 filed cases in employment, which doesn't  
12 account for, you know, the number of inquiries we  
13 receive or pre-complaint interventions or other ways  
14 that we might be able to negotiate or resolve a case.  
15 So, we are seeing an increase in cases. We are also  
16 seeing an increase in attorney filed cases at the  
17 Commission. The Council passed a law that allows for  
18 attorney's fees to be collected at the Commission.  
19 So, we're seeing cap (sic) representation, and very  
20 strong cases being brought to the Commission with  
21 regard to pregnancy discrimination and employment.

22 CHAIRPERSON EUGENE: Well, what do you  
23 think that are the causes of the increase of cases  
24 could be?

2 DEPUTY COMMISSIONER SUSSMAN: I-I think  
3 like I said that—that the explicit protections in the  
4 Pregnant Worker Fairness Act, which has now been New  
5 York City passed it in 2014. I think there's now 23  
6 such laws across the country. It's a—it's an  
7 incredibly important and powerful protection because  
8 prior to that under federal law you basically had to  
9 show that you—there was another person who was not  
10 pregnant who was given a similar accommodation. You  
11 couldn't be treated better, quote/unquote "better"  
12 because of your pregnancy than other workers. Now,  
13 there's explicit protections for people to recover,  
14 to—to have a healthy pregnancy while working and also  
15 to recover from childbirth. So, I think having that  
16 law in place has been a—has really changed the—the  
17 game in New York City. I also think that we, you  
18 know, this is an area that is of particular  
19 importance to the Commissioner. She was previously a  
20 workers' rights attorney, and she said, and I can  
21 represent that at certain points in her private  
22 practice, the vast majorities are cases were  
23 pregnancy discrimination cases. So, one of the first  
24 publications we issues back when the Commissioner  
25 started in March 2015 was notice of rights about

2 pregnancy, about this specific protection, and then we  
3 published our Legal Enforcement Guidance in 2016,  
4 which we hoped to then move into rule making next  
5 year, which has been--what we've heard from advocates  
6 has been incredibly useful in even advocating for  
7 their clients without having to come to the  
8 Commission and bring a complaint. I--and I will also  
9 add that I think that there is a lot of  
10 misunderstanding about pregnant workers' rights in  
11 the workplace. They--I think it is a challenging  
12 area. I think there is--this is one of the areas  
13 where we actually see overt discrimination where  
14 employers are sort of stepping and saying I don't  
15 think you should be doing this, and sort of making  
16 decisions for people as opposed to the pregnant  
17 worker and their doctor kind of coming to a decision  
18 about what is--is best for them.

19 CHAIRPERSON EUGENE: But you just  
20 mentioned some aspect of policy of the federal level,  
21 but are you aware of any policy changes at the  
22 federal level that may base it on access to report to  
23 you choices in addition to what you just mentioned?

24 DEPUTY COMMISSIONER SUSSMAN: Well,  
25 unfortunately we're seeing, you know, narrowing of



2 access to rights in—across the different issue areas  
3 with respect to the promulgation of rules at the  
4 federal level. You know, there's been some Supreme  
5 Court decisions that have given, you know, even  
6 privately held corporations the right to exclude  
7 certain kinds of care in their insurance policies.  
8 So, I think there—there is a real movement both with,  
9 you know, our federal administration and also the,  
10 you know, the makeup of the Supreme Court. I think  
11 there's a lot of concerns that we will see a further  
12 chipping away of reproductive rights. With respect  
13 to these types of bills, I have not seen anything at  
14 the federal level around discrimination based on  
15 reproductive health decisions that propose but, you  
16 know, I—I think that we are all sort on edge  
17 regularly about what the next sort of proposed rule  
18 or—or decision might be.

19 CHAIRPERSON EUGENE: Intro 863 we all  
20 agree this is a wonderful bill, but do you think  
21 that, you know, the Intro 863 fits to adjust the  
22 issues of discrimination lays on the positive right  
23 for—of choices?

24 DEPUTY COMMISSIONER SUSSMAN: I think so.  
25 You know, there—we—we—we want to work with Council

2 and also in consultation with the Law Department, of  
3 course, to ensure that—that the language of the bill  
4 reflects sort of our shared interest in ensuring that  
5 that people do not face discrimination based on  
6 reproductive or sexual health decision and I, you  
7 know, we—we agree with the goals of the bill, and—and  
8 seek to support it.

9 CHAIRPERSON EUGENE: So, what is—do you  
10 have all—do you have any recommendations, any advice  
11 on what can be done in addition to that to ensure  
12 that to ensure that the right of people are respected  
13 in term of a positive life.

14 DEPUTY COMMISSIONER SUSSMAN: One  
15 recommendation that we added that I noted in our  
16 testimony is—is to consider expanding these  
17 protections beyond the employment context to housing  
18 and public accommodations as well, and I think, you  
19 know, we are amenable to having further conversations  
20 about what other ways we might be able to strengthen  
21 the bill or strengthen the Commission's ability to  
22 enforce the—the law.

23 CHAIRPERSON EUGENE: [coughs] Excuse me.  
24 [background comments] It's getting cold, right  
25 outside. So, in terms of the discrimination based on

2 sexual reproduction—sexual reproductive life the  
3 decision, that kind of thing and jobs, and, you know,  
4 all seen anywhere in the housing and even in the  
5 school. But can you give us an example of cases in  
6 which an individuals was discriminated against, and  
7 how was it a public accommodation based on sexual  
8 reproductive kind of decision?

9 DEPUTY COMMISSIONER SUSSMAN: As we sort  
10 of discussed this bill internally we were trying to  
11 explore different scenarios. I mean these are not—  
12 the example I'll provide is not one that I've seen at  
13 a commission, but were thinking about the context in  
14 which someone might seek medical treatment from a  
15 provider, and the provider looks at one's medical  
16 history and sees that they had had an abortion for  
17 example, and the medical provider then determines  
18 that they are—they do not wish to—to take that person  
19 on as a patient. You know, medical providers are  
20 public accommodations like anyone else who has a  
21 business or provides a service. So, we would want to  
22 consider expanding the bill to address those kinds of  
23 service increase.

24

25

2 CHAIRPERSON EUGENE: Thank you very much.  
3 Let me call on Council Member Williams for some  
4 questions.

5 COUNCIL MEMBER WILLIAMS: Thank you, Mr.  
6 Chair. Thank you so much for your testimony and I  
7 worked with the Commission before, and we've done  
8 some—some great work protecting domestic violence  
9 victims, and—and veterans. So, I'm very glad that we  
10 can be doing this again. Wait, there's one thing I  
11 wanted to read into the record. Sorry, this is from  
12 and op-ed on that Ward (sic) and I wanted to make  
13 sure it was on the record. Just noting this is not a  
14 hypothetical situation. In general in the United  
15 States and even in New York employees primarily women  
16 have been target for employment discrimination  
17 because their personal reproductive health decisions.  
18 Michelle McCusker (sp?) a woman in Queens was fired  
19 from a religious school on New York for becoming  
20 pregnant outside of marriage, an a woman in Wisconsin  
21 was fired for using in vitro fertilization. Because  
22 all specific protections against such actions they  
23 fail—fall into the gaps of the system of law. So, I  
24 just wanted to make sure I lifted up the voices of  
25 those women that have to deal with this. Well, my

2 questions I guess was kind of what they Council  
3 Member was asking about other ways that we can  
4 protect employees' reproductive choices, but I do  
5 want to expand a little bit. I hadn't thought about  
6 housing and jobs, which is—I mean I hadn't heard  
7 about this issue 'til someone brought it to my  
8 attention last year. So, and the same for the  
9 veterans. Is there any way you can expand a little  
10 bit on how—what other examples you think in housing  
11 or jobs? Have you heard of any—and I'm sorry. Jobs.  
12 You said housing. What the other one?

13 DEPUTY COMMISSIONER SUSSMAN: Public  
14 accommodation.

15 COUNCIL MEMBER WILLIAMS: Public  
16 accommodation--

17 DEPUTY COMMISSIONER SUSSMAN:  
18 [interposing] Yep. Uh-hm.

19 COUNCIL MEMBER WILLIAMS: --particularly  
20 around housing are there any anecdotal things you  
21 heard about how that may be affecting people?

22 DEPUTY COMMISSIONER SUSSMAN: So, I  
23 haven't heard anecdotally, but, you know, we might  
24 not be the best ones to report on sort of those kinds  
25 of anecdotes. I would imagine advocates or, you

2 know, even Council Members if they've had  
3 constituents come to them. In the housing context I  
4 could imagine in the context of shelter if there are  
5 shelters that, you know, privately funded or, you  
6 know, that receive private money might not want to  
7 allow someone to say if they disagree with certain  
8 decisions. So, I'm thinking more in the context of-of  
9 a housing grid (sic) and a shelter context perhaps  
10 than of a private housing provider or sorry, more of  
11 a landlord/tenant situation.

12 COUNCIL MEMBER WILLIAMS: So, the impetus  
13 for adding areas to increase was just kind of  
14 brainstorming of what could happen in-in this  
15 scenario?

16 DEPUTY COMMISSIONER SUSSMAN: Yes, and I  
17 also think that we are generally reluctant to add  
18 certain protections in some context and not the  
19 other, and sort of wait for the problems to arise. I  
20 think if we're thinking about this, if we're  
21 prioritizing this as an area of expanded jurisdiction  
22 we'd like to try to be consistent unless we're  
23 intentionally excluding it because we have reason to  
24 intentionally exclude it.

2 COUNCIL MEMBER WILLIAMS: Thank you.  
3 Thank you, Mr. Chair. We appreciate the support. I  
4 do also want to shout out all the women who are  
5 Council Members who are under those well including  
6 Tish James our public advocate and soon to be  
7 Attorney General, but thank you all.

8 DEPUTY COMMISSIONER SUSSMAN: Thank you.

9 CHAIRPERSON EUGENE: Thank you Council  
10 Member Williams. Council Member Kallos, please.

11 COUNCIL MEMBER KALLOS: I want to start  
12 by thanking Council Member Williams for introducing  
13 and reintroducing this legislation and being a leader  
14 on this issues on reproductive rights. I want to  
15 thank our Majority Leader Laurie Cumbo. Our Women's  
16 Committee Chair Helen Rosenthal and, of course, the  
17 Committee Chair for this committee on Civil and Human  
18 Rights, Council Member Eugene who I had the pleasure  
19 of sitting up at every City Council meeting. Thank  
20 you. I'll just as a quick question. The United  
21 States Supreme Court that I don't necessarily feel is  
22 very representative of our nation currently, and may  
23 not be for quite some time, issued a landmark  
24 decision I guess that will be-live in infamy in Hobby  
25 Lobby. Will this introduction and legislation-and if

2 it comes to pass as a law be able to withstand the  
3 scrutiny of Hobby Lobby and are we as a city able to  
4 tell employers that they can no longer force their  
5 religious views onto the—the women and—and families o  
6 our great city.

7 DEPUTY COMMISSIONER SUSSMAN: So, these  
8 are the kinds of issues that we've been in—in  
9 discussion with the Law Department and we hope to  
10 have some of these deeper conversations with Council.  
11 What I will say is that Hobby Lobby was specifically  
12 around in the provision of health benefits and the  
13 requirement that a privately—a closely held private  
14 employer had to expand their health benefits to  
15 include certain whether it was birth control or  
16 emergency contraception that they—that the private  
17 owner has disagreed with based on their religion.  
18 Here we are not addressing the provision of health  
19 benefits. It' really about prohibiting  
20 discrimination, which, you know, the city has the  
21 space to create more protections under the law than  
22 federal and even state. So, we actually—this is—this  
23 is an area of the law that we have some liberty to  
24 sort of go further, and I—so, I think that if we  
25 focus it in that way, you know, we can construct



2 something and work with the Law Department and work  
3 with the Council to-to create legislation that would  
4 withstand scrutiny but again we, you know, this is  
5 something that I defer to some of the experts at the  
6 Law Department on.

7 COUNCIL MEMBER KALLOS: As an attorney  
8 who, and I think every attorney fancies themselves as  
9 a Constitutional lawyer, I imagine this thing we're  
10 looking at is strict scrutiny and because we're not  
11 legislating specifically with regards to healthcare  
12 but discrimination throughout the whole scope of the  
13 employment relationship that that would survive a  
14 strict scrutiny test because there is a public  
15 purpose in protecting individuals' rights to plan for  
16 a family. Would-would agree?

17 DEPUTY COMMISSIONER SUSSMAN: I think  
18 that's sort of the framework that we're operating  
19 under as well, yes.

20 COUNCIL MEMBER KALLOS: And so what we'd  
21 be saying is you can't discriminate if somebody is  
22 pregnant. You can't discriminate if somebody is no  
23 longer pregnant or if a person chooses to become  
24 pregnant or engages in any other reproductive health  
25 decisions and similarly if an employer decided to-to-

2 to—I believe in New York State all health insurance  
3 has to cover these pieces. So, I guess the only way  
4 in which that would happen is if the employer—if it  
5 was an employer managed healthcare program and they  
6 tried to somehow discriminate through their health  
7 insurance as well as other benefits around that.

8 DEPUTY COMMISSIONER SUSSMAN: Right, Uh-  
9 hm.

10 COUNCIL MEMBER KALLOS: Okay, thank you.

11 CHAIRPERSON EUGENE: Thank you very much,  
12 Council Member Kallos. Deputy Commissioner, could  
13 you explain on your comment about released in  
14 specific protection intention exclusion. There are  
15 this about the way the law can be interpreted?

16 DEPUTY COMMISSIONER SUSSMAN: I'm sorry.  
17 Can you—?

18 CHAIRPERSON EUGENE: Could you explain  
19 on your comment about this thing specific protection  
20 or international—intentional exclusion there are  
21 just, in fact, the way the law can be interpreted

22 DEPUTY COMMISSIONER SUSSMAN: I'm not  
23 sure I understand the question, but I think the  
24 general principle around construction of—of  
25 legislation from—from my perspective is we want to

2 make sure that we are not—if we are intentionally  
3 listing certain health decisions for example that if  
4 there's an omission it's not—it's not interpreted as  
5 an intentional omission. So that we are constructing  
6 the bill in such a way that can be interpreted  
7 broadly and that any omission may be because, you  
8 know, in 15 years there's a procedure that didn't  
9 exist at the time of drafting or we hadn't thought of  
10 that it isn't read to be an intentional omission.

11 CHAIRPERSON EUGENE: But with respect to  
12 Intro 63--

13 DEPUTY COMMISSIONER SUSSMAN: Uh-hm.

14 CHAIRPERSON EUGENE: --do you think  
15 there's any intention or consequences of this bill  
16 that maybe negatively add to the Human Rights  
17 protection?

18 DEPUTY COMMISSIONER SUSSMAN: I can't—I-  
19 at this point I cannot envision any sort of negative  
20 interpretation. You know, again we do want to ensure  
21 that we are keeping in mind some of the  
22 Constitutional principles that Council Member Kallos  
23 had identified, but again I think those can be  
24 discussed more extensively in negotiations.

2 CHAIRPERSON EUGENE: But can you also  
3 elaborate a little more on some of the education of  
4 this bill and its core vision?

5 DEPUTY COMMISSIONER SUSSMAN: I think the  
6 implications of the bill are what I think the--the  
7 intent is, which is that, you know, an employer would  
8 not be able to terminate an employee or not hire  
9 someone or, you know, cause any other sort of adverse  
10 action like a demotion or taking responsibilities  
11 away because they disagree with one's both  
12 reproductive or sexual health decisions. I'm sure if  
13 I'm fully understanding, but that is sort of my  
14 understanding of what the bill would do at this--at  
15 this point.

16 CHAIRPERSON EUGENE: But in our current  
17 city Human Rights Law are you aware of any gaps that  
18 are currently in our city Human Rights Law--

19 DEPUTY COMMISSIONER SUSSMAN: I think--

20 CHAIRPERSON EUGENE: --terms of I just  
21 say, you know, just for the nation pays on--on sex and  
22 health--producing health decisions.

23 DEPUTY COMMISSIONER SUSSMAN: Well,  
24 currently as I mentioned many of the procedures or--or  
25 choices that are identified in the--in the bill may

2 already be protected with respect to accommodations  
3 because of our broad interpretation of the pregnancy,  
4 child birth and related medical conditions language  
5 in our law. I should also mention that we have a  
6 very robust disability discrimination protections for  
7 which seeking testing, treatment or counseling for  
8 STIs including HIV-AIDS would already be protected.  
9 So, we have existing protections that we learn from  
10 how those have been enforced, and how advocates and  
11 individuals have used those protections to inform our  
12 work in this—in this space as well.

13 CHAIRPERSON EUGENE: Thank you very  
14 much. We have been joined by Council Member Dromm.  
15 Thank you. Okay, very good. So, how does the  
16 Commission of Human Rights respond to complaint about  
17 discrimination based on a protected choices? Could  
18 you draw us through--

19 DEPUTY COMMISSIONER SUSSMAN: Right.

20 CHAIRPERSON EUGENE: --when we see the  
21 complaint what happens?

22 DEPUTY COMMISSIONER SUSSMAN: Sure I--

23 CHAIRPERSON EUGENE: What--?

24 DEPUTY COMMISSIONER SUSSMAN: So,  
25 there's—there's—I would say in this space there might

1 be two avenues. The first is particularly with  
2 respect to a claim around let's say pregnancy  
3 accommodation where someone is in the workplace and  
4 they need an accommodation or to maintain their job  
5 or to avoid going on paid leave. We have an Early  
6 Intervention Unit that we've created for these kinds  
7 of cases that may require more swift intervention  
8 because filing a complaint and waiting for a  
9 respondent to respond. The pregnant worker may be  
10 forced to go out on leave during that time. The  
11 system, our process is just because of the due  
12 process issues and the way that our rules are laid  
13 out might just take too long for that pregnant  
14 worker. So, in some circumstances if that  
15 individuals is still working and needs and  
16 accommodation, the pregnant worker will—we will—we  
17 will route that to our Early Intervention Unit, which  
18 will negotiate hopefully a resolution with the  
19 employer so that the individual can get the  
20 accommodation that they need. Otherwise, the case  
21 might be filed as a complaint, which requires that  
22 the individual comes in and meet with—meets with an  
23 attorney in our Law Enforcement Bureau. That  
24 complaint is signed by the Complainant and then  
25

2 served on the responding party, and that initiates  
3 our investigation. Our investigation will involve  
4 looking at documents, interviewing witnesses,  
5 collecting other forms of evidence and making an  
6 assessment as to whether we believe that there is  
7 probable cause that discrimination occurred or not  
8 probable cause. At any point in this process  
9 especially if we are leading towards a probable cause  
10 determination we will try to potentially conciliate  
11 the case, which is essentially a three-party  
12 resolution. The Commission is a party, the  
13 responding party and the complaining party, and so we  
14 will—you know in the best of circumstances we will  
15 negotiate a settlement for the complainant, which  
16 could include damages for lost wages, emotional  
17 distress damages. It could include if there's back  
18 pay or front pay or other expenses maybe medic al  
19 expenses. Then we would negotiate whatever civil  
20 penalties that individual the responding party might  
21 have to pay to the city of New York as a punishment  
22 or a penalty for violating the law, and we might also  
23 negotiate a policy change, training requirements,  
24 which we often do particularly identify that the  
25 employer has not—does not have policies in place or

2 training in place to ensure that these kinds of cases  
3 won't come up again. And so, if we don't conciliate  
4 the case and we issue a probable cause finding that  
5 case we're going to enter in litigation, during the  
6 investigation the Commission is a neutral  
7 investigator. Once we find probable cause, the  
8 Commission is no longer neutral. The Commission's  
9 interest is in rooting out discrimination so we would  
10 litigate that case in most circumstances in behalf of  
11 the complainant, and bring that case to OATH to the  
12 Office of Administrative Trials and Hearings for a  
13 hearing, which would involve taking testimony from  
14 witnesses, and then the OATH judge, the ALJ would-  
15 would issue a report and recommendation, and our  
16 Commissioner and the Office of the Commissioner and  
17 Chair---and Chair would issue a decision and order a  
18 final decision and order in the case. But again,  
19 most cases don't go through the full litigation  
20 process as most cases in litigation and Federal or  
21 State Court don't and the case might resolve at any  
22 point along that--along that process.

23 CHAIRPERSON EUGENE: Than you very much.

24 Commissioner, I know that we know that--that, you  
25 know, we may have good intent and we mat be dedicated



2 and all heart to address an issue, but there are  
3 always some challenges, always regardless how good we  
4 may be, and—and what are the challenges and the  
5 obstacles faced by the Commission when trying to  
6 address the discrimination based on one of these  
7 Choices?

8 DEPUTY COMMISSIONER SUSSMAN: Well, again,  
9 at this point, I can only really report around our  
10 experience enforcing the law with respect to  
11 pregnancy or disability because those are the law  
12 that we have, and I think we are continually faced  
13 with the challenge of being flexible in our  
14 enforcement. Like I said, our—our agency has a  
15 litigation type function. So, it's a long—it can be  
16 a long process, and a lot of people are busy with  
17 many commitments and to engage in a another sort of  
18 administrative system is not workable for a lot of  
19 people and the—and the time it takes to process cases  
20 can—can be lengthy again because we have specific  
21 structures and mechanisms in place to ensure due  
22 process. So that is one of the challenges that we  
23 face and—and we've—we've made efforts to become a  
24 little bit more flexible in how we enforce the law.  
25 Again, creating an early intervention unit so that we

2 can try to negotiate resolutions earlier. It may  
3 just be a call from the Commission saying are you  
4 aware of the law? Do you know what your obligations  
5 are? That might be enough to get an issue resolved,  
6 but I think we are continually challenged with  
7 creating systems that acknowledge how busy people are  
8 and also how urgent some of these claims might be.

9 CHAIRPERSON EUGENE: Deputy Commissioner  
10 Diana Sussman, thank you so very much for your  
11 testimony.

12 DEPUTY COMMISSIONER SUSSMAN: Thank you.

13 CHAIRPERSON EUGENE: And thank you for  
14 the wonderful job that you are doing on behalf of the  
15 people of New York to ensure that rights of everyone  
16 is respected. Thank you very much.

17 DEPUTY COMMISSIONER SUSSMAN: Thank you  
18 so much.

19 CHAIRPERSON EUGENE: Have a nice day.  
20 Thank you. Now, we're going to call Sarah Sanchala  
21 from Planned Parenthood New York City. Thank you.  
22 [background comments, pause]

23 SARAH SANCHALA: Hi. Good morning.

24 CHAIRPERSON EUGENE: Good morning.

2 SARAH SANCHALA: My name is Sarah  
3 Sanchala, and I'm the Director of Government  
4 Relations at Planned Parenthood of New York City. I  
5 would like to thank Committee Chair Eugene for  
6 holding this hearing and Council Member Williams for  
7 sponsoring this legislation and the entire committee  
8 for your dedication to address this important issue.  
9 Planned Parenthood of New York City supports the  
10 passage of Intro 863, which would prohibit employer  
11 discrimination on the basis of sexual and  
12 reproduction health decisions. Planned Parenthood of  
13 New York City has been a leading provider of sexual  
14 and reproductive health services for over 100 years.  
15 Thousands of New Yorkers depend on our essential  
16 services each year. We firmly believe that all  
17 people deserve access to quality affordable and  
18 compassionate healthcare as well as the right to  
19 exert control over the reproductive choices. It is  
20 critical that New Yorkers are able to access this  
21 care without experiencing retaliation from their  
22 employers. Eighty percent of Americans support  
23 policies that make it easier to access the full range  
24 of birth control options. Despite this overwhelming  
25 support of a widespread use of birth control,

2 employers continue to try to discriminate against  
3 employees who rely on birth control as well as many  
4 other essential sexual and reproductive health  
5 services. Additionally, the Trump Administration  
6 have created a hostile landscape for access to sexual  
7 and reproductive healthcare through Guide Rules, and  
8 tax on Title 10 and other dangerous tactics. Given  
9 this reality, it has never been more critical for New  
10 York to stand up for sexual and reproductive  
11 healthcare access. New York should be a leader in  
12 progressive policies that recognize the rights of all  
13 people to make their own choices about their bodies,  
14 the future and health, and to live free from employer  
15 discrimination. Planned Parenthood of New York City  
16 is proud to support the Boss Bill and be part of the  
17 efforts to ensure access to sexual and reproductive  
18 health services regardless of gender, sexual  
19 orientation, immigration status or ability to pay.  
20 We applaud Council Member Williams for introducing  
21 this bill, which would ensure that people are able to  
22 access medical care from fertility treatment to birth  
23 control to abortion without workplace retaliation.  
24 We look forward to continuing to be a resource and  
25 partner moving forward. Thank you so much.

2 CHAIRPERSON EUGENE: Thank you, thank you  
3 very much Ms. Sanchala. Thank you, but could you  
4 tell us what issues related to discrimination based  
5 on a positive (sic) price you're having from your  
6 client? I mean this is--

7 SARAH SANCHALA: I-I can't-

8 CHAIRPERSON EUGENE: [interposing] People  
9 who go to your organization to the Planned Parenthood  
10 what type of issues are complaints they bring to you?

11 SARAH SANCHALA: We get a lot of them. I  
12 can get you specific examples. Regard--regarding  
13 specifically employment or--or just the patients in  
14 general.

15 CHAIRPERSON EUGENE: [interposing] Yes,  
16 discrimination in general, discrimination. Days, you  
17 know, and they're sick--they report it--it is a  
18 decision, a situation. Let's put it-- not decision  
19 but situation because they are taking treatment,  
20 because they are pregnant, because they have to go  
21 for some medical treatment or services. Just tell us  
22 about exactly, you know, from your experience what  
23 type of complaint or cases or issues that your  
24 organization is dealing with?

2 SARAH SANCHALA: I-I don't actually have  
3 any specific case examples to share with you right  
4 now, but I'm happy to report back with you. After,  
5 I'll check in with our clinical team.

6 CHAIRPERSON EUGENE: Okay, but the  
7 services that you are providing could you tell us  
8 about the services that Planned Parenthood is  
9 providing. Just we need some better detail.

10 SARAH SANCHALA: Yeah, so--

11 CHAIRPERSON EUGENE: [interposing]  
12 Because that may help people.

13 SARAH SANCHALA: Yeah, and--and yeah I  
14 mean we--we--

15 CHAIRPERSON EUGENE: While facing, you  
16 know, discrimination are as a preventive measure.  
17 Yeah.

18 SARAH SANCHALA: Yeah, I mean so we  
19 provide the wide range of services for--for sexual and  
20 reproductive health. So, it's birth control,  
21 emergency contraception, gynecological care, breast  
22 cancer screening, colonoscopy. The list goes on. I  
23 think we provide--I'm must looking at the data here.  
24 We have last year we provided 64,206 sexual and  
25 reproductive healthcare visits, 500--5,884 pregnancy

2 tests in addition to 90-over 90,000 tests for STIs  
3 and 32,000 for HIV tests. So, I think in general we  
4 see a wide range of clients. We both have a mobile  
5 unit and health centers around the city and into the  
6 boroughs and so, we--some of our--some of our clients  
7 and patients are--are people who don't have permanent  
8 housing and don't have--have sort of the traditional  
9 life--life trajectories that everyone else has right  
10 now. So, the range of impacts is great and--and we're  
11 able to provide the service regardless of--of any  
12 other barriers that they're facing. So, I think that  
13 there are a lot of other barriers in people's lives  
14 that--that bring them to because we're easy to access.

15 CHAIRPERSON EUGENE: But based on your  
16 experience, you know, serving people and do you have  
17 any suggestions of how we can strengthen the  
18 protection of reported choices? Anything that you  
19 feel that you can--

20 SARAH SANCHALA: [interposing] Yeah, I'm--  
21 I'm trying to not be snarky about the Federal  
22 Administration.

23 CHAIRPERSON EUGENE: But, you know, if  
24 you don't--if you don't think about it, but it can  
25 always look forward to the--

2 SARAH SANCHALA: I mean right now  
3 honestly that is our biggest--

4 CHAIRPERSON EUGENE: --malfeasance.

5 SARAH SANCHALA: Yeah, some of our  
6 biggest attacks are from the Federal Administration,  
7 cuts to funding, cuts to services.

8 CHAIRPERSON EUGENE: Okay.

9 SARAH SANCHALA: The public charge, which  
10 I know there was a hearing last week, and I think  
11 that some of these initiatives like Intro 863 are  
12 ways that the City can sort of counter some of these  
13 attacks where the feds are failing and/or adding  
14 additional burdens, the city is able to step in and  
15 add these protections.

16 CHAIRPERSON EUGENE: Okay. Thank you  
17 very much. Oh, Council Member Williams please.

18 COUNCIL MEMBER WILLIAMS: Thank you so  
19 much. Thank you for your support of this bill and  
20 all the services that you do at Planned Parenthood,  
21 and my--my own question was did you--I don't know if it  
22 was--it was surprising to hear the--the expansion that  
23 was recommended by the Deputy Commissioner around  
24 housing and public accommodations. Was that  
25 something you had thought of? Did it make sense?



2 Did you have any possible examples of how that might  
3 work?

4 SARAH SANCHALA: Yeah, I mean I can  
5 obviously go back and talk with our team. We are  
6 primarily a sexual and reproductive healthcare  
7 organization, and so we tend to focus on the clients  
8 and the medical provision of care, but again, we see  
9 clients who are impacted by housing and other  
10 concerns, and so, we would definitely love to  
11 continue to have that conversation as we continue  
12 with the Commission. I think it's—it's interesting  
13 to expand.

14 COUNCIL MEMBER WILLIAMS: Okay. Thank  
15 you so much again for your support.

16 SARAH SANCHALA: Yes, thank you.

17 CHAIRPERSON EUGENE: Thank you, Council  
18 Member Williams. Ms. Sanchala, thank you very much  
19 for your testimony, and thank you also. I want to  
20 thank your organization the Planned Parenthood of New  
21 York City for the services you are—you are providing  
22 to the people in New York because this is a very  
23 important issue field, sexual and reproductive  
24 services are very, very important and I'm saying that  
25 because, you know, I know first hand what it—what it

2 means, you know, for somebody who has a medical  
3 grounds (sic). So, this is very important that we  
4 come together, we help people because some of the  
5 time that could be a very difficult challenge, a very  
6 difficult situation, big challenges for people who  
7 are going through those situations. Thank you very  
8 much and have a wonderful day.

9 SARAH SANCHALA: Thank you. You, too,  
10 and I'll get back to you with some examples.

11 CHAIRPERSON EUGENE: So, since there is  
12 no other client (sic) and no other questions, the  
13 meeting is adjourned. [gavel] [pause] So, let's see.  
14 We are going to open the—the hearing because Council  
15 Brad Lander is here testify.

16 COUNCIL MEMBER LANDER: [laughing]

17 CHAIRPERSON EUGENE: And Council Member  
18 Lander, please.

19 COUNCIL MEMBER LANDER: Thank you very  
20 much, Mr. Chair for your indulgence. This is a great  
21 bill. I appreciate your hearing it. I'm pleased to  
22 be a co-sponsor and strong Supporter.

23 CHAIRPERSON EUGENE: Thank you very much.

24 COUNCIL MEMBER LANDER: Thank you.

2 CHAIRPERSON EUGENE: And now the meeting  
3 is adjourned. [laughter] [gavel] [background  
4 comments]

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C E R T I F I C A T E

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



Date December 10, 2018