

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HEALTH

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April 13, 2010

Start: 1:33pm

Recess: 2:30pm

HELD AT: Council Chambers
City Hall

B E F O R E:
MARIA DEL CARMEN ARROYO (Medical)
JOEL RIVERA (Acting)
Chairperson

COUNCIL MEMBERS:
Council Member Inez Dickens
Council Member Daniel Dromm
Council Member Mathieu Eugene
Council Member Julissa Ferreras
Council Member Rosie Mendez
Council Member Deborah L. Rose
Council Member Peter F. Vallone, Jr.
Council Member James G. Van Bramer
Council Member Albert Vann

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

Robert Purvis
Vice President
New York Blood Center

Henry Robin
Member, Board of Directors and the Greater New York
Steering Committee
Human Rights Campaign

Janet Weinberg
Chief Operating Officer
Gay Men's Health Crisis

Kevin Fisher
Policy Director
AVAC

Andres Hoyos
Associate Director
Center CARE Wellness, Gay, Lesbian, Bisexual and
Transgender Community Center

Tokes Osubu
Executive Director
Gay Men of African Descent

Oscar Lopez
Director of Health Policy
Latino Commission on AIDS

Mark Fliedner
Senior Assistant District Attorney
Kings County D.A.'s Office

Antonio Centeno
Board Member
Community Board Two

Pei Desrosiers
Executive Director
Women's HIV Collaborative of New York

CHAIRPERSON RIVERA: Good

afternoon, my name is Joel Rivera, today I will be the acting Chair of the Health Committee today, due to the unavoidable absence of Chair Maria del Carmen Arroyo. Today, the Committee will hear two resolutions, first the Reso 80 sponsored by Speaker Quinn calls upon the U.S. Food and Drug Administration to reverse their longstanding policy prohibiting men who have sex with men from donating blood. Our second, Reso 39, which I spon--which Council Member Mendez sponsored, calls on Congress to reintroduce and pass legislation that would amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing the transmission of HIV and other diseases. I'd like to thank Speaker Quinn for joining us in bringing these important public health issues to the forefront. I will briefly discuss these Resolutions in turn.

Beginning with Reso 80, the FDA has imposed a restriction on men who have sex with men from donating blood since 1982. The FDA restriction imposes a lifetime bar on any man--change it?

Okay. There we go--any, okay, so - - where am I?

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2 The FDA restriction imposes a lifetime bar on any
3 man who has had sex with another man, even once,
4 since 1977, regardless of their health status.

5 The FDA's policy is based on the fact that men who
6 have sex with men have greater incidence of HIV
7 and other infections that can be transmitted by
8 transfusion; yet the policy fails to consider the
9 individual donor's health status. Other countries
10 allow men who have sex with men to donate blood,
11 including South Africa, Argentina, Australia,
12 Hungary, Japan, Sweden and New Zealand.

13 Nationally leading health and LGBT organizations
14 support reversing this policy, including the
15 American Medical Association, the American Red
16 Cross, the America Association of Blood Banks, and
17 America's Blood Centers. Given the substantial
18 need for blood donors, it is counterintuitive to
19 close off a substantial part of the population
20 from donating. While some may have legitimate
21 public health concerns, we must ensure that any
22 decision made is guided by medical science,
23 including available advanced blood screening
24 methods. We are encouraged that the FDA has
25 announced that the U.S. Department of Health and

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2 Human Services Advisory Committee on Blood Safety
3 and Availability will examine this issue in June.
4 We feel that it is important to go on the record
5 as a City and make our voices heard. The FDA has
6 invited to today's hearing, but declined our
7 invitation, citing the pending review. Today we
8 are also discussing Reso 39, which pertains to
9 facilitating the development of microbicides for
10 preventing transmission of HIV and other diseases.
11 It is estimated that women account for
12 approximately half of all HIV and AIDS infections
13 worldwide. Microbicides are a developing
14 technology that would give women a preventative
15 tool that they can control. Adequate development
16 and investments of microbicides could halt the
17 transmission of HIV and AIDS, particularly in
18 countries with scarce prevention resources. In
19 2009, then Senator Barack Obama introduced the
20 Microbicide Development Act, which would have
21 created a dedicated microbicide research unit in
22 the National Institute of Allergy and Infectious
23 Diseases, as well as increase research funding for
24 microbicides. Further investment in HIV and AIDS
25 prevention tools will reduce transmission of this

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2 disease, and microbicides in particular have the
3 potential to empower women. Today, the Committee
4 wants to hear from members of the medical and LGBT
5 community, individuals who rely on blood
6 transfusions and others, concerned individuals on
7 these two public health issues. I would like to
8 thank the staff of the Committee for their hard
9 work and I also want to recognize my colleagues
10 who are here with us, who are on the Health
11 Committee. We have Council Member Peter Vallone,
12 Council Member Daniel Dromm, Council Member
13 Mathieu Eugene, Council Member Inez Dickens, and
14 Council Member Debbie Rose. The first panel is
15 Rob Purvis, Janet Weinberg, and Henry Rubin. Just
16 come up to the front. [pause, background noise]
17 You may begin, just state your name for the
18 record, and your affiliation, and you may begin
19 your testimony, in whichever order you choose.

20 ROBERT PURVIS: That it? Okay.
21 Rob Purvis with the New York Blood Center.
22 Members of the City Council Health Committee,
23 ladies and gentlemen, I'm Rob Purvis, Vice
24 President of the New York Blood Center. I
25 sincerely thank you for your invitation to testify

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2 today, and also want you to know how much the New
3 York Blood Center appreciates your support and how
4 much we depend on it. Our CEO and President, Dr.
5 Christopher Hillyer, wishes he could've attended
6 today and sends his sincere apologies, but he is
7 attending a prescheduled meeting with our Board of
8 Trustees. Since 1964, the New York Blood Center
9 has proudly served the 20 million people of New
10 York City and our neighboring communities by
11 providing blood transfusion products and related
12 services to our hospitals. Members of this
13 Committee, including the Speaker herself, have
14 personally joined us at blood drives, and
15 supported our special initiatives, to increase the
16 diversity of our blood supply. It's our job to
17 ensure the safety, reliability, and availability
18 of New York City's blood supply, and we know
19 everyone here shares our goals. The resolution
20 introduced by Speaker Quinn supports a
21 reexamination of current donor deferral criteria.
22 We are in favor of this reexamination. And I also
23 want to say that we agree with your opening
24 comments and statements associated with this
25 resolution. We'd welcome a revision, and if so

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2 determined by the Food and Drug Administration, of
3 questions people are asked when they come in to
4 roll up their sleeves. One of the nation's
5 largest, as one of the nation's largest nonprofit,
6 community based blood centers, we're required to,
7 and do of course comply with federal FDA and State
8 Department of Health regulations, and American
9 Association of Blood Bank standards. As such, we
10 look forward to working with our regulatory
11 authorities on the reexamination of eligibility
12 criteria for all potential donors. A meeting of
13 the FDA's Blood Products Advisory Committee has
14 been scheduled for July 26th and 27th. The New York
15 Blood Center will offer to provide scientific and
16 medical data and input, a role we have often
17 played in deliberations over how to optimize the
18 safety, reliability and availability of our blood
19 supply. Members of the Health Committee, we again
20 thank you for your support and your encouragement
21 of our life saving mission. We welcome this
22 reexamination in the spirit of our ongoing service
23 to the people of New York city. Thank you.

24 [pause, background noise]

25 HENRY ROBIN: Very good. My name

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2 is Henry Robin, and I am a member of the Board of
3 Directors and the Greater New York Steering
4 Committee of the Human Rights Campaign. HRC is
5 America's largest civil rights organization
6 working to achieve lesbian, gay, bisexual and
7 transgender equality. On behalf of our President,
8 Joe Solmonese, and our more than 750,000 members
9 and supporters nationwide, I thank you for
10 considering Resolution 80 and holding this
11 important hearing. I am honored to present this
12 statement regarding the need for the FDA to revise
13 its outdated and stigmatizing lifetime ban on gay
14 and bisexual men donating blood. The City of New
15 York has long been a leader, both in our nation's
16 fight against HIV and AIDS and in the struggle for
17 LGBT equality. And as someone who has lived and
18 worked in New York City for twelve years, I thank
19 you for once again demonstrating that leadership
20 on this important issue. As you know, current
21 policy set by the U.S. Food and Drug
22 Administration, imposes a lifetime deferral for
23 blood donation by any man who's had sex with
24 another man since 1977. In the last 30 years, our
25 scientific understanding of the virus has grown

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2 exponentially, and along with it methods to test
3 for the virus, prevent its spread, and treat those
4 who are infected. In short, it's not 1977 anymore,
5 and a policy that turns away an entire class of
6 donors, however right minded it might've been at
7 the time of its adoption, must continue to be
8 justified based on sound evidence, scientific
9 evidence. The Department of Human, of Health and
10 Human Services' announcement that a committee
11 would reexamine the policy at a meeting this
12 summer is a very positive step. The Obama
13 Administration has done an admirable job of taking
14 a hard look at longstanding HIV related policies,
15 too many of which have been grounded in ideology
16 or fear rather than science. This has included
17 ending the ban on HIV positive visitors and
18 immigrants, as well as calling on Congress to
19 remove the prohibition on federal funding for
20 syringe exchange programs, and to restrict federal
21 sex education dollars away from disproven
22 abstinence only programs, to more comprehensive
23 efforts. These are very positive changes that
24 will help fight the epidemic as well as the
25 stigmatization of people with HIV and AIDS. I

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2 believe revisiting the blood donation policy will
3 serve these same important purposes. Our nation
4 is in desperate need of more blood donors. The
5 current policy turns away an entire potential
6 class of such donors, the majority of whom are
7 healthy and willing to do their part to help
8 others in need. While I agree that the FDA must
9 always put the safety of the blood supply first, I
10 also believe that the science has changed and
11 warrants a revision of this policy. I urge you to
12 adopt Resolution 80 and push the Obama
13 administration to ensure, as it has in other
14 areas, that this HIV related policy is grounded in
15 sound science. Again, I thank the Committee and
16 the Council for considering this important issue,
17 and for giving me the opportunity to testify on
18 behalf of the Human Rights Campaign.

19 JANET WEINBERG: Hi, my name's
20 Janet Weinberg, and I'm the Chief Operating
21 Officer at Gay Men's Health Crisis and I want to
22 start this by saying thank you for holding this
23 hearing on two very important issues that affect
24 the community that we are, that GMHC is most
25 involved with. And first, I'd like to speak about

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2 U.S. blood policy, which fails to maximize the
3 blood safety would reduce unnecessary
4 discrimination and stigma against gay and bisexual
5 men. In recent years, leaders within the health,
6 within the public health and blood bank
7 communities, such as the American Association of
8 Blood Banks, America's Blood Centers and the
9 American Red Cross, have voiced support for
10 revising or lifting this policy. Much of today's
11 medical care depends on a steady supply of blood
12 from healthy donors. Despite shortages in the
13 nation's blood banks, FDA regulations mandate that
14 if a man has sex with another man, even once,
15 since 1977, he is permanently excluded from
16 donating blood; however, the policy does not
17 consider the potential donor's HIV status,
18 frequency of risk of sexual activity, or if he's
19 in a monogamous relationship. Alternative
20 policies offer more promise to reduce risk to
21 blood recipients while expanding the donor pool to
22 include HIV negative gay and bisexual men. The
23 FDA should initiate changes to blood donor
24 eligibility policies, to reduce unnecessary anti-
25 gay discrimination, and stigma, while improving

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2 blood safety and educating all donors of the
3 realities of HIV risk factors. There are two
4 basic models that other countries have adopted
5 with respect to men who have sex with men donors.
6 One is simply shortening the deferral period to
7 one year. The other model is altering the
8 deferral period to focus on specific behavior
9 rather than on group based classifications. So,
10 less restrictive policies range from one to five
11 year deferral periods to no blanket ban at all.
12 The permanent deferral for men who have sex with
13 men since 1977 should be replaced with a policy
14 that defers high risk men who have sex with men,
15 as defined by recent sexual history, for a period
16 of time carefully tailored to known window
17 periods, while permitting low risk men who have
18 sex with men donors to donate blood. In short,
19 Gay Men's Health Crisis fully supports Resolution
20 80, and that calls on the FDA to revise their
21 longstanding and unjustified prohibition on
22 homosexual men donating blood. GMHC also supports
23 Resolution 39, that urges passage of legislation
24 to facilitate microbicide development.
25 Microbicides are produced being developed that

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2 could someday reduce the transmission of HIV
3 during sexual intercourse. They're one of the
4 most promising and most exciting potential HIV and
5 STD prevention options for men, women and
6 children. Over the past few years, vaginal
7 microbicides have gained increased attention
8 because of their potential to empower women to
9 take charge of their sexual health. Women are at
10 the epicenter of the HIV/AIDS epidemic and
11 represent almost half of the 33 million people
12 currently infected with HIV worldwide. Many women
13 face social and economic realities that limit
14 their ability to make decisions about who they
15 have sex with. This lack of power often results
16 in situations that were they, where they're unable
17 to avoid sex with men and may be HIV infected and
18 they can't negotiate condom use. Unlike other
19 barrier methods such as condoms, microbicides
20 could be used without the cooperation or even the
21 knowledge of one's sexual partner. This is key to
22 HIV prevention. This Resolution has been before
23 the Council for four years now. We're asking that
24 it be passed now, it has no budgetary implications
25 for the City. It simply is a good health

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2 practice. So, today, GMHC is urging City Council
3 to adopt both of these important resolutions and
4 call for an unjustified end for, to the ban
5 against homosexual men in the blood ban, and to
6 support the acceleration of microbicide research
7 and development. Thank you.

8 CHAIRPERSON ARROYO: The first
9 question we have is from Council Member Daniel
10 Dromm.

11 COUNCIL MEMBER DROMM: Thank you.
12 Comment, a little bit of an observation, too, and
13 a question. Are you saying that because I'm a gay
14 man, and although I have had numerous tests for
15 HIV over the last two decades, and fortunately
16 have always come up negative, that even with that
17 I'm permanently banned according to the policies
18 now from donating blood?

19 JANET WEINBERG: You are currently
20 banned from having, from donating blood, so simply
21 because you've had sex with a man since 1977. If
22 you'd like to learn more about this, if you go to
23 GMHC's website, we have a full report on the blood
24 ban, and all of its implications, at www.gmhc.org.

25 COUNCIL MEMBER DROMM: And then I

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2 guess my follow up on it is really like, what
3 effect does that have on the LGBT community? What
4 effect does it have in terms of people's own self-
5 image, to be permanently banned from something
6 that most of the rest of society is taught is a
7 good thing to do for your community?

8 JANET WEINBERG: Council Member,
9 this actually came up because our CEO, Dr.
10 Marjorie Hill and I were doing a presentation at a
11 conference called "The Out and Equal Conference,"
12 which is a conference of corporate America, gays
13 in corporate America. And then men were saying
14 that they have colleagues who aren't out to other
15 colleagues, and their companies, their
16 corporations are doing blood bans. So while
17 they're on line, they have a choice, they either
18 come out at that moment, and say "I'm a gay man, I
19 can't donate blood," or they go down, go through
20 the whole ritual of preparing to donate blood, and
21 whisper to somebody so that they can keep their
22 identity a secret. This is still reality in
23 corporate America today, this issue of not being
24 out and the stigmatization. So, they're put in a
25 real difficult scenario.

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2 COUNCIL MEMBER DROMM: Yet there
3 are adequate resources to be able to test the
4 blood and test it correctly to ensure that the
5 transmission of HIV does not occur, as I think
6 many of the people in the public do fear. Am I
7 right about that?

8 JANET WEINBERG: Correct. And to
9 my knowledge that you can blood titer HIV now
10 within 48 hours. So within 48 hours of exposure,
11 it will show up as being positive.

12 COUNCIL MEMBER DROMM: In some
13 early cases, and in particular I think of Arthur
14 Ashe, who caught the disease allegedly with a
15 blood transfusion, would cases like that be able
16 to be prevented, if in fact the ban is lifted?

17 JANET WEINBERG: Scientific
18 knowledge has vastly improved since Arthur Ashe
19 was infected with tainted blood through the blood
20 donation. It's not the same type of testing,
21 we've come a long way scientifically, and so no, I
22 don't anticipate that that would be an issue.

23 COUNCIL MEMBER DROMM: Well, then,
24 I would just like to conclude by saying, you know,
25 it seems relatively safe that this ban be lifted,

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2 and you know, thank you for your testimony.

3 JANET WEINBERG: Thank you, sir.

4 CHAIRPERSON RIVERA: I'm going to
5 ask a question before I move on to the next--I
6 guess this goes to Robert Purvis from the blood
7 center. Now, when, I'm a blood donor, so when I
8 donate blood, or if anybody donates blood, it goes
9 through a very rigorous testing procedure, right?
10 You don't just take blood and just give it to
11 someone, it's, there's a very rigorous and a
12 extensive, comprehensive testing that all blood
13 goes through to determine if there's any
14 abnormalities or any issues that a recipient would
15 have problems with, right. It's not like--

16 ROBERT PURVIS: Yeah, there's
17 extensive testing, there's a battery, really of
18 tests that are done to every unit of the blood
19 that's collected. And the, there's a series of
20 kind of safety nets, I guess, is the way they're
21 presented by the FDA, there's the donor
22 questionnaire, which goes into people's habits,
23 lifestyles, their health, things of that nature;
24 and testing is another one of those safety nets,
25 and the 48 hours being referred by as, commonly

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2 referred to as the "window period," as to when a,
3 any type of disease can be identified. And so,
4 those safety measures have over the years made
5 blood donation considerably safer, and testing is
6 one of those that has advanced incredibly over the
7 course of time. There is, however, and the
8 science will support that still, a slight window
9 period of opportunity, and I think that's where,
10 when the FDA looks at it, that will be the
11 decision that they'll ultimately make, of does it
12 change in the criteria, continue to, you know,
13 does it enhance the safety of the blood supply,
14 and the science today seems to say yes to that
15 question. And on the 25th/26th, they'll listen to
16 all, and look at all of that science and make that
17 recommendation.

18 CHAIRPERSON RIVERA: Has there been
19 any example of, I mean, in general, just, you
20 know, from any blood donors, recently donating
21 blood and it going through the rigorous testing,
22 procedures, or the 48 hour window timeframe, that
23 tainted blood has gone through the system? I
24 mean--

25 ROBERT PURVIS: No.

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CHAIRPERSON RIVERA: No. So, I mean, overall the blood supply is extremely safe, and okay, perfect.

ROBERT PURVIS: Yeah, it's extremely safe today.

CHAIRPERSON RIVERA: Extremely safe. We've been joined by Council Member Al Vann. Do you we have any other questions for this panel? Seeing none, well, thank you very much, thank you. The next panel we have is Kevin Fisher, Andres Hoyos, okay, and Tokes Osubu.
[pause, background noise]

KEVIN FISHER: So you just, okay.

CHAIRPERSON RIVERA: Okay, you may begin at any point, just state your name, your designation/organization, and you may begin.

KEVIN FISHER: Thank you. My name is Kevin Fisher, and I'm here to speak on behalf of Resolution 39 and Resolution 80. So, good afternoon, and thank you for the opportunity to testify before your Committee today. My name is Kevin Fisher and I'm the Policy Director at AVAC, which his based here in New York. And AVAC is an international, nonprofit organization that uses

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2 education, policy analysis, advocacy, community
3 mobilization, to accelerate the ethical
4 development and eventual global delivery of AIDS
5 vaccines and other new prevention options as part
6 of a comprehensive response to the pandemic. And
7 I'd like to begin by commending the Council
8 leaders for their decision to focus on HIV today.
9 I mean, you couldn't have picked a better or more
10 challenging time to take on these crucial issues
11 as the White House develops for the first time a
12 national AIDS strategy. And here in New York I'd
13 estimate 105,000 people, or about one in 80 New
14 Yorkers have HIV. I'm here to offer support for
15 both Resolution 39 and Resolution 80, and I'm
16 going to start with Resolution 39. Resolution 39
17 is an important endorsement of the need for safe
18 and effective microbicides. And I would also say
19 that microbicides at this point are not just for
20 women, but they're also being planned for men,
21 too, so they're also--And as HIV continues to
22 ravage New York and communities around the world,
23 HIV rates among gay men and other men who have sex
24 with men, remains shockingly high. At the same
25 time, women are increasingly at the epicenter of

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2 the HIV/AIDS epidemic, representing nearly half
3 the 33 million people worldwide currently infected
4 with the virus. And even in the U.S., women face
5 unique challenges in managing their own health,
6 and the health and wellbeing of their families.
7 And both men and women urgently need access to
8 safe and effective, and self-initiated HIV
9 prevention options at affordable prices.

10 Microbicides are one such experimental option,
11 which is being actively pursued in the U.S. and
12 internationally. As you know, microbicides are
13 products which are being developed for vaginal or
14 rectal use, to reduce the transmission of HIV
15 during sexual intercourse. Microbicides could
16 take the form of a gel, a film or sponge, or can
17 be contained in a vaginal ring that releases the
18 active ingredient gradually. Several of the newer
19 experimental microbicide candidates use
20 antiretroviral drugs that are also being used
21 successfully for treatment. Since the microbicide
22 development act was introduced by then Senator
23 Obama and Representative Jan Schakowsky, steps
24 have been taken towards a number of goals of that
25 Act. And I also commend the Council for now

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2 having New York leadership in this area where,
3 which I think has been Illinois focused prior to
4 this. Funding for microbicide research has
5 increased at the NIH and the microbicide trial
6 network has been established to test new products.
7 Still, the Microbicide Development Act remains
8 critically important. The Act is a very important
9 education force around this important work. It
10 can leverage further increases in public sector
11 funding and support the work of the microbicide
12 program at the NIH's Office of AIDS Research. The
13 Act will also continue to support the work of the
14 Microbicide Trial Network, a very successful and
15 admired prevention trial network that is based in
16 the University of Pittsburgh, and has several New
17 York based partners. These recent advances in
18 momentum must needs to be safeguarded. Pressures
19 from a fragile economy and funding cutbacks, and
20 the disappointing results from certain recent
21 microbicide trials have led to a certain
22 handwringing about the demise of microbicides as
23 an HIV prevention technology, and this is unfair,
24 inaccurate and uninformed. The power of the
25 microbicide concept is as important and valid

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2 today as it's ever been. We need to keep sending
3 that message and the Microbicide Development Act
4 does that. Now, I'd like to talk about, briefly
5 about Resolution 80. Resolution 80 is also timely
6 for as I'm sure you're aware, as has mentioned
7 before, the Advisory Committee on Blood Safety and
8 Availability is scheduled to meet in June, to
9 discuss the current policy. And legislation in
10 the area of scientific decision making is a matter
11 to be taken with great caution. Fortunately, the
12 science support reevaluation of the current FDA
13 policy. We believe the decades old blood donation
14 policy lags behind science and our nation is long
15 overdue for such a review. Such a review would
16 involve gay men who present no danger to our
17 nation's blood supply to participate in a life
18 saving act of altruism and civic responsibility
19 from which they are now currently barred. I'm not
20 going to go over the current policy, 'cause it's
21 mentioned, but I would say that the AVAC supports
22 the recommendations of the Gay and Lesbian Medical
23 Association and the National Alliance of State and
24 Territorial AIDS Directors, that healthy gay men
25 in certain situations, such as men who are not

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2 sexually active, or who are in safe, monogamous
3 relationships, should be allowed to donate blood.
4 And this change is also warranted as other
5 speakers have said, because of improvements in
6 technology and detecting early HIV infections that
7 provide another backup system to protect the
8 nation's blood supply. The MSM ban excludes many
9 prospective donors who are healthy and at little
10 or no risk of HIV infection. The change in this
11 restriction is unlikely to have any immediate
12 impact on the national blood donations, which
13 total about 14 million annually, but over time
14 could provide an additional capacity for the blood
15 supply. Thank you and I'll be happy to answer any
16 questions you have. Thank you.

17 ANDRES HOYOS: Good afternoon,
18 Andres Hoyos, social work at the Gay, Lesbian,
19 Bisexual and Transgender Community Center. Thank
20 you for having me here. I'm going to speak in
21 support of Resolution 80. So, I am Andres Hoyos,
22 a gay Latino immigrant, and social worker, and for
23 20 years my practice has focused on the mental
24 health needs of gay men. I'm currently the
25 Associate Director of Center CARE Wellness at the

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2 Gay, Lesbian, Bisexual and Transgender Community
3 Center, and I've been working there for the last
4 seven years. So, currently, in the United States,
5 policy permanently excludes gay men and bisexual
6 men from donating blood, regardless of their level
7 of HIV risk; however, their heterosexual
8 counterparts are deferred from donating blood for
9 a year if they are participating in high risk
10 behavior, such as having unprotected with a
11 partner who is HIV positive. The context for this
12 policy has changed significantly in the last 25
13 years since its implementation. Importantly,
14 technology for testing has reduced the window
15 period for detection of HIV infection for less
16 than two weeks, to less than two weeks. Sexual
17 orientation or gender of those persons involved in
18 a sexual encounter does not determine the risk for
19 HIV transmission. We should take this opportunity
20 to emphasize and assess the level of risk for HIV
21 transmission individually rather than focusing on
22 an identity base factors. An extended focus on
23 identity rather than actual risk could also be
24 used to extend the blood donation ban to other
25 groups with higher HIV seroprevalence, including

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2 communities of color, women, children and people
3 living in poverty. Of course, we don't want to do
4 that. One of the painful lessons learned from the
5 onset of the HIV epidemic in the '80s was the
6 stigmatization of groups who were often already
7 disempowered and marginalized by focusing on
8 identity rather than actual risk. This has a
9 negative impact in this population of focus and
10 our, in our community at large. It also
11 contributes to a stigmatization that is associated
12 with increased discrimination and can lead to
13 potential violence. Even though the FDA blood
14 donation ban is not intentionally discriminatory,
15 its impact is. Applying the blood donation ban
16 indiscriminately to gay men, regardless of their
17 actual risk, and no other groups with elevated
18 HIV risk, is harmful. It's harmful for the gay
19 man community, and it's harmful for the national
20 blood supply. The blood donation ban prevents gay
21 men and bisexual men from participating in a vital
22 process of community building, or what could be
23 called a cultural citizenship. This also sends an
24 implicit stigmatization message that gay men,
25 bisexual men, are damaged goods, second class,

1 less than others, diseased, or inherently
2 contagious. Paradoxically, it was this gay
3 community, the same community that the FDA policy
4 implies is not good enough to ever donate blood,
5 that first rallied to support those living with
6 HIV and AIDS. This is the same gay community that
7 has fought and struggled for over 30 years for
8 services and effective prevention diagnostic and
9 treatment methods around HIV and AIDS. This ban
10 sends the wrong message to our gay community,
11 while trying to encourage gay and bisexual men to
12 periodically test for HIV, to reduce the risk and
13 remain connected with the healthcare system, as
14 prophylactic measure we simultaneously develop
15 regressive and unscientific policies such as the
16 blood donation ban. We're telling our gay
17 brothers that they are not good enough to donate
18 blood, and disengaging them from, disengaging them
19 for life from a fundamental civic action
20 associated with health and community. Sadly, we
21 lose an opportunity also to educate our
22 communities about safer sex for everyone,
23 especially for those engaging in high risk
24 behaviors. The screen of potential blood donors
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2 should be based upon assessment of risk behaviors
3 for HIV transmission, while simultaneously
4 promoting community involvement in healthier
5 behaviors. Participants who donate blood should
6 be supported, educated and encouraged to assess
7 their own level of HIV risk and to make
8 responsible and informed decisions. These--this
9 in turn protects gay and bisexual men, and all
10 others at high risk from further stigmatization
11 and discrimination. The Center endorses a
12 specific nonstigmatizing blood donation policy, in
13 particular the one mentioned by Gay Men's Health
14 Crisis, and I highly recommend to check the white
15 paper that they have posted on their website. The
16 permanent deferral for gay and bisexual men should
17 be replaced with a policy that is scientific
18 based, is consistent with other high risk groups,
19 and is substantially less discriminatory. The
20 Lesbian, Gay, Bisexual and Transgender Community
21 Center supports the New York City Council as it
22 speaks with the voice of over eight million New
23 Yorkers with Resolution 80 calling upon the United
24 States Food and Drug Administration to reverse
25 their longstanding prohibition on gay men donating

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blood. Thank you.

TOKES OSUBU: Good afternoon. My name is Tokes Osubu, and I'm the Executive Director of Gay Men of African Descent. And on behalf of my group, and people, I'd like to thank the City Council, specifically the Health Committee, for holding this hearing. 30 years ago we called each other on rotary phones and had to go to the library to learn the capital of Norway. And never even imaged the scientific and medical advances we take for granted today. And almost 30 years ago, the United States banned gay men from donating blood. The blood ban remains a stark reminder, and key evidence, of the stigma that HIV has brought to our City, and our nation, and a our values. You probably don't know this, but blood donation has a long history in this City. In the beginning of the HIV epidemic in New York City, the ban on gay men from donating blood was rooted in a lack of knowledge in a climate of fear. 30 years of experience and thousands of studies later, it stands as evidence not of fear of HIV, contaminating our blood supply, but of the fear of change. Most Americans have never wanted to

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2 donate blood, and most still avoid it. The Red
3 Cross has huge mobilization campaigns before HIV
4 arrived and after, to get all Americans to donate
5 and most still refuse to this day. By targeting
6 marginalized populations, local organizations were
7 able to solicit the donations the blood banks
8 needed for a small fee. From a City rife with
9 employment and housing discrimination, came
10 homosexual men and intravenous drug users ready
11 and willing to donate. Our reward for turning the
12 other arm was not acceptance and integration, but
13 rejection. But we still showed up to help time
14 and time again. History has it that the blood ban
15 began when communities that depended on our blood
16 for survival refused to tolerate us anymore. Many
17 called on the government and advocacy agencies to
18 protect children from the blood of gay men. And
19 it wasn't until a healthy child contracted HIV
20 that the Red Cross became the first of many to ban
21 gay blood in 1983. And we saw some of the first
22 decisive action on HIV at the federal level
23 shortly thereafter. Not a statement of support
24 for a struggle to survive, but the ban itself.
25 The real crime of the blood ban is the acceptable

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2 victim who demands that we feel be blamed for a
3 disease that we all have. The ban continues to
4 cement the notion that all gay men have HIV, and
5 that all heterosexuals do not. The ban is proof
6 positive that we would rather talk about
7 minorities than a virus, that is continuing to
8 destroy this country and its communities. The
9 only thing the ban is good for is adding insult to
10 injury, and further marginalizing our community.
11 In retrospect, the ban failed to prevent
12 heterosexuals from infecting hemophiliacs via
13 blood donations that to this day are not seen as
14 suspect. Over one in 70 New Yorkers is HIV
15 positive and the numbers are rising. Not merely a
16 handful of gays in the Village, yet we are the
17 only ones who are impacted and screened away. Our
18 diseases were just out diseases. We really are
19 all in bed together, and not just at the blood
20 bank. If the FDA wants to protect the blood
21 supply from HIV, they can either test everyone or
22 ban everyone. It's the 21st Century and you all
23 have AIDS at this point, we just had it first.
24 Gay Men of African Descent everywhere had long
25 supported lifting the ban on blood donation. It

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stands as a hallmark of our early years and our resolution today, and our resolution today shows how far we've come. We need to continue to be a community, to stand together and fight the virus without fighting each other. GMAD strongly and without reservation supports the New York City Council Resolution calling upon the United States Food and Drug Administration to reverse their longstanding prohibition on homosexual men donating blood. Thank you.

CHAIRPERSON RIVERA: Thank you very much. We have first, one of the sponsors of the bill, Rosie Mendez, who has joined us, and wants to say a few remarks, followed by Council Member Daniel Dromm.

COUNCIL MEMBER MENDEZ: Thank you, Mr. Chair. First, to you, to everyone on this Committee, and to everyone out there, I want to apologize for being late. Was trying to make it here timely. And regarding my Resolution, I wanted to thank many members of the GMHC community. We started on this Resolution in my last legislative term, and we're finally getting a hearing. And hopefully we can get it passed this

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2 term. So, thank you very much, Mr. Chair, and
3 thank you, everyone.

4 CHAIRPERSON RIVERA: Council Member
5 Dromm?

6 COUNCIL MEMBER DROMM: Thank you,
7 again, Council Member Rivera. I just kind of
8 wanted to go back a little bit, because I
9 particularly appreciated your testimony Mr. Osubu.
10 And the atmosphere in I guess 1980 when they first
11 implemented this policy. Could you just describe
12 that a little bit more in terms of the atmosphere
13 around the disease? Wasn't it called at that time
14 Gay Related Immune Deficiency?

15 TOKES OSUBU: Yes, yes, it was, and
16 I think one has to be quite, well, I'd like to be
17 realistic around this. If something beings to
18 attack your country or your family, and it's, that
19 attack is coming from one sole source, it's only
20 human, I would say, that you'd want to keep that
21 source away from your family. You know, it was
22 understandable that that took place when it took
23 place, where no one--there was so much that was
24 unknown about HIV as we know it today. But like I
25 said, 30 years in the making, 30 years of studies,

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30 years of experience and proof, 30 years, I mean, way too late. I mean, it's never too late, but no, it's too long. Not it should certainly be changed, yes.

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COUNCIL MEMBER DROMM: The point that I'm trying to get at a little bit is that so much of the attitude I think in the '80s was also intersecting with anti-homophobia, with homophobia. And so much of the policies that went into place were very connected to homophobic ideas and policies. And yet in many ways, we've seen a lot of success in terms of the LGBT rights movement; yet, in this area, we have not seen a correction of a policy that was probably implemented on the basis of a lot of homophobia. And I just wondered if anybody had a comment on that.

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TOKES OSUBU: Well, actually I do, yes. It's easy to take action if it's based on a philosophy. You know, for want of a better word. And as I say, homophobia was very, very rife, you know, was very blatant, then. And it was very, very easy, because when you talk about HIV and AIDS, it's always the disease of the "other," the

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2 disease of those on the margins. You know? And
3 gay men certainly were on the margins, and to a
4 large extent we still are, as Haitians were, and
5 hemoph--injection drug users. So it's always
6 those on the outside, not normal, not part of the
7 good ones. And so, when you have something that
8 is so pervasive, that oftentimes isn't spoken
9 about, and you enact a law that then banishes that
10 section of society, that really isn't like the
11 rest of us, it's very, very easy for folks to say,
12 "Well, it's okay, 'cause it's protecting those of
13 us that are good."

14 COUNCIL MEMBER DROMM: And I think
15 that marginalization, specifically, is antiquated
16 perhaps as this law is. Thank you.

17 TOKES OSUBU: Thank you, sir.

18 CHAIRPERSON RIVERA: Are there any
19 other questions on, for this panel? Thank you
20 very much, gentlemen.

21 TOKES OSUBU: --very much.

22 CHAIRPERSON RIVERA: We only have
23 four more panelists, and we're going to group them
24 together. We have Oscar Lopez from the Latino
25 Commission on AIDS, Mark Fliedner, and Antonio

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2 Centeno, Jr., as well as Pei Desrosiers. I hope I
3 did not butcher the last--Pei Desrosiers. When
4 you're on the mic. [pause, background noise]
5 Just state your name for the record and you may
6 begin in any particular order.

7 OSCAR LOPEZ: I'm Oscar Lopez with
8 the Latino Commission on AIDS, I'm the Director of
9 Health Policy. And thank you all very much for
10 having us today. I'm here today speaking in favor
11 of lifting the ban of gay men being able to donate
12 blood. When I was a young man in Texas, my dad
13 had a heart attack and heart surgery. And I was
14 sitting in the waiting room with my family, and we
15 were all debating what we could do, we wanted to
16 do something, in those hours that we waited and
17 waited. And the whole family decided to get up
18 and donate blood. And at that point I was forced
19 to come out of the closet to the rest of my
20 family, even though I wasn't read; it was either
21 do that or run the, go through the whole procedure
22 only to be denied publicly from donating blood.
23 And that was the first of many times in my
24 lifetime where I've had to, during a blood drive,
25 during events, had to say, "No, I can't, I'm not

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2 allowed to," even though I wanted to, time and
3 time again. Not being able to donate blood as an
4 American citizen is a slap in the face, especially
5 because I'm HIV negative, especially because I
6 have had my same partner for 19 years. And it's
7 not fair. Plain and simple, I should be allowed
8 to do what every other American is allowed to do.
9 I have friends who are promiscuous and wild and
10 crazy, but because they're heterosexual, they can
11 go, line up, give blood, no questions asked.
12 There's no question in my mind that what we need
13 is a better procedure, a questionnaire, a tool
14 that better screens people when they donate blood.
15 But to lift the ban and allow gay men to donate
16 would be just and fair. There's not a single
17 piece of scientific evidence that supports this
18 ban, and in March 2006 it should be noted that the
19 American Red Cross and the Blood Banks of America,
20 the American Association of Blood Banks, reported
21 to an FDA sponsored workshop that the ban is
22 medically and scientifically unwarranted. Again,
23 it's a civic responsibility, in my opinion, to
24 donate blood, and to give back to the community,
25 and this ban doesn't allow me to do that. Whether

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2 or not you all vote to lift this ban, in the
3 United States it's still going to be addressed, in
4 Washington D.C. it will be addressed. And if you
5 Google this, you'll find lots of arguments for
6 both sides. Some people are calling it a
7 homosexual agenda item. This is not a homosexual
8 agenda item, I don't even believe there is a
9 homosexual agenda. But I do believe that it's,
10 what's fair to any American citizen, and this ban
11 is not fair. So on behalf of the Latino
12 Commission on AIDS, I'm here to support the
13 lifting of the ban, and support of Resolution 80
14 and Resolution 39. And we thank you, the Council,
15 for holding this hearing and allowing us to
16 address this issue. Thank you.

17 MARK FLIEDNER: Good afternoon, my
18 name is Mark Fliedner, I'm a Senior Assistant
19 District Attorney in the Kings County D.A.'s
20 Office, but I'm here today in my capacity as a
21 private citizen. I strongly support Resolution
22 80. I am a father of two children who will need
23 blood, the son of elderly parents who will need
24 blood, the partner of a now healthy man who will
25 need blood, and the colleague and friend of many

1 people that are dear to me who will need blood.
2 The baseless existence of this policy in 2010
3 amounts to institutionalized homophobia. Couple
4 times a year, my office that I love holds a very
5 aggressively promoted and implemented blood drive.
6 It's very well meaning and it's very well
7 executed, and every time that the posters go up I
8 frankly shudder. Last year, I was in the position
9 where I walked into my building and was confronted
10 in the lobby by somebody who knows my face and
11 knows me to be a friendly sort, pulled me over and
12 said, "You need to do this, you need to give blood
13 today." First response was, "I'm not in a
14 position to do so." She warmly and well
15 intentionally persisted, until I found myself
16 needing to say "I'm not permitted to give blood
17 because I'm a man who has had sex with another
18 man." This despite the fact that I've been in a
19 monogamous relationship, as you mentioned, for a
20 decade, with somebody who is HIV negative, and I
21 get tested and all of that. It was demoralizing.
22 Not because I needed to identify myself as a gay
23 man, that's something I proudly do, but because I
24 had to identify myself as a gay man in an
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2 unhealthy context. And that's what I worry about.
3 You've got the American Red Cross trying to do
4 good work, and all of these other organizations
5 trying to do good work, and what we've created now
6 is a situation where these blood drives are set up
7 and they actually create a hostile work
8 environment for those of us that have to be
9 confronted with them in this context. It's not
10 good for the American Red Cross, not good for me,
11 not good for New York City, not good for the
12 nation. And my primary concern is that when gay
13 men and bisexual men are asked to identify
14 themselves in an unhealthy context, it does send
15 that terrible message that, to the next generation
16 of gay and bisexual young men who are trying to
17 grapple with what it means to be them. And it
18 says something that is unhealthy in a way that's
19 going to have an impact on the community in
20 generations to come. It's got to stop. Thank
21 you.

22 ANTONIO CENTENO: Good afternoon,
23 Council Members. My name is Antonio Centeno, and
24 I am a Board Member of Community Board Two, which
25 happens to be Maria del Carmen Arroyo's district.

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2 But I'm here as a individual, not representing the
3 Board. I speak here today for, in support of your
4 Resolution 80, to have, reverse this ban on gay
5 men and bisexual men to donate blood. My mother
6 came to New York in the '60s, and ever since then
7 she raised me to be community conscious and give
8 back to my community. I do so still as a
9 community board member, I've been onto nonprofit
10 boards, I am Red Cross volunteer. But the only
11 part that I can't give back is through blood
12 donation. I believe that this FDA policy is
13 legalized discrimination, and I cannot see how the
14 U.S. government protects and defends our
15 constitution where it states that all men are
16 created equal, but then have a federal agency
17 which policy goes against those groups that are
18 actually being protected and defended by the
19 constitution. With so much technology nowadays, I
20 don't see how this ban or policy is even
21 necessary. But I wanted to take it more into a
22 more personal kind of feeling, I want you to
23 understand how this has made me feel and affected
24 me. My firm on average hosts about three blood
25 drives a year. And I am always asked by coworkers

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2 if I'm going to donate, and I respectfully lie and
3 say, "Oh, I forgot we were even hosting one,"
4 which his kind of impossible when you have posters
5 all over the place saying, you know, go to OMA 1B
6 and give blood. To avoid explaining why I can't,
7 not only is it outing me when I don't need to out
8 myself to anyone that I do not choose to, but at
9 the same time it makes me feel that I don't matter
10 and that the government has failed me. I love my
11 country. I support and defend my country. And I
12 think that my country has failed me in not
13 supporting me and defending me, with this policy.
14 I fear the day when I have a family member that
15 actually needs a blood transfusion, for the simple
16 reason being that I would be denied at the
17 hospital from saving my family's life, because I
18 am gay. I didn't choose to be gay, I was born
19 gay, this is how I contribute to my family, I am
20 myself, and my mother doesn't ask for anything
21 else but to be myself. And to give back. So I
22 just ask that the U.S. government gives me that
23 one last part of giving back, and it's giving the
24 gift of life.

25 PEI DESROSIERS: I'm Pei

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2 Desrosiers, I'm the Executive Director of the
3 Women's HIV Collaborative of New York. And I just
4 wanted to say both myself and the Collaborative,
5 we support Resolution 80. And I really commend
6 the Council Members who brought it up, because you
7 know what, it was a Resolution whose time had
8 come. And you got it, and you understood what was
9 unfair about it. And we respect you for making
10 that stand. I think it was maybe about, it was
11 maybe about a year-and-a-half ago, I had to go for
12 surgery, and I was planning to get my own blood,
13 have them keep it, in case I needed it, which is
14 like, you know, one of the recommended practices.
15 And my blood count was too low. So, they told me
16 that I couldn't do it. Luckily for me, my partner
17 is a nurse, Andrea's a nurse, and she was able to
18 donate blood on the spot. I mean, how likely is
19 it that your partner is also A-? You know, and
20 they could not only, you know, just be there for
21 you, but be there for you in terms of also being
22 able to give blood. I was like totally amazed.
23 And it was so quick, and it was so seamless. And
24 I know all of the gay friends that we have. For
25 those who are negative, I mean, like it's, it was,

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I mean, she didn't even think twice about doing it. And I think that if we have the proper medical stuff in place, then it becomes kind of silly not to allow this simply because some people are very scared and, for lack of a better word, bigoted. I think that if there's sound medical reasons, then it makes sense. But if they aren't, then you know, just treat everyone the same. I also wanted to speak on the resolution to have microbicide testing and more funding towards that. I guess it was about a year ago, the Women's Collaborative came out with a report on women living with HIV in New York City. And one of the things that the report showed us was that a) ten percent of the women who have HIV in New York City, ten percent of the women who have HIV in the United States, live in New York City. And what that means is that microbicides, it's one of the best promises that we have, at least for women. In terms of having them develop something for women that's controlled by women. Because a woman could decide to use a microbicide little gel before and that would give her some measure of protection. Of course you could say that there's

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2 lots of other methods out there, but one of the
3 things that we found is that women who are poor,
4 or women who are powerless, are powerless in so
5 many other areas of their lives. If there are
6 things that we can do in terms of public health
7 that allow a woman to retain that sense of power
8 or that sense of control, even when she engages in
9 sex, because the whole negotiation around safer
10 sex, for some people they can do it, you know.
11 And they're very fluent in it. I think that for
12 people, for women who are powerless, they are less
13 fluent in the negotiation around safer sex. So,
14 we support that, although the microbicide testing
15 and results that they have so far, have not been
16 all of that promising. But I don't think that we
17 should stop, I think that it's a good concept, and
18 we should really work towards finding a solution
19 that works. And that's, that's what I think about
20 it. And I just wanted to just bring this
21 perspective to the table, because there are a lot
22 of women, there are lots of HIV positive women who
23 can't be here to just, you know, have a voice and
24 say, "This is important to us." Okay? That's it,
25 thank you.

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CHAIRPERSON RIVERA: Thank you.

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We've been joined by Council Member Van Bramer.

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Do we have any questions on behalf of the

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Committee Members? I see none. Thank you very

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much. And seeing no others for today's hearing,

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this meeting is adjourned. Thank you.

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[gavel]

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C E R T I F I C A T E

I, JOHN DAVID TONG certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script that reads "John David Tong". The signature is written in dark ink and is positioned above a horizontal line.

Signature _____

Date April 23, 2010