

**Testimony of Dana Sussman**  
**Deputy Commissioner for Policy and Intergovernmental Affairs**  
**New York City Commission on Human Rights**  
**Before the Committee on Civil and Human Rights**  
**November 19, 2018**

Good morning Chair Eugene, and members of the Committee on Civil and Human Rights. I am Dana Sussman, Deputy Commissioner for Intergovernmental Affairs and Policy at the New York City Commission on Human Rights, and I am pleased to be here to discuss Intro. 863, which seeks to protect employees from discrimination on the basis of sexual and reproductive health decisions.

The bill defines reproductive and sexual health decisions to include “any decision by the employee to receive services which are arranged for or offered or provided to individuals relating to the reproductive system and its functions, including, but not limited to, fertility-related medical procedures, family planning services and counseling, including, but not limited to, access to all medically approved birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, sexually transmitted disease testing and treatment, abortion procedures and HIV testing and counseling.” The Commission and the Administration support the goals of the legislation, and the right to be free from discrimination based on 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 a reasonable accommodation in the workplace for “pregnancy, childbirth, 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 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 two examples briefly. Earlier this year, the Commission settled a case on behalf of a 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 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 also requires Whole Foods to change its policies with regard to employee attendance and accommodations to comply with the NYC Human Rights Law and train all human resources employees on the updated policies. 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 breastmilk 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 nationwide policy changes on pregnancy and lactation accommodations and training for its New York City-based staff.

The Commission is supportive of the goals of Intro. 863, to the extent it comports with existing laws, and is committed to ensuring that New Yorkers do not face discrimination based on their very personal choices to become pregnant, to have an abortion, to seek treatment or counseling for sexually transmitted infections. The Commission recommends that the protections proposed in the bill in the context of employment be extended to housing and public accommodations. The Commission also looks forward to discussing with Council meaningful strategies for effectively notifying covered entities of their obligations and rights under the City Human Rights Law. We are grateful for the opportunity to present today and to partner with Council to move the bill forward.

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Thank you for convening this hearing today on this important issue. I look forward to your questions.

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Planned Parenthood of New York City

**Testimony of Planned Parenthood of New York City  
Before The New York City Council  
Committee on Civil and Human Rights  
Regarding Introduction 863**

November 19, 2018

Good Morning. My name is Sarah Sanchala and I am the Director of Government Relations at Planned Parenthood of New York City. I would like to thank Committee Chair Mathieu Eugene for holding this hearing, Council Member Jumaane Williams for sponsoring this legislation, and the entire Committee on Civil and Human Rights for their dedication to addressing this important issue. PPNYC supports the passage of Introduction 863, also known as the “Boss Bill,” which would prohibit employer discrimination on the basis of sexual and reproductive health decisions. Passing this legislation is critical to protecting and expanding access to the full range of sexual and reproductive health care options for all New Yorkers.

Planned Parenthood of New York City (PPNYC) has been a leading provider of sexual and reproductive health services in New York City for more than 100 years, reaching approximately 85,000 New Yorkers annually through our clinical and education programs. PPNYC provides a wide range of health services including access to birth control; emergency contraception; gynecological care; cervical and breast cancer screenings; colposcopies; male sexual health exams; testing, counseling, and treatment for sexually transmitted infections; the HPV vaccine; HIV testing and counseling; and pregnancy testing, options counseling and abortion. We also provide PrEP and PEP, transgender hormone therapy, vasectomies, and, recently, menopausal hormonal therapy. We are a trusted name in health care because of our commitment to comprehensive, inclusive care. We believe that high quality health care is a human right every person deserves and our doors are open to all New Yorkers regardless of income, gender, gender-identity, insurance, or immigration status.

At PPNYC, we firmly believe that all people deserve access to quality, affordable, and compassionate health care and the ability to exert control over their reproductive lives and futures. A reproductive justice framework advocates for a world in which all people have the right to bodily autonomy and are empowered to create a life in their own vision. Choosing if, when, and how to have a family, as well as accessing sexual and reproductive health care for all the wide and varied medical reasons that people choose to, is a critical part of that autonomy and a human right we all deserve. To be able to do so without fear of retaliation from an employer is essential to be truly autonomous.

As a trusted health care provider, we see firsthand the range of sexual and reproductive health services upon which New Yorkers rely. In 2017, PPNYC received 64,206 sexual and reproductive health visits and provided 5,884 pregnancy tests. We also provided 90,235 tests for sexually transmitted infections, 32,137 HIV tests, and 5,748 Pap tests to screen for cervical cancer. We also provided an additional 15,937 services by Project Street Beat, our mobile health

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center.<sup>1</sup> Thousands of New Yorkers depend on our services each year for sexual and reproductive health care that is essential, and often life-saving. It is critical that New Yorkers are able to access this care without experiencing discrimination and retaliation from their employers.

Increasingly, we have seen the dangers of employer involvement and interference in private employee health decisions. Since the Affordable Care Act (ACA) was enacted, over 100 lawsuits have been filed by employers across the country to deny employees contraceptive coverage based on the personal or religious beliefs of employers.<sup>2</sup> After the 2014 Supreme Court case, *Burwell v. Hobby Lobby*, was decided in favor of the employer,<sup>3</sup> access to birth control has been at the center of debates concerning employer discrimination on the basis of sexual and reproductive health decisions. We know that birth control is an essential component of being able to build the families and lives we want. Nearly nine in ten women of reproductive age will use contraception at some point in their lives, whether for family planning or other medical reasons.<sup>4</sup> Fifty eight percent of all women who use the pill rely on it, at least in part, for something other than pregnancy prevention, including endometriosis, polycystic ovarian syndrome -- which is prevalent among women of color-- fibroids, and menstrual regulation.<sup>5</sup>

Support for access to contraception and protection from employer discrimination transcends party and political affiliation. Eighty six percent of Americans (including 91% of Democrats and 83% of Republicans) support policies that make it easier to access the full range of birth control options.<sup>6</sup> Regardless of widespread use and overwhelming societal support of birth control, employers continue to fight for the right to discriminate against employees who rely on birth control as well as many other essential sexual and reproductive health services. In the face of these attempts to diminish access to vital health care, New York must work to ensure equitable coverage of health services and prevent employers from infringing on individuals' rights to make their own health care decisions. Introduction 863 would do just that.

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<sup>1</sup> About Us. Planned Parenthood of New York City. Retrieved November 16, 2018, from [https://www.plannedparenthood.org/uploads/filer\\_public/e8/d8/e8d883c4-9924-4999-832c-bf0f7334977f/about\\_us\\_2018.pdf](https://www.plannedparenthood.org/uploads/filer_public/e8/d8/e8d883c4-9924-4999-832c-bf0f7334977f/about_us_2018.pdf)

<sup>2</sup> Status of the Lawsuits Challenging the Affordable Care Act's Birth Control Coverage Benefit. National Women's Law Center. Last updated May 22, 2015. Retrieved November 16, 2018, from <http://www.nwlc.org/status-lawsuits-challenging-affordable-care-acts-birth-control-coverage-benefit>

<sup>3</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. \_\_\_, 134 S. Ct. 2751 (2014) (holding that, as applied to closely held corporations, Dep't of Health and Human Svcs. regulations requiring employers to provide female employees with no-cost access to contraception per ACA violate the Religious Freedom Restoration Act).

<sup>4</sup> Contraceptive Use in the United States. Guttmacher Institute. July 2018. Retrieved November 16, 2018, from [https://www.guttmacher.org/sites/default/files/factsheet/fb\\_contr\\_use\\_0.pdf](https://www.guttmacher.org/sites/default/files/factsheet/fb_contr_use_0.pdf)

<sup>5</sup> David A. Ehrmann, Kristen Kasza, Ricardo Azziz, Richard S. Legro, Mahmoud N. Ghazzi; Effects of Race and Family History of Type 2 Diabetes on Metabolic Status of Women with Polycystic Ovary Syndrome, *The Journal of Clinical Endocrinology & Metabolism*, Volume 90, Issue 1, 1 January 2005, Pages 66–71, <https://doi.org/10.1210/jc.2004-0229>

<sup>6</sup> Survey Says: #ThxBirthControl. Power to Decide (formerly The National Campaign to Prevent Teen and Unplanned Pregnancy). November 2015. Retrieved November 16, 2018, from <https://powertodecide.org/what-we-do/information/resource-library/survey-says-thxbirthcontrol-november-2015>

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Since day one, the Trump Administration has worked to create a hostile landscape for access to sexual and reproductive health care, through domestic and global gag rules, attacks on Title X and teen pregnancy prevention funding, and appointing anti-sexual and reproductive health leaders throughout his administration, among other dangerous tactics. Given this landscape, it has never been more critical for New York to stand up for sexual and reproductive health care access. New York should be a leader in progressive policies that recognizes the rights of all people to make their own choices about their bodies, futures, and health, and to live free from employer discrimination under any circumstance.

Planned Parenthood of New York City is proud to support the Boss Bill and be part of efforts to ensure reproductive freedom and maintain access to critical health services regardless of gender, orientation, immigration status, or ability to pay. We applaud Council Member Jumaane Williams for introducing the Boss Bill, which would ensure that people are able to access medical procedures or medicine — from fertility treatment to birth control to abortion — without workplace retaliation. We are proud to support Introduction 863 and look forward to continuing to be a resource and partner moving forward.

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*Since 1916, Planned Parenthood of New York City (PPNYC) has been an advocate for and provider of sexual and reproductive health services and education for New Yorkers. Through a threefold mission of clinical services, education, and advocacy, PPNYC is bringing better health and more fulfilling lives to each new generation of New Yorkers. As a voice for sexual and reproductive health equity, PPNYC supports legislation and policies to ensure that all New Yorkers—and, in fact, people around the world—will have access to the full range of sexual reproductive health care services and information.*

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

Date: \_\_\_\_\_

Name: Sarah Sanchezala (PLEASE PRINT)

Address: 26 Bleeker St

I represent: Planned Parenthood NYC

Address: \_\_\_\_\_

*Please complete this card and return to the Sergeant-at-Arms*

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

Date: \_\_\_\_\_

Name: Dana Sussman (PLEASE PRINT)

Address: 22 Rensselaer

I represent: CCHR

Address: \_\_\_\_\_

*Please complete this card and return to the Sergeant-at-Arms*