



COMMISSION ON HUMAN RIGHTS
100 GOLD STREET - SUITE 4600, NEW YORK, NY 10038
MAILING ADDRESS: PO BOX 2023, NEW YORK, NY 10272
Dial 311 www.nyc.gov

Carmelyn P. Malalis
Commissioner and Chair

Testimony of Carmelyn P. Malalis
Before the Committee on Civil Rights

Intro. 689—In relation to establishing a housing discrimination testing program.
Intro. 690—In relation to establishing an employment discrimination testing program.
Intro. 421—Amendment to the Administrative Code of the City of New York, in relation to the powers and duties of the Commission on Human Rights

March 3, 2015

Thank you, Chair Mealy, members of the Civil Rights Committee, and Council Members for convening today's hearing and inviting me to testify on these important pieces of legislation. As the newly appointed Chair and Commissioner of the Commission on Human Rights, I can say without reservation that the Commission strongly supports what it understands to be the goals of these three bills – robust enforcement of the City Human Rights Law, supporting the existing testing work of the Commission, and providing the public with greater transparency of the Commission's work, particularly with regards to the investigations initiated by our agency, so that the public can better assist us in identifying the areas and industries in which serious violations of the Human Rights Law occur and the identities of the repeat violators of the law. These goals are consistent with the Mayor's commitment to aggressively enforcing the Human Rights Law and safeguarding the rights and dignity of all people in New York City.

I. New Commissioner/Chair of the Commission

As part of that commitment, Mayor de Blasio appointed me to helm this very important agency, and I proudly assumed my role as Chair and Commissioner almost two weeks ago. My personal stake in building on the prior work of the Commission to make it an even more robust enforcer of our very expansive law, proactively educating our different stakeholders in their rights and obligations under the law, and finding collaborative, non-adversarial ways of accomplishing

the mandates of the Commission is not insignificant. I am the daughter of Filipino immigrants, my wife is an immigrant from Ethiopia, and we are raising our two biracial children in our family and extended family comprised of many different faiths and belief systems – the Commission’s mandates to “foster mutual respect and understanding”¹ among different people and communities, and “encourage equality of treatment”² for all are indeed personal mandates for me. My wonderful “modern family” is my daily reminder of why working to combat discrimination and intolerance in this great city is so important and why I accepted the very important responsibility of leading the Commission.

Taking on prejudice, discrimination and bigotry is my life’s work. It is my great honor to bring that knowledge and experience to my work at the Commission. I have spent more than a decade representing and litigating on behalf of clients with claims under the Human Rights Law, assisting and consulting with legal advocacy organizations that work with and advocate on behalf of individuals and communities affected by the discrimination and harassment that the law was meant to protect against, and working with counsel for employers and businesses to resolve issues proactively and non-litigiously. When representing clients who were victims of discrimination, retaliation or harassment as an employee advocate, I always investigated to see if my client was able to raise a claim under the Human Rights Law. Not only is the Human Rights Law expansive in the number of different bases of protection provided, but actually written into the law is the requirement that its provisions be “construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws . . . have been so construed.”³ I was an avid enforcer of the law as an employee advocate, and I intend to be an even more avid enforcer of the law in this new capacity, especially with this administration’s commitment to equality and justice and the support of the City Council.

¹ Id. § 8-104(1).

² Id. § 8-104(2).

I am also eager to continue developing and growing relationships with different Commission stakeholders, and creating new collaborations to help the Commission better serve the public in both our Law Enforcement Bureau and our Community Relations Bureau. While enforcement of the law is important and speaks to my history as an advocate, I also come to this role cognizant of the fact that much can also be accomplished through the very important work of the Commission's Community Relations Bureau. For example, in addition to educating individuals on their rights, we want to support businesses in New York City by providing opportunities for education and training tailored to their needs. A multi-pronged strategy of enforcement, outreach, education, and training is necessary if the Commission is to accomplish what the public asks of it and what the law requires.

Given the breadth of the Human Rights Law's protections, the multiple communities and stakeholders I plan to reach out to in building on the Commission's prior enforcement work and community relations networks, time is a valuable commodity. In a moment, I will address the three pieces of proposed legislation, and I do want to thank the Speaker and the Council for prioritizing the Commission's work and putting the Commission in the forefront. As a threshold matter, however, I do ask this Committee and the Council to allow for a timeline that would enable the Commission to develop effective, lasting strategies and implement them. Having been in this role for just shy of two weeks, I am just beginning the process of reviewing all of the Commission's operations as well as its policies and procedures, familiarizing myself with the Commission's current docket, and speaking with stakeholders who have already reached out to welcome me into this role and offer resources from their firm, organization, or community. I have been shuttling between our agency's five locations to meet and get to know the hard-working City employees who, in 2014 alone, have helped the Commission secure over \$1 million in damages for complainants and almost \$200,000 in civil penalties through enforcement, and assist over

³ Administrative Code of the City of New York § 8-130.

90,000 people in the City through projects and activities administered through the Commission's Community Relations Bureau, not to mention the many more people the Commission reaches through its media and ad campaigns. Building on the successes of the Commission's prior work and implementing the multi-pronged strategy I have described will take some time, and I am concerned that placing any additional obligations on the Commission with short timelines – such as those included in the proposed legislation – may actually be counterproductive to making the Commission more effective, more visible, more accessible, more transparent, more responsive or more impactful.

II. Consideration of Expansion of the Commission's Testing Program Is Underway

I joined the agency at a time when it was preparing its 2014 Year-End Report, which just became available to the public, and shows the work the agency has been engaged in prior to my arrival. In 2014, the Commission initiated 124 investigations into employment and housing discrimination resulting in the filing of 125 Commission-initiated complaints (some of the cases filed in 2014 were investigated in 2013). The Commission's testers were involved in all 125 situations leading up to a Commission-initiated complaint, indicating the effectiveness of the testing program in identifying violations of the law. Consistent with the procedure proposed in Int. Nos. 689 and 690, Commission testers referred incidents of actual or perceived discrimination to the Law Enforcement Bureau, which then initiated investigations and filed complaints.

Currently, the Commission's testing program is staffed by two full-time staff and six part-time staff who identify possible violations of the Human Rights Law in the employment and housing contexts, and then may go out into the field as testers to determine if employers, real estate agents and brokers, and other entities with obligations under the law are in fact violating the law. A January 2015 grant of funds from Housing Preservation and Development will support the Commission's testing work until June 2015, and has enabled the Commission to deploy testers in even more situations.

Exploration of ways to expand the Commission's testing program in target and scope is already underway. I have been carefully reviewing the Commission's practices and procedures to identify types of matters that may be appropriate for testing, and time is needed to assess the necessary strategy for expanding our program. This includes the possibility of reaching out to community partners and a diversity of legal advocates to help us strategically pinpoint appropriate targets and collaborating with such groups to further diversify our pool of testers addressing the Human Rights Law's different protections. In the last decade, the Commission's testing program has focused primarily on matters involving gender-based discrimination in employment, and discrimination based on lawful source of income or family status in housing. Matters involving discrimination based on race, sexual orientation, gender identity and gender expression, religion, arrest or conviction record, and other bases covered by the Human Rights Law would also benefit from the Commission's program. Investing time into building partnerships with community groups and legal advocacy organizations and thinking strategically about the Commission's investigations will help us test in those different areas.

The Commission agrees that the type of testing contemplated by Int. Nos. 689 and 690 would be helpful to combatting discrimination in employment and housing, and that such testing is a powerful tool for the Commission's Law Enforcement Bureau. As the Commission's testing program has been effective, and considerations to expand the reach of the program are being reviewed, I am concerned that the timelines imposed in the bills may actually be counterproductive to the Commission expanding an effective testing program, which includes community partners and advocacy organizations that can help with a thoughtful expansion.

III. New Reporting Requirements Under Int. No. 421

The Administration has a clear commitment to accountability and understands why the information to be reported under Int. No. 421 helps to keep the Commission accountable and how it also helps the public assist the agency. However, I believe that allowing the Commission to

build momentum while engaging key stakeholders will enable us to evaluate and implement strategy, and address the new reporting requirements contemplated in Int. No. 421 in a manner that would best serve the public. In accepting this appointment and meeting with members of the community and legal advocacy organizations, I am excited to harness the power entrusted to the Commission to seek out and address discrimination, retaliation and harassment in our city, and to work with Corporation Counsel to that same end.

As I alluded to earlier, in broadening the scope and targets for Commission-initiated investigations and complaints, and further emboldening and animating the Commission's enforcement activities, I want to do so strategically, thoughtfully and effectively, which takes time. Though the information sought in Int. No. 421 could be provided in the Commission's 2015 annual report as contemplated by the bill, I believe that such information is not likely to capture the efforts underway and that are more likely to materialize in annual reports for 2016 or 2017. Some of the information required by Int. No. 421 is already available in another format in the Commission's year-end report or website.⁴ However other information sought would likely not be reflective of efforts underway if reported in 2015. Also, efforts to address some of the recommendations in the Comptroller's recent audit report are already underway as a result of this administration's prioritization of the need for improvement. For example, the Commission is already working with DoITT to acquire, adapt and implement Law Manager, a well-regarded case-tracking software that will help us capture our statistics more reliably. We expect implementation to begin in the second quarter of Fiscal Year 2016. Another priority consistent with the

⁴ The proposed bill would require the Commission to quantify specific agency publications and reports in its annual report. See Int. No. 421(10)(b)(iv). The Administrative Code of the City of New York already empowers the Commission to issue this information – “publications and reports of investigations designed to promote good will and minimize or eliminate prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby” see Section 8-105(7) – and the Commission has been accomplishing this goal through the creation of the literature that is distributed to the public and media reports regarding the Commission each year, both of which are already included in the Commission's year-end report and/or available on its website.

Comptroller's recommendations is to conduct a review of the Commission's policies and operating procedures to determine how we might clarify and refine them. Having begun with the Commission less than two weeks ago, I am only at the beginning of this strategic process. Rather than rushing through the planning process, I submit that it is essential for the Commission to take the requisite amount of time to engage the various stakeholders, as well as to review and revise necessary procedures, assess and implement infrastructure that strategically responds to the public's needs, and build the relationships necessary to create a more robust program for Commission-initiated investigations with Corporation Counsel.

* * *

Make no mistake. I share your urgency in prosecuting more cases of discrimination and across more bases covered under our expansive Human Rights Law, and understand the utility of transparent reporting so that the public can help us identify the areas and targets appropriate for Commission attention. I want to proceed thoughtfully and strategically to accomplish those ends. I thank you, again, for inviting me to speak on behalf of the Commission and look forward to our continued partnership on the important goals of these proposed bills.

NYC COMMISSION ON HUMAN RIGHTS

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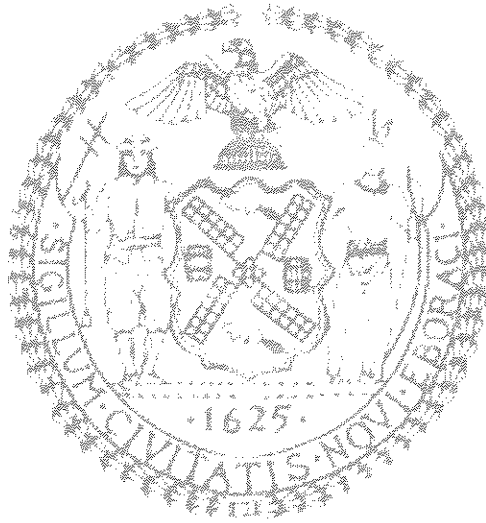
ANNUAL
REPORT

BILL DE BLASIO, Mayor
CARMELYN P. MALALIS, Commissioner/Chair



2014 Annual Report

NEW YORK CITY COMMISSION ON HUMAN RIGHTS



BILL DE BLASIO, MAYOR
CARMELYN P. MALALIS, COMMISSIONER/CHAIR
NEW YORK CITY COMMISSION ON HUMAN RIGHTS

Message from the Mayor



New York has always been a place filled with opportunity and the promise of equality, and people from all over the world have come here to be a part of our city's great success story. Hailing from every corner of the globe, our residents and visitors contribute to the diversity and strength of our communities. To ensure that everyone is treated fairly and with respect, it is our duty to protect the civil rights of all those who live in, work in, and visit the five boroughs.

Responsible for safeguarding the dignity and fundamental rights of all New Yorkers, the New York City Commission on Human Rights has upheld social justice and enforced our Human Rights Law, one of the most comprehensive civil rights laws in the nation. I have appointed Carmelyn P. Malalis as the Chair of the Commission, whose background of encouraging positive community relations and advocacy for fair and equal treatment will help us better protect the rights of people in our city.

The Commission on Human Rights has made vital contributions to our goal to build one city, where everyone can rise together, and I invite you to learn more about the Commission's work in its 2014 Annual Report.

A handwritten signature in cursive script that reads "Bill de Blasio". The signature is written in dark ink and is positioned above the printed name.

Bill de Blasio

Message from the Commissioner



When Mayor Bill de Blasio appointed me to helm this important agency, I was honored to be given the opportunity to work with the City and New Yorkers in protecting the human rights and dignity of people in our great city. In mid-February 2015, I proudly assumed my role as Chair and Commissioner. Since then, I have had the great pleasure of meeting and getting to know the hard-working Commission employees who have assisted over 90,000 people in the City through projects and activities administered through the Commission's Community Relations Bureau, and the staff in our Law Enforcement Bureau, who have helped people in the City secure over one million dollars in damages when their rights under the City Human Rights Law were violated.

Indeed, I joined the Commission just as it finished another busy year. In 2014, 633 complaints of discrimination, retaliation, harassment, or failure to accommodate were filed with or by the Commission's Law Enforcement Bureau, which is charged with enforcing the New York City Human Rights Law – one of the most expansive of its kind in the nation. The Community Relations Bureau's Human Rights Specialists and support staff continued to provide training, programming and services to New Yorkers in every borough through its five borough-based Community Services Centers. Both bureaus teamed up to field almost 5,000 inquiries and resolve almost 200 matters involving violations of the Human Rights Law without having to file a complaint. These are just some examples of the Commission's accomplishments from the past year.

To accomplish the work we do at the Commission requires more than a legal and professional commitment. Our work is very personal, as indicated in the language of our law: "...there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences." While many of the accomplishments that you will read about in this 2014 Annual Report are presented in numbers and dollars, we have listed several examples to highlight the human factor. For example, in 2014, the Commission successfully advocated on behalf of female workers who were sexually

harassed and in some cases fired; a Brooklyn man who was denied housing because he has a child living with him; a man who had difficulty moving around his home because structural insufficiencies in his building prevented his use of a wheelchair; and a woman who was repeatedly harassed by her supervisor based on her national origin. These are just a few of the many individuals whose lives were improved – and whose dignity was restored – because of the Commission’s work.

Looking ahead, I am thrilled to lead this very important agency into an exciting period of transition, expansion and transformation. After more than a decade of representing and litigating on behalf of clients with claims under the Human Rights Law, assisting and consulting with legal advocacy organizations that work with and advocate on behalf of individuals and communities affected by the discrimination and harassment that the law was meant to protect against, and working with counsel for employers and businesses to resolve issues proactively and non-litigiously, it is my great honor to bring that knowledge and experience to my work at the Commission.

There is much that our Law Enforcement Bureau (LEB) and Community Relations Bureau (CRB) have accomplished when they have worked together and there is much more that we look forward to accomplishing in the year ahead. Efforts are already underway to implement a collaborative, strategic vision where staff working with individuals filing complaints will help inform the work of both LEB and CRB to help them identify and resolve issues with or without complaints filed; staff working on Commission-initiated investigations will help CRB develop programming responsive to the needs of different communities; and CRB Human Rights Specialists can help LEB identify the industries and repeat violators of the law that should be investigated. There are multiple ways in which our bureaus can interact with each other, as well as with other City agencies, community groups, employers, businesses, and other entities. The year ahead will be a year of exploration and strategizing to build on the prior work of the Commission and design even more ways to protect, inform, educate and train New Yorkers.

It is an exciting time to be partnering with the Commission, and I invite you to read about us in this 2014 Annual Report, reflect on the work the Commission has done and is poised to do, and think about how you, your organization, firm, business or community can help accomplish our mandates to “foster mutual respect and understanding” and “encourage equality of treatment” in our wonderfully diverse city.

I am proud to serve as the City’s Human Rights Commissioner and look forward to working with and for you in 2015!

A handwritten signature in black ink, appearing to read 'C. P. Malalis', written in a cursive style.

Carmelyn P. Malalis

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Introduction

The New York City Commission on Human Rights is charged with the enforcement of the New York City Human Rights Law, Title 8 of the Administrative Code of the City of New York, and with educating the public and encouraging positive community relations. The Commission is divided into two major bureaus -- Law Enforcement and Community Relations. The Law Enforcement Bureau is responsible for the intake, investigation, and prosecution of complaints alleging violations of the Law. The Community Relations Bureau helps cultivate understanding and respect among the City's many diverse communities through its borough-based Community Service Centers and numerous educational and outreach programs.

The New York City Human Rights Law is one of the most comprehensive civil rights laws in the nation. The Law prohibits discrimination in employment, housing and public accommodations based on race, color, creed, age, national origin, alienage or citizenship status, gender (including gender identity, gender expression and sexual harassment), sexual orientation, disability, marital status and partnership status. In addition, the Law affords protection against discrimination in employment based on unemployment status, arrest or conviction record and status as a victim of domestic violence, stalking and sex offenses. In housing, the Law affords additional protections based on lawful occupation, family status, and any lawful source of income. The City Human Rights Law also prohibits retaliation, discriminatory harassment or violence, and bias-related profiling by law enforcement. The Law also requires employers to make reasonable accommodations for pregnant women, religious beliefs, and people with disabilities. Housing providers and public accommodations are required to make reasonable accommodations for religious beliefs and people with disabilities.

The Commission's Community Relations Bureau (CRB) educates the public about the protections of the New York City Human Rights Law and encourages understanding and respect among New York City's many diverse communities. CRB fulfills this role through its many educational programs, workshops and presentations directed at the City's most vulnerable populations, such as immigrants, the unemployed, the formerly incarcerated, seniors, and people with disabilities. In addition, CRB brings diverse populations together in shared activities like sports to work towards shared goals, allowing them to focus on the things they share, instead of their differences.

Law Enforcement Bureau

The Commission's Law Enforcement Bureau (LEB) enforces the NYC Human Rights Law. LEB is responsible for the intake, investigation, and prosecution of complaints alleging violations of the Law.

The number of new cases the Commission filed in 2014 was 633; 69% of those cases were in employment, 17% in housing, 13% in public accommodation, and 1% were discriminatory harassment or violence. In addition, the Commission successfully resolved 191 potential complaints of discrimination through pre-complaint intervention; 176 of those are in the area of disability accommodations.

The following three examples illustrate successful pre-complaint interventions.

- LEB successfully intervened on behalf of a pregnant woman, who was fired from her job instead of being offered a temporary leave accommodation. LEB addressed the issue with her employer, citing an amendment that was added to the NYC Human Rights Law in 2014 that prohibits discrimination in employment based on pregnancy, childbirth, or a related medical condition and requires employers to provide a reasonable accommodation. When the woman was cleared to work, she was reinstated to her previous position.
- LEB successfully intervened on behalf of a disabled tenant who uses a wheelchair to ambulate. The tenant notified the building manager of broken tiles near the elevator that made it difficult to enter and exit the elevator. The tenant also complained about difficulty in opening the front door. No repairs or modifications were made until LEB spoke to the building manager, who replaced the broken tiles and agreed to install an automatic front door.
- LEB successfully intervened on behalf of an employee who had been convicted of a misdemeanor crime in 1997 and disclosed that information to the

employer. When she did not receive a paycheck for two weeks and inquired, she was allegedly told, "you're a criminal and we don't have to pay you." After LEB spoke with the owner, the woman received her full pay in addition to overtime and the expenses she had incurred.

In addition to the 191 allegations resolved through pre-complaint intervention, the Commission resolved 568 filed cases. The average amount of time it took to resolve these cases was 468 days. The Commission's two-pronged approach – an intensive initial interview with the complainant followed by an immediate investigation of the facts alleged – provides LEB staff with a greater ability to gather evidence, identify witnesses, and build the strongest case.

During 2014, 79% of the pending cases at the Commission were under one year old. At the end of 2014, only two cases were over three years old – both of those were appeals.

Cases

The following filed complaints show the types of cases the Commission regularly handles and resolves for complainants. These cases were resolved in 2014.

- A complainant alleged that her employer subjected her to sexual harassment based on her gender and then fired her in retaliation for complaining to her supervisor. Two of the woman's co-workers were also fired in retaliation for their involvement in the investigation. The Commission reached a settlement in which the employer agreed to pay the first complainant \$45,000 in back pay and compensatory damages; the other two complainants each received \$20,000 in back pay and compensatory damages. The respondents also agreed to undergo training on the NYC Human Rights Law.

- A complainant filed a discrimination complaint with the Commission against her employer alleging that her supervisor repeatedly made disparaging remarks to her based on her national origin. The employer agreed to settle the matter by paying the complainant \$8,000 in damages and undergoing training on the NYC Human Rights Law.
- A complainant filed a discrimination complaint with the Commission against his landlord alleging the building superintendent repeatedly made disparaging remarks based on the man's sexual orientation. The landlord terminated the superintendent and just before trial, agreed to settle the matter, paying \$15,000 to the complainant.

Access for People with Disabilities

The Equal Access Program assists people with disabilities by identifying architectural and financial resources that are available, advocating for the disabled when dealing with landlords and/or service providers, and assisting with legal action if intervention fails.

Many of New York's buildings, stores, and other public accommodations are not accessible to people with disabilities. As a result of its aggressive efforts in 2014, the Commission negotiated 182 modifications. Most of these modifications (176) were accomplished through pre-complaint intervention.

Orders

In 2014, the Commission issued three post-trial Orders.

- On February 5, 2014, the Commission ordered a Queens dry cleaner to pay a \$10,000 civil penalty and \$10,000 in damages to one of its employees after repeatedly subjecting him to derogatory names because of his perceived sexual orientation.
- On May 22, 2014, the Commission ordered the owners of a Brooklyn building to pay \$5,000 in

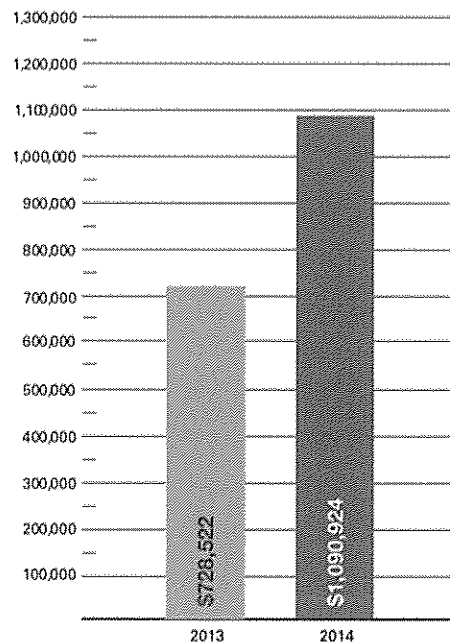
damages to the complainant after refusing to rent him an apartment because he had a child.

- On September 10, 2014, the Commission ordered that a disability discrimination case, dismissed by an OATH judge, go to trial. The disability complaint involved a hospital worker with strep throat who was instructed to take leave. When he returned to work three days later, he was fired. The Administrative Law Judge granted summary judgment in favor of the respondent and stated that strep throat was not a disability under the NYC Human Rights Law. The Commission reversed the judge's recommendation and ordered a trial.

Fines

In 2014, the Commission assessed 62 fines totaling \$189,750.

SETTLEMENTS



Settlements

The Commission has the authority to obtain cash settlements for those aggrieved by violations of the Human Rights Law. In 2014, 77 complainants received settlements totaling \$1,090,924. Non-cash settlements successfully negotiated by the Commission include rehiring, policy changes, and modifications for accessibility. *(See chart on page 5)*

LEB Staff

In addition to three attorneys from the Commission’s executive staff, the Law Enforcement Bureau consists of 14 attorneys, four Human Rights Specialists, including two former NYPD officers, and four support staff members.

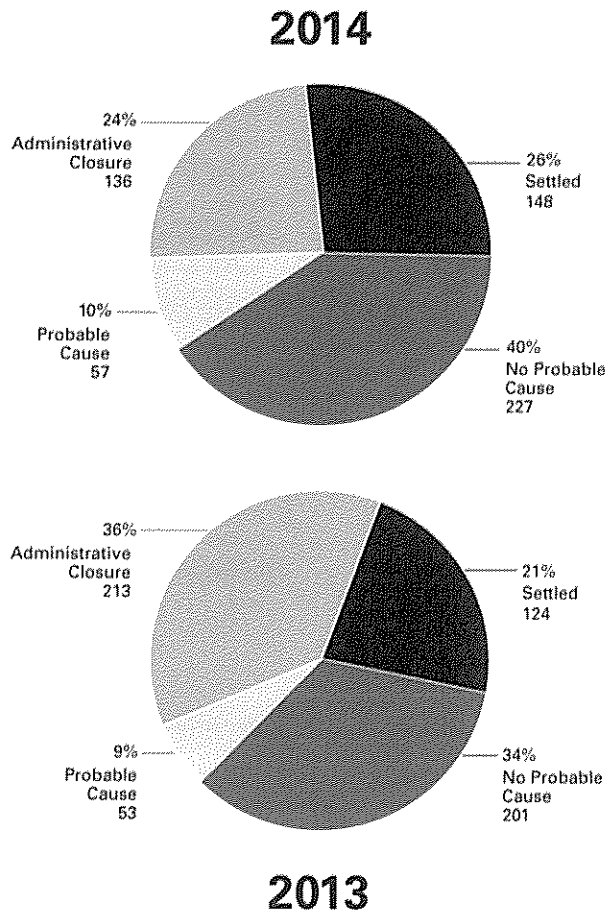
BRIEF DESCRIPTION OF THE COMPLAINT PROCESS

<p>INTAKE</p>	<p>Members of the public come into one of the Commission’s locations to raise a claim under the Human Rights Law. They fill out an intake form, and that information is sent to an LEB attorney. Attorneys conduct the interview and try to intervene and resolve the issue before generating a complaint. Outside attorneys have the ability to submit complaints to the Commission.</p>
<p>COMPLAINT IS FILED</p>	<p>The Law Enforcement Bureau files and serves the complaint; all parties are invited to mediate.</p>
<p>INVESTIGATION</p>	<p>Attorneys interview parties and witnesses, review documents, and depending on the type of case, may inspect the premises.</p>
<p>DETERMINATION</p>	<p>A Probable Cause Determination is issued when, after its investigation, the Commission believes that a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice was committed. The Commission may administratively close a case for a number of reasons, including, but not limited to, if the Commission cannot locate the complainant, if the complainant fails to cooperate or is disruptive or if the Commission determines that prosecution is not in the public interest. If after its investigation, the Commission determines that probable cause has been found not to exist, the Commission shall issue a No Probable Cause Determination stating the reasons for LEB's conclusion and dismiss the complaint.</p>
<p>THE HEARING PROCESS</p>	<p>An Administrative Law Judge (ALJ) from the Office of Administrative Trials and Hearings holds a pre-trial conference. If the case does not settle, the ALJ conducts a hearing and issues a Report and Recommendation, which is sent to the Commission.</p>
<p>FINAL DECISIONS AND ORDERS</p>	<p>The Commission reviews the Report and Recommendation and issues a Decision and Order.</p>

Determinations and Resolutions

The charts below indicate the percentage of cases that resulted in determinations, settlements, and administrative closures.

DETERMINATIONS AND RESOLUTIONS



CASES FILED

The types of discrimination complaints filed with and by the Commission during 2014 can be found below. Since many complaints alleged more than one protected class, these totals will exceed the number of complaints filed. The chart depicts each area of protection involved in the complaints filed.

EMPLOYMENT	2014
Age	43
Creed	16
Disability	119
Alienage	0
Color	13
National Origin	51
Sexual Orientation	17
Race	55
Gender	211
Arrest Record	5
Conviction Record	7
Domestic Violence	3
Citizenship Status	0
Partnership Status	0
Marital Status	2
Pregnancy Accommodation	27
Retaliation	88

HOUSING	2014
Age	5
Creed	2
Disability	38
Alienage	3
Lawful Source of Income	23
Gender	5
Color	5
Marital Status	6
National Origin	11
Sexual Orientation	9
Race	17
Presence of Children	4
Lawful Occupation	2
Citizenship Status	3
Partnership Status	2
Retaliation	5
Interference with Protected Class	2
Relationship by Association	8

PUBLIC ACCOMMODATION	2014
Age	4
Creed	4
Disability	39
Alienage	0
Color	10
National Origin	5
Sexual Orientation	4
Race	30
Gender	18
Citizenship Status	0
Partnership Status	0
Marital Status	1
Retaliation	3
Relationship by Association	1

Discriminatory Harassment and Violence	2014
Disability	1
National Origin	2
Color	1

MEDIATION	2014
Cases	1
Closed	1
Successfully Settled	1
Unsuccessful, returned to LEB	0
Conferences	2

Inquiries

The chart below provides information on the number of communications (eg., telephone calls, emails, and letters) the Commission received from the public inquiring about the NYC Human Rights Law in 2014.

TOTAL: 4,975

Protection	Employment	Housing	Public Accommodation	Discriminatory Harassment and Violence	Bias-Based Profiling	Non-Jurisdictional	Total	LIMITED ENGLISH PROFICIENCY LANGUAGES	
Age	41	15	17	0	0	69	142	Arabic	3
Religion/Creed	15	12	11	1	0	40	79	Bengali	1
Disability	49	75	49	1	1	187	362	Cantonese	10
Alienage/Citizenship Status	4	0	1	0	1	10	16	Haitian Creole	2
Color	48	40	47	2	0	164	291	Korean	3
National Origin	32	26	20	0	0	107	185	Mandarin	22
Sexual Orientation	16	12	2	2	0	32	64	Polish	2
Race	57	60	64	1	0	171	343	Russian	10
Gender*	44	28	17	1	1	99	190	Spanish	461
Arrest Record	12	3	2	0	0	20	37	Turkish	1
Conviction Record	15	6	0	2	0	22	45		
Domestic Violence	2	0	0	0	0	2	4		
Partnership Status	0	8	2	0	0	12	22		
Marital Status	2	1	0	0	0	4	7		
Lawful Source of Income	1	21	2	1	0	24	49		
Lawful Occupation	2	3	1	0	0	8	14		
Presence of Children**	0	6	2	0	0	5	13		
Unemployment Status	2	0	0	0	0	1	3		
Retaliation	11	4	0	1	0	11	27		
Misc.***	610	595	499	26	7	2,236	3,972		

*Includes Gender Identity, Gender Expression, and Sexual Harassment.

**Includes children that are, may be, or would be residing there.

***Inquiries not related to a specific protection.

Community Relations Bureau

The Human Rights Law empowers the Commission to proactively reach out to the public – individuals, communities, community groups, advocacy organizations, employers, businesses, landlords, real estate agents, etc. – to provide education, training, and information on the protections of the Human Rights Law and encourage understanding and respect among the people that live in and visit New York City. To address this mission, the Commission’s Community Relations Bureau (CRB) provides services through its five borough-based Community Service Centers, and gathers intake information from individual walk-ins, which is provided to LEB, so that LEB staff can contact the individuals. CRB consists of 27 Human Rights Specialists and four support staff members.

The various services of CRB’s field operation compose the Commission’s Neighborhood Human Rights Program (NHRP). Through the NHRP, the Commission’s Human Rights Specialists work on a local level with block, tenant, religious, educational, merchant, and community groups to improve relationships, foster understanding and stabilize communities. The Commission stations Human Rights Specialists in each of the five boroughs so that they are able to personally build relationships in local communities and support civic leadership and community organizations, educate community members about the protections they have under the Human Rights Law and, if necessary, connect them to the Commission’s LEB or other City services. Below is a description of some of the many services provided to the public in 2014 through the Commission’s NHRP.

Serving the City’s Immigrant Communities

The Commission conducted 86 workshops, including 63 ESOL classes (reaching 1,221 students and teachers), and other outreach events during 2014 to inform immigrant workers, employers, and immigrant advocacy organizations about immigrants’ rights and employers’ obligations under Federal and City laws. For example,

- Human Rights Specialists attended over 200 naturalization swearing-in ceremonies, reaching more than 32,000 people, to provide presentations on the Human Rights Law to new citizens and provide personal, on-site support to immigrant families with questions about their rights;
- CRB collaborated with 22 schools and educators providing adult literacy classes which include literature and other information regarding the Human Rights Law and NHRP services in materials distributed to students;
- CRB worked with a number of locations including Flushing Library, Jackson Heights Library, Brooklyn Library, New York Public Library, LaGuardia College, Harlem YMCA, New America YMCA, University Settlement, YMCA Elesair Program, Turning Point, and the Chinatown Manpower Project to teach English classes to speakers of other languages (ESOL classes), and to educate students on employment rights using an interactive DVD workbook developed and produced by the Commission. The Commission also prepared beginning/intermediate and advanced workbooks for ESOL teachers with lesson plans and supplemental information; and
- Human Rights Specialists worked with community groups and advocacy organizations to provide workshops explaining discrimination based

on national origin, citizenship or alienage, including citywide presentations that were conducted in English, Spanish, Chinese, and French.

Developing and Presenting Programming for Workforce Development and Back-To-Work Agencies

During 2014, CRB continued its workforce development program *Working for Real: Employment Rights and Discrimination in the Workplace*. This anti-discrimination program provides workshops throughout the City's many workforce development and other back-to-work agencies. The program highlights employment information; recognizing and responding to employment discrimination; sexual harassment in the workplace; and specific resources for people with disabilities; individuals with arrest and/or conviction records; and victims of sexual harassment. The Commission has responded to the need for these workshops at multi-site organizations such as Goodwill Industries, FEGS, and many other community-based venues.

Re-Entry Programs and Workshops for Incarcerated and Formerly Incarcerated Individuals

In 2014, the Commission also expanded its workshop format for incarcerated and formerly incarcerated individuals, conducting 285 workshops for 10,134 individuals through a large re-entry network. CRB staff built and/or strengthened relationships with a variety of different groups and programs including, for example, ComALERT, Serendipity 1 and 2, NYC Dept. of Probation's Neighborhood Opportunity Network Program, NYC Dept. of Correction and Community Supervision, Hour Working Women Program, and the Women's Prison Association. In addition, each week, CRB collaborates with the City's Department of Correction to present workshops at one of the 16 different Rikers Island facilities. These workshops emphasize employment protections under the Human Rights

Law, as well as provide useful information on citywide services, voting rights, and other helpful resources.

Equal Access for People with Disabilities

The CRB staff continued its Equal Access Program in 2014, with the goal of identifying equal access issues in housing, employment and public accommodations, and resolving them without the need for such issues to be raised in an adversarial process before LEB. Individuals, housing providers, and other entities have praised this program, in which CRB staff members regularly conduct workshops and engage in collaborative discussions with relevant parties to address accessibility issues. In 2014, CRB successfully negotiated 176 modifications for individuals with disabilities through such interventions, and worked with LEB staff when necessary.

Modifications secured through the Commission in 2014 include installing permanent and portable interior and exterior ramps, electronic doors, interior and exterior railings, accessible bathrooms and grab bars; painted steps for color contrast for the visually impaired; lowering of sink and removal of door saddles; widening of a bedroom door; decreased door pressure; policy changes at a restaurant to permit wheelchairs; accessible parking spaces and signage; lowering of credit card swipe mechanisms at a market; and relocation of a disabled resident to an accessible unit.

Accommodations made in 2014 that have a wider impact on more individuals include: (i) significant renovations completed at a Manhattan health club that include accessible signage, installation of electronic doors, lowering of elevator panels, decreasing door pressure to pool area, installation of ramps to a pool and sauna, accessible showers, installation of a locker room and changing area, and installation of lifts into a pool and hot tub; (ii) another health club repaired its pool lift, lowered the door pressure on all doors at the club and now provides accessible bathrooms; (iii) a film festival

now provides an accessible viewing area as well as a special screen with captioning; (iv) a medical lab in Brooklyn provides accessible blood drawing services; and (v) a Brooklyn museum that is providing literature detailing accessible area restaurants, services, and transportation.

Outreach and Education to Students, Schools, Educators, and Staff

In 2014, CRB staff members visited 28 City schools and 20 youth centers across the City. They conducted 288 sessions and taught over 5,382 students in grades 6-12. Human Rights Specialists covered an array of topics, including the Human Rights Law, addressing incidents of sexual harassment, conflict resolution among school stakeholders, cyberbullying, and peer mediation between students.

Developed internally at the Commission, CRB's Peer Mediation Training Program helps schools to establish a peer mediation program at their location and trains middle and high school students to become peer mediators. During 2014, 192 high school students from 16 schools throughout the City graduated from the Peer Mediation Training Program. The Commission uses its *Talk it Over: A Peer Mediator's Guide* to assist the student mediators with the mediation process. These student mediators then assist their peers in resolving differences before they escalate into violence or harassment. CRB's approach to teaching peer mediation is grounded in the underlying principles of the Human Rights Law -- tolerance, human dignity, and respect. During this eight-to-ten week program, CRB staff members teach students valuable life skills and facilitate discussions regarding patience, persistence, active listening, and problem solving, while presenting alternatives to threats and violence. To assist schools in maintaining and growing the program, the Commission-developed

training manual is provided to school coordinators along with CRB contacts who can be called to consult with the coordinators. Students, faculty, and staff benefit from the program.

Fair Housing Services and Programs

In 2014, the Commission participated in several activities as part of its fair housing program to promote equal opportunity for housing under the law. These activities included: providing training for housing providers and community groups (including 151 fair housing workshops); facilitating problem-solving discussions with housing providers to resolve housing complaints; assisting LEB in investigations of unlawful real estate practices; providing technical assistance to tenants as part of the Citywide Task Force on Housing Court; and participating in community activities encouraging harmonious intergroup relations and neighborhood stability.

In addition, the Commission pooled funding from the NYC Department of Housing Preservation and Development, the Russell Sage Foundation, and Columbia University to collaborate with a research team at Columbia University's Center for the Study of Development Strategies to conduct a housing discrimination study. Through testing supervised by both the Center and the Commission, the study measured baseline levels of discrimination in the rental housing market and also experientially tested the effectiveness of anti-discrimination telephone messages from city government. A final report is expected in 2015.

Mortgage Counseling and Predatory Loan Prevention

Since 2004, the Commission has been a HUD-certified Housing Counseling Agency and has provided mortgage counseling services to the public

in each Community Service Center. Most of the Commission's clients are referred to the agency by HUD when individuals' homeownership is in jeopardy. CRB staff members engage in outreach efforts and provide counseling services to address the community instability created by predatory lending practices. These practices include excessively high fees and commissions, misrepresentation of the mortgage's terms and conditions, high interest rates, repeated financing of loans, balloon payments, and the financing of high-cost credit insurance. In 2014, CRB staff provided 415 counseling sessions for 63 homeowners facing foreclosure.

In order to reach affected members of communities, CRB staff distribute information and helpful resources, including consumer and banking information. Human Rights Specialists also participate in homeownership seminars and predatory lending workshops in communities more vulnerable to this type of discrimination.

Educating Businesses on the Human Rights Law

Many neighborhood-based businesses need information and education regarding their rights and responsibilities as employers or public accommodations under the Human Rights Law. CRB staff work with different groups and organizations to provide this much-needed information so that businesses do not run afoul of the law. In 2014, CRB staff conducted 20 workshops for Business Improvement Districts, Chambers of Commerce, and other business organizations, covering employment discrimination and public accommodations issues such as accessibility, refusal to serve because a patron is a member of a protected class, and discriminatory advertising. The Commission launched a citywide campaign distributing thousands of decals printed in several languages to street-level businesses

stating "We Do NOT Discriminate. If You're Buying, We're Selling." The campaign informed store owners of the City's comprehensive Human Rights Law while informing shoppers of all protected classes under the law that they are welcome to shop at those locations free from discrimination.

Serving a Diversity of Communities with Different Language Access Needs

The CRB staff conducted 148 workshops in languages other than English. Those languages were: Spanish – 67; Mandarin/Chinese – 43; French – 2; Russian – 26; Haitian Creole – 8; Korean – 1; and Coptic – 1. As part of a comprehensive public education campaign, the Commission published its informational booklet in several languages spoken by New Yorkers, including Chinese, English, French, Haitian Creole, Italian, Korean, Russian, and Spanish. The booklets appear on the Commission's website: www.nyc.gov/cchr. In addition to those languages, some of the Commission's info cards are printed in Arabic, Italian, Polish, and Urdu.

In addition, the Department of City Planning estimates that nearly 50% of all New Yorkers speak a language other than English at home and, of those, 49% are considered Limited English Proficient (LEP), meaning that 25% of all New Yorkers are LEP. The Commission estimates that it has provided services to over 36,000 LEP individuals in 2014.

By year-end, the Commission delivered 91,638 units of service throughout the five boroughs meaning that CRB assisted 91,638 members of the public in 2014.

COMMUNITY PROGRAMS

<p>IMMIGRANT EMPLOYMENT RIGHTS</p>	<p>Program provides presentations and materials on employment and workplace protections for:</p> <ul style="list-style-type: none"> • immigrant workers, employers, and immigrant advocacy organizations; • ESOL adult literacy students at all learning levels; and • ESOL, ESL, GRE, and ABE instructors.
<p>WORKFORCE DEVELOPMENT PROGRAMMING</p>	<p>Program provides presentations considering employment rights for:</p> <ul style="list-style-type: none"> • clients in workforce development agencies and other back-to-work programs; • individuals with disabilities; • individuals with arrest and/or conviction records; and • victims of domestic violence.
<p>RE-ENTRY PROGRAMS</p>	<p>Program provides presentations and materials regarding employment rights for previously incarcerated individuals in:</p> <ul style="list-style-type: none"> • re-entry community organizations; • correctional institutions; and • parole and probation orientations.
<p>EQUAL ACCESS FOR PEOPLE WITH DISABILITIES</p>	<p>Program provides:</p> <ul style="list-style-type: none"> • investigation of individual inquiries (interviews, space assessment, code assessment, analyzing code compliance issues, discussion of the law); • intervention, i.e. educating and negotiating with owners; • group presentations regarding disability rights to consumers, business people, social service agencies, and hospitals; and • drafting complaints and follow-up investigations.
<p>SCHOOL PROGRAM</p>	<p>Program provides several curricula, including the "NYC Human Rights Law," "Sexual Harassment," "Cyberbullying," and "Resolving Conflict" to:</p> <ul style="list-style-type: none"> • school classes (grades 6-12) or youth programs; and • teachers, or counselors, and parent groups.
<p>PEER MEDIATION & COMMUNITY MEDIATION</p>	<p>Program provides:</p> <ul style="list-style-type: none"> • how to mediate bias and other community disputes; • peer mediation programs in schools; and • conflict resolution training to personnel from community groups, not-for-profit organizations and schools.
<p>FAIR HOUSING, MORTGAGE COUNSELING & PREDATORY LOAN PREVENTION</p>	<p>Program provides:</p> <ul style="list-style-type: none"> • fair housing training with HPD to contractors and developers; • community or parent group presentations on fair housing provisions of the Law; and • weekly assistance in Housing Courts with the Citywide Task Force on Housing Court. <p>• HUD-referred counseling for individuals facing the loss of their homes that includes:</p> <ul style="list-style-type: none"> ■ reviewing in person their financial and mortgage status; ■ writing letters to creditors or banks to negotiate payment; ■ exploring alternatives to foreclosure with individuals and lending institutions; ■ referring cases of suspected predatory lending; ■ distributing literature and participating in housing coalitions; and ■ delivering community presentations on predatory lending and foreclosure prevention.
<p>FAIR BUSINESS PRACTICE</p>	<p>Program provides presentations and materials on the Human Rights Law covering employment rights and public accommodation issues like accessibility, refusal of services based on a protected class, and discriminatory advertising for:</p> <ul style="list-style-type: none"> • Business Improvement Districts; • chambers of commerce; and • business organizations.

Major Highlights

Preliminary Report Released on Combatting Housing Discrimination

The Commission released a preliminary report following a 2½ year housing discrimination study conducted with Columbia University’s Center for the Study of Development Strategies. The study measured the baseline levels of discrimination in the rental housing market and also tested the effectiveness of anti-discriminatory telephone messages from City government urging landlords to comply with the NYC Human Rights Law. The report suggested that there was strong evidence of discrimination against the Hispanic testers and that they were the least likely group, compared to whites and African-Americans, to receive a callback for an offer to rent an apartment. Preliminary results also revealed that phone contact by the City can substantially reduce discriminatory behavior by brokers and landlords directed at Hispanics but not necessarily have any impact on discriminatory behavior against African-Americans.

Commission Teams with HPD on Fair Housing Efforts

The Commission teamed up with the NYC Department of Housing Preservation & Development (HPD) on a number of Fair Housing initiatives during 2014, delivering 68 fair housing workshops geared for tenants, homeowners, landlords, and construction companies and contactors receiving HPD funds – providing them with information on various aspects of the NYC Human Rights Law including fair housing laws and employment discrimination. The Commission also collaborated with HPD, hosting a forum entitled Combatting Housing Discrimination, which highlighted the Columbia University study on discrimination and effective anti-discrimination messaging from government. This joint effort is in addition to the Commission’s own presentations on Fair Housing.

Commission Targets Employment Discrimination with Increased Public Education

With the addition of two amendments to the NYC Human Rights Law, the Commission increased its public education efforts in the area of employment discrimination. The Commission created a Pregnancy and Employment Rights poster available in seven major languages on the Commission’s website. Under the law, all employers with four or more employees are required to distribute the poster to all its employees. In addition to enforcing the law, the Commission’s Human Rights Specialists have highlighted the rights of pregnant women in all presentations, workshops, and information fairs and have distributed Commission literature to clinics, hospitals, and community-based organizations. Additionally, Commission staff have targeted employers, colleges, and schools with information on interns, who now have the same rights as employees under the law, whether they are paid or unpaid.

Decal Campaign Highlights Discrimination-Free Shopping

The Commission visited street-level businesses throughout the City with decals in several languages that read “We Do NOT Discriminate. If You’re Buying, We’re Selling” – a message that reached thousands of New Yorkers and visitors. The decals were part of the Commission’s intense education effort to inform businesses of the City’s comprehensive Human Rights Law and inform shoppers of all protected classes under the law that they are welcome to shop at that business free from discrimination.

Commission in the News

The Commission's Communications Department works closely with both the Law Enforcement and Community Relations Bureaus to develop a media strategy that would maximize the number of people the Commission reaches, informing them of the Commission's work and the NYC Human Rights Law. Part of this aggressive anti-discrimination campaign included highlighting the Commission's high-profile cases and events in mainstream, ethnic, and community press.

In 2014, the Commission appeared 704 times in the media, with the majority of media appearances prominently featuring the Commission. This number does not include each media outlet's online version of the story. Additionally, the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

Significant placements in both print and electronic media included: The Associated Press, Reuters, Huffington Post, CBS NY, ABC News, NBC News, Fox News, Al Jazeera, CNBC, WPIX 11, NY 1 News, NYC Media, News 12 Brooklyn, Bronx Net, *The New York Times*, *Daily News*, *New York Post*, *The New York Law Journal*, *Wall Street Journal*, *The Washington Post*, *The L.A. Times*, *Miami Herald*, *Chicago Tribune*, *Staten Island Advance*, *AM New York*, *Gay City News*, *China Press*, *Brooklyn Daily Eagle*, *Chief/Leader*, *The Jewish Daily Forward*, *The Economist*, *Women's Wear Daily*, *Crain's New York Business*, *Gothamist*, *DNA Info*, *NPR/WNYC 93.9 FM* and *AM 820*, and *WWRL 1600 AM*. Below and the following page provide a sampling of the Commission's 2014 highlights in the media.

Doctor Says No Overtime; Pregnant Worker's Boss Says No Job

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.



...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

The NY Times 10/20/14

Ex-broker hit with \$20K fine for alleged discrimination

City issued against former Citigroup ad executive, says she denied

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

Real Deal 2/19/14

Landlord Ordered to Pay Damages After Family Was Denied Unit

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

NY Law Journal 5/28/14

Taxi! Seeking women to drive for female passengers



...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

Bismark Tribune 9/15/14

PAY UP, PERV

Judge: Give boss, 88, a \$370G slap for harass

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.



NY Daily News 3/18/14

Williamsburg Stores To Revise Modesty Signs: City Drops Suit

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

...the Commission's Public Service Announcement "Words Hurt Anywhere" aired 852 times.

The Jewish Week 1/22/14

Broker gets \$20K fine for posted ad for dual income, no kids tenants

By The Bronx and Westchester
Times and Daily News



The city's Human Rights Commission is punishing a broker for posting an advertisement with a \$20,000 fine for the posting of an advertisement of renting apartments with dual income and no kids.

NY Post 2/18/14

SAH 7th Graders Sworn In as Peer Mediators

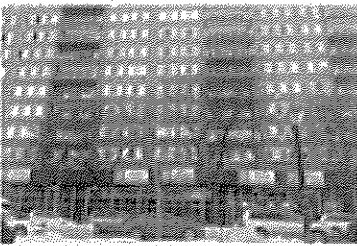
All 60 students at the school were sworn in as peer mediators. They will be working on resolving conflicts and mediating disputes among students, parents, and faculty. The school is part of the New York City Commission on Human Rights Peer Mediation Program.



Store Front Academy 12/5/14

Building Discriminates Against Older Tenants With Gym Ban, Complaint Says

By Linda Rosen - August 26, 2014



The building discriminates against older tenants by not allowing them to use the gym.

DNA Info 8/20/14

Elderly NYC Businessman Faces Sex Discrimination Penalties

A 68-year-old businessman is facing sex discrimination penalties after being denied a promotion because he is older. The case is being handled by the Human Rights Commission.

The Human Rights Commission is punishing a broker for posting an advertisement with a \$20,000 fine for the posting of an advertisement of renting apartments with dual income and no kids.

NY Law Journal 3/24/14

Fil-Am named chair of New York human rights commission

The Human Rights Commission has named a Filipino-American as its new chair. The commission is responsible for enforcing anti-discrimination laws.

The Human Rights Commission is punishing a broker for posting an advertisement with a \$20,000 fine for the posting of an advertisement of renting apartments with dual income and no kids.

The Human Rights Commission is punishing a broker for posting an advertisement with a \$20,000 fine for the posting of an advertisement of renting apartments with dual income and no kids.

Baton Rouge Post 12/2/14

Haves, have-nots divided by apartment poor doors

By HANNAH BREFF - Monday, August 18, 2014 9:25 am

The city's Human Rights Commission is punishing a broker for posting an advertisement with a \$20,000 fine for the posting of an advertisement of renting apartments with dual income and no kids.

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Haves, have-nots divided by apartment poor doors.

The Human Rights Commission is punishing a broker for posting an advertisement with a \$20,000 fine for the posting of an advertisement of renting apartments with dual income and no kids.

Brownsville Herald 8/18/14

United States: New York City Commission On Human Rights Releases New York City Human Rights Law Pregnancy And Employment Rights Poster

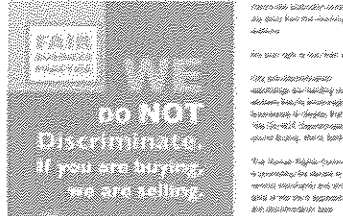
Law Updated January 17, 2014
Author by William S. Ambrose
Lynch, Levin, Carter, Formis, Skoway and Pappas, P.C.

The Human Rights Commission is punishing a broker for posting an advertisement with a \$20,000 fine for the posting of an advertisement of renting apartments with dual income and no kids.

Mintz Levin 1/17/14

City Human Rights Commission handing out anti-bias stickers to businesses

By The Bronx and Westchester Times and Daily News



The Human Rights Commission is handing out anti-bias stickers to businesses.

NY1 10/30/14

New campaign by the NYC Commission on Human Rights seeks to stop discrimination

The Human Rights Commission is launching a new campaign to stop discrimination. The campaign is called 'do NOT Discriminate.'

News 12 7/24/14

Upper East Side restaurant fined \$5K because of Craigslist 'hostess' ad



The Human Rights Commission is punishing a restaurant for posting an advertisement with a \$5,000 fine for the posting of an advertisement of renting apartments with dual income and no kids.

NY1 10/30/14

Mayer de Blasio Signs Bill Protecting New York's Unpaid Interns From Sexual Harassment



Mayor de Blasio is signing a bill to protect unpaid interns from sexual harassment.

Newsweek 4/16/14

Town Hall Meeting Illuminates Ebola Facts in the Bronx

The Human Rights Commission is holding a town hall meeting to discuss Ebola facts in the Bronx.

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NY1 10/30/14

FY 2015 Budget

The Commission's funding comes primarily from City tax-levy monies and a Federal Community Block Grant (CDBG) administered by the US Department of Housing and Urban Development (HUD). Additional funding has also been provided by NYC Housing Preservation and Development (HPD) for Fair Housing initiatives, and a contract with the Equal Employment Opportunity Commission (EEOC) for cases the Commission resolves that could have been filed under Federal law.

City Tax-Levy	\$2,547,016
Federal Community Development Block Grant	\$4,272,940
HPD	\$99,600
TOTAL	\$6,919,556

Additional Program Grant Funding

EEOC Contract (Workshare agreement)	\$165,100
TOTAL	\$165,100

Commissioners

The Human Rights Commissioners are appointed by the Mayor to serve in a non-salaried position, assisting the Commissioner and Chair, Carmelyn P. Malalis, in addressing issues of discrimination. The current Commissioners represent a diverse, qualified group of individuals who share an unwavering commitment to safeguarding the rights and dignity of all the people of New York City. A maximum of 15 members, including the Chair, can be appointed to the Commission.

Catherine Albisa

Co-founder and Director of the National Economic and Social Rights Initiative (NESRI).

Rabbi Sharon Kleinbaum

Senior Rabbi at Congregation Beit Simchat Torah (CBST) and human rights activist.

Reverend Dr. Demetrius Carolina

Pastor of the First Central Baptist Church on Staten Island and civil rights advocate; Executive Director of Central Life Family Center.

Ana Oliveira

President and Chief Executive Officer of The New York Women's Foundation, devoting over 25 years in public health for under-served populations.

Steven Choi

Executive Director for the New York Immigration Coalition.

Arnaldo Segarra

Lifelong organizer and activist who has served in federal and local government positions.

Jonathan Greenspun

Political consultant and a managing director at Mercury Public Affairs; serves on several civic boards including The Museum of Jewish Heritage - A Living Memorial to the Holocaust.

Domna Stanton

A distinguished professor at CUNY Graduate Center with over 10 years' experience as a Human Rights Watch Board Member or committee member.

Publications

Booklets:

NYC Commission on Human Rights
English/Chinese
English/French
English/Haitian Creole
English/Korean
English/Russian
English/Spanish

Discrimination Against Muslims, Arabs and South Asians in New York City Since 9/11
Survey report

Equal Access: It's the Law
English/Chinese
English/French
English/Haitian Creole
English/Italian
English/Korean
English/Russian
English/Spanish

Fair Housing: It's the Law
English/Chinese
English/French
English/Haitian Creole
English/Italian
English/Korean
English/Spanish

Guidelines Regarding Gender Identity Discrimination
English/Chinese
English/Haitian Creole
English/Italian
English/Korean
English/Russian
English/Spanish

Turning the Game Around: NYC Can Help
English/Spanish
Pocket guide for prisoners and formerly incarcerated

Race At Work: Realities of Race and Criminal Record in the NYC Job Market by Dr. Devah Pager and Dr. Bruce Western
Report on the impact of race, ethnicity and criminal records on securing entry-level positions in NYC

*Talk It Over—A Peer Mediator's Guide**

The NYC Human Rights Law: Administrative Code of the City of NY Title 8

The Right to Work: Understanding Immigrant Employment Rights
Beginner/Intermediate
Advanced

Cards:

All Commission info cards are available in the 7 major languages: English, Chinese, Haitian Creole, Italian, Korean, Russian, and Spanish. Some of the cards have also been published in French, Polish, and Urdu.

Cyberbullying
Domestic Violence and Employment Rights
Employment Discrimination
Equal Access
Fair Business Practice (Cards & Flyers)
Fair Housing
Gender Identity
Housing Discrimination
Immigrant Employment Rights
Interns
Lawful Source of Income
Mortgage Counseling
Peer Mediation
Pregnancy and Employment Rights
Offices, Law, and Services
School Program
Sexual Harassment
Unemployment Status

Brochures:

Mediation Questions and Answers
Sexual Harassment in the Workplace
English
Spanish

CCHR Newsletters:

2002 – 2010
Immigrants and New Citizens
2011 – 2014*

Annual Reports:

2002 – 2014 Available online:
www.nyc.gov/cchr

Posters:

Fair Housing
English
Spanish
Multi-lingual

National Origin, Race, and Perceived Disability (Ebola)
Multi-lingual

From Many Countries, One City
Multi-lingual

Love Your Neighbor*
Multi-lingual

Pregnancy and Employment Rights
Chinese
English
French
Haitian Creole
Korean
Russian
Spanish

CD-ROM:

Discrimination and Race Relations: Selected Reports From the NYC Commission on Human Rights (1935 – 2005)
100 selected major reports, speeches, surveys, documents, testimony from public hearings, and policy papers since the Commission's earliest days in 1934 as a voluntary mayoral committee

DVDs:

Fighting for Justice: NY Voices of the Civil Rights Movement
Apollo Panel Discussion
NYC TV Broadcast copy
Esther Cooper Jackson
Clifford L. Alexander, Jr.
Elsie Richardson

PSAs:

Words Hurt Anywhere
Bedrooms
Texting
Love is Love
My Voice
Thanks Man

*Currently not available online

Office Locations/Contact Information

Main Office

100 Gold Street, Suite 4600
New York, NY 10038
Dial 311 or Tel: (212) 306-7500
Fax: (212) 306-7658

NY Relay Services:

(800) 421-1220 English
(877) 662-4886 Spanish
711

For Mortgage Counseling Services, call

Brooklyn and Queens
(718) 657-2465

Bronx
(718) 579-6900

Manhattan and Staten Island
(212) 306-5070

Website

www.nyc.gov/cchr

Community Service Centers

Manhattan

100 Gold Street, Suite 4600
New York, NY 10038

Queens

153-01 Jamaica Avenue, 2nd Floor
Jamaica, NY 11432

Bronx

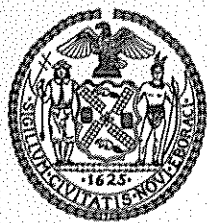
1932 Arthur Avenue, Room 203A
Bronx, NY 10457

Staten Island

60 Bay Street, 7th Floor
Staten Island, NY 10301

Brooklyn

275 Livingston Street, 2nd Floor
Brooklyn, NY 11217



NYC COMMISSION ON HUMAN RIGHTS

BILL DE BLASIO, Mayor | CARMELYN P. MALALIS, Commissioner/Chair



the work and family legal center

80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | f: 212.430.5983 | info@abetterbalance.org | abetterbalance.org

Testimony before the New York City Council Civil Rights Committee Regarding
Oversight of the Human Rights Commission

March 3, 2015

Submitted by Dina Bakst, Co-President and Phoebe Taubman, Senior Staff Attorney
A Better Balance: The Work and Family Legal Center

Good afternoon. My name is Phoebe Taubman, and I am a Senior Staff Attorney at A Better Balance: The Work and Family Legal Center. A Better Balance is a New York City-based legal advocacy organization dedicated to promoting fairness in the workplace and helping workers across the economic spectrum care for their families without risking their economic security. A Better Balance also hosts a free hotline and legal clinic to assist low-income New Yorkers facing problems at work related to pregnancy and family caregiving. We receive calls from men and women across the tri-state area as well as individuals all over the nation in response to our advocacy efforts.

I want to start by thanking Council Speaker Mark-Viverito and Councilmember Mealy for convening this hearing to discuss how to improve the efficacy and impact of the Human Rights Commission (“the Commission”). We are excited about the potential for improving the Commission under the new leadership of Chair Carmelyn Malalis, whose experience as a litigator and passion for rooting out discrimination will serve her well in her new role. We are eager to support the Chair in her efforts.



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80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | f: 212.430.5983 | info@abetterbalance.org | abetterbalance.org

The New York City Human Rights Law (“NYCHRL”) is a powerful tool for fighting bias, and is one of the strongest such laws in the country. However, the law is only as strong as its enforcement. For low-income New Yorkers who cannot afford legal representation, the Commission is often the only avenue for vindicating their rights. Although organizations like ours, and our partners in the New York City Human Rights Law Working Group advocating for reform of the Commission, take on some of these cases, we simply cannot meet more than a small part of the need. The City needs a revitalized Commission to fill the broad demand among low-income New Yorkers for accessible and affordable resolution of their claims, as well as to prosecute pattern and practice violations of the NYCHRL.

Failing to address discrimination has significant economic consequences not only for the victims but also for our city as a whole. Unfair treatment can trigger a cascade of misfortune for New Yorkers who have little to no financial safety net. We have heard from numerous callers who lost their job and paycheck because of discrimination, only to then find themselves sleeping on a relative’s couch, or in a homeless shelter, because they could not pay their rent. Others have found it hard to secure another job without a recommendation from their former employer, and must rely on public assistance to support themselves and their families for months. Most also draw on unemployment benefits for some period of time to help them stay afloat.



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We need a robust and committed Commission to enforce the NYCHRL on behalf of low-income New Yorkers, and discourage discrimination that injures them while also adding needless burden to our city’s public service infrastructure. We applaud the Council for committing to increase the Commission’s budget so the Commission may have the resources to implement many of the recommendations offered here today. In addition, we propose several strategies by which the Commission can improve enforcement of the NYCHRL for New Yorkers with the fewest resources.

Improve Transparency and Information about Commission Process

New Yorkers who turn to the Commission to resolve their discrimination claims have little knowledge about the process they are initiating when they file a charge. After an individual files a complaint of discrimination, the Commission must investigate the complaint to determine whether probable cause exists to suggest discrimination in fact occurred. If so, the case is assigned for prosecution; if not, the case is dismissed. In 2013, only 9% of cases filed with the Commission resulted in a finding of probable cause, while most cases—70%—were either terminated by administrative closure or dismissed in a finding of no probable cause.¹ These numbers are surprising, given the breadth of the anti-discrimination protections of the NYCHRL and the potential investigatory power of the Commission.

¹ 2013 Annual Report, New York City Commission on Human Rights, at 6.



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Few New Yorkers understand the probabilities involved in the Commission process, or realize that by choosing to pursue their claims through the Commission, they may foreclose other legal options including the right to file a complaint in court. In addition to the complainant's chances of success, other aspects of the process, including which cases the Commission chooses to pursue and the timeframe in which a complainant can expect a resolution, are shrouded in mystery. The Commission does not disclose this information, or its implications, up front to complainants.

Complainants also may not understand that additional legal claims arising from their situation, which are outside the jurisdiction of the Commission, have statutes of limitation that run while the Commission process is ongoing. Given that the average time it took the Commission to resolve cases in 2013, including those resolved through pre-complaint intervention, was 320 days,² this can present a major barrier to justice for individuals who unknowingly let the clock tick on potential claims while waiting for a determination from the Commission.

The Commission should train staff to assist pro se complainants in understanding the basics of the NYCHRL, including how to distinguish actionable discrimination from other seemingly unfair treatment that does not make out a colorable claim. This can help claimants who feel wronged by their employer (or landlord) to avoid the feeling wronged again by a dismissive and taciturn Commission. The Commission should also train

² Id. at 4.



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intake staff to explain the consequences of forum selection, so that complainants can make informed decisions about how best to resolve their disputes. The Commission should also ensure that intake staff are fluent in the central protections of (and the agencies tasked with enforcing) the laws that are often intertwined with employment discrimination, particularly pregnancy discrimination, including the Family and Medical Leave Act, New York State Temporary Disability Insurance and Unemployment Benefits laws, and the New York State Nursing Mothers in the Workplace Act, so that individuals do not lose their chance to apply for benefits or challenge other violations while waiting for the Commission's investigation to be completed. Finally, the Commission should train intake staff to ensure that all pro se callers are treated with the respect they deserve. By way of example, one client of ours reported feeling like the investigator in her case was uninterested, unduly argumentative, and did not communicate effectively about what relief he might seek from her employer.

Implement Fast-Track Resolution for Pregnancy Accommodations Claims

Since January of 2014, the NYCHRL has guaranteed workplace accommodations to employees based on pregnancy, childbirth and related medical conditions. More than a year after going into effect, many employers are still unaware of their obligations under the law. This is an area where the Commission has the opportunity to avert costly litigation and the spiraling economic disadvantages of discrimination by intervening while pregnant workers are still employed. According to the Commission's own records, the average age of a pending pregnancy discrimination case in October 2014 was 271



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80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | f: 212.430.5983 | info@abetterbalance.org | abetterbalance.org

days—approximately the length of an average pregnancy.³ By implementing a “fast-track” for these complaints, the Commission can keep them out of extended investigation, keep women on the job, and reduce staff workload. In California, where a similar accommodations requirement has been in effect since 2000, disputes have repeatedly been resolved quickly and informally through good faith negotiations.⁴ The Commission should facilitate such negotiations between pregnant women and their employers in a timely matter, since pregnancy accommodations are, by definition, short-term in nature and the need for them may expire long before the Commission would otherwise finish investigation of a complaint.

Review and Clarify Existing Know-Your-Rights Materials

In the absence of extensive case law interpreting and clarifying the scope of the NYCHRL, the Commission should review its public education materials and offer further guidance to employees and employers about their rights and responsibilities under the law. For example, the Commission’s Pregnancy and Employment Rights Info Card lists unpaid medical leave as a reasonable accommodation for needs related to pregnancy, childbirth and related medical conditions. While unpaid medical leave is a critical accommodation, and should certainly be specified as such for childbirth recovery and prenatal visits, in cases where other modifications can allow a woman to keep earning a

³ Mulqueen, Cliff. Correspondence from Cliff Mulqueen, Deputy Commissioner/General Counsel for New York City Commission for Human Rights.

⁴ Noreen Farrell, Jamie Dolkas and Mia Munroe, *Expecting a Baby, Not a Layoff: Why Federal Law Should Require the Reasonable Accommodation of Pregnant Workers*, Equal Rights Advocates (2013).



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paycheck, it should be an accommodation of last resort. Also, the Commission should clarify that accommodations for breastfeeding in the workplace are included within the scope of the law.

Conclusion

We are grateful that the Council is prioritizing enforcement of the NYCHRL and reinvesting in a robust and comprehensive human rights infrastructure for New York City. We are the eager to work with the Council and the new Chair of the Commission to promote fairness and prevent discrimination that threatens the economic security of New Yorkers with the fewest resources.

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TESTIMONY OF LEGAL SERVICES – NYC

New York City Council, Committee on Civil Rights

Hearing on the NYC Human Rights Commission

March 3, 2015

Good afternoon. My name is Christine Clarke and I am a staff attorney at Legal Services NYC (LSNYC), the City's largest provider of free legal services to low-income New Yorkers. I work in the Equal Rights Initiative, representing clients who face discrimination based on race, gender, national origin, sexual orientation, disability, source of income, and other categories protected under federal, state and City law. LSNYC is a member of the Human Rights Law Working Group, a coalition of over 40 civil rights and social justice organizations working together to recommend reforms at the City's Human Rights Commission. I expect that my colleagues in the advocacy community will testify today about many different areas in which the Commission might be able to better fulfill its obligations to New Yorkers, I will be focusing my testimony today on the Commission's budget and the need effectively train Commission staff.

I want to thank the Civil Rights Committee and the Speaker's office for holding this very important hearing. New York City has one of the strongest and most protective human rights laws in the country, thanks to the hard work of the City Council and members of this Committee in particular. The Council has repeatedly acted to strengthen the Human Rights law by passing forward-thinking legislation to protect workers and tenants facing discrimination. As advocates, we thank you for your commitment to protecting the civil rights of all New Yorkers.

As a result of years of defunding and neglect under previous administrations, the Commission finds itself in crisis. Since 1991, the population of New York City has increased by over a million individuals, yet the Human Rights Commission enforcement staff has been reduced in that same time period from 241 enforcement staff, to 66 – a 70% reduction in total staffing. The number of City-funded positions has fallen even further, from 152 city-funded employees, to *eleven*, literally a 90% decline. No matter how much progressive legislation the City passes, it is clear that this level of staffing is simply not sufficient to enforce a broad and progressive human rights law on behalf of a city of 8.4 million people.

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LSNYC applauds Speaker Mark-Viverito's announcement that the Commission will receive an additional \$5 million in baseline funding to double the Commission's enforcement staff. However, even with an addition of 65 new enforcement personnel, the Commission will still have almost 50% less staff than it had 25 years ago. An increase of \$5 million to the Commission's budget, while absolutely necessary, still leaves the Commission at only about 65% of its 1991 funding levels, adjusted for inflation. The Council must continue to increase the Commission's budget over the next two fiscal years to bring funding to a sufficient level to enforce New York City's expansive Human Rights Law. We're still not there yet.

Having been decimated by astronomical staffing and funding cuts, the Commission has fallen into irrelevance over the past twenty years. Both LSNYC, and our partners in the New York City Human Rights Law Working Group, do not refer individuals to the Commission, nor have we for years, because of its entrenched reputation as being simply unable to provide virtually any enforcement or investigative aid to victims of discrimination. In fact, having practiced anti-discrimination law in this City for my entire legal career, I have met only a handful of attorneys who have referred anyone to the Commission, for any reason, preferring to refer people to the EEOC or HUD, despite the fact that federal law is substantially less protective than our own City Human Rights Law.

A lack of enforcement staff is not the only reason that we and other advocates refrain from referring people to the Commission. The severe funding shortfalls – as well as mismanagement by previous administrations – have also meant that staff are not fully or properly trained in City law. Years of encounters with undertrained enforcement staff has severely tarnished the Commission's reputation.

But a fully trained and effective Commission is *essential* to protecting the rights of all New Yorkers – particularly low-income New Yorkers who may not have access to private legal representation, and thus rely on the Commission and its enforcement staff to both explain their legal rights to them, and enforce those rights when they have been violated. As the public face of the City's commitment to civil rights, the Commission must be made up of the best and most highly-trained staff. The most protective and expansive civil rights laws become meaningless if our residents cannot rely on the City's own Human Rights Commission to enforce them.

Both LSNYC and our partners in the Human Rights Law Working Group have encountered staff who are poorly trained on the basics of the City Human Rights Law, as well as

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its recent amendments. For example, it is crucial that staff be well trained concerning the Community Safety Act – a law which does not provide for monetary damages, and thus is unlikely to be enforced by the private bar. Similarly, it is crucial that Commission staff be up-to-date on new provisions of the law, such as source of income discrimination in housing, and domestic violence and pregnancy discrimination in employment. As this Committee is aware, a number of other amendments to the Law have been proposed and, if they are passed, Commission staff will also need to be trained on these areas of the law.

The Commission, as a recipient of federal funds, is required by federal law to ensure equal access to Commission services for individuals who are deaf or who have limited English proficiency. To that end, it is crucial that Commission staff be properly trained in the use of interpreters and cultural competency. It is similarly essential that interpreters used by the Commission be appropriately assessed and trained on interpretation skills to ensure, that individuals with limited English proficiency receive the services to which they are entitled.

Finally, while it is crucial that Commission staff be properly trained on the City law they are charged with enforcing, it is equally important that Commission staff be adequately trained to provide New Yorkers with information to protect their rights *outside* the Commission. This means providing people with accurate information about the consequences of choosing to initiate an investigation at the Commission, rather than filing a private suit, as well as information concerning other civil rights laws that so often intersect with the City's, such as the Family Medical Leave Act, Section 23a of the Correction Law or the state and federal Equal Pay Acts.

While LSNYC and the other members of the New York City Human Rights Law Working Group are willing and able to assist in training Commission staff, it is nonetheless crucial that the Commission budget continue to increase each fiscal year until it is truly capable of fulfilling its obligations, including fully training its staff, as well as offering competitive salaries so that the Commission may hire the most highly qualified and motivated personnel. We must ensure that the New York City Human Rights Commission is staffed with the brightest and most qualified people and that such personnel are sufficiently knowledgeable about the law so as to be able to provide the level of enforcement, investigation, and advice that this City and its residents deserve.

With the appointment of a new Commissioner with a strong vision for how to revitalize the agency, as well as the Speaker's announcement of additional funding, we are hopeful that the

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Commission is on its way to becoming an agency fully capable of meeting its mandate, and one that we as New Yorkers can rely on and be proud of.



**Testimony of Fred Freiberg, Executive Director, Fair Housing Justice Center (FHJC)
Hearing of the New York City Council Committee on Civil Rights
March 3, 2015 – 1:00 p.m.**

Good afternoon. My name is Fred Freiberg and I am the founder and current Executive Director of the Fair Housing Justice Center, Inc. (FHJC). I appreciate the opportunity to provide testimony to the New York City Council's Committee on Civil Rights regarding the introduction of a local law that would require the City Commission on Human Rights to utilize testing to investigate housing discrimination in New York City.

The FHJC is a non-profit civil rights organization based in New York City. Our mission is to challenge systemic housing discrimination, promote policies that foster open, accessible, and inclusive communities, and strengthen enforcement of fair housing laws. The FHJC provides counseling on fair housing rights, investigative assistance including testing, and referrals to administrative agencies and cooperating attorneys. We are the only HUD-funded "Qualified Fair Housing Organization" (QFHO) that operates a testing program in the City of New York.

The FHJC operates one of the most effective fair housing testing programs in the nation. Our program employs over 100 professional actors as testers. These individuals have been recruited through a partnership with the Actors Fund. Our testers are trained to participate in both complaint-responsive and systemic testing investigations. The FHJC uses state of the art technology in its testing program. We have an array of technology tools that we have developed for use by our test coordinators to aid with the design and implementation of testing investigations. We equip our testers with concealed audio recorders and, in some cases, concealed audio/video recorders on investigations. In addition to utilizing testing in our own program, the FHJC has also provided testing services, under contract, to numerous government enforcement agencies including the Office of the New York State Attorney General, both U.S. Attorney Offices in New York City, the New York State Division on Human Rights, and other governmental agencies. The FHJC also assisted the Civil Rights Bureau at

the Office of the New York State Attorney General to develop its own in-house testing capability. Over the past ten years, FHJC testing investigations have resulted in successful legal challenges to housing discrimination; actions that have opened up tens of thousands of housing units to populations previously excluded; changed housing provider practices; and resulted in the recovery of millions of dollars in damages and penalties. Last year alone, cases supported by FHJC testing evidence were resolved with extensive injunctive relief and a monetary recovery in excess of \$3 million.

Professionally, I have been coordinating testing investigations throughout the United States for nearly 40 years. Over that time, I have supervised well over twelve thousand testing investigations and personally participated in more than 1500 tests. I have used testing to investigate all types of housing accommodations and housing related services including real estate firms, rental management companies, landlords, co-ops and condos, nursing homes, assisted living facilities, lending institutions, retirement communities, mobile home parks, homeowner associations, housing locator services, and government housing programs. I have been named as a witness in more than 400 fair housing cases and have provided deposition or trial testimony at least 52 times in cases filed in state and federal courts across the country. In the past, I assisted government agencies and private civil rights organizations to develop effective testing capabilities including the Civil Rights Division of the U.S. Department of Justice. I'm also currently involved in a HUD-sponsored national training program aimed at achieving greater consistency in the quality of testing performed by more than 75 private fair housing organizations across the nation. I highlight my background for the Committee merely to underscore that I have considerable experience and expertise in this particular investigative field.

I appear before the Committee on Civil Rights today to enthusiastically endorse the intent behind the Committee's proposed testing legislation which is aimed at ensuring that the New York City Commission on Human Rights develop or acquire a testing capability to aid with enforcement of fair housing laws. The FHJC has consistently maintained that government agencies or private fair housing organizations cannot really claim to have an effective enforcement program aimed at reducing housing discrimination unless they also have a testing capability. The value of testing in fair housing law enforcement is abundantly clear.

When investigating individual allegations or complaints of housing discrimination, often information obtained from testing investigations can provide the vital corroborative evidence that enables complainants to meet their burden of proof. Courts across this land have recognized that information obtained from testing investigations is often the only competent admissible evidence that can prove that housing discrimination is occurring.

But testing also enables a fair housing law enforcement agency to be more proactive and ferret out systemic housing discrimination. Given the very subtle nature of most contemporary housing discrimination, relying on a purely complaint-responsive approach to fair housing enforcement is, at best, ineffective and perpetuates a vicious cycle. Permit me to explain what I mean. Sadly, systemic housing discrimination based on race and national origin is still quite pervasive in New York City and throughout this region. You might be surprised to learn how often African American and Latino homeseekers are lied to about available apartments, quoted higher rents or fees, or encounter agents who are engaged in racial steering and other discriminatory housing practices. The FHJC has been able to document these practices through well-planned systemic testing investigations. These investigations have found that often the discrimination is so subtle, actual homeseekers may have no way to know that illegal discrimination is occurring. If consumers are unaware that they are being discriminated against, no complaints will be filed. If complaints are not filed, no enforcement action will be taken. Without enforcement action, unlawful discrimination continues to harm this community. The only way to break this cycle, reduce illegal housing discrimination, and achieve greater compliance with the law is to conduct systemic testing investigations to document these invidious discriminatory practices.

For all these reasons, our organization completely agrees with the sponsors of the proposed testing legislation that the Commission should work to develop or acquire a fair housing testing capability that will aid with the enforcement of the City's Human Rights Law. We do, however, have a few specific comments and suggestions on the proposed legislation.

First, we assume that the sponsors of the law understand the Commission already possesses the full authority, and we even would argue duty, to investigate housing discrimination using all available means, including testing. In this sense, the legislation seems more symbolic than substantive.

Second, while "matched paired" testing is utilized by social scientists for research and by enforcement practitioners, including our organization, it is not the only or necessarily the

most effective test structure depending upon the facts presented in a given situation. While the legislation does not restrict the Commission to only conduct matched paired testing, the stated emphasis on this type of test structure is curious at best, particularly as it concerns the reporting requirements. Other commonly used testing structures involve more than two testers or, in the case of instances where overtly discriminatory policies are communicated such as a policy that restricts families with children of a certain age or prohibits assistance animals for people with disabilities, only one tester may be necessary. Why does the Committee only want a report on “matched paired testing?” The current language seems to confer some greater importance to this approach or that “matched paired testing” is inherently more valuable in an enforcement context than other types of testing which is simply not true. Perhaps oversight could be accomplished by an accounting of the total number of tests completed and the number of tests resulting in enforcement action.

Third, the other concerning provision of the proposed legislation is the requirement that after one year, the Commission report on the location of all “matched paired” tests completed and whether that testing yielded evidence of discrimination. Disclosing the specific address of where testing has been conducted on an annual or semi-annual basis could undermine the Commission’s ability to conduct systemic investigations by disclosing information about targeting strategies or enforcement priorities. Just as the NYPD does not report the location of undercover or “informant” investigations conducted that do not result in prosecutions because it could signal how or where enforcement resources are being targeted to identify those who are violating the law, the Commission should adhere to a similar practice: Disclosing the number of tests conducted each year would avoid this problem – it would provide information to the Council to enable some oversight of the Commission’s work, while protecting the specific location of undercover testing investigations from public disclosure.

Finally, while the Commission should acquire a testing capability, there are a number of ways to accomplish this and it will likely take some time and planning. Who is the Commission going to use as testers to ensure it has a pool of testers who are diverse by race, gender, age and other protected characteristics? Does the Commission currently have experienced personnel with training to plan and coordinate testing investigations and who can testify, if necessary, about the investigations conducted? Is the Commission planning to equip its testers with concealed audio recorders? If so, are there chain-of custody

procedures in place to preserve and control the recorded evidence? What forms and procedures will the Commission use to assign tester characteristics? Establishing and operating a testing program is not an easy matter and there are many resource and logistical considerations. Suffice to say, care must be taken to ensure that any testing capability established by the Commission comports with the highest investigative standards so that the investigations yield credible, objective, and admissible evidence. We are eager to assist the Commission to develop an effective testing capability.

After years of not having an effective government enforcement mechanism at the local level, it is our considered view that the Commission is in need of a major overhaul, a gut renovation if you will. We are hopeful that the Commission, under the leadership of the new Commissioner Carmelyn Malalis, will establish a meaningful intake process that is available to any New Yorker who believes that his or her fair housing rights have been violated, that the Commission will investigate all complaints and take enforcement action when those investigations yield evidence of discrimination. FHJC's experience and the experience of our clients in working with the Commission in the last administration was most unsatisfactory to put it mildly, but we remain hopeful that the Commission can be transformed into a serious law enforcement agency, one that is more responsive to the community it is serving and more effective in its mission to vigorously protect the civil rights of all New Yorkers. In that regard, we would also urge this Committee to consider proposing amendments to the City Human Rights Law to make it substantially equivalent to the federal Fair Housing Act so that the City can take advantage of federal funding available under the Fair Housing Assistance Program (FHAP) that it would be entitled to receive from the Department of Housing & Urban Development (HUD) as a local commission with a substantially equivalent fair housing law. Since parts of the City Human Rights Law are already more expansive than the federal law which does not adversely impact substantial equivalency, making some additional legislative changes to further strengthen the law could yield additional federal resources to support the important work of the Commission.

I welcome any questions you might have for me. Also, as an organization, we are ready and willing to make our services available to the Commission as it moves forward to establish a stronger fair housing enforcement presence in this community. Thank you very much.

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Testimony by Nicole Salk, Senior Staff Attorney, South Brooklyn Legal Services before the New York City Council Committee on Civil Rights on March 3, 2015

My name is Nicole Salk. I am a Senior Staff Attorney in the Workers' Rights and Benefits Unit at South Brooklyn Legal Services. South Brooklyn Legal Services (SBLs) is part of Legal Services NYC, which is the largest civil legal services provider in the country and is dedicated to fighting poverty and seeking justice for more than 60,000 low-income New Yorkers annually. As part of my job, I provide advice and representation to low-wage workers who have experienced employment discrimination.

Legal Services NYC is part of the New York City Human Rights Law Working Group, a coalition of legal services organizations, civil rights advocates, and others which formed to address the New York City Commission on Human Rights' failure to effectively enforce the New York City Human Rights Law. Thanks to the City Council, New York City has some of the strongest civil rights law in the Country. However, the New York City Commission on Human Rights—with its low budget and ineffective enforcement—has left the promise of these laws unfulfilled. The New York City Human Rights Law Working Group formed to advocate

South Brooklyn Legal Services
105 Court Street, 3rd Floor Brooklyn, NY 11201
Phone: 718-237-5500 Fax: 718-855-0733 www.sbls.org
John C. Gray, Project Director

Towards justice and dignity for all – Por la Justicia y Dignidad de Todos

for a revitalized and well-funded Commission which we believe is essential to making sure that the important laws that the City Council has passed will be enforced.

We are pleased that a new Commissioner has been named who has both the experience with and commitment to enforcement of the Human Rights Law. We also commend Speaker Mark-Viverito for committing to adding five million dollars to the Commission's budget, which is a crucial first step to revitalizing the Commission.

We support the increased use of testing by the Commission. However, I am going to focus my remarks today on Int. No. 421 which will amend the current reporting requirements to include reporting on investigations initiated by the commission as well as pattern and practice investigations referred to the Corporation Counsel for the purpose of commencing a civil action in Court.

There are three types of proceedings authorized by the HRL—one under Section 8-109, another under Section 8-402, and a third under 8-502. Section 8-109 permits an individual acting for herself or by her attorney, and the Commission itself, to initiate a complaint with the Commission against an individual who has violated the terms of the HRL. Section 8-402, on the other hand, authorizes the Commission to initiate so-called pattern and practice complaints against suspected violators of the law. It does so by referring the case to Corporation Counsel or by prosecuting the case itself, using Commission attorneys designated by Corporation Counsel. A crucial difference is that both punitive damages and penalties are permitted in pattern and practice cases brought under Section 8-402, while only penalties may be levied under Section 8-109. Finally, Section 8-502 allows an individual to file a proceeding in Court alleging a claim under the HRL. Section 8-502 allows punitive damages as well as other damages and attorneys' fees.

Int. 421 requires additional reporting of both Commission initiated complaints under Section 8-109(c) of the HRL and pattern and practice or systemic investigations referred to the Corporation Counsel under Chapter 4 of the HRL.

Commission initiated complaints as well as investigation and litigation based on pattern and practice or systemic discrimination comprise some of the most important work that the Commission is tasked to do under the New York City Human Rights Law. This is because both Commission initiated complaints and systemic cases have the potential to impact a substantial number of individuals. While Commission initiated cases could be pursued against only one individual, it is more likely that the Commission will initiate cases involving more than one individual because of the resources involved.

Commission initiated and systemic cases tend to attract more attention which in turn helps to educate the public-at-large about the City's anti-discrimination laws. Equally important, Commission initiated and systemic cases help to discourage violations of the City's Laws because the employer, landlord and business communities know that the Commission takes enforcement seriously.

Moreover, systemic pattern and practice investigations are particularly valuable in ferreting out and prosecuting violations based upon implicit biases held by employers, landlords, and others. We live in a world where explicitly discriminatory actions and statements are less tolerated, but we know that discrimination has not gone away. Discrimination is more likely to manifest today as policies and practices that disproportionately affect protected groups. Systemic investigations and prosecutions based on the HRL could be a powerful tool if utilized effectively.

In the last 20 years, it is our understanding that the Commission has initiated very few complaints if any. It is also our understanding that neither Corporation Counsel nor attorneys designated at the Commission by Corporation Counsel (if there are any) have brought even one pattern and practice discrimination case in Court since the law was changed to authorize these type of cases in 1991. Even though the Commission has been tasked with investigating systemic discrimination, the Law Department employs approximately 700 lawyers, and we have the most important and progressive anti-discrimination law in the Country, the City has not tasked a single lawyer to bring a single affirmative case in Court enforcing the New York City Human Rights Law. This has to change. We believe that a revitalized and well-resourced City Commission will do this work and requiring the Commission to report on its accomplishments, or lack thereof, is crucial.

I want to share with you some thoughts about what enforcement around systemic discrimination might look like. One example involves landlords and brokers across the City who engage in unlawful source of income discrimination on a daily basis. Individuals who receive housing vouchers such as Section 8, HASA¹, LINC II, and others, routinely face insurmountable obstacles to find safe and affordable housing because of rampant violations of the source of income protections of the law. In fact, a recent Craigslist search for “no programs” revealed over 50 listings for available apartments stating that such vouchers would not be accepted. A campaign initiated by the Commission could be highly effective in targeting such overt and rampant discrimination and could result in injunctive relief that could work systemic change. That higher yield will also mean greater impact, and more civil penalties paid into the City’s General Fund.

¹ In addition to source of income discrimination, individuals with HASA housing vouchers also face discrimination based on their actual or perceived sexual orientation and/or gender identity.

Another example of pattern and practice discrimination involves discrimination based on one's arrest and/or criminal record by employers. We know that criminal record discrimination is rampant and often serves as a proxy for race discrimination because of the over-policing of people of color. An investigation of criminal record discrimination may involve sending out testers to employers in order to determine if employers routinely turn away applicants with arrest and/or criminal records without first allowing them to apply for jobs and be considered for employment. Pattern and practice discrimination by the Commission will become even more important assuming the Fair Chance Act, currently pending before the Council, becomes law. The Fair Chance Act would prohibit employers from inquiring into an applicant's criminal record prior to extending a conditional job offer. Thus, investigations of employers who make unlawful inquiries into applicants' criminal records prior to interview and conditional offers of employment will become crucial.

These are just a few examples of potential systemic investigations and complaints that we hope the Commission may consider. We recommend that the Commission create an affirmative enforcement unit to address patterns of discrimination and that Corporation Counsel assign some of its legal staff to work on investigations and prosecutions at the Commission.

We are looking forward to working with the Commission to help identify patterns and practices of discrimination and to refer cases to the Commission directly when appropriate. We also hope that the Commission reaches out to community-based organizations and anti-discrimination advocates to help it to identify systemic discrimination that the Commission can target for investigation and prosecution.

Nicole Salk
Senior Staff Attorney
Worker Rights and Benefits Unit
South Brooklyn Legal Services

105 Court Street
Brooklyn, NY 11201
(718) 237-5544
nsalk@sbls.org

Testimony before NYC City Council

Good afternoon honorable members of the City Council and the Committee on Civil Rights. My name is Natasha Lycia Ora Bannan and I am Associate Counsel at LatinoJustice PRLDEF, a national civil rights organization engaged in advocacy and impact litigation on behalf of underserved Latino communities along the east coast. Thank you for the invitation to address you today on the important issue of employment discrimination in this city, and the need to implement measures, including testing, that can better help determine how particular communities of workers are being discriminated against and how employers are engaging in such discrimination.

Several years ago LatinoJustice PRLDEF initiated the Latinas At Work, or LAW, Project, which now works with low-wage Latina immigrant workers in New York City. Through the LAW project we partner with community-based organizations throughout the region to educate and empower Latina workers about their rights under state and federal laws, and where needed and appropriate, provide legal representation and advocacy for workers to assert their rights through civil litigation. Last year we began to develop a better, more evidence-based understanding of how sexual harassment and gender-based discrimination uniquely affect Latina immigrant workers in NYC. We submitted Freedom of Information requests to various enforcement agencies and distributed surveys to our community partners to have Latina



LatinoJustice PRLDEF
99 Hudson Street, 14th
floor
New York, NY 10013-2815
Tel: 212.219.3360
Fax: 212.431.4276
800.328.2322

workers document the type of discrimination and harassment they've experienced working in all types of sectors in New York City.

Through these efforts, we have subsequently come across many stories of low-wage Latina workers who are often victims of unscrupulous employers who too often take advantage of their labor or immigration status by paying them less than minimum wage and withholding overtime pay. At times when workers have decided to assert their rights to fair compensation, their employers have responded by firing them or threatening exposure to immigration authorities.

Immigrants predominately work in low-wage jobs and industries throughout the city and country. For example, Latinos make up 27% of New York City's working population, but comprise 44% of restaurant and food workers and 35% of retail workers.¹ Latina women are overrepresented in the lowest paying job sectors—such as laundromats, cleaning services or as domestic workers—with jobs that fail to offer structured paths to improve their social mobility.² These types of low-wage jobs typically provide little to no employment protections, flexibility for time off or predictable schedules.³ Because of both the precariousness nature of some types of low-wage work and the isolation and desperation many low-wage workers feel a climate ripe for harassment and discrimination is often created.

In addition to abusive wage and compensation practices, discrimination and harassment is often rampant in the low-wage workplace, where there are both too few opportunities to check or report illegal behavior and where many Latina immigrant workers end up, often because they feel that working in abusive or discriminatory conditions is their only option. As a result, they see and experience discrimination based on gender, gender identity or pregnancy, as well as experience

¹ Community Service Society, *Latino New Yorkers Can't Afford to Get Sick 2* (2013), available at <http://www.cssny.org/publications/entry/latino-new-yorkers-cant-afford-to-get-sick>.

² Labor Council For Latin American Advancement, *Trabajadoras: Challenges and Conditions of Latina Workers in the United States* (2012), available at http://www.lclaa.org/images/pdf/Trabajadoras_Report.pdf.

³ Center for Work Life Law, UC Hastings School of Law, *Poor, Pregnant, and Fired: Caregiver Discrimination Against Low-Wage Workers 2-4* (June 2011), available at http://www.worklifelaw.org/pubs/IssueBrief_PoorPregnantAndFired.pdf.

sexual harassment, as a byproduct of their work and immigration status. In New York, one in every three domestic workers has reported feeling harassed and abused at work by their employer, and they attribute such abuse to either race or immigration status.⁴ For example, while discrimination claims filed at the New York State Division of Human Rights and the New York City Commission on Human Rights may suggest that reports of discrimination have gone down in most categories, pregnancy discrimination rates have actually gone up from 2011 rates to 2012. It's important to note that a lack of reporting does not necessarily signify a reduction in discrimination, but may indicate a lack of confidence in follow-up on such claims via investigation and enforcement by the responsible agency. Lastly, a 2011 report found that Latinas were more likely to report that they were fired from a job while they were pregnant or within three months after giving birth.⁵

This Committee's proposal to implement testing for employers discriminating against workers, particularly low-wage workers, based on any protected status, including race, national origin, ethnicity, language, gender or class, will help identify where such unlawful practices are occurring and serve as a deterrent for employers in the future. When the New York City Hiring Discrimination Study conducted similar testing for discriminatory employment hiring practices several years ago, the results confirmed what this Committee suspects continues to be true: Latinos and Blacks are often discriminated against at the earliest stages of the hiring process, seemingly on the basis of race, nationality or ethnicity alone.⁶ The results of this Committee's current investigation will thus help contribute to a body of evolving knowledge on the types of discrimination employers are engaging in, and help to disaggregate data based on identity and protected class. This Committee and the City Council should empower and adequately fund the New York City Commission on Human Rights to engage in proactive enforcement of its laws in prohibiting discriminatory hiring and

⁴ Domestic Workers United & DataCenter, *Home is Where the Work Is: Inside New York's Domestic Work Industry* 5 (2006), available at <http://www.datacenter.org/reports/homeiswheretheworkis.pdf>.

⁵ *Trabajadoras: Challenges and Conditions of Latina Workers in the United States*, *supra* note 2, at 58.

⁶ Devah Pager et al., *Race at Work: A Field Experiment of Discrimination in Low-Wage Labor Markets* 19-20 (2008), available at <http://www.law.virginia.edu/pdf/workshops/0708/pager.pdf>.

employment practices. LatinoJustice PRLDEF and the Latinas At Work Project wholly support this Committee's efforts at instituting testing as an investigative tool and helping to root out employment discrimination in New York City. Thank you.

Natasha Bannan
Associate Counsel
nbannan@latinojustice.org
(212) 735 7583

Employment Testing bill mark-up by Fair Play Legislation

fairplaylegislation.org

[Proposed deletions struck through; proposed additions underlined]

Int. No.

By Council Members Lander, Garodnick and Mealy

A LOCAL LAW

In relation to establishing an employment discrimination testing program.

Be it enacted by the Council as follows:

Section 1. Investigation of discrimination in employment. a. For a period of one year, the law enforcement bureau of the commission on human rights shall organize and conduct an no fewer than six investigations of discrimination in employment, during which the commission shall test local employers, including, but not limited to, any employer, labor organization or employment agency or an employee or agent thereof.. No fewer than half of Ssuch investigations shall include ~~but not be limited to~~ sending out matched pairs of testers who shall apply for the same job and who shall present similar credentials but who shall not present the same actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status, or other protected characteristic pursuant to title 8 of the administrative code of the city of New York. The first of the investigations shall commence on or before ~~June~~ October 1, 2015.

b. On or before ~~June~~ July 1, 2016, the commission shall submit to the speaker of the council a report related to the housing accommodation investigations conducted during the prior ~~nine~~ 12 month period. Such report shall include, but not be limited to: (i) the number of matched

pair tests completed; (ii) ~~the location~~ identification of the industry of the employer where each completed matched pair test was conducted; and (iii) the protected class variable used in each matched pair test and ~~(iii)~~ (iv) the number of incidents of actual or perceived discrimination on each protected class basis including a such description of any incidents of discrimination that would not compromise any ongoing or prospective investigation or prosecution.

~~c. Any incidents of actual or perceived discrimination shall be referred to the commission's law enforcement bureau.~~

~~d.~~ Nothing herein shall preclude the commission from conducting other such discrimination testing programs or investigations.

§ 2. This local law shall take effect immediately upon enactment.

BG/RC
LS 1187/2014
10/22/14, 10:30A

Housing Testing bill mark-up by Fair Play Legislation

fairplaylegislation.org

[Proposed deletions struck through; proposed additions underlined]

Int. No.

By Council Members Lander, Garodnick and Mealy

A LOCAL LAW

In relation to establishing a housing discrimination testing program.

Be it enacted by the Council as follows:

Section 1. Investigation of discrimination in housing accommodations. a. For a period of one year, the law enforcement bureau of the commission on human rights shall organize and conduct ~~an~~ no fewer than 12 investigations of discrimination in housing ~~accommodation services~~, during which the commission shall test local housing accommodation providers, including, but not limited to, the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof. No fewer than half of Ssuch investigations shall include ~~but not be limited to~~ sending out matched pairs of testers who shall apply for the same housing accommodations and who shall present similar credit histories but who shall not present the same actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, alienage or citizenship status, lawful source of income, number of children who will be residing with such person or persons, or other protected characteristic pursuant to

subdivision 5 of section 8-107 of the administrative code of the city of New York. The first of the investigations shall commence on or before June July 1, 2015.

b. On or before ~~June~~ July 1, 2016, the commission shall submit to the speaker of the council a report related to the housing accommodation investigations conducted during the prior 12 month period. Such report shall include, but not be limited to: (i) the number of matched pair tests completed; (ii) ~~the location~~ identification of the neighborhood in which each completed matched pair test was conducted; and (iii) the protected class variable used in each matched pair test and ~~(iii)~~ (iv) the number of incidents of actual or perceived discrimination on each protected class basis including a such description of any incidents of discrimination that would not compromise any ongoing or prospective investigation or prosecution.

~~———— c. Any incidents of actual or perceived discrimination shall be referred to the commission's law enforcement bureau.~~

~~dc.~~ Nothing herein shall preclude the commission from conducting other such discrimination testing programs or investigations.

§ 2. This local law shall take effect immediately upon enactment.

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LS 1187/2014
10/22/14, 10:30A

Testimony of Paul Keefe, Associate Counsel
Next Door Project, Community Service Society of New York
In support of Intro. 421 and Bills Establishing Testing Programs
for Employment (Int. 690) and Housing Discrimination (Int. 689)
Committee on Civil Rights of the New York City Council
March 3, 2015

This testimony is presented on behalf of the Community Service Society of New York (“CSS”), a nonprofit organization serving low-income New Yorkers for over 170 years. CSS has long believed that work is the surest pathway out of poverty, and, since 2008, our Legal Department has addressed employment barriers faced by people with criminal records. Through our Next Door Project, we train and supervise a cadre of retired senior citizen volunteers to help individuals obtain, understand, and fix mistakes on their criminal records, reaching over 500 clients annually. Additionally, we help people obtain certificates that demonstrate rehabilitation, advocate for policy changes on the state and local level, and litigate individual and class action cases.

CSS supports Intro. 421, which requires the City Commission on Human Rights (“Commission”) to publish in its annual report the extent and results of investigations initiated by the Commission. CSS also endorses Intros. 690 and 689, which require Commission-led investigations to detect employment and housing discrimination. Intro 690, however, should be amended to explicitly include all classes protected by the City Human Rights Law—particularly people with criminal records.

Employment discrimination against people with criminal records, especially in entry-level positions, is rampant, as demonstrated by a 2005 report produced by the Commission called “Race at Work: Realities of Race and Criminal Record in the NYC Job Market” written by Drs. Devah Pager and Bruce Western.¹ The report relied on results from matched pairs of testers of young white, Latino, and African-American men who applied for 1470 entry-level jobs throughout New York City. Not only were whites more likely to get a callback or job offer than Latinos or African-Americans, African-Americans were nearly half as likely to be considered as whites.² When white testers presented with a recent felony record, they were as likely as Latinos and much more likely than African-Americans to receive a callback or job offer.³ Overall, people with criminal records are only half as

¹ Devah Pager & Bruce Western, *Race at Work: Realities of Race and Criminal Record in the NYC Job Market 2* (2005), *available at* http://www.nyc.gov/html/cchr/downloads/pdf/publications/race_report_web.pdf.

² *Id.* at 3.

³ *Id.* at 6-7.

likely to get a call back than those without; for African-American applicants, the likelihood is reduced to one-third.⁴

In a follow-up article summarizing the New York City study and other reports using testers, Dr. Pager concludes “that race has large effects on employment opportunities, with a black job seeker anywhere between 50 and 500 percent less likely to be considered by employers as an equally qualified white job applicant.”⁵ Because employers have less information about an individual at the initial application stage, they are more likely to be guided by conscious or unconscious bias when deciding who to interview and hire,⁶ and these biases are more powerful when an applicant presents negative information, like a criminal record that correlates with racial stereotypes.⁷ Unconscious bias is powerful: In a survey of nearly 200 employers, 61.7% said they were “very likely” or “somewhat likely” to hire a African-American man with good references and interpersonal skills, even though he had a year-old felony drug conviction and was released from prison the previous month.⁸ When actually presented with an applicant matching those characteristics, however, only 14.7% of the same employers called the person for an interview.⁹ The discrepancy between what employers say they will do versus what they actually do shows the need for testing.

Countless clients of the Next Door Project describe being denied employment because of their records. A few relay being told that their record was a problem; others who had promising interviews never heard from an employer again after a background check was done. Most, however, simply never receive a callback after disclosing their record on an initial job application. These problems persist despite Correction Law Article 23-A—on the books since 1976 and enforced through the State¹⁰ and City Human Rights Laws¹¹—that prohibits public and private employers from firing or declining to hire someone just because of a criminal conviction. The Fair Chance Act (Int. 318), currently before the City Council, would prohibit employers from inquiring about an applicant’s conviction history until after offering the person a job, cutting down on this blatant—yet difficult to prove—form of discrimination.

⁴ Devah Pager, *The Mark of a Criminal Record* 108 Am. J. Soc. 937, 960 (2003), available at http://www.princeton.edu/~pager/pager_ajs.pdf.

⁵ Devah Pager, *The Use of Field Experiments for Studies of Employment Discrimination: Contributions, Critiques, and Directions for the Future* 609 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 104, 114 (2007), available at http://scholar.harvard.edu/files/pager/files/annals_pager.pdf.

⁶ *Id.* at 118.

⁷ Devah Pager, *The Mark of a Criminal Record* 108 AM. J. SOC. 938, 944–45 (2003), available at http://scholar.harvard.edu/files/pager/files/pager_ajs.pdf. Recipients of public benefits also carry a negative credential. *Id.* at 942. This demonstrates the need to test source of income discrimination in housing, which is also prohibited by the City Human Rights Law. N.Y. City Admin. Code § 8-107(5).

⁸ Devah Pager & Lincoln Quillian, *Walking the Talk? What Employers Say Versus What They Do*, 70 AM. SOC. REV. 355, 362–63 (2005), available at http://scholar.harvard.edu/files/pager/files/asr_pagerquillian2.pdf

⁹ *Id.* at 365. By contrast, half of the employers called back White applicants with criminal records. *Id.*

¹⁰ N.Y. Exec. L. § 296(15),(16).

¹¹ N.Y. City Admin. Code § 8-107(10),(11).

Even if the Fair Chance Act is enacted, however, testing will be necessary to ensure employers comply with this law, and testing for this kind of strict legal compliance need not involve matched pairs. As an illustration, the Fair Chance Act lays out a process employers must follow: a person cannot be asked about her or his record until after a conditional offer of employment. If a background check is done and an employer no longer wants to hire the person, it must give her or him a copy of the report, written reasons why they can legally be denied employment under the City Human Rights Law, and seven days to respond. Multiple individual testers sent to the same employer can easily discover whether or not these requirements were followed, and consistently failing to comply would signal the need for more guidance and enforcement by the Commission.

Testing should be conducted with the goal of making systemic change, which may be achieved by initiating pattern and practice litigation either by the Commission itself or the City's Corporation Counsel.¹² Additional funds—in excess of current budget proposals—should be given to the Commission so it can ensure that testers are selected, trained, and supervised in a way to reduce bias and ensure reliable results. To the extent possible, matched testers should share all characteristics except the one to be tested, and be trained to conduct themselves similarly in interviews, which requires extensive instruction and practice, along with daily post-interview reviews.¹³ The Commission must be given a budget enabling it to set up a robust testing program.

Testing is a vital tool to detect the subtle forms of discrimination most prevalent, yet most obscured, in our City today. CSS endorses the Council's interest in testing for employment and housing discrimination and reporting those results. Thank you for the opportunity to comment on this legislation.

¹² See N.Y. City Admin. Code § 8-402.

¹³ Pager *supra* note 5, at 117.



Testimony for the New York City Council Civil Rights Committee Human Rights Commission | March 3, 2015

Submitted by: Alyssa Aguilera, Political Director, VOCAL-NY. Contact: alyssa@vocal-ny.org and (917) 200-1446.

I want to start by thanking Chair Mealy for holding this critical hearing, and all the members of the Civil Rights committee for the opportunity to provide testimony today. My name is Alyssa Aguilera and I am the political director for VOCAL New York, a grassroots, membership organization comprised of low-income people impacted by HIV/AIDS, the drug war and mass incarceration. I am here today to speak to the importance of a well funded, effective, and just Human Rights Commission.

It is not enough for our city to pass progressive civil rights legislation, without a strong agency to ensure the implementation and enforcement of these laws, we will not be able to fully achieve the goals and spirit of these hard fought civil rights victories.

HOUSING DISCRIMINATION

A large number of VOCAL New York's members are recipients of the Human Resource Administration's HIV/AIDS Services Administration, or HASA. HASA recipients receive enhanced rental assistance, allowing them to pay rents from \$900 to \$1150. They are also protected under the "source of income discrimination" legislation that stipulates people cannot be denied an apartment if they are able to pay their rent. The legislation was enacted in response to landlords denying low-income people apartments who rely on government rental assistance programs. Despite this having been law since for decades, not a day goes by that we do not hear stories from our members about being denied apartments because the landlord "doesn't take programs." Keep in mind that HASA recipients are able to pay a higher amount of rents than some other rental assistance programs, so the problem is likely worse for people in other programs, especially those whose rental assistance is time limited. I would urge every member of this committee to ask their staff to call landlord to see how many begin the conversation with "do you have a job?" or "we don't take programs".

Not only is this a violation of the law, but it is exacerbating our homelessness crisis, as people struggle to find apartments, as well as continue to strain relationships in gentrifying communities where longtime residents struggle to find apartments. But the onus to enforce these vital laws cannot be on non-profit organizations, or on individual Council Members advocating for each constituent whose rights are violated, or by our already overwhelmed legal services community. We need a strong Human Rights Commission that can ensure that legislation such as this is enforced and support Intro 0689 to test housing discrimination across the city.

EMPLOYMENT DISCRIMINATION

In addition to experiencing housing discrimination, our members also fall victim to employment discrimination largely due to their criminal record history. Because employers often ask about criminal record history on the application, many of our members do not even get the opportunity to interview or



explain their circumstances to an employer – and instead are prejudged by their record history. Here's one story from VOCAL member, Brian Pearson:

"When I came home from prison in 2010, all I wanted was a fresh start for my daughter and me. I knew I couldn't go back to the way I was living before. I already had four felonies, and I couldn't imagine spending more time locked up and away from my family.

I applied for a dozen jobs a day, but on every application I'd have to face my past with one question: "Have you ever been convicted of a felony?" Sometimes I left the checkboxes blank, hoping they wouldn't ask again; other times I'd write, "Yes, will explain in interview," but only twice got the opportunity. Every time, I felt like I was being judged for who I was when I got convicted, not for the person I am today.

Being denied a fair shot at a job over and over again can take a toll on your self-esteem. With so many people telling you that you aren't good enough, you can really start to believe it. I started applying to fewer and fewer jobs and felt like employers would always see me as a felon, not as a person."

As such, we have been working with a citywide coalition of advocates to support the passage of the Fair Chance Act (Intro 318) - City Council legislation that will prohibit employers from asking about criminal record history until after a conditional job offer, in addition to other protections. We are hopeful that this legislation will be passed in the coming months and critical to its success will be a strong Human Rights Commission to see that it is adequately enforced. We support Intro 0690 to test employment discrimination.

DISCRIMINATORY PROFILING BY THE NYPD

Finally, I'd like to draw attention to the Community Safety Act, city council legislation passed in 2013 that expands and strengthens the NYPD ban on discriminatory profiling. The ban includes protections from profiling on the basis of race, ethnicity, religion, national origin, age, gender, gender identity or expression, sexual orientation, immigration status, disability, and housing status. A landmark piece of legislation, endorsed by more than 100 community organizations citywide, this major win is only half achieved if there are not adequate resources and will to enforce the ban.

By seeing an end to discriminatory and abusive profiling, we will not only get justice for those profiled but will also help deter officers and the NYPD as a whole, from engaging in these harmful practices if they know there will be consequences for their actions.

There also needs to be a transparent training and evaluation plan of the profiling ban - with input from directly impacted New Yorkers, community groups and police reform advocates - to ensure that HRC staff and systems, including investigators, are competent in processing claims related to bias-based profiling by police.



COLUMBIA LAW SCHOOL

HUMAN RIGHTS INSTITUTE

Remarks of Erin Foley Smith

New York City Council Hearing:

Effective Enforcement of the City's Human Rights Law.

Tuesday, March 3, 2015 at 1:00 PM

16th Floor Committee Room, 250 Broadway, New York, NY

Introduction

I am Erin Smith, and I represent Columbia Law School's Human Rights Institute. We support federal, state, and local government efforts to promote core human rights of dignity, equality, and opportunity. For the past several months, we have been working as part of the New York City Human Rights Law Working Group in an effort to improve the city's human rights commission. My remarks today relate to how civil and human rights agencies currently operate in other cities and states throughout the U.S.—and how international human rights principles inform their work—as well as what New York City might learn from some of these commissions.

The New York City Human Rights Law (NYCHRL) is one of the strongest civil rights laws in the nation and an important tool for fighting discrimination in employment, housing, and public accommodations. We are grateful for all that the City Council has done to recognize and support human rights in our city, including Speaker Mark-Viverito's recently announced plan to increase baseline funding for the New York City Commission on Human Rights by five million dollars. And we commend Mayor de Blasio on his recent appointments to the Commission. At the same time, we are concerned that the Commission, which is the key body responsible for implementing our strong local laws, does not currently have the resources necessary to realize its full potential. During the coming months—a period of renewal—the Commission's leadership should consult with community members, set priorities, and determine how to allocate resources.

Today's hearing offers an opportunity to highlight some of the challenges facing our Commission and to offer ways to address those challenges, looking at the human rights principles that guide human rights institutions around the world.

Using the human rights framework, local governments across the U.S. have shifted their perspective, using internationally agreed upon human rights principles as a basis to promote equality, opportunity, and dignity. Local governments are on the cutting edge, developing innovative solutions to address the needs of their communities.

Leveraging a Proactive Human Rights Framework

Protecting human rights has been one of our nation's core values since its inception. That makes sense. International human rights standards affirm the dignity and worth of every person and enable all individuals to meet their basic needs. They are premised on notions of fairness and

Jerome L. Greene Hall 435 West 116th Street, Box B-28 New York, NY 10027

Phone: (212) 854-3138 Fax: (212) 854-3554 hri@law.columbia.edu

<http://web.law.columbia.edu/human-rights-institute>

equality for all. These standards recognize that civil rights, economic rights, and social rights are all connected.

Human rights place an affirmative obligation on government to respect, protect, and fulfill these rights. Human rights often recognize a fuller, more robust spectrum of rights than provided for under federal, and sometimes city and state, law. Importantly, human rights place a focus on preventing discrimination and addressing its underlying causes.

International human rights principles speak to the role of human rights institutions in particular, dictating that such institutions should have a broad mandate to both promote and protect human rights, and that they should have adequate funding to effectively conduct those activities. In addition to responding to complaints and petitions, human rights institutions should have the ability to proactively address human rights concerns.

Using the human rights framework, local governments have shifted their perspective and developed new approaches to longstanding problems. I will describe specific examples in a moment, but first I want to touch on **WHY we think a human rights lens is useful:**

- It calls for a holistic approach to assessing the impact of policies on all members of a community.
- It addresses systemic causes of discrimination and inequality. Human rights are aimed at tackling implicit bias, as well as preventing discrimination, which is broadly defined to include policies with a discriminatory impact, regardless of intent.
- The human rights framework recognizes we have to address structural causes of inequality.
- Human rights principles call for human rights institutions to both promote and protect human rights, and to have the resources adequate to do so.
- Finally, a human rights approach emphasizes transparency and accountability along with participation of community members.

That's why it's so valuable that the New York City Commission is a *Human Rights Commission*.

The Role of State and Local Government

Most human rights concerns fall within state and local jurisdiction. Indeed, “human rights begin . . . [i]n small places, close to home.”¹

Criminal justice, violence against women, homelessness, and education—these are just some of the areas where struggles for equality play out. And they all fall under state and local jurisdiction. The U.S. federal government has recognized that state and local commissions “play a critical role” in making human rights a reality, and that access to them is vital.²

Indeed, ensuring human rights to equality, opportunity, and freedom from discrimination requires strong collaboration between local, state, and federal government, and between government and civil society. Local governments are leading the way, innovating in the use of

human rights. And this makes sense, as local government actors are closest to understanding what is wrong and are well-positioned to craft workable solutions.

The Role of Civil and Human Rights Agencies

State and local civil and human rights agencies, like New York City's, are particularly well-placed to make human rights real: through outreach, monitoring, enforcement regarding pressing issues, and through policy recommendations to address injustice and inequity.³ Indeed, institutional change cannot occur without sustained focus on ways to eradicate discrimination and promote equal opportunity. Along with their state and local partner agencies and community-based groups, state and local commissions are established institutions with the capacity to effectively advance policies that foster dignity and opportunity for all.

Many challenges exist for state and local government actors, including civil and human rights agencies. As you are well aware, lack of funds and lack of political support make advancing civil and human rights a perennial challenge. Despite these challenges, a number of jurisdictions are embracing human rights as a lens to assess problems and as a roadmap for positive change.

Examples of Local Initiatives⁴

I'd like to mention just a few examples of efforts that state and local agencies around the U.S. are undertaking today to promote and protect human rights in their communities. New York City leads the nation in so many ways. But, as Mayor de Blasio has stated, "inequality—that feeling of a few doing very well, while so many slip further behind—that is the defining challenge of our time."⁵ Recent initiatives demonstrate our city's commitment to human rights, including improving access to healthcare, working to provide paid sick leave, and making municipal ID cards available to everyone. Building on that momentum, our city's Commission can learn from and build upon the examples below so that New York City continues its progress toward becoming a human rights leader among its peers.

- **Holding hearings on human rights.** In spring 2014, the Tennessee Human Rights Commission held a series of hearings on the status of human rights in Tennessee. Through the hearings, the Commission collected more than fifty testimonies on human rights topics relevant to a diverse range of Tennesseans, including LGBT rights, homelessness, and education, among others. In November 2014, the Commission released a report on the hearings, including the testimonies it had collected and a summary of the recommendations presented.⁶ The Commission plans to use the report as the basis for identifying and prioritizing its efforts to address discrimination in the state.
- **Pattern and practice investigation.** The mandate of the San Francisco Human Rights Commission includes investigating and mediating complaints of discrimination and resolving community disputes involving individual or systemic discrimination. A recent initiative by the Human Rights Commission involved the mediation of tensions between the Chief of Police and the Arab and Muslim communities of San Francisco. The Commission conducted a public hearing to gather testimony regarding surveillance and racial and religious profiling experienced by Arab, Middle Eastern, Muslim, and South Asian American communities, and to develop recommendations to address these

concerns. Following the hearing, the Commission published a report,⁷ which includes official findings of surveillance and intimidation and general distrust of law officials as a result of perceived or experienced discrimination. It also contains recommendations by the Human Rights Commission—including ensuring greater transparency and oversight of the San Francisco Police Force. The San Francisco initiative offers an example of looking at systemic discrimination through proactive, broad-based investigation, in line with human rights principles.⁸

- **Investigating the need for new local laws.** In 2010, residents of a transitional housing program in Seattle proposed that the city make it against the law to discriminate against a person in employment or housing due to an arrest or conviction record. In response, the Seattle Office for Civil Rights worked with community organizations, housing providers, employers, and the general public to explore possibilities. The Office ultimately worked to help pass a local law preventing such discrimination, which took effect in 2013. The Office is now responsible for enforcing the law and has provided information sheets and public service announcements in several languages to educate the public and support the implementation of the law. It also offers free technical assistance and group presentations to help with compliance.
- **Proactively investigating and reporting on issues.** In 2007, the Washington State Human Rights Commission (WSHRC) generated a briefing paper documenting, analyzing, and addressing the “severe lack of housing for farm workers in the state.” In developing the paper, the WSHRC was guided by its mandate to enforce prohibitions against discrimination based on race and nationality contained in state and federal statutes. In addition to drawing upon domestic legal standards, in writing the report, the WSHRC incorporated international standards for adequate housing, including from the Universal Declaration of Human Rights.
- **Advancing women’s equality.** San Francisco is an established leader in using human rights to address gender inequity. In 1998, the City adopted a local ordinance based explicitly on the international treaty on the rights of women (CEDAW). The goal of the ordinance was to eliminate gender inequity. To comply with the ordinance, a number of city agencies underwent gender assessments to review practices and policies to ensure programs were meeting the needs of women and girls. Through this analysis, the Commission on the Status of Women identified discriminatory practices and barriers to employment, and then helped departments institute policies to correct these inequalities. For example, as a result of using a rights-based analysis, the city adopted more flexible work policies and supported new laws on telecommuting and paid parental leave.
- **Addressing criminalization of homelessness through human rights.** In January 2014, Duluth, MN became the first city to pass a homeless persons’ bill of rights. The resolution acknowledges the importance of ensuring an adequate standard of living, including food, clothing, and housing, a core element of the Universal Declaration of Human Rights, and sets up mechanisms to focus on eliminating hunger, homelessness, and poverty. Rhode Island is one of several states that recently enacted Homeless Bills of Rights as part of growing efforts to combat criminalization of homelessness, which diverts funding from constructive solutions and exacerbates a cycle of poverty.

Jerome L. Greene Hall 435 West 116th Street, Box B-28 New York, NY 10027

Phone: (212) 854-3138 Fax: (212) 854-3554 hri@law.columbia.edu

<http://web.law.columbia.edu/human-rights-institute>

These examples offer just a sampling of the strategies taking hold across the country.

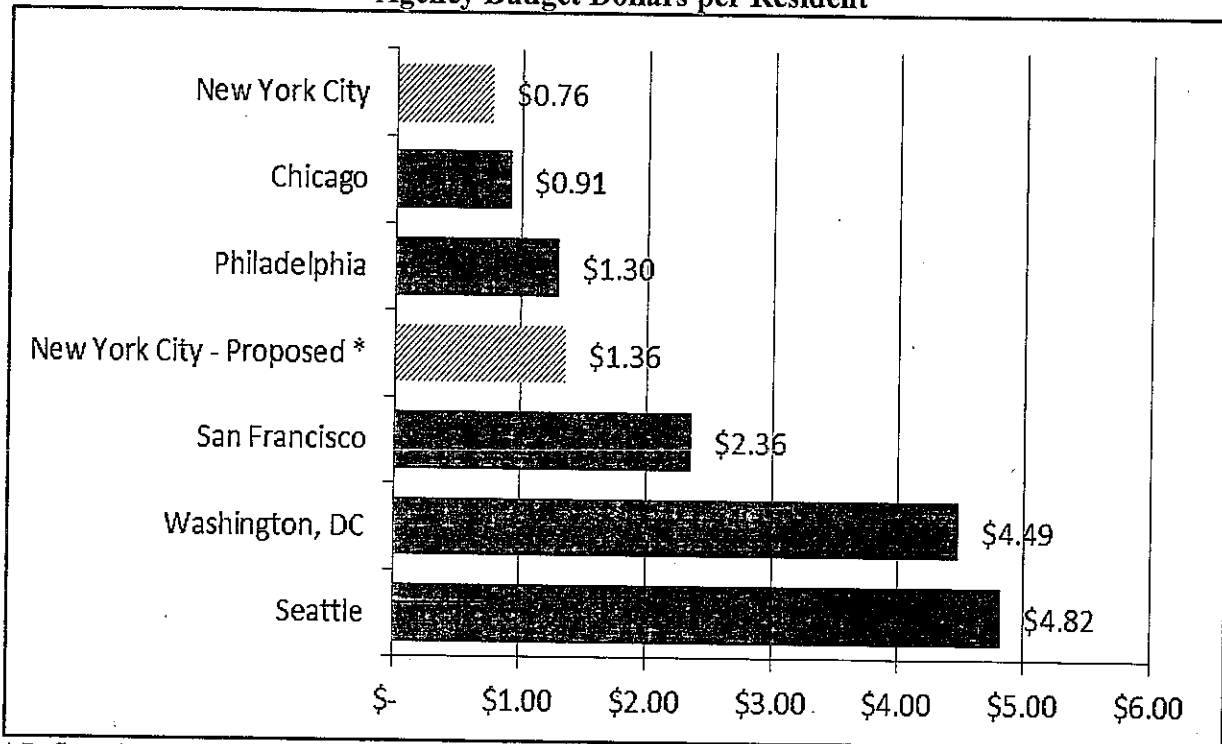
Data on Other Civil and Human Rights Agencies

Protecting civil and human rights is a commitment many in the City Council and the Administration share. Realizing this goal requires not only a commitment, but also prioritization and resources. To effectively identify and remedy discrimination, adequate budget and staff are essential.

Unfortunately, New York City's Commission falls behind on these metrics. A brief look at how our commission compares to civil and human rights agencies in other large cities, in terms of budget and staffing, demonstrates that we have significant room for improvement. We recognize Speaker Mark-Viverito's recent announcement that she plans to restore five million dollars of the Commission's funding and to double the number of attorneys and human rights specialists. As the figures below demonstrate, these changes would represent a great step in the right direction.

First, in terms of budget, we have looked at civil and human rights agencies in five other large cities,⁹ and we have compared them on the metric of dollar per resident, since some cities, of course, represent a much larger number of individuals.

Figure 1
Agency Budget Dollars per Resident¹⁰



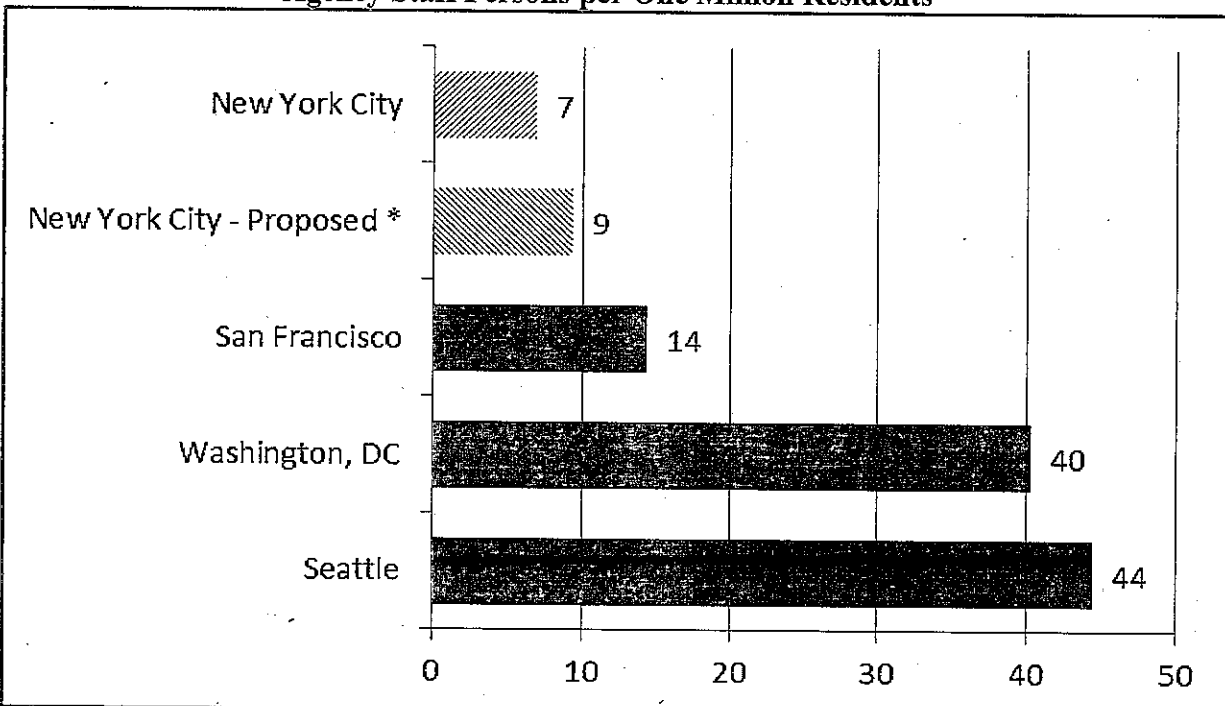
* Reflects \$5 million in increased Commission funding, as proposed by Speaker Melissa Mark-Viverito in her 2015 State of the City Address

New York's Commission had a total 2014 budget of around \$6.5 million. Just \$2.2 million—only one-third—came from city coffers; the remainder came from federal grant money.

And as the figure shows, New York City currently has the lowest budget per resident, at \$0.76. Increasing the budget by five million dollars, as proposed by Speaker Mark-Viverito, would bring New York City to the middle of the pack. While this is certainly an improvement, we believe our city can and should do better.

As you can imagine, budget correlates closely with the number of commission staff in each of these cities. The figure below shows the number of commission staff persons per one million residents. Adequate staffing is essential to ensure the Commission can complete its work.

Figure 2
Agency Staff Persons per One Million Residents¹¹



* Reflects proposal of Speaker Melissa Mark-Viverito in her 2015 State of the City Address to double the number of attorneys and human rights specialists serving on the Commission

Unfortunately agency staff data was not available for all of the comparison cities we reviewed.

As the data show, New York City has the lowest number of commission staff per resident, by a significant margin. This means that New York has fewer man hours to devote to all aspects of its work, including taking inquiries, resolving complaints, conducting independent investigations, addressing patterns of discrimination, educating the public, and conducting testing. Even doubling the Commission's attorneys and human rights specialists leaves New York far behind our peers.

This information is discouraging, certainly. Our city's residents face serious discrimination and have fewer means to remedy that discrimination than individuals in many of our peer cities. This is true despite our very strong human rights law. But we also see reason for hope. We believe that it is possible to remedy this problem and, indeed, that increasing the Commission's budget would go a long way toward that end. And we are buoyed by the fact that the Mayor recently appointed a new Commission head and a number of new Commissioners—respected advocates

and leaders in our community—who are now well-positioned to help ensure the Commission is a robust body. We join with the other speakers at today’s hearing in calling for increased resources for the New York City Commission on Human Rights. We urge the Commission to adopt a proactive human rights framework to more comprehensively address the multiple forms of discrimination and inequality that continue to face New Yorkers, and we call on the City Council to support the Commission in this effort. Thank you.

¹ Eleanor Roosevelt, Address at the Tenth Anniversary of the Universal Declaration of Human Rights: In Our Hands (1958).

² See U.S. Dep’t. of State, Annex A to the Common Core Document of the United States: State, Local, Tribal, and Territorial Human Rights Organizations and Programs, Submitted with the Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, ¶ 1, (Dec. 30, 2011), available at <http://www.state.gov/j/drl/rls/179782.htm>.

³ See Kenneth L. Saunders & Hyo Eun (April) Bang, “A Historical Perspective on U.S. Human Rights Commissions,” Executive Session Papers: Human Rights Commissions and Criminal Justice (Marea L. Beeman ed., 2007), available at http://www.hrccj.org/pdfs/history_of_hrc.pdf.

⁴ Most of these examples are drawn from a 2012 Report by the Human Rights Institute, *Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy*, available at <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf>.

⁵ Bill de Blasio, Mayoral Victory Speech, available at <http://www.nytimes.com/2013/11/06/nyregion/de-blasios-victory-speech.html?pagewanted=all> (Nov. 5, 2013).

⁶ Tennessee Human Rights Commission, *The Status of Human Rights in Tennessee* (2014), available at <http://www.state.tn.us/humanrights/publications/FINAL%20The%20Status%20of%20Human%20Rights%20in%20Tennessee%2011.21.14.pdf>.

⁷ City and County of San Francisco Human Rights Commission, *Community Concerns of Surveillance, Racial and Religious Profiling of Arab, Middle Eastern, Muslim and South Asian Communities and Potential Reactivation of SFPD Intelligence Gathering* (2011), available at <http://sf-hrc.org/Modules/ShowDocument.aspx?documentid=983>.

⁸ See, e.g., Comm. on the Elimination of Racial Discrimination, *Concluding Observations—United States of America*, ¶ 28, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008) (“The Committee recommends that the State party take all appropriate measures, including increasing the use of ‘pattern and practice’ investigations, to combat de facto discrimination in the workplace . . .”).

⁹ The data provided here is the most recent available for the New York City Commission on Human Rights, the District of Columbia Office of Human Rights, the Seattle Office of Civil Rights, the City and County of San Francisco Human Rights Commission, the City of Philadelphia Commission on Human Relations, and the Chicago Commission on Human Relations.

¹⁰ United States Census Bureau, Annual Estimates of Resident Population (2013), available at <http://factfinder2.census.gov/bkmk/table/1.0/en/PEP/2013/PEPANRRSIP.US12A>; NYC Commission on Human Rights, 2013 Annual Report, available at <http://www.nyc.gov/html/cchr/downloads/pdf/annual13.pdf>; District of Columbia Office of Human Rights, Operating Budget (2013), available at http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/hm_ohr_chapter_2015a.pdf; Letter from Brenda Anibarro, Policy Manager, Seattle Office for Civil Rights, to Erin Foley Smith, Project Attorney, Columbia Law School Human Rights Institute (Oct. 7, 2014); San Francisco Human Rights Commission, FY13-15 Budget (2013), available at http://sf-hrc.org/sites/sf-hrc.org/files/migrated/FileCenter/Documents/HRC_Publications/Budget_and_Performance_Measures/SFHRC_Budget_FY_13_15.pdf; Philadelphia City Council, Philadelphia Commission on Human Relations / Fair Housing Commission, Fiscal 2015 Proposed Appropriations, available at <http://phlcouncil.com/wp-content/uploads/2014/05/HumanRelFY15Test.pdf#page=2>; Chicago Commission on Human Relations, Freedom of Information Act (FOIA) Departmental Information (FY 2013 Operating Budget), available at http://www.cityofchicago.org/content/dam/city/depts/cchr/general/FOIA_WebsiteInfo022513.pdf; Melissa Mark-Viverito, New York City Council Speaker, State of the City 2015: Lifting Every Voice (Feb. 11, 2015), available at <http://council.nyc.gov/html/pr/021115rmk.shtml>.

¹¹ United States Census Bureau, *supra* note 10; NYC Commission on Human Rights, *supra* note 10; District of Columbia Office of Human Rights, *supra* note 10; Letter from Brenda Anibarro, *supra* note 10; San Francisco Human Rights Commission, *supra* note 10; Melissa Mark-Viverito, *supra* note 10.

Testimony of
E. Cukor, Anya Mukarji-Connolly, & Eugene Chen
New York Legal Assistance Group
LGBTQ Law Project

Before the New York City Council
Committee on Civil Rights
Regarding Proposed Bills No. 0689-2015 & 0690-2015
March 3, 2015

Thank you to Committee Chair Council Member Darlene Mealy, the members of the Civil Rights Committee and the sponsors for spearheading these important bills.

My name is Ez Cukor and I am an attorney with the LGBTQ Law Project at the New York Legal Assistance Group. Our office provides free legal services and advocacy to low-income Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) communities throughout New York City. We work to defend and expand the rights of New York City's LGBTQ community and offer legal advice and representation in a wide variety of poverty-related civil legal matters, such as employment discrimination, housing, public assistance, legal name changes and family law.

On behalf of the New York Legal Assistance Group, I am here to offer our support for the proposed bills, which would strengthen the work of the New York City Commission on Human Rights.

Disproportionate Rates of Poverty & Discrimination Within LGBTQ Communities:

Poverty disproportionately impacts LGBTQ communities, including higher rates of homelessness and discrimination in the workplace.¹ The rates of poverty and discrimination are even higher for transgender and gender non-conforming people. Transgender and gender non-conforming people experience devastating levels of discrimination, harassment, and mistreatment in nearly every aspect of their lives, particularly in attempting to secure housing and in finding employment.²

Housing Discrimination

LGBTQ people face high levels of housing discrimination. In 2013, The U.S. Department of Housing and Urban Development (HUD) released a study showing that same-sex couples

¹ Sears, Brad & Lee Badgett, *Beyond Stereotypes: Poverty in the LGBT Community*, (2012) available at <http://williamsinstitute.law.ucla.edu/headlines/beyond-stereotypes-poverty-in-the-lgbt-community/>

² National Center for Transgender Equality, National Gay and Lesbian Taskforce, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, (2011) available at http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

experienced significant discrimination in the rental housing market relative to different sex couples in all metropolitan areas tested, even those where discrimination based on sexual orientation is illegal.³ We applaud HUD on taking the initiative to perform a nationwide study on housing discrimination for same-sex couples. The HUD study did not, however, address discrimination based on gender identity or gender expression. Transgender people face rampant housing discrimination. The best available data shows that nineteen percent of transgender respondents nationwide have been denied housing simply for being transgender.⁴ Transgender people of color experienced housing discrimination at as much as more than three times the rate of their white counterparts.⁵ People of color also faced disproportionate eviction and homelessness.⁶ New Yorkers fared no better than the rest of the nation.⁷

Employment Discrimination

Transgender people, particularly people of color, also experience alarming rates of workplace discrimination.⁸ In one survey, forty-nine percent of transgender New Yorkers reported that they had *never* been offered a job while living openly as transgender.⁹ The unemployment rate among transgender and gender non-conforming people is double that of the general public, and even higher for transgender people of color.¹⁰ Lesbian, gay and bisexual workers are similarly far too often harassed, fired, or denied employment.¹¹

Employment discrimination often triggers a cascade of adverse consequences for low-income workers. One former NYLAG client, a middle age transgender woman, has a resume that shows education and a successful work history. Despite that, she has struggled to find steady employment since living openly as a woman. Another NYLAG client became homeless as a result of being unlawfully terminated because of her gender expression and perceived sexual orientation.

³ Department of Housing and Urban Development, *An Estimate of Housing Discrimination Against Same Sex Couples*, at vi (2013) available at http://www.huduser.org/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf.

⁴ *Injustice at Every Turn* at 106, see note 2.

⁵ *See id.* at 106-119. Respondents reported being denied housing because of being transgender at the following rates: American Indian, 47%; African American 38%; Multiracial 32%; Latino/a, 26%; Asian, 17%; White, 15%.

⁶ *See id.*

⁷ *Injustice at Every Turn* at 51, see note 2.

⁸ National Center For Transgender Equality, National Gay and Lesbian Taskforce, *Findings of the National Transgender Discrimination Survey: New York Results* available at: <http://www.nysenate.gov/files/pdfs/NYS%20NTDS%20findings.pdf>.

⁹ Make the Road New York, *Transgender Need Not Apply: A Report on Gender Identity Job Discrimination*, at 12 (2010) available at http://www.maketheroad.org/pix_reports/TransNeedNotApplyReport_05.10.pdf.

¹⁰ *Injustice at Every Turn*, see note 2.

¹¹ Sears, Brad & Christy Mallory, *Documented Evidence of Employment Discrimination and Its Effects on LGBT People: Executive Summary*, (2011) available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>

Cost of Discrimination

Discrimination comes at a cost for New York. In New York, roughly 11,600 transgender people have lost a job, 21,500 were not hired for a job, 11,600 were denied a promotion, 11,000 have been denied housing, and 4,600 have been evicted due to anti-transgender bias.¹² Estimates indicate that discrimination against transgender and gender non-conforming New Yorkers costs the state approximately \$1.5 to \$7 million in Medicaid and housing program expenditures.¹³

As a result of widespread experiences of discrimination, transgender and gender non-conforming people, particularly people of color, are four times more likely than their peers to live in extreme poverty and earn less than \$10,000 annually.

New York City's Human Rights Law is an important tool in the fight against the high rates of discrimination that LGBTQ communities in New York face.

NYC Human Rights Commission is Uniquely Positioned to Investigate and Respond to Discrimination

New York City's Human Rights Law is among the strongest and broadest anti-discrimination laws in the United States. The Commission is uniquely positioned to enforce the law to protect the most vulnerable New Yorkers. Under its new leadership, we hope the Commission will use its legal authority to fight actively housing and employment discrimination using methods which include testing.

Testing designed to uncover evidence of discrimination and support enforcement of the Human Rights Law is an important way to address unlawful discrimination. Well-designed testing can reveal patterns of discrimination that remain otherwise undetectable. Evidence of discrimination can be difficult for an individual victim to obtain, with marginalized victims faring worse when navigating the legal system. Furthermore, the Commission and the Law Department are well positioned to take enforcement action if their investigation uncovers evidence of unlawful discrimination. The Commission's use of testing to gather data and redress violations of the Human Rights Law sends a powerful message to employers and landlords that the City is committed to stopping unlawful discrimination.

The New York Legal Assistance Group's LGBTQ Law Project therefore supports Ints. 0689-2015 & 0690-2015. We encourage the City Council to give the Commission latitude in

¹² Herman, Jody L., *The Cost of Employment and Housing Discrimination Against Transgender Residents of New York*, (2013) available at: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-NY-Cost-of-Discrimination-April-2013.pdf>

¹³ See *id.*

implementing testing programs that will be of maximum use in enforcement litigation for any evidence of discrimination it uncovers. We recommend that the Commission engage in employment and housing discrimination testing on the basis of race, gender, sexual orientation, and gender expression and identity. We stress the importance of using of testers who are transgender. We encourage testing of race and LGBTQ status because LGBTQ people of color are much more likely to experience discrimination than white LGBTQ people. Finally, testing for discrimination on the basis of arrest record, criminal history, and lawful source of income would also benefit LGBTQ communities who are disproportionately and unjustly caught in the criminal justice system due to racial and gender profiling by police.

On behalf of the LGBTQ Law Project at NYLAG, I want to thank this Committee for working to strengthen our Human Rights Law and Commission. Ensuring that all New Yorkers can access work and a safe home will not only benefit those most in need, but will strengthen our communities and our City.

Thank you,



E. Cukor, Esq.

Anya Mukarji-Connolly, Esq.

Eugene Chen, Esq.

Attorneys

LGBTQ Law Project

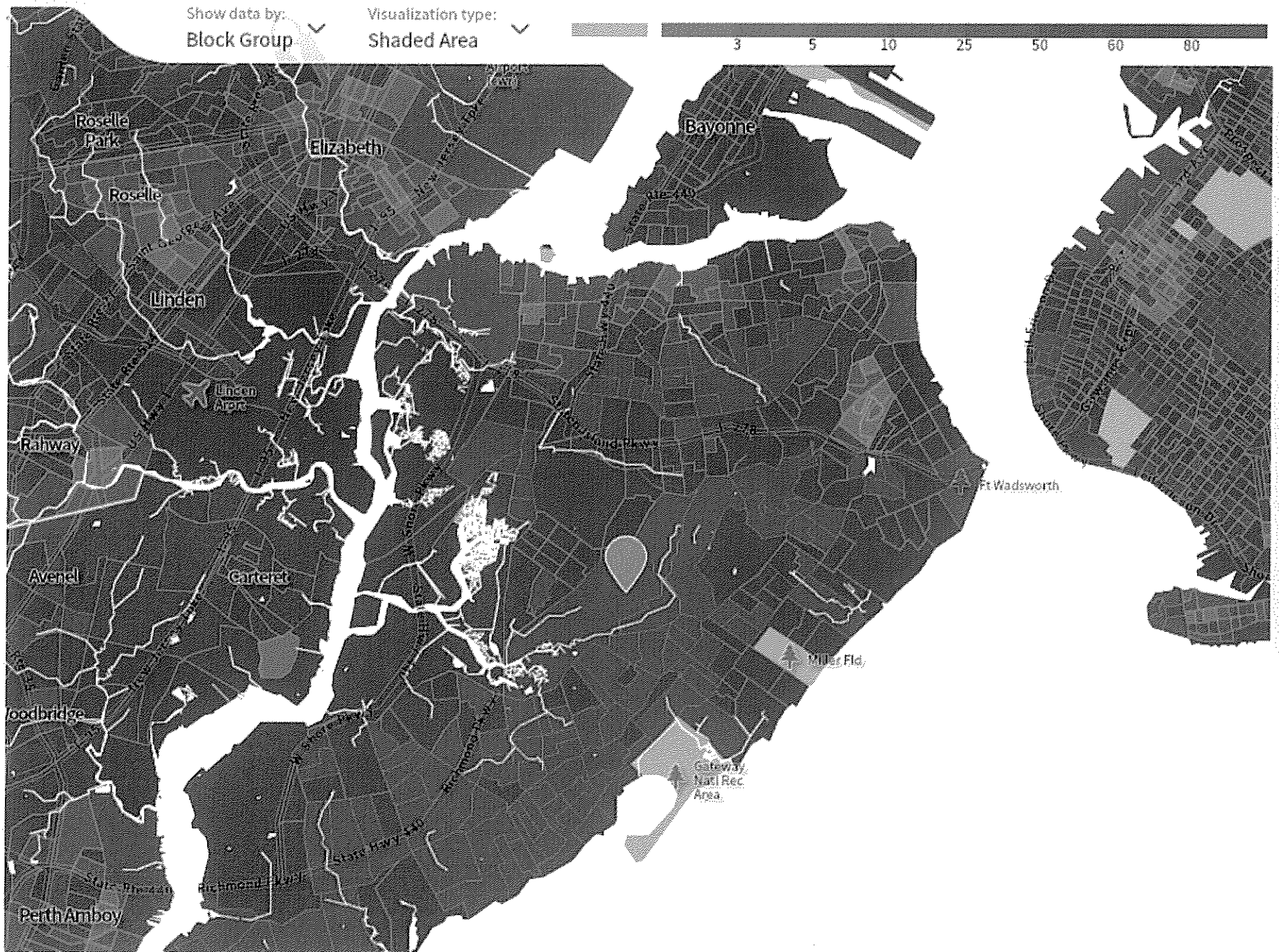
New York Legal Assistance Group



African Americans in Brooklyn: Flatbush Avenue remains the best guide to the Borough's demographic split (that's where the vivid or ultra-vivid red — either more than 60 or 80 percent African-American — tends to end and where you are not far from under 5 percent (or even less) African-American. Note that the southernmost part of Brooklyn (mostly highly white) is not depicted).



Latinos in the Bronx: The intense concentration of Latinos in the Bronx...except in Riverdale and the northeast portion of the borough.



Whites in Staten Island: Interestingly, the City Council district that encompasses the northern third of Staten Island is the most diverse in the city. But most of the rest of Staten Island has remained ultra-white. The maintenance of that pattern was facilitated by a rezoning of land during the Bloomberg years to preclude the construction of multi-family housing in the southern two-thirds of the borough. Note: the southernmost portion of Staten Island, also very white, is not depicted.



Who lives where in Manhattan? In this map, a little surprise. Rather than providing racial or ethnic information, we depict median household income (same ACS 2008-2012 survey; income represented in 2012, inflation-adjusted dollars). Manhattan (with the northern and southern tips cut off) is depicted in the leftmost third of the map. The bolder the red, the higher the median income. You guess who lives where.



199 Water Street
New York, NY 10038
T (212) 577-3300
www.legal-aid.org

March 3, 2015

Committee on Civil Rights
New York City Council
250 Broadway
New York, New York

Blaine (Fin) V. Fogg
President

Seymour W. James, Jr.
Attorney-in-Charge

Adriene L. Holder
Attorney-in-Charge
Civil Practice

Judith Goldiner
Attorney in Charge
Law Reform Unit

Hearing:
Oversight – Effective Enforcement of the City's Human Rights Law

TESTIMONY OF THE LEGAL AID SOCIETY

Introduction

Thank you Chairperson Mealy, and members of the Committee on Civil Rights, for the opportunity to provide testimony today. This testimony is submitted on behalf of The Legal Aid Society.

The Legal Aid Society is the oldest and largest legal services provider for low income families and individuals in the United States. Annually, the Society handles more than 300,000 cases and legal matters for low income New Yorkers with civil, criminal and juvenile rights problems, including some 46,000 individual civil matters in the past year benefiting nearly 116,000 New Yorkers as well as law reform cases which benefit all two million low-income families and individuals in New York City. Through a network of 16 neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low-income individuals.

The mission of the Society's Civil Practice is to improve the lives of low-income New Yorkers by providing legal representation to vulnerable families and individuals to assist them in obtaining and maintaining the basic necessities of life — housing, health care, food and subsistence-level income or self-sufficiency. The Society's legal assistance focuses on enhancing individual, family and community stability by resolving a full range of legal problems in the areas of housing and public benefits, foreclosure prevention, immigration, domestic violence and family law, employment, elder law, tax law, community economic development, health law and consumer law. In addition to individual assistance, The Legal Aid Society represents clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back up support and technical assistance for community organizations.

We are very excited to be here discussing effective enforcement of the HRL, now that Commissioner Carmelyn Malalis has begun her tenure and there is a strong prospect of additional resources for the agency. Given our particular focus on low-income New Yorkers, from our perspective, CCHR's role in the City is absolutely critical. The HRL provides among the most expansive protections against discrimination in the nation. There are many people with discrimination claims who may have protection only under the HRL: for example, tenants facing discrimination based on source of income, pregnant women denied necessary accommodations at work who do not have a disability, lesbian and gay workers facing a hostile work environment based on sexual orientation, community members discriminated against based on a criminal record, and survivors of domestic violence.

But here has been a dearth of enforcement of the HRL for low-income New Yorkers, who sometimes have difficulty finding private counsel. At The Legal Aid Society, like our sister organizations in civil legal services, we represent as many people as we possibly can, but we only reach the tip of the iceberg. The enforcement of the HRL for low-income people depends on government action.

We therefore welcome the Council's willingness to maximize the efforts of the New York City Commission on Human Rights (CCHR) to use its authority to investigate and initiate complaints of unlawful discrimination, issue subpoenas and utilize the Corporation Counsel to commence civil actions against those who discriminate. We also applaud the new Chair of the CCHR's plans to begin using the Commission's existing authority to engage in testing and systematic investigations of discrimination in New York City. In light of these changes from prior practice, we believe that some of the legislation considered today is unnecessary at the time. However, there is still much that the CCHR and the City Council can still do to ensure that the promise of the HRL is achieved for low-income New Yorkers.

Discrimination Against Tenants Based on Source of Income

We will first focus on the critical issue of discrimination against tenants based on source of income. We were very excited when this body passed Local Law 10 of 2008, banning this pernicious form of discrimination. Prior to the passage of Local Law 10, tenants who wanted to use Section 8 vouchers and other programs that subsidized their rent payments found themselves without recourse and vulnerable to homelessness when landlords refused to accept their vouchers. With the passage of Local Law 10, tenants gained access to the enforcement mechanisms of the CCHR and the courts.

However, more can be done to enforce this law and fulfill the City Council's legislative intent to fully ban discrimination against potential and current New York City tenants based on source of income. Tenants who need subsidies to help pay their rent continue to face discrimination from landlords and brokers who either do not know about Local Law 10 or by those who attempt to sidestep the law in an effort to avoid accepting legitimate income. For example, the New York City Human Resources Administration (HRA) and the New York City Department of Homeless Services (DHS) recently initiated the Living in Communities (LINC) rental assistance program to help families residing in shelter secure permanent housing. While over 1,500 such vouchers have been issued since the program's

inception in September 2014, and an additional 2,500 shall be issued, only 400 have signed leasehold agreements and commenced using the subsidy thus far.

Furthermore, we know of several landlords who are aware of Local Law 10 have intentionally avoided making necessary repairs to apartments in order to fail Section 8 inspections, thus continuing to successfully discriminate against tenants because of their source of income. Often the result has been that a tenants' vouchers are rescinded or the tenants are forced to move. This intentional lack of maintenance allows landlords to circumvent the Section 8 program, and their actions constitute violations of Local Law 10. These abuses are on the rise as an increasing number of neighborhoods undergo gentrification and owners seek to maximize the rent they can command. The CCHR can make it clear that any refusal to make repairs in accordance with the New York City Housing Maintenance Code that cause an apartment to fail Section 8 or Advantage inspections violates Local Law 10. In this climate, the agency charged with rooting out such discrimination has to play a vital role.

The legislation proposed reflects the vital need for systematic research regarding current source of income discrimination. We hope that the CCHR will provide it. The Legal Aid Society attempts to help as many tenants who are suffering from income discrimination as possible. However, we are often limited to those tenants who contact us and the tenants that our resources allow us to assist. A concentrated look at where the problems lie -- a focus on landlords, management companies, and real estate brokers is critical. For example, there does not appear to be much credible data regarding potential tenants who have attempted, and are then rejected, for placement in an apartment based solely on their need for assistance paying the monthly rent. Data gathering and periodic reporting by the CCHR together with the City Council's oversight reporting will help organizations such as The Legal Aid Society be proactive in assisting constituents. With updates regarding people who are rejected for housing based on income, we can reach out to provide help, rather than wait for a client to seek us out.

The Human Rights Commission should increase efforts to inform tenants of their rights under Local Law 10 and landlords of their obligations. While intentional violations are most egregious, unintentional and uninformed acts by landlords are equally damaging to the goal behind Local Law 10. Many landlords do not know about Local Law 10, and this lack of knowledge leads to unnecessary refusals to accept programs such as Section 8 and LINC. The mere fact that we continue to bring lawsuits against landlords illustrates the consequences due to their lack of information. Because tenants are equally uninformed, families who receive money from various programs believe that they must accept the landlord's uninformed decision as final, and subsequently lose their homes. To date, CCHR has not taken any steps to publicize Local Law 10, so many landlords and tenants alike remain in the dark about the City Council's resolve to end income discrimination. Education about Local Law 10 will lead to less litigation, and more tenant housing security. Also, the City should require brokers to post signs in their place of business informing potential tenants that source of income discrimination is illegal, as well as requiring broker contracts to include information about Local Law 10, in order to raise landlord awareness that discrimination based on source of income is illegal.

Due to our continued concern for the tenants of New York City we would like to propose the following measures:

- CCHR should test the rental market for discriminatory practices and file Commission initiated complaints. This testing can be accomplished by using CCHR in-house sources, or by contracting with an organization who has testing capacity and expertise, such as the Fair Housing Justice Center.
- CCHR should stop automatically mediating a discrimination problem prior to filing an official complaint. Filing of a complaint helps to establish a written record which in turns helps to identify a potential systemic discrimination issue within a real estate or management company, or with a particular landlord.
- CCHR actively monitors electronic sites such as Craigslist in order to identify discriminatory advertising practices by brokers and landlords. Discriminatory practices observed on electronic sites include statements by landlords and brokers such as “ No Programs Accepted” or “No Children Allowed.” The City Council can require CCHR to periodically report their findings.
- The Council should explore ways to increase CCHR funding which would allow it to use its powers under the HRL to the fullest extent.
- The Council should strengthen Local Law 10 by eliminating current restrictions on building size.

Other Proposals

In addition to our specific proposals to strengthen CCHR’s enforcement of Local Law 10, based on our clients’ experience with CCHR we have the following proposals to increase effective enforcement of the HRL by CCHR, applicable to all areas of discrimination:

- Although the Commission has the power to initiate litigation, in the past, the agency has rarely done so. CCHR should invest significant resources in utilizing this power and focus on bringing pattern and practice actions designed to attack the most persistent forms of discrimination.
- Testing programs at CCHR should test for a broader range of discriminatory practices. Testing should be targeted to focus on priority areas and to support Commission-initiated litigation. Community partners working with affected communities could be a resource to assist in developing testing programs. The bills under consideration today may be premature in this respect, since CCHR will need time to develop new areas of litigation and consult with key organizations.
- CCHR should improve transparency of its policies and procedures. CCHR should focus on developing clear guidelines for its work that can be shared with the public, ideally online.

- The HRL allows attorneys to submit complaints to CCHR directly, similar to the Charge filing process at the EEOC. CCHR should utilize this provision more effectively, with outreach to litigators to clarify the procedure.
- CCHR should expand mediation as a resource for discrimination disputes.
- CCHR should increase civil penalties, which will both send a strong message about the strength of the discrimination law in New York City and encourage Respondents to resolve discrimination complaints at early stages. CCHR should also more readily use its power to issue preliminary injunctions to address discrimination and retaliation quickly when CCHR receives complaints about ongoing violations.
- At the intake stage, CCHR should provide robust counseling and referrals when complainants present a range of issues. CCHR should also provide detailed information about election of remedies, that is, that by filing a complaint with the agency, the complainant has chosen her forum and will not have an opportunity to bring her claims in court.
- CCHR should ensure the agency is fully accessible to individuals for whom English is a second language.
- CCHR should provide policy guidance and/or opinion letters to clearly communicate the parameters of the HRL to the public. There is a particular need for guidance in several key areas: pregnancy discrimination and accommodation, criminal record discrimination, language access and the rights of individuals for whom English is a second language, LGBTQ discrimination, tenant harassment, HRL coverage and retaliation. These issues are discussed more in depth by others here providing testimony.
- CCHR should also monitor private litigation of the HRL and file amici in cases of first impression.
- CCHR should hold regular meetings with legal advocates and other community partners. These meetings could be particularly critical in helping the agency to develop Commission-initiated litigation
- Finally, there is a great need for staff training, particularly on the breadth of the HRL and challenging issues in investigations such as pretext, intersectional claims, retaliation and stereotyping.

Please do not hesitate to contact us for any further information. Thank you for the opportunity to testify today.

Respectfully Submitted:

Amy M. Hong
Hollis V. Pfitsch
Sebastian Riccardi
Staff Attorneys
The Legal Aid Society
Employment Law Unit
Law Reform Unit
199 Water Street, 3rd Floor
New York, New York 10038

Robert Desir
Staff Attorney
Law Reform Unit
199 Water Street, 3rd Floor
New York, New York 10038



199 Water Street
New York, NY 10038
T (212) 577-3300
www.legal-aid.org

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The Legal Aid Society is the oldest and largest legal services provider for low income families and individuals in the United States. Annually, the Society handles more than 300,000 cases and legal matters for low income New Yorkers with civil, criminal and juvenile rights problems, including some 46,000 individual civil matters in the past year benefiting nearly 116,000 New Yorkers as well as law reform cases which benefit all two million low-income families and individuals in New York City. Through a network of 16 neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low-income individuals.

The mission of the Society's Civil Practice is to improve the lives of low-income New Yorkers by providing legal representation to vulnerable families and individuals to assist them in obtaining and maintaining the basic necessities of life — housing, health care, food and subsistence-level income or self-sufficiency. The Society's legal assistance focuses on enhancing individual, family and community stability by resolving a full range of legal problems in the areas of housing and public benefits, foreclosure prevention, immigration, domestic violence and family law, employment, elder law, tax law, community economic development, health law and consumer law. In addition to individual assistance, The Legal Aid Society represents clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back up support and technical assistance for community organizations.

We are very excited to be here discussing effective enforcement of the HRL, now that Commissioner Carmelyn Malalis has begun her tenure and there is a strong prospect of additional resources for the agency. Given our particular focus on low-income New Yorkers, from our perspective, CCHR's role in the City is absolutely critical. The HRL provides among the most expansive protections against discrimination in the nation. There are many people with discrimination claims who may have protection only under the HRL: for example, tenants facing discrimination based on source of income, pregnant women denied necessary accommodations at work who do not have a disability, lesbian and gay workers facing a hostile work environment based on sexual orientation, community members discriminated against based on a criminal record, and survivors of domestic violence.

But here has been a dearth of enforcement of the HRL for low-income New Yorkers, who sometimes have difficulty finding private counsel. At The Legal Aid Society, like our sister organizations in civil legal services, we represent as many people as we possibly can, but we only reach the tip of the iceberg. The enforcement of the HRL for low-income people depends on government action.

We therefore welcome the Council's willingness to maximize the efforts of the New York City Commission on Human Rights (CCHR) to use its authority to investigate and initiate complaints of unlawful discrimination, issue subpoenas and utilize the Corporation Counsel to commence civil actions against those who discriminate. We also applaud the new Chair of the CCHR's plans to begin using the Commission's existing authority to engage in testing and systematic investigations of discrimination in New York City. In light of these changes from prior practice, we believe that some of the legislation considered today is unnecessary at the time. However, there is still much that the CCHR and the City Council can still do to ensure that the promise of the HRL is achieved for low-income New Yorkers.

Discrimination Against Tenants Based on Source of Income

We will first focus on the critical issue of discrimination against tenants based on source of income. We were very excited when this body passed Local Law 10 of 2008, banning this pernicious form of discrimination. Prior to the passage of Local Law 10, tenants who wanted to use Section 8 vouchers and other programs that subsidized their rent payments found themselves without recourse and vulnerable to homelessness when landlords refused to accept their vouchers. With the passage of Local Law 10, tenants gained access to the enforcement mechanisms of the CCHR and the courts.

However, more can be done to enforce this law and fulfill the City Council's legislative intent to fully ban discrimination against potential and current New York City tenants based on source of income. Tenants who need subsidies to help pay their rent continue to face discrimination from landlords and brokers who either do not know about Local Law 10 or by those who attempt to sidestep the law in an effort to avoid accepting legitimate income. For example, the New York City Human Resources Administration (HRA) and the New York City Department of Homeless Services (DHS) recently initiated the Living in Communities (LINC) rental assistance program to help families residing in shelter secure permanent housing. While over 1,500 such vouchers have been issued since the program's

inception in September 2014, and an additional 2,500 shall be issued, only 400 have signed leasehold agreements and commenced using the subsidy thus far.

Furthermore, we know of several landlords who are aware of Local Law 10 have intentionally avoided making necessary repairs to apartments in order to fail Section 8 inspections, thus continuing to successfully discriminate against tenants because of their source of income. Often the result has been that a tenants' vouchers are rescinded or the tenants are forced to move. This intentional lack of maintenance allows landlords to circumvent the Section 8 program, and their actions constitute violations of Local Law 10. These abuses are on the rise as an increasing number of neighborhoods undergo gentrification and owners seek to maximize the rent they can command. The CCHR can make it clear that any refusal to make repairs in accordance with the New York City Housing Maintenance Code that cause an apartment to fail Section 8 or Advantage inspections violates Local Law 10. In this climate, the agency charged with rooting out such discrimination has to play a vital role.

The legislation proposed reflects the vital need for systematic research regarding current source of income discrimination. We hope that the CCHR will provide it. The Legal Aid Society attempts to help as many tenants who are suffering from income discrimination as possible. However, we are often limited to those tenants who contact us and the tenants that our resources allow us to assist. A concentrated look at where the problems lie -- a focus on landlords, management companies, and real estate brokers is critical. For example, there does not appear to be much credible data regarding potential tenants who have attempted, and are then rejected, for placement in an apartment based solely on their need for assistance paying the monthly rent. Data gathering and periodic reporting by the CCHR together with the City Council's oversight reporting will help organizations such as The Legal Aid Society be proactive in assisting constituents. With updates regarding people who are rejected for housing based on income, we can reach out to provide help, rather than wait for a client to seek us out.

The Human Rights Commission should increase efforts to inform tenants of their rights under Local Law 10 and landlords of their obligations. While intentional violations are most egregious, unintentional and uninformed acts by landlords are equally damaging to the goal behind Local Law 10. Many landlords do not know about Local Law 10, and this lack of knowledge leads to unnecessary refusals to accept programs such as Section 8 and LINC. The mere fact that we continue to bring lawsuits against landlords illustrates the consequences due to their lack of information. Because tenants are equally uninformed, families who receive money from various programs believe that they must accept the landlord's uninformed decision as final, and subsequently lose their homes. To date, CCHR has not taken any steps to publicize Local Law 10, so many landlords and tenants alike remain in the dark about the City Council's resolve to end income discrimination. Education about Local Law 10 will lead to less litigation, and more tenant housing security. Also, the City should require brokers to post signs in their place of business informing potential tenants that source of income discrimination is illegal, as well as requiring broker contracts to include information about Local Law 10, in order to raise landlord awareness that discrimination based on source of income is illegal.

Due to our continued concern for the tenants of New York City we would like to propose the following measures:

- CCHR should test the rental market for discriminatory practices and file Commission initiated complaints. This testing can be accomplished by using CCHR in-house sources, or by contracting with an organization who has testing capacity and expertise, such as the Fair Housing Justice Center.
- CCHR should stop automatically mediating a discrimination problem prior to filing an official complaint. Filing of a complaint helps to establish a written record which in turns helps to identify a potential systemic discrimination issue within a real estate or management company, or with a particular landlord.
- CCHR actively monitors electronic sites such as Craigslist in order to identify discriminatory advertising practices by brokers and landlords. Discriminatory practices observed on electronic sites include statements by landlords and brokers such as “ No Programs Accepted” or “No Children Allowed.” The City Council can require CCHR to periodically report their findings.
- The Council should explore ways to increase CCHR funding which would allow it to use its powers under the HRL to the fullest extent.
- The Council should strengthen Local Law 10 by eliminating current restrictions on building size.

Other Proposals

In addition to our specific proposals to strengthen CCHR’s enforcement of Local Law 10, based on our clients’ experience with CCHR we have the following proposals to increase effective enforcement of the HRL by CCHR, applicable to all areas of discrimination:

- Although the Commission has the power to initiate litigation, in the past, the agency has rarely done so. CCHR should invest significant resources in utilizing this power and focus on bringing pattern and practice actions designed to attack the most persistent forms of discrimination.
- Testing programs at CCHR should test for a broader range of discriminatory practices. Testing should be targeted to focus on priority areas and to support Commission-initiated litigation. Community partners working with affected communities could be a resource to assist in developing testing programs. The bills under consideration today may be premature in this respect, since CCHR will need time to develop new areas of litigation and consult with key organizations.
- CCHR should improve transparency of its policies and procedures. CCHR should focus on developing clear guidelines for its work that can be shared with the public, ideally online.

- The HRL allows attorneys to submit complaints to CCHR directly, similar to the Charge filing process at the EEOC. CCHR should utilize this provision more effectively, with outreach to litigators to clarify the procedure.
- CCHR should expand mediation as a resource for discrimination disputes.
- CCHR should increase civil penalties, which will both send a strong message about the strength of the discrimination law in New York City and encourage Respondents to resolve discrimination complaints at early stages. CCHR should also more readily use its power to issue preliminary injunctions to address discrimination and retaliation quickly when CCHR receives complaints about ongoing violations.
- At the intake stage, CCHR should provide robust counseling and referrals when complainants present a range of issues. CCHR should also provide detailed information about election of remedies, that is, that by filing a complaint with the agency, the complainant has chosen her forum and will not have an opportunity to bring her claims in court.
- CCHR should ensure the agency is fully accessible to individuals for whom English is a second language.
- CCHR should provide policy guidance and/or opinion letters to clearly communicate the parameters of the HRL to the public. There is a particular need for guidance in several key areas: pregnancy discrimination and accommodation, criminal record discrimination, language access and the rights of individuals for whom English is a second language, LGBTQ discrimination, tenant harassment, HRL coverage and retaliation. These issues are discussed more in depth by others here providing testimony.
- CCHR should also monitor private litigation of the HRL and file amici in cases of first impression.
- CCHR should hold regular meetings with legal advocates and other community partners. These meetings could be particularly critical in helping the agency to develop Commission-initiated litigation
- Finally, there is a great need for staff training, particularly on the breadth of the HRL and challenging issues in investigations such as pretext, intersectional claims, retaliation and stereotyping.

Please do not hesitate to contact us for any further information. Thank you for the opportunity to testify today.

Respectfully Submitted:

Amy M. Hong
Hollis V. Pfitsch
Sebastian Riccardi
Staff Attorneys
The Legal Aid Society
Employment Law Unit
Law Reform Unit
199 Water Street, 3rd Floor
New York, New York 10038

Robert Desir
Staff Attorney
Law Reform Unit
199 Water Street, 3rd Floor
New York, New York 10038

**At the Crossroads:
Is There Hope for Civil Rights Law Enforcement in New York?**

**A Report from the
Anti-Discrimination Center
of Metro New York, Inc.**

“We must not turn away from one another. We must not retreat into separate tribes of like-minded, like-looking people who worship the same god, wear the same clothes, read the same books and eat the same food as one another. This is the way of exclusion, not inclusion. We cannot afford to keep going this way. If we are to survive as a society, as a nation, we must turn toward one another and reach out in every way we can.”

**- Representative John Lewis,
*Walking with the Wind***

I. Introduction

Confronted with evidence of an apparently inadequate police response to a bias incident on Staten Island, Mayor Bloomberg has said he has “zero tolerance” for bias crimes, and, referring to those who commit such crimes, has asked the City’s District Attorneys to “punish such criminals to the fullest extent permitted by law.”¹ Contrary to some intemperate rhetoric that has vilified the Administration in connection with this issue, we believe that the Mayor’s remarks represent earnest opposition to -- and a sincere commitment to fight -- bias crimes. We wish our evaluation of the City’s overall record of anti-discrimination law enforcement could have been equally optimistic.

Twenty-one months ago, the Administration inherited an anti-discrimination law enforcement system that was in complete disrepair. As a Bar Association report found, the City’s Human Rights Commission was deeply underfunded, unfocused, and backlogged. Most importantly, it lacked an understanding of either the need to create, or the means by which to create, a credible deterrent against acts of discrimination in the same way deterrence is created in other areas of law enforcement.² It was not asking itself the fundamental question for any anti-discrimination agency: to what extent are we making headway in deterring, preventing, uprooting, and remedying discrimination?

If possible, the record of the City’s Law Department was worse. Though it had possessed

¹ *New York Times*, September 23, 2003, p. B4, col. 5.

² For a description of the wholesale failure by either the Human Rights Commission or the City’s Law Department to enforce the City’s Human Rights Law as of the end of 2001, see the report of the Civil Rights Committee of the Association of the Bar of the City of New York, entitled *It Is Time to Enforce the Law: Fulfilling the Promise of the NYC Human Rights Law*, 57 *The Record* 229 (Summer 2002). The report is available on the web at www.antibiaslaw.com/committeereport.pdf.

II. The City's Law Department

Contrary to popular belief, the Commission is not the only agency with authority and responsibility to enforce the City's Human Rights Law. The City's Law Department is obliged to investigate and prosecute cases where there is a pattern and practice of discriminatory conduct.⁵ This authority and responsibility is in addition to and independent of the authority of the Commission. Unfortunately, the Law Department's record has not improved.⁶

A. Total lack of enforcement

Once again, the Law Department failed to bring a single prosecution under the City's Human Rights Law in all of Fiscal Year ("FY") 2003. Of the hundreds and hundreds of attorneys in the Law Department, there is not one devoted specifically to City Human Rights Law enforcement. As illustrated by the chart below, the Law Department's inaction is part of a sorry and unbroken pattern.

Law Department Prosecutions Under the City Human Rights Law								
FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03
0	0	0	0	0	0	0	0	0

The Law Department has had the same excuse over the years: we're waiting for cases from the Human Rights Commission. Aside from the fact that the wait has been long and fruitless, the response reveals a failure to appreciate how civil rights cases are developed. If there is not a group

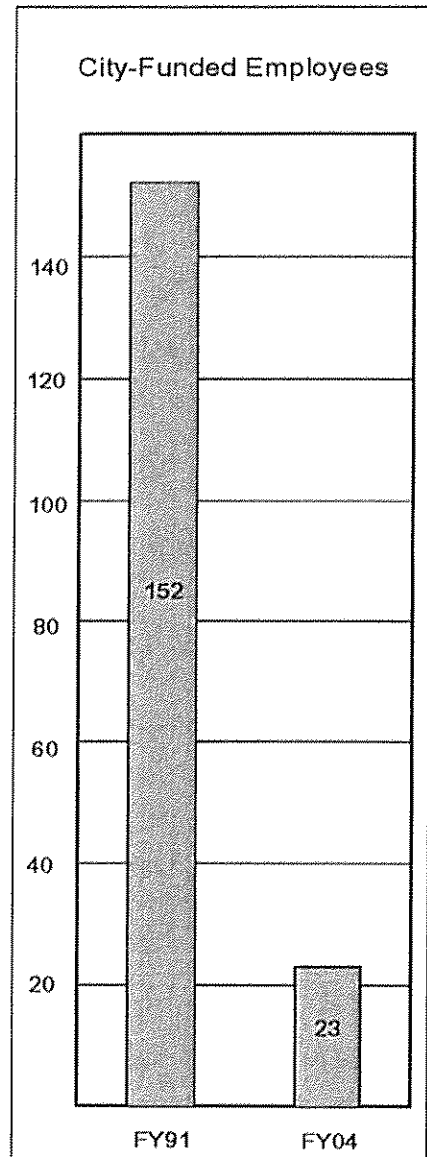
⁵ Title 8, Chapter 4 of the Administrative Code.

⁶ Notwithstanding our substantive critique, the Center would like to thank the Law Department for its prompt and professional response to our Freedom of Information Law request.

a penny a New Yorker per week. Even more striking is what has happened over the long term. In FY91, the Commission had 152 City-funded employees. In FY04, the Commission is only budgeted for 23 such employees, a reduction of approximately 85%. Perhaps this is a realistic level of commitment for a small- or medium-sized City that is relatively homogeneous. But to suggest that it is anything close to adequate for New York, a City of eight million people that is part of what the Census Bureau has found to be the most segregated “primary metropolitan statistical area” for Hispanics and Latinos in the entire United States,⁷ takes the idea of “doing more with less” beyond all reasonable bounds.

Perhaps the most insidious aspect of ratifying the previous Administration’s chokehold on Commission funding is the way that the scope of the problem of discrimination is redefined to rationalize the low level of spending. It would

be a rare Administration indeed that would say, “Yes, we know that discrimination is entrenched and ongoing; and we know that fighting it is a major and complex task requiring highly experienced



⁷ The New York primary metropolitan statistical area encompasses the five boroughs of New York City, plus Westchester, Rockland, and Putnam Counties. See Iceland, John, et al., *Racial and Ethnic Residential in the United States: 1980-2000* (U.S. Census Bureau, Series CENSR-3, 2002).

is not to say that an investigative agency should not look critically at the statements and other evidence put forth by a complainant – it should. But the fact remains that it is the employer or housing provider that naturally has, in most cases, a disproportionate amount of the information relating to why an action was actually taken.

“No Probable Cause” or “NPC” determinations are final agency determinations, extinguishing, subject to appeal, the rights of the complaining party. Most of the NPC determinations in the sample were so lacking in detail that they did not even list what basic investigative steps were taken. But in the group that did provide details, it turns out that 32 percent of the investigations did not involve interviewing anyone at all. Another 43 percent of the investigations involved only an interview of the complainant. Another 14 percent involved only an interview of a witness, not of the principals. Thus, in at least 89 percent of these cases, no respondent was interviewed. An agency cannot uncover discrimination if it doesn’t look and probe for discrimination.

2. Misunderstanding the agency’s role at the investigative stage

In part, this problem is a function of the agency’s misapprehension of what it means to be “neutral” in an investigation. One version of neutrality is that which is supposed to be performed by a judge or other ultimate finder-of-fact. In this version, the finder-of-fact receives what is submitted, and then assesses the material in an impartial fashion. There comes a point in the administrative process where the Commission is supposed to do exactly this. In those cases where Probable Cause is found and a trial is held, the parties to the case are the Commission’s Law Enforcement Bureau, acting as prosecutor, and the person or entity charged with having

Complainants should, of course, cooperate with an investigation to the extent to which they are able. But once a complaint has been filed, *it is the Commission's obligation* to be as probing with respondents as it would be as if it were already prosecuting the case, and as probing with complainant as it would be as if it were already defending the case. In so doing, it would dig deeply to identify what parts of each side's version do and do not add up. Yet the Commission engages in a process of what might be called "asymmetrical skepticism." NPC after NPC relies on the idea that a complainant has not "rebutted" the contentions of the respondent—contentions generally contained in an answer or position statement prepared by respondent's counsel. In essence, the Commission will say to an (almost always unrepresented) individual: "Go ahead and disprove what respondent's counsel has written."

The respondent's attorney's position winds up being treated as true unless conclusively proven false by complainant, without that position ever being challenged directly by Commission inquiry.¹⁰ A more even-handed alternative, and one that recognizes that attorneys for discrimination defendants don't tend to volunteer inculcating reasons for their clients' conduct, is to treat a position statement as one of the bases on which to build an investigation (along with asking who participated, who knew or should have known, what are the appropriate comparisons, etc.).

around.

¹⁰ A similar problem exists when the Commission treats conflicting versions of an event as a "tie" that goes to the respondent. Since unimpeachable third-party witnesses are not frequently available in the context of discriminatory acts, it is important for a credible complainant to be able to tell her story at a trial, and leave it to the ultimate fact-finder to decide her testimony alone is enough to prove discrimination (there is, of course, no legal requirement for corroboration).

contemporaneously complaining of disparate treatment, and there were sworn statements from several witnesses that complainant was a good worker (*i.e.*, evidence tending to show that the employer's claim that complainant's work was "substantially below minimum standard" was merely a pretext). One of the few other women ever to work on the respondent's sites also must have experienced gender bias: she was quoted as saying that if a woman couldn't tolerate sexism she should choose another line of work. Nevertheless, the Commission chose to credit the employer's explanation, and did so without exploring any criticisms that may have been made about complainant were themselves motivated by gender bias. Moreover, the way the Commission ultimately characterized the gender breakdown of its workforce suggests a willingness to shape the facts to meet the needs of coming to an NPC determination. The Commission had gotten what, for it, were unusually robust statistics on respondent's seven work sites. Over five years, there were an average of 79 men employed per year. In two of those years, no women were employed, and, in three of those years, one woman was employed per year. How did the Commission manage to treat this data as undercutting (rather than supporting) the idea that respondent had "systematically excluded women"? By characterizing respondent thus: "more than one-half of its sites employed at least one female construction worker."

4. Failing to understand and apply basic principles of discrimination law

Compounding the problem still further is the Commission's unawareness of – or unwillingness to apply – either basic principles of discrimination law or the specific provisions of the City's Human Rights Law. It should be said that the failure to have done so in a particular case that was NPC'd does not necessarily mean that the case should have been PC'd; in the particular circumstance, the error may have been ultimately harmless. But these errors do cast a light on how

basis of his protected class. Yet the Commission treated the fact that respondents knew of complainant's race and color prior to hire as evidence countering the harassment claim.

In a pair of cases, there was ample evidence of sexual harassment, but the Commission dismissed the cases because the wrongdoer supposedly worked for an entity that had too few employees to qualify as an employer under the Human Rights Law, and because the agency wouldn't hold other respondent entities vicariously liable for the actions of the wrongdoer. There is no indication that the agency ever explored the question of joint-employer doctrine; recognized that an employer is responsible not only for the actions of its employees, but for the actions of its agents as well; or recognized that liability was possible under the theory that the offices in question were a public accommodation for which the lessor of the space was responsible.

The Commission failed to apply the "continuing violation" doctrine. That doctrine -- which even a very conservative Supreme Court has accepted in the harassment context¹³ -- provides that all acts that make up a violation are actionable so long as at least the most recent occurred within the limitations period.

The agency only looked at the question of whether respondents "knew" of complainants' disability status instead of also looking at whether the respondents "should have known." This

¹³ This is not to suggest that interpretations of federal law are automatically the correct interpretations of City law. If there was one thing that was clear about the legislative history of the comprehensive 1991 amendments to the City Human Rights Law, it was that interpretations of state and federal law were to be seen as the floor below which the City law could not fall, not a ceiling above which the City law could not rise. Interpretations of the City law are supposed to be made by construing the law liberally to accomplish its purposes. The fact that analysis of the City law is intended to be distinct from analysis of state or federal law is a fact with which many federal and state judges have had great difficulty over the years. It is a consequence, in part, of the Law Department's failure to act as an advocate for the law and of the Commission's failure to develop a body of independent case law.

independent of the validity of the underlying charge, the agency dismissed the retaliation complaint based on its belief that the underlying charge was without merit. It apparently failed altogether to investigate complainant's charges that one of the respondents had threatened to treat her adversely in various ways if she did not withdraw the complaint.

Frequently, the agency speculates about what could have been a legitimate reason for a respondent to have taken action against a complainant,¹⁷ forgetting that the question is not what could have been permissible, but rather *what was the actual reason* for a respondent's actions.

The agency failed to consider that a statement of discriminatory preferences is itself illegal, regardless of whether any other violation can be proved. A complainant may not know that this prohibition is set forth in Administrative Code §8-107(d), but the agency should.

The foregoing list – which is but a sample of the problems of analysis found – is deeply troubling. The problems found, remember, come largely from a pool of approximately 100 determinations examined, and thus comprise a very significant percentage of the sample. These problems reflect a need both for better training and for a more civil rights-friendly attitude.

5. How the Commission's Investigative Posture Translates into Outcomes

The agency reached a determination of whether probable cause exists in 1,547 cases in FY03. Of these, 1,523 were No Probable Cause determination – fully 98.4 percent. This is an even higher percentage than was the case when the Bar Association examined this question in connection with the Commission's Fiscal Year 2000 work. It is an extraordinarily high percentage by any standard.

¹⁷ The agency even issued an NPC in a case where the respondent had failed to answer, even though answers are required by the City Human Rights Law, and defaults are permitted to be taken.

proper investigations, to understand and consider cases pursuant to the substantive requirements of the City Human Rights Law, or to apply the appropriate standards for whether probable cause exists. Lurking always in the background is the fact of the Administration's budget decisions: if the agency were more probing and found probable cause more frequently, it would be put in the position of having to acknowledge the need for significantly greater staffing, an acknowledgment that is politically *verboten*.

C. The Commission fails to penalize discriminators

The Commission's record and attitude in connection with civil penalties can only be described as unsatisfactory in every respect. In 1991, the City's Human Rights Law was amended to permit the imposition of civil penalties up to \$100,000 per violation. The cap was substantially too low (a large employer or landlord would not even be caused to flinch at that level of penalty), but an important principle was established: discrimination harmed not only a particular individual against which it was directed, but it harmed the very fabric of the City itself.

It is important to understand that these penalties were not intended to be reserved for only the most egregious violations of the law: even in those circumstances where there was no showing of either willfulness, wantonness, or malicious, penalties were still available up to \$50,000 per violation. The idea was that the penalties could be imposed "to vindicate the public interest."¹⁹ In signing the law, then-Mayor Dinkins pointed to the traditional law enforcement function served by civil penalties: "As cases begin to be prosecuted under the new law...the existence of these penalties

¹⁹ Admin. Code §8-126(a).

penalties would be the same respondent who was compensating the complainant.

Well, it certainly isn't a "delicate balance" when an agency *never* includes a civil penalty provision in a settlement agreement, or when the answer to "where in the zero to one-hundred-thousand dollar range the agency should insist on" is always "zero." The problem is three-fold.

First, to the extent that the Commission believes that compensating the complainant is "punishment enough," it trivializes the harm that we all suffer at the hands of discriminators and fails to carry out the intention of the Human Rights Law.

To the extent that the Commission believes that there is a fixed amount that a respondent will pay, and civil penalties will, in essence, come out of the pocket of a complainant, it reflects an unwillingness to recognize that a discrimination defendant's position is dynamic, not static: it depends on what it perceives as the scope of its potential exposure (and the likelihood of that exposure being realized). Discrimination defendants are certainly not going to volunteer to add a civil penalty to the amount being paid to a complainant, and they currently believe – correctly – that they will not be forced to. If the agency demonstrated its willingness to proceed in the face of recalcitrance, it would find more flexibility than it imagines exists.

To the extent that the Commission fails (as it does) even to insist on civil penalties in cases where Probable Cause has already been found (one of the recommendations of the Bar Association report), it has lost sight of basic principles of plea bargaining. One wants to encourage resolutions as early in the process as possible, consistent with meeting the purposes of the law. Making clear that civil penalties were being evaluated on a case-by-case basis prior to a Probable Cause determination, but would always be insisted upon once Probable Cause had been found, would help

there were 153 settlements (a number which turns out to be only five percent of all case closures).²⁵ On the very next line of the MMR, the “Average value of cash settlement” is listed as \$13,332. Taken at face value, this amount would represent an improvement over recent Commission practice, but nevertheless does not represent a serious and appropriate level of compensation for this type of injury (as anyone familiar with awards and settlements in discrimination cases brought in court knows well).

But one cannot take the reported amount at face value. As a preliminary matter, reporting an average without reporting the median is frequently misleading, since a few larger settlements can skew the average so that it appears artificially high. Unfortunately, the Commission went further in dressing up its numbers. The actual average sum gotten for complainants per settlement was only \$7,190, a figure derived from dividing the total amount gotten for complainants (reported as approximately \$1.1 million) by the total number of settlements (reported as 153).

The way the Commission arrived at its inflated number was to *exclude from its calculations the significant number of settlements where the complainant received no money*. It turns out that the Commission did not get monetary compensation for complainants in 71 of the 153 cases (46.4 percent). The Commission did not provide to the Center the median settlement data we had requested, but it is clear from what can be derived from the MMR, and from the fact that there were a couple of small dollar (\$100 and \$500) settlements in the sample month data we did examine, that

²⁵ In calculating all case closures, we have omitted the 24 Probable Cause determinations. PCs, despite the Commission’s odd characterization, are not “closed cases”; they are the very cases that need to be litigated until tried or appropriately settled.

Whatever one may think of this attitude among discriminators and their defenders, surely this attitude shouldn't infect the thinking of those whose job it is to be civil rights prosecutors. Victims of discrimination should not have their injuries trivialized by the very people whose job it is to protect them. Thus, it is especially disappointing to hear that, in one of the rare cases in which a complainant received a Probable Cause determination, there was an attempt to pressure a complainant into accepting a mere \$5,000 settlement.

Complainant was told that \$5,000 was a lot of money. He was told that he should not be objecting to a \$500 per month payment plan: if complainant were to get the money at once, "You never know, you might blow it in one shot." Complainant was told that the various owners of the building had low income – without distinguishing between civil penalties (which are pegged to how much it takes to punish a particular offender) and compensatory damages (which are designed to restore a person fully, regardless of the offender's financial status). The idea that an enterprising student was denied housing and forced to undergo the humiliation of rejection, as well as the cost of commuting in time and money, did not, apparently, strike the agency as a serious violation. The agency tried to suggest weaknesses in the case relating to which owner or owners would be responsible for the discrimination, either not knowing or not caring that all owners are strictly liable under the City Human Rights Law for the actions of each and all of their agents. The Commission did not consider the fact that taking the case to trial would both allow an Administrative Law Judge to value the injuries and, at the same time, perform the salutary function of demonstrating to violators that the agency was in fact prepared to try meritorious cases. Instead, it Commission dangled the possibility of dismissing the case because complainant was supposedly refusing a reasonable settlement.

F. The Commission unlawfully refuses to accept complaints

It is important to be able to focus on systemic violations and meritorious individual claims, as the Commission asserts it wants to be able to do. But it is also important to fulfill the agency's statutory obligations to individual complainants, and, to the extent that triage is performed, to do so in a way that lends itself to accountability.

The Human Rights Law permits anyone to file a complaint, and mandates that the agency acknowledge such filing.²⁷ Likewise, Commission regulation provides that there is a right to file by any person "claiming to be aggrieved," or by that person's attorney.²⁸ The regulations, too, mandate acceptance of complaints by the Commission's Law Enforcement Bureau.²⁹

The statutory requirement of Commission acknowledgment of a complaint was new in the comprehensive 1991 revisions to the law. It was a means by which to deter the practice of ad hoc rejection of (or sitting on) a complaint, as well as a means by which to achieve clarity as to when complaints were actually filed. At the same time, a section on mediation and conciliation was added to the law. It authorized the Commission to engage in such dispute resolution proceedings "at any time *after* the filing of the complaint."³⁰ Why after the complaint only? So that each instance of attempted mediation or conciliation could be properly tracked, without potential complainants getting lost in the bureaucracy or otherwise shortchanged, and without potential respondents being

²⁷ Admin. Code §8-109(a).

²⁸ 47 RCNY §1-11(a)(1).

²⁹ 47 RCNY §1-11(e).

³⁰ Admin. Code §8-115(a).

violation of the terms of an intervention or other informal resolution is not itself treated as a violation of the Human Rights Law.³³ In addition, these interventions tend to provide little if any compensation for complainants. But the most immediate problem is in the area of accountability, and it is in this area that the Commission's practice demonstrates exactly the risks that the 1991 changes to the law were designed to prevent.

Successful interventions may be nice, but what about the other people who have come to the agency and do not wind up with a filed complaint? In response to inquiry, *the Commission says it does not have data to determine what happened to those people for whom intervention was not successful, let alone for those people for whom intervention was not attempted and for whom a complaint was never filed.* The agency is simply not keeping track, and thus there is a growing number of people who have simply "disappeared," sent away by means of undocumented communications.

It is not as though any serious observer wants the Commission to waste time on complaints that are not meritorious. Indeed, the Bar Association report included a proposal to amend the Human Rights Law so as to permit the agency to decline to investigate up to 25% of complaints filed each year. The key difference between the Bar Association proposal and Commission practice is whether a complainant is permitted to file. Pursuant to the former, all complainants would be permitted to file. Because of that, all complainants would avoid statute-of-limitations problems, and, crucially, there would be a ready-made audit trail. The agency's needs would be met as well. The proposal allowed a significant level of prosecutorial discretion. If there were clearly non-meritorious or non-

³³ Admin. Code §8-107(8) makes violation of conciliation agreements an unlawful discriminatory practice.

verbally and in the text of her complaint), and despite the fact that all the things she had asked for were available remedies under the City's Human Rights Law, the agency ultimately informed her that the case had been concluded. The good news was that some (very real) modifications were promised to be made by the cultural institution. And these should not be minimized.

The bad news is all that it reflects about the Commission's attitude and practices. Even if the resolution the Commission imposed on the would-be complainant had been acceptable to her, the reality is that the resolution has no teeth: while the promises made may be fulfilled, there is no enforceable mechanism to insure that they are. Just as bad, the Commission did not even bother to discuss any potential objections the would-be complainant might have. Rejecting the principle that a victim of discrimination is entitled to decide whether to file a complaint, the would-be complainant was informed: "[T]he Commission has decided that there is no need for filing a formal complaint..." So much for the assertion that people with lawful complaints are not turned away.

What about the training that complainant wanted to be included in any agreement? Disregarded by the agency. What about compensatory damages for having been excluded? As previously discussed, the agency, contrary to the law, apparently doesn't view this type of exclusion as an injury that should be compensated. What about the fact that the would-be complainant is now subject to the argument that the first example of lack of proper access about which she wanted to complain is now more than a year old, and thus she is subject to the argument that such a claim is time-barred at the agency? The most gentle answer would be, "Too bad."

Assume for a moment that the agency had accepted the complaint for filing as it was legally obligated to do (and that the statute-of-limitations problem had been avoided). Assume that the

for Administrative Convenience or other administrative cause, 153 settlements, and two trials). There is no point in pretending that this was a pretty process. Dubious means – both the improper application of legal standards, sometimes by people not trained in anti-discrimination work, and the improper restriction of incoming cases – helped the process along.³⁶

But the process has changed the reality of the Commission's current-day potential. The Big Case Dump has brought the Commission's inventory of cases to be investigated down to an extremely manageable 500-600. This does not, of course, help the individuals whose cases were closed before adequate investigation or analysis was done.³⁷ It does mean that the time is at hand where a reasonably-funded agency could investigate new cases promptly and spend significant energy on systemic and Commission-initiated matters. The question is how the Administration is going to interpret its ability to execute the Big Case Dump.

If it persists in its view that discrimination cases are "easy," maintains its current investigatory practices, and continues its reluctance to force respondents to do the right thing (there were zero attempts to secure preliminary injunctive relief in FY03), prospects are poor. If it recognizes the complexity of many discrimination cases, changes its investigatory ways, and adopts a more traditional law enforcement attitude (*i.e.*, more concerned with victims; less concerned about the offenders), prospects are significantly better.

³⁶ Part of the process was dismissing cases when the complainant could not be found. In the sample month we examined, approximately half of the dismissals for Administrative Convenience were because of a failure to locate. Were that pattern extrapolated to the entire year, it would represent more than 650 such closures. The Commission has not provided that information, and, because of the Commission's insistence on withholding the names of complainants from these final determinations of their rights, we could not assess how hard the Commission bothered to look for the lost complainants.

³⁷ We have not been provided with sufficient information for us to come to a reliable estimate as to how many people with actually meritorious cases were prejudiced by the Big Case Dump.

told: "Watch out – we're going to patrol this whole City with a handful of cops."

Unfortunately, there were only three Commission-initiated complaints that were generated in FY03. The task ahead is one of "seek and ye shall find," and we should hope the agency would make it a priority to bolster substantially the extent to which they look.

I. The Commission does not have systems in place to assure accountability

One internal mechanism to assure accountability that does exist under the City's Human Rights Law is the right of anyone who has had a case dismissed by the agency's Law Enforcement Bureau to appeal the determination to the Chairperson of the agency. In FY03, however, dismissals were vacated in the rarest of circumstances. One explanation is that the agency almost always got the determination right in the first instance, a hypothesis not supported by the types of errors and omissions of analysis discussed above at pages 11-15. More plausibly, the refusal to vacate was a function of the overriding desire to reduce caseload, a process discussed above at pages 30-31. A structural problem, though, is that the "initial determination" function and the "review" function have not been kept separate as they were intended to be. There is supposed to be a line or wall between the Law Enforcement Bureau on the one hand, and the Chairperson (aided by the General Counsel's office) on the other. The agency has blurred or ignored this line.

Another basic mechanism that should exist is the ability to record and analyze data on what the agency is doing. The Commission does not have adequate case tracking and analysis systems in place. As mentioned previously, the agency does not track what happens to people who contact the agency and wind up not filing a complaint. The agency is not even able to disaggregate the

Rights Division of the Justice Department – who would be able to share his or her expertise in constructing these types of investigations and prosecutions.

The Commission has to create a serious deterrent against those who would discriminate. Discriminators and potential discriminators need to understand that there is a real risk of detection, and a real price to pay for discriminating. Part of the solution is **hiring enough staff** to be able to go after discriminators aggressively. Currently, the agency dare not engage in high profile public education about the availability of its services for fear that it would be swamped by people seeking to use them. That should never be the case. Part of the solution is **insisting on civil penalties.** At the very least, respondents should be made to know that if their recalcitrance extends to the point of a Probable Cause determination, the Commission will not settle a case without a civil penalty being included.

Part of the solution is **being prepared to try cases.** The agency should **establish targets** both for cases to be PC'd and for cases to be tried.³⁹ Part of the solution is to **treat discrimination injuries with respect.** The agency needs to make itself more aware of the scope of settlements and verdicts that are achieved in the context of cases brought to court, and **seek to bring Commission results into line.**

The Commission must expand significantly the work its initiates, including creating a more extensive testing program. These programs must be of sufficient scope to make anyone considering an act of discrimination stop and realize that detection efforts are ongoing every single

³⁹ A case that is *properly* a No Probable Cause should never receive a Probable Cause determination. Targets remind the agency that its job is to find and fight more of the discrimination that continues to plague us.

use its services is lost. In any event, **the appropriate City Council committees need to exercise oversight** to make certain that the City's anti-discrimination function is being carried out thoroughly and aggressively.

The Commission needs to ask itself why it is not getting better cases. Introspection tends not to be the forte of governmental agencies, but any business that was dissatisfied with its yield would ask itself "why." The product the agency needs to be marketing is that of defender and protector of human rights. Applying the most basic of market research questions: What are the factors that are inhibiting victims of discrimination and their counsel from coming to the agency?

On the question of appropriations, **it is clear that the process of defunding the agency must be reversed.** Unless one believes that there only a handful of discrimination cases to be found in the City each year, the resources allocated do not begin to fill the need. An easy way to leverage the agency's resources is to enlist the assistance of other City agencies. The Department of Buildings and the Department of Housing Preservation and Development regularly communicate with building owners; the Department of Consumer Affairs regularly communicates with many owners of restaurants and other public accommodations. Putting those housing providers and owners of public accommodations on actual notice both of the obligations – and of the consequences, including the imposition of civil penalties, for failing to meet those obligations – should not be a difficult step.

As for the Law Department, **it is time to turn the Law Department's anti-discrimination functions over to the Commission on Human Rights.** The Bar Association report recommended that a first step for the Law Department would have been to assign a mere one percent of its attorneys

Appendix: Missing Indicators and Missing Targets

The following is not intended to be comprehensive, but to illustrate the types of performance-based and quality-control indicators and targets at which the City ought to be looking. In respect to the targets, these are set out as first steps, not an ultimately acceptable level of performance.

<u>Indicator</u>	<u>FY04 target</u>
● Number of paired tests conducted	360
● Number of Commission-initiated complaints filed	50
● Number of individual complaints filed	1,200
● Number of preliminary injunctions sought	12
● Number of individual case Probable Cause determinations	120
● Number of trials	36
● Number of cases in which civil penalties are provided (via settlement or trial)	75
● Average civil penalty	\$20,000
● Pattern-and-practice cases brought in court (by the Law Department or its successor)	4

- Means and medians (as well as aggregates) are needed in terms of monetary relief secured for complainants through conciliation agreements and, separately, for that achieved after trial. Non-monetary relief should also be reported (one category of non-monetary relief is already reported).

- The numbers of each sub-category of dismissals needs to be able to be identified and tallied (*e.g.*, No Probable Cause Determinations, dismissals for lack of jurisdiction, dismissals for failure to locate complainant, dismissals because complainant refused to accept a conciliation agreement, etc.).

Note: it may seem as though there should be more cases in which civil penalties are awarded given the targeted number of Commission-initiated complaints and individual case Probable Cause determinations, but, when comprehensive investigations are done, and a prosecutor insists on reasonable relief and penalties, the time from filing to resolution cannot be artificially foreshortened. This is especially true where discriminators and their defenders have gotten used to the idea that settlements can be cheap and easy.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1090 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)
Name: Nicholas Lucia Ann Brennan

Address: 9 Hudson St NY 10013

I represent: Interjustice Project

Address: _____

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THE CITY OF NEW YORK**

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in favor in opposition

Date: 3-3-16

(PLEASE PRINT)
Name: Carly Gustin

Address: 57 W 17 St

I represent: Family & Community of NY

Address: 57 W 17 St

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in favor in opposition

Date: 3/

(PLEASE PRINT)
Name: Sebastian Ricciardi

Address: 199 Water St.

I represent: Legal Aid Society

Address: 199 Water St.

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in favor in opposition

Date: 3/3/2015

(PLEASE PRINT)

Name: ERIN SMITH

Address: ~~435 W 116th St~~ 32 E 10th St, 10003

I represent: Columbia Law School Human Rts Inst
Institute

Address: 435 W 116th St, 10027

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I intend to appear and speak on Int. No. 421 Res. No. _____

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Name: NICOLE SALIK

Address: 105 COURT ST 4TH FLOOR

I represent: SOUTH BRICKTWN LEGAL SERVICE

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: 3-3-15

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Name: Phoebe Taubman A Better Balance

Address: 50 Maiden Ln, 606 NYC 10038

I represent: A Better Balance

Address: 50 Maiden Ln, 606 NYC 10038

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Name: FRED FREISLICH

Address: 5 HANOVER SQ

I represent: FAIR HOUSING JUSTICE CENTER

Address: 5 HANOVER SQUARE

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in favor in opposition

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Name: Christine Clarke

Address: 40 WORTH ST 6th floor

I represent: Local Services NYC

Address: 40 WORTH ST 6th floor

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I intend to appear and speak on Int. No. 689 Res. No. 690

in favor in opposition

Date: 3/3/15

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Name: EZ Luker

Address: 208 Hancock St, Apt 2

I represent: New York Legal Assist Grp

Address: 7 Hanover Sq, 18th Fl New York, NY

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: CLIFF MALQUEEN, DEPUTY CMSR/GENERAL COUNSEL

Address: _____

I represent: NYC COMMISSION ON HUMAN RIGHTS

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: CARMELYN MALALIS, COMMISSIONER/CHAIR

Address: _____

I represent: NYC COMMISSION ON HUMAN RIGHTS

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 471, 689, 69 Res. No. _____

in favor in opposition

Date: 3/3/15

(PLEASE PRINT)

Name: Paul Keck

Address: 117 Henry St #12 NY NY 10002

I represent: Community Service Society

Address: 105 E. 72nd St NY NY 10010

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