Commission on Human Rights

Testimony of Dana Sussman
Special Counsel to the Office of the Chairperson
New York City Commission on Human Rights
Before the Committee on Civil Rights
September 21, 2015

Proposed Int. No. 108-A - In relation to prohibiting employment discrimination based on an individual's actual or perceived status as a caregiver.

Proposed Int. No. 804-A - In relation to reasonable accommodations for individuals with disabilities.

Proposed Int. No. 815-A - In relation to expanding the right to truthful information under the city human rights law and legislating an express cause of action for employers and principals whose rights are violated by conduct to which their employees or agents are subjected.

Proposed Int. No. 825-A - In relation to expanding the definition of employer under the human rights law to provide protections for domestic workers.

Good afternoon, Chair Mealy, members of the Civil Rights Committee, and Council Member Lander, and thank you for convening today's hearing. I am Dana Sussman, Special Counsel to the Office of the Chairperson at the New York City Commission on Human Rights. Today I am joined by Melissa S. Woods, the Commission's First Deputy Commissioner and General Counsel. Commissioner and Chairperson Carmelyn P. Malalis had planned to testify today, but unfortunately is tending to a family medical situation. In my role as Special Counsel, I have been intimately involved in the Commission's legislative and intergovernmental affairs, and am proud to be representing the Commission at today's hearing. Before I address the four

bills that are the subject of today's hearing, I will first give you an update on some of the changes Commissioner Malalis has implemented at the Commission since the last hearing in March.

As you know, Commissioner Malalis assumed her role a little more than six months ago. Since then, she and our team have been hard at work developing the agency's infrastructure, onboarding talented, experienced staff, providing enhanced training and development opportunities for staff agency-wide, and evaluating and developing the agency's internal and public-facing policies and procedures. Under Commissioner Malalis's leadership, and with the invaluable support of the Administration and the Council, the Commission is growing and developing to effectively and reliably fulfill its dual mandates of (1) enforcing the City Human Rights Law – one of the most expansive of its kind in the nation – and (2) providing education, outreach, training and other initiatives for the public to foster mutual understanding and respect among all New Yorkers.

In June, Hollis Pfitsch joined us as our new Deputy Commissioner for the Law Enforcement Bureau, following a career devoted to representing low-income New Yorkers with employment rights issues under the City Human Rights Law and other laws. Deputy Commissioner Pfitsch brings not only her veteran experience with the City Human Rights Law and a high-volume docket, but also the relationships forged with several community-based organizations that have already been useful in the agency's outreach efforts, as is evident in the increased number of complaints filed by the public. Under her leadership, the Law Enforcement Bureau has created a level of supervising attorneys to specialize in specific issue areas and supervise agency attorneys in those areas. We have hired and on-boarded three new supervising attorneys, all with significant civil rights experience and community relationships in their specific areas, and they join the two other supervising attorneys who have been with the Law

Enforcement or the past three to eight years in other capacities. The Bureau will also be on-boarding five new agency attorneys this week and next. All attorneys who have joined the team come with several years of relevant experience, including working with vulnerable populations, litigating under the City Human Rights Law, and handling high-volume caseloads. Consistent with our effort to increase internal language capabilities, many of our new hires speak second and third languages, in addition to English.

About two and a half months ago, Pascale Bernard joined the Commission as its new Deputy Commissioner for the Community Relations Bureau. I know that many of you and your staff know Deputy Commissioner Bernard, as she has spent over a decade working within the City Council Speaker's Office, most recently as Deputy Director of the Community Engagement team. Deputy Commissioner Bernard is in the process of restructuring the entire Bureau, adding new lines of supervision and development opportunities, with an eye towards creating a strategic plan for the Community Relations Bureau. She has begun the process of hiring more staff with experience in working with diverse populations and underserved communities that will continue over the next several months. As new staff is added, you can expect to see more and new initiatives coordinated through the Community Relations Bureau.

I know that Council Member Dromm had asked the Commissioner about the Commission's outreach to LGBT communities at the last hearing, so I will specifically mention that as an example. Since the last hearing, the Community Relations Bureau has added an LGBT Community Liaison to its ranks. The person filling that role brings years of experience serving as a liaison with LGBT communities through his work at different LGBT community organizations and for several local elected officials. In June, Commissioner Malalis, herself, led a roundtable discussion with transgender community advocates from different organizations

throughout the City to discuss ways the Commission can work with their groups and others on transgender rights, including enforcement actions. We are training all Commission staff on cultural competency on these issues, and are in the process of developing a Trans 101 cultural competency train-the-trainer workshop to roll out through our borough offices to members of the public. These are just some of the new initiatives created to enhance the Commission's outreach and programming for LGBT communities.

The Commission's independent Office of the Chairperson has also been further developed to help it perform its three major functions: organizational, adjudicatory, and policy. In its organizational capacity, the Office of the Chairperson oversees the administrative development of the agency and works with the agency's other commissions on outreach initiatives. In its adjudicatory capacity, the Office of the Chairperson receives and reviews requests to appeal the Law Enforcement Bureau's Determinations of No Probable Cause, remands appropriate matters back to the Law Enforcement Bureau for continued investigation or prosecution, receives and reviews de novo Reports and Recommendations issued by OATH administrative law judges, and issues final Decisions and Orders in administratively-filed actions. In its policy capacity, it develops and implements the Commission's interpretative guidance on the City Human Rights Law, promulgates rules and regulations regarding the Commission and the City Human Rights Law, and works with other City agencies, Mayoral offices, elected officials, and community stakeholders on legislation and intergovernmental affairs. As Special Counsel in that office, I have been working with the Commissioner in these areas. We are in the process of hiring an agency attorney to work within this office.

Commissioner Malalis also spoke about connecting the work of various parts of the agency during the last hearing. One of the Commission's new initiatives that is currently being

run as a joint project of the Community Relations Bureau, the Law Enforcement Bureau, and the Office of the Chairperson are free, regularly scheduled trainings held at each one of our borough-based Community Service Centers. These Know Your Obligations trainings were developed specifically for smaller employers, housing providers, and small businesses. The Commission wants these groups to see us as a resource and partner in strengthening their businesses, and developed these training so that they can learn, free of charge, how to comply with the law.

We have also reinstituted the Office of Mediation and Conflict Resolution to facilitate the quick resolution of cases where appropriate. The Commission sees this office as integral in providing alternative ways of resolving enforcement actions as well as helping the Law Enforcement Bureau run its docket efficiently.

We have also created a more robust General Counsel's Office to oversee a newly reconstructed Human Resources Department, a growing IT department, and other agency operations, in addition to managing all compliance and reporting requirements. First Deputy Commissioner Woods oversees that office, and with her seventeen years of experience in civil rights litigation and labor and employment law, will also be providing support on policy initiatives and Commission-initiated investigations where appropriate.

We have also created an Office of Communications and Marketing to amplify the work of the other parts of Commission, and increase public awareness of the Commission and the City Human Rights Law so more New Yorkers can avail themselves of the resources the agency provides. Heading this office is our new Executive Director of Communications and Marketing, Carmen Boon, who brings with her twenty years of experience in communications and media relations, including ten years working with New York City elected officials and City agencies, including Human Resources Administration, Housing Preservation and Development, and most

recently as an Assistant Commissioner at the Department of Consumer Affairs. This office is integral in providing the transparency Commissioner Malalis promised when she testified in March. Now important agency developments and the agency's first-ever interpretive guidance, are accessible to the public on the Commission's website. Hopefully, you have also seen the fruits of this office's labor with the increased visibility of the Commission on its website and other digital media, new materials, and appearances by Commissioner Malalis and her staff on various media outlets. Our campaign on Local Law 37, the Stop Credit Discrimination in Employment Act, will be visible in subways and bus shelters, and on the radio, in print, and online in the next few weeks. Soon, we will also launch a similar campaign for Local Law 63, the Fair Chance Act, and are looking forward to partnering with you on these and future initiatives.

Commissioner Malalis has already led many efforts to make the Commission a stronger, more effective venue of justice for New Yorkers, and is determined to continue the full agency review and implementation of necessary changes. She has not been shy in sharing her goal of making the Commission the premier civil rights/human rights agency. To that end, we are continuing to work on upgrading all of the Commission's systems; building a new investigations unit; revamping all Commission publications; publishing enforcement guidance and will be going through the rule-making process in many different areas of protection for the first time in the Commission's history; and making the Commission processes more transparent and user-friendly for the public. All of this is a brief snapshot of some of the many changes that have taken place over the last six months.

Now, turning to the subject of today's hearing – Intro. 108-A, Intro. 804-A, Intro. 815-A, and Intro. 825-A. Commissioner Malalis and her office have considered each of these bills very

carefully in determining the Commission's position with respect to each. Considerations as this agency's role as enforcer of the City Human Rights Law, the experience of veteran City Human Rights Law litigators at the Commission, as well as Commissioner Malalis's previous experience as an employee advocate, utilizing the City Human Rights Law regularly in practice, inform our position on these bills.

Intro. 108-A: Caregiver Discrimination

The proposed bill will add an additional protected category in employment to the City Human Rights Law of caregiver status, and will also require employers to make reasonable accommodations to caregivers so that they "can satisfy the essential requisites of the job where the caregiver is: caring for an individual with a disability; caring for a child or children in facilitating involvement in education; and providing care in the event to a childcare or eldercare emergency."

The Commission believes that people with caregiving responsibilities, including both working parents and people caring for parents and other loved ones, should have strong workplace protections. Consistent with other employment protections afforded under our law, employers' focus should be on qualifications and merit, and not other issues or characteristics personal to an employee. Commissioner Malalis spent many years representing workers who faced family responsibilities discrimination before joining the Commission, and believes that additional protections for workers in this area are critically important. Such protections have the potential to dramatically alter workplace relationships, as we have seen with Paid Sick Leave. We look forward to continuing working with the Council on this bill and hearing from other advocates on what they see as the pressing needs for caregivers.

Intro. 804-A: Interactive Process

The proposed bill will define the term "good faith interactive process" and will delineate a specific process that must be followed in the context of determining a reasonable accommodation for a disability. The bill will also identify a separate violation of the City Human Rights Law where a covered entity fails to engage in a good faith interactive process.

The Commission opposes this bill. Despite language in the proposed bill stating that "nothing contained in this subdivision shall be construed to offer less protection for the rights of individuals with disabilities than any applicable provision of federal, state, or local law," we are very concerned that adopting language from federal case law from the Americans with Disabilities Act, which is exactly what this bill proposes to do, will only serve to narrow the very expansive disability provisions of the City Human Rights Law.

This bill also has the potential for narrowing the City Human Rights Law because it fails to incorporate the interactive process language in the housing and public accommodations contexts, or in the other provisions of the law that mandate reasonable accommodations, including religious accommodations and accommodations for victims of domestic violence, sexual violence, and stalking. Courts can read that omission as intentional and find that failure to engage in the "interactive process" in these contexts is not a violation of the law or a factor to consider in determining if a covered entity met its obligations to provide a reasonable accommodation under the law.

The Commission, as part of its long-term strategic vision, plans to publish interpretative enforcement guidance on disability rights and accommodations in the coming months. Part of this guidance will include specific language around covered entities' obligations to work with individuals with disabilities to develop reasonable accommodations. We encourage the Council

to take a look at those materials when they are published. Our intent is to provide guidance to attorneys, courts, and members of the public on how the disability provisions of the City Human Rights Law should be interpreted in this area, among others. We welcome the Council's partnership, and once the Commission has published its guidance we would welcome opportunities to continue conversations on this topic.

Intro. 815-A: Truthful Information and Indirect Discrimination

The proposed bill will make it unlawful to represent that opportunities, be it in employment, housing, or public accommodations, are unavailable when they are, in fact, available. We support this proposal and see it as being useful in "failure to hire" employment cases which are particularly challenging to prove.

It is our understanding that the provisions of this bill amending Sections 8-102 to add new subsection 30 and 8-502 to add new subsection (h) seek to codify the ability of organizations to use testers to bring claims on behalf of violations of the law uncovered by the testers and to provide a remedy for persons who are aggrieved when their employees or agents are discriminated against.

We support this amendment and note that we currently interpret the law to cover such organizational standing in which an organization brings claims under the City Human Rights Law on behalf of its members or employees.

Intro. 825-A: Domestic Workers

The proposed bill will eliminate the four-employee minimum for employer coverage under the City Human Rights Law for employers of domestic workers, so that a domestic worker, often working alone or perhaps with one other worker, will have protection under the City Human Rights Law.

The Commission recognizes the unique vulnerabilities that domestic workers face, and several members of Commissioner Malalis's staff have a long history of representing domestic workers who were exploited, trafficked, and victims of wage theft and other abuses. Understanding those vulnerabilities, the Commission supports the principle of expanding protections for domestic workers under the City Human Rights Law. We believe a good model for such legislation is the New York State Domestic Workers Bill of Rights, which was signed into law in 2010. Among its protections, it expanded coverage of the New York State Human Rights Law, which also has a four-employee minimum, to domestic workers regardless of the number of employees, in specifically articulated circumstances: sexual harassment, harassment on the basis of gender, race, religion, or national origin, including offensive or humiliating jokes or comments regarding gender, race, religion, or national origin. The Commission supports adding protections for domestic workers within a similar framework, and is open to considering other protections that may be requested by affected communities.

Creating a parallel city law would provide domestic workers and their advocates with another venue to bring their claims, broader interpretation under the City Human Rights Law than the State Human Rights Law, the possibility of higher damages under the City Human Rights Law, and would allow the Commission's Community Relations Bureau to do targeted outreach to these communities within the City.

The Commission believes the particular vulnerability of domestic workers to wage theft, abuse, and trafficking is of paramount concern in New York City, and as such, warrants a policy discussion between the Council, the Commission, and key community stakeholders on these and other issues facing this community and how we can work together to address them. We

welcome further discussions on how to protect workers and support the possibility of a limited expansion of the City Human Rights Law similar to what is available at the state level.

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The Commission thanks Chair Mealey, the members of the Committee, and Council Member Lander, for calling this hearing. We look forward to continuing our dialogue on how to strengthen the Commission and the City Human Rights Law to ensure respect and dignity for all New Yorkers. I welcome your questions and comments. Thank you.

Real Possibilities in

New York City

AARP New York

Testimony before the Committee on Civil Rights New York City Council

September 21, 2015

City Hall
New York, NY

Introduction

Good afternoon Chair Darlene Mealy and members of the Civil Rights Committee. My name is James Arnold, and I serve on AARP New York's Executive Council. AARP is a membership organization with over 2.6 million members in New York State and about 750,000 members living in NYC. **I would like to submit the following testimony in support of Int. No. 108 which would amend our city code to prohibit employment discrimination based on an individual's actual or perceived status as a caregiver.**

Caring for an older family member now is the "new normal" of caregiving. Based on an AARP analysis of Census data over the next two decades the share of people living in NYC who are aged 65 and over will change from one in eight to one in six residents. Overall New York's 60+ populations will increase exponentially to a projected 1.84 million by 2030, a 47% increase from 2000. In addition New York City caregivers, like most in the nation are more often female and are younger than 65 and tend to be working.

An AARP 2014 poll of NYC age 50 plus voters ***The State of the 50+ in NYC July 2014*** found some interesting results about caregivers.

Key findings include:

- ***Among all NYC 50+ voters, 39% have been caregivers in the past five years or currently are providing care to a friend or family member.***
- ***NYC voters 50+ do not see their caregiving responsibilities diminishing. More than half (52%) believe they are likely to provide care within the next 5 years***
- ***When asked about the extent to which providing care puts a strain on their overall quality of life, nearly six out of ten (59%) 50+ caregivers in NYC experience an overwhelming or a good deal of strain***
- ***Most NYC 50+ voters (79%) believe supporting family caregivers should be a priority for NYC elected officials.***

It has been a long known fact that family support is a key factor in determining an older person's ability to remain in his or her home and community, and out of institutional care settings such as nursing homes. However, the care provided by family members can come at a cost, both to the caregiver and to their families.

It is clear to AARP that this proposal could undoubtedly help caregivers in our city, who help save our tax dollars by assisting their loved ones in aging at home rather than in more costly, taxpayer funded institutional settings.

In addition, AARP research shows that the majority of New Yorkers aged 50 and over would prefer to receive any type of long-term care services at home rather than in a long-term care facility.

We believe our recent NYC 50 Plus Voter survey shows strong support for the City Council to help caregivers as they juggle multiple tasks to provide care to their loved ones.

Conclusion

Thank you again for allowing AARP to testify regarding this important proposal to prohibit employment discrimination based on an individual's actual or perceived status as a caregiver. I am happy to answer any questions concerning my testimony and caregiving issues.

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National Employment Lawyers Association / New York

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Testimony of Margaret McIntyre on behalf of the

National Employment Lawyers Association / New York Affiliate (NELA/NY)

in support of Intro 815-A

September 21, 2015

I am the chair of the Legislative Committee of NELA/NY, and I testify today to express our strong support for Intro 815-A. Our roughly 400 attorney members have been on the front line of fighting in court to vindicate the civil rights of New Yorkers. Some of our members are well known, others never see the limelight; all are committed to seeing that the promise of the City Human Rights Law is made real.

We all recognize, however, that there are kinds of cases that come up *all the time* that our members tend not to be able to take. In a certain way, they are the most simple: a failure to hire on the basis of race, gender, religion, or other protected class basis. But the problem is that it is very difficult for us to know (and very difficult for our prospective clients) to know exactly how that failure to hire fits in with the broader picture of what the employer is doing.

That is why testing for discrimination is so important. Testing is the tool that provides that broad picture, either in response to a particular complaint, or because a testing organization has observed that a particular group appears to be excluded from a workplace. Testing provides independent and powerful evidence of discrimination, and that is why we are so pleased that Intro 815-A provides an explicit statutory basis for testing in the employment realm, something that has never been able to be achieved on the federal level.

Others are testifying to the threat to broad standing on the federal level. I'll just underline the fact that the threat is very real and that, for almost 25 years, a central concern of the Council in strengthening the City's Human Rights Law has been to protect New Yorkers against limitations on the rights that exist on the federal and state levels.

The City Human Rights Law has a very particular philosophy. *Williams v. NYC Housing Authority*[1] is the leading case that interprets the City Human Rights Law in light of the 2005 Local Civil Rights Restoration Act. That case explained that "the text and legislative history [of the Restoration Act] represent a desire that the City HRL 'meld the broadest vision of social justice with the strongest law enforcement deterrent.'"[2]

The provision of Intro 815-A that deals with so-called "indirect discrimination" fits perfectly with that vision. Actually, indirect discrimination is something of a misnomer. The only way an organization or other entity can act is through its agents and employees. So when an agent or employee is discriminated against when doing the organization's work, it really could be called a first-level or direct violation.

In any event, this is a clear and logical category of injury that Intro 815-A is tackling. And remember: no innocent employer has to worry about its impact. If you don't take action because of the protected class status of the employee or agent, there will no liability. It is only those covered entities that do engage in biased behavior who will now be answerable to a broader range of victims of their acts.

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[1] 61 A.D.3d 62 (1st Dept. 2009).

[2] *Id.* at 68, *citing* Gurian, *A Return to Eyes on the Prize: Litigating Under the Restored New York City Human Rights Law,* 33 Fordham Urb. L.J. 255, 262 (2006).

As such, there is absolutely no reason to exempt these victims from protection -- whether they are organizations engaged in testing or other entities that have been harmed. Let's put it this way: whether there are many organizations that step forward in reliance on this provision or whether there are few, the City Human Rights Law has no business turning a blind eye to any.

We urge you again to pass Intro 815-A as it stands before you today.

Lambda Legal
making the case for equality

Testimony of Demoya R. Gordon, Staff Attorney, Lambda Legal

Before the New York City Council Committee on Civil Rights
In Support of Proposed Int. No. 815-A

September 21, 2015 at 1:00 pm

Good afternoon. My name is Demoya Gordon, and I am an attorney at Lambda Legal. I would like to thank the Committee on Civil Rights for the opportunity to testify before you today in support of Intro 815.

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

I am here today to urge you to enact Intro 815. This legislation is important to the LGBT community specifically and to the civil rights community more generally.

New York City has made tremendous progress on LGBT rights, but much remains to be done to get us to where we need to be. Yes, there are LGBT-friendly landlords, but, in many areas of the city, people still face housing discrimination based on their sexual orientation or gender identity. Yes, there are LGBT-friendly workplaces, but far too many LGBT employees and job seekers still deal with unfair treatment on a regular basis. These burdens are even greater for LGBT people who are of color, living in poverty, are immigrants, have a disability, or are otherwise additionally underprivileged.

LGBT New Yorkers have to contend on a daily basis with the very real risk of facing discrimination or harassment while conducting activities as routine as looking for a job or apartment, applying for a loan, or going to the doctor.

So how does Intro 815 help our community? First, it helps strengthen and preserve testing for discrimination, which is an important but underused tool in the fight against discriminatory policies and conduct. Testing has traditionally been used most often in the housing context. Intro 815 will help strengthen its use in this context as well as expand its use in other important sectors, such as employment and public accommodations.

Intro 815 also strengthens our ability to deter acts of bias. Where individuals have been harmed in the course of carrying out an entity's business, this amendment would empower the entity (which in many cases will be better-resourced than an individual complainant) to seek redress.

So Intro 815 will ensure that minority- and women-owned businesses, and other businesses willing to put a diverse staff to work in a diverse (but not always accepting) city, can seek a legal remedy for any harm they incur due to unjust discrimination against their employees or agents.

As we sit here today, many discriminators still think they can get away with unjust treatment, and many victims of discrimination believe there is little they can do about it. To give you an idea of the extent of the discrimination LGBT New Yorkers face: over the past five years, Lambda Legal has received between 900 and 1,000 calls from across the state related to employment issues alone. Almost half of these calls were from people facing discrimination right here in our city. Callers seek our help on a wide range of employment issues, such as not

being hired or being terminated from a job based on LGBT status, being subjected to verbal or even physical harassment and abuse at work, or being denied equal access to facilities and job-related benefits. Consider also that the calls Lambda Legal and the other nonprofit legal organizations around the city receive likely represent only a small fraction of the total number of New Yorkers who face discrimination on a regular basis.

I would also like to emphasize just how important it is that Intro 815 makes clear that deprivation of a person's civil rights is automatically an injury for which that person can seek redress. This important ground is threatened on the federal level, and it is important that we keep it alive here in New York.

New York City has made considerable progress towards becoming a more just and equitable place for everyone to live and work. But much remains to be done. We cannot afford to stagnate or become complacent. Intro 815 will help keep us moving in the right direction.

By enacting Intro 815, we will maximize our ability to bring discriminators to account, honor our civil rights heritage, and hopefully serve as a model for other jurisdictions to bolster their anti-discrimination laws as well.

For these reasons, I urge you again to pass Intro 815. Please do not hesitate to contact me should you have any questions or need additional information. Thank you.

Respectfully submitted,

Lambda Legal

Demoya R. Gordon, Esq.
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PRRAC

Poverty & Race Research Action Council

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September 21, 2015

Presented at Hearing of Committee on Civil Rights

Hon. Darlene Mealy
Chair, Committee on Civil Rights
New York City Council
250 Broadway
New York, New York 10007

Re: Intro 815

Dear Council Member Mealy:

The Poverty & Race Research Action Council (PRRAC) is a national civil rights policy organization that promotes a research-based advocacy strategy on structural inequality issues. PRRAC has been particularly active in focusing on the importance of "place" and the continuing consequences of historical patterns of housing segregation and development for low-income families in the areas of health, education, employment, and incarceration.

Testing is a crucial tool in the battle against the housing discrimination that helps continue patterns of segregation created decades ago, and it is important that we have legislative language that broadly grants what is sometimes called a right to truthful information, independent of protected class status. Intro 815 does that, and we support the bill wholeheartedly.

This measure is particularly timely. On the federal level, the future of broad standing for testers is in doubt, with the Supreme Court about to review the longstanding principle that someone's whose civil rights are violated automatically has the right to sue even if he or she hasn't suffered other "concrete" injuries. The prospect of New York City taking the lead to preserve these rights on the local level is important in and of itself and as a model for other localities and states to do the same.

At a time when the civil rights community is frequently on the defensive, this forward-thinking bill deserves to be passed without delay.

Respectfully submitted,

Philip Tegeler
Executive Director

cc: Hon. Brad Lander

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Center for Independence of the Disabled, NY

September 21, 2015

Requiring Interactive Process in Connection With the Need for Reasonable Accommodations

Lourdes I. Rosa-Carrasquillo, Esq.
Director of Advocacy

New York City Council – Civil Rights Committee

Thank you for the opportunity to submit testimony on behalf of CIDNY.

For more than 35 years, CIDNY has provided assistance to people with all kinds of disabilities, most of whom live independently in the community. We are a part of the Independent Living Centers movement – a national network of grassroots, community-based, cross disability organizations that enhance opportunities for people with disabilities to direct their own lives. In 2014, CIDNY provided assistance and resources to over 15,000 New Yorkers with disabilities, their families and service providers.

The New York City Human Rights Law is well written in that it encompasses all areas that are at risk for discriminating behavior. The amendment offered in Intro 804; however, fails to do so. It limits the "good faith interactive discussion" only with employers or potential employers. It is silent on housing and public accommodation where it is also much needed.

Housing tenants with disabilities also need reasonable accommodations and often times accommodations can be negotiated. If a dwelling has four units or more it is mandated under New York City Human Rights Law for the owner to make reasonable accommodations upon request. Many times the reasonable accommodations are as simple as putting in a ramp or widening a door. Or they can be as complex as building a lift or changing a tub into a rolling shower. Either way there are opportunities for negotiation between the owner and the tenant. Tenants with disabilities are not intending to make things more difficult for owners and there may be another way to meet the needs of the tenant, without undue burden on the owners. However, owners may try to take shortcuts that would not adequately serve the tenant. So if the owner decides to make the accommodations as she sees fit, the tenant may not be receiving the reasonable accommodation she needs. If the owner speaks with the tenant then the owner would not have spent unnecessary dollars on a non-conforming accommodation. The conforming reasonable accommodations would allow for the tenant to have access to and enjoy her home.

For example, CIDNY had a case in which the tenant was asking for a higher tub because the tub was not deep enough to accommodate her. This is a rather basic request. The owner decided to put in a shower without a tub and since the tenant is a wheelchair user that solution did not accommodate her needs – she could not use the shower.

The same holds true for public accommodations. Businesses can negotiate with customers about some of the accommodations needed. Often times when a wheelchair user requests a ramp, the business owner states that it is too costly. They tend to think of the concrete or metal ramps. In fact, many times a portable ramp could meet the needs of wheelchair users. Sometimes, it's just a small step or two and a portable ramp could address it. However, business owners, rather than discuss the issue with their customer or the customer's representative, deny the reasonable accommodation.

Negotiations are the basis for reasonable accommodations. No employer, business or home owner should be making unilateral decisions without finding out what the actual need is.

Title I of the Americans with Disabilities Act addresses this same issue, while the rest of the ADA is silent. That might be why the New York City Council – Civil Rights Committee is being restrictive. However, the New York City Human Rights Law does not have to mirror the ADA. It can always allow for greater protections.

CIDNY opposes the narrowness of the amendment. We would like to emphasize that New York City Human Rights Law has always offered greater protections; let us not change that.

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Center for Independence of the Disabled, NY

September 21, 2015

Expanding The Right To Truthful Information Under the Human Rights Law and Legislating an Express Cause of Action For Employers and Principals Whose Rights Are Violated by Conduct To Which Their Employees or Agent Are Subjected

Lourdes I. Rosa-Carrasquillo, Esq.
Director of Advocacy

New York City Council – Civil Rights Committee

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For more than 35 years, CIDNY has provided assistance to people with all kinds of disabilities, most of whom live independently in the community. We are part of the Independent Living Centers movement – a national network of grassroots, community-based, cross disability organizations that enhance opportunities for people with disabilities to direct their own lives. In 2014, CIDNY provided assistance and resources to over 15,000 New Yorkers with disabilities, their families and service providers.

The New York City Human Rights Law is a powerful law that can only be strengthened by broadening its reach. The right to truthful information plays a significant role in protecting consumers from discrimination.

The original language in the New York City Human Rights Law is silent as to whether the actor (real estate agent, potential employer, labor organization, etc.) could be deceptive as to the availability of housing or employment. This may seem like it should be understood but including the actual act of lying would further clarify a specific method that is used to discriminate.

It can be argued that the language "to refuse, withhold or deny" is obviously an act of deceptiveness; however, the actual act of lying is not a reason to hold the actor accountable. Through this amendment even the act of lying that no housing or employment opportunity exists would be found in violation of the New York City Human Rights Law.

I applaud the City Council Civil Rights Committee for having the foresight to see that as strong as a law may be, times change as do forms or actions of discrimination. Actors will always find a way around laws to achieve their goal. Therefore, laws must be fluid and amended to the circumstances.

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THE BLACK INSTITUTE

www.TheBlackInstitute.org

TESTIMONY SUBMITTED ON BEHALF OF
THE BLACK INSTITUTE
IN SUPPORT OF INTRO 815

September 21, 2015

The Black Institute supports the passage of Intro 815. Others will have testified about the importance of testing for housing discrimination, for assuring that the ability of civil rights organizations to do so is preserved here in New York City at a time when that right is under attack in the Supreme Court, and for expanding the explicit statutory basis for testing to employment and public accommodations.

We want to focus on two things:

1. The importance of having the law recognize explicitly that there are both direct and indirect victims of discrimination.

Organizations and businesses can only act through their employees, whether the entities are seeking information, trying to be hired to do work, get supplies, or engage in other activities covered by the Human Rights Law. When those employees are treated negatively in the course of carrying out the work of the organization or business, that translates into the organization or business being harmed.

It is not a new idea that, once someone's civil rights are violated, anyone who is harmed by that conduct has a right to sue.[1] Intro 815 vindicates this principle, although it should be noted that the legislation is narrowly drafted. It only applies where an employee is carrying out work for an employer.

One of the reasons that the Black Institute is so interested in seeing this legislation passed is because of our work with Minority and Women Owned Business Enterprises (MWBEs). These MWBEs continue to face barriers to equal access. Sometimes that's because someone with contracts to give does not pay sufficient attention to expanding the pool of applicants with which it does business.

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[1] In fact, this is exactly what the Supreme Court said in Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979).

But sometimes, it's just plain old prejudice against the MWBE employee who shows up wanting, say, to rent office space. Since an employee of an It is not doesn't carry a sign that says, "I work for a MWBE," the potential discriminator will not necessarily know that that fact. All the discriminator will know is that there is someone -- a woman, an African-American -- who it doesn't want to deal with. The result is that the MWBE doesn't get its office space, and that result is caused because of conduct based on protected class status.

Or say the MWBE wants to be a subcontractor on a construction job. The MWBE employee shows up at an information session the general contractor is conducting, but can't get the time of day. There, too the result is that the MWBE is disadvantaged based on protected class status.

Intro 815 properly recognizes that the discriminator shouldn't be shielded from being held accountable for the injury to the MWBE.

2. The question on civil rights legislation shouldn't be "why do it?" but rather "why *wouldn't* you do it?"

Whenever civil rights legislation is proposed, there are always those who say, "Go slow" or "Do you really need this?" But that is the wrong approach, and Intro 815 is a good illustration of why.

Why *shouldn't* there be an explicit statutory basis for testing in the housing area? There is no good reason.

Why *shouldn't* we encourage civil rights organization to conduct testing in employment and in public accommodations, too? There is no good reason.

Why *shouldn't* the very fact of violating a statutorily-created right be sufficient to create a right to sue (understanding that the determination of damages is a separate question)? There is no good reason.

Why *shouldn't* a discriminator be held accountable when its biased conduct against an individual also violates the rights of the entity for which the individual works? There is no good reason.

Since at least 1991, the City Human Rights Law has been focused on maximizing coverage. We should stay on that path and pass Intro 815.

As such, there is absolutely no reason to exempt these victims from protection -- whether they are organizations engaged in testing or other entities that have been harmed. Let's put it this way: whether there are many organizations that step forward in reliance on this provision or whether there are few, the City Human Rights Law has no business turning a blind eye to any.

We urge you again to pass Intro 815-A as it stands before you today.

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FOR THE RECORD

PARTNERSHIP *for* New York City

WRITTEN COMMENTS TO THE CIVIL RIGHTS COMMITTEE OF THE NEW YORK CITY COUNCIL

MONDAY, SEPTEMBER 21, 2015

KATHRYN WYLDE
PRESIDENT & CEO

PARTNERSHIP FOR NEW YORK CITY

The Partnership for New York City is a nonprofit organization working to enhance the economy of the five boroughs of New York City and maintain the city's position as the pre-eminent global center of commerce, innovation and economic opportunity.

David Rockefeller founded the organization in the wake of the 1970s fiscal crisis to involve business leaders more directly with government and other civic groups to address broad social and economic problems in a "hands on" way. The Partnership also established a fund that invests directly in economic development projects that create jobs in NYC. Partnership member companies generate one-quarter (or $158 billion) of the city's economic output and employ nearly one million New Yorkers.

We write to express disappointment that the City Council is proposing more mandates on employers, largely driven by special interest advocacy groups that use anecdotal evidence to argue that mistreatment or discrimination against employees and job applicants is a widespread problem. We strongly disagree. There is no data that justifies new and costly laws and regulations that make it even more difficult to create jobs and grow a business in New York City. Aggressive enforcement of existing laws would generally take care of the few bad actors, rather than legislating new impositions on the vast majority of employers who are doing nothing wrong.

Intro. 804 imposes a new layer of paperwork on employers dealing with job applicants and employees with disabilities, without any data documenting that the current protections are insufficient. The proposed legislation would require formal documentation of the process by which employers do or do not accommodate employees with disabilities – turning a basic and routine workplace interaction into a bureaucratic and relatively costly exercise.

Intro. 108 would elevate "caregiver status," which is vaguely defined and captures a large swath of the workforce, to be on par with other protected classes (like race and sex). Potentially, almost everyone could avail themselves of "caregiver" status, with employers having little or no recourse when the protected status is abused.

In the last three years, the Council has created three new protected classes in the workplace: pregnant employees (though New York law defines "disability" in such broad terms that pregnant women were already protected if discrimination were to occur); job applicants who are unemployed (a measure which is broader in scope and carries significantly higher penalties than similar laws in other places); and unpaid interns (NYC is one of the only municipalities to place employees and interns on equal footing in this regard).

Individuals asserting discrimination claims related to any of these laws may either sue their employer or file a complaint with the Commission on Human Rights. Both processes can be burdensome and costly for businesses, even in cases where the employer is ultimately vindicated. For example, the NYC Human Rights Commission received a total of 260 complaints during the first four months of FY 2015, of which 54% were dismissed. The average time from the date of filing with the Commission through resolution of the complaint is 243 days, during which time employers are paying staff and legal fees to deal with the process.

According to Norton Rose Fulbright's 2014 Litigation Trends Survey, nearly 61% of U.S. companies report an average cost of $100,000 or more to defend a single plaintiff employment lawsuit (excluding costs of settlement and judgments). New York City is widely known to be the most litigious business environment in the country, which is a barrier to business investment and job location here.

It is the hope of the business community that the City Council would refocus its legislative agenda on measures that would encourage employers to invest in increasing opportunities for employment. The legislation under consideration today continues to drain business resources for compliance and legal costs. This legislation is unnecessary and makes New York City less competitive. The City has lost more than 100,000 middle class jobs in the past five years and Council mandates will inevitably accelerate these losses in the years ahead. We urge the Council to reject this legislation.

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Gale A. Brewer, Borough President

Testimony of Gale A. Brewer, Manhattan Borough President
Hearing of the New York City Council Committee on Civil Rights
September 21, 2015

As Gale A. Brewer and the Manhattan Borough President, I thank Chair Darlene Mealy and members of the Committee on Civil Rights for the opportunity to testify about a local law to amend the City's Human Rights Law in relation to caregiver discrimination. I am proud to have introduced Intro 108A of 2014 with my friend and colleague Council Member Debi Rose of Staten Island.

Intro 108A-2014 would ban discrimination against caregivers in the workplace, and require that employers reasonably accommodate workers with certain needs related to the care of dependent people with disabilities, parental involvement in a child's education, and childcare or eldercare emergencies. This legislation was originally introduced in 2007 by then-Public Advocate Betsy Gotbaum and I was the primary sponsor of the bill in 2012. Since then, family caregiving has become more commonplace as the number of families increases, and older adults either retire in the five boroughs or age in place. In a 2013 study, the New York City Department of Planning estimated the City's senior population (adults 65+ years of age) would reach 1,002,208 by 2020, and 1,409,708 by 2040. This trend underscores the need to develop public and private solutions to ensure that workers with eldercare or childcare responsibilities have equal employment opportunity and are protected from discrimination in the workplace.

Family Responsibilities Discrimination (FRD) is a form of employment discrimination that occurs when an employee is unfairly penalized at work because of his or her obligations to provide care for family members. Dozens of localities in over 20 different states, including Chicago, Washington D.C., Atlanta, Boston, and Miami-Dade County, have recognized the limits of existing law and prohibited caregiver discrimination at the local level. Thirteen states and the District of Columbia have enacted laws to guarantee time off for parents to attend their children's educational events.

Caring for an older relative or friend or for a child is now the 'new normal' of family caregiving in the United States. The 2011 Gallup Healthways Well-Being Index found that more than one in six Americans who work a full or part-time job also report assisting with care for an elderly or disabled family member, relative, or friend. AARP's website features a range of helpful caregiving tools and resources including an App and 'I Heart Caregivers' storybank, reflecting the widespread nature of these arrangements.

Eldercare and childcare responsibilities fall disproportionally not only on women, but also on low-wage workers. Contrary to popular belief, having family responsibilities is not, in and of itself, a protected characteristic under federal anti-discrimination laws. Family caregiving responsibilities at home can lead to negative consequences at work. The financial impact on working caregivers who leave the labor force due to caregiving demands can be severe. Workers with childcare or eldercare responsibilities report the kinds of workplace

effects that open up employees to discrimination. The most common include arriving late, leaving early, or taking time off during the day to provide care, but also taking a leave of absence or reducing work hours from full to part time. An estimated 10 percent of these family caregivers quit their jobs to give care or chose early retirement.

Furthermore, FRD arises from treating employees with caregiving responsibilities less favorably than other employees due to unexamined assumptions that their family obligations may mean that they are not committed to their jobs. A Better Balance's Work and Family Legal Center regularly counsels employees with family responsibilities who encounter FRD bias, including being disciplined for taking personal days while non-caregiving employees are not and being required to make up missed hours while their non-caregiver colleagues are not. These experiences have shaped the language and momentum for the legislation we are discussing today and I'm proud to be partners - yet again - with A Better Balance in this important endeavor to create a more equitable work-life balance in our city.

It is imperative that employees not be penalized or lose their job due eldercare or childcare responsibilities. The City's Human Rights Law explicitly prohibits discrimination in employment, housing, and public accommodations based on race, color, creed, age, national origin, alienage or citizenship status, gender (including gender identity and sexual harassment), sexual orientation, disability (including pregnancy), marital status, and partnership status. Interns, whether paid or not, are considered employees under the law. Yet the current law does not explicitly prohibit discrimination based on caregiver status. Rather, FRD claims are actionable only when discrimination against family caregivers qualifies as discrimination under other federal statutes.

Legislation to prohibit workplace discrimination against family caregivers would not give any group special rights. It would simply require employers to treat workers with caregiving responsibilities the same way that they treat other employees. Thus, an employer who readily allows a student's work schedule to be shaped around their class schedule could not refuse to show similar flexibility for an employee caring for an older adult or a child. Anti-discrimination law simply requires equal treatment.

Int 108A would expressly prohibit employment discrimination based on an individual's actual or perceived status as a caregiver and would thereby add caregivers to the protected classes in the workplace under the New York City Human Rights Law. The strength of our neighborhoods is founded on families and friendships and the ability to support the wellbeing and development of others. These responsibilities should not expose New Yorkers to discrimination or job loss.

Thank you again for the opportunity to testify and to all of those who are here in support. I am honored to have introduced Int. 108A with Council Member Rose and I urge the Committee to vote in favor of the bill.

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September 21, 2015

Testimony of The Legal Aid Society, Employment Law Unit In Support of Int. No. 108-A, Int. No. 804-A, In. No. 815-A and Int. No. 825-A

Presented Before the New York City Council Committee on Civil Rights

Presented by Karen Cacace, Supervising Attorney, Employment Law Unit

Thank you for the opportunity to present this testimony.

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 115,000 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 24 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low-income individuals. 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.

Through our Employment Law Unit, we provide legal services to over 2,000 low-wage workers each year to ensure these workers receive fair wages, fair treatment, decent working conditions, and the benefits to which they are entitled if they lose their jobs. Most of these cases involve wage and hour violations, family and medical leave issues, workplace discrimination, including discrimination based on past involvement with the criminal justice system, labor trafficking and unemployment insurance.

Int. No. 108-A

We support the addition of "caregiver status" as a protected category under the New York City Human Rights Law. Legal Aid is frequently contacted by low-wage workers who are

forced out of their jobs when their employers deny them the minor scheduling adjustment they need to accommodate their caregiving responsibilities. For example, Legal Aid was contacted by a woman who was a retail worker who was fired after repeatedly requesting a transfer from the evening shift to the morning shift so that she and her partner could coordinate care for their infant son. Although there were openings on the morning shift, her employer gave those positions to workers without caregiving responsibilities, then fired the woman who had requested the shift change because of her inflexible schedule and repeated requests for a shift change.

Workers with caregiving responsibility come in all forms – mothers, spouses, children, and grandchildren. Caregiving work is challenging in many ways, and stable employment is vital to ensuring that caregivers are able to provide for our society's children, elderly, and disabled. The City Council should protect the caregivers among us by ensuring that they cannot be fired simply because of their caregiving responsibilities or denied minor accommodations that would enable them to care for their loved ones. Accordingly, The Legal Aid Society is in favor of the proposed amendment to the New York City Administrative Code.

Int. No. 804-A

We support the proposed amendment to the New York City Human Rights Law to require employers and potential employers to engage in a good faith interactive discussion with employees or applicants who have disabilities (including pregnancy and related conditions), in order to identify what reasonable accommodations are available to allow that person to perform the job in question.

Legal Aid is often contacted by low-income workers who are fired from their jobs because of a disability. For example, Legal Aid is currently representing a breast cancer survivor who worked at a hospital in Brooklyn as a nurse technician. Due to complications from her mastectomy, she suffered from lymphedema, which caused swelling in her arm and hand. This made it difficult for her to push wheel chairs and perform other parts of her job. She needed additional sick days or light duty work as an accommodation for her disability. The hospital, however, refused to engage in an interactive process to determine if a reasonable accommodation could be achieved. Instead, it fired her. She has been unable to find comparable work and this year was facing eviction from her apartment due to difficulty in paying the rent. With a clearer and stronger requirement that employers work with employees to find accommodations, she may have been able to continue working and supporting herself.

There are many people with disabilities in the City who have experienced similar situations – they want to work and support themselves but need accommodations to do so. Employers, however, are often unaware of or ignore their responsibilities to provide reasonable accommodations. This amendment will clarify and strengthen employers' obligations to discuss with employees potential accommodations that could allow the employees to continue working and supporting themselves. Accordingly, we support this proposed amendment.

Int. No. 815-A

We support the proposed amendment to the New York City Human Rights Law to expand the right to truthful information, particularly as this pertains to employment. Legal Aid represents many low-income workers who are subjected to discrimination. For many workers, however, even identifying if discrimination occurred is difficult because the potential employers have not provided truthful information about what jobs are available. This amendment will require that employers provide such information. This will make it easier for employees to identify if they have been denied a job for an illegal reason and, thus, easier to enforce the anti-discrimination provisions of the Human Rights Law.

Int. No. 825-A

We support the proposed amendment to the New York City Human Rights Law to expand protections for all domestic workers. Currently, the Human Rights Law only applies to employers who have four or more employees. Because many domestic workers work for families that employ less than four employees, they are not currently protected by the Human Rights Law. At The Legal Aid Society, we have seen numerous cases in which domestic workers were subjected to discrimination but had no recourse under any law. Currently, we are representing a domestic worker who was fired because she became pregnant. We have sued on her behalf because she was not paid the minimum wage or overtime while she was working but we were not able to bring any claims based on the pregnancy discrimination because the family she worked for did not employ four or more workers.

In another case, a family employed one white domestic worker and two Latina domestic workers and provided the white worker with significantly better terms and conditions of employment compared to the Latina workers, even though they all performed the same work. The employers also routinely made derogatory comments about the Latina workers. For discrimination based on race, these workers could bring a claim under the Civil Rights Statute 42 U.S.C. section 1981. However, the race and national origin discrimination is currently not prohibited under New York City law.

In addition, although domestic workers now have a cause of action for sexual harassment under the State Human Rights Law thanks to the Domestic Workers Bill of Rights, there are many types of discrimination that are not covered by the Domestic Workers Bill of Rights. Moreover, the City Human Rights Law is expressly designed to be more expansive than the State law and has significantly more favorable standards and remedies. Thus, the proposed amendment to the City Law would provide domestic workers with both more substantive protections and more potential remedies.

Domestic workers, however, are not the only workers employed by employers who have less than four employees. We are often contacted by low-income workers who work in small offices and although they are subjected to sex or age discrimination, they have no recourse under any law. These employees are also vulnerable to hostile work

environments, have no right to accommodations for disabilities, and are vulnerable to discrimination based on criminal records and other protected categories in the city law. Accordingly, we urge the City Council to eliminate the four employee requirement entirely.

In conclusion, The Legal Aid Society commends the City Council's efforts to enact laws that protect New York City's workers. We look forward to continuing to work together to ensure that all workers, especially low-income and vulnerable workers, have a fair chance to succeed at their jobs and provide for their families.

Respectfully Submitted:

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Testimony before the New York City Council Civil Rights Committee
September 21, 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 & 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 to assist low-income working New Yorkers with pregnancy discrimination, caregiver discrimination, pay discrimination, and other related issues. We receive calls from men and women across the tri-state area as well as from individuals all over the nation in response to our advocacy efforts.

While we are here today to support and offer comments on several legislative proposals designed to strengthen our city's Human Rights Law, we also want to make clear our enthusiasm about and support of efforts at the Human Rights Commission to improve enforcement of this powerful law. Such purposeful attention dedicated to enforcement, along with additional funding to carry out those plans, is critical to ensure that all New Yorkers, including those with the least means, can benefit from the protections offered by the law.

Intro 108A-2014: Caregiver Discrimination

We strongly support Intro 108A-2014 which would modernize the workplace and provide much-needed support for people struggling both to provide and care for their families.

Employment discrimination against caregivers harms a wide range of New Yorkers. Bias in the workplace against parents and family caregivers affects men and women across the economic spectrum. Nationwide, seventy percent of children are growing up in families headed by a single working parent or two working parents,[i] and nearly four in ten mothers are the primary breadwinner for their families.[ii] In New York City, the majority of two-parent households have both parents in the workforce, and 61% of women with children under age six are in the labor force.[iii] More Americans are shouldering elder and family care responsibilities, especially as the baby boomer generation ages: more than one in six American workers provide care to an elderly or disabled family member, relative, or friend.[iv] This number is even higher for families living below the poverty line[v] and is likely to increase in New York City, where the number of disabled adults over 60 years old is expected to grow by 40 percent over the next twenty years.[vi]

Most family caregivers are women (65 percent)[vii] and the value of all the informal care they provide ranges from $148 billion to $188 billion annually.[viii] These caregivers provide unpaid labor that benefits not only their families but our society and economy as well. They deserve protection from unfair treatment that derails their careers, suppresses their lifetime earnings, and pushes their families onto public assistance and into poverty.

We need legal protections that fit the workforce of today. We met a professional woman with ten years of experience and excellent reviews at her job, who was fired after returning from her second maternity leave and told she was not capable of doing the work anymore because she was the mother of several small children. We spoke with a man working in retail who was fired the day after he asked for a part-time schedule to care for his mother, who had recently been diagnosed with cancer. Another woman, whom we spoke to recently, had been working for years on a schedule that allowed her to care for

her ailing husband. A new manager entered the picture and suddenly changed the woman's hours, making it impossible for her to be with her husband when he needed her, while the employer happily accommodated another worker who was going to school part-time.

Caregiver discrimination is particularly hard on single mothers. Yvette, a single mother of three lost her job at a grocery store, where she had worked for eleven years, after her boss changed her shift to require work on Saturdays. She had no childcare on the weekend and the cost of securing it would have wiped out her wages for the day. She tried to work out alternative shift times, but was rebuffed. A younger colleague without children was allowed to reject the Saturday shift because she was attending school on the weekends. Eight months after Yvette lost her job she was still looking for work.

In the low-wage workplace, caregiver discrimination is also often especially blatant. We have heard from women who are scolded and ridiculed in front of their colleagues for having children and often denied any requests—for a raise, a shift change, even just time off for a doctor's appointment—because they chose to start a family. The economic consequences for these women, and their families, can be severe.

Targeted legislation is necessary to prevent caregiver discrimination. Without a law on the books that explicitly prohibits discrimination based on caregiver status, individuals who have suffered job loss and lost income from this kind of unfair treatment often find themselves without legal redress. Some caregivers may be able to make out claims under existing civil rights laws if they can prove, for example, that the discrimination they faced was based on sex or association with a disabled person. But too many cases fall through the cracks. For instance, women facing caregiver discrimination often find it hard to articulate their legal claims as sex discrimination because they cannot point to a comparator—a man or woman without young children who has placed similar requests for time off or the like and who has received better treatment. Men also have trouble convincing courts that they are victims of sex discrimination because of their caregiving responsibilities.[ix] Barriers to justice exist for low-wage workers as well, who tend to work

in isolated settings or do not have the freedom to confer with colleagues to uncover information necessary for a legal claim. Clearly designating caregiver status as a protected class under the law would give these women hope for economic stability, job protection, and basic human dignity at work.

Making caregiver discrimination explicitly illegal would help employers as well. Without clear legal guidance, employers are confused about what kind of conduct is prohibited. Creating an unambiguous ban on discrimination against caregivers would help prevent unfair treatment and invite a discussion about caregiver bias, both in the workplace and more broadly, that could help workers retain their jobs and much-needed income for their families.

Other cities around the country have enacted laws to prevent discrimination against caregivers. New York city would join dozens of other cities and localities that have prohibited employment discrimination based on familial or caregiver status.[x] In addition, the District of Columbia[xi] prohibits discrimination based on an employee's family responsibilities and Alaska[xii] outlaws workplace discrimination against parents.

Targeted reasonable accommodations for caregivers will support struggling families without harming business. Using standards already in the Human Rights Law, Int. 108A would require employers to provide workplace accommodations for certain categories of caregivers, but only if such changes do not cause "undue hardship" for their business. These caregivers would be granted the same interactive process that disabled workers enjoy, allowing them to propose, for example, alternative work arrangements to help them meet the requirements of the job while also attending to their family responsibilities.

Other countries that have included caregivers in their civil rights laws have also enacted reasonable accommodations requirements, acknowledging their debt to the United States for creating the concept in the context of disability.[xiii] The Canadian Supreme Court noted with approval that an anti-discrimination standard accompanied by a reasonable

accommodation requirement fosters workplaces that accommodate the potential contributions of all employees. Under this approach, employers may still have rules that burden caregivers, but they must explore reasonable alternatives in such cases.[xiv] New South Wales, Australia, in response to mothers dropping out of the workforce and the growing wage gap between women and men, created a strong caregiver anti-discrimination law with a reasonable accommodation provision, which has been used to increase workplace flexibility for caregivers who need it to stay in the labor market.[xv]

Accommodations for workers caring for a dependent with a disability

"Reasonable accommodation" has worked well to ensure that workers with disabilities are not treated unfairly or driven out of the workplace. It is equally important that employers provide accommodations, when possible and reasonable, to the loved ones who care for someone suffering from a disability while also holding down a job.

Existing law provides limited protections for these workers. While federal and New York City laws prohibit discrimination against employees based on a relationship with a person with a disability, they do not guarantee reasonable accommodations to help workers provide care to disabled relatives.[xvi] Some caregivers may be entitled to leave time under the Family and Medical Leave Act, but 40 percent of the workforce is excluded from the protections of that law. And caregivers of the elderly and impaired have an even steeper hill to climb than mothers and fathers when attempting to prove unfair treatment based on gender. As a result, working caregivers of aging relatives report having less access to flexible work and perceive significantly lower job security than even workers with childcare needs.[xvii]

An accommodation provision that is tailored to address the needs of both employers and employees can help to keep caregivers attached to the workforce, while promoting the wellbeing of New Yorkers with disabilities and offering potential savings on health care costs to businesses and taxpayers.

Accommodations for a parent to participate in a child's educational events

Research has confirmed, time and again, that parental involvement in children's education leads to positive outcomes for children's academic achievement and future success. There is strong evidence that parent participation in school activities of elementary school-age children produces gains in literary performance,[xviii] as well as possible improvements in school engagement, socio-emotional adjustment, absences, and math achievement.[xix] When parents, and particularly fathers, observe their children in the classroom, attend parent-teacher conferences, and meet with counselors, their children more frequently achieve academic success.[xx] Parental involvement in early education contributes significantly to children's wellbeing as well: parental "responsibility for learning activities, such as reading to children, and providing complementary learning experiences . . . has the power to alter the influence of poverty on children's language and literacy development."[xxi]

Despite these benefits, many parents cannot engage with their children's academic achievement because of rigid work schedules that keep them away. Unfortunately, parents who most need flexibility to help their children with school problems, i.e. those whose kids are struggling with academics or discipline issues, are least likely to have such benefits.[xxii] Research shows that parents who can alter their work hours are more likely to be involved in their children's education, resulting in numerous long-term benefits for their children's wellbeing.[xxiii]

Eighteen states and the District of Columbia have recognized the importance of this issue and adopted school-related leave laws or regulations to help parents attend their children's educational events.[xxiv] Providing reasonable accommodations to allow parental participation in school-related events will give parents in New York City the opportunity to contribute to their children's academic achievement without risking their employment. It is also critical for the ultimate success of this Administration's strategy to improve low-performing schools through greater parental participation.[xxv] A Better Balance would be

supportive of further clarity, however, regarding the language of this provision as amended. Clarity could include specifying the types of circumstances covered by the term "caring for a child or children in facilitating involvement in education," to include attending or participating in school- or preschool-related events related to the academic achievement of the employee's child.

Accommodations for childcare and eldercare emergencies

Many New Yorkers have limited control over their work hours, leaving little margin of error in the event of a family emergency or childcare crisis. Low-wage workers are especially vulnerable and report receiving less desirable shifts and fewer hours, or losing their jobs entirely when their childcare falls through.[xxvi] Offering a bit of wiggle room to these caregivers can help them stay attached to the workforce and earning critical income for their families while weathering inevitable, but infrequent, exigencies of home. This can also help to keep caregivers off public assistance and allow employers to retain happier, more productive and loyal employees.

Retaliation

Finally, Intro 108-A would protect caregivers from retaliation when they request a change to the terms or conditions of employment as they relate to their caregiving responsibilities. This protection is critical because workers rightfully fear stigma or other negative repercussions simply for requesting an alternative work arrangement. Research has shown that nearly 80 percent of employees do not take advantage of corporate flexibility policies because they are concerned about jeopardizing their careers.[xxvii] Long work hours and "flexibility stigma" – particularly regarding part-time work – push many professional workers, especially mothers with caregiving responsibilities, out of the workforce.[xxviii] And low-wage workers who have little financial cushion in the case of job loss are even less willing to rock the boat by requesting an accommodation.

Intro 180-A would offer all caregivers under the law, even those not explicitly granted

the right of reasonable accommodation, the peace of mind to request such accommodations without fear of being penalized in return.

Intro 804-2015: Reasonable accommodations for individuals with disabilities

A Better Balance does not support Intro 804-2015, which would amend the New York City's broadly protective Human Rights Law to import and enshrine a potentially limiting definition from federal law. As the Local Civil Rights Restoration Act of 2005 made clear, the New York City Human Rights law (NYCHRL) must be construed independently from similar or identical provisions of New York state or federal statutes. There is a strong body of case law describing the interactive process required under the NYCHRL. By codifying a definition of a "good faith interactive process" that tracks federal law, this proposal is unnecessary and could even undermine the scope and impact of City law by encouraging federal judges to forgo a separate analysis of NYCHRL claims before them.

Intro 815-2015:Truthful Information

A Better Balance supports Intro 815-2015 to update and strengthen the impact of the New York City Human Rights Law.

Intro 825-2015: Domestic Workers

A Better Balance has long advocated for the rights of domestic workers, and their quest for workplace justice. We look forward to working with the council on refining this proposal to adequately address the needs of both domestic workers and the individual families who employ them.

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[viii] *Women and Caregiving: Facts and Figures, Family Caregiver Alliance*, http://www.caregiver.org /caregiver/jsp/content_node.jsp?nodeid=892.
[ix] Stephanie Bornstein, The Law of Gender Stereotyping and the Work-Family Conflicts of Men, 63 Hastings L.J. 1297, at 1338.
[x] Stephanie Bornstein and Robert J. Rathmell, *Caregivers as a Protected Class?: The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination*, Center for WorkLife Law, University of California at Hastings (Dec. 2009), *available at* http://worklifelaw.org/pubs/LocalFRDLawsReport.pdf.
[xi] D.C. Code Ann. §2-1401.01-02
[xii] Alaska Stat. §18.80.200
[xiii] European Union Directive on Equal Treatment (2000).
[xiv] Central Alberta Dairy Pool, 2 S.C.R. 489, 518 (1990).
[xv] Conference Report, Working Time Discrimination and the Law: The Family Responsive Workplace in Europe and the United States (March, 2005), pg. 11.
[xvi] Young v. U.S. Dep't of Homeland Sec., 10 CIV. 9571 RJS, 2011 WL 6057849 (S.D.N.Y. Dec. 5, 2011) (explaining that the ADA's association provision, which the NYC HRL mirrors, was intended to prevent stereotyping about disabled individuals and their caretakers, but 'does not obligate employers to accommodate the schedule of an employee with a disabled relative.'"
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[xviii] Harvard Family Research Project, "Family Involvement In Elementary School Children's Education," 2007, p. 3 (*citing* McBride, B. A., Schoppe-Sullivan, S. J., & Moon-Ho, H., 2005).
[xix] Charles V. Izzo, Roger P. Weissberg, Wesley J. Kasprow, and Michael Fendrich, A Longitudinal Assessment of Teacher Perceptions of Parent Involvement in Children's Education and School Performance, AMERICAN JOURNAL OF COMMUNITY PSYCHOLOGY, 1999, 27(6), 817–839, 829.
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ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
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Statement of Kenneth Kimerling, Legal Director

Asian American Legal Defense and Education Fund

in Support of Intro 815

September 21, 2015

The Asian American Legal Defense and Education Fund is a national organization that engages in litigation, advocacy, education, and organizing to protect and promote the rights of Asian Americans. Intro 815 sensibly clarifies the law as it relates to testing and to indirect discrimination, and we support its passage.

"Persons" under the City Human Rights Law currently include not only natural persons but also entities like corporations as well. And corporations, whether for-profit or not-for-profit, can only act through their agents or employees. Sometimes when a covered entity discriminates against an employer or agent, it is unaware that the employee or agent is acting on behalf of the employer or principal. But that doesn't change the result that the discrimination against the employer or agent results in the rights of the employer or principal being violated, too. One obvious example is the testing context where, by definition, the tester must not reveal any affiliation because he or she is pretending to be a regular apartment seeker. But this can come up in a wide range of scenarios.

If a minority or women owned business deploys someone to find out information about the

requirements of a new subcontract, and the MWBE employee can't get the information because of her protected class status, why on earth should liability be limited to the circumstance where the employee or agent has said, "I work for this MBWE"?

(Yes, under current City Human Rights Law,[1] if the wrongdoer *knew* of the employee's relationship with the employer, it would be held liable. There is no reason to shield the wrongdoer if it commits that same act of discrimination without knowing of the relationship.)

In the decades I have worked in civil rights, I know that the surest friend of discrimination defendants is the ability to avoid the merits of the case and argue collateral issues. Whether the discrimination is direct or indirect, there shouldn't be any question that all victims have a cause of action, and the paragraph now being challenged is needed to take an important step to doing so.

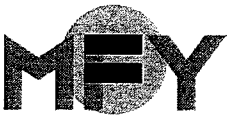
One thing I have seen time and time again when civil rights legislation is proposed is that some people will always question the need for the legislation or claim to be worried that the legislation is "open ended." But they miss the point. The law at its best is proactive, not reactive. When it comes down to it, the idea isn't that one particular manifestation of discrimination is harmful, but rather than *all* discrimination is harmful.

While it is true that the primary use of Intro 815 will be to assist testing organizations to be able to prosecute the discrimination they have uncovered, there is no reason to limit the bill to those organizations and every reason to have it available for anyone who has been discriminated

[1] Admin. Code § 8-107(20).

against indirectly.

This is especially true because we know that discrimination continues to be a scourge in New York. Since we know that entities can only act through employees or agents, it stands to reason that some of the people being discriminated against are discriminated against when carrying out the business of their employers. Even were the number of these cases relatively small (and there is no way to know at this point because discrimination without a remedy tends to be discrimination that stays invisible), anyone who proposes to shield such discriminators needs to be asked why they want to protect conduct that is unmistakably and illegally based on protected class status.



LEGAL

SERVICES

INCORPORATED

TESTIMONY

ON

PROPOSED INTRO. NO. 815-A

IN RELATION TO EXPANDING THE RIGHT TO TRUTHFUL INFORMATION UNDER THE CITY HUMAN RIGHTS LAW AND LEGISLATING AN EXPRESS CAUSE OF ACTION FOR EMLOYERS AND PRINICPALS WHOSE RIGHTS ARE VIOLATED BY CONDUCT TO WHICH THEIR EMPLOYEES OR AGENTS ARE SUBJECTED

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL
COMMITTEE ON CIVIL RIGHTS

PRESENTED BY:

MAIA GOODELL
MFY LEGAL SERVICES, INC.

September 21, 2015

MFY Legal Services, Inc. (MFY) submits this testimony to New York City Council Committee on Civil Rights concerning Intro. 815-A.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for over 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 10,000 New Yorkers each year. We submit this testimony based on our experience with clients from MFY's Workplace Justice Project, which advocates on behalf of low-income workers most vulnerable to exploitation and handles a range of employment problems, including workplace discrimination and other barriers to employment, which includes MFY's Re-entry Project, helping individuals with criminal convictions overcome barriers to employment.

MFY commends the Committee on Civil Rights for holding this hearing about this important legislation. Intro 815-A, if enacted, would substantially strengthen the New York City Human Rights Law in several ways, across many substantive areas. This testimony highlights three major ways it could help New Yorkers in the employment context. First, the bill would provide a firm statutory basis to confer standing to sue on advocacy organizations that use testing to uncover systemic discrimination. Second, it would provide a statutory right of action on behalf of those indirectly discriminated against. Finally, it would make explicit that a violation of a statutorily-created right, in and of itself, is sufficient to confer standing to sue.

The Importance of "Testing" to Expose Illegal Discrimination in Hiring

MFY conducts hundreds of intakes each year. Our employment attorneys regularly speak to New Yorkers who have been denied a job, despite being qualified for the position. Often those clients strongly suspect that the reason for the denial was illegal bias by the employer, such as racial bias or automatic disqualification for criminal convictions without the analysis required by Correction Law Article 23A. Unfortunately, most of these clients have virtually no way to prove that illegal discrimination was a factor. Potential employers are unlikely to tell a job applicant that it will not consider the applicant because of his or her protected status. As the law stands now, when a worker comes to MFY seeking legal assistance in these situations, we have no choice but to counsel the client that, without direct proof, he or she will likely have limited success in establishing a discrimination claim in court or in an agency.

The lack of a remedy in such circumstances is particularly frustrating when we suspect that a large employer is engaging in systemic discrimination, but where we have no way to test that theory. Based on our clients' individual examples, we believe that systemic hiring discrimination is rampant in certain industries, such as in retail. Through our partnership with retail workers' advocacy groups, we see examples of retailers who, we strongly suspect, do not hire applicants of color for more desirable sales positions, or who limit their applicants of color to "back of the house" positions stocking merchandise. However, we lack access to the type of proof that could establish a claim of discrimination in court.

Simply put, it would be a game-changer if MFY had the option to send those clients to an advocacy organization that employed testers, and which could further investigate employers' hiring practices. "Testing," which has been a crucial tool for advocacy organizations in establishing housing discrimination, is virtually nonexistent in the employment context.

Though the New York City Human Rights Law is strong in many respects, one of its fundamental weaknesses is it is virtually impossible to hold employers accountable for even the most egregious and systemic hiring discrimination.

Through these amendments, advocacy organizations that use testing will be able to effectively help individuals prove that they have been discriminated against, and will also be able to independently seek redress for systemic discrimination on behalf of themselves, as the indirect victims of a discriminatory practice. An organization's right to go to court could make a huge difference by allowing organizational plaintiffs to bring discrimination claims that otherwise may never be brought, for example, because of vulnerable individuals' fear of coming forward.

By passing Intro. 815-A, the City Council can help maximize the practical means by which illegal discriminators can be held to account. MFY applauds the Committee on Civil Rights of the New York City Council for holding this hearing, and urges the Council to pass Intro. 815-A.

For any questions about this testimony, please feel free to contact Maia Goodell at (212) 417-3749, mgoodell@mfy.org.

Fair Play Legislation

Statement of Fair Play Legislation in Support of Intro 815-A, September 21, 2015

Some discrimination is still practiced with a snarl and hateful words. Most of the time, though, discrimination today is practiced with a smile. The family denied an apartment or the worker denied a job might have no good way to find out that illegal bias was at work.

A powerful way to detect discrimination, including systemic discrimination, is through the technique of "testing," which most often involves an organization seeing if its testers, bearing equivalent profiles and differing only in protected class status, are treated differently.

Creating an explicit statutory basis for testing

Though the New York City Human Rights Law is strong in many respects, most housing provisions in the law, as well as all of the other parts of the law, do not have language that explicitly forms the basis for a tester to have "standing" to sue in court (the right not to have the availability of an apartment or job or other right in question misrepresented because of protected class status).

Earlier this year, the Council recognized the importance of making certain that the City Human Rights Commission conducts testing to detect housing and employment discrimination, including

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patterns of such discrimination.[1] It is just as important to insure that such testing be conducted by private, non-profit organizations who then have the ability to prosecute instances of discrimination in court. Indeed, in the housing discrimination context, these private groups have been the backbone of ant-discrimination enforcement. In other contexts, testing needs to be done so as to ferret out both individual instances of discrimination and industry-wide practices.

Intro 815 makes explicit for all contexts of discrimination the fact that misrepresentations because of protected class status about the availability of something the right to which is created, protected, or granted by the Human Right Law are illegal. It is this right that has served as the principal basis for tester standing.[2] And, of course, no one -- whether a tester or not -- should be misrepresented to on account of protected class status.[3]

Independent of any concrete injury, the bare violation of the law is actionable

Intro 815 also protects the bedrock civil rights principle -- which was the basis for granting tester standing -- that the only injury needed to permit someone to sue for a civil rights violation is the

[1] *See* Local Laws 32 and 33 of 2015.

[2] *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372-73 (1982). Consistent with the requirements of the Restoration Act, all references to federal case law are relevant only insofar as they illustrate broad construction principles, and only to the extent that they represent "a floor below which the City's Human Rights Law cannot fall, rather than a ceiling above which the local law cannot rise." Local Law 85 of 2005, § 1.

[3] What testing does, of course, is replicate the frequent real-life circumstance where someone, because of protected class status, is told that housing or employment is not available when in fact it is.

fact that a legislatively granted right has been invaded. The "bare" violation of the statute can cause other, concrete injuries, but is not required to.[4]

This principle is now under attack on the federal level, the Supreme Court having taken on a case to hear this term about the extent to which a concrete injury is required.[5] Regardless of the outcome on the federal level, and consistent with the requirements of the Restoration Act,[6] Intro 815 makes clear, that, for City Human Rights Law purposes, only the invasion of a statutorily protected right is required.

In preserving this civil rights principle, Intro 815-A would do what amendments to the City Human Rights Law have been doing now for almost 25 years: act as a bulwark in defense of the people of this city against the attempts of conservative federal and state judges who have systematically worked to narrow both the scope of civil rights protections and access to court.

Retaining the ability to vindicate a "bare" violation of the statute is extremely important, and not just because, without it, tester standing can ordinarily not be sustained. The point of the City Human Rights Law is to say that it is *always* wrong to engage in a discriminatory act. Some discriminatory acts might result in more tangible harm than others, but all must be deterred to the

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[4] *Id.* at 373, *citing Warth v. Seldin,* 422 U.S. 490, 500 (1975) (the actual or threatened injury required by Article III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing).

[5] *Spokeo, Inc. v. Robins,* Docket No. 13-1339, *cert. granted* April 27, 2015.

[6] Local Law 85 of 2005, the Local Civil Rights Restoration Act (the "Restoration Act").

maximum extent possible.[7] Part of that task is making clear that the act of engaging in discrimination is itself a violation, even in the absence of concrete consequences.

No loophole for discriminators when the victim is an organization or other entity

Even more important than tester standing is the matter of organizational standing. Organizations (not testers) are the ones that have an ongoing institutional interest in seeing civil rights laws enforced. Organizations (not testers) are the ones who have the resources and expertise to pursue prosecutions.

It would have been better if fair housing organizations had, back in 1982, recognized the full breadth of *Havens* when it held that *all* persons have a right to be free of misrepresentations based on protected class status. The Fair Housing Act and the City Human Rights Law both include organizations and other entities as "persons." But, because in *Havens*, the organization had sought standing on the basis of "diversion of resources," and the Supreme Court held that there was standing on that basis, organizations have, ever since, sought standing on that basis.

The problem is that, at best, "diversion of resources" introduces a collateral issue to be litigated, something to be avoided whenever possible. And, sometimes, when a fair housing organization has been funded to do testing, there is no diversion to be proven.

[7] An approach that maximizes deterrence "incorporates 'traditional methods and principles of law enforcement'" as required by the Restoration Act. *Williams v. NYC Housing Authority,* 61 A.D.3d 62, 76 (1st Dept. 2009).

The cleaner route is to go back to the idea that all persons, including entities, can be deprived of truthful information (or other rights) because of protected class status.[8] By definition, an artificial entity cannot walk up to a landlord itself and make inquiry. It is the most basic and long established principle that "[a] corporate body can only act by agents" and that "a corporation, being an artificial person, can transact its business only through its officers and agents," 2 Fletcher Cyc. Corp. ¶ 275.[9]

Whether a testing organization is seeking information about the availability of an apartment or a job, or whether a business is trying to acquire supplies or be hired to work on a project, the organization or business is obliged to use employees or agents (a "representative").

At the moment of contact between the representative and the entity required to comply with the provisions of the Human Rights Law ("covered entity"), most would agree that the representative's protected class status *ought not* be salient to the covered entity. But if that status *is* salient, *both* the representative *and* the representative's principal or employer wind up being treated unfairly because of protected class status. In other words, the covered entity has effectively imputed the protected class status of the representative to the representative's principal or employer.

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[8] *See* Craig Gurian, *Using Local and State Legislation to Preserve and Expand the Ability of Fair Housing Organizations to Prosecute the Discrimination They Uncover,* 1 Harv. L. Pol'y Rev. (Online) (October 2007), *available at* www.antibiaslaw.com/orgstanding.

[9] Courts, unfortunately, cannot be relied on to follow agency law in the discrimination field if they have another agenda. *See, e.g., Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). In that case, the Supreme Court accepted agency principles as a "starting point" (particularly the then-existing section 219(2)(d) of the Restatement (Second) of Agency, the application of which leads to virtually automatic liability for acts of supervisors because the existence of the supervisory relationship always aids the harasser). *Id.* at 802-803. But the court chose to modify that principle (and provide an affirmative defense to employers) because of what it concluded was the desire of Congress for there not to be automatic liability. *Id.* at 804. Under the New York City Human Rights Law, of course, the result is different: strict liability applies based on the conduct of someone exercising supervisory or managerial authority. Admin. Code § 8-107(13)(b)(1). *See Zakrzewska v. The New School,* 14 N.Y.3d 469 (N.Y. 2010).

To put it yet another way, the result is the equivalent of the representative's principal or employer being *perceived* to have a particular protected class status.

As such, Intro 815-A makes clear that all "persons" under the Human Rights Law can exercise their rights through employees or agents, and, likewise, can have those rights violated based on conduct to which the employees or agents are subjected.

As a practical matter, Intro 815-A removes an ambiguity from the operative provisions of the law: when a covered entity is prohibited from acting against a person because of the protected class status of "such person," how to interpret the protected class status of artificial (other-than-natural) persons? Intro 815-A's answer can be expressed in two ways: (1) treating the artificial person as having assumed the protected class status of its representative; and (2) treating the term "such person" to mean "such person or such person's employee or agent." In either case, the bundle of rights that the artificial person has (that is, rights created, granted, or protected by the Human Rights Law")[10] includes the right to be free of discrimination because of the protected class status of the artificial person's employees or agent.[11]

It is likely that Intro 815-A will be invoked most frequently in circumstances where the covered entity was not aware of the relationship that existed between the representative it is dealing with and the representative's employer or principal. This is because the City Human Rights Law al-

[10] See proposed Admin. Code § 8-502(h).

[11] For the purpose of the cause of action being expressly recognized by Intro 815-A, the conduct complained of must have "occurred while the agent or employee was acting, or as a result of the agent or employee having acted, within the scope of the agency or employment relation." Proposed Admin. Code § 8-502(h)(2)(a)(1).

ready broadly protects a person (whether an individual or an entity) against being disfavored or otherwise discriminated against because of the protected class status of someone else with whom the person has a "known relationship or association."[12] Intro 815-A, on the other hand, makes clear that [i]t is irrelevant whether or not the covered entity knows of the agency or employment relationship."[13]

In the testing context, of course, it is always the case that the relationship between organization and tester employee is not known by the covered entity (otherwise there could not be effective testing). There are other situations, too, where the covered entity may act against a representative before that representative has announced or explained the relationship he or she has with an employer or principal.

The covered entity cannot and should not be heard to complain that it is being held accountable in the additional circumstances contemplated by Intro 815-A. The underlying conduct is unchanged. A plaintiff or plaintiffs will still have to show that protected class status played a role in the conduct in which the covered entity engaged.

Moreover, this is not a circumstance of making actionable highly attenuated consequences, three or four degrees removed. It is entirely reasonable for covered entities to bear in mind the fact

[12] Admin. Code ¶ 8-107(20). *See Jing Zhang v. Jenzabar, Inc.*, 2015 WL 1475793 (E.D.N.Y. 2015) (organizational plaintiff had valid cause of action because defendant foundation, who discriminated against individual plaintiff on the basis of individual plaintiff's religion, also cut off financial support to the organization because it was the individual plaintiff's employer).

[13] Proposed Admin. Code § 8-502(h)(2)(b).

that the person which whom they are dealing could be acting on behalf of an employer or principal.[14]

We have heard it said that there might not be a high volume of complaints covered by Intro 815-A outside of the testing context. *That would be wonderful,* if true. But *projected volume* of complaints is not the measure of whether conduct is *wrongful* and should be prohibited.

Take an African-American electrician who has his own business. He hears of some work that needs to be done, goes to the site, and asks to perform the repair. He is told, "Go away, you are African-American." He is deprived of the business and, properly, can complain of that discriminatory conduct.

Now take a small business, organized as a corporation. It employs an African-American electrician. That electrician hears of some work that needs to be done, goes to the site, and asks to perform the repair. He is told, "Go away, you are African-American." The corporation -- which, as already noted, can only act through employees and agents -- is deprived of the business because of race. There is no justification for not holding the discriminator accountable to that business entity for the race-based refusal to do business.

The answer that the City Human Rights Law has and should continue to encourage is simple: just don't discriminate and you won't be liable to anyone.

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[14] Or a prospective co-tenant, for that matter.

Intro 815-A works both to deter discrimination and to make sure that employers who are *good actors* don't shy away from having their work carried out by employees who are members of groups that might be disfavored.

Intro 815-A does not displace any other cause of action

The illustration of an "aggrieved person" set out by Intro 815-A is consistent with the requirements of the Restoration Act to interpret the law broadly and is not intended to limit any other basis on which a right to bring an administrative or court action may be claimed, whether diversion of resources, representative standing, various types of indirect injury, or otherwise.[15]

Intro 815-A deserves to be enacted promptly.

[15] Proposed Admin. Code § 8-502(h)(3).

As of today's hearing (September 21, 2015), Intro 815 is supported by:

A Better Balance

Asian American Legal Defense and Education Fund

The Black Institute

Brandworkers

Center for Popular Democracy

Community Service Society

Disability Rights Advocates

Fair Housing Justice Center

Fair Play Legislation

504 Democratic Club

Lambda Legal

LatinoJustice PRLDEF

Lawyers' Committee for Civil Rights Under Law

MFY Legal Services, Inc.

National Employment Law Project

National Employment Lawyers Association (New York Affiliate)

National Fair Housing Alliance

New Economy Project (formerly NEDAP)

Poverty & Race Research Action Council (PRRAC)

For further information, email craiggurian@fairplaylegislation.org or call 646-484-9893

Testimony of Fred Freiberg, Executive Director, Fair Housing Justice Center (FHJC)

Hearing of the New York City Council Committee on Civil Rights

September 21, 2015 – 1:00 p.m.

I write, on behalf of the Fair Housing Justice Center (FHJC), to support proposed Int. 815-A which is intended to strengthen the New York City Human Rights Law (HRL) by explicitly providing the right to truthful information about housing and broadening the definition of who an aggrieved person is under the HRL. We appreciate the opportunity to provide written testimony to the New York City Council's Committee on Civil Rights. After briefly providing some background information, I will focus my comments on two key provisions in the proposed legislation.

The FHJC is a regional civil rights organization based in New York City. Our mission is to eliminate housing discrimination; promote policies that foster open, accessible, and inclusive communities; and strengthen enforcement of fair housing laws. Our service area includes all five boroughs of New York City and seven suburban New York counties outside of the City. Since 2005, the FHJC has been the only organization routinely conducting testing to investigate housing discrimination in New York City. We employ over 130 professional actors and use state of the art technology in our testing program to ensure that we gather credible, objective, and admissible evidence in all of our investigations.

Our testing investigations have led to dozens of successful legal challenges in state and federal courts that have opened up tens of thousands of housing units to populations previously excluded; recovered millions in damages and penalties to victims of housing discrimination; and most importantly, changed the way that many housing providers do business. In addition to assisting direct victims of housing discrimination, the FHJC is frequently an organizational plaintiff and our testers also bring claims under local, state, and federal fair housing laws.

Testing is one of the most effective tools for enforcing fair housing laws. Without testing, many victims of housing discrimination would not be able to meet their burden of proof. Courts across this land have long recognized that information obtained from testing investigations is often the most competent evidence to prove that housing discrimination is occurring.

But testing also serves another vital public purpose because it enables a fair housing organization or law enforcement agency to be more proactive and ferret out systemic housing discrimination. Our testing investigations confirm that often discrimination is so subtle that actual homeseekers have no way to know that illegal discrimination is occurring. Systemic testing is often the only way to document these invidious discriminatory practices. But, documenting the discrimination is only the first step. Then, it becomes vitally important that the evidence can be used to obtain compliance with the law so that discrimination does not continue in the future. Int. 815-A will immeasurably help to ensure that the City HRL can be more vigorously enforced.

The Right to Truthful Information in Housing

Section 4 of the proposed amendment would modify Section 8-107, Subdivision 5, Paragraph a and add to the definition of what constitutes an unlawful discriminatory practice "**to represent to any person or persons that any housing accommodation or an interest therein is not available for inspection, sale, rental, or lease when in fact it is so available**" based on a protected characteristic. Frequently, FHJC testing investigations uncover evidence that landlords, property management agents, building superintendents, and other agents provide untruthful information to prospective renters or buyers as a tactic to deny housing to protected populations. Recent FHJC testing investigations illustrate how violators of fair housing laws will politely lie to unsuspecting and unwanted populations about the amount of the rent, security deposit, or application fee; whether a unit is available to inspect; whether an apartment is available or how many apartments are available; and whether housing is available in specific buildings or neighborhoods.

Here are some examples which illustrate how the provision of untruthful information has become a common technique or tactic for discriminating against protected populations in housing. Each of these examples resulted in lawsuits and, with one exception, each case has been settled for injunctive relief including, but not limited to, fair housing training, adoption and posting of fair housing policies, publicly advertising available apartments, and compliance monitoring by the FHJC for multiple years, along with a substantial monetary recovery.

- The FHJC tested a 76-unit rental building in the Midwood neighborhood of Brooklyn and learned that the on-site manager was lying to African American and Latino testers about available apartments, while telling Russian or Russian-speaking testers about available units and showing vacant apartments.

- The FHJC tested a 72-unit rental building in the Astoria neighborhood of Queens that was owned and managed by a company that controls over 1000 rental units in New York City. The building manager told African American testers that no apartments were available while repeatedly telling white testers about available apartments and showing them vacant units.

- The FHJC tested a landlord who owns three buildings with over 250 units of rental units in Brooklyn neighborhoods. The tests showed that the on-site agent lied to African American testers about available apartments while telling white testers about available units and showing them vacant apartments.

- The FHJC tested a 59-unit building in the Bay Ridge neighborhood of Brooklyn. The building super informed African American testers that no apartments were available while white testers were told about and shown available apartments.

- FHJC tested a 107-unit rental building in the Sunnyside neighborhood of Queens and the on-site agent told African American testers that no apartments were available while telling white testers about available apartments and showing them vacant units. The agent also quoted rent amounts to African American testers that were higher than those offered to their white counterparts.

- FHJC tested a landlord that owns 16 buildings with over 900 units of rental housing in Brooklyn and found that rental agents lied to African American testers about rental units in buildings located in white Brooklyn neighborhoods while telling white testers about available apartments and showing them vacant units.

- The FHJC conducted three tests at two apartment buildings in the Woodlawn neighborhood of the Bronx and found that the rental manager was telling African American testers that no apartments were available, while telling white applicants about available apartments and showing them vacant units. The agent, who worked for a landlord who owns over 200 units of rental housing, also quoted rents to the African American applicants that were higher than those quoted to the white testers.

- The FHJC conducted four tests at a 43-unit apartment building in Brooklyn and found that the on-site agent was quoting African American applicants rents that were $50-200 higher per month than the rents he was offering white applicants. (This case is still pending.)

In all of the above examples, there is virtually no possibility that actual consumers would ever know they were being provided untruthful information. Consequently, no complaints would be filed with any government agency and no enforcement action would result.

Consumers should expect to receive truthful information about housing regardless of their race, national origin, disability, sexual orientation or other protected characteristics. While a similar specific provision exists in the New York State Human Rights Law and the federal Fair Housing Act, adding this provision to the City HRL would protect more New Yorkers because the City HRL contains many more protected characteristics. For all of the above stated reasons, we urge the Committee to approve this amendment.

Definition of Aggrieved Person

Section 15 of the proposed amendment would amend the Definitions section of the HRL, Section 8-102 by adding the term "**aggrieved person**" and providing further that "**A person is aggrieved even if that person's only injury is the deprivation of such right**" granted by the HRL. The ability of organizations to assert fair housing claims and obtain critically needed injunctive or equitable relief should not turn on whether the organization can prove a diversion of resources as is currently the case. For individuals, the ability to file a complaint about an act of housing discrimination should not require proof of a psychic injury or economic disadvantage as the basis for standing. The denial of the right to be treated in a fair and equal manner in the housing market as protected by the HRL should be sufficient to establish standing under the law.

As illustrated in the previous examples of FHJC testing cases, organizational plaintiffs and complainants can serve a critical role in aiding the City to obtain compliance with the HRL. This is particularly true in the housing context where discrimination, especially when based on race or national origin, often occurs in subtle ways that are not discernable to the ordinary consumer looking for an apartment. Broad injunctive relief that changes housing practices and prevents future discrimination is less likely to be ordered to remedy an individual instance of discrimination that, by its nature, is more limited in scope. However, where a right protected by the City HRL has been denied, then this proposed amendment ensures there is a mechanism for organizations whose testers or employees have been discriminated against, to redress that violation.

The proposed amendment to add a definition of "aggrieved person" to the City HRL advances the public interest of eradicating illegal housing discrimination in New York City. By expanding the definition of who may file complaints or lawsuits under the HRL, the amendment helps to ensure that housing providers who discriminate are held accountable for their illegal conduct. For these reasons, we strongly urge the Committee to adopt this amendment to the City HRL.

Thank you very much for your time and consideration.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

1401 New York Avenue, NW
Suite 400
Washington, DC 20005-2124

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

Statement of the Lawyers' Committee for Civil Rights Under Law in Support of Intro 815

September 18, 2015 – The Lawyers' Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and the resulting inequality of opportunity. For more than 50 years, we have worked to secure equal justice for all through the rule of law.

The Lawyers' Committee is pleased to join our fellow civil rights organizations -- national and local -- in support of Intro 815. At the federal level, Congress has long recognized the need for effective private enforcement of civil rights protections, and, for decades, the use of testing by fair housing organizations has exposed discrimination that would otherwise have remained hidden and without remedy. An explicit statutory basis for standing in testing cases is important in state and local law, too.

Indeed, the City Council's consideration of Intro 815 cannot have come at a more timely moment. Right now, we and our allies are involved in a case before the Supreme Court -- *Spokeo, Inc. v. Robins* -- where the broad right to standing based only on the invasion of a statutorily created right is under attack. Along with the National Fair Housing Alliance, we have filed an *amicus* brief defending the principle of broad standing.

But, just as those who are hostile to civil rights and labor rights understand that it is important to engage at all levels of government, so, too, must those who are committed to the protection and expansion of civil rights fight at the state and local level. Intro 815 performs exactly that function.

Moreover, in contrast to the housing context, there has been very little testing for employment discrimination over the years. This has greatly hindered the ability of civil rights advocates to identify and prosecute patterns of discrimination: industries and sectors that continue to deny African-Americans, women, or other protected class groups a fair chance to be hired. With Intro 815, New York City will be taking the lead in providing explicitly a powerful tool to help diversify workplaces. When this legislation is enacted, we hope it will be a model that can be adopted by other jurisdictions around the country.

Over the years, the civil rights legislation that has most captured the public's attention are those bills that expand the ranks of those groups whose members are protected from discrimination. That substantive work is, of course, enormously

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

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important. But it turns out that a less dramatic area -- the means and methods to be able to get into court and seek redress for biased conduct -- is just as important. It is there that battles are fought every day in court, and it is there -- over questions like standing, burdens of proof, and procedure -- where the promise of equal rights under law is either fulfilled or stymied. Intro 815 takes important steps to maximize the means and methods to vindicate civil rights, and we urge its prompt adoption.

Jon M. Greenbaum
Chief Counsel

DRA
DISABILITY RIGHTS ADVOCATES
A non-profit corporation

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Statement of Disability Rights Advocates
before the
Civil Rights Committee of the New York City Council
September 21, 2015

Disability Rights Advocates (DRA) is one of the leading nonprofit disability rights legal centers in the nation. Its mission is to advance equal rights and opportunity for people with all types of disabilities nationwide. DRA is run by people with disabilities for people with disabilities.

DRA regrets that prior commitments make us unable to attend today's hearing. We wanted, however, to express our strong support for Intro 815.

People with disabilities continue to face numerous barriers to accessibility; in housing, in employment and in public accommodations as well.

It is critical that the Council act now to adopt Intro 815 so that there is an unmistakable statutory basis for organizations to pursue violations of the New York City Human Rights Law across all areas of public life covered by the law.

Intro 815 makes an important contribution in the area of legal standing to challenge conduct that violates the antidiscrimination provisions of the NYCHRL. This is critical because basic disability rights are often unattainable without court action. It is of concern that the standing of civil rights organizations is currently being attacked at the federal level, jeopardizing future progress towards equality and inclusion for New Yorkers with disabilities. Individuals often lack the resources to challenge discrimination in the courts on their own or they often face retaliation if they choose to do so. Without the ability of organizations to make such challenges, many instances of unlawful discriminatory conduct will go without remedy. Intro 815 will not only insulate New Yorkers against the attacks on organizational standing

occurring at the federal level, it will also set an example for other states and localities throughout the nation, that independent progressive action is essential to preserving the ability to vindicate our rights.

NATIONAL DOMESTIC
WORKERS ALLIANCE

Irene Jor's testimony delivered to the New York City Council Committee on Civil Rights
Regarding Proposed Int. No. 825-A
September 21, 2015

Good afternoon, my name is Irene Jor & I am the New York organizer for the National Domestic Workers Alliance, and coordinator for the New York Domestic Workers Alliance. Founded in 2007, the Alliance works for the respect, recognition, and inclusion in labor protections for domestic workers. We are building a powerful movement rooted in human rights and dignity. Our New York coalition is comprised of many expert organizations that have been working with domestic workers since the mid 1990s. Several organizations from our current coalition organized for 6 years to win the New York Domestic Worker Bill of Rights.

Today we organize an incredible range of domestic workers in the New York metropolitan area – nannies to housekeepers to elder caregivers, trafficking survivors and women day laborers, domestic workers who hail from all corners of the world. Across all the domestic workers who come through our doors, organizers and worker leaders have observed the incredible amount of discrimination, exploitation, and even abuse they face in the workplace. These instances are not unrelated to the intersectional oppression domestic workers face as women of color & immigrant women low-wage workers.

Under the current NYC Human Rights Law, many domestic workers are excluded from seeking much needed protections that are afforded to workers in workplaces with four or more employees. Though the NYS Human Rights Law protects domestic workers from sexual and other forms of harassment on the job, it does not offer any protection in ensuring that domestic workers are treated fairly in instances of hiring and firing, or subject to discriminatory practices while on the job that suppresses a key part of their identity or physical condition.

To name some examples, we have met domestic workers who are fired immediate and/or strategically forced to quit after their employer discovers they are pregnant. We often hear of employers who have routinely coerced domestic workers to submit to their requests by threatening to out their immigration status. One instance we learned of a domestic worker who had a partial hearing disability and was fired even though it did not interfere with her agreed upon responsibilities. Recently I met a domestic worker who has had a difficult time moving beyond the interview phase with potential employers, she noticed there was discomfort on their part with her Muslim identity and decision to wear a Hijab.

The Alliance & Coalition applaud the introduction of Bill No. 825, which seeks to expand the definition of employer under the human rights law to provide protections for domestic workers. We hope in addition to passing this as a local law, that the City Council will also call on and provide the support needed to domestic workers, and employers to engage with the NYC Commission on Human Rights in the implementation process.

Along with this testimony, some of our worker leaders wanted to also share their letters of support. We hope you will take the time read these. To end I want to also note that this week is National Nanny Recognition Week. Nannies are an important segment of the childcare professionals spectrum. Their labor makes their employers' lives possible and they do the critical work of caring for and nurturing children's minds, bodies, and spirits.

In celebration of this week we have created this ribbon. It is the colors of the National Domestic Workers Alliance, representing the respect and dignity all nannies, house cleaners, and elder caregivers deserve. The small rhinestone represents the incredible value of domestic work to our society. We hope you'll join us in solidarity by wearing this ribbon this week, and sharing it's significance with your family and friends.

09/19/15

Querido Ayuntamiento de la ciudad de New York y el comité de Derechos civiles,

Mi nombre es Johanna Chicas y soy originaria de El salvador, ahora vive en Queens. Yo he trabajado en New York por 6 años.

Estoy emocionada que una ley local esta ~~was~~siendo introducida para extender la definición de empleado bajo la ley de derechos humanos para proveer protecciones para los trabajadores del hogar. Yo pienso que eso es importante porque como niñera, inmigrante y latina he sentido la discriminación por ser lo que soy una desendiente de los indios americanos, porque mis empleadores se han aprovechado de mi estado migratorio y me he sentido amenazada y creo que como todo ser humano merezco todos los derechos de seres humanos, no ser discriminación por mi profesión como trabajadora del hogar.

Esta ley local es muy importante para las trabajadores del hogar en todas partes de esta ciudad.

Sinceramente, Johanna Chicas.
Chelsea 10001 work place

New York 19-09-2015

Querido Ayuntamiento de la Ciudad de Nueva York y el comite de derechos Civiles.

Mi nombre es Maria Mercedes Rosales-Mayorga y soy Originalmente de Guatemala, Ahora Vivo en Bay Ridge N4. Yo he trabajado en Nueva York por 10 años,

Yo estoy emocionada que una ley local esta siendo introduciba para extender la definicion de empleado bajo la ley de derechos humanos para proveer protecciones para extender la definicion de empleado bajo la ley de derechos humanos para proveer protecciones para trabajadoras del hogar.

Yo pienso que es importante por que vamos a ayudar a muchas trabajadoras del hogar a ser tratados correctamente y poder sentirse como seres humanos

Sinceramente

MMMR

Maria Mercedes Rosales-M
1120 Bay Ridge

Sept 19-2015

Dear New York City
Council & the Committee
on Civil Rights

My Name is Juliette Samuel

I am originally from the Island of Dominica, I now live in Bronx NY, I have worked as a Nanny / Housekeeper in New York city for about 20 yrs.

I'm excited that a local law is being introduced to explain the defination of employer under the human rights law to provide protection for domestic workers. I feel this is important because, So many of my coworkers who became Pregnant and Shared the information with employer, they would be terminated.

This local law is Crucial for domestic workers ~~and~~ in all corners of the City

Sincerly,
Juliette Samuel
Work - Manhattan
Home BRONX

9/19/15

DEAR NEW YORK CITY COUNCIL AND THE COMMITTEE ON CIVIL RIGHTS,

My NAME IS Marrisa SENTENO. I LIVE IN WOODSIDE QUEENS AND I HAVE WORKED AS A WORKER RIGHTS ADVOCATE IN NEW YORK FOR OVER 8 YEARS.

I AM EXCITED THAT A LOCAL LAW IS BEING INTRDDUCED TO EXPLAIN THE DEFINITION OF EMPLOYER UNDER THE HUMAN RIGHTS LAW TO PROVIDE PROTECTION FOR DOMESTIC WORKERS.

I FEEL THIS IS IMPORTANT BECAUSE OVER THE YEARS OF DIRECTLY WORKING WITH THE COMMUNITY AND SPECIFICALLY WITH DOMESTIC WORKERS IN AND AROUND NEW YORK CITY I HAVE SEEN MANY CASES OF HUMAN RIGHTS VIOLATIONS THAT DOMESTIC WORKERS WERE UNABLE TO ACCESS AND FILE A CLAIM AGAINST SUCH VIOLATIONS BECAUSE OF THE EXCLUSION OF THEIR WORKPLACE AS A DOMESTIC WORKER. I HAVE HAD POTENTIAL EMPLOYERS CALL ME UP AND SAY THEY ONLY WANT TO HIRE SOMEONE WHO IS A CERTAIN AGE, THEY ONLY WANT TO INTERVIEW PEOPLE OF A CERTAIN RACE OR FROM A SPECIFIC COUNTRY BECAUSE THEY "WORK BETTER." POTENTIAL EMPLOYERS HAVE SAID TO ME, "OH, I HAD

TO LET HER GO BECAUSE SHE GOT PREGNANT. IN MY YEARS WORKING WITH THE COMMUNITY I HAVE SPOKEN AND TRIED TO HELP DOMESTIC WORKERS WHO SAID THEY HAD BEEN FIRED ONCE THEY TURNED A CERTAIN AGE AND TOLD THEY WERE TOO OLD FOR THE WORK. MANY TIMES WE WERE POWERLESS TO FIGHT BACK AGAINST MANY, MANY INCEDENCES OF DISCRIMINATION.

THIS IS NOT ONLY IN MY WORK BUT IN MY COMMUNITY WHERE SO MANY OF MY CLOSE FRIENDS IN WOODSIDE, QUEENS HAD ISSUES OF DISCRIMINATION FROM THEIR EMPLOYERS BUT WERE EXCLUDED BECAUSE THEY HAPPEN TO WORK PROFESSIONALLY IN HOMES. IT IS NOT RIGHT AND NEEDS TO CHANGE AND I TRUST THAT AS MY CITY COUNCIL YOU WILL VOTE TO PUSH THIS LOCAL LAW THAT IS CRUCIAL FOR DOMESTIC WORKERS IN ALL CORNERS OF THIS CITY.

SINCERELY,

Maria Dentico

COMMUNITY RESOURCE CENTER 10543
WOODSIDE, QUEENS 11377

09/19/15

Querido Ayuntamiento de la ciudad de Nueva york y el comite de Derechos Civiles,

Mi nombre es Silvia Medina originalmente de Mexico ahora vivo en Brooklyn Ny. yo he trobajado en Nueva yort por 15 años.

yo estoy emocionada porque una ley local esta siendo introducida para extender la definicion de empleado bajo la ley de derechos humanos para proveer protecciones para trabajadoras del hogar. yo pienso que eso es importante porque yo fui despedida porque me enferme y fui al hospital yo senti que fue ingusto porque yo no tobe la culpa de enfermarme pienso que nadie le gusta estar enfermo y tombien por no ablar perfecto ingles ay descriminacion

esta ley local es muy importante para las trabajadoras del hogar en todas partes de la ciudad

Sinceramente
Silvia Medina
11237 — 11215

Sep 19 2015

Dear: New York City Council +
The Committe on Civil Rights

My name is Lupe Molina
Iam originally from Mexico and
I now live in Queens, I have
worked a a nanny in New York
City for 13 years. I am exited
that a local Law is being
introduce to explain the
defenition of emeloyer under
the human rights law to
provide protection for domestic
workers. I feel this is important
because it will provide Protection
for all of us working on this
industry. This Local Law is
crucial for domestic workers
in all corners of this city

Sincerely
Guadalupe Molina
~~Jackson~~ Brookly Heights
Jackon Heights 11372

Sept, 17 2015

Dear New York city Concil + the committee on Civil Rights

My name is Margarida Petkof I am originally from Brazil and now I live in NYC.

I have worked as a nanny/housekeeper in New York city for 8 years.

I am excited that a local law is being introduced to explain the defination of employer under the human rights law to provide protection for domestic workers.

I feel this is importante because we are hard workers and need someone who can represent us.

I have a friend who was terminated because she has a hearing disability.

This local law is crucial for domestic workers in all corners of this city.

Sincerely

Margarida

10024 work area

10030 Home area

09/19/15.

Querido Ayuntamiento de la Ciudad de Nueva York y el comite de Derechos Civiles,

Mi nombre es Doris y soy originalmente de Perú, ahora vivo en Nueva York. Yo he trabajado en Nueva York por 13 años.

Yo estoy emocionada porque una ley local esta siendo introducida para extender la definición de empleado bajo la ley de derechos humanos para proveer protecciones para trabajadoras del hogar. Yo pienso que eso es importante porque yo veo mucha discriminacion por embarazo.

Esta ley local es muy importante para las trabajadoras del hogar en todas partes de esta ciudad.

Sinceramente,

Doris Zempoalteca

New York 10002

New York 10021.

19/09/2015

Querido Ayuntamiento de la ciudad de New York y el comité de Derechos Civiles

Mi nombre es Yolany Castellanos y soy originalmente de Honduras, a hora vivo en New Jersey. Yo he trabajado en New York por 6.5 años.

Yo estoy muy emocionada porque una ley local esta siendo introducida para extender la definición de empleado bajo la ley de derechos humanos para proveer protecciones para trabajadoras del hogar. Yo pienso que es importante porque:

Hace 5 años cuando yo trabajé como niñera y quedé embarazada, mis empleadores empezaron actuar diferente conmigo. No me Pagaban las horas extras que correspondian y me despidieron porque yo comencé a decir que no podía hacer horas extras los fines de semana. No me dieron una justificación razonable, me dijó que ya su familia no era prioridad para mi.

Fuí Al departamento de labor para reclamar mi caso, y ellos me dijeron que no podian hacer nada.

Esta Ley local es muy importante para las trabajadoras del hogar en todas partes de esta ciudad.

Sinceramente,

Yolany Castellanos

144 W 27 Street, 10001
378 Park Ave. Rutherford NJ 07070

FOR THE RECORD

LATINOJUSTICE
COMMITTED TO JUSTICE AND LEADERSHIP SINCE 1972 ■ PRLDEF

Statement of LatinoJustice PRLDEF
in Support of Intro 815 –A

The City Council of New York, Committee for Civil Right Hearings
September 21, 2015

LATINOJUSTICE PRLDEF STRONGLY SUPPORTS INTRO 815 -AND URGES ITS IMMEDIATE PASSAGE

Since 1972, **LatinoJustice PRLDEF** (formerly known as Puerto Rican Legal Defense & Education Fund) has fought to defend the constitutional and civil rights of Latinos. As a national not-for-profit nonpartisan legal defense fund, we champion fairnesss, opportunity and equality under the law in all aspects of national and local life.

We support a host of proposed amendments to rebuild the agency's capacity and vigor and to advance substantive provisions in the City's Human Rights Law. This Council has an important duty to fortify our City Human Rights Law and to advance ways that can help vindicate the civil rights and equal dignity of all New Yorkers in this new century.

LatinoJustice PRLDEF supports Intro 815-A which addresses a number of concerns relevant to Latino constituents and immigrants who experience discrimination and barriers based on their actual or perceived race, national origin, color, alienage and citizenship status, disability, sexual orientation, family size, or, history with the criminal justice system, and other protected grounds. Discriminatory practices, insidious and open, are used to thwart access to equal opportunity in housing, employment, credit, membership, business practices, and public accommodations.

Without doubt, a person's words and direct acts of discrimination can be observed. However, many other acts of discrimination do not announce themselves and are cloaked in pretextual and deceptive practices. The scourge of illegal discriminatory treatment facing protected groups is more subtle and complex. Meaningful effective enforcement of civil rights laws will depend on improved laws, better tools, and the diligence of local groups and legal services organizations to bring up claims for victims and press for accountability upon discriminators and their agents.

Intro 815-A can improve the use of paired testing as a tool in all aspects of housing - residential and commercial property sales, loans, and rentals. Patterns of residential segregation exist throughout this City and State. Redlining, steering, discouragement, and other sophisticated ploys are still used. Based on federal laws, the important tool of paired testing can be used to ferret out housing discrimination. Paired testing is a critical methodology for assessing discrimination in the housing market for both research and enforcement purposes.

According to the United States Department of Housing & Urban Development, recent evidence of housing discrimination against gay and lesbian home-seekers, discrimination based on source of income and against families with children, persons with physical disabilities, and persons with mental disabilities, has been amply documented.

Next, the potential reach of testing methodologies and the use of investigatory and analytical tools can be applied in employment, public accommodations and other suitable spheres of life. Currently, testing on the employment side is undeveloped because no clear authority is found in federal law and practice to enhance such testing. How important it would be to create explicit statutory authorization in local law using agency principles to facilitate the use of testing in enforcing one's right to be free of misrepresentations based on one's protected class status!

Intro 815-A introduces an unambiguous statutory basis for liability where misrepresentation motivated by bias is perpetrated or used, for example, "[b]ecause of any person's unemployment [status]" § 12 (1)(a), "because of any person's actual or perceived status as a victim of domestic violence, or as a victim of sex offenses or stalking" at § 13 (2).

In addition, amendments would also hold that a person's arrest record will no longer be permitted to justify a denial of equal opportunity, "because of such record, that any license, credit or employment is unavailable when in fact it is available" §11a(2). We are deeply concerned about the widespread use of commercial background checks that often depend on databases which contain inaccurate data not purged, where the formerly incarcerated struggle to re-enter society and often are turned away from jobs and being made ineligible to obtain licenses, permits or similar access to work or housing. [1]

Finally, this bill's use of basic agency principles, §§ 15, 17, is a common-sense way to increase accountability for discrimination. Specifically, Intro 815-A prohibits covered entities from discriminating against anyone because of the protected class status of an employee or agent, regardless of whether the covered entity knows of that relationship. An act doesn't become wrongful only when such a relationship is known -- it is and should be unlawful the moment that a covered entity acts negatively because of protected class status.

Many residents can fall into traps which are hard to overcome; misdirection and misrepresentation premised on bias is not easy to know. New York City industries and bastions of privilege bar access to membership, housing or employment because of one's profile. For example, "resume discrimination" is used where screening an applicant's perceived pedigree - "wrong" name, sex, ethnicity, etc., will mean no callback or fair consideration for an interview. Thus, a job opening or rental apartment can be available but *not* for you if you possess some of attributes which is a cause or motive in denying equal opportunity. Discrimination is a scourge that must be eliminated under enforceable laws.

◈ ◈ ◈

[1] Similar concerns on discriminatory practices based on criminal arrest background resonate in LatinoJustice PRLDEF's pending federal class action lawsuit against a federal program which had screened out thousands of minority individuals with *any* history of arrest, regardless for whether such charges were dismissed or had occurred in the distant past. Discriminatory hiring protocols can adversely and disproportionately prevent otherwise qualified candidates from being considered for employment. See, *www.CensusDiscriminationlawsuit.com.*

In closing, LatinoJustice PRLDEF urges this legislative body to pass Intro 815-A to proscribe forms of discrimination facilitated by designs and activities used to cloak bias in housing, employment, credit and business practices. The struggle for civil rights and equality under law continues.

If you have any questions, please contact *Jackson Chin*, Senior Counsel at (212)219-3360 ext. 7572 or email jchin@latinojustice.org.

FOR THE RECORD

National Fair Housing Alliance

1101 Vermont Avenue, NW, Suite 710, Washington, DC 20005 • (202) 898-1661 • Fax: (202) 371-9744 • www.nationalfairhousing.org

September 21, 2015

Hon. Darlene Mealy
Chair, Committee on Civil Rights
New York City Council
250 Broadway
New York, New York 10007

Dear Council Member Mealy:

The National Fair Housing Alliance (NFHA) is the only national organization dedicated solely to ending discrimination in housing. NFHA is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States.

We regret that we were unable to attend today's hearing, but wanted to express our strong support for each element of Intro 815.

In addition to continuing our national advocacy, we believe it is very important for states and localities to do what they can to preserve and expand fair housing rights for as many people as possible. Intro 815 thrusts New York City into a leadership role for this kind of effort.

We know from long experience that fair housing testing is a crucial tool for identifying housing discrimination, and that private fair housing groups perform the overwhelming amount of testing work. Therefore, it is very important to strengthen the ability of fair housing groups and their testers to bring claims.

Intro 815 not only provides the necessary language to prohibit misrepresentations, but it also makes clear that a group is denied its own right to information free of discrimination when a misrepresentation is made to a tester because of protected class status. This provides a straightforward mechanism for allowing fair housing centers to bring discrimination cases on their merits.

Intro 815, moreover, stands true to the principle that a violation of a civil rights law, in itself is something that allows the victim to pursue enforcement.

Intro 815 is an important, forward-thinking bill, and deserves swift passage. Civil rights allies throughout the country will be heartened by the passage of this legislation.

Sincerely,

Shanna L. Smith
President and CEO

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 108A Res. No. _____

☒ in favor ☐ in opposition

Date: 9/21/2015

(PLEASE PRINT)

Name: Shulamit Warren, on behalf of Manhattan Borough Pres. Gale Brewer

Address: 1 Centre St., 19th South

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 108A Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Holly Chu - on behalf of MBP Gale A Brewer

Address: _____

I represent: (Shulamit Warren had to leave for meeting)

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 810, 815 Res. No. _____

☑ in favor ☑ in opposition

Date: _____

(PLEASE PRINT)

Name: MONICA BARTLEY

Address: 1251 DEKALB AVE #6E, BROOKLYN, NY 11221

I represent: CENTER FOR INDEPENDENCE OF THE DISABLED, NY

Address: 841 BROADWAY, #301, NY NY 10003

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 815 Res. No. _____

☒ in favor ☐ in opposition

Date: 9/21/2015

(PLEASE PRINT)

Name: Felix Martin Lockman

Address: 53 Irving Place, Brooklyn, NY 11238

I represent: The Black Institute

Address: 39 Broadway Suite 1760

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Dana Sussman, Special Counsel

Address: Commission on Human Rights

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 825-A Res. No. _____

☑ in favor ☐ in opposition

Date: 9/21/15

(PLEASE PRINT)

Name: Irene Jor

Address: 34-46 71st #2, Jackson Heights NY 11372

I represent: National Domestic Workers Alliance

Address: 395 Hudson St. Flr. 4 New York NY 10014

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. Rights
Commission on Human ☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT) 1st Special Counsel

Name: Melissa S. Woods, Deputy Commissioner

Address: Commission on Human Rights

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 108 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Phoebe Taubman / A Better Balance

Address: 80 Maiden Lane, Suite 606

I represent: A Better Balance

Address: Same

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 815 Res. No. _____

☒ in favor ☐ in opposition

Date: 29 SEPT 2015

(PLEASE PRINT)

Name: DANIELA NAVAU ESQ

Address: 89-03 Rutledge Avenue Flushing NY

I represent: LAW OFFICE OF DANIELA NAVAU PC

Address: SAME AS ABOVE

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 815-A Res. No. _____

☑ in favor ☐ in opposition

Date: 9/18/15

(PLEASE PRINT)

Name: J. Patrick Delince

Address: 299 Broadway, Suite

I represent: Lawyer's Committee for Civil Rights Law

Address: 1401 NY Ave, NW, Suite 400, Washington, DC. 20005-2124

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 108 Res. No. _____

☑ in favor ☐ in opposition

Date: 9/21/15

(PLEASE PRINT)

Name: James Arnold

Address: _____

I represent: AARP New York City

Address: 750 3rd Ave, Manhattan

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 804 Res. No. _____

☐ in favor ☒ in opposition

Date: 9/21/15

(PLEASE PRINT)

Name: Michael Grenert, Esq.

Address: 800 third Ave., NY, NY 10022

I represent: National Employment Lawyers

Address: Association/New York

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 815-A Res. No. _____

☑ in favor ☐ in opposition

Date: 9/21/15

(PLEASE PRINT)

Name: MARGARET McINTYRE, ESQ

Address: 299 BROADWAY, SUITE 1310, NYC 10007

I represent: NELA / NY

Address: 39 BROADWAY, SUITE 2420 NYC

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 815-A Res. No. _____

☑ in favor ☐ in opposition

Date: Sep 21, 2015

(PLEASE PRINT)

Name: MAIA GOODELL

Address: 299 Broadway, 4th Fl 10007

I represent: NFY Legal Services

Address: Same

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☑ in favor ☐ in opposition

Date: 9/21/15

(PLEASE PRINT)

Name: Karen Cacace

Address: The Legal Aid Society

I represent: 199 Water St 3rd Fl

Address: NY, NY 10038

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 815 Res. No. _____

☐ in favor ☐ in opposition

Date: 09/21/2015

(PLEASE PRINT)

Name: Roger D. Maldonado

Address: 552 58th St., 2nd fl. Brooklyn, NY 11220

I represent: Poverty & Research Action Council (on behalf of)

Address: 1200 18th St. NW, Suite 200 Washington, DC. 20036

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 815 Res. No. _____

☑ in favor ☐ in opposition

Date: 9/21/15

(PLEASE PRINT)

Name: Demoya Gordon

Address: 120 Wall St., 19th Floor, NY, NY 10005

I represent: Lambda Legal

Address: 120 Wall St, 19th Fl., NY, NY 10005

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 108 Res. No. 108

☑ in favor ☐ in opposition

Date: 09/21/2015

(PLEASE PRINT)

Name: JAMES E. Arnold

Address: 411 E 92th Street 2E

I represent: AARP NY state

Address: _____

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 815 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: LORI BIKSON

Address: 57 W 57th St NY NY

I represent: Asian American Legal Defense

Address: 99 Hudson St NY NY 10013

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 815-A Res. No. _____

☒ in favor ☐ in opposition

Date: 9/21/15

(PLEASE PRINT)

Name: Fred Freiberg

Address: 5 Hanover Sq. 17th Fl. NY NY

I represent: Fair Housing Justice Center

Address: 5 Hanover Sq 17th Fl. NY, NY

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 825-A Res. No. _____

☑ in favor ☐ in opposition

Date: 9/21/15

(PLEASE PRINT)

Name: [redacted] Gayle Kirshenbaum

Address: 486 17th st Brooklyn, NY 11215

I represent: Hand in Hand Domestic Employers Network

Address: 395 Hudson St. Flr. New York NY 10014

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 815 Res. No. _____

☒ in favor ☐ in opposition

Date: 9-21-15

(PLEASE PRINT)

Name: CRAIG GURIAN

Address: 57 W 57 ST NY NY

I represent: FAIR PLAY LEGISLATION

Address: 57 W 57 ST NY NY

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