

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS

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HELD AT: Council Chambers
City Hall

B E F O R E:
DANIEL R. GARODNICK
Chairperson

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Leroy. G. Comrie, Jr.
Karen Koslowitz
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2 CHAIRPERSON GARODNICK: Good
3 morning. Good afternoon. Let's start that again.
4 Good afternoon everyone and welcome to the
5 Consumer Affairs Committee of the New York City
6 Council. Today is Thursday, September the 20th.
7 My name is Dan Garodnick. I have the privilege of
8 chairing this Committee. I am joined today by
9 Council Members Koslowitz, Nelson, and Fidler, and
10 we are hearing today—it's an oversight hearing
11 entitled gas stations in New York City, putting a
12 premium on consumer protection. Thousands of
13 times each day, New Yorkers motor into gas
14 stations to fill up their tanks given an average
15 price per gallon hovering around \$4.00 and
16 creeping up to \$5.00 a gallon in some locations.
17 New Yorkers are also shelling out a lot more money
18 today compared to even just a couple of months ago
19 when the average price per gallon was \$3.44.
20 While we can't control the price of gasoline
21 locally, we can ensure that New York City's more
22 than 1800 gas stations adhere to a host of
23 consumer protection laws designed to protect the
24 public. They include of course, prohibiting price
25 gouging, increasing prices more than once within a

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2 24 hour period, not delivering the accurate number
3 of gallons that are actually being paid for and
4 selling in a manner that deceives consumers
5 regarding a gasoline's price, quality or identity.
6 Other consumer protection laws are specific to
7 signage. Local law requires for example that any
8 sign visible to drivers around a gas station's
9 premises must include the total price per gallon
10 for each grade of gasoline offered for sale;
11 however, if a gas station charges two prices for
12 the same gasoline grade one price for cash
13 purchases and another usually higher price for
14 credit card purchases, local law does not require
15 that both prices are displayed on those street
16 level signs or that the signs state that the
17 posted prices are the lower usually cash prices
18 for a given gasoline grade. So imagine a motorist
19 driving on fumes and needing to fill up her tank,
20 she spots a gas station street level sign
21 indicating that it sells 87 octane gas for \$4.09 a
22 gallon. That's about average she thinks and she
23 drives into the station. She pulls up to the
24 pump. After she turns off her engine and gets out
25 of her car, she notices that \$4.09 is actually the

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2 cash price for 87 octane. The credit card price
3 for that grade unfortunately is \$4.29. She has a
4 couple of dollars in her wallet, and she can
5 either cough up the extra 20 cents a gallon and
6 pay with a credit card or she can get back into
7 her car to search for a cheaper gas station and
8 hope that the next station's sign are not equally
9 deceptive and I might add hope that she does not
10 run out of gas on the way. Council Member Fidler
11 has introduced legislation Intro 702, which would
12 require that gas stations on their street level
13 signs either post both cash and credit card prices
14 for each grade of gasoline or to indicate that the
15 single posted price for each grade is the cash
16 price. Intro 702 is on today's agenda and Council
17 Member Fidler will make a few comments in a moment
18 on his bill, but first I want to raise one more
19 point about gas stations charging a higher price
20 for credit card rather than for cash purchases.
21 New York State law prohibits sellers from imposing
22 a credit card surcharge, and thus, the practice of
23 some gasoline stations charging a higher price for
24 a credit card purchase would seem to be in
25 violation of state law. Today the Committee will

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2 explore with the Department of Consumer Affairs
3 (DCA) why gas stations may if they may charge a
4 higher price for credit card purchases at all, and
5 how that practice is consistent with state law.
6 In addition given that DCA is the agency charged
7 with enforcing all local and state consumer
8 protection laws locally, this Committee will
9 examine the degree to which gas stations are
10 complying with applicable laws today. So before
11 we hear from DCA, let me recognize the presence of
12 Council Member Oliver Koppell, a member of the
13 Committee, and I'd like to turn the microphone
14 over to Council Member Fidler.

15 COUNCIL MEMBER FIDLER: Thank you,
16 Mr. Chairman and first let me begin by thanking
17 you for scheduling this hearing on Intro 702 - -
18 issues to Speaker Quinn for calling attention to
19 this issue very publically this morning and to my
20 counsel, Brad Reed [phonetic], who is seated in
21 the front row, who helped craft this legislation.
22 Yesterday at the Housing and Buildings Committee I
23 made reference to the concept of a legal fiction.
24 It's a term I learned in my first days of law
25 school. It's when something that you know really

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2 isn't true, accurate is nonetheless lawful and you
3 kind of wink. The example I gave is when you go
4 into a casino and you pull up to the video
5 terminal lottery terminal lottery machines, and we
6 don't call them slot machines. We all know they
7 are slot machines, but in New York they are
8 lottery devices. That is a legal fiction. New
9 York State law when it comes to consumer
10 protection on gasoline prices is a legal fiction.
11 To make it illegal to charge extra for a credit
12 card, but not make it illegal to charge less for
13 cash is a distinction without a difference. It's
14 ridiculous and it actually I think is embarrassing
15 to the lawmakers of the state of New York who have
16 passed that legislation and I would hope that they
17 would change it. Clearly the City Council does
18 not have the power to do that. What we do have
19 the power to do however is to educate and make
20 consumers aware to make the process oh,
21 transparent as say calories on a menu of a chain
22 restaurant is in the city. I had the experience
23 yesterday of filling my car after - - I was
24 virtually on empty. It cost me \$102.00 to fill my
25 car with gas yesterday. Now as someone maybe the

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2 only person the room who is old enough to remember
3 when gasoline was \$0.399 that was quite a shock.
4 I'm kind of used to paying less than that. I used
5 my credit card. That probably cost me an extra
6 four or five dollars for the privilege. I
7 remember when I used to pull into a gas station
8 and for the price of \$0.399 they were anxious that
9 I would use their credit card. I recognize that
10 some stations do not charge for use of their
11 company credit card, but I think the practice of
12 using company gasoline credit cards has sort of
13 disappeared or certainly lessened now that people
14 more commonly use credit cards and debit cards for
15 all kinds of transactions. Information is power,
16 and you are empowering consumers should you pass
17 Intro 702. Signs ought to be clear. They ought
18 to make it clear if that price that is being
19 advertised is for cash only. If there are
20 multiple prices, they should all be posted in my
21 view. I know that this original bill passed, the
22 signage bill passed, in the city in the early
23 '80s. My late friend, Ted Silverman, was the
24 sponsor of that bill and I certainly know that he
25 would be standing her with me today if he could

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2 saying we could make that bill better by making it
3 require that all signs have all prices on them or
4 indicate that they are only for one class in
5 price, so I look forward to this hearing. I hope
6 that we will back here in the not too distant
7 future enacting this or an amended piece of
8 legislation that can get the job. I thank you for
9 your time.

10 CHAIRPERSON GARODNICK: Thank you,
11 Council Member Fidler, and with that, we are going
12 to invite our first witnesses to come testify,
13 representatives from the city's Department of
14 Consumer Affairs, and as soon as you are settled
15 and comfortable, please introduce yourselves and
16 we look forward to hearing your testimony.

17 [pause]

18 FRAN FREEDMAN: Am I on? Good
19 afternoon, Chairman Garodnick and members of the
20 Committee, and especially Council Member Fidler.
21 I am Fran Freedman. I am deputy commissioner for
22 external affairs for the Department of Consumer
23 Affairs, and I have with me John Brown, who is our
24 director of petroleum enforcement. John speaks
25 octane better than anyone I know, so he has joined

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2 me today, and Mr. Chair, I'd like to tell you that
3 we have with us three special guests; my three
4 graduate students from Columbia University's
5 school of social work. This is the very first
6 time the Department has served as a field
7 placement for Columbia University's school of
8 social work—my alma mater. They're going to
9 expanding the capacity of our service delivery in
10 our financial impoundment office, and I'm just
11 delighted that they were able to join us today.

12 CHAIRPERSON GARODNICK:

13 [Interposing] Thank you, and we welcome them as
14 well/

15 FRAN FREEDMAN: --and I just wanted
16 to acknowledge and welcome them. Thank you.
17 Commissioner Mintz, of course, asked me to thank
18 you all for the opportunity to appear before you
19 today at your oversight hearing on gas stations in
20 New York City, putting a premium on consumer
21 protection and you are hearing on Intro number
22 702, Council Member Fidler's bill, and that is the
23 bill that would require that all signs advertising
24 the price of gasoline and/or diesel motor fuel
25 disclose the total selling price for cash and

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2 credit card purchases. As the Department works
3 directly through how our financial impoundment
4 centers with tens of thousands of New Yorkers
5 struggling to stretch their paychecks to make ends
6 meet. We obviously share the Council's concerns
7 about the impact of rising gas prices on our
8 city's residents on our visitors, and while you
9 know and as Chairman Garodnick has stated, the
10 city has no control over the price of gas. The
11 Department's inspectors worked every day to ensure
12 that New Yorkers and tourists get every drop of
13 gas that they pay for at each and every gas pump
14 at each and every gas station throughout the five
15 boroughs. Thanks to legislation over the decades
16 by City Council and the State, the Department is
17 empowered to inspect the city's approximately
18 10,000 pumps across approximately 800 gas stations
19 for accuracy on average of at least once and often
20 twice each year and as well to be able to condemn
21 pumps on the spot that don't meet standards of
22 accuracy. Not only does DCA conduct this high
23 volume of regular inspections, it reinspects those
24 condemned devices, which must be fixed before
25 being allowed by the Department to be put back

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2 into service. We also just deploy our inspectors
3 to respond to consumer complaints, which we
4 receive through 311 and our website. Since 2008,
5 DCA has visited gas stations 6,293 times
6 inspecting as many as 11,756 pumps in 2008 to
7 10,248 pumps in 2012. As you can see there has
8 been a diminishment in the number of pumps and the
9 number of gas stations. Of those inspections
10 2,449 yielded one or more violations with 3,663
11 separate charges issued. During the five year
12 period, 1660 pumps were condemned and taken out of
13 service until they were fixed. In 2012 alone,
14 inspectors visited 828 gas stations, 1,275 times
15 inspection 10,248 pumps and condemning 494 of
16 them. There were 523 inspections which yielded
17 one or more violations, with 778 charges issued.
18 Top charges issued since 2008 include 276 for
19 short measure on the pumps, 228 for not painting
20 the ports with proper colors, 224 for not priming
21 the pumps, which means that the gas stations had
22 failed to have the require five gallon test
23 measure on premises for the purpose of priming its
24 pumps properly and 210 for gas pumps which failed
25 to cut off the flow of gas properly. In addition,

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2 those gas stations, which sell pre-packed food
3 items were issued 660 violations for failing to
4 provide customers with scales to confirm posted
5 weights, just like any other supermarket, bodega,
6 grocery store, et cetera. Nearly 180 violations
7 were issues over the five years fir such deceptive
8 trade practices and failing a state a price posted
9 on a curb sign is for cash or credit when there is
10 price differential between the two, failing to
11 have an attendant at a full service aisle, failing
12 to state that debit card transactions are charged
13 at credit card prices when they were failing to
14 post the sulfur content signage on all diesel
15 pumps.

16 Let me take you on a virtual
17 inspection of a gas station. Here is what DCA's
18 inspectors check in addition to some product
19 sampling they do and other technical items for the
20 state quality control program; our inspectors look
21 for posted proper matching signage and pumps and
22 curb signs including that the unit price on the
23 pump matches the price posted on the stations main
24 signage and curb signage and curb signage. They
25 look for properly painted and marked fill powers

1 based on product type and ethanol content. For
2 example premium products are red with a white
3 cross. Midgrade products are blue with a white
4 cross and regular gasoline products are white with
5 a black cross. Products which contain ethanol as
6 an extender must have borders in certain colors
7 painted around each fill port. They look for pump
8 dispensing accuracy. They look at gas octane and
9 levels advertised and priced. They look for
10 proper maintenance of gasoline storage tanks, and
11 they look finally at functioning equipment
12 including indicator lights, nozzles, air
13 compressors and valves. Inspectors also check to
14 that the gasoline brand new appears on all
15 dispensers, that all internal security seals are
16 in place and that there are property delivery
17 documents. Over the past five years we have
18 received from 311 a total of about 4,000 consumer
19 complaints. More than half were requests for
20 inspections. In calendar year 2011 for example,
21 367 inspections were conducted based on consumer
22 complaints. Annually an average of approximately
23 450 complaints that come to us from 311 are for
24 all kinds of overcharging. The good news for
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2 consumers is that over the five year period
3 compliance rates for the city's pumps remain at a
4 high of 97 percent. DCA estimates that compliance
5 is fairly even across the boroughs. In 2012 we
6 inspected more than 430 pumps in Manhattan with 92
7 percent compliance--more than 2,000 pumps in the
8 Bronx with 92 percent compliance, over 3,000 pumps
9 in Brooklyn with 95 percent compliance, over 3,440
10 pumps in Queens with 97 percent compliance and
11 more than 1,170 pumps in Staten Island with 97
12 percent compliance. The Department's strong
13 working relationship with the New York State
14 Association of service stations and repair shops,
15 the area's largest organization of gasoline
16 retailers has helped ensure such high compliance
17 rates. At the end of the day New Yorkers should
18 be reassured that despite high prices for
19 gasoline, they are literally getting every drop of
20 gas for which they pay so dearly, Regarding Intro
21 702, which would require that all signs,
22 advertising the price of gasoline and/or diesel
23 motor fuel disclosed the total selling price for
24 cash and credit card purchases. The Department
25 heartily supports the legislation. We believe

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2 that the enhanced signage will make it easier for
3 consumers to ascertain the cost of fuel before
4 pulling into the gas station. Thank you again for
5 the opportunity to discuss how the Department
6 protects consumers at the gas pumps and to comment
7 on proposed legislation. I'll be happy to answer
8 your questions.

9 CHAIRPERSON GARODNICK: Thank you
10 very much for your testimony. Let me note that we
11 have been joined by Council Member Leroy Comrie,
12 and let me just jump into—I'm sorry, Council
13 Member Ferreras too. Let me jump into the
14 question about Section 518 of the State's General
15 Business Law, which of course is the one which
16 prohibits sellers from imposing a credit card
17 surcharge at all. This Committee wants to
18 understand very clearly. You heard about this
19 from and certainly from my Council Member Fidler
20 how this law applies to gas stations here. Some
21 of the stations today are actually charging more
22 credit card purchases than they are charging for
23 cash purchases, and it appears that what they are
24 claiming is they are offering a cash discount. Is
25 this—

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FRAN FREEDMAN: [Interposing]

Correct.

CHAIRPERSON GARODNICK: So that is your understanding of what is going on.

FRAN FREEDMAN: That is our understanding.

CHAIRPERSON GARODNICK: Now how is a cash discount any different from offering two different prices for gasoline?

FRAN FREEDMAN: I think Council Member Fidler said it all. It's a fiction; however, it complies with the law because it's a discount.

CHAIRPERSON GARODNICK: Now so the law as far as DCA understands--

[crosstalk]

CHAIRPERSON GARODNICK: If is treated as a cash discount, it does not violate Section 518--

FRAN FREEDMAN: [Interposing]
Correct.

CHAIRPERSON GARODNICK: --of the general business law?

FRAN FREEDMAN: Correct.

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2 CHAIRPERSON GARODNICK: Could it be
3 equally reasonable for the Department of Consumer
4 Affairs to conclude that the nomenclature of cash
5 discount is simply as Council Member Fidler put it
6 a distinction without a difference, and therefore,
7 is a violation of law?

8 FRAN FREEDMAN: I think I would
9 have to put that to our legal division.

10 CHAIRPERSON GARODNICK: Have you?

11 FRAN FREEDMAN: No. Well, I mean
12 they have made the interpretation as we have
13 discussed. We haven't discussed the reverse.

14 CHAIRPERSON GARODNICK: Okay, so
15 DCA has concluded for itself that a cash discount
16 is not inconsistent with the state's general
17 business law?

18 FRAN FREEDMAN: Correct. It is not
19 considered a surcharge.

20 CHAIRPERSON GARODNICK:
21 [Interposing] Well—

22 FRAN FREEDMAN: I mean the—

23 [crosstalk]

24 CHAIRPERSON GARODNICK: So if we
25 had a clothing store out there that was charging

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2 two different prices for each article of clothing
3 that it sold, a cash price and a higher credit
4 card price, would that store be in violation of
5 the State's General Business Law.

6 FRAN FREEDMAN: A retail store must
7 disclose if they do in fact charge a surcharge for
8 credit cards, which we don't control. They must
9 disclose that.

10 CHAIRPERSON GARODNICK: And may
11 they?

12 FRAN FREEDMAN: Yes.

13 CHAIRPERSON GARODNICK: A retail
14 store—

15 FRAN FREEDMAN: [Interposing] A
16 retail store may charge a surcharge for credit
17 cards and long as they disclose it.

18 CHAIRPERSON GARODNICK: Okay.

19 FRAN FREEDMAN: In other words, you
20 know, if you are using a credit card.

21 CHAIRPERSON GARODNICK: Retail
22 stores can, gas stations cannot? That is what you
23 are saying?

24 FRAN FREEDMAN: As long as they
25 disclose it.

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2 CHAIRPERSON GARODNICK: Okay. So
3 there would never be a situation which DCA could
4 enforce against a retail store for charging extra
5 money for the same—

6 FRAN FREEDMAN: [Interposing]
7 Actually, Mr. Chair, I'd have to check that. Let
8 me check that because I know this is an issue.
9 Yeah. I'd have to check that.

10 CHAIRPERSON GARODNICK: Okay. I'm
11 not certain. I would like you to check that. I'm
12 not certain that that is right.

13 [crosstalk]

14 CHAIRPERSON GARODNICK: My
15 understanding of the general business law Section
16 518 is that it prohibits sellers from imposing
17 credit card service charges--

18 FRAN FREEDMAN: [Interposing]
19 Right, right, right, right, right. So I'd have to
20 check that.

21 CHAIRPERSON GARODNICK: Which in my
22 view would include a retail store, which also in
23 my view includes gas stations even if they are
24 using a different nomenclature to do that very
25 thing. Go ahead, that would be great.

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2 COUNCIL MEMBER FIDLER: My counsel
3 has handed up—he actually did a little memo for me
4 on this. Apparently DCA attempted to prosecute a
5 gas station owner for charging two prices for cash
6 and credit, and unfortunately the court and the
7 people versus - - held that it was a New York cash
8 discount, and that is the origin of why DCA—

9 FRAN FREEDMAN: [Interposing] Of
10 the interpretation.

11 CHAIRPERSON GARODNICK: I see, so
12 DCA actually agrees with the interpretation of at
13 least some of the members of this Committee,
14 perhaps all of the members of this Committee, but
15 it was the court and that - - case, which allowed
16 for that distinction to proceed. Thank you,
17 Council Member Fidler for that. Local Law 38,
18 which we passed here in the Council in 2006
19 prohibits increasing gas prices more than once in
20 a 24 hour period. Now that is a law which I would
21 assume would be hard for the DCA to enforce
22 through its regular inspection protocols.

23 FRAN FREEDMAN: It is arduous
24 because what you have to do is inspect the
25 records, the documents and we do it, but it takes

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a while. John if you want to talk—

CHAIRPERSON GARODNICK:

[Interposing] Take us through a virtual inspection of compliance with Local Law 38.

[crosstalk]

JOHN BROWN: Basically what we will check these records for the day's activities and the law requires that the price is there listed on the top and then we will add all of the transactions that have taken place during the course of the day, divide that by the number of transactions to see whether there was a change in the price. If he has not listed the unit price that he is charging, we simply issue the violation for not having proper records.

CHAIRPERSON GARODNICK: So okay just let me make sure I understand that. So you go through all of the transactions—

JOHN BROWN: [Interposing] All the day's transactions.

CHAIRPERSON GARODNICK: --and with the total cost of every transaction, based on the per gallon charge.

JOHN BROWN: Every one that they

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2 charged and then add that up, divide by the total
3 number of transactions that took place. That
4 number should equal the - - .

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CHAIRPERSON GARODNICK: Okay, so
6 and this is a matter of record keeping that a gas
7 station is required to hold on to?

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JOHN BROWN: Yes, it is.

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CHAIRPERSON GARODNICK: And if a
10 gas station stopped reporting those transactions
11 at say 2pm on a particular day and DCA came in to
12 inspect the books, and saw that there were no
13 transactions after 2pm that day, and you say,
14 "Well, what's the deal??"

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JOHN BROWN: [Interposing] We would
issue the violation-

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CHAIRPERSON GARODNICK: Well, how
do you know that they were still selling after - -
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JOHN BROWN: Because you'd know the
break in the shift, so you look at the notes that
are there, so if at 2 o'clock all of a sudden
there is no records any longer, when you get the
shift change and the sales start up again because
usually what they were doing with this in 24 hours

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2 is when you have your rush hour keep going on we
3 would raise the price and then when you wanted to
4 be more competitive when people weren't rushing to
5 work, - - gas to get there, they would lower the
6 price back down. So at 2 o'clock that is when you
7 might see your drop in the price, and then the
8 price would escalate back to the higher price when
9 rush hour hit again. So once we saw the block of
10 time that was missing and then the block of time
11 where the sales took place again—we're on a 24
12 hour station—we make the assumption that you were
13 selling through the entire day and take the
14 appropriate enforcement action.

15 CHAIRPERSON GARODNICK: Got it. So
16 let me ask one more question before I go over to
17 Council Member Fidler. Prior DCA press released
18 on the subject of gas station inspections have
19 revealed that back in 2005 there were 1200
20 stations inspected with about 14,000 pumps. In
21 2001, there were 1800 stations inspected with
22 about 10,000 pumps. And so one question that I
23 have is why were there so many more gas stations
24 present in the city of New York between 2005 and
25 2011? 'Cause there were apparently 1200 stations

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2 in 2005 stations in 2005 and 1800 stations in 2011
3 with fewer pumps inspected? Can you help us
4 understand those stats? They come out of DCA press
5 releases and I'm throwing this at you without-

6 FRAN FREEDMAN: No. We have
7 noticed a diminution, a significant diminution in
8 the number of gas stations in the city. Stations
9 have been closing. They have been shrinking in
10 size as property values go up and they sell off
11 parts of or all of their stations. We have
12 noticed that. In terms of are you suggesting that
13 there are fewer pumps as well?

14 CHAIRPERSON GARODNICK: Actually I
15 am not really even suggesting anything. I am
16 reading off of the DCA press release, which noted
17 that there were 1200 stations in 2005 and 1800
18 stations in 2011, so the opposite of what you just
19 said that there were actually more stations now or
20 at least until last year. John will explain.

21 CHAIRPERSON GARODNICK: Please.

22 JOHN BROWN: There are several
23 different types of inspections that are taking
24 place. There is the annual inspection which - -
25 done on every station throughout the city. Then

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2 during the course of the year you will have
3 consumer complaints against different stations.
4 We may have multiple complaints against the same
5 station over a period of time. Also, we get
6 requests by repair companies who have come in and
7 broken out security seals in order to form
8 recalibrations on pumps. We go back to check the
9 work done by the repair people and replace our
10 security seals back on those pumps. Those are all
11 inspections that are performed by the department.
12 There are also sweeps that we perform for quality
13 of gasoline that we will do on various weekends
14 and what have you. Those are also inspections.
15 As far as the number of pumps that are shrinking,
16 based on the changing technology, the single
17 dispenser is being pretty much done away with and
18 replaced by blend pumps. So we are at one point
19 in time if I were selling three different products
20 I would have three separate pumps. Now I have a
21 blend, which is only two, so one of them has been
22 taken away. So that is the reduction.

23 CHAIRPERSON GARODNICK: Okay. That
24 makes perfect sense, and on the number of stations
25 perhaps it's the number of station inspections

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that you all did is what was released.

JOHN BROWN: That total depends on as I said the repair requests we get and the consumer complaints that come in.

CHAIRPERSON GARODNICK: Okay. Great. Council Member Fidler?

COUNCIL MEMBER FIDLER: Chairman, good to see you again. I have to say you know that you have a good idea. It's got to be a really good idea when Lew Fidler proposes something and the Bloomberg Administration heartily supports it, so - - . I'm very happy and I appreciate the support and I hope and recognize they are probably some things that I would change in my own bill here before we pass it, but I hope we can work together to make it happen. I do want to ask you, does DCA maintain a website?

FRAN FREEDMAN: Excuse me?

COUNCIL MEMBER FIDLER: Does DCA maintain a website?

FRAN FREEDMAN: Oh yes. I hope you have visited it.

COUNCIL MEMBER FIDLER: I can't honestly say-

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2 FRAN FREEDMAN: [Interposing
3 nyc.gov/consumers. Please visit.

4 COUNCIL MEMBER FIDLER: Okay. It
5 would be my pleasure. Do you post the list of
6 people or stations that violate the - - issue a
7 violation for shorting you at the pump?

8 FRAN FREEDMAN: We don't publish
9 any violation information on our site. We have
10 something called instant license check and you can
11 check licensees. We don't however license gas
12 stations.

13 COUNCIL MEMBER FIDLER: Would there
14 be any - - to the law or policy that would prevent
15 you from listing those stations that have been
16 violated for say giving you $\frac{3}{4}$ of a gallon when you
17 paid for a gallon?

18 FRAN FREEDMAN: I think, Council
19 Member, it's an overall policy decision that we
20 have grappled with from time to time in terms of
21 listing violations across industries, and it's
22 something we can certainly continue to discuss.

23 COUNCIL MEMBER FIDLER: I honestly
24 think that that is a piece of knowledge that I as
25 a consumer would very much want to know because

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2 it's really no way of knowing if the gas station
3 you have pulling into for the last year and most
4 of us are creatures of habit. We frequently go
5 back to the same station is one that's been
6 cheating. And I am going to submit an - - request
7 that we require them to be posted, at least for a
8 year after they have been corrected, so people can
9 not only be aware that they are cheated, but to be
10 conscious that if they are going there, they
11 should really be checking in some way to see
12 whether they are cheated again. It would help you
13 keep track of people who have shown a tendency
14 towards violating the law, and you can probably
15 steal more money by shorting people at the gas
16 pump than even by charging them a price other than
17 what it's supposed to be. So I appreciate your
18 mentioning how many of those there are, and - -
19 piece of legislation as soon as I can get to it.
20 Thank you.

21 FRAN FREEDMAN: Thank you.

22 CHAIRPERSON GARODNICK: Thank you
23 very much, Council Member Fidler. Let me follow
24 up with a few more questions here on the subject
25 of enforcement by DCA. Now that we have a better

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2 understanding about the process for issuing a
3 violation under local law 38 that again is the law
4 preventing multiple changes in prices, how often
5 have there been violations issued for violations
6 of that law?

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FRAN FREEDMAN: That is data we
8 don't have at the moment, but we can certainly
9 look that up, and get back to you.

10

CHAIRPERSON GARODNICK: Okay, it's
11 just not information that you have at the hearing,
12 but it is something that is within DCA's capacity
13 to determine?

14

FRAN FREEDMAN: We will try.

15

CHAIRPERSON GARODNICK: Okay. What
16 would be the challenge in figuring that out? Is
17 that related to your internal - - issues?

18

[crosstalk]

19

FRAN FREEDMAN: Exactly. Exactly.
20 Exactly.

21

CHAIRPERSON GARODNICK: So are
22 these tickets issued by hand?

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FRAN FREEDMAN: All of our tickets
24 are issued by hand. Yes.

25

CHAIRPERSON GARODNICK: So-

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2 FRAN FREEDMAN: [Interposing] That
3 is the challenge.

4 CHAIRPERSON GARODNICK: I ask that
5 because obviously we have seen that issue before
6 and we do as part of the oversight for this
7 hearing, we do want to know the answer to that
8 question because that was a law that came out of
9 the City Council. Complaints from consumers about
10 cash versus credit pricing; do you get those?

11 FRAN FREEDMAN: We do get them as I
12 think I mentioned we have had at least 4,000
13 complaints transmitted from 311. What we have
14 noticed is that fully half of them are anonymous.
15 We docket only those complaints where consumers
16 have specifically asked for cash refunds and those
17 were over the years only 33. We have in fact
18 gotten—there were about 16 having to do with being
19 overcharged and wanting a cash refund. We were
20 able to successfully mediate those and we were
21 able to successfully return to consumers a little
22 more than \$500.

23 CHAIRPERSON GARODNICK: So just to
24 be clear, the 4,000 complaints were across all
25 categories of issues?

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FRAN FREEDMAN: Yes.

CHAIRPERSON GARODNICK: they were not all related to confusion about - - credit card-

[crosstalk]

CHAIRPERSON GARODNICK: And it's very hard to-the 450 that have something to do with overcharge have overlapping categories, so it is hard to know, and it's hard to tease out what it specifically something related to a confusion between a cash price or a credit card price, and I would say, even if people are not explicitly complaining about this, it is clearly an issue, which is why you're supporting it and certainly why-

FRAN FREEDMAN: [Interposing]

Absolutely. Absolutely.

CHAIRPERSON GARODNICK: --this Committee is enthusiastic about adding more transparency to the process because once you are there, I mean, most people are not stepping up and saying I must call 311 or I must complain to the DCA about this or that. They may be monetarily annoyed, frustrated and then carry on with their

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lives.

FRAN FREEDMAN: Which is why fully half of the 4,000 did complain anonymously. What they want is to vent, and then you know, not necessarily have action taken.

CHAIRPERSON GARODNICK: When there are some abnormal disruptions in the market like hurricanes or other weather extremes, what does DCA do to make sure that retailers including gas stations that they are not engaging in price gouging?

[background conversation]

CHAIRPERSON GARODNICK: So nothing?

FRAN FREEDMAN: Correct.

CHAIRPERSON GARODNICK: Should we be concerned about that?

FRAN FREEDMAN: You know, I think the only way we could even begin to become concerned is to look and see if there were patterns of 311 calls related to those times of emergencies, but—

CHAIRPERSON GARODNICK:

[Interposing] And do you get - -

[crosstalk]

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CHAIRPERSON GARODNICK: --price gouging in times of emergency?

FRAN FREEDMAN: Not related to gas. We have during the blackouts, there have been times when there have been reports.

CHAIRPERSON GARODNICK: So when there are reports about a retailer or about whoever, and maybe it is not usually a gas station, what does DCA do at that point?

FRAN FREEDMAN: We look into it.

CHAIRPERSON GARODNICK: Real time?

FRAN FREEDMAN: Real time, but we haven't found anything along those lines. It's not something that has surfaced as an issue for us.

CHAIRPERSON GARODNICK: So you don't believe that price gouging-

[crosstalk]

CHAIRPERSON GARODNICK: --emergency issue in New York City? Okay. Do you ever collaborate with the attorney general's office in its efforts to regulate gas stations, or do you operate mostly independently?

FRAN FREEDMAN: Independently.

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2 CHAIRPERSON GARODNICK: Going back
3 to the DCA past press releases, on pump
4 condemnations, we haven't talked a whole lot about
5 pump condemnations because there is actually a
6 pretty high rate of compliance it sounds like for
7 gas stations. In fiscal year, 2009, there was 1.9
8 percent of the pumps were condemned by my
9 information here. In fiscal year '11, there were
10 3.1 percent.

11 FRAN FREEDMAN: Correct.

12 CHAIRPERSON GARODNICK: Do those
13 numbers generally hover at, around or below 3
14 percent? Is that—

15 FRAN FREEDMAN: Yes, if you look at
16 the pattern over the last five years, that is
17 exactly correct. I can read you if you're
18 interested—

19 CHAIRPERSON GARODNICK:
20 [Interposing] Read us what?

21 FRAN FREEDMAN: The numbers that
22 were condemned - - 2008.

23 CHAIRPERSON GARODNICK: For the
24 last five years?

25 FRAN FREEDMAN: Yeah.

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CHAIRPERSON GARODNICK: Go for it.

FRAN FREEDMAN: Thank you. Okay, so in 2008, it was 205 for 98 percent compliance. In 2009 it was 227, again for 98 percent compliance. In 2010, it was 310 condemned for 97 percent compliance. We had a little falling off in 2011 with 424 condemned for a mere 96 percent compliance, and this year unfortunately, we saw a further falling off—494 pumps were condemned for 95 percent compliance. That still brings your five year average to 97 percent.

CHAIRPERSON GARODNICK: Are you able to pinpoint what might be the cause of the additional need for pump condemnations in the last couple of years? 'Cause there has been a couple of big jumps between 2010 and 2012. It went from 310 to 494. What's going on there?

JOHN BROWN: Well, basically what is going on is you have stations where people are not buying as much gas as they were before, and stations quite honestly as cutting their maintenance budgets and we are finding a cheaper brand of nozzle being used. It's a perfectly legal nozzle, but it's not as good as what was

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2 being used previously, so we are getting problems
3 with the anti-drain valves and so the devices
4 cause—not because the pump is delivering a short
5 measure—but because part of the system is not
6 functioning property and therefore, it is
7 condemned.

8

CHAIRPERSON GARODNICK: In a
9 February 21, 2011 press release, DCA cited some of
10 the reasons for condemning a pump. Reasons which
11 I may not understand sitting here, and would love
12 it if you could give us a clearer picture—pump
13 creeping. What is pump creeping?

14

JOHN BROWN: This is when you lift
15 up the nozzle—

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CHAIRPERSON GARODNICK:
17 [Interposing] And it follows you around.

18

JOHN BROWN: - - gauge the
19 interlock and all of a sudden, the pump starts to,
20 and you haven't even begun to dispense product.
21 You have not engaged the trigger. It is the pump
22 is creeping.

23

CHAIRPERSON GARODNICK: Got it.
24 How about improper maintenance of station devices?
25 How would you assess that?

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JOHN BROWN: State law requires that a station be maintained in such a way that there are pumps that are going to be in the consumer's favor. There are going to be pumps that are in the vendor's favor, and there are pumps that are at zero. A preponderance of those pumps in the favor of the vendor is considered to be an improperly maintained station, and therefore, it is condemned and violations are issued.

CHAIRPERSON GARODNICK: Burned out indicators?

JOHN BROWN: You will see in these eight bar [phonetic] indicators they burn out, so then when you look at it, you can't tell what the unit price actually is. You can't tell in some cases what the price per gallon that you paid actually was, or you can't tell how many gallons you received because part of the indicator is burned out.

CHAIRPERSON GARODNICK: The indicator is that

[crosstalk]

CHAIRPERSON GARODNICK: When you

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2 are filling your tank, it's the thing that is
3 ticking and ticking upward.

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JOHN BROWN: That is it.

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CHAIRPERSON GARODNICK: Going back

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to the 2011 press releases from DCA, it looked

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like between 2009 and 2010 there was a drop off in

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the number of complaints reported to DCA. We have

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1329 in fiscal year '09 and 645 in fiscal year

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'10. Can you help us understand the dramatic

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reduction from one year to the next?

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FRAN FREEDMAN: I wish I had a good

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idea, but I don't. There may have been other

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things on consumers' minds during that year.

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CHAIRPERSON GARODNICK: Do you have

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the number of complaints going back over a five

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year time horizon as you did for the compliance-

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FRAN FREEDMAN: [Interposing] Yes,

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I can tell you precisely the complaints that came

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through 311. In 2008, there were 948. In 2009,

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there were 1,332. In 2010, 612. In 2011, 808,

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and in 2012, 673.

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CHAIRPERSON GARODNICK: Okay, so it

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actually really was more of a bump in 2009.

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FRAN FREEDMAN: In 2009.

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CHAIRPERSON GARODNICK: Mm-hmm.

Okay. In an inspection, we noted that there is such a thing as an overcharge and an inaccurate meter. Well, first of all, explain the difference between those. If one is just volume related and one is just pricing related, then that may be the answer, but tell us what the difference is between overcharge and inaccurate meter and what the penalty is for each of those.

JOHN BROWN: That is exactly the difference. They are pretty much the same thing. It depends on whether you are talking about the short measure that was delivered or resulted in overcharge and it results in less products than the meter actually registered.

CHAIRPERSON GARODNICK: Okay, and the penalty for each is the same?

JOHN BROWN: I don't know. I have no idea about - - .

CHAIRPERSON GARODNICK: You just issue the violations?

JOHN BROWN: I feel it's a conflict of interest for enforcement personnel to even deal with that aspect of the Department, so we stay as

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far away from it as we possibly can.

CHAIRPERSON GARODNICK: I think that is fair, but I will ask your colleague, Ms. Freedman, whether she knows the answer.

FRAN FREEDMAN: I don't know the answer, but we can find out.

CHAIRPERSON GARODNICK: Will you please? That would be great. We will put that on our follow up list here. Okay. Well, those are all of the questions that I have for you all, so we appreciate your support of Council Member Fidler's legislation, and Council Member Fidler, I look forward to moving this bill through this Committee as quickly as we can and certainly talking about those amendments that you had in mind. We appreciate your testimony today and we will look forward to the follow up as well.

FRAN FREEDMAN: Thank you so much.

CHAIRPERSON GARODNICK: Thank you. Next up we have Jeff Frediani, who I met this morning from AAA New York. Jeff, please come join us. Make yourself comfortable and whenever you are ready, you can begin.

[pause]

1
2 JEFFREY FREDIANI: Good afternoon.
3 My name is Jeffrey Frediani. I am a legislative
4 analyst with AA New York, and AAA New York serves
5 more than 1.6 million members residing in the city
6 of New York and adjacent counties of New York
7 state, and we support Intro 702. With gasoline
8 prices at increased and steady levels, many
9 consumers are coping with the reality of higher
10 prices. One year ago, the average price for a
11 gallon of regular in New York City was \$3.98.
12 Today it averages \$4.23. With hurricane season
13 now upon us and because fuel prices now seem to be
14 significantly higher with each passing year many
15 consumers now believe that increased gasoline
16 costs have become a permanent fixture in their
17 lives. They are rightly concerned because this
18 year's price increase will cost a typical family
19 about \$2700 per year in gasoline expenditures or
20 about \$35 more per year. AAA calculates this
21 increase on the assumption that the average
22 vehicle according the federal figures consumes
23 over 650 gallons of gasoline each year and that
24 nationally, the average household owns more than
25 two vehicles. While an extra \$325 per year might

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2 not sounds like much to some people, it is
3 important to note that according to recent figures
4 in Time Magazine an estimated two in five or 40%
5 of American households live from paycheck to
6 paycheck. With that reality in mind, it is easier
7 to understand why sharp and steady increases in
8 fuel prices are a significant financial setback
9 for many citizens and why consumers need more
10 protection from misleading prices at gas stations.
11 Unfortunately, some gas stations are engaging in a
12 deceptive advertising practice whereby they post
13 the lower, cheaper cash sales on the marquee
14 signage near the road, only to charge the driver a
15 much higher price for using a credit card once
16 they pull into the station. In 2008, AAA New York
17 partnered with then Attorney General Andrew Cuomo
18 in the fight against this practice and the
19 Attorney General's investigation revealed that
20 approximately 1/3 of gas stations in the Long
21 Island region were engaging in this deceptive
22 practice. This legislation by requiring a more
23 prominent street side advertising of cash versus
24 credit prices will allow drivers to see the
25 advertised price of gasoline from the road more

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2 easily and help stop this deceptive bait and
3 switch tactic. Accordingly, we strongly support
4 enactment of Intro 702 as a welcome relief to
5 drivers who desperately need relief at the gas
6 pump. Thank you.

7 CHAIRPERSON GARODNICK: Well, thank
8 you very much for your testimony and for your
9 presence here. Let me just ask you about New York
10 City specifically and what you are seeing in New
11 York City relative to what you see in other
12 places. Do you think that we have problems here
13 on deceptive practices that are distinct from what
14 you have seen outside New York City, other places,
15 New York state, around the country or do you think
16 that they are more par for the course sorts of
17 problems.

18 JEFFREY FREDIANI: It's difficult
19 to say only because when we speak to members that
20 call in with their prices or with their complaints
21 about gas prices, we don't always ask them where
22 they are from. We know they are in our general
23 club area, which includes Westchester, New York
24 City and Long Island, but we don't ask them their
25 exact location, so I can't really say.

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CHAIRPERSON GARODNICK: But you do get specific complaints about specific problems though. Is that right?

JEFFREY FREDIANI: Yes.

CHAIRPERSON GARODNICK: Now this cash versus credit charge issue, is that a common complaint that you are hearing from members?

JEFFREY FREDIANI: We probably receive most of them--most of the members speak to me. I probably get one or two a month if we run a story as we have in our member magazine about it then it will spike for a month or two and I'll get a higher number since it's in people's minds.

CHAIRPERSON GARODNICK: Right, and again as I pointed out with DCA, I don't think that this is one of those issues where people necessarily think to call AAA or DCA as frustrated as they may be when they realize it--if they realize it. So thank you very much for that. Council Member Fidler?

COUNCIL MEMBER FIDLER: First - - I think I have been a member of AAA for 40 years now, and I'm very, very pleased to see that my dues are being well spent today. So I just want

1
2 to ask you one question - - in mind just in terms
3 of a possible amendment to my own bill. Road
4 signs are not required on - - as helpful as they
5 are to the consumer and quite frankly even when
6 the signs at the pump are accurate and you see
7 like oh my goodness, the credit card price is 20
8 cents a gallon higher, most of us will not pull
9 out once we have pulled in, particularly if it's a
10 full service station. Do you think it would be
11 appropriate in the city of New York to require
12 that there be road signs?

13 JEFFREY FREDIANI: I think it would
14 definitely give consumers a better understanding
15 of the price before they pull in. I don't see how
16 that would hurt the choice the consumer has.

17 COUNCIL MEMBER FIDLER: Thank you.

18 CHAIRPERSON GARODNICK: Thank you
19 very much, Council Member Fidler and we thank you
20 very much for your presence here this afternoon
21 and also this morning. With that, that is the
22 last witness who is signed up to testify at
23 today's hearing. We thank everybody for their
24 interest in this subject and again, Council Member
25 Fidler, we thank you for sponsoring this bill, and

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with that, we are adjourned.

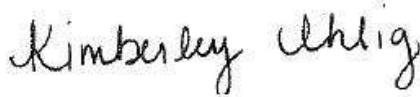
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[gavel]

C E R T I F I C A T E

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

Signature _____

Date 10/03/12