

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CIVIL
SERVICE AND LABOR

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September 25, 2013
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HELD AT: 250 Broadway, Hearing Room, 14th Fl.

B E F O R E: Michael C. Nelson
Chairperson

COUNCIL MEMBERS:

James F. Gennaro
Melissa Mark-Viverito
Domenic M. Recchia, Jr.
Eric A. Ulrich
Annabel Palma

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

Sarah DeStefano

Nathan Vogel

Legal Counsel for New York Civil Liberties Union

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COMMITTEE ON CIVIL SERVICE AND LABOR

CHAIRPERSON NELSON: Good afternoon everyone. I'd like to blame this on the UN, but it's the Brooklyn Bridge that had a lane out. Great singing group, pretty good bridge usually, but not today. Good afternoon, and thank you for coming. I'm Mike Nelson at Chair of the New York City's Council Committee Service--Committee on Civil Service and Labor, as you may have surmised. Today's hearing is regarding proposed Introduction 1106-A, a local law on relation to online social media and other personal online accounts and employment. A few technical amendments were made to the bill after the hearing was noticed, but they were not substantive. As we grow more and more independent with each other in using online social media and other websites to communicate, stay in touch with friends and family, conduct purchases, and sales of personal items, etcetera, legal issues have sprung up that never existed before. The Committee has received reports and found convincing evidence through research that employers are requesting access to social media accounts like Facebook

2 or other types of personal accounts in
3 connection with obtaining or continuing
4 employment. As our Senator, Chuck Schumer
5 recently pointed out, this seems like a form of
6 discrimination, and indeed an employer can
7 obtain information from an applicant or
8 employees' Facebook account that it would be
9 illegal for them, though, to ask about it in an
10 interview, such as age, sexual orientation,
11 marital status, disabilities, or religious
12 beliefs. Proposed Intro 1106-A would make
13 requesting such access unlawful unless there is
14 an investigation into an employees' use of that
15 account. We've been contacted by some business
16 groups that want some accommodations for the
17 industries because for instance, they're
18 required to record old business correspondence
19 and sometimes people use their personal
20 accounts for business purposes. The Committee
21 is open to making amendments to the bill that
22 will make sure that the confidentiality of
23 employees' accounts is protected while also
24 allowing for businesses to protect their
25 clients interest where confident appropriate

2 language can be found for this purpose. We've
3 been joined by colleague, Annabel--it's almost
4 over, you know? It's like three and a half
5 more months. Before we begin, I'd like to thank
6 Matt Garland [phonetic] at Counsel, and now I
7 believe that my colleague Annabel Palma, the
8 sponsor of this legislation would like to say a
9 few words.

10 COUNCIL MEMBER PALMA: Thank you,
11 Mr. Chair, and thanks everyone for being here
12 at today's hearing. I want to also thank Matt
13 Garland and the staff who worked so hard on
14 this bill. I think it's going--it's a great
15 piece of legislation and it's going to be nice
16 protection for workers. We know that while New
17 York City and across the country progressive
18 activists fought to protect employees from
19 unfair working conditions going on by new
20 technologies. Technological Innovations
21 continues to raise important issues for working
22 men and women. And today, so much personal
23 information is online and assessable to
24 employers, information about personal--a
25 person's political association, religious

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beliefs, relationships and much more, and we know that this composed a problem to certain individuals having--being hired for certain positions, and access to this information will no doubt lead to abuse and discrimination, you know, on some level. But with such a competitive job market, employees will likely feel compelled to give up more personal information than necessary to secure or maintain a job. That's why I'm proud to introduce this internet password bill. I believe it provides an important protection for employees in this century and the coming years ahead, and I look forward to hearing today's testimony and from--particularly from an individual who was subject to this type of invasion and was not hired because she would not disclose her password to a personal social media account, and so I'm really looking forward to what--to hear what her experience was and her input in making sure that this doesn't happen to anyone moving forward. Thank you so much, Mr. Chair for the time you have

2 allowed me to speak, and I look forward to
3 hearing today's testimony.

4 CHAIRPERSON NELSON: Thank you,
5 Councilman Palma. We're going to hear from a
6 few people right now who have come to testify.
7 First is from the New York Civil Liberties
8 Union, Nate Vogel.

9 [off mic conversation]

10 CHAIRPERSON NELSON: Would Sarah
11 DeStefano [phonetic] please also join us.

12 SARAH DESTEFANO: Hello, and--oh, no
13 I don't have copies. I'm sorry. Hello, and
14 thank you for inviting me to speak about this
15 privacy issue, and to share my story of its
16 effect. My name is Sarah DeStefano, and I am a
17 2012 graduate of Brooklyn Law School here in
18 New York. My interest in practicing law was
19 actually motivated by a desire to serve the
20 public, and I sought positions, legal
21 positions, employment with that motivation. I
22 excelled in my law classes. I held leadership
23 positions in many student groups and interned
24 at various government agencies and offices.
25 But as you can imagine, last fall my classmates

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and I faced a daunting employment market after we graduated. Despite my efforts, I graduated without a job. So you can imagine my glee, when in August of 2012 a government agency in Upstate New York called to schedule an interview for an open position for an attorney. I attended three rounds of interviews over three or four months, driving an hour and half each way to attend the interviews. The first meeting was with a senior attorney within the agency, then with the Deputy, and then with the head of the department himself. Having had many interviews as I had at this point in my life, I can tell you that you're never quite sure how an interview went when you leave it until you hear if you've been invited back to the next round or if you've gotten the job, but I felt pretty confident about my chances. The-
-in the last round, the interviewer seemed impressed with my resume, my undergraduate and law school studies, and being that I'm originally from Upstate New York, my local roots. He explained that if I were chosen to fill the position, I would be contacted by one

2 of the county's investigators, who would be
3 conducting a background check, and ultimately
4 that's exactly what happened. I received a
5 phone call from an investigator who explained
6 that he would be conducting a criminal and
7 credit check. He also asked for personal
8 references in addition to professional
9 references, people who he could ask what I was
10 like during high school. In addition to this
11 he stated that he had found my LinedIn and
12 Facebook accounts, and being as my Facebook
13 account has strict privacy settings, he would
14 be adding me as a friend using the office's
15 Facebook account. This was a practice I had
16 been told as some sort of fable in law school.
17 This is something that we should be worried
18 about. I never expected it would actually
19 happened. I asked what he was planning on
20 looking at on my page. He said he wanted to go
21 through my pictures and posts and information I
22 had listed, as he put it, "to make sure that
23 I'm not a wack-a-do." I told him that I would
24 have to think about it. Obviously, I wasn't
25 comfortable. Privacy is a major topic of study

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in law school, and I was torn on how to proceed. On one hand, I was unemployed, faced with enormous amount of debt, and on the other hand I believed this to be a complete over reach by an employer to request such a thing, and that they could do it based on this oversaturated labor market. I honestly have nothing to hide, no embarrassing pictures or extreme Facebook posts, but I still just didn't feel comfortable with it. So I asked family and friends for advice, and eventually even took to Facebook, posting if asked to do so, would you allow a potential employer to have access to your Facebook as a condition of employment. The answer was a resounding no. And the most interesting piece of advice I received was that this is a veiled attempt by employers to get answers to questions that they cannot ask you during formal interview, questions which the Federal Labor Department have determined lead to hiring decisions which discriminate against women and minorities, do I have children, am I engaged, how old am I, what is my sexual preference or religious beliefs.

2 These are taboo questions to ask during an
3 interview, but all can be gleaned by simply
4 accessing the password protected sections of my
5 Facebook page. As such, I called the
6 investigator back and explained my position.
7 While I can understand wanting to see the
8 portions of the page which are readily
9 available to the public, I did not understand
10 what the other portions of my Facebook page had
11 to do with my qualifications of employment. I
12 further explained that I didn't think that this
13 was a proper practice under Federal Labor Laws,
14 something that I could not just ignore after
15 three years of legal study. Continued to
16 explain that I understood their concern for
17 embarrassment of the office, but I hope that as
18 legal office they would respect my decision,
19 and that I would be more than happy to speak
20 with whomever would make the ultimate decision
21 on my employment to discuss any concerns and
22 Facebook content. Sometime in December I
23 received a letter in the mail thanking me for
24 taking the time to interview with the office,
25 but that another applicant was hired for the

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position. I will never know for certain, obviously, if rejecting their request to be Facebook friends led to their rejection of employment, but based on everything that was said, it seems highly likely. It was obviously a disappointment, but I am proud of myself for not ignoring my legal studies or my right to privacy. My story actually has a happy ending, in that I am now gainfully employed as an attorney. The position which I applied to was a government office, and thus, the right to privacy is clearer than with private employers. However, I still believe that there is a line between the information which private employers should have access to. An employee is expected to leave their personal issues at the door when they arrive at work. This provides a more efficient and professional workplace. In the same spirit, and employer should not be able to seek out otherwise private information from its employees. The danger of discrimination that a qualified applicant will be passed over or that an employee could be denied a promotion or a raise based on information taken from a private

2 Facebook page is simply too great. As
3 Americans, our workplace ideal is that the most
4 qualified candidates fill positions of
5 employment, not those simply who do not have a
6 social media presence. Labor laws exist to
7 protect these employees and potential employees
8 from discrimination and unfair employment
9 practices, and I applaud you in working to
10 expand these protection to workers in the
11 internet age. Thank you for allowing me to
12 share my story today. I hope that it's helped
13 you understand the importance of this piece of
14 legislation. I full-heartedly support these
15 efforts and hope that you will pass the bill.
16 Thank you.

17 NATHAN VOGEL: Okay, well thank you
18 very--thank you very much. My name is Nate
19 Vogel. I am a Legislative Counsel with the New
20 York Civil Liberties Union, on whose behalf I
21 respectfully submit this testimony. I would
22 like to thank the Committee on Civil Service
23 and Labor inviting the NYCLU to provide
24 testimony on Introduction 1106. The NYCLU is a
25 not for profit, non-partisan organization with

1 almost 50,000 supporters around the state and
2 around 26,000 in New York City. The NYCLU is
3 the foremost defender of civil rights and civil
4 liberties in New York State. We support Intro
5 1106. The bill would prohibit employers from
6 requiring job applicants or employees to give
7 employer access to their private, personal,
8 online accounts. It's never been acceptable
9 for an employer to go to an employee's home,
10 read his or her mail, peruse a personal diary,
11 or listen to an employee's home phone calls.
12 This same consideration should apply to all our
13 private communications. As more and more of our
14 lives are lived online, employers here in New
15 York and across the country are increasingly
16 turning to social media to assist them in
17 making decisions about hiring promotion and
18 retention. For many years employers have
19 searched for publicly available information
20 about job candidates and existing employees on
21 sites like LinkedIn and Facebook. A 2011 study
22 found that 89 percent of employers use social
23 media in their recruiting. And a separate
24 study in 2013 reported that 43 percent of
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hiring managers who use social media to research applicants decided not to hire someone based on what they found online. But a recent trend has emerged and employers are now seeking access to information about employees and applicants that has maintained in social for a, but not publicly accessible because the employee or applicant has restricted his or her audience. Employers do this as we've just heard by requiring employees and applicants to grant them access to private accounts. Last year, the AP reported the story, and this is--so we've heard from one person that this happened to, but I want to make it clear that this wasn't an isolated incident. Last year the AP reported the story of Justin Bassett [phonetic]. Mr. Bassett was a--is a New York City bases statistician. He applied for a new job. After searching for Bassett's Facebook page and finding it restricted, his perspective employer asked for his log-in information. Mr. Bassett refused to give it, and he withdrew his job application, but not everybody feels like they can afford to refuse an employer's

1 request. In 2010, Robert Collins testified
2 before the Maryland State Legislature about his
3 application to be re-instated after a leave of
4 absence of the employee of the Maryland
5 Division of Corrections. When his interviewer
6 for his social media account passwords, he felt
7 like he couldn't say no without losing--without
8 risking losing a job he needed. He turned over
9 his Facebook password, and right in front of
10 him, the interviewer proceeded to log in and
11 read through his private messages and posts.
12 The practice is not limited to employers asking
13 for information from specific employees. After
14 hearing Robert Collin's story, the ACLU of
15 Maryland learned that the Division of
16 Correction in Maryland had a blanket policy of
17 requiring log-in and password information from
18 all job applicants. An employer who demands
19 account passwords from a job applicants or an
20 employee intrudes deeply into the worker's
21 privacy. Social media messages and e-mail may
22 include intimate conversations between romantic
23 partners. Searching through a Google account,
24 an employer could scrutinize an employee's web
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2 history, learning about her political or
3 religious affiliations. An Amazon.com account
4 can reveal a person's shopping history,
5 disclosing anything from her taste in movies to
6 her medical purchases. As we've heard today,
7 combing through an applicant's online accounts,
8 an employer might be able discern information
9 upon which it would be unlawful to base a
10 hiring decision like religious beliefs,
11 citizenship status, pregnancy or sexual
12 orientation. Employers who sift through
13 private messages on personal accounts also
14 intrude on the privacy of the individuals who
15 sent those messages to the applicant or the
16 employee. These third parties who might be
17 family members, friends, or a doctor setting up
18 an appointment expected their conversations to
19 remain private. They have no ability to refuse
20 the employers demands for access to those
21 conversations. When employers condition a job
22 on access to deeply personal information,
23 employees and job-seekers face a difficult
24 choice; do I defend my privacy and the privacy
25 of those people who communicate with me, or do

2 I keep my job? Protecting the privacy of
3 online accounts is a vital reform and one that
4 is gaining momentum. Legislators around the
5 country are recognizing the need for reform.
6 Just last month, New Jersey Governor Christie
7 signed a bill to protect workers' online
8 privacy. In all, 10 states have passed similar
9 bills protecting online privacy of job
10 applicants and employees, and legislation has
11 been introduced in at least 36 states,
12 including New York. The NYCLU hopes that the
13 New York City joins the list of jurisdictions
14 that have taken action to protect employee
15 privacy. Intro 1106 provides strong privacy
16 protections for New York City workers that will
17 prohibit employers from requiring both
18 employees and job applicants to provide access
19 to online accounts, including social media like
20 Facebook and Twitter, but also personal e-mail
21 accounts and online shopping accounts. The
22 bill bans actions that employers could sue to
23 circumvent the prohibition on demanding direct
24 access. Specifically, it bars employers from
25 requiring access to log into their personal

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accounts while an interviewer watches over the applicant's shoulder. Intro 1106 also prohibits employers from requiring add them as friends which we also heard that they do, and change their privacy settings. Intro 1106 defines limitations that will still ensure that the bill does not interfere with legitimate supervision and investigation by employers. The legislation would permit employers to seek out and use information about an employee that is publicly available and ensures that employers may access accounts to investigate unlawful actions by their employees. These provisions demonstrate that employee's privacy does not need to be sacrificed to protect employer's legitimate interests. Intro 1106 is a positive step towards ensuring all New Yorkers can engage in the kinds of private communications and activities online that are critical for personal liberty in a free democratic society. The NYCLU urges city council members to approve the bill. Thank you very much for your time.

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CHAIRPERSON NELSON: Oh yeah,
Melissa Mark-Viverito, Council Member, has
joined us. Before I hand it back to Council
Member Palma, just--I'm the fourth one to sign
on to the author of this. So I'm, you know,
I'm with you with this. I just wanted to pose a
possible scenario. Let's say somebody had on
there homicidal ideation, member of the Nazi
party, espouses Jihad, a whole host of other
possibilities--looking like the--looking
forward to someday committing a violent act
workplace or otherwise, where does the employer
of the company stand with this to explain their
lack of vetting? How complicit would they be,
legally and within their own conscience?
That's the second part, you know, you can't get
into, but legally perhaps?

NATHAN VOGEL: Sure, yeah. So I
can't speak--so I can't speak to their legal
obligations, but what I can speak to is that
employers have always vetted their employees.
They've always interviewed their employees.
They've always searched for what information is
publicly available about employees, and there

2 are certain jobs where people do have more
3 extensive background checks, and this bill
4 doesn't stop that. This bill doesn't prevent
5 that.

6 CHAIRPERSON NELSON: We hope the
7 National Security--

8 NATHAN VOGEL: [interposing] Right,
9 right. What this bill does--all this bill does
10 is it prevents employers from forcing their
11 employees to expose information that those
12 people have deliberately decided to keep
13 private. Employers can still check public
14 Facebook accounts. They can check public
15 LinkedIn accounts. They can check public
16 websites. They just can't force employees to
17 reveal information that they've explicitly
18 decided is going to be private.

19 CHAIRPERSON NELSON: I agree with
20 you with that. I just wanted to throw that out
21 there, though, 'cause this--

22 SARAH DESTEFANO: [interposing]
23 Another point on that, actually.

24 CHAIRPERSON NELSON: Sure.

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SARAH DESTEFANO: If I might. I can't speak on the legal aspect of that either, but what I will say is that things that are on Facebook are not always meant to be the direct meaning of what they're posted as. So you could have a facetious or sarcastic meaning to something that's posted, and perhaps to the people that know you and are friends with you that makes sense, 'cause they know that you wouldn't be posting some communist paraphernalia online. And that's your intended speech, right? But if you have a potential employer logging into your Facebook, they may not know that that is your intent. And therefore they're looking at it with a completely different perspective thinking you're a communist, and they perhaps do not like that position. And therefore, they're denying you a job based on something that's not even your intended meaning at all. I think that there is a real danger for that.

CHAIRPERSON NELSON: Uh-huh. Well, that's good. That's why I threw that out

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there. I wanted to have you define this, and you both did a very good job with that. Mrs.--

COUNCIL MEMBER PALMA: Thank you, Mr. Chair. Sarah, I'm interested in knowing when--during the course of your three interviews was it brought up that the employer was going to require access to any of your social media accounts?

SARAH DESTEFANO: I don't--I don't remember hearing it during the interviews, but I know that they did say that they would be conducting a--I think what they said was they'd be conducting a background check which would include a search of the internet. But I mean, I can google myself, too, and there's nothing on there, and I didn't have a--I don't have a problem with that. Those are publicly available things about me. I don't have a problem with that. I didn't--I don't think I realized at the time in that third interview that meant they were going to be requesting this Facebook access until the investigator actually called.

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COUNCIL MEMBER PALMA: And we know that Facebook is not the only social media out there. There's Twitter and others. Was it-- their request limited to Facebook, or did they ask you, you know, for your LinkedIn and Twitter, and--

SARAH DESTEFANO: [interposing]
Right, at the time I didn't have any other social media sites, so I had--he had found my LinkedIn and Facebook and asked if there were others, which there were not.

COUNCIL MEMBER PALMA: You didn't disclose you had social media accounts during your interviews, they, the investigator proactively called you and--

SARAH DESTEFANO: It may have said on my application for employment, "Do you use social media?" And I would have said yes. For the reason I stated in testimony, I can understand why a government office especially would be interested in seeing what's open to the public so that, you know, as I'm a representative of that office. If someone were to go googling or Facebook searching, I

2 wouldn't want what is readily available to the
3 public to be embarrassing to that office
4 either.

5 COUNCIL MEMBER PALMA: And
6 obviously, through your communication, before
7 you made your decision not to disclose your
8 passwords, there were people within your circle
9 that found that this should not be a practice
10 of any employment.

11 SARAH DESTEFANO: Absolutely.

12 COUNCIL MEMBER PALMA: For Mr.
13 Vogel, the 10 states you mentioned that have
14 already implemented this law, can you--can you
15 share with us if there's any problems or any
16 issues with the law that already has been
17 passed?

18 NATHAN VOGEL: I'm not aware of any,
19 but I also haven't really looked into it. So I
20 can't really speak to that.

21 COUNCIL MEMBER PALMA: And do you
22 think with the way the bill is drafted here,
23 there will be any potential issues for
24 violations around any of the federal laws or
25 any financial or other industries of relation

2 regarding the background checks and what
3 employers can investigate while they're
4 considering hiring an employee?

5 NATHAN VOGEL: I'm not an expert in
6 the, like the sort of securities regulations
7 and things that I think you're asking about,
8 but I can--but I will say that this bill is
9 limited and it does strike a balance between
10 the needs of--the rights of employees or the
11 interests of employees and protecting their
12 privacy with employers legitimate interests in
13 investigations. The bill does specifically say
14 that employers can search for public
15 information. It specifically says that
16 employers can--they can request account access
17 if necessary for an investigation, if
18 necessary, under applicable laws. So this bill
19 does exempt, I think, the kind of activities
20 that you're talking about and ensures that
21 employers can still comply with their legal
22 obligations.

23 COUNCIL MEMBER PALMA: You cited to
24 individuals in your testimony, I imagine that
25 there are a host of people going through this

2 experience. Do you--does the New York City
3 Liberties Union have that on of individuals
4 calling in sort of trying to figure out to deal
5 with this?

6 NATHAN VOGEL: We haven't been
7 collecting that data. What we have--the ACLU
8 has been collecting stories from around the
9 country. There was a town in Montana that the
10 city government decided that all job applicants
11 to city government positions would have to give
12 up their Facebook passwords. So this is a wide
13 spread problem. It's also not a reported
14 problem, so there's not good data. Nobody's
15 collecting. As far as I know, there are no
16 surveys. Lots of employers do use social media
17 information. Eighty-three percent of hiring
18 managers or employers use--do some social media
19 research, but one of the problems with this
20 issue is that it's not really reported. There's
21 not a system for reporting it, and actually
22 this bill will create that system because
23 people will file complaints when it happens.

24 COUNCIL MEMBER PALMA: Thank you.

25 Thank you, Mr. Chair. Thank you. And clearly

2 I stated it my opening remarks and in the
3 remarks that I gave at the press conference,
4 there's a clear need to make sure that
5 individuals are not faced with this kind of
6 punitive practice by an employer just for not
7 disclosing their personal passwords to their
8 social media accounts. There's definitely lots
9 of ways to make sure you are hiring the correct
10 individuals for certain positions and, you
11 know, their private lives. Definitely need to
12 remain private and I am hopeful that this--
13 putting this piece of legislation forward and
14 having support for my colleagues and getting it
15 passed will help protect workers and continue
16 to enable them to seek employment in a fair
17 way. So, I thank you both for your testimony.
18 Thank you so much, Sarah, it's really
19 courageous to come in and, you know, share
20 personal stories. So I thank you.

21 SARAH DESTEFANO: Thank you for
22 having me.

23 CHAIRPERSON NELSON: So a lot of this
24 is in the embryonic stage as far as a lot of
25 the information is anecdotal, but it's building

2 up to something that we could actually do a
3 file and thus here to prove something or other.
4 Alright, I want to say for the record, we
5 invited large business, chambers of commerce
6 and business groups, and the Partnership for
7 New York did submit testimony for the record,
8 and the Department of Consumer Affairs did as
9 well. So they're on record with this also.
10 Sure, Ms. Mark-Viverito, Council Member?

11 COUNCIL MEMBER MARK-VIVERITO: Yeah,
12 I wanted to ask you from the NYCLU just in
13 terms of, you mentioned a city--I don't
14 remember if it was a city or state--Montana,
15 that is forcing, right? That you have to
16 provide this information. Do you know of any
17 municipalities or any other locations that are
18 doing something on the other end of the
19 spectrum of trying to--similar to what we're
20 trying to do here, any other places that have
21 done something that maybe is a model or
22 something that is kind of on the cutting edge
23 of this issue?

24 NATHAN VOGEL: Well, there are--
25 legislation on this issue has been introduced

2 in 36 states. I'm not sure about
3 municipalities. The example that I cited early
4 that was Bozeman, Montana. It was a city of
5 Montana, and they stopped. That was in 2009.
6 So they don't do that anymore, but they were
7 updated for a while, but I don't know about
8 their municipalities that are passing
9 legislation like this. And I think that's--if
10 New York City becomes--joins the list of
11 governments that are passing this legislation
12 that would send a really powerful signal. And
13 I think also help, there's also legislation in
14 New York State, and I think if New York City
15 passed this legislation, then that would help
16 with the New York State legislation as well.

17 COUNCIL MEMBER MARK-VIVERITO: Thank
18 you.

19 CHAIRPERSON NELSON: Yeah, it become
20 a tsunami effect, if you will. Any other
21 questions from my colleagues? Well, with that,
22 I think we had a very good hearing here, and
23 you present the case very well. I thank you,
24 again, Council Palma, and with that this
25 hearing is adjourned. Thank you.

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COMMITTEE ON CIVIL SERVICE AND LABOR

COUNCIL MEMBER MARK-VIERITO: Thank

you.

[gavel]

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify there is no relation to any of the parties to this action by blood or marriage, and that there is no interest in the outcome of this matter.



Date 10/02/2013

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COMMITTEE ON CIVIL SERVICE AND LABOR