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**Testimony before the New York City Council Committee on Women’s Issues  
Regarding Proposed Bill Int. No. 1512**

*April 24, 2017*

Thank you Council Member Dromm, Chair Cumbo, bill sponsors, and committee members for the opportunity to speak with you today.

My name is Ashe McGovern, and I am the Legislative and Policy Director of the Public Rights/Private Conscience Project at Columbia Law School, or PRPCP. PRPCP is a think tank focused on bringing legal, policy, and academic expertise to bear on the multiple contexts in which religious liberty rights conflict with or undermine other fundamental rights. We are particularly concerned with the impact that overly-broad religious exemptions have on the rights of marginalized communities, including lesbian, gay, bisexual, transgender and queer, or LGBTQ, communities, those seeking access to reproductive healthcare, religious minorities, and communities of color.

PRPCP strongly supports the proposed bill, which will require employees at several of the city’s largest agencies to undergo trainings on discrimination and cultural competency. While this bill is an important step in advancing racial and gender equity for all New Yorkers, we believe these requirements should be expanded to cover all city agencies, as well as city contractors.

**1. City contractors, in addition to city agencies, should be subject to oversight, accountability, and cultural competency training.**

As the primary providers of many city-funded services, it is just as crucial for private contractors to be trained on discrimination, implicit bias, and cultural competency as it is for city agencies. City contractors provide vital social and human services to New York City residents, particularly to low-income communities seeking access to housing, healthcare, employment, and life-saving social services. According to the Mayor’s Office of Contract Services, in 2016, the City agreed to fund nearly 4,500 human services contracts valued at over \$4.3 billion.<sup>1</sup>

LGBTQ people, and people of color, by virtue of being more likely to live in poverty than their peers, benefit significantly from city-funded programs and services.<sup>2</sup> These communities also experience a heightened vulnerability to discrimination, harassment, and mistreatment in accessing those services, and in many other areas of their lives.<sup>3</sup> As a result, it is vital that city contractors are subject oversight, accountability and cultural competency training in order to ensure they do not engage in discriminatory behavior, either in the provision of social services, or through their own internal organizational practices.

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<sup>1</sup> MAYOR’S OFFICE OF CITY CONTRACTORS, *Agency Procurement Indicators Fiscal Year 2016*, available at <https://www1.nyc.gov/assets/mocs/downloads/pdf/IndicatorsReport/AgencyProcurementIndicators20161017.pdf>.

<sup>2</sup> LEGAL SERVICES NYC, *Poverty is an LGBT Issue: An Assessment of the Legal Needs of Low-Income LGBT People* (2016), <http://www.legalservicesnyc.org/storage/PDFs/lgbt%20report.pdf>; M.V. Lee Badgett, Laura E. Durso, and Alyssa Schneebaum, *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community* (WILLIAMS INSTITUTE, 2013), <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-poverty-update-june-2013/>; Deborah Povich, Brandon Roberts, and Mark Mather, *Low-Income Working Families: The Racial/Ethnic Divide* (WORKING POOR FAMILIES PROJECT, 2015), [http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WFPF-2015-Report\\_Racial-Ethnic-Divide.pdf](http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WFPF-2015-Report_Racial-Ethnic-Divide.pdf).

<sup>3</sup> Ashe McGovern, Sarah McBride, and Sharita Gruberg, *Nondiscrimination Protections for LGBTQ Communities: Securing Comprehensive and Inclusive Protections at All Levels of Government* (CENTER FOR AMERICAN PROGRESS, 2016), <https://www.americanprogress.org/issues/lgbt/reports/2016/12/08/294423/nondiscrimination-protections-for-lgbtq-communities/>; PUBLIC RIGHTS/PRIVATE CONSCIENCE PROJECT, *Unmarried and Unprotected: How Religious Liberty Bills Harm Pregnant People, Families, and Communities of Color* (COLUMBIA LAW SCHOOL, 2017), [http://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/PRPCP/unmarried\\_unprotected\\_-\\_prpcp.pdf](http://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/PRPCP/unmarried_unprotected_-_prpcp.pdf).

**2. All contractors, including faith-based contractors, should receive cultural competency training and oversight.**

There is a particular need for training and oversight of faith-based contractors due to their unique legal status. The New York City Human Rights Law (NYCHRL) prohibits discrimination on the basis of several protected categories, including on the basis of race, gender, and sexual orientation. However, the NYCHRL also contains a narrow exemption for religious institutions and organizations that allows them to prefer co-religionists in hiring, firing, and housing accommodations and to “[take] such action as is calculated by such organization to promote the religious principles for which it is established or maintained.”<sup>4</sup> Courts have interpreted this provision in conflicting ways, making it essential that faith-based contractors receive clear guidance and training on their responsibility to provide nondiscriminatory and culturally competent services to all New Yorkers.

While the religious exemption in the NYCHRL clearly does not permit faith-based contractors to discriminate in the provision of city-funded services, its application to employment discrimination is less clear. For example, in *Logan v. Salvation Army*, a gay employee brought suit against the Salvation Army after experiencing harassment in the workplace as a result of his sexual orientation.<sup>5</sup> The New York County Supreme Court found that while under the NYCHRL exemption the Salvation Army, a religious organization, could prefer co-religionists in hiring, it could not harass an employee who would otherwise be protected under the law.<sup>6</sup> In *Lown v. Salvation Army*, however, the Southern District of New York held that under the city and state human rights law exemptions, the Salvation Army could require employees to commit in writing

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<sup>4</sup> N.Y.C. Code § 8-107(12) (“Nothing contained in this section shall be construed to bar any religious or denominational institution or organization or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.”).

<sup>5</sup> *Logan v. Salvation Army*, 10 Misc.3d 756 (N.Y. Sup. Ct. 2005).

<sup>6</sup> Protections for New Yorkers on the basis of sexual orientation were added to the Human Rights Law soon after the plaintiff filed suit. The *Logan* court held that these protections could not be applied retroactively, but recognized that had they been in effect at the time of the incidents, the employee in question would have been protected.

to following certain religious principles and beliefs as a condition of employment without violating the NYCHRL's ban on religious discrimination.<sup>7</sup>

In addition to the lack of clarity regarding NYCHRL's religious exemption, over the past several years there have been many examples nationwide, including in New York,<sup>8</sup> of faith-based recipients of government funds that have objected to, or requested exemptions from, their legal duty to provide comprehensive and non-discriminatory services.<sup>9</sup> These occurrences highlight a strong need for faith-based contractors to receive oversight of and training on their obligations under the NYCHRL, as well as information on how to provide comprehensive and sensitive care to a diverse population. This should include training and oversight regarding the needs of LGBTQ communities, as well as communities in need of reproductive health services.

The city has a responsibility to ensure that organizations that receive public funds to provide essential services are providing these services in a nondiscriminatory manner that reflects the values and principles codified in the city human rights law and prioritized by the city council. The

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<sup>7</sup> *Lown v. Salvation Army, Inc.*, 393 F. Supp. 2d 223, 252 (S.D.N.Y. 2005).

<sup>8</sup> For example, New York has contracted with faith-based health insurance plans to provide Medicaid and other health coverage, despite the fact that these plans refuse to provide seamless access to essential women's health care. See, Amy Littlefield, *How a Catholic Insurer Built a Birth Control Obstacle Course in New York*, REWIRE (Jan. 26, 2017) <https://rewire.news/article/2017/01/26/catholic-insurer-built-birth-control-obstacle-course-new-york/> (describing how one faith-based insurer, despite the fact that it "reaps billions in taxpayer funding through Medicaid each year and is one of the most dominant insurers on New York's state-run exchange," places religious restrictions on essential women's health services.).

<sup>9</sup> Erick Eckholm, *Suit Challenges U.S. Over Abortions and Birth Control for Immigrant Minors*, N.Y. TIMES (June 24, 2016), <https://www.nytimes.com/2016/06/25/us/suit-challenges-us-over-abortions-and-birth-control-for-immigrant-minors.html>; Martha Stoddard, *Facing Almost \$1 Million in Losses This Year, Catholic Charities Looks for Providers to Take Over Some Services*, OMAHA WORD-HERALD (Aug. 31, 2016) [http://www.omaha.com/news/metro/facing-almost-million-in-losses-this-year-catholic-charities-looks/article\\_21b6d64b-e37c-5c49-a4ea-d3cc95984e85.html](http://www.omaha.com/news/metro/facing-almost-million-in-losses-this-year-catholic-charities-looks/article_21b6d64b-e37c-5c49-a4ea-d3cc95984e85.html); Laurie Goodstein, *Illinois Catholic Charities Close Over Adoption Rule*, THE BOSTON GLOBE (Dec. 29, 2011), <https://www.bostonglobe.com/news/nation/2011/12/29/illinois-catholic-charities-close-rather-than-allow-same-sex-couples-adopt-children/Km9RBLkpKzABNLJbUGhvJM/story.html>.

In addition, there have been efforts at the federal and state levels to pass or expand upon religious exemptions in order to permit faith based contractors to discriminate based on their religious beliefs. Noel Gutierrez-Morfin, *Controversial 'Religious Liberty' Provision Puts Defense Bill in Limbo*, NBCNEWS.COM (Oct. 25, 2016), <http://www.nbcnews.com/feature/nbc-out/controversial-religious-liberty-provision-puts-defense-bill-limbo-n669266>; Sarah Posner, *Leaked Draft of Trump's Religious Freedom Order Reveals Sweeping Plans to Legalize Discrimination*, THE NATION (Feb. 1, 2017), <https://www.thenation.com/article/leaked-draft-of-trumps-religious-freedom-order-reveals-sweeping-plans-to-legalize-discrimination/>. For a list of proposed state and federal legislation regarding discrimination by government contractors, see PROTECT THY NEIGHBOR, *Government-Funded Discrimination* (last viewed Apr. 24, 2017) <http://www.protectthyneighbor.org/government-funded-discrimination/>.

failure of the city to train and monitor the practices of parties who provide services to New Yorkers with public funding creates a situation where the city is directly subsidizing discrimination.

**3. All agencies should be required to engage in cultural competency training, and to develop stronger oversight, accountability and training procedures for their contractors.**

Finally, although this bill is a clear step in the right direction, it should be expanded to cover all city agencies. Several agencies not listed in this bill direct significant funds towards human services contracts, including the Department of Youth and Community Development and the Department of Homelessness Services, which directed over \$883 million and \$937 million respectively in 2016 alone. They, too, should be bound by the training requirements proposed in this bill—as well as additional oversight and accountability measures in administering contracts.

In conclusion, we strongly recommend that the council expand this bill to cover all agencies as well as city contractors. We further recommend that the council take steps to increase oversight over contractors, including faith-based organizations, to ensure that New Yorkers seeking social services are provided with non-discriminatory and culturally competent care.

Respectfully submitted,



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