



TESTIMONY OF KATHY RODGERS
Before the New York City Council
Committee on Government Operations
In Support of Intro 512A
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Thank you for inviting me to speak today. My name is Kathy Rodgers, and I am the President of Legal Momentum. Legal Momentum, now celebrating its 35th anniversary, is the nation's oldest civil rights organization devoted to advancing women's rights.

We have, throughout, been at the forefront of innovative public policy and impact litigation to end employment discrimination against women. We are very familiar with both the power and the limits of our legal system.

My testimony is about discrimination in public employment, a problem the City has been working to solve for years, and how Intro 512 can provide new tools and insights to help promote that fight. New York City has long been a national leader in developing pioneering legislation and policy that recognize and protect the human rights of every citizen. New York City can continue in the vanguard of this movement by passing Intro 512.

In 2001, Legal Momentum sent out a call to women's organizations, academics and other parties to see if there were an interest in joining us in an effort to use the legal frameworks and tools of human rights principles right here at home in New York City. The response was phenomenal and that meeting led to the drafting of the bill before you today.

This is the first such law to incorporate first the principles of CEDAW, the Convention for the Elimination of all forms of Discrimination Against Women, and CERD, the Convention to Eliminate all forms of Racial Discrimination. Why is this important for women? Because a woman cannot separate her gender and her color – she is at all times both.

That leads me to the first of three key concepts in Intro 512 that I want to highlight: intersectionality, affirmative measures, and periodic follow-up.

“Intersectionality” refers to the fact that historical grounds for discrimination often overlap and reinforce each other; bias compounds. Vanessa David is a perfect example. As an African-American, a woman, and a lesbian, she had three traditional strikes against her in the construction trades, and she was harassed and ultimately fired on all those grounds.

Many women, especially women of color, have trouble finding and keeping work in the construction trades. Despite a federal goal set almost forty years ago to bring women up to at least 6.9% of all federal construction trades jobs, women still have only 2 to 3% of all construction trade jobs in the country.

These are jobs that pay well, as much as \$50,000 to \$100,000 per year with benefits, and they don't require a college education. These jobs would get women out of poverty, but it requires some kind of affirmative measures by government, employers and unions to break through age-old barriers to women's employment.

Intro 512 requires the City to look into disparities in workforce representation on a regular and proactive basis in ways that also uncover the effects of intersectionality. The City must take responsibility for examining retention rates for women *and* people of color to see if they're being hired at all, if they're leaving their jobs more quickly, and to ask why that is and how to fix it *before* the lawsuit.

This brings me to the second concept: affirmative measures. These are necessary because our current legal structure for vindicating civil rights, the single-plaintiff litigation model, requires individuals – generally the most vulnerable – first to suffer harm, then to file a complaint and to prosecute the case through long administrative and judicial proceedings. The process is lonely, emotionally devastating (especially in harassment cases), prohibitively expensive, and often a career ender. It is not an efficient process for vindicating rights.

Affirmative measures are more effective and are recognized as consistent with both our constitutional and international laws. In a concurring opinion in *Grutter v. Bollinger*, the University of Michigan Law School admissions case, Justice Ginsburg, joined by Justice Breyer, noted that the majority analysis "accords with the international understanding of the office of affirmative action" under CERD and CEDAW.¹

San Francisco has been very successful in using its CEDAW-based law as an occasion to come up with better employment practices to promote the success of women. For instance, the San Francisco Department of Public Works now has a women's support group, flex-time for child care, more job-training courses, and a women engineers' caucus, all of which will help women engineers and utilities workers.

With respect to the issues raised by Ms. David's case, perhaps the City might decide to place on-site independent monitors on its construction sites to oversee hiring and receive harassment complaints; offer pre-apprenticeship training to women and minorities to increase their numbers in the construction trades; and create dedicated apprenticeship spots for underrepresented groups in City-employed construction units.

Finally, I want to stress the importance of periodic follow-up. Intro 512 uses a reporting and planning model rather than a litigation model to protect people from discrimination. Aside from the truth that lawsuits are inefficient for the plaintiff, lawsuits often don't motivate discriminatory agencies to change.

A perfect example of this is the New York City Fire Department, which hired about forty women in the early 1980's as the result of a lawsuit. Over the following twenty years, they hired just nine more women in a department of 11,000 firefighters. This year, without a lawsuit, they're hiring

¹ *Grutter v. Bollinger*, 539 U.S. 306, 344 (2003) (Ginsburg, J. concurring).

about twenty more women because of an innovative physical training program that Legal Momentum developed in conjunction with the United Women Firefighters Association and the New York Sports Club.

We need to ensure that this is not an isolated event. Intro 512 will require the Fire Department to justify its hiring practices to the City Council and the public every five years, not just on the rare occasions when someone brings a lawsuit. It will also bring community groups like us into the process sooner so that we can develop innovative solutions together. Periodic follow-up by the City and the community is the key to real change.

Human rights principles blend two interrelated and fundamental presumptions: first, that each person has worth and dignity simply by virtue of being human, and accordingly, each of us is entitled to basic civil and political rights, *and* to economic and social justice. The second presumption is that each of us is responsible not only to or for oneself, but also to and for our brothers and sisters. Human rights principles tell us that it is not enough to practice personal responsibility; we must practice social responsibility.

Intro 512 gives us exciting new tools and opportunities to improve the delivery of City services and the quality of City employment for women. Thank you.