



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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ADMINISTRATION FILES LEGAL CHALLENGE TO LOCAL LAW 71

ASSERTS THAT STATE LAW PRE-EMPTS CITY LAW, THUS INVALIDATING THE MEASURE

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New York, N.Y., Sept. 3, 2013 – The New York City Law Department filed a legal action today in Supreme Court, New York County on behalf of Mayor Michael R. Bloomberg to challenge Local Law 71 of 2013, enacted by the City Council over the Mayor's veto on Aug. 22.

The complaint asks the Court to declare the new local law invalid on the grounds that the City Council legislated in an area of the law that is pre-empted by the New York State Criminal Procedure Law. Where such "field pre-emption" (or pre-emption within a certain area) exists, local legislatures are without authority to adopt laws in the same field. The complaint also asks for a permanent injunction to prevent the implementation of the local law.

"The Mayor made clear in his veto message that this anti-profiling measure is illegal -- and today we are taking action on his behalf to prevent the law from taking effect," said Corporation Counsel Michael A. Cardozo of the New York City Law Department. "This suit is necessary to prevent the City Council from enacting laws where the State's exclusive authority has been established."

"There's an important principle at stake here," Cardozo added. "Local legislative bodies should not be passing laws affecting the regulation of law enforcement activity in this way. This is a matter governed by the State Legislature."

The Council first passed its "racial profiling" bill on June 26th. The law bans bias-based profiling – which already was illegal – but expands the category of individuals protected from law enforcement action based on profiling from race, ethnicity, religion and national origin to now include age, gender, sexual orientation and other categories. It creates a new, private right of action for individuals who believe they have been the subject of biased-based profiling. There is no provision for damages; however, they can seek declaratory or injunctive relief (for example, they can ask a judge to prevent the City from engaging in a particular policy or practice). As noted, a court can also award attorney and/or expert witness fees. The Mayor vetoed the measure on July 23rd, and the City Council overrode the veto on Aug. 22nd.

"The Mayor vetoed Local Law 71 on the grounds that it is unlawful and harmful to the City," today's legal complaint notes. "... It is pre-empted by the State Criminal Procedure Law, which is a comprehensive and detailed State regulatory scheme that fully occupies the field of criminal procedure and bars local legislatures, including the Council, from legislating in this area." In terms of "next steps," the City has filed the complaint with the Court today and served the City Council. The Council will then have 20 days to file a response.

On Aug. 22nd, the City Council overrode the veto of another bill that creates an Inspector General

position to oversee the Police Department. That bill is not part of today's lawsuit.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 80,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the prosecution of juvenile delinquency matters. For more information, please visit nyc.gov/law.

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