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**TESTIMONY OF STEVEN SACCO AND MARK NOFERI  
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**NEW YORK CITY COUNCIL  
COMMITTEE ON IMMIGRATION HEARING  
“Int. No. 253 - In relation to the creation of a New York City identity card program.”  
April 30, 2014**

We are Steven Sacco and Mark Noferi, members of the Immigration and Nationality Law Committee of the New York City Bar Association. We submit this testimony on behalf of the Committee today in support of proposed Local Law 0253-2014.<sup>1</sup>

The New York City Bar Association applauds the City Council for holding this hearing to examine the need for a municipal ID for New York City residents. We believe a municipal ID card will make New York a safer, more inclusive, and more economically vibrant community, for all New Yorkers (not just immigrants), and it will do so in a legally sound way. We also raise questions below concerning implementation and confidentiality.

Currently, about half a million of our fellow New Yorkers are undocumented non-U.S. citizens,<sup>2</sup> and thus cannot get drivers’ licenses or a photo ID under state law.<sup>3</sup> By passing this law, New York City would join municipalities nationwide in instituting ID cards for residents regardless of immigration status—*i.e.* New Haven, CT, Los Angeles, San Francisco, Richmond, and Oakland, CA, and Trenton, Asbury Park, and Monmouth County, NJ.<sup>4</sup>

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<sup>1</sup> See <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1709715&GUID=96D7B94F-F24B-4308-8F29-6C559BF444EB&Options=ID|Text|&Search=0253>.

<sup>2</sup> The City of New York, *The Newest New Yorkers* 186 (Dec. 2013), at <http://www.nyc.gov/html/dcp/html/census/nny.shtml>.

<sup>3</sup> N.Y. VEH. & TRAF. LAW § 501.

<sup>4</sup> See Center for Popular Democracy, *Who We Are: Municipal ID cards as a local strategy to promote belonging and shared community identity* (Dec. 2013), at <http://populardemocracy.org/sites/default/files/municipal%20id%20report.pdf>. See also Els de Graauw, *Municipal ID Cards for Undocumented Immigrants: Local Bureaucratic Membership in a Federal System*, POLITICS & SOC'Y (forthcoming Sept. 2014) (manuscript at 26) (on file with author); Paul F. Lagunes, Brian M. Levin & Ruth K. Dittmann, *The (Identification) Cards You Are Dealt: Biased Treatment of Anglos and Latinos Using Municipal-Issued versus Unofficial ID Cards*, POLITICAL PSYCHOLOGY (2013).

First, *the Council should enact a municipal ID program because it will help make our city safer, foster civic participation, and benefit the City economically.*

A municipal ID will increase public safety by encouraging more crime reporting and cooperation with police investigations. Not having any form of photo identification is generally a red flag to law enforcement that an individual may be undocumented. Undocumented New Yorkers know this, and it understandably increases their reluctance to contact the police, including to report a crime.<sup>5</sup> Conversely, a municipal ID should allow undocumented New Yorkers to interact with police without fear of deportation. Along these lines, immigrants stopped by police during investigations or for minor violations “should be issued a summons, not detained for lacking ID.”<sup>6</sup>

To allay immigrants’ fears, though, the legislation must take steps to prevent undocumented New Yorkers from risk of federal immigration prosecution simply by applying for the card.<sup>7</sup> We support Section 3-136 as a strong step in this direction. Section 3-136 provides that (1) the City “shall not retain originals or copies of records” submitted to prove identity, and (2) “to the maximum extent allowed by applicable federal or state law,” ID application information shall be “treated as confidential” and not disclosed to government entities absent the applicant’s written permission, or an order “by a court of competent jurisdiction.” However, these provisions raise further questions, such as the extent to which immigration courts could subpoena ID card records in deportation proceedings, records’ availability under Freedom of Information laws,<sup>8</sup> any City obligations to disclose names if not records,<sup>9</sup> the length of time the City will keep records, and which City agency will oversee recordkeeping (as discussed later). We would support an amendment directing the City to develop regulations to clarify these issues, as other parts of this legislation provide.<sup>10</sup>

Additionally, to allay any Police Department concerns of fraud, we also support Section 3-135’s strong proof of identity and residency requirements. The City could also look to other cities for innovative methods of preventing fraud while preserving privacy. San Francisco, for example, invested in fraud prevention technology such as a foreign identification authentication

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<sup>5</sup> Center for Popular Democracy, *Who We Are*, at 8.

<sup>6</sup> N.Y. Times, *Caution Ahead for Municipal IDs* (Apr. 27, 2014), at <http://nyti.ms/1fJkMtx>.

<sup>7</sup> See N.Y. Times, *Caution Ahead for Municipal IDs* (“originals should be returned to cardholders and copies destroyed.”)

<sup>8</sup> In New Haven, local anti-immigrant activists tried to obtain names of ID card applicants through state Freedom of Information requests. The state rejected the requests. Cristina Costantini, *Municipal ID Cards Given To Undocumented Immigrants In Cities Across The U.S. With Varied Success*, Huffington Post (Oct. 24, 2011), at <http://huff.to/1u08eXX>

<sup>9</sup> By comparison, San Francisco’s legislation specifically provides that the city will keep confidential “the name and other identifying information” to the maximum extent provided by law. San Francisco Administrative Code § 95.2(c)(3), available at Center for Popular Democracy, *Who We Are*, at 49.

<sup>10</sup> See § 3-133 (directing Mayor’s office of operations to “promulgate all rules necessary”), § 3-134(b) (directing Mayor’s office to adopt rules for fee waivers), § 3-135(a)(i), (ii) (directing Mayor’s office to adopt rules for proof of identity and residency).

module, biometric identification, and a laser engraving machine to design a card intended to be more secure than California's state drivers' license.<sup>11</sup>

Moreover, the municipal ID program will encourage civil participation and foster a sense of belonging for all New Yorkers, including undocumented immigrants. Municipal ID enables its holders to receive services from city agencies, borrow library books, access medical clinics and financial services, pick up packages, and cash checks.<sup>12</sup> To encourage participation, we support Section 3-137, which provides that “[a]ll city agencies shall accept such card as proof of identity and residency for access to city services,” and that the city shall “seek to expand the benefits associated with” the ID, including promoting the card to “banks and other public and private institutions.” Facilitating the opening of bank accounts by undocumented New Yorkers reduces their need to keep large sums of cash on person or in homes, and in turn reduces the risk they are targeted for robbery and other crimes.<sup>13</sup>

This inclusion creates economic benefits for the city, as the undocumented and other vulnerable populations are able to engage in everyday transactions, reducing their own economic hardships.<sup>14</sup> (Richmond, California cited economic benefits in passing its municipal ID law.)<sup>15</sup> Over the long-term, a recent study found that communities which greet immigrants with benevolence and inclusion, rather than governmental hostility, set immigrants and their children on a stronger long-term course in life. Specifically, meaningful social interaction and educational opportunities for children of immigrants, rather than exclusionary measures, help to reduce fear, social stigmatization, and gang activity.<sup>16</sup>

Second, **Municipal ID's properly benefit City populations other than undocumented immigrants.** The proposed New York City photo ID is not just good for undocumented city residents, but for many other New Yorkers as well:<sup>17</sup>

- Transgender New Yorkers, for example, have difficulty obtaining identification that matches their gender. Thus, we support Section 3-132(a), which allows applicants to self-designate their gender if they choose.<sup>18</sup>

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<sup>11</sup> Henry Grabar, *L.A. Moves Forward With Its Own Immigration Reform*, Atlantic Cities (Nov. 13, 2012), at <http://bit.ly/1u09xWE>; City of Oakland, *Report and Recommendations to Implement the Municipal Identification Program* (Oct. 13, 2009), at <http://bit.ly/1u0aRsQ>; Business Wire, *San Francisco Issues Municipal ID Cards With Capture Technologies' Solution* (Jan. 15, 2009), at <http://bit.ly/1u0a6Qw>.

<sup>12</sup> See Karthick Ramakrishnan & Pratheepan Gulasekaram, *Understanding Immigration Federalism in the United States*, CTR. FOR AM. PROGRESS 21 (Mar. 2014), at <http://www.americanprogress.org/wp-content/uploads/2014/03/StateImmigration-reportv2.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> Center for Popular Democracy, *Who We Are*, at 10.

<sup>15</sup> *Id.* at 44.

<sup>16</sup> Sarah Hendricks, *Living in a Car Culture Without a License*, Immigration Policy Center 9 (Apr. 2014), at [http://www.immigrationpolicy.org/sites/default/files/docs/living\\_in\\_car\\_culture\\_without\\_a\\_license\\_3.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/living_in_car_culture_without_a_license_3.pdf).

<sup>17</sup> Center for Popular Democracy, *Who We Are*, at 9.

<sup>18</sup> This would “provide access to basic and much-needed services and accommodations that many take for granted,” and “clear away many of the hurdles transgender New Yorkers face when it comes to legal documents that reflect

- Homeless New Yorkers have trouble applying for a state-issued ID because of the difficulty to supply an address.<sup>19</sup> Thus, we support Section 3-135(ii), which directs the Mayor to establish regulations so that homeless can provide alternative proof of residency.
- Formerly incarcerated New Yorkers trying to re-enter society with little documentation will benefit.<sup>20</sup>
- Finally, many New Yorkers, particularly the elderly and children under 16, do not drive, but can benefit from having a municipal ID.

Each of these populations would benefit from being able to obtain a city-issued photo ID. Moreover, it is important that the ID card be attractive to all New Yorkers, not just undocumented immigrants, to avoid any “scarlet letter” effect associated with the ID.<sup>21</sup>

We thus encourage City outreach to facilitate widespread implementation of the card. Additionally, like San Francisco, the Council could amend the legislation to direct New York City’s Mayor’s Office of Immigrant Affairs (MOIA) to coordinate with other City agencies to promote the card and develop multiple uses for it.<sup>22</sup>

Third, we raise questions regarding implementation of the legislation. Currently, the legislation directs that the Mayor’s “office of operations” administer the program and promulgate all rules necessary to do so.<sup>23</sup> Traditionally, the Mayor’s office of operations does not administer large-scale programs such as this, to our understanding. Large numbers of applicants for the program are expected, based on smaller cities’ experiences. New Haven has issued about 15,000 cards, and San Francisco has issued about 10,000.<sup>24</sup>

We encourage the Council to consider whether assigning responsibility to a specific City agency would help smooth the program’s implementation, and help clarify issues such as confidentiality. The Council could direct coordination with MOIA, if it chose. For example,

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their true identities.” Nathan Schaefer, Empire State Pride Agenda (Apr. 11, 2014), at <http://council.nyc.gov/html/pr/041114mis.shtml>.

<sup>19</sup> *Id.* (Mary Brosnahan, Coalition for the Homeless).

<sup>20</sup> *Id.* (Nancy Wackstein, Executive Director, United Neighborhood Houses).

<sup>21</sup> Center for Popular Democracy, *Who We Are*, at 10.

<sup>22</sup> San Francisco Administrative Code § 95.2(d) (“The Immigrant Rights Administrator shall be responsible for coordinating with the Agency and other City Departments the promotion of the cards and the development of multiple uses for the cards.”), available at Center for Popular Democracy, *Who We Are*, at 48-49.

<sup>23</sup> Section 3-133.

<sup>24</sup> Elizabeth Hagen, *NYC can expect rush on new municipal ID cards*, N.Y. Post (Feb. 12, 2014), at <http://bit.ly/1uOdWsW>.

San Francisco’s legislation directs administration by their County Clerk, in consultation with their Immigrant Rights Administrator, under their City Administrator’s supervision.<sup>25</sup>

Lastly, ***the Municipal ID program is lawful and does not contravene federal laws.*** A state or municipality is within its rights to issue a unique identifier to its population, including undocumented non-citizens. Although the federal government is pre-eminent in setting immigration policy, state and local governments still possess authority to regulate the lives of residents within their borders.<sup>26</sup>

For this reason, a nonpartisan Congressional Research Service report recently concluded that municipal IDs are “unlikely to be barred by federal law.”<sup>27</sup> No court has held that federal law preempts state or local governments from issuing IDs to undocumented populations within their borders. Indeed, the only court to rule on municipal IDs, a California state court, concluded that San Francisco’s municipal ID was not preempted by federal law.<sup>28</sup>

Specifically, New York City’s municipal ID is unlikely preempted as a “regulation of immigration.” The ID, available to *any* current resident of New York City (Sections 3-132(b), 134(a)), only regulates local matters, not national matters such as entry or legal residency in the United States.<sup>29</sup> Moreover, New York City’s ID is unlikely preempted by the federal REAL ID Act.<sup>30</sup> The federal REAL ID Act does require states to require proof of legal immigration status if a state seeks federal agencies to accept its ID for federal purposes.<sup>31</sup> But, New York City does not seek its ID to be used for any federal purpose (nor does the City intend the ID to provide proof of lawful immigration status).<sup>32</sup> Indeed, federal law explicitly envisions that localities will use non-conforming IDs at the local level.<sup>33</sup>

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<sup>25</sup> San Francisco Administrative Code § 95.2(a)(3), (d), *available at* Center for Popular Democracy, *Who We Are*, at 48-49. Oakland’s legislation similarly directs the City Clerk to administer the program, or “such other City Department or Agency that the City Administrator may designate.” Oakland Municipal Code Chs. 2.34.020, .050, *at Who We Are*, 42-43.

<sup>26</sup> Ramakrishnan & Gulasekaram, *Understanding Immigration Federalism*, at 1.

<sup>27</sup> Kate M. Manuel & Michal John Garcia, *Unlawfully Present Aliens, Driver’s Licenses, and Other State-Issued ID: Select Legal Issues*, CONG. RESEARCH SERV. 20-21 (Mar. 28, 2014), at <http://www.fas.org/sgp/crs/misc/R43452.pdf>.

<sup>28</sup> *Langfeld v. City of San Francisco*, Case No. 508-341, Order Sustaining Respondents’ and Intervenors Demurrer (Cal. Sup. Ct. May 13, 2008).

<sup>29</sup> Manuel & Garcia, at 13, 16, *citing United States v. Rivera*, 516 F.3d 500, 503 (6th Cir. 2008) (certificates for driving are “not related to naturalization, citizenship, or legal status”). Manuel & Garcia argue that legislation granting drivers’ licenses or IDs to all residents (such as New York’s), rather than specifically barring drivers’ licenses to unauthorized immigrants, is more likely to survive preemption challenges. *Id.* at 16, *citing LULAC v. Bredesen*, 2004 U.S. Dist. LEXIS 26507, \*21 (M.D. Tenn., Sept. 28, 2004).

<sup>30</sup> P.L. 109-13, Div. B, §202, 119 Stat. 312-315 (May 11, 2005) (codified, as amended, at 49 U.S.C. §30301 note).

<sup>31</sup> P.L. 109-13, Div. B, at §202(b)(2)(B).

<sup>32</sup> Manuel & Garcia, at 16-17, 20-21.

<sup>33</sup> *Id.* at 17; P.L. 109-13, Div. B, §202(d)(11).

Lastly, New York City's ID is unlikely preempted under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.<sup>34</sup> PRWORA does bar state and local governments from providing "state and local public benefits" to unlawfully present noncitizens unless the state enacts legislation that "affirmatively provides" for their eligibility.<sup>35</sup> However, ID cards are not "public benefits" (such as Medicaid).<sup>36</sup> Additionally, New York City's ID card does not grant new federal or state public benefits to immigrants. Under PRWORA, New York City does not possess the authority to do so.<sup>37</sup>

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In sum, City Bar applauds and encourages the expeditious passage of Int. No. 253 by the City Council. The ID card program will make New York a safer, more inclusive, and more economically vibrant community for all New Yorkers.

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<sup>34</sup> 8 U.S.C. §1621.

<sup>35</sup> 8 U.S.C. §1621(d).

<sup>36</sup> Manuel & Garcia, at 17-18. PRWORA defines public benefits as "any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government," or "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government." 8 U.S.C. §1621(c)(1)(A), (B).

<sup>37</sup> Manuel & Garcia, at 21.