

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
THE MAYOR OF THE CITY OF NEW YORK

Plaintiff,

SUMMONS

-against-

Index No. _____

THE COUNCIL OF THE CITY OF NEW YORK,


Defendants.
-----X

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on plaintiff's undersigned attorney within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in this complaint. Plaintiff designates New York County as the place of trial in accordance with CPLR § 503(a).

Dated: New York, New York
September 3, 2013

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007
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By: 
June R. Buch
Assistant Corporation Counsel

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

THE MAYOR OF THE CITY OF NEW YORK

Plaintiff,

COMPLAINT

-against-

Index No. _____

THE COUNCIL OF THE CITY OF NEW YORK,

Defendant.

-----X

The Mayor of the City of New York, Michael R. Bloomberg, by Michael A. Cardozo, Corporation Counsel of the City of New York, for his complaint against the Council of the City of New York ("Council"), alleges as follows:

PRELIMINARY STATEMENT

1. This action challenges the validity of a local law adopted by the Council over the Mayor's veto, Local Law 71 for the year 2013 ("Local Law 71") as preempted by the New York State Criminal Procedure Law. Local Law 71 purports to amend Administrative Code § 14-151, the City of New York's ("City") existing prohibition on racial and ethnic profiling by a law enforcement officer, including members of the force of the New York City Police Department ("Police Department" or "NYPD"). It expands the definition of prohibited profiling; it extends the prohibition to not just individual law enforcement officers, but also the NYPD; it creates private rights of action for intentional and disparate impact profiling claims against law enforcement officers, the City, and the NYPD; it specifies the burdens of proof and evidentiary requirements for such rights of action; and it allows courts to award attorneys fees and expert fees to prevailing plaintiffs in profiling lawsuits. Because it is preempted, Local Law 71 exceeds the bounds of permissible legislation by the Council.

2. The Mayor vetoed Local Law 71 on the grounds that it is unlawful and harmful to the City. It is unlawful because it is preempted 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.

PARTIES

3. The plaintiff is the Mayor of the City of New York. The Mayor is “the chief executive officer of the city” and exercises all the powers vested in the City, except as otherwise provided by law. Charter §§ 3, 8.

4. The defendant is the Council of the City of New York. The Council is the legislative body of the City. Charter §§ 21, *et seq.*

JURISDICTION AND VENUE

5. This Court has jurisdiction over defendant pursuant to CPLR 301.

6. Venue in New York County is proper pursuant to CPLR 503(a).

FACTS

Local Law 71

7. On June 26, 2013, the Council passed Local Law 71, Intro 1080 (now Local Law 71 of 2013).

8. Local Law 71 prohibits “biased-based profiling,” which it defines as an act by a law enforcement officer that “relies on actual or perceived race, national origin, color, creed, age, alienage or citizenship status, gender, sexual orientation, disability, or housing status as the determinative factor in initiating law enforcement action against an individual.” Local Law 71, Section 2 (amending Ad. Code § 14-151), at § (a)(1), (b).

9. The Law defines “housing status” to include, among other things, being homeless or having a home, living in public housing, or owning or renting a home. The terms national origin, gender, disability, sexual orientation, and alienage or citizenship status are given the same meaning as in Administrative Code § 8-102, the City Human Rights Law. *Id.* §§ (a)(3), (a)(4).

10. Local Law 71 creates two ways for a plaintiff to establish a claim of biased-based profiling. First, it provides that a claim for intentional bias-based profiling is established where

an individual brings an action demonstrating that

(i) the governmental body has engaged in intentional bias-based profiling of one or more individuals and the governmental body fails to prove that such bias-based profiling (A) is necessary to achieve a compelling governmental interest and (B) was narrowly tailored to achieve that compelling governmental interest; or

(ii) one or more law enforcement officers have intentionally engaged in bias-based profiling of one or more individuals; and the law enforcement officer(s) against whom such action is brought fail(s) to prove that the law enforcement action at issue was justified by a factor (s) unrelated to unlawful discrimination.

Id. § (c)(1).

11. Second, it provides that a claim is established when “a policy or practice ... or a group of policies or practices within the police department regarding the initiation of law enforcement action has had a disparate impact...” *Id.* § (c)(2)(i). It provides that a claim is established where:

(i) a policy or practice within the police department or a group of policies or practices within the police department regarding the initiation of law enforcement action has had a disparate impact on the subjects of law enforcement action on the basis of characteristics delineated in paragraph 1 of subdivision a of this section, such that the policy or practice on the subjects of law enforcement action has the effect of bias-based profiling; and

(ii) The police department fails to plead and prove as an affirmative defense that each such policy or practice bears a significant relationship to advancing a significant law enforcement objective or does not contribute to the disparate impact; provided, however, that if such person who may bring an action demonstrates that a group of policies or practices results in a disparate impact, such person shall not be required to demonstrate which specific policies or practices within the group results in such disparate impact; provided further, that a policy or practice or group of policies or practices demonstrated to result in a disparate impact shall be unlawful where such person who may bring an action produces substantial evidence that an alternative policy or practice with less disparate impact is available and the police department fails to prove that such alternative policy or practice would not serve the law enforcement objective as well.

Id. § (c)(2).

12. Local Law 71 provides that

the mere existence of a statistical imbalance between the demographic composition of the subjects of the challenged law enforcement action and the general population is not alone sufficient to establish a prima facie case of disparate impact violation, unless the general population is shown to be the relevant pool of comparison, the imbalance is shown to be statistically significant, and there is an identifiable policy or practice or group of policies or practices that allegedly causes the imbalance.

Id. § (c)(2)(iii).

13. A plaintiff may assert intentional and/or disparate impact biased-based profiling claims either in a civil action or before the New York City Commission on Human Rights. *Id.* § (d)(1). The claim may be asserted against “any governmental body that employs any law enforcement officer,” an officer, and the Police Department. *Id.*

14. Local Law 71 provides for injunctive and declaratory relief. The court may also “allow a prevailing plaintiff reasonable attorney’s fees as part of the costs, and may include expert fees as part of the attorney’s fees.” *Id.* §§ (d)(2), (d)(3).

15. Local Law 71 further provides that its terms should be “construed broadly, consistent with the Local Civil Rights Restoration Act of 2005.” Local Law 71, Section 1.

The Criminal Procedure Law

16. The New York State Criminal Procedure Law (“CPL”) governs the actions of law enforcement; it places limits and obligations on the actions of law enforcement officers, including the Police Department. As a comprehensive and detailed set of laws, it was intended to and does occupy the field of criminal procedure legislation in the State, which includes not only legislation concerning the procedures followed in courts of law, but also legislation concerning the procedures and standards law enforcement officers must apply and follow in performing their investigative and law enforcement work.

17. Aside from the CPL, law enforcement agencies and officers, including the NYPD and individual officers, are also subject to applicable federal and state constitutions, laws, rules, and judicial orders.

18. The State Legislature enacted the CPL in 1970, as a “comprehensive modernization of procedures for the administration of criminal justice.” Bill Jacket for Chapter 997 of the Laws of 1970, Governor’s Memoranda, dated May 20, 1970.

19. Prior to the CPL, the State’s law of criminal procedure was largely embodied in the Code of Criminal Procedure (“Code”), originally enacted in 1881. By 1961, the State Legislature recognized that the Code needed a comprehensive and thorough review; through piecemeal amendments over many years, the Code had become a patchwork of confusing procedures and inconsistent and anachronistic terms. Bill Jacket for Chapter 346 of the Laws of 1961, Program Bill Memorandum.

20. Accordingly, the State created a Temporary Commission on Revision of the Penal Law and Criminal Code (“Commission”). *See* L. 1961, c. 346. The Commission was given a mandate to perform an “overall redrafting” of the law of criminal procedure, with a view to “simplification of language” and “streamlining of procedure.” Bill Jacket for Chapter 346 of the Laws of 1961, Program Bill Memorandum.

21. The Commission also sought to create uniformity across the State. For example, it brought “within the ambit of the proposed Criminal Procedure Law,” the New York City Criminal Court, previously governed largely by the New York City Criminal Court Act rather than the Code. Bill Jacket for Chapter 997 of the Laws of 1970, Memorandum in Support and Explanation of Proposed Criminal Procedure Law, Prepared by the Temporary Commission on Revision of the Penal Law and Criminal Code.

22. The resulting Criminal Procedure Law is a detailed and complete set of laws that was intended to govern all matters of criminal procedure in the State of New York, from the investigations performed by police officers and departments through post trial matters.

23. For example, CPL Article 690 governs the issuance and execution of search warrants, and CPL Article 700 governs warrants for wiretaps and video surveillance. CPL § 140.50 governs the stopping and questioning of persons by police officers and specifies the conditions under which a stop may lawfully be made and the conditions when an officer may lawfully search a person. Other provisions of the CPL govern arrests, fingerprinting, and all other aspects of criminal procedure.

24. The CPL expressly states that it is the sole source of procedure for criminal actions, proceedings, and matters. It provides that the CPL applies “exclusively” to “all criminal

actions and proceedings” and “all matters of criminal procedure ... which do not constitute a part of any particular action or case.” CPL § 1.10(1).

25. As the State Legislature recognized in 1970, a comprehensive and uniform set of criminal procedures is beneficial to the State and its people. It ensures that people throughout the State are subject to the same laws and standards and avoids the confusion and unequal treatment that would result if different jurisdictions had different procedural rules.

The Mayor’s Veto

26. On July 23, 2013, the Mayor vetoed Local Law 71 on the ground that it is preempted by the State Criminal Procedure Law and would be harmful to the City.

The Council’s Vote to Override the Mayor’s Veto

27. On August 22, 2013, the Council voted to override the Mayor’s veto.

28. Accordingly, pursuant to its terms, Local Law 71 will go into effect 90 days after its effective date. Local Law 71, Section 5.

FIRST CAUSE OF ACTION **(Preemption – The Criminal Procedure Law)**

29. Plaintiff repeats and realleges the above allegations 1 through _ with the same force and effect as if fully set forth herein.

30. Local Law 71 is illegal and invalid because it is preempted by the State Criminal Procedure Law. When the State Legislature has preempted a field, local legislation in that area is invalid irrespective of whether the local law is consistent or inconsistent with State law.

31. The State legislature may expressly articulate its intent to occupy a field or it may occupy a field by implication. An implied intent to preempt may be found in a declaration

of State policy by the legislature or from the fact that the legislature enacted a comprehensive and detailed regulatory scheme in a particular area.

32. The CPL is a comprehensive and detailed regulatory scheme that imposes burdens, limitations and obligations on law enforcement, including the Police Department and individual officers, and determines the procedures that law enforcement must follow in performing their work, from investigations through post trial proceedings. It is intended to be a uniform and complete set of laws for the entire State. As such, the CPL preempts the field of criminal procedure legislation and prevents local legislatures, including the Council, from passing local laws in this area, regardless of whether those local laws are consistent or inconsistent with the CPL.

33. The Criminal Procedure Law expressly states that it is the sole source of procedure for criminal actions, proceedings, and matters. According to the CPL, it applies “exclusively” to “all criminal actions and proceedings” and “all matters of criminal procedure ... which do not constitute a part of any particular action or case.” CPL § 1.10(1).

34. Law enforcement, including the Police Department and individual law enforcement officers, are subject to applicable federal and state constitutions, laws, rules, and judicial orders.


35. By legislating what is or is not an unlawful enforcement action, and creating enforcement mechanisms for same, Local Law 71 seeks to regulate criminal procedure – an area that is preempted by the CPL which, as set forth above, occupies the entire field of State criminal procedure legislation, including the procedures that govern law enforcement actions.

36. Local Law 71 is preempted by State law and should be declared invalid.

WHEREFORE, the Mayor respectfully requests a declaratory judgment that Local Law 71 is invalid, without force or effect; a permanent injunction enjoining the operation and implementation of Local Law 71; and such other relief as the Court deems just and proper.

Dated: New York, New York
September 3, 2013

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