

Myths & Facts (Updated 7/8/2013)

Despite myths being disseminated by opponents about the Community Safety Act's legislation to ban discriminatory profiling, the bill does not restrict police officers from engaging in effective and justified law enforcement activity. It only prohibits law enforcement discrimination, such as profiling a New Yorker simply because they are Black, Latino, LGBTQ, or Muslim. Beyond this discrimination being morally wrong, it is counterproductive to public safety because it damages the relationship between law enforcement and entire communities.

MYTH: There is already a strong ban on profiling in New York City law.

FACTS: While racial profiling is banned by law in NYC, **the existing racial profiling ban has no mechanism to enforce the law. In addition, there are no protections whatsoever against NYPD profiling based on immigration status, sexual orientation, gender, gender identity and expression, age, disability, or housing status.** That's why the *End Discriminatory Profiling Act* of the Community Safety Act is so important: it expands the categories of groups protected from baseless and discriminatory profiling by the police *and* provides a meaningful way for individuals who have been unlawfully profiled to pursue legal action by filing a complaint in court or with the New York City Human Rights Commission.

MYTH: The police department doesn't engage in profiling. More Black and Latino people are crime suspects, so more of them are stopped by police.

FACTS: In 2011, only 16% of street stops by NYPD officers were based on a person fitting the description of a crime suspect. **The overwhelming majority of people subject to a stop and frisk are not engaged in illegal activity when stopped**—they are students on the way to school, people coming home from work, neighbors going to the store, friends visiting each other's apartments. The disproportionate impact on communities of color is unjust, and it doesn't make anyone safer. **Being Black, Latino, Muslim or LGBT is not and should not be treated as reasonable suspicion.**

MYTH: This bill will permit lawsuits against every police policy or practice, including crime-prevention initiatives like Operation Crew Cut and the use of cameras, on the basis of statistical disparities.

FACTS: **The bill clearly states that a lawsuit cannot be brought on the basis of statistics alone.** If a plaintiff brought a lawsuit for bias-based profiling based only on the fact that cameras – or another law enforcement practice – were capturing a large number of people of one race, ethnic group or other protected category, the suit would not be allowed to proceed. Even if a policy did have a disparate impact on a group or community – and that disparate impact is proven by more than statistics alone – under the bill, the NYPD could successfully defend their policy by demonstrating it serves a compelling government interest and is narrowly tailored to limit discrimination.

MYTH: This bill will open the floodgates to an avalanche of lawsuits that will benefit tort lawyers, but cost the taxpayers millions of dollars to defend and obstruct law enforcement.

FACTS: **This bill does NOT allow individuals to sue the NYPD or the City for monetary damages.** It only allows New Yorkers to sue for injunctive and declaratory relief when they have been discriminated against by the NYPD, making it highly unlikely that New Yorkers will file suits (or find attorneys to file them) without significant belief that they would win their cases – **there's no monetary incentive to sue, and in fact there are significant costs of money and time.** In order to file a suit, a plaintiff must be willing to pay a filing fee of several hundred dollars and complaints are screened and dismissed if they do not meet a viable claim of discrimination. Attorneys that file frivolous lawsuits would be subject to sanctions, including monetary fines.

Discriminatory policing is what costs the city millions of dollars a year. **The costs of defending unlawful discrimination by the NYPD are already borne by taxpayers to the tune of \$745 million in settlements and legal fees in 2012 alone.** This bill will actually save taxpayers money by forcing the NYPD to abandon ineffective, wasteful, and harmful discriminatory practices. The *End Discriminatory Profiling Act* allows New

Yorkers to seek injunctive and declaratory relief to make changes to discriminatory and ineffective policy, practice and training. It would not allow plaintiffs to seek monetary damages.

MYTH: This bill will threaten the livelihood of officers and force them to avoid fighting crime because they fear lawsuits filed against them.

FACTS: This bill does not allow disparate impact claims to be brought against individual officers – those claims may only be brought against the department. Claims against individual officers must demonstrate intentional discrimination, which requires an extremely high burden of proof. Police officers carrying out their duties lawfully have nothing to fear.

MYTH: This bill will stop police officers from apprehending suspects based on a physical description or identifying a suspect’s age, gender, color or disability, thereby hamstringing individual officers and jeopardizing public safety.

FACTS: The bill is a common-sense measure that affirms the legal basis for police action by making it clear that a person’s race, religion, sexual orientation, gender identity or other characteristics alone cannot be the primary basis for a stop or other law enforcement action. **The bill does not restrict police officers from engaging in lawful police activity like pursuing a lead or using a physical description (including race or other descriptive category) to pursue an actual suspect.** If an eyewitness account includes a description, officers can use that description. It just prohibits officers from using race – and other protected categories, like religion or sexual orientation – as the only or primary basis to target entire communities, rather than trustworthy information or circumstances linking a person to suspected unlawful activity.

It uses the same exact “determinative factor” standard as the current racial profiling law – sponsored by Public Safety Chair Peter Vallone, Jr. and signed into law by Mayor Bloomberg in 2004 – that does not presently prevent officers from identifying a suspect based on race (see the actual text of bill below).

NYPD quotas that drive the explosion of unlawful stops and discriminatory policies are what hamstringing officers, make them second guess themselves and jeopardize public safety by wasting law enforcement resources and destroying community trust in the police. Officers will police more efficiently and effectively, focusing on real leads, specific suspect descriptions, and objective evidence, rather than wasting their time and resources on tactics that are not only discriminatory, but dangerously ineffective.

2004 Racial Profiling Law language	2013 Discriminatory Profiling Legislation language
<p>1. "Racial or ethnic profiling" means an act of a member of the force of the police department or other law enforcement officer that relies on race, ethnicity, religion or national origin as the determinative factor in initiating law enforcement action against an individual, rather than an individual's behavior or other information or circumstances that links a person or persons of a particular race, ethnicity,</p>	<p>1. "[Racial or ethnic] Bias-based profiling" means an act of a member of the force of the police department or other law enforcement officer that relies on actual or perceived race, [ethnicity, religion or] 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, rather than an individual's behavior</p>