

Testimony of Jay Flemma, Esq.
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Before the New York State Assembly Economic Development
Committee, February 1, 2017, Albany, New York

**PURPOSE: FUNDING FOR FORECLOSURE PREVENTION SERVICE
PROVIDERS**

Dear Chairman and Members of the Committee:

Thank you all for the opportunity to speak to you today. My name is Jay Flemma, and I'm a lawyer with the Utica office of the Legal Aid Society of Mid-New York, where I've worked in the mortgage foreclosure defense practice group for the last three years. I'm here today to raise an urgent alarm. There is a desperate need for you to promptly fund New York's existing foreclosure prevention service network by recreating the New York Homes and Community Renewal foreclosure defense program (HCR). New York's foreclosure defense network is in the direst of fiscal emergencies, and that means every New York homeowner is at risk as well. Without lawyers and housing counselors, all New Yorkers, your constituents, face mortgage foreclosure lawsuits alone, an all but hopeless task.

To give you an example of who we are, what we do, and why the funding is so critical to the State, please consider that in the last two years alone, under the Home Ownership Protection Program, the Legal Aid Society of Mid-New York has averaged per year:

***closing 192 cases;

***preventing foreclosure in 122 cases;

***given counsel and advice on another 104;

...and in doing so has:

***saved homeowners \$3,060,649 in loan modifications, reinstatements, and payoffs; and

***saved homeowners another \$2,129,036 in principal forgiveness or forbearance.

We are always within our fiscal allotment and comfortably out-perform our yearly goals. Perennially, we – and all foreclosure prevention service providers as a whole - are one of the best bargains in the budget.

Foreclosure affects everyone, of all ethnicities, socio-economic backgrounds, religions, and political ideologies. The foreclosure crisis doesn't care if you're young or old, black or white, Christian or Muslim, Democrat or Republican, rich or poor. It cuts its devastating swath across all walks of life, and I know everyone in this room recalls the stomach-churning terror of the last crash with dread: how entire neighborhoods, once proud and prosperous, evaporated into blight.

Sadly, the national foreclosure crisis is still with us and shows no signs of abating. Indeed, almost every metric we study indicates that a second crash is coming, perhaps even more devastating than the last.

As you all know, Funding for the Home Ownership Protection Program through the New York Attorney General's Office ends September 30 of this year, and the AG has been explicit: they will no longer fund the program. Subsequent bank settlements – if any, and that seems unlikely for the near future – are now subject to the budget process between the Governor's office and the legislature, and the Memorandum of Understanding process (whereby legislature and governor are supposed to allocate housing-related funds) does not include funding for foreclosure prevention services.

However, prior to the HOPP program, New York Homes and Community Renewal (HCR) funded a state-wide network of housing counseling and legal services. It's that program that we – the foreclosure defense attorneys of New York, ask to be re-created and funded.

There are three critical reasons to support this campaign: foreclosures are still steadily increasing, the housing market is now enduring similar triggers to those which precipitated the 2008 crash, and the law of mortgage foreclosures is so complex and voluminous, unrepresented defendants are incapable of adequately defending themselves.

Just three weeks ago the Office of Court Administration announced that there were 33,635 new foreclosure cases filed in New York in

2016, a number well in excess of the levels we saw at the beginning of the crisis. Right now there are over 72,000 pending foreclosure cases in New York courts, representing a whopping 26% of the civil docket. More than one out of every four cases in New York is a mortgage foreclosure action.

Sadly, these numbers look to increase in the future as several foreclosure prevention programs and protections for homeowners have vanished, while other potential crisis-triggering practices, once forbidden, have again been permitted.

First, the Home Affordable Modification Program (HAMP) which helped over 1.5 million homeowners keep their homes, ended on December 30, 2016 with nothing to replace it. This leaves homeowners with only their bank or servicer's internal modification programs, many of which are severely limited. This was a huge blow to mortgage foreclosure defense as our most effective weapon against the crisis has vanished.

Worse still, recently enacted federal sub-prime programs are creating new generations of risky loans. Early last year, FannieMae rolled out the HomeReady Program, a replacement to their notorious "MyCommunityMortgage" sub-prime program. For the first time, applicants with sub-prime credit scores (as low as 620) can, for a mere 3% down if they qualify, apply for loans based on the income of non-related, non-borrowers who may or may not be living in the household. This is dangerous because three of the biggest indicators of likely default are reliance on outside income, low down payments, and low credit scores. Doubling down on this risky approach appears to be in the works, as there has been talk of green-lighting "NINJA loans" – an acronym for "no income, no job, no assets."

That is the textbook urban dictionary definition of insanity – repeating a mistake and expecting a different result.

Along with that, the raising of interest rates last December translates to a higher monthly expense in the cost of a loan, right now about \$75 per month over the life of a 30-year, fixed rate mortgage.

Finally, mortgage foreclosure law is as deep in its complexity and it is voluminous in its breadth. A lawyer must be both a transactionalist and a litigator simultaneously. He or she must have a mastery of multiple areas of law that intersect with a foreclosure case, such as bankruptcy, wills and estates, divorce, real estate, land use and zoning, and disability just to name a few.

Moreover, the sheer number of sources of mortgage foreclosure law is staggering. Federal regulations, state statutes, court rules, CPLR provisions, mortgagee letters, investor guidelines, stock/bond prospectuses: thousands upon thousands of pages governing myriad types of loans, none of which are identical to the other. And the law changes on almost a daily basis. In my 23 years as an attorney, I have practiced in many complex areas of law, including intellectual property and Internet law: two disciplines known for prolixity, complexity, and almost daily changes. But even those disciplines are not as labyrinthine as the law and practice of mortgage foreclosure defense.

Without lawyers to guide them, homeowners will be lost in the Byzantine maze the practice has become. They know nothing of appeals of denial, escalations, or notices of error. They have no idea when a servicer may not be properly following either the investor guidelines or the settled law, or how to file effective complaints to either the CFPB or DFS. And they lack the leverage to be able to negotiate fair resolutions from banks that are ruthlessly trying to prize the last possible cent from their already strained wallets.

Worse still, without a network of skilled, dedicated mortgage foreclosure defense providers, the homeowners of New York – your constituents – will be left to the mercy of the myriad mortgage foreclosure scams that have devastated so many unsuspecting borrowers.

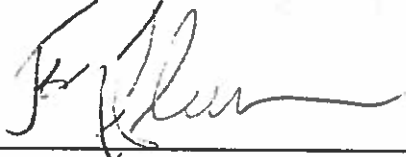
The loss of the existing network of foreclosure defense attorneys means an exponential rise in foreclosed homes and zombie properties, at a cost to New York and its homeowners to terrible to fathom.

You, our elected lawmakers, have admirably passed reforms that keep New York ahead of most of the rest of the nation when it comes to protecting homeowners. We thank you for that. The CPLR 3408 revisions and the zombie properties law are great strides in leveling the playing field in the courts. Senators Weinstein and Klein's bill regarding reverse mortgages is a godsend to the elderly borrowers who were formerly left defenseless. And the consumer protections enacted finally allow homeowners to strike back at bank and servicer abuses. But all of that is for naught without the lawyers who know about these protections and how to skillfully use them.

Without the lawyers, the homeowners are unprotected. And as my client Lesley Vella said so admirably in her written testimony (attached

hereto) everyone has a mortgage, so in this current mortgage foreclosure crisis, everyone is at risk.

As such, we ask you to promptly fund the state's foreclosure defense service providers through a new HRC program. We seek \$10 million for us to continue working from October 2017-March of 2017, and will need further funding to keep the program running in the future. Without us, the ordinary citizens of New York State don't stand a chance.

A handwritten signature in black ink, appearing to read "Jay Flemma", written over a horizontal line.

Jay Flemma, Esq.

Testimony of Lesley A. Vella
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Before the New York State Assembly Economic Development
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**PURPOSE: FUNDING FOR FORECLOSURE PREVENTION SERVICE
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Dear Chairman and Members of the Committee:

Thank you for the opportunity to testify for you today about how the mortgage foreclosure crisis nearly took my home and destroyed my family and about how the Legal Aid Society of Mid-New York foreclosure prevention attorneys and housing counselors saved them both.

My name is Lesley Vella. I'm a speech language pathologist for the Rome City School District, and my story is identical to that of thousands of New Yorkers, regardless of nationality or religion, political ideology or economic status - I nearly lost my home and my family to foreclosure during an economic hardship.

Without question, if it weren't for the attorneys and housing counselors at the Legal Aid Society of Mid-New York saving my home from foreclosure, my life would be in ruins. As such, I'm here to ask you to immediately fund the State's foreclosure prevention services network so that every homeowner has a chance to save their homes and families as well.

My husband John and I bought our dream home in New Hartford, New York in 2011. I was 31 then and had my whole life in front of me. Our beautiful daughter Mia was born in that home, and for three years we were happy. But then in 2014, I suffered two hardships simultaneously that put my home in foreclosure and my life in pieces: my husband and I separated for a time, and I donated a kidney to my brother to save his life, (I also helped pay his frighteningly expensive medical bills).

Suddenly I was trying to pay for the home for my daughter and I on one wage, while at the same time fending off creditors for both

medical bills and my mortgage. I managed to save a little money every month, but the mortgage servicer refused to take partial payments. Worse still, my 70 year-old father was a co-signer on the note and mortgage, and when we could not bring the loan current, we were both sued.

In desperation, I answered an ad I saw on television for a legal service that would connect us with a foreclosure defense attorney. At that time, I had actually saved \$6,500, so I responded to the ad, and that company connected me with two different lawyers: first one in Florida, and then later, one in Virginia. I gave these attorneys the \$6,500 in hopes they could either defend the action or arrange a settlement.

Sadly, months passed and nothing was done in my defense. It turned out I had become yet another victim of the foreclosure defense scams that still prey upon desperate homeowners to this day. Now I was not only facing foreclosure, but the nest egg I had saved in hopes of being able to start a repayment plan was gone too. I began to lose hope.

Happily, my husband and I reconciled, and together we once again started to try to rebuild our finances – hoping beyond hope for some relief – be it modification, repayment, anything.

We found out about the Legal Aid Society of Mid-New York through our housing counselor, Rose Marie Roberts of Utica, New York. She recommended we go to our local Legal Aid office for help – in this case the Utica office of the Legal Aid Society of Mid-New York. (Ms. Roberts later joined them as their in-house housing counselor, a great boon to that agency and to homeowners throughout the counties they serve.) I connected with Legal Aid with one day to go before my father and I would have defaulted in answering the Complaint.

Immediately our Legal Aid lawyer, Jay Flemma, Esq., got us an extension of time to answer the Complaint and, coordinating with Ms. Roberts, helped us complete a modification package which was submitted to the bank.

We were initially denied.

Happily Attorney Flemma's knowledge and mastery of the procedural details of appealing, escalating, and otherwise challenging the denial saved our home. We would have had no idea appellate review or other internal procedures would have allowed us to have that denial

reversed. And even if we did, we had no idea how to present that to the Court and the bank. Between Attorney Flemma's excellent relations with both the court and the bank attorneys and his skillful navigation of the procedural workings and complicated banking rules, a few short months later – in September of 2015 - the "no" turned to "yes," the denial became an approval, and we signed a trial modification, which became the final modification that we are still working under today.

But that's not all our Legal Aid lawyer did for us. Attorney Flemma got about \$4000.00 in excessive fees and charges removed from our mortgage account by the bank. That was enormous, because it helped make our loan more affordable. Additionally, he helped transfer responsibility for the obligation from my 70 year-old father to my husband, so my Dad no longer has to worry. And best of all, Attorney Flemma recovered \$6,000 of the \$6,500 I paid the scammers, money everyone else told me (and him) we had no hope of recovering.

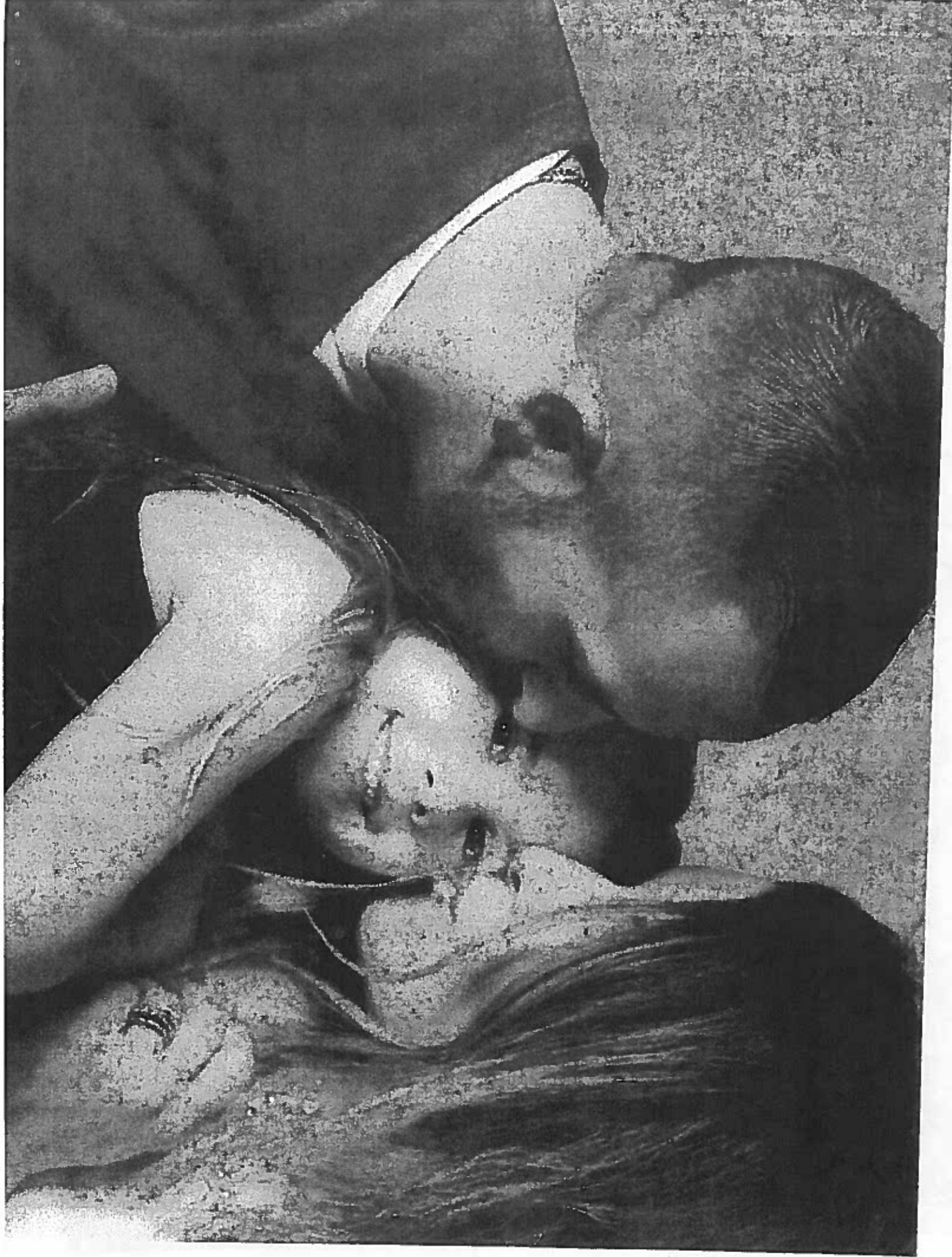
Make no mistake - without my Legal Aid lawyer, I would be divorced, broke, and my daughter and I would be facing a terrible, uncertain future. Instead, our lives are as joyful as we could ever wish them to be. Yes, I've added a second job doing private work with early intervention and preschool children and per diem work at a nursing home to help make ends meet, but we could never have survived this economic horror without the Legal Aid Society of Mid-New York.

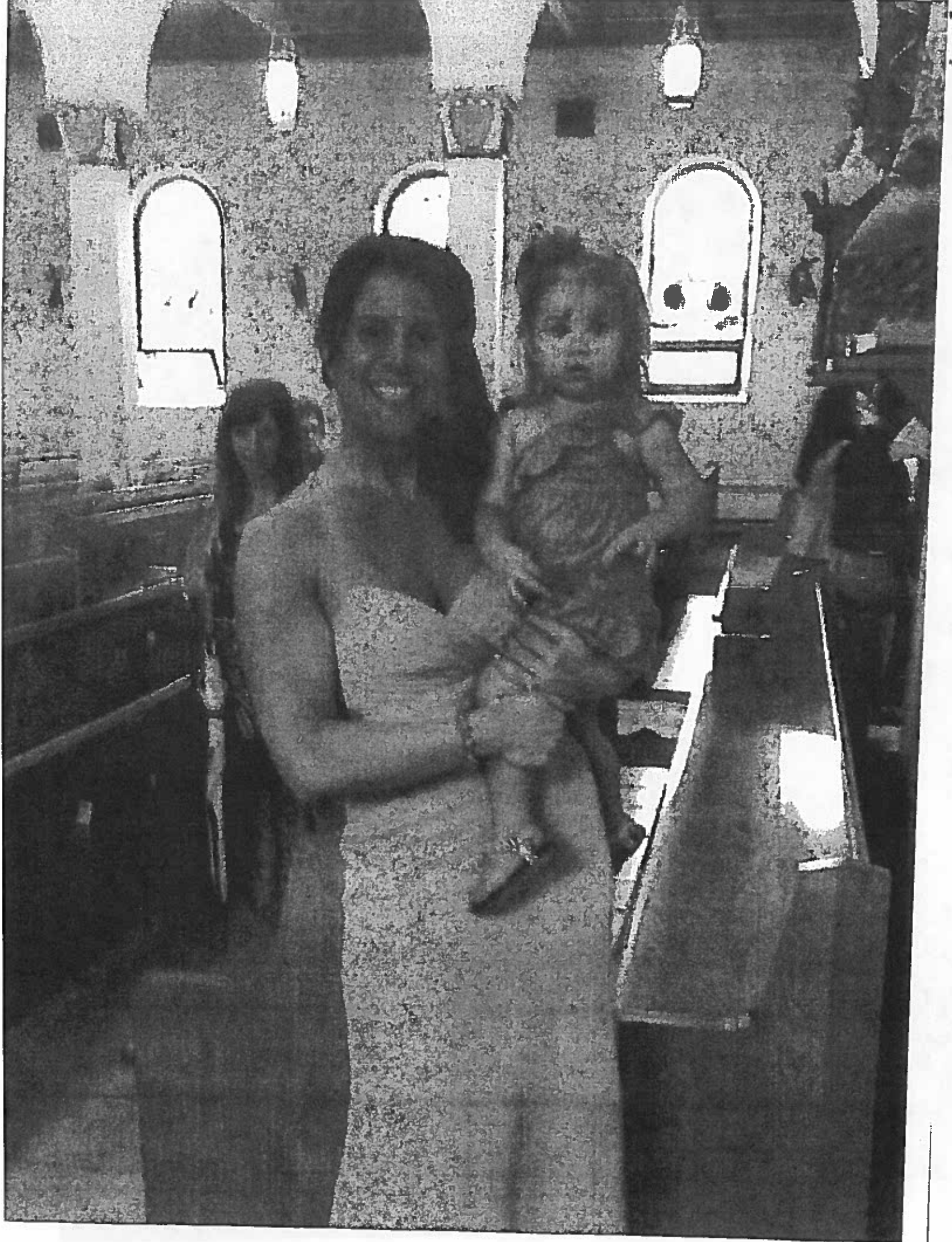
Our Legal Aid mortgage foreclosure lawyer made all the difference in the world, but without immediate funding thousands of New York homeowners face the same terrible fear and uncertainty we once did. People like me – people like your constituents – desperately need you to fund foreclosure prevention attorneys and housing counselors. Everyone has a mortgage, so in this current, grave mortgage foreclosure crisis, everyone is at risk.

Funding runs out in September; our mortgages – indeed, our lives and our children's lives - don't. On behalf of homeowners everywhere, please fund the foreclosure prevention service providers immediately. Without them, ordinary New Yorkers face a bleak future alone.



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11/30/17

