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## **TESTIMONY OF THE LEGAL AID SOCIETY**

Joint Legislative Public Hearing on 2020-2021 Executive Budget Proposal: Housing

February 5, 2020

Thank you Majority Leader Stewart-Cousins, Chair Krueger, Speaker Carl Heastie, Chair Weinstein, Chair Kavanagh, Chair Cymbrowitz, the New York State Senate Finance Committee and the New York State Assembly Ways and Means Committee for holding this very important hearing. We welcome the opportunity to submit testimony before the Committees on behalf of the Legal Aid Society concerning fiscal priorities for the coming year. We agree with the Committees that “access to safe and secure housing is a fundamental right”<sup>1</sup> and are eager to work with the Committees to ensure that tenants across New York State can take advantage of this fundamental right. The government should continue to focus on the housing crisis by ensuring safe housing for New Yorkers<sup>2</sup>.

### **The Legal Aid Society**

The Legal Aid Society (Legal Aid), the nation’s oldest and largest not-for-profit legal services organization. Legal Aid provides comprehensive legal services in all five boroughs of New York City for people who cannot afford to pay for private counsel. Since 1876, Legal Aid has

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<sup>1</sup> Report from the New York State Senate, Committee on Investigations and Government Operations, Final Investigative Report: Code Enforcement in New York State, August 5, 2019, page 6.

<sup>2</sup> Id at 3.

advocated for low-income families and individuals and has fought for legal reform in City, State, and Federal Courts across a variety of civil, criminal and juvenile rights matters. Legal Aid takes on 300,000 cases annually, including thousands of cases in which we fight for the rights of tenants in regulated and unregulated apartments across the city. Legal Aid also takes on law reform and appellate cases, the results of which benefit more than 1.7 million low-income New Yorkers; the landmark rulings in many of these cases have a state-wide and national impact.

### **Housing Access Voucher Program**

We urge the passage of the Housing Access Voucher Program S07628(Kavanagh)/A9657 (Cymbrowitz). Homelessness has reached epidemic levels in New York State. Over 92,000 New Yorkers are homeless, this number has increased 36 percent since 2011. Most local governments lack the resources necessary to address the homelessness crisis. We know that housing stability leads to better educational outcomes for children and better health outcomes for elderly and disabled tenants. After years of federal austerity budgets, we cannot expect the federal government to fund a program to help low-income homeless citizens. It is time for New York State to find an answer to this intractable crisis. Creating a state-wide Section 8 program would be the start of providing low-income New Yorkers with stability.

The Housing Access Voucher Program would be administered through the public housing authorities throughout the state. Currently those public housing authorities administer the federal Section 8 program. As the new Housing Access Voucher Program is similar to the federal Section 8 program in its details, counties and localities would not be administratively burdened by having to train workers on a new program. A recent report found that communities where people spend more than 32 percent of their income on rent can expect a more rapid increase in homelessness<sup>3</sup>. The Housing Access Voucher Program would cap tenants' rent at 30 percent of household income to increase housing stability as beneficiaries' incomes rise and fall. Additionally, the public housing

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<sup>3</sup> Priced Out: Homelessness Rises Faster Where Rent Exceeds a Third of Income, Chris Glynn, Alexander Casey, December 11, 2018, <https://www.zillow.com/research/homelessness-rent-affordability-22247/>

authorities would be required to inspect rental units so to ensure that public monies do not go to landlords renting unsafe housing.

Thus, we strongly support the Housing Access Voucher Program S07628(Kavanagh)/A9657 (Cymbrowitz) and urge its passage.

### **Home Stability Support (HSS)**

The Legal Aid Society urges enactment of Home Stability Support (HSS) S.2375 (Krueger)/A.1620 (Hevesi). The Legal Aid Society sees the financial and human costs of homelessness in the communities we serve every day. HSS is an essential component to addressing the homelessness crisis in an effective, financially responsible manner. Despite myriad efforts, the homelessness crisis has persisted throughout. In New York City alone, over 63,000 men, women and children are living in some form of shelter and tens of thousands more doubled up in over-crowded or unsafe housing. The public assistance shelter allowance for low income New Yorkers is woefully inadequate -- a single person receives only \$215 towards rent, a couple only \$250, and a family of 4 only \$450 per month. Meanwhile, the Fair Market Rent (FMR) for a modest apartment in New York City ranges from \$1665 for a studio, to \$1,951 for a two bedroom apartment.

Although New York City and a few other counties have state-approved rent supplement programs, the State has kept the subsidy unrealistically low and imposed onerous restrictions. In New York City, certain families who are homeless or at risk of homelessness may be eligible for a Family Homelessness and Eviction Prevention Supplement (FHEPS), which will provide up to a maximum of \$1534/month for rent for a family of four. However, FHEPS only becomes available when a family is sued in Housing Court and at risk of eviction. Further it provides no relief for families with no minor children, seniors, or singles as it only covers families with minor children. And, it is not available outside of New York City.

The **Home Stability Support (HSS)** bill would create a statewide housing supplement program providing payments of up to the Fair Market Rent. HSS would not be limited to families with minor children, it would not require that tenants be sued before they could receive help, and it

would be tied to the FMR with annual adjustments, and would generate higher and more realistic rent support levels than under City FHEPS.

### **Support for Public Housing**

We urge you to protect our State's public housing by including **\$3 billion** in the FY 2021 budget for emergency capital improvements in public housing across the state. To further exacerbate the significant infrastructure needs of the public housing stock, the current federal administration has proposed cuts to public housing. This follows decades of federal disinvestment in public housing. Public housing developments are home to some of New York's most vulnerable populations including seniors and families with young children. Across New York State, our public housing is in disrepair -- putting over 600,000 people at risk of lead paint exposure, mold, and other environmental toxins. Public housing developments are regularly without heat and hot water; residents suffer from non-working elevators, leaks, and infestations. Public Housing is a necessary resource that keeps New York City and New York State affordable to many. NYCHA is, by far, the State's largest provider of affordable housing. It offers the only truly and permanent affordable housing in the State to hundreds of thousands of very low-income New Yorkers. Eviction rates are lower in public housing than in any other form of affordable or supportive housing.

Until 1998, New York State provided ongoing operating and capital support for the 15 State built public housing developments. In 1998- Governor Pataki stopped providing operating support. NYCHA estimates that from that time until 2010 (when some of the units were federalized) these State built units generated \$60 million of operating subsidy shortfall for NYCHA annually- between 2001-2010, estimated at \$660 million. Since 2010, when the units were federalized, they continue to generate approximately \$15 million a year in operating shortfalls for NYCHA (because not all units were actually receiving federal operating subsidy as a quirk in how they did the federalization). NYCHA is forced to use its limited federal funding to cover the operating costs of those State units- money that it doesn't have.

**Justice in Every Borough.**

Prior to 2015, there had not been any substantial allocations for NYCHA repairs from New York State. In recent years, \$550 million has been allocated to the New York City Housing Authority in the State budget. These funds have been critical as we work to fight the tide of capital shortfalls, but public housing continues to be severely underfunded. It is time to recognize this housing stock and its residents are at a precipice and it is up to New York State to create a backstop for this federal divestment. This \$550 million commitment from the State to the New York City Housing Authority demonstrates progress that we need to move forward on. Keeping NYCHA, and public housing authorities across the State, in a perpetual state of capital deficit will make operating problems worse, not better.

Furthermore, the housing authorities outside New York City face the same woes and also require attention. The Buffalo Municipal Housing Authority, for example, ranks among one of the nation's most needy authorities. Across the State, public housing residents have been forced to forego basic maintenance as a result of decades of federal divestment.

New York City Housing Authority (NYCHA) developments needs at least **\$2 billion** in the FY 2021 budget for emergency capital improvements and an additional **\$1 billion** for public housing outside of New York City. We also request for these funds to be allocated to public housing authorities directly, for emergency repair projects identified in consultation with the Members whose districts include public housing developments rather than through the Dormitory Authority of the State of New York (DASNY). Ongoing commitment and efficient investment by all levels of government is necessary to maintain this vital resource.

### **Eliminate the 421A Tax Exemption**

The Affordable New York commonly known as 421-a tax exemption should end. The revenue lost to this program alongside its minor contribution to affordable housing demand its discontinuance.

A recent NYC Department of Finance's Tax Expenditure Report indicates that 421-a is the City's largest real property tax expenditure program and has resulted in foregone property tax

revenues at an annual rate of \$1.6 billion; a windfall for developers. Meanwhile, it has failed to produce affordable units New Yorkers truly need. What qualifies as an affordable apartment under this program would be laughable if New York City were not in the midst of an acute housing crisis. The rent levels are far too high to be truly affordable to the majority of average neighborhood residents.

The program also remains subject to abuse. In 2018, HPD was forced to suspend benefits to more than 1,700 property owners after finding that over 11,000 apartments, represent \$66 million in tax revenue, were not in compliance with program rules. Additionally, a recent ProPublica report revealed that two-thirds of the 6,000 rental properties with 421-A abatements did not have approved applications on file, nor were they registered as rent stabilized. Recently the offices of the NYS Attorney General and NYC Comptroller announced a \$2.9 million settlement several developers for who violating prevailing the program's wage requirements by underpaying building service employees and withholding supplemental benefits.

In this era of increased federal disinvestment, New York State should not forego revenue that does not produce much desired housing when it can be used to fund rent vouchers or provide capital funding to the public housing or Mitchell Lama housing stock.

### **Eviction Only For Good Cause**

We urge passage of S 2892A(Salazar)/A 5030(Hunter). The Legal Aid Society believes that prohibiting evictions that are without cause is an essential tool in the fight to prevent displacement that undermines family stability.

We commend the legislature for strengthening the retaliatory eviction law last year. However, this amendment is no substitute for a right to a renewal lease. The Good Cause bill would extend the right to a renewal lease and protections from unconscionable rent increases to all tenants across New York State, except those living in owner-occupied buildings with four or fewer units. The bill requires a landlord to obtain an order from a judge certifying that an eviction is for a good cause before they can remove a tenant from the unit. It further stipulates that the end of a lease is not

a good cause. The bill also acknowledges that steep rent increases are often de facto evictions, and requires that rent increases of more than 1.5 times the annual percentage change in the consumer price index be presumed unreasonable, unless accompanied by special conditions.

When tenants lack the right to a renewal lease, it is in their interest to remain silent in the face of housing conditions that threaten their health and safety. If the government is serious in its desire to prioritize safe and healthy homes, it must partner with tenants who live in these homes and experience the urgent need for repairs. However, without a right to remain, it is impossible for tenants to assert their rights without risking eviction. For example, the Legal Aid Society recently represented a gentleman who lived in a three unit building in Brownsville Brooklyn for ten years, where he had a Section 8 voucher. He is partially blind and relies on a portable oxygen tank to breathe. His landlord's only motive in seeking his eviction appears to be that he had complained to the City about insufficient heat in the winter of 2017. Although we fought as hard as we could, getting the first case against him dismissed, ultimately he was forced to agree to move out. His legal options were exhausted. Unfortunately, he was unable to find a new apartment and was evicted in March. He is currently living in a homeless shelter. Our disabled citizens should not have to weigh the risk of eviction against asserting their right to complain to government authorities about the lack of heat.

This bill would represent a huge step forward for Legal Aid's clients in all five boroughs. If this bill were passed, tenants in 600,000 additional units across the City would be afforded basic protections.<sup>4</sup> For Legal Aid lawyers on the front lines of the City's housing crisis, these protections will help even the playing field in court, reducing the number of eviction proceedings brought against low-income tenants, and empowering them with many of the legal defenses tenants in regulated apartments already enjoy.

Thus we strongly support S 2892/A 5030 and urge these Committees to consider it a tool in their efforts to secure safe housing for New Yorkers.

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<sup>4</sup> Tom Waters, Community Service Society, testimony before the Assembly Housing Committee, May 2, 2019.

**Conclusion**

Thank you for the opportunity to submit testimony before the New York State Senate Committees on Housing, Construction and Community Development and on Investigations and Government Operations today.

Respectfully Submitted:

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