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TESTIMONY OF THE LEGAL AID SOCIETY

Joint Legislative Public Hearing on 2021-2022 Executive Budget Proposal: Housing

February 2, 2021

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”¹ 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 Yorkers².

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

¹ 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.

² 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.

New York City was the epicenter of the world's COVID-19 pandemic. As of January 27, 2021, there have been at least 584,673 cases in New York City since the beginning of the pandemic.³ As of January, Brooklyn, Queens and the Bronx are third, fourth and sixth counties with the highest death rate in the United States.⁴ New York City lost 26,499 people to COVID⁵. The disproportionate impact of COVID-19 on our client communities is well-documented. COVID-19 has exposed the racial and social inequities that have led to vulnerable populations bearing the brunt of this crisis. Throughout the crisis, Black and Latinx New Yorkers have died of COVID-19 at twice the rate of white people and have a hospitalization rate that is four times that of white people.⁶ The CDC and others have attributed those rates to lack of access to health care and exposure to the virus related to occupation, including frontline, essential, and critical infrastructure workers. “[A]s more data becomes available, one thing is clear: COVID-19 has only magnified the systemic inequalities that persist in the United States. And nonwhite Americans, especially African Americans, have been hit hard on nearly every front.”⁷

In January 2020, New York City's unemployment rate was 3.5 percent. As of December, it is 11 percent and that is a decrease from the worst months of 2020, June and July when a staggering 20 percent of New Yorkers were out of work⁸. New York State is in the midst of a financial crisis

³ See <https://www.nytimes.com/interactive/2020/nyregion/new-york-city-coronavirus-cases.html>.

⁴ [Johns Hopkins University, Coronavirus Resource Center](#) (Last Updated January 26, 2021).

⁵ Id.

⁶ Centers for Disease Control and Prevention, COVID-19 Hospitalization and Death by Race/Ethnicity, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (Nov. 30, 2020).

⁷ Kaur, Harmeet, The coronavirus pandemic is hitting black and brown Americans especially hard on all fronts CNN (May 8, 2020) <https://www.cnn.com/2020/05/08/us/coronavirus-pandemic-race-impact-trnd/index.html>.

⁸ See <https://labor.ny.gov/stats/laus.asp>.

that was caused by the health crisis. The only way to combat these dual crises is to keep people in their homes where they can avoid COVID, where they can seek employment opportunities and remain employed.

Emergency Rent Assistance: Maximizing Federal Dollars to Meet the Crisis in New York City

In December, Congress passed and the former President signed into law a COVID relief package which included \$25 billion in relief to tenants. The money can be used for rent arrears, for three months of future rent and for utility costs. The funding mechanism is the Coronavirus Relief Fund (CRF), first created in the CARES Act. The allocation formula was set in the CARES Act and allows for a direct allocation for New York State and New York City and other localities with populations of more than 200,000. New York State will receive \$800 million, the remaining approximately \$480 million goes directly to the New York State localities which applied for the allocation.

We hope that the program designers will avoid the mistakes made by those who designed and implemented the failed New York State Homes and Community Renewal COVID relief program. Last spring, the Legislature used \$100 million from the CRF to create a rent relief program. That program layered eligibility requirement on eligibility requirement, required immense amounts of documentation and required tenants to pay more than 30% of their new reduced income toward their rent arrears. The program was opened quickly and soon closed. There was no attempt to reach out to the community-based groups who are working with those most affected by the crisis. The application required tenants to apply through an online portal that was only accessible to tenants who spoke English. The program discriminated against immigrants in violation of federal law as it was not open to all tenants regardless of immigration status. *See Poder in Action v. Phoenix*, ___ F. Supp. 3d ___, 2020 WL 7245072 (D. Ariz 2020). Because the program required so much documentation, tenants were asked to supplement their applications and then never heard from the program again.

In the end, New York State was only able to spend \$40 million of the \$100 million allocation⁹. While Governor Cuomo reopened the program in December, only minor changes were made to the program which did not cure its flaws and there is every reason to believe that the State will be unable to spend the remaining \$60 million. Meanwhile, it is estimated that New York State tenants owe between \$1.3 and \$2.2 billion in back rent¹⁰.

Any program for rent relief must be open to all tenants regardless of immigration status. Any other position is in violation of federal law. See Poder in Action v. Phoenix, ___ F. Supp. 3d ___, 2020 WL 7245072 (D. Ariz 2020).

New York State must ensure that New York City tenants receive their fair share of the monies allocated. New York City's direct allocation was determined by a formula set by the CARES Act: 45% of New York City's proportion of New York State's population. New York City directly received 19.8% of New York State's allocation. ANHD has published a report analyzing what percentage of the funds would be New York City's fair share¹¹. According to ANHD, 63 percent of New York State's renters live in New York City. If New York City's allocation matched its percentage of renters, we would see \$800 million for our renters. It is clear that the COVID pandemic has laid bare the racial and economic inequality experienced by people of color. New York City houses 73.5 percent of all Black renters, 79.3 percent of all Latinx renters and 83.4 percent of all Asian renters in New York State¹². Our costs are higher too. New York City's median rent is \$1443 versus \$1280 in the rent of the State¹³. Even accounting for population, New York City's renters will be shortchanged. New York City and New York State must commit to a just recovery that ensures that the most impacted and most vulnerable among us do not fall further behind.

The Emergency Rental Assistance program created by the federal law requires that grantees provide relief to tenants with incomes of under 80 percent of Area Median Income (AMI) and that

⁹ See <https://hcr.ny.gov/system/files/documents/2020/10/covid-rrp-report.pdf>.

¹⁰ For estimates on back rent owed, we rely on Stout, a nationally recognized research firm that has been analyzing census data and producing bi-weekly State-by-State estimates of rent owed. [New York's analysis is available here.](#)

¹¹ See <https://anhd.org/blog/new-york-citys-unfair-share>.

¹² Id.

¹³ Id.

the grantees prioritize tenants with incomes of under 50 percent of AMI. We recommend that the rent relief program first prioritize tenants with incomes of under 30 percent of AMI and then 50 percent of AMI.

After considering the rental assistance programs created by States and localities from CARES Act funds, the National Low Income Housing Coalition (NLIHC) recommended the best practices of program design¹⁴. NLIHC recommends that grantees allow applicants to self-certify that they qualify for the program. Clearly, New York State's over-reliance of documentary proof of tenant eligibility in the flawed New York State Homes and Community Renewal COVID relief program ensured that desperate tenants received no relief. We are particularly concerned for our clients without immigration status or those who work in the grey economy who have lost their jobs but are unable to prove loss of income to the satisfaction of government bureaucrats. The rent relief money must be issued quickly and easily. There is no reason to put artificial barriers before desperate tenants. Additionally, the application process must be simple and accessible. The program must provide language justice and have multiple channels for tenants and landlords to apply. Any rent relief program must not leave behind low income New Yorkers on the other side of the digital divide.

Even were New York City to receive its fair share, there is not currently enough money to cover every low-income New Yorker who owes rent. The designers of New York's program should consider targeting emergency rental assistance to areas with high shares of housing instability, job loss, and populations disproportionately impacted economically by the pandemic, including communities of color, which have been hardest hit by the pandemic. We recommend targeting the most impacted census tracts and providing the assistance through a lottery rather than on a first come first serve basis. The lottery should initially target tenants at or below 30 percent of AMI. First come first serve programs often leave behind historically marginalized communities.

Payments to landlords covering rent arrears should include basic tenant protections. Landlords that receive this funding should agree that the payments resolve the tenants rent arrears

¹⁴ See <https://nlihc.org/resource/nlihc-releases-report-best-practices-state-and-local-emergency-rental-assistance-programs>.

and that the landlord will not sue the tenant for back rent for this time period. Additionally, landlords should agree not to evict tenants without good cause for a period of at least one year. Landlords should forgive all late fees and legal fees connected to the rent arrears.

Housing insecurity affects Black renters and other renters of color disproportionately. According the United States Census Departments Pulse survey, as of the week ending January 18th, 32 percent of all New York State renters have no or little confidence of paying rent in February¹⁵. But when we break this number out and look at race and Latinx origin, the racial disparity is stark. 52 percent of Latinx renters, 45 percent Black renters, 41 percent Asian renters and only 8 percent white renters have no or little confidence that they can pay rent in February. How we provide relief to renters in New York State will determine whether we leave our Black tenants and tenants of color behind to face decades of recovery from this crisis. The legislature must ensure that the COVID relief recovery centers Black communities and communities of color and advances racial equity.

Housing Access Voucher Program

We urge the passage of the Housing Access Voucher Program S02804(Kavanagh)/A3701 (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. 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.

We strongly supported this bill when it was introduced last year. It was a priority before COVID. But if there is one lesson we have learned over this long hard year, it is that housing is

¹⁵ See Census.gov, Week 22 Household Pulse Survey, January 6 – January 18, <https://www.census.gov/data/tables/2021/demo/hhp/hhp22.html> (Last accessed January 29, 2021)

health care. NYC's shelter population for single adults has reached the record heights of 20,515.¹⁶ New York State must prioritize a path to permanent housing for its homeless citizens.

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 homelessness¹⁷. 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 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)/A2804 (Cymbrowitz) and urge its passage.

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;

¹⁶ See Coalition for the Homeless, Fact about Homelessness. See <https://www.coalitionforthehomeless.org/facts-about-homelessness/> (Last accessed January 29, 2021)

¹⁷ 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/>

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.

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.

Justice in Every Borough.

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 3082(Salazar)/A (Hunter)¹⁸. 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

¹⁸ Bill has not yet been numbered for the 2021-22 session.

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.¹⁹ 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 3082/A²⁰ and urge these Committees to consider it a tool in their efforts to secure safe housing for New Yorkers.

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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¹⁹ Tom Waters, Community Service Society, testimony before the Assembly Housing Committee, May 2, 2019.

²⁰ Bill has not yet been renumbered for 2021-22 session.

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