

TESTIMONY OF THE LEGAL AID SOCIETY

Joint Legislative Public Hearing on the 2023 Executive Budget Proposal:
Housing

March 1, 2023

Thank you Majority Leader Stewart-Cousins, Senate Housing, Construction and Community Development Committee Chair Kavanagh, Speaker Carl Heastie, Assembly Housing Committee Chair Rosenthal, the New York State 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 on behalf of The Legal Aid Society concerning fiscal priorities for the coming year in the area of housing. We are eager to work with the Committees to ensure that New Yorkers across the state have access to the housing they need to rebuild the disruption and destruction caused by the COVID-19 pandemic, particularly in New York City, where our low-income clients have suffered disproportionately in respect of health impacts and economic losses.

Governor Hochul proposed a Housing Compact in her 2023-2024 budget proposal. Her State of the State speech laid out why a bold proposal was necessary. Governor Hochul argued that

“New York State is currently facing a severe, once-in-a-generation housing crisis. According to the Population Reference Bureau more than half of New York renters

are rent-burdened, meaning that they pay more than 30 percent of their income on rent – the second-highest rate in the nation. In the New York City metro area, rents have risen 30 percent since 2015 and home prices have risen 50 percent over the same period. Outside of New York City, rents have risen 40 to 60 percent since 2015 while home prices have risen 50 to 80 percent¹.”

We agree with the Governor, we are in a once in a generation housing crisis. Tenants are struggling to find affordable housing and because most tenants live in unregulated housing, at any moment their housing stability could be taken away from them. The Governor’s plan completely neglected to provide solutions to the housing crisis that tenants can use today instead to years and years from now. The purpose of this testimony is to discuss what is missing from the Governor’s plan.

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 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.

Declining Affordability of Housing

Many New York City renters are facing dire circumstances. In the face of fewer rental opportunities and higher prices, renters are suffering from a growing disparity between what they can afford and their actual rent. According to the Selected Initial Findings of the 2021 New York City Housing and Vacancy Survey, the median rent for rent-stabilized apartments was 1400.² According to the HVS, between 2017 and 2021, there

¹ <https://www.governor.ny.gov/news/governor-hochul-announces-statewide-strategy-address-new-yorks-housing-crisis-and-build-800000>

² Gaumer, E. The 2021 New York City Housing and Vacancy Survey: Selected Initial Findings. New York, NY: New York City Department of Housing Preservation and Development; 2022. Page 17. Available at <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/2021-nychvs-selected-initial-findings.pdf>

was a net loss of almost 100,000 units renting under \$1500 and a net gain of over 100,000 units with rents of \$2300 and more.³ Over 50 percent of all renter households are rent burdened and one-third of all renter households are severely rent burdened.⁴ Among households earning less than \$25,000 a year who do not live in public housing or report having a voucher, an astonishing 85 percent are severely rent burdened.⁵ An individual would have to work an astonishing 104 hours per week at minimum wage, 52 weeks a year, in order to afford an average two-bedroom apartment in New York City.⁶ Alternatively, the individual would need a wage increase to at least \$38.961 per hour, or \$81,040 a year, in order to afford the same apartment.⁷ One of the most astounding findings in the 2022 HVS is that the median asked for rent – the rent for people who are looking for housing – was \$2750.⁸ In 2017 that number was \$1875. A family would have to have a yearly income of \$110,000 a year for that rent to be affordable.⁹ The median household income for a renter household is \$50,000.¹⁰ Needless to say, the clients of The Legal Aid Society cannot afford these rents.

During the first two years of the worldwide pandemic, the homeless population for families did not increase significantly. But after the two year unprecedented eviction moratorium ended last year, the numbers of families in shelter began increasing again¹¹. For single adults, the situation has worsened even with the eviction moratorium. In December 2022, an average 24,359 individuals slept in NYC’s shelter system for single adults, an increase of 110 percent in ten years.¹²

As you know, New York City was the epicenter of the country’s COVID-19 pandemic. As of December 14, 2022, there have been at least 6,454,678 cases in New York State since the beginning of the pandemic.¹³

³ Gaumer, E. The 2021 New York City Housing and Vacancy Survey: Selected Initial Findings. New York, NY: New York City Department of Housing Preservation and Development; 2022. Page 21. Available at <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/2021-nychvs-selected-initial-findings.pdf>

⁴ Id. at 54.

⁵ Id. at 55.

⁶ NYC Rent Guidelines Board, *2022 Income and Affordability Study*, 21. <https://rentguidelinesboard.cityofnewyork.us/wp-content/uploads/2022/04/2022-IA.pdf>

⁷ Id. at 22.

⁸ Gaumer, E. The 2021 New York City Housing and Vacancy Survey: Selected Initial Findings. New York, NY: New York City Department of Housing Preservation and Development; 2022. Page 29. Available at <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/2021-nychvs-selected-initial-findings.pdf>

⁹ Id.

¹⁰ Id. at 45.

¹¹ <https://www.coalitionforthehomeless.org/facts-about-homelessness/>

¹² https://www.coalitionforthehomeless.org/wp-content/uploads/2023/02/NYC-Homelessness-Fact-Sheet-12-2022_citations.pdf

¹³ <https://www.nytimes.com/interactive/2021/us/covid-cases-deaths-tracker.html>

As December 14, 2022, Brooklyn, Queens and the Bronx are fourth, fifth and tenth counties with the highest death rate in the United States.¹⁴ New York State lost 77,272 people to COVID-19 as of December 14, 2022.¹⁵

The disproportionate impact of COVID-19 on our client communities is well-documented. COVID-19 has exposed the long-standing 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 two times that of white people.¹⁶ 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.”¹⁷ Low-income workers have also faced higher job losses during the pandemic. In the first month of the pandemic, employment for workers in the bottom quintile dropped 35% as compared to a 9% drop in employment for the highest quintile of earners.¹⁸

Although the economy is starting to rebound, COVID has had a devastating financial impact on of millions of New Yorkers, caused by death, disability, loss of work, and a range of increased expenses. Many New Yorkers struggled to pay their rent prior to the pandemic, and the COVID-caused financial crisis exacerbated the instability. Prior to COVID, New York City’s unemployment rate was 3.8 percent, after COVID it shot up to 20 percent and has slowly decreased but as of October 2022, it is still an alarming 5.9 percent.¹⁹ To put this in perspective, New York State DOL has a monthly record of the unemployment rate starting January 1, 1976. For decades, the highest unemployment rate recorded in New York City was 11.5 percent which was the rate from August through November 1992. However since March 2020, New York City has seen eleven months with rates higher than the highest rate previously recorded.

¹⁴ See [Johns Hopkins University, Coronavirus Resource Center](#) (last updated December 13, 2022). This website notes that New York City’s data does not include probable COVID-19 deaths as this data is not reported.

¹⁵ <https://www.nytimes.com/interactive/2021/us/covid-cases-deaths-tracker.html>

¹⁶ 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> (Updated November 8, 2022).

¹⁷ Harmeet Kaur, *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>.

¹⁸ Tamaz Cajner, *et al.*, *The U.S. Labor Market During the Beginning of the Pandemic Recession*, Nat’l Bureau of Econ. Research, <https://www.nber.org/papers/w27159.pdf>.

¹⁹ <https://statistics.labor.ny.gov/lslaus.shtm>

Moreover, unemployment insurance claim numbers do not capture the full extent of the financial hardship caused by COVID-19, because they exclude workers who have lost work but do not qualify for unemployment, including people without sufficient prior earnings or work history, undocumented immigrants, and those whose hours have been cut but who still work part-time.

Declining Availability of Housing

Unfortunately for New York City renters, declining affordability is coupled with declining availability. The number of vacant units affordable to low-income New Yorkers is meager. In 2021, the vacancy rate for all units with rents less than \$900 was only 0.86 percent.²⁰ The 2021 vacancy rate for units between \$901 and \$1499 was no better at 0.93 percent.

The scarcity of available rent-stabilized housing is a part of an overall decline in the availability of affordable housing. There remain only 77,000 units covered by either the Mitchell-Lama program or the federally subsidized Project Based Section 8 program. This is a loss of 35 percent since 1990.²¹

Applicants for public housing face similar shortages: 254,827 families are on the waitlist for NYCHA public housing, with 17,200 applicants on the waiting list for Section 8 housing vouchers in New York City.²²

The combination of market forces and governmental decisions has worked together to have a devastating effect on low and moderate income New Yorkers. While the government has focused on subsidizing the creation of market rate units, the hoped for trickle-down effect has failed to materialize. The declining number of vacant units available for rent for low income New Yorkers, the fact that housing expansion has failed to meet the actual need, and the ongoing public housing crisis have all contributed to the scarcity of available affordable housing.

²⁰ Gaumer, E. The 2021 New York City Housing and Vacancy Survey: Selected Initial Findings. New York, NY: New York City Department of Housing Preservation and Development; 2022. Page 26. Available at <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/2021-nychvs-selected-initial-findings.pdf>

²¹ Oksana Miranova, *Closing the Door: Subsidized Housing at a Time of Federal Instability*, Community Service Society, March 2018. http://lghftp.58547.nexcesscdn.net/803F44A/images/nycss/images/uploads/pubs/Closing_the_Door_FINAL_WEB.pdf

²² New York City Housing Authority, "Facts about NYCHA," available at https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA_Fact_Sheet_2022.pdf Data accessed June 6 2022.

Housing Stability Leads to Better Outcomes in Health, Education and Employment

When families have stable housing it leads to better outcomes in health, education and employment.²³ Housing instability has been linked to greater risk of depression,²⁴ worse outcomes for chronic illnesses like diabetes,²⁵ low-weight and/or pre term infants²⁶, and general adverse childhood health²⁷. Frequent moves before a child is seven years old leads to greater thought-related and attention-related problems.²⁸ These problems can reduce educational achievement. Children who experience high mobility between third and eighth grades do worse in school.²⁹ Moreover, forced moves are also a predictor for job loss.³⁰ If keeping employment without stable housing is difficult, finding new employment while unstably housed is even more difficult. If we are to recover from this pandemic, people who were employed prior to the pandemic need assistance to find and keep new jobs. The cost of adverse health outcomes, poor education achievement and lack of employment is significant in New York City.

Eviction Only For Good Cause

²³ See attachment to this testimony, Brief for Amici Curiae, Center for Health Policy and Law at Northeastern University School of Law, et al. filed on behalf of Defendants-Appellees and Intervenors in *CHIP vs. the City of New York*, Court of Appeals Second Circuit, 20-3366.

²⁴ Burgard, S. et al, *Housing Instability and Health: Findings from the Michigan Recession and Recovery Study*, Social Science & Medicine, December 2012.

<https://www.sciencedirect.com/science/article/abs/pii/S0277953612006272?via%3Dihub>

²⁵ Berkowitz, et al. *Unstable Housing and Diabetes-Related Emergency Department Visits and Hospitalization: A Nationally Representative Study of Safety-Net Clinic Patients*, 2018

<https://pubmed.ncbi.nlm.nih.gov/29301822/#:~:text=Conclusions%3A%20Unstable%20housing%20is%20common.for%20vulnerable%20individuals%20with%20diabetes.>

²⁶ Leifhart, et. al, *Severe Housing Insecurity during Pregnancy: Association with Adverse Birth and Infant Outcomes*, Int J Environ Res Public Health. 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7700461/>

²⁷ Sandel, et al, *Unstable Housing and Caregiver and Child Health in Renter Families*, Pediatrics, 2018, <https://publications.aap.org/pediatrics/article/141/2/e20172199/38056/Unstable-Housing-and-Caregiver-and-Child-Health-in>

²⁸ Gaylord, et al., *Impact of housing instability on child behavior at age 7*, Int J Child Health Hum Dev., 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8442946/>

²⁹ Cutuli, et al, *Academic achievement trajectories of homeless and highly mobile students: Resilience in the context of chronic and acute risk*. Child Development 2013. https://www.researchgate.net/profile/Jeffrey-Long-6/publication/24250390_Academic_achievement_of_homeless_and_highly_mobile_children_in_an_urban_school_district_Longitudinal_evidence_on_risk_growth_and_resilience/links/5c9b85c2a6fdccd4603f111c/Academic-achievement-of-homeless-and-highly-mobile-children-in-an-urban-school-district-Longitudinal-evidence-on-risk-growth-and-resilience.pdf

³⁰ Desmond, et al, *Housing and Employment Insecurity among the Working Poor*, Social Problems, 2016. <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>

We urge passage of Resolution 506, calling upon the State Legislature to pass and the Governor to sign the Good Cause Eviction bill. 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.

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 would protect 1.6 million tenants across New York State.³¹ 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. Rent growth continues to have outpaced pre pandemic rents.³²

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. Low-income tenants, particularly the elderly and disabled, should not have to weigh the risk of eviction against asserting their right to essential services.

Here are two examples of tenants that we are representing in no cause eviction cases. Mr. S. has lived in his apartment for 15 years. He is disabled and receives the HASA subsidy to help pay his rent. He has always paid his rent on time. He lives in a basement apartment which has leaks but it's a roof over his head. After 15 years, his landlord is evicting Mr. S. because he is selling the building and he wants to sell the building empty. After paying his rent on time for 15 years while living in a basement apartment with leaks, Mr. S. will lose his home because the state legislature has

³¹ <https://www.cssny.org/news/entry/good-cause-eviction-legislation-protect-rental-households-tenants>

³² <https://www.apartmentlist.com/research/national-rent-data>

failed to act. We represent a family in the Bronx, Mr. E, Ms. R and their eight children. They lived in shelter until they found this apartment as part of the CityFHEPS program. Prior to moving in, the landlord received \$15,219.02 in future payments and hold money. As soon as they moved in, the landlord started denying essential services like hot water, cooking gas and heat. Mr. E complained to HPD and this led to a proceeding against the landlord in which the Court ordered civil penalties. After this, the landlord did not renew the lease. And this landlord is a small “mom and pop” landlord. He owns 7 buildings with 24 units in them. The buildings all have terrible conditions in them and he is currently evicting 6 tenants on no defense holdovers. He is receiving an exorbitant amount of money for inadequate apartments and as soon as a tenant complains, he gives a notice of lease non renewal.

This bill would represent a huge step forward for Legal Aid’s clients in all five boroughs. 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 Resolution 506 and urge this Committee pass it.

Housing Access Voucher Program

We urge the passage of the Resolution 344. Homelessness has reached epidemic levels in New York State. Over 78,000 New Yorkers are homeless. 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 in 2020. 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 health care. NYC’s shelter population for single adults has reached the record heights of 24,359.¹² New York State must prioritize a path to permanent housing for its homeless citizens.

Justice in Every Borough.

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.¹³ 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 support the Resolution 344 calling on the State Legislature to pass and the Governor to sign the Housing Access Voucher Program.

Emergency Rent Assistance Program

In December 2020, Congress passed, and the President signed into law, the Consolidated Appropriations Act of 2021, which included the Emergency Rental Assistance (ERA1) program.³³ The act created a fund of \$25 billion in rental and utility assistance for renters and directed the Treasury Department to allocate the funds to states and localities. On March 11, 2021, Congress enacted the American Rescue Plan which included an additional \$21.5 billion in ERA funds (ERA2).³⁴ New York State and its participating localities were initially allocated just over \$2.4 billion in ERA1&2 dollars for New York tenants. Funding was also secured through the 2022-23 New York State budget, which included an appropriation of \$800 million to support ERAP. OTDA began requesting additional funding in the form of reallocated ERA1 and 2 funds in November 2021 and July 2022, respectively, and has received approximately \$333 million in ERA1&2 funds recaptured from other jurisdictions. Treasury reports that as of December 2022, ERA funds are almost exhausted and expects limited if any further reallocation of excess funds.

Since the ERAP program opened on June 1, 2021, OTDA has received 387,326 applications and disbursed \$2.68 billion to New York landlords on behalf of 213,079 tenant families. Unfortunately, subsidized tenant households have been effectively shut out from accessing ERAP funds. When designing the

³³ The Emergency Rental Assistance program was established by section 501 of Division N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (Dec. 27, 2020) (the Act). The bill was passed on December 21st and signed by the President into law on December 27, 2020

³⁴ See American Rescue Plan, Pub. L. No. 117-2 (March 11, 2021).

program, legislators put subsidized tenants at the back of the line to receive assistance, despite being amongst the poorest New Yorkers facing the most inequities. As a result, the applications of approximately 58,000 subsidized tenant households remain on hold, many since June 2021, with arrears totaling \$365 million. As it currently stands, the total amount of funds obligated for ERAP applications exceeds the amount OTDA has available to pay these applications. OTDA projects a \$217 million shortfall to cover applications received through October 30, 2022, which includes unsubsidized tenant applications. It is particularly tragic that subsidized tenants, who have a permanent, affordable housing resource, may be evicted because the State elected to prioritize everyone above them, including creating a separate fund for tenants over 80% of AMI. The State must ensure that subsidized tenant applications are processed so they can preserve their affordable homes.

Public Housing Arrears

NYCHA is facing a separate problem, which is the largest amount of unpaid rent in its history. Collection rates plummeted over the course of the pandemic, resulting in almost half a billion dollars in arrears. NYCHA relies on rent collection to fund critical repairs. Funding the ERAP applications of subsidized tenants is not enough to address the crippling amount of arrears owed by public housing tenants. Public housing tenants were discouraged from applying for ERAP based on their deprioritization, and OTDA's published statements that subsidized applications could not be funded. These tenants face the threat of eviction on a massive scale. To ensure the preservation of public housing tenancies, the legislature should wipe arrears clean by paying the arrears that ERAP will not cover.