SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
----------X
In the Matter of the Application of Index No.

MARIE VINCENT, CAROLINA TEJEDA, MARY CRONNEIT, SUSAN ACKS,

On behalf of themselves and all others similarly situated,

Petitioners,

For a Judgment Pursuant to Article 78 of The Civil Practice Law and Rules,

-against-

MAYOR ERIC ADAMS, in his official capacity as Mayor of the City of New York, and THE CITY OF NEW YORK,

Respondents.
----------X

MEMORANDUM OF LAW IN SUPPORT OF PETITION

THE LEGAL AID SOCIETY
Twyla Carter, Attorney-in-Chief
Judith Goldiner, Esq., Attorney in Charge,
Civil Law Reform Unit
Edward Josephson, Supervising Attorney
Robert Desir, Staff Attorney
Alex MacDougall, Staff Attorney
49 Thomas Street
5th Floor
New York, NY 10013
Phone: (646) 581-7506
Email: rrdesir@legal-aid.org

Counsel for Petitioners

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 1

LEGAL ARGUMENT 4

I. CLASS CERTIFICATION SHOULD BE GRANTED 4

A. Class Certification Is Appropriate. 4

B. The "Governmental Operations" Doctrine Does Not Bar Certification of the Proposed Plaintiff Class. 6

II. PETITIONERS ARE ENTITLED TO MANDAMUS RELIEF 7

A. The Standard for Mandamus Relief. 7

B. Local Laws 99, 100, 101 and 102 Impose a Non-Discretionary Duty on Respondents. 8

1.The City Council duly enacted the CityFHEPS Reform Laws. 8

2. The CityFHEPS Reform Laws are Consistent with State Law. 10

3. The Legality of the CityFHEPS Reform Laws Do Not Depend on Budget Appropriations. 12

III. CONCLUSION 13

TABLE OF AUTHORITIES

Cases

Andryeyeva v. New York Health Care, Inc., 33 N.Y.3d 152 (2019) 4
Borden v. 400 E. 55th St. Assocs., L.P., 24 N.Y.3d 382, 399 (2014) 4
Brad H. v. N.Y., 185 Misc. 2d 420 (Sup. Ct. N.Y. Cnty. 2000), *aff'd*, 276 A.D.2d 440 (1st Dep't 2000) 7
Brown v. Wing, 170 Misc. 2d 554 (Sup. Ct. Monroe Cnty. 1996) 6
Clark v. Cuomo, 66 N.Y.2d 185, 189, 495 N.Y.S.2d 936, 486 N.E.2d 794 (1985) 9
Eric M. Berman, P.C. v. City of New York, 25 N.Y.3d 684, 690, 16 N.Y.S.3d 25, 37 N.E.3d 82 (2015) 11
Friar v. Vanguard Holding Corp., 78 A.D.2d 83 (2d Dep't 1980) 5
Garcia v. New York City Dep't of Health & Mental Hygiene, 31 N.Y.3d 601, 617, 81 N.Y.S.3d 827, 106 N.E.3d 1187 (2018) 11
Gianelli v. New York State Div. of Hous. & Comm. Renewal, 142 Misc. 2d 285, 286-87, 536 N.Y.S.2d 675, 676 [Sup Ct. NY County 1989] 8
Goodwin v. Gleidman, 119 Misc. 2d 538 (Sup. Ct. N.Y. Cnty. 1983) 7
Harper v. Angiolillo, 89 N.Y.2d 761, 765, 658 N.Y.S.2d 229 (1997) 7
Hernandez v. Barrios-Paoli, 93 N.Y.2d 781, 698 N.Y.S.2d 590, 720 N.E.2d 866(1999) 10,11
Jancyn Mfg. Corp. v. County of Suffolk, 71 N.Y.2d 91, 97, 524 N.Y.S.2d 8, 518 N.E.2d 903 (1987) 11
Klosterman v. Cuomo, 61 NY2d 525, 539, 475 N.Y.S.2d 247, 463 N.E.2d 588(1984) 8
Lamboy v. Gross, 126 A.D.2d 265 (1st Dep't 1987) 6
Maddicks v. Big City Properties, LLC, 163 A.D.3d 501do n (2018), *aff'd*, 34 N.Y.3d 116 (2019) 5
Matter of Broidrick v. Lindsay, 39 N.Y.2d 641, 385 N.Y.S.2d 265, 350 N.E.2d 595(1976) 9
Matter of Consolidated Edison Co. of N.Y. v. Dep't of Env't Conservation, 71 N.Y.2d 186, 193, 524 N.Y.S.2d 409, 519 N.E.2d 320 (1988) 12
Matter of County of Niagara v. Shaffer, 201 A.D.2d 786, 787, 607 N.Y.S.2d 466 (3d Dep't 1994) 12
Matter of CRP Sanitation, Inc. v. Solid Waste Commn. of County of Westchester, 86 A.D.3d 608, 611, 927 N.Y.S.2d 384 (App. Div. 2d Dept. 2011) 7
Matter of Dan R., 199 A.D.2d 322, 606 N.Y.S.2d 1000 (App. Div. 2d Dep't 1993) 8
Matter of Fullilove v. Beame, 48 N.Y.2d 376, 423 N.Y.S.2d 144, 398 N.E.2d 765(1979) 9
Matter of Guzman v. 188-190 HDFC, 37 A.D.3d 295, 296, 830 N.Y.S.2d 112 (App. Div. 1st Dept. 2007) 7
Matter of New York State Health Facilities Assn. v. Axelrod, 77 N.Y.2d 340, 349, 568 N.Y.S.2d 1, 569 N.E.2d 860(1991) 9
Matter of Savastano v. Prevost, 66 N.Y.2d, 47, 495 N.Y.S.2d 6 (1985) 7
Mayor of the City of New York v. Council of the City of New York, 38 A.D.3d 89 (1st Dep't 2006) 10

Monroe-Livingston Sanitary Landfill, Inc. v. Town of Caledonia, 51 N.Y.2d 679, 683, 435 N.Y.S.2d 966, 417 N.E.2d 78 (1980) 12
N.Y.C. Coalition to End Lead Poisoning v. Giuliani, 245 A.D.2d 49 (1st Dep't 1997) 6
Perez v. Caso, 72 A.D. 2d 797, 421 N.Y.S.2d 627 [2d Dept 1979] 8
Pludeman v. N. Leasing Sys., Inc., 74 A.D.3d 420 (1st Dep't 2010) 5
Stecko v. RLI Ins. Co., 121 A.D.3d 542 (2014) 5
Stewart v. Roberts, 193 A.D.3d 121 (2021) 4
Subcontractors Trade Assn. v. Koch, 62 N.Y.2d 422, 477 N.Y.S.2d 120, 465 N.E.2d 840 (1984) 9
Tindell v. Koch, 164 A.D.2d 689 (1st Dep't 1991) 6
Under 21 v. City of New York, 65 N.Y.2d 344, 492 N.Y.S.2d 522, 482 N.E.2d 1 (1985) 9
Varshavksy v. Perales, 202 A.D.2d 155 (1st Dep't 1994) 7
Weinberg v. Hertz Corp., 116 A.D.2d 1 (1986), *aff'd*, 69 N.Y.2d 979 (1987) 5
Zorn v. Howe, 276 A.D.2d 51, 55, 716 N.Y.S.2d 128 (2000) 11

New York State and New York City Statutes

CPLR § 901 4,5,7
CPLR § 902 7
SSL § 56 12
SSL § 62 11
SSL § 131-a 12
N.Y.C. Admin. Code §§ 21-145(c) 2

New York City Charter Provisions

New York City Charter §21 8
New York City Charter §28 8,12
New York City Charter §33(a) 13
New York City Charter §34 8
New York City Charter §35 8
New York City Charter §36 8
New York City Charter §37(b) 2, 8,9,10
New York City Charter §254 13
New York City Charter §254(a) 12
New York City Charter §255 12
New York City Charter §255(b) 12

Rules of the City of New York City

68 RCNY § 10-02 1
68 RCNY §10-06(b)(1) 1
68 RCNY § 10-05 2

PRELIMINARY STATEMENT

Petitioners seek an order compelling Respondents to issue vouchers for the City Family Homelessness and Eviction Prevention Supplement ("CityFHEPS") to themselves and to all similarly situated applicants made eligible under Local Law Nos. 99,100,101, and 102 of 2023 (the "CityFHEPS Reform Laws"). Petitioners are New York City tenants who are in jeopardy of eviction and families or individuals who reside in shelter or are otherwise homeless.

In recognition of the grave threat homelessness and housing insecurity poses to New York City households, the New York City Council ("the Council") recently expanded CityFHEPS to allow more households such as Petitioners to access this critical benefit. The Adams administration, however, has refused to implement the new laws, precluding Petitioners and all similarly situated applicants from obtaining a housing subsidy. Consequently, Petitioners remain in shelter or at risk of eviction from their homes even though they are legally entitled to the subsidy they so critically need.

Petitioners, therefore, respectfully request that this Court issue an order directing Respondents to take all steps necessary to issue CityFHEPS vouchers to Petitioners and to all applicants eligible for CityFHEPS under the above-mentioned duly enacted laws.

STATEMENT OF FACTS

CityFHEPS became the main New York City funded rental supplement in 2018 when the City consolidated its pre-existing voucher programs. *See,* Chapter 10 to Title 68 of the Rules of the City of New York.[1] As in the federal Section 8 program, CityFHEPS participating

[1] City Record, Vol. 145, No. 189, at 5328 (Sept. 28, 2018).

households pay 30% of their income in rent and the City pays the remaining balance.[2] While CityFHEPS has assisted thousands of households since its creation in 2018, its limitations and eligibility restrictions have prevented many households in need from accessing this vital rental supplement.

In recognition of the program's inadequate maximum rent amounts, Local Law No. 71 of 2021 increased the maximum rental allowances to match the payment standard used in the federal Section 8 program.[3] Most recently, in May 2023, the Council passed a series of laws designed to simplify and expand CityFHEPS eligibility for households in shelter and at risk of eviction ("CityFHEPS Reform Laws"). Among other changes, the CityFHEPS Reform Laws make subsidies available to all income-eligible households "at risk of eviction"; allow homeless applicants to receive a rental assistance voucher regardless of their employment status, source of income, or the type of shelter they reside in; and increase the income threshold for working applicants.

In June 2023, Mayor Adams vetoed these bills. On July 13, 2023, the Council, acting pursuant to its authority under Section 37(b) of the New York City Charter, overrode the Mayor's vetoes of Intros 229-A, 878-A, 893-A and 894-A, and assigned them Local Law Nos. 99,100,101, and 102 of 2023, respectively.

Despite the Council's veto override, on or about December 15, 2023, Commissioner of Social Services Molly Wasow Park informed the Council in writing that the Adams administration was refusing to implement these duly enacted laws. As explained below, Ms. Park raised no legally cognizable grounds for the administration's refusal. As a result, although these local laws were to take effect on January 9, 2024, the Adams administration has taken no

[2] 68 RCNY §10-06(b)(1)
[3] later codified as N.Y.C. Admin. Code § 21-145(c); 68 RCNY § 10-05

steps to implement them, and Petitioners cannot access the housing subsidies to which they are legally entitled and need to avoid homelessness or exit shelter.

The Petitioners herein, as proposed class representatives, are typical of the households that are eligible for CityFHEPS but cannot receive this crucial rental subsidy because the Respondents refuse to implement the laws that make them eligible. Petitioners Carolina Tejeda, Mary Cronneit and Susan Acks all have below-market rent-stabilized units that they cannot afford on their fixed incomes. A CityFHEPS subsidy would enable them to pay their rent going forward, and their ability to pay future rent would qualify them for payment of the rent arrears sought in their ongoing eviction proceedings. Due to Respondents' failure to implement the CityFHEPS Reform Laws, Petitioners Tejeda, Cronneit and Acks can be evicted from their long-term homes.

Petitioner Marie Vincent currently resides in a city shelter with her grandson. Although her income from her hospital maintenance job is insufficient for her to rent an apartment, she cannot use CityFHEPS to exit shelter into permanent housing because her income is above the current income eligibility threshold, and Respondents refuse to increase the threshold as mandated by Local Law 100.

Accordingly, Petitioners seek an injunction directing Respondents to take all steps necessary to implement the CityFHEPS Reform Laws and to issue CityFHEPS vouchers to Petitioners and to all similarly situated applicants.

LEGAL ARGUMENT

I. CLASS CERTIFICATION SHOULD BE GRANTED

Petitioners bring this proceeding pursuant to CPLR § 901 *et seq.* on behalf of themselves and a class defined as all households that are eligible to receive the CityFHEPS rental supplement as expanded by the CityFHEPS Reform Laws, Local Laws 99, 100, 100 and 102.

A. Class Certification Is Appropriate

Section 901(a) of the CPLR sets forth the criteria for class certification: (1) the class is so numerous that joinder of all members would be impracticable; (2) questions of law or fact common to the class predominate; (3) the claims or defenses of the representative parties are typical of the class; (4) the class representatives will fairly and adequately protect the interests of the class; and (5) a class action is the superior method for adjudicating this case. The prerequisites for class certification are satisfied in this proceeding.

New York State's class action statute is to be liberally construed and read to favor the maintenance of class actions. *Andryeyeva v. New York Health Care, Inc.*, 33 N.Y.3d 152 (2019) ("Article 9 was intended to replace New York's prior 'restrictive' class action rules which 'fail(ed) to accommodate pressing needs for an effective, flexible and balanced group remedy'"); *Stewart v. Roberts*, 193 A.D.3d 121 (2021) ("[c]laims of uniform systemwide violations are particularly appropriate for class relief"). Nonetheless, a "liberal construction" is hardly necessary here – the prerequisites for class certification are easily satisfied.

First, the proposed class is clearly so numerous that joinder of all members would be impracticable. CPLR § 901(a). New York courts have consistently held that a class numbering in the hundreds meets the CPLR's numerosity requirement. *See*, *e.g.*, *Borden v. 400 E. 55th St.*

Assocs., L.P., 24 N.Y.3d 382, 399 (2014) (finding groups of 53 – 500 to be sufficiently numerous, noting that "the legislature contemplated classes involving as few as 18 members"); *Maddicks v. Big City Properties, LLC*, 163 A.D.3d 501 (2018), *aff'd*, 34 N.Y.3d 116 (2019) (tenants in 11 buildings); *Stecko v. RLI Ins. Co.*, 121 A.D.3d 542 (2014) ("at least 50" employees). Here, hundreds of households in New York City are potentially eligible for CityFHEPS pursuant to the CityFHEPS Reform Laws and cannot receive this benefit due to Respondents' unlawful action.

Second, questions of law or fact common to the proposed class predominate over any questions affecting only individual members. The sole issue in this case is whether Respondents' failure to implement the CityFHEPS Reform Laws is unlawful. The commonality rule requires a predominance of claims, not unanimity of facts, among all class members. *Pludeman v. N. Leasing Sys., Inc.*, 74 A.D.3d 420, 423 (1st Dep't 2010); *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 98 (2d Dep't 1980). Even where there are subsidiary questions of fact or law that are not common to the entire class, certification of a class is warranted, provided those differences "do not override the common questions of law and fact." *Weinberg v. Hertz Corp.*, 116 A.D.2d 1, 6 (1986), *aff'd*, 69 N.Y.2d 979 (1987).

In the present case, common legal issues outweigh minor factual differences among the Petitioners. Although some Petitioners are housed while others are homeless, these differences are not relevant to a determination of whether Respondents are unlawfully denying them the rental supplement provided via the CityFHEPS Reform Laws. Thus, all class members share common grievances that arise from the same course of Respondents' conduct.

Third, the claims or defenses of the representative parties are typical of the claims or defenses of the class. Each proposed class representative's claims are identical to those of the

class members – *i.e.*, that Respondents' failure to provide Petitioners with a voucher defies a duly enacted law.

Fourth, the named Petitioners will fairly and adequately protect the interests of the proposed class. In supporting their own claims, Petitioners will simultaneously advance the claims of the other class members. They do not have any particularized claims that veer from those of the class. Furthermore, Petitioners' attorneys are experienced in class action litigation involving public benefits.

Finally, a class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in this proceeding. The members of the proposed class have little or no income and are without the resources that would be necessary to raise their claims in individual actions; it would be "oppressively burdensome" to impose such an obligation upon them. *See, Tindell v. Koch*, 164 A.D.2d 689 (1st Dep't 1991); *Lamboy v. Gross*, 126 A.D.2d 265, 274 (1st Dep't 1987); *Brown v. Wing*, 170 Misc. 2d 554 (Sup. Ct. Monroe Cnty. 1996). Moreover, Petitioners' counsel would not have the resources to commence hundreds of individual cases to secure each class member's right to receive CityFHEPS. Class certification is therefore essential to ensure that all potential petitioners and petitioner class members will be protected, and that the resources of the judicial system and all counsel will be efficiently utilized.

B. The "Governmental Operations" Doctrine Does Not Bar Certification of the Proposed Plaintiff Class

Class certification is warranted notwithstanding the governmental operations doctrine – where, as here, "the condition sought to be remedied by the plaintiffs poses some immediate threat that cannot wait individual determinations." *N.Y.C. Coalition to End Lead Poisoning v. Giuliani*, 245 A.D.2d 49 (1st Dep't 1997). *See also*, *Varshavksy v. Perales*, 202 A.D.2d 155 (1st

Dep't 1994) (governmental operations doctrine did not apply where the government's reluctance to extend temporary injunctive relief to individuals other than the named plaintiffs constituted an immediate threat); *Brad H. v. N.Y.*, 185 Misc. 2d 420, 425 (Sup. Ct. N.Y. Cnty. 2000), *aff'd*, 276 A.D.2d 440 (1st Dep't 2000); *Goodwin v. Gleidman*, 119 Misc. 2d 538, 546 (Sup. Ct. N.Y. Cnty. 1983) (governmental operations doctrine was inapplicable where petitioners, residents of an emergency relocation shelter, faced a housing emergency and other socioeconomic difficulties impeding their ability to bring individual suit).

As explained above, Petitioners are either under threat of eviction due to unaffordable rents or living in shelter. To the extent that Respondents will not agree to extend to the entire class any relief granted to the individuals, certification of a class is therefore warranted. Accordingly, the petitioner class meets the standards of CPLR § 901(a) and should be certified pursuant to CPLR § 902.

II. PETITIONERS ARE ENTITLED TO MANDAMUS RELIEF

A. The Standard for Mandamus Relief

It is well established that a mandamus proceeding is available "to compel the performance of a ministerial, nondiscretionary act where there is a clear legal right to the relief sought." *Matter of Savastano v. Prevost*, 66 N.Y.2d, 47, 495 N.Y.S.2d 6 (1985), citing *Klosterman v. Cuomo*, 61 NY2d 525, 539, 475 N.Y.S.2d 247, 463 N.E.2d 588 (1984); see also, *Harper v. Angiolillo*, 89 N.Y.2d 761, 765, 658 N.Y.S.2d 229 (1997); *Matter of CRP Sanitation, Inc. v. Solid Waste Commn. of County of Westchester*, 86 A.D.3d 608, 611, 927 N.Y.S.2d 384 (App. Div. 2d Dept. 2011); *Matter of Guzman v. 188-190 HDFC*, 37 A.D.3d 295, 296, 830 N.Y.S.2d 112 (App. Div. 1st Dept. 2007). 15. The act sought to be compelled must be ministerial, nondiscretionary and nonjudgmental, and must be premised upon a specific statutory

authority mandating performance in a specific manner. *See*, *Gianelli v. New York State Div. of Hous. & Comm. Renewal*, 142 Misc. 2d 285, 286-87, 536 N.Y.S.2d 675, 676 [Sup Ct. NY County 1989], citing *Perez v. Caso*, 72 A.D. 2d 797, 421 N.Y.S.2d 627 [2d Dept 1979]. However, mandamus is available to compel "acts which are mandatory but are executed through means that are discretionary." *Klosterman v. Cuomo*, 61 N.Y.2d 525, 539 (1984). Such actions can therefore be the subject of a judicial order when the agency fails to perform its duty. *Matter of Dan R.*, 199 A.D.2d 322, 606 N.Y.S.2d 1000 (App. Div. 2d Dep't 1993).

B. Local Laws 99, 100, 101 and 102 Impose a Non-Discretionary Duty on Respondents.

1. The City Council duly enacted the CityFHEPS Reform Laws.

As the body vested with the legislative power of the city, the Council is authorized to adopt local laws consistent with the New York City Charter or with the constitution or laws of the United States or this state, for the good rule and government of the city; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the city and its inhabitants; and to effectuate the purposes and provisions of this charter or of the other law relating to the city. New York City Charter §§ 21, 28. Any powers reserved under the Charter "shall not be held to limit the legislative power of the council, except as specifically provided in this charter." *Id*., § 21.

Under this authority, the Council duly adopted the CityFHEPS Reform Laws on May 25, 2023. *Id*. §§ 34, 35, 36. The Mayor vetoed the CityFHEPS Reform Laws on June 23, 2023.[4] Exercising its express authority under Section 37(b) of the Charter, the Council then overrode the

[4] With the exception of Introduction 893-a for which the Mayor cited fiscal concerns and questioned the Council's authority to enact legislation regarding rental assistance programs as reasons for his disapproval, the Mayor disapproved the CityFHEPS package without stating his objections in writing, as required by City Charter § 37(b).

Mayor's veto, by a vote of 42-8, and duly enacted the CityFHEPS Reform Laws on July 13, 2023. Pursuant to the City Charter, these laws were then "deemed adopted, notwithstanding the objections of the mayor." City Charter § 37(b).

Instead of implementing the duly adopted laws, in December 2023, Respondents wrote to the Council that "the laws cannot be implemented at this time."

The constitutional principle of separation of powers, "implied by the separate grants of power to each of the coordinate branches of government" *Clark v. Cuomo*, 66 N.Y.2d 185, 189, 495 N.Y.S.2d 936, 486 N.E.2d 794 (1985), requires that the Legislature make the critical policy decisions, while the executive branch is responsible for implementing those policies. *Matter of New York State Health Facilities Assn. v. Axelrod*, 77 N.Y.2d 340, 349, 568 N.Y.S.2d 1, 569 N.E.2d 860 (1991). "No matter how well-intentioned his actions may be, the Mayor may not unlawfully infringe upon the legislative powers reserved to the City Council." *Under 21 v. City of New York*, 65 N.Y.2d 344, 492 N.Y.S.2d 522, 482 N.E.2d 1 (1985) *citing*, *Subcontractors Trade Assn. v. Koch*, 62 N.Y.2d 422, 477 N.Y.S.2d 120, 465 N.E.2d 840 (1984); *Matter of Fullilove v. Beame*, 48 N.Y.2d 376, 423 N.Y.S.2d 144, 398 N.E.2d 765 (1979); *Matter of Broidrick v. Lindsay*, 39 N.Y.2d 641, 385 N.Y.S.2d 265, 350 N.E.2d 595 (1976). Acts inconsistent with these principles wrest power reserved to the legislature and violate the doctrine of separation. *Clark v. Cuomo*, 66 N.Y.2d at 189; *see also, Under 21*, 65 N.Y.2d at 359.

As explained above, the Council enacted Local Laws 99, 100, 101 and 102 pursuant to the legislative authority granted by the City Charter and then overrode the Mayor's veto as expressly authorized by City Charter § 37(b). It would utterly eviscerate the veto override provisions of the Charter, rendering them meaningless, if the Mayor could unilaterally refuse to

implement legislation "deemed adopted" as a result of the Council's exercise of its powers under Section 37(b).

In *Hernandez v. Barrios-Paoli*, 93 N.Y.2d 781, 698 N.Y.S.2d 590, 720 N.E.2d 866 (1999), the Court of Appeals held that the Mayor must implement eligibility criteria lawfully enacted by the City Council if they do not conflict with any State or Federal requirements. In *Hernandez,* the Court upheld a local law that broadened the eligibility requirements for persons with HIV/AIDS and ruled that the City could not continue to use eligibility verification procedures that "violate[d] the language of Local Law No. 49 and contravene[d] the purpose of the statute." *Id.,* at 786. Similarly, in *Mayor of the City of New York v. Council of the City of New York*, 38 A.D.3d 89 (1st Dep't 2006), the Appellate Division upheld the authority of the City Council to regulate the Mayor's conduct of collective bargaining in a manner consistent with State law. Since, as explained below, the CityFHEPS Reform Laws do not conflict with any State or federal law, Respondents have a clear, nondiscretionary duty to implement these duly enacted laws.

2. The CityFHEPS Reform Laws are Consistent with State Law

In her letter to the Council, dated December 15, 2023, Commissioner Wasow Park argued that "the Local Laws also seek to legislate in an area in which authority is reserved to the State." However, Commissioner Park then acknowledged that the New York Social Services Law "specifically authorize[s] local districts to develop their own local rent supplement programs, subject to OTDA's review and approval." Commissioner Park, however, illogically asserted "by imposing eligibility requirements on the CityFHEPS program, Local Laws 100-102 subvert this planning role delegated to local social services districts and undermine the State's oversight authority of its local agent." On the contrary, the Commissioner's own letter recognizes that

localities may develop their own rent supplement programs. The City Council's legislation simply directs the Administration to revise the parameters of its current program, as authorized by the Court of Appeals in *Hernandez*. Since, upon information and belief, the Administration has not submitted the CityFHEPS Reform Laws to OTDA for "review and approval," any argument that the CityFHEPS Reform Laws conflicts with State law is at best premature.

The CityFHEPS Reform Laws, moreover, do not conflict with State law or intrude upon a regulatory field that is fully occupied by State law so as to be preempted. *See Garcia v. New York City Dep't of Health & Mental Hygiene*, 31 N.Y.3d 601, 617, 81 N.Y.S.3d 827, 106 N.E.3d 1187 (2018). State law only preempts local law where the two conflict directly, or "where the legislature has indicated its intent to occupy the particular field (field preemption)." *Id.,* quoting *Eric M. Berman, P.C. v. City of New York*, 25 N.Y.3d 684, 690, 16 N.Y.S.3d 25, 37 N.E.3d 82 (2015).

To establish conflict preemption, "it must be shown that the local law permits conduct prohibited by State law, prohibits conduct specifically permitted by State law or imposes restrictions on rights granted by the State." *Zorn v. Howe*, 276 A.D.2d 51, 55, 716 N.Y.S.2d 128 (2000), *citing*, *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 97, 524 N.Y.S.2d 8, 518 N.E.2d 903 (1987). Here, the CityFHEPS Reform Laws do not expand eligibility for the rental vouchers beyond any limit imposed by State law and is consistent with the City's general duty under NY Social Services Law § 62 to provide for any person in its territory "who is in need of public assistance." *Id.* § 62(1).

Nor is implementation of the CityFHEPS Reform Laws barred by the doctrine of "field preemption." State law allows for local legislatures to play a role in the provision of benefits to its residents. Field preemption does not lie in "the mere fact that the Legislature has enacted

specific legislation in a particular field"; "[t]he key question in all cases is what did the Legislature intend?" *Matter of Consolidated Edison Co. of N.Y. v. Dep't of Env't Conservation*, 71 N.Y.2d 186, 193, 524 N.Y.S.2d 409, 519 N.E.2d 320 (1988); *see also Monroe-Livingston Sanitary Landfill, Inc. v. Town of Caledonia*, 51 N.Y.2d 679, 683, 435 N.Y.S.2d 966, 417 N.E.2d 78 (1980) (looking for evidence of "a State purpose to exclude the possibility of varying local legislation"). Local legislation runs afoul of state law and is preempted where it would thwart the state's control. *Matter of County of Niagara v. Shaffer*, 201 A.D.2d 786, 787, 607 N.Y.S.2d 466 (3d Dep't 1994) (preempting local law that imposes prerequisite additional restrictions on benefits guaranteed by state law). Here, however, SSL § 131-a expressly grants local districts discretion in what manner to provide grants for shelter; this clearly contemplates that people in different districts will receive different types and amounts of benefits. Further illustrative is SSL § 56, which restrains the Human Resources Administration ("HRA") from exercising power in a matter "inconsistent with the laws relating to said city."

3. The Legality of the CityFHEPS Reform Laws Do Not Depend on Budget Appropriations

In her letter of December 15, 2023, Commissioner Park argued that the CityFHEPS Reform Laws cannot be implemented because it was "not reflected" in the budget the Council adopted in June 2023. However, no New York City Charter provision supports the notion that a Local Law must be specifically funded by an appropriation for its implementation to be valid. To the contrary, the City Charter plainly separates the Council's powers to adopt laws under City Charter §28 from its budget-related authority under City Charter §§§254(a), 255 and 255(b). Budget appropriations are not earmarked for particular programs such as CityFHEPS but are made at the agency level as "units of appropriation." If the administration believes an agency requires supplemental funding, it may request a budget amendment or seek additional

appropriations in the next annual budget. The Mayor, however, may not simply refuse to implement a legislatively created program he does not favor based on the absence of a budget amendment simultaneous with the legislation.[5]

Since Respondents failed to raise any legal justification for their refusal to implement the CityFHEPS Reform Laws, Petitioners are entitled to an order from this court directing Respondents to follow the law.

CONCLUSION

Respondents' refusal to implement the duly enacted legislation of the City Council, in the absence of any conflict with State law, violates the separation of powers principles inherent in the City Charter. Respondents are unlawfully denying Petitioners the benefit of critical protections the Legislature intended them to have, while they face eviction and languish in shelter, creating exactly the evil the Legislature sought to prevent – households eligible for a subsidy meant to prevent eviction will be evicted because Respondents have failed to act in accordance with the law. Because Respondents' failure to implement CityFHEPS is directly at odds with the governing legislation, this Court should issue an injunction in the nature of mandamus, directing Respondents to implement the laws and issue Petitioners the vouchers to which they are entitled.

[5] The Council must accompany any proposed local law with a fiscal impact statement containing certain information. City Charter §33(a). However, the fiscal impact statement does not "affect, impair, or invalidate" the local law even if the statement is found to be inaccurate. City Charter § 33(e).

Respectfully submitted,

Robert Desir

THE LEGAL AID SOCIETY
Judith Goldiner, Esq., Attorney in Charge, Civil Law Reform Unit
Edward Josephson, Supervising Attorney
Robert Desir, Staff Attorney
Alex MacDougall, Staff Attorney
49 Thomas Street
5th Floor
New York, New York 10013
Tel: (646) 581-7506
Email: rrdesir@legal-aid.org