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New York Supreme Court
Appellate Division – First Department

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

Petitioners-Appellants,

—against—

Case No. 2024-05186

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

Respondents-Respondents.

THE COUNCIL OF THE CITY OF NEW YORK,

Petitioner-Appellant,

—against—

MAYOR ERIC ADAMS, in his official capacity as Mayor of the City of New York,

Respondent-Defendant.

BRIEF OF PETITIONERS-APPELLANTS

THE LEGAL AID SOCIETY
Twyla Carter, Attorney-in-Chief
Judith Goldiner, Esq., Attorney in Charge,
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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

QUESTIONS PRESENTED 3

STATEMENT OF FACTS 4

I. Background on CityFHEPS 4

II. Responding to a Housing Crisis with CityFHEPS Reform Laws 6

III. Plaintiffs Seek Enforcement Of The CityFHEPS Reform Laws In NY State Supreme Court which Wrongly Decides That The City Council Has No Policymaking Authority In The Field Of Social Services 7

LEGAL ARGUMENT 11

I. THE COURT BELOW ERRED BY FINDING THAT THE SOCIAL SERVICES LAW PREEMPTS LOCAL LEGISLATION REGARDING SOCIAL SERVICES POLICY. 11

A. The City Council's policy making authority is inherent in New York's system of local self-government. 11

B. The CityFHEPS Reform Laws Do Not Conflict With Any Provision Of State Law. 12

C. The Court Below Wrongly Held that State Law Precludes the City Council from Legislating in the Entire Field of Social Services. 14

Page

II. THE VALIDITY OF THE CITYFHEPS REFORM LAWS DO NOT HINGE ON WHETHER THE COUNCIL IS A SOCIAL SERVICES DISTRICT UNDER THE SSL 18

III. PETITIONERS-APPELLANTS MEET THE REQUIREMENTS FOR CLASS CERTIFICATION 20

CONCLUSION 22

TABLE OF AUTHORITIES

Cases | Page

Beaudoin v. Toia, 45 N.Y.2d 343 (1978) 15
City of N.Y. v. Town of Blooming Grove Zoning Bd. of Appeals,
305 A.D.2d 673 (2d Dep't 2003) 17
City of New York v. Maul, 14 N.Y.3d 499, 929 N.E.2d 366 (2010) 9
Clark v. Cuomo, 66 N.Y.2d 185 (1985) 11-12
Coleman ex rel. Coleman v. Daines, 19 N.Y.3d 1087, 979 N.E.2d 1158
(2012) 9
Consolidated Edison Co. v Town of Red Hook, 60 N.Y.2d 99 (1983) 19
DeStefano v. Emergency Housing Group, 281 A.D.2d 449 (2d Dep't 2001)...17,18
Friar v. Vanguard Holding Corp., 78 A.D.2d 83 (2d Dep't 1980) 21
Hernandez v. Barrios-Paoli, 93 N.Y.2d 781 (1999)..............................passim
Jancyn Mfg. Corp. v. County of Suffolk, 71 N.Y.2d 91, 524 N.Y.S.2d 8,
518 N.E.2d 903 (1987)..13
Marypat Realty Corp. v. Hernandez, No. 570555/01, 2002 WL 31940717 (App. Term. 1st Dep't 2002)..20
Matter of Adkins v. Board of Appeals, 199 A.D.2d 261 (2d Dep't 1993).........17
Matter of County of Niagara v. Shaffer, 201 A.D.2d 786, 607 N.Y.S.2d 466
(3d Dep't 1994) 13
Matter of Landsdown Ent. Corp. v. New York City Dep't of Consumer Affairs,
74 N.Y.2d 761(1989) 13
Matter of N.Y. Statewide Coal. of Hisp. Chambers of Com. v. NYC Dep't of Health and Mental Hygiene, 23 N.Y.3d 681 (2014) 11
McDonald v. New York City Campaign Fin. Bd., 4
0 Misc. 3d 826, (Sup. Ct. N.Y. Co. 2013)
aff'd as modified, 117 A.D.3d 540 (1st Dep't 2014)..14
Monroe-Livingston Sanitary Landfill, Inc. v. Town of Caledonia,
51 N.Y.2d 679, 435 N.Y.S.2d 966, 417 N.E.2d 78 (1980) 14
New York State Club Ass'n, Inc. v. City of New York,
69 N.Y.2d 211 (1987) 19
People v. Cook, 34 N.Y.2d 100 (1974) 14
People v. Jesus, 54 N.Y.2d 465 (1981) 13
People v. Judiz, 38 N.Y.2d 529 (1976) 14,18
Pludeman v. N. Leasing Sys., Inc., 74 A.D.3d 420 (1st Dep't 2010) 21
Weinberg v. Hertz Corp., 116 A.D.2d 1 (1986),
aff'd, 69 N.Y.2d 979 (1987) 21

Page

Zorn v. Howe, 276 A.D.2d 51, 716 N.Y.S.2d 128 (2000) 13,14

Statutes

Social Services Law §34 19
Social Services Law §56 12,18
Social Services Law §61 19
Social Services Law §61(1) 18
Social Services Law §62 13,18
Social Services Law §98 1
Social Services Law §131 19
Social Services Law §132 16
Social Services Law §134 16
Social Services Law §400 19

Municipal Home Rule Law § 10 11

Rules and Regulations

18 NYCRR § 352.3(a)(3)(i) 13
18 NYCRR § 352.3(a)(3) 17

Constitutional Provisions

New York State Constitution Article IX, § 1 11
New York State Constitution Article IX, § 2 11
New York State Constitution Article IX, § 2(c)(10) 11
New York City Charter §21 11
New York City Charter §28 11

PRELIMINARY STATEMENT

Amid historic levels of homelessness and rising evictions, the New York City Council enacted laws to expand access to CityFHEPS(“CityFHEPS Reform Laws”), a New York City created and funded rental subsidy. (R. 2046-2125). The reforms were designed to provide a genuine lifeline to New Yorkers in need *before* rather than only after being evicted from affordable homes, and also to help more households trying to get out of NYC shelters with a CityFHEPS voucher. (R. 1698-1736). In January 2024, the statutory deadline for implementation came and went with Mayor Eric Adams refusing to abide by his duties under the New York City Charter to enforce the law. (R. 1782-1783). Petitioners-Appellants are low-income New Yorkers who sought vouchers under the expanded criteria but were deprived of even the opportunity to apply due to Mayor Adams’ unilateral refusal to implement the CityFHEPS Reform Laws. (R. 13-32).

Facing eviction from their longtime homes or having no other means of exiting shelter, Petitioners-Appellants sought relief from Supreme Court of the State of New York (“the court below”) in the form of an injunction directing Respondents to implement the law. (R. 75-76). By decision and order on motion dated August 2, 2024, the court below dismissed the Petition. (R. 6-12).

The overarching issue in this case is whether the CityFHEPS reform laws are preempted by state law. The court below concluded that the CityFHEPS

Reform Laws are invalid based on field preemption. (R. at 9). The court below's conclusion that state law deprives the City Council of any social services policymaking authority is unsupported by any binding precedent and directly refuted by the Court of Appeals in *Hernandez v. Barrios-Paoli*, 93 N.Y.2d 781 (1999), which the decision fails to address. The sole case on which the court below relies focuses on a county's role in implementing fair hearing decisions as an agent of the state; it is inapposite and not determinative of whether local districts may be subject to local legislation in addition to state directives. *Id*.

The court below's decision represents a radical departure from decades of social services policy making by the New York City Council and implementation by the executive branch, and precludes the residents of the City from using the democratic process to address issues essential to their lives. No intent to preempt municipal law on housing subsidies is expressed in State law, nor does the State so occupy the field of housing subsidies that there is no room for municipal policymaking. This Court should find that the court below erred in deciding that the CityFHEPS Reform Laws are preempted by state law and require the mayor to implement them.

QUESTIONS PRESENTED

I. Whether the court below erred in holding that the CityFHEPS Reform Laws are preempted by the New York State Social Services Law.

II. Whether the court below erred in denying Petitioners-Appellants' motion for class certification.

STATEMENT OF FACTS

I. Background on CityFHEPS

In October 2018, the de Blasio administration created the City Fighting Homelessness and Eviction Prevention Supplement, known as CityFHEPS, by consolidating and replacing the City's pre-existing housing voucher initiatives. (R. 250-251). The goal was to streamline the administration of city-funded rental assistance and improve access to rental subsidies for low-income New Yorkers facing and experiencing homelessness. (R. at 1361).

From its inception, the CityFHEPS program was hampered by highly restrictive eligibility criteria, burdensome bureaucratic requirements and a policy design focusing almost exclusively on assisting families only after they entered shelter. To qualify for CityFHEPS, a household could not have income exceeding 200% of the federal poverty limit, less than $40,000 per year in 2023 for a household of two. (R. at 2569). Households at risk of eviction needed an active case in housing court combined with recent shelter history or an active Adult Protective Services ("APS") case or be facing eviction from one of the approximately 15,000 rent controlled apartments remaining in the city (there are over 1,000,000 rent-stabilized apartments by comparison). (R. at 1361). Applicants residing in a City shelter were only eligible to apply for CityFHEPS after living there for 90 days. (R. at 1703).

Unfortunately, securing a voucher did not mark the end of an uphill battle faced by households in need of rental assistance. Those fortunate enough to obtain a voucher were met with almost impossible odds of finding an apartment with a rent that met the impracticably low CityFHEPS maximum rent limit. (R. at 24). For example, a household of two was required to find an apartment in New York City with a maximum rent of $1323 in 2019. (R. at 24). The vacancy rate for apartments with that rent was approximately 2.52%. (R. at 24).

To address the CityFHEPS program's prohibitively low maximum rents, and at the behest of experts, advocates and impacted households, the City Council enacted Local Law 71 in 2021, setting maximum rents using the same payment standard as for federal Section 8 vouchers, and extending the number of annual renewals permitted under the CityFHEPS program. (R. at 18).

The City implemented Local Law 71 as required, by amending Title 68 of the Rules of the City of New York, increasing the maximum rents for CityFHEPS apartments to the Section 8 payment standard adopted by the New York City Housing Authority. (R. at 18). This critical reform significantly increased the pool of eligible apartments available to CityFHEPS voucher holders.

II. Responding to a housing crisis with CityFHEPS Reform Laws

Despite much-needed improvements to CityFHEPS resulting from local legislation, the program remained difficult to access, and the housing crisis continued to worsen. Evictions in New York City began rising following the end of the COVID-19 eviction moratorium, and nearly tripled from 2022 to 2023, with low-income communities of color in Central Brooklyn and South and Central Bronx experiencing the highest rates. Evictions continue surpassing pre-pandemic levels with no signs of slowing down. (R. at 20).

Rising evictions coincided with historically high levels of homelessness and record numbers of people in shelters. At the start of 2023, there were over 70,000 individuals sleeping in New York City shelters each night, most longtime New Yorkers, compared to 45,000 at the start of 2022. (R. at 20).

It was against the backdrop of steadily worsening housing insecurity that the City Council proposed legislation to make critically needed reforms to the CityFHEPS program. (R. 1329-1330). The proposed changes were informed by the expertise of advocates, policy experts and the experiences of impacted people. Later, a series of bills were introduced to: increase the income eligibility criteria for applicants to 50% of the area median income (Local Laws 100, 102); eliminate the 90-day shelter stay requirement (Local Law 100); remove the shelter history requirement and expand eligibility to otherwise eligible households facing eviction

(Local Laws 100, 102); and prohibit DSS from deducting a utility allowance from the maximum rental allowance for a CityFHEPS voucher (Local Law 99). (R. at 960, 1356, 1986). Critically, the proposed reforms proactively made assistance available to low-income tenant households at risk of eviction allowing households to avoid eviction from affordable homes and entering an overburdened shelter system. (R. at 1987).

The City Council voted overwhelmingly to pass the package of bills that would become the CityFHEPS Reform Laws on May 25, 2023. (R. 1955-2045). On June 23, 2023, the mayor exercised his executive power under Section 255 of the New York City Charter to veto the entire legislative package. (R. at 1701). Three weeks later, the City Council invoked its own power under the same section of the Charter and enacted the bills into law by overriding the mayor's veto with a supermajority vote. (R. 1698-1736).

Enactment of the CityFHEPS Reform Laws started the clock on an implementation deadline of January 9, 2024. (R. 1784-1791). Instead of implementing the law, the mayor instead chose to break with democracy and_flout his sworn obligation under the Charter. The Adams Administration explicitly stated that City DSS would not be implementing the CityFHEPS Reform Laws, citing preemption and budgetary concerns. (R. 66-72).

III. Plaintiffs Seek Enforcement Of The CityFHEPS Reform Laws In NY State Supreme Court which Wrongly Decides That The City Council Has No Policymaking Authority In The Field Of Social Services.

The Petitioners-Appellants in this case exemplify the vulnerable populations in need of access to CityFHEPS. Like thousands of other low-income New Yorkers, without access to life-saving rental assistance, they face eviction from affordable homes or indefinite stays in the shelter system. On February 14, 2024, without any recourse to obtain a voucher under the expanded CityFHEPS criteria, Ms. Marie Vincent, Ms. Carolina Tejeda, Ms. Marie Cronneit and Ms. Susan Acks filed suit, on behalf of themselves, and a class of similarly situated persons, in New York State Supreme Court seeking an order requiring Mayor Adams to implement the CityFHEPS Reform Laws. (R. 73-74).

Ms. Vincent became homeless when she was evicted from her long-time home in the Bronx after a new owner came into possession and removed every single tenant. She was then forced into the shelter system with her 12-year-old grandson where she remained for nearly one year before this case commenced. Her employment income from cleaning hospitals at night was too high under the old income limit, but she is income-eligible under the CityFHEPS Reform Laws. (R. 14, 24-25).

Ms. Tejeda worked her whole life to support her family, even after enduring serious injuries from an accident. She is now significantly disabled with a minor

daughter and cannot afford her rent; she faces eviction from her Bronx apartment and is eligible for a voucher under the CityFHEPS Reform Laws. The cost of housing Ms. Tejeda and her daughter each month in shelter is approximately seven times her entire rent, and nearly ten times the share of her rent that the City would be paying if she were enrolled in the CityFHEPS program. (R. 14-15, 25-27).

Ms. Cronneit is 86 years old and has lived in her Brooklyn apartment for over 20 years. Her monthly rent is approximately $1000. Ms. Cronneit's husband died during the pandemic and rental arrears began accruing following his passing. At the time of filing, Ms. Cronneit faced eviction and homelessness in her late 80s. (R. 15, 27).

Ms. Acks is a disabled senior who has an over 40-year tenancy in her Brooklyn apartment. She has no family that can assist her with living expenses, and her rent exceeds her income from disability benefits. Ms. Acks is at risk of eviction and homelessness without a CityFHEPS voucher. (R. 15, 28). [1]

[1] Since filing, Ms. Vincent was issued a CityFHEPS voucher and exited shelter in May 2024. Her income still exceeds the CityFHEPS limit, but City DSS permitted Ms. Vincent to restore and transfer an old CityFHEPS case approved when she had less income. Ms. Acks received One Shot Deal funds to pay her arrears in June 2024 but has since accrued additional arrears because she cannot afford to pay ongoing rent. Finally, Ms. Cronneit was approved for Adult Protective Services and was issued a CityFHEPS voucher as a result; it is expected her eviction proceeding will be discontinued within the next week. Each plaintiff-appellant can still serve as class representatives as there remain "concrete legal issues that predominate and plaintiffs' claims seek to vindicate rights accorded them by statutes and regulations." *City of New York v. Maul*, 14 N.Y.3d 499 at 514, 929 N.E.2d 366 (2010), *Coleman ex rel. Coleman v. Daines*, 19 N.Y.3d 1087, 979 N.E.2d 1158 (2012)(citing *City of New York v. Maul*, 14 N.Y.3d 499 at 514, 929 N.E.2d 366 (2010)).

On August 1, 2024, the court below issued a decision denying Petitioners-Appellants' petition in full. The decision failed to address the fundamental argument that City DSS' role as an "agent" of the State DSS does not exempt the agency from following local legislation, an argument supported by Court of Appeals precedent. In concluding that the New York City Council lacks any policy making authority in the area of social services, the court below overlooked decades of cited case law supportive of the proposition that local legislation should not be found invalid on preemption grounds solely on the basis that it seeks to regulate the same subject matter as the state. (R. 6-12).

LEGAL ARGUMENT

I. THE COURT BELOW ERRED BY FINDING THAT THE SOCIAL SERVICES LAW PREEMPTS LOCAL LEGISLATION REGARDING SOCIAL SERVICES POLICY.

A. The City Council's policy making authority is inherent in New York's system of local self-government.

The New York State Constitution requires local governments to include a "legislative body elected by the people thereof." N.Y. Const., art. IX, § 1. The New York City Charter ("Charter") designates the Council as New York City's legislative body. New York City Charter ("NYC Charter") §21. As such, the City Council has expressly been delegated broad powers to enact local legislation consistent with state law to provide for the "government, protection, order, conduct, safety, health and well-being of persons or property therein." *See* N.Y. Const., art. IX, § 2(c)(10); Municipal Home Rule Law § 10; NYC Charter § 28.

In *Matter of N.Y. Statewide Coal. of Hisp. Chambers of Com. v. NYC Dep't of Health and Mental Hygiene*, 23 N.Y.3d 681, 693 (2014), the Court of Appeals recognized that "the City Council is the sole legislative branch of City government," and that the Board of Health, although created by the State legislature, must act within the parameters set by the Council. The Court noted that "the City Charter unequivocally provides for distinct legislative and executive branches of New York City government." *See also, Clark v. Cuomo*, 66 N.Y.2d

185 (1985) (discussing separation of powers in State government).

Indeed, the Social Services Law recognizes the City Council's authority by mandating that the powers of the City social services district must be "consistent with the special and *local laws* relating to" New York City. NY Social Services Law ("SSL") §56 [emphasis added]. Upon enactment, Section 56 preserved the role of local legislatures in shaping programs and policies in the area of social services. The language regarding the duty of local DSS districts to obey local laws remained intact after the SSL was amended to assert State control over the local districts, clearly showing that City DSS is subject to oversight *both* by the City Council and by State DSS.

As set forth below, the court below's decision below radically curtailed the power of the City Council to address some of the most urgent and fundamental issues affecting its constituents and infringed upon the democratic right of the City's residents to govern their own affairs through their elected legislature.

B. <u>The CityFHEPS Reform Laws Do Not Conflict With Any Provision Of State Law.</u>

Although Respondents moved to dismiss the Petition on grounds of conflict preemption, neither their papers, nor the court below's decision, cited any specific provisions of the SSL that conflicted with, or precluded, the CityFHEPS Reform Laws. Conflict preemption prohibits local governments from adopting laws

"inconsistent with" state law and invalidates local laws that are in "a head-on collision" with state law, such as when "[a] local law prohibits what a State Law explicitly allows, or when a State Law prohibits what a local law explicitly allows." *Matter of Landsdown Ent. Corp. v. New York City Dep't of Consumer Affairs*, 74 N.Y.2d 761, 764 (1989); *People v. Jesus*, 54 N.Y.2d 465 (1981); *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 (1987). Unlike the local law in *Matter of County of Niagara v. Shaffer*, 201 A.D.2d 786, 787, 607 N.Y.S.2d 466 (3d Dep't 1994), which was preempted because it imposed additional restrictions on benefits guaranteed by state law, the CityFHEPS Reform Laws do not allow conduct State law prohibits, nor do they forbid conduct State law allows. The CityFHEPS Reform Laws do not expand eligibility for the rental vouchers beyond any limit imposed by State law and are consistent with the City's general duty under NY SSL § 62 to provide for any person in its territory "who is in need of public assistance." *Id.* § 62(1).

Indeed, the possibility of a conflict between the CityFHEPS Reform Laws and the State legislative scheme is precluded by the State's regulatory authority to approve or disapprove any modifications to the CityFHEPS program. 18 NYCRR § 352.3(a)(3)(i). It is Respondents who are usurping the authority of State DSS by refusing to submit the CityFHEPS reforms for its approval, depriving the State of

an opportunity to assess the laws' consistency with State social services policy.

C. The Court Below Wrongly Held that State Law Precludes the City Council from Legislating in the Entire Field of Social Services.

In the absence of any conflict with any specific provisions of State law, the court below nevertheless held that the CityFHEPS Reform Laws are invalid based on an unwarranted use of the doctrine of field preemption. "Where local government is otherwise authorized to act, it will be prohibited from legislating on a subject only if the State pre-empts the field through legislation evidencing a State purpose to exclude the possibility of varying local legislation." *Monroe-Livingston Sanitary Landfill, Inc. v. Town of Caledonia*, 51 N.Y.2d 679, 683 (1980). "It is only when the state has evidenced a desire or design to occupy an entire field to the exclusion of local law that the city is powerless to act." *People v. Judiz*, 38 N.Y.2d 529, 532 (1976); *Zorn v. Howe*, 276 A.D.2d 51, 54 (3d Dep't 2000); *McDonald v. New York City Campaign Fin. Bd.*, 40 Misc. 3d 826, 846 (Sup. Ct. N.Y. Co. 2013), *aff'd as modified*, 117 A.D.3d 540 (1st Dep't 2014). Indeed, as the court noted in *Judiz*, "unless preemption is limited to situations where the intention is clearly to preclude the enactment of varying local laws, 'the power of local governments to regulate would be illusory." *Id.*, *citing, People v. Cook*, 34 N.Y.2d 100, 109 (1974).

The court below based its brief preemption analysis entirely upon the Court of Appeals' holding in *Beaudoin v. Toia*, 45 N.Y.2d 343 (1978) However, this case involved a County social services department's' duty to implement State decisions, not the relationship between a local social services agency and the local legislature. In *Beaudoin,* a county department initiated a proceeding to annul a State commissioner's decision which overruled its denial of an application for public assistance benefits. *Id*. at 346. The Court determined that the County Department of Social Services lacked standing to challenge the State commissioner's fair hearing decision since the counties are agents of the state who may not adopt interpretations of State department regulations that differ from those of the State. *Id*. at 346. The Court further noted that the prevailing federal law required "any State plan under the AFDC program be administered or supervised by "a single State agency" and that the State agency's decisions were not subject to challenge by any local social services district. *Id*. at 348. Although *Beaudoin* held that local social services districts are subject to State DSS authority, it did not preclude the possibility that such districts could *also* be subject to the authority of the local legislatures governing those districts, where such local laws did not conflict with State law.

In *Hernandez v. Barrios-Paoli*, 93 N.Y.2d 781 (1999), however, the Court of Appeals decided the precise issue at stake in the present case: whether the City

DSS commissioner had to comply with a local law in the absence of any direct conflict with state law. In *Hernandez*, the local law eliminated City DSS's eligibility verification review (EVR) requirement for clients with HIV/AIDS and provided that all eligibility reviews must be conducted by the City's Division of AIDS Services and Income Support (DASIS) (now HASA), replacing DSS's EVR process. City DSS was sued by a DASIS client for violating the law by continuing to require EVR. In response, City DSS argued that the local law was preempted by State law provisions mandating investigations of clients' "eligibility." (R. 1794-1839).

The Court of Appeals rejected City DSS's argument and concluded that, even though the SSL permitted EVR, the City had to obey the local law prohibiting it. *Hernandez,* 93 N.Y. 2d at 787. The Court ordered the Mayor and City DSS to follow City law, which the Court determined was not preempted. *Id*. at 789. The Court carefully examined the sections of the SSL (§§132, 134) the Mayor alleged the City law conflicted with and concluded that they "merely provide a skeletal framework within which the Commissioner of Social Services must act," and that the local law was "effectuating the intent of the State." Not only did the Court plainly recognize the City Council's power to legislate in the area of social services, but throughout the case, City DSS itself repeatedly recognized the City Council as a participant in the "administration of its public benefits programs." *Id*.

at 788. As explained in Point I.B., *supra*, the CityFHEPS Reform Laws do not conflict with any provision of the State SSL and are consistent with City DSS's obligations under the skeletal framework provided by the SSL for the delivery of rental assistance programs to New Yorkers in need. Thus, the ruling in *Hernandez* is irreconcilable with the court below's reasoning below, mandating its reversal.

Moreover, far from excluding localities from taking action within the field of social services, State DSS's regulations implementing the SSL acknowledge the role of localities in establishing housing subsidy programs in accordance with local needs. The regulations specifically empower "social services districts," of which the City of New York is one, to "provide additional monthly shelter supplements to public assistance applicants and recipients" with the approval of State DSS. 18 NYCRR § 352.3(a)(3). Nothing in the SSL or its implementing regulations suggests that local legislatures are precluded from exercising their constitutional powers to shape such subsidy programs.

In contrast, some of the cases cited by Respondents below recognized that the State did intend to preempt local legislation in certain very specific areas within the broader field of social services. In cases such as *Matter of Adkins v. Board of Appeals*, 199 A.D.2d 261 (2d Dep't 1993), *DeStefano v. Emergency Housing Group*, 281 A.D.2d 449 (2d Dep't 2001) and *City of N.Y. v. Town of Blooming Grove Zoning Bd. of Appeals,* 305 A.D.2d 673 (2d Dep't 2003) local restrictions

were invalidated on the grounds that the "regulation of adult-care facilities has been preempted by the State." *See, DeStefano* at 451("Since the Camp, as a shelter for homeless adults, *is comprehensively regulated by the state*, local zoning authorities are precluded from using zoning ordinances or permit requirements to control the details of shelter operations."[emphasis added]). By singling out adult care facilities as a particular sub-field of social services that is so "comprehensively regulated by the State" as to preclude local legislation, these decisions confirm that State law does not preempt the vast area social services regulation in its entirety. Indeed, as suggested by the Court of Appeals in *People v. Judiz*, 38 N.Y.2d 529, 532 (1976), such a sweeping result would render "illusory" the power of local governments to regulate their own affairs.

II. **<u>THE VALIDITY OF THE CITYFHEPS REFORM LAWS DO NOT HINGE ON WHETHER THE COUNCIL CONSTITUTES A SOCIAL SERVICES DISTRICT UNDER THE SSL.</u>**

The court below incorrectly reasoned that the CityFHEPS Reform Laws are preempted because the "social services district" established by SSL § 56 is City DSS, rather than the City of New York.

As the "city social services district" under SSL §61(1), Respondents are responsible for public assistance and care via its administration of various public assistance programs. SSL §62. Districts play a critical role in delivering essential

services to vulnerable populations within their communities.[2] However, even assuming that despite the clear language of the statute, “the City of New York” is intended to mean City DSS, not the City of New York, designation of a local agency as a “district” hardly displays the Legislature's “desire that its regulations should pre-empt the possibility of varying local regulations.” *New York State Club Ass'n, Inc. v. City of New York*, 69 N.Y.2d 211 (1987), *citing*, *Consolidated Edison Co. v Town of Red Hook*, 60 N.Y.2d 99, 105 (1983). As recognized by the Court of Appeals in *Hernandez*, 93 N.Y.2d 781, *supra*, whether or not City DSS constitutes the “district” established by SSL § 56, it may still be subject simultaneously to the authority of both State DSS *and* the New York City Council, as long as City law does not contradict or conflict with any particular provisions of the State SSL.

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[2] SSL § 31(authority to provide protective services for children); SSL § 34(administration of public assistance, eligibility determination process for various assistance programs); SSL § 50(requirements for provision of care for children in foster care and responsibilities related to adoption services); SSL § 61(administration of Supplemental Nutrition Assistance Program (SNAP)); SSL § 98(framework for licensing and monitoring day care services and other residential facilities; SSL § 131 (responsibilities regarding Medicaid administration); SSL § 400 (general assistance programs available, including the determination of need and the provision of services.

III. PETITIONERS-APPELLANTS MEET THE REQUIREMENTS FOR CLASS CERTIFICATION.

The court below denied class certification on the grounds that "the sole issue before this Court is whether the respondents are required to implement the laws, not whether the proposed intervenors [or class members] would be eligible for such benefits." (R. 7-8). Petitioners-Appellants, however, initiated this action on behalf of themselves and all similarly situated households alleging that they would be eligible for CityFHEPS under the expanded criteria of the Reform Laws and were barred from obtaining the subsidies by Respondents' unlawful refusal to implement the Laws. (R., 2332-2350). Respondents' refusal to follow the new laws rendered futile any attempts by Petitioners-Appellants to seek individual determinations of their eligibility. Thus, Petitioners-Appellants had standing to seek a declaration on behalf of themselves and the proposed class that Respondents are required to implement the CityFHEPS Reform Laws, so that their eligibility under those Laws could be determined by City DSS. Petitioners-Appellants did not and do not seek an eligibility determination from the court below.[3] That the potential class members may present different facts or characteristics when

[3] The court below puzzlingly suggested that class members could seek rulings from the NYC Housing Court regarding their entitlement to City housing subsidies, although such rulings would exceed that court's jurisdiction under the NYC Civil Court Act. (R. 7). *See, Marypat Realty Corp. v. Hernandez,* No. 570555/01, 2002 WL 31940717 (App. Term. 1st Dep't 2002) ("an administrative determination regarding social services benefits is not reviewable in the Housing Court.")

applying for benefits still comports with the commonality rule which requires a predominance of claims, not identity 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). Here, the predominant legal issues significantly outweigh any minor factual disparities among the Petitioners-Appellants. The distinctions that may arise, even if they may result in an ineligibility determination, are irrelevant to the determination of whether Respondents are unlawfully denying them an ability to seek the rental supplement established by the CityFHEPS Reform Laws. Therefore, all class members possess common grievances that arise from the same course of conduct by the Respondents and class certification is appropriate.

CONCLUSION

For the reasons outlined above, Respondents' refusal to implement the duly enacted legislation of the City Council violates the separation of powers principles inherent in the City Charter, and the CityFHEPS Reform Laws are not preempted by State law. The court below's denial of the Petition should be reversed.

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

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word. Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman
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Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this Statement is 4,977.

Dated: September 30, 2024

Robert Desir

Robert Desir
Attorney for Petitioners-Appellants

NOTE OF ISSUE
Appellate Case No. 2024-05186
New York County Clerk's Index No. 450563/2024

New York Supreme Court
Appellate Division – First Department

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

Petitioners-Appellants,

—against—

Case No. 2024-05186

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

Respondents-Respondents.

THE COUNCIL OF THE CITY OF NEW YORK,

Petitioner-Appellant,

—against—

MAYOR ERIC ADAMS, in his official capacity as Mayor of the City of New York,

Respondent-Defendant.

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1. Term noticed for: December 2024.
2. The date of the Notice of Appeal is August 19, 2024.
3. The Judgment/Order was entered on August 7, 2024. The Judgment/Order was rendered by the Honorable Lyle Frank.
4. The nature of the appeal or cause-Challenge Decision and Order of Honorable Lyle Frank, entered August 7, 2024, denying petition for relief.
5. The index number is 450563/2024.
6. The Appellate Division case number is 2024-05186.

CERTIFICATION PURSUANT TO CPLR §2105

I, Robert Desir, an attorney at law admitted to practice before the courts of the State of New York, hereby certify pursuant to CPLR §2105 that the papers contained in the annexed Joint Record on Appeal have been personally compared by me with the originals on file in the office of the clerk of the Supreme Court, New York County and that I found them to be true and complete copies of those originals.

Legal Aid Society

Dated: September 30, 2024

Robert Desir

Robert Desir
Attorney for Petitioners-Appellants

STATEMENT PURSUANT TO CPLR §5531
Appellate Case No. 2024-05186
New York County Clerk's Index No. 450563/2024

New York Supreme Court
Appellate Division – First Department

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

Petitioners-Appellants,

—against—

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

Respondents-Respondents.

THE COUNCIL OF THE CITY OF NEW YORK,

Petitioner-Appellant,

—against—

MAYOR ERIC ADAMS, in his official capacity as Mayor of the City of New York,

Respondent-Defendant.

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1. The index number of the case is 450563/24.
2. The full names of the original parties are as set forth above. There has been no change in the parties.
3. The action was commenced in Supreme Court, New York County.
4. The action was commenced on August 26, 2024 by service of petition; the answer of Defendant was served on March 26, 2024.
5. The nature and object of the action is Administrative Review and Declaratory Judgment.
6. This appeal is from a Decision and Order of the Honorable Lyle E. Frank, entered in favor of Respondents, against Petitioners on August 2, 2024, which denied Petitioners' petition.
7. The appeal is on a full reproduced record.