

New York Supreme Court
Appellate Division: First Department

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

Petitioners-Appellants,

—against—

Case No.

MAYOR ERIC ADAMS, in his official capacity

2024-05186

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.

NOTICE OF CROSS MOTION FOR RELIEF PURSUANT TO CPLR §5519(c)

PLEASE TAKE NOTICE that upon the annexed affirmation, memorandum of law and exhibit thereto, Petitioners will move this Court on September 8, 2025, at 10:00 in the forenoon, or as soon thereafter as counsel may be heard for an order for relief under CPLR §5519(c) vacating the automatic stay herein, and for such other relief as the Court may deem just and proper.

Dated: September 2, 2025
New York, New York

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*New York Supreme Court
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Respondent-Defendant.

MEMORANDUM OF LAW IN OPPOSITION TO LEAVE TO APPEAL AND
IN SUPPORT OF CROSS MOTION.

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TABLE OF CONTENTS

Table of Authorities	ii
I. Preliminary Statement	1
A. Procedural Background.....	3
II. Argument	
A. Leave to Appeal to the Court of Appeals Should be Denied	4
B. The Automatic Stay of Enforcement Should Be Vacated.....	6
1. Standard	
a. CPLR §5519(a)(1).....	6
b. CPLR §5519(c).....	7
2. Respondents have not shown a clear likelihood of success.	8
3. Public Interest Weighs Against a Stay.....	8
4. Risk of Irreparable Harm to Petitioners Supports Denial of Stay.....	9
5. Respondents face no irreparable harm.	10
III. Conclusion	11

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Clark v. Cuomo</i> , 105 A.D.2d 451 (1st Dep’t 1984).....	7
<i>De Lury v. City of New York</i> , 48 A.D.2d 405, 370 N.Y.S.2d 600 (1st Dep’t 1975).....	7,8
<i>Freeman v. Lamb</i> , 33 A.D.2d 974, 307 N.Y.S.2d 752 (4th Dep’t 1970).....	6
<i>Glen Oaks Vill. Owners, Inc. v. City of New York</i> , No. 42, __ NY3d __, 2025 WL 1458090 (N.Y. May 22, 2025).....	4
<i>Pokoik v. Department of Health Services of County of Suffolk</i> , 220 A.D.2d 13 (2 nd Dep’t 1996).....	4
<i>Police Benevolent Assn. v. City of New York</i> , 40 NY3d 417 (2023)	1
<i>Summerville v. City of New York</i> , 97 N.Y.2d 427, 767 N.E.2d 140, 740 N.Y.S.2d 683 (2002).....	6
<u>Statutes</u> <u>Page(s)</u>	
SSL § 20(3).....	7
SSL § 20(3)(a).....	3,5
SSL § 56.....	4,5,7
CPLR § 5519(a)(1).....	6
CPLR §5519(c).....	7
<u>Regulations</u>	<u>Page(s)</u>
18 NYCRR 352.3.....	1
18 NYCRR 352.3(a)(3)(ii)	3
<u>Additional Authorities</u>	<u>Page(s)</u>
N.Y. Prac., Civil Appellate Practice § 9:3 (3d ed.).....	7
Jack E. Pace III, <i>Automatic^{8,9} Stays and Governmental Operations: How New York State Protects the Government from the Poor</i> , 24 Fordham Urb. L.J. 137, 152-153 [1996]	8,9

I. Preliminary Statement

Petitioners urge this court to deny Respondents’ motion for leave to appeal this court’s order of July 10, 2025, which is unlikely to succeed on the merits, but likely to cause needless delay in providing desperately needed benefits to prevent evictions of low-income families. Respondents’ motion begins by claiming that this case involves “important questions” about the division of authority between local social services officials and local legislatures, warranting Court of Appeals review. But this Court’s unanimous decision already gave those questions careful, extended treatment over fifteen pages, concluding unequivocally that the Social Services Law (“SSL”) neither expressly nor implicitly preempts the City Council from enacting the CityFHEPS reform laws. This Court’s ruling was carefully based on recent Court of Appeals precedent, particularly *Police Benevolent Assn. v. City of New York*, 40 NY3d 417 (2023), and is thus highly unlikely to be overturned on appeal.

This court correctly held that “the Social Services Law and 18 NYCRR 352.3 created a dynamic legislative and regulatory environment in which the State and City governments have a symbiotic, though not equal, relationship relative to rental assistance.” See Exhibit A at 14. Respondents’ reliance upon cases such as *Beaudoin v. Toia* and *Thomasel v. Perales* was properly rejected in this Court’s core holding that the SSL contemplates State-local collaboration, not State exclusivity. The Legislature intentionally left space for local legislation that supplements State-approved programs, as seen in 18 NYCRR 352.3’s express allowance for locally proposed shelter supplements. That regulatory design refutes Respondents’ conception of a rigid top-down hierarchy excluding legislative input from the City Council. Moreover, this court rejected as “an absurd construction” Respondent’s argument that City DSS is both the Social Services “Department” and “District” for New York City. This Court correctly noted that

“the Mayor's position would also result in a reorientation of the power to make policy judgments (and any corresponding budget judgments) from the City Council to the executive branch, a result we cannot endorse in the absence of a clear intention by the Legislature.” July 10, 2025 Decision and Order (“Exhibit A”) at 14. For all these reasons, Respondents have little likelihood of success on appeal.

As set forth in Petitioners’ annexed affidavit, however, granting Respondents leave to appeal will further delay urgently needed rental assistance, the absence of which is currently placing numerous low-income families in danger of eviction and homelessness. Petitioners therefore request that this court vacate the current automatic stay and direct the City to submit a CityFHEPS plan to the State pending any further proceedings herein.

For these reasons, Respondents’ motion for leave to appeal should be denied in its entirety, and the stay of enforcement of this Court’s Order that Respondents implement the CityFHEPS reform laws should be vacated forthwith, so that Respondents are required to commence the process of submitting the necessary plan to the New York State Office of Temporary and Disability Assistance (“OTDA”) for review and approval.

In the alternative, if the Court does not deny Respondents’ motion outright, Petitioners respectfully request the Court, in the interest of avoiding further delay, to address the application for leave to appeal on an expedited basis, and direct Respondents to perfect any appeal forthwith. Given the significant public interest in the timely resolution of this matter, and the fact that Respondents retain the ability to seek leave directly from the Court of Appeals, prompt determination of this motion would help ensure that the stay of enforcement does not become a source of unnecessary delay.

A. Procedural Background

This Court's July 10, 2025 order directed Respondents to implement the Local Laws by making the appropriate submission or submissions to the OTDA, for assessment in accordance with 18 NYCRR 352.3(a)(3)(ii). On August 10, 2025, Respondents moved this Court for leave to appeal to the New York State Court of Appeals, triggering an automatic stay pursuant to CPLR § 5519(a)(1) of all executory directives in this Court's order. *Pokoik v. Department of Health Services of County of Suffolk*, 220 A.D.2d 13 (2nd Dep't 1996).

SSL § 20 requires that any changes to rental assistance programs at the local level must be submitted to the OTDA for review and approval. Under 18 NYCRR 352.3(a)(3)(ii), when a social services district proposes an additional monthly shelter supplement, OTDA must conduct a substantive assessment to determine whether the supplement will achieve its intended purpose, is justified by relevant factors such as housing need and availability, will not diminish incentives for economic self-sufficiency, will not adversely affect low-income households not receiving public assistance, and can be supported with available funding. Although the regulation does not prescribe a formal submission format, it necessarily requires that the district provide OTDA with sufficient information to enable that assessment. This includes, at a minimum, a description of the proposed supplement, the local law or policy authorizing it, empirical data and analysis supporting its necessity, fiscal projections identifying the funding source and sustainability, and any other evidence relevant to the regulatory criteria. The OTDA has 30 days to approve or disapprove these submissions. SSL § 20(3)(a). If no action is taken within that period, the proposals become operative automatically. *Id.*

II. Argument

A. Leave to Appeal to the Court of Appeals Should be Denied

As set forth above, this court's unanimous decision was explicitly based on recent on-point holdings of the New York Court of Appeals and is thus unlikely to be reversed by that court. See Exhibit A at 9-11, citing, *Police Benevolent Assn.* 40 NY3d 417 and *Glen Oaks Vill. Owners, Inc. v. City of New York*, No. 42, __ NY3d __, 2025 WL 1458090 (N.Y. May 22, 2025). This Court thoroughly addressed both field and conflict preemption and harmonized the Council's reforms with State oversight, leaving no conflict in appellate authority to resolve. Exhibit A at 11. No "novel" or unsettled point of law remains that would justify further review. Granting leave here would invite the Court of Appeals to revisit settled law in the absence of any split or ambiguity.

Respondents' reliance on the pre-1946 statutory scheme as evidence that the local legislature currently lacks power to make changes in the administration of public assistance is misplaced. As this Court recognized, current law does not strip local legislative bodies of policymaking capacity where the State has expressly invited local supplementation. Exhibit A at 11. SSL § 56 confirms that the City "shall have all the powers and duties of a social services district" consistent with local law, a formulation that accommodates Council-passed reforms like the CityFHEPS changes. Exhibit A at 9.

Second, Respondents' contention that only the "City Commissioner" may make rules in this arena was rightly rejected by this court as an "absurd construction". This court correctly held that the City of New York as a whole, and not just the Department of Social Services comprises the New York "social services district." *Id.* at 13. As part of that district, the City Council retains its legislative authority to enact policy choices, leaving the executive branch discretion in *how* to

implement them. *Id.* at 14. This framework preserves both branches' roles and complies with SSL § 20(3)(a). This court rightly noted that Respondents' contrary construction would "result in a reorientation of the power to make policy judgments (and any corresponding budget judgments) from the City Council to the executive branch" which was not intended by the Legislature.

Third, this Court specifically rejected the notion that SSL § 56 is silent on local legislative authority. Exhibit A at 13. By linking the powers and duties of the district to "special and local laws," SSL § 56 envisions a role for City-enacted measures so long as they are consistent with State law. The CityFHEPS reforms fit squarely within that space.

Fourth, Respondents' invocation of early-20th-century governance ignores the modern home-rule framework under N.Y. Const., art IX. This Court recognized that the Council has repeatedly legislated social services matters such as shelter use, DSS subagency creation, and eligibility expansion, without State objection. Exhibit A at 12. That consistent practice underscores the compatibility of the CityFHEPS reforms with the existing legal order.

Finally, this Court reaffirmed *Beaudoin*'s description of local commissioners as "arms of the State," but emphasized that this arrangement operates alongside municipal legislative powers under home rule. Exhibit A at 3, 14. Far from "severing" the State-local chain, the CityFHEPS reforms reinforce the collaborative model envisioned by statute and regulation, with local input followed by State approval.

Since this court's order was solidly grounded in Court of Appeals precedent and longstanding principles of home rule, Respondents have little likelihood of success on appeal, and their motion should be denied.

B. The Automatic Stay of Enforcement Should Be Vacated

Plaintiffs separately cross-move pursuant to CPLR §5519(c) asking this Court to vacate the automatic stay afforded Respondents under CPLR §5519(a)(1), independent of the outcome Respondents' motion. No stay is warranted because the appeal lacks merit, and vulnerable tenants remain in danger of homelessness without the relief the CityFHEPS reforms would provide. Moreover, the City will suffer no irreparable harm or undue burden from seeking State approval of the Council's CityFHEPS amendments, since no monetary disbursements are currently required under the July 10 Order.

1. Standard

a. CPLR §5519(a)(1)

CPLR §5519(a)(1) automatically stays all proceedings to enforce the judgment or order being appealed, pending the outcome of the appeal or the motion for permission to appeal, when the state, a political subdivision, or one of their officers or agencies files a notice of appeal or an affidavit stating they intend to seek permission to appeal. *Summerville v. City of New York*, 97 N.Y.2d 427, 767 N.E.2d 140, 740 N.Y.S.2d 683 (2002).

b. CPLR §5519(c)

CPLR §5519(c) provides a procedural mechanism for a party aggrieved by an automatic stay, such as one arising under CPLR §5519(a)(1), to seek relief by motion. This mechanism enables either the court from which the appeal is taken or the appellate court to vacate, limit, or modify the stay upon such terms as may be just. The provision grants the court broad discretion, and in exercising it, courts have emphasized a careful balancing of the equities. *Freeman v. Lamb*, 33 A.D.2d 974, 307 N.Y.S.2d 752 (4th Dep't 1970). The New York Civil Appellate Practice guide explains that as a matter of public policy, the CPLR 5519(a)(1) stay is not to be lightly vacated. Where CPLR 5519(a)(1) clearly applies, the respondent should demonstrate that

the governmental entity's appeal is without merit, was taken in bad faith or for the sole purpose of delay, or that the automatic stay would be unduly burdensome or cause undue hardship. 8 N.Y. Prac., Civil Appellate Practice § 9:3 (3d ed.). *De Lury v. City of New York*, 48 A.D.2d 405, 370 N.Y.S.2d 600 (1st Dep't 1975) provides further guidance. Here, the court held that to lift a government-initiated stay, the moving party must show good cause, typically by demonstrating that the appeal lacks merit, that continued enforcement of the stay would cause undue hardship or prejudice, that the stay serves more as a delay tactic than a protective measure, and that public interest factors favor enforcement of the judgment. Similarly, in *Clark v. Cuomo*, 105 A.D.2d 451, 452 (1st Dep't 1984), the court granted a motion under CPLR 5519(c) to vacate a stay automatically imposed when the State appealed. The court emphasized that a final judgment had been issued after trial and that upon consideration of the particular circumstances, including the public's interest in prompt enforcement, vacatur was warranted. *Id.* These principles demonstrate that even government-triggered automatic stays are not absolute and can be lifted when the equities strongly favor immediate enforcement.

2. Respondents have not shown a clear likelihood of success.

As discussed above, Respondents have not shown a likelihood of success on appeal. This Court has already issued a unanimous and detailed decision that resolved the questions presented, leaving no novel or unsettled issue. The Court reconciled the Council's enactment of the FHEPS reforms with State oversight and held that Social Services Law §§ 20 and 56 preserve the City Council's legislative role alongside the executive's duty to implement those laws. It further rejected claims of State preemption, finding that the statutory scheme accommodates local measures, and made clear that permitting the Mayor to disregard duly enacted legislation would amount to an improper executive veto. The City's long history of legislating in social services matters confirms this interpretation. Within this settled framework, Respondents identify

no substantial legal question warranting further review. Unlike in *De Lury*, where the Court found that the government had a strong likelihood of success on appeal, here, the opposite is the case, since the governing statutes and regulations expressly authorize the Council to enact reforms such as the CityFHEPS amendments. Because Respondents cannot demonstrate even a threshold likelihood of success, the automatic stay serves no legitimate purpose and should be vacated.

3. Risk of Irreparable Harm to Petitioners Supports Denial of Stay

As explained in the within affidavit of Robert Desir, dated September 2, 2025, the current docket of the Legal Aid Society currently includes numerous low-income clients who face eviction due to the Mayor's delay in implementing the Council's CityFHEPS amendments. These clients have resided in rent regulated apartments for many years and pay rents that are far below market, yet they face the loss of their long-term homes because their extremely low incomes are insufficient to pay even their below-market rents. Many of them are elderly, or suffer from mental or physical disabilities in addition to their housing insecurity. Due to the nearly eighteen months of delay resulting from this litigation, numerous such tenants have already lost their homes, and many more will become homeless each month that implementation of the laws is further postponed. The automatic stay in this case thus prolongs the harms the Legislature intended to address through the CityFHEPS reforms. Professor Pace observes that "[t]he automatic stay often leaves poor plaintiffs without shelter or subsistence benefits for six to nine months and notes that in *McCain v. Koch*, for example, the court necessarily found that plaintiffs would suffer irreparable harm if they did not get relief immediately because CPLR §5519(a)(1) stayed the order." Jack E. Pace III, *Automatic Stays and Governmental Operations: How New York State Protects the Government from the Poor*, 24 Fordham Urb. L.J. 137, 152-153 [1996]. He explains that the automatic stay "risks causing serious harm to poor plaintiffs by

postponing needed relief, even in cases where a court has already determined that plaintiffs will suffer irreparable harm without immediate compliance.” *Id.*

Here, vacatur of the automatic stay will not require Respondents to disburse funds or implement the benefit in full; rather, Respondents would only have to begin the preliminary procedural step of submitting a plan to the State for review, a step that is outside this litigation and which typically requires a lengthy, multi-stage process involving State oversight and consultation. Delaying this step under the stay serves no legitimate purpose and risks the very harm Pace identifies, leaving low-income households without relief for months longer than necessary. Because these consequences cannot be undone even if Petitioners ultimately prevail, further delay serves only to frustrate both the judgment of this Court and the public interest it protects.

4. Public Interest Weighs Against a Stay

The public interest weighs heavily against continuing a stay that shields governmental defendants from taking even preliminary steps toward compliance while the people they serve endure ongoing harm. The public’s interest is clearly to protect vulnerable families from homelessness, and to avoid shelter entries that strain the municipal budget. Moreover, even if this Court denies Respondents’ motion for leave, they retain the ability to seek leave directly from the Court of Appeals; a further avenue that can prolong the litigation. This potential for successive appellate applications is yet another reason to vacate the stay and require that Respondents proceed with the State submission process now, in parallel with any further appeals, so as not to frustrate the timely implementation of this Court’s ruling.

5. Respondents face no irreparable harm

Respondents face no irreparable harm from commencing the initial procedural steps required by this Court’s decision. Pace explains that courts can “protect low income plaintiffs

from the delays of the automatic stay and the governmental operations rule while still safeguarding the government's operational needs." *Id.* at 144. He further observes that "the costs to the government can be addressed through discretionary stays, while the harm to plaintiffs from postponed relief often cannot be undone" *Id.* at 160–161. These points underscore the imbalance at work here: the Respondents' claimed burden is limited to the ordinary steps required to seek approval of a social services policy change, while continued delay exposes low-income households to the kind of immediate and irreparable harm Pace identifies. In these circumstances, equitable considerations favor lifting the stay to prevent needless postponement and to protect the public interest. Although OTDA has 30 days to respond to Respondents' plan for expansion, it could be months before a plan is even submitted, as Respondents and OTDA coordinate to define the program's contours, align it with State priorities, and ensure consistency with other rent supplement programs. This open-ended process, which has no set timeline, could contribute to further delays before the Respondents formally submit a plan for State approval. Record on Appeal ("R"), 96-111. Delaying these preliminary steps serves no legitimate purpose; on the contrary, it risks wasting months if Respondents' legal challenges fail, forcing them to start from scratch. Beginning the process now ensures that, should their challenges fail, there will be minimal additional delay before OTDA can render its decision.

II. Conclusion

For the foregoing reasons, Respondents' motion for leave to appeal should be denied. Further, this Court should vacate the automatic stay and direct Respondents to commence the plan submission process without further delay.

Dated: September 2, 2025
New York, New York

Respectfully submitted,
THE LEGAL AID SOCIETY
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Attorneys for Petitioners

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

MARIE VINCENT, CAROLINA TEJEDA,
MARY CRONNEIT, SUSAN ACKS, on behalf of
themselves and all others similarly situated,

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.

Case No. 2024-05186

AFFIRMATION IN SUPPORT OF
PETITIONERS' MOTION
OPPOSING LEAVE TO APPEAL

ROBERT DESIR, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the truth of the following under the penalties of perjury and pursuant to CPLR § 2106:

1. I am a staff attorney for the Law Reform Unit of the Legal Aid Society, attorneys for the above-captioned Petitioners in this action, and I submit this Affirmation in support of Petitioners' motion opposing leave to appeal and Petitioners' motion pursuant to CPLR §5519(c) seeking vacatur of the automatic stay herein.

2. The Legal Aid Society represents vulnerable New Yorkers facing eviction from their homes throughout the five boroughs of New York City.

3. Respondents' failure to submit a plan to the State for implementing the CityFHEPS reform laws, as ordered by this Court directly impacts our clients by prolonging the opportunity to access critically needed CityFHEPS vouchers to prevent eviction.

4. As detailed below, every day we work with low-income clients living in affordable apartments who are on the brink of homelessness. Many of these clients are

categorically eligible for CityFHEPS under the expansion and have no other pathway to remain in their homes and avoid homelessness.

5. I am familiar with the facts of these cases based upon my personal knowledge and communications with colleagues.

Annette Johnson

6. Annette Johnson is a 68-year-old senior who has lived in her rent-stabilized apartment in Flatbush, Brooklyn for over 37 years. Her sole source of income is Social Security retirement benefits of about \$1,100 per month.

7. Her monthly rent is \$1,298.83, which is higher than her total monthly income, giving her a rent-to-income ratio exceeding 100 percent. Her rent is below the CityFHEPS maximum payment standard for her household size of one.

8. She currently owes approximately \$45,000 in arrears. She fell into arrears while caring for her sick mother, who passed away last fall, and she continues to provide care to her sister, who has stage-four cancer.

9. Ms. Johnson faces eviction in a nonpayment case and, without the future ability to pay her rent and secure funds to pay her arrears, has little hope of resolving the case and avoiding eviction.

MF

10. MF is a 57-year-old woman who has lived alone in her rent-stabilized apartment for almost 20 years. She also receives visits from a home health aide two afternoons a week, which she needs after becoming disabled forcing her to retire from working as a home health aide. She relies on Access-a-Ride to get from place to place and has limited mobility.

11. She receives Social Security Disability and Supplemental Security Income totaling \$967 per month and State Supplement Program benefits of \$87.00.

12. MF has an extremely low rent of \$904.85 per month. Yet, her rent is still more than 85% of her income. Her rent is well below the CityFHEPS maximum payment standard for her household size.

13. She currently owes approximately \$11,500 in arrears. Her case is pending and has not yet been settled but she does not have access to resources needed to pay her arrears or pay ongoing rent.

PC

14. PC is a 54-year-old woman who has lived in the same building in the Bronx for her entire life. She inherited shares in her Mitchell-Lama limited equity cooperative apartment after her parents passed away and now resides alone. She is on the autism spectrum.

16. Her only income is Public Assistance, in the amount of \$690.00 per month.

17. Her monthly maintenance charges are \$1,099.84. Her maintenance charges significantly exceed her income but are below the CityFHEPS maximum payment standard for her household size of one.

18. PC currently owes approximately \$14,000 in arrears through August 2025 and has no way to pay her arrears or ongoing rent without a subsidy.

Christina Baker

19. Christina Baker lives in a City Mitchell-Lama building in Staten Island with her two minor children. She has resided there for seven years.

21. Her gross income is approximately \$1,700 per month from employment. She previously received FHEPS until May 2024, when her Public Assistance case was erroneously closed. She is reapplying for benefits but since it has been over a year since she was on cash assistance, she is beyond the 4-month Earned Income Disregard period and thus likely does not qualify for ongoing benefits with only earned income.

22. Her monthly rent is \$2,575. With her current income, her rent-to-income ratio is well over 100 percent. Her rent is, however, below the CityFHEPS payment standard limit for her household size.

23. She was sued in a nonpayment proceeding and represented herself, entering into a final judgment stipulation with a pay date of July 31, 2025. She has not yet been served with a Notice of Eviction.

Cheryl Gonzalez

24. Cheryl Gonzalez is a 50-year-old woman who lives alone in a rent-stabilized apartment in Staten Island. She has resided there for six years.

26. She previously worked but stopped in 2021 after a major depressive episode. She was diagnosed with bipolar disorder in 2022 and has since been hospitalized multiple times, including four times this year. She currently receives approximately \$400 per month in Public Assistance benefits.

27. Her monthly rent is \$1,543.20. Her rent is over three times her current income, but it is below the CityFHEPS maximum payment standard for her household size.

28. She is unable to pay her rent because her income is not sufficient.

29. She is currently pursuing Social Security Disability benefits.

30. Ms. Gonzalez is facing eviction in a nonpayment proceeding with no way to pay her arrears or ongoing rent without a rental subsidy.

Richard Lama

31. Richard Lama is a 65-year-old senior who lives alone in a rent stabilized apartment where he has resided for eight years. He has several chronic health conditions, including diabetes, and earlier this year he was diagnosed with cancer and underwent surgery.

32. His monthly income is \$1,607, which consists of Social Security retirement benefits and a small pension.

33. His monthly rent is \$1,597.30, giving him a rent-to-income ratio of approximately 99 percent. His rent is below the CityFHEPS maximum payment standard for his household size.

34. He cannot afford the rent on his fixed income.

35. Mr. Lama is facing eviction in a nonpayment proceeding with no way to pay his arrears or ongoing rent going without a rental subsidy.

36. Not one of the clients from the cases described above is eligible for a voucher under existing CityFHEPS criteria, but all are eligible under the City Council's CityFHEPS expansion.

37. With each passing month that the CityFHEPS reform laws go unimplemented more low-income clients will be at risk of eviction. Preventable evictions will occur resulting in vulnerable New Yorkers experiencing homelessness and being forced to enter our city's overcrowded shelter system.

Dated: September 2, 2025
New York, NY

Robert Desir

ROBERT DESIR

EXHIBIT A

Appellate Division, First Judicial Department

Peter H. Moulton,	J.P.
Ellen Gesmer	
Manuel J. Mendez	
John R. Higgitt	
Kelly O'Neill Levy,	JJ.

Appeal No. 3780
Index No. 450563/24
Case No. 2024-05186

In the Matter of MARIE VINCENT et al.,
Petitioners-Appellants,

-against-

MAYOR ERIC ADAMS etc., et al.,
Respondents-Respondents.

In Matter of THE COUNCIL OF THE CITY OF NEW YORK,
Petitioner-Plaintiff-Appellant,

-against-

MAYOR ERIC ADAMS etc.,
Respondent-Defendant-Respondent.

WOMEN IN NEED ("WIN"), COALITION FOR THE HOMELESS,
HELP USA, HOMELESS SERVICES UNITED,
INTERFAITH ASSEMBLY ON HOMELESS AND HOUSING,
NEW YORK COALITION FOR HOMELESS YOUTH
AND COMMUNITY SERVICE SOCIETY OF NEW YORK ("CSS"),
Amici Curiae.

Petitioners and petitioner-plaintiff appeal from an order of the Supreme Court, New York County (Lyle E. Frank, J.), entered August 6, 2024, which, to the extent appealed from, denied the petition seeking an order directing respondent Mayor Eric Adams to implement Local Law Nos. 99, 100, 101 and 102 (2023) and to declare that the

Local Laws are not preempted by New York State law.

Twyla Carter, The Legal Aid Society, New York (Robert Desir, Adriene Holder, Judith Goldiner, Edward Josephson, Alex MacDougall of counsel), for Marie Vincent, Carolina Tejada, Mary Cronneit and Susan Acks, appellants.

Office of the General Counsel for the New York City Council, New York (Nwamaka G. Ejebe, Jason Otaño, Jeffrey Campagna and Amanda Delgrosso of counsel), and Emery Celli Brinckerhoff Abady Ward & Maazel LLP, New York (Anderew G. Celli, Jr., Diane L. Houk, Sonya Levitova and Laura S. Kokotailo of counsel), for The Council of the City of New York, appellant.

Muriel Goode-Trufant, Corporation Counsel, New York (Devin Slack, Richard Dearing and D. Alan Rosinus of counsel), for respondents.

Cleary Gottlieb Steen & Hamilton LLP, New York (Roger A. Cooper, Jennifer Pollan, Catherine Guerrier and Jack Samuel of counsel), for amici curiae.

HIGGITT, J.

On this appeal from an order denying CPLR article 78 petitions challenging the Mayor of the City of New York’s refusal to enforce certain local laws designed to improve City government-sponsored rental assistance, we are asked to determine whether the City Council was preempted by the New York State Social Services Law and its implementing regulations from passing those local laws. For the reasons that follow, we conclude that the City Council was not preempted from legislating in the field of rental assistance.

I.

A.

“In New York State, the social services program is a State program, administered through . . . 58 local social services districts under the general supervision of the State Department of Social Services and the State Commission of Social Services” (*Matter of Beaudoin v Toia*, 45 NY2d 343, 347 [1978]).¹ Each of the 57 counties outside of New York City constitutes a county social services district (Social Services Law § 61[2]). Section 61(1) of the Social Services Law provides that “[t]he city of New York is . . . constituted a city social services district.” The City “shall have all the powers and duties of a social services district insofar as consistent with the provisions of the special and local laws relating to such city” (Social Services Law § 56). A “social services district”² is “responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care” (Social Services Law § 62[1];

¹ The Department was reorganized and renamed the Department of Family Assistance in 1997 (*see* L 1997, ch 436, part B, § 122[a]).

² While Social Services Law § 62(1) refers to “public welfare districts,” such nomenclature is deemed to refer to “social services districts” (*see* L 1967, ch 728, § 5).

see Social Services Law §§ 88, 91 [relating to obligation to make necessary appropriations]). A “social services district” must have a “social services department” responsible for administering public assistance or care within the district (Social Services Law §§ 2[17], 77; *see* Social Services Law § 131[1]). At bottom, the social services district has the responsibility to provide assistance and care to the needy, and the social services department is obliged to administer the assistance and care for which the district is responsible.

B.

The State, through its Commissioner of the Department of Social Services (*see* Social Services Law § 11), supervises the social services districts (*see* Social Services Law § 34[3][d]; *see also* Social Services Law § 20[2][b], [3][a]). The powers of the Commissioner are enumerated in several statutes. These powers include, as relevant here: to “determine the policies and principles upon which public assistance, services and care shall be provided within the state both by the state itself and by the local governmental units within the limits hereinafter prescribed [in the Social Services Law]” (*id.* at § 17[a]); to “make known his [or her] policies and principles to local social services officials and to the public and private institutions and welfare agencies subject to his [or her] regulatory and advisory policies” (*id.* at § 17[b]); to “take cognizance of the interests of health and welfare of the inhabitants of the state who lack or are threatened with the deprivation of the necessities of life and of all matters pertaining thereto” (*id.* at § 34[3][c]); to “exercise general supervision over the work of all local welfare authorities” (*id.* at § 34[3][d]); to “enforce [the Social Services Law] and the regulations of the department within the state both by the state itself and by the local governmental units” (*id.* at § 34[3][e]); and to “establish regulations for administration

of public assistance and care within the state both by the state itself and by the local governmental units, in accordance with law” (*id.* at § 34[3][f]).

Section 20 of the Social Services Law lists various powers of the State Department of Social Services (State DSS), generally. Those powers include: to “administer all the forms of public welfare work for which the state is responsible” (*id.* at § 20[2][a]); to

“supervise all social services work, as the same may be administered by any local unit of government and the social services officials thereof within the state, advise them in the performance of their official duties and regulate the financial assistance granted by the state in connection with said work” (Social Services Law § 20[2][b]);

and

“supervise local services departments and in exercising such supervision the department shall approve or disapprove rules, regulations and procedures made by local social services officials within thirty days after filing of same with the commissioner; such rules, regulations and procedures shall become operative immediately upon approval or on the [30th] day after such submission to the commissioner unless the commissioner shall specifically disapprove said rule, regulation or procedure as being inconsistent with law or regulations of the department” (Social Services Law § 20[3][a]).

Availing itself of its rule-making power, the State DSS has promulgated regulations addressing a vast spectrum of social service matters, including rental assistance. As pertinent to this appeal, the State DSS has enacted, and amended many times, 18 NYCRR 352.3 (“Rent allowances”), which establishes, among other things, that each social services district must provide a monthly allowance for rent for qualified individuals (18 NYCRR 352.3[a][1]). Rule 352.3 also establishes, for each social services district, the maximum rental allowance based on the size of a recipient family and whether the recipient family has one or more children (18 NYCRR 352.3[a][1]). State DSS recognized, however, that a social services district may wish to offer its rental-

assistance recipients an “additional monthly shelter supplement” (18 NYCRR 352.3[a][3][i]). Thus,

“[a] social services district, with the approval of the Office of Temporary and Disability Assistance [the Office], may provide additional monthly shelter supplements to public assistance applicants and recipients who will reside in private housing, or who currently reside in private housing and are facing eviction. Social services districts choosing to provide such supplements must submit a plan to the [Office] . . . prior to providing any such supplements” (*id.*).

As to the Office’s approval,

“[t]he [O]ffice may authorize a social services district to provide such supplement or a distinct part of such supplement if it determines that the provision of such supplement would accomplish its stated purpose and is justified considering such factors as the length of temporary housing stays, existing litigation and other factors affecting the availability of housing. The [O]ffice must also consider the impact of granting the supplement on the economic incentives for self-sufficiency and the impact on low-income households which are not in receipt of public assistance. The [O]ffice may authorize the supplement only if it determines that there are sufficient funds available to provide such reimbursement” (18 NYCRR 352.3[a][3][ii]).

Thus, with respect to rental assistance, State DSS establishes the maximum rental allowance that a social services district must provide to recipients of rental assistance. However, a social services district is permitted to propose to the State DSS an additional shelter supplement, which proposal the State DSS can approve, in whole or in part, or reject.

C.

The New York City Fighting Homelessness and Eviction Prevention Supplement (FHEPS) was an executive branch housing voucher initiative created by the DeBlasio administration in 2018. FHEPS was implemented to streamline administration of city-funded rental assistance and curb homelessness. FHEPS is a “shelter supplement” under 18 NYCRR 352.3. According to appellants and the amici, FHEPS presented

restrictive eligibility criteria and significant bureaucratic requirements, and provided relief to a very limited segment of the New York City housing-insecure population.

II.

In 2023, the City Council passed four local laws that modify FHEPS (Local Law Nos. 99-102 [2023] of City of NY). These FHEPS reform laws were prompted by three conditions faced by the City: the rising number of evictions of residential tenants, a dramatic increase in the rate of homelessness, and an overburdened shelter system.³ These laws were designed to broaden eligibility for City-funded rental assistance, and promote quantitatively and qualitatively greater assistance. Thus, the FHEPS reform laws increased the income eligibility threshold, eliminated a 90-day shelter residency requirement, eliminated recipient work requirements, prohibited the New York City Department of Social Services (City DSS) from deducting a utility allowance from the maximum rental allowance for a FHEPS voucher, and expanded the list of individuals eligible for rental assistance (*see* Local Law Nos. 99-102).

The Mayor responded by vetoing the FHEPS reform laws (*see* NY City Charter § 255), citing budgetary and policy concerns. The City Council countered by overriding the veto (*see id.*), and the FHEPS reform laws went into effect on January 9, 2024. However, the Mayor has refused to enforce the FHEPS reform laws. His administration has insisted that financial, operational, and legal impediments exist that prevent the executive branch of City government from enforcing the new local laws.

Several individuals who hoped to avail themselves of the benefits of the FHEPS reform laws commenced this CPLR article 78 proceeding, challenging the Mayor's

³ These emergencies and the growing crises of housing instability are ably reviewed in the amici's brief.

refusal to implement those laws. The individuals initiated the proceeding as a putative class action, and bring the case on behalf of themselves and others similarly situated. The City Council was granted leave to intervene in the proceeding, and sought an order directing the Mayor to implement the FHEPS reform laws or, alternatively, a declaration that those laws are valid. With respect to the principal relief sought, the City Council makes plain that it “seeks only that the Mayor be directed *to* take action to implement [the new local laws]. *How* the administration implements the [FHEPS] Reform Laws is within the administration’s discretion.”

The Mayor opposed the article 78 petition on the ground that the FHEPS reform laws are preempted by the State’s Social Services Law.

III.

Supreme Court denied the petition and dismissed the proceeding, concluding that under the doctrine of field preemption, the FHEPS reform laws are preempted by the Social Services Law. The court further concluded that the City DSS is the “social services district” under Social Services Law § 61, and that the City DSS, not the City Council, has the exclusive authority within City government to make social services policy.

IV.

On appeal, the City Council argues that the Social Services Law does not preempt the field of rental assistance because that law does not clearly evince a desire by the State Legislature for statewide uniformity in that field. To the contrary, notes the City Council, the Social Services Law encourages local innovation and problem-solving by the City. Next, the City Council contends that the “social services district” for the City of New York is the City itself (including the City Council as the legislative branch of

government), not the City DSS, and, therefore, it is the City Council that possesses the policy-making authority regarding rental assistance.

The individual petitioners also appeal. They stress that the City Council, as the legislative branch of City government, enjoys the policy-making privilege inherent in enacting local legislation that the executive branch is compelled to implement. The individual petitioners point to Social Services Law § 56, which provides that the powers and duties of the social services department must be consistent with both state and local law. The individual petitioners maintain that neither field nor conflict preemption dooms the FHEPS reform laws.

The Mayor responds that Supreme Court correctly concluded that the FHEPS reform laws are barred by field preemption. The Mayor contends that, by virtue of a comprehensive legislative scheme, control and coordination of public assistance rests with the State. While the Mayor acknowledges that the Social Services Law allows for local input to address local issues, he insists that the Social Services Law confers upon the Mayor, through the City DSS, the power to devise rental assistance policy. Under the Mayor's analysis, the City Council is limited to certain enumerated powers in the realm of public assistance (e.g., making appropriations and levying taxes). The City DSS, not the City government broadly, is the relevant social services district.

V.

The issue of whether the City Council was preempted by state law from passing the FHEPS reform laws is greatly informed by the Court of Appeals' recent decision in *Police Benevolent Assn. of the City of New York, Inc. v City of New York* (40 NY3d 417 [2023]). As to the relationship between the City's home rule authority and preemption, the Court wrote,

“[t]he constitutional home rule provision authorizes municipalities to adopt local laws pertaining to the government, protection, order, conduct, safety, health and well-being of their citizens, so long as such local laws are not inconsistent with the constitution or general state laws (NY Const, art IX, § 2 [c] [10]). The doctrine of preemption acts as a significant restriction on the home rule powers of municipalities. Local laws may be inconsistent with and preempted by state law either because the legislature has occupied the relevant field of regulation or because the local law conflicts with state law (see *Albany Area Bldrs. Assn. v Town of Guilderland*, 74 NY2d 372, 377 [1989])” (*Police Benevolent Assn.*, 40 NY3d at 423 [internal quotation marks omitted]).

With respect to field preemption, the Court counseled as follows:

“[f]ield preemption prohibits a local government from legislating in a field or area of the law where the [l]egislature has assumed full regulatory responsibility (*People v Torres*, 37 NY3d 256, 265 [2021], quoting *DJL Rest. Corp. v City of New York*, 96 NY2d 91, 95 [2001]). When the State has assumed that responsibility and preempted the entire field, a local law regulating the same subject matter is deemed inconsistent with state law for purposes of the home rule provision if it either prohibits conduct which the [s]tate law, although perhaps not expressly speaking to, considers acceptable or at least does not proscribe or . . . imposes additional restrictions on rights granted by [s]tate law (*Jancyn Mfg. Corp. v County of Suffolk*, 71 NY2d 91, 97 [1987] [citations omitted]; see *New York State Club Assn. v City of New York*, 69 NY2d 211, 221-222 [1987], *affd* 487 US 1 [1988]; *Monroe-Livingston Sanitary Landfill v Town of Caledonia*, 51 NY2d 679, 683 [1980]). Permitting such laws to operate in a field preempted by the State would tend to inhibit the operation of the State’s general law and thereby thwart the operation of the State’s overriding policy concerns (*Jancyn Mfg. Corp.*, 71 NY2d at 97; see *Incorporated Vil. of Nyack v Daytop Vil.*, 78 NY2d 500, 505 [1991]).

“The state legislature’s intent to preempt local legislation need not be expressly stated. Intent to occupy a field to the exclusion of local legislation can be implied from a declaration of state policy, the State’s enactment of a comprehensive and detailed regulatory scheme in a particular area, or from the nature of the subject matter being regulated and the purpose and scope of the [s]tate legislative scheme, including the need for [s]tate-wide uniformity in a given area (*People v Diack*, 24 NY3d 674, 679 [2015] [internal quotation marks and citations omitted]; see *Albany Area Bldrs. Assn.*, 74 NY2d at 377; *Consolidated Edison Co. of N.Y. v Town of Red Hook*, 60 NY2d 99, 105 [1983])” (*Police Benevolent Assn.* at 423-424 [internal quotation marks omitted]).

Here, the State has not preempted the field of rental assistance, expressly or implicitly.

As to the former, nowhere in the Social Services Law has the Legislature expressly stated an intention to preempt local legislation relating to rental assistance.

As to the latter, no clear intent to occupy the field to the exclusion of local legislation can be implied under the circumstances (*see People v Judiz*, 38 NY2d 529, 532 [1976]; *see also Glen Oaks Vil. Owners, Inc. v City of New York*, __NY3d__, 2025 NY Slip Op 03101 [2025]). The State policy regarding social services, generally, and rental assistance, specifically, is one of State and local collaboration, subject to State coordination. Moreover, while the Social Services Law and its accompanying regulations represent a comprehensive and detailed regulatory scheme, that scheme provides room for material local input (*see Glen Oaks Vil. Owners*, 2025 NY Slip Op 03101, *3-4). Indeed, the statutory law and regulations allow for proposed local supplementation of State mandated and approved rental assistance.

Lastly, the nature of the subject matter being regulated and the purpose and scope of the state legislative scheme do not suggest an intention to occupy the field of rental assistance; rather, the nature of the subject matter and the purpose and scope of the legislative scheme demonstrate that the Legislature and the State DSS wanted to foster local collaboration with the State, and to preserve and invite local problem-solving innovations. The result of State-local collaboration incorporating local proposals is State-approved rental assistance tailored to local needs, as opposed to statewide uniformity.

While the State DSS retains oversight of the administration of social services and the ultimate authority to set social services policy (including rental assistance policy), the Social Services Law and the implementing regulations allow for material local input in the formulation of rental assistance policy (*see id.*). Therefore, allowing for local

legislation in this arena would neither inhibit the application of the State's laws nor thwart the implementation of the State's policy concerns. On the other hand, accepting the Mayor's contention that the State has occupied the entire field of rental assistance would undermine the State policy of allowing for local input into rental assistance policy and intrude upon the City's home-rule prerogative to have a say in matters pertaining to the health and well-being of its citizens.

In fact, the City Council has many times exercised its legislative power in the social services realm. From 1990 to 2014, it passed legislation regulating City DSS's use of housing shelters, including prohibiting City DSS from using Tier I shelters (*see* Local Law No. 18 [1990]; Local Law No. 6 [1999]; Local Law No. 43 [2002]; Local Law No. 62 [2014]). The Council's legislation has established subagencies within City DSS, including the Department of Homeless Services (*see* Local Law No. 57 [1998]), and has required City DSS to implement access to counsel for all New Yorkers facing eviction (*see* Local Law Nos. 53, 54 [2021]). Most recently, and most relevantly, its legislation has expanded eligibility for the City FHEPS program (*see* Local Law Nos. 71, 157, 170 [2021]; Local Law No. 64 [2023]).

Additionally, the FHEPS reform laws do not conflict, directly or indirectly, with State law. "[A] local law is conflict preempted only if it directly or expressly conflicts with state law" (*Police Benevolent Assn.*, 40 NY3d at 426). The Mayor maintains that the City Council's efforts to legislate on the subject of rental assistance conflict with the Social Service Law because that law delegated to the City DSS the authority to make policy decisions regarding rental assistance. The Mayor's position in this regard rests on the following line of reasoning: the State, through 18 NYCRR 352.3, delegated to social services districts the right to submit proposals regarding shelter supplements to the

Office; the City DSS (not the City Council) is the “social services district” for the City; as the social services district for the City, the City DSS alone possesses the right to propose a shelter supplement; and the FHEPS reform laws, which were passed by the City Council over the Mayor’s veto, conflict with the State’s delegation of authority to the City DSS. We disagree with the Mayor that the City DSS is the social services district for the City, and the failure of this starting premise dismantles his conflict preemption position.

The Legislature created two separate principal local actors in the realm of social services: social services districts and social services departments. The Legislature specified that a social services district is “responsible for the assistance and care of any person who resides in or is found within the district, and is in need of public assistance and care” (Social Services Law § 62[1]). The Legislature tasked the social services department with administering public assistance or care within the social services district (*id.* at §§ 2[17], 77). The Legislature identified “[t]he city of New York” as “a city social services district” (*id.* at § 61[1]), and declared that “[t]he city of New York shall have all the powers and duties of a social services district” (*id.* at § 56).

The Legislature could have defined “the city of New York” to have a particular meaning under the Social Services Law, but it did not. Giving that phrase its plain, commonly understood meaning, “the city of New York” is the City itself and all of its constituent parts, including the Mayor and the City Council (NY City Charter §§ 3, 21; *see Matter of New York Statewide Coalition of Hispanic Chambers of Commerce v New York City Dept. of Health and Mental Hygiene*, 23 NY3d 681, 693-694 [2014]). The City itself, therefore, is the social services district, not the City DSS.

Moreover, reading “the city of New York” to mean the City itself preserves the distinction between “districts” on the one hand and “departments” on the other, and

recognizes that those two entities have separate roles under the statutory scheme. The City itself, as the social services district, is *responsible* for the social service needs of the district's inhabitants, while the City DSS, as the social services department, is charged with the *administration* of the assistance and care to be provided. The Mayor's position – that the City DSS is both the social services district and its department – would eliminate the distinction made by the Legislature, an absurd construction that we must avoid. The Mayor's position would also result in a reorientation of the power to make policy judgments (and any corresponding budget judgments) from the City Council to the executive branch, a result we cannot endorse in the absence of a clear intention by the Legislature.

The City itself, as the social services district, has the right to propose shelter supplements under 18 NYCRR 352.3, and the City Council, as the legislative branch of city government, has the right to pass local laws crafting putative shelter supplements (that remain subject to implementation by the executive branch of City government, and review by State government). Thus, there is no conflict between the FHEPS reform laws and the Social Services Law and 18 NYCRR 352.3.

VI.

The Social Services Law and 18 NYCRR 352.3 created a dynamic legislative and regulatory environment in which the State and City governments have a symbiotic, though not equal, relationship relative to rental assistance. The Legislature has prescribed roles for both the City itself, including the City Council, and the City DSS – roles that are constrained by State oversight. Because nothing in the Social Services Law or its implementing regulations preempted the City Council from passing the FHEPS reform laws, the order denying the CPLR article 78 petitions must be reversed, and the

petitions granted to the extent of directing respondent to implement those laws.

Accordingly, the order of the Supreme Court, New York County (Lyle E. Frank, J.), entered August 6, 2024, which, to the extent appealed from, denied the petition seeking an order directing respondent Mayor Eric Adams to implement Local Law Nos. 99, 100, 101 and 102 (2023) and a declaration that the Local Laws are not preempted by New York State law, and dismissed the proceeding commenced pursuant to CPLR article 78, should be reversed, on the law, without costs, and the petition granted to the extent that respondent is directed to implement the Local Laws by making an appropriate submission or submissions to the New York State Office of Temporary and Disability Assistance, within the New York State Department of Family Assistance, for assessment under 18 NYCRR 352.3(a)(3)(ii).

Order, Supreme Court, New York County (Lyle E. Frank, J.), entered August 6, 2024, reversed, on the law, without costs, and the petition granted to the extent that respondent is directed to implement the Local Laws by making an appropriate submission or submissions to the New York State Office of Temporary and Disability Assistance, within the New York State Department of Family Assistance, for assessment under 18 NYCRR 352.3(a)(3)(ii).

Opinion by Higgitt, J. All concur.

Moulton, J.P., Gesmer, Mendez, Higgitt, O'Neill Levy, JJ.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: July 10, 2025

A handwritten signature in black ink, appearing to read 'Susanna Molina Rojas', written in a cursive style.

Susanna Molina Rojas
Clerk of the Court