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Joint Legislative Public Hearings on 2024-2025 Executive Budget Proposal

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Housing

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INTRODUCTION

We appreciate the opportunity to submit this testimony on behalf of Empire Justice Center. This testimony addresses issues in the Executive Budget that pertain to housing.

Empire Justice Center is a statewide, multi-issue, multi-strategy not-for-profit civil legal aid provider focused on changing the complex systems impacting low income and marginalized New Yorkers. With a focus on poverty law, Empire Justice takes a 360-degree approach to the areas of law we practice in, providing individual legal representation, policy research and analysis, training and technical assistance as well as impact litigation. Our work cuts across all significant areas of poverty law and involves three inter-related services:

We practice the law: Empire Justice Center provides a range of legal assistance from our offices in Rochester, Albany, Yonkers, White Plains, Central Islip, and Hempstead. We provide one on one representation and undertake impact litigation to address systemic issues impacting low income and marginalized communities.

We teach the law: Our history as a backup center for civil legal services providers began in the 1970's and has developed so that we now also provide training, technical assistance and other support services to a variety of other community-based organizations, keeping them apprised of changes in the law and regulations.

We change the law: In order to ensure that the needs of low-income families are heard within the state's policy making processes, we engage in both legislative and administrative advocacy on a range of issues impacting our clients and we do the same as needed at the local and federal levels.

Support for New York State's homeownership retention programs and assistance that support keeping families housed has never been more critical.

We will discuss the positions set forth below:

1. **Fund New York State's Homeownership Preservation Program at $40 Million**
2. **Support NYS Right to Counsel for Tenants**
3. **Restore full funding of $50 m for the Emergency Rental Assistance Program**
4. **Increase the shelter allowances to 100% of HUD fair market rent, adjusted annually if the FMR is increased, and until the shelter allowance is increased, improve the Shelter Supplement and Rental Supplement Programs**
5. **Reject the proposal in the Executive Budget to sweep $100 million from Interest on Lawyers Account (IOLA) to the general fund**

FULLY FUND NEW YORK STATE'S HOMEOWNERSHIP PROTECTION PROGRAM (HOPP)

We appreciate the legislature's steadfast commitment to ensuring that funding the New York State Office of the Attorney General's Homeowner Protection Program ("HOPP) is in the final budget every year. We know that you recognize these services as critical. As the only source of dedicated funding for foreclosure prevention, HOPP is pivotal to preventing families from losing their homes. HOPP provides annual grants to eighty-nine non-profit housing counseling and legal services providing direct assistance to homeowners in default and foreclosure. HOPP Empire Justice Center is one of two Anchor Partners contracted by the Office of the Attorney General to provide oversight and technical assistance to grantees under HOPP. (The Center for New York City Neighborhoods is the Anchor Partner overseeing grants in New York City.) Despite the extraordinary need for HOPP services, the Governor's proposed budget eliminates all funding for this vital program. This grim scenario would leave countless vulnerable families without essential support and expose them to scammers inflicting further harm. We urge the New York State Legislature to maintain HOPP funding at $40 million.[1]

The Census Bureau, in collaboration with other federal agencies, initiated the Household Pulse Survey, "to provide nearly real-time weekly data on COVID-19's impact on employment, food security, health status, housing security, and educational disruption." [2] The Household Pulse Survey includes a measure of how many adults report being behind on their mortgages. At the state level, New York homeowners were the most likely to fall behind on their mortgage with an average of 8.9% of homeowners reporting being behind on their mortgage payments throughout the pandemic. [3] U.S. Census Household Pulse Survey data showed, as of fall 2023, an average 8% of New York homeowners delinquent on their mortgage loans this year, with an average of 306,587 New York families at risk of losing their homes. These numbers show an increase in mortgage distress since the prior year, when the number of families at risk was 288,261. Even more alarming are the disparities between white homeowners and homeowners of color: for 2023 a monthly average of 15% of Black and Brown homeowners were delinquent, compared to 7% of non-Hispanic white homeowners in New York State. Rising interest rates, inflation and the end of federal and state assistance programs place even more New Yorkers at risk of foreclosure. New York ranked fourth nationally in seeing the greatest number of foreclosure starts in 2023[4]. New York homeowners need HOPP assistance now more than ever.

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[1] The HOPP grantees contract years are not aligned with the State fiscal year, so funding in this year's budget is required for the network to be able to continue after current contracts end on July 15, 2024. The executive budget includes re-appropriation language that will permit last year's allocation to be used after March 31, 2024 for the existing contracts, which are not paid until after the end of the contract term, but last year's allocation will have been exhausted upon the conclusion of the current contract year on July 15, 2024.

[2] https://www.nyc.gov/assets/opportunity/misc/us-census-bureau-household-pulse-survey.pdf

[3] https://porch.com/advice/cities-that-fell-behind-on-their-mortgages-during-covid-19

[4] https://www.attomdata.com/news/market-trends/foreclosures/attom-2023-year-end-u-s-foreclosure-market-report/

HOPP plays a crucial role in safeguarding New York homeowners by preventing mortgage and tax foreclosures. HOPP agencies assist seniors needing tax foreclosure and reverse mortgage foreclosure assistance and who are particularly vulnerable to scams. HOPP advocates work to find viable solutions and help to ensure a dignified outcome for this vulnerable population. HOPP combats abusive mortgage practices, mortgage scams and deed theft. Scammers continuously try to profit off distressed homeowners struggling to make payments. The elimination of HOPP funding would not only leave homeowners without critical support but it would create an environment ripe for increased mortgage scams and deed theft. Scammers scour land records and court filings to identify distressed homeowners. When a home is in foreclosure mortgage servicers must file a "Notice of Pendency" with the local county clerk's office. Lists of these filings, which are also available to purchase, include the owners' name and mailing address. Scammers then target homeowners with deceptive materials by mail, email, social media, and telephone. Some even go as far as approaching then at their homes. Without HOPP, scammers would be left with unprecedented opportunities to exploit vulnerable New Yorkers.

Discussions around deed theft must acknowledge its connection to racial justice. Deed theft disproportionately affects communities of color, stripping away hard-earned generational wealth. The communities currently grappling with deed theft are the same communities facing the enduring effects of redlining and predatory lending. HOPP provides funding to legal services organizations, many of which have been involved with deed theft cases. In addition, HOPP advocates are engaged in the community and able to identify scams and provide information to the OAG through its Protect Our Homes Campaign, developed in partnership with The Center for New York City Neighborhoods. Recently Governor Hochul signed important legislation making improvements to various aspects of the law that will benefit homeowners who have already been victimized by deed theft scams. The recent legislation, as well as additional provisions contemplated in the proposed budget, are important protections but without the HOPP network distressed homeowners will have nowhere to turn but to the scammers looking to prey upon them, and the provisions meant to provide protections for the deed theft and partition scam victims (including those contemplated in the Governor's proposed budget) will be of no use if the HOPP-funded programs representing homeowners seeking to vindicate their rights under those initiatives are eliminated.

HOPP advocates are on the front lines combatting the surge in zombie second mortgages, which are part of the predatory mortgage lending practices that traditionally targeted communities of color. HOPP advocates assist homeowners facing the challenges posed by the resurgence of these mortgages.

Foreclosure plunges already distressed homeowners into the complexities of navigating the loss mitigation process. The specifics of loss mitigation options can vary greatly depending on who owns the loan (private investor/securitized loan) whether the loan is insured by the federal government, Federal Housing Administration (FHA), Rural Housing Service (RHS), or Veteran's Affairs (VA); and whether the loan is owned by a government-sponsored enterprise (GSE), Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) and what program a homeowner might be eligible for. Navigating all

the layered state and federal policies, guidelines and regulations demands a level of expertise to insure all home retention options are made available to a homeowner. HOPP advocates are available in every county of the state to make sure mortgage servicers are complying with applicable federal and New York law. Without HOPP advocates a family's chance of success diminishes considerably. This is especially true given the vast resources of lenders.

It is critical to emphasize that foreclosure prevention is complex and requires an in-depth understating of the subject matter. Regular training sessions, workshops and updates are part of the technical assistance organized by HOPP Anchor Partners. This serves to ensure advocates are well-equipped to provide foreclosure prevention services to homeowners across New York State. Approximately two hundred seventy-five certificates of continuing legal credit were earned by advocates attending HOPP's statewide conference this year.

In addition to the training sessions, the HOPP conference delved into discussions around racial and economic justice. The New York Office of the Attorney General presented on their recent comprehensive report "Racial Disparities in Homeownership." Leah Rothstein, co-author with Richard Rothstein of *Just Action – How to Challenge Segregation Enacted Under the Color of Law,* and other presenters shared insights and potential pathways forward for protecting homeownership for Black and Brown New Yorkers.

HOPP is an integral and permanent part of the foreclosure process in New York State. Here are some examples:

- ***90 Day Pre-Foreclosure Filing Notices (RPAPL 1304 and 1306)*** – Lenders are required by statute to send a pre-foreclosure notice specifically identifying housing counseling agencies serving the homeowners' county. These housing counseling agencies depend on HOPP funding. If the housing counselor deems legal services are necessary, then because of the collaboration among HOPP advocates it can promptly make a referral to a HOPP legal services organization before a foreclosure action is even commenced.

- ***Settlement Conferences (CPLR 3408)*** – Courts are required to hold a mandatory settlement conference, bringing the homeowner and lender in for good faith negotiations before a foreclosure action in court can proceed. HOPP advocates are embedded in the courts' processes across the state. Courts will often refer homeowners to HOPP advocates at the settlement conference. Defaulting homeowners have a statutory opportunity to answer a foreclosure complaint within thirty days of appearing at the first settlement conference. HOPP legal services are able assist with answers and regularly hold free walk-in clinics. HOPP advocates are critical to assisting with pandemic relief from the Homeowner Assistance Fund HAF. HOPP advocates assisted homeowners across the state in accessing the funds needed to keep them in their homes. New York HAF report that as of January 2023, 60% of all awards have been made to applicants who identify as a race other than white. [5]

[5] https://www.nyhomeownerfund.org/

- ***Deed Theft Scam Prevention*** – HOPP advocates are the first line of defense in preventing distressed homeowners from being victimized by scams in the first place. HOPP advocates are engaged in the community and able to identify scams and provide information to the OAG through its Protect Our Homes Campaign State. HOPP advocates also refer matters to regulators and law enforcement. In 2019, New York amended two laws designed to help homeowners victimized by deed theft and foreclosure scams, recent legislation enacted in November 2023 amends those provisions and provides additional tools to law enforcement, who work with HOPP-funded agencies to combat deed theft and other scams.

We urge the New York State Legislature to maintain HOPP funding at $40 million. We appreciate your ongoing support is crucial, particularly the recent increases in funding – together we can preserve the progress New York has made in keeping New York families in their homes.

RECOMMENDATION: Fund New York State's Homeownership Preservation Program at $40 Million

SUPPORT NYS RIGHT TO COUNSEL FOR TENANTS

Among other substantive areas of law Empire Justice Center practices, we advocate for tenants in housing court and provide services such as eviction defense and enforcement of housing rights. We are part of the Tenant Defense Project in Monroe County, with funding from the Senate's Upstate Legal Services funding, and we represent undocumented tenants on Long Island with funding from the Emergency Renal Assistance Program (ERAP), through a subcontract with Nassau Suffolk Law Services. As a result of our work, we are pleased to share our perspective on the proposal for a right to counsel for tenants.

We enthusiastically support the proposal for a right to counsel for tenants and your efforts to address our state's crisis of homelessness and our critical shortage of affordable housing. We urge you to guarantee the right to legal counsel in housing court by passing a Statewide Right to Counsel and the resources to support it. S2721, introduced by Senator Rachel May, guarantees the right to a free attorney for all New Yorkers facing displacement across the state. With eviction filings in New York at an all-time high[6], rampant homelessness[7], and the displacement pressures on New York's households caused by a lack of affordable housing, it is unacceptable that those who have helped make our state a great and diverse place are forced out of their homes solely because they are unable to defend themselves in housing court. It is for this reason that Empire Justice and other legal services organizations have committed to representing tenants in eviction court who would otherwise go unrepresented. Yet despite these efforts, the number of homeless New Yorkers has continued to rise. As the state balances the need to produce more

[6] Over 175,000 active cases in New York as of December 31, 2023: NYS Eviction Crisis Monitor: https://www.righttocounselnyc.org/evictioncrisismonitor

[7] Over 100,000 New Yorkers homeless on any given night: HUD's 2023 Annual Homelessness Assessment Report to Congress: https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf

housing against the need to protect its residents from displacement, we believe that the commitment of the Legislature to ensure that communities are preserved, and existing residents are fully protected from preventable and illegal evictions is crucial to the life and health of the state we all love. Additionally, despite its cost, right to counsel makes financial sense insofar as the cost of homelessness to the state is significantly greater than the cost of legal representation, especially when considering the cost of hospitalization and medical treatment, the criminal justice system, and emergency shelter.[8]

A strong commitment from the Legislature along with other anti-displacement initiatives will send a powerful message to our clients and the general public that new housing will not be developed at the expense of New York's low income and working-class residents - and will help to affirm the public's faith that New York is truly committed to helping all New Yorkers maintain stable housing.

RECOMMENDATION: Pass Right to Counsel (S2721 May) and include the resources necessary to implement it.

RESTORE FULL FUNDING OF $50 M FOR THE EMERGENCY RENTAL ASSISTANCE PROGRAM

The Office of Temporary and Disability Assistance's Emergency Rental Assistance Program (ERAP) provides funding to support legal services and representation for eviction cases outside of New York City to ensure housing for our clients.

Our Long Island Office has focused on the need of poor immigrants for representation and legal assistance since its inception in 2007. Thanks to subcontract with Nassau Suffolk Law Services (NSLS) — funded through the ERAP program — we expanded our housing work and started a new Tenant Advocacy Practice Group, bringing our Rochester and Long Island practitioners together. With the new contract we began providing direct representation and legal advice to tenants facing eviction in the many Landlord/Tenant courts throughout Long Island. Our clients are primarily undocumented immigrants who cannot be represented by NSLS due to Legal Services Corporation restrictions. Most do not speak English and have very little understanding of the court system and processes. Prior to Empire Justice's involvement, these tenants had no access to legal services when facing eviction.

The ERAP funding has provided enormous relief for a large number of our clients. Many tenants were eligible for rent arrears payments that prevented eviction. Even in cases where the ERAP Program could not prevent termination of the rental agreement, the Program gave our clients added time to find alternative housing and money to move. Our Tenant Advocacy staff also

[8] National Alliance to End Homelessness Factsheet – Cost of Homelessness: http://www.endhomelessness.org/pages/cost_of_homelessness

offer guidance and representation to tenants who are being illegally evicted from their homes and has averted some catastrophic situations.

Starting in 2021, we hired one attorney and one bilingual paralegal with litigation experience. With help from a senior supervising attorney, we established an intake process for clients referred from NSLS, the courts, and immigrant advocacy groups across Long Island. The emerging practice was aided by a long term staff member who is a bilingual senior paralegal in our Long Island office and has great knowledge of local benefits and programs that help immigrants and an Attorney Emeritus with vast expertise in tenant defense, we have continued to grow the program. In 2023 we provided legal advice, referrals, and representation to over 120 individuals and households, an over 20% increase over the year earlier.

With the increase in funding provided by the legislature last year, Nassau Suffolk Law Services was able to increase Empire Justice Center's funding. We have hired a second Housing Attorney and Bilingual Paralegal and opened a second Long Island office in Hempstead that will offer more accessible services to our Nassau County clients. We anticipate posting a third attorney position, in the very near future. The additional staff will enable us to take on more cases and provide more extensive legal advice and referrals for other types of assistance. In addition, we now have some resources to do outreach to immigrant communities to offer information on the rights and protections of tenants and the legal services that we can provide. Restoration of the legislative add in this year's budget is essential to our ability to continue these services.

The most urgent need of our clients is for safe, affordable, and stable housing. They must often live in overcrowded and unsanitary conditions because the rents in legal units are higher than they can afford. Lower cost rental units are mostly found in the poorer areas with the greatest concentration of people of color, exacerbating the huge problem of segregation on Long Island in communities and schools. Although direct service representation in housing courts cannot solve these systemic problems, with support, we could provide greater assistance to immigrant tenants on Long Island to obtain financial help, benefits, or immigrational relief that would allow them to remain secure in their homes.

RECOMMENDATION: Restore full funding of $50 m for eviction prevention representation by the Office of Temporary and Disability Assistance's Emergency Rental Assistance Program by adding $15 m ($10 m for NYC and $5 m for rest of state) to the proposal of $35 million in the executive budget.

INCREASE SHELTER ALLOWANCE BENEFITS FOR HOUSING EXPENSES TO 100% OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S FAIR MARKET RENT FOR HOUSEHOLDS ELIGIBLE FOR PUBLIC ASSISTANCE (A.5543/S.2982).

The New York State Office of Temporary and Disability Assistance (OTDA) is charged with formulating a shelter allowance schedule setting forth maximum allowances for rent for each social services district.[9] For families with children, by statute, that allowance must be adequate to provide for the child in the home.[10] Unfortunately, OTDA has failed to amend its regulations to keep up with the cost of housing, and at this point, there are no rental units in the private market that meet basic health and safety standards that are priced at or below the shelter allowance. For households with children, OTDA has not updated the shelter allowance schedule since 2003 even though rents have doubled since then. For households without children, OTDA has not increased the shelter allowance since 1988, but rents have tripled in the last 35 years.[11]

To determine the cost of housing in New York State and nationwide, the Department of Housing and Urban Development (HUD) engages in a detailed analysis of rents in the private housing market. Using that data, HUD determines the "fair market rent" (FMR) for housing that meets basic quality standards for each jurisdiction. An area's FMR is the amount that a tenant would need to pay for privately owned, decent, and safe rental housing of a modest (non-luxury) nature with appropriate amenities (i.e., including cooking and bathing facilities).[12] The FMR is not the average rent paid in a community – it is an estimate of the 40th percentile gross rent paid by recent movers into standard quality private market units in an area.[13]

The shelter allowances are dramatically lower than the actual cost of decent housing – the FMR -- in all counties across New York State. Shelter allowances for a family of three range from a low of $259 per month in Franklin County to a *high* of $447 per month in Suffolk County. Comparing the shelter allowance to the FMR, as seen in the chart below, the shelter allowance leaves tenants hundreds, if not thousands, of dollars short of being able to afford a habitable apartment. (For a chart containing all counties, see Table 2 in the addendum.)

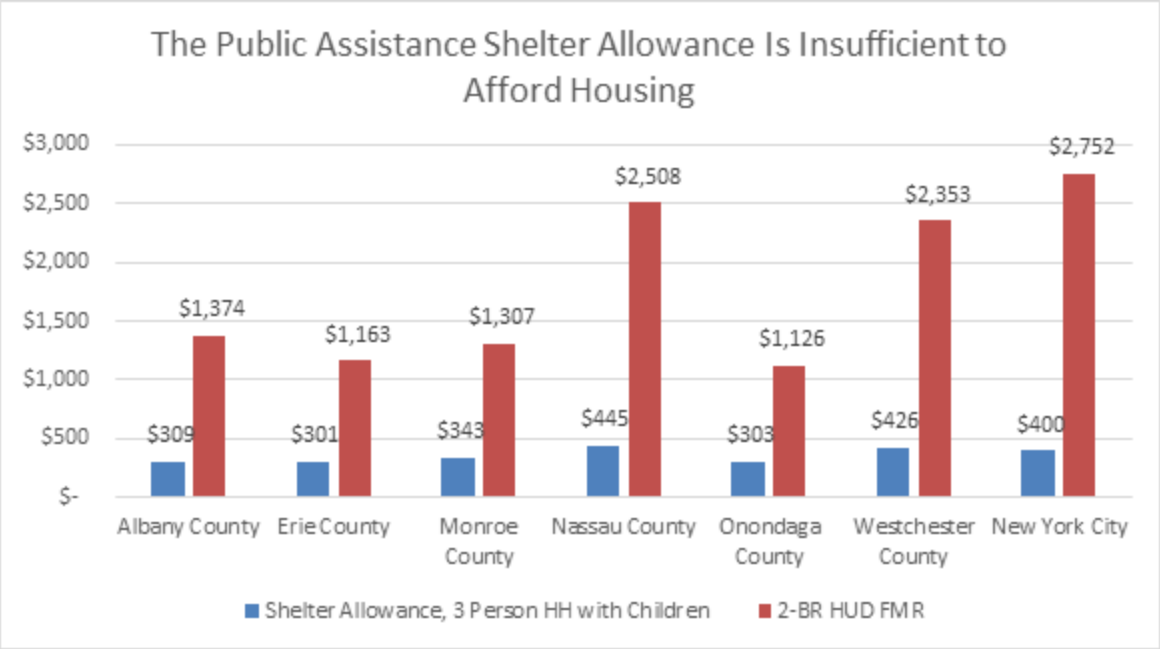
[9] *See* SSL 131-a; also see 18 NYCRR § 352.3 (setting rent allowances).

[10] SSL 350(1)(a).

[11] In Albany County, for instance, the 2024 HUD FMR for a two bedroom is $1374 while in 2003, it was $633, and in 1988 it was $438. *HUD FMR History 1983-Present*, US Dept. of Hous. & Urban Dev., https://www.huduser.gov/portal/datasets/fmr.html#history (last accessed Jan. 26, 2024).

[12] 24 CFR 888.113.

[13] *Id.*



OTDA offers local districts the opportunity to request approval to provide supplements for households receiving public assistance who are experiencing or at risk of eviction if the district can describe a justification for the need.[14] Unfortunately, as of July 2023, only 21 districts had approved Shelter Supplement programs for households receiving public assistance. Furthermore, there isn't sufficient funding allocated to supplements to meet the level of need in most counties: outside of New York City, as of July 2023, only 1,705 households were receiving rental assistance from a Shelter Supplement – a small fraction of the number of public assistance recipients experiencing homelessness. Benefits range from only 29% of FMR to a high of 86% of FMR, making it incredibly challenging for recipients to put Shelter Supplements to use. Some programs have additional restrictive eligibility criteria. The Shelter Supplement program fails to fill the gap left by the meager shelter allowance.

To curb the rise in homelessness and housing instability, the 2021, 2022 and 2023 budgets allocated $100,000,000 annually to fund a New York State Rental Supplement Program.[15] The Rental Supplement Program provides supplements, at local option, to low-income New Yorkers who are experiencing homelessness or facing imminent loss of housing.[16] But like the Shelter Supplement program, the Rental Supplement Program as currently formulated does not do enough to remedy the inadequacy of the shelter allowance. Local districts must opt into the program, and some have declined to do so. Participating counties are typically setting the supplement at only 85% of FMR when data clearly shows that 100% FMR is the most

[14] 18 NYCRR 352.3(a)(3). See also NY Off. Of Temp. and Disability Assistance, Shelter Supplements Plans and Revisions, GIS 20 TA/DC012 (Feb. 21, 2020), available at https://otda.ny.gov/policy/gis/2020/20DC012.pdf.

[15] Ch. 55 of the Laws of 2021, sec. 1, at p. 629-30. See also Ch. 53 of the Laws of 2022, sec. 1, at p. 655-58; Ch. 53 of the Laws of 2023, sec. 1, at p. 680-683.

[16] NY Off. of Temp. and Disability Assistance, New York State Rental Supplement Program, 21 LCM-24 (Dec. 31, 2021), available at https://otda.ny.gov/policy/directives/2021/LCM/21-LCM-24.pdf; 2023 New York State Rental Supplement Program Allocations 23 LCM-07 (5/11/23), available at https://otda.ny.gov/policy/directives/2023/LCM/23-LCM-07.pdf

reasonable standard to get New Yorkers into safe and decent housing. Many public assistance recipients are ineligible because they are not imminently at risk of homelessness even if they are living in substandard and unsafe housing, reside in overcrowded conditions, or have yet to receive a notice of eviction from their landlord. And because OTDA required local district "plans" to be approved by the agency before benefits could be issued to desperately needy households experiencing and at risk of homelessness, implementation was significantly delayed. Like Shelter Supplements for households receiving public assistance, the number of Rental Supplements available is insufficient to meet the needs of households experiencing or at risk of homelessness. In fact, as of April 2023, only 587 households on public assistance had been approved for rental assistance through the Rental Supplement Program.[17]

Safe and habitable rental housing is unaffordable for public assistance households due to the inadequacy of the shelter allowance and the supplement programs currently available fail to fill the gap in need. As a result, households on public assistance who have not been lucky enough to get federal subsidies for housing are likely to be cost-burdened (putting them at risk of eviction and frequent moves), be doubled up in overcrowded housing (leading to negative health and educational outcomes), live in substandard conditions that are making them sick, or experience homelessness. New Yorkers deserve better.

RECOMMENDATIONS:

1. **Increase the shelter allowances to 100% of HUD fair market rent, adjusted annually if the FMR is increased.**
2. **Until the shelter allowance is increased, improve the Shelter Supplement and Rental Supplement Programs:**
   i. **All public assistance recipients experiencing housing instability who do not reside in federally subsidized housing or have federal rental assistance should be entitled to shelter or rent supplements.**
   ii. **Increase the value of Shelter Supplements and Rent Supplements to 100% of FMR.**
   iii. **Set consistent program rules and policies for all districts through regulation or OTDA guidance, ensuring that unlawful restrictions are not imposed on applicants and recipients and reducing the burden on districts by eliminating the need to submit program plans.**
   iv. **Require all districts to offer Shelter Supplements and Rent Supplements to address homelessness and housing instability in their communities.**
   v. **Provide due process protections for applicants and recipients.**

REJECT THE PROPOSAL IN THE EXECUTIVE BUDGET TO "SWEEP" $100 MILLION FROM IOLA TO THE GENERAL FUND

Empire Justice Center is deeply concerned about the proposal Executive Budget to sweep $100 million from the Interest on Lawyers Account (IOLA) to the general fund. IOLA funding not only

[17] FOIL data received by Empire Justice Center from NY Off. of Temp. and Disability Assistance, FOIL Number OTDA-23-07-049 (Sept. 20, 2023).

supports essential services that help low-income New Yorkers obtain help with civil legal problems affecting their most basic needs, such as food, shelter, jobs and access to health care, it is a critical source of infrastructure dollars that the civil legal services community is in desperate need of. These funds are accumulated for distribution at the next round of grants to civil legal services providers, which are intended to assist in addressing the dual crises of an estimated $ 1 billion civil justice gap and community wide salaries that are at least 30% below counterparts in similar public interest and public sector fields.

There is an IOLA or IOLTA fund in every state across the country. Here in New York our fund was established in 1983, under New York State Finance Law (§ 97-v). With the recognition of the vast need for to fund civil legal services, these funds were created for the sole purpose of funding civil legal assistance. The legislative intent was as follows:

> *Legislative findings and declaration.* The legislature finds that the availability of civil legal services to poor persons is essential to the due administration of justice. ***The purpose of this act is to provide funding for providers of civil legal services*** (emphasis added) [1] in order to ensure effective access to the judicial system for all citizens of the state to extent practicable within the means available for that purpose.
>
> The Interest on Lawyers Account (IOLA) fund established by this act will be authorized to receive funds from any source for disbursement to nonprofit legal services providers for charitable purposes, including the delivery of legal services in civil matter to poor persons. The IOLA fund will receive the interest earned by qualified client funds held by attorneys in unsegregated interest-bearing accounts designated IOLA accounts. Funds which qualify for deposit in IOLA accounts are those which, in current practice, attorneys do not deposit in segregated accounts because insufficient interest would be earned to justify the expense of administration. When pooled in an IOLA account, funds which would be unproductive as individual accounts will generate income, the ***beneficial*** *interest in which will be held by the IOLA fund exclusively for charitable purposes* (emphasis added).

Even during the most extreme financial crises in the past, IOLA funds have never been swept or used for any other purpose than to provide civil legal services to low-income New Yorkers. Now is not the time to divert or undermine the purpose of this critical resource.

IOLA distributes the accumulated interest dollars through competitive requests for proposals issued every two years. IOLA also collects and distributes outcomes and they are impressive. In 2023, IOLA grantees closed over 307,000 client cases, benefiting over 639,000 low-income New Yorkers. The top five areas of service from 2023 are housing, immigration, family law, education and health.

Since its inception, interest rates have fluctuated wildly. In the early days, this resulted in dramatic swings in funding for civil legal services, causing uncertainty and financial crisis for providers and loss of services for client communities. To guard against this, IOLA rightly shifted to a "rainy day" approach that creates a reserve of funds that can be used to avoid cuts in funding and thus civil legal services during periods where interest rates and thus earnings are low. This funding stability has been a godsend.

Furthermore, this attempted sweep could not come at a worse time. The civil legal services community faces a complex crisis. The value of and need for civil legal services has never been more front of mind in our state. Recognition that there is no civil Gideon for folks facing bankruptcy, loss of home, healthcare – the essentials of life – has grown among the public and policy makers as a result of educational efforts. The Access to Justice Gap, the space between the civil legal needs of low-income New Yorkers and the resources available to meet those needs has now been documented and assessed at a $1 billion over what is currently in the system[18]. As noted in the Permanent Commission on Access to Justice's 2023 report to the Chief Judge, "the Permanent Commission recently adopted its Funding Working Group's report finding that between $842 million and $1 billion is a realistic estimate of the additional annual funding, over and above existing funding, to close the justice gap."[19] Notably, this analysis

[18] Permanent Commission on Access to Justice's 2023 report to the Chief Judge, November 2023. https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/23_ATJ-Comission_Report.pdf

[19] https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/23_ATJ-Comission_Report.pdf

focuses only on those earning up to 250% of poverty and does not include immigration related legal services.

Demand and need for our community's services is vast, but the resources are not there, leaving far too many New Yorkers facing life altering legal junctures without an attorney who understands the process. At the same time, salaries, in comparison to any other government funded attorney services are so low, it is becoming impossible to compete with state, county and city positions. With the well-deserved and long overdue increase in rates for assigned counsel in criminal matters, civil legal services salaries have fallen even further behind. The IOLA funds that are to be swept are slated to help address these very issues.

The New York Civil Legal Services Coalition recently released a white paper: *Pay Parity: A Shared Vision to Achieve Pay Parity for All Attorneys Working to Close the Justice Gap*[20]. As an overview, New York's civil legal services providers, like Empire Justice Center, which provide legal services to low-income New Yorkers on behalf of the state, are funded at levels that hold entry-level salaries at 30% to 45% lower than other government funded legal services providers, and those inequities only grow throughout their careers. The widening salary gap is making it increasingly difficult to attract and retain legal talent and do the work that we are contracted with the state to do. Unfilled positions result in clients not served – unlawful evictions executed, homes lost to foreclosure, lifesaving health coverage not received.

In addition, IOLA has just launched a multi-year Justice Infrastructure project that will assist our under resourced community improving the delivery of services and create efficiencies across programs. The accumulated funds are what made it possible for the IOLA Fund to pursue this project.

[20] https://nylscoalition.org/iola

We need the legislature's support in addressing the needs of our client community through rejecting the proposal in the executive budget to sweep funding from IOLA. IOLA has been a key partner in all of our efforts to increase services and more recently to address pay parity. There is increased appropriation authority in the Executive Budget for IOLA to take a first step forward, with the expectation that the next round of competitive funding will be significantly larger and utilized to address both the crisis in salaries and the societal imperative to make progress toward closing the Justice Gap for in New York State. These funds, along with OCA's efforts are essential to our community's ability to make gains against the justice gap and to be able to fulfil existing promises for representation through being able to compete against others in our field for employees.

ASK: Reject the $100m sweep of IOLA funds and support pay parity for civil legal services providers

ADDENDUM

Table 1

New York State's Public Assistance Grant Leaves Families Below 40% of the Federal Poverty Level in Every County			
County	**PA Grant for a 3 Person Household**	**2024 Poverty Level for a 3 Person Household**	**PA Grant as Percentage of Poverty**
Albany County	$698	$2,151.00	32%
Allegany County	$662	$2,151.00	31%
Bronx County (NYC)	$789	$2,151.00	37%
Broome County	$679	$2,151.00	32%
Cattaraugus County	$658	$2,151.00	31%
Cayuga County	$679	$2,151.00	32%
Chautauqua County	$674	$2,151.00	31%
Chemung County	$672	$2,151.00	31%
Chenango County	$653	$2,151.00	30%
Clinton County	$664	$2,151.00	31%
Columbia County	$679	$2,151.00	32%
Cortland County	$670	$2,151.00	31%
Delaware County	$663	$2,151.00	31%
Dutchess County	$801	$2,151.00	37%
Erie County	$690	$2,151.00	32%
Essex County	$657	$2,151.00	31%
Franklin County	$648	$2,151.00	30%
Fulton County	$661	$2,151.00	31%
Genesee County	$670	$2,151.00	31%
Greene County	$670	$2,151.00	31%
Hamilton County	$656	$2,151.00	30%
Herkimer County	$664	$2,151.00	31%
Jefferson County	$665	$2,151.00	31%
Kings County (NYC)	$789	$2,151.00	37%
Lewis County	$668	$2,151.00	31%
Livingston County	$696	$2,151.00	32%
Madison County	$693	$2,151.00	32%
Monroe County	$732	$2,151.00	34%
Montgomery County	$672	$2,151.00	31%
Nassau County	$834	$2,151.00	39%
New York County (NYC)	$789	$2,151.00	37%
Niagara County	$683	$2,151.00	32%

Oneida County	$676	$2,151.00	31%
Onondaga County	$692	$2,151.00	32%
Ontario County	$697	$2,151.00	32%
Orange County	$810	$2,151.00	38%
Orleans County	$691	$2,151.00	32%
Oswego County	$689	$2,151.00	32%
Otsego County	$669	$2,151.00	31%
Putnam County	$830	$2,151.00	39%
Queens County (NYC)	$789	$2,151.00	37%
Rensselaer County	$685	$2,151.00	32%
Richmond County (NYC)	$789	$2,151.00	37%
Rockland County	$823	$2,151.00	38%
Saratoga County	$705	$2,151.00	33%
Schenectady County	$700	$2,151.00	33%
Schoharie County	$675	$2,151.00	31%
Schuyler County	$664	$2,151.00	31%
Seneca County	$677	$2,151.00	31%
St. Lawrence County	$670	$2,151.00	31%
Steuben County	$660	$2,151.00	31%
Suffolk County	$836	$2,151.00	39%
Sullivan County	$686	$2,151.00	32%
Tioga County	$674	$2,151.00	31%
Tompkins County	$706	$2,151.00	33%
Ulster County	$739	$2,151.00	34%
Warren County	$688	$2,151.00	32%
Washington County	$684	$2,151.00	32%
Wayne County	$691	$2,151.00	32%
Westchester County	$652	$2,151.00	30%
Wyoming County	$668	$2,151.00	31%
Yates County	$675	$2,151.00	31%

Table 2

	Shelter Allowance for a 3 Person Household, with Children, Compared to HUD 2024 Fair Market Rent for a 2-Bedroom Rental Unit			Shelter Allowance for a 1 Person Household, no Children, Compared to HUD 2024 Fair Market Rent for a 1-Bedroom Rental Unit		
County	**Allowance**	**2-BR FMR**	**Shortfall**	**Allowance**	**1-BR FMR**	**Shortfall**
Albany	$309	$1,374	($1,065)	$184	$1,131	($947)
Allegany	$273	$905	($632)	$190	$731	($541)
Bronx	$400	$2,752	($2,352)	$215	$2,451	($2,236)
Broome	$290	$1,141	($851)	$218	$904	($686)
Cattaraugus	$269	$905	($636)	$179	$709	($530)
Cayuga	$290	$958	($668)	$179	$733	($554)
Chautauqua	$285	$905	($620)	$167	$711	($544)
Chemung	$283	$1,208	($925)	$197	$922	($725)
Chenango	$264	$905	($641)	$189	$777	($588)
Clinton	$275	$1,047	($772)	$156	$826	($670)
Columbia	$290	$1,190	($900)	$191	$1,042	($851)
Cortland	$281	$992	($711)	$199	$805	($606)
Delaware	$274	$905	($631)	$200	$798	($598)
Dutchess	$412	$1,825	($1,413)	$216	$1,419	($1,203)
Erie	$301	$1,163	($862)	$169	$992	($823)
Essex	$268	$971	($703)	$199	$828	($629)
Franklin	$259	$905	($646)	$161	$763	($602)
Fulton	$272	$964	($692)	$159	$734	($575)
Genesee	$294	$976	($682)	$202	$804	($602)
Greene	$281	$1,155	($874)	$197	$965	($768)
Hamilton	$267	$1,140	($873)	$159	$868	($709)
Herkimer	$275	$992	($717)	$173	$790	($617)
Jefferson	$276	$1,360	($1,084)	$200	$1,035	($835)
Kings	$400	$2,752	($2,352)	$215	$2,451	($2,236)
Lewis	$279	$905	($626)	$152	$707	($555)
Livingston	$307	$1,307	($1,000)	$187	$1,050	($863)
Madison	$304	$1,126	($822)	$199	$916	($717)
Monroe	$343	$1,307	($964)	$257	$1,050	($793)
Montgomery	$283	$914	($631)	$158	$780	($622)

Nassau	$445	$2,508	($2,063)		$288	$2,144	($1,856)
New York	$400	$2,752	($2,352)		$215	$2,451	($2,236)
Niagara	$294	$1,163	($869)		$174	$992	($818)
Oneida	$287	$992	($705)		$179	$790	($611)
Onondaga	$303	$1,126	($823)		$203	$916	($713)
Ontario	$308	$1,307	($999)		$207	$1,050	($843)
Orange	$421	$1,825	($1,404)		$229	$1,419	($1,190)
Orleans	$302	$1,307	($1,005)		$202	$1,050	($848)
Oswego	$300	$1,126	($826)		$183	$916	($733)
Otsego	$280	$1,061	($781)		$200	$879	($679)
Putnam	$441	$2,752	($2,311)		$237	$2,451	($2,214)
Queens	$400	$2,752	($2,352)		$215	$2,451	($2,236)
Rensselaer	$296	$1,374	($1,078)		$153	$1,131	($978)
Richmond	$400	$2,752	($2,352)		$215	$2,451	($2,236)
Rockland	$434	$2,752	($2,318)		$302	$2,451	($2,149)
Saratoga	$316	$1,374	($1,058)		$185	$1,131	($946)
Schenectady	$311	$1,374	($1,063)		$195	$1,131	($936)
Schoharie	$286	$1,374	($1,088)		$199	$1,131	($932)
Schuyler	$275	$940	($665)		$194	$740	($546)
Seneca	$288	$991	($703)		$204	$770	($566)
St. Lawrence	$281	$940	($659)		$182	$763	($581)
Steuben	$271	$905	($634)		$159	$759	($600)
Suffolk	$447	$2,508	($2,061)		$309	$2,144	($1,835)
Sullivan	$297	$1,078	($781)		$211	$917	($706)
Tioga	$285	$1,141	($856)		$201	$904	($703)
Tompkins	$317	$1,664	($1,347)		$217	$1,434	($1,217)
Ulster	$350	$1,702	($1,352)		$263	$1,308	($1,045)
Warren	$299	$1,284	($985)		$215	$1,025	($810)
Washington	$295	$1,284	($989)		$199	$1,025	($826)
Wayne	$302	$1,307	($1,005)		$207	$1,050	($843)
Westchester	$426	$2,353	($1,927)		$271	$1,934	($1,663)
Wyoming	$279	$905	($626)		$199	$728	($529)
Yates	$286	$1,066	($780)		$181	$811	($630)

The United States Department of Housing and Urban Development (HUD) sets Fair Market Rents (FMR) yearly. The FMR is the 40th percentile of gross rents for typical, non-substandard rental units occupied by recent movers in a local housing market.