

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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

Index No. 450563/2024

On behalf of themselves and all others similarly
situated

Petitioners,

-against-

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

Respondents.

AFFIRMATION OF JASON A. OTAÑO IN SUPPORT OF MOTION TO INTERVENE

JASON A. OTAÑO, an attorney duly admitted to practice before the courts of the State of New York, hereby affirms under penalty of perjury, pursuant to Rule 2106 of the Civil Practice Laws and Rules (“CPLR”):

1. I, JASON A. OTAÑO, am the General Counsel for the City Council of the City of New York, and attorney for proposed intervenor, the Council of the City of New York.
2. I make this affirmation based upon personal knowledge, information and belief.
3. I make this affirmation in support of the Council’s motion for an order pursuant to CPLR 401, 1012, 1013, and 7802(d), permitting the Council to intervene as a party in this proceeding and directing that the verified petition, in the proceeding under Index Number 450563/2024 be amended by adding the Council as a party intervenor-petitioner.
4. No prior application for the relief sought herein has been made in this or any other court.

BACKGROUND

5. The proceeding under Index No. 450563/2024 was brought pursuant to Article 78 of the CPLR, by Marie Vincent, Carolina Tejada, Mary Cronneit, and Susan Acks, by and through their counsel the Legal Aid Society. Petitioners seek to certify a class of similarly situated individuals and to compel Mayor Eric Adams to implement a package of legislation to expand the NYC Family Homelessness and Eviction Prevention Supplement program (“CityFHEPS”).

6. CityFHEPS is a City-funded program that provides rental assistance vouchers to help New Yorkers residing in shelters afford permanent housing and to assist New Yorkers who are at risk of eviction to remain stably housed. Last year, in response to the City’s unprecedented shelter capacity crisis, the Council passed Local Laws 99, 100, 101, and 102 of 2023. (“CityFHEPS Reform Laws”). The laws work in tandem to expand access to the vouchers and remove antiquated administrative obstacles to eligibility.

7. All four laws took effect on January 9, 2024, 180 days after their enactment.

8. Despite their enactment, neither the Mayor nor his Administration have taken any action to implement the CityFHEPS Reform Laws. To the contrary, the Adams Administration has expressly stated its intent to disregard the laws and articulated the Mayor’s belief that they are preempted by the State Social Services Law.

9. This proceeding was brought by individual New York City residents through their counsel the Legal Aid Society, a non-profit legal services provider in New York City. Petitioners are New Yorkers who are newly eligible for CityFHEPS assistance under the Reform Laws but have not been provided rental vouchers because of the Mayor’s inaction. In their Article 78 petition, they seek that the Court compel the Mayor to implement the CityFHEPS Reform Laws.

10. Pursuant to three provisions of the CPLR, the Council is permitted to intervene: (a) as a matter of right pursuant to CPLR 1012(a)(2) because the representation of the Council’s interest

is inadequate and the Council may be bound by the judgment; (b) pursuant to CPLR 1013 because the Council's claims and this action have common questions of law and fact; and (c) pursuant to CPLR 7802(d) because the Council has an indisputable interest in ensuring that its local laws are upheld and properly executed.

11. Attached as **Exhibit A** is the Council's proposed Petition-Complaint in Intervention.

12. Attached as **Exhibit B** is a memorandum of law in support of the Council's proposed Petition-Complaint in Intervention.

13. Attached as **Exhibit C** is a memorandum decision dated September 30, 2014, in the matter of *Neighborhood in the Nineties v. The City of New York*, Supreme Court, New York County, Index No. 156382/2013.

THE COUNCIL'S MOTION TO INTERVENE IS TIMELY

14. The Council's motion to intervene is timely. "In examining the timeliness of the motion, courts do not engage in mere mechanical measurements of time, but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party." *Yuppie Puppy Pet Prods., Inc. v. Street Smart Realty, LLC*, 77 A.D.3d 197, 201 (1st Dept. 2010) (citing *Teichman v. Community Hosp.*, 87 N.Y.2d 514, 522 (1996)).

15. There is no undue delay on the Council's part. On February 8, 2024, the Council adopted Resolution 4, authorizing Speaker Adrienne Adams to take legal action to compel the Mayor to implement the Reform Laws. This case was filed on February 14, 2024, and was given a docket number and assigned to a judge on February 15, 2024. The Council now moves to intervene on February 21, only seven days after this case was filed, and its motion to do so is timely. *See, e.g., Yuppie Puppy*, 77 A.D.3d at 201 (holding that the motion to intervene was timely where the

party “sought to intervene a mere two weeks after negotiations to obviate the motion to intervene ended”).

16. None of the parties would be prejudiced by the Council’s intervention because the prompt intervention will not delay proceedings. Moreover, the Council’s intervention does not create any unfair advantage or disadvantage on the parties.

THE COUNCIL IS ENTITLED TO INTERVENE AS OF RIGHT

17. The Council may intervene as of right in this action. Pursuant to CPLR 1012(a), “[u]pon timely motion, any person shall be permitted to intervene in any action: . . . (2) When the representation of a person’s interest by the parties is or may be inadequate and the person is or may be bound by the judgment.”

18. “Intervention is liberally allowed by courts permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action.” *Yuppie Puppy* 77 A.D.3d at 201.

a. **The Council has an Interest in the Instant Matter Where the Implementation of its Local Laws is at Issue**

19. The Council has a right to intervene as of right because it has “a real, substantial interest in the outcome of the litigation.” *Id.*

20. The Council is the “legislative body” of the City of New York. City Charter § 21. The New York State Constitution, the New York City Charter, and the Municipal Home Rule Law empower the Council to pass local legislation such as the CityFHEPS Reform Laws. *See* N.Y. Const. Art. IX § 2(c)(9); City Charter § 28; Mun. Home Rule L. § 10(1)(a)(10).

21. Respondent Eric Adams is the Mayor of the City of New York and as such is the “chief executive office of the city.” New York City, N.Y., Charter § 3. While the Mayor can assist the Council in proposing legislation, if and when a Mayor’s veto is overridden, his role as *policy*

maker ends and his law enforcement role begins. Regardless of whether the local law aligns with his policy preferences, he is duty-bound to implement the law. Actions to the contrary unlawfully usurp legislative authority and violate the separation of powers doctrine.

22. The Mayor and his administration have made it clear over the past four months that they have no intention of implementing the CityFHEPS Reform Laws and that they believe them to be preempted by State law.

23. The Council has a real and substantial interest in ensuring that its duly enacted local laws are upheld, can withstand challenges to their validity, and are properly implemented.

24. The Council necessarily has a real and substantial interest in the outcome of this litigation, namely, the upholding and implementation of its own duly passed legislation.

25. Moreover, the Council may be bound by the judgment in its future exercise of its legislative authority. This is particularly so where a basis of the Mayor's opposition is that the Reform Laws are preempted by state law. A decision in this case may bind or impact the Council's legislative mandate in future similar circumstances. *See Neighborhood in the Nineties v. City of New York*, attached as **Exhibit C**, at 2. Because this litigation may impact the extent of the Council's legislative authority, particularly in the all-important context of City rental assistance programs, the Council has a real and substantial interest in its outcome.

b. The Council's Interests Are Inadequately Represented by the Parties

26. Additionally, "the representation of the [Council]'s interest by the parties is inadequate." CPLR 1012(a)(2). As stated above, the Council's primary interest is ensuring that its legislation is properly executed. Also, the Council has an interest in defending the validity of its legislation in general, and against claims of preemption by state law, since any ruling on this issue may affect the Council's ability to legislate in the future. *See Exhibit C* at 2.

27. By contrast, the primary interest of the Petitioner class in this matter is in their own entitlement to CityFHEPS assistance under the Reform Laws. The Petitioner class in this action seeks that the changes in eligibility established by the Reform Laws be applied to their own applications for CityFHEPS vouchers. They assert that the Mayor’s refusal to implement the Reform Laws has caused them to be deprived of a benefit provided for them by law.

28. New York courts have found inadequate representation in cases involving far less significant differences in interest. *See, e.g., Subdivision, Inc. v Town of Sullivan*, 75 A.D.3d 978, 979-80 (3rd Dept. 2010) (allowing town zoning board to intervene in a case where town was already a party); *Civil Service Bar Assoc, Local 237, Intl. Bhd. Of Teamsters v. New York*, 64 A.D.2d 594, 595 (1st Dept. 1978) (holding that Supreme Court erred by denying former City employees the right to intervene and challenge settlement between City and intervenors’ former collective bargaining representative).

29. Because of the substantial difference between the interests of the Council and the interests of the individual Petitioners in this action, the Council’s interest is not adequately represented in this case. The Council must be permitted to intervene as of right.

**THE COURT SHOULD EXERCISE ITS DISCRETION
TO PERMIT THE COUNCIL TO INTERVENE**

CPLR 1013

30. Even if, *arguendo*, CPLR 1012 did not grant the Council a right to intervene, this Court should exercise its discretion and allow the Council to intervene pursuant to CPLR 1013. CPLR 1013 provides that:

Upon timely motion, any person may be permitted to intervene in any action when . . . the person’s claim or defense and the main action *have a common question of law or fact*. In exercising its discretion, the court shall consider whether intervention will

unduly delay the determination of the action or prejudice the substantial rights of any party.

31. The standard for intervention under CPLR 1013 is to be liberally construed. *See, Yuppie Puppy*, 77 A.D.3d at 201, *Teleprompter Manhattan CATV Corp. v State Bd. of Equalization & Assessment*, 34 A.D.2d 1033, 1033 (3rd Dept. 1970); *United Servs. Auto. Ass'n v. Graham*, 21 A.D.2d 657, 657 (1st Dept. 1964); *See also* 2 Weinstein, Korn & Miller, N.Y. Civil Practice, ¶ 1012.05 (“[T]he CPLR intervention statutes are to be liberally construed”).

32. The Council’s proposed petition in intervention addresses common questions of law and fact. *See* CPLR 1013. Both this case and the Council’s proposed petition in intervention and supporting memorandum of law address the Council’s authority to enact the CityFHEPS Reform Laws, the laws’ validity, and the Mayor’s responsibility to implement those laws. Both cases arise out of the same facts: the Council’s passage of the CityFHEPS Reform Laws, the Mayor’s veto, the Council’s override, and the Mayor’s subsequent refusal to carry out his legal duty to implement the laws. As such, intervention is permitted under CPLR 1013.

33. Additionally, Courts have consistently held that, where a proposed intervenor has “established a ‘real and substantial interest’ in the outcome of an action,” permissive intervention under CPLR 1013 should be allowed. *Patterson Materials Corp. v. Town of Pawling*, 221 A.D.2d 609, 610 (2d Dept. 1995). As explained *supra*, the Council has a real and substantial interest in the outcome of this litigation.

34. Intervention will not unduly delay determination of the action as this matter was only filed seven days ago.

35. Nor will intervention prejudice the substantial rights of any party as the Council is moving to intervene to ensure the implementation of duly enacted local laws.

CPLR 7802

36. The Court should also permit the Council to intervene under CPLR 7802(d), which provides that the court “may allow other interested persons to intervene” in an Article 78 proceeding.

37. The standard for intervention under CPLR 7802(d) is even more liberal than the standard under CPLR 1013. *See, e.g., Greater N.Y. Health Care Facilities Ass’n v. DeBuono*, 91 N.Y.2d 716, 720 (1998) (CPLR 7802(d) “grants the court broader authority to allow intervention in an article 78 proceeding than is provided pursuant to CPLR 1013”); *Tenn. Gas Pipeline Co. v. Town of Chathan Bd. of Assessors*, 239 A.D.2d 831, 832 (3rd Dept. 1997) (intervention under CPLR 7802(d), “is more liberal than that provided in CPLR 1013”) (citations omitted); *Elinor Homes Co. v. St. Lawrence*, 113 A.D.2d 25, 28 (2nd Dept. 1985) (noting that 7802(d) “grants the court broader power to allow intervention in an article 78 proceeding than is provided pursuant to either CPLR 1012 or 1013 in an action”) (citations omitted).

38. The court may grant intervention at any time. *See Greater N.Y. Health Care Facilities Ass’n*, 91 N.Y.2d at 720 (“Permission to intervene in an article 78 proceeding may be granted at any point of the proceeding, including after judgment for the purposes of taking an appeal.” (citation omitted)).

39. The Council should be permitted to intervene under CPLR 7802 because the Council is an “interested” party with regards to the implementation of the CityFHEPS Reform Laws. As discussed *supra*, the Council has an interest in seeing that its legislation is duly implemented by the City’s executive branch. And, should the Court proceed to address whether the legislation is preempted, the Council certainly has an interest in any adjudication that will address whether its laws are valid and could impact its ability to legislate in this area in the future.

40. As such, the Court should exercise its discretion and permit the Council to intervene under CPLR 1013 and/or CPLR 7802(d).

CONCLUSION

41. For the foregoing reasons, the Court should issue an order permitting the Council to intervene as a party in this proceeding and direct that the verified petition be amended by adding the Council as a party intervenor-petitioner-plaintiff.

Dated: February 21, 2024
New York, New York

OFFICE OF THE GENERAL
COUNSEL FOR THE NEW YORK
CITY COUNCIL



Jason A. Otaño
250 Broadway, 15th Floor
New York, NY 10007
(212) 482-2969