Exhibit B

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

THE COUNCIL OF THE CITY OF NEW YORK,

Petitioner-Plaintiff,

-against-

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

Respondent-Defendant.

Index No. 450563/2024

MEMORANDUM OF LAW IN SUPPORT OF PROPOSED INTERVENOR-PETITIONER-PLAINTIFF'S ARTICLE 78 APPLICATION TO COMPEL RESPONDENT-DEFENDANT TO IMPLEMENT THE CITYFHEPS REFORM LAWS

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PRELIMINARY STATEMENT

Under the City Charter, the Council of the City of New York makes the laws, and the City's chief executive—the Mayor—has the responsibility to implement them. Despite his Charter-mandated responsibilities, Mayor Eric Adams has failed to implement crucial local laws, leaving New Yorkers without essential support. During the legislative process, the Mayor may seek to influence what the Council does, may express his policy views on legislation, and may ultimately veto legislation that he disagrees with. But, in the end, if the Council overrides a mayoral veto, that legislation becomes law. Once *that* occurs—once legislation becomes *law*—the Mayor's job is to implement and effectuate the law, whether he agrees with it or not.

Last summer, faced with a housing crisis of immense proportions, the Council took action to protect New Yorkers in need. The Council passed four laws designed to assist households facing the risk of eviction or homelessness and to ease the burden on the City's already overstretched shelter system. It did so by expanding access to housing vouchers available through the City's Fighting Homelessness and Eviction Prevention Supplement program ("CityFHEPS"). In developing this package of legislation, the Council listened to hours of live testimony from a wide range of stakeholders, including policy experts, and reviewed hundreds of pages of written testimony, including statistical analyses. The Mayor opposed these bills with frequently shifting explanations. He lobbied, both directly and in the press, for members of the Council to vote against them, and he vetoed the bills once the Council passed them. Yet the Council overrode the Mayor's veto and enacted the bills into law despite his objection. As a result, these bills became law—Local Laws 99, 100, 101, and 102 of 2023 (hereinafter "CityFHEPS Reform Laws" or "Reform Laws") —which became effective, by their terms, on January 9, 2024.

Because the Council validly enacted the CityFHEPS Reform Laws, the Mayor is now legally required by the Charter to implement them. But he refuses to do so. His refusal not only deprives New Yorkers of housing benefits to which they are entitled under the law; it usurps the powers of the Council, a co-equal branch of City government, and it upends the separation of powers enshrined in the City Charter. What he could not secure through the Charter-established process, the Mayor is now attempting to achieve by unlawfully abdicating his duties. As the third branch of government, empowered to "compel acts that officials are duty-bound to perform," *Klostermann v. Cuomo*, 61 N.Y.2d 525, 540 (1984), this Court should direct the Mayor to fulfill his legal mandate as the City's chief executive to implement the CityFHEPS Reform Laws, in full and forthwith.

FACTS

The CityFHEPS Reform Laws were adopted with the purpose of addressing two concurrent emergencies facing New York City: a rising number of evictions, and a dramatic increase in the rate of homelessness. For years, as part of its efforts to ameliorate the effects of these interrelated crises, the City has provided rental assistance to individuals and families at risk of or experiencing homelessness under a program known as CityFHEPS. Pet. ¶¶ 21-23. CityFHEPS is administered by the New York City Department of Social Services ("DSS"), which includes both the Department of Homeless Services ("DHS") and the Human Resources Administration ("HRA"). Pet. ¶ 22.

In 2022 and 2023, the Council, spurred on by the eviction, homelessness, and shelter crises around them and encouraged by experts and advocates, determined that the then-extant CityFHEPS eligibility criteria imprudently denied New Yorkers in need access to the program.

Pet. ¶¶ 35-36, 52-63; *see* Ex. I, July 13, 2023, Committee Report, at 4-10.[1] To start, no household making more than 200% of the federal poverty limit—$29,160 for an individual and $60,000 for a household of four in FY 2023—could qualify for a CityFHEPS voucher. Pet. ¶ 44, 48. Moreover, applicants with children had to satisfy a 14-hour-per week work requirement to become eligible. Pet. ¶ 39. In addition, applicants *residing in a City shelter* were only eligible after living there for 90 days. Pet. ¶ 39. And, save for a few narrow exceptions, applicants living *outside of a shelter* were only eligible if they had a prior history of living in a City shelter *and* were evicted or currently facing eviction proceedings.[2] Pet. ¶¶ 36-38. In the main, the program was limited to households who presently or previously experienced homelessness; it did not cover most households at serious risk of homelessness. *See* Pet. ¶¶ 36-39. Even after an applicant had secured a voucher, the voucher's usefulness was limited by a rule permitting DSS to deduct a utility allowance from the maximum rent it would pay to a landlord. Pet. ¶ 39.

In April 2022 and January 2023, legislation was introduced to change five key elements of the program and expand eligibility for CityFHEPS:[3]

- The bills increased the income eligibility criteria for applicants to 50% of the area median income. *See* Local Laws 100, 102.
- For applicants residing in a shelter, the bills eliminated the 90-day shelter residency requirement. *See* Local Law 100.
- The bills removed the requirement that an applicant be currently living in or previously living within a DHS shelter to qualify for help, and for an ongoing eviction court proceeding to be necessary to qualify for eviction prevention support. Instead, under the laws, an applicant can demonstrate that they are at a risk of eviction, and thus eligible, by showing certain types of precursor notices intended to terminate their tenancy. *See* Local Laws 100, 101.

[1] All cites to exhibits refer to exhibits attached to the Ejebe Affirmation, incorporated by reference into the Petition.

[2] The exceptions to this general rule were that applicants living outside of shelters could be eligible for CityFHEPS if their household included a veteran, received certain DSS benefits or was referred by a qualifying program.

[3] The text of each Local Law is reproduced in the July 13, 2023 Committee Report. *See* Exhibit. I, at 17-26.

- The bills eliminated the weekly work requirements for voucher eligibility. *See* Local Law 102.
- And the bills prohibited DSS from deducting a utility allowance from the maximum rental allowance for a CityFHEPS voucher and reduces the voucher recipient's rent contribution should the recipient rent an apartment for less than the maximum rental allowance. *See* Local Law 99.

Taken together, the package of legislation significantly removed barriers to housing assistance, doing away with bureaucratic requirements that essentially trapped applicants in the shelter system. Crucially, the bills employed a proactive approach to assist renters at risk of eviction and to prevent them from entering the shelter system by allowing them to remain in their homes.[4]

After the legislation was introduced, the Council did what legislatures typically do: it gathered information, solicited input from experts, held hearings, considered amendments and changes, and debated the merits of each of these proposals. Pet. ¶¶ 49-50. During this process, the Mayor and his Administration weighed in on the bills. Pet. ¶ 64. The discussion was open and zestful: members of the Mayor's administration highlighted their concerns with the supply of affordable housing and generally expressed a preference for more incremental changes to streamline the CityFHEPS program. *See, e.g.*, Ex. G, January 18, 2023, Committee Hearing Transcript, at 40-42, 58-59.

Ultimately, each of the four bills was amended and advanced to an up-or-down vote on the floor of the Council, and each was approved by a majority of the Council by a vote of 41 to 7. Pet. ¶ 65. On June 23, 2023, the Mayor vetoed them all—exercising his only direct power over

[4] It should be noted that the lack of housing supply remains at crisis levels, and the Council is partnering with the Administration to confront this issue. Yet keeping low-income New Yorkers in their homes, rather than allowing them to be evicted, is the rational way to avoid increased competition for a limited supply of housing amongst this subset of New Yorkers in need of housing stability. Allowing low-income New Yorkers to be evicted would only add to the number of people in need of housing assistance forced to search for homes, and thus likely open up housing units to higher-income New Yorkers and fuel gentrification.

legislation. Pet. ¶ 66. In his veto message and the press statements that followed, the Mayor stated that he opposed the bills as a matter of policy, believing that their implementation would be too costly for the City and that they failed to address the supply of affordable housing. Pet. ¶¶ 66-68. In passing, the Mayor also suggested that those bills were legally invalid and preempted by the State's Social Services Law. Pet. ¶ 69. Three weeks later, on July 13, 2023, the Council re-passed each bill by a vote of 42 to 8; far more than a required two-thirds majority to override a veto. Pet. ¶ 70. Each bill thus became a law of the City of New York.

By their terms, the Reform Laws were set to go into effect on January 9, 2024—but the Mayor has taken no steps to implement them. Pet. ¶¶ 73-74, 85. In fact, the Administration has expressly stated its intent to disregard the laws and has even proactively imposed administrative rules in direct contravention of the laws, such as new work requirements on voucher recipients in direct contravention of Local Law 102. Pet. ¶ 75. This has left the Council no choice but to bring legal action to ensure that New Yorkers in need receive the benefit of laws duly passed by their elected representatives.

ARGUMENT

I. THE MAYOR'S REFUSAL TO IMPLEMENT THE CITYFHEPS REFORM LAWS IS UNLAWFUL

A. The Charter Empowers the Council to Pass Local Laws and Obligates the Mayor to Implement Them

The Charter of the City of New York "unequivocally provides for distinct legislative and executive branches of New York City government." *Matter of N.Y. Statewide Coal. of Hisp. Chambers of Com. v. N.Y.C. Dep't of Health & Mental Hygiene*, 23 N.Y.3d 681, 693 (2014); *see also Under 21, Catholic Home Bur. for Dependent Children v. City of New York*, 65 N.Y.2d 344, 356 (1985).

The Charter establishes the Council as sole "legislative body of the city," and it vests the Council with "the legislative power of the city." N.Y.C. Charter § 21. The Charter empowers the Council with wide legislative jurisdiction to adopt local laws not inconsistent with State or Federal law "for the good rule and government of the city; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the city and its inhabitants." N.Y.C. Charter § 28.

The Council's powers are derived, ultimately, from the State Constitution, which mandates that "[e]very local government . . . shall have a legislative body elective by the people thereof." N.Y. Const. art. IX § 1. The State Constitution also empowers "every local government" to "adopt and amend local laws" relating to, *inter alia*, "the government, protection, order, conduct, safety, health and well-being of persons . . . therein." N.Y. Const. art. IX § 2; *see also* N.Y. Mun. Home Rule L. § 10 (same). Taken together, these provisions imbue the Council with "broad power . . . to provide by local law for the good government of the city and the preservation and promotion of the health, safety and general welfare of its inhabitants." *Good Humor Corp. v. City of New York*, 290 N.Y. 312, 317 (1943).

By contrast, the Charter identifies the Mayor as the "chief executive officer of the city." N.Y.C. Charter § 3. While the Council is vested with lawmaking authority, as chief executive, the Mayor has the authority—and the duty—to implement laws duly passed by the Council. *Subcontractors Trade Ass'n v. Koch*, 62 N.Y.2d 422, 427 (1984) (Mayor "is empowered to implement and enforce legislative pronouncements emanating from the Council"); *see Giuliani v. Council of City of New York*, 181 Misc. 2d 830, 834-35 (Sup. Ct. 1999) ("[T]he City Council's role is to create generalized standards while the Mayor's or his appointee's role, *inter alia,* is to

enforce those standards in making individualized determinations."); *Under 21*, 65 N.Y.2d at 356 (Mayor has a "duty to enforce" valid Council laws).

The Mayor may have input in the legislative process: he and his Administration may participate in the hearing process, suggest legislation, and ultimately approve, veto, or decline to sign laws passed by the Council. The Council may override the Mayor's veto by a supermajority. N.Y.C. Charter § 37(b). However, once a law is enacted, whether over the Mayor's veto or not, it becomes local law.

This system is simple: laws are enacted by the Council and executed by the Mayor. This is "the separation of powers," which is itself "the bedrock of the system of government . . . in establishing . . . coordinate and coequal branches of government, each charged with performing particular functions." *Matter of N.Y.C. C.L.A.S.H., Inc. v. N.Y. State Off. of Parks, Recreation & Historic Preserv.,* 27 N.Y.3d 174, 178 (2016) (internal quotation marks and citations omitted). As a general matter, this division of powers between legislative and executive branches "requires that the [l]egislature *make* the critical policy decisions, while the executive branch's responsibility is to *implement* those policies."[5] *Greater N.Y. Taxi Ass'n v. N.Y. City Taxi & Limousine Comm'n*, 25 N.Y.3d 600, 609 (2015) (alteration in original) (emphasis added) (quoting *Bourquin v. Cuomo*, 85 N.Y.2d 781, 784 (1995)); *Leadingage N.Y., Inc. v. Shah*, 153 A.D.3d 10, 16 (2017) (same), *aff'd*, 32 N.Y.3d 249 (2018). And the "Mayor may not unlawfully infringe upon the legislative powers reserved to the City Council." *Under 21*, 65 N.Y.2d at 356.

Once a bill becomes law—either with mayoral approval or without it—the mayor has no choice; he must effectuate the law. That is the mayor's duty. *Council of City of New York v.*

[5] This separation, fundamental to our entire form of representative democracy, of course tracks the federal Constitution. *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2191 (2020) ("Under our Constitution, the 'executive Power'—all of it—is 'vested in a President,' who must "take Care that the Laws be faithfully executed." (quoting U.S. Const. art. II, § 1, cl. 1; *id.*, § 3)).

Bloomberg, 6 N.Y.3d 380, 389 (2006) ("The Mayor does indeed have a duty to implement valid legislation passed by the City Council, whether over his veto or not."). Refusing to do so violates the separation of powers enshrined in the Charter. "[W]hen the Executive acts inconsistently with the Legislature, or usurps its prerogatives, [] the doctrine of separation is violated." *Clark v. Cuomo*, 66 N.Y.2d 185, 189 (1985). Indeed, it is not merely within the Mayor's power to implement the Council's laws; it is his legal responsibility to do so. Failure to carry out that responsibility is a dereliction of the Mayor's duty. In the rare cases where such dereliction occurs, the third branch of government—the judiciary—must act to ensure that the executive carries out its mandate to effectuate the laws. *See, e.g.*, *Mayor of the City of New York v. Council of the City of New York*, 38 A.D.3d 89, 102 (1st Dept. 2006); *Cmty. Hous. Imp. Program, Inc. v. New York State Div. of Hous. & Cmty. Renewal*, 230 A.D.2d 66, 71 (3d Dept. 1997); *cf. Hernández v. Barrios-Paoli*, 93 N.Y.2d 781, 784 (1999).

B. The Council Validly Exercised Its Legislative Authority to Pass the CityFHEPS Reform Laws

The Council's enactment of the CityFHEPS Reform Laws was a valid exercise of the body's legislative authority. As noted above, both the State Constitution and the City Charter grant the Council broad power to adopt local laws for the general welfare, so long as they do not conflict with federal or state law. N.Y. Const. art. IX § 2(c)(10); N.Y. Mun. Home Rule L. § 10(1)(ii)(a)(12); N.Y.C. Charter § 28. The Court of Appeals has made clear that "[l]ocal laws are valid . . . [when they] have a substantial relation to matters within the field where legislative power is vested in the local legislative body of the city by the Constitution and statutes of New York," and they are "reasonably calculated to achieve a legitimate public purpose." *Good Humor*, 290 N.Y. at 317. The CityFHEPS Reform Laws, which are designed to support New York City residents and ensure that they remain housed in the face of an eviction, affordability,

and homelessness crisis, undoubtedly fall squarely within the permissible scope of the Council's general welfare legislative powers. And, as discussed *infra*, the CityFHEPS Reform Laws do not conflict with federal or state law.

C. The Mayor's Abdication of His Duties is Unjustified

Despite their lawful enactment, the Mayor has refused to implement the CityFHEPS Reform Laws—and no legal justification exists for his failure to do so. In blatant disregard for the law, after the Reform Laws were passed over his veto, the Mayor announced that he would not be implementing the laws and directed his Administration accordingly. The laws' effective date, January 9, 2024, came and went, with the Adams Administration taking no steps to ensure that City personnel within DSS were implementing the Reform Laws. In fact, the Adams Administration took proactive steps to *undermine* the Reform Laws. *See, e.g.*, Pet. ¶ 75.

It seems Mayor Adams simply decided that, if his vetoes could not stop the passage of the CityFHEPS Reform Laws, his orders—issued by executive fiat alone—would. But the Mayor cannot refuse to implement duly passed laws simply because he disagrees with them. To do so violates the democratic principles of the State Constitution and the City Charter; it is lawless. The Mayor *must* implement and give effect to the laws. The Mayor's failure to implement the CityFHEPS Reform Laws not only constitutes a dereliction of his duty as the City's executive but also harms the very New Yorkers the laws were designed to help.

The Mayor, in his veto letter and through his DSS Commissioner, has suggested that the Reform Laws are legally invalid. *See* Ex. I, Appendix A, Mayor's Veto Letter; Ex. N, Commissioner Park's Letter to Deputy Speaker Ayala. In broad strokes, the Mayor contends that the Reform Laws are preempted by the New York State Social Services Law (the "NYS SSL") and should have been passed through referendum. *See id.* By raising the issue of a mandatory referendum, the Mayor appears to be suggesting that the Council violated the doctrine of

"curtailment," which prohibits a local law from transferring or curtailing a Charter-imposed power without a referendum. *See* Mun. Home Rule L. § 23(2)(f).

These arguments lack merit. For the reasons stated below, the laws are valid; they are not preempted by state law and they do not curtail budgetary authority such that they must have been passed by a referendum. More fundamentally, if the Mayor believed that the Reform Laws were unlawful, he should have taken his concerns up with the courts himself. He had ample time—six months from the laws' enactment—to do so. Instead, he unilaterally decided the Reform Laws were invalid and that he would not implement them, and in doing so, usurped the role of the judiciary. This cannot be the way that disputes between the political branches are addressed.

But, given the facts as they are, the Court must now proceed to decide whether these laws are valid—and the Mayor is simply wrong when he argues that they are not. As a threshold matter, efforts to invalidate duly enacted statutes like the CityFHEPS Reform Laws—by way of preemption, curtailment, or any other mode of legal challenge—are profoundly disfavored. "[A] strong presumption of validity attaches to legislative enactments." *Metro. Package Store Ass'n, Inc. v. Koch*, 89 A.D.2d 317, 324 (3d Dep't 1982) (same). To overcome that presumption, the challenging party must show "beyond a reasonable doubt" that the statute is legally defective or otherwise unconstitutional—and, even then, "only as a last resort should courts strike down [the] legislation." *Lighthouse Shores*, *Inc. v. Town of Islip*, 41 N.Y.2d 7, 11 (1976); *see also Metro. Package*, 89 A.D.2d at 324 ("heavy burden" to establish invalidity); *Council for Owner Occupied Hous., Inc. v. Koch*, 119 Misc. 2d 241, 243 (N.Y. Sup. Ct. 1983) ("[A] court should strike down a statute only . . . where the invalidity of the statute is apparent on its face."), *aff'd*, 61 N.Y.2d 942 (1984). The Mayor cannot overcome this presumption of validity here with either of his proposed theories of illegality.

1. The CityFHEPS Reform Laws Are Valid and Not Preempted by the NYS SSL

The NYS SSL is a sprawling statute that consolidates a patchwork of various legal regimes dating back decades, all dealing with the aid, care, and support of persons in need. Certain sections of the NYS SSL call on local governments to engage in policymaking. The area of rental assistance vouchers is one such area where the State Legislature permits, and in fact encourages, local lawmaking. The NYS SSL divides the State into 58 "social services districts." The five boroughs of New York city comprise one district. NYS SSL § 56.[6] New York City is the only city with this structure. Outside of New York City, each district corresponds to one of the 57 counties that make up the remainder of the state.[7]

The NYS SSL's implementing regulations require each "social services district"—in the case of New York City, the City as a whole—to provide for a specified amount of monthly rent assistance to public assistance recipients. 18 NYCRR § 352.3(a)(1). While the state regulations establish a baseline obligation, the statute explicitly permits social services districts to supplement assistance beyond this baseline. The regulations specifically authorize "social services districts" to develop their own local rent supplement programs, subject to review and approval by the Office of Temporary and Disability Assistance ("OTDA"). *See* 18 NYCRR § 352.3(a)(3) ("A social services district, with the approval of the [OTDA], may provide additional

[6] Section 56 provides that "[t]he city of New York 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. The officers thereof charged with the administration of public assistance and care shall have additional powers and duties of a commissioner of social services not inconsistent with the laws relating to said city."

[7] Section 57 provides that "[e]ach city, other than the city of New York, shall form part of the county social services district of the county in which it is situated and shall not assume any powers and responsibilities for the administration or expense of public assistance and care, in addition to those specified in subdivision two of section sixty-nine, except pursuant to the provisions of sections seventy-four and seventy-four-a of this chapter."

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.").

This regulation accounts for the fact that "[l]ocal districts have different needs based upon the current housing situation in their area. By implementing a flexible shelter supplement, these districts may choose to provide a supplement for their neediest and adapt this supplement as housing situations change." N.Y. State Register, Feb. 26, 2003, Office of Temporary and Disability Assistance Revised Rulemaking. In short: the economic needs of homeless or at-risk families in New York City are different from those in Buffalo or Watertown. OTDA recognizes as much: in responding to a comment that the delegation to local districts was an abrogation of OTDA's "responsibility to provide an adequate shelter allowance," OTDA stated that it was "cognizant of the benefit of local districts having the authority to provide an additional payment/supplement in order to obtain and/or maintain housing when necessary." N.Y. State Register, Aug. 6, 2003, Office of Temporary and Disability Assistance Notice of Adoption.

Despite the clear statutory language authorizing local action, the Mayor has suggested that the CityFHEPS Reform Laws are preempted by the NYS SSL. In general terms, the doctrine of preemption holds that local statutes are invalid if they are found to be inconsistent with state law in one of two narrow circumstances. "Local laws may be inconsistent with and preempted by state law either because [(i)] the legislature has occupied the relevant field of regulation" and the local law "prohibits conduct which the state law . . . considers acceptable" or "imposes additional restrictions on rights granted by state law"—so-called "field preemption"; or "[(ii)] the local law conflicts with state law"—so-called "conflict preemption," which means that the local law directly contradicts a state law on the same subject. *Police Benevolent Ass'n of City of New York,*

Inc. v. City of New York, 40 N.Y.3d 417, 423 (2023) (citing *Albany Area Bldrs. Assn. v. Town of Guilderland,* 74 N.Y.2d 372, 377 (1989)).

It is unclear from the Mayor's veto statement or Commissioner Park's letter whether the Administration claims that the CityFHEPS Reform Laws are invalid as a result of field preemption or conflict preemption. In any event, both theories fail.

a. CityFHEPS Reform Laws Are Not Field Preempted

The doctrine of field preemption clearly does not apply because the State has explicitly encouraged local lawmaking in the area of rental assistance. Field preemption "prohibits a local government from legislating in a field or area of the law where the '[l]egislature has assumed full regulatory responsibility.'" *Police Benevolent Ass'n*, 40 N.Y.3d at 423. This assumption of responsibility by the Legislature needs to be either expressly stated or "implied from the nature of the subject matter being regulated and the purpose and scope of the State legislative scheme, including the need for State-wide uniformity in a given area." *People v. Diack*, 24 N.Y.3d 674, 679 (2015) (quoting *Albany Area Bldrs. Assn.*, 74 N.Y.2d at 377).

The opposite is true here. State law expressly *provides* for local legislation in this area. The NYS SSL authorizes "social services districts" to "provide additional monthly shelter supplements." 18 NYCRR § 352.3(a)(3)(i). In this way, the NYS SSL contemplates that local legislatures will fill in the gaps and supplement rental assistance programs, just as the Council has done here.

Notably, this reading of the law—that local laws modifying the CityFHEPS program are *not* field preempted—comports with the Mayor's own previous practices. Neither the de Blasio Administration nor the Adams Administration raised the issue of preemption when the Council enacted its first set of reforms to the CityFHEPS program in 2021, 2022, and early 2023. Pet. ¶ 34.

b. CityFHEPS Reform Laws Are Not Conflict Preempted

The doctrine of conflict preemption is also not a bar to the Reform Laws. The Mayor appears to argue that the NYS SSL delegates authority to local "social services officials" to engage in policy making *to the exclusion of local legislatures*. Ex. N at 3. The Mayor stresses that the Council cannot legislate in this area because the State delegated DSS as its "local agent." *Id.* While the NYS SSL does delegate many specific functions to DSS as its "local agent," it is simply incorrect that this delegation of authority precludes local law-making by the City's legislative branch. This reading is wrong for at least three reasons.

First, the NYS SSL simply does not say that all power rests with DSS in these matters. In fact, it says the opposite. The NYS SSL's implementing regulations empower "social services districts," of which the City of New York is one, to "provide additional monthly shelter supplements to public assistance applicants and recipients." 18 NYCRR § 352.3(a)(3). The regulations plainly do not use the term "social services officials" when granting this authority, because they were never intended to divest local legislators from the power to act in this arena. *Id.*

Section 56 of the NYS SSL, in its discussion of New York City in particular, makes clear that a "social services district" and "social services officials" within such a district have different powers. The section provides:

> The *city of New York* 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. The *officers thereof charged with the administration of public assistance and care* shall have additional powers and duties of a commissioner of social services not inconsistent with the *laws relating to said city*.

NYS SSL § 56 (emphasis added). In this provision, the City of New York, including its legislative branch, is the "social services district," while the social services officials are understood to be individuals "charged with the administration of public assistance and care." *Id.*

Notably, Section 56 acknowledges that the duties of a social services district and the duties of social services officers are subject to local law. In other words, this statutory scheme recognizes and endorses the role of local lawmaking.

Second, the notion that only DSS (and not the Council) can take action in the arena of social services has already been rejected by the Court of Appeals. In *Hernandez v. Barrios-Paoli*, the DSS sought to strike down a Council law it argued was inconsistent with NYS SSL. *See Matter of Hernandez v. Barrios-Paoli*, 93 N.Y.2d 781 (1999). Without using the term "preemption," DSS argued that DSS was as an "agent" of the State and only it—not the Council—could make policy in that area of social services. *See* Exhibit U, *Hernandez* Respondents' Brief, at 15, 18 (citing *Beaudoin v. Toia*, 45 N.Y.2d 343, 347 (1978)). The Court of Appeals implicitly rejected this argument by concluding that the Council was permitted to pass this legislation that was consistent with the State's aims. *Hernandez*, 93 N.Y.2d at 788.

Third, the Mayor's reading would conflict with the State Constitution, which grants exclusive policymaking authority to local legislatures, not to administrative agencies. *Matter of N.Y. Statewide Coal. of Hisp. Chambers of Com. v. NYC Dep't of Health and Mental Hygiene*, 23 N.Y.3d 681, 697 (2014) ("That task, policymaking, is reserved to the legislative branch."). To be sure, DSS plays an important role in administrating the CityFHEPS program. *See* NYS SSL § 131(1). However, DSS's role in *administering* public funds does not serve to exclude the Council from enacting laws concerning CityFHEPS or otherwise exercising its legislative powers bestowed by the State Constitution and the Charter.

Separately, the Mayor suggests (wrongly) that because local assistance supplements are subject to the OTDA-approval process, the Council cannot legislate concerning the CityFHEPS program. As noted above, when there is a modification to the CityFHEPS program as it relates to

public assistant recipients or applicants, the City is required to seek approval from OTDA for that modification. 18 NYCRR § 352.3(a)(3)(i). If OTDA does not respond within 30 days, the City's modification is assumed to be approved. NYS SSL § 20(3)(a). The Mayor contends that this approval process demonstrates that the Council cannot pass local legislation to modify CityFHEPS and all changes to the program must originate out of DSS rulemaking. Ex. N, at 3.

This argument has no basis in law or practice. Many local laws have an element of state approval, and in the specific case of CityFHEPS, the OTDA has not disapproved previous Council lawmaking in this arena, namely Local Law 70 of 2021, Local Law 71 of 2021, and Local Law157 of 2021.[8] More to the point, there is no support for the view that a limited approval right at the state level gives rise to preemption; it doesn't.

Ultimately, any reliance on a theory of conflict preemption would be misplaced. This doctrine only invalidates local laws that are in "a head-on collision" with state law, *Matter of Landsdown Ent. Corp.*, 74 N.Y.2d 761, 764 (1989)—such as when "[a] local law prohibits what a State Law explicitly allows, or when a State Law prohibits what a local law explicitly allows." *Chwick v. Mulvey*, 81 A.D.3d 161, 168 (2d Dept. 2010). No such collision exists here. No state law disallows the expanded CityFHEPS eligibility that the Reform Laws provide for—or prohibits the Council from making those laws. Again, the opposite is true: state law encourages local law-making in exactly this area, to address local conditions. Simply put, because there is no conflict between local and state laws, the theory of conflict preemption does not apply.

[8] It is unclear to the Council whether DSS has submitted the CityFHEPS Reform Laws to OTDA. Although the Deputy Speaker specifically raised this question with Commissioner Park, she did not respond to this inquiry. *See generally* Ex. N. The Council should note the SSL regulations only require DSS to submit modifications to the CityFHEPS program that relate to public assistance applicants or recipients. Accordingly, many of the reforms set out in Local Laws 100-102 do not need OTDA approval because they relate to those who do not qualify for public assistance.

2. The CityFHEPS Reform Laws Are Valid and Do Not Curtail or Transfer the Power of the Mayor

Similarly, the CityFHEPS reform laws do not curtail or transfer any budgetary powers. In Commissioner Park's letter, the Administration argues that the (i) "vast cost" imposed by the local laws improperly curtails the budgeting powers of the Mayor and the City Council; and (ii) "because the adopted budget does not reflect appropriations sufficient to provide a voucher to every newly eligible person, the Local Laws simply cannot be implemented in this manner." Ex. N, at 3-4.

The Administration's cost estimate has been heavily disputed. *See* Pet. ¶ 78. But even if the Mayor were correct that the CityFHEPS Reform Laws will cost the City $17 billion over 5 years, this estimate does not invalidate the laws.

Any curtailment defense is inapplicable. The Charter and the Municipal Home Rule Law require that any local law that "[a]bolishes, transfers or curtails any power of an elective officer" be subject to a mandatory referendum. N.Y. Mun. Home Rule L. § 23(2)(f); N.Y.C. Charter § 38(5). In *Mayor of the City of New York v. Council of the City of New York*, 9 N.Y.3d 23, 32 (2007), the Court of Appeals held that "[t]he Municipal Home Rule Law and the City Charter cannot sensibly be read to subject all local laws . . . to a mandatory referendum," and instead "the requirement of a referendum for legislation that 'curtails any power of an elective officer' must be read as applying only to legislation that impairs a power conferred on the officer as part of the framework of local government." *Id.* at 33. In addition, the Court held that "[a] law that merely regulates the operations of city government . . . is not a curtailment of an officer's power." *Id.*

Nothing about the projected cost of a local law could possibly "[i]mpair a power conferred on [the Council or the Mayor] as part of the framework of local government." *Id.* To say that any law's budgetary impact might abolish, transfer, or diminish the Council's or the

Mayor's budgetary powers is to misunderstand the system. Those Charter-mandated powers remain unchanged, as do the Council's and the Mayor's respective roles in lawmaking.[9] Moreover, while the Reform Laws make important modifications to the CityFHEPS program, DSS retains extensive flexibility, as always, in *how* it chooses to operationalize these changes; but, in all events, it must comply with the letter of the law as enacted.

Finally, contrary to the suggestion contained in the Commissioner's letter, nothing in the Charter, local law, or City regulations requires the Council to allocate money from the budget to fund a specific piece of legislation at the time of its passage. The Council's legislative powers are distinct and separate from its budgetary ones. *Compare* N.Y.C. Charter § 28 (detailing the broad scope of the Council's legislative powers), *with* N.Y.C. Charter §§ 247, 253, 254(a), 255(b) (outlining the Council's role in the budget adoption process).

II. ARTICLE 78 PROVIDES A REMEDY

Situations like the instant one are infrequent—rarely are mayors openly defiant of the Council's power to make laws—but they do arise. When they do, the courts are empowered to step in. Article 78 provides a remedy.

As this Court is well aware, Article 78 proceedings are "special proceeding[s]" available to remedy deviations from legal norms committed by government officials. "A proceeding pursuant to CPLR article 78 is designed to compel, prohibit, or review the action of a body, officer, or corporation in the performance of its duties." *Levine v. Bd. of Educ. of City of New York*, 186 A.D.2d 743, 745 (1992). A limited set of remedies is available under Article 78,

[9] In brief, the budget process and timeline as set forth in the Charter is as follows: First, the Mayor submits a preliminary budget to the City Council by January 16 of each year. N.Y.C. Charter § 236. The City Council holds public hearings on the Mayor's preliminary budget and provides its budget response to the Mayor by April 1. N.Y.C. Charter § 247. The Mayor releases an executive budget by April 26 and the City Council holds public hearings on the executive budget as presented by the Mayor between May 6 and May 25. N.Y.C. Charter §§ 249, 253. The City Council is then granted the authority to adopt the budget for the ensuing fiscal year, which begins on July 1. N.Y.C. Charter §§ 226, 254.

including the remedy of mandamus to compel. *See* CPLR 7803(1). "Mandamus to compel lies where an administrative body has failed to perform a duty enjoined upon it by law, the performance of that duty is mandatory and ministerial rather than discretionary, and there is a legal right to the relief sought." *Hoffman v. N.Y. State Indep. Redistricting Comm'n*, 2023 WL 8590407, at *11 (N.Y. Dec. 12, 2023).

The Court of Appeals has determined that, through mandamus to compel, it is "[w]ithin [a] court's competence to ascertain whether an administrative agency has satisfied the duty *that has been imposed on it by the Legislature* and, if it has not, to direct that the agency proceed forthwith to do so." *Klostermann*, 61 N.Y.2d at 531(emphasis added). This is because, under this writ, "[a] subordinate body can be directed *to* act, but not *how* to act, in a manner as to which it has the right to exercise its judgment." *People ex rel. Francis v. Common Council*, 78 N.Y. 33, 39 (1879) (emphasis added).

Here, the Council seeks only to compel the Mayor to act and implement the CityFHEPS laws. The Council does not seek that this Court instruct the Mayor on *how* to implement these laws, only that his administration take action to do so. Moreover, no discretion is required to implement the CityFHEPS Reform Laws. The Council seeks an order compelling the Administration to take ministerial steps to update program criteria consistent with legislative mandate. To order as much would "[n]ot involve the courts in resolving political questions or making broad policy choices," because "[t]he City Council made the policy and political decisions and arranged its priorities in enacting" the CityFHEPS Reform Laws. *Nat. Res. Def. Council, Inc. v. N.Y.C. Dep't of Sanitation*, 83 N.Y.2d 215, 221 (1994). Here, the Council "ask[s] only that the . . . program be effectuated in the manner that it was legislated." *Id.* (quoting

Klostermann, 61 N.Y.2d at 537). This relief is well within the bounds of the limited remedies available under Article 78.

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The Council does not bring this action lightly. In the Council's modern history, it has rarely been forced to seek a court's assistance to compel the Mayor to effectuate its laws. Yet to do nothing here in the face of the Mayor's dereliction of duty would harm not only the citizens of our City, but also our system of government. By refusing to enforce a duly enacted law of New York City's legislative branch, the Mayor assumes legislative power he does not possess. This usurpation of the legislature's authority violates the doctrine of separation of powers. *Rapp v. Carey*, 44 N.Y.2d 157, 160 (1978). "The Framers with memories of the tyrannies produced by a blending of executive and legislative power rejected that political arrangement." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 633 (1952).

CONCLUSION

For the above reasons, Intervenor-Petitioner-Plaintiff the Council of the City of New York requests that this Court grant the relief sought in the Article 78 Petition in Intervention by declaring that the CityFHEPS Reform Laws are not preempted and do not curtail any budgetary powers and ordering that the Mayor of the City of New York implement the laws.

Dated: February 21, 2024
New York, New York

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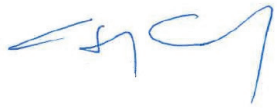
CERTIFICATION UNDER UNIFORM CIVIL RULE 202.8-b

Pursuant to rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court, I certify that this memorandum of law complies with that rule because it is 6,768 words long.

Dated: February 21, 2024
New York, New York



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