New York Supreme Court

Appellate Division—First Department

In the Matter of the Application of

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

Petitioners-Appellants,

For a Judgment Pursuant to Article 78 of The Civil Practice Law and Rules

– against –

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

Respondents-Respondents.

Appellate Case No.: 2024-05186

(For Continuation of Caption See Inside Cover)

MEMORANDUM OF LAW OF PETITIONER-PLAINTIFF-APPELLANT THE COUNCIL OF THE CITY OF NEW YORK IN OPPOSITION TO MOTION FOR LEAVE TO APPEAL

JASON A. OTAÑO
NWAMAKA G. EJEBE
OFFICE OF THE GENERAL COUNSEL FOR THE NEW YORK CITY COUNCIL
250 Broadway, 15th Floor
New York, New York 10007
(212) 482-2969
jotano@council.nyc.gov
nejebe@council.nyc.gov

ANDREW G. CELLI, JR.
LAURA KOKOTAILO
EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
One Rockefeller Plaza, 8th Floor
New York, New York 10020
(212) 763-5000
acelli@ecbawm.com
lkokotailo@ecbawm.com

Attorneys for Petitioner-Plaintiff-Appellant The Council of the City of New York

New York County Clerk's Index No. 450563/24

CP COUNSEL PRESS (800) 4-APPEAL • (385145)

THE COUNCIL OF THE CITY OF NEW YORK,

Petitioner-Plaintiff-Appellant,

– against –

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

Respondent-Defendant-Respondent.

TABLE OF CONTENTS

PAGE NO.

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

This Court correctly and unanimously concluded, in a thorough and well-reasoned 15-page opinion, that the New York City Council's package of legislation modifying the City's rental assistance program ("the CityFHEPS Reform Laws") was not preempted by the New York State Social Services Law or its regulations ("SSL").[1]

This case presents an application of straightforward, established principles of preemption and statutory construction. And, as this Court unanimously found, the State Legislature has never stripped the Council—the legislative arm of the "social services district"—of the power to make social services policy for City residents. Indeed, the statutory language expressly acknowledges a role for local legislation. *See, e.g.*, SSL §§ 56, 77. The Council exercised this long-established policymaking authority in enacting the CityFHEPS Reform Laws.

This Court should deny the motion because Respondents have not satisfied the requirements for relief. Respondents' motion rehashes arguments that this Court has already carefully reviewed and rejected. This Court's ruling does not create a split within the Appellate Division, and it perfectly aligns with prior Court

[1] Capitalized terms not otherwise defined have the meanings ascribed to them in Council's opening brief.

of Appeals precedent. No Court of Appeals review is necessary. Rather, this case should be resolved expeditiously so that the Mayor can finally take steps to implement the CityFHEPS Reform Laws and supply rental assistance to New Yorkers in need.

BACKGROUND

A. NYS Social Services Law and the preservation of the City's municipal home rule authority

Since 1923, the New York Constitution and the Municipal Home Rule Law have vested local governments with the power to "adopt and amend local laws . . . relating to . . . [t]he government, protection, order, conduct, safety, health and well-being of persons or property." N.Y. Const. art. IX, § 2(c); Mun. Home Rule Law § 10. Responding to the failure of rural counties to sufficiently provide for their vulnerable residents, in 1929, the Legislature enacted the precursor to the SSL, which established a state-mandated floor for assisting those in need. R. 2170, 2173. A few large cities, including New York City—all of which were already providing aid for their residents in need—were deemed "city public welfare districts" and were permitted to maintain local control and policy-making authority, with the State providing general oversight. R. 2171-72.

From the moment of enactment, it was clear that New York City retained its home rule policy-making authority in the areas covered by the law, so long as such authority was exercised in ways consistent with State objectives. R.

2172. Specifically, the precursor to SSL § 56 provided that covered cities "shall have all the powers and duties of a public welfare district insofar as *consistent with the provisions of the special and local laws relating to such cities* . . . ." R. 2173 (emphasis added). Commentators at the time noted the SSL did not "interfer[e] in any way with the powers of the cities under their charters or the City Home Rule Law." R. 2172. As time passed, the term "public welfare district" was replaced with "social service district," and the SSL was frequently amended, but the City's home rule powers never changed. R. 2173-74.

Once such amendment to the SSL took place in 1946. That year the Legislature passed the Ostertag Act in response to statewide inefficiencies in the administration of social services. With the Ostertag Act, the Legislature sought to "moderniz[e] [the] local welfare administration" and "slash[] centur[ies]-old red tape," by requiring, among other things, each social service district to dispense services through one local office and simplify their aid application process.[2] Notably, the Ostertag Act preserved the provisions of the SSL that acknowledged the City's role in policymaking. *See, e.g.*, SSL § 56. And the Governor expressly promised that the reorganization of the social services system would not diminish

[2] Thomas E. Dewey, Governor of the State of New York, Governor's Annual Message, (1947) at 19-20 ("In place of a patchwork of complexity and duplication, we shall have a simplified and coordinated system. For the first time, all of our sick and our needy will be served promptly and directly through a single, convenient local office. Investigations of all family needs, for all types of assistance and service, will be made by one agency, not several. Instead of a variety there will be a uniform standard of assistance and care within the individual county.").

the "strength and function of local government." Thomas E. Dewey, Governor of the State of New York, Special Message from the Governor (Jan. 30, 1946) at 5-6.

B. Regulation 352.3 authorization to "social services districts" to provide supplemental rental assistance

The SSL empowers the New York State Department of Social Services ("State DSS") to promulgate rules and regulations to effectuate its purpose. SSL § 34(3)(f). In the area of rental assistance, State DSS explicitly empowered "social services districts," including the City of New York, to "provide additional monthly shelter supplements to public assistance applicants and recipients who will reside in private housing, or who currently reside in private housing and are facing eviction." 18 NYCRR § 352.3. The City's legislative body, the Council, took seriously its obligations to provide for the City's most vulnerable residents, including the homeless and housing insecure. R. 1275-77.

To that end, and in response to a capacity crisis in the City's shelters exhausted by an increase in evictions and homelessness, the Council enacted the CityFHEPS Reform Laws in 2023. These laws loosened eligibility requirements for city-funded rental assistance to better target those most in need, and increased the amount of such payments to keep families most at risk of eviction from becoming homeless. The Council passed these bills into law over the Mayor's veto. R. 260-261. The stated bases for the Mayor's veto were budgetary impacts and policy differences with the Council. R. 260. After the bills went into effect, the

Mayor sat on his hands, refusing to implement the laws that would provide this sorely needed assistance to qualifying New Yorkers.

C. This Court's ruling that the CityFHEPS Reform Laws are not preempted

The Council filed an Article 78 petition in Supreme Court, and in litigation, the Mayor claimed that these bills are preempted by the SSL. The Trial Court (Frank, J.) denied the Council's petition, and this Court unanimously reversed on appeal, declaring that the CityFHEPS Reform Laws are not preempted by the SSL or its regulations.

Specifically, the Court found that there was no field preemption because the State's regulatory scheme "provides room for material local input." Decision & Order, *Vincent v. Adams*, 2025 N.Y. Slip. Op. 04146, at *6 (1st Dep't July 10, 2025). The Court reasoned that accepting Respondents' contention that the State occupied the entire field of rental assistance "would undermine the State policy of allowing for local input into rental assistance policy and intrude upon the City's home-rule prerogative to have a say in matters pertaining to the health and well-being of its citizens." *Id.* at *6-7. The Court also rejected the Mayor's conflict preemption argument, finding that Respondents could not be the "social services district" for the City, "and the failure of this starting premise dismantles his conflict preemption position." *Id.* at *8. The Court directed Respondents to

implement the CityFHEPS Reform Laws by making appropriate submissions to the New York State Office of Temporary and Disability Assistance.

ARGUMENT

Respondents' motion fails to establish grounds for leave to appeal. 22 NYCRR § 500.22(b)(4). It is undisputed that a potential appeal would not involve a conflict among the departments of the Appellate Division. And while the results of this lawsuit are of tremendous significance to the New Yorkers desperately in need of CityFHEPS vouchers, the legal questions in this case involve straightforward application of well-established preemption and statutory interpretation principles. This Court correctly reasoned that the SSL does not preempt the field of rental assistance; rather, the SSL and its regulations endorse local policymaking, and explicitly authorize the very type of policymaking that the Council engaged in here: offering additional rental assistance supplements to City residents above and beyond any public assistance required by the state. 18 NYCRR 352.3(i).

Respondents have not, and cannot, argue that this Court incorrectly applied those principles such that review by the Court of Appeals is warranted. Instead, Respondents rehash the same arguments this Court has already considered and rejected and incorrectly argue that this Court's ruling is in conflict with prior Court of Appeals precedent. Respondents' arguments fail for three main reasons.

A. Respondents' "absurd" statutory construction does not warrant further review by the Court of Appeals

Respondents' motion provides no answer—perhaps because they have none—as to how the Court of Appeals could respond differently to the core questions in this case: what is the "social services district" and who controls policymaking within the social services district? Despite the Mayor's convoluted argument that "social services district" somehow means City DSS, this Court correctly recognized that the SSL designates New York City itself as a "social services district." SSL §§ 61, 56. Because Regulation 352.3 authorizes a "social service district" to provide additional rental assistance supplements after consultation with the State, all parties agree that the "social service district" controls policymaking with respect to the CityFHEPS Program. Resp. Br. at 11.

This Court aptly noted that there were multiple reasons why the Respondents' statutory reading was flatly wrong and indeed "absurd," including that (*i*) the Respondents' interpretation violated the plain meaning of the phrase "city of New York"; (*ii*) it conflated two defined terms in the statutory scheme—"social services district" and "social services department"; and (*iii*) it would result in the "reorientation of the power to make policy judgments" from the City Council to the executive branch. *Vincent*, 2025 N.Y. Slip. Op. 04146, at *8.

Respondents' motion fails to address any of this or explain how the Court of Appeals could violate the principles of statutory construction in order to

give them their preferred reading of the statute. Court of Appeals intervention is not warranted to affirm this obviously correct result. Importantly, each of Respondents' preemption theories—conflict, field, and delegation—all rise and fall on the finding that City DSS is the "social services district." Resp. Br. at 23, 28, 32, 37. This alone is grounds to deny Respondents' motion.

B. The Ostertag Act did not strip the City of its Home Rule Authority

Repeating arguments made in their papers and during oral argument, Respondents contend that because the Ostertag Act's repeal of a provision of the SSL that permitted the passage of "local laws to make changes in the *administration* of public assistance and care within the city limits," NYSCEF Doc. No. 28, Resp.'s Mot. for Leave to Appeal ("Mot.") at 6-7 (emphasis added); *see* Resp. Br. at 30, there is conclusive proof that the Council has no authority to shape social services policy. This argument is flatly wrong, for a few reasons.

First, by enacting the Ostertag Act and repealing the quoted provision, the Legislature streamlined and standardized the administration of public assistance, but it did not remove the local legislature's powers to make *policy*. The Act left intact provisions of the SSL that recognized the City's role in policymaking. *See, e.g.*, SSL §§ 56, 77. As this Court has explained, there is a distinction between administering public assistance (which is the purview City DSS) and policymaking (a power vested in the City) in the area of rental

assistance. Thus "[w]hile the State DSS retains oversight of the administration of social services . . . the [SSL] and the implementing regulations allow for material local input in the formulation of rental assistance *policy*." *Vincent*, 2025 N.Y. Slip. Op. 04146, at *6 (emphasis added).[3]

Second, it stretches credulity to believe that the repeal of single subsection in the SSL stripped the City of its home rule authority.[4] The Council has reviewed the legislative history cited by Respondents, Resp. Br. at 3-4, and can find no support for this interpretation of the Ostertag Act.

Third, Respondents' reading of the Ostertag Act is belied by the City's historical reality—before and after the Ostertag Act, the Council routinely passed local laws setting social services policy for the City. *See, e.g.*, Local Law 33 of 1946 (establishing a new commission—led in part by the City DSS

[3] And contrary to Respondents' argument otherwise, Mot. at 7, Section 20(3)(a) of the SSL simply provides to City DSS officials the classic *administrative* tools of an executive agency—the power to make "rules, regulations and procedures." These are not the tools of policymaking.

[4] Respondents incorrectly suggest that the Council's authority to pass the CityFHEPS Reform Laws comes from Section 56 of the SSL. Mot. at 7. The Council's source of authority is the Constitution, Municipal Home Rule Law, and City Charter. Respondents also misunderstand the source of the Board of Alderman's power to legislate in this area. For the first time in this litigation, the Mayor argues that the Council's predecessors, "the Boards of Estimate and Alderman" "did not have policymaking authority over social services." Mot. at 8. As their only proof point, Respondents cite to a provision in the 1909 City Charter that directs the Board of Alderman to make apportionments for public assistance. *Id.* (citing 1909 N.Y. City Charter, ch. 13 § 662). However, Respondents fail to acknowledge other sections of the 1909 Charter, which are the ones that grant the Board of Alderman broad legislative powers, including the power to make laws "for the preservation of the public health, peace and prosperity of [New York] [C]ity and its inhabitants," 1909 N.Y. City Charter, ch. 13 § 43 (cleaned up). *See also id.* §§ 17, 44, 49.

Commissioner's predecessor—for the foster care of children); Local Law 34 of 1960 (by the request of the Mayor, permitting City DSS's predecessor to provide care for minors living in poverty); Local Law 230 of 1964 (by request from City DSS Commissioner's predecessor, providing conditions for when the Commissioner may place minors in agency boarding homes); *see also* R. 2175-77; R. 253. And, as this Court recognized, the Council has frequently used its legislative power to legislate in the realm of social services, reforming the CityFHEPS program in 2021, regulating City DSS's use of housing shelters, establishing City DSS sub agencies, and requiring City DSS to implement access to counsel for New Yorkers facing eviction. *Vincent*, N.Y. Slip. Op. 04146 at *7.

Fourth, the Court of Appeals has already weighed in on this question in the Council's favor, emphasizing that the Council has policymaking authority under the umbrella of social services. In *Matter of Hernandez v. Barrios-Paoli*, the Court of Appeals rejected the argument that only City DSS, not the City Council, could make City policy in a particular area of social services. 93 N.Y.2d 781 (1999).[5]

[5] Equally unavailing is Respondents' argument that Sections 77 and 88 of the SSL are duplicative of the Council's plenary local lawmaking authority under the Constitution. Mot. at 7. This is inaccurate. These provisions set out the Legislature's dictates that the City "shall"—not simply can—fund the SSL's public assistance programs, SSL § 88; that the Council—not the Mayor—should make key appointment authorizations, SSL § 77(4); and if the Council, at its discretion, seeks to pass a local law transferring City DSS Commissioners' responsibilities to another agency head then the City DSS Commissioners' *State* powers and duties will also be transferred to the other agency head SSL § 77(3).

C. This Court's ruling perfectly aligns with Court of Appeals precedent

Respondents argue that leave to appeal is warranted in part because this Court's ruling is in conflict with Court of Appeals precedent. Oddly, in their motion, Respondents do not discuss *Hernandez*—a case that directly addresses whether local lawmaking is permissible to supplement the SSL. Instead, Respondents insist that Court of Appeals precedents dealing with the principal-agent relationship between State DSS and local social services commissioners are in conflict with this Court's ruling. They are not.

Neither *Beaudoin v. Toia*, 45 N.Y.2d 343, 347 (1978) nor *Thomasel v. Perales*, 78 N.Y.2d 561, 570 (1991) conflict with this Court's ruling. In *Beaudoin*, the Court of Appeals held that the State's decision as to a particular individual's eligibility for benefits was binding on a local social services commissioner as the "agent" of State DSS, and the local commissioner lacked standing to challenge its principal's decision. 45 N.Y.2d at 347. *Beaudoin* stands for the unremarkable proposition that local commissioners must administer the distribution of funds pursuant to State DSS's interpretation of State regulations. The decision does not stand for the proposition that a municipality is precluded from legislating in the area of social services. Likewise, *Thomasel* resolved a dispute over attorneys' fees based on the principal-agent relationship between State DSS and City DSS, concluding that State DSS could be held vicariously liable for attorneys' fees

awarded to a prevailing plaintiff. 78 N.Y. 2d at 570-71. Again, this ruling had nothing to do with local lawmaking at all.

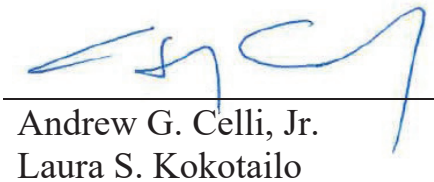
This Court's decision carefully analyzed the relationship between State DSS, City DSS, and the Council. The ruling acknowledged, as in *Beaudoin* and *Thomasel*, that State DSS "retains oversight of the administration of social services." *Vincent*, N.Y. Slip. Op. 04146 at *7. And, as in *Hernandez*, this Court came to the conclusion that local lawmaking is permissible to build on the "skeletal framework" of the SSL so long as the local law "effectuates the intent" of the SSL. *Hernandez*, 93 N.Y.2d at 788. This Court's ruling sings in perfect harmony with these Court of Appeals precedents, and there is no tension among the decisions that needs to be resolved.

CONCLUSION

There is no need for Court of Appeals review of the unanimous and thoroughly-reasoned decision of this Court. The homelessness, eviction, and shelter-capacity crises that motivated the passage of the CityFHEPS Reform Laws in 2023 still persist today. New Yorkers urgently need the relief that these laws will provide. They must be implemented now, with no further delays. Respondents' motion for leave to appeal should be denied.

Dated: September 2, 2025
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP



Andrew G. Celli, Jr.
Laura S. Kokotailo

One Rockefeller Plaza, 8th Floor
New York, New York 10020

(212) 763-5000

OFFICE OF THE GENERAL
COUNSEL FOR THE NEW YORK
CITY COUNCIL

Jason Otaño
Nwamaka Ejebe
Jeffrey Campagna
Amanda Delgrosso

(212) 482-2969

250 Broadway, 15th Floor
New York, NY 10007

Attorneys for Petitioner-Plaintiff-Appellant