To be Argued by:
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(Time Requested: 30 Minutes)

APL-2025-00188
New York County Clerk's Index No. 450563/24
Appellate Division–First Department Case No. 2024-05186

Court of Appeals

of the

State of New York

In the Matter of the Application of

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

Petitioners-Respondents,

(For Continuation of Caption See Inside Cover)

BRIEF FOR RESPONDENT THE COUNCIL OF THE CITY OF NEW YORK

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June 23, 2026

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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 and THE CITY OF NEW YORK,

Respondents-Appellants.

THE COUNCIL OF THE CITY OF NEW YORK,

Petitioner-Plaintiff-Respondent,

– against –

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

Respondent-Defendant-Appellant.

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PRELIMINARY STATEMENT

In 2023, faced with a housing crisis of immense proportions, the New York City Council passed a package of laws reforming the CityFHEPS housing voucher program ("CityFHEPS"). These laws (the "CityFHEPS Reform Laws") were designed to assist households facing eviction or homelessness and to ease the burden on the City's overstretched shelter system. The Mayor of New York City (then and now) disagreed with the Council's policy choice and has refused to implement the laws, arguing that the CityFHEPS program is costly and has not achieved its stated goals of reducing the population of the City's shelters. The Mayor's policy critique of the program overlooks the key fact that the City has not provided the resources, administrative capacity, or housing access needed for the CityFHEPS program to thrive. But policy arguments are one thing; the law is something else entirely. Rather than following the law as passed and partnering with the Council to work on additional reforms, the Mayor simply refused to act at all. When challenged, he invoked—and now invents—legal doctrines in a bid to avoid his responsibility as the City's executive to execute the laws.

At bottom, the Mayor seeks to strip the Council of its historical power to engage in policymaking for New Yorkers in need. Instead of working with the Council, and confining the policy debates to the court of public opinion, the Mayor argued the CityFHEPS Reform Laws are preempted by New York State's Social

Services Law (the "SSL"). The Appellate Division, First Department rejected the Mayor's arguments, holding that nothing in the SSL or its implementing regulations preempts the Council from passing the CityFHEPS Reform Laws.

In this appeal, the Mayor once again asks this Court to reject the plain language of the SSL to conjure a sweeping and heretofore unrecognized theory of "preemption" that would grant his administration exclusive authority over all policymaking related to city-funded rental assistance and all other subjects touched by the SSL. Doing so would transfer policymaking powers from the City's legislative body to the Mayor and relegate the Council to a mere rubber stamp on appropriations—all absent any clear expression that the Legislature intended this result. No statutory text, regulatory text, or legislative history supports the Mayor's position. The First Department rightly rejected the Mayor's baseless attack on the separation of powers. This Court should affirm.

The SSL explicitly grants the Council the power to legislate in the area of rental assistance, as it did here. Section 61 of the SSL identifies the City of New York as a city social services district and 18 § NYCRR 352.3(a)(3)(i) expressly authorizes "social services districts" to offer rental assistance supplements over and above a state-mandated floor, which the CityFHEPS Reform Laws do. The State's Office of Temporary Disability Assistance ("OTDA") reserves the right to

review and approve or disapprove these supplements, thereby preserving State oversight.

The Mayor's argument is based entirely on the notion that, even though Section 61 of the SSL designates the *City of New York* as a social services district, the Legislature actually intended to afford all policy-making power to the Mayor and his agency, the New York City Department of Social Services (City DSS), to the exclusion of the City Council. This construction of the statute can be summarized as "La ville, c'est moi." It completely discounts the Council's role in City government, eliminates the clear distinction that the Legislature made between the executive branch and the City, and was rightly described by the First Department as "absurd."

If accepted, the Mayor's arguments would not only invalidate the CityFHEPS Reform Laws; they would threaten a host of laws that have been on the books for years. The Council has legislated in the area of rental assistance for over 35 years, and in the area of social services for more than a century. The SSL did not nullify the Council's constitutional home-rule powers—to pass local laws relating to the health, safety, and wellbeing of New Yorkers—which are enshrined in the New York Constitution and Municipal Home Rule Law. This Court should not do so either.

QUESTION PRESENTED

(1) Whether the First Department correctly held that the CityFHEPS Reform Laws are not preempted by state law.

STATEMENT OF THE CASE

I. THE NEW YORK STATE SOCIAL SERVICES LAW

The New York Social Services Law has existed in various iterations since the 1920s. R.1269-75. It covers a large array of subject matter areas, including housing and rental assistance, foster care, veterans' assistance, assistance to people with disabilities, residential programs for adults and children, and services for victims of domestic violence and human trafficking. The SSL also establishes State DSS and delineates its powers. SSL §§ 5-20.

Recognizing the role of localities in administering and delivering social services to their citizens, the SSL divides the State into "social services districts." The SSL charges each "social services district" with the responsibility "for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance." SSL § 62(1). The statute defines the term "city social services district" as "the City of New York." SSL § 61. Each of the other counties in the state is designated as a "county social services district." *Id.* All cities other than New York City are part of the "county social services district" for the County in which they are located. SSL § 57.

The SSL also recognizes that each “social services district” must have within it a “social services *department*,” a government office whose function includes the delivery of state-funded public assistance benefits (*i.e.*, transfer payments, or what is commonly called “welfare”). *See* SSL §§ 66 (emphasis added), 77. The law defines a “social services department” as “the division or officer of city government or the office or official or board charged with the authority to administer public assistance or care in the county social services district.” SSL § 2(17). It is the duty of social services officials operating these departments “to provide adequately for those unable to maintain themselves.” SSL § 131(1).

Notably, the SSL delineates separate powers and duties for city social service districts and county social service districts. Title 3 of Article 3 of the SSL discusses County social service districts. SSL §§ 65-73. Title 4 of Article 3 of the SSL discusses City social service districts. SSL §§ 76-79. An important distinction between the two types of social services districts is that Section 65 expressly states that a county commissioner of social services “shall act as the agent of the [State] department in all matters relating to assistance and care administered or authorized by the town public welfare officers.” SSL §§ 65(3), 2(1). In Title 4, which relates to city social services districts, the word “agent” does not appear.

The SSL explains that "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." SSL § 56. Germane to this appeal, the SSL also provides that 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." *Id*. Thus, while it is clear that the commissioner of social services is charged with the authority to *administer* social services, nothing in these provisions delegates to such commissioner the exclusive authority to *make policy* related to social services. Certainly, nothing in the statute expressly preempts local law. In the case of the New York City, the power to make policy at the local level rests with "the City of New York"—including its legislative branch, the Council.

State regulations make this point specifically: regulations promulgated under the SSL empower local "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(a)(3)(i). Such payments are "rental assistance." Where a "social services district" develops a plan to provide supplemental rental assistance for public assistance applicants and recipients, the "social services district" must submit the plan to the New York State Office of

Temporary Disability Assistance ("OTDA") for review and approval. *Id.* The regulation authorizes the social services district—not exclusively the Mayor or City DSS—to decide to provide additional shelter supplements.

II. THE COUNCIL HAS CONSISTENTLY USED ITS LEGISLATIVE AUTHORITY TO PASS LAWS AFFECTING THE DELIVERY OF SOCIAL SERVICES, INCLUDING HOUSING-RELATED SUPPORT

The Council is the "legislative body of the city," vested with "the legislative power of the city, " N.Y.C. Charter § 21, while the Mayor is the "chief executive officer of the city." N.Y.C. Charter § 3. This structure follows typical separation of powers principles: the "[l]egislature make[s] the critical policy decisions, while the executive branch's responsibility is to implement those policies." *Greater N.Y. Taxi Ass'n v. N.Y.C. Taxi & Limousine Comm'n*, 25 N.Y.3d 600, 609 (2015) (first alteration in original) (quoting *Borquin v. Cuomo*, 85 N.Y.2d 781, 784 (1995)). Thus, under principles of home rule, as the City's legislative body, the Council has the power to legislate on areas relating to the safety, health, and well-being of City residents, while the Mayor carries out those laws. In the case of social services-related laws, City DSS, an agency under direct control of the Mayor, has that function. *See* N.Y.C. Charter §§ 601-04; SSL §§ 66, 67. The New York City Charter expressly contemplates that City DSS will act pursuant to both state and local law—the latter being a function of the Council—in the area of "outdoor relief"—*i.e,* social services. N.Y.C Charter § 603 ("[N]o form of outdoor relief

shall be dispensed by the city except under the provisions of a *state or local law* which shall specifically provide the method, manner and conditions of dispensing the same." (emphasis added)).[1]

Operating under these established principles of home rule and separation of powers, the Council has passed laws relating to social services, and even laws that direct City DSS to take particular actions, for decades. For example:

- Local Law 18 of 1990, a law that prohibits the City of New York from using so-called "Tier I shelters" to house families within the five boroughs. Notably, Local Law 18 was passed and implemented in New York City, even though Tier I facilities were otherwise permitted by state law statewide. R.2175-76.
- Local Law 57 of 1998, which established the City Department of Homeless Services ("DHS") within City DSS, set population limits for shelters for adults, required that beds be available for individuals seeking assistance at Emergency Assistance Units, and directed DHS to provide case management services. R.2176.
- Local Law 6 of 1999, a law that permits homeless shelters to operate in excess of the 200-person limit under certain circumstances. R.2176.
- Local Law 43 of 2002, a law that requires City DSS to provide emergency shelter and services to victims of domestic violence—and prohibits City DSS from denying services solely based on lack of documentary evidence of the domestic violence incident. R.2176.
- Local Laws 81 and 82 of 2005**,** which require City DSS to increase the number of eligible New Yorkers enrolled in the federal food stamp program, and direct City DSS to waive the face-to-face interview requirement and develop an online application system for the program. R.2177.

[1] "Outdoor relief" is assistance to alleviate poverty for individuals outside an institution. Most modern public assistance is outdoor relief.

- Local Law 62 of 2014, a law requiring DHS to grant a presumption of eligibility for shelter applicants exiting Human Resources Administration ("HRA") domestic violence shelters. R.2176.

- Local Laws 160, 164, and 165 of 2019, laws that require City DSS and HRA to: (1) provide systems for clients to reschedule appointments by phone; (2) provide spaces for children at job and SNAP centers; (3) establish a pilot program for providing social work services at job centers run by City DSS; and (4) establish an office of constituent services within City DSS. *See* R.2177.

- Local Laws 53 and 54 of 2021, laws that requires City DSS's Office of Civil Justice to implement access to legal services for tenants facing eviction in all City zip codes, and for the Office of Civil Justice Coordinator—a City DSS officer—to work with community groups to educate tenants about their rights in housing court. R.2176.

- Local Law 35 of 2023, a law that directs the City's DHS to maintain a ratio of one full-time mental health provider per fifty families with children in each shelter for families with children. R.2176-77.

III. THE CITYFHEPS PROGRAM AND RELATED COUNCIL LEGISLATION

In 2018, the City launched a program known as the Family Homelessness and Eviction Prevention Supplement—the CityFHEPS program—which consolidated several pre-existing local rental assistance programs under a single programmatic umbrella. R.310-11. CityFHEPS is a City-funded program, paid for by City tax dollars; it provides rental assistance vouchers to people who currently reside in private housing but are vulnerable to eviction, and to those who currently live in shelters. R.100-01; R.310-11. The CityFHEPS program identifies the families most in need and provides targeted rental assistance to address these dire cases of housing insecurity. *See* R.311. The program is administered by City

DSS, in conjunction with HRA and DHS—these agencies process applications and get vouchers in the hands of qualifying applicants. R.251.

The Council has, for years, passed legislation that reshapes CityFHEPS and alters its eligibility criteria. In 2021, the Council enacted Local Law 71 of 2021, which modified the maximum rent toward which a CityFHEPS voucher could be applied, directing that it must be set—and increased annually—at the same rate as levels utilized by the Section 8 program. R.252-53. The same year, the Council enacted Local Laws 157 and 170 of 2021, which directed City DSS to change CityFHEPS eligibility requirements for youths in foster care and those living in runaway and homeless-youth shelters. R.253. Then-Mayor de Blasio signed all three pieces of legislation into law. And in 2023, the Council passed Local Law 64 of 2023, which requires City DSS to provide CityFHEPS rental assistance payments through an electronic funds transfer. R.253. Mayor Adams signed this bill into law. R.253.

IV. THE CITYFHEPS REFORM LAWS

Against this backdrop, in 2023, the Council legislated to further modify CityFHEPS. With the City experiencing escalating homelessness, eviction, and shelter-capacity crises, the Council undertook to address these interrelated issues. The Council considered whether reforms to the CityFHEPS program could bring about needed change, including by revising the program's overly restrictive

income and maximum rent requirements to make the program more effective. R.253-54; R.257-59. The Council held three public hearings to study possible reforms to CityFHEPS. R.257. Over seventy witnesses, including service providers, policy experts, Adams administration officials, CityFHEPS recipients, and unhoused New Yorkers testified. R.257.

After considering the issue, the Council enacted the CityFHEPS Reform Laws: Local Laws 99, 100, 101, and 102 of 2023. These laws were designed to loosen eligibility requirements for CityFHEPS vouchers and enhance the city-funded rental assistance provided to those most in need. For example, the Reform Laws increased the income eligibility threshold, eliminated the 90-day shelter residency requirement, eliminated work requirements, prohibited City DSS from deducting a utility allowance from the maximum rental allowance for a voucher, and expanded eligibility requirements to include individuals at risk of eviction (not just those already living in a shelter, evicted, or in eviction proceedings). R.255-56. The Council passed each bill by a vote of 41 to 7.

Then-Mayor Eric Adams vetoed all four bills. He objected to the bills on budgetary and policy grounds, and he suggested that the laws were invalid because the SSL exclusively delegates policymaking authority to City DSS. R.260; R.1687.

The Council overrode the Mayor's veto by a vote of 42 to 8, a supermajority vote well in excess of a two-thirds majority. R.261.

The four bills became law and went into effect on January 9, 2024. R.261. Yet Mayor Adams refused to implement the CityFHEPS Reform Laws, nor did he challenge them in court.

V. PROCEDURAL HISTORY

On February 14, 2024, seven individuals (represented by the Legal Aid Society) initiated an Article 78 proceeding seeking an order directing that the Mayor implement the CityFHEPS Reform Laws. R.13. The Council intervened in the proceeding and filed a petition-complaint in intervention. R.248-69. The Council sought an order directing the Mayor to implement the laws, or, alternatively, a declaration that the laws are valid. R.267. The Mayor opposed, arguing that the CityFHEPS Reform Laws were preempted because they conflicted with the SSL. R.196-204.

The Supreme Court (Frank., J.) denied the petition and dismissed the proceeding, holding that the CityFHEPS Reform Laws were preempted under the doctrine of field preemption. R.9-10. In barely a page-and-a-half of "Discussion" of the legal issues in this case, the Supreme Court held that the "social services district" with exclusive authority to make social services policy for the City was City DSS (a mayoral agency), not the City as a municipality, and not its legislative

branch, the Council. R.10. The Supreme Court relied primarily on a 1978 decision, *Beaudoin v. Toia*, 45 N.Y.2d 343 (1978), concluding that because City DSS is an "agent" of State DSS, it cannot be directed to act by the Council. R.9-10.

The Council and the individual petitioners appealed to the First Department. R.2-3. On appeal, the Mayor argued that (1) the CityFHEPS Reform Laws were field preempted, because the State had preempted the field of "public assistance," and (2) the CityFHEPS Reform Laws were conflict preempted, because they conflicted with the SSL's allegedly-exclusive delegation of authority to City DSS to make policy regarding rental assistance. *See Vincent v. Adams*, 243 A.D.3d 1, 8-9 (1st Dep't 2025).

The Appellate Division, First Department rejected both arguments and reversed the Supreme Court's Order denying the Petition. *Id.* at 13-14. It held that the CityFHEPS Reform Laws were not preempted by the SSL.

First, the First Department held that the State has not preempted the field of rental assistance "expressly or implicitly." *Id.* at 10. Rather, "State policy regarding social services generally, and rental assistance specifically, is one of state and local collaboration, subject to State coordination." *Id.* at 10-11. Such provision for local collaboration is inconsistent with the notion of field preemption. *Id.* at 11.

The State's policy of state-local "collaboration" is reflected, among other places, in 18 NYCRR § 352.3, a state regulation that expressly authorizes "proposed local supplementation of State mandated and approved rental assistance." *Id.* Given that the state explicitly "allow[s] for material local input in the formulation of rental assistance policy," "allowing for local legislation in this arena would neither inhibit the application of the State's laws nor thwart the implementation of the State's policy concerns." *Id.*

Second, the First Department held that the CityFHEPS Reform Laws were not conflict preempted. The Mayor had argued that the SSL delegated exclusive policymaking authority related to rental assistance to City DSS and thus the Council's passage of the CityFHEPS Reform Laws conflicted with that State delegation of authority. *Id.* at 12. That argument was premised on the Mayor's notion that City DSS is both the social services district and its department. *Id*. at 14. The First Department rejected this argument: it is plain from the text of the statute and the legislative history that the "social services district" is "the City itself . . . not the City DSS." *Id.* at 12-13. Therefore, the "City itself, as the social services district, has the right to propose shelter supplements under 18 NYCRR § 352.3, and the City Council, as the legislative branch of City government, has the right to pass local laws crafting putative shelter supplements." *Id.* at 13. The First Department found that the Mayor's argument misreads the SSL and ignores the

statutory distinction between "social services districts," the City of New York, SSL § 61, and "social services departments." *Id.* at 12-13. The Court noted the "plain, commonly understood meaning [of] 'the City of New York' is the City itself and all of its constituent parts, including the Mayor and the City Council." *Id.* (citing N.Y.C. Charter §§ 3, 21, and *Matter of New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Dept. of Health and Mental Hygiene*, 23 N.Y.3d 681, 693-694 (2014)). The Court observed that the SSL regulation found at 18 NYCRR § 352.3(a)(3)(i) specifically delegates to "social services districts," the power to authorize supplemental rental assistance like CityFHEPS. *Id.* The Court concluded, "The City itself, as the social services district, has the right to propose shelter supplements under 18 NYCRR § 352.3, and the City Council, as the legislative branch of city government, has the right to pass local laws crafting putative shelter supplements." *Id.* at 12-13.

The statutory distinction between social services districts, like the City itself, and social services departments, like City DSS, "recognizes that those two entities have separate roles under the statutory scheme": the "City itself . . . is responsible for the social service needs of the district's inhabitants, while the City DSS . . . is charged with the administration of the assistance and care to be provided." *Id.* at 13. The First Department further held that, to adopt the Mayor's argument "would [] result in a reorientation of the power to make policy judgments . . . from the City

Council to the executive branch, a result we cannot endorse in the absence of a clear intention by the [L]egislature." *Id.* at 13.

The First Department reversed Supreme Court's decision and directed the Mayor and City DSS to implement the CityFHEPS Reform Laws "by making an appropriate submission or submissions" to OTDA. *Id.* at 14.

The Mayor sought leave to appeal to the Court of Appeals, and the First Department granted leave on October 7, 2025.

ARGUMENT

The CityFHEPS Reform Laws are not preempted, and the Mayor has not identified—and cannot identify—any authority to the contrary. Consistent with its home rule authority, and pursuant to 18 NYCRR § 352.3(a)(3)(i), the New York Council was fully authorized to pass the CityFHEPS Reform Laws. While the Mayor argues that the SSL vested exclusive authority to enact the CityFHEPS Reform Laws with City DSS, *see, e.g.*, App. Br. at 3, 23, 26, there is nothing in the text, regulations, or the legislative history to support this conclusion. All available evidence points in the opposite direction: to the conclusion that the Legislature and State DSS sought to encourage local innovation through local legislative action, promoting shared power and responsibility to provide benefits to people in need.

I. THE CITYFHEPS REFORM LAWS ARE NOT PREEMPTED

The New York State Constitution "grants local governments the power to enact 'local laws not inconsistent with the provisions of the constitution or any general law' relating to certain specified subjects, including the 'safety, health and well-being of the locality's persons or property." *Glen Oaks Vil. Owners, Inc. v. City of New York*, 44 N.Y.3d 468, 473 (2025) (quoting N.Y. Const., art. IX, § 2(c)(ii)(10), Mun. Home Rule L. § 10(1)(ii)(a)(12)). "State law can preempt local law in one of two ways: either through conflict preemption . . . or field preemption." *Id.* at 473. The CityFHEPS Reform Laws do not conflict with state law under either theory.

In his brief to this Court, the Mayor barely mentions the word "preemption" —even though "preemption" was the only basis under which he argued below that the CityFHEPS Reform Laws were invalid, R.196-204; *see Vincent*, 243 A.D.3d at 8-9, and it was the theory under which both the Supreme Court and First Department assessed this case, R.9-10; *Vincent*, 243 A.D.3d at 9-13. The First Department correctly ruled that the Reform Laws were neither conflict preempted nor field preempted. The Mayor's passing reference to preemption here, App. Br. at 22-23, cannot overcome the First Department's reasoned decision. The Mayor blurs the lines between field and conflict preemption, but these are distinct

analyses defined in case law. Actual analysis under these well-established standards shows the CityFHEPS Reform Laws are not preempted.

As a threshold matter, having been duly enacted under the Council's home rule powers, the CityFHEPS Reform Laws enjoy a presumption of validity. *Metro. Package Store Ass'n Inc. v. Koch*, 89 A.D.2d 317, 324 (3d Dep't 1982); *cf. Lighthouse Shores, Inc. v. Town of Islip*, 41 N.Y.2d 7, 11 (1976) (presumption of constitutionality of local legislative enactments can only be overcome "beyond a reasonable doubt").[2] The Mayor does not argue otherwise.

A. The CityFHEPS Reform Laws Are Not Field Preempted

Field preemption occurs "when a local government legislates in a field for which the State Legislature has assumed full regulatory responsibility." *DJL Rest. Corp. v. City of New York*, 96 N.Y.2d 91, 95 (2001). Field preemption requires that the State "intend[ed] to occupy a particular field," whether the intention is "express or implied." *Glen Oaks*, 44 N.Y.3d at 473. "When the State *has* assumed that responsibility and preempted the entire field, a local law regulating the same subject matter is deemed inconsistent with state law for purposes of the home rule provision if it either [1] prohibits conduct which the state law, although

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[2] Preemption is a constitutional question, because the New York Constitution's home rule provision permits municipalities to adopt local laws "so long as such local laws are 'not inconsistent' with the constitution or general state laws," *i.e.*, not preempted. *Police Ben. Ass'n*, 40 N.Y.3d at 423 (quoting N.Y. Const., art IX, § 2(c)(10)).

perhaps not directly speaking to, considers acceptable or at least does not proscribe, or [2] imposes additional restrictions on rights granted by state law." *Police Ben. Ass'n of City of New York v. City of New York*, 40 N.Y.3d 417, 423 (2023) (quoting *Jancyn Mfg. Corp. v. Cnty. of Suffolk*, 71 N.Y.2d 91, 97 (1987)) (cleaned up).

When analyzing whether the State has expressed an intent to occupy a field, the field must be defined with sufficient specificity.[3] The Mayor suggests the field is the vast body of social services regulations. However, the Council has always maintained—and the First Department agreed—that the proper field is rental assistance. *See Vincent*, 243 A.D.3d at 10.

Here, the State has not occupied the field of rental assistance because the SSL neither expressly nor by implication demonstrates the State's intent to occupy that field. Instead, the SSL regulations expressly authorize local policymaking subject to approval by OTDA. Thus, just as in *Glen Oaks*, the State "recognize[s]

[3] *See, e.g.*, *Killett-Williams v. Bloomberg*, 2003 NY Slip Op. 30217(U), 2003 WL 26090789 (Sup. Ct. N.Y. Cnty. May 5, 2003) (concluding that the state preempted the field of "regulat[ing] subsidized employment programs"); *Mayor v. Council*, No. 21-701, 2004 NYLJ LEXIS 5254, at *1 (Sup. Ct. N.Y. Cnty. Dec. 1, 2004) (same for "welfare to work" programs); *City of N.Y. v. Town of Blooming Grove Zoning Bd. of Appeals*, 305 A.D.2d 673, 674 (2d Dep't 2003) ("Regulation of adult-care facilities has been preempted by the state."); *Matter of Adkins v. Bd. of Appeals*, 199 A.D.2d 261 (2d Dep't 1993) (same); *Bloomberg v. Liu*, 43 Misc.3d 1203(A) (Sup. Ct. N.Y. Cnty. 2014) (same); *cf. DeStefano v. Emergency Hous. Grp.*, 281 A.D.2d 449 (2d Dep't 2001) (same).

that local government plays an important role in th[e] area," precluding field preemption. 4 N.Y.3d at 474.

The SSL and 18 NYCRR § 352.3 expressly permit localities to supplement State-mandated rental assistance—and that is exactly what the CityFHEPS Reform Laws do. In 2003, State DSS promulgated 18 NYCRR § 352.3. The regulation mandates that each social services district provide a set monthly rental assistance allowance to residents in need, *id.* § 352.3(a)(1), and it then provides that "a social services district, with the approval of [OTDA], may provide additional monthly shelter supplements to public assistance applicants and recipients who will reside in private housing, or who currently reside in private housing and are facing eviction," *id.* § 352.3(a)(3)(i). CityFHEPS rental vouchers are rental assistance supplements offered to individuals who will either exit the shelter system to reside in private housing, or who currently reside in private housing, are facing eviction, and will use the voucher to remain in private housing. R.253-56. CityFHEPS is exactly the type of "supplement" contemplated by 18 NYCRR § 352.3(a)(3)(i).

Because the SSL regulations expressly authorize local departures from the uniform state rental assistance requirements, it is impossible to infer that the Legislature intended for uniformity in rental assistance across the state. There is no way that the State can both preempt the field of rental assistance *and* encourage local innovation as to rental assistance, since field preemption requires a finding

that the state “prohibits a local government from legislating in a field or area of the law where the [state] legislature has assumed full regulatory responsibility.” *People v. Torres*, 37 N.Y.3d 256, 265 (2021).

The Mayor asks this Court to look to other provisions of State law for evidence that the Legislature intended to preempt the field of supplemental rental assistance, citing the Education Law and the Alcohol and Beverage Control Law. *See* App. Br. at 42-43. Whatever the preemptive effects of those laws may be, they do not change the fact that nothing in the SSL implies that the Legislature intended to preempt local laws in the field of supplemental rental assistance.

Contrary to the Mayor’s contention, *see id.*, as to field preemption at least, this is the end of the inquiry. The State cannot both preempt the field of rental assistance *and* encourage local innovation as to rental assistance; those two concepts are at war with one another. Field preemption requires a finding that the state “prohibits a local government from legislating in a field or area of the law where the [state] legislature has assumed full regulatory responsibility.” *Torres*, 37 N.Y.3d at 265. The record is clear that that has not occurred here.

B. The CityFHEPS Reform Laws Are Not Conflict Preempted

Conflict preemption occurs if a local law “directly or expressly conflicts with state law.” *Police Ben. Ass’n*, 40 N.Y.3d at 426. For a local law to be conflict preempted, there needs to be a “head-on collision” between that local law and state

law. *Lansdown Ent. Corp. v. N.Y.C. Dep't of Consumer Affs.*, 74 N.Y.2d 761, 764 (1989). For example, a local law is conflict preempted where it flatly prohibits conduct that is "specifically permit[ted]" by state law. *N.Y. State Club Ass'n, Inc. v. City of New York*, 69 N.Y.2d 211, 222 (1987).

No such "head-on collision" exists here. The Mayor points to no provision of the SSL vesting exclusive authority to pass rental assistance supplements to City DSS.[4] To the contrary, 18 NYCRR § 352.3 names the "social services district" as the entity that may provide supplemental rental assistance. The city "social service district" means "the City of New York." SSL §§ 56 ("The City of New York shall have all the powers and duties of a social services district."); 61 ("The City of New York" is a "city social services district"). The term the "City of New York" encompasses all its constituent parts including the City Council. *Vincent*, 243 A.D.3d at 13 (citing N.Y.C. Charter §§ 3, 21, and *N.Y. Statewide Coal.*, 23 N.Y.3d at 693-694). Hence it is for the City of New York, including its Council, to issue supplemental rental assistance. A local law enacted by the Council that provides

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[4] Any analogy to the Education Law is misplaced. The Education law does bestow authority over specified educational matters on the Chancellor, leaving no role for the City Council—that is explicit in the text. Education Law § 2590-h provides that the Chancellor "shall have the following powers and duties," including the authority to operate the City's high schools and to promulgate educational standards and curriculum requirements, *inter alia*. The State Legislature thus identified the governmental actor empowered to exercise those functions and correspondingly withdrew them from the sphere of local legislative action. No comparable language appears in the SSL. Nowhere does the Legislature vest exclusive *policymaking* authority in a local executive official, nor did it expressly withdraw legislative authority from the local legislative body. *See infra* Section III.A.1.

for supplemental rental assistance subject to approval by OTDA is not inconsistent with the SSL or its regulations.

The Mayor insists that the Legislature really meant to say that City DSS is a "social services district." App. Br. at 13-14. This construction is inconsistent with the plain language of the statute and this Court's precedents. "Where the language of a statute is clear and unambiguous, courts must give effect to its plain meaning." *People v. Kisina*, 14 N.Y.3d 153, 158 (2010) (citation omitted). When the statute says that the City of New York is a social services district, it means the City of New York—plain and simple. Far from a "head-on collision" with State law, the Council passing the CityFHEPS Reform Laws occurred exactly as the State authorized.

The Mayor also argues that, because City DSS has rulemaking authority, that authority somehow displaces local legislative power. This is wrong. SSL § 20(3)(a), acknowledges that State DSS supervises local social services departments, and can "approve or disapprove rules, regulations and procedures made by local social services officials." But the fact that a local social service *department* may promulgate rules says nothing about the separate authority of a social services *district*, acting through its legislative branch, to enact laws and make policy for the City. It certainly does not *a fortiori* divest a local legislature of its lawmaking and policymaking power.

To the contrary, legislative policymaking and executive rulemaking routinely coexist; this is often the way that government works. *Darweger v. Staats*, 267 N.Y.290, 306 (1935) ("More and more must the laws become general in form, leaving to . . . administrative bodies the establishment of rules and regulations and the determination of the facts to which the general law will apply."); *see, e.g.*, *Glen Oaks*, 44 N.Y.3d at 471-72 (recognizing that the state "Climate Act directs DEC to promulgate regulations"). Agency rulemaking "is not an exercise of legislative power, but rather an exercise of 'administrative' or 'executive' power." *Delgado v. State*, 39 N.Y.3d 242, 289 (2022) (Singas, J., dissenting). There is no basis to extrapolate, from a grant of rulemaking authority to an agency, that the State intended to displace a local legislature's lawmaking power.

The Mayor's argument would turn this ordinary allocation of government responsibilities on its head. To hold that a statute that gives an agency *rulemaking* power, necessarily and automatically displaces a legislature's *policymaking* power, would be exactly the kind of "absurd result[]" that courts must avoid in statutory interpretation. *Lubonty v. U.S. Bank Nat'l Ass'n*, 34 N.Y.3d 250, 255 (2019).

C. Encroachment is Not a Preemption Doctrine

Rather than analyze established preemption doctrines, the Mayor suggests that the CityFHEPS Reform laws "encroach" on City DSS's authority. The

Mayor's "encroachment" theory is invented; it lacks a basis in the law. Preemption is established through well-established doctrinal pathways (field preemption and conflict preemption), not vague assertions of "encroachment" or concerns about overlapping authority. Simply put, "encroachment" is not a standard for preemption analysis. And the CityFHEPS Reform Laws are not preempted under any standard for preemption.

II. THE SSL REAFFIRMS THAT POLICYMAKING AUTHORITY LIES WITH THE COUNCIL, AND ADMINISTRATION LIES WITH CITY DSS

The SSL distinguishes between policymaking and administration. Contrary to the Mayor's radical proposition that the SSL somehow displaces the Council's policymaking authority and vests that authority in City DSS, the statute, its implementing regulations, and settled principles of administrative law all distinguish between policymaking and administration—and they tell us who, among municipal actors, has which power.

Throughout the SSL, the responsibilities assigned to City DSS are administrative in nature. *See, e.g.*, SSL §§ 65(1) (county commissioners "shall administer the public assistance and care for which the county public welfare district is responsible"); 77(1) (city commissioners "shall administer the public assistance and care for which the city public welfare district is responsible"). The SSL also grants City DSS and State DSS rulemaking authority. SSL §§ 34(3)(f)

(state DSS responsibility to "establish regulations for administration of public assistance and care" throughout the state); 20(3)(a) (state DSS "shall approve or disapprove rules, regulations and procedures made by local social services officials"). Such rulemaking authority is a hallmark of an administrative agency. *See supra* at 23-24. And State DSS's role is to supervise the administration of public assistance. SSL § 34(3)(d) (state DSS "exercise[s] general supervision over the work of all local welfare authorities"). Nothing in the statute suggests that the Legislature used the term "administration" as a proxy for "policy."

By contrast, the SSL provides that the City of New York, as a "city social services district," is "responsible for the assistance and care of any person who resides" therein. SSL §§ 56, 62(1).[5] This description clearly goes well beyond administering a state program; it provides for substantive responsibility at the local level, and thus the power to make policy, towards a particular end: assisting people in need.

This allocation of responsibilities follows settled principles of administrative law. It is black letter administrative law that legislatures make policy, and agencies administer those policies. *See Darweger*, 267 N.Y. at 306; *Delgado*, 39

[5] When the then-extant Public Welfare Law was renamed the Social Services Law in 1967, the term "social services district" replaced "public welfare district" in most provisions of the SSL, but the term "public welfare district" survives in some sections. The terms are synonymous and interchangeable. For consistency, this brief uses the term "social services district" throughout.

N.Y.3d at 289 (Singas, J., dissenting) (agency rulemaking "is not an exercise of legislative power, but rather an exercise of 'administrative' or 'executive' power"). Even the Mayor's authority recognizes this distinction. *See Matter of Nicholas v. Kahn*, 47 N.Y.2d 24, 31 (1979) ("[T]here is a manifest distinction between the legislative power to be exercised only by that body and an ancillary power to implement the policies enacted into law. The cornerstone of administrative law is . . . that the Legislature may declare its will, and after fixing a primary standard, endow administrative agencies with the power to fill in the interstices in the legislative product by prescribing rules and regulations consistent with the enabling legislation.").

The Mayor now attempts to elide these distinctions by arguing that what the state *really* meant when it said "administration" in the SSL is "policy." App. Br. at 30-32. This argument is contrary to the plain language of the statute, which repeatedly endows State and City DSS with *administrative* responsibility, *not* policymaking responsibility. *Kisina*, 14 N.Y.3d at 158 ("Where the language of a statute is clear and unambiguous, courts must give effect to its plain meaning."). If the State wanted to endow DSS with policymaking authority, it would have said as much. *Gonzalez v. Ne. Parent & Child Soc'y.*, 2026 N.Y. Slip Op. 01443, 2026 WL 738987, at *2 (N.Y. Mar. 17, 2026) ("We cannot by implication supply in a statute a provision which . . . the legislature intended intentionally to omit."

(cleaned up)). Instead, the State consciously chose to use the word "administration" which has a different meaning.[6]

As this Court has recognized, the SSL is no different and does not subvert these traditional roles between the Council as a legislative body and City DSS as an administrative one. In *Hernandez v. Barrios-Paoli*, 93 N.Y.2d 781 (1999), this Court rejected a City DSS argument that Council legislation directing City DSS to take certain actions was inconsistent with the SSL—an argument much like the Mayor's argument today. There, the local law directed a sub-agency of City DSS to take certain prescribed steps when determining whether individuals with HIV or AIDS were eligible for particular public benefits and services. In response, City DSS argued that, as an "agent" of the state, only it (City DSS) could make City policy in this area of social services, and the Council could not. R.1814, 1817. This Court rejected this argument and concluded that the Council could lawfully pass legislation consistent with the State's aims. *Hernandez*, 93 N.Y.2d at 788. The Court clarified that the Council was permitted to pass the legislation since it was consistent with the State's goals and "effectuate[d] the intent of the State statutes." *Id.* So too, here. The CityFHEPS Reform Laws are fully consistent with

[6] *Compare Policy*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("A standard course of action that has been officially established by an organization, business, political party, etc."); *with Administration*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("In public law, the practical management and direction of the executive department and its agencies.").

State goals, as expressed in 18 NYCRR § 352.3, which establish a floor of rental assistance that the City *must* offer, and authorize the City to go above that floor (with its own money) to provide supplemental rental assistance. *See supra* at 20-21, 22-23. The CityFHEPS Reform Laws do not undermine or reverse course from State goals, but fit neatly within the framework the State established to encourage local innovation.[7]

The SSL's division of roles—policymaking to the Council and administration to City DSS—is also consistent with established separation of powers principles, which the SSL does nothing to disturb. Therefore, it is consistent with the statute for the Council to make policy and pass the CityFHEPS Reform Laws, because the SSL and its regulations vest *administration*, not policymaking, with City DSS.

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[7] Rather than grappling with the distinction between policy and administration, which the SSL preserves, the Mayor argues that the statute "refutes . . [a] distinction" between *responsibility* and administration. This argument sets up a false binary. Both DSS and the City of New York as the social services district share the responsibility for the welfare of the people of the City of New York. SSL §§ 62 (explaining that City as a city social services district is "responsible for the assistance and care" of its residents), 2(17), 77, 131(1) (providing DSS has the "responsibility" of administering public assistance). This is consistent with home rule principles. *See* N.Y. Const., art. IX, § 2(c) (municipalities can "adopt and amend local laws" relating to residents' "safety, health and well-being"); Mun. Home Rule L. § 10 (same). And even if State DSS has ultimate authority over social services policy throughout the State, that does not displace the Council's ability to make policy, which the State expressly endorses as to rental assistance in 18 NYCRR 352.3. The OTDA approval process ensures the balance between ultimate state authority and local innovation. When read together, these laws recognize the City and State share responsibility for providing for people.

III. THE CITYFHEPS REFORM LAWS ARE PERMITTED BY STATE LAW

It was the Mayor who first argued that the CityFHEPS Reform Laws were preempted. Now, after losing on both preemption theories at the First Department, the Mayor embarks on a gambit unmoored from traditional doctrine. He asserts that the CityFHEPS Reform Laws are invalid because State law—in some way that he does not explain—forbids the Council from passing such laws.

Nothing supports the Mayor's argument: not (1) the text of the statute, (2) its regulations, (3) the legislative history of the SSL, and (4) decades of past practice. To the contrary, all of the above *undermine* the Mayor's argument and affirm the Council's ability to legislate on matters relating to social services broadly, and rental assistance specifically. And *Beaudoin* and *Thomasel* have no relevance to this dispute. In the end, the Mayor seeks a radical redistribution of power within City government—but he can point to *no* provision of the SSL or any place in its legislative history to justify it. This Court should not upend City government absent clear intent that the State Legislature sought that result. Since there is no such clear intent here—and the State expressly authorized the Council's actions by regulation, *see* 18 NYCRR § 352.3(a)(3)(i)—the Mayor's argument must be rejected and the First Department's decision affirmed.

A. The Text of the Social Services Law and Its Regulations Permit the Council to Pass the CityFHEPS Reform Laws

The Mayor points to no provision of the SSL that strips the Council of its home rule authority; to the contrary, the SSL repeatedly leaves room for local lawmaking. And 18 NYCRR § 352.3 expressly authorizes the Council to enact rental assistance supplements.

1. The SSL Does Not Displace the Council's Legislative Authority; it Preserves it

Under established principles of home rule, the "State Constitution grants local governments the power to enact 'local laws not inconsistent with the provisions of the constitution or any general law' relating to certain specified subjects, including the 'safety, health and well-being of the locality's persons or property.'" *Glen Oaks*, 44 N.Y.3d at 473 (quoting N.Y. Const., art. IX, § 2(c)(ii)(10), Mun. Home Rule L. § 10(1)(ii)(a)(12)). The only way to establish that a local law is "inconsistent" with the Constitution or state law is to show that it is preempted. *Id.*; *see supra* Section I. The Mayor ignores these bedrock principles in favor of what can only be described as a newly-invented theory: that the SSL somehow revoked the City's home rule powers in this arena, or otherwise intended to deprive the Council of authority to act.

a. The Mayor's Cited Provisions of the SSL Do Not Strip the Council of Legislative Authority

The Mayor cannot cite a single provision of the SSL to support his claim that the Legislature intended to forbid the Council from enacting local laws in areas covered by the statute. It is inappropriate for a Court to "by implication supply in a statute a provision which it is reasonable to suppose the legislature intended intentionally to omit." *Gonzalez*, 2026 WL 738987, at *2. To the contrary, courts must presume that the state "legislature's omission[s] . . . [are] intentional." *Id.* at *6; *see Simmons v. Trans Express Inc.*, 37 N.Y.3d 107, 120 (2021) (Rivera, J., dissenting) ("'Put another way, if the legislature had intended' to impose a particular limitation, 'it would have said so in the statute.'" (quoting *Cruz v. TD Bank, N.A.*, 22 N.Y.3d 61, 72 (2013) (cleaned up)). The absence of an express statement by the Legislature that it intended to disempower the City of New York from acting in the arena of social services, or rental assistance, ends the inquiry. This appeal should be denied on this basis alone.

Undeterred, the Mayor cherry-picks portions of the SSL in his effort to cobble together an argument that supports his conclusion; but none has the effect of undermining the Council's home rule power to legislate assistance for people in need. For instance, the Mayor highlights SSL §§ 20 and 34, which establish the responsibilities of State DSS and its commissioner, respectively, and confer rule-making authority on the state commissioner. None of this is remarkable: State

DSS is an administrative agency, part of the state's executive branch, and the Legislature empowered it to act in certain ways. None of that says a word about the power of municipalities, including the City of New York, *also* to act in *related* fields. The Mayor also points to SSL § 20(3)(a), which acknowledges that City DSS has rulemaking power, subject to State DSS oversight and approval. But for the reasons stated *supra* Section II, this purely administrative role does nothing to displace the legislature's *policy*making power.

The Mayor also highlights sections of the SSL that direct or empower local legislatures to take certain actions—but those also have no bearing on this case. For example, the Mayor places great weight on SSL §§ 77 and 91. SSL § 77 empowers the Council, as the "legislative body of the city," to authorize deputy commissioners, assistants, and employees of City DSS, SSL § 77(4), and acknowledges that local law may assign the duties of a city commissioner to more than one department of city government. SSL § 77(3). And SSL § 91 instructs the Council to "appropriate the amount necessary for" public assistance, estimated by City DSS.

Neither Section 77 nor 91 says that these are the *only* things that the Council can do relative to public assistance. Rather, these provisions dictate specific things that local legislatures *must* do, in addition to all of the other things they *can* do under their Home Rule power, *see* S SSL § 91 ("The legislative body . . . *shall*

appropriate the amount necessary . . . ." (emphasis added)); *see also* SL § 88 (explaining that the City "*shall*" fund the SSL's public assistance programs (emphasis added)), or identify actions that *only* local legislatures, not the Mayor or his appointees, can take. SSL §§ 77(4) (explaining that the Council, not the Mayor, must make key appointments and authorizations); 77(3) (explaining that 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 also transfer accordingly). These provisions neither restrict nor enhance a local legislative body's authority under the Home Rule Law. It would be a violation of principles of statutory interpretation to read language into these provisions that simply is not there. *See Gonzalez*, 2026 WL 738987, at *2.

Finally, while City DSS must follow the instructions of State DSS when it is carrying out a state function, SSL §§ 11, 34, 20(2)(b), 20(3)(a), like evaluating eligibility for benefits, *see infra* Section III.D (discussing *Beaudoin*), State DSS's supervision of City DSS does nothing to displace the Council's power to legislate. Instead, the SSL permits local social services departments like City DSS to *both* act as "agents" of the State *and* be subject to local law. Regulatory approval and oversight powers at the State level act as the checking mechanism to ensure that the policies of the State and the City are fully aligned.

As relevant here, 18 NYCRR § 352.3(a)(1) exemplifies this scheme. Under this regulation, the State provides rental assistance pursuant to the SSL as a "floor"; City DSS administers that assistance—but, by state regulation, it also can provide and administer *additional* assistance ("supplements") as required by local law, to respond to local conditions, all subject to State DSS (OTDA) approval. *Id.* § 352.3(a)(3)(i). *See supra* at 20-21, 22-23 (explaining this regulation). The Council's passage of the CityFHEPS Reform Laws is not in tension with this scheme; it is an embodiment of how the scheme is designed to work. Far from being prohibited by the SSL, the CityFHEPS Reform Laws and their implementation, with OTDA approval, exemplify the state-municipality relationship the SSL envisioned.

b. The SSL Acknowledges a Role for Local Lawmaking

In fact, and even more to the point, the SSL repeatedly acknowledges the existence of local lawmaking (and New York City local lawmaking in particular) and makes space for it in the social services apparatus. Section 56 states that the City of New York has "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*." SSL § 56 (emphasis added). That same provision describes that social services commissioners have "powers and duties . . . *not inconsistent with the laws relating to said city*." *Id.* (emphasis added). Section 56 thus makes clear that the

social services district's and officer's duties are *subject to local law*. This affirms the principle that local social services agencies are subject to local laws. Likewise, Section 77 envisions that the duties of the commissioner of City DSS will be constrained by local law, since it authorizes a supplemental role for the Council to authorize City DSS commissioners to appoint assistants and employees. As discussed *supra* at 33-34, however, the Legislature gave no indication that this should be the Council's *only* role with respect to City DSS. Reading Section 77 in conjunction with Section 56 illuminates this distinction: Section 56 states generally that City DSS must act consistently with local laws, and then Section 77 clarifies a particular authority that lies with the Council (as opposed to City DSS), in addition to its plenary home rule authority. And the New York City Charter confirms that City DSS's authority is cabined by local law. N.Y.C. Charter § 603 ("[N]o form of outdoor relief shall be dispensed by the city except under the provisions of a state *or local law* which shall specifically provide the method, manner and conditions of dispensing the same." (emphasis added)). Thus, rather than writing local lawmaking out of the scheme altogether, as the Mayor would have it, the SSL specifically acknowledges local lawmaking as a feature of the landscape—which, in turn, reflects a recognition by the Legislature that the Council's policymaking role under principles of home rule was undisturbed.

The SSL's references to "local laws" mean just that: local laws. The Mayor's argument that these somehow mean state laws relating to localities, App. Br. at 35-36 & n.9, is incorrect. "Special laws" are state laws pertaining to a municipality. Const. art. 9, § 2(b)(2); *see Town of Islip v. Cuomo*, 64 N.Y.2d 50, 55-57 (1984). Local laws are exactly that: local laws passed by a municipality.

The Mayor misrepresents the holdings of his cited authority, which, if anything, emphasizes that the Legislature has distinguished between General, Special, and Local Laws for more than 100 years. *McAneny v. Bd. of Estimate & Apportionment of City of N.Y.*, 232 N.Y. 377 (1922), had nothing to do with the notion that the term "local laws" actually meant the same thing as "special laws" in the 1920s. There, the Court asked whether a State law that applied to cities with a population of one million or more was a general law or a special law (that required City approval). *Id.* at 392-93. In *In re City of Syracuse*, 224 N.Y. 201, 210 (1918), the Court does not refer to a state statute as a "special or local law," as the Mayor wrongly asserts. Rather, the Court reviewed both special and local laws when determining whether a city could discontinue a condemnation proceeding after the vesting of title (by statute) and before the fixing of the price. *Id.* The Court's statement that a city takes property by special or local law is a summation of its discussion of various condemnation statutes, including local, special and general laws. There, the Court is distinguishing between special and local laws, *not* eliding

the two. Finally, in *Peterson v. Martino*, 210 N.Y. 412, 417 (1914), the Court does not say that a reference to "special laws" and "local laws" in a statute means the same thing. Instead, the Court assessed whether a general law repealed an earlier special law by implication.

The Mayor argues that the concept of "local laws" took shape in the 1940s, but that is not true. The New York State Constitution of 1894 provides that the powers of the board of supervisors of cities can be held by common councils or boards of alderman, and that the State legislature confers upon boards of supervisors the power of local legislation. Const. (1894), art. III §§ 26, 27.

It would make little sense for "local law" to mean the same thing as "special law," because the statute would be redundant if that were so. *Feinstein v. Bergner*, 48 N.Y.2d 234, 239 (1979) (explaining the "obvious principle that where the Legislature has used different words in a series, the words should not be construed as mere redundancies"); *People v. Giordano*, 87 N.Y.2d 441, 448 (1995) ("We should assume the Legislature had a purpose when it used [a] phrase . . . and avoid a construction which makes the words superfluous." (citation omitted)). This Court should not adopt this strained reading of the SSL.

Ultimately, no provision of the SSL states that local legislatures lose their power to legislate on issues relating to social services, public assistance, or rental assistance—in fact, the SSL recognizes local lawmaking. To adopt the Mayor's

argument, as the First Department observed, would radically alter the balance of power within New York City government. *Vincent*, 243 A.D.3d at 13. It would remove policymaking power from the city's legislative body altogether—a result that, had the Legislature so intended, it would have said so explicitly in the text of the statute. *See Gonzalez*, 2026 WL 738987, at *2. The SSL says nothing of the sort.[8]

2. The State's Regulation, 18 NYCRR § 352.3, Expressly Authorizes the City Council to Pass Legislation Like the CityFHEPS Reform Laws

Far from removing the Council's power to legislate on issues of social services, state regulations affirmatively authorize the Council to pass legislation like the CityFHEPS Reform Laws. 18 NYCRR § 352.3(a)(3)(i). The Mayor barely mentions this regulation in his brief,[9] but it is crucial because it recognizes City's—and thus the Council's—power to enact rental assistance supplements for

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[8] Respondents suggest that the Council's authority to pass the CityFHEPS Reform Laws comes from Section 56 of the SSL. App. Br. at 32-37. Not so: the Council's sources of authority are the Constitution, Municipal Home Rule Law, and City Charter.

[9] Indeed, the Mayor only acknowledges the existence of 18 NYCRR § 352.3 twice in his brief: once in the facts section, where the Mayor attempts to resuscitate his gambit that "social services district" actually means City DSS, App. Br. 13-14, and once in the argument section, to support the notion that City DSS created the CityFHEPS program. App. Br. 41. The Council does not dispute that City DSS created the program, but that does not mean that the Council cannot legislate to modify the program, as it has done without incident for years, *see infra* Section III.C, and as the Council has done for other agency-created programs. *See* Local Law 83 of 2023 (codifying the originally agency-created Summer Youth Employment Program); Local Law 90 of 2020 (codifying the Commercial Lease Assistance Program created by a City agency).

New Yorkers in need, which is exactly what the Council did in passing the CityFHEPS Reform Laws.

As explained *supra* at 22-23, 18 NYCRR § 352.3(a)(3)(i) provides that the "social services district"—here the City of New York and its constituent parts, *see* SSL §§ 56, 61—may provide additional monthly shelter supplements to public assistance applicants and recipients who will reside in private housing, or who currently reside in private housing and are facing eviction," *id.* § 352.3(a)(3)(i). Far from *withdrawing* the Council's power to legislate, in this regulation the state affirmatively authorized the council to pass rental assistance supplements just like the CityFHEPS Reform Laws. The Mayor cannot get around this fact.

Of course, the regulations also say that, once the local social services district decides to provide a rental assistance supplement, it must present it to the State OTDA for approval. *See* 18 NYCRR § 352.3(a)(3)(i). This step combines State DSS's supervision of public assistance, including rental assistance, across the state, with the Legislature's desire to encourage local innovation and flexibility. Different localities in this state have different populations, housing markets, and capacity to assist their residents in need, and this regulation is designed to allow for local innovation in this area. Thus, the Mayor is wrong to suggest that, by passing the CityFHEPS Reform Laws, the Council inappropriately "intrud[ed] on the relationship between state and local social services." App. Br. at 26. Rather, the

Council acted in exactly the way that the State permits local governments to act in 18 NYCRR § 352.3(a)(3)(i). Whether the CityFHEPS Reforms Laws, as implemented by City DSS, will or will not be approved by OTDA remains an open question, as the Mayor has never submitted them for review. But to be clear, the Council has always understood that such approval was a requirement of the SSL.[10] Likewise, it is common for city agencies to take their own steps in implementing Council legislation, such as by promulgating regulations to operationalize the legislation passed at a more general level by the Council. *See supra* Section II; *Darweger*, 267 N.Y. at 306. What the Mayor objects to is all a normal part of local government, and is no reason to invalidate the CityFHEPS Reform Laws.

The crux of the Mayor's argument is that this regulation delegated exclusive authority to City DSS to develop rental assistance supplements; but this argument is contrary to the plain text of the regulation (and the SSL). State DSS knew what it was doing when it designated the "social services district" generally, not a "social services department" only, as the entity that can innovate to propose rental assistance supplements. The Mayor has no response to this—which is why his

[10] The fact that there will be an iterative discussion between the City and OTDA is not a reason to invalidate the CityFHEPS Reform Laws. App. Br. at 44-45. That discussion is a feature, not a bug, of the process. The State plays a role in approving any policy that the municipality creates, whether by City DSS regulations or by Council legislation. The City is not a sovereign and every action that the Council takes is subject to potential override by the State. Moreover, there are a number of local laws that cannot take effect until the State takes some sort of action, such as by approving the Local Laws. *See, e.g.*, Local Law 26 of 2024; Local Law 118 of 2023.

brief is replete with generalities about the SSL, but devoid of any meaningful consideration of this regulation.

B. The Legislative History of the SSL Reflects No Intent to Withdraw Policymaking Power from the City Council

If the state really intended the SSL to divest the Council of its policymaking role, as the Mayor insists, the legislative history should reflect this radical change. Indeed, the Mayor leans heavily on legislative history arguments in his brief, given that his arguments have no support in the statute itself. But the Mayor's cited legislative history documents are highly selective and ignore the true story of the development of the SSL—and how the SSL has always treated New York City differently than other localities. When considered holistically, the legislative history actually supports the Council's position that the State never intended to strip home rule authority from the City (and its legislative branch, the Council).

1. The SSL Acknowledges Legislatures' Roles in City Social Services Districts like New York City

In the 1920s, the State first established our modern structure of social services districts (then called "public welfare districts"). The 1920s amendments established "*county* social services districts," subject to greater state control, and separate "*city* social services districts," which maintained "the powers of the cities under their charters or the City Home Rule Law." R.2170-72. The State imposed this system because rural counties were failing to provide adequately for their

residents in greatest need, and the State needed to step in. But at the same time, large cities like New York City were effectively providing services to their residents, and the State wanted to preserve their ability to innovate and be responsive to their residents' needs.

Given this preference for city social services districts to innovate, in 1929 the SSL was amended such that Section 56 specified that "city social services districts" had all the powers and duties of a social services district "insofar as consistent" with local law. SSL § 56. This provision has been amended five times since 1940, including in 1977, both before and after the legislation cited by the Mayor. R.2172-74; *see* App. Br. at 9-12. But the State never removed its reference to local law—and thus, local lawmaking—in Section 56. It never removed that reference because it wanted local lawmaking to continue. R.2173-74.[11] The Mayor's argument presumes that the Legislature did not know the meaning of the phrase "local law" when it passed this act; that is obviously not correct.

This aspect of the legislative history is notable for what it shows and what it omits. The legislative history shows that rural counties were not providing sufficient services to their residents, and the State stepped in to ensure some

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[11] The SSL also refers to commissioners of "county social service districts" as "agents" of the state, SSL §§ 65(3), 2(1), but the Legislature never used that term in sections about commissioners of "city social services districts." *See* SSL §§ 76-79.

minimal level of services that all counties needed to provide. However, the State wanted New York City and other larger cities to continue to use their own money and innovate creative ways to enhance social services for their residents. This rationale drove the establishment of city social services districts (like New York City) as distinct from county social services districts.

2. The Ostertag Act Did Not Strip the Council of its Policymaking Ability

The Mayor relies heavily on the Ostertag Act, a 1946 law that focused on streamlining the administration of public assistance throughout the state—even though the Act says nothing about displacing local legislatures' home rule powers. The Mayor cites selective provisions from the Ostertag Act and its history to argue that the Council has no authority to make policy in the areas of social services—but the legislative history does not support this extreme proposition.

First, to place the act in context, the Ostertag Act's goal was to streamline and modernize "local welfare *administration*," as the Mayor's own legislative history makes plain. *Special Message from the Governor to the Legislature* (Jan. 30, 1946) ("*1946 Special Message*"), published in Integration of Public Welfare Services in the State of New York (1946) at 5 (explaining goals of "integration of services to the needy," establishing "a single office at which the needy may apply for all types of public assistance," establishing "a single agency" to investigate families' needs, "abolition of the cumbersome and costly settlement system," etc.);

id. (explaining the Ostertag Act "slashes century-old red tape, ends the shuttling of the needy from one agency to another, modernizes and improves our public welfare system, and substantially increases State aid to the localities for welfare purposes"). The Ostertag Act also preserved the distinction between city social services districts (like New York City) and county social services districts. *Id.* at 7 ("Cities at present have the right to come to the Legislature for authorization to become city public welfare districts. New York City and five up-state cities have so established.").

Against this backdrop, the Ostertag Act repealed 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." Soc. Welfare L. § 76(2) (1941); App. Br. at 10. This repeal related solely to laws concerned with the "*administration* of public assistance," not with *policymaking* around benefits for people in need. The Legislature streamlined and standardized the administration of public assistance in the Ostertag Act, but it did not remove the local legislature's policymaking power. As detailed *supra* Section II, there is a distinction between administration and policymaking. In the arena of public assistance particularly, administration is extensive and complex, and requires great coordination. Critically, even as it repealed a section that dealt with administration, the Ostertag Act left intact the provisions of the SSL that recognize the role of local laws. *See,*

e.g., SSL §§ 56, 77 (discussed *supra* Section III.A.1.b). The Ostertag Act could have eliminated those references, but it did not. The legislative history cited by the Mayor provides no support for the proposition that the limited repeal of a single subsection of the SSL was intended to strip the City of New York of its home rule authority—*sub silentio*. The Mayor's argument otherwise is a bridge too far.

Second, the Mayor's reading of the Ostertag Act is belied by the history of legislative activity in New York City. Both before and after the passage of the Ostertag Act, the Council routinely passed 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 Commissioner's predecessor—for children's foster care); Local Law 34 of 1960 (at the request of the Mayor, permitting City DSS's predecessor to provide care for minors living in poverty); Local Law 230 of 1964 (at the request of 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. As the First Department recognized, the Council has frequently used its legislative power to legislate in the realm of social services generally, and rental assistance and housing-related social services specifically. *Vincent*, 243 A.D.3d at 11. This legislation includes reforming the CityFHEPS program in 2021, regulating the City's use of shelters, establishing City DSS's sub-agencies, and requiring City DSS to implement an access-to-counsel program for New

Yorkers facing eviction. *Id.*; *see infra* Section III.C. The Mayor would have it that the Council and generations of previous New York City mayors have operated contrary to law in passing and implementing Council legislation on social services for decades. This is nonsensical.

Third, the Mayor's emphasis on the Ostertag Act's addition of language in SSL § 20(3)(e), requiring local social services officials to submit a comprehensive public assistance plan to the state for approval and supervision, is misplaced. App. Br. at 10 (citing L. 1946, ch. 200, § 5; N.Y. State Department of Social Welfare, *Public Social Services in 1946*, at 6, published as New York Legislative Document No. 76 (1947)). This provision does nothing more than affirm the goal of increased state oversite of *administration* of public assistance; it says nothing about the Council's home rule power.

Fourth, the Mayor's discussion of the Ostertag Act ignores the fact that the Court of Appeals has already implicitly held that the Council retains its home rule powers to legislate on areas of social services, the Ostertag Act notwithstanding. In *Hernandez v. Barrios-Paoli*, 93 N.Y.2d 781 (1999), discussed further *supra* Section II, the Court of Appeals rejected a mayoral administration's argument that only City DSS, not the Council could make city policy in a particular area of social services. The Ostertag Act was no impediment to that holding.

Ultimately, nowhere in the Mayor's many paragraphs devoted to the Ostertag Act does he identify any language in the Act or in its legislative history that shows it was intended to eliminate the Council's home rule powers as to matters touching on public assistance or rental assistance. App. Br. 9-10, 24.

3. Legislative Changes in the 1960s and 1970s Reaffirm State and Local DSS Authority Over Administration

The later legislative history the Mayor cites is equally unavailing. The 1965, 1971, and 1972 legislative changes are simply commonsense reforms standardizing the administration of public assistance across the social services districts. The actual substance of the 1965 reforms, requiring local commissioners to be appointed, not elected, was already enshrined in the New York City Charter. In fact, the New York City mayor and commissioner supported the bill, which would expand a local City practice statewide. Bill Jacket, L. 1965, ch. 071, Letter from Mayor Robert Wagner (July 2, 1965). While the record contains rhetorical flourishes from upstate residents about these laws portending "complete domination" by the State, the actual substance of the laws did no such thing. It merely standardized how social services administered state programs, in the way that New York City was already doing.

The 1971 reforms, as with the Ostertag Act, were aimed at the "reorganization of the *administration* of our social assistance program," *Special Message Recommending Complete Reoganization of the State Welfare Program*,

(Mar. 29 1971) ("*1971 Special Message*"), published in the Public Papers of Nelson A. Rockefeller (1971) at 230, and contain no hint of any intention to displace the City's home rule powers. The legislative changes were solely designed to reform administration. *See id.* (explaining goal to "reorganize New York's welfare system so it is managed more effectively and made accountable to the taxpayers"); *id.* at 233 (reallocating administrative rulemaking powers from the Board of Social Welfare to the Commissioner of social services); *cf. id.* at 234 (legislation sought to improve local administration, recognizing that "the delivery of public assistance and social services is carried out primarily through locally administered social services districts"). And, the 1971 Special Message acknowledged the import of DSS's administrative role, seeking to enact reforms to "[p]ermit the [State DSS] to focus *entirely* on the *delivery* of social services." *Id.*

The 1972 reforms simply enhanced state oversight over local social services departments and their administration of social services, acknowledging local rulemaking in the same way that present-day SSL § 20(3)(a) does. Again, for an administrative agency to be endowed with rulemaking authority is typical, and does not insinuate that the Legislature is somehow stripped of its policymaking power. *See supra* Section II.

Ultimately, the history is devoid of any indication that local legislatures needed to be reined in, that their policymaking was out of control, or that the

Legislature even had concerns along those lines. To the contrary, the history shows that it was the *administration* of public assistance by local social service officials that needed additional state oversight. The legislative history emphasizes that the goals of the SSL were to ensure that local social service districts conform with federal law and address fraud. *See, e.g.*, *1971 Special Message* at 234-35 (aiming to address "abuses and violations of the system"). There is no indication in the legislative history that New York City is precluded from using its own City money to innovate supplemental assistance over and above the state-mandated floor.

C. Decades of Past Practice Confirm the City Council's Authority to Legislate in Areas Covered by the SSL, Including as to CityFHEPS

The Mayor's theory that the SSL stripped the Council of its power to legislate on areas related to social services is undermined by decades of past practice. The Council legislated in the area of social services immediately following the passage of the Ostertag Act, and for decades after. *See, e.g.*, Local Law 33 of 1946 (establishing a new commission—led in part by the City DSS Commissioner's predecessor—for children's foster care); Local Law 34 of 1960 (at the request of the Mayor, permitting City DSS's predecessor to provide care for minors living in poverty); Local Law 230 of 1964 (at the request of City DSS

Commissioner's predecessor, providing conditions for when the Commissioner may place minors in agency boarding homes).

In more recent decades, the Council has legislated specifically in areas relating to homelessness and rental assistance. *See, e.g.*, Local Law 18 of 1990 (prohibiting the City from using so-called "Tier I shelters" to house families—even though Tier I facilities were permitted by state law); Local Law 57 of 1998 (establishing DHS within City DSS, setting population limits for adult shelters, directing DHS provide case management services, *inter alia*); Local Law 6 of 1999 (permitting homeless shelters to operate in excess of a 200-person limit under certain circumstances); Local Law 43 of 2002 (requiring City DSS to provide emergency services and shelters to victims of domestic violence—and prohibiting City DSS from denying services solely based on the lack of documentary evidence of a DV incident); Local Law 62 of 2014 (requiring DHS to grant a presumption of eligibility for shelter applicants exiting DV shelters); Local Laws 53 and 54 of 2021 (requiring City DSS to implement access-to-counsel programs for tenants facing eviction and provide education to tenants about their rights in housing court); Local Law 35 of 2023 (directing DHS to maintain a particular ratio of mental health providers to families in family shelters).

The Council has also passed legislation that directs City DSS and its sub-agencies to take particular actions. *See, e.g.*, Local Laws 81 and 82 of 2005

(requiring City DSS to increase the number of eligible New Yorkers enrolled in the federal food stamp program and waive face-to-face interview requirements); Local Laws 160, 164, and 165 of 2019 (requiring City DSS and HRA to (1) establish systems for clients to reschedule appointments by phone; (2) provide spaces for children at job and SNAP centers; (3) establish a pilot program for providing social work services at job centers; and (4) establish an office of constituent services within City DSS).

And the Council enacted laws directly addressing the CityFHEPS program—all without objection. *See, e.g.*, Local Law 71 of 2021 (modifying the rent towards which a CityFHEPS voucher can be applied and directing it be set at the same rate as Section 8); Local Law 157 of 2021 (expanding CityFHEPS eligibility to include youths who have spent time in foster care); Local Law 170 of 2021 (directing City DSS to change CityFHEPS eligibility requirements for youth in foster care and youth in runaway and homeless-youth shelters); Local Law 64 of 2023 (requiring City DSS to provide CityFHEPS rental assistance payments through electronic funds transfer).

Put simply, it is undisputed that, as the First Department recognized, the Council has *frequently* used its power to legislate in the realm of rental assistance and housing-related social services. *Vincent*, 243 A.D. 3d at 11-12. The Mayor's theory that the Ostertag Act stripped the Council of its ability to legislate on areas

involving social services in 1946, if accepted, would mean that the Council has had no authority for eighty years to pass *any* of the above legislation. App. Br. at 9-10, 24. It would mean that all of the above laws were passed illegally. And it would mean that generations of Councils and Mayors have flagrantly violated state law, repeatedly, over decades, without a word of protest from anyone. That simply cannot be right.

The Mayor tries to dodge this problem by arguing that the Council cannot legislate in the "heart" of a social services program, App. Br. at 40-42, versus tinkering around the edges of a program—which he presumably concedes is permissible. Not only is the Mayor's distinction between "the heart" of social services law, as compared to its periphery, vague and unsupported by law; it is also explicitly contradicted by this Court's precedent. *Hernandez*, 93 N.Y.2d 781, permitted a Council law to go into effect, notwithstanding the Mayor's argument that only City DSS, not the Council, could have implemented that policy. *See supra* at 28-29. Indeed, on many occasions, the Council has legislated at the "heart" of CityFHEPS itself, with not so much a word of objection from any Mayor. *See, e.g.*, Local Law 71 of 2021 (modifying the rent towards which a CityFHEPS voucher can be applied and directing it be set at the same rate as Section 8); Local Law 157 of 2021 (expanding CityFHEPS eligibility to include youths who have spent time in foster care); Local Law 170 of 2021 (directing City

DSS to change CityFHEPS eligibility requirements for youth in foster care and youth in runaway and homeless-youth shelters). The Mayor would have it that all other mayoralties for the past eighty years have seen the Council usurp power that they believed rightfully resided with City DSS, but did nothing about it. That defies common sense. More importantly, there is no support in the text of the statute or the legislative history to back it up.

D. *Beaudoin* and *Thomasel* Have No Impact on This Case

The Mayor's continued reliance on the *Beaudoin* and *Thomasel* cases is misplaced. Far from holding that the SSL disempowers local legislatures from passing laws supplementing rental assistance, these cases do not discuss local legislation at all. In *Beaudoin v. Toia*, a benefits-eligibility case, this Court held that a local county DSS could not substitute its interpretation of state law for that of the State DSS commissioner. 45 N.Y.2d 343, 347 (1978). The case arose out of an unremarkable decision on an individual's entitlement to benefits. A Rensselaer County resident, Shirley Jorczak, took custody of her Massachusetts-born step-niece and sought public assistance for the child. *Id.* at 345. The Rensselaer County DSS denied the application, and Ms. Jorczak requested a fair hearing before State DSS. *Id.* at 346. State DSS reversed Rensselaer County DSS's decision and directed County DSS to provide the child's benefits. *Id.* Rensselaer County DSS refused to comply, and Ms. Jorczak initiated an Article 78 proceeding

to compel the County "to comply with [State DSS's] fair hearing determination"; Rensselaer County DSS "commenced a parallel Article 78 proceeding to annul the State commissioner's fair hearing decision." *Id.* at 346-47.

In evaluating these facts, this Court held that "[i]n the administration of public assistance funds," local social services districts are "agents" of State DSS and cannot substitute their own interpretation of state law for that of the State Commissioner. *Id.* at 347. This Court concluded that Rensselaer County DSS "ha[d] no standing to challenge the State commissioner's ruling" since it involved interpretation of a statutory question. *Id.* In so holding, the Court emphasized that the social services program is a state program, and that local departments of social services operate "under the general supervision of" State DSS, such that they form a "single State administrative agency." *Id.*

The Council does not dispute that local DSS commissioners operate under the authority of State DSS and must follow State DSS's directives, as *Beaudoin* articulated. But that is irrelevant to the issues here. Just because local DSS commissioners must comply with State DSS's instructions in administering public assistance, it does not follow that therefore the Council excluded from making *policy* concerning local rental assistance, particularly since the State expressly acknowledged the Council's power to do so in 18 NYCRR § 352.3.

Thomasel has even less import than *Beaudoin*. There, this Court resolved a dispute over the allocation of attorneys' fees that a plaintiff sought to collect after prevailing in a case addressing City DSS's provision of public assistance benefits. *Thomasel v. Perales*, 78 N.Y.2d 561, 570 (1991). This Court concluded that, because City DSS was an agent of State DSS, State DSS could be held vicariously liable for a portion of the attorneys' fees awarded. *Id.* at 570-71. Again, that case had nothing whatsoever to do with local law-making, rental assistance, or municipal home rule power, the central issues on this appeal.

The Mayor repeatedly quotes *Thomasel*'s statement that there is an "interconnected and inextricable chain of authority" between state social services officials and "[l]ocal social service commissioners." *Id.* at 570; *see* App. Br. at 11, 28, 37, 44. But, again, the CityFHEPS Reform Laws do nothing to disturb this "chain of authority." City DSS can be and is responsive to State DSS and to the Council, in different ways. Both things can be, and are, true at the same time. And even if there were any doubt, the structure of 18 NYCRR § 352.3(a)(3)(i) articulates and preserves the relationship between City DSS and State DSS: the OTDA approval process ensures that, whatever rental assistance supplement the Council is asking City DSS to implement, State DSS approves it. Rather than "shunt[ing] local social services officials to the sidelines," App. Br. at 28, the

Reform Laws envision an iterative process with the Council, City DSS, and State DSS to operationalize the laws.

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Ultimately, this case comes down to the City's home rule powers: fundamental authority vested in the City's legislature—by the Constitution and by statute—to provide for the health, safety, and well-being of its residents. If a State law is going to divest the Council of its home rule powers, it must be clear about it. No such clarity exists here: not in the text of the statute, the legislative history, nor in decades of past practice. It would set a dangerous precedent for the Court to conclude that a statute can override the Constitution *sub silentio*, but that is exactly what the Mayor asks the Court to do here. The Court must reject his arguments and affirm the First Department.

CONCLUSION

This Court should affirm the First Department's decision and conclude that the CityFHEPS Reform Laws are valid and the Mayor must be directed to implement them.

Dated: June 23, 2026
New York, New York

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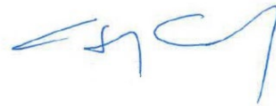

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NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: June 23, 2026

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

AFFIDAVIT OF SERVICE BY OVERNIGHT FEDERAL EXPRESS NEXT DAY AIR

I, Tyrone Heath, 1702 Clay Avenue, Apt 11, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

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Sworn to before me on June 23, 2026

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Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2030

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