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Hon. Bill de Blasio
Office of the Mayor
City Hall
New York, NY 10007

Dear Mayor de Blasio:

Since its founding in 1870, the New York City Bar Association (the “City Bar”) has grown to over 24,000 members who work to promote the public good by advocating for legal reform. The membership of the City Bar’s Special Committee on AIDS includes lawyers with comprehensive knowledge of HIV-related law and policy issues. We write to you as our new Mayor, to urge you to provide a mandate for addressing City policies which directly impact the health and welfare of persons living with HIV/AIDS and the risk of transmission of the virus.

Despite public impression to the contrary, HIV/AIDS is an ever-growing epidemic, and New York continues to be one of the worst affected states in the country. Over 100,000 New York City residents are living with HIV/AIDS and it is the third leading cause of death in NYC among residents who are between 35 and 54 years old. The epidemic disproportionately impacts communities of color, LGBT and men who have sex with men. Homelessness, poverty, unequal access to healthcare, incarceration and the rate of background prevalence in certain communities are increasingly recognized as key factors explaining disparities in HIV/AIDS across NYC. In the face of this ongoing epidemic, and the high instance of HIV infection in New York, we urge your administration to pay attention to the specific needs of people living with HIV/AIDS, in particular with respect to the issues highlighted below.

PROVIDE AFFORDABLE HOUSING PROTECTION AND INCREASE RENTAL ASSISTANCE LEVELS

The housing status of a person living with HIV/AIDS (PLWHA) significantly impacts his or her health and adherence to medical protocol. Compared to stably housed PLWHA, those who are homeless experience worse overall physical and mental health, including higher rates of hospitalization and emergency room use, lower CD4 counts (indicating a weaker immune system), higher viral loads, and poorer adherence to antiretroviral therapy. In NYC, housing assistance for low-income people living with HIV/AIDS is primarily offered through the HIV/AIDS Services Administration (HASA), a division of the Human Resources Administration (HRA).

We applaud your agreement with Governor Cuomo to implement a 30% income cap for low-income renters with HIV/AIDS. This affordable housing protection will prevent homelessness for more than 10,000 individuals who have been disabled by HIV/AIDS, and allow an additional 1,000 people to move out of the shelter system. This affordable housing initiative will improve HIV health outcomes, improve lives and save money for the government.

An important barrier to obtaining and maintaining permanent housing for PLWHAs is HASA's extremely low rental assistance levels, which have not been updated since 2003 and are now 25% below the Fair Market Rent for New York City utilized by Section 8 and other tenant based rental assistance programs. We urge you to implement revisions to the rent guidelines utilized by HASA to address the realities of the housing market in NYC.

Last year this Committee addressed several concerns to the City Council about certain housing policies of HASA that are detrimental to the health and welfare of PLWHA who depend on HASA housing subsidies.¹ HASA has reduced payment of apartment brokers' fees from 100% to only 50%. It is our collective experience that brokers in New York City are unwilling to accept this reduced fee. As a result, many brokers have either stopped accepting HASA clients altogether, or have informally asked HASA clients to pay the other 50% themselves. The overwhelming result is that fewer people living with HIV/AIDS can access stable, safe and suitable housing. Consequently, more and more PLWHA spend protracted time in city shelters or SROs, which are both unhealthy and inordinately expensive. This policy is not sound fiscally or socially since it merely shifts costs from payment of brokers' fees to payment for emergency and transitional shelter. The resulting cost is more expensive, does not benefit the HASA recipient, and places the recipient at risk of adverse health consequences.

HASA's security deposit vouchering system provides for security deposits only in the form of a paper voucher. In order for landlords to redeem their voucher after the tenant has vacated the premises, they must submit extensive paperwork regarding apartment conditions, documentation of damages, estimates for repair work, and receipts for work performed. Landlords we speak with are unwilling to comply with this burdensome procedure. Yet again, landlords are deterred from accepting housing applications from HASA clients and PLWHA are precluded from securing stable housing. We urge you to restore funding to HASA's security deposit and broker's fee payments in order to assist homeless people living with HIV/AIDS obtain suitable apartments.

In addition to being bad public health policy, these policies substantially increase housing costs for PLWHA. For example, the City pays at least \$55.00 per night for emergency housing or \$1,650.00 per month. In contrast, HASA pays \$940 per month for a one bedroom apartment (almost half the cost of emergency housing). The forfeiture of permanent housing exacts a physical—as well as economic—cost to chronically ill HASA clients whose health is jeopardized by the loss of a safe and stable home environment. There are, moreover, other means of effectuating cost savings which protect the health and safety of the HASA beneficiary. For example, Social Services Law §143-b empowers the New York City Human Resources

¹ Letter to the NYC Council from the AIDS Committee, New York City Bar Association, June 11, 2012, *available at* <http://www2.nycbar.org/pdf/report/uploads/20072302-CommentonRecentChangestoHASAPolicy.pdf>

Administration and HASA to withhold payment of rent in any case in which living conditions are dangerous, hazardous or detrimental to life or health. Unfortunately, HASA rarely utilizes this authority or its authority to seek a reduction in the rent when such conditions exist. Rather, it frequently continues to pay rent for recipients who are living in substandard housing with multiple hazardous violations of record.

A challenge with tenant-based rental assistance programs like HASA's is the rising cost of rent. There are concrete steps HASA could take to slow the cost of rent increases among their clients. Many HASA clients, including nearly all who experience a severe rent burden due to the loophole in state law that the thirty percent rent cap is meant to address, qualify for the Disability Rent Increase Exemption (DRIE) program. Additional HASA clients would qualify for Senior Citizen Rent Increase Exemption (SCRIE) program. Both DRIE and SCRIE allow eligible tenants to have their rent frozen so it cannot be increased, however, the programs are vastly underutilized by HASA clients. Moreover, the agency does not appear to actively promote enrollment, despite the significant cost savings that could be achieved. Your administration could make a significant difference in the housing stability of HASA clients by ensuring that caseworkers assist all eligible clients access these important benefits and protections.

ELIMINATE RESTRICTIONS ON USE OF FEDERAL FUNDS FOR LANDLORD/TENANT PROCEEDINGS

The current shortage of existing low-income housing demands that, whenever possible, people remain housed in the first instance. A study of the impact of legal counsel for poor tenants in New York City's Housing Court showed that having an attorney produces large differences in outcomes for low income tenants, independent of the merits of the case.² Because there is no right to appointment of counsel in civil matters and the supply of free legal services is insufficient to meet the need for representation, most tenants facing eviction are unrepresented. The Ryan White Care Act provides funding for legal supportive services to PLWHA in NYC, but program guidance issued by the Human Resources and Services Administration of the U.S. Department of Health and Human Services, as interpreted by the New York City Department of Health and Mental Hygiene, is depriving PLWHA in NYC of critical legal assistance in eviction prevention and other matters.

In a letter dated June 7, 2010, the NYC Department of Health and Mental Hygiene instructed legal providers that Ryan White funds cannot be used for landlord/tenant proceedings unless the proceeding is directly related to discrimination due to HIV, or the denial of HIV related housing benefits; family violence proceedings unless directly related to an individual's HIV status, or immigration-related activities. These restrictions prohibit services which are absolutely critical support for PLWHAs. For example, data shows that "there is a significant relationship between homelessness/unstable housing and remaining outside of or marginal to HIV care."³ PLWHAs who receive meaningful housing assistance are "almost four times more

² *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, Law and Society Review Vol. 35, No.2

³ Community Health Advisory and Information Network (CHAIN Study), Columbia University School of Public Health, Overview, p. 15, 2000. See also White House Office of National AIDS Policy, *National HIV/AIDS Strategy for the United States* ix (2010), available at <http://www.whitehouse.gov/sites/default/files/uploads/NHAS.pdf> at 28

likely to enter into medical care...and twice as likely to enter into and continue in care that meets current clinical standards for treatment of HIV/AIDS.”⁴ Through eviction prevention and housing advocacy services, legal providers remove very real, concrete barriers to primary care (unstable housing/risk of homelessness) for an already at-risk population.

We urge you to take action remove the restrictions on the use of Ryan White Care Act funding, to insure that individuals with HIV/AIDS are able to receive the legal support services they need to achieve positive medical outcomes, as authorized by the CARE Act.⁵

PROHIBIT THE USE OF CONDOMS AS EVIDENCE IN PROSECUTION

There is mounting evidence that the practice of police seizure of condoms as evidence of prostitution-related offenses, and introduction of condoms as evidence of prostitution-related offenses in criminal proceedings undermines New York’s important efforts to fight HIV and AIDS, as documented by the New York City Department of Health and Mental Hygiene,⁶ the PROS Network (a coalition of organizations engaged in outreach and services to people in the sex trades),⁷ the Open Society Foundations,⁸ and Human Rights Watch.⁹ In New York City, an epicenter of the AIDS epidemic, police officers routinely confiscate and enter condoms as evidence in prostitution-related cases, and prosecutors routinely cite seized condoms as evidence of a prostitution-related offense in criminal court complaints. In fact, the Kings County District Attorney’s Office has created a form for supporting depositions in prostitution-related cases that

(“Access to housing is an important precursor to getting many people into a stable treatment regimen. Individuals living with HIV who lack stable housing are more likely to delay HIV care, have poorer access to regular care, are less likely to receive optimal antiretroviral therapy, and are less likely to adhere to therapy”).

⁴ “Housing and Health Care Among Persons with HIV/AIDS,” Angela Aidala, PhD, Natasha Davis, MSW, David Abramson, MPH, and Gunjeong Lee, MPhil, presented at the 130th meeting of the American Public Health Association, 2002 (Abstract #47702). Relying on data from the CHAIN Study for 1995-2000, these researchers also concluded that people with housing needs who receive “practical housing assistance are almost four times more likely to enter into medical care... , and twice as likely to enter into and continue in care that meets current clinical

⁵ 42 U.S.C §§300ff-14.

⁶ New York City Department of Health and Mental Hygiene, A Report to the New York City Commissioner of Health, prepared by Paul Kobrak, December 8, 2010 (on file with Human Rights Watch).

⁷ PROS Network and Urban Justice Center Sex Workers Project, Public Health Crisis: the Impact of Using Condoms As Evidence in New York City, April 2012, *available at* <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf> (last visited Jan. 6, 2014).

⁸ Open Society Foundations, Criminalizing Condoms: How Policing Practices Put Sex Workers and HIV Services at Risk in Kenya, Namibia, Russia, South Africa, and the United States, and Zimbabwe. New York: Open Society Foundations, July 2012, *available at* <http://www.opensocietyfoundations.org/reports/criminalizing-condoms> (last visited Jan. 6, 2014).

⁹ Human Rights Watch, Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities. New York: Human Rights Watch, July 2012, *available at* <http://www.hrw.org/reports/2012/07/19/sex-workers-risk-0> (last visited Jan. 6, 2014).

asks officers to record how many and where condoms were found on individuals at the time of arrest.¹⁰

Public health and criminal justice officials nationwide have expressed concern about such law enforcement practices undermining efforts to address HIV/AIDS.¹¹ Indeed, some are calling for a public health approach to the criminalization of condoms. In October 2012, Nassau County District Attorney Kathleen Rice issued a policy directive to all prosecutors in her office prohibiting the use of condoms as evidence of prostitution.¹² And, the San Francisco Police Department and District Attorney recently announced that they will stop using condoms as evidence in prostitution cases for a trial period of ninety days, to be followed by an evaluation beginning in January 2013.¹³

People who are or are likely to be profiled as involved in the sex trades, including LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) youth, are aware of this practice and consequently fear carrying condoms, either for use with clients or with other sexual partners. Their fear leads them to carry fewer condoms, and to engage in sex work without the protection of condoms. LGBTQ youth and others who are involved in the sex trades are among populations targeted for HIV prevention efforts due to high infection rates. In the age of HIV, discouraging the use of condoms, particularly among high-risk and vulnerable groups, can have disastrous public health consequences. A 2011 study in New York City among people who exchange sex for money or other goods found that 14% of the men and 10% of the women were HIV positive,¹⁴ as compared to a 1.4% HIV prevalence in New York City generally and a 0.6% prevalence in the United States overall.¹⁵ We must ensure that this vulnerable community is not deterred from using condoms.

Moreover, vouchering condoms as arrest evidence, listing the number of condoms found on individuals in criminal complaints against them, and introducing condoms as evidence of intent to engage in prostitution-related offenses at trial, deters a broad range of people from carrying condoms; anyone who is stopped and searched on suspicion of prostitution-related

¹⁰ *Ibid*, pp.91-100

¹¹ Office of National AIDS Policy, National HIV/AIDS Strategy for the United States, July 2010, p. 37, *available at* <http://www.whitehouse.gov/administration/eop/onap/nhas> (last visited Jan. 6, 2014).

¹² Kathleen Rice, District Attorney, Nassau County, “A Prosecutors Long Game: When the Public’s Health Becomes the Greater Good,” *Huffington Post*, Oct. 10, 2012, *available at* http://www.huffingtonpost.com/kathleen-rice/a-prosecutors-long-game_b_1955572.html?utm_hp_ref=new-york (last visited Jan. 6, 2014).

¹³ George Gascón, District Attorney, City and County of San Francisco, Letter to Theresa Sparks, Oct. 31, 2012. (On file with New York City Bar Association.)

¹⁴ Samuel M. Jenness et al., “Patterns of Exchange Sex and HIV Infection in High-Risk Heterosexual Men and Women,” *Journal of Urban Health*, vol. 88, no. 2 (2011), pp. 329-341.

¹⁵ New York City HIV/AIDS Surveillance Slide Sets. New York: New York City Department of Health and Mental Hygiene, 2011, updated Feb. 2013, *available at* <http://www.nyc.gov/html/doh/html/data/epi-surveillance.shtml> (last visited Jan. 6, 2014).

activities may be inhibited, including men who have sex with men, LGBTQ people, women of color, HIV/AIDS outreach workers and others who regularly fear harassment or arrest by the police.¹⁶

Transgender women in particular experience a high rate of profiling for prostitution-related offenses by the police, a practice so widespread in New York City that it was the subject of a 2005 campaign by Amnesty International.¹⁷ Transgender women interviewed by Human Rights Watch routinely said that they have had condoms confiscated by the police. LGBTQ youth, and particularly homeless youth, and LGBTQ youth of color, report that police assume that they intend to engage in prostitution-related offenses or “lewd conduct” if they find condoms on them during stops, frisks, or consent searches.¹⁸ According to these groups who are frequently targeted by the police, the seizure and use of condom possession as evidence deters them from carrying condoms.

The recent directives by the Nassau County and San Francisco District Attorneys demonstrate an effort by law enforcement officials to balance public health and criminal law obligations. We urge you to issue an executive order prohibiting the use of condoms as evidence of prostitution and related offenses by the New York City Police Department in their supporting depositions in prostitution-related cases and to engage the District Attorneys’ offices to exercise their prosecutorial discretion to cease using the possession of condoms as evidence to prosecute prostitution and related offenses,

However, state-wide legislation is necessary because executive orders and District Attorneys’ policies and their implementation can change over time. San Francisco’s history demonstrates the importance of state legislation to comprehensively address the use of condoms as evidence. In 1994, the San Francisco District Attorney adopted a policy stating that condoms should not be used as evidence of prostitution. Unfortunately, that policy was not followed by subsequent District Attorneys and was only recently reinstated.¹⁹ State legislation to prohibit police and prosecutors from introducing condoms as evidence of prostitution-related offenses in criminal proceedings was introduced by Senator Velmanette Montgomery and Assembly Member Barbara Clark (A.2736/S.1379).²⁰ Amendment of the existing law is essential to

¹⁶ Streetwise and Safe, “Memorandum in Support of Bill Number A-1008 and S-323,” submitted to the New York State Legislature March 2012, *available at* <http://www.streetwiseandsafe.org/wp-content/uploads/2011/01/SAS-legislative-memo-FINAL.pdf> (last visited Jan. 6, 2014).

¹⁷ Amnesty International, “Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender people in the United States,” AI Index No.: AMR 51/122/2005, September 21, 2005.

¹⁸ PROS Network and Urban Justice Center Sex Workers Project, Public Health Crisis: the Impact of Using Condoms As Evidence in New York City, April 2012, *available at* <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf> (last visited Jan. 6, 2014).

¹⁹ At present, the San Francisco District Attorney’s office has implemented a moratorium on the use of condoms as evidence of prostitution.

²⁰ Report on Legislation by the AIDS Committee, A.2736/S.1379, New York City Bar Association, April 2013, *available at* <http://www2.nycbar.org/pdf/report/uploads/20072412-LettercondemningCondomsasEvidenceofProstitution.pdf>.

promoting both public health and human rights. Your support is critical to the passage and implementation of this bill.

New York City has distributed millions of condoms to its citizens in an admirable campaign to protect the public health. Police and prosecution policies that deter people from using these condoms, particularly members of groups at high risk for sexually transmitted disease, undermine citywide HIV prevention efforts, waste tax dollars, and invite increased rates of HIV and other infections.

CONCLUSION

We look forward to working with your administration on these pressing matters of common concern. Thank you for your time and your consideration.

Sincerely,



Lynn Neugebauer
Chair, AIDS Committee

Cc: Lilliam Barrios-Paoli, Deputy Mayor for Health & Human Services, Office of the Mayor
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