



**NEW YORK  
CITY BAR**

**WRITTEN TESTIMONY  
SUBMITTED FOR THE CHIEF JUDGE’S STATEWIDE 2022  
CIVIL LEGAL SERVICES HEARING**

**NEW YORK CITY BAR ASSOCIATION  
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The New York City Bar Association (“City Bar”) appreciates the opportunity to submit testimony today and thanks Acting Chief Judge Cannataro, Judge Marks, the Presiding Justices, and State Bar President Wallach for their steadfast support for civil legal services. Our testimony will be in three parts: first, a reflection on why robust civil legal services funding remains critically important for rebuilding a post-pandemic New York; second, a discussion of why safe and affordable shelter and preserving socio-economically diverse communities are essential to access to justice; and third, an invitation to consider how the civil legal services ecosystem has a unique, post-pandemic role to play in addressing the digital divide.

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## I. ROBUST CIVIL LEGAL SERVICES FUNDING REMAINS CRITICALLY IMPORTANT

The City Bar sees firsthand how important it is that civil legal services and access to justice programs continue to receive robust funding. Many of the City Bar’s committees work on substantive areas of law touching on the lives of New York’s poorest and otherwise most vulnerable residents; the City Bar’s policy arm advocates for law reform to increase access to justice; and the staff of the City Bar’s pro bono-driven civil legal services affiliate, the City Bar Justice Center (“Justice Center”), works tirelessly to provide free, high quality civil legal services that each year benefit roughly 24,000 New Yorkers struggling with poverty and other forms of socioeconomic vulnerability and exclusion. As the largest division of the City Bar Fund – the City Bar’s charitable affiliate – the Justice Center furthers access to justice by mobilizing law firms, corporate legal departments, and other legal institutions to provide pro bono legal services; educating the public on pertinent legal issues; and impacting public policy.

As New York leans into pandemic recovery, funding for civil legal services undoubtedly remains critically important – often even lifesaving – for New Yorkers of low income who cannot afford counsel. Quite simply, civil legal services funding translates into an individual or family staying in their home and avoiding foreclosure, or moving out of a homeless shelter; accessing medical care or other vital life essentials; and sometimes the life or death outcome of asylum-seekers starting a new life away from the threat of persecution. These are victories that can and should make us proud. At the same time, civil legal services funding brings great value to New York’s economy. Right before the COVID-19 pandemic hit, the Permanent Commission on Access to Justice reported to the Chief Judge the stunning results of an analysis conducted by Neil Steinkamp of Stout Risius Ross, LLC finding that Judiciary Civil Legal Services funding resulted in a return of \$10 to our state’s economy for every \$1 of funding.<sup>1</sup> Given this context, and what we assume is everyone’s goal of rebuilding a stronger post-pandemic New York, maintaining each dollar of that funding – if not further increasing it – is imperative. And that is because pandemic assistance funding and extraordinary aid programs like the eviction and foreclosure moratoriums all have ended – and, yet, poverty remains.

Two important recent studies – by the Legal Services Corporation, and by the Poverty Tracker Research Group at Columbia University and Robin Hood – have highlighted the persistent and widespread forms of poverty and disadvantage that far too many of our neighbors continue to experience. These studies demonstrate the consequences of economic insecurity on access to justice. Both reports also make clear that these problems disproportionately impact people and communities of color.<sup>2</sup>

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<sup>1</sup> Permanent Commission on Access to Justice, Report to the Chief Judge of the State of New York at 10 (Nov. 2019), [https://www.nycourts.gov/LegacyPDFS/19\\_ATJ-Comission\\_Report.pdf](https://www.nycourts.gov/LegacyPDFS/19_ATJ-Comission_Report.pdf). (All websites last visited Sept. 7, 2022.)

<sup>2</sup> See generally, e.g., Legal Services Corporation, The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans (April 2022) (hereinafter, LSC Justice Gap Report), <https://lsc-live.app.box.com/s/xl2v2uraiotbbzrhwtjlgj0emp3myz1>; and Poverty Tracker Research Group at Columbia University and Robin Hood, The State of Poverty and Disadvantage in New York City, Vol. 4 (April 2022)

- **LSC’s Justice Gap Report** found an estimated 15% of U.S. households were below 125% of the Federal Poverty Line (FPL) in 2022.<sup>3</sup> Additionally, an estimated 74% of low-income individuals experienced more than one civil legal issue last year – and 39% experienced more than five such issues – with the most common problems reported being consumer issues (50%), health-related problems (39%), housing instability (33%), and custody disputes (26%).<sup>4</sup> Yet LSC also found that individuals at 125% or below FPL did not receive assistance for 92% of legal problems having a substantial impact, compared to 86% of those between 125% and 400% of the FPL and 78% of those at 400% or above the FPL.<sup>5</sup>
- **Statistics from the Columbia-Robin Hood Poverty Tracker Report** document this issue even closer to home, finding that adult poverty rates in New York City were nearly double the national average (16% vs. 9%, and 18% vs. 10% for children), translating to roughly 1.14 million adults and 330,000 children living in poverty. The Poverty Tracker Report also found that 29% of adults and 38% of children faced material hardship related to food access, housing, bills, medical assistance, and finances, all of which closely intertwine with legal issues.<sup>6</sup>

Much of this data is similar to what the Justice Center typically sees, with its practice in its most recent completed reporting year first and foremost addressing family and housing issues (each at 31% of all matters the Justice Center handled), followed by consumer and income maintenance issues (at 15% and 8%, respectively), and then employment, immigration, and wills & estates (each at 5%).<sup>7</sup>

Looking ahead, at least three areas merit particular attention as the judiciary and policymakers assess the landscape for civil legal services coming out of the pandemic.

1. **The growth in the senior population, and increased poverty within that population**, shows the continued need for both limited-scope, brief advice-and-counsel services (as well as extended representation) for those who by life circumstance are more likely to be isolated and vulnerable. In the last decade, the senior population just in New York City (individuals aged 65+) rose from 963,000 in 2010 to more than 1.2

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(hereinafter, NYC Poverty Tracker Report), [https://www.robinhood.org/wp-content/themes/robinhood/images/poverty-tracker/pdfs/POVERTY\\_TRACKER\\_REPORT35.pdf](https://www.robinhood.org/wp-content/themes/robinhood/images/poverty-tracker/pdfs/POVERTY_TRACKER_REPORT35.pdf).

<sup>3</sup> LSC Justice Gap Report at 22.

<sup>4</sup> *Id.* at 32-33.

<sup>5</sup> *Id.* at 60.

<sup>6</sup> Poverty Tracker Report at 8. Note that the NYC Poverty Tracker Report assesses data from two years prior – i.e., the most recent, April 2022, report provides an in-depth look-back analysis at 2020 data. Importantly, the Report notes that “the threat of rising poverty rates [with the pandemic] was not realized because of bold government action taken to strengthen the safety net and stabilize incomes in uncertain times.” *Id.* at 5. With many such programs now having ended, there is a real risk of resurging poverty. *See id.* at 5-6.

<sup>7</sup> City Bar Justice Center, Impact Report at 4 (June 2022), <https://www.citybarjusticecenter.org/wp-content/uploads/2022/06/2022-CBJC-Impact-Report.pdf>.

million in 2020 – making seniors the fastest growing segment of the population.<sup>8</sup> Unfortunately, poverty rates among NYC seniors also increased, hitting 21% in 2020.<sup>9</sup> The NYC Department of Health has identified several factors that explain the growth in poverty rates among seniors, including reduced employment opportunities for the elderly, the Covid-19 pandemic, the rising cost of health care, and barriers related to seniors’ immigration status, such as educational and language barriers.<sup>10</sup> At the same time, NYC Health has shown that as seniors’ poverty rates have grown, the population has increasingly experienced civil legal issues, including those related to access to housing, public benefits, medical assistance, and social support.<sup>11</sup> The City Bar and Justice Center work on such issues, as well as the closely related problem of frauds and scams that target older New Yorkers.<sup>12</sup> Focused civil legal services funding and programming addressing these issues is critical if New York is to care in a holistic way for those who helped build the society we now enjoy.

- 2. Immigration also remains deeply challenging in a state long a haven for immigrants**, with continued shifts in federal policy and recent practices of certain U.S.-Mexico border state officials, alleged to have purposely bussed migrants to New York City, straining local resources and underscoring the need for holistic solutions to human and legal services needs.<sup>13</sup> City Bar committees that examine immigration and social welfare issues will remain attuned to these issues, and the Justice Center – in addition to managing a substantial ongoing immigration docket – is fielding calls from and exploring pro bono partnerships with resource-stretched services providers and other stakeholders to address this crisis. At the end of the day, legal services funding is critical to meeting these complex needs and thereby ensuring that New York remains a place where immigrants can find a new home and build a new life.

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<sup>8</sup> Christian González-Rivera & Center for an Urban Future, A Call to Increase Support for New York City’s Growing and Diverse Older Adult Population, Testimony before the New York City Council Committee on Aging Preliminary Budget Hearing – Aging Christian González-Rivera (March 12, 2019), <https://nycfuture.org/research/increase-support-for-nycs-growing-and-diverse-older-adult-population#:~:text=There%20are%20now%201.2%20million,just%20the%20last%20ten%20years.>

<sup>9</sup> See *id.*; see also Angely Mercado et al., A Snapshot of Poverty among Older NYers Shows Pockets of Deep Need, City Limits (Feb. 28, 2019), <https://citylimits.org/2019/02/28/aging-boom-poverty/#:~:text=The%20number%20of%20older%20adults,the%20borough%20jumped%2067%20percent;> and NYC Health, Health of Older Adults - New York City (2019), <https://www1.nyc.gov/assets/doh/downloads/pdf/episrv/2019-older-adult-health.pdf>.

<sup>10</sup> NYC Health, Health of Older Adults - New York City.

<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., Vivienne Duncan, Seniors Beware: COVID-19 Scammers Are Targeting You, City Bar Justice Center (Aug. 21, 2020; April 30, 2021), <https://www.citybarjusticecenter.org/news/seniors-beware-covid-19-scammers-are-targeting-you/>.

<sup>13</sup> See, e.g., Andy Newman & Raúl Vilchis, A Migrant Wave Tests New York City’s Identity as the World’s Sanctuary, *New York Times* (Aug. 20, 2022), <https://www.nytimes.com/2022/08/20/nyregion/nyc-migrants-texas.html>; Eric Lach, Trying to Find Places for Asylum Seekers in New York City’s Homeless Shelters, *The New Yorker* (Aug. 28, 2022), <https://www.newyorker.com/news/as-told-to/trying-to-find-places-for-asylum-seekers-in-new-york-citys-homeless-shelters>; Gabriel Poblete, Greg B. Smith, & Sneha Dey, How Gov. Greg Abbott exported a border crisis to New York City, *Texas Tribune* (Aug. 12, 2022), <https://www.texastribune.org/2022/08/12/greg-abbott-eric-adams-migrants-bus/>.

**3. The pandemic showed the power of pro bono to meet certain needs, but consistent and robust funding to support core direct legal services is still required** given the complexity and scope of need and fluctuating capacities within the pro bono community. A case in point: when COVID-19 hit in March 2020, the Justice Center – like so many other entities – quickly rolled out new services to address pandemic-related legal needs. In the span of a few short months, the Justice Center recruited, trained, and deployed roughly 1,000 pro bono attorneys to help implement expanded services meeting unique pandemic legal needs. Inevitably, however, volunteer fatigue sets in – particularly in our present moment, with volunteers themselves dealing with the ongoing challenges of the pandemic, family demands, and return-to-office adjustments. At the same time, the sources of organized and scalable pro bono partnerships – law firms and corporate legal departments – find themselves extraordinarily busy with day-to-day work. As legal services providers like the Justice Center labor to meet increasingly complex and intertwined civil legal needs of low-income New Yorkers striving to recover from the pandemic, it is essential that increases to baseline funding continue so as to support core direct legal services in a consistent way. Ensuring such a foundation is in place better allows providers efficiently and competently to leverage pro bono partnerships once greater availability of pro bono labor revives.<sup>14</sup>

## **II. SAFE AND AFFORDABLE SHELTER AND PRESERVING SOCIOECONOMICALLY DIVERSE COMMUNITIES ARE ESSENTIAL TO ACCESS TO JUSTICE**

This section of our testimony focuses on an area of practice core to so many legal services providers, including the Justice Center, and that is housing. We cover three points: how New York City’s Right to Counsel Law (RTC) is working and should be bolstered and enforced, not undermined; how providing internet access in homeless shelters is necessary in order to connect individuals with housing opportunities; and how New York’s relatively new Uniform Partition of Heirs Property Act must continue to be studied, understood and properly applied so as to preserve inter-generational wealth especially among homeowners of color.

### **A. Supporting and Expanding New York City’s Right to Counsel Law**

It is no longer controversial to say that legal representation of tenants in Housing Court that meets the highest standards of our profession is a powerful response to evictions, racial discrimination, and the challenges identified in Secretary Jeh Johnson’s October 2020 Equal

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<sup>14</sup> The City Bar Justice Center’s pro bono partnership model demonstrates this. With a FY21-22 budget of roughly \$4 million, the Justice Center through its own staff as well as via pro bono legal services provided by partner law firms and corporate legal departments, helped clients obtain over \$6.1 million in benefits and monetary awards, including settlements; helped clients divest nearly \$2.1 million in debt through bankruptcy and foreclosure-prevention advocacy; and preserved nearly \$80,000 in client resources by avoiding recoupments, garnishments, and other levies, or securing filing fees. *See* City Bar Justice Center, Impact Report at 6. Every dollar in funding for civil legal services organizations, therefore, has a direct multiplier effect for New Yorkers in need – and, as the research by Neil Steinkamp and Stout Risius Ross mentioned earlier in this testimony has shown, has additional positive multiplier effects on our state’s economy.

Justice report.<sup>15</sup> Similarly, it is not controversial to say that legal representation of tenants in Housing Court provides for a fairer, more efficient, better understood judicial process, the benefits of which also inure to court personnel and judges.

But we cannot stop there. As reiterated by Secretary Johnson, we need to stay vigilant, with continued commitment and action past the reading of the report. More to the point, Secretary Johnson recommended that the court system be a *partner* in the great task of transforming the high-volume housing court away from the “cattle call” culture experienced by people of color in New York City. This is a cause that the City Bar will continue to stand behind 100% and we will advocate both for expansion of RTC statewide<sup>16</sup> and for a modification of the current income cap so that greater numbers of tenants will qualify.<sup>17</sup>

NYC’s RTC law was enacted in 2017 and showed very promising early results, demonstrating that disturbing trends could be reversed.<sup>18</sup> Prior to passage of RTC, we saw the court and a high-stakes legal process being used to the consistent disadvantage of unrepresented litigants: that is, high numbers of eviction filings and unacceptably high numbers of default judgments against largely unrepresented litigants of color living in rent-regulated housing in New York City. Proceedings were conducted in quick order, or settlements were “negotiated” and produced in hallways. We cannot go back to that system of injustice and, yet, legal services providers are reporting that we are at risk of doing *just that* if we do not effectively address the current situation in NYC Housing Court, where more and more tenants are being forced to appear *pro se* in proceedings in which the loss of their homes is a very real possibility.

After NYC enacted RTC, it was a great task for the New York State Office of Court Administration (“OCA”) and NYC’s Office of Civil Justice (“OCJ”) to envision and put into practice a law that would drastically change the caustic environment of Housing Court in such a short time. As NYC was one of the first cities to offer RTC in eviction proceedings, there was no guide to follow for OCA or RTC legal services providers (“Providers”), nor was there empirical data to rely on when drafting and negotiating contracts. Providers, OCJ and OCA flew somewhat blindly into the process with the knowledge that their historic efforts would transform the Housing Court for the better. RTC would be a critical step in eliminating systemic racism in what had been

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<sup>15</sup> Report from the Special Advisor on Equal Justice in the New York State Courts (Oct. 2020), <https://www.nycourts.gov/whatsnew/pdf/SpecialAdvisorEqualJusticeReport.pdf>.

<sup>16</sup> Report in Support of Creating a Statewide Right to Counsel in Eviction Proceedings, New York City Bar Association (May 2022), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/right-to-counsel-new-york-state>.

<sup>17</sup> At the local level, the City Bar has supported increasing right to counsel’s income eligibility level from 200 percent to 400 percent of the federal poverty level. See Report on Legislation New York City Bar Association (March 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/expanding-right-to-counsel-for-tenants-in-new-york-city-housing-court>.

<sup>18</sup> According to reporting by NYC’s Office of Civil Justice (“OCJ”), tenants with counsel are far more successful in being able to retain their homes (with 86% able to remain) in New York City. Universal Access to Legal Services: A Report on Year Four of Implementation, Office of Civil Justice (Fall 2021), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2021.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2021.pdf) at 17. Simply put, RTC is a game-changer. When done right, it levels the playing field in Court, gives people a fighting chance to assert their legal rights, and sends a message that the lives and homes of all New York City households are entitled to be treated with dignity and respect.

one of the most egregious forums in the New York State court system. Creating a new structure where counsel served vast numbers of previously unrepresented people needed the cooperation of all involved.

Then came a pandemic of such significant proportions that all court proceedings were paused, stayed, or held remotely for the better part of two years. Trainings promised by OCA were slowed, and each court had to modify practices in different ways. No proceeding was spared. Opening the door to remote proceedings during the pandemic changed every facet of litigation, requiring court administration and litigants to adapt. This is the world we live in now, and as former Administrative Judge for NYC Civil Courts Anthony Cannataro said, “you can’t put the genie back in the bottle.” In NYC Housing Court, OCA, OCJ, Providers, Landlords’ counsel, judges and parties face a new but recovering forum where cooperation and adjustment is crucial to maintaining the success of RTC.

Recently, however, OCA and OCJ seem to be faltering in their commitment to ensuring that unrepresented tenants are not left to defend themselves in Housing Court proceedings that could lead to eviction. We understand that conversations among OCA, OCJ and Providers have occurred over the past year, but that a resolution has yet to be found. As a starting point to finding a resolution, we urge that OCA consider alternate court calendars. This approach would allow for greater opportunity to carry out the RTC law and to hold it up as the *goal*, not as a hurdle to be overcome or set aside if difficulties arise. In other words, we urge that a resolution *lead with* RTC, not end with it as a byproduct. The ravages and impacts of COVID-19 require no less.

While we understand that the entire judicial system has changed and that some court processes are returning thoughtfully and gradually, the perception is that RTC is fair game to be whittled away, as cases simply move forward without it. The consensus cannot be in favor of returning to the “cattle call” of old - this is *precisely* what Secretary Johnson warned against.

*Things can be different.* The City Bar’s Housing Court Committee, which is comprised of tenant and landlord lawyers, as well as Housing Court personnel, has suggested the following:

- Court calendars should be temporarily modified by first scheduling pre-pandemic cases that already have two attorneys; then, adjourned new cases that have two attorneys can be added to the calendar.<sup>19</sup>
- Appearances should be adjusted to ensure that attorneys who are engaged virtually are not required to appear physically at the same time.<sup>20</sup>

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<sup>19</sup> Court calendars in Housing Court should not feel random; cases with two attorneys should be scheduled first. This approach can expedite settlement and funding. Moreover, there are scores of Housing Part cases with dire conditions that are not being calendared because many more judges are being allocated to the eviction cases in the resolution parts than to the HP parts. Two attorney cases can be handled first and housing maintenance standards can be enforced while stakeholders meet in partnership to improve the implementation of RTC.

<sup>20</sup> Some court parts have routinely scheduled remote proceedings, some cases are on a remote track, and some cases are mandatory in-person. This can mean that on some days, lawyers are in the courthouse hallways doing remote proceedings on their phones, then attending scheduled in-person proceedings, sometimes simultaneously. The Court should explore the possibility of having remote/in-person days and times, and accounting for remote conflicts as well as in-person ones.

- Requests for virtual proceedings to accommodate a disability should be routinely honored in accordance with law.
- RTC attorneys should be given a sufficient amount of time to establish the attorney-client relationship and research and investigate complex cases. Anything less is not meaningful right to counsel.

OCA, OCJ and the Providers must come to the table with neutral parties to compare data and collaborate on what the new normal can be. Bar associations are a critical neutral party in this conversation and they need to collaborate and work together with many other stakeholders in support of RTC – that means the state court system, community-based organizations, legal services organizations, and government agencies.<sup>21</sup> This collaboration is critical to our success. Our Task Force on Civil Right to Counsel, led by Andrew Scherer and Alison King, will continue to guide us, as both a convener and a witness. We’ll continue to look at ways to expand RTC; improve the physical conditions of Housing Court facilities in NYC; wisely implement the use of remote proceedings; amplify the need to connect tenants with their lawyers as early in the eviction process as possible; and, finally, find ways to help ensure that the Emergency Rental Assistance Program is a success.

## **B. Addressing the Digital Divide for New Yorkers Experiencing Homelessness**

The Justice Center has continued its work with the City Bar, legal and nonprofit organizations, and community groups to highlight the unique impacts the digital divide has on New Yorkers experiencing homelessness.<sup>22</sup> As is discussed further in the final section of our testimony, this digital divide is not a new problem, but it has been exacerbated by the COVID-19 pandemic. Without access to the internet in shelters, individuals and families experiencing homelessness are unable to search and apply for permanent housing and jobs, participate in remote schooling, apply for government benefits, or obtain necessary medical care. Accessing counseling, telehealth<sup>23</sup> or any other service<sup>24</sup> has been extremely difficult since the start of the pandemic, as many of these services are reliant on Zoom or other internet-based platforms to allow patients and providers to safely meet with clients. As a result, poor or no internet connectivity leaves many

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<sup>21</sup> See, e.g., Maldonado, King and Scherer, Universal Access Hearing Nov. 2018 Written Statements, NYC.GOV, 56-59 (Nov. 15, 2018), <https://www1.nyc.gov/assets/hra/downloads/pdf/universal-access-hearing-nov-2018-written-statements.pdf> (statement of Roger Juan Maldonado on behalf of the New York City Bar); Right to Counsel: The Nationwide Movement to Fight the Eviction Crisis, STOUT (Oct. 14, 2019), <https://www.stout.com/en/insights/article/right-to-counsel-nationwide-movement-fight-eviction-crisis>.

<sup>22</sup> See generally “Support for Legislation Providing Internet Access to Individuals Living in Temporary Housing Throughout New York State,” New York City Bar Association (Reissued May 4, 2022), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/digital-divide-free-wifi-for-homeless-shelter-residents>. For a definition and further discussion of the digital divide, see *infra*, note 32.

<sup>23</sup> See, e.g., “#WiFi4Homeless: A Virtual Existence with Virtually No Internet,” City Bar Justice Center, <https://www.citybarjusticecenter.org/client-stories/wifi4homeless-a-virtual-existence-with-virtually-no-internet/>.

<sup>24</sup> See, e.g., “#WiFi4Homeless: Inaccessible Internet, Inaccessible Housing,” City Bar Justice Center, <https://www.citybarjusticecenter.org/client-stories/wifi4homeless-inaccessible-internet-inaccessible-housing-2/>.



shelter residents unable to effectively participate in critical services needed for their well-being and that could ultimately help them transition into stable, permanent housing.

As we highlighted in our testimony last year, the Justice Center first documented this problem in a May 2020 report, “Homeless Need Internet Access to Find a Home: How Access to Internet and Technology Resources can Support Homeless Families Transition out of Homeless Shelters,” and in the time since has consulted with the City Bar on efforts to ensure free, reliable internet access in temporary housing facilities across the state.<sup>25</sup> We have seen progress, but there is still more work to be done. Building on the Justice Center’s findings, the Legal Aid Society, along with Milbank LLP and Coalition for the Homeless, Inc., secured a major victory with a settlement with New York City in April 2021 that ensured that over 200 shelters housing school-age children were equipped with internet access.<sup>26</sup> In addition, the 2022 New York State budget included the “Working to Implement Reliable and Equitable Deployment of Broadband Act (WIRED Broadband Act)” and funding for “ConnectALL” – policies and programs that would expand broadband access and affordability statewide.<sup>27</sup>

While these are significant achievements, it does not eliminate the need for the State to affirmatively ensure *all* shelter residents *across the State* have internet access. New York City’s efforts do not help adult shelter residents who do not live in qualifying shelters; this includes individuals engaged in GED, vocational, or college course work who face the same barriers to remote learning as school-aged children.<sup>28</sup> And the State budget’s WIRED Broadband Act and

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<sup>25</sup> See “Testimony to the Chief Judge’s Statewide 2021 Civil Legal Services Hearing,” New York City Bar Association (Sept. 13, 2021), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/testimony-to-the-chief-judges-statewide-2021-civil-legal-services-hearing>; see also “Homeless Need Internet Access to Find a Home: How Access to Internet and Technology Resources can Support Homeless Families Transition out of Homeless Shelters,” City Bar Justice Center (May 2020), <https://www.citybarjusticecenter.org/wp-content/uploads/2020/05/Homeless-Need-Internet-Access-to-Find-a-Home-2020-Report.pdf>.

<sup>26</sup> See, e.g., Noah Goldberg, “NYC must finish WiFi installation in family homeless shelters by August: suit,” *NY Daily News* (April 5, 2021), <https://www.nydailynews.com/new-york/ny-lawsuit-wifi-homeless-shelters-august-new-york-city-remote-learning-20210405-bp4lx2wfhzc65badzvspwihk4q-story.html>; David Brand, “NYC Installs WiFi at Every Family Homeless Shelter Following Legal Settlement,” *City Limits* (May 25, 2022), <https://citylimits.org/2022/05/25/nyc-installs-wifi-at-every-family-homeless-shelter-following-legal-settlement/>.

<sup>27</sup> The City Bar, in collaboration with outside partners, advocated for the State budget to include funding for internet access in temporary housing facilities. See “Letter Urging Governor Hochul to Fund Internet Access to all Individuals Residing in Temporary Housing in the 2022 Budget,” Dec. 17, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/executive-budget-request-internet-access>.

<sup>28</sup> Education is critical to an individual’s ability to participate in society. It promotes the social, economic, and intellectual well-being necessary to live a stable life and avoid homelessness. For shelter residents, education may reduce the length of their shelter stay and facilitate their exit into permanent housing. See, e.g., “Barrier to Education: How Homeless Students Are Being Impacted by Remote Learning,” New York City Bar Association, [http://documents.nycbar.org/files/2020744-InternetAccessHomelessShelters\\_EducationFactSheet.pdf](http://documents.nycbar.org/files/2020744-InternetAccessHomelessShelters_EducationFactSheet.pdf); see also “No Barriers: A Legal Advocate’s Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act,” National Law Center on Homelessness & Poverty, 2<sup>nd</sup> Edition (Nov. 2016), at 10, <https://homelesslaw.org/wp-content/uploads/2018/10/NoBarriers.pdf> (“Moreover, school stability is critical for homeless children and youth, not only providing continuity during a turbulent time in their lives but also leading to improved academic outcomes. Continuity of education during homelessness is vital not only for children and youth’s mental and emotional health in the short-term, but for their future ability to succeed in a competitive job market and break the cycle of homelessness and poverty, because childhood homelessness is a strong predictor of adult homelessness.”).

funding for ConnectALL did not explicitly state that funding would be directed at temporary housing facilities.

The City Bar will continue to press this issue through its grassroots, collaborative campaign, by issuing reports, and supporting legislation, as well as through efforts of the Justice Center, and supported by pro bono counsel, representing the needs of individuals experiencing homelessness. An investment by the State in enhancing access to the internet in temporary housing facilities could lead to a reduction in the overall homeless population and a reduction in other costs associated with housing New York's homeless population.

### **C. The Justice Center's Homeowner Stability Work Supports Intergenerational Homeownership Particularly by New Yorkers of Color**

As detailed in our testimony last year, the Justice Center's Homeowner Stability Project ("HSP")<sup>29</sup> engages in direct representation, public education, and law reform work to advocate for individuals and families of limited economic means who possess heirship interests in intergenerationally-owned homes, often in areas of New York City with rapidly increasing home values. The vast majority of New Yorkers served by this advocacy belong to communities historically denied equal access to homeownership benefits due to structural racism in housing and lending policies. Without services like those provided by HSP, many such members of our community face the loss of longtime family homes (and often substantial home equity) following mortgage and tax lien foreclosure – or, especially, predatory partition actions brought by third-party investors who purchase heirs' often quite minimal partial interests in the homes and then sue to force a sale, displacing the heir occupants. Awareness of these issues led both the Justice Center and the City Bar to take a leading role in a law reform movement culminating in New York's passage in 2019 of the Uniform Partition of Heirs Property Act,<sup>30</sup> which established significant state legal protections for heirship property owners. Armed with the tools of this reform, HSP has successfully placed many of these complex partition cases with sophisticated pro bono litigation teams and has secured several wins.

What we typically see in these cases is that the home in question is owned by a family of color that first bought the property when race-based redlining prevailed, and that also likely had unequal access to credit, also on account of race. Against this backdrop, taking on homeowner stability matters connects us (and pro bono partners) to the *greater* mission of nonprofit legal services – a mission that connects concrete cases and clients to the type of mindful, thoughtful advocacy that begets systemic change.

Over the past two and a half years, based on our review of the pleadings, we have located several hundred cases that appear to fall under the new law. It is our concern that many of the attorneys handling the cases on both sides have no idea the new law exists. We are planning to do further outreach with elected officials' offices, the courts and community groups in order to

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<sup>29</sup> See City Bar Justice Center, *Homeowner Stability Project*, <https://www.citybarjusticecenter.org/projects/homeowner-stability-project/>.

<sup>30</sup> NY RPAPL 993

increase awareness of the new law, as well as programming and training at the City Bar.<sup>31</sup> The director of the Homeowner Stability Project, Scott Kohanowski, was very pleased to be invited to conduct training for judges this past year; the trainings were extremely well attended and informative.

### **III. THE CIVIL LEGAL SERVICES ECOSYSTEM HAS A UNIQUE, POST-PANDEMIC ROLE TO PLAY IN ADDRESSING THE DIGITAL DIVIDE**

The “digital divide”<sup>32</sup> presented significant obstacles especially to our most vulnerable neighbors even before the pandemic, but in many ways became worse because of it<sup>33</sup> – the preceding discussion of the digital divide’s effect on New Yorkers using homeless shelter services being a case in point. The City Bar respectfully posits that the civil legal services community has a unique role to play in addressing this challenge in a post-pandemic New York.

#### **A. The Issue**

Researchers have observed that a truly “stark” divide exists across both rural/remote as well as urban areas even in countries like the United States with otherwise high connectivity rates.<sup>34</sup> Importantly, the digital divide not only “fall[s] along other disparities such as income and gender-based inequality,” but also “can deepen other divides and inequalities,” including healthcare access and outcomes, and economic and educational opportunities.<sup>35</sup> In this respect the digital divide’s pervasiveness is particularly relevant to the broad topic of access to justice as New York rebuilds our economy and the very fabric of our community coming out of the pandemic. By definition, access to justice initiatives and civil legal services funding focus on the poorest amongst us, and the digital divide is a significant characteristic of poverty: a 2021 Pew Research Foundation

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<sup>31</sup> See, e.g., March 10, 2022 Program, Preserving the Family Home: From Partition of Heirs Property to Deed Theft, <https://www.nycbar.org/cle-offerings/webcast-preserving-the-family-home-from-partition-of-heirs-property-to-deed-theft/> (featuring Scott Kohanowski, Alan Kolod, Chair, City Bar Committee on Commercial and Uniform Laws; Mary Lynn Dlabola, Special Referee, Bronx Supreme Court – Civil; and Maureen Kokeas, First Deputy Sheriff, NYC Department of Finance).

<sup>32</sup> “At a high level, the digital divide is the gap between those with Internet access and those without it. But the digital divide is multifaceted and includes many factors such as access, affordability, quality, and relevance.” Charlie Muller & João Paulo de Vasconcelos Aguiar, What Is the Digital Divide, Internet Society (March 3, 2022), <https://www.internetsociety.org/blog/2022/03/what-is-the-digital-divide/>. The digital divide also has been understood to encompass, beyond lack of access to the internet, “vast inequities in technology access” more generally. See Phela Townsend, Disconnected: How the Digital Divide Harms Workers and What We Can Do about It, The Century Foundation (Oct. 22, 2020), <https://tcf.org/content/report/disconnected-digital-divide-harms-workers-can/?session=1&agreed=1>.

<sup>33</sup> Early in the pandemic, Phela Townsend of the Century Foundation observed that “[p]rior to the COVID-19 outbreak, an estimated forty-two million Americans did not have the ability to purchase broadband internet. And as the pandemic has ravaged the country, these vast inequities in technology access—which, together, have come to be known as the digital divide—have intensified and worsened. Roughly half of low income families have struggled to pay their internet and cell phone bills. Millions of unemployed workers had trouble navigating state unemployment websites, while almost 15 percent of students face barriers in remote learning conditions because they lack access to high-speed internet at home. Townsend, Disconnected, *supra* note 32.

<sup>34</sup> Muller & Vasconcelos Aguiar, What Is the Digital Divide, *supra* note 32.

<sup>35</sup> *Id.*

study found that 43% of adults with lower incomes lacked home broadband services and 41% lacked a desktop or laptop computer, whereas such technology is “nearly ubiquitous” for those in households earning over \$100,000.<sup>36</sup>

That is why narrowing the justice gap must attend to the digital divide coming out of the pandemic. For we simply cannot overlook the fact that one of the pandemic’s triumphs amidst adversity – the power that digital technology gave to so many of us to quickly and safely preserve our livelihoods by pivoting to a work-from-home world, not to mention access healthcare, education, and a range of other services (including legal expertise) – was less available if not unavailable to the poor, those in frontline services work, those for whom English is not a first language, and so many others. These same communities also had, and often still have, a harder time navigating an increasingly “virtual” world when it comes to accessing services and the courts and protecting themselves from increasing frauds/scams.

## **B. Numbers Can Tell an Important Story**

Data from the Justice Center – which we would not be surprised to see mirrored by other providers – demonstrates why the civil legal services community should focus on this problem. Unsurprisingly, Justice Center in-person intakes plummeted in the first year of the pandemic, from 988 during the annual period ending March 31, 2020 to 59 for the year ending March 31, 2021. During that same period, intakes conducted online rapidly rose, from 1,687 to 3,323. This difference in how civil legal services patrons sought assistance is even starker when adjusted for the total number of intakes the Justice Center completed in those two years, with the percentage of services initiated online rising from 10.2% of the overall total for the year ending March 31, 2020 to 22% for the year ending March 31, 2021.<sup>37</sup>

Those changes are striking in their own right, but tell an even more important story in light of the fact that, by definition, civil legal services consumers are persons of low income, whom the data previously highlighted in this section of our testimony shows already experience a digital divide disadvantage. One hypothesis we can draw, therefore, is that any forthcoming discussions concerning civil legal services funding ought to consider the extent to which narrowing the digital divide may well facilitate, if not further magnify, expanded access to justice.

In this respect, it is important further to note that the shift in how the Justice Center is seeing people access services seems to have continued in the second pandemic year, ending March 31, 2022. With vaccines widely available and the Justice Center’s offices having physically reopened roughly midway through that year, in-person intakes rose to 421, from that first pandemic year figure of just 59. But while even that 2021-22 figure remained well below 50% of pre-pandemic levels, services initiated online remained consistent with the first pandemic year, at 3,275 for the year ending March 31, 2022 (versus 3,323 for the year ending March 31, 2021).

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<sup>36</sup> Emily A. Vogels, Digital Divide Persists Even as Americans with Lower Incomes Make Gains in Tech Adoption, Pew Research Center (June 22, 2021), <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/#:~:text=Roughly%20a%20quarter%20of%20adults.incomes%20are%20not%20tablet%20owners> (last accessed Sept. 4, 2022).

<sup>37</sup> The vast majority of City Bar Justice Center patrons initiate services by telephone.

Comprising roughly 23.3% of all Justice Center intakes for 2021-22, that online intake figure represented an even higher percentage than the 22.0% of overall intakes for the first pandemic year. Meanwhile, in that same 2021-22 period, the Justice Center conducted a total of more than 14,000 telephone, online, and in-person intakes, providing direct services benefiting nearly 24,000 New Yorkers in need, but additionally reached *over 150,000* people through resources and information made available online.<sup>38</sup>

### **C. Towards a More “Tech-Equitable” Civil Legal Services Ecosystem**

If such trends are consistent – and, continue – across the civil legal services ecosystem, it becomes incumbent upon providers, funders, and all stakeholders to view expanding access to justice and narrowing the digital divide in tandem, and to think creatively about how to design the inevitable, further shift towards online and other “virtual” mechanisms of delivering civil legal services. At least three related considerations might inform a more “tech-equitable” future for civil legal services.

First, “unbundling” pro bono civil legal services has become increasingly accepted as a means of providing some form of assistance to help narrow the justice gap where full-scope representation may be infeasible. To the extent the digital divide involves a corresponding knowledge access gap – i.e., increasingly, key information is available only online – the civil legal services community’s experience successfully delivering “brief information and advice” services (as contrasted with extended representation) provides a template for addressing that divide and knowledge gap. With that comes the need to ensure such services formats are as widely accessible as possible – including, e.g., by being available in multiple languages, and accessible for those who are sight- or hearing-impaired or have cognitive limitations. Examples of such a possibility include expanding public information and education efforts via “Know Your Rights” clinics and resources conducted in person for those with limited access to technology, but that are then simultaneously live-streamed and archived online for those who have more robust tech access.

Second, civil legal services providers can directly partner with local community organizations and elected officials to ensure that those in need of services, know they exist and can access them. To the extent the pandemic worsened social and other forms of isolation for those living in poverty, not to mention inflicted disproportionate economic and health effects, entities whose mission it is to increase access to justice have a unique role to play in helping to restore the fabric of our communities. Because such entities have more finely tuned “hybrid” legal services delivery mechanisms over the past two-plus years, they are positioned – if appropriately funded to support the requisite technical platforms and expertise – to partner with community organizations and electeds to reach those in need of services and to deliver them competently and efficiently.

Third, with respect to the resource dimension of this task, the private bar and the business community have a role to play as well, by supporting efforts of civil legal services providers both financially and in terms of volunteer involvement. Themselves having successfully transitioned

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<sup>38</sup> Obviously not unrelated to shifts in how services were initiated, the City Bar Justice Center – like so many other legal services providers – also has adapted how it delivers services. Both pandemic health restrictions on in-person activities together with the fact that pro bono volunteers – a significant driver of overall Justice Center productivity – had shifted to remote work, resulted in a pivot from in-person to “virtual” legal services clinics and other remote delivery of legal services.

from in-person to virtual to now hybrid modes of work, the private bar and the business community have both the technical experience and the resources to help the legal services community deploy new methods of services delivery. From supporting the technological and logistical infrastructure required to operate and scale up hybrid clinics to providing a steady stream of volunteers to develop substantive content as well as provide direct client counseling for such services, the private bar and the business community can and should seize this moment to both advance access to justice and narrow the digital divide.

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The City Bar very much appreciates your consideration of these important issues. I am happy to answer any questions and provide any requested follow-up information once the hearings have concluded.

*The City Bar thanks the following individuals from the City Bar Justice Center for their significant contributions to this testimony: Kurt Denk, Executive Director; Lily Gottlieb, Operations Assistant; Scott Kohanowski, Director, Homeowner Stability and LGBT Advocacy Projects; and Libby Vazquez, Director of Legal Services and Director, Legal Hotline and Planning & Estates Law Project. Likewise, the City Bar thanks Andrew Scherer and Alison King, co-chairs of the City Bar's Task Force on the Civil Right to Counsel; and Sara Wagner, immediate past chair, City Bar's Housing Court Committee.*

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