

**NEW YORK
CITY BAR**

**WRITTEN TESTIMONY
SUBMITTED FOR THE CHIEF JUDGE’S STATEWIDE 2023
CIVIL LEGAL SERVICES HEARING**

**NEW YORK CITY BAR ASSOCIATION
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**SEPTEMBER 8, 2023
COURT OF APPEALS
ALBANY, N.Y.**

The New York City Bar Association (“City Bar”) appreciates the opportunity to submit testimony today and thanks Chief Judge Wilson, Chief Administrative Judge Zayas, the Presiding Justices, and all our court leaders 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 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 receiving robust funding. Many City Bar committees work on substantive areas of law impacting 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 Justice Center ("Justice Center"), the City Bar's civil legal services affiliate, leverages the pro bono time and talent of the private bar to provide free, high quality civil legal services that each year benefit over 25,000 New Yorkers struggling with poverty and other forms of socioeconomic vulnerability and exclusion. A member of the New York Legal Services Coalition, the Justice Center is among legal services organizations benefiting from the recent inclusion of a COLA adjustment in Judiciary Civil Legal Services funding, and shares the Coalition's concerns regarding pay parity that is essential to improve hiring and retention of the talent necessary to keep civil legal services programming flourishing for New Yorkers in need.

Civil legal services funding remains critically important, if not lifesaving, for New Yorkers of low income who cannot afford counsel. It translates into an individual or family moving from a homeless shelter to their own home, or avoiding eviction or foreclosure to stay in their home; accessing public benefits, medical care, or other vital life essentials; or, in the case of the burgeoning community of asylum-seekers arriving in New York, starting a new life away from the threat of persecution. Each victory in matters like these can and should make us proud. At the same time, civil legal services funding brings great value to New York's economy. By now, the civil legal services community is well familiar with the 2019 report of the Permanent Commission on Access to Justice detailing an analysis conducted by Neil Steinkamp finding that Judiciary Civil Legal Services funding resulted in a return of \$10 to our state's economy for every \$1 of funding.¹ Given this context, and the goal of extending and deepening New York's post-pandemic recovery, maintaining if not further increasing each dollar of that funding remains imperative. That is especially true as the safety net effects of pandemic assistance funding and the eviction and foreclosure moratoriums fade, and providers like the Justice Center see a rise in appeals for free civil legal assistance.

Indeed, leading studies by the Legal Services Corporation and by the Poverty Tracker Research Group at Columbia University and Robin Hood continue highlighting the persistent and widespread forms of poverty and disadvantage that far too many of our neighbors endure, particularly both during and then coming out of the pandemic. Both studies also not only demonstrate the consequences of economic insecurity on access to justice, but also make clear that these problems disproportionately impact people and communities of color.²

¹ 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. (All websites last visited Sept. 8, 2023.)

² See generally, 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/xl2v2uraiotbbzrhwtjlgioemp3myz1>; and Poverty Tracker Research Group at Columbia University and Robin Hood, The State of Poverty and Disadvantage in New York City, Vol. 5 (Winter 2023)

- LSC’s April 2022 Justice Gap Report**, the fourth in a series and the first since 2017 (and, therefore, the first since the pandemic), found that an estimated 15% of U.S. households were below 125% of the Federal Poverty Line (FPL) in 2022.³ 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%).⁴ Yet 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.⁵ And in what should be of concern to all invested in increasing access to justice, LSC’s findings that 74% of low-income households experienced at least one civil legal problem in the previous year, and that 92% of the civil legal problems of low-income Americans did not receive any or enough legal help, represented an increase over the findings for these categories in its prior, 2017 report, which had found 71% of low-income households having experienced at least one civil legal problem in the previous year, and 86% of low-income Americans’ civil legal problems insufficiently assisted.⁶ While the increase can be attributed to a number of factors, it is unsurprising that the 2022 report included a finding that 33% of low-income Americans traced at least one civil legal problem to the pandemic.⁷
- Statistics from the Columbia-Robin Hood Poverty Tracker Report** document these issues even closer to home, finding that poverty rates in New York City were double the national average for adults (18% vs. 9%), and triple the national average for children (15% vs. 5%) – although, in a glimmer of hope, the report also noted that this was the lowest annual child poverty rate since the tracker began collecting child poverty data in 2017, and that stable overall rates of poverty between 2019 and 2021 – amidst the pandemic – “are a testament to the efficacy of historic, though temporary, policy interventions.”⁸ The Poverty Tracker Report also found that poverty is unequally distributed across demographic groups. Latino New Yorker poverty rates were twice that of white New Yorkers (24% vs. 12%); poverty rates among Black and Asian New Yorkers were also higher (at 21% and 20%, respectively, vs. 12% for white New Yorkers); across metrics, women experienced higher rates of disadvantage than men; and New Yorkers born outside the U.S. experienced higher poverty and hardship rates than U.S.-born New Yorkers.⁹ Moreover, 25% of adults and 26% of children faced

(hereinafter, NYC Poverty Tracker Report), https://www.robinhood.org/wp-content/themes/robinhood/images/poverty-tracker/pdfs/POVERTY_TRACKER_REPORT38.pdf.

³ LSC Justice Gap Report at 22.

⁴ *Id.* at 32-33.

⁵ *Id.* at 60.

⁶ LSC Justice Gap Research, Introduction, <https://www.lsc.gov/initiatives/justice-gap-research>.

⁷ *Id.*

⁸ Poverty Tracker Report at 6, 15-16. Note that the NYC Poverty Tracker Report assesses data from two years prior – i.e., the most recent, Winter 2023, report provides an in-depth look-back analysis at 2021 data.

⁹ *Id.* at 8.

material hardship related to food access, housing, bills, medical assistance, and general finances, all of which closely intertwine with legal issues.¹⁰

Much of this data is similar to what the Justice Center typically sees, with the top six legal areas most frequently addressed in its most recently completed reporting year being housing and family issues (at roughly 24% and 20%, respectively, of all matters the Justice Center handled), followed by consumer and income maintenance issues (at roughly 9% and 5%, respectively), and then employment and immigration (each at roughly 5%).¹¹

II. SAFE AND AFFORDABLE HOUSING AND SUPPORT FOR OUR MOST VULNERABLE – YOUTH, SENIORS, AND IMMIGRANTS TO NEW YORK – ARE ESSENTIAL TO ACCESS TO JUSTICE

This section of our testimony focuses on areas of practice core to so many legal services providers, including the Justice Center. We cover three areas: (a) how New York City’s Housing Court Right to Counsel Law (RTC) is working and should be bolstered and enforced, not undermined; (b) how New York’s 2019 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; and (c) the importance of access to civil legal services for our most vulnerable neighbors – children and youth, seniors, and immigrants to New York.

A. Supporting New York City’s Housing Court Right to Counsel Law

It is clear 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 Justice report.¹² Similarly, it is clear 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.

NYC’s RTC law was enacted in 2017 and showed very promising early results, demonstrating that disturbing trends could be reversed.¹³ 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

¹⁰ *Id.* at 21-23.

¹¹ City Bar Justice Center, Impact Report at 3 (June 2023), <https://www.citybarjusticecenter.org/wp-content/uploads/2023/06/2023-City-Bar-Justice-Center-Impact-Report.pdf>.

¹² Report from the Special Advisor on Equal Justice in the New York State Courts (Oct. 2020), <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

¹³ 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 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.

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. It seems that the collective commitment to RTC is faltering.

We must do better. We understand that an RFP has been issued by New York City for new contracts for legal services providers and that conversations among the Office for Court Administration (OCA), the Office of the Civil Justice Coordinator (OCJ) and providers are underway concerning the terms of future contracts. We also understand that the Caseload Working Group guidelines are viewed positively and as a good start by providers. Fundamentally, contracts must provide sufficient compensation to the providers to enable them to hire, train and retain a highly capable, diverse workforce to provide the highest quality assistance to all tenants who are entitled to counsel. RTC must be viewed as an integral goal of the proceeding, not as a hurdle to be overcome or set aside if difficulties arise.

While we understand that the entire judicial system has changed in many ways as a result of COVID-19 and that some court processes are returning thoughtfully and gradually, the perception is that RTC is expendable, as cases simply move forward without it. But the consensus cannot be in favor of returning to the “cattle call” culture of old - this is precisely what Secretary Johnson warned against. We suggest the following: (1) court calendars should be temporarily modified by first scheduling cases that already have two attorneys; then, adjourned cases that have two attorneys can be added to the calendar¹⁴; (2) RTC attorneys should be given a sufficient amount of time to establish the attorney-client relationship and research and investigate complex cases; (3) requests for virtual proceedings to accommodate a disability should be routinely honored in accordance with law; (4) the use of virtual appearances should be re-examined and re-integrated into the system for administrative and non-hearing appearances; and (5) judges should offer RTC at every stage of the proceeding, not just at the initial appearance.

Of particular note, the bulk of nonpayment cases can be shortened by the swift implementation of rental assistance. New York City Human Resources Administration (HRA) and OCA must work together to integrate the court system and aid applications. There are currently long waits for City FHEPS and one-shot deals which far exceed the reasonable time a tenant can be ordered to pay a rent balance. This means that more warrants of eviction are triggered, Orders to Show Cause must be filed and judicial determinations must be made that strain judicial resources and often end in evictions. Any disconnect between the agencies can be resolved by collaboration and a more efficient application process. When tenants are instructed to apply for a one-shot deal in or out of the courthouse, there must be knowledgeable HRA personnel available to walk them through the process. The HRA network must be available at the courthouses to achieve the best results. During the pandemic, HRA procedure and documents required to apply for aid were streamlined, and cases were discontinued when back rents were fully satisfied. A

¹⁴ 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.

partnership between the courts, OCJ and HRA should take these lessons into account. A speedier aid application process would make the right to counsel less arduous and easier to implement.

Since last year, Housing Court has almost fully returned to the oft-decried cattle call culture. Where other courts have continued virtual proceedings and taken steps learned from the pandemic to integrate technology and procedures to preserve the dignity and efficiency of the court process, the Housing Court has moved backward. Despite the existence of the biggest rent crisis ever experienced, housing court calendars are as long as they were pre-pandemic. In the midst of a shortage of court personnel and clerical staff, the Housing Court is flooded with cases in an ad hoc fashion which creates chaos. The courtrooms and hallways are crowded with people and more and more tenants are being forced to proceed without counsel. Providers simply cannot keep up with the demand and are forced to refuse representation. In other words, despite being the first municipality to enact a landmark and groundbreaking law, and despite all of its early promise, we are now allowing outdated and dysfunctional processes to plunge blindly forward.

Our Task Force on Civil Right to Counsel, led by Alison King, Andrew Scherer and Sara Wagner will continue to guide us on this important issue, as both a convener and a witness. We'll continue to examine and advocate for ways to assure that all tenants who are entitled to counsel are able to obtain counsel; to improve the physical conditions of Housing Court facilities in NYC; to wisely implement the use of remote proceedings; and to amplify the need to connect tenants with their lawyers as early in the eviction process as possible.

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

As detailed in our testimony in each of the past two years, both the Justice Center and the City Bar took a leading role in a law reform movement culminating in New York's passage in 2019 of the Uniform Partition of Heirs Property Act (UPHPA),¹⁵ which established significant state legal protections for heirship property owners. Armed with the tools of this reform, the Justice Center's Homeowner Stability Project (HSP), which for many years had focused more exclusively on foreclosure defense work, increasingly 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.¹⁶

Over the past three and a half years, based on our review of the pleadings, we have located several hundred cases that appear to fall under New York's UPHPA. It remains a concern, however, that many of the attorneys handling the cases on both sides have no idea this now four-year-old law exists, and courts' handling of requirements under the law are at times uneven. We continue to engage in outreach and collaboration with elected officials, the courts, and community groups in order to increase awareness of the new law, as well as programming and training at the City Bar, including an upcoming hybrid in-person/live broadcast public forum on Deed Theft and

¹⁵ NY RPAPL 993

¹⁶ See City Bar Justice Center, *Homeowner Stability Project*, <https://www.citybarjusticecenter.org/projects/homeowner-stability-project/>.

Scam Prevention to be hosted by City Bar and HSP on September 20.¹⁷ HSP and its director, Scott Kohanowski, also continue conducting trainings for judges and other key stakeholders in the UPHPA’s implementation, and is increasingly working with law enforcement to combat deed theft and other equity-stripping schemes that often involve heirs property.

This work is also important to advancing racial justice. The vast majority of New Yorkers served by HSP’s advocacy belong to communities historically denied equal access to homeownership benefits due to structural racism in housing and lending policies. 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. Without services like those provided by HSP and several other legal services organizations, 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. Given the complexity of these matters, much of HSP’s recent success in this area owes to successfully partnering with sophisticated pro bono litigation (as well as transactional) teams at leading New York law firms. 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, such as has occurred with the UPHPA’s passage and ongoing implementation.

C. Access to Civil Legal Services for Children and Youth, Seniors, and Immigrants to New York

Both data and news-grabbing headlines make clear the need for access to justice particularly for many among our most vulnerable communities – children and youth, seniors, and immigrant New Yorkers.

As detailed in Section I’s discussion of the most recent Columbia-Robin Hood Poverty Tracker Report, poverty rates among children in New York City are triple the national average (15% vs. 5%).¹⁸ And while that data also revealed a hopeful sign in a drop in child poverty rates – quite likely, however, only a brief one¹⁹ – the Justice Center saw increases in services benefiting households with children and youth under the age of 25 of nearly 3% from FY21 to FY22, and nearly 9% from FY22 to FY23. At the other end of life’s spectrum, there is continued and growing

¹⁷ See also, e.g., 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 Diabola, Special Referee, Bronx Supreme Court – Civil; and Maureen Kokeas, First Deputy Sheriff, NYC Department of Finance).

¹⁸ See discussion, *supra*, at 3; see also Poverty Tracker Report at 16.

¹⁹ Center on Poverty & Social Policy at Columbia University, The State of Poverty and Disadvantage in NYC 2021 (Feb. 13, 2023), <https://www.povertycenter.columbia.edu/nyc-poverty-tracker/government-initiatives-cut-nyc-child-poverty-rate-in-2021> (observing that “[t]his year’s Poverty Tracker ... spotlights the temporary pandemic relief programs that dramatically—but only briefly—brought child poverty in New York City to historic lows. The reduction in poverty rates highlighted in the report shows that government policy can be an effective poverty-fighting tool.”).

need for legal services for the growing senior population, which is experiencing increased poverty. The senior population just in New York City (individuals aged 65+) rose from 963,000 in 2010 to more than 1.2 million in 2020 – making seniors the fastest growing segment of the population.²⁰ Unfortunately, poverty rates among NYC seniors also increased, hitting 21% in 2020.²¹ 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 pandemic, rising healthcare costs, and barriers related to seniors’ immigration status, such as educational and language barriers.²² 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.²³ 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.²⁴ Focused civil legal services funding and programming addressing these issues remains critical if New York is to care in a holistic way for those who helped build the society we now enjoy.

Finally, none of us can ignore the headlines focused on New York’s asylum-seekers crisis, and on the whole, providing adequate immigration legal assistance to the many who cannot afford it remains deeply challenging in a state long a haven for immigrants. City Bar committees that examine immigration and social welfare issues will remain attuned to these issues; the City Bar and the Justice Center have supported efforts of the New York City Mayor’s Office to expand pro bono clinics serving asylum seekers;²⁵ and the Justice Center continues its own efforts to leverage pro bono partnerships and collaborate with other stakeholders to address this crisis. Absent substantial shifts in immigration legal policy at the federal level, increased resources for those providing on-the-ground legal services are critical to meeting these complex needs and ensuring that New York remains a place where immigrants can find a new home and build a new life.

²⁰ 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.>

²¹ 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](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).

²² NYC Health, Health of Older Adults - New York City.

²³ *Id.*

²⁴ 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/>.

²⁵ Office of the Mayor, Mayor Adams Announces Asylum Application Help Center has Helped Submit Over 1,300 Asylum Applications in Matter of Weeks, Announces Higher Education Partnerships for Fall Semester (Aug. 2, 2023), <https://www.nyc.gov/office-of-the-mayor/news/561-23/mayor-adams-asylum-application-help-center-has-helped-submit-1-300-asylum>.

III. THE CIVIL LEGAL SERVICES ECOSYSTEM HAS A UNIQUE, CONTINUING ROLE TO PLAY IN BRIDGING THE DIGITAL DIVIDE

The City Bar reiterates its suggestion, outlined in testimony last year, that the civil legal services ecosystem has a unique and continuing role to play in bridging the digital divide that can further complicate access to justice on the part of New Yorkers of limited means or who experience other vulnerabilities.

A. The Issue

The “digital divide”²⁶ presented significant obstacles to our most vulnerable neighbors even before the pandemic, but in many ways became worse because of it,²⁷ as further shown below with respect to the digital divide’s effect on New Yorkers living in shelter. But the issue is not limited to that population, and indeed researchers have shown how “stark” this divide is across both rural/remote as well as urban areas even in countries like the United States with otherwise high connectivity rates.²⁸ Moreover, the digital divide both “fall[s] along other disparities such as income and gender-based inequality,” and “can deepen other divides and inequalities,” including healthcare access and outcomes, and economic and educational opportunities.²⁹ In this respect the digital divide’s pervasiveness is particularly relevant to the broad topic of access to justice, given the focus of access to justice initiatives and civil legal services programming on those among us with the least resources and the fact that the digital divide is a significant characteristic of poverty: a 2021 Pew Research Foundation 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 \$100,000.³⁰

²⁶ “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>.

²⁷ 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 26.

²⁸ Muller & Vasconcelos Aguiar, What Is the Digital Divide, *supra* note 26.

²⁹ *Id.*

³⁰ 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>.

As hybrid work becomes the new norm for those with greater resources, those invested in increasing access to justice 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.

Data and practice experience 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, in the first year of the pandemic, Justice Center in-person intakes plummeted, but intakes conducted online rapidly rose – roughly doubling. Even as in-person services have returned, *intakes* conducted in-person have not returned to pre-pandemic levels, while online intakes continue to increase. Meanwhile, even as the Justice Center provided direct services in the past fiscal year benefiting over 25,000 New Yorkers in need, it additionally reached roughly 90,000 people through online resources and information.³¹ Given what data show regarding the impact of the digital divide on persons of low income – who by definition are the consumers of pro bono legal services – it is clear that ongoing discussions of civil legal services funding ought to consider the extent to which narrowing the digital divide goes hand-in-hand with expanding access to justice.

B. Addressing the Digital Divide for New Yorkers Experiencing Homelessness

Both the City Bar and the Justice Center continue working together and with other legal and nonprofit organizations and community groups to highlight the unique impacts the digital divide has on New Yorkers experiencing homelessness.³² As noted in the preceding subsection, this is not a new problem, and 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. Remote counseling, telehealth, and other internet-based health services have expanded since the start of the pandemic; however, these services are unavailable to those without a connection to a WiFi network.³³ As a result, poor or no internet connectivity leaves many 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.

³¹ City Bar Justice Center, Impact Report at 3 (June 2023), <https://www.citybarjusticecenter.org/wp-content/uploads/2023/06/2023-City-Bar-Justice-Center-Impact-Report.pdf>.

³² 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 *supra* note 26.

³³ 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/>.

As we highlighted in our testimony in each of the past two years, 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.³⁴ 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 240 shelters housing school-age children were equipped with internet access.³⁵ In 2022, the 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.³⁶ In 2023, the New York State Senate passed S4561A, which would require all temporary housing facilities to provide high-speed internet access to all individuals residing in their facilities.³⁷

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. Additionally, 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.³⁸

³⁴ 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>.

³⁵ 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/>.

³⁶ 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>.

³⁷ Kristen Gonzalez, Senator Gonzalez’s Bill Requiring Internet Access For Temporary Housing Residents Passes The New York State Senate (June 9, 2023), <https://www.nysenate.gov/newsroom/press-releases/2023/kristen-gonzalez/senator-gonzalezs-bill-requiring-internet-access>.

³⁸ 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; 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, 2nd 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

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

The preceding discussion makes clear that providers, funders, and all stakeholders must view expanding access to justice and narrowing the digital divide in tandem, and think creatively about how to equitably further the advance of 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 from in-person to virtual to now hybrid modes of work, the private bar and the business community

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.”).

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.

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 M. Denk, Executive Director; Kyla James, Operations and Program Associate; Scott Kohanowski, Director, Homeowner Stability and LGBT Advocacy Projects; Lisa Pearlstein, Director, Legal Clinic for the Homeless; and Libby Vazquez, Director of Legal Services and Director, Legal Hotline and Planning & Estates Law Project. Likewise, the City Bar thanks Alison King, Andrew Scherer and Sara Wagner, co-chairs of the City Bar's Task Force on the Civil Right to Counsel.

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