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STATE OF NEW YORK
COURT OF APPEALS

BARBARA JIGGETTS, THERESA FELDER, DOROTHY HUGHES, MARIA ARTIAGA, JOHNNIE MAE BEAL, BLANCA SANCHEZ, and LINDA GREEN on behalf of themselves, their children, and all others similarly situated,

Plaintiffs-Appellants,

-against-

CESAR PERALES, as Commissioner of the New York State Department of Social Services,

Defendant-Respondent,

WILLIAM J. GRINKER, as Commissioner of the New York City Department of Social Services, OCEAN PARK COMPANY, BOSMOR REALTY CORP., GUPTA & PRASAD REALTY CORP., CYMCO REALTY CO., EMPIRE REALTY CO., LORICHAME REALTY CORP., and ARVERNE ASSOCIATES, Landlords,

Defendants.

BRIEF OF AMICI CURIAE CITIZEN'S COMMITTEE FOR CHILDREN, COALITION FOR THE HOMELESS, COMMITTEE FOR HISPANIC CHILDREN AND FAMILIES, INC., COMMUNITY SERVICE SOCIETY OF NEW YORK, EMERGENCY ALLIANCE FOR HOMELESS FAMILIES AND CHILDREN, INTERFAITH ASSEMBLY ON HOMELESSNESS AND HOUSING, NATIONAL BLACK CHILD DEVELOPMENT INSTITUTE, NEW YORK HOUSING CONFERENCE, PUERTO RICAN ASSOCIATION FOR COMMUNITY AFFAIRS, INC., PUERTO RICAN FAMILY INSTITUTE, and SETTLEMENT HOUSING FUND, IN SUPPORT OF PLAINTIFFS-APPELLANTS

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INTEREST OF THE AMICI CURIAE

Amici curiae, eleven non-profit social service organizations, submit this brief in support of plaintiffs and urge reversal of the June 15, 1989 order of the Appellate Division, reversing the order of the Supreme Court of the State of New York, IAS Part 25 (Moskowitz, J.).

Amici, described more fully in Appendix A to this brief, are united in their concern over the current crisis in the availability of housing within the range of the shelter allowances and the lackluster response of the State and City. Through their involvement with City and State residents most at risk -- welfare recipients, children, the homeless, and the working poor -- amici have experienced first-hand the human toll that results from policies that create hopelessness and despair.

Each organization brings to this matter a wealth of experience and expertise in child and family development, community, housing, and legal matters. Amici include organizations that have devoted considerable time and resources to work with and on behalf of poor and needy children, and that have felt their limited resources sorely pressed by the significant increase in homeless families seeking help.

Amici feel that this case may be a significant step toward establishing the right of all human beings to be safe,

secure, and healthy in their person and environment. Because of this common conviction, all of these groups share an interest in the outcome of this litigation.

PRELIMINARY STATEMENT

For three-quarters of a century, it has been the social policy of New York State that no child should be deprived of a stable, permanent home by reason only of destitution. Rejecting the nineteenth century practice of incarcerating the indigent in "poor houses" or "alms houses," the legislature provided in 1915 for grants to widowed mothers to permit them to raise their children at home. Subsequent statutes and regulations governing aid to families with dependent children have consistently required -- as the present law does -- that such aid be adequate to maintain children in the home.

This unwavering policy reflects the belief that a child's proper physical, emotional, and moral development requires the security and continuity of a real home -- and that institutionalizing poor children and their families is not just cruel and unfair, but constitutes reckless endangerment of society's most precious resource.

Consistent with this policy, New York has historically provided rent assistance that is at least minimally adequate to maintain most families in permanent housing. This Court found as recently as 1977 that aid provided was adequate for approximately

ninety-five percent of public assistance families. See Bernstein v. Toia, 43 N.Y.2d 437, 447, 373 N.E.2d 238, 243, 402 N.Y.S.2d 342, 347 (1977).

As found by the Supreme Court in this case, a crisis in affordable housing in New York -- compounded by the inaction of administrative agencies charged with setting adequate levels for housing grants -- has made a mockery of state policy. Shelter allowances that only a few years ago were adequate to keep a permanent roof over the head of nearly every child are now insufficient for thousands of families under the Aid to Families with Dependent Children (AFDC) program. Periodic increases have simply been outstripped by rapidly rising rents for the limited stock of available, affordable housing.

Families facing eviction because their shelter grant is inadequate are now unable in most cases to find less expensive housing, because such housing does not exist in significant quantities anywhere in New York City. These families will become and are becoming homeless. If they can find no one else to take them in, and want to avoid living on the street, they must resort to a City-run emergency shelter or welfare hotel.

Thus does a century of progress evaporate, as New York's children face life in the squalid modern-day equivalent of the discredited "poor house" -- exposed to drugs, crime, disease, and chaos, and deprived of a stable home, for no reason other than poverty.

This result is immoral: Our most vulnerable neighbors are subjected to deprivation and abuse in a city of plenty. It is irrational: Defendants pay fantastic sums to maintain families in emergency accommodations rather than granting them a fraction of that amount to allow them to meet their rent. And above all it is illegal: The law requires that housing allowances be adequate to prevent children from losing their homes.

Plaintiffs here seek to enforce that legislative mandate by requiring defendants to adopt regulations reasonably calculated to provide shelter allowances that are adequate for most families. This relief -- which in no way challenges the underlying statutory scheme -- is modest and interferes with no valid executive prerogative. Section 131-a of the Social Services Law allows defendants to select the method of providing housing grants, but § 350(1)(a) requires that these grants be "adequate to enable the father, mother, or other relative to bring up the child properly, having regard for the physical, mental and moral well-being of such child" (emphasis added). This legislative mandate implements the state's affirmative duty under section 1 of article XVII of the State Constitution to provide for the "aid, care and support of the needy." See Tucker v. Toia, 43 N.Y.2d 1, 7, 371 N.E.2d 449, 451, 400 N.Y.S.2d 728, 730 (1977).

In light of the mandatory statutory standard and the stark, uncontradicted factual showing made by plaintiffs, the Supreme Court properly sustained the instant complaint and granted limited preliminary injunctive relief (CA. 44-88)[1/]. The Appellate Division's reversal of that decision (CA. 8-29) is based on a strained reading of both the controlling case law and the relevant statutory language -- and functionally ignores the compelling factual record portraying a system that has ceased to meet the standards set by the Legislature and this Court. The decision of the Appellate Division should be reversed.

ARGUMENT

I.

THE SUPREME COURT CORRECTLY HELD THAT THE QUESTION OF DEFENDANTS' COMPLIANCE WITH LEGISLATIVE STANDARDS IS JUSTICIABLE

Defendants have taken the extraordinary position throughout this litigation that the question of their compliance with the statutory mandate that housing grants to AFDC families be "adequate" is entirely non-justiciable. They have argued that plaintiffs may only be heard by the courts if they show that the aid provided is tantamount to a denial of all aid to the needy. Although the Appellate Division did not expressly find this

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1/ Material contained in the Appendix submitted by plaintiffs to this Court is cited as "CA. ____." Material contained in the Record in the Appellate Division is cited as "R. ____."

action non-justiciable, it did focus upon the non-justiciability holding in RAM v. Blum, 77 A.D.2d 278, 432 N.Y.S.2d 892 (1st Dep't 1980) (CA. 25). Amici anticipate that defendants will raise this issue before this Court as an alternative ground for sustaining the Appellate Division's ruling.

In making their justiciability argument, defendants have mischaracterized this action as a challenge to legislative authority. But plaintiffs seek only to enforce a clear and specific mandate of the State Legislature violated through bureaucratic neglect. This action does not seek to challenge legislative judgments on sensitive questions of social policy, but to vindicate them. Properly framed, the questions presented in this case are clearly justiciable under well-settled New York law.

A. Courts May Order Administrative Agencies to Comply With Controlling Statutes and Regulations

The principle of separation of powers requires that courts be available to insure compliance by the executive branch with the dictates of the legislature. As this Court has held: "Administrative agencies can only promulgate rules to further the implementation of the law as it exists; they have no authority to create a rule out of harmony with the statute." Jones v. Berman, 37 N.Y.2d 42, 53, 332 N.E.2d 303, 308, 371 N.Y.S.2d 422, 429 (1975).

Moreover, as the Court held in Klosterman v. Cuomo, 61 N.Y.2d 525, 531, 463 N.E.2d 588, 590, 475 N.Y.S.2d 247, 249 (1984), "[I]f a statutory directive is mandatory, not precatory it is within the courts' competence to ascertain whether an administrative agency has satisfied the duty that has been imposed on it by the Legislature and, if it has not, to direct that the agency proceed forthwith to do so."

In Klosterman, the Court sustained a complaint seeking to compel the State to expend sufficient funds to satisfy statutory requirements of adequate care for the mentally ill. Rejecting the argument that the matter was non-justiciable because it involved the allocation of resources and implicated the decision-making function of the executive and legislative branches, the Court reaffirmed the principle that rights granted by the legislature must be enforced by the judiciary: "[D]efendants fail to distinguish between a court's imposition of its own policy determination upon its governmental partners and its mere declaration and enforcement of the individual's rights that have already been conferred by the other branches of government." 61 N.Y.2d at 535, 463 N.E.2d at 593, 475 N.Y.S.2d at 252.

This Court has in several other cases recognized the justiciability of claims seeking executive compliance with statutory and regulatory mandates for the provision of adequate

social services. See, e.g., McCain v. Koch, 70 N.Y.2d 109, 119-20, 511 N.E.2d 62, 66-67, 517 N.Y.S.2d 918, 922-23 (1987) (court may enforce administrative regulations requiring adequate conditions in emergency shelters); Dental Society v. Carey, 61 N.Y.2d 330, 335, 462 N.E.2d 362, 364, 474 N.Y.S.2d 262, 264 (1984) (court may require state to increase medicaid dental fee reimbursement schedule to meet statutory adequacy standards). That compliance may be compelled through injunctive relief. "There is no question that in a proper case Supreme Court has power as a court of equity to grant a temporary injunction which mandates specific conduct by municipal agencies." McCain, 70 N.Y.2d at 116, 511 N.E.2d at 64, 517 N.Y.S.2d at 920.

Courts of other states have also recognized that scrutiny of administrative compliance with legislative mandates is required, not barred, by the separation of powers. See Cooper v. Swoap, 11 Cal. 2d 856, 864-65, 524 P.2d 97, 102, 115 Cal. Rptr. 1, 6 ("administrative regulations promulgated under the aegis of a general statutory schedule are only valid insofar as they are authorized by and consistent with the controlling statutes," because administrative violation of statutory standards "is completely incompatible with the basic premise on which our democratic system of government rests"), cert. denied, 419 U.S. 1022 (1974). As the Supreme Judicial Court of Massachusetts held in Coalition for the Homeless v. Secretary of Human Services, 400 Mass. 806, 823-24, 511 N.E.2d 603, 614 (1987) (emphasis added) (citations omitted):

> The judicial role in assuring compliance with a statutory mandate involving the expenditure of public funds is a delicate one. The judgment of the executive agency as to how to carry out its obligations must be given deference. Once a failure to comply with a statutory mandate is found, however, an order directing the department to submit to the court its program for fulfilling its statutory obligations may be an appropriate initial step. Subsequent orders may be necessary. The process often calls for a careful mixture of judicial persistence, patience, and firmness.

Consistent with this principle, many courts of other states have adjudicated the question of the adequacy of public benefits provided under mandatory statutes -- and have held that increased benefit levels may be ordered in appropriate cases. See, e.g., Coalition for the Homeless, 400 Mass. at 823-24, 511 N.E.2d at 613-14 (court may compel agency to seek funds to satisfy statute mandating aid sufficient to maintain AFDC children in their own home); State ex rel. Ventrone v. Birkel, 54 Ohio St. 2d 461, 462, 377 N.E.2d 780, 781 (1978) (county department of welfare has "a statutory duty to establish standards of poor-relief payments 'sufficient to maintain health and decency,' with which failure to comply constitutes a valid basis for an action in mandamus"); City & County of San Francisco v. Superior Court, 57 Cal. App. 3d 44, 49-50, 128 Cal. Rptr. 712, 716-17 (1976) (agency ordered to promulgate standards for aid to indigent because previous level of payments was "not consistent with the objects and purposes of the law relating to public

assistance programs"); Keller v. Thompson, 56 Haw. 183, 532 P.2d 664, 672 (1975) (flat grant system under mandatory aid statute must be reviewed to ensure that "the amount of assistance granted is reasonably commensurate with the minimum necessary to assure recipients a standard of living compatible with decency and health").

Because plaintiffs here do not challenge the validity of any statute passed by the New York State Legislature, but rather seek to enforce existing statutory mandates, the cases discussed by the Appellate Division do not render this case non-justiciable. For example, Bernstein v. Toia, 43 N.Y.2d 437, 373 N.E.2d 238, 402 N.Y.S.2d 342 (1977), was a challenge to the entire regulatory scheme of flat shelter grants. The Court upheld the system, stressing that the shelter allowance schedule at issue was generally adequate. Id. at 449, 373 N.E.2d at 244, 402 N.Y.S.2d at 348. In RAM v. Blum, 77 A.D.2d 278, 432 N.Y.S.2d 892 (1st Dep't 1980), plaintiffs challenged the constitutionality of standards for non-shelter grants actually set by the State Legislature in Social Services Law § 131-a(3)(a). Id. at 281, 432 N.Y.S.2d at 894.

B. The Relief Sought Would Not Usurp Any Legislative or Administrative Functions

Justiciability principles require that courts limit the exercise of their power to spheres in which they have both authority and competence. "The paramount concern is that the judiciary not undertake tasks that the other branches are better suited to perform." Klosterman, 61 N.Y.2d at 535, 463 N.E.2d at 593, 475 N.Y.S.2d at 252. But it is the essence of the judicial function to enforce the policies promulgated by those other branches.

This Court has therefore declined to "legislate" complex social policy questions, but has not hesitated to enforce the clearly discernable will of the Legislature. In Abrams v. New York City Transit Authority, 39 N.Y.2d 990, 992, 355 N.E.2d 289, 290, 387 N.Y.S.2d 235, 236 (1976), the Court rejected a suit challenging subway noise levels because plaintiffs failed to identify "specific illegal acts or omissions for which judicial correction may be sought." The Court held it improper to "substitute judicial oversight for the discretionary management of public business by public officials." In contrast, in Bruno v. Codd, 47 N.Y.2d 582, 588, 393 N.E.2d 976, 979, 419 N.Y.S.2d 901, 904 (1979), the Court allowed a suit by battered wives charging that family court officials improperly interfered with access to the court: "[J]usticiability hardly can be denied when

what is at stake is not the righting of social injustices . . . but the enforcement of clear, nondiscretionary and easily definable statutes and rules."

This case is squarely controlled by Klostermann, Dental Society, Bruno, and other cases concerning judicial enforcement of legislative standards. These cases hold that courts may not usurp the legislature or executive function, but may require administrative agencies to follow statutory directives. As the Court held in Dental Society:

> Appellants' attack on the justiciability of the claim is . . . misdirected. Appellants' concerns that the courts are ill equipped to fix reimbursement rates for individual dental services or will be embroiled in the allocation of limited financial resources misperceive the thrust of the petition. Respondent does not ask the courts to set fees for dental work or allocate the State's budget for such services. The question is whether the reimbursement schedule promulgated by the State meets the test set forth in the applicable Federal regulations . . . .
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> Whether administrative action violates applicable statutes and regulations is a question within the traditional competence of the courts to decide. The relief requested by respondent requires the court neither to fix rates for dental services nor to determine budgetary priorities, and we agree with the court below that, if respondent were to establish its contentions, adequate relief could be afforded without judicial encroachment on executive or legislative prerogatives.

61 N.Y.2d at 335, 462 N.E.2d at 364, 474 N.Y.S.2d at 264 (emphasis added).

In the present case as well, the Supreme Court recognized the proper limits of the judicial role. The court held that plaintiffs, if they ultimately prevail on their claim, would be entitled only to an order directing defendants to re-calculate housing allowances to comply with the legislative standard of adequacy: "The court recognizes that it is within the sound discretion and expertise of defendants to determine how to comply with constitutional and legislative mandates regarding needy families with children. However, a certain meaningful minimum standard must be met to make the statute viable" (CA. 85a-86).

The Courts must enforce legislative standards even though the allocation of limited funds to meet public needs is generally left to the political process. Where the law requires it, courts will not hesitate to order the executive branch to expend funds. See, e.g., Jones v. Berman, 37 N.Y.2d at 53, 332 N.E.2d at 309, 371, N.Y.S.2d at 429 (striking down illegal limitation on emergency assistance); Gabel v. Toia, 64 A.D.2d 267, 271, 409 N.Y.S.2d 869, 872 (4th Dep't 1978) (invalidating state regulation requiring proration of home relief grant because of conflict with Social Services Law). And the Court of Appeals has made clear that courts should not avoid deciding legal questions simply because they arise in an intensely political

context. Anderson v. Krupsak, 40 N.Y.2d 397, 403-04, 353 N.E.2d 822, 826, 386 N.Y.S.2d 859, 862-63 (1976).

On the record below, the relief sought may very well not require defendants to spend more in the long run to house AFDC families. Adequate housing grants would likely save vast amounts now squandered on exorbitant welfare hotels and expensive emergency shelters. In any event, the legal duty to meet legislative standards of adequacy is not conditioned upon the appropriation of any particular amount of money; if the available funds are inadequate to discharge their legal responsibilities, defendants must ask the Legislature for more. See Jones v. Berman, 37 N.Y.2d at 55, 332 N.E.2d at 310, 371 N.Y.S.2d at 431 ("It is clear that the county's duty to provide assistance is not dependant upon the receipt of equivalent money from the State and the cases have so held.").[2/]

2/ Defendants have further suggested that plaintiffs' claims are non-justiciable because the Legislature is cognizant of housing and homelessness problems when it appropriates funds for social services. But the Legislature cannot be presumed to make substantive policy choices through general budget appropriations. This is particularly true when such funds are not earmarked for specific purposes and some discretion is granted to administrative agencies in allocating funds to satisfy previously expressed -- and mandatory -- legislative standards. See T.V.A. v. Hill, 437 U.S. 153, 190 (1978). Repeal by implication is always disfavored -- but especially so in the context of an appropriations bill. United States v. Will, 449 U.S. 200, 221 (1980). Cf. Jones, 37 N.Y.2d at 54, 332 N.E.2d at 309, 371 N.Y.S.2d at 430 (duty to provide "emergency" benefits not eliminated by provision governing "duplicate" benefits because "'[h]ad the Legislature desired to terminate the obligation of social security districts, it is not likely that it would have done so only by implication'") (citation omitted).

In the present case, as in Klostermann, "there is nothing inherent in plaintiffs' attempts to seek a declaration and enforcement of their rights that renders the controversy non-justiciable. They do not wish to controvert the wisdom of any program. Instead, they ask only that the program be effected in the manner that it was legislated." 61 N.Y.2d at 537, 463 N.E.2d at 594, 475 N.Y.S.2d at 253.

II.

THE SUPREME COURT CORRECTLY HELD THAT PLAINTIFFS STATED A CAUSE OF ACTION FOR VIOLATION OF THE MANDATORY AID PROVISIONS OF THE SOCIAL SERVICES LAW

As noted above, plaintiffs' claim is not a facial challenge to the flat grant system of shelter allowances for the needy; it is an attempt to vindicate the basic purposes of the flat grant system by insuring that grants are, as the Legislature intended, generally adequate to maintain families in permanent housing. The plain language of the Social Services Law sets this standard and, as demonstrated in Point III, infra, plaintiffs have made a powerful showing that present housing allowances provided under N.Y. Comp. Codes R. & Regs. tit. 18, § 352.3(a) are completely inadequate to satisfy that standard.

A. The Instant Case is One of First Impression in New York

The issue presented in this case -- the complete inadequacy of shelter allowances to maintain children in a permanent home as legislatively mandated -- has never before been presented to a court in this State. The cases cited by the Appellate Division, deciding different questions on different factual records, do not control.

As noted above, Bernstein v. Toia challenged the validity of the entire flat grant system, and RAM v. Blum was a

constitutional challenge to non-shelter grants set by the State Legislature. Neither case concerned the general adequacy of standards set by administrative agencies, and neither involved Social Services Law § 350(1)(a), the provision mandating adequacy for housing grants to AFDC families. Finally, in neither case was there any claim that inadequate grants were actually causing families to become homeless.

The other case discussed at length by the Appellate Division, Weinhandler v. Blum, 84 A.D.2d 716, 444 N.Y.S.2d 3 (1st Dep't 1981), is also inapposite. While plaintiffs here allege that inadequate shelter allowances will make them homeless in violation of the Social Services Law, no such claim was advanced in Weinhandler.[3/] The Appellate Division therefore confronted a very different claim in Weinhandler from the one asserted here; while it upheld the adequacy of shelter allowances, it expressly limited the holding to the record before it. Id. at 717, 444 N.Y.S.2d at 4. Nothing in the Weinhandler opinion addresses the specific statutory provisions relied upon here, or the historical legislative mandate to protect children.

3/ Plaintiffs in Weinhandler alleged that the shelter allowances were inadequate to meet their rents, but they did not assert that they were unable to cover their rent with other funds or relocate to less expensive apartments elsewhere in the City. Evidence in the Weinhandler record suggested that many inexpensive apartments were then still available in New York (R. 265-66). Not only is today's housing market drastically different, but families are less able to borrow from non-shelter grants to pay rent because the purchasing power of those grants has deteriorated (R. 319-21).

In short, the cases cited by the Appellate Division do not forestall an analysis of the relevant statutory provisions themselves; this is a case of first impression.

B. The Social Service Services Law Provides that Aid Shall be Adequate to Raise Children Properly in a Permanent Home

The clear and unequivocal language of Soc. Serv. Law § 350(1)(a) provides that:

> Allowances shall be adequate to enable the father, mother or other relative to bring up the child properly, having regard for the physical, mental, and moral well-being of such child, in accordance with the provisions of section one hundred thirty-one-a of this chapter and other applicable provisions of law. Allowances shall provide for the support, maintenance and needs of one or both parents if in need, and in the home . . . .

(emphasis added). Similarly, § 344(2) of the Social Services Law provides that "[a]id shall be construed to include services, particularly those services which may be necessary for each child in the light of the particular home conditions and his other needs" (emphasis added).

As the Supreme Court found (CA. 74-77), these provisions evince a clear legislative intention to protect the well-being of children and to maintain for them a stable home life. The repeated use of the word "shall" indicates that the legislative directive is mandatory, not precatory, and thus the Supreme Court correctly held that plaintiffs could state a cause

of action based on defendants' failure to set adequate grants pursuant to these sections. See Klostermann, 61 N.Y.2d at 531, 463 N.E.2d at 591, 475 N.Y.S.2d at 250.

The Supreme Court's straightforward reading of the statutes is consistent not just with their plain meaning, but with this State's historical commitment to providing a stable home environment for its children. The Appellate Division's strained statutory arguments to the contrary should be rejected.

1. The adequacy standard of § 350(1)(a) is not obviated by the general language of § 131 or § 131-a

The Appellate Division held that the mandatory language of Soc. Serv. Law § 350(1)(a) is not mandatory after all because the section also says that aid will be given "in accordance with the provisions of section one hundred thirty-one-a of this chapter and other applicable provisions of law" (CA. 26-27). But § 131-a simply directs defendants to provide, "in accordance with the provisions of this section and regulations of the department," non-shelter grants "within the limits of the schedules included in subdivision three of this section" plus "additional amounts which shall be included therein for shelter" and other special needs. Soc. Serv. Law § 131-a(1). The section does not even require that defendants adopt the present flat grant system. See Bernstein, 43 N.Y.2d at 446-47, 373 N.E.2d at 243, 402 N.Y.S.2d at 347 (statute signals general preference for flat

grant concept but leaves to commissioner implementation of shelter component of public assistance grants).

Nothing in § 131-a limits the standard of adequacy that is prescribed for housing allowances for AFDC families in § 350, which is expressly entitled "Character and adequacy." It is this section that mandates that aid shall be "adequate to enable the father, mother or other relative to bring up the child properly" and that aid shall be provided "for the support, maintenance and needs of one or both parents if in need, and in the home."

The Appellate Division's holding that the general authorization of § 131-a trumps the specific standards of § 350(1) is based upon a distortion of the plain meaning of both provisions. Section 131-a directs defendants to pay housing grants; it provides discretion in enforcing the dictates of § 350(1)(a), but it does not supplant those dictates. General enabling language must be subject to specific requirements enumerated for each component of the aid program. Indeed, § 131, which establishes the general duty of social services officials to provide care, itself expressly provides that aid must be provided "in accordance with the requirements of this article and other provisions of this chapter."

Other statutory language read by the Appellate Division as limiting § 350(1)(a) is fully consistent with that section's mandatory terms. Section 131(1) -- which is a completely separate section from § 131-a and which is not even mentioned in

§ 350 -- provides that it is the duty of social service officials to provide adequately for the needy "insofar as funds are available for that purpose." This general provision cannot erase the mandatory duty imposed by § 350(1)(a) without automatically eviscerating every affirmative obligation contained in the Social Services Law.

In any event, defendants have not demonstrated -- and neither court below found -- that funds are unavailable to meet the statutory standard, or that the Legislature would fail to provide additional funds if necessary. Indeed, the extraordinary amount spent on emergency shelters and hotel rooms for homeless families suggests that providing an adequate shelter allowance and preventing many families from becoming homeless would be a more effective use of available resources.

Similarly, the requirement of § 131(3) that assistance and service shall be given a needy person in his own home "[w]henever practicable" suggests limitations based on the physical or mental condition of the recipient, rather than the availability of funds. This view is supported by additional language in § 131(3) mostly omitted from the Appellate Division's opinion: "As far as possible families shall be kept together, they shall not be separated for reasons of poverty alone, and they shall be provided services to maintain and strengthen family life" (emphasis added). The context suggests that "[a]s far as possible" refers to non-financial factors, such as medical

problems or the need to protect children from abuse -- since the same sentence expressly provides that families "shall not be separated for reasons of poverty alone" (emphasis added).

Each of these provisions repeatedly states that aid to achieve the stated goals "shall" be provided. In contrast to this language and the express mandatory provisions of § 350(1)(a), other parts of § 350 provide discretion to social service officials. Thus, § 350(1)(b) provides that "[w]hen permitted in accordance with regulations of the department, provision may be made" for certain items of medical assistance (emphasis added). Similarly, § 350(1)(f) provides that care in special facilities "may be provided" during pregnancy if "in the judgment of the social services official" care cannot be provided in the home (emphasis added).

The Appellate Division also misconstrued § 344(2) which provides that "[a]id [to dependent children] shall be construed to include services, particularly those services which may be necessary for each child in the light of the particular home conditions and his other needs." The court reversed Special Term's ruling that this language supported the State's mandatory duty to provide for children in the home, holding that the statute "relates to supportive services, not to cash allowances" (CA. 27). But the statute actually says that aid shall "include" services "necessary" for each child in the home -- suggesting that services are not provided in a vacuum but are supplemental

to other aid, and that the total aid package should meet the needs of children in their own homes.

The Appellate Division further erred in adopting defendants' argument that the Legislature would not have provided a standard of adequacy for AFDC children without setting a similar standard for families receiving Home Relief (CA. 27). Without addressing the standards governing aid to Home Relief recipients, it is sufficient to note that AFDC is the principal program addressing the needs of indigent children in New York. The Appellate Division points to 33,000 children in New York City receiving public assistance through Home Relief, but ignores the half million children dependent on the AFDC program -- approximately 93 percent of the total children for whom aid is provided. New York City Human Resources Admin., Office of Policy and Economic Research, HRA Facts (June 1988). In any event, it is hardly "inappropriate" (CA. 27) for the Legislature to have provided special protection for children in the AFDC program, who by definition have been deprived of parental support or care. See Soc. Serv. Law § 349-b(1).[4/]

4/ The Appellate Division did not reach the further suggestion of defendants below that § 350(5), requiring social services officials to cooperate with charitable organizations, renders irrelevant the standard of adequacy established in § 350(1)(a). But even if the Legislature contemplated that some individuals would have needs that government alone could not meet, such a stop-gap provision cannot absolve defendants of their duty under the Social Services Law and the State Constitution to attempt to meet legislative goals and standards. Defendants cannot dump their responsibilities on organizations, like amici, working with limited resources to help those for whom government aid is insufficient.

2. The mandatory standard of § 350(1)(a) reflects a longstanding legislative commitment to protecting children and maintaining them in the home

Underlying the mandatory language of Soc. Serv. Law § 350(1)(a) is the broader social policy, expressed in § 131(3), that "[w]henever practicable, assistance and service shall be given to a needy person in his own home." The Appellate Division's ruling that § 344(2) and 350(1) are not mandatory flies in the face of this long-held policy. As the court noted in Thrower v. Perales, 138 Misc. 2d 172, 175, 523 N.Y.S.2d 933, 935 (Sup. Ct. N.Y. Co. 1987):

> The history of public assistance in New York State reflects a steady transition away from punitive institutionalization of the poor to programs that provide cash, goods and services to restore the economically needy to self-care and self-support. Underlying this transition is a recognition of the fact that poor people are not morally defective, but victims of an often harsh economic system.

Since 1915, when New York passed the Child Welfare Act, 1915 Laws, ch. 228, State policy has put a special emphasis upon keeping children out of harsh institutional settings and providing aid sufficient for families to remain together and in the home. Although the principle of home care was not extended to the needy in general until establishment of the Home Relief program in 1929, see Thrower, 138 Misc. 2d at 175, 523 N.Y.S.2d at 935, the 1915 legislation expressly provided for grants to

widowed mothers with children under sixteen years old "in order that such children may be suitably cared for in their homes by such mothers." 1915 Laws, ch. 228 (emphasis added).

As the First Department has summed up the legislative commitment: "It is axiomatic that children need stable, secure homes and are among the least able to bear the hardships of poverty and destitution. Public policy strongly favors assistance to families with destitute children." McCain v. Koch, 117 A.D.2d 198, 214, 502 N.Y.S.2d 720, 729 (1st Dep't 1986), rev'd in part on other grounds, 70 N.Y.2d 109, 511 N.E.2d 62, 517 N.Y.S.2d 918 (1987).

Since 1935, when a limit on housing grants was lifted, the Legislature has mandated that shelter allowances for families with dependent children "shall be adequate to enable the mother or relative to bring up the child or children properly having regard for the physical, mental and moral well-being of such child or children." 1935 Laws, ch. 547, § 1 (emphasis added). This provision is the predecessor of current Soc. Serv. Law § 350(1)(a).

In addition to the statutory language, administrative regulations and practice have also consistently provided that shelter allowances to AFDC families be adequate to maintain children in a stable home. For example, New York City Department of Welfare guidelines in the 1930's provided for payment of a

rent allowance covering the entire actual rent paid, up to a specified maximum, and for payment of excess amounts upon demonstration that "the family is unable to procure suitable living quarters according to the rent schedule within the area in which they are accustomed to live," or that the health of a family member required better accommodations. New York City Dep't of Welfare, Manual Of Policies Relating To Eligibility For Relief § 12 (1938) (R. 260-61).

From 1953 through 1965, agency regulations expressly provided:

> Each public welfare agency shall allow the rent item "as paid" or shall establish an allowance schedule based on a number of rooms, with and without heat, utilities, furniture and furnishings. The rent allowance shall provide a sufficient amount for all persons to obtain housing on a standard of health and decency.

Official Supplement to the Official Compilation of N.Y. Comp. Codes R. & Regs. tit. 8, § 512 (1953)(emphasis added)(R. 257). In 1965, the social service regulations were recodified, but still required that the "allowance schedule shall provide a sufficient amount for all persons to obtain housing in accordance with standards of public health in the community." N.Y. Comp. Codes R. & Regs. tit. 18, § 352.3(a) (repealed 1975) (R. 259). Thus, the consistent legislative and administrative policy of the State through 1975 was to provide housing allowances adequate to allow AFDC recipients to maintain permanent housing.

In 1975, the regulation requiring adequate shelter allowances was supplanted by a schedule of maximum grants "constructed after detailed studies on the basis of a methodological sampling of actual costs of shelter in each local social services district and then the adoption of the 95th percentile of such allowances." Bernstein, 43 N.Y.2d at 447, 373 N.E.2d at 243, 402 N.Y.S.2d at 347. In upholding the newly-adopted regulation, a federal court noted that: "[n]inety-five percent of welfare recipients, it is estimated, have found accommodations in New York City within the maximum shelter allowances as fixed by the new regulations." The court further observed that the record reflected "that there are sufficient facilities available for recipients on welfare within the maximum allowances for shelter." Mayor v. Toia, 419 F. Supp. 1161, 1163 (S.D.N.Y. 1976).

Therefore, as initially adopted, the flat grant system was neither intended to change -- nor did it effectively reduce -- the substantive standard of adequacy established by § 350(1)(a). The new system was merely intended to simplify and streamline administration of social services. Cf. Rosado v. Wyman, 397 U.S. 397, 417 (1970) (noting that flat grant system adopted in 1969 for non-shelter allowances was intended not as "a reduction in the content of [the State's] former standard," but as "an advance in administrative efficiency"). The Bernstein Court specifically described the purpose of the flat grant system adopted for housing allowances as to provide, "after statistical

and qualitative analysis of a fair sampling of individual grants, a uniform figure . . . determined to be adequate in general to meet the needs in question." 43 N.Y.2d at 444, 373 N.E.2d at 241, 402 N.Y.S.2d at 345-46 (emphasis added).

In sum, both the legislative and administrative history of housing grants in New York demonstrate that the present system was never intended to provide less than adequate housing allowances. While the Legislature has given defendants considerable latitude in establishing the methodology of setting and providing housing grants, it has always been assumed that such grants would be adequate for the overwhelming majority of AFDC recipients. The deferential attitudes adopted by the courts in Bernstein, RAM, and Weinhandler reflect this assumption. Certainly, no court has before been confronted with housing allowances so inadequate in light of actual conditions as to threaten a substantial proportion of AFDC recipients with homelessness -- thus violating § 350(1)(a).

What has changed is not the legislative policy but the realities of the New York City housing market. Regulations that may have been adequate to satisfy the statutory mandate at a time of high vacancy rates for low-income apartments have become totally inadequate today. See Point III, supra.

The remedy need not upset either the statutory scheme established by the Legislature or the basic approach taken by defendants. All that is required is that defendants -- if they

choose to implement the directives of §§ 131-a and 350(1)(a) through a flat grant with a fixed maximum -- undertake the sort of realistic, empirical study that has informed the setting of housing grants in the past. Defendants could then set new shelter allowances that, at the very least, will meet the basic housing costs for most families in today's real housing market.[5/]

The Supreme Court correctly rejected defendants' attempt to escape their duty to provide adequately for AFDC families under § 350(1)(a). In sustaining plaintiffs' cause of action, the court did nothing more than vindicate the Legislature's dominant role in setting social policy by giving a mandatory standard-setting provision its plain meaning. The Appellate Division took an unduly narrow view of the legislative mandate in reversing that decision and ordering the complaint dismissed. This Court should reverse the decision of the Appellate Division.

5/ The Appellate Division misconstrued the relief sought as the right to receive shelter allowances "in accordance with [plaintiffs'] actual rents" (CA. 26). Plaintiffs seek no such relief -- merely an order directing defendants to do their jobs by reassessing the general adequacy of the housing allowance to meet the needs of most aid recipients.

III.

THE EVER WORSENING HOMELESSNESS CRISIS SUPPORTS THE SUPREME COURT'S DECISION

In addition to sustaining the complaint, the Supreme Court granted the named plaintiffs preliminary injunctive relief based on their compelling and effectively uncontradicted factual showing on the gravity of the housing crisis and the harm likely to befall children in homeless families. Noting that even Governor Cuomo admitted that shelter allowances were "shamefully inadequate," the court found that inadequate grants would likely lead to plaintiffs being evicted and confronted with "the dismal prospect of emergency housing since they [would] undoubtedly be unable to secure alternative affordable housing" (CA. 86-87).

The court also recognized the devastating impact of defendants' shelter policies upon children: "By providing [families] with public assistance which is the functional equivalent of no assistance at all, defendants may be creating a permanent underclass in New York City" (CA. 87). The court observed that homeless children forced into the emergency housing system face poverty level subsistence, high dropout and absentee rates from school, and frequent separation of families (CA. 87-88). The court stressed the importance of keeping "family units together in their homes" as opposed to the "'extremely unhealthy environment'" of emergency housing (CA. 88) (citation omitted).

The court's factual findings fully support the granting of preliminary injunctive relief, particularly the limited relief ordered. While the only issue before this Court is the adequacy of plaintiffs' pleading, the stark factual picture recognized by the Supreme Court further distinguishes this case from those relied upon by the Appellate Division in ordering the complaint dismissed. Not only did Bernstein, Weinhandler, and Ram deal with different legal claims -- none of them addressed the level of sheer inadequacy demonstrated here. Plaintiffs do not simply assert that they cannot find or keep an apartment in a convenient neighborhood, or one with every amenity, but that they cannot, within the shelter allowance limits, maintain any apartment at all. Plaintiffs therefore face not just financial hardship or inconvenience but imminent homelessness. The resulting impact on plaintiffs' children violates both modern standards of decency and the clear dictates of the Social Services Law.

A. The Present System of Shelter Allowances is Completely Inadequate to Allow AFDC Families to Secure and Maintain Permanent Housing

The record evidence and publicly available data both demonstrate that the housing crisis has made it virtually impossible for low-income families forced into the market to obtain affordable, decent private housing -- or indeed any permanent housing at all -- anywhere in New York City. The crisis is growing in epidemic dimensions. Despite mild

protestations, defendants cannot and do not seriously dispute this conclusion.

1. Permanent housing within the shelter allowance maxima is simply not available in significant amounts in New York

According to Professor Michael Stegman, author of the City's own Housing and Vacancy Report for 1987 and one of plaintiffs' affiants, "the shelter allowance paid to public assistance families is simply too low to secure and maintain housing in New York City" (R. 269). Drawing upon a series of studies examining the New York housing market, Professor Stegman found that rent increases between 1975 and 1986 significantly outpaced adjustments in the shelter schedule, resulting in a "dramatic decline in the availability of housing within the shelter maximum" (R. 271). In contrast to the finding in Bernstein in 1977 that virtually all families could find housing within the shelter allowances, Professor Stegman found that "almost 60 percent of public assistance families living in private housing pay rent in excess of the shelter maximum" (R. 270).

The studies surveyed by Professor Stegman indicate that between 1975 and 1986 the shelter maximum for public assistance households increased by only 25 percent. In contrast, rent levels in New York City increased during this period by an estimated 128 percent, or "five times the increase in the shelter maximum" (R. 270-71) (emphasis added). Moreover, between 1975 and 1984, the number of apartments in New York City renting for

under $200 per month dropped by 72 percent; the number of apartments renting for under $300 per month dropped by 44 percent; and there was a 60 percent drop in the number of such apartments that were vacant and available (R. 271-72). Professor Stegman emphasized that "because many of these apartments are in public housing, the percentage decline in private apartments renting at affordable levels is probably even greater" (R. 271).

These apartments did not disappear from the rental market entirely, but jumped into rental categories exceeding the public assistance rent schedules. Professor Stegman noted that between 1975 and 1984 the number of apartments renting for more than $300 increased fivefold. By 1984, about 450,000 apartments rented for between $300 and $399 -- all of which were beyond the means of a family of five receiving the shelter maximum (R. 272).

The City's own 1987 Housing and Vacancy Report (the "City Report") demonstrates that the situation has only worsened for low income families seeking rental housing within the agency allowances. Although the City Report notes that the overall number of available vacant rental units increased by 7,892 between 1984 and 1987, most of these newly available units were far out of reach of public assistance families relying on shelter allowance grants. During the same period, the number of available vacant apartments costing less than $300 per month actually decreased by 7,029, and the vacancy rate for such apartments dropped below one percent. Id. at 47.

The magnitude of rent increases is further illustrated in the New York City Housing and Vacancy Surveys conducted by the U.S. Bureau of the Census in 1978, 1981, 1984 and 1987:

In 1978, the median asking rent for a vacant available apartment in New York City was $185. By 1981, it had jumped almost thirty percent to $240. The 1981 price increased an additional thirty-one percent by 1984, when the median asking rent was $315 per month. The 1984 asking rents themselves increased by an additional forty-three percent by 1987, when the median asking rent for a vacant available apartment was $450. In short, in the eleven years between 1978 and 1987, the median asking rent for a vacant available apartment rose by 243 percent! P. Weitzman, Worlds Apart: Housing, Race/Ethnicity & Income in New York City, 1978-87, at 54 (1989) ("Worlds Apart").

A recent report prepared by the U.S. General Accounting Office further illustrates the virtual impossibility of finding affordable living quarters under current AFDC allowances. During 1988, the federal government's section 8 fair market rental ceiling for a two bedroom apartment in New York City was $535 per month. G.A.O. Report 89-20, Rental Housing: Housing Vouchers Cost More Than Certificates But Offer Added Benefits, at 38 (1989) ("G.A.O. Report"). By way of comparison, the monthly AFDC shelter allowance provided to recipients, including plaintiff Barbara Jiggetts and her three children, during 1988 was $312 (CA. 12). Although the section 8 fair market rental ceilings

exceed AFDC shelter allowances by $223 per month, G.A.O. investigators "were unable to locate any apartments renting within" the section 8 guidelines in New York City. G.A.O. Report at 40 (emphasis added).

Thus, a family of four seeking an apartment on a housing allowance of $312 faces bleak prospects. Worse, the few apartments available in that price range are likely to be unsuitably small. Figures in the City Report are based on median rent for an entire apartment, without regard to the number of rooms. The 1987 Study also acknowledges that new buildings contain proportionately more efficiency and one bedroom apartments and that "vacancy rates are also inversely related to apartment size." City Report at 52. Therefore, most apartments large enough to house families with children will be more expensive -- indisputably out of reach of public assistance families.

The City Report estimates that during 1986 fewer than 5,000 apartments renting within the shelter maxima became available for occupancy in all of New York City, and concluded that "it is highly unlikely that families receiving public assistance can secure low-rent affordable housing using just their shelter allowance for rent. The result is that a high proportion of welfare recipients must spend large portions of their basic grants for rent." Id. at 92. Families who, like

plaintiffs, simply cannot draw upon other grants to supplement the inadequate rent schedule, face eviction and homelessness.

AFDC families are thus faced with a Hobson's choice. If they do not use food money to subsidize the inadequate housing grant, they will be evicted and must face a further choice between the nightmare of homelessness and attempting to survive the horror of existence in a welfare hotel or in Tier I or II shelters. AFDC families must therefore use a portion of other grant money to subsidize the rent shortfall. Such families are forced into choosing hunger over eviction -- hunger rather than life in Penn or Grand Central Station -- hunger rather than passing by society's dregs in Times Square, only to reach a "home" surrounded by drug dealers, crack-cocaine addicts, prostitutes, and prowling felons.

2. Members of the plaintiff class are likely to become homeless if not provided with an adequate shelter allowance

The City's own study confirms that shelter allowances have become insufficient to allow AFDC families to maintain permanent housing in the private sector. Prior to the 1988 increase, the City Report found that "[s]ixty-three percent of all households receiving public assistance who do not live in Housing Authority units pay more than their shelter allowance for rent." Id. at 25. The Report found that for families in decontrolled or rent-stabilized housing -- such as plaintiffs -- shelter allowances would have to be increased by an average of

$101 per month to cover actual rents. Id. The 1988 increase only offset a portion of that gap.[6/]

Families faced with rent increases above the shelter maximum must borrow from other grants to pay their rent, but since these grants may be scarcely adequate to sustain families in the first place (R. 319-21), it is obvious that many will be unable to borrow enough.[7/] The result is almost certain eviction. Indeed, of a total of 26,542 evictions conducted by City marshals in 1986, one-half of all tenants involved were public assistance recipients (R. 525).

Once put out of their homes, most AFDC families will be unable to locate permanent housing that they can afford. As the

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6/ The shelter allowance increases that became effective January 1, 1988 -- the first since 1984 -- ranged only from 10.1 percent (for two and seven member families) to 19.9 percent (for five member families). During the same four year period, the median gross rent for all apartments in New York City increased by 21.5 percent (1987 Report at iii) -- so the new increases did not even offset the last few years of inflation.

7/ In the face of these harsh realities, the State Department of Social Services continues to rely on the thoroughly discredited premise that housing allowances are sufficient to meet the needs of poor families. The Department recently so assumed in studying the question of whether to raise allowances for food and other non-housing needs. J. Welsh & R. Franklin, Valuing Basic Needs in New York State: A Methodological Proposal, at 2 (1988) (prepared for the Bureau of Policy Analysis, Office of Program Planning, Analysis and Development, N.Y.S. Dept. of Social Services). For the State to base the setting of any benefit levels on such a premise simply continues the vicious cycle faced by plaintiffs, for in the end it matters not to the poor whether they are forced to borrow from food money to pay rent or are forced to borrow from rent money to nourish their children.

1987 Report found, vacant rental units coming on the market by 1987 were increasingly out of the reach of public assistance families. The median asking rent for vacant apartments in New York in 1987 was $450, 29 percent greater than the median rent for all occupied units, and vacancy rates were up only for luxury apartments. City Report at 50. Moreover, the stock of low-cost housing available to low-income families has dwindled, as vacated rent controlled apartments have become either de-controlled or stabilized, depending on building size. In either case, the rent increases significantly. Id. at 52.

Nor can it be assumed that evicted AFDC families can enter the public housing system. A waiting list of more than 200,000 families exists for the N.Y.C. Housing Authority's 175,000 units. 2 J. Knickman, B. Weitzman, M. Shinn, E. Marcus,[8/] A Study Of Homeless Families In New York City,[9/] at 2 (1989). Housing projects maintained by the New York City Housing Authority have an extremely low turnover rate. Felstein & Stegman, Toward the 21st Century, at 24 (1987) (study prepared for the Commission on the Year 2000).

Across the country family members may comprise one third of the overall homeless population. 2 Study of Homeless

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8/ The authors are faculty members of the Graduate School of Public Administration, New York University.

9/ This four volume study, dated September 1, 1989, was commissioned by and prepared for the New York City Health Resources Administration. It will be referred to as "Study of Homeless Families," preceded by volume number.

Families, at 1. In New York, young families are at particular risk of becoming homeless because they are least likely to have strong ties to the housing market and more likely to have experienced other factors that are associated with the risk of shelter use. 4 Study of Homeless Families, at 3. Behind all the statistics, studies, and surveys are thousands of actual families[10/] in New York struggling desperately, as the Supreme Court found, "to make a decent, stable homelife for their children" (CA. 87) -- which they can only achieve by securing decent, affordable housing. While every family is unique, the facts of the plaintiffs' cases (described as of the time of filing the complaint) illuminate the reality of trying to maintain a permanent home on the woefully inadequate allowances presently provided by defendants.

Theresa Felder - a two person household

Theresa Felder lives with her hearing-impaired daughter, age eleven, in a small one bedroom apartment in Brooklyn. When she and her family moved into the rent stabilized apartment in 1980, the rent was $250 per month. The rent increased to $308.03 per month for the 1985-87 lease period. Relying upon the 1984 shelter allowance schedule, Ms. Felder had a shelter "gap" of $81.03 per month. To pay the full rent, Ms.

10/ During a given year, it is estimated that between 7,000 and 10,000 different families that are on public assistance use the emergency housing system for some period of time. 3 Study of Homeless Families, at 1.

Felder would have found it necessary to use over 50 percent of her "food and other" money, leaving only $5.83 a day for all other living expenses, including food (R. 354-55). Despite the terror of eviction, Ms. Felder was unable to borrow from her limited non-shelter funds and still provide even minimal care for her daughter. She therefore amassed $1,296.48 in rent arrears and faced imminent eviction when this suit was commenced (R. 355).

The 1988 shelter schedule adjustment provided Ms. Felder with a scant $23 extra per month. Even without a rent increase, Ms. Felder would still be nearly $60 short of covering her rent. In fact, the rent was expected to rise to at least $351 in November of 1987 (R. 354) -- leaving Ms. Felder and her daughter with a $101 monthly shortfall, larger than before the allowance "increase."

Blanca Sanchez - a three person household

The plight of Blanca Sanchez typifies that of many three-person households unable to meet their shelter costs. In 1987, Ms. Sanchez received a $244 shelter allowance while her rent was $375 per month, $131 more than her monthly grant. Unable to pay rent arrears since June 1986, Ms. Sanchez sought alternative housing, but was unable to locate a private apartment for less than $500 per month. She was also unable to obtain public housing (R. 880-81).

Because of her inability to pay rent arrears, Ms. Sanchez's shelter grant was discontinued entirely in May of 1987. The 1988 allowance increases are therefore of no help to Ms. Sanchez and her two children. If the injunctive relief ordered by the Court below is not upheld, the Sanchez family will become homeless.

Maria Artiaga - a four person household

Maria Artiaga's experiences echo those of Theresa Felder and Blanca Sanchez. She and her three children live in Brooklyn. When Ms. Artiaga first intervened in this action, she was receiving a $270 monthly shelter allowance, but her rent was $381.01 per month. Although Ms. Artiaga paid the full amount of her shelter grant to her landlord, and supplemented those payments by borrowing from her food money whenever possible, she could not close the gap entirely (R. 739). Although Ms. Artiaga has searched for cheaper apartments in the private housing market, she has found nothing meeting her family's needs. Nor has she been able to obtain public housing (R. 742).

Once again, the new shelter allowance schedules do little to help Ms. Artiaga and her family. The current allowance of $312 per month is still almost $70 less than her rent, assuming no increase since April, 1987. Any increase will expand the shelter gap, perhaps even exceeding the shortfall under the pre-1988 allowance. In any event, if Ms. Artiaga and her three children are evicted from this apartment, it would be virtually

impossible for them to find even a two-bedroom apartment for $312.

3. Defendants have failed to demonstrate that the shelter allowances provided are adequate to maintain AFDC families in permanent housing

Throughout this litigation, defendants have not seriously disputed that the shelter allowance schedule is inadequate to maintain families in permanent rental housing. They have argued only that the new rental allowances provide substantial aid to many families, and therefore represent more than "token" assistance.

For example, defendants alleged below that, following the 1988 increases, 65 percent of all public assistance households would get full rental coverage; that 85 percent of public assistance households would get 80 percent coverage; and that 75 percent would receive 90 percent coverage. On their face, these statistics show serious slippage from the near-100 percent support provided before the present housing crisis (see pp. 27-28, supra). But for several other reasons, these statistics are misleading and insufficient to support the Appellate Division's reversal of Special Term's decision.

First, since defendants' statistics embrace all public assistance families, they necessarily include those living in public housing projects, which charge rent at or below the shelter allowance. Plaintiffs here are low-income families

unable to obtain public housing and trying to survive in the private rental market. A somewhat more accurate picture is provided by defendant Grinker, who found that even after the 1988 increases approximately 45 percent of all public assistance families in private housing would still pay rent above the shelter ceiling. For two-person households, the estimate was 51 percent (R. 509).

Second, the statistics are also misleading in their inclusion of all public assistance households. As noted in the affidavit of Professor Stegman, AFDC households, a subgroup of public assistance households, are more likely to be paying rent in excess of the shelter maximum (R. 270).

Third, even on their own terms, defendants' statistics present a grim picture. If only 65 percent of all public assistance households can pay their rent with their housing allowances, more than one third cannot. Most of these families will eventually be put out of their homes if they are unable to make up the gap from other sources. That 85 percent of public assistance households receive 80 percent coverage is a dubious achievement. A family of four with a rent of $390 has 80 percent coverage -- but must still pay $78 a month in excess of the new shelter allowance. And, simply put, landlords do not accept statistical analyses in lieu of rent payments.

Out of court, the government has repeatedly admitted the extreme inadequacy of the shelter allowance limits. Governor

Cuomo himself has recognized that the shelter allowance was "shamefully inadequate" (R. 1065). Even after the new allowance levels went into effect, defendant Grinker stated that "the level of benefits that are available for welfare is not enough for people to get by on in a given month" Computer Burps, Leaving Mothers to Go Hungry, N.Y. Times, May 23, 1988, at B-1.

The experience of public assistance families in the rental housing market confirms this inadequacy: "Welfare families are five times more likely to occupy dilapidated housing, and more than twice as likely to live in housing with many code violations. In part this is because the shelter grant has not come close to keeping pace with inflation." Report of the Commission on the Year 2000 142 (June 1987) (R. Wagner, Chair). As one housing specialist has noted, "[t]here are no apartments renting at $312 a month, unless it is something no one would want, not even for your dog." Rental Housing Increasingly Out of Reach of Poor, N.Y. Times, July 12, 1988, at B-1. In the present market, AFDC families are grateful for any permanent housing, but even this would be denied them without the relief sought in this case.

It is beyond dispute that the inability to pay rent leads to homelessness. A recent study of people seeking shelter commissioned by the City Human Resources Administration demonstrated that 74.5 percent of those interviewed who had once lived in permanant homes were rendered homeless by eviction (more than

58 percent) or by leaving their last apartment because of inability to meet rents or landlord harrassment (more than 16 percent). 1 Study of Homeless Families, at 14. Some of these people may seek refuge by "doubling up" with family or friends prior to entering the City system. But this is only a stop-over on the road to homelessness. Living with others "clearly increases the risks that a family will seek City-supported emergency housing" and is a key predictor of shelter use. Id. at 9. As noted in the 1987 Report, overcrowded or doubled-up families are generally the ones unable to pay adequate rent for their own apartments, and are likely next in line for homelessness. City Report at 138-46.

Victor Bach, Director of Housing Policy and Research for the Community Service Society of New York, in analyzing a City study on the causes of homelessness, found that "[t]he clear conclusion is that the most frequent cause of a family's homelessness -- the cause of its original displacement from the last home the family rented (before doubling up) -- is the inability to pay rent." Testimony of Victor Bach at Hearings of the Rent Guidelines Board (June 6, 1988).

The direct link between inadequate grants and homelessness is clear. The Governor himself found that "[i]nadequate shelter ceilings also contribute to the rapidly growing homeless population and promote deterioration of the State's housing stock" (R. 230). Moreover, the 1987 HRA Annual Report charac-

terizes rent arrears payments as the "most powerful tool in preventing evictions." New York City Human Resources Admin. Annual Report, Breaking The Cycle of Dependency 10 (1987).

* * *

The picture presented by the housing market today is radically different and worse than that of just a few years ago. The inescapable conclusion is that New York's low-rent housing market, which once welcomed the poor and provided affordable shelter while they worked their way up the economic ladder, may be a thing of the past. The only low-rent apartments remaining in the near future may be in the publicly-owned sector. Worlds Apart at 42-43. But if plaintiffs are evicted they have little hope of securing an apartment through the New York City Housing Authority (see p. 37-39, supra).

Instead, unless the judgment of the Supreme Court is reinstated, plaintiffs will surely join the swelling ranks of our homeless population. Professor Stegman noted in his affidavit that "by 1984 there were 460,262 fewer apartments renting for under $300 than there were apartments renting for under $200 in 1975" (R. 271). It is therefore no longer just difficult to find an apartment renting within the shelter maximum -- it is effectively impossible. Even after the 1988 increase, any connection between the shelter allowance limits -- $286 for a family of three, $312 for a family of four, $337 for a family of five -- and actual housing costs is sheer fantasy.

The flat grant system, adopted for administrative convenience and once adequate to provide housing for most needy families, has drifted so far away from reality as to render meaningless the legislature's promise of "adequate" housing support. The present case thus provides a dramatic contrast to Bernstein, Ram, and Weinhandler, which concerned very different factual records (see pp. 16-17, supra).

Rather than raise the shelter maximum to a reasonable level, defendants prefer to pump millions of dollars into emergency shelters and welfare hotels that are a poor, if exceedingly expensive, substitute for permanent housing. For example, providing emergency shelter for Theresa Felder and her daughter for one year would cost over $28,000 more than simply paying her excess rent for that period (R. 358). A review of figures available from the July 27, 1988 New York State Department of Social Services Directory of Tier I Shelters demonstrates the sheer irrationality of a policy that, contrary to legislative mandate, withholds rent shortfalls of around $100 per month, resulting in eviction -- only to pay shelter rates at the following per-homeless-family levels:

Shelter	Daily Rate	Annual Rate
East Third Street	$170.40	$62,196
151st Street	132.15	48,235
Auburn Place	114.59	41,825
Catherine Street	105.24	38,413
Forbell Street	95.44	34,836

Citizens' Committee for Children of New York, Children In Storage: Families in New York City's Barracks-Style Shelters, at 61 ("Children in Storage") (Nov. 1988). Such a policy is, on its face, arbitrary, capricious, and irrational.

B. Homelessness Has a Particularly Devastating Impact on the Health and Well-Being of Children

When families become homeless, children are special victims. As the Supreme Court found, children forced to live in emergency shelters or welfare hotels suffer emotionally, physically, and educationally (CA. 87-88). The disproportionate impact of the homelessness crisis upon children makes the provision of an adequate housing allowance both a legal and a moral imperative, if the State's commitment to ensure the proper upbringing of children is to have any force.

In many ways, those homeless who have recently been evicted can be regarded as the most stable of all homeless families. They tend to be older and better educated than homeless families that did not have their own apartment last year. Although the proportion of these families indicating health problems is similar to that of other homeless families, they have a far lower reported incidence of substance abuse. Forty-five percent, a comparatively large number, report full-time work experience. Their story, their path to homelessness, lies in an inability to keep up with rent payments and to avoid eviction. 2 Study of Homeless Families, at 89.

AFDC families who lose their homes have few options. Affordable apartments are scarce. The next step may be to turn to relatives and friends for shelter -- with children sleeping on the floors of unfamiliar, overcrowded apartments, often far from their schools. Families often must separate to find housing for each member. When doubling up is no longer possible, they must resort to the City's emergency shelter system (R. 342).

The number of people residing in welfare hotels has recently diminished as a result of New York City's plan to close those squalid accommodations. But this policy has had virtually no impact on the total number of families facing the horrors of homelessness. Indeed, the ranks of the homeless continue to grow.

At the peak of the Depression, at any given night in New York City, 9,400 people were without homes. Several years ago, there were close to 28,000 -- and 12,500 of them were children. Bank Street College of Education, Home is Where the Heart Is 100 (Mar. 1988) ("Bank Street").

Appallingly, 36,000 people a night now stay in city shelters and at least that many are on the streets. Homeless Plan Called Meager for New York, N.Y. Times, Dec. 4, 1989, at B-1, col. 6. 1,693 families, comprised of 5,325 people, are still housed in welfare hotels. 3,032 of these hotel occupants are children. Another 2,154 homeless families are housed in Tier I and Tier II shelters. Of these 6,849 shelter residents, 3,918

are children. New York City Human Resources Admin., Census of Homeless Families By Facility - 11/16/89 (Prepared by Office of Crisis Intervention Services).

No statistic is available that reflects the number of children included among our unsheltered wandering homeless. Obviously, no statistic can quantify the suffering that results from homelessness. But plaintiffs and their children -- facing eviction because of inadequate shelter grants -- represent the next wave of families likely to swell these intolerable numbers.

Most families entering the New York City shelter system are first admitted to barracks-type Tier I congregate shelters offering no privacy. Although state regulations require that a family in a Tier I shelter be referred to other emergency housing within 21 days, neither this limit nor a 50-person per room limit is observed. Bank Street at 26. Tier II shelters, although somewhat less grim, also provide limited privacy and many bar men or children over age eight. Id.

The welfare hotels that still house thousands of New York City's homeless family members are infamous for their poor conditions. Id. at 28. Families are crowded into small single rooms with barely enough space for a bed and dresser. Some rooms contain neither a bathroom nor a table, in violation of State regulations. City: Welfare Hotel Divides Small Rooms Into Cubicles, Newsday, May 18, 1988, at 3. Eight people may find

themselves sharing a bathroom built for one, and two families may share a suite intended for a single family. Rooms Fit Rules, State Says, Newsday, May 28, 1988, at 6 ("Rooms Fit"). Many hotels fail to provide cribs for families with infants, and others lack sufficient beds, mattresses, pillows, and blankets for family members. Citizens' Committee for Children of New York, 7000 Homeless Children: The Crisis Continues 42 (Oct. 1984) ("CCC Report").

Defendants do not dispute that the hotels fail to provide a decent environment for families. As defendant Perales commented regarding code violations in the hotels, "The issue is not violations of regulations . . . that's not what makes hotel life terrible. There's no set of regulations that's going to make life decent in those hotels." Rooms Fit, Newsday. As one tenant put it: "I've been poor all my life. Ain't no crime to be poor if you can survive. But you can't survive if you live in this hotel." CCC Report at 40.

Those who must endure the emergency shelter system are also the most vulnerable. According to a survey of 27 American cities, including New York, homelessness rose most rapidly in 1989 among families with children, which now represent 36 percent of the homeless population in these cities. In New York City, families make up more than 60 percent of the homeless population. United States Conference of Mayors, A Status Report on Hunger & Homelessness in American Cities: 1989, at 67 (Dec. 1989).

Half the homeless children in New York City are under age five, and ten percent are under age one. Bank Street at 8. As Professor James R. Dumpson, former Commissioner of the City's Department of Social Services, indicated in his affidavit, "it is the children who suffer most" when families lose permanent housing (R. 297). And they suffer in many different ways.

1. Homelessness disrupts and impedes children's education

The education of New York City's homeless children is disastrous. A 1988 study found that of approximately 6,000 homeless school-age children, only 583 had actually been registered for school by late 1987. Only 850 early childhood education slots then existed for the 5,500 children ages birth to five years of age. Bank Street at 61. Compared to the citywide average of 89 percent, school attendance for homeless children who were registered ranged from 50 to 70 percent. Id. at 56.

Given the circumstances faced by homeless children, it is surprising that any of them manage to attend school. When families are shuttled from shelter to shelter, they do not know whether or where to enroll their children. Families are often housed far from their original communities and therefore cannot send their children to their previous schools. CCC Report at 16.

A 1984 study found that the disruption is worst in Tier I congregate shelters where the staff, anticipating short stays, may discourage school registration. Id. at 17. Years later, the

city still has not effectively dealt with the problem of children in transit. As one article noted, "When families become homeless, their children's education often gets lost in the shuffle, particularly if families keep moving from one welfare motel to another." No Home, No School, Newsday, April 10, 1988, at 2. In the absence of effective action by the City to ensure school registration, "regular non-attendance" is common among hotel children. Metro Matters: For Homeless, Struggles Include Getting to School, N.Y. Times, April 23, 1987, at B-1, col. 1 (quoting Jill Blair, Ombudsman for School Chancellor Nathan Quinones) ("Getting to School").

Even those homeless children able to attend school face special burdens. Homeless children are stigmatized as "hotel kids" by their classmates. Getting To School, N.Y. Times. One mother explained: "The kids, they say 'your mother is a crack-head,' that kind of thing . . . it don't hurt me, but it makes them feel bad." New York's Homeless Children: In The System's Clutches, N.Y. Times, February 3, 1987, at B-1, col. 2 ("Homeless Children"). And one child at the Hotel Martinique said: "School is bad for me. I feel ashamed. They know we're not the same. My teacher do not treat us all the same. They know which children live in the hotel." J. Kozol, Rachel and Her Children 64 (1988). Some homeless students are ignored altogether at their new schools, left to roam the hallways unsupervised. Mom Finds Miracles Through Persistence, Newsday, May 8, 1988, at 2 ("Mom Finds Miracles").

Finally, the chaotic and noisy life of shelters and welfare hotels makes it virtually impossible for children to do well in school. Having rested poorly -- if at all -- the previous night, most children are simply too tired to be receptive to learning at school. Children in Storage at 48. Homeless children often fall asleep in class, their heads on their desks, because "the hotel rooms they live in are so noisy and crowded that they get little rest at night." Homeless Children, N.Y. Times. Noise and overcrowding make studying difficult. As a result, homeless children are often two or more years behind classmates (id.), and many are classified as "learning disabled" or "emotionally disturbed" (R. 298).

Manhattan Borough President-elect Ruth Messinger has called the City's current education policies for homeless children "a prescription for chaos." Schools Are Failing To Serve Homeless Children, Messinger Asserts, N.Y. Times, Sept. 3, 1987, at B-5, col. 1. In such an unstable, transient environment, homeless children cannot obtain what they need most -- a decent education that will halt the cycle of poverty. As Board of Education Ombudsman Jill Blair emphasized, if the City does not do its job in educating homeless children "there'll be a another hotel population -- the kids of these kids." Getting To School, N.Y. Times.

2. Homeless children are exposed to hunger and health hazards

Hunger and disease are facts of life for many homeless children. Most emergency shelters and welfare hotels lack cooking facilities. Bathtubs often double as kitchen sinks. Hot plates and toasters, illegal in hotels, nevertheless function for many families as their entire kitchen. With refrigeration scarce, many hotel families attempt to keep their food cool by storing it in toilet tanks or coolers. CCC Report at 29. Even where cooking facilities are available, many welfare hotels are located far from affordable food shopping, causing some families to spend their limited food budgets on unhealthy and expensive fast food. Bank Street at 48-49.

Day-care directors and teachers have observed that the hunger of homeless children affects both their academic performance and their social behavior. Id. at 54. One teacher described a student whose hunger was unbearable:

> "He would come in here daily kicking and crying uncontrollably. He'd throw himself on the floor, out of control. Even our assurances that breakfast would be served shortly couldn't quiet him down. He was starving. As soon as breakfast was on the table, he'd quiet down and eat, two or more bowls of cereal."

Id. As another teacher observed (id. at 36):

> "Of course these children are behind in school. When you are dehydrated from continuous diarrhea, wheezing from untreated asthma, exhausted after being kept awake all night from the noise in the hotel, and hungry

> from not having eaten a real meal for days, it's hard to get excited about learning the ABC's."

As a result of poor nutrition among mothers and a lack of prenatal care, one of six welfare hotel babies is born with dangerously low birth-weight -- a leading cause of infant death. Id. at 37-38. A 1986 study by the New York City Department of Health shows that the infant mortality rate in New York City welfare hotels exceeds that of some developing countries (R. 300), and the mortality rate for infants born in welfare hotels in 1987 was double the New York City rate. That figure may be even higher today. Bank Street at 40. As the Bank Street report concluded (at 55):

> Hungry children are unable to concentrate in school and can't learn, pregnant women jeopardize the well-being of their unborn child and self, and tiny, helpless babies are hospitalized for starvation. A lack of food equals poor nutrition, which, in turn, leads to sick children. Sick children can neither grow nor develop properly.

Hunger among homeless families only makes them more vulnerable to unhealthy conditions. According to Professor Dumpson, "The homeless, especially those living in congregate shelters, are at a much higher risk of contracting contagious diseases than are comparable populations in stable housing with private rooms and bathrooms" (R. 299). Shared bathrooms, poor plumbing facilities, sporadic or non-existent garbage disposal, and insufficient heat, combined with overcrowding, create a

breeding ground for infection. Rats and roaches are rampant in hotels. Children are plagued with scabies and lice. See Kozol at 104; Homeless Children, N.Y. Times. Lacking a refrigerator, diabetics in one hotel resorted to storing their insulin under the water tap. Kozol at 98. Hungry young children, attracted to the sweet-tasting chips of paint that flake off hotel walls, frequently ingest dangerous levels of lead paint. Id. at 102-03. In the Hotel Martinique, 75 percent of the children were under- or non-immunized. When children become ill, as they frequently do, the lack of available medical care can be fatal. Bank Street at 43.

In City shelters, the close proximity of beds, communal use of bathrooms, and generally unsanitary conditions all foster the spread of disease. Children and adults are exposed to a wide variety of illnesses and the health of hundreds of children is thus endangered. Children in Storage at 27. Contagious illnesses are rampant. Id. at 30. There is a particularly great threat of fecal contamination when many young children are present. According to a former director of the Family Health Program of the Department of Health, Dr. Karen Benker:

> The large numbers of young children in diapers and the large number of individuals using a limited number of toilets and sinks create a situation in congregate living of fecal contamination of beds, floors, walls, tables, toilet seats, . . . and any surface that can be touched by children or adults who have changed diapers. The typical toddler puts a hand or object in the mouth every three minutes. The following serious

> diseases have been clearly documented as spreading in similar settings: hepatitis A, hepatitis B, amebiasis, shigellosis, E. coli infection, campylobacter infection, yersinia infection, and rotatvirus infection.
>
> Because in the congregates new families with new organisms are continuously joining the facility, additional organisms are introduced; the children (and adults) are at risk of developing chronic, recurrent diarrhea, a condition that in underdeveloped countries has been shown to undermine nutrition and resistance to disease.

Children in Storage at 32 (citing K. Benker, N.Y.C. Dept. of Health Discussion Paper (Apr. 1986)).

Another serious problem -- one which also demonstrates the frustration of living subject to a crumbling beauracracy -- is that although none of the Tier I shelters has transportation to medical institutions available to residents, only one subway token per family is available for this purpose. This does not allow parents to accompany sick children or children to accompany sick parents. Shelter rules create a "Catch-22" situation, for neither are children permitted to remain alone in the shelter. When one family member becomes ill, all family members must go to the medical facility on one subway token.

The rules also make it impossible for a parent to care properly for a sick child at the shelter. As one mother stated: "The baby is sick and needs juice. It's hard to get it because I must take all the kids (including the ill child) to the store to

buy it. They won't let my eleven year old go alone, or let my friends watch the baby while I go out." Id. at 36-37, 53.

3. Homelessness also takes a heavy psychological and emotional toll on children

The impact of homelessness upon children is psychological and emotional as well as physical. As Professor Dumpson indicated, transience, overcrowding, and lack of family privacy are psychologically debilitating and demoralizing. Children, already traumatized by the loss of their home, must further cope with the bewilderment of new schools, new surroundings, new faces, and the often frightening conditions of welfare hotels and shelters (R. 299); Children in Storage at 49.

One psychiatric study revealed that more than half the children living in homeless shelters older than age five were seriously depressed, and most said they had suicidal thoughts. The study reported that "the children's problems are heightened by the stress of repeated disruptions, most currently, living in a shelter where there is little privacy and overcrowding." Homeless Children Found Impaired, N.Y. Times, June 18, 1985, at C-6, col. 6. Homeless children suffer from an alarmingly high incidence of anxiety, severe depression, lags in normal development, and other psychological problems. Id.

Recent studies have confirmed that infants and young children, warehoused in shelters, face potentially devastating

psychological effects. 4 Study of Homeless Families at 21. It is no wonder, since shelter children are exposed to the risk of family belongings being stolen while they sleep, theft of their clothes from bathrooms while they shower, and other behaviors such as adult sexual activity, drug use, fighting, and cursing. Children In Storage at 24-26. Moreover, an alarming number of families are "bounced" through the system, from one shelter to the next or from shelters to hotels for two week stays, only to be returned to barracks-style shelters. Not only does the practice of "bouncing" violate State regulations, it is severely disorienting to children. Id. at 11.

As social worker Regina Wadkins explained in her affidavit, homelessness traumatizes both child and parent. Families moved from one temporary shelter to another are denied any sense of privacy, stability, or community. All family members may be subject to serious mood disorders, anxiety, and depression, and some may attempt suicide (R. 328).

4. Homeless children are exposed to drugs and violent crime

> Children hung from fire escapes and shared the narrow, littered hallways with drug dealers at 3 o'clock in the morning. The sound of gun fire carried into the rooms from the street below. Mothers called to their children to keep away from the half-lighted stairwells. And everywhere this weekend there were children, five, seven, ten years old, who talked matter-of-factly of drugs, muggings and shootings.

In A Hotel For Homeless Families, Childhood Dies Young, N.Y. Times, Nov. 4, 1985, at B-1, col. 1.

In addition to the pain and disruption of homelessness, families in welfare hotels must also survive the deadly threat of crime and drugs. Children of the welfare hotels are exposed to an insidious world of rampant illegal drug use and drug dealing, sexual abuse, shootings, beatings, and prostitution.

Drug dealers operate openly, unchallenged, while security guards, if present at all, do not interfere. Id. Sometimes the guards are actual accomplices, letting junkies into the hotel and, in the words of one homeless mother interviewed by Jonathan Kozol, "taking women in the corner. You'd go down twelve-thirty in the night, they're in the corner with the girls. This is true. I seen it." Kozol at 107. One guard who dared to interfere with a drug deal was murdered. Id. at 85.

Kozol also describes a conversation among children in which one casually mentioned that "[l]ast week a drug addict tried to stab me. With an ice pick. Tried to stab my mother too." She added that residents of the hotel often offered her crack and other drugs, which she refused and ran to her hotel room. Id. at 64-65. "I wish someone in New York could help us," said the terrified girl. "Put all of the money that we have together and we buy a building. Two or three rooms for every family. Everybody have a kitchen. Way it is, you frightened all the time. I think this world is coming to the end." Id. at 63.

Growing up amidst crime and criminals, many hotel children are taught at an early age to accept violence and lawlessness. Kozol describes how the children of the Martinique Hotel begin to steal and break the law for lack of money: a boy jumping the turnstile, a girl stealing food from supermarkets. Id. at 75. These children initially learn violence to survive, but later become victimizers themselves. Uprooted, drifting, seeking escape from misery, many hotel children turn to drugs and become trapped in the deadly cycle of addiction and crime. Given the conditions under which homeless children are raised, as Regina Wadkins observed, "it is not surprising that there is an increased likelihood of substance abuse" (R. 328).

5. Homelessness destroys the very fabric of family life

As demonstrated in Professor Dumpson's affidavit, loss of permanent housing creates an increased risk that children will be placed in foster care (R. 300). The City's former Deputy Administrator for Income Maintenance Programs noted that a recent survey found "'that the lack of adequate housing contributed to the breakup of families in New York City, leading to the placement and retention of children in foster care'" (R. 301).

Indeed, the City may use the trying circumstances of homelessness as a basis for separating families. Bank Street at 71-72. Once children are placed in foster care, they are usually not returned as long as their families remain in emergency

housing. The longer the separation, the more likely that a family will suffer repeated separations, robbing children of any sense of continuity in their lives (R. 328-29).

Families are thus punished twice for the sin of poverty. As the Bank Street study asked (at 72):

> Are children at risk of imminent removal and placement into foster care just by virtue of living in a welfare hotel or other shelter? If a child eats lead paint, or falls out of an unstable crib, or isn't kept clean because there is no water, is that neglect and if it is, whose fault is it? The mother's?

Even when the City does not intervene, homeless families may have to separate while doubling up with other families. Some parents try to maintain stability in their children's lives by sending them to live with relatives, having them visit at the shelters on weekends. Getting to School, N.Y. Times; Mom Finds Miracles, Newsday.

Families that somehow manage to stay together in the same location must still endure the stressful, dangerous living conditions of emergency shelter. And they must somehow try to function as a family under the ever watchful eyes of shelter staff members and private security guards who act as disciplinarians. Parents are afraid to discipline their own children lest it be confused with abuse. Staffworkers and guards constantly remind parents that Special Services for Children can

be called to take away their children if abuse is suspected. Children in Storage at 22.

As Regina Wadkins indicated, the pressures of homelessness may cause or aggravate other problems, such as alcohol and drug dependency, criminal behavior, or mental illness (R. 329). All these factors undermine family stability, to the ultimate detriment of the children.

6. The destructive impact of homelessness violates the State's commitment to protect children

The myriad harms visited upon homeless children -- overcrowding, hunger, disease, disrupted education, psychological damage, exposure to crime and drugs, and the separation of families -- amount to an egregious violation of State policy. Instead of protecting children and ensuring that they are raised in a permanent stable home, as the Social Services Law has required for decades, the City and State have returned to a tacit policy of institutionalizing the poor -- a policy rejected by New York State for poor children as early as 1915 (see pp. 24-26, supra). Even as far back as 1874, enlightened social policy rejected the institutionalization of children: "No healthy child of sound mind should be allowed to grow up in any institution, public or private, however well managed." State Charities Aid Association Second Annual Report (1874), reprinted in Children and Youth in America: A Documentary History 251 (R. Bremner, ed. 1971).

When the State Legislature mandated in Soc. Serv. Law § 350(1)(a) that aid to AFDC families "shall be adequate" to raise the child properly, it recognized that New York's future is staked on the lives of its children. As Jacob Riis wrote nearly a century ago:

> The problem of the children is the problem of the State. As we mould the children of the toiling masses in our cities, so we shape the destiny of the State which they will rule in their turn, taking the reins from our hands. In proportion as we neglect or pass them by, the blame for bad government comes to rest upon us.

J. Riis, The Children of the Poor 1 (1892).

Children need a home -- and "home" is not a cardboard box on the street. Nor is it the floor of a neighbor's apartment or cramped, dispiriting quarters in a shelter or welfare hotel. As the language of the Social Services Law itself indicates, the best environment for a child is with his or her family in their own, permanent home.

Defendants' shelter policy is penny-wise and pound-foolish in the most tragic sense. Homeless parents, unable to provide any stability for their children, sink into despair. Their children, born malnourished, raised amidst chaos and disease, victimized by and ultimately drawn into the world of crime and drugs, are unable to escape an impoverished existence. Many will grow up poor, uneducated, and unable to function as

productive members of society -- and the circle of homelessness will begin again.

By satisfying the legislative mandate and providing shelter allowances adequate to prevent AFDC families from becoming homeless, defendants could mitigate some of these social ills. In the long run, shelter allowance increases cost much less than welfare hotels and shelters. They cost less than providing intensive care for thousands of underweight babies born to homeless mothers. They cost less than unemployment and disability payments for the growing numbers of youth and adults who lack the educational, social, emotional, and psychological ability to obtain employment. Finally, adequate shelter allowances cost less than building jails.

By denying children a real home and placing them in the worst of environments, defendants teach them that government is their enemy, that society does not care, that life is unfair. It is a lesson that cannot easily be unlearned. And it is one that the Legislature, years ago, sought to avoid in mandating that shelter allowances be adequate to keep children in their homes.

CONCLUSION

For the foregoing reasons, the judgment of the Appellate Division should be reversed.

Dated: New York, New York
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Respectfully submitted,

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APPENDIX A: INTEREST OF THE AMICI CURIAE

Citizen's Committee for Children is a forty year old not-for-profit, privately funded advocacy organization for children serving New York City. Areas of focus are children's health, education, mental health, welfare and housing.

Coalition for the Homeless is an education and advocacy organization committed to the principle that the provision of decent housing is a prime obligation of a civilized society.

The Committee for Hispanic Children and Families, Inc. is a non-profit, citywide education and advocacy organization founded in 1982, which has developed a diversified program to help foster the Hispanic family's survival. Their efforts have focused on bolstering mechanisms that establish and/or consolidate those support systems needed so that families can stay together in a healthy environment.

The Community Service Society of New York is an activist organization that works cooperatively with community-based organizations and other social policy and advocacy groups to fight poverty through research, legislation, advocacy, community development and service. The Society works to identify problems that create a permanent poverty class in New York City and to bring about changes needed to eliminate such problems. The Society therefore has addressed the issues of homelessness and the problems of children in poverty.

Emergency Alliance for Children is a coalition servicing New York City and made up of over one hundred social service, housing, and advocacy agencies focusing on the living conditions that affect homeless families and children.

Interfaith Assembly on Homelessness and Housing is an interfaith group of clergy, religious leaders, and concerned members of the faith community, asserting the moral responsibility of the religious community and government officials to work toward just public policies which will guarantee the right of every person to a decent place to live.

The National Black Child Development Institute is a non-profit charitable and educational organization dedicated to improving the quality of life for Black children. The Institute is composed of committee volunteers who help to educate their communities about national, state and local issues facing Black children and youth.

New York Housing Conference is a regional affiliate of the National Housing Conference. It has operated on the long held belief that the New York State Shelter Allowance Grant is totally inadequate to meet the average rental levels in the private low-income housing market that presently exists in New York City.

Puerto Rican Association for Community Affairs, Inc. (PRACA) is a service organization for women and children suffering from a variety of social disadvantages including the lack of affordable housing. PRACA's work has put it in direct contact with families living in welfare hotels and the problems of drugs, crime, and family instability, which have a detrimental effect on healthy child development.

Puerto Rican Family Institute (PRFI), established in 1962, is a private non-profit organization serving poor Hispanic and Puerto Rican communities in three boroughs of New York City. At present, PRFI maintains three mental health clinics, four child placement prevention programs, and three intermediate care facilities in the Bronx servicing mentally retarded adults.

Settlement Housing Fund (SHF) is a non-profit housing development corporation established in 1969 by United Neighborhood Houses, the federation of some thirty-five New York City Settlement Houses. SHF's goal is to give technical and financial support to settlements and community groups so that they can sponsor new or rehabilitated housing in their neighborhoods.