



**WRITTEN TESTIMONY ON**

**EXPLORING SOLUTIONS TO THE DISPROPORTIONATE  
IMPACT OF COVID-19 ON MINORITY COMMUNITIES**

**PRESENTED TO:**

**NEW YORK STATE SENATE  
NEW YORK STATE ASSEMBLY**

**PRESENTED BY:**

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Thank you to the NYS Senate and NYS Assembly for holding this public hearing seeking recommendations on how to mitigate the disproportionate adverse impacts of COVID-19 on minority communities. Mobilization for Justice, Inc. (MFJ) commends the Senate and the Assembly for seeking testimony on this important topic. MFJ envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised, or have disabilities. We do this by providing the highest quality direct civil legal assistance, conducting community education and building partnerships, engaging in policy advocacy, and bringing impact litigation. We assist more than 10,000 New Yorkers each year in the areas of disability rights, children’s rights, economic justice, and housing rights, benefitting over 25,000. Through weekly hotlines, courthouse clinics, and representation in legal actions and administrative hearings, MFJ staff work to ensure a level playing field for New York’s poor and working poor. Approximately 80 percent of our current clients are persons of color.

**I. The Adverse Racial Impact of COVID-19 on our Clients.**

According to the New York State Department of Health (NYSDOH), as of May 13, 2020, although Black and Latinx residents account for 51 percent of the NYC population, they account for about 62 percent of NYC’s COVID-related fatalities. Across the State, excluding New York City, NYSDOH reports that Black and Latinx residents account for just 21 percent of the population, but over 33 percent of COVID-related fatalities.<sup>1</sup> As recognized by the New York State Legislature, this disproportionate impact is reflected nationally in COVID-related infection, hospitalization, and fatality rates.

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<sup>1</sup> New York State Department of Health, *NYS COVID-19 Tracker: Fatality Data* (May 2020), available at <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (preliminary data as of May 13, 2020, with 99 percent reporting for NYS and 63 percent reporting for NYC as provided by the New York City Department of Health and Mental Hygiene).

Three primary explanations for this disparity stem from systemic racial inequity. First, many of the co-occurring illnesses that render individuals vulnerable to COVID-19—including heart disease, diabetes, hypertension, and obesity—are rooted in or exacerbated by poverty. Historically, these social determinates of health disproportionately affect Black and Latinx communities. This might partially explain why many of the New York nursing homes reporting the highest number of deaths also report some of the highest numbers of non-white residents.<sup>2</sup> Second, Black and Latinx individuals have less access to healthcare.<sup>3</sup> Third, persons of color are less likely to be able to work from home. Persons of color are more likely to work in essential services, meaning they are subject to increased viral exposure. For example, in New York City, according to the New York City Comptroller, 75 percent of frontline workers—including nurses, janitors, grocery clerks, and transit employees—are people of color.<sup>4</sup> While these essential workers are busy keeping the State running and caring for our infirm, those with children struggle to meet childcare and homeschool needs as schools remain closed, meaning children of color will face increased barriers to education access. Much of the economic fallout of COVID-19 will fall squarely on persons of color, who, because they are more likely to be out of work, are unable to pay rent, mortgage payments, and other debt obligations.

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<sup>2</sup> Joseph Shapiro, *In New York Nursing Homes, Death Comes to Facilities with More People of Color*, NATIONAL PUBLIC RADIO, April 22, 2020, available at: <https://www.npr.org/2020/04/22/841463120/in-new-york-nursing-homes-death-comes-to-facilities-with-more-people-of-color>

<sup>3</sup> 2018 National Healthcare Quality and Disparities Report. Rockville, MD: Agency for Healthcare Research and Quality, September 2019. AHRQ Pub. No. 19-0070-EF, available at: <https://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/nhqdr/2018qdr-final.pdf>.

<sup>4</sup> New York City Office of the Comptroller, *New York City's Frontline Workers* (Mar. 2020), available at [https://comptroller.nyc.gov/wp-content/uploads/documents/Frontline\\_Workers\\_032020.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/Frontline_Workers_032020.pdf) (citing United States Census Bureau, American Community Survey 2014-2018 5-Year Estimates).

## A. Disability and Aging Rights Clients

MFJ's Disability and Aging Rights Project provides legal assistance to residents of nursing homes and adult care facilities and their families. Our nursing home resident clients are disproportionately Black and we are deeply concerned that they are suffering disproportionately during this crisis.

Many of our clients reside in nursing homes and adult care facilities in neighborhoods that have been hard hit by COVID-19, including Elmhurst, Far Rockaway, Coney Island and Coop City. Far Rockaway, for example, has one of the highest death rates from COVID-19 in New York City.<sup>5</sup> Over 50 percent of its residents are Black and Latinx and the median income is far lower than the average in Queens.<sup>6</sup> Far Rockaway is also home to numerous long-term care facilities, including 18 nursing homes and adult care facilities.<sup>7</sup> Since the only other hospital in the area closed in 2012, the Rockaway peninsula has had only one hospital, St. John's Episcopal Hospital.<sup>8</sup> While residents of wealthier neighborhoods in the Rockaways can drive to hospitals in other areas, doing so is less often an option for lower income residents of Far Rockaway – including nursing home and adult care facility residents.

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<sup>5</sup> Maria Caspani & Jonathan Allen, *Coronavirus Deadliest in New York City's Black and Latino Neighborhoods*, REUTERS, May 18, 2020, available at: <https://www.reuters.com/article/us-health-coronavirus-new-york-deaths/coronavirus-deadliest-in-new-york-citys-black-and-latino-neighborhoods-data-shows-idUSKBN22U32A>.

<sup>6</sup> *Id.*

<sup>7</sup> See N.Y. State Dep't of Health nursing home profiles, available at: [https://profiles.health.ny.gov/nursing\\_home/](https://profiles.health.ny.gov/nursing_home/); N.Y. State Dep't of Health adult care facility directory, available at: <https://profiles.health.ny.gov/directory/acfs>.

<sup>8</sup> Sally Goldenberg & Michelle Bocanegra, *Divergent Death Tolls in New York's Rockaways Shows COVID-19's Uneven Reach*, POLITICO, May 20, 2020, available at: <https://www.politico.com/states/new-york/albany/story/2020/05/20/divergent-death-tolls-in-new-yorks-rockaways-show-covid-19s-uneven-reach-1284964>

While we have some demographic information about the neighborhoods in which our clients live, and we know that nursing homes that house disproportionately large numbers of people of color had more deaths due to COVID-19, we do not know what proportion of the nursing home and adult home residents who died in Far Rockaway, or in any other part of the State, were people of color. It is critically important that the State furnish this data, in order to know the scope of the disparate impact that the COVID-19 crisis is having on residents of color, and to be able to make concrete plans to address these inequities.

Nursing home residents and staff account for 43 percent of all deaths from COVID-19 in the United States, according to an analysis by The New York Times.<sup>9</sup> The reasons that nursing home residents have been so hard hit are myriad, including: residents' vulnerabilities due to age and medical conditions; the congregate nature of the facilities; and poor infection control measures, compounded by chronic understaffing.<sup>10</sup>

Nationwide, nursing homes with significant numbers of Black and Latinx residents are twice as likely to have had at least one COVID-19 case than nursing homes with a resident population that is overwhelmingly White.<sup>11</sup> In New York State, residents and staff of nursing homes account for approximately 20 percent of the deaths.<sup>12</sup> However, we believe that this

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<sup>9</sup> Matthew Conlen, et al., *43% of U.S. Coronavirus Deaths Are Linked to Nursing Homes*, N.Y.TIMES, June 27, 2020, available at: <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html>.

<sup>10</sup> *Id.*; Alex Spanko, *Nursing Home Staffing Strain Could Reach 'High Point' This Week as COVID-19 Crisis Rages*, SKILLED NURSING NEWS, April 12, 2020, available at: <https://skillednursingnews.com/2020/04/nursing-home-staffing-strain-could-hit-high-point-this-week-as-covid-19-crisis-rages/>.

<sup>11</sup> Robert Gebeloff, et al., *The Striking Racial Divide in How Covid-19 Has Hit Nursing Homes*, N.Y.TIMES, May 21, 2020, available at: <https://www.nytimes.com/article/coronavirus-nursing-homes-racial-disparity.html>.

<sup>12</sup> *See State Data and Policy Actions to Address Coronavirus (Table: State Reports of Long-Term Care Facility Cases and Deaths Related to COVID-19 (as of June 25, 2020))*, Kaiser Family Foundation, June 24, 2020, available at: <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/>.

percentage is a dramatic undercount: because New York State’s published data regarding deaths in long-term care facilities includes only those residents who died *on-site* at the facility, and excludes those who died after transfer to a hospital, large numbers of nursing home resident deaths are not being counted as nursing home deaths.<sup>13</sup> The data on deaths in adult care facilities also includes only deaths that occurred on site at the facility. The staff attorneys in our Nursing Home Project have received credible reports from adult home residents that numerous residents have died in facilities that list only one or two deaths, or none, in the State’s public report. Further, while New York State issues data on the demographics of individuals who have died of COVID-19, including data on race, it does not break out the demographics of the nursing home residents or adult home residents who have died from COVID-19, so we do not know how the racial disparities reflected in the death rates in the population as a whole, are reflected among residents of long term care facilities who have died.

Data on nursing home and adult care facility staff who have died from COVID-19 is especially hard to obtain. A report from Kaiser Health News notes that long-term care workers are disproportionately female, disproportionately in close, frequent, contact with patients, and are disproportionately paid low wages. Nearly four in 10 are over the age of 50 and one in four is Black.<sup>9</sup> Of personal care workers and aides, nearly one-third are Black. There have been

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<sup>13</sup> N.Y. STATE DEP’T OF HEALTH, NURSING HOME AND ACF COVID RELATED DEATHS STATEWIDE (Data through May 27, 2020), available at: [https://www.health.ny.gov/statistics/diseases/covid-19/fatalities\\_nursing\\_home\\_acf.pdf](https://www.health.ny.gov/statistics/diseases/covid-19/fatalities_nursing_home_acf.pdf). Note that media reports document numerous deaths that are not reflected in the DOH reports. See, e.g. Joaquin Sapien, “*Did I Mess This Up?*” *A Father Dying From Coronavirus, a Distraught Daughter and a Midnight Rescue*, PROPUBLICA, April 25, 2020 (reporting that at least twelve residents from Queens Adult Care Center have died; the facility is absent from the state report cited supra), available at: <https://www.propublica.org/article/did-i-mess-this-up-a-father-dying-from-coronavirus-a-distraught-daughter-and-a-midnight-rescue>; Yoav Gonen, et al., *Remember Their Names: NYC Veterans Nursing Home Staff Leaks List of 48 Who Died*, THE CITY, May 23, 2020 (reporting that staff reported 48 deaths of residents of the New York State Veterans Home in St. Albans, while state data showed 35 deaths), available at: <https://www.thecity.nyc/coronavirus/2020/5/23/21270845/remember-their-names-nyc-veterans-nursing-home-staff-leaks-list-of-48-who-died>.

numerous media reports and complaints to government agencies about workplace safety violations in long-term care facilities, including insufficient personal protective equipment (PPE).<sup>10</sup> It is clear that by doing their jobs, these workers are at great risk.

The little we know about racial disparities related to deaths of nursing home residents is alarming. We know that the nursing homes with the highest death rates in New York are those with higher percentages of Black and Latinx residents.<sup>14</sup> This suggests that the racial disparities affecting people with COVID-19 as a whole are reflected in long-term care facilities. But we need demographic data on the residents who have been infected and who have died to obtain a true picture of the extent of the racially disparate impact of COVID-19. Even the most basic data about the demographics of nursing home residents in New York State is lacking. In response to our Freedom of Information Request for demographic data on residents of New York City nursing home residents, New York State recently responded that it has no such data.

Disparate treatment of people of color in nursing homes is not a new problem: nursing homes historically excluded people of color.<sup>15</sup> Although in recent years the proportion of residents of color has increased and the proportion of white residents has decreased,<sup>16</sup> nursing homes remain highly segregated and are known to provide lower-quality of care to people of color.<sup>17</sup> Examples

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<sup>14</sup> Joseph Shapiro, et al., *In New York Nursing Homes, Death Comes To Facilities With More People Of Color*, NATIONAL PUBLIC RADIO, April 22, 2020, available at: <https://www.npr.org/2020/04/22/841463120/in-new-york-nursing-homes-death-comes-to-facilities-with-more-people-of-color>.

<sup>15</sup> See, e.g., *Hickman v. Fowinkle*, C.A. No. 80-2014 (W.D. Tenn. Filed Jan. 11, 1980), settled by consent decree (alleging that African Americans were denied access to nursing homes, instead placed in unlicensed boarding homes).

<sup>16</sup> Zhanlian Feng, et al., *Growth of Racial and Ethnic Minorities in US Nursing Homes Driven by Demographics and Possible Disparities in Options*, HEALTH AFFAIRS, July 2011, available at: <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2011.0126>.

<sup>17</sup> See, e.g. Lauren J. Campbell, et al., *Racial/Ethnic Disparities in Nursing Home Quality of Life Deficiencies, 2001 to 2011*, J.GERONTOL. & GERIATRIC MED., Jan.-Dec. 2016, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5066711/>.

of disparate rates of the prevalence of pressure ulcers<sup>18</sup> and socialization<sup>19</sup> show the real-life impact of these disparities in quality of care on residents of color in nursing homes.

Studies also suggest that people of color are less able to access less-restrictive alternatives to nursing homes, such as assisted living or services at home.<sup>20</sup> Recent Medicaid cuts in New York State, and the carve-out of Medicaid Long Term Care programs from nursing home coverage, will only make accessing services in the community harder. New York must consider the impact on people of color who now face even greater barriers to returning to the community, all the while receiving poorer care in nursing homes than their White counterparts. This impact can have life and death consequences for Black and Latinx residents of nursing homes.

## **B. Economic Justice and Housing Rights Clients**

Financial and housing insecurity is already a stark reality for many communities of color, who will continue to bear the burden of the inevitable pandemic-related economic downturn. Many of our clients are routinely just one paycheck away from eviction, foreclosure, or crippling debt. The staff in MFJ's Economic Justice practice area represent and advise low-to-moderate income New Yorkers who are at risk of foreclosure, struggling with consumer debt, have tax problems with the IRS, and/or are grappling with workplace justice issues. About 83 percent of our current Economic Justice clients are persons of color. For low-income tenants in the Bronx,

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<sup>18</sup> Yue Li, et al., *Association of Race and Site of Care with Pressure Ulcers in High-risk Nursing Home Residents*, J. AMER. MED. ASSOC., July 13, 2011, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4108174/>.

<sup>19</sup> Yue Li, et al., *Racial and Ethnic Disparities in Social Engagement Among US Nursing Home Residents*, MED. CARE, 52, 314-21 (Apr. 2014).

<sup>20</sup> Center for Medicare Advocacy, *The Changing Demographics of Nursing Home Care: Greater Minority Access... Good News, Bad News*, Aug. 18, 2011, available at: <https://medicareadvocacy.org/the-changing-demographics-of-nursing-home-care-greater-minority-access%e2%80%a6-good-news-bad-news/>.

Brooklyn, and Manhattan, our Housing Project staff represent and advise clients facing eviction in landlord-tenant court. About 80 percent of our current Housing Project clients are persons of color.

Communities of color are particularly vulnerable to short- and long-term economic uncertainty because of systemic inequities that render wealth accumulation so much more difficult for persons of color as compared to their white counterparts. According to 2016 Federal Reserve data, the median net worth of Black households (\$17,600) is one-tenth the wealth of white households (\$171,000), while the median net worth of Latinx/Hispanic households lags similarly far behind (\$20,700).<sup>21</sup> Black Americans in particular suffer from a deep racial wealth gap—the lasting consequence of slavery, segregation, redlining, and institutionalized racism. Without a financial cushion, communities of color are unable to weather economic storms.

In the midst of COVID-19 in particular, as many New Yorkers have transitioned to working from home in order to practice social distancing, persons of color are generally excluded from this privilege because they are vastly overrepresented—again, due to systemic and structural inequality—in low-wage occupations. This leads to two consequences. First, as explained above, workers of color are more likely to work in risky high-exposure essential services such as food delivery, public transit, grocery stores, postal service, and carrier service. These workers of color have no choice but to subject themselves to increased viral exposure in order to make ends meet, which has contributed to the disparate impact of COVID-19 on communities of color.

A troubling recent report issued by the National Employment Law Project illustrates that Black workers are “more likely to work under conditions that are both hazardous and repressive,” and retaliation has been prevalent against whistleblowers for reporting COVID-19-related health

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<sup>21</sup> Board of Governors of the Federal Reserve System, *Recent Trends in Wealth-Holding by Race and Ethnicity: Evidence from the Survey of Consumer Finances, Accessible Data* (2016), available at <https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-accessible-20170927.htm#figure1>.

and safety concerns in the workforce.<sup>22</sup> This same study found that Black workers disproportionately feared repercussions for declining work to protect their health or the health of their families.<sup>23</sup> These fears for Black workers are compounded by the fact that “these beliefs are grounded in the reality that structural racism has made them especially vulnerable to contracting the virus and suffering serious complications or dying.”<sup>24</sup> No one should have to work in unsafe conditions or fear retaliation for exposing those conditions or be denied unemployment benefits for leaving employment that is not safe.

Second, low-wage occupations are generally deemed most dispensable in layoffs, leading to increased unemployment rates for persons of color. Although unemployment rates have climbed for all workers in the COVID-19 labor market, the unemployment rate as of April 2020 was higher for Black workers (16.7 percent) compared to the unemployment rate for white workers (14.2 percent).<sup>25</sup> Unemployment insurance and federal Economic Impact Payments may provide temporary relief for some, but many persons of color are specifically excluded because of lack of immigration status, because they are misclassified as independent contractors instead of employees (e.g., app-based drivers), or because they have not filed tax returns or are excluded from safety net programs that would otherwise render them eligible for stimulus payments. Without these safety nets or financial cushions, persons of color are more likely to miss rent and mortgage payments.

The pandemic-related economic downturn has and will disproportionately affect communities of color in other ways, including in the areas of debt collection, credit reporting,

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<sup>22</sup> National Employment Law Project, *Silenced About COVID-19 in the Workplace* (June 2020), available at <https://s27147.pcdn.co/wp-content/uploads/Silenced-About-COVID-19-Workplace-Fear-Retaliation-June-2020.pdf>.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> Economic Policy Institute, *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus—Racism and Economic Inequality* (2020), available at: <https://www.epi.org/files/pdf/193246.pdf>.

private student loan debt, and unfair and abusive practices. The widespread unemployment created by the COVID-19 crisis has already caused many New Yorkers to fall into debt, or go further into debt,<sup>26</sup> subjecting them to unfair debt collection, enforcement of judgments with abusive interest rates, and negative credit reporting. It is well established that debt collection generally and debt collection lawsuits specifically, disproportionately impact communities of color; therefore those communities hit hardest by the COVID-19 crisis will be disproportionately impacted by the inevitable onslaught of collection efforts and actions.<sup>27</sup> An increase in debt collection lawsuits, which are notorious for being generated *en masse* with shoddy proof, will subject New Yorkers of color to more economic strain, and expose those who must defend themselves in person at courthouses to increased health risks. If New Yorkers do not defend themselves, or if they lose those cases because they cannot afford attorneys, the debt collectors will engage in aggressive enforcement of judgments, which, in New York have shockingly high and abusive interest rates,<sup>28</sup> thus exacerbating the financial impact of the COVID-19 crisis on communities of color.

The assumption of additional debt will have lasting consequences on consumers. In addition to the impact it will have on consumers' credit scores, home and automobile insurance companies will use credit reports and other socioeconomic factors against consumers seeking policies. The use of irrelevant factors when underwriting and pricing insurance disproportionately burdens lower-income New Yorkers with higher insurance costs and often has a disparate impact

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<sup>26</sup> See Ann Carrns, *What Happens if You Are Sued by a Debt Collector?* (May 8, 2020), THE NEW YORK TIMES (“In a survey taken in early March, before the height of the pandemic, more than a quarter of Americans said they did not pay all of their bills on time, which was the highest proportion since 2012, according to the National Foundation for Credit Counseling.”), available at <https://www.nytimes.com/2020/05/08/your-money/coronavirus-debt-collection.html>.

<sup>27</sup> See The Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts, 17* (May 2020), available at <https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf>.

<sup>28</sup> See N.Y. Civil Practice Law and Rules Section 5004 (setting interest rates on judgments at “the rate of nine per centum per annum.”)

on people of color. In the wake of the COVID-19 crisis, the discriminatory use of this data will further negatively impact New Yorkers of color.

Persons of color, particularly Black Americans, will also disproportionately struggle with private student loan debt. The private student loan market is one of the fastest growing credit markets in the country, ahead of mortgages, auto loans, and credit cards.<sup>29</sup> In New York alone, there are over 400,000 private student loan borrowers,<sup>30</sup> carrying approximately \$11.4 billion in private student loan debt.<sup>31</sup> Most concerning, Black borrowers are four times as likely to fall behind on repayment than their white counterparts.<sup>32</sup> This is due in part to predatory lenders targeting vulnerable populations with products that contain exorbitantly high fees and interest rates.<sup>33</sup> In addition, there are little to no flexible payment arrangements available to private student loan borrowers, who receive bad information and customer service, and face abusive debt collection practices.<sup>34</sup> Several private education lenders have been the subject of federal and state litigation based on their use of abusive collection tactics, pursuit of illegitimate debt, and robo-

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<sup>29</sup> Student Borrower Protection Center, *Private Student Lending 7* (April 2020), *available at* [https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report\\_042020.pdf](https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf) [hereinafter “Private Student Lending”].

<sup>30</sup> Student Borrower Protection Center, *Protecting Private Student Loan Borrowers in New York 2* (June 2020), *available at* <https://protectborrowers.org/wp-content/uploads/2020/06/Private-Student-Debt-in-NY.pdf> [hereinafter “Protecting Private Student Loan Borrowers”] (citing data compiled from the U.S. Department of Education Office of Federal Student Aid (FSA) *available at* <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/Portfolio-by-Location.xls> and U.S. Department of Education National Center for Education Statistics, *Baccalaureate and Beyond Longitudinal Study*, *available at* [https://nces.ed.gov/datalab/index.aspx?ps\\_x=bffcape7c](https://nces.ed.gov/datalab/index.aspx?ps_x=bffcape7c)).

<sup>31</sup> *Id.* (citing data compiled from FSA available at the link above and the Federal Reserve Bank of New York *available at* [https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/area\\_report\\_by\\_year.xlsx](https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/area_report_by_year.xlsx).)

<sup>32</sup> *Private Student Lending* at 10.

<sup>33</sup> *Id.* at 9.

<sup>34</sup> *Protecting Private Student Loan Borrowers* at 9. This information is based on publicly available data on New York private student loan complaints submitted to the Consumer Financial Protection Bureau, as of June 15, 2020.

signing of court documents.<sup>35</sup> The federal government, while taking action to protect borrowers of federal student loans,<sup>36</sup> has left private student loan borrowers to fend for themselves, leaving it entirely up to states to protect vulnerable borrowers. New York must step up and lead on this issue by passing legislation that would limit the economic exploitation of Black borrowers.

Furthermore, the COVID-19 crisis has already resulted in the emergence of bad actors seeking to exploit New Yorkers with unfair products and practices.<sup>37</sup> New York trails woefully behind the majority of other states that boast consumer protection statutes that broadly prohibit unfair business practices, including bad practices that target communities of color.<sup>38</sup> New York must catch up to these other states to provide robust and meaningful protections and remedies to New Yorkers and small business owners of color.

Mr. B is just one example of a New Yorker facing the immediate and long-term economic consequences of COVID-19, and the rippling effects it will continue to have on our economy and housing crisis without legislative intervention. Mr. B is a Black homeowner in Queens who lives with his wife and four young children under the age of 10. Mr. B works in the hospitality industry,

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<sup>35</sup> See, e.g., Press Release, Department of Financial Services, *DFS Superintendent Linda A. Lacewell Announces Settlement With National Student Loan Servicer of For-Profit Schools* (Aug. 15, 2019), available at

[https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr1908151#:~:text=Lacewell%20today%20announced%20that%20the,the%20State%20of%20New%20York](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1908151#:~:text=Lacewell%20today%20announced%20that%20the,the%20State%20of%20New%20York); Crowly, Stacy, *Student Loan Creditor, Fined for 'False' Lawsuits, Must Halt Collections*, THE NEW YORK TIMES, September 18, 2017; Press Release, Consumer Financial Protection Bureau, *CFPB Wins Default Judgment Against Corinthian Colleges for Engaging in a Predatory Lending Scheme* (Oct. 28, 2015), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-wins-default-judgment-against-corinthian-colleges-for-engaging-in-a-predatory-lending-scheme/>.

<sup>36</sup> The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides for numerous protections for federal student loan borrowers, such as, a halt on virtually all collection activity, an automatic administrative forbearance, and a cessation on the accumulation of interest. Yet, there are absolutely no protections for private student loan borrowers.

<sup>37</sup> See, e.g., New York Attorney General, *Guidance on Coronavirus Resources and Warnings about Consumer Scams*, available at <https://ag.ny.gov/coronavirus>.

<sup>38</sup> National Consumer Law Center, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws* (March 2018), available at <https://www.nclc.org/images/pdf/udap/udap-report.pdf>.

which means he has been out of work since March due to COVID-19. Although his mortgage servicer granted him a temporary three-month forbearance beginning in March, the end of that three-month period is quickly approaching, even though New York City essentially remains closed and Mr. B is still unable to work. Mr. B does not have an economic cushion to help carry him through. Once this forbearance period ends, his mortgage servicer has informed Mr. B that a lump sum repayment will become due. Unless he is presented with other options, Mr. B will not be able to afford this lump sum repayment and will be in danger of losing his home to foreclosure.

If Mr. B loses his home to foreclosure, this will also strip an affordable housing option from a market that is already in crisis. Like many homeowners of multi-family properties, Mr. B rents the second unit of his two-family home to a family member—his senior citizen mother. Should Mr. B lose his home to foreclosure, it will likely be sold to the highest bid by a private developer.

## **II. Legislative Recommendations**

The NYS Senate and NYS Assembly must make every effort to address these inequities through legislation. To address the crisis affecting Black and Latinx residents of nursing homes and adult care facilities, New York must:

- Gather and report the demographics of nursing home residents in New York State, by nursing home, on an ongoing basis. This is a first step toward identifying racial disparities in quality of care and health outcomes.
- Gather and report the demographics of residents who have died from COVID-19. In order to provide an accurate picture, this data must include those residents who died in hospitals.
- Reduce the population density in adult care facilities and nursing homes by providing more supported housing in the community, prioritizing facilities with higher populations of people of color.
- Enact legislation that requires minimum staffing levels in nursing homes in New York State. The ravages of COVID-19 have only been exacerbated by the

understaffing crisis; the lack of adequate staff creates an unsafe environment for staff and residents alike.

- Reverse the FY2019 state budget carve-out of nursing home care from managed long-term care (MLTC). Nursing home care is extraordinarily expensive—more expensive than 24-hour home care—but the financial incentive for MLTCs and nursing homes are now aligned: to have people move into institutions and keep them there once they are admitted.

To address the economic and housing uncertainty for households of color that has been exacerbated by COVID-19, New York must:

- Impose a moratorium on evictions for one year from the date that the state of emergency of New York State was declared, until March 7, 2021.
- Impose a moratorium on the commencement of any action or proceeding seeking a judgment of possession or monetary judgment against a tenant or lawful occupant of a residential property for rent or use and occupancy which accrued within one year of the date that the state of emergency of New York State was declared, until March 7, 2021.
- Extend and expand unemployment insurance for the period in which the NY on PAUSE order is in effect. Dismantle structural barriers for persons of color by making UI benefits available to undocumented immigrants and expanding the definition of employee. New York should also ensure that workers who separate from work because of dangerous conditions are eligible for unemployment benefits.<sup>39</sup>
- Workers should have the right to refuse to work under conditions that they reasonably believe are dangerous, and whistleblowers who sound the alarm about workplace health and safety conditions or practices must be protected from retaliation.
- Impose a moratorium on the commencement of mortgage foreclosure actions and the sale and seizure of foreclosed properties for one year from the date that the state of emergency of New York State was declared, until March 7, 2021.

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<sup>39</sup> For more information about ways New York State can respond to the COVID-19 crisis on behalf of workers, we refer the Legislature to: National Employment Law Project, Protecting Worker Safety & Health in the COVID Crisis: A State & Local Model Policy Response (April 2020), available at <https://s27147.pcdn.co/wp-content/uploads/Protecting-Worker-Safety-Health-COVID-State-Local-Policy-Response.pdf>.

- Authorize certain state-regulated institutions to offer disaster partial claims to qualified mortgagors.
- Subsidize high-speed internet access for low-income individuals and families.
- Ban the use of credit reports and other socioeconomic factors in the underwriting and pricing of home and automobile insurance, and specifically pass A7040/S7667.
- Pass legislation that ensures private student loan borrowers are informed of any all available repayment options, creates basic and fair standards for the collection of private student loan debts, and adds protections for new borrowers.
- Impose a temporary ban on the filing of new consumer debt cases.
- Impose a stay on enforcement of consumer debt judgments.
- Protect consumers currently facing debt collection, and those who will face the inevitable onslaught of COVID-19-induced debt collection efforts, and pass A6909C/S4827C, which would level the playing field for unrepresented litigants, including people of color, who are sued in consumer debt cases, and pass A10479/S07946, which would reduce the currently punitive rate of nine percent on consumer debt judgments to a maximum of three percent.
- Provide meaningful protections and remedies to consumers and small business owners who are treated unfairly or are taken advantage of by prohibiting unfair and abusive practices and passing A679C/S2407C, which would provide greater access to justice in various transactions including financing, mortgages, insurance, and student loans.

**Thank you for the opportunity to provide this written testimony. For more information or if you have any questions, please contact Senior Staff Attorneys Tanya Kessler ([tkessler@mfjlegal.org](mailto:tkessler@mfjlegal.org)) or Belinda Luu ([bluu@mfjlegal.org](mailto:bluu@mfjlegal.org)).**