

**Testimony of Commissioner Emily Lloyd  
New York City Department of Environmental Protection  
before the  
New York City Council Committee on Finance  
concerning  
Intro. 612 – Relating to the Reauthorization of Lien Sale Authority  
250 Broadway  
January 8, 2015, 10 am**

Good morning, Chairwoman Ferreras and Members. I am Emily Lloyd, Commissioner of the New York City Department of Environmental Protection (DEP). I am joined today by Steve Lawitts, First Deputy Commissioner and Executive Director of the New York City Water Board, as well other DEP staff. Thank you for the opportunity to testify on Introduction 612, which would reauthorize the sale of property tax and water and sewer liens.

As you know, DEP has overall responsibility for the City's water supply and sewer system, including providing drinking water to all New Yorkers, maintaining pressure to fire hydrants, managing storm water, and treating wastewater. All of our water related expenses—both operational and capital—are paid for with the money collected from the water and sewer rate charge—billed to all New York City property owners and authorized annually by the New York City Water Board. DEP's stand-alone lien sale authority for seriously delinquent water and sewer charges, which expired on December 31, 2014, is a critical enforcement tool that allows us to keep water and sewer rates as low as possible, while fulfilling our Agency's mission. I appear before you today to express DEP's strong support of Introduction 612 and to urge the reauthorization of DEP's lien sale authority.

Each year, DEP collects more than \$100 million of revenue directly attributable to the sale of water and sewer liens and the pre-lien sale process. In addition, we estimate that we also collect another \$360 million annually, due to the lien sale's "halo effect", or inducement of customers to stay current on their charges to avoid being placed on the lien sale list. These funds currently represent close to 13% of our overall budget, an amount that is vital to meeting our obligations every year.

As background on the scale of the lien sale for water and sewer charges for Fiscal Year 2014, in October 2013, well before the required period, DEP sent notices to nearly 22,000 properties that had either already met, or were on track to meet, the eligibility criteria for inclusion in the FY 2014 lien sale. Properties in Tax Class 2, 3, and 4 were eligible for the lien sale if their delinquency on water and sewer payments was at least \$1,000 for at least one year and two- and three-family homes in Tax Class 1 were eligible for the lien sale if their delinquency was at least \$2,000 for a period of at least a year.

In January 2014, DEP sent another notice to more than 11,000 properties that met the criteria for inclusion in the lien sale. In February 2014, the official 90-day notice was sent to 16,267 properties, representing \$193 million in outstanding charges. In addition, these properties were listed on the Department of Finance's website and in a printed notice which was published in the Daily News. This same group of properties continued to receive a 60-day notice, a 30-day notice and a 10-day notice, unless they either paid their delinquent balance or signed a binding payment

agreement for the delinquent balance. These notices resulted in over 13,000 payments made for amounts totaling \$108.6 million. In Fiscal Year 2014, DEP sold liens on only 2,267 properties—or less than 15% of the original 90-day list.

As of January 5, 2015, DEP has approximately 20,717 customers with \$310 million in outstanding charges that would be eligible for the lien sale.

Our goal is to make sure that the water and sewer system receives the revenue it needs to support current and future operations. DEP's lien sale authority is an essential tool that not only provides needed revenue, but also ensures that all building owners pay for the water that their buildings consume. Without continued lien sale authority, we would in effect be returning to the years before 2008, when delinquent customers perceived that there were no consequences for failure to pay their water bills. We are concerned that this would create a large gap in revenue, which would result in a significant increase in the water rate. Not renewing the lien sale authority would unfairly shift the financial burden from a minority of delinquent customers to the majority of customers who pay their bills on time, pay their fair share, and who would now have to pay even more because the water and sewer system no longer has its most effective enforcement tool available.

Since 2011, we have also implemented several initiatives aimed at helping our customers and reducing individual costs. We have installed Automated Meter Reading devices (AMR) on 96% of all properties. Customers are now able to view their water usage data in near-real time, allowing them to manage their consumption more effectively and potentially reduce their charges. Since 2011, more than 72,000 customers have received automated Leak Notifications and saved more than \$60 million dollars in charges because they have been able to respond and fix their leaks in a timely manner. Accordingly, this year, the Water Board also expanded the leak forgiveness program to include leaks of maintainable fixtures, such as toilets and sinks. Over 1,000 customers have benefited from this change so far, receiving \$1.2 million in leak forgiveness. Finally, and perhaps most relevant to the lien of water and sewer charges, because of AMR, DEP's estimated bill rate has fallen by more than 82% since 2009. As a result, 97.8% of the water and sewer bills sent to metered customers reflect actual usage, which led to a 55% drop in customer disputes in Fiscal Year 2014 versus Fiscal Year 2011—and a 40% reduction since Fiscal Year 2008. DEP will also begin offering monthly billing as an opt-in option to all 836,000 customers by June 30, 2015.

In addition to these initiatives, DEP is committed to protecting its most vulnerable customers while ensuring that everyone pays his or her fair share for the water and sewer services used. That is why the Water Board, in partnership with DEP, adopted the lowest rate increase in nine years, froze water and sewer bills for roughly 25% of all single-family homeowners—many of them seniors—and partnered with the NYC Human Resources Administration to carry out Mayor de Blasio's progressive vision by creating the Home Water Assistance Program to help over 12,500 of our low-income customers.

Again, we strongly support Introduction 612 and urge you to vote in favor of the continued fiscal health and resiliency of the water supply, distribution, and wastewater collection and treatment systems. While uninterrupted lien sale authority is crucial, we are mindful of issues that some Members would have preferred to address in the context of this reauthorization. We believe the

inclusion of a task force in this bill ensures that these issues will receive the thorough and deliberative consideration they deserve in anticipation of the next reauthorization two years from now. We look forward to working with the Council and the other members of the task force to ensure that the tax and water lien sale process is fair, efficient and effective. I thank you for the opportunity to testify today and would be happy to address any of your questions.



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January 5, 2015

The Honorable Melissa Mark-Viverito  
Speaker  
The Council of the City of New York  
250 Broadway, Suite 1856  
New York, NY 10007

Dear Speaker Mark-Viverito,

As you know, the Department of Environmental Protection (DEP) has overall responsibility for the City's water and sewer system, including providing drinking water to all New Yorkers, managing storm water, and treating wastewater.

All of our water related expenses – both operational and capital – are paid with the money collected from the water and sewer rate charge, which is billed to all New York City property owners and authorized annually by the New York City Water Board. As recently discussed between our respective staff members, DEP will begin offering monthly billing as an opt-in option to all 836,000 customers by June 30, 2015. This option will provide monthly billing to all customers who desire it, while enabling those customers who prefer quarterly billing to remain on their current billing cycle.

As per our previous agreement with the Council, nearly 30,000 property owners have entered into payment agreements to pay off their delinquent water and sewer charges. These 30,000 payment agreement customers are already on monthly billing.

We believe that offering monthly billing as an option will help all DEP customers to manage their water and sewer payments in a way which best suits each individual building owner. I look forward to continuing to work with you and the rest of the City Council in the months ahead.

Sincerely,

Emily Lloyd  
Commissioner

cc: Honorable Julissa Ferreras, Finance Committee Chair  
Honorable Donovan Richards, Environmental Protection Chair  
Tanisha Edwards, Chief Counsel, Finance Division  
Samara Swanston, Counsel, Environmental Protection Committee  
Jacques Jiha, Commissioner, Department of Finance  
Samara Karasyk, Assistant Commissioner, Department of Finance  
Steven Lawitts, First Deputy Commissioner, DEP  
Reggie Thomas, City Legislative Affairs, Office of the Mayor  
Michael DeLoach, Intergovernmental Affairs, Office of the Mayor  
Ben Furnas, Office of First Deputy Mayor



**Testimony of Deputy Commissioner Jeffrey Shear**  
**City Council Hearing on Legislation to Extend the City's Authority to Sell Tax Liens**  
**January 8, 2014**

Good morning Chair Ferreras and members of the Finance Committee. My name is Jeffrey Shear, and I am the Deputy Commissioner for Treasury, Payments and Operations at the New York City Department of Finance (DOF). I am joined today by Samara Karasyk, Assistant Commissioner of External Affairs at the Department of Finance. Thank you for the opportunity to testify today in support of Int. No 612, legislation extending the city's authority until December 31, 2016 to sell tax liens for property related payments owed to the City including property taxes, water and sewer charges, and other charges associated with real property.

The legislation before the Council today authorizes a process the City has conducted annually since 1996: the sale of tax liens. Selling tax liens is an important tool that enables us to collect unpaid property-related taxes and charges, and ensures fairness and equity among all property owners. The sale of tax liens has resulted in the collection of a total of \$1.3 billion since 1996 in delinquent taxes and charges essential to funding the city's vital programs. It has also contributed to the decline in the rate of delinquent property taxes to 1.4 percent in FY14 from a 4.4 percent average in the three years before the first lien sale, resulting in an enhanced collection of \$5.4 billion. We expect the 2015 lien sale to generate approximately \$60 million in FY2015.

As you know, a lien is a legal claim to property for unpaid property taxes and other charges owed to the city. Through the authority granted in this legislation, the city sells the lien (but not the property itself) to a specially created trust. The trust then has the authority to collect the delinquent balance on the property.

There are over one million properties in New York City. Ninety eight percent of property owners pay their taxes on time. Annually, about 25,000 property owners are

notified that a lien may be sold in relation to their property. These properties are eligible for sale because they meet certain criteria. Properties may be eligible for the lien sale if they have at least \$1,000 in delinquent property taxes that are more than 3 years old. Notification – which includes at least four mailings by the DOF to property owners and interested parties before the sale; full page ads in daily, community and ethnic newspapers; and numerous outreach events by DOF staff – typically results in four out of five properties avoiding the lien sale altogether. These property owners avoid the lien sale by paying their delinquent balance; demonstrating that they qualify for senior citizen, veterans or disability exemptions; telling us that they own a Build it Back property recovering from Hurricane Sandy; or entering into a payment plan with the DOF. Ultimately, the number of liens actually sold is typically reduced to approximately 5,000 properties. This process of ensuring that all property owners and other interested parties are notified and have an opportunity to resolve their delinquencies is what is projected to produce \$60 million this fiscal year.

The legislation before the committee today codifies our continued outreach efforts and collaboration with the Council by requiring we issue a quarterly property status report on the lien sale and provide information to the Council regarding our outreach events. Councilmembers may request a lien sale outreach event for their district. It further establishes a ten-person Task Force equally balanced between the Council and the Administration to examine and make recommendations on refining and improving the lien sale process. DOF therefore supports the legislation and looks forward to working with the Council to make the lien sale process as effective and as fair as it can be.

At this time, my colleagues and I would be happy to answer any questions you may have.



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**TESTIMONY OF MOSES GATES, BEFORE  
THE NEW YORK CITY COUNCIL FINANCE COMMITTEE ON LIEN SALE  
REAUTHORIZATION**

January 8th, 2015

Good Morning. Thank you Chair Ferreras and to the members of the Finance Committee for the opportunity to testify.

My name is Moses Gates and I am the Director of Planning and Community Development for the Association for Neighborhood and Housing Development (ANHD). ANHD is a membership organization of NYC- neighborhood based housing and economic development groups- CDCs, affordable housing developers, supportive housing providers, community organizers, and economic development service providers. Our mission is to ensure flourishing neighborhoods and decent, affordable housing for all New Yorkers. We have nearly 100 members throughout the five boroughs who have developed over 100,000 units of affordable housing in the past 25 years alone and directly operate over 30,000 units. Thank you for the opportunity to testify this afternoon.

Specifically, I would like to address how reauthorizing the program under the current proposal is not beneficial to New York City and potentially harmful to the availability of affordable housing for many of the city's residents.

While we do support reauthorizing tax lien sales, we have two recommendations as to changes in the proposed legislation. The first, which my colleagues at the Urban Justice Center can speak to more, is that the legislation should exclude all affordable housing that has had city investment and, specifically, should make defective liens sold on HDFCs developed under Article XI of the State Private Housing Finance Law, as was the case prior to 2011. Since this change, despite the best efforts of the City, 5 affordable housing HDFC properties, developed with government money, have gone through the lien sale process, with their liens now owned by private actors. It is unconscionable that the city would allow this to happen – instead a far better solution would be for the city to use its lien foreclosure authority to maintain affordability in these properties by putting them through the Third Party Transfer program, and transferring them to responsible, not-for-profit ownership that will preserve the affordability – and city investment in affordable housing – for the long term.

The second change is to add some more diversity to the task force charged with revamping the Lien Sale law over the next two years. Currently, only government entities are represented – 5 appointees from the City Council, who are specifically required to be City Council Staff, and 5 appointees from the Administration. Left out are community stakeholders, financial institutions, nonprofit developers and service providers, and other experts who deal with affordable housing preservation issues on a daily basis. We believe it is of great importance that a perspective other than that of government is represented on the task force. Specifically, we would like to propose 5 additional members of the task force, who would be chosen by City Council, and would be required to have expertise in specifically in working with financially distressed or foreclosed properties.



**TESTIMONY OF LEGAL SERVICES NYC BEFORE THE NEW YORK CITY  
COUNCIL COMMITTEE ON FINANCE ON PRECONSIDERED INT. -A  
A LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE OF THE CITY OF  
NEW YORK IN RELATION TO THE SALE OF TAX LIENS**

Thursday, January 8, 2015

New York City

I am Justin Haines, Director of the foreclosure prevention project at Legal Services-NYC-Bronx, and I submit this testimony on behalf of Legal Services NYC regarding the Preconsidered Int. reauthorizing the sale of tax and water liens. First, we would like to thank the Council for its leadership in attempting to ensure fairness in the annual tax and water lien sale and for its efforts to increase outreach efforts to homeowners so that homeowners can learn how to avoid inclusion in the annual lien sale. We understand that there are many challenges in addressing these issues, especially in this time of economic austerity, so we thank you for your partnership in the pursuit of justice.

Legal Services-NYC is the nation's largest provider of free civil legal services to the poor. For more than 40 years, we have provided expert legal assistance and advocacy to low-income residents of New York City. Each year, our neighborhood offices across Manhattan, the Bronx, Brooklyn, Queens and Staten Island serve tens of thousands of New Yorkers—including homeowners, tenants, the disabled, immigrants, the elderly and children.

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Joseph Steven Genova, Board Chair



Legal Services-NYC is also the oldest and largest provider of foreclosure prevention legal services in New York City. For more than a decade, we have challenged abusive lending and home sale schemes—from redlining to subprime lending to loan mod scams. We currently operate four dedicated foreclosure prevention projects with approximately 50 attorneys and paralegals working in some of the hardest hit neighborhoods across the Bronx, Brooklyn, Queens, and Staten Island. To date, we have assisted more than 7,000 families at risk of losing their homes. We, therefore, have an informed perspective on the challenges homeowners face in all aspects of the foreclosure process.

Today, specifically, I would like to share the experiences of our clients in tax lien foreclosures which highlight the ways in which the tax lien sale law and foreclosure process could be improved.

We see many homeowners facing tax and water lien foreclosure through our court-based foreclosure prevention clinic in Bronx Supreme Court. We carefully analyze each homeowner's case to assess whether they have any defenses to the foreclosure and help them prepare answers to the foreclosure complaints if they have meritorious defenses. Unlike mortgage foreclosures, many homeowners facing tax lien foreclosures lack substantive defenses, as they suffered an economic hardship that made them unable to pay their water or taxes for a period of time. If a homeowner has a mortgage on his or her property, the mortgage company will usually be interested in paying off the outstanding tax or water lien to preserve the lien priority of the mortgage. Most mortgage companies are aware of tax liens on the property and pay them promptly if the homeowner cannot. This is because the mortgage company can be added to the quarterly bill notices. But if the lien is based on unpaid water charges, the mortgage companies often are unaware of the unpaid charges until after the lien has been sold. When a mortgage company pays the tax or water lien for the homeowner, it is an escrow advance and under the Real Estate Settlement Procedures Act (RESPA), the mortgage company is entitled to recover those escrow advances within a 12-month period. If the tax and water lien was large, for example \$24,000, then this adds a considerable monthly expense of several thousand dollars a month to

the normal mortgage payment. We have seen situations where these high monthly escrow charges cause a homeowner to default on their mortgage and go into foreclosure.

For homeowners who have overcome their financial hardship, we assist them in securing affordable repayment plans from the tax lien servicers, MTAG and Tower Capital, even after the tax lien foreclosure is initiated. Unlike the repayment plans offered by the Department of Finance (DOF) or the Department of Environmental Protection (DEP) that require no down payment and can be repaid over 10 years, the tax lien servicer repayment plans are un-regulated, require large down payments and generally can extend over a period of only one to three years. Many homeowners cannot afford to enter into these tax lien servicer repayment plans and will eventually be foreclosed upon by the tax lien trust.

We often encounter homeowners who no longer have a mortgage and find themselves subject to tax lien foreclosures. These are often long-time homeowners and senior citizens who face the loss of substantial equity in their homes. Thankfully, due to the changes in the tax lien law to exempt homeowners with tax exemptions or those who appear eligible for an exemption like the Senior Homeowner Exemption from the lien sale, these numbers have dropped-- but not entirely. In these cases, homeowners whose homes are worth several hundred thousands of dollars face losing their properties to foreclosure over a lien that could be as low as only several thousands of dollars. Over the past six years, there have been several foreclosure rescue loan funds that we have been able to use, including the discontinued Gap Loan program administered by NEDAP (now known as New Economy Project) or the New York State Mortgage Assistance Program (NYS-MAP), established late last year by Attorney General Schneiderman, to pay off such liens. With both of these programs, which have maximum loan amounts of \$25,000 and \$40,000 respectively, a homeowner was not required to make monthly payments but instead could pay off the loan upon transfer or sale of the property. These rescue funds have played an incredibly important role in this credit-choked economic recovery period, where many homeowners cannot secure a mortgage or line of credit on their mortgage-free home. The Gap

Loan Program fund was exhausted in 2013 and the NYS-MAP program, although new, is a finite resource designed to assist homeowners across the state and could be exhausted by the end of this year as well.

Our clients will benefit from the increased outreach opportunities in local communities that Council members can request pursuant to the proposed amendments. In the last two years, DOF and DEP have greatly increased their outreach efforts to homeowners to assist homeowners in avoiding the lien sale by signing up for tax exemptions and repayment plans prior to inclusion in the lien sale. We also believe our clients will benefit from the clearer notices in multiple languages to prior exemption holders about how to renew their tax exemptions and the notices that more clearly inform a homeowner of what constitutes default under a repayment agreement, how to cure that default and the effect of default on their future eligibility for installment agreements. Lastly, many of our clients who were victims of Hurricane Sandy will greatly benefit from the exemptions from lien sale inclusion for Sandy-affected properties in the proposed legislation. Many of our Sandy-devastated clients have not returned to their homes and continue to rent elsewhere, creating a financial hardship that has left them unable to keep up with their property taxes.

It is tremendously important for the Council to examine the fairness of the tax lien sale program as a mechanism for the collection of debts owed to the City. To that end, our clients stand to benefit from some of the revisions proposed in this reauthorization of the tax lien sale program, namely the amendments to Section 11-320 of the code, requiring quarterly reports from the tax lien purchasers that will reveal the interest, costs and fees for the liens that were sold, the frequency of post-foreclosure installment agreements and the nature of defective tax liens. The client stories I will share highlight the need for this data so that the Council understands that these stories are not just anecdotal but rather emblematic of defects in the current tax lien sale process.

Our clients will also benefit from the creation of the proposed temporary taskforce with the addition of Section 11-356 of the Code that will examine the tax lien process to ensure it is fair, efficient and effective and will look at the data generated from those quarterly reports. We suggest that the Council consider expanding the membership of the taskforce to include the community of legal service providers and housing counseling advocates who have years of experience helping homeowners and have direct knowledge of the devastating effect the tax lien sales have on vulnerable homeowners. This taskforce investigation is crucial and timely as the future of many foreclosure prevention programs is uncertain, with the Attorney General's Homeowner Protection Program funding slated to end in two years. Soon the minimal safety net legal service providers have established over the last six years will evaporate.

**I. The Removal of Defective Tax Liens from Sale Must Be Improved and the Outdated Provisions of the Administrative Code Need to Be Revised, Eliminated or Amended to Reflect Third Party Tax Lien Sales**

In early October 2012, Edith came into our court-based foreclosure prevention clinic in Bronx Supreme Court. Her case was unusual in that she believed she was up to date on her property taxes on her Shorehaven Condominium in the Bronx, even though she was being sued in a tax lien foreclosure. Although she reported that she had informed the tax lien trust attorneys that she believed she was current, they disregarded her and scheduled a foreclosure auction to occur in two weeks.

Ultimately our investigation revealed that Edith was correct in that she *had* paid all of her property taxes. We also discovered a huge error that DOF had made--when the tax lots were designated, only half of the Shorehaven condominiums had been built. Ultimately some of the plans were changed for the block where Edith's condo was located, and under an Amended Condo plan most of Edith's block received new tax lot identification numbers. But DOF failed to update its records by deleting the tax lot numbers from the original plan and substituting the new number, with the result that each

property had two tax lot numbers associated to it. Even more bizarrely, the old lot numbers that should have been deleted were being assessed under a different building class and at a much higher rate. DOF continued to assess property taxes on these “phantom” lots, eventually those unpaid taxes became liens that were sold in the annual lien sale and eventually became tax lien foreclosures.

I wrote a letter to the attorney for the tax lien trust that was prosecuting Edith’s tax lien foreclosure, explaining the DOF record-keeping order that mistakenly caused Edith’s property to be reported as in default, and asked that the foreclosure auction be cancelled and the case dismissed. While he agreed to avert the auction, he did not agree to dismiss the case until the tax lien trust conferred with DOF and validated that this was indeed an error and a defective lien. I discovered that Edith’s case was not unique and that there were two other pending foreclosures based on the same error on neighboring properties, affecting twelve condos on the block. I requested updates every couple months and it seemed no progress was being made to invalidate the lien and foreclosure.

A year and a half later, another homeowner, Jessica, requested assistance at the court clinic for a tax lien foreclosure when she too had been up to date on her property taxes. Upon investigation, she lived on Edith’s block and had the exact same problem. I was extremely upset to learn that not only had DOF not fixed the problem but that subsequent defective liens were sold and subsequent foreclosures had been started in cases plagued by the very same defects that I had brought to the attention of the both the tax lien trust and DOF. I filed a motion to dismiss and sought sanctions and attorney’s fees for bringing a frivolous lawsuit. Again, the lawyer’s for the trust, now a different law firm, said they needed time to contact DOF and conduct their own investigation but agreed based on the information I presented the lien appeared defective. The case was adjourned over a period of seven months.

I received opposition to the motion to dismiss. In the opposition, the tax lien trust relied on the now confusing state of Title 11, Chapters 3 and 4 of the Administrative Code in arguing that provisions of that same code were no longer valid. Many parts of those Chapters were written when the city

conducted its own *in rem* tax foreclosures and the specific provisions refer to the rights and powers the City has. Now that the tax lien sale program is conducted by selling the liens to a tax lien trust through a negotiated sale, the tax lien trust must be assumed to step into the shoes of the city in using the provisions of the code to conduct tax lien foreclosures. The Code should be brought current to refer to the rights of tax lien trusts as purchasers of the tax liens to conduct the foreclosures. This confusing state of the current code was used by the tax lien trust in its argument. For example, the tax lien trust relied upon Sections 11-336 and 11-411, providing for a presumption of validity that requires the tax lien trust to only attach a certified copy of the tax lien certificate signed by the Commissioner of Finance as the basis of a tax lien foreclosure. The code shifts the burden to the defendants to affirmatively prove any defect. The tax lien trust argued that Jessica could not conclusively prove that her property could not have two tax lot identifiers. While I relied on Section 11- 409(b), which states that it shall be a complete defense if the taxes were paid before the lien was sold or if the property was not subject to tax, the tax lien trust argued that this section was applicable only when the city conducted the tax lien foreclosures.

The tax lien trust also argued that Jessica should have exhausted all available administrative remedies, including an Article 78 proceeding challenging the assessment of tax on her property, which would have required to have been brought within four months of the final determination by DOF, or a tax certiorari proceeding pursuant to Article 7 of the Real Property Tax law, which must be conducted within 30 days of a final assessment.

Eventually, the tax lien servicer agreed with my investigation, but even then could not discontinue the foreclosure without sign off from DOF, and the attorney could not provide no assurance that this defect would be rectified with respect to the other affected lots, including Edith's property. For over a month, I reached out to every contact I could find at DOF to get someone to look at this issue and confirm that all the lots would have the charges removed, the liens invalidated, and the foreclosures

dismissed. After this experience, it became abundantly clear that foreclosure prevention advocates need a contact within DOF to resolve issues like this. Because the tax lien trust voluntarily withdrew its case against my client, I never received a decision from the judge on the arguments both sides raised and my clients were not compensated for the years of stress occasioned by tax lien foreclosure actions erroneously commenced against them due to a DOF error.

## **II. Tax Lien Foreclosures Are Exacerbating an Existing Foreclosure Crisis By Jeopardizing Homes without Mortgages**

Augustine came to our court-based clinic on a Thursday in October with a foreclosure auction scheduled for the following Monday. Augustine grew up in the home, which he had inherited in 1991 when his mom passed away. The home is a two-family home and the other unit was rented to a senior citizen couple on Social Security paying only \$600 in monthly rent—an important reminder that homes needlessly lost to foreclosure also represent the loss of affordable rental housing in New York City’s low and moderate income neighborhoods. Augustine had no mortgage and was up to date on his property taxes, but was behind on his water charges. He had fallen behind when he lost his job and when his elderly tenants experienced health problems and had difficulty paying their rent. The water lien was originally \$27,000, but by the end of the foreclosure process had grown to \$45,000. We helped Augustine file an Order to Show Cause to stop the sale, which gave us enough time to apply to the NYS-MAP program, for which we believed he was eligible. Unfortunately the NYS-MAP program was not fully operational until November 2014. Augustine was found eligible for the \$40,000 MAP grant but he owed \$45,000. The attorney handling the case was able to negotiate a \$3000 reduction in the fees and Augustine used savings and money from another source to pay the balance. The MAP loan closed on Christmas eve and the home was saved. If MAP did not exist, Augustine would have lost his home-- worth roughly \$540,000-- and the community would have lost affordable housing for three people because of a \$45,000 water lien.

### **III. Exemption from the Tax Lien Sale is Desperately Needed for Sandy Victims But May Be Coming Too Late**

Lawrence is a client of Staten Island Legal Services. His home was destroyed by Hurricane Sandy. His property consists of two adjacent tax lots, with his house located on one of the lots and the second one is used as his yard. His property is in the flood zone and eligible for the Buy It Back program, meaning that it is in such a high-risk area that the State would rather purchase the land back from Lawrence rather than have him rebuild. Unfortunately, he believed when he was paying his property taxes that he was paying for both tax lots combined. It wasn't until he was served papers for a tax lien foreclosure for \$8,000 that he realized that there were unpaid taxes owing on the unimproved yard lot. The tax lien has now grown to \$13,000, and a second tax lien was purchased by the trust in the 2014 sale for an additional \$5,000. Lawrence has applied to the Buy It Back program, but he has no idea when he will be approved for the program and he will receive funds. Given the unique circumstances as a Sandy victim, he asked the tax lien servicer for an interest-free, no money down repayment plan, but that request was denied. Now we only hope that we can secure his Buy It Back funds in time to pay off the tax lien before it goes to auction.

### **IV. DOF Needs to Improve Billing for Owners of Dual Lots**

Diane, an elderly widow living in Cambria Heights, is being assisted by Queens Legal Services. Diane works hard to pay her bills on time, and has lived in her home mortgage-free since 1997. Diane prides herself on being debt free and has raised her daughters and grandchildren to do so as well.

Yet just before this past Christmas, Diane was served with a summons and complaint informing her that she is delinquent on the property taxes on her yard, and that the property is now in foreclosure. Diane thought someone was playing a joke on her as she pays every property bill she receives on time. Diane's home sits on two adjacent lots—the larger lot on which her house sits and a small tract of land little more than the size of a driveway. Quite reasonably, Diane believed that she was paying the



property taxes on her whole property when she made her quarterly tax payment. To her horror, she discovered that the property taxes on the small lot containing her driveway have not been paid in years because this lot was erroneously not included in the quarterly bill she receives from the Department of Finance. Indeed, the Department of Finance records do not show any viable address associated with the smaller lot, but simply state “Bad Location Address.” As a result, Diane never received any property tax bill for this lot, or any of the requisite notices that her property was at risk to be included in the annual lien sale.

The tax bill on the small lot Diane owns is less than \$20 per quarter. However, because she never received a bill for these payments, or any notification that the taxes on this lot were delinquent, she is now facing a tax lien foreclosure. Worse, the debt is now accruing interest at a rate of 9%, compounded daily, resulting in a payoff amount of over \$6,000, for which she has no recourse but to pay or risk losing part of her property.

Diane is not alone. Sabrina, a client of Legal Services NYC-Bronx, also has adjacent lots, one improved by her home while the other is a driveway and yard. We were just able to secure a mortgage modification trial plan for her home, but her loan servicer, Wells Fargo, was only aware of and paying the property taxes on the main lot. The adjacent lot’s taxes remain unpaid and are subject to a tax lien foreclosure where the unpaid taxes have now grown to \$21,000, which delinquency is now jeopardizing her mortgage modification because Wells Fargo requires any lien over \$20,000 to be paid off or subordinated before the final mortgage modification can be finalized.

#### **V. Tax Lien Foreclosures Are Conducted in a Sloppy Manner**

Gajendranauth, a construction worker, came to the Bronx foreclosure clinic just after he discovered that his home sold at tax lien foreclosure auction. He was never behind in property taxes but he had owed \$7,900 in water/sewer arrears. He told us that in 2010 he started getting, all of a sudden, quarterly water bills over \$2,000, even though there was no change in his water consumption. This

happened over more than one billing cycle, and at some point he called DEP to complain, causing DEP to send a workman to replace his water meter. After the meter replacement, he reported, his quarterly DEP bills reverted to their normal levels, and from that point on the bills did not reflect any arrearage of \$7,900, the amount claimed in the Aug 2011 lien.

This client understandably believed that the DEP arrears were resolved by a bill adjustment following the replacement of his defective meter. In May 2011 he was injured on the job and therefore was out of work for a while, causing him to fall into default on his mortgage. But by February 2013, he secured an in-house mortgage modification on good terms, reducing his interest rate to 3.25%

However, unbeknownst to Gajendranauth, a tax lien foreclosure had been filed in September 2012. Our investigation revealed that he was not properly served, because the process server's affidavit asserted that he served a black female that he knew to be the Defendant when, in fact, this client is an Indian male. Indeed, he did not know about the tax lien foreclosure at all, and he only came in seeking legal help because the Purchaser at auction posted a letter and copy of the Referee's Deed on his door.

We filed a motion seeking to set aside the sale, vacate the judgment and dismiss the case for lack of personal service. While the judge did not decide our motion, he strongly encouraged the tax lien trust and the purchaser at auction, who was just an investor, to restore the property to our client and work out a return of the deed to our client. A settlement was reached that gave the property back to our client, and his mortgage servicer paid the water lien and a portion of the costs and allowed Gajendranauth to repay over several years. Ultimately, it would have been beneficial to our client had he been able to challenge the very nature of the water lien charges, as he believed them to be erroneous, due to the faulty meter.

**VI. Although the Interest Rate Has Been Reduced on Many Tax Liens, Interest, Costs and Fees Remain Excessive in Tax Lien Foreclosures**

Pedro came to the foreclosure clinic seeking help with water liens on his property which, is an SRO building that had been almost destroyed by a fire in 2001. From 2001 to 2004, Pedro restored the building, unit-by-unit, doing the restorations slowly because he did not have a mortgage or hazard insurance when the fire occurred. During this time, he had the water turned off on the property. Eventually, he was able to rent out several units, but the income he received from those few units was not enough to cover the property taxes and water charges and he fell behind.

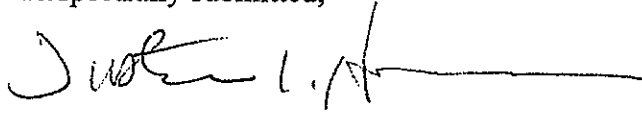
It turns out that he has three tax and water liens on the property. The oldest lien was sold for \$31,469, but by September 2014 the total owed for the lien was \$104,873, which now included **\$66,913 in interest** and \$6,489 in fees. The second oldest lien sold for \$4,096, but by now had doubled to \$8,680. The third lien sold for \$8,821 and now \$10,694 was owed. The total amount owed was beyond anything we could help him secure to save the property. He was not eligible for any repayment plans because the amount owed was so excessive.

**VII. DOF Line Staff at Service Centers Need to Be Better Trained in What Repayment Plans Are Available to Homeowners**

Through our foreclosure prevention work, we come across many homeowners with delinquent tax and water charges that could be included in future lien sales. We give them the location of the closest service center and tell them they should apply for an installment repayment plan or, if eligible, the water debt assistance program. The clients regularly come back to us informing us that the DOF worker told them they had to make a down payment, but in fact homeowners are eligible for no down payment, 10- year repayment plans. The Department of Finance should do more to ensure that the line staff is fully apprised of the installment plans and other programs to avoid inclusion in the lien sale.

Thank you again for the opportunity to testify before the Committee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin L. Haines", followed by a long horizontal line extending to the right.

Justin L. Haines  
Director, Foreclosure Prevention Unit  
Legal Services NYC – Bronx  
349 East 149<sup>th</sup> Street, 10<sup>th</sup> Floor  
Bronx, NY 10451

**Testimony before the New York City Council Committee on Finance  
Submitted by the Center for New York City Neighborhoods**

**Preconsidered Intro. , a Local Law to amend the administrative code of the city of  
New York, in relation to the sale of tax liens.**

**January 8, 2015**

Good morning, and thank you for inviting me to testify today. My name is Caroline Nagy and I am the Policy Manager at the Center for NYC Neighborhoods. Thank you, Chair Ferreras, along with the members of the Finance Committee, for holding today's hearing regarding the sale of tax liens in New York City.

**About the Center for NYC Neighborhoods**

At the Center for NYC Neighborhoods, our mission is to promote and protect affordable and sustainable homeownership in New York City. We believe that keeping homeownership affordable creates strong neighborhoods that allow for working and middle class New Yorkers to be a part of the economic opportunities that emerge as New York City continues to prosper. Through a network of community-based partner non-profits—what we refer to as our “Network Partners”—we provide homeowners with the essential support to prevent and overcome economic hardships of many kinds, and to make absolutely sure that they can afford to stay in their homes. Since 2008, our network of 36 community-based partners located throughout the five boroughs has assisted over 30,000 homeowners.

**Tax Lien Sales in New York City**

The sale of tax liens for one-to-four family homes in New York City causes financial hardships for thousands of low-income or otherwise vulnerable families each year, while presenting a serious challenge to our mission of promoting and protecting affordable and sustainable homeownership in New York City. Lien sales most frequently impact communities still reeling from the foreclosure crisis. Many of these neighborhoods provide the last remaining affordable housing for many seniors and homeowners of color. This year, we saw 2,729 tax liens sold for one-to-four family homes at an average value of \$12,000. While the initial lien value can be relatively small at sale, once sold and compounded with steep interest rates and fees, homeowners can often find that their balance owed is rapidly increasing.

Ultimately, the City's sale of tax liens puts low-income, elderly, and disabled homeowners at risk of losing their homes through foreclosures. Here are three recent examples of the hardships caused to vulnerable New Yorkers from the sale of their tax liens. In each of these cases, homeowners were only able to avoid foreclosure on their homes due to the last-minute, heroic efforts of their legal services attorneys.

**Mr. M**

Two weeks ago, the Center and our Network Partner Legal Services NYC saved the home of a Bronx homeowner who was just days away from the auction of his home due to a foreclosure on his property tax

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lien. For over 45 years, Mr M. has lived in his home, recently appraised at \$500,000, and has been mortgage-free since he paid off his mortgage in 1996. In 2010, Mr. M was laid off from his job at a nonprofit. He began working as an assistant to an elderly blind man until the man passed away last year, leaving him once again unemployed. His tenants, an elderly couple on a fixed social security income, fell behind on their rent after the husband fell ill with cancer. Given their situation, Mr. M refused to evict them or raise their rent. Unfortunately, due to the financial pressures this caused, Mr. M fell behind on his water charges. His debt was sold in a lien sale and resulted in a foreclosure action commenced against him by the Trustees who had purchased the lien.

A judgment of foreclosure was entered on May 5, 2014, and the sale was scheduled for October 20, 2014. The principal due on the lien was \$27,000, which had ballooned to \$32,000 by the foreclosure judgment last May. By Christmas Eve, Mr. M now owed over \$42,000, due to mounting fees as well as interest payments of \$9 a day. Fortunately, Mr. M received some last-minute help by a Legal Services NYC attorney, who obtained a stay on the auction. His attorney then applied for a loan through the new New York State Mortgage Assistance Program (based on the New York City pilot program), which had just begun allowing its loan fund to be used for tax liens. The loan closed on Christmas Eve and Mr. M, along with his elderly, disabled tenants, were able to avoid joining the growing ranks of homeless New Yorkers and remain safe and secure in their home.

## **Ms. G**

Ms. G, a 78-year-old senior citizen, also faced foreclosure due to a tax lien that was sold in 2012 but was ultimately able to keep her home due to the last-minute efforts of the Center's Network Partner JASA Legal Services for the Elderly in Queens (LSEQ). Ms. G, who has lived in her home for 46 years, experienced financial hardship when a roommate left her home unexpectedly leaving her to manage all of the household expenses on her own. She became depressed during this period, resulting in her falling behind on her property taxes. When Ms. G first received the summons and complaint, she was unaware of the free legal and housing counseling assistance available. So instead, she defaulted in answering.

Ms. G eventually sought assistance from JASA-LSEQ. They negotiated a payment plan with the servicer of the tax lien, whereby the tax lien company agreed to a payment plan only if Ms. G would pay at least 25% of the balance due and enter into payment plans for her late water charges and property taxes. JASA helped Ms. G review various payment options, to determine which one would work best for her current circumstance.

Additionally, JASA is currently working with the New York City Department of Finance to help Ms. G enter into an affordable payment plan for her most recent tax bill. After discovering that Ms. G had not filed any senior exemptions for her property taxes, JASA also began working with her to apply for these exemptions for the next year. Once Ms. G has entered into a repayment plan for the past year's property

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taxes, she will be able to enter into the repayment plan for the tax lien and the tax lien foreclosure will be dismissed.

## **Ms. L**

Ms. L, a senior citizen, came to Network Partner MFY only two days before an auction sale on her home as a result of a tax lien foreclosure. Two years ago, when the case was first initiated, Ms. L, proceeding pro se, believed she paid off the lien. However, her payment was approximately \$1,000 shy of what was in fact due, something the lienholder's counsel never told her. MFY filed an Order to Show Cause with a Temporary Restraining Order (TRO) to stop the sale. The TRO was granted, giving MFY the space to negotiate an affordable repayment plan.

## **Proposed Tax Lien Legislation**

While the homeowners mentioned here were able to receive legal assistance and avoid foreclosure, they still face significantly increased debt and financial hardship as a result of the lien sale. Unfortunately, it is likely that others never receive help and ultimately lose their homes to lien foreclosure.

The proposed legislation addresses some of our concerns with the lien sale process. First, we support the proposed legislation's exclusion of Sandy-damaged homes from the lien sale. Homeowners impacted by Sandy have faced tremendous amounts of stress and financial hardship due to storm damage and the complexities of the rebuild process. Individuals and their communities, as well as the City, State, and Federal government, have invested significant time, money, and other resources into the recovery process, and it is justifiable and appropriate that the City's lien sale policy reflects the need for such exemptions. Second, the proposed legislation imposes quarterly reporting requirements on lien purchasers, which will increase transparency regarding the status of properties post-sale and hopefully lead to enforcement of existing limitations on interest rates and other fees. Finally, the bill calls for a temporary taskforce to evaluate the lien sale process over the next two years and develop recommendations to ensure that it is fair, efficient, and effective. We hope that this taskforce will result in further substantial improvement to the lien sale process and we look forward to working with this taskforce to achieve this goal, though we would prefer to see increased representation of community-based organizations on the taskforce.

## **Recommendations**

We at the Center are grateful to the City Council and the Finance Committee for provisions within the proposed legislation which curb some of the harms we see caused by the lien sale, as well as for previous reforms to the lien sale process that resulted in greater notice to homeowners as well as restrictions on interest and fees that can be charged by lien purchasers. We also believe there is more work to be done to ensure that the lien sale process protects New York City's vulnerable homeowners. Given the hardship caused by the tax lien sale for these homeowners, we respectfully submit the following recommendations:

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**1. Exempt owner-occupied Class 1 properties from the lien sale:**

While provisions exist to exempt seniors and persons with disabilities from the lien sale, unfortunately homeowners who qualify for these exemptions do not always receive them. Additionally, current exemptions do not include a provision for homeowners who are low income and/or experiencing economic hardship. Given the hardships and increased foreclosure risk caused by the lien sale, we believe a blanket exemption for owner-occupied Class 1 properties is the optimal solution.

**2. Expand the DEP Water Debt Assistance program to cover low income homeowners and tax liens:**

If an exemption for Class 1 properties is not feasible, the City should expand the DEP Water Debt Assistance program to cover low-income homeowners and tax liens. Currently, homeowners who are delinquent or in foreclosure on their mortgage are taken out of the water lien sale if they are able to make payments going forward. For qualifying homeowners, the outstanding lien amount is “frozen,” meaning it will not be sold but instead will be repaid upon sale, refinance, or death. The Water Debt Assistance program should be used as a model to expand exemptions for other low-income or vulnerable households. For example, many homeowners impacted by the tax lien sale do not owe a mortgage on their home, but fall behind on their payments due to economic hardship. Further, the current program applies to water liens but not tax lien. Ultimately, the City should extend program eligibility to low-income households as well as tax liens.

**3. Increase representation of community-based organizations in the new taskforce:**

Our Network Partners work with New Yorkers impacted by the tax lien sale on a daily basis. They are familiar with household budgets of elderly and low-income New Yorkers and have advanced insights into the impacts of the various regulations involved in the lien sale process. Their input would be invaluable to the taskforce’s work, and therefore the taskforce should include at least two representatives of community-based foreclosure prevention organizations.

Thank you for the opportunity to testify. We appreciate the Council’s interest and work on the tax lien sale and look forward to working with you on this very important issue in the future.



TESTIMONY

ON

**Tax Lien Sale Legislation Reauthorization**

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL  
COMMITTEE ON FINANCE

PRESENTED BY:

Harvey Epstein

ASSOCIATE DIRECTOR  
URBAN JUSTICE CENTER  
COMMUNITY DEVELOPMENT PROJECT

URBAN  
JUSTICE  
CENTER



COMMUNITY DEVELOPMENT PROJECT

January 8, 2015

Good afternoon Chair Ferreras, and Committee Members. My name is Harvey Epstein, and I am speaking on behalf of the Community Development Project (CDP) at the Urban Justice Center about the proposed reauthorization of the Tax Lien Sale Legislation. Specifically, I would like to address how reauthorizing the program under the current proposal is not beneficial to New York City and potentially harmful to the availability of affordable housing for many of the city's residents. Thank you for the opportunity to testify this afternoon.

The Community Development Project formed in September 2001 to strengthen the impact of grassroots organizations in New York City's low-income and other excluded communities by winning legal cases, publishing community-driven research reports, assisting with the formation of new organizations, and providing technical and transactional assistance in support of their work towards social justice. Our work is informed by the belief that real and lasting change in low-income, urban neighborhoods is often rooted in the empowerment of grassroots, community institutions. For more than ten years, CDP has offered legal services and support on housing issues to community non-profits, group cases, and individuals in low-income NYC neighborhood. CDP provides these critical services free of charge in both English and Spanish because the groups, families and individuals that we work with could not meet these needs any other way.

It should be stated that I do support reauthorizing tax lien sales. However, my support is conditioned on slight adjustments to the program which I believe will allow the city to collect a higher percentage of the outstanding taxes and fees owed, and maintain the inventory of affordable housing for the city's low-income residents. I would propose that the reauthorization exclude all affordable housing. This should specifically include all non profit buildings limited equity co-operatives and condos where the city has invested significant funds and instead submit those types of properties to the third party transfer or other affordable housing disposition program.

Under the current tax lien sale program, and proposed reauthorization, the City sells tax liens to private investors at a discount to the actual amount outstanding. In doing so, the City loses its opportunity to foreclose on the property and transfer (sell) the property to new and presumably more responsible or attentive owners. This does a few things. First, the City takes a financial loss on accrued taxes and fees by selling the liens at a discount. Secondly, any investment the City has made in the building could be lost if the private investor is unable to collect the lien and subsequently forecloses on the property. Instead of surrendering the investment in these buildings, the City should utilize the third party transfer or other disposition program. In so doing, the City could potentially recoup more of its losses by foreclosing on the property or transfer the building to responsible owners and keep the units as permanently affordable housing. Lastly, by selling the lien and leaving the current owners in place, the City risks becoming engaged in continuous battle over collecting taxes and fees on the property where the city has invested substantial funds. While my proposal only addresses a portion of the properties included in tax

lien sales, many of these properties contain affordable housing units that are put at risk in the tax lien sale, whereby the City loses control over potential new ownership.

~~Maintaining and increasing the inventory of affordable housing is crucial to~~ the overall well-being of the City and its residents. As such, the City allocates millions of dollars annually for affordable housing programs. These programs range from direct ownership of properties to providing subsidies to current property owners in exchange for maintaining affordable units. The City can protect its "investment" in these buildings through other and better means than tax lien sales. As previously stated, the Third Party Transfer program would allow the City to foreclose on a tax deficient property and transfer it to a new owner. The new owner would have to be "qualified" by the City which gives the City some control of its investment in these buildings. Finally, the new owners could be the residents themselves through a non-profit co-op, thereby promoting a sense of homeownership and community togetherness which could increase the general moral and well-being of lower income neighborhoods.

Alternatively, if the Committee and City Council does not want to exclusively subject these properties to the third party transfer program, I propose that they simply be excluded from the tax lien sales until the Task Force created in this reauthorization bill have an opportunity to study the deficiencies of these buildings and make recommendations for alternative means to collect outstanding taxes and fees.

I thank you for the opportunity to testify.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 612 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 1/8/15

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Name: Steven Lawitts

Address: DEP 5917 Junction Blvd Flushing 11373

I represent: DEP

Address: (same as above)

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in favor  in opposition

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Name: Baaba Halm

Address: \_\_\_\_\_

I represent: Dept. of Housing, Preservation and Development

Address: \_\_\_\_\_

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Date: 1/9/15

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Name: Joshua Goldstein

Address: \_\_\_\_\_

I represent: Office of Management and Budget

Address: \_\_\_\_\_

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Name: Jeffrey Shear

Address: DO#1 Centre Street

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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Name: Christopher Allred

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I represent: HPD

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in favor  in opposition

Date: January 8, 2015

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Name: Justin Haines

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Name: Harvey Epstein

Address: 172 E 4th St

I represent: Urban Justice Center

Address: 123 William Street

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Name: Emily Lloyd, Commissioner

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I represent: Department of Environmental Protection

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Date: 1-8-15

(PLEASE PRINT)

Name: Samantha Karasyk

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I represent: \_\_\_\_\_

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in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Moses Gates

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I represent: ANHD

Address: \_\_\_\_\_

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