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WRITTEN TESTIMONY OF THE CIVIL RIGHTS COMMITTEE AND THE SOCIAL WELFARE COMMITTEE

NYC HEARING ON PROPOSED RULES CONCERNING THE FAIR FARES NYC PROGRAM

NYC DEPARTMENT OF SOCIAL SERVICES/HUMAN RESOURCES ADMINISTRATION

December 10, 2019

The Civil Rights Committee and Social Welfare Law Committee of the New York City Bar Association¹ appreciate the opportunity to comment on the implementation of the Fair Fares NYC Program (“Fair Fares”). As an organization of 24,000 members, the New York City Bar Association’s mission is to equip and mobilize the legal profession to practice with excellence, promote reform of the law, and advocate for access to justice in support of a fair society. In doing so, the City Bar uses its voice to address a broad range of policy issues, which includes civil rights, housing law, immigration and nationality law, social welfare law, disability law, and laws affecting children and families. The Committees applaud the efforts of the City Council, Mayor, city agencies, and advocates that have made Fair Fares a reality.

As discussed in the Social Welfare Law Committee’s Report supporting Fair Fares² dated May 25, 2018, the Committees support Fair Fares because (1) the Program fills an existing gap in the transportation assistance available to New York residents, and will help low-income New Yorkers prioritize income for their essential needs like housing, nutrition and health care; and (2) by making transit more affordable to low-income New Yorkers, the program will reduce the number of New Yorkers arrested or given a desk appearance ticket for fare evasion and thereby reduce their risk of entanglement in the courts, lost time they can ill afford from work or school, and becoming further impoverished or ensnared in the system by the inability to pay associated fines. The report remains relevant today, especially in light of increased enforcement of fare evasion.³

¹ The Civil Rights Committee addresses both civil rights and civil liberties matters, including issues affecting racial, ethnic and religious minorities. The Social Welfare Law Committee focuses on legal issues impacting low income New Yorkers and public policies which concern income disparities and the social safety net.

² New York City Bar Association, *Report by the Social Welfare Law Committee: Support for the Fair Fares Campaign* (May 2018) <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-the-fair-fares-campaign>. (All websites cited in this testimony were last visited on December 12, 2019).

³ Samar Khurshid, *24 City Council Members Call on MTA to Address ‘Over-Policing,’ End Fare Evasion Crackdown*, Gotham Gazette (Nov. 20, 2019), <https://www.gothamgazette.com/city/8943-city-council-members-call-mta-to-end-fare-evasion-crackdown-over-policing-subways>.

Presently, over 93,000 New Yorkers have enrolled in Fair Fares, which is an achievement.⁴ The Committees recognize, however, that there is more work to be done to ensure that Fair Fares is adequately implemented so that the estimated 800,000 New Yorkers who live below the federal poverty line can benefit from this important program.⁵

Pursuant to the goals of the program, the Committees make the following recommendations:

I. INCREASE RESOURCES AND COORDINATION FOR PROGRAM ADMINISTRATION, TO ENSURE THAT ALL ELIGIBLE NEW YORKERS HAVE ACCESS TO ENROLLMENT

In order to ensure that New Yorkers who are eligible for Fair Fares are aware of the program and have access to enrollment, it is important that the City devote substantial resources to public education and outreach. In particular, the City should carefully consider outreach to immigrant communities, formerly incarcerated individuals, and young people, set outreach goals, and track the numbers of individuals being reached to ensure that those goals are being met. The Committees recommend increased coordination with other City agencies like the Mayor's Office of Immigrant Affairs and the Mayor's Office of Criminal Justice, Division of Homeless Services, among others, to most efficiently ensure that Fair Fares is reaching vulnerable communities. The Committees also suggests coordination with Health and Hospitals and Veterans Hospitals.

At a time when immigrant communities are rightfully fearful of engaging with the government, the Committees commend the Fair Fares program for its accessibility to all New Yorkers, regardless of citizenship. In a survey of several hundred people enrolled in the program, however, participants noted the lack of support for non-English speakers.⁶

Fair Fares is especially important for undocumented New Yorkers who otherwise cannot afford transit costs, as those arrested for "theft of services" risk severe immigration consequences. Theft of services is a misdemeanor and may have collateral consequences for non-citizens. A theft of services arrest may alert federal immigration authorities due to associated fingerprinting or an appearance in court (via the Office of Court Administration's website, eCourts).⁷ Even an appearance via the issuance of a civil summons may result in information being shared via eCourts.⁸ A conviction may also constitute a crime of moral turpitude which

⁴ Fair Fares NYC, Office of the Mayor, <https://www1.nyc.gov/office-of-the-mayor/fair-fares-nyc.page>.

⁵ J. David Goodman and Jeffery C. Mays, *Of 800,000 Poor New Yorkers, Only 30,000 Can Get the New Half-Priced Metrocards*, New York Times (Jan. 4, 2019), <https://www.nytimes.com/2019/01/04/nyregion/fair-fares-metrocard-discount-nyc.html>.

⁶ Clayton Guse, *Advocates Hail Growing Roster of Half-priced MetroCard Holders, Say Program More Effective than Cops*, NY Daily News (Nov. 6, 2019), <https://www.nydailynews.com/new-york/ny-fair-fares-cops-on-subway-20191106-vx3lr7wchfeblithjar3wzpd2m-story.html>.

⁷ Emma Whitford, *NYPD Claims New Yorkers Won't Be Deported For Turnstile Jumping*, Gothamist (Feb. 25, 2017), <https://gothamist.com/news/nypd-claims-new-yorkers-wont-be-deported-for-turnstile-jumping> (explaining the possible immigration consequences of non-citizens prosecuted for not paying their subway fare).

⁸ *Id.*

may result in immigration consequences.⁹ Therefore, the City should invest in significant outreach to immigrant communities to enroll non-citizens in Fair Fares and help ensure that they are not flagged for enforcement by immigration authorities.

II. ELIMINATE THE PERMANENT DISQUALIFICATION FOR THE SECOND OFFENSE

Pursuant to Proposed Rule § 12-05, a Fair Fares participant “who misuses or abuses the [program], or commits fraud on the program, including but not limited to giving the card to another person to use or deliberately providing misinformation to the Program,” will be “permanently disqualified” from the program for her second offense. Research shows that the burden of transit fares limits low-income New Yorkers’ ability to get medical care and look for or take jobs further from where they live.¹⁰ With such compounding needs, permanently eliminating their chance to remain in the Fair Fares program further exacerbates the problems low-income New Yorkers face. The program should not include the ability to permanently bar a person from participation. Rather, the program should consider temporary disqualification for a limited period of time as a way to curb and disincentivize misuse of the program.

If a person may be barred, temporarily or permanently, participants in the program should be afforded procedural due process and sufficient time to contest any erroneous findings that they misused the program.¹¹ Such protections should be afforded to program participants that sufficiently balance protecting the program’s solvency with justice for the most marginalized New Yorkers - most of whom cannot afford a lawyer. Fair Fares should consider providing funds to non-profits who may be able to provide counsel to participants. The hearings to contest disqualification should take place in a neutral and impartial way, such as through an internal fair hearing process or a proceeding at the Office of Administrative Trials and Hearings.

In light of the importance of affordable transit for low-income New Yorkers, the Committees recommend against including a permanent disqualification from the program for all misuse including, “giving the card to another person to use.” Further, the Committees recommend that the proposed rule include sufficient due process protections for low-income New Yorkers, such as administrative hearings to contest decisions.

⁹ Bronx Defenders, *Know Your Rights: Special Information for Non-Citizens*, Bronx Defenders (October Oct. 2, 2010), <https://www.bronxdefenders.org/special-information-for-non-citizens/>.

¹⁰ Harold Stolper and Nancy Rankin, *The Transit Affordability Crisis: How Reduced MTA Fares Can Help Low-Income New Yorkers Move Ahead*, Community Service Society (April 2016), <https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/The%20Transit%20Affordability%20Crisis%20updates%204%2018%2016%20-%20UPDATED%204.pdf>.

¹¹ Similar means tested programs have been found to require an appeal process pursuant to the due process clause of the Fourteenth Amendment. *See, e.g. Goldberg v. Kelly*, 397 U.S. 254 (1969) (welfare benefits); *Atkins v. Parker*, 472 U.S. 115 (1984) (food stamps); *Kapps v. Wing*, 404 F.3d 105 (2d Cir. 2005) (New York Home Energy Assistance Program).

III. CONCLUSION

In conclusion, the Committees thank you for this opportunity to submit comments and express our support for the proposal, as well as offer our recommendations to greater effectuate the purpose of Fair Fares.

Civil Rights Committee
Zoey Chenitz, Chair

Social Welfare Committee
Katharine Deabler-Meadows, Chair