

Testimony by Kimberly Flynn, Chair, WTC Health Program Survivors Steering Committee

***New York City Council Committee on Civil Service and Labor
July 22, 2019
250 Broadway***

Hearing re: Reso 0897 “Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act”

As Chair of the WTC Health Program’s Survivors Steering Committee, I want to express our full support for the Council reso calling for the VCF to be made permanent, and for all cuts to be restored. Survivors and responders would of course prefer to have their health back. Compensation is something which affords those whose health was permanently harmed at least some measure of justice and peace of mind. And time, as has been so eloquently observed by John Feal and John Stewart in the past few weeks.

We are so grateful to our brothers and sisters in the responder community for leading the fight for a permanent VCF.

What is the Survivors Steering Committee?

The James Zadroga 9/11 Health and Compensation Act, in addition to federalizing the health program and re-opening the VCF, created two stakeholder-based steering committees which advise the WTC Health Program – the Responders Steering Committee and the Survivors Steering Committee, which advises the program on meeting the 9/11-related health needs of residents, students and area workers whose health was harmed by exposures to the WTC disaster. We are stakeholders. Our goal and our duty continues to be to make the Zadroga Law work as well as it can for survivors.

Like responders, we too are seeing cancers arriving earlier and in greater numbers than national statistics predict, rare cancers, cancers that are unusually aggressive. Though 9/11 illnesses and deaths among survivors are not in the headlines, the survivor community is suffering as well.

As the Council knows, this toxic legacy is not just the result of 9/11, but also a direct result of the federal government’s failures to protect the health of New Yorkers, as well as the heroic responders who came to our rescue.

Government agencies not only lied about the safety of the area, and not only failed to provide a science-based cleanup of downtown buildings, they also spent years actively and aggressively disconnecting the dots between people’s toxic WTC exposures and the health impacts caused by breathing in the dust and smoke. For at least a decade, City Hall and City agencies participated in denying the dangers.

As a result, survivors still may not know that they are eligible for Zadroga benefits, because they do not link their illnesses to 9/11. This is especially an issue for people exposed to 9/11 as children.

We are aware that this Committee has heard testimony calling for letters to be sent to those attending schools in Lower Manhattan on 9/11 notifying them they may be eligible. Three such rounds of letters have been sent in the past, two by the City. Unfortunately, enrollments in the WTC Health Program increased very little.

The SSC has been working with the WTC Health Program to arrive at much more comprehensive approach. We have gained agreement for the program to foot the bill for the creation of a new study cohort of NYC's public school alums. The Department of Education is on board and has begun to provide information to the WTC Health Registry housed by the NYC Department of Health. The Registry has begun the work of contact tracing, because many former students are no longer at their former addresses. The value of this project is 2-fold:

- 1) Former students will be enrolled in a registry, like the WTC Health Registry. They will be in ongoing contact with people who can answer their questions, provide them with updates, and if they develop 9/11-related conditions, link them to their Zadroga benefits. So they are linked-in going forward.
- 2) This registry will be the basis for a study cohort. The hope is that longitudinal study of a large number of people exposed as children will help fill the longstanding knowledge gaps about how the WTC disaster has affected the physical health of those who experienced it as children. Right now, the WTC Health Program's research knowledge is based almost entirely on a population of adults. As the past 25 years of pediatric environmental medicine has made clear, children are not just little adults. For one thing, the fact that they are still developing means that they are far more vulnerable to harm from environmental exposures. It stands to reason that the unprecedented toxic exposures of 9/11 had the potential to hurt their health in some ways that are different than adults.

We all need to know what is happening to this group over the long run. Remember that the WTCHP can only add new conditions for care when there is sufficient research evidence, and the VCF will only compensate for physical conditions certified by the WTCHP. Lacking the research evidence will block these survivors' access to Zadroga benefits that they need and deserve, a grave injustice.

We as SSC would like an opportunity to discuss ways in which the Council can help this effort, as well as others.

Once the VCF extension is passed and signed, we will all breathe a deep, collective sigh of relief. You will hear that nowhere more loudly than in Lower Manhattan. Then we, as a survivor committee, will go back to the job of ensuring that survivors understand and can access their Zadroga benefits. We call on the Council to help.

Thank you.

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The United Federation of Teachers represents more than 190,000 employees including teachers and classroom paraprofessionals, along with school secretaries, attendance teachers, guidance counselors, psychologists, social workers, adult education teachers, administrative law judges, nurses, laboratory technicians, speech therapists, and 60,000 retired members. We also represent teachers and other employees at a number of private educational institutions and some charter schools.

Res. 0897-2019 **Miller** **Committee on Civil Service and Labor**

FOR THE RECORD

Summary of Resolution

The purpose of this resolution is to call on the U.S. Congress to pass, and the U.S. President to sign, the “Never Forget the Heroes: Permanent Authorization of the September 11th Victim Compensation Fund Act” (H.R. 1327/S.546), which would fully finance and extend authorization for the September 11th Victim Compensation Fund until fiscal year 2090.

Statement of Support

The original September 11th Victim Compensation Fund (VCF) operated from 2001-2004 to provide compensation for any individual, or a personal representative of a deceased individual, who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001.

However, in the years since, thousands of men and women, including first responders, relief workers, city workers and local residents lost their lives or got sick after being exposed to a toxic combination of burning chemicals, pulverized drywall and powdered cement during and right after the terrorist attacks. As a result, Congress passed and President Obama signed the James Zadroga 9/11 Health and Compensation Act of 2010, which lead to the reactivation of the VCF until 2015 to compensate individuals who were exposed to the toxic mix and were later diagnosed with cancer or other maladies.

With the number of cancer cases on the rise since the first reactivation of the VCF, Congress had no option but to reauthorize the fund in 2015 for another five years until 2020. The scientific and medical communities agree that many cancers can lie dormant for more than 20 years before they become active and deadly. As proof, in 2018 the number of cancer certifications by the World Trade Center Health program reached over 10,000 cases.

With funding for VCF expected to be fully consumed before 2020, it is now time for the U.S. Congress and President to fully finance and extend the September 11th Victim Compensation Fund until fiscal year 2090. The medical data shows, and the scientific community agrees, that cancer—among other diseases—cases are on the rise for individuals who were exposed to the toxic mix. The health, lives and families of these men and women should not be dependent on congressional reauthorizations.

FOR THE ABOVE MENTIONED REASONS, UNITED FEDERATION OF TEACHERS SUPPORTS THE PASSAGE OF THIS RESOLUTION.

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FOR THE RECORD

Lila Nordstrom

Testimony to New York City Council - 7/22/19

Hearing on the Never Forget the Heroes: Permanent Authorization of the September 11th Victim Compensation Fund Act. (H.R.1327/S.546)

My name is Lila Nordstrom. On September 11th I was a 17 year-old student at Stuyvesant High School, a public school just three blocks from the World Trade Center.

On the morning of 9/11 I was in a class with windows looking south and my classmates and I saw planes hit the Twin Towers, dozens of people jumping to their deaths, and thousands of evacuees streaming out of the area. Then the first tower fell, and as a dust cloud started to rush towards us we were given orders to evacuate. I was one of the first people to leave the school, but the moment that I stepped outside the second tower fell, and everybody took off in a run. It took me hours to reach my parents by phone, and I ended up walking ten miles and staying with a friend in Queens.

After the attacks, the city made the decision to send us to a school in Brooklyn on a split schedule and Stuyvesant's building was used as a command center and morgue for the cleanup effort at Ground Zero. City and federal officials made the choice to send us back very quick, however. Stuyvesant returned on October 9th, less than a month after the attacks. Ground Zero was still on fire and would be for another four months. The smell of smoke was suffocating, and despite assurances from officials, very little was done to prepare the school for students. No HazMat team got called in. The filters in our ventilation system weren't replaced until January, the WTC dust sitting in our air vents wasn't removed until the following summer, and the auditorium's contaminated upholstery wasn't fully replaced until 2014, more than ten years later. The school was also continually re-contaminated by trucks carting toxic debris from Ground Zero right past our school and dumping it onto a barge parked directly next to our air intake system. Testing of the air around the school showed that on many days it was as bad as the air at Ground Zero.

In total the city returned more than 19,000 public school students to the contaminated area during the cleanup, as well as thousands of teachers and school staff, and tens of thousands of college students and professors from Borough of Manhattan Community College, Pace University, and NYU. Downtown residents and office workers were also actively encouraged to return, even those with young children, and many of them got left to clean up contaminated spaces themselves given dangerously inadequate guidance. The Lower Manhattan Development Corporation even used public money to entice unsuspecting new residents into the area to combat the rising vacancy rates. Through all of this public officials at the federal level were aware that the conditions were not safe, but nobody told us.

NIOSH has now linked more than 68 cancers to the WTC toxins. I haven't even had my 20th high school reunion, but I already know five former classmates with

lymphomas. My friend Michele is in remission from thyroid cancer. Other classmates have been diagnosed with breast cancer, rare bone cancers, testicular cancers, and melanomas.

Classmates are also starting to die – just a couple of months ago, Cathy Choy, who graduated a year after me, passed away at 33 from a 9/11-linked gastric cancer. That's just from Stuyvesant. BMCC and PACE students that are also sick with cancers and other serious illnesses, as are many younger children from the area. Beyond cancer plenty of us, including myself, already suffer from other chronic, 9/11-related conditions. I'm personally certified with asthma, GERD, chronic rhinosinusitis, and PTSD.

The serious illnesses emerging now are just the tip of the iceberg. Many students and former residents and workers from the area are still not aware of these programs. There are also major gaps in the research, which has largely focused on male responders. This means that we know almost nothing about the whether 9/11-affected young adults are developing conditions that would be specific to those exposed to the disaster as children. Women also have reason to be concerned that our health issues won't be adequately studied, and will never be recognized as linked to 9/11, therefore not covered and not compensable through the VCF.

The youngest 9/11 survivors have to live with the results of these exposures for another 70 or 80 years. In light of this, we appreciate the Council's support in our fight to extend of the Victim Compensation Fund. In addition, there are a number of things the City is uniquely positioned to do to ensure the affected young adult population is taken care of. So we are asking for your help and support

Will the Council agree to work with the NYC DOE and stakeholders to ensure that a system that provides easily accessible and free proof of attendance to affected public school students and alumni be established?

Will the Council work with NYC DOHMH and stakeholders to ensure that research on both developmental impacts of the community's 9/11 exposures and the women's health implications of these exposures be well studied?

Will the Council agree to work with stakeholders to figure out how to best notify as many former students as possible that they qualify for these 9/11 health services, especially the thousands of students who attended school in the area but lived in other parts of the city?

Since the WTC Health Program that survivors have access to only covers certain conditions and acts as a second payor, larger healthcare laws have an enormous impact on 9/11 survivors. Will the council work to ensure that if healthcare laws change at the federal level, 9/11 survivors are not left without access to insurance or other healthcare options?

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Presented Before
the New York City Council
Committee on Civil Service and Labor

Regarding
Resolution 897:

Calling on Congress to Pass, and the President to Sign, the *Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act* (H.R.1327/S.546)

Monday, July 22, 2019

Good afternoon, Chair Miller and Council Members King, Moya, Dromm, Adams, Ulrich, and Louis. Thank you for holding this important hearing.

My name is Matthew J. Baione, and I am a founding partner of Pitta & Baione LLP, a law firm practicing in the area of 9/11 victim compensation law. I submit this testimony on behalf of the firm, our clients, and the 9/11 community at large. I can speak to both the devastating magnitude of the 9/11 cancer epidemic, and the vital need for permanent authorization of the September 11th Victim Compensation Fund (VCF).

This hearing is well-timed – tomorrow, the United States Senate will vote on the *Never Forget the Heroes Act* (NFHA), which has already been passed by the House of Representatives by an overwhelming bipartisan margin of 402 votes in favor. Last week, Senator Kirsten Gillibrand (D-NY) attempted to pass the bill with unanimous consent. Unfortunately, the vote was blocked by Senator Mike Lee (R-UT) and Senator Rand Paul (R-KY), each of whom has proposed amendments to the bill. Tomorrow, there will be three votes-Senator Lee's amendment to cap funding; Senator Paul's amendment to cut spending in other areas to make up for funding the VCF; and for full passage of the NFHA.

If the bill does not pass tomorrow without amendment then more 9/11 responders and victims will receive reduced compensation, be forced to continue fighting for what is already owed to them, and in too many cases be deprived of their moment of justice before death.

Recently, I had to explain to a retired New York City law enforcement officer that her husband, who is a retired New York City employee and who is suffering from terminal brain cancer in his early forties, is receiving a compensation award equal to 5% (five percent) of what he is owed. Congress is the only hope for this family, and for too many others, who are receiving compensation cuts for one reason and one reason only – because Congress failed to sufficiently fund the VCF in the past. Senator Lee's proposed amendment would once again fail to provide adequate funding for the VCF, which would initiate another cycle of grief, shame, and drudgery for 9/11 responders and victims.

So, thank you all again for using your positions of power to call on Congress, and the President, to end this fight once and for all by permanently funding the VCF. Although the 9/11 health crisis is not limited to New York City – it is a nationwide epidemic claiming victims in all 50 states and in 434 out of 435 Congressional districts – this resolution sends a clear message to Congress that the New York City Council takes care of its own and recognizes fallout from attacks carried out in its own backyard.

What is the September 11th Victim Compensation Fund?

Individuals may be eligible for compensation from the VCF if between September 11, 2001 and May 30, 2002 they were present:

- At Ground Zero
- In Lower Manhattan, south of Canal Street (area workers, residents, students, etc.)
- At the Staten Island Fresh Kills Landfill
- In any area related to, or along, debris removal routes (piers, barges, etc.)
- In areas where WTC-contaminated vehicles or equipment were cleaned or rehabilitated.
- At the Office of the Chief Medical Examiner of New York City or at temporary morgues.

Conditions eligible for compensation include cancer, lung disease, respiratory illnesses, sleep apnea, and GERD (persistent heartburn). Families of those who have passed away, and suffered from a 9/11-related condition during their lifetime, may also be eligible for compensation. The list of covered conditions is subject to grow over time. For example, cancer was not added until 2012.

Impacts of the VCF Cuts

In October 2018, the VCF Special Master Rupa Bhattacharyya announced that there may eventually be a funding shortage, that the VCF would formulate new policies to prevent that outcome, and that only claims submitted after February 1, 2019 would be impacted. Unsurprisingly, the claim submission rate skyrocketed between October 2018 and February 1, 2019.

On February 15, 2019, the VCF Special Master announced that she had been forced to break her promise: Unpaid claims submitted before February 1, 2019 are cut by 50%, and all claims submitted after are cut by 70%. In many cases the “true cuts” are much higher.

For example, there is a statutory requirement that the VCF apply collateral offsets (e.g. life insurance, disability pension, survivor pension, etc.) against the value of awards. So, if a claimant is entitled to \$100,000 in lost earnings and disability benefits are \$50,000, then the Claimant is entitled to nothing – a 100% cut against a victim in the 50% cut category.

As another example, the VCF is reevaluating the value of previous personal injury awards in wrongful death claims. So, if a claimant was paid \$100,000 during their lifetime, and their family now files a wrongful death claim, the calculation would be as follows: \$50,000 for personal injury plus \$100,000 for wrongful death, subtract the \$100,000 previously paid, for a total award of \$50,000. In other words, even though the VCF is applying the new cuts against the previously issued award, they are still reducing the wrongful death award by the total value of that previously issued award. Complicated, but the bottom line is that before February the award in this example would be \$200,000. Today it would be \$50,000. An 80% cut against a victim in the 50% cut category.

As of January 31, 2019, over 47,000 claims had been submitted to the VCF and 21,317 initial award decision had been issued. The recently announced 50 to 70% cuts (which, due to VCF calculation methods, are much more in some cases; one of our clients diagnosed with terminal brain cancer suffered a 95% cut), impact clients who are unpaid as of February 1, 2019. This means over 25,000 claimants, who were previously told would not be impacted by the cuts at all, are receiving awards cut by at least 50%. Since then, 3,000 claims have been submitted. Their awards will cut by 70% as well as all others who submit before the fund closes on December 18, 2020 (unless the VCF runs out of money before then).

The VCF Special Master cited rising claim rates, which has coincided with skyrocketing 9/11-related cancer and death rates as the reasons for issuing the cuts. The 9/11 cancer rate has risen 3800% in only five years, and the death rate is doubling annually. The confirmed deaths are over 2,000. However, the recorded deaths have only been verified

through the WTC Health Program, which did not open until 2011. Experts estimate that the true death rate is already more than the number of people killed in the attacks themselves.

Why is the VCF Necessary?

On September 18, 2001, just one week after the attacks, the Director of the Environmental Protection Agency, Christine Todd Whitman, infamously declared “the air is safe to breathe” in New York City. In August 2003, the EPA Office of Inspector General stated that “When EPA made a September 18 announcement that the air was ‘safe’ to breathe, the Agency did not have sufficient data and analyses to make the statement.”

We now know that the 16-acre site, which burned for 99 days, contained toxic chemicals including the following:

- 1.2 million tons of building material and contents which burned at temperatures close to 2,000 degrees Fahrenheit
- 300+ tons of asbestos
- 12,000 miles of electric cables containing polychlorinated biphenyls (PCBs)
- 23,000 mercury containing light bulbs
- 90,000 liters of jet fuel
- 130,000 gallons of transformer oil
- Hundreds of miles of wires containing polyvinyl chloride
- 50,000 personal computers
- 300 mainframe computers

Atmospheric scientist Thomas Cahill, Professor University of California – Davis, who had studied 9/11 toxins extensively before his death, commented

The debris pile acted like a chemical factory. It cooked together components of the buildings and their contents, including enormous numbers of computers, and gave off gases of toxic metals, acids and organics for at least six weeks.

Dr. Michael Crane, Director of the World Trade Center Health Program Clinical Center of Excellence at The Mount Sinai Hospital has commented

We will never know the composition of that cloud, because the wind carried it away, but people were breathing and eating it. What we do know is that it had all kinds of god-awful things in it. Burning jet fuel. Plastics, metal, fiberglass, asbestos. It was thick, terrible stuff. A witch’s brew.

Almost eighteen years later, we still have not determined just how unsafe the post-9/11 air quality was, yet the EPA decided to declare it safe just seven days after the attacks. Since the EPA has been ruled to have immunity from liability for its role in causing hundreds of thousands of people to breathe in cancer-causing toxic dust, the victims would have no recourse if Congress never reopened the VCF to compensate those who are diagnosed with latent conditions caused by their exposure to 9/11 toxins.

Congress did the right thing when it opened the VCF to people like James Zadroga, Luis Alvarez, and Raymond Pfeiffer. It was a subtle acknowledgment that the federal government acknowledged its role in spreading misinformation and endangering its citizens. It is time for Congress to do the right thing again by permanently authorizing and fully funding the VCF.

Thank you again to Committee Chair Miller and Council Members King, Moya, Dromm, Adams, Ulrich, and Louis. for allowing me to submit testimony, and for holding this hearing and for introducing the resolution calling on Congress to pass, and the President to sign, the *Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act*.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: July 22, 2019

(PLEASE PRINT)

Name: Kimberly Flynn

Address: _____

I represent: Survivors Steering Committee

Address: 40 Org of Staff Analysts

▶ Please complete this card and return to the Sergeant-at-Arms ◀