



Legislation Text

File #: Res 1833-2013, Version: *

Res. No. 1833

Resolution authorizing the Speaker to intervene, file an amicus brief, or join an amicus brief on behalf of the Council of the City of New York in the litigation captioned *Pelegrin v. New York City Human Resources Administration*, for the purpose of defending provisions of the New York City Charter that require city agencies to provide public notice and the opportunity for public comment on proposed new rules and rule changes before adoption.

By The Speaker (Council Member Quinn) and Council Members Palma, Dromm, Brewer, Jackson, Chin, Comrie, Ferreras, Fidler, James, Koo, Koslowitz, Lander, Mark-Viverito, Mendez, Richards, Rose, Van Bramer and Halloran

Whereas, The City Administrative Procedure Act (“CAPA”), Chapter 45 of the New York City Charter (§§1041-1047), sets forth the process that every New York City agency must follow to adopt a rule; and

Whereas, Charter §1041 defines a rule as “the whole or part of any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency”; and

Whereas, CAPA requires city agencies to, among other things, (a) publish the full text of a proposed rule in the City Record at least thirty days prior to the date set for a public hearing or the final date for receipt of written comments; (b) electronically transmit a proposed rule to the Office of the Speaker of the Council, the Council’s Office of Legislative Documents, each Council Member, the chairs of all community boards, the news media, and civic organizations; and (c) provide the public with the opportunity to comment on the proposed rule; and

Whereas, The New York City Human Resources Administration / Department of Social Services (“HRA”) is a city agency as defined by CAPA; and

Whereas, On March 27, 2013, Gilma Pelegrin, on her own behalf and on behalf of all others similarly

situated, filed a verified petition (“the Petition”) pursuant to Article 78 of the Civil Practice Law and Rules, against HRA and Robert Doar, Commissioner for HRA; and

Whereas, The proceeding is currently pending in New York Supreme Court, New York County; and

Whereas, The Petition alleges that in 2012 HRA “instituted a policy pursuant to which HRA will demand payment of public assistance benefits from sponsors of legal immigrants (the ‘Sponsor Liability Policy’); and

Whereas, The Petition alleges that the Sponsor Liability Policy will impact thousands of people in the New York City region; and

Whereas, The Petition alleges that “the failure of HRA to place its procedures on the public record has left Ms. Pelegrin and other sponsors ... with no way to ascertain the applicable rules and exemption to which they are subject”; and

Whereas, The Petition alleges that “HRA has disseminated misinformation to Ms. Pelegrin and others and has contradicted its own rules with no way for the targeted sponsors to hold them accountable”; and

Whereas, The Petition seeks to have The Sponsor Liability Policy annulled and declared invalid because it is a rule that was not adopted pursuant to CAPA; and

Whereas, In response to the Petition, HRA argues that it was not required to follow the rulemaking procedures set forth in the Charter because “Social Services Law § 20(3)(a) preempts the CAPA process under the doctrine of state conflict preemption,”; and

Whereas, The Council does not agree that Social Services Law § 20(3)(a) preempts the CAPA process; and

Whereas, HRA’s failure to follow CAPA’s rulemaking procedures deprives the Council and the People of the City of New York of critical procedural safeguards set forth in the Charter and adopted by referendum; now, therefore, be it

Resolved, That the Council of the City of New York authorizes the Speaker to intervene, file an amicus

brief, or join an amicus brief on behalf of the Council of the City of New York in the litigation captioned *Pelegrin v. New York City Human Resources Administration*, for the purpose of defending provisions of the New York City Charter that require city agencies to provide public notice and the opportunity for public comment on proposed new rules and rule changes before adoption.

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