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**Testimony of Allie Bohm
On Behalf of the New York Civil Liberties Union
Before the New York City Council Committees on Health and Hospitals and
the Subcommittee on COVID Recovery and Resiliency
Regarding Oversight – COVID-19 in NYC: Evaluating the Present
Challenges**

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The New York Civil Liberties Union (NYCLU) is grateful for the opportunity to submit the following testimony regarding oversight of COVID-19 in NYC: Evaluating the Present Challenges. The NYCLU, the New York state affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices across the state and over 180,000 members and supporters. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution through an integrated program of litigation, legislative advocacy, public education, and community organizing.

Two years and eight months into the COVID-19 pandemic, New York City has all but ended its community-based COVID mitigation strategies, such as universal masking.¹ For the last month, COVID, driven by new variants, has been on the rise in Europe,² often a harbinger of things to come in the United States. And, indeed, COVID positivity rates are now increasing in New York City.³ The City's response, however, appears to be ignore it and hope it goes away.

¹ E.g. Marc Santia, *New York's Mask Mandate for Schools Ends, But Not for NYC Yet – What You Need to Know*, NBC, Mar. 2, 2022, <https://www.nbcnewyork.com/news/local/new-yorks-mask-mandate-for-schools-ends-but-not-for-nyc-yet-what-you-need-to-know/3578953/>; Emma G. Fitzsimmons, *Adams Ends Pandemic Mandates in New York City Amid Concern He Is Rushing*, N.Y. TIMES, Mar. 4, 2022, <https://www.nytimes.com/2022/03/04/nyregion/nyc-mask-vaccine-mandate.html>.

² Andrew Joseph, *From BQ.1.1 to XBB and beyond: How the splintering of Omicron variants could shape Covid's next phase*, STAT, Oct. 6, 2022, <https://www.statnews.com/2022/10/06/bq11-omicron-variants-splintering-covid-next-phase/>.

³ *Compare COVID-19: Data*, NYC HEALTH, <https://www.nyc.gov/site/doh/covid/covid-19-data.page#sum> (last visited Nov. 3, 2022) *with COVID-19: Data*, NYC HEALTH, <https://www.nyc.gov/site/doh/covid/covid-19-data.page#sum> (last visited Oct. 25, 2022).

New York has had access to the new COVID bivalent booster shots since early September.⁴ And while Pfizer-BioNTech have been advertising the new booster on repeat in CVSes and Duane Reades, their ads are only in English and risk being dismissed as profit-motivated. Moreover, the City's silence when it comes to promoting the new vaccines speaks volumes. Perhaps unsurprisingly then, the Kaiser Family Foundation reports that half of the public has heard little or nothing about the bivalent COVID boosters, and half of those who are vaccinated either do not know whether the new vaccine is recommended for them or believe it is not.⁵

Meanwhile, the federal government quietly announced that it will end its spending on COVID vaccines, tests, and treatments this fall, shifting costs to private insurers and leaving the uninsured to fend for themselves.⁶ Rather than step in to fill this funding gap and ensure that all New Yorkers have access to COVID vaccines, tests, and treatments, we have heard that the City similarly has shuttered T2 grants and its COVID Community Advisory Board.⁷

Predictability, the impact of these policy changes is already falling hardest on New York's most marginalized communities: the disabled, communities of color, people whose primary language is not English, and economically disadvantaged New Yorkers. This is largely because health outcomes at the individual and community levels are deeply impacted by the interaction of factors in one's social environment (including income, education level, family and social support, and experience of discrimination), and one's physical environment⁸ (including place of residence, crowding conditions, air and water quality, and transportation

⁴ *Stay Up to Date with Vaccines*, CDC, Nov. 1, 2022, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html#:~:text=What%20You%20Need%20to%20Know,for%20people%20aged%205%E2%80%9311>.

⁵ *Half of Public Has Heard Little or Nothing About the New COVID-19 Booster Aimed at Omicron; Many Don't Know If the CDC Recommends That They Get the New Booster*, KFF, Sept. 30, 2022, <https://www.kff.org/coronavirus-covid-19/press-release/half-of-public-has-heard-little-or-nothing-about-the-new-covid-19-booster-aimed-at-omicron-many-dont-know-if-the-cdc-recommends-that-they-get-the-new-booster/>.

⁶ Martha Lincoln and Anne N. Sosin, *Ending Free Covid Tests, US Policy Is Now "You Do You,"* THE NATION, Sept. 9, 2022, <https://www.thenation.com/article/society/covid-tests-end-pandemic/>.

⁷ We understand that the City has convened a COVID-19 Recovery Roundtable and Health Equity Task Force, Press Release, NYC, Mayor Adams Announces COVID-19 Recovery Roundtable and Health Equity Task Force (Feb. 17, 2022) (<https://www.nyc.gov/office-of-the-mayor/news/083-22/mayor-adams-covid-19-recovery-roundtable-health-equity-task-force>), and a Public Health Corps, *NYC Public Health Corps*, NYC HEALTH, <https://www.nyc.gov/site/doh/health/neighborhood-health/public-health-corps.page#:~:text=NYC%20Public%20Health%20Corps,includes%20about%2080%20community%20groups> (last visited Nov. 7, 2022), that may include some former T2 grantees and Community Advisory Board members.

⁸ Note that far too many New Yorkers live in food deserts where they are unable to readily access foods that support healthy dietary patterns and health outcomes. See *Access to Foods That Support Healthy Dietary Patterns*, OASH, <https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/access-foods-support-healthy-dietary-patterns> (last visited Nov. 4, 2022).

systems),⁹ and New York City's COVID response has not sufficiently mitigated for these factors.

As a result of New York City's policy decisions, some immunocompromised people have felt their only viable option is self-imposed lockdown to avoid a disease that could prove to be a death sentence.¹⁰

And, despite experiencing higher COVID-19 mortality rates, nationwide – including in New York – patients of color have received monoclonal antibodies to treat COVID less often than white patients with Hispanic/Latinx patients receiving monoclonal antibodies 58% less than white patients, Black patients receiving monoclonal antibodies 22% less often, Asian American patients receiving them 48% less often, and other patients of color receiving them 47% less often.¹¹ In addition, Black and Hispanic/Latinx New Yorkers lag behind every other racial group when it comes to receiving a COVID-19 booster shot. Only 28% of Black New Yorkers and 30% of Hispanic/Latinx New Yorkers have been boosted compared with 41% of white New Yorkers and 63% of Asian/Native Hawaiian/Pacific Islander New Yorkers.¹²

While New York City has long stumbled in its COVID-19 response,¹³ with the help of community-based organizations (CBOs) and community leaders, the City did come close to closing the gap between the Black and white primary series vaccination rates.¹⁴ Indeed, New York City knows – or at least, it has been told many times – that to reach all of New York City's communities, particularly its most marginalized, it must prioritize cultural and linguistic competence and meaningful community engagement, because, just as community members were, in 2020, more effective at convincing their neighbors to wear masks and

⁹ NCHHSTP Social Determinants of Health, CDC, <https://www.cdc.gov/nchhstp/socialdeterminants/index.html> (last visited May 14, 2020); *see generally* NYCLU, TESTIMONY BEFORE THE NEW YORK STATE SENATE AND THE NEW YORK STATE ASSEMBLY REGARDING THE DISPROPORTIONATE IMPACT OF COVID-19 ON MINORITY COMMUNITIES (2020).

¹⁰ *E.g.* Shruti Rajkumar, *Many try to return to a normal from COVID, but disabled people face a different reality*, NPR, July 14, 2022; Victoria Knight, *Covid Still Threatens Millions of Americans. Why Are We So Eager to Move On?*, KHN, Feb. 22, 2022, <https://khn.org/news/article/covid-immunocompromised-safety-guidance/>.

¹¹ Jennifer L. Wiltz et al., *Racial and Ethnic Disparities in Receipt of Medications for Treatment of COVID-19 — United States, March 2020–August 2021*, 71 MMRW 96, 96 (2022).

¹² *Vaccination by Demographic Group*, NYC HEALTH, <https://www.nyc.gov/site/doh/covid/covid-19-data-vaccines.page> (last visited Nov. 3, 2022).

¹³ *See generally* NYCLU, TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEES ON HEALTH AND HOSPITALS REGARDING OVERSIGHT OF NYC'S COVID-19 TESTING AND CONTACT TRACING PROGRAM, PART II (2020); NYCLU, TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEES ON HEALTH AND HOSPITALS REGARDING OVERSIGHT OF COVID-19 VACCINE DISTRIBUTION & ACCESSIBILITY IN NYC (2021); NYCLU TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEES ON HEALTH AND HOSPITALS REGARDING OVERSIGHT – VACCINE HESITANCY AND EQUITY IN NYC (2021).

¹⁴ *Vaccination by Demographic Group*, NYC HEALTH, <https://www.nyc.gov/site/doh/covid/covid-19-data-vaccines.page> (last visited Nov. 3, 2022) (62% of Black New Yorkers have completed their primary vaccination series compared with 64% of white New Yorkers).

social distance,¹⁵ community members and organizations are more likely than outsiders to know how to listen to and answer their neighbors' legitimate concerns¹⁶ and convince their neighbors to get vaccinated.

The City also knows that it must meet people in their neighborhoods. This is particularly important for those whose family-obligations prevent them from traveling to far-flung vaccination sites. And while Commissioner Vasan testified at today's hearing that the City is bringing mobile vaccination vans to adult day care centers, senior centers, and other locations around the City,¹⁷ a Google search for mobile vaccination locations suggests that the City's mobile vaccination pop-ups ended October 1, and a link for the location of "Mobile Vaccine Bus Locations" redirects to the City's "General Vaccine Information" page.¹⁸

The City also knows that New Yorkers will avoid vaccination if they fear that there will be negative immigration consequences associated with receiving a vaccine.¹⁹ They may also shy away if they worry about sharing personal information with the government or private companies, whether for fear of criminalization, having their children taken away, targeted advertising, or any other reason. That's why earlier in the pandemic, the City broadcast messages about immigration status on LinkNYC kiosks, messages that appear to have ceased.

¹⁵ Ashley Southall, *Police Face Backlash Over Virus Rules. Enter 'Violence Interrupters.'*, N.Y. TIMES, May 22, 2020, <https://www.nytimes.com/2020/05/22/nyregion/Coronavirus-social-distancing-violence-interrupters.html>.

¹⁶ See generally NYCLU TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEES ON HEALTH AND HOSPITALS REGARDING OVERSIGHT – VACCINE HESITANCY AND EQUITY IN NYC (2021).

¹⁷ DR. ASHWIN VASAN, COMMISSIONER, NYC DEP'T OF HEALTH & MENTAL HYGIENE, TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEES ON HEALTH AND HOSPITALS AND SUBCOMMITTEE ON COVID RECOVERY AND RESILIENCY REGARDING OVERSIGHT – COVID-19 IN NYC: EVALUATING THE PRESENT CHALLENGES (2022).

¹⁸ *New York City Department of Probation and NeON Pop Up COVID Vaccination Clinics*, NYC PROBATION, <https://www.nyc.gov/site/probation/about/dop-pop-up-vaccination-clinics.page> (last visited Nov. 3, 2022); *General Vaccine Information*, NYC HEALTH, <https://www.nyc.gov/site/doh/covid/covid-19-vaccines.page> (last visited Nov. 3, 2022). It is unclear why NYC Probation was put in charge of pop-up vaccination sites for the general population.

¹⁹ See Press Release, Kaiser Family Foundation, *Vaccine Monitor: Unvaccinated Hispanic Adults are Twice as Likely as White Adults to Want a COVID-19 Vaccine ASAP, Highlighting a Key Outreach Opportunity for Vaccination Efforts* (June 14, 2021) (<https://connect.kff.org/vaccine-monitor-unvaccinated-hispanic-adults-are-twice-as-likely-as-white-adults-to-want-a-covid-19-vaccine-asap>) (“4 in 10 unvaccinated Hispanic adults (39%) say they are concerned that they might be required to provide a Social Security number or government-issued identification to get vaccinated, and about a third (35%) are concerned that getting a vaccine might negatively affect their own or a family member's immigration status.”); Rachel Roubein & Dan Goldberg, *Rush to close vaccination gap for Hispanics*, POLITICO, June 27, 2021, <https://www.politico.com/news/2021/06/27/hispanic-vaccination-gap-covid-barriers-496394> (“One-third of unvaccinated Hispanics said they believed receiving a Covid vaccine could complicate immigration status for themselves or their family, despite the Biden administration's assurances that it would not, according to a national survey from the African American Research Collaborative and the Commonwealth Fund . . .”).

But, Councilmembers can do more than post messages about immigration status on LinkNYC kiosks. At the end of the 2022 legislative session, the legislature passed, unanimously, vaccine confidentiality legislation that would ensure that personal information shared to receive a vaccine cannot be used to criminalize or deport anybody or take their children away.²⁰ The bill awaits the Governor's signature, and City Council should call on her to sign it immediately.

But the City can do more to protect New Yorkers from COVID than simply making it easier and safer for people to get vaccinated and boosted. New York can reduce COVID transmission indoors by promulgating stricter indoor air quality standards and ventilation requirements.²¹ Making these changes would likely reduce the transmission and prevalence of other respiratory infections as well. This is particularly important in communities of color that were among the hardest hit by the pandemic. New Yorkers who have long lived in the shadow of power plants, highways, and waste transfer stations are 15% more likely to die from COVID-19 because of existing respiratory illnesses due to over-exposure to air pollution.²²

And it is incumbent on New York City to act in this space: although the New York State HERO Act requires indoor air quality safety plans and actions, it does so only when there is a declared state of emergency related to airborne infectious disease outbreak, and the State ended COVID-19's designation as an airborne infectious disease that presents a serious risk of harm to the public under the HERO Act on March 17, 2022.²³

New York City is unquestionably tired of COVID-19. But, until COVID-19 gets tired of us, the City must not abandon its role in preventing spread and protecting public health. Rather, in addition to calling on the Governor to sign vaccine confidentiality and improving indoor air quality and ventilation standards, the City must fill the shortfall left by the federal government and ensure that all New Yorkers can access COVID vaccines, testing, and treatment regardless of their insurance status or income level. It must collaborate closely with CBOs to make sure that information about the availability of the new bivalent vaccines reaches all of our communities – in the languages they speak – and it must work with CBOs on the placement of vaccination sites to ensure that all of our communities actually have

²⁰ A.7326-A/S.6541-A, 2021-2022 Reg. Sess. (N.Y. 2022).

²¹ See Jay K. Varma, *The Answer to Covid Fatigue Is Creativity, Not Surrender*, N.Y. TIMES, May 23, 2022, <https://www.nytimes.com/2022/05/23/opinion/covid-masks-tests-vaccines.html>; *Ventilation in Buildings*, CDC, June 2, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html>.

²² Danielle Muoio Dunn, *An 'urgent' crisis: City's study of environmental inequities gains new momentum amid COVID*, POLITICO, Nov. 8, 2021, <https://www.politico.com/states/new-york/albany/story/2021/11/08/an-urgent-crisis-citys-study-of-environmental-inequities-gains-new-momentum-amid-covid-1392421>.

²³ *Health & Safety Precautions for Worksites*, NEW YORK STATE DEPARTMENT OF LABOR, <https://dol.ny.gov/ny-hero-act> (last visited Nov. 4, 2022).

access to those vaccines. And, it must partner with and fund CBOs to engage harder to reach populations and breakdown vaccine hesitancy.

The end of the pandemic cannot come soon enough. And, it is incumbent upon New York City to do the hard work to make sure not only that the pandemic ends, but that it ends for all of us, especially the most vulnerable.

The NYCLU thanks the Committees and Subcommittee for the opportunity to provide testimony and for their consideration of this critically important issue.