

# Race Matters

Impact of the 2009-10  
Executive Budget Proposal

**CITIZEN  
ACTION**  
OF NEW YORK

A Report By

And the Public Policy and Education Fund of New York

Long Island Progressive Coalition is the Long Island affiliate of Citizen Action of New York  
Metro Justice is the Rochester affiliate of Citizen Action of New York

**“Though race related issues continue to occupy a significant portion of our political discussion, and though there remain many unresolved racial issues in this nation, we, average Americans, simply do not talk enough with each other about race.”**

*- United States Attorney General Eric Holder  
February 18, 2009*

### Acknowledgements

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Citizen Action of New York is fully responsible for any errors in this report.

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### A Note On the Issue Sections of This Report

Each of the issue sections of this report, beginning with “Education,” has been divided into two sections: “Key Executive Budget Actions” and “Impact on Communities of Color.”

Executive Budget actions that have a positive impact on reducing racial and ethnic disparities are signified by a ✓, actions with a negative impact are signified by a ✗, and actions for which we could not make a determination are signified by a ?.

### Introduction

The New York State Fiscal Year (FY) 2009-10 budget that will be enacted this spring will have a major impact on the future of our state's economy, our communities, our schools, our health and our social safety net. The final choices made in the budget will say a great deal about the priorities our state chooses in tough times, and even more about whether we are willing to make the choices that will lead to economic recovery for all New Yorkers.

As we talk to people across the state, we find that the people of New York want a just budget. They want a budget that lifts up everyone, especially those who are facing hard economic times, that protects communities and families in crisis, and that provides New Yorkers with a path toward economic recovery and a better future.

With so much at stake, the deliberations over the budget must seriously consider the real impact of the choices being made. This report assesses the impact of key proposals in the Executive Budget on communities of color, where the economic downturn is already having a disproportionate impact.

This report examines the impact of the Executive Budget on people of color in several major policy areas: education, higher education, health care, human services, and criminal and juvenile justice. (It is therefore a snapshot of a few major policy areas; it does not present a full picture of the Executive Budget.) We looked at key policy and spending proposals in the Executive Budget in order to determine whether there will be an unfair impact on communities of color. In each of the policy areas covered, we document that racial inequities will be continued or compounded, although to different degrees depending on the policy area. The results of our analysis are mixed – we found some proposals that address racial and ethnic disparities and others that increase disparities. But on balance the proposed cuts would have a disproportionately negative impact on communities of color. **The proposed budget, if enacted, would increase the racial and ethnic disparities in our state by key economic and social measures.**

The impacts on people of color addressed in this report are not just because more people of color are low income. People of color are disproportionately low income due to racial bias, and even when people of color earn a higher income and are middle or upper middle class, they are still affected by racial and ethnic bias, even if unintentional. The racial disparities in health delivery and health outcomes, for example, are well documented, and require

solutions that are race-conscious, like outreach and treatment sensitive to the particular community.<sup>1</sup> In addition, many middle-income and even high-income people of color live in communities where people of color predominate; in such communities, basic resources such as quality schools are often deficient or entirely lacking. This testifies to the need to consciously seek to close racial and ethnic disparities as part of the development of state policies.

We believe that the Governor and the Legislature want to enact a budget that decreases the racial and ethnic disparities in our state or at least does not increase disparities. **However, no mechanism exists to systematically assess equity in the development of the state budget. Unfortunately, racial inequality often is perpetuated by government and other institutions in the absence of conscious strategies to remedy it.**

We have included a section on the tax and revenue policies in the Executive Budget, as this is highly significant to providing a full picture of the budget's impact on people of color. We believe that enactment of Fair Share Tax Reform, which asks the wealthiest 3.5 percent of New Yorkers to pay a small income tax increase in order to reduce the spending cuts, is a vital component of an equitable budget.

It is important to mention that on February 17<sup>th</sup>, shortly before this report went to press, President Obama signed the massive federal \$787 billion economic stimulus package, known formally as the American Recovery and Reinvestment Act. New York State will get an estimated \$24.6 billion over a two-year period.<sup>2</sup> We hope these funds will be used to restore a substantial portion of the cuts decried in this report. However, the stimulus will not address all of the cuts and does not change the central focus of this report: to look at the initial choices made in the Executive Budget from the perspective of racial justice, and to recommend alternatives to significantly reduce the negative impacts on communities of color.

We discuss the racial inequities in the Executive Budget in this report in the hope that the Governor and the Legislature will respond by passing a budget that reverses these inequities. In order to do this, our state leaders must consider impacts on racial equity as a central and often decisive factor in developing policy solutions.

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1. See, for example, Kaiser Health Disparities Report, *Traditional HIV/AIDS Awareness Messages Not Effective Among Young Minorities, Study Finds* (February 2009), [http://www.kaisernet.org/daily\\_reports/rep\\_disparities\\_recent\\_rep.cfm?dr\\_cat=5&show=yes&DateTime\\_mon=2009.02.23&DateTime\\_fri=2009.02.27#57118](http://www.kaisernet.org/daily_reports/rep_disparities_recent_rep.cfm?dr_cat=5&show=yes&DateTime_mon=2009.02.23&DateTime_fri=2009.02.27#57118);

2. "Inside the stimulus 'war room,'" Albany Times Union, February 19, 2009, <http://www.timesunion.com/AspStories/story.asp?storyID=771632>.

## The State of the State as a Whole

Critical to looking at the budget is its release at a time in which the national economy faces its greatest crisis since the Great Depression. And the trends in New York parallel those in the rest of the nation. The State Division of the Budget (DOB) projects a decline in private employment of 1.8 percent, in wages of 3 percent, and in total personal income of 1.3 percent in 2009; each of these trends became worse in 2008.<sup>3</sup>

Foreclosures were predicted to top 50,000 in the state by the end of 2008.<sup>4</sup> The number of unemployed in New York City alone is projected to rise by 120,000 by the end of 2009.<sup>5</sup> And most significant for the ability of our state leaders to address these and other critical problems, the DOB projected, upon the release of the budget, a \$13.7 billion deficit that had to be closed for the 2009-2010 fiscal year that begins on April 1, 2009;<sup>6</sup> estimates of this figure have grown since the budget's initial release.

## Racial and Ethnic Disparities Are Still Enormous, and They're Getting Wider

Economic pain is not evenly spread either in New York State or nationally. Forty years after the death of Dr. Martin Luther King, Jr., racial and ethnic disparities<sup>7</sup> in New York and throughout the nation persist, by such basic measures of well-being as employment and income, and in regard to the access of different groups to basic resources like education and health care. The

### Figure 1: Racial and Ethnic Disparities

**Unemployment:** In 2007, the unemployment rate for white workers in New York averaged 3.5 percent, but was 7.5 percent for African-American workers, 6.5 percent for Hispanic workers, and 4.1 percent for Asian-American workers.<sup>12</sup>

**Underemployment:** In the same year, the underemployment rate for white workers in the state averaged 6.5 percent, but was 12.5 percent for African-American workers, 10.5 percent for Hispanic workers, and 7.4 percent for Asian-American workers.<sup>13</sup>

**Poverty:** In the 2005-2007 period, 10.0 percent of non-Hispanic whites in New York State were below the poverty line, as compared to 24.8 percent of Hispanics, 21.9 percent of African-Americans, and 15.6 percent of Asian-Americans.<sup>14</sup>

**Poverty and Language Barriers for Asian Pacific Americans:** Asian Pacific Americans in New York State face the dual challenges of high poverty rates and language barriers. In New York City, which has the largest concentration of Asian Pacific Americans in the state, 25.9 percent of Asian-Americans are below the poverty line and 28 percent are in linguistic isolation: the highest rate of any ethnic group.<sup>15</sup>

**Health:** 23 percent of Hispanics and 16 percent of African-Americans in New York were uninsured as of 2005-06, as compared to 11 percent of whites.<sup>16</sup> 19 percent (112,000) of Asian-Americans in New York City (where 72 percent of Asian-Americans in the state live), are uninsured.<sup>17</sup> The infant mortality rate for African-Americans remains 2.3 times that of whites nationally.<sup>18</sup>

**Education:** As of 2005-06, despite years of litigation to address funding inequities, New York State still had the highest funding gap between districts with large and small percentages of people of color in the nation, at \$2902 per student, and there still exists an "achievement gap" between African-Americans, Hispanics, and whites.<sup>19</sup>

**Imprisonment:** While African-Americans and Hispanics were 32 percent of New York State's population as of 2008, they comprised nearly 90 percent of all those incarcerated in state prisons for drug offenses that year.<sup>20</sup>

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3. New York State Division of the Budget, *2009-10 Executive Budget, Economic and Revenue Outlook (Receipts Overview)*, at 5.

4. Fiscal Policy Institute, *Balancing New York State's 2009-2010 Budget in an Economically Sensible Manner*, (January 2009), at 31, <http://www.fiscalpolicy.org/20092010BriefingBookJanuary14.pdf>.

5. Fiscal Policy Institute, *New York City Unemployment in 2009 - The Emerging Crisis* (December 2008), at 1, [http://www.fiscalpolicy.org/FPI\\_NYC\\_EmergingUnemploymentCrisis2009\\_December2008.pdf](http://www.fiscalpolicy.org/FPI_NYC_EmergingUnemploymentCrisis2009_December2008.pdf).

### Figure 2: Disparities Are Getting Wider

**Major Economic Indicators:** From 2000 to 2007, a period in which the American economy grew significantly, “[o]n all major economic indicators – income, wages, employment and poverty – African-Americans were worse off in 2007 than they were in 2000.”<sup>21</sup>

**Unemployment:** The unemployment rate among African-Americans in New York City was three percentage points higher than for whites in 2007 (7.4 vs. 4.4 percent); it is projected to be six percentage points higher by the 4th quarter of 2009 (14.0 vs. 8.1 percent).<sup>22</sup>

**Wages:** From 2000 to 2007, the inflation-adjusted wage of all American workers declined by \$1, while the median African-American worker’s wage declined by \$3.<sup>23</sup>

**Poverty:** From 2000 to 2007, the poverty rate grew 2.8 percent for Black families overall, and child poverty among African-Americans grew by 3.3 percent during this period.<sup>24</sup>

**Income:** While median income for U.S. born Hispanic families grew 4.4 percent from 2000 to 2007, it declined for foreign born Hispanic families by 9.1 percent during this period.<sup>25</sup>

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statistics in Figure 1 illustrate this point. In addition, the statistics in Figure 2 indicate that racial and ethnic disparities are getting worse rather than better by several measures. In this time of extreme economic distress, the disparities are likely to become wider in the future.

### State Leaders Must Consider the Impact on Racial and Ethnic Disparities in Making Policy

The statistics in Figure 1 highlight the vast and persistent disparities that still exist in New York State and nationally between different racial and ethnic groups. As a consequence, it is not enough for state leaders to just address the major problems of the state from the standpoint of the population as a whole. We do not live in a “colorblind” society, and it simply is not true that a “rising tide lifts all boats.” For example, the well-being of African-Americans nationally suffered in the 2000 to 2007 period, even in a time of economic expansion. As the Economic

Policy Institute (EPI), a nationally recognized think-tank, points out, it’s not enough to find ways to expand employment in general: “Black America needs a national strategy for *black* full-employment.”<sup>8</sup> Guaranteeing that people of color have equitable access to resources is a matter of fundamental fairness, and this must be done through race-conscious policies: policies that are aimed at the particular needs of each racial and ethnic group.

Addressing the needs of people of color is fundamentally important to the future of the state as a whole. New York State is among the most diverse states in the nation. According to census data, 26 percent of the state’s population is non-white as compared to 20 percent for the nation as a whole. New York has more African-Americans, Asian Pacific Americans,

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6. New York State Division of the Budget, *2009-10 Executive Budget, Briefing Book* (Director’s Message), at 1 (hereinafter, “*Executive Budget, Briefing Book*”).

7. In this report, we use the term “racial and ethnic” disparities in recognition of the fact that Hispanics are not considered a separate “racial” group. Under census data, Hispanics can be of any race. When we use the term “people of color,” however, we are referring to African-Americans, Hispanics, Asian Pacific Americans – indeed, any group other than non-Hispanic whites.

8. Economic Policy Institute, *Reversal of Fortune: Economic gains of 1990s overturned for American Americans from 2000-07* (September 18, 2008), at 11 (EPI Briefing Paper #220)(emphasis in original).

and Hispanics than the national averages for these groups.<sup>9</sup> A diverse range of immigrants make up 21 percent of the state population, compared to the 12 percent in the United States overall.<sup>10</sup> Twenty-eight percent of New Yorkers live in households where a language other than English is spoken at home as compared to 18 percent for the nation as a whole, and 20 percent of New Yorkers are foreign-born, as compared to 11 percent nationally.<sup>11</sup>

It is clear that the future success of New York State – the productivity of the state economy, the state’s cultural resources, and countless other measures of our quality of life – depends on state leaders meeting the needs of all New Yorkers in the state budget and in other aspects of state policy. As elsewhere throughout the nation, race (and ethnicity) does matter in New York.

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9. U.S. Census Bureau. State & County QuickFacts: New York, <http://quickfacts.census.gov/qfd/states/36000.html>.
  10. Fiscal Policy Institute, Working for a Better Life: A Profile for Immigrants in the New York Economy (November 2007), at 3, [http://www.fiscalpolicy.org/publications2007/FPI\\_ImmReport\\_WorkingforaBetterLife.pdf](http://www.fiscalpolicy.org/publications2007/FPI_ImmReport_WorkingforaBetterLife.pdf).
  11. U.S. Census Bureau. State & County QuickFacts: New York, <http://quickfacts.census.gov/qfd/states/36000.html>.
  12. Fiscal Policy Institute, *New York’s Rising Unemployment – The Other Crisis in Albany* (August 2008) at 5, [http://www.fiscalpolicy.org/FPI\\_UnemploymentTheOtherCrisis\\_August2008.pdf](http://www.fiscalpolicy.org/FPI_UnemploymentTheOtherCrisis_August2008.pdf). (In this report, we use the term “Asian Pacific Americans” rather than “Asian-Americans,” unless it is clear from the context that the source we cited intended to exclude from the term “Asian Pacific Americans” Pacific Islanders or Native Hawaiians.)
  13. *Id.*, at 5.
  14. U.S. Census Bureau. American FactFinder, New York: Poverty Status in the Past 12 Months (Data Set: 2005-2007; American Community Survey 3-Year Estimates), [http://factfinder.census.gov/servlet/STTable?\\_bm=y&-context=st&-qr\\_name=ACS\\_2007\\_3YR\\_G00\\_S1701&-ds\\_name=ACS2007\\_3YR\\_G00\\_-&-CONTEXT=st&-tree\\_id=3307&-redoLog=true&-\\_caller=geoselect&-geo\\_id=04000U\\_2007\\_3YR\\_G00\\_-&-CONTEXT=st&-tree\\_id=3307&-redoLog=true&-\\_caller=geoselect&-geo\\_id=04000US36&-format=&-\\_lang=en](http://factfinder.census.gov/servlet/STTable?_bm=y&-context=st&-qr_name=ACS_2007_3YR_G00_S1701&-ds_name=ACS2007_3YR_G00_-&-CONTEXT=st&-tree_id=3307&-redoLog=true&-_caller=geoselect&-geo_id=04000U_2007_3YR_G00_-&-CONTEXT=st&-tree_id=3307&-redoLog=true&-_caller=geoselect&-geo_id=04000US36&-format=&-_lang=en).
  15. Coalition for Asian American Children and Families, Press Release, *Governor’s Budget Proposal Will Hurt Many Asian Pacific American Children and Families* (December 2008). According to the U.S. Census, a “linguistically isolated” household means that all members of the household 14 years and over have at least some difficulty with English.
  16. United Hospital Fund, *Health Insurance Coverage in New York, 2005-2006* (March 2008), Fig. 8, at 10, [http://www.uhfny.org/usr\\_doc/Health\\_Insurance\\_Coverage\\_in\\_New\\_York\\_2005\\_2006.pdf](http://www.uhfny.org/usr_doc/Health_Insurance_Coverage_in_New_York_2005_2006.pdf).
  17. The 72 percent figure, from the 2007 American Community Survey, is cited in Rutgers: The State University of New Jersey, NAAS: National Asian American Survey, (October 2008), at 5-6; [http://eaglepoll.rutgers.edu/NAASReport\\_NJ-NY\\_10-13-08.pdf](http://eaglepoll.rutgers.edu/NAASReport_NJ-NY_10-13-08.pdf). The data as to uninsured Asian-Americans is from the New York City Community Health Survey (2007), available at <http://www.nyc.gov/html/doh/html/survey/survey.shtml>.
  18. Economic Policy Institute, *The State of Working America 2008* 09, at 13.
  19. Cited in Alliance for Quality Education, *Will Educational Funding Promises be Broken?: Students in Poverty, Students of Color and English Language Learners Face the Largest Cuts in Basic Classroom Operating Aid under Proposed Budget* (February 2008), at 4.
  20. New York State Commission on Sentencing Reform, *The Future of Sentencing in New York State: Recommendations for Reform* (January 2009), at 77.
  21. Economic Policy Institute, *Reversal of Fortune: Economic gains of 1990s overturned for American Americans from 2000-07* (September 18, 2008), at 1 (EPI Briefing Paper #220).
  22. Fiscal Policy Institute, *New York City Unemployment in 2009 – The Emerging Crisis* (December 2008), at 9, [http://www.fiscalpolicy.org/FPI\\_NYC\\_EmergingUnemploymentCrisis2009\\_December2008.pdf](http://www.fiscalpolicy.org/FPI_NYC_EmergingUnemploymentCrisis2009_December2008.pdf).
  23. Economic Policy Institute, *Reversal of Fortune: Economic gains of 1990s overturned for American Americans from 2000-07* (September 18, 2008), at 3 (EPI Briefing Paper #220).
  24. *Id.*, at 7-8.
  25. Economic Policy Institute, Press Release, *Hispanic Families’ Income Fell in the 2000s: Unemployment and poverty higher than the national average* (October 2008).

## Education: Breaking the Promise to Provide Educational Equity

The severe cuts to school aid will not only harm students around the state as a whole, but will particularly harm students in “high-need” districts which educate the vast majority of the state’s children of color and a greater than average share of the state’s immigrant children and English Language Learners. The Executive Budget disproportionately cuts aid to high-need districts. The general school aid cuts, combined with cuts to programs such as after-school and universal pre-Kindergarten, will have a disproportionate adverse impact on students of color.

### Key Executive Budget Actions:

#### **✘ Cut \$2.5 billion in school aid.**

The Executive Budget proposes a multi-billion dollar cut to school aid. Specifically, school aid will be \$2.5 billion lower than schools would otherwise receive under the landmark school aid reform law of 2007, known as the “State Education Budget and Reform Act.” The 2007 law reformed the state school aid formula to provide more funding and a higher share of state funding to “high-need” school districts – districts in which large numbers of low income children live and in which property wealth is low.

#### **✘ Delay full phase-in of 2007 funding commitment for 4 years.**

The 2007 reform law provided for a \$7 billion increase in school aid. The full amount was originally to be provided by 2010-11. Under the Executive Budget, the full phase-in of the \$7 billion increase, including “foundation aid,” will be achieved in 2014-15: a stretch-out of the aid increase from 4 to 8 years.

#### **✘ Delay universal pre-Kindergarten increase for two years, and delay full phase-in for 4 years.**

A previously mandated increase in critical aid for universal pre-Kindergarten (“UPK”) would be delayed for two years; UPK will be maintained at its current (FY 2008-09) level until 2011-12. As with foundation aid, the full phase-in will not occur until 2014-15.

#### **✘ Eliminate Teacher Center and Teacher Mentor-Intern program funding.**

Other proposed education cuts in the budget include the elimination of funding for Teacher Centers, which offers professional development to teachers, and for the Teacher Mentor-

Intern Program, which funds the mentoring of new teachers by experienced teachers.<sup>26</sup>

### **X Reduce funding for after-school programs.**

The Executive Budget proposes to cut the Advantage After-School Program by 25 percent below the funding level of the previous year.<sup>27</sup> The budget also eliminates \$7 million in state funding to supplement the federal funding provided to the 21<sup>st</sup> Century Community Learning Centers,<sup>28</sup> federally funded after-school programs targeted primarily at students attending high-poverty and low-performing schools.<sup>29</sup>

### **✓ Maintain contracts for excellence and foundation formula for school aid.**

The Executive Budget requires that programs already mandated by “contracts for excellence” – the plans low-performing school districts must file with the state specifying the programs they will institute to raise achievement with the new state dollars – must be maintained this year.<sup>30</sup> In addition, the Executive Budget maintains the foundation formula established in 2007 to distribute funds to school districts based upon need.<sup>31</sup>

## **Impact on Communities of Color:**

### **X School districts with greater numbers of students of color and immigrants will receive larger per-pupil cuts than other districts.**

The Executive Budget attempts to ameliorate some of the impact of the cuts on school districts classified as “high-need” (and those with a high percentage of people of color) by cutting “high-need” districts by a smaller percentage than low-need districts. Despite the good intentions behind this measure, Figures 3 and 4 show that the cuts will in fact have an inequitable impact on students of color: the budget cut school districts defined as “high-need” by the State Education Department (SED) – districts with high rates of poverty and low property tax wealth – to a much greater degree than either average- or low-need districts.

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26. The source for the first 4 “Key Executive Budget Actions” for education are: *Executive Budget, Briefing Book* (Education and Arts), at 50-52, and New York State Division of the Budget, *2009-10 Executive Budget, Agency Presentations* (State Education Department), at 17-20 (hereinafter, “*Executive Budget, Agency Presentations*”).

27. The After-School Corporation, Budget Testimony, Human Services (January 14, 2009), at 3. (Every year, the New York State Senate Finance Committee and the New York State Assembly Ways and Means Committee hold joint hearings to get public input on the Executive Budget by subject area. For simplicity, all citations to testimony at these hearings will be referred to as “Budget Testimony;” we also specify the topic of the hearings and the date the hearings were held. All budget testimony is available from the Assembly Public Information Office.)

28. *Executive Budget, Briefing Book* (Education and Arts), at 54.

29. U.S. Department for Education, 21st Century Community Learning Centers (web page: <http://www.ed.gov/programs/21stccclc/index.html>).

30. Campaign for Fiscal Equity, Inc., Budget Testimony, Elementary and Secondary Education (January 28, 2009), at 5.

31. *Executive Budget, Briefing Book* (Education and Arts), at 18.

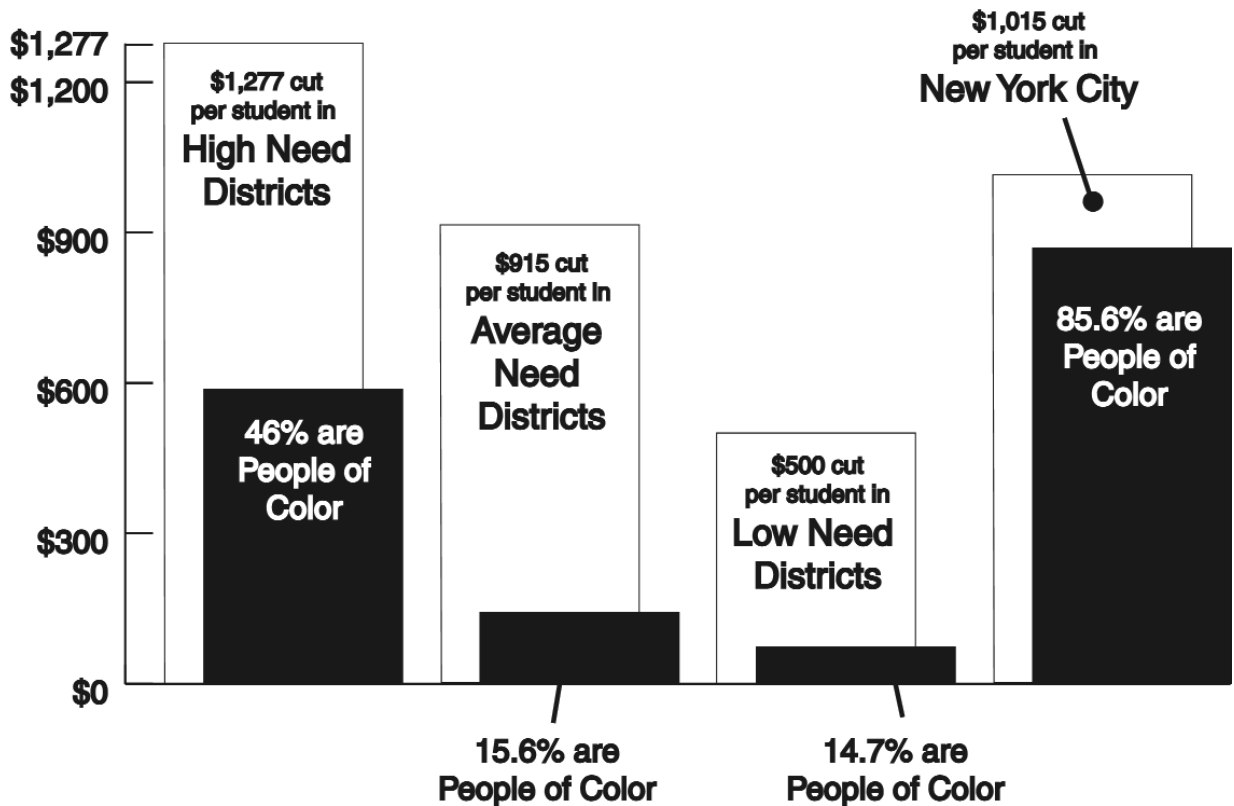
**Figure 3: Analysis of Proposed Education Cuts in the Executive Budget: High, Average and Low-Need Districts**

	Cuts	Enrollment	Cuts/Pupil	% African-American	% Hispanic	% Non-White	% LEP
High Need	\$643,056,380	503,484	\$1,277	27.3%	15.8%	46.0%	6.1%
Average Need	\$758,378,106	828,910	\$915	6.4%	6.4%	15.6%	2.2%
Low Need	\$197,893,110	396,144	\$500	3.0%	5.1%	14.7%	2.5%
NYC	\$1,007,777,490	993,068	\$1,015	33.4%	38.9%	85.6%	13.8%
Total	\$2,607,105,086	2,721,606	\$958	19.6%	19.8%	46.6%	7.2%

Source: Fiscal Policy Institute Analysis of Data provided by State Education Department, U.S. Census  
LEP: Limited English Proficient

**Figure 4: Analysis of Proposed Education Cuts in the Executive Budget: High, Average and Low-Need Districts - With Non-White Enrollment**

**Cut per Student  
in dollars**



These districts have a higher percentage of students of color than either average- or low-need districts.

As Figures 3 and 4 demonstrate, high-need districts were cut an average of \$1277 for each elementary pupil enrolled, while average-need districts were cut an average of \$915, and low-need, \$500. The high-need category in Figures 3 and 4 does not include New York City, which SED classifies as a high-need district. However, the New York City cuts fit this pattern too: at \$1015 per-pupil, the New York City district was cut to a greater degree than either average or low-need districts. And, significantly, high-need districts (including New York City) also have greater percentages of students of color: New York City is 85.6 percent students of color, and high-need (non-New York City) districts are 46 percent students of color.

The Executive Budget has a similar disproportionate adverse impact on immigrants. As Figure 3 indicates, both New York City, 13.8 percent of whose students are “limited English proficient” (LEP) and high-need districts other than New York City (6.1 percent LEP) were cut more per-pupil than either average- or low-need districts. High-need districts have higher percentages of LEP students than average- and low-need districts.

A comparison of two school districts in Western New York illustrates the greater impact of state aid cuts on districts with large numbers of students of color. The superintendent of the Buffalo school district said that a proposed state aid cut of 3.12 percent translated into a reduction of as many as 900 to 1000 staff – although he did not indicate what the ultimate outcome would be, given the (limited) alternatives available to the district to address the cuts.<sup>32</sup> In contrast, officials of the relatively wealthy Pittsford district do not anticipate staff cuts due to a proposed 13 percent state aid cut.<sup>33</sup>

The disparate impact of the proposed cuts on students of color goes directly against the goals of the 2007 education reform law. The law was passed after the Court of Appeals, New York’s highest court, concluded in the Campaign for Fiscal Equity (CFE) litigation that the state was not meeting its constitutional obligation to provide all children with a “sound, basic education,” accompanied by a massive multi-year campaign led by parents from underfunded school districts demanding that the state rectify the unfairness of the state aid formula.

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32. “Williams urges all-out push against cuts in state aid,” Buffalo News, January 29, 2009, <http://www.buffalonews.com/cityregion/buffaloerie/story/562406.html>. The superintendent said that other measures were under consideration to partially offset the possible staff reductions that would otherwise be required, like using a \$15 million surplus to partially fill the gap, but made clear that the state aid cuts were catastrophic, whatever alternative was chosen.

33. “Budget gap looms for local school districts,” Democrat and Chronicle, January 29, 2009, <http://www.democratandchronicle.com/article/20090129/NEWS01/901290347/1002/NEWS>.

Critical to the Court of Appeals finding of a constitutional violation of the rights of all New York City children was its conclusion that the State had failed to educate economically disadvantaged children and children of color in the City.<sup>34</sup> The Court of Appeals summarized in a decision in the CFE litigation that:

The 1999 655 Report [an annual report produced by the State Education Department] noted that schools with the highest percentages of minority<sup>35</sup> children “have the least experienced teachers, the most uncertified teachers, the lowest-salaried teachers, and the highest rates of teacher turnover.”<sup>36</sup>

These disparities persist today. The Education Trust, nationally recognized for its work on funding inequities, found in its January 2008 analysis, consistently with earlier findings, that New York had the highest funding gap in the nation between districts with high and low numbers of students of color, at almost \$3000 per student.<sup>37</sup> And this funding gap undoubtedly has an impact on achievement. For example, in 2008, for boys in grades 3 through 8, 75.5 percent of whites passed the state English Language Arts (ELA) test, as compared to 48.5 percent of Hispanics and 47.1 percent of African-Americans. (A similar pattern of disparities exists among girls.)<sup>38</sup>

Most educational experts agree and the lower court in CFE ruled that only sustained and reliable increases in funding and improvements in educational programs on a multi-year basis can result in significant improvements in student achievement in high-need school districts.<sup>39</sup> For example, the prospect that adequate funding will not be sustained on a multi-year basis is an impediment to attracting and retaining quality teachers, who fear that they will be laid off if they accept jobs in high-need schools. The magnitude of this year’s proposed cuts to high-need districts is certain to negatively impact the steps that experts agree positively affect educational quality, particularly for students of color, such as reducing class sizes, attracting and retaining teachers, providing supplemental services targeted at students who need extra help, and programs for “English Language Learners.”<sup>40</sup> As a consequence, the disproportionate nature of the cuts will impede the state’s efforts to raise achievement by students of color and to close the achievement gap.

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34. See Campaign for Fiscal Equity, *Summary of Evidence: Plaintiff’s Evidence in CFE v. State of New York: New York State Needs to Fund its Standards* (web page: [www.cfequity.org/](http://www.cfequity.org/)).

35. In this report, we only use the term “minority” when the original quote or report name uses that term.

36. *Campaign for Fiscal Equity v. State*, 100 NY2d 893 (2003).

37. Cited in Alliance for Quality Education, *Will Educational Funding Promises be Broken?: Students in Poverty, Students of Color and English Language Learners Face the Largest Cuts in Basic Classroom Operating Aid under Proposed Budget* (February 2008), at 4.

38. NYS Education Department PowerPoint Presentation (Untitled; concerning test results 2008); <http://www.emsc.nysed.gov/irts/655report/2008/38elaandmathgender.ppt#382,1>, ELA Performance By Racial / Ethnic Group, By Gender Grades 3-8 2008.

39. *Campaign for Fiscal Equity v. State*, 719 NYS2d 475 (Sup. Ct. New York Cty. 2001).

40. Alliance for Quality Education, *Budget Testimony, Elementary and Secondary Education* (January 28, 2009), at 2-3.

**X** Cuts to After-School programs and flat funding of universal pre-Kindergarten (UPK) will have a more serious impact on students of color.

Studies indicate that after-school and universal pre-Kindergarten have a particularly strong impact on raising achievement by low-income children and children of color. Low-income teenagers who participated in after-school programs in several large American cities were more likely to attend graduate school (63 percent) than non-participants (42 percent). Low-income students who attended after-school programs were also found to be more likely to go to post-secondary schools (42 percent) than non-participants (16 percent).<sup>41</sup>

Studies of early childhood education programs that enroll a majority of children of color found, among other things, that children that had been enrolled in early childhood programs: 1) earn significantly more in their lifetimes than non-participants; 2) are less likely to smoke when they are older; 3) have higher average achievement scores in regular public schools at the age of 14 than non-participants; and 4) have lower numbers of arrests as adults.<sup>42</sup> Cutting early childhood programs like UPK thus threatens to have a negative impact on a range of outcomes for thousands of children of color in the state.

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41. The studies referenced are cited in Coalition for After-School Funding, *The Value of After-School Programs* (2008).

42. The studies referenced are cited in Winning Beginning NY, *Research Briefing: Long-Term Impacts of Early Education*, [http://www.winningbeginningny.org/publications/documents/researchbriefing\\_long.pdf](http://www.winningbeginningny.org/publications/documents/researchbriefing_long.pdf).

## Higher Education: Closing the Door on Access to the Middle Class

Under the Executive Budget, students at New York State’s public university systems will face the dual burden of tuition increases and cuts in state aid. This will result in a decline in educational quality and difficulties for many in affording college. The tuition increases and aid cuts will have a particularly severe impact on students of color, given that CUNY predominantly serves students of color and both CUNY and SUNY provide students with a less expensive education than private institutions. Also, given that students of color are more likely to have financial barriers to college attendance, tuition increases are more likely to prevent them from attending college.

### Key Executive Budget Actions:

- X** Ratify the decision by the boards of the State University of New York (SUNY) and the City University of New York (CUNY) to significantly raise tuition for students at state-operated campuses and cut aid to SUNY and CUNY four-year and community colleges.
  - Annual SUNY tuition will be raised 14 percent for all resident students at state-operated campuses. For undergraduates, tuition will increase from \$4350 to \$4970, or \$620. In a small positive change in policy, SUNY will be allowed to retain 20 percent of the revenue raised from tuition increases for the first time in 30 years. (In the past, all tuition increases were applied to the state budget general fund.)<sup>43</sup> State support for SUNY will decrease by \$169 million, or 7.1 percent.<sup>44</sup>
  - Annual resident undergraduate CUNY tuition will increase from \$4000 to \$4600, or \$600 (15 percent). As with SUNY, CUNY will be able to retain 20 percent of the revenue raised. Taxpayer support will decline by \$64 million, or 5.6 percent.<sup>45</sup>
  - State support for SUNY community colleges will decline by \$28 million. Community colleges will receive a \$270 per-FTE (Full Time Equivalent student) reduction in state “base operating aid” (from \$2675 to \$2405), or roughly ten percent.<sup>46</sup>

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43. *Executive Budget, Agency Presentations* (State University of New York), at 84-86.

44. *Id.*, at 86.

45. *Executive Budget, Agency Presentations* (City University of New York), at 11-12.

46. *Executive Budget, Agency Presentations* (State University of New York), at 87.

- State support for CUNY community colleges will decrease by \$6 million, or 3.4 percent. The \$12 million increase for additional enrollment is more than offset by a \$270 per-FTE reduction in “base operating aid” (from \$2675 to \$2405).<sup>47</sup>
- While additional funding of \$38 million has been added to “TAP” (the Tuition Assistance Program) to offset the SUNY and CUNY tuition increases, all but the most needy students will face higher out-of-pocket costs for tuition, even with the TAP increase.<sup>48</sup>

### **X Restrict eligibility for the Tuition Assistance Program (TAP).**

The New York State Tuition Assistance Program (TAP) helps eligible New York residents pay tuition at approved schools in New York State, with grants of up to \$5000; the amount of the TAP award is based on, among other things, the family’s taxable income.<sup>49</sup> The Executive Budget proposes to increase academic standards for non-remedial students to maintain TAP eligibility, requiring students to earn at least 18 credits and achieve a 1.8 grade point average after two semesters of study. Graduate students would no longer be eligible for TAP.<sup>50</sup>

### **Impact on Communities of Color:**

### **X Tuition increases, accompanied by reductions in state aid to both state-operated four-year SUNY and CUNY colleges and community colleges, will disproportionately restrict access to higher education for students of color, and decrease educational quality at each university system.**

The State University of New York (SUNY), with its 64 campuses in every region of New York State, and the City University of New York (CUNY), with 11 senior colleges and various professional schools and community colleges throughout the 5 boroughs of New York City, have traditionally served as a means for low and moderate income students and students of color to enter the middle class by obtaining professional and technical education.<sup>51</sup> Critical to their success in achieving this mission is low tuition. As the Fiscal Policy Institute recognized in a recent report, upward mobility is a “critical issue in New York, where income

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47. *Executive Budget, Agency Presentations* (City University of New York), at 11-12.

48. *Executive Budget, Briefing Book* (Higher Education), at 72; *Executive Budget Briefing Book, Agency Presentations* (Higher Education Services Corp.), at 54.

49. New York State Higher Education Services Corporation, “About TAP,” (web page: [http://www.hesc.com/content.nsf/SFC/3/About\\_TAP](http://www.hesc.com/content.nsf/SFC/3/About_TAP)).

50. *Executive Budget, Agency Presentations* (Higher Education Services Corp.), at 54.

51. *Executive Budget, Agency Presentations* (City University of New York), at 11; *Executive Budget, Agency Presentations* (State University of New York), at 83; Fiscal Policy Institute, *New York State’s Underinvestment in Public Higher Education* (January 2009), at 1 (hereinafter, “*Underinvestment*”), [http://www.fiscalpolicy.org/FPI\\_UnderinvestmentPublicHigherEd\\_20090115.pdf](http://www.fiscalpolicy.org/FPI_UnderinvestmentPublicHigherEd_20090115.pdf).

inequality is dramatic and growing. New York has gradually solidified its shameful place as the state with the greatest degree of income inequality in the country...”<sup>52</sup>

CUNY and to a lesser extent SUNY have disproportionately served students of color and lower-income students not served by more expensive private institutions. SUNY and CUNY combined educate 61 percent of all college students of color in the state.<sup>53</sup> As of 2007, 27 percent of the CUNY student body were Hispanic, 29 percent were African-American, and 16 percent were Asian Pacific American.<sup>54</sup> Fifty-four percent of CUNY students come from families with household incomes of less than \$30,000; of the freshmen class, 37 percent were born outside of the U.S. mainland, and 43 percent did not have English as their native language.<sup>55</sup> As of 2008, 20 percent of SUNY enrollees were students of color: 9 percent African-American, 6 percent Hispanic, and 5 percent Asian Pacific American.<sup>56</sup> Roughly 60 percent of TAP recipients, a program that provides tuition aid for low- and moderate-income students – attend SUNY and CUNY.<sup>57</sup> SUNY also has over 1.2 million continuing education students, playing a vital role in assisting with career advancement for low and moderate income New Yorkers.<sup>58</sup>

The proposed tuition increases and funding cuts at SUNY and CUNY are just the most recent step in a multi-year trend of the state’s failure to maintain its investments in its two major public higher education institutions.<sup>59</sup> First, tuition has been going up and up, putting an ever greater strain on the modest income families and families of color who attend New York State’s public universities. SUNY tuition increased by 31 percent between 1991-92 and 2008-09 in constant dollars. At CUNY, which serves more students of color than SUNY, tuition more than doubled in the same period. The state’s long-term failure to maintain its support for its public higher education institutions is certain to result in reductions in the quality of the instruction provided at these institutions. For example, both SUNY and CUNY have seen reductions in the percentage of faculty that are full-time in the last decade.<sup>60</sup>

Professors and students alike have eloquently testified to the Legislature as to the impact of the proposed cuts in the Executive Budget on the low-income students and students of color that attend CUNY and SUNY. The head of the CUNY faculty union testified that the cuts to

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52. *Underinvestment*, at 1.

53. State University of New York, Budget Testimony, Higher Education (January 15, 2009), at 2.

54. City University of New York: Office of Institutional Research and Assessment, *A Profile of Undergraduates at CUNY Senior and Community Colleges: Fall 2007*.

55. *Id.*

56. The State University of New York, *SUNY Facts 2008 Academic Year*.

57. State University of New York, Budget Testimony, Higher Education (January 15, 2009), at 2.

58. *Id.*, at 1.

59. See generally, *Underinvestment*.

60. *Underinvestment*, at 18-19.

base aid for community colleges in particular, coupled with CUNY plans to increase enrollment to make up some of the revenue shortfall, is a “recipe for academic failure” for many. Given that enrollment increased at CUNY by 5.2 percent at the four-year colleges and 7.3 percent at CUNY community colleges, faculty representatives argue that providing any meaningful individualized services to struggling students will be nearly impossible. In CUNY community colleges, for example, “more students will be crammed into our classrooms, fewer students will receive individual attention, [and] less time will be devoted to research or professional renewal.”<sup>61</sup> “Cutting CUNY community colleges not only makes no sense economically, it raises a serious question of Civil Rights,” as CUNY community colleges are among the few opportunities low and moderate income people of color have for a college education.<sup>62</sup>

It is predictable that the impacts of closing off access to higher education – both through higher tuition and decreased aid – will be greater in this period of economic crisis, nationwide and in New York State.

As unemployment increases in the current recession, it is taken for granted that the rates will climb even higher in African-American and Latino communities. At the same time, communities of color and immigrant communities are being hit particularly hard by foreclosures in the current housing crisis. Making sure people of color and immigrants have good opportunities to expand their skills and education during this downturn should be a high priority for state officials.<sup>63</sup>

Already, applications are increasing to SUNY and CUNY, as people of color and whites alike are trying to increase their job qualifications in a tough job market. As family budgets get tighter, greater numbers of students of color are likely to apply to cheaper public colleges and universities rather than to more expensive private colleges.<sup>64</sup> Tuition increases of 14 percent in the case of SUNY, and 15 percent in the case of CUNY, coupled with cuts to community college aid and restrictions on TAP, make it ever harder for people to obtain the dream of higher education and eventual job advancement, especially in a period when increasing numbers of people of color are unemployed or underemployed.

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61. Professional Staff Congress/CUNY, Budget Testimony, Higher Education (January 15, 2009), at 4.

62. *Id.*, at 1-2.

63. *Underinvestment*, at 2.

64. See *Underinvestment*, at 6-7.

- X Many of the TAP rule changes are likely to disproportionately affect students of color, and the TAP funding increase will only help the neediest students.**

The Executive Budget proposes to increase academic standards for students to maintain TAP eligibility, requiring students to earn at least 18 credits and achieve a 1.8 GPA after two semesters of study. As one student representative testified to the Legislature, these changes could “close the door on low-performing students before they have a chance to find their bearings.” Sadly, due to the existing long-term inequities in secondary education, many low-performing students impacted by these proposed rules are likely to be students of color.<sup>65</sup> While the most needy students will have their tuition increases covered by TAP, modest-income students and middle income students will face additional costs.<sup>66</sup>

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65. New York Public Interest Research Group, Budget Testimony, Higher Education (January 15, 2009), at 2.

66. See *Executive Budget, Briefing Book* (Higher Education), at 72.

## Health Care: The Verdict's Still Out

The expansions of health care coverage in the Executive Budget will reduce the existing racial disparities in coverage. However, these steps forward in coverage are marred by an unfortunate premium increase for Child Health Plus. We are unable to reach a conclusion on the impact of the Executive Budget's large health care cuts on racial disparities. The complexity of the policy changes in the budget, and the lack of availability of a detailed analysis of its impact on different communities, makes it difficult to determine whether the cuts have a disproportionate impact on communities of color. The state should assess the impact of the cuts on communities, including an assessment of the impact of the cuts on racial disparities in health care delivery and outcomes.

### Key Executive Budget Actions:

- ✓ Expand eligibility for Family Health Plus (FHP) to 200 percent of the Federal Poverty Level (FPL).

Eligibility for the critical Family Health Plus program would be raised to 200 percent of the Federal Poverty Level (FPL), allowing families that are struggling but not destitute to be covered. A family of 3 earning up to \$36,000 annually would now be eligible for FHP. This change is contingent on the receipt of a federal waiver.<sup>67</sup>

- ✓ Reduce these unnecessary barriers to enrollment in Medicaid and FHP:

- The requirement of a face-to-face interview;
- An "asset test;"
- A "finger imaging" (fingerprinting) requirement for applicants.<sup>68</sup>

- ✗ Increase premiums paid by families for Child Health Plus (CHP).

The Executive Budget proposes an increase in premiums for CHP of up to \$35 per child per month, or 88 percent. Advocates fear that these large premium rate increases will result in the failure by financially hard-pressed families to obtain coverage for their children in this time of economic downturn, with negative consequences for public health.<sup>69</sup>

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67. Health Care for All New York, Budget Testimony, Health (February 2, 2009), at 4.

68. New York Coalition of Prepaid Health Service Plans, Budget Testimony, Health (February 2, 2009), at 4.

69. *Id.*, at 5-6.

**?** A combination of cuts to health care programs and new fees and taxes on providers are imposed, resulting in \$3.5 billion in savings to the state.<sup>70</sup>

A combination of health care cuts and new revenue measures in the budget would produce \$3.5 billion in savings to the state in FY 2009-10. While an itemization of each of the cuts and revenue measures is beyond the scope of this report, some of the cuts that have a potentially positive or negative impact on patient care are listed below.<sup>71</sup>

- Changes are made to hospital and community-based services, resulting in \$699.7 million in savings.

A critical component of this part of the health budget is the continuation of changes begun in FY 2008-09 to the complex formula that determines the calculation of Medicaid payments for hospital inpatient services, sometimes called the hospital “rebasings” proposal. The changes cut payments to hospitals, and reinvest a share of these savings into outpatient care.<sup>72</sup>

- Nursing home policy changes would result in \$420.2 million in savings.

Included in this component are changes to the existing system of state reimbursement for nursing home care, 72 percent of which is underwritten by Medicaid. On a multi-year basis, 6000 nursing home beds will be phased out, but, according to the administration, will be replaced by community alternatives over a 5-year period.<sup>73</sup>

- Home care policy changes would result in \$189.4 million in savings.

Changes are made to the system of reimbursement for home care that make the condition of patients the principal focus of determining the amount of payment. An assessment on home care provider revenues is also established that is projected to raise \$19.1 million in FY 2009-10.<sup>74</sup>

- Pharmacy savings total \$111.4 million.

This component of the health care budget consists of a number of steps, including maximizing non-state revenues by directly negotiating with manufacturers for drug

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70. An itemization of the \$3.5 billion number appears at: *Executive Budget, Briefing Book* (Health Care), at 38. For simplicity, we have used here the term “savings” to refer to both cuts in programs, and revenue (tax and fee) increases.

71. See *Executive Budget, Briefing Book* (Health Care), at 38-49.

72. *Id.*, at 36-39.

73. *Id.*, at 39-40.

74. *Id.*, at 40-41.

rebates, limiting the number of units of certain medications than can be prescribed that have a high incidence of fraud and abuse, allowing denial of prescriptions funded by Medicaid when the prescriber cannot demonstrate medical necessity, and requiring the use of brand-name drugs “when the cost, less rebates, is less than the generic equivalent.”<sup>75</sup>

✓ **Increase funds for indigent care.**

The Executive Budget proposes to transfer \$141.3 million from state Graduate Medical Education (GME) fund to the state “Indigent Care Pool,” designed to compensate hospitals that provide care to low-income people.<sup>76</sup>

✓ **Maintain HIV/AIDS services at current levels.**

The budget proposes no new cuts to the AIDS Institute, which “develops and funds HIV prevention and health care programs, educates the public and health care providers, formulates policy and directs regional and statewide HIV/AIDS planning.” Although the state instituted a one-time cut of \$65 million to the state share of AIDS funding, Housing Works, a leading AIDS advocacy organization, accepts the administration explanation that this was due to a funding surplus because of drug company rebates and federal funding issues, and is confident that under the Executive Budget, present services will be maintained.<sup>77</sup>

### **Impact on Communities of Color:**

✓ **The proposals in the Executive Budget to expand coverage will have the positive impact of reducing existing racial disparities in health care coverage and in health outcomes.<sup>78</sup>**

Expanding coverage of Family Health Plus (FHP) to 200 percent of FPL and removing barriers to enrollment in public health programs like Medicaid and Family Health Plus (FHP) are particularly critical for people of color, because of the existing racial disparities in health care coverage and in health care outcomes that create a greater need for public health programs in communities of color. Of the 2.5 million uninsured New Yorkers, nearly 1 million are below 200 percent of FPL, and employer-based coverage for this population is declining. The expansion of FHP to 200 percent of FPL has the potential of reversing this pattern by

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75. *Id.*, at 41-42.

76. *See, for example, Id.*, at 38.

77. Housing Works, *Governor protects AIDS Institute funding; continues Medicaid reform*, <http://www.housingworks.org/news-press/detail/props-for-paterson/>.

78. *See generally*, Community Service Society Roundtable PowerPoint Presentation, *Initiative to Reduce Racial Disparities in Health Coverage and Outcomes in Public Insurance Programs* (February 2009), at slide 10.

expanding the number of low-income people of color that are insured, and consequently reducing disparities in health outcomes, such as in childhood immunization rates.<sup>79</sup>

Only 46 percent of African-Americans and 34 percent of Hispanics have coverage through their employer, as compared to 71 percent of whites. In contrast, 41 percent of Hispanics and 36 percent of African-Americans receive public insurance, as compared to 14 percent of whites.<sup>80</sup> Across all income levels, people of color are much more likely than whites to be uninsured. For example, only 13.1 percent of whites are uninsured, while 20.7 percent of African-Americans, 30.8 percent of Latinos, and 23.3 percent of Asian-Americans in New York are uninsured.<sup>81</sup> According to an analysis of CPS data conducted by the Community Service Society, African-American enrollment in public insurance nearly levels racial disparities in insurance coverage for people below 200 percent of FPL.

A representative of an association of public health insurance plans summarized the objections to the requirement of a face-to-face interview, the asset test, and finger-imaging, all of which the Governor's budget proposes to eliminate:

The requirements are onerous and labor-intensive for both the individual applying and the enroller, keeping enrollment levels unnecessarily low and administrative costs unnecessarily high. These policies are notoriously unproven fraud deterrents, with virtually no published studies demonstrating effectiveness.<sup>82</sup>

Another health care advocate further explains the burden imposed by the requirement of face-to-face interviews. Given that low-income workers have been “losing coverage at an ever-accelerated pace.... It makes no sense for them to have to take off a day from their work in order to sign up for coverage.” Similarly, finger-printing doesn't help to detect fraud and is contrary to the public policy of expanding coverage: “[a]pplying for health coverage should be encouraged, not criminalized.”<sup>83</sup>

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79. Health Care for All New York, Budget Testimony, Health (February 2, 2009), at 4; See Community Service Society Roundtable PowerPoint Presentation, *Initiative to Reduce Racial Disparities in Health Coverage and Outcomes in Public Insurance Programs* (February 27, 2009), at slide 11.

80. United Hospital Fund, Health Insurance Coverage in New York, 2005-2006 (March 2008), Figure 8: [http://www.uhfny.org/usr\\_doc/Health\\_Insurance\\_Coverage\\_in\\_New\\_York\\_2005\\_2006.pdf](http://www.uhfny.org/usr_doc/Health_Insurance_Coverage_in_New_York_2005_2006.pdf).

81. Based on a three-year blend of CPS data conducted by CSS. See Community Service Society Roundtable PowerPoint Presentation, *Initiative to Reduce Racial Disparities in Health Coverage and Outcomes in Public Insurance Programs* (February 27, 2009), at slide 10.

82. New York Coalition of Prepaid Health Service Plans, Budget Testimony, Health (February 2, 2009), at 4.

83. Health Care for All New York, Budget Testimony, Health (February 2, 2009), at 5.

**X The proposed premium increase for Child Health Plus will likely have a disproportionate adverse impact on people of color.**

As noted above, people of color use public insurance programs at a higher rate than whites due to the existing racial disparities in insurance coverage. African-Americans comprise 20.3 percent of public insurance enrollment, a level higher than their representation in the overall population. Therefore, the proposed premium increase will likely exacerbate the existing disparities by decreasing the number of children of color enrolled in Child Health Plus.

**? Further study needs to be done to assess the impact on communities of color of the major health care budget cuts, and to develop a long-term strategy to improve the poor health outcomes of people of color relative to whites.**

The most recent annual State Department of Health report on health disparities in New York State, known as the State “Minority Health Surveillance Report,” finds that African-Americans fare worse compared to other racial and ethnic groups on a variety of health indicators, including diabetes, breast cancer, and HIV/AIDS mortality. Hispanics also fare poorly on a number of indicators. While Asian Pacific Americans do better than other people of color on many health measures and outcomes, there remain some areas of great concern, such as asthma.<sup>84</sup>

While observers agree that health care disparities based on race and ethnicity are of critical importance, serious disagreements exist over the impact of the Executive Budget on racial equity in regard to health care delivery and outcomes. One particular area of controversy is over the administration’s “hospital rebasing” proposal. Health care advocates such as Medicaid Matters New York generally applaud the Executive Budget proposal, pointing out, for example, that New York State is the top state in the nation in Medicaid spending, yet is “near the bottom in addressing the health needs of its vulnerable populations.” They argue that reinvesting in community-based primary and preventative care is a much better use of the state’s limited Medicaid dollars.<sup>85</sup> The Health Care Association of New York State (HANYS), a trade group, counters that “the majority of hospitals would experience significant payment cuts under this proposal.... Based on the state’s numbers, 25 percent of hospitals would have their Medicaid rates cut by 20 percent or more .... ,” with serious consequences to patient health, specifically to certain public and “safety net” hospitals that would be disproportionately hurt.<sup>86</sup>

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84. State Department of Health, *New York State Minority Health Surveillance Report* (September 2007), at 12-13.

85. Medicaid Matters New York, *Budget Testimony, Health* (February 2, 2009), at 2.

86. Health Care Association of New York State, *Budget Testimony, Health* (February 2, 2009), at 8.

HANYS emphasizes that major public hospitals – which disproportionately serve people of color – are negatively impacted to a greater degree than other hospitals. They also claim that certain regions of the state (particularly hospitals in Western New York and Rochester) would disproportionately lose funding under the hospital rebasing proposal.<sup>87</sup> Medicaid Matters counters that a redirection of limited state funding to primary care would ultimately be a better use of limited Medicaid dollars that disproportionately provide health services to people of color. The organization notes that although New York State is the national leader in Medicaid spending, it ranks 5th from the bottom among the states in spending on primary care.<sup>88</sup>

Similar disputes exist as to the home care and nursing home cuts. While providers focus on the fact that the cuts eliminate existing services that patients depend on,<sup>89</sup> many health care advocates agree with the administration that moves to change reimbursement methodologies properly change the present focus on providing funding to specific institutions toward an approach that focuses funding on the care patients need.<sup>90</sup>

HANYS argues that the debate over hospital rebasing cannot be resolved without thorough and reliable estimates of the impacts.<sup>91</sup> We believe that an analysis of the community impact of each of the health care cuts in the budget should be undertaken by the state, with a significant emphasis on the impacts on racial disparities in health care delivery and outcomes.

### ✓ **The additional funds for Indigent Care and HIV/AIDS will benefit people of color.**

AIDS advocates have praised the Governor for maintaining current service levels despite the state budget deficit.<sup>92</sup> Maintenance of HIV/AIDS services is critical to people of color. As of 2006, African-Americans represented 47.3 percent of AIDS diagnoses, and Hispanics represented 29.9 percent of AIDS diagnoses, as compared to 19.7 percent for whites. African-Americans were diagnosed with AIDS at roughly ten times the rate for whites, and Hispanics six times.<sup>93</sup>

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87. *Id.*, at 8-9.

88. Medicaid Matters New York, Budget Testimony, Health (February 2, 2009), at 2.

89. See, for example, Greater New York Hospital Association, Budget Testimony, Health (February 2, 2009); Healthcare Association of New York State, Health (February 2, 2009), at 8-9.

90. See, for example, Medicaid Matters New York, Budget Testimony, Health (February 2, 2009), at 2.

91. Health Care Association of New York State, Budget Testimony, Health (February 2, 2009), at 9.

92. See, for example, Housing Works, *Governor protects AIDS Institute funding; continues Medicaid reform*, <http://www.housingworks.org/news-press/detail/props-for-paterson/>.

93. Specifically, African-Americans had 72.5 cases per 100,000 of the population, Hispanics, 44.8, and whites 7.3. Bureau of HIV/AIDS Epidemiology, New York State Department of Health, *New York State HIV/AIDS Surveillance Annual Report: For Cases Diagnosed Through December 2006*, [http://www.health.state.ny.us/diseases/aids/statistics/annual/2006/2006-12\\_annual\\_surveillance\\_report.pdf](http://www.health.state.ny.us/diseases/aids/statistics/annual/2006/2006-12_annual_surveillance_report.pdf).

As already stated, the Executive Budget proposes to transfer \$141.3 million from the state Graduate Medical Education (GME) fund to a fund known as the state “Indigent Care Pool.” This pool, designed to compensate hospitals that provide care to the poor, is becoming more critical than ever to people of color, as more and more people lose their jobs and employer-provided health insurance during these tough economic times. This is a better way to use scarce health care dollars than GME, which has been criticized by advocates for years as “lacking accountability and transparency and for failing to verify that hospitals actually provide financial assistance to uninsured and underinsured patients in exchange for this funding.”<sup>94</sup> Since people of color in our state are disproportionately poor due to existing racial inequities, the additional funds for the indigent care pool will benefit people of color.

There is an additional State fiscal benefit to this change. The state GME pool is fully state-funded. The proposal to take half of these funds, and have them matched with federal funds through the indigent care pool, means that the state is using its purchasing power in a much more prudent manner. The hospitals will still receive another \$1.3 billion in federally-funded GME funds.<sup>95</sup>

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94. Health Care for All New York, Budget Testimony, Health (February 2, 2009), at 6.

95. *Id.*, at 7.

## Criminal Justice: Failure to Attack the Problem at the Roots

The Executive Budget took some steps to address the high rate of incarceration in New York State. However, the current system has resulted in severe consequences to communities of color, and the budget does not provide a comprehensive approach to the racial disparities in the criminal justice system. The Executive Budget also closes or downsizes underutilized juvenile justice facilities, which is both good juvenile justice policy and positive from the standpoint of racial justice. The Executive Budget unwisely continued long-term state policies to cut state funding for criminal defense representation and prisoner representation; these steps will have an enormously disparate impact on people of color.

### Key Executive Budget Actions:



Reduce the prison population and close underutilized facilities.

- Underutilized prison camps and annexes will be closed.
- A few recommendations in the recent sentencing commission report will be implemented that will reduce the state's prison population by roughly 1600 inmates.<sup>96</sup>



Reduce Funding for criminal defense.

The Executive Budget proposes to fund the New York State Defenders Association (NYSDA) at \$1.2 million, despite the fact that NYSDA has indicated to the Governor that it will need at least \$1.7 million just to maintain its current level of services. Similarly, the Executive Budget is proposing a 12 percent cut for the "Aid to Defense" program, which funds public defenders around the state, despite the fact that large backlogs in handling cases exists, caseloads are increasing as arrests are increasing, and that office caseloads already exceed standards for adequate criminal defense.<sup>97</sup>

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96. *Executive Budget, Agency Presentations* (Department of Correctional Services), at 337-338.

97. New York State Defenders Association/ New York State Defenders Justice Fund, Budget Testimony, Public Protection (January 27, 2009), at 4-5; Testimony of the Association of Legal Aid Attorneys (UAW Local 2325), Budget Testimony, Public Protection (January 27, 2009), at 3.

### **X Eliminate funding for Prisoners' Legal Services of New York.**

The Executive Budget, following a repeated pattern since 1996, proposes no funding for Prisoners' Legal Services (PLS). Since 2001, PLS has been funded at \$2.3 million annually through an addition of funding by the Assembly in the final budget negotiations.<sup>98</sup> PLS represents prisoners on a number of matters, including in disciplinary cases, and alleged violations of legal or constitutional rights. Criminal justice advocates have requested at least \$5 million for PLS in FY 2009-10.<sup>99</sup>

### **✓ Close or downsize underutilized juvenile facilities and evening reporting centers.**

The Executive Budget proposes to close or downsize eight juvenile facilities and three evening reporting centers operated by the Office of Children and Family Services (OCFS) as of June 1, 2009, saving \$16.4 million in Fiscal Year 2009-10. The closures and downsizings are good fiscal policy in that the affected facilities are extremely underutilized, and good juvenile justice policy in that they represent a move towards restructuring the state's juvenile justice system towards a greater focus on providing developmentally appropriate services in settings closer to where most of the youth live.<sup>100</sup>

### **Impact on Communities of Color:**

### **✓ The reduction in the prison population mandated by the changes in the Executive Budget will decrease the number of people of color that are incarcerated. However, despite the recognition that vast racial disparities exist in sentencing and other criminal justice practices, the Executive Budget contains only limited steps to reduce the prison population in New York State.**

There is no clearer example of racial and ethnic disparities in our state and nation, than in the criminal justice system. Leading observers have indicated that the "problem of racial disparity is one which builds at each stage of the criminal justice continuum from arrest through parole, rather than the result of the actions at any single stage."<sup>101</sup> For example, one New York State study has found that people of color charged with felonies are more

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98. Email dated February 24, 2009 from Karen Murtagh-Monks, Executive Director, Prisoners' Legal Services.

99. Prisoners' Legal Services of New York, Budget Testimony, Public Protection (January 27, 2009), at 7; New York State Defenders Association/ New York State Defenders Justice Fund, Budget Testimony, Public Protection (January 27, 2009), at 5.

100. Office of Children and Family Services, Budget Testimony, Human Services (January 14, 2009), at 4-5; *Executive Budget, Agency Presentations* (Children and Family Services), at 36.

101. The Sentencing Project, *Reducing Disparities in the Criminal Justice System: A Manual for Practitioners and Policymakers* (2d Ed. 2008), at 2, [http://www.sentencingproject.org/Admin/Documents/publications/rd\\_reducingracialdisparity.pdf](http://www.sentencingproject.org/Admin/Documents/publications/rd_reducingracialdisparity.pdf).

likely to be detained before trial than whites. Nationally, African-Americans are 13 percent of the general population but 38 percent of prison and jail inmates, and Hispanics are 15 percent of the general population but 19 percent of the prison and jail population.<sup>102</sup> Due in major part to New York's unjust drug sentencing laws, people of color are vastly overrepresented as prison inmates for drug offenses. As of 2008, African-Americans and Hispanics were 32 percent of New York State's general population but comprised nearly 90 percent of all offenders in state prisons for drug offenses.<sup>103</sup> A report by a commission on sentencing reform established by Governor Spitzer issued in January of 2009 recognized the consequences of this system of gross disparities in New York's prison population to the future of people of color in the State, quoting a well-known sociologist:

“Young black men today are more likely to do time in prison than serve in the military or graduate college with a bachelors degree. The large black-white disparity in incarceration is unmatched by most other social indicators. Racial disparities in unemployment (two to one), non-marital childbearing (three to one), infant mortality (two to one), and wealth (one to five) are all significantly lower than the seven to one black-white ratio in incarceration rates...

The social penalties of imprisonment also spread through families. Though formerly incarcerated men are just as likely to have children as other men of the same age, they are less likely to get married ... [and] will most likely divorce or separate... [The children of prisoners] too, are to some extent drawn into the prison nexus, riding the bus to far-flung correctional facilities and passing through metal detectors and pat-downs on visiting day .... To be young, black, and unschooled today is to risk a felony conviction, prison time, and a life of second-class citizenship. In this sense, the prison boom has produced mass incarceration – a level of imprisonment so vast and concentrated that it forges the collective experience of an entire social group.”<sup>104</sup>

Several leading criminal justice advocates have praised the limited steps in the Executive Budget to reduce New York's prison population, but argued that the Governor sadly missed the political opportunity presented by the budget deficit to comprehensively address the issue of massive incarceration in the state. Clearly, greater long-term budget savings can be achieved by addressing New York's punitive mandatory sentencing laws for drug offenses.<sup>105</sup> The Fortune Society, a well-known criminal justice advocacy organization and service

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102. Cited in *Id.*, at 2.

103. New York State Commission on Sentencing Reform, *The Future of Sentencing in New York State: Recommendations for Reform*, (January 2009), at 77.

104. *Id.*, at 77-78.

105. For this view, see, for example, Jonathan E. Gradess, “Make Jail Time a Last Resort” (Op-Ed), Albany Times Union, February 11, 2009 (arguing for abolition of all mandatory sentencing laws for drug offenses in response to Rockefeller Drug Laws).

provider for those leaving prison, praises the Executive Budget for proposing to close the prison camps and annexes, but points out that Rockefeller Drug Law reform and other steps to decrease the prison population would “yield even greater savings.” Some put the annual savings for Rockefeller Drug Law reform at \$250 million annually. The Fortune Society also criticizes the Executive Budget for cutting base funding for alternative-to-incarceration (ATI) programs by 6 percent, calls for eligibility for the state Tuition Assistance Program to be restored to people in prison, and criticizes the Executive Budget’s proposed cuts to supportive housing for those released from prison.<sup>106</sup> Similarly, the Center for Community Alternatives calls for Rockefeller Drug Law reform, diversion of additional funds for prisons to ATI, and expansion of existing temporary release programs.<sup>107</sup> Each of these steps will ultimately save the state money, and continue to address the shocking and manifestly unfair racial and ethnic disparities in our criminal justice system.

The Governor was a vocal supporter of Rockefeller Drug Law reform as a legislator, and he affirmed his support for reform in his recent State-of-the-State address, promising to re-examine the Rockefeller Drug Laws once he received the report from the Commission on Sentencing Reform (which was released shortly after his address). Given the comments in the State-of-the-State and the prospect of huge savings from a re-examination of the Rockefeller Drug Laws, many activists are optimistic about the prospects for reform this legislative session.<sup>108</sup>

✓ **The closure of juvenile facilities will likely result in better treatment and support for young people of color who would have been incarcerated in upstate juvenile facilities.**

The New York Juvenile Justice Coalition, a coalition of representatives of advocacy groups, legal service providers, alternative sentencing programs, and community-based organizations, points to research indicating that community-based programs can lower re-arrest rates of youth by 25 to 70 percent. Moreover, moving towards community-based programs has important implications for racial justice. “Eighty-six percent of youth held in ... [Office of Children and Families Services] facilities are African-American or Latino; and 95 percent of New York City youth in state custody are African-American or Latino.” As the Coalition argues, it makes absolutely no sense to confine these youth in upstate facilities that are far from their homes and communities, where they would have access to family and social supports, and services like family counseling, substance abuse treatment, and mental health services that are more likely to prevent them from becoming re-arrested.<sup>109</sup>

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106. Fortune Society, Budget Testimony, Public Protection (January 27, 2009), at 2-3.

107. Center for Community Alternatives, Budget Testimony, Public Protection (January 27, 2009), at 2-11.

108. “Paterson once arrested over Rockefeller drug law reform (blog),” Albany Times Union, January 28, 2009,

<http://blogs.timesunion.com/capitol/archives/10410/paterson-once-arrested-over-rockefeller-drug-law-reform>.

109. New York Juvenile Justice Coalition, *Proposals for Reform 2009*.

However, community reinvestment of some of the large-scale savings from juvenile facility closures and downsizings is not in the Executive Budget, and advocacy groups like the Juvenile Justice Project of the Correctional Association (which coordinates the New York Juvenile Justice Coalition) insist that community reinvestment is the only way to truly reduce recidivism, positively impact youth and communities of color, and save the state taxpayers money. While juvenile incarceration costs from \$140,000 to \$200,000 per bed per year, community-based programs cost anywhere from \$2,000 to \$15,000 per youth per year. Eighty percent of youth released from New York's juvenile correctional centers are re-arrested within three years of release, but community-based programs have recidivism rates ranging from 17 to 35 percent.<sup>110</sup>

**X Reduced support for criminal defense and representation of prisoners will disproportionately affect people of color due to the greater proportion of people of color in the criminal justice system and the greater likelihood that they will not have funds to obtain private representation.**

There is nothing more basic to increasing racial equity in the criminal justice area than ensuring that the fragile structure established in the state to ensure that poor defendants receive adequate representation in court is maintained and strengthened. Critical to any serious discussion of racial justice in our state is reducing the disparities in regard to those convicted of crimes. As the new sentencing commission report demonstrates, the Paterson administration is well-aware of the critical role of the “prison-industrial complex” in impeding the economic progress of African-Americans and other people of color. Yet, the Executive Budget fails to address the outrageous historic underfunding of criminal defense in the state, even though the cost to the state of maintaining criminal defense efforts at their current levels is relatively small.

The New York State Defenders Association (NYSDA), a non-profit that receives funding for assisting public defense attorneys (legal aid, public defenders, and assigned counsel) in counties throughout the state, summarized the inaction of successive Governors in this area: “In 2006, a blue-ribbon commission described public defense as ‘An Ongoing Crisis.’ That crisis continues.” Specifically, the Kaye Commission found that the “current system unconstitutionally fails to satisfy the State’s duty to protect the rights of those who need public defense services.” NYSDA received in FY 2008-09 less than it did in the year 2000, eight years before. NYSDA states that the pattern of annual cuts to the program was causing its efforts to be “pushed past the breaking point.”<sup>111</sup>

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110. Email from Juvenile Justice Project, Correctional Association to Citizen Action of New York, February 25, 2009.

111. New York State Defenders Association/ New York State Defenders Justice Fund, Budget Testimony, Public Protection (January 27, 2009), at 2-3, 6.

The Executive Budget also contains no funding to begin much-needed reform of New York State's broken, county-by-county public defense system that has for decades failed to ensure the right to counsel to all, and has not been able to blunt the racially discriminatory impact of law enforcement, prosecution, and legislative policies. The Campaign for an Independent Public Defense Commission has proposed diverting \$3 million from an existing revenue stream intended to improve public defense (the Indigent Legal Services Fund) to create the infrastructure for implementing an Independent Public Defense Commission recommended by a blue-ribbon panel appointed by former Chief Judge Judith S. Kaye. This recommendation is supported by a broad coalition of more than 200 groups and individuals statewide.<sup>112</sup>

Finally, adequate representation of prisoners through Prisoners' Legal Services would not only ensure that those who have been incarcerated receive fair treatment, but also their successful reintegration once released.<sup>113</sup> These purposes cannot be fulfilled by continued flat-funding, even assuming the Assembly is once again successful this year in providing the level of funding PLS has received since 2001.

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112. Email from New York State Defenders Association to Citizen Action of New York, February 22, 2009.

113. Prisoners' Legal Services of New York, Budget Testimony, Public Protection (January 27, 2009), at 7.

## Human Services: Giving With One Hand, and Taking With the Other

The Executive Budget's approach to the needs of human services programs is fraught with inconsistency. On the one hand, the budget commendably proposes increases in some areas like emergency food programs and a raise in the welfare grant. On the other hand, the budget proposes cuts to other programs equally necessary to low-income people and people of color, like SSI, and to critical advocacy services that ensure that people of color and low-income people receive the federal and state benefits to which they are entitled. The budget also proposes cuts to beneficial programs that serve immigrants and refugees.

### Key Executive Budget Actions:

- ✓ **Expand the Hunger Prevention and Nutrition Assistance Program.**

The Hunger Prevention and Nutrition Assistance Program, a critical funding source for food pantries and other emergency programs, is increased by \$4.4 million, for a total of \$30.9 million in funding.<sup>114</sup>

- ✗ **Reduce funding for the Nutrition Outreach and Education Program (NOEP).**

The Nutrition Outreach and Education Program (NOEP), which provides outreach and education about the Food Stamp Program and assists with Food Stamp applications is significantly cut. This cut is projected to reduce the number of NOEP service areas in the state from 45 to roughly 15.<sup>115</sup>

- ✓ **Raise the basic state welfare grant.**

The welfare grant is raised for the first time since 1990: 10 percent a year for three years. However, the Executive Budget delays the implementation of the initial increase until January 2010, and even when the three year increase is fully phased in, it will still represent only roughly three-fourths the purchasing power of the grant in 1990.<sup>116</sup>

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114. Hunger Action Network of New York State, Budget Testimony, Human Services (January 14, 2009), at 1.

115. Nutrition Consortium of New York State, Budget Testimony, Human Services (January 14, 2009), at 1-2.

116. Hunger Action Network of New York State, Budget Testimony, Human Services (January 14, 2009), at 2; Empire Justice Center, Budget Testimony, Human Services (January 14, 2009), at 5-6 (pages unnumbered). (This report also cites separate Empire Justice Center budget testimony delivered on January 27th on the topic of Public Protection.)

### **X Reduce the state supplement for the federal Supplemental Security Income (SSI) program.**

The Executive Budget proposes to reduce the state supplement for the federal Supplemental Security Income (SSI) program, which provides critical cash assistance for low-income aged, blind, and disabled by \$84.1 million.<sup>117</sup>

### **X Seriously reduce funding for civil legal services to low-income people.**

The Executive Budget proposes to severely cut civil legal services – representation of low-income clients. Even though civil legal services received roughly \$8 million statewide for legal services in FY 2008-09, and nearly twice that amount the previous year, the Executive Budget (as amended by the 30-day amendments) only proposes \$1 million for civil legal assistance.<sup>118</sup>

### **X Reduce funding for immigrant and refugee programs.**

The Executive Budget proposes to cut funding for these immigrant and refugee programs:

- The New York State Citizenship Initiative, which provides a variety of services to immigrants who have not become citizens, including developing competency in U.S. history, the English language, and civics, and preparation for the naturalization interview, has been cut from \$2.3 million to \$1.85 million, roughly 20 percent.<sup>119</sup>
- The New York State Refugee Resettlement Assistance Program, which funds non-profit organizations throughout the state to provide refugees with various transitional services, including job training and employment assistance, has been cut from \$2.3 million to \$1.85 million, and has lost \$1.4 million in TANF funding (the entire amount of its TANF funding).<sup>120</sup>

## **Impact on Communities of Color:**

As mentioned in the introduction to this report, roughly 25 percent of Hispanic New Yorkers, 22 percent of African-American New Yorkers and 16 percent of Asian-American New Yorkers are low-income (as compared to 9 percent of non-Hispanic whites),<sup>121</sup> highlighting the critical

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117. Executive Budget, Agency Presentations (Office of Temporary and Disability Assistance), at 43-44; Executive Budget, Briefing Book (Human Services), at 110.

118. The Legal Aid Society, Budget Testimony, Public Protection (January 27, 2009), at 6.

119. United Jewish Appeal, Budget Testimony, Human Services (January 14, 2009), at 2.

120. *Id.*, at 1-2; *SFY 2009-2010 Proposed Funding Reductions* (Undated memo provided to Citizen Action).

121. U.S. Census Bureau. American FactFinder, New York: Poverty Status in the Past 12 Months (Data Set: 2005-2007; American Community Survey 3-Year Estimates) U.S. Census Bureau.

role that these programs play in providing a necessary social safety net for many families of color. Given the disproportionate number of people of color that benefit from programs such as food stamps, SSI, and legal services for the poor, it is undeniable that increasing access to these programs and raising benefit levels is an essential step in protecting the fragile economic status of many families of color.

- ✓ **Raising the welfare grant and funding for emergency food programs are positive steps for people of color, as a higher percentage of people of color are low-income.**

According to the New York State Office of Temporary and Disability Assistance (OTDA), the proposed welfare benefit increase will raise the grant from \$291 a month to \$387 a month for a family of three in New York City, once fully implemented. An estimated 200,000 households will benefit from the proposed increase. While the welfare caseload has not yet increased due to the dire national and state economy, we “have historically seen a one-to-two year lag between an economic downturn and an increase in the welfare rolls.”<sup>122</sup> Therefore, the proposed increase in the welfare grant will provide a necessary cushion to hundreds of thousands of New Yorkers, a large number of whom are people of color, who are newly unemployed due to the economic downturn, as well as those who were previously in desperate circumstances.

In a time of increasing hunger due to the economic crisis, food and nutrition advocates have praised the Executive Budget for increasing the state’s emergency food funding program, known as the Hunger Prevention and Nutrition Assistance Program. Food pantries and other emergency food programs are a critically needed service for people who are in desperate need of food for their families’ survival.

- ✗ **The proposed cuts to SSI, a critical “safety-net” program, are extremely detrimental to low-income people of color.**

At \$84.1 million, the cut to SSI is roughly ten times the proposed increase of \$7.7 million in FY 2009-2010 for the welfare grant. The administration has rationalized the SSI cut on the ground that SSI recipients nationwide received a cost of living adjustment of 5.8 percent in January of 2009, so that recipients will still receive \$13 to \$21 more a month than in 2008. “New York’s SSI recipients are the poorest of the poor, and asking them to forego any precious dollars or cents that ... the federal agency paying their benefits, determined was necessary to bring them close to some sort of economic parity in these dismal times, will

cause each of these elderly or disabled recipients increased pain and suffering they can ill afford.”<sup>123</sup>

**X The cuts to civil legal services to the poor, and to the Nutrition Outreach and Education Program (NOEP) vastly undermine the ability of low-income people of color to obtain public benefits they are entitled to, and to protect their rights. These cuts will potentially exacerbate racial inequities.**

Civil legal services – representation of low-income clients, many of whom are people of color in urban areas of the state – are critical to the well-being of tens of thousands of low-income families. The ability to obtain a lawyer for is often the only means low-income people have available to obtain the public benefits wrongly denied them, and on which they literally depend on for their existence, including Medicaid, federal disability benefits, food stamps, and public assistance. The failure to obtain quality legal assistance therefore may lead to total impoverishment and its consequences, like hunger and homelessness. Moreover, cuts to legal services may exacerbate further income gaps between low-income people of color and whites, given the disproportionate need low-income people of color have for these services.

The Legal Aid Society, based in New York City, handles more the 30,000 individual civil matters for “the most vulnerable New Yorkers,” including “immigrants fleeing oppression, unemployed workers, persons with HIV infection, and children and adults faced with evictions, foreclosures and homelessness.”<sup>124</sup> The Empire Justice Center provides critical legal services to immigrants, particularly victims of domestic violence.<sup>125</sup> It is disheartening that the Executive Budget includes cuts of the magnitude proposed to such programs, considering that in a period of economic crisis, increases in poverty, foreclosures, homelessness and other measures of hardship are certain to occur. Given the devastating state and national economy, an increase in the budget for civil legal services to \$11.4 million – as recommended by the legal services community – is critical, even given the state budget crisis.<sup>126</sup>

Given the successful track record of NOEP of increasing federal Food Stamp recipients in New York State and therefore maximizing the amount of federal dollars in the state, cutting NEOP, which helps a large number of low-income people of color, seems penny wise and

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123. Empire Justice Center, Budget Testimony, Human Services (January 14, 2009), at 4-5 (pages unnumbered).

124. The Legal Aid Society, Budget Testimony, Public Protection (January 27, 2009), at 7.

125. Empire Justice Center, Budget Testimony, Public Protection (January 27, 2009), at 3.

126. Empire Justice Center, Budget Testimony, Public Protection (January 27, 2009), at 4; The Legal Aid Society, Budget Testimony, Public Protection (January 27, 2009), at 7.

pound foolish. In a period when 10 percent of New Yorkers cannot regularly purchase the food needed for an adequate diet, the proposed cuts to NOEP should be reconsidered.<sup>127</sup>

**X The cuts to immigration and refugee programs threaten to impact on the ability of these critically important groups, a majority of whom are people of color, to successfully integrate into U.S. society and become citizens.**

Roughly three of every four immigrants in New York is non-white. Immigrants in New York State are 21 percent of the state's population, and contribute broadly to the state's economy; specifically, they produce an estimated 22 percent of the state's gross domestic product. In upstate and downstate suburbs, two-thirds of immigrants own their own homes.<sup>128</sup> However, the success of immigrants integrating into their new nation and state depends in part on the availability of services to support that integration, including the English language instruction, naturalization services, and job training and assistance provided by the agencies funded by the New York State Citizenship Initiative and the New York State Refugee Resettlement Assistance Program, both of which the Executive Budget proposes to cut.<sup>129</sup>

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127. Nutrition Consortium of New York State, Budget Testimony, Human Services (January 14, 2009), at 1-2.

128. Fiscal Policy Institute, *Working for a Better Life: A Profile for Immigrants in the New York Economy* (November 2007), at 1-2, [http://www.fiscalpolicy.org/publications2007/FPI\\_ImmReport\\_WorkingforaBetterLife.pdf](http://www.fiscalpolicy.org/publications2007/FPI_ImmReport_WorkingforaBetterLife.pdf).

129. UJA-Federation of New York, Budget Testimony, Human Services (January 14, 2009), at 1-2; United Neighborhood Houses, Budget Testimony, Human Services (January 14, 2009), at 4.

## Taxes In New York: No Shared Sacrifice

Throughout this report, we have called for restorations in several critical programs that serve low and moderate income people and people of color. Given the deficit of more than \$13 billion the state faces, it is essential to examine the revenue side of the budget in order to achieve a final budget that does not have an unfair impact on people of color. In addition, the current revenue structure of New York State is itself inequitable.

Four important trends are critical to the debate as to who should “sacrifice” in this time of severe economic distress.

- **Wealthy New Yorkers are receiving an ever higher share of the state’s income.** As of 2006, the top 1 percent of New Yorkers in income received 29 percent of the state’s income – more than two-and-a-half times the combined income of the bottom half. New York currently has the highest income gap in the nation between the rich and poor, and between the rich and the middle 20 percent of the income distribution.<sup>130</sup>
- **The large-multi-year tax cuts enacted between 1994 and 2005 reduced revenue in New York by \$20 billion in 2008-09.**<sup>131</sup>
- **Over the past 30 years, the state has reduced income tax rates on the wealthiest New Yorkers by more than 50 percent, forcing working class families to pay an increasingly higher share of the overall tax burden.** Families making \$40,000 annually now pay the same marginal income tax rate as wealthy families making \$4,000,000 annually (see Figure 5).
- **New Yorkers with the least income carry the highest tax burden.** As shown in figure 6, when all taxes are added together, the wealthiest New Yorkers (the richest 1 percent) pay only 6.5 percent of their incomes in taxes while the least well off (the bottom 20 percent) pay 12.6 percent. There is no question that placing the burden

Figure 5

Today In New York	
<i>If your household taxable income is over...</i>	<i>your marginal tax rate is...</i>
<b>\$40,000</b>	<b>6.85%</b>
<b>\$400,000</b>	<b>6.85%</b>
<b>\$4,000,000</b>	<b>6.85%</b>

Rates apply to portion of income above your tax bracket.

130. Fiscal Policy Institute, *Balancing New York State’s 2009-2010 Budget in an Economically Sensible Manner*, (January 2009), at 7.

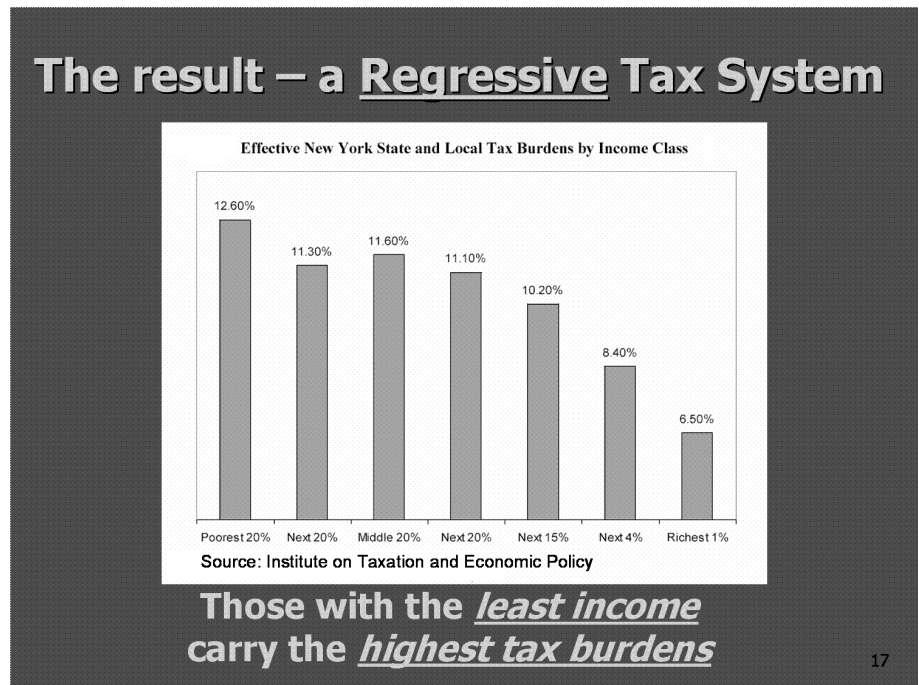
131. *Id.*, at 42.

on low and moderate income New Yorkers has a disparate impact on people of color. As of 2005, the median African-American family income in New York was \$45,090, while the median Latino family income in New York was \$38,951. On average, African-Americans earn 62 percent of what whites earn, while Latinos earn on average 54 percent for every dollar earned by whites in New York.<sup>132</sup>

As a consequence of these four trends, there has been no true “shared sacrifice” in New York State. Low and moderate income people in recent years have shared the “burden” in the form of reduced services, as highlighted in this report. However, just as significantly, average working families, including people of color, also have increasingly come to pay a disproportionate share of the burden of supporting state services, as taxes on high-income individuals and corporations have been lowered.

The Executive Budget continues this long-term trend. While a full discussion of the tax policies embodied in the FY 2009-2010 budget is beyond the scope of this report, the Executive Budget proposes \$3.1 billion in new or additional taxes and fees,<sup>133</sup> many of which disproportionately fall on low and moderate income people and people of color, while totally failing to increase income taxes which fall more heavily on high-income people.

Figure 6



We believe that the Legislature must re-examine the revenue policies embodied in the Executive Budget to restore real shared sacrifice. Average working families, including people of color, should not have to bear an unfair share of the burden of the state budget crisis in the form of regressive fees and cuts in the state services they depend on.

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132. Applied Research Center data analysis of the 2006 American Community Survey, Selected Population Profiles and Income, Earnings and Poverty Data from the 2006 American Community Survey, <http://www.arc.org/content/view/532/53/>.

133. *Executive Budget, Briefing Book* (Financial Plan Summary), at 15.

Instead, the Legislature should enact the “Fair Share Tax Reform” legislation introduced on February 11, 2009 by Eric Schneiderman and his Senate colleagues as S.2021, and A.5912, introduced by Darryl Towns and his Assembly colleagues on February 23, 2009.<sup>134</sup> This legislation would raise personal income taxes for wealthy New Yorkers earning over \$250,000 annually, generating up to \$6 billion in new revenue. Currently, the highest tax rate in New York State is 6.85 percent for those earning at least \$40,000 annually. As Figure 7 indicates, the new legislation would increase percentage rates for \$250,000 annual income earners to 8.25 percent, over \$500,000 to 8.79 percent and for those earning over \$1,000,000 annually the rate would increase to 10.30 percent, bringing greater fairness to the state tax code.

Passing Fair Share Tax Reform and rescinding the spending cuts that most severely disproportionately impact people of color would be giant first steps in bringing greater racial equity to the New York State budget.

Figure 7

Fair Share Tax Reform Model				
Income Brackets	Rate Increase	New Tax Rates	New Revenue	% of NYS Taxfilers
Above \$250,000	1.40%	8.25%	\$568 million	2.0%
Above \$500,000	2.12%	8.97%	\$823 million	0.8%
Above \$1,000,000	3.45%	10.30%	\$4.6 billion	0.6%
<b>Total</b>	--	--	<b>\$6 billion</b>	<b>3.5%</b>

134. As of February 25<sup>th</sup>, S.2021 had 20 co-sponsors of S.2021 in addition to Senator Schneiderman, and A.5912 had 24 co-sponsors in addition to Assemblyman Towns. Additional co-sponsors are being added. An updated list of co-sponsors for both the Senate and Assembly bills can be obtained at the New York State Bill Drafting Commission’s bill status website: <http://public.leginfo.state.ny.us/menuf.cgi>.

# Key Findings

This report examined a number of key components of the Executive Budget for FY 2009-10 in order to determine its impact on communities of color. The analysis examined whether major proposals in the budget would address existing racial and ethnic disparities, or widen the racial and ethnic inequalities in our state.

**1. In several critical areas, the cuts and deferred spending in the Executive Budget would exacerbate racial inequities.**

**Education** - The \$2.5 billion cut in school aid falls disproportionately on students of color and undermines the goals of the landmark 2007 school aid reform law. Our analysis shows that school districts with greater numbers of students of color and students with limited English proficiency will receive larger per-pupil cuts than other districts. In addition, programs with a track record of helping students of color to achieve, like universal Pre-Kindergarten and after-school programs, are harmed in the proposed budget.

**Higher Education** - Cuts to CUNY and SUNY, combined with tuition increases, are threatening to restrict access to the public higher education institutions that have traditionally served as a means for low and moderate income students of color to enter the middle class.

**Child Health Plus** - Increased premiums for a highly successful program aimed at providing comprehensive low-cost health coverage for children (Child Health Plus) will increase racial disparities in health coverage.

**Criminal Defense** - The lack of funding for criminal defense will have a serious impact on low income people of color given the already large racial inequities in the criminal justice system.

**Human Services** - The cuts to civil legal services to the poor and to nutrition advocacy programs will vastly undermine the ability of low-income people of color to obtain public benefits they are entitled to, and potentially exacerbate existing racial inequities. Small but effective programs that assist immigrants, three-fourths of whom are people of color, have also been cut.

**2. In some areas, the Executive Budget would have a positive impact on racial equity, demonstrating that positive efforts are viable, even in the face of tight budgetary constraints.**

**Health Coverage** - The proposed expansion of Family Health Plus, the removal of unnecessary barriers to enrollment in public health insurance programs, and the redirection of limited state resources to a state fund that assists the needy (the indigent care pool), all decrease existing racial and ethnic inequities in health care coverage. These proposals are good illustrations of how limited funds can be redirected to support those most in need.

**Criminal and Juvenile Justice** - The proposed budget takes a few steps to begin addressing the disproportionate adverse impact of the state's sentencing policies on people of color by slightly decreasing the prison population and reforming juvenile justice. As sentencing reform moves forward, much more can be done to increase equity and decrease costs at the same time.

On the whole, however, unless the budget is changed so that similar steps towards equity are made in other critical areas, the negative impacts of the budget greatly outweigh the positive impacts on racial equity.

**3. There are viable revenue streams that could provide the infusion of needed funds to address critical needs and advance racial equity. Progressive approaches to revenue would be more equitable from a racial justice standpoint than those proposed in the Executive Budget.**

For example, a graduated progressive income tax increase for the wealthiest New Yorkers could provide \$6 billion in additional revenue to mitigate cuts. The Fair Share Tax Reform proposal fairly places a share of the sacrifice on those who can most afford to pay. Given the large disparities of wealth and income between people of color and whites, a more progressive income tax would not only be more equitable for low and moderate income New Yorkers, but also for people of color.

# Recommendations

**1. The State Legislature should make changes to the proposed budget to prevent adverse racial impacts and to create more opportunities to advance racial equity, and improve the quality of life for all New Yorkers.** Funding needs to be restored to avoid increasing racial and ethnic inequality in New York State, as well as to meet the needs of most New Yorkers.

**2. The Legislature should pass the Fair Share Tax Reform proposal for an income tax increase on the wealthy.** An increase in income taxes on New Yorkers earning over \$250,000 a year in order to restore critical spending leads to a more equitable tax system while also providing funds necessary to make state spending more equitable for communities of color. Fair Share Tax Reform would generate about \$6 billion which would allow significant restorations in spending for health care, education and the social safety net.

**3. The impact on racial equity should be considered in state budget-making and fiscal policy in order to prevent the creation and perpetuation of racial inequality.** A conscious and careful analysis of the effects of public decisions on different racial and ethnic groups would enable state policymakers to make more informed decisions. Such an analysis is a useful tool for assessing the anticipated effects of budgets and other public policies in order to identify ways to maximize equity and inclusion and minimize adverse and unanticipated impacts. For example, the education section of this report documents that the Executive Budget clearly attempted to mitigate the impact of the education cuts on high-need districts by proposing lower percentage cuts on “high-need” districts. However, our analysis shows that the budget in fact appears to harm high need/high percentage of people of color districts significantly more than low-need/low percentage of people of color districts. Our proposal for greater data analysis should be accompanied by restructuring the state budget process to make sure that the needs of New York’s major racial and ethnic groups are taken into account in the design of state policies.

## Conclusion

**This report reviews a number of programs in the Executive Budget and concludes that many of the proposed cuts would disproportionately impact people of color and communities of color. These impacts could increase racial inequality in the state and widen the already existing disparities that disadvantage people of color.**

To ensure that the state is committed to a higher standard of racial equity and fairness, we must undertake conscious and systematic ways of assessing the racial impacts of proposed budgetary decisions and fiscal policies. The challenge in the 21<sup>st</sup> Century is to remedy policies and practices by government and other institutions that produce or perpetuate racial inequity, whether or not these policies and practices are intentional. Systemic racial inequality is often unconsciously perpetuated unless it is consciously remedied. There is an immediate opportunity for the State Legislature to consciously re-examine and re-adjust the proposed budget so that adverse racial impacts can be prevented and more opportunities to advance racial equity can be created.

The consequences of the state's failure to adequately fund many of the programs mentioned in this report and their value to people of color have been extensively documented.<sup>135</sup> The cumulative negative effects of state budget cuts on families of color are even worse. imagine a family in Buffalo, for example, that has one child in high school whose chances of graduation will be diminished because of reductions to programs designed to provide him with extra help, and a second child who won't be able to continue to attend college because of her family's inability to balance the family budget in light of the combined effects of SUNY tuition increases, increases in Child Health Plus premiums, and increases in other basic necessities like rental housing, food, and energy.

**We must expand the point we touched on in the introduction to this report. It is not enough to address the needs of the state's residents as a whole: state leaders must institute remedies that address the particular needs of people of color.** As the Economic Policy Institute stated in a recent report:

[T]here are persistent gaps in income between white and African American and Hispanic families. Certainly, discrimination plays a role here ... It is also the case that minority families' incomes, particularly those of African Americans, tend to be more responsive to economic trends, both positively and negatively....

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135. For example, see page 11 for a selection of studies indicating the positive benefits of after-school programs and early childhood education to children of color.

EPI went on to recommend policies targeted at reducing unemployment, particularly for African-Americans and other people of color. We would add that New York State must also tailor its policies concerning education, health care, and other vital service areas to ensure that in this time of economic downturn, the progress that people of color have made is not totally reversed.

It is by no means inevitable that income gaps between whites and people of color will continue: policies that lead to stimulating the economy are particularly important. In the 1990s, for example, African-Americans experienced increasing employment, higher wages, and a significant drop in the poverty rate. Home ownership, the major source of wealth for most Americans, increased for African-Americans, as did median African-American household income. EPI argues that “[i]f these trends had continued, African-Americans would have made significant advances in closing economic gaps with whites.”<sup>136</sup> This didn’t happen because of the contraction of the economy after 2000, and due to governmental policies that ignored the economic impact of the economic downturn on vulnerable groups.

The Governor has taken the public position that the proposed cuts in his Executive Budget are painful and regrettable, but the inevitable result of the economic crisis we face and the resulting multi-billion dollar state deficit. However, as the revenue section of this report indicates, **the state has a clear alternative to making severe cuts: raising taxes on high-income individuals through the Fair Share Tax Reform Plan.** President Obama has made the decision in his first proposed budget, released last week, that raising taxes on high income people is far preferable to neglecting America’s most urgent needs. The Governor and the Legislature should take the same course. The stark choices we face were summarized by a large group of religious leaders from throughout New York State in a December 2008 open letter to the Governor:

We are concerned... that steep state cuts will exacerbate the economic downturn and harm vulnerable low- and moderate income New Yorkers. Constrained by a balanced budget imperative, states face only difficult choices in balancing their budgets during recessions. Economic theory and historical experience give a clear and unambiguous answer: it is economically preferable to raise taxes on those with high incomes than to cut state expenditures... Raises taxes and maintaining public ... investments also helps New York and America in meeting its long run needs. America today faces two

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136. Economic Policy Institute, *Reversal of Fortune: Economic gains of 1990s overturned for American Americans from 2000-07* (September 18, 2008), at 1. Although EPI focused in its briefing paper on the economic progress made by African-Americans, it is clear that other non-whites made economic progress during the 1990s too.

major problems – inadequate investments .... and growing inequality. The poor are particularly dependent on government expenditures, and cutbacks would hurt them the most.<sup>137</sup>

The evidence and analysis in this report supports that statement and provides another reason to pass the Fair Share Tax Reform Plan and use the additional revenue to restore a significant portion of the proposed cuts: to prevent cuts that will increase racial and ethnic inequality. The final choices made when a state budget is passed will say a great deal about the priorities our state chooses in tough times, and even more about whether we are willing to make the choices that will lead to economic recovery for all New Yorkers.

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137. This letter is reproduced in *Fair Share Tax Reform: Solving New York's Budget Crisis Through Real Shared Sacrifice*, produced by the Fair Share Tax Reform campaign.