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Appellate Division, First Department Case No. 2019-3610
New York County Clerk's Index No. 153759/17

Court of Appeals
STATE OF NEW YORK

TAX EQUITY NOW NY, LLC,

—against—

Plaintiff-Appellant,

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF FINANCE, STATE OF
NEW YORK, AND NEW YORK OFFICE OF REAL PROPERTY TAX SERVICES,

Defendants-Respondents.

**BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE NEW YORK STATE
CONFERENCE IN SUPPORT OF APPELLANT**

SARA E. MARGOLIS
MOLOLAMKEN LLP
430 Park Avenue
New York, New York 10022
Telephone: (212) 607-8172
Facsimile: (212) 607-8170

*Attorney for Proposed Amicus Curiae
National Association for the Advancement
of Colored People New York State
Conference*

**CORPORATE DISCLOSURE STATEMENT
OF PROPOSED *AMICUS CURIAE* NAACP NEW YORK STATE
CONFERENCE**

Pursuant to Rule 500.1(f) of the Rules of Practice of the Court of Appeals of the State of New York, the proposed *amicus* states as follows:

The NAACP New York State Conference is a domestic not-for-profit organization and is the statewide unit of the NAACP in New York state. The NAACP New York State Conference states it has no parent corporations.

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 Anna M. Santiago, *Trends in Black and Latino Segregation in the Post-Fair Housing Era: Implications for Housing Policy*, 9 La Raza L.J. 131, 138 (1996).....20
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 Gary Orfield, et al., *E Pluribus . . . Separation: Deepening: Deepening Double Segregation for More Students*, Executive Summary 10 (2012), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national/e-pluribus...separation-deepening-double-segregation-for-more-students/orfield_epluribus_revised_omplete_2012.pdf.....25, 26
 Educ. Research Advocacy & Support to Eliminate Racism, *Housing and Neighborhood Preferences of African Americans on Long Island* 7 (2012), <http://www.stony-brook.edu/commcms/surveys/docs/eraseracism.pdf>.....22

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New York Department of Finance, Annualized Sales (http://www1.nyc.gov/site/finance/taxes/property-annualized-sales-update.page)	8, 9
<i>Huge Tax You Don’t Even Know About</i> , Business Insider (June 28, 2013), http://www.business-insider.com/if-you-live-in-new-york-and-you-rent-youre-paying-a-huge-tax-you-dont-even-know-about-2013-6	14
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Jack Goodman, <i>Houses, Apartments, and Property Tax Incidence</i> 15 (Joint Ctr. for Hous. Studies, Harvard Univ., Working Paper No. W05-2, 2005), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w05-2.pdf	14
John R. Logan & Brian J. Stults, <i>The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census</i> (Mar. 24, 2011), http://www.s4.brown.edu/us2010/Data/Report/report2.pdf	20
Kyle Crowder et al., <i>Neighborhood Diversity, Metropolitan Constraints, and Household Migration</i> 3 (June 2012), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3384993/pdf/nihms383264.pdf	24

Margery A. Turner & Karina Fortuny, <i>Residential Segregation and Low-Income Working Families</i> 3 (Urban Institute, Low-Income Working Families Paper No. 10, Feb. 2009).....	24
Marguerite L. Spencer et al., <i>The Benefits of Racial and Economic Integration in Our Education System: Why This Matters for Our Democracy</i> 4 (2009), http://www.kirwaninstitute.osu.edu/reports/2009/02_2009_EducationIntegrationBenefitsReport.pdf	26
Matthew Desmond & Monica Bell, <i>Housing, Poverty, and the Law</i> , 11 Ann. Rev. L. & Soc. Sci. 15, 24 (2015).	19
N.Y.C. Indep. Budget Office, <i>Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City</i> 28 (2006), http://www.ibo.nyc.ny.us/iboreports/-propertytax120506.pdf	8
New York, <i>Housing New York: A Five-Borough, Ten-Year Plan</i> 88 (2014), http://www.nyc.gov/html/	18
New York, <i>Housing New York: A Five-Borough, Ten-Year Plan</i> (2014).....	18
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Paul M. Ong & Jordan Rickles, <i>The Continued Nexus Between School and Residential Segregation</i> , 6 Afr.-Am. L. & Pol'y Rep. 178, 179 (2004).....	25

Pew Research Ctr., <i>Americans Say They Like Diverse Communities; Election, Census Trends Suggest Otherwise</i> (Dec. 2, 2008), http://www.pewsocialtrends.org/2008/12/02/americans-saythey-like-diverse-communities-election-census-trends-suggest-otherwise/	22
Rachel M. Goor, “ <i>Only the Little People Pay Taxes</i> ”: <i>Reforming New York City’s Property Tax Structure to Mitigate Inequality and Increase Efficiency</i> 19 (June 2017).....	7
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Richard W. England, <i>Tax Incidence and Rental Housing: A Survey and Critique of Research</i>	13
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Social Research, <i>New Racial Segregation Measures for Large Metropolitan Areas: Analysis of the 1990-2010 Decennial Censuses</i> , https://www.psc.isr.umich.edu/dis/census/segregation2010.html ;.....	20
Statistical Atlas, <i>Household Income in New York, New York</i> , https://statisticalatlas.com/place/New-York/New-York/Household-Income	17
Taxation & Econ. Policy, <i>The ITEP Guide to Fair State and Local Taxes</i> 28 (2011), http://www.itep.org/pdf/guide.pdf	14, 19

PRELIMINARY STATEMENT

Plaintiff-Appellant Tax Equity Now NY LLC (“TENNY”)’s Complaint properly pleads that New York’s property tax system violates the Fair Housing Act (the “Act” or the “FHA”). The Act is a broad, remedial civil-rights statute that demands a generous construction. Its twin goals of eliminating even unintentional housing discrimination and affirmatively moving the Nation toward a truly integrated society cannot be achieved without recognition of the Act’s expansive scope and the fact-intensive nature of disparate-impact claims under its provisions.

It is clear that New York’s property tax system disproportionately disadvantages African-American residents in particular. Homeowners in districts within New York City that are at least three-fifths African-American, for example, pay effective tax rates that are roughly 20% higher than in districts that are at least three-fifths White. And apartment tenants – disproportionately African-American – bear much of the burden of effective tax rates several times higher than those on condominiums and cooperatives (“condos” and “co-ops”), which are more likely to be owned by White residents and by law should be treated equally. The serious effects of these inequities on housing are adequately alleged in the Complaint and supported by data from, among other sources, the City itself.

The City’s property tax system does not just harm minority residents. It harms all the City’s residents by perpetuating some of the worst residential

segregation in the United States. That unlawful effect creates and deepens inequalities in education, socioeconomic outcomes, and even public health. And it prevents the growth of cross-racial understanding at a time when it is sorely needed in our communities. For all those reasons, this Court should reverse the dismissal by the First Department of TENNY's complaint and find that TENNY has sufficiently pleaded each of its claims against both New York City and New York State.

INTEREST OF AMICUS CURIAE

The NAACP New York State Conference is a non-profit programmatic component of the National Association for the Advancement of Colored People, which has fought for the causes of freedom and equality for over 100 years. As part of its mission to build a society in which all individuals have equal rights, the NAACP has often been at the forefront of ensuring fair housing without regard to race. That advocacy has taken New York branches of the NAACP to the courtroom in some of the most consequential Fair Housing Act cases to date. *See, e.g., Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988), *aff'd*, 488 U.S. 15 (1988); *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181 (2d Cir. 1987).

When it enacted the Fair Housing Act in 1968, Congress declared a goal of eradicating racial discrimination in housing. The evils that Congress targeted five

decades ago are all too present today, and all too apparent in New York City. The City's property tax system undermines the Fair Housing Act's promise by imposing unequal burdens on struggling minority residents, restricting the supply of affordable housing that minorities need the most, and reinforcing stark residential segregation. That is not a political problem. It is a civil rights crisis that the NAACP is committed to fixing.

ARGUMENT

The heaviest burdens of New York's arbitrary property tax system fall disproportionately on African-American residents, hampering their ability to obtain and stay in affordable, quality housing. This broken system further perpetuates some of the worst residential racial segregation in the Nation, with serious consequences for not only African-American residents, but all City residents. The First Department's decision dismissing TENNY's complaint should be reversed by this Court.

I. CONSISTENT WITH OTHER APPELLATE DECISIONS, THE FAIR HOUSING ACT MUST BE INTERPRETED GENEROUSLY TO ACHIEVE ITS GOALS OF ENDING DISCRIMINATION AND BUILDING AN INTEGRATED SOCIETY

Congress enacted the Fair Housing Act "to eradicate discriminatory practices within a sector of our Nation's economy." *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2521 (2015). Decades before the Act's passing, the Supreme Court had declared "[d]e jure residential

segregation” unconstitutional. *Id.* at 2515 (citing *Buchanan v. Warley*, 245 U.S. 60, 80 (1917)). Yet racism, discrimination, and segregation in the housing market persisted. *Id.* In the 1960s, Dr. Martin Luther King, Jr., fought against those and other evils, calling for civil rights for all Americans. “In April 1968, Dr. Martin Luther King, Jr., was assassinated” *Id.* at 2516. One week later, “Congress responded by . . . passing the Fair Housing Act.” *Id.*

The Fair Housing Act “provide[s], within constitutional limitations, for fair housing throughout the United States.” 42 U.S.C. § 3601. The Act bans “the denial of housing opportunities on the basis of ‘race, color, religion, or national origin.’” *Inclusive Cmty.*, 135 S. Ct. at 2516 (quoting Civil Rights Act of 1968, § 804, 82 Stat. 83). Two sections of the Act are at issue here. Section 804(a) of the Fair Housing Act declares it “shall be unlawful” to “otherwise make unavailable, or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C. § 3604(a). Section 804(b) makes it illegal to “discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling.” 42 U.S.C. § 3604(b). Both provisions bar not just intentional discrimination, but also practices that have “a greater impact on [African-American] people than on white people.” *Metro. Hous. Dev. Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1288, 1290 (7th Cir. 1977); see *Inclusive*

Cmtys., 135 S. Ct. at 2516; *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 711 (9th Cir. 2009).

Those disparate-impact clauses (or provisions) prohibit “two kinds of racially discriminatory effects which a facially neutral decision about housing can produce,” *Arlington Heights*, 558 F.2d at 1290: (1) an “‘adverse impact on a particular minority group,’” or (2) “‘harm to the community generally by the perpetuation of segregation,’” *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 619 (2d Cir. 2016) (quoting *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 937 (2d Cir. 1988)); *Suffolk Hous. Servs. v. Town of Brookhaven*, 109 A.D.2d 323, 335 (2d Dep’t 1985). Both the U.S. Supreme Court and the Department of Housing and Urban Development recently reaffirmed those twin goals, *see Inclusive Cmtys.*, 135 S. Ct. at 2522; 24 C.F.R. § 100.500(a), and with good reason. Attention to both is needed to fulfill Congress’s vision of “open, integrated residential housing patterns.” *Huntington Branch, NAACP*, 844 F.2d at 937.

Since the Act’s inception, the U.S. Supreme Court has given it a “generous construction.” *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972); *see also City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995); *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982) (noting Congress’s “broad remedial intent”). Indeed, the Act’s disparate-impact provisions “reach[]

every private and public practice that makes housing more difficult to obtain on prohibited grounds.” *United States v. Hous. Auth.*, 504 F. Supp. 716, 726 (S.D. Ala. 1980); *see Arlington Heights*, 558 F.2d at 1289.

“Whether a particular practice results in a discriminatory effect is a fact-specific inquiry.” Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11,460, 11,468 (Feb. 15, 2013). Appellate courts thus permit FHA claims to proceed if the complaint plausibly supports a discriminatory effect caused by the alleged practice. *See, e.g., Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016); *Swanson v. Citibank, N.A.*, 614 F.3d 400, 405-07 (7th Cir. 2010). In particular, appellate courts allow statistics-driven FHA claims to proceed so that they may be considered on a full record that includes expert testimony. *See Langlois v. Abington Hous. Auth.*, 207 F.3d 43, 50 (1st Cir. 2000) (affirming preliminary finding of disparate effect based on “some evidence of discriminatory effect, which may be enhanced by expert evidence once [plaintiffs] have had a chance to develop it”). This Court should follow suit.

II. NEW YORK’S PROPERTY TAX SYSTEM DISPARATELY IMPACTS AFRICAN AMERICANS IN VIOLATION OF THE ACT, WHICH IS A MATTER OF PUBLIC IMPORTANCE

The Complaint’s allegations show that the City’s property tax system disproportionately affects African-American residents. Data collected by the City

and others reinforce that showing sufficiently to support the claims set forth in the Complaint.

A. The Class One Property Tax System Discriminates Against African-American Homeowners

1. *African-American Homeowners Pay Disproportionately Higher Effective Tax Rates*

The Class One property tax system (which includes one-, two-, and three-family dwellings), ROA108-109, imposes higher tax rates on homes in majority African-American neighborhoods and lower tax rates in majority-White neighborhoods. As TENNY's Complaint alleges, residents "in majority-minority and super-majority (over 60%) minority districts . . . pay *\$376 million more* in taxes . . . than they would if they . . . paid the same effective tax rate as homeowners in majority-white districts" because of the "unequal allocation of the property tax burden" in Class One. ROA103 (emphasis added). Living in a majority-White community saves the average homeowner almost \$1,000 in property taxes every year. *See id.*

That unequal tax burden is caused by the system's pervasive underassessment of homes in majority-White communities. New York caps assessment growth on Class One properties at 6% per year and 20% over five years. N.Y. Real Prop. Tax Law §§ 1802(1)(a), 1805(1); *see Rachel M. Goor, "Only the Little People Pay Taxes": Reforming New York City's Property Tax Structure to*

Mitigate Inequality and Increase Efficiency 19 (June 2017) (unpublished Master's thesis, Massachusetts Institute of Technology). Those assessment caps favor rapidly appreciating properties, whose excess value above the caps is disregarded for tax purposes. N.Y.C. Indep. Budget Office, *Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City* 28, 30 (2006), <http://www.ibo.nyc.ny.us/iboreports/-propertytax120506.pdf>. (hereinafter "IBO Report").

The resulting benefits accrue primarily to neighborhoods "with the most valuable properties, the most affluent households, and the smallest share of minorities" – leaving African-American homeowners, who typically do not own homes in those areas, at a substantial disadvantage. Andrew T. Hayashi, *Property Taxes and Their Limits: Evidence from New York City*, 25 *Stan. L. & Pol'y Rev.* 33, 46 (2014). Overall, over 825,000 African-American residents live in the 15 Community Planning Districts ("CPDs") whose Class One properties are taxed the most – compared to just 325,000 African-American residents in the 15 most-favored CPDs.¹ For Class One homes citywide, the effective tax rate before

¹ Unless otherwise noted, demographic data in this brief comes from NYU Furman Center for Real Estate & Urban Policy, *State of New York City's Housing and Neighborhoods in 2015 Report* (2015) (<http://furmancenter.org/research/sonychan/2015-report>); and effective tax rate calculations are derived from the New York City Department of Finance's online database of property assessments (<http://www1.nyc.gov/site/finance/taxes/property-assessments.page>) and annualized sales (<http://www1.nyc.gov/site/finance/taxes/property-annualized-sales-update.page>).

exemptions in CPDs that are at least three-fifths African-American was 20% higher in fiscal year 2017 than in districts that are at least three-fifths White.² For homes that sold in 2015 – and thus have a more concrete market value – the effective tax rate disparity between supermajority African-American and White neighborhoods rises to 40%.³ No matter how you slice the data, it reveals the same picture: The Class One system taxes African-American homeowners at disparately higher rates than White homeowners.

2. *Discrimination Within Class One Violates the Fair Housing Act*

The disparities within Class One are not just unfortunate – they are illegal. The disparities make housing “unavailable” to African Americans in violation of Section 804(a) of the Act. 42 U.S.C. § 3604(a). Disparate tax rates decrease housing affordability and homeowner savings for new housing, and increase the likelihood of foreclosure. ROA150, 159-160. That disparate impacts work a violation of the Act is well established. Indeed, the State previously argued as much in a Fair Housing Act suit: “[R]acially discriminatory overassessment in (relatively poorer) minority communities,” the State alleged, leads to “higher incidence[s] of illegal occupancies and rooming houses” and “higher rates of foreclosure,” among other negative effects – making housing “unavailable.” ROA654; *see also Saint-Jean v. Emigrant Mortg. Co.*, 50 F. Supp. 3d 300, 320

² *Id.*

³ *Id.*

(E.D.N.Y. 2014) (actions that result in “disproportionate foreclosures” violate the Act).

The property tax system also violates Section 804(b) of the Act by imposing discriminatory “terms, conditions, or privileges” on home sales. 42 U.S.C. §3604(b). Any housing transaction is necessarily conditioned on a transfer of the tax burden. *See* ROA657 (State complaint). Thus, the disparate tax burden necessarily imposes discriminatory “terms” or “conditions” on every sale. Moreover, the property tax system imposes higher tax rates on houses likely to be owned by African Americans, and basic economics dictates that higher taxes beget lower sale prices, and vice-versa. For that reason too, a house’s sale price – reflective of the tax burden – is a discriminatory “term[.]” or “condition[.]” on the sale. *Cf. United States v. Balistreri*, 981 F.2d 916, 929 (7th Cir. 1992); *Clark v. Universal Builders, Inc.*, 501 F.2d 324, 330-31 (7th Cir. 1974).

The Supreme Court has squarely held that “disparate-impact claims are cognizable under the Fair Housing Act.” *Inclusive Cmty.*, 135 S. Ct. at 2525. To plead a disparate-impact claim, a plaintiff may allege “the policy in question imposes a significantly adverse or disproportionate impact on a protected group of individuals.” *Rivera v. Inc. Vill. of Farmingdale*, 571 F. Supp. 2d 359, 369 (E.D.N.Y. 2008); *see also* 24 C.F.R. §100.500(a). The Supreme Court rejected any reading of the statute that would require pleading more. *See Inclusive Cmty.*,

135 S. Ct. at 2525. TENNY's complaint alleges that the Class One system deprives African Americans of housing. *See* ROA150, 159-160; *see also*, pp. 9-11, *supra*. It further alleges that the system's disparately higher tax rates on African Americans make certain housing options unaffordable, increase the likelihood of foreclosures, and reduce their savings for new housing. ROA151, 159-160. Those effects all deprive African Americans of housing, raising an issue of public concern.

B. New York's Class Two Property Tax System Disparately Impacts African Americans in Violation of the Act

1. *Disparities Within Class Two Disparately Harm African-American Residents*

Even if African Americans do not own Class One property, they cannot escape the property tax system's discriminatory effects. The Class Two system includes rental apartments, condos, and co-ops. ROA108. Those residences are taxed at substantially different rates depending on their classification because of the system's peculiar assessment scheme. Ultimately, rental apartments are taxed at much higher rates than condos and co-ops. At the same time, rental apartments are disproportionately rented by African Americans, while condos and co-ops are overwhelmingly owned by White people. The property tax system's higher tax rate on rental properties thus falls disproportionately on African Americans.

The property tax system imposes unique burdens on rental property. “[R]ental property is taxed at roughly *5-6 times* the effective tax rate” of condos and co-ops. ROA136 (emphasis added). One major source of that inequity is the Class Two assessment scheme. The City does not calculate the market rental value of the apartments in condos and co-ops – *i.e.*, the value if they were then converted to rentals. Instead, the City compares condos and co-ops to rental buildings of a similar age, and uses those rental rates to estimate the value of the similarly aged condos and co-ops. ROA133-135. This “income approach almost always results in a lower value than if sale prices were used.” IBO Report, *supra*, at 17; *see also Greentree at Lynbrook Condo. No. 1 v. Bd. of Assessors of the Vill. Of Lynbrook*, 81 N.Y. 2d 1036, 1039 (1993). The underassessments are exaggerated for older units. Since most rentals constructed before 1974 are rent-regulated, their rental rates are often substantially lower than their true market value. ROA133-135. Yet the system assesses old condos and co-ops using those artificially low rates. Another source of inequity is the tax abatement for condos and co-ops, which simply slices off “an equal percentage of unequal tax burdens” and thus further favors those properties over rental apartments. IBO Report, *supra*, at 34-36.

“The combined effect of undervaluation and the abatement is enormous.” Andrew Hayashi, Citizens Budget Comm’n, *Options for Property Tax Reform: Equitable Revenue Raising Reforms for New York City’s Property Tax* 7 (2013).

Some of the City's most expensive buildings are assessed at values below the value of a single apartment within the building. For instance, the property tax system assessed a 68-unit building at \$41 million even though one unit sold for \$70 million. ROA99. The system assessed another 66-unit building at \$41 million despite the sale of one unit for \$70 million. *Id.* Some rental properties are thus assessed and taxed at rates nearly 70 times higher than the most valuable luxury condos and co-ops. ROA99, 136-137. Even the City admits that its system results in condos and co-ops "to be undervalued." ROA250; *see also* ROA299 (New York City Department of Finance's First Deputy Commissioner agreeing that, "in general if you look at the aggregate data, the rentals do have an effective tax rate higher" than other Class Two properties).

That unequal tax system results in renters paying more than their fair share. It "effectively shift[s] the tax burden from undervalued properties to the other properties in the same class" – rental properties. NYU Furman Ctr., *Shifting the Burden: Examining the Undertaxation of Some of the Most Valuable Properties in New York City* 6 (2013), http://furmancenter.org/files/FurmanCenter_Shiftingthe-Burden.pdf (hereinafter "Furman Report"); *see also* ROA136.

Renters shoulder that disparate tax burden through higher rents. Studies have repeatedly shown that renters pay a share of the costs of property taxes through increased rents. *See, e.g.*, Richard W. England, *Tax Incidence and Rental*

Housing: A Survey and Critique of Research, 69 Nat'l Tax J. 435, 448-51 (2016) (surveying recent economic studies); NYU Furman Ctr., *State of New York City's Housing and Neighborhoods 2011*, at 4 (2011), http://furmancenter.org/files/sotc/SOC_2011.pdf; Jack Goodman, *Houses, Apartments, and Property Tax Incidence* 15 (Joint Ctr. for Hous. Studies, Harvard Univ., Working Paper No. W05-2, 2005), <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w05-2.pdf> (rental property owners recoup property taxes through rents). Indeed, the City's Independent Budget Office has recognized as much. *See* ROA210.

Property taxes are especially likely to be passed on to tenants in New York. Landlords are more likely to raise rents to recoup taxes when “residential rental property is in short supply,” as is common in New York. Inst. on Taxation & Econ. Policy, *The ITEP Guide to Fair State and Local Taxes* 28 (2011), <http://www.itep.org/pdf/guide.pdf>. And for landlords that have the option of converting units to condos or co-ops, “[r]ents must rise so that landlords are willing to keep their buildings as rentals despite the unfavorable tax treatment.” Josh Barro, *If You Live in New York and You Rent, You're Paying a Huge Tax You Don't Even Know About*, Business Insider (June 28, 2013), <http://www.businessinsider.com/if-you-live-in-new-york-and-you-rent-youre-paying-a-huge-tax-you-dont-even-know-about-2013-6>.

The resulting burdens disproportionately affect African-American residents, who are “much more likely” to live in apartment buildings than in condos and co-ops. See Furman Report, *supra*, at 7; see also ROA100, 183. While 62% of renters are racial minorities, only a little more than 38% of condominium and 32% of cooperative owners are racial minorities. Furman Report, *supra*, at 7; ROA183. In 2011, White residents made up 41.3% of households citywide, but about 60% of condo and co-op households. Furman Report, *supra*, at 7; ROA153. By contrast, African-American households totaled 22.3% of households citywide, but just 14.6% of pre-1974 co-ops and 9.3% of other condos and co-ops. Furman Report, *supra*, at 7.

The City’s valuation of residential apartment buildings also “generates significant variation across neighborhoods,” further disadvantaging many African-American residents. Hayashi, *Options for Property Tax Reform*, *supra*, at 7. In Brooklyn, for instance, the effective tax rate for all residential apartment buildings that sold in 2015 in the supermajority-White 6th CPD was 0.44%, while the rate for the same category in the supermajority-African-American 17th CPD was 1.44% – over *three times* as much.⁴ And overall, the average effective tax rate for

⁴ See p.9 n.1, *supra*.

residential apartment buildings that sold in 2015 was 11% higher in supermajority African-American neighborhoods than in supermajority White neighborhoods.⁵

The combination of these inequities falls hard on African-American Class Two residents. They make up 40.9% of the population in the 15 CPDs with the highest Class Two effective tax rates, but only 18.8% of the population in the 15 CPDs with the lowest rates.⁶ The tax system's discrimination between Class Two properties thus translates into discrimination on the basis of race.

2. *The Class Two Property Tax System Violates the Fair Housing Act*

Those discriminatory tax burdens mean that New York effectively charges African-American residents more as a condition of living in similar properties – which is racial discrimination “in the terms, conditions, or privileges of sale or rental of a dwelling” in violation of Section 804(b). The tax system also makes housing unavailable on the basis of race in violation of Section 804(a) by making existing housing options disproportionately difficult for African-American residents to afford, and by constraining the development of new affordable housing options.

A rental apartment's “terms, conditions, or privileges” include the rental rate. *Balistreri*, 981 F.2d at 929 (“offering black testers apartments at higher

⁵ *Id.*

⁶ *Id.*

rental rates than those offered to white testers discriminates in the terms of rentals and violates the Act”); *see also* City Br. 33-34. So the disparately higher rents imposed on African Americans – caused by disparately higher taxes – are discriminatory “terms” or “conditions” that violate the act. *See Balistrieri*, 981 F.2d at 929.

The higher tax burdens on apartments also makes housing “unavailable.” 42 U.S.C. §3604(a). The system’s higher rents for apartment tenants exacerbates an affordable-housing crisis that disproportionately affects African-American residents. Hayashi, *Options for Property Tax Reform, supra*, at 9 (explaining that the “highly favorable treatment of owner-occupied properties . . . contributes to the limited affordability of rental housing”). That crisis is getting worse: “In 2014, there were roughly 234,000 (27%) fewer rent-stabilized or rent-controlled units affordable to low-income households than there were in 2002, and 97,000 (23%) fewer unregulated units affordable to low-income households.” NYU Furman Ctr., *The Challenge of Rising Rents: Exploring Whether a New Tax Benefit Could Help Keep Unsubsidized Rental Units Affordable* 1 (June 2015), http://furmancenter.org/files/NYUFurmanCenter_ChallengeofRisingRents_10JUN2015.pdf.

Higher tax rates also discourage investment in housing that would disproportionately benefit African Americans. *See* Statistical Atlas, *Household Income in New York, New York*, <https://statisticalatlas.com/place/New-York/New-York/Household-Income> (African-American New Yorkers had median household

incomes over \$31,000 lower than non-Hispanic Whites). As the City has admitted, the “property tax system discourages the production of rental units and encourages conversion of units to cooperatives or condominiums at a time when homeownership is out of reach of most families due to high costs and limited access to credit.” ROA158-159 (quoting City of New York, *Housing New York: A Five-Borough, Ten-Year Plan*, at 26 (2014)). The disparate burden imposed on renters also increases foreclosure and eviction rates, harming minority tenants who may be forced to vacate their apartments. *See Hunt*, 814 F.3d at 1223 (the Act “protects renters . . . from eviction”). And property taxes, a significant expense for developers, are “a powerful incentive tool to induce investment in” housing stock. City of New York, *Housing New York: A Five-Borough, Ten-Year Plan* 88 (2014), http://www.nyc.gov/html/housing/assets/downloads/pdf/housing_plan.pdf (hereinafter “City Plan”). The tax system’s “strong property tax preference” for condos and co-ops thus favors development of those properties over more affordable housing options. Hayashi, *Options for Property Tax Reform*, *supra*, at 9.

Higher rents also make it more likely that African-American tenants will face eviction for failure to pay rent. *See* Shaila Dewan, *Evictions Soar in Hot Market; Renters Suffer*, N.Y. Times (Aug. 28, 2014), <https://www.nytimes.com/2014/08/29/us/evictions-soar-in-hot-market-renters-suffer.html> (detailing “a surge in eviction cases” caused by rising rents). Renters who are evicted when their

landlords fail to pay property taxes or fall behind on mortgages often have “difficulty finding adequate and affordable new housing.” David Lurie, Note, *Rental Home Sweet Home: The Disparate Impact Solution for Renters Evicted from Residential Foreclosures*, 111 Nw. U. L. Rev. 239, 240-41 (2016). Higher rents caused by overtaxation also make it more likely that African-American tenants will face eviction for failure to pay rent. See Shaila Dewan, *Evictions Soar in Hot Market; Renters Suffer*, N.Y. Times (Aug. 28, 2014), <https://www.nytimes.com/2014/08/29/us/evictions-soar-in-hot-market-renters-suffer.html> (detailing “a surge in eviction cases” caused by rising rents). That is not an uncommon occurrence: In 2012, New York City had almost 80 nonpayment-related evictions per day. Matthew Desmond & Monica Bell, *Housing, Poverty, and the Law*, 11 Ann. Rev. L. & Soc. Sci. 15, 24 (2015).

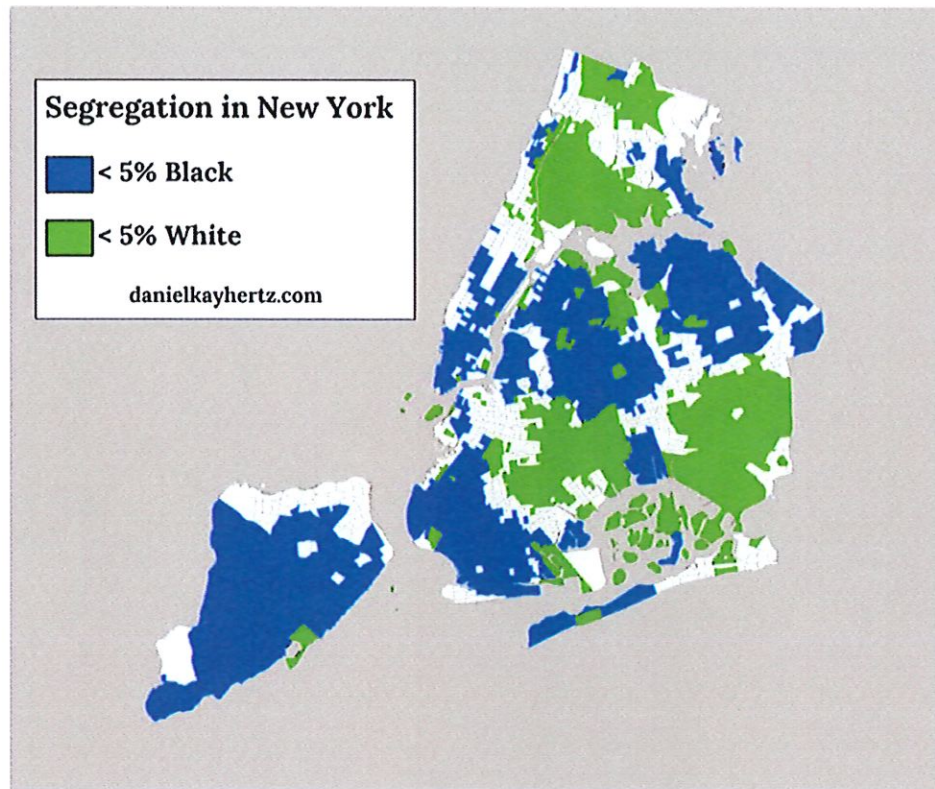
TENNY’s complaint details the link between the renter’s injury and the property tax system, and substantiates that link. See ROA152-153; see also pp. 16-17, *supra* (collecting studies establishing the same). A landlord must recoup costs like taxes through higher rents. That is particularly true in New York, where the supply of rental properties is scarce. Inst. on Taxation & Econ. Policy, *The ITEP Guide to Fair State and Local Taxes* 28 (2011), <http://www.itep.org/pdf/guide.pdf>. TENNY’s complaint thus relies on a well-established causal connection between higher tax rates and higher rents and raises an issue of public concern.

III. THE NEW YORK PROPERTY TAX SYSTEM PERPETUATES SEGREGATION, WHICH IS A MATTER OF PUBLIC CONCERN

A. New York Is One of the Most Segregated Cities in the Nation

New York City is a deeply segregated city – one of the most segregated in the nation. See William H. Frey, Univ. of Mich. Population Studies Ctr., Inst. for Social Research, *New Racial Segregation Measures for Large Metropolitan Areas: Analysis of the 1990-2010 Decennial Censuses*, <https://www.psc.isr.umich.edu/dis/census/segregation2010.html>; John R. Logan & Brian J. Stults, *The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census* (Mar. 24, 2011), <http://www.s4.brown.edu/us2010/Data/Report/report2.pdf>. Segregation has been a fact of life in New York for far too long. See Anna M. Santiago, *Trends in Black and Latino Segregation in the Post-Fair Housing Era: Implications for Housing Policy*, 9 *La Raza L.J.* 131, 138 (1996) (hereinafter “Santiago”) (1990 Census data placed New York’s African-American and Latino communities as the sixth- and fourth-most segregated in America, respectively).

The situation is even more extreme at the neighborhood level. As the City recently acknowledged, “nearly half of the city’s neighborhoods remain dominated by a single racial or ethnic group.” City Plan, *supra*, at 26. In many neighborhoods, either African-American or White residents make up less than five percent of the population.



Daniel K. Hertz, *How Segregated Is New York City?* *City Notes* (Apr. 14, 2014), <https://danielkayhertz.com/2014/04/14/how-segregated-is-new-york-city/>.

B. The Property Tax System Perpetuates Segregation

Continued hyper-segregation is not inevitable – but the City’s property system hampers integration. The ripple effects of discriminatory property taxation create obstacles for minorities who would otherwise move and thereby decrease segregation, as well as disincentivizes non-minorities to move into majority-minority neighborhoods. These effects, too, violate the Fair Housing Act. *See Inclusive Cmty.*, 135 S. Ct. at 2522; *Huntington Branch*, 844 F.2d at 937.

Studies show that “Blacks and Latinos prefer to live in integrated neighborhoods.” Santiago, *supra*, at 140. In a 2011 survey, 69% of African-American respondents in nearby Long Island said that the mix of African-American and White residents in their ideal neighborhood would be 50/50. Educ. Research Advocacy & Support to Eliminate Racism, *Housing and Neighborhood Preferences of African Americans on Long Island* 7 (2012), <http://www.stonybrook.edu/commcms/surveys/docs/eraseracism.pdf>. And in 2008, 83% of African-American survey respondents and 69% of Hispanic survey respondents said they would rather live in a community with a mix of different races than a racially homogenous one. Pew Research Ctr., *Americans Say They Like Diverse Communities; Election, Census Trends Suggest Otherwise* (Dec. 2, 2008), <http://www.pewsocialtrends.org/2008/12/02/americans-saythey-like-diverse-communities-election-census-trends-suggest-otherwise/>.

But higher tax rates hamper minority mobility and constrain the supply of affordable housing. Studies have found reduced segregation where minorities have higher household incomes and access to increased housing supply. Santiago, *supra*, at 145. Yet New York’s system deprives minorities of disposable income and decreases the stock of affordable housing in neighborhoods with few minority residents. *See* ROA156 (explaining that affordable rental housing is concentrated in poor, majority-minority neighborhoods). These constraints add to the effects of

other forms of housing discrimination that “raise the costs of [the] housing search for minorities and restrict their housing options.” U.S. Dep’t of Hous. & Urban Dev., *Housing Discrimination Against Racial and Ethnic Minorities 2012*, xi (June 2013).

Higher tax burdens also discourage investment in minority communities and deter integration. Like African-American and Hispanic survey respondents, White respondents prefer to live in communities with a mix of different races. Pew Research Ctr., *supra*. But as a matter of basic economics, people are disinclined to pay more money for the same goods and services. *See* ROA159 (citing studies for the proposition that people consider tax burdens in making housing decisions). The over-taxation of properties in majority-minority neighborhoods thus financially discourages non-minorities from integrating into those communities. New York’s property tax system thus perpetuates segregation doubly. It not only prevents African Americans from integrating into White communities, but also economically penalizes White people from integrating into minority communities.

New York’s policies perpetuate segregation for no good reason. The tax system is a far cry from a set of carefully “order[ed] . . . priorities.” *Inclusive Cmty.*, 135 S.Ct. at 2522. To the contrary, there appears to be widespread agreement that New York’s property tax system is “unfair,” ROA104 (Greg David, City Council speaker), and “broken,” ROA105 (Lois Weiss, Chairwoman of the

New York City Council’s Housing Committee). The system has been called “a crazy quilt constructed with little obvious rationale.” ROA103. Yet there is little will for reform. Mayor de Blasio admitted that it is “obviously the most controversial thing you can imagine” to “shine a light on [the property tax system] and talk about how to restructure it and to be more fair.” ROA105.⁷ Those institutional inequities further demonstrate the importance of TENNY’s Complaint.

C. The Residential Segregation Perpetuated by the Tax System Harms Minorities and Society as a Whole

While the property tax system concentrates its burdens on minority residents, the City’s pervasive segregation harms every New Yorker. “The destructive social and economic consequences of racial residential segregation – for African Americans in particular – have been well-documented.” Kyle Crowder et al., *Neighborhood Diversity, Metropolitan Constraints, and Household Migration* 3 (June 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3384993/pdf/nihms383264.pdf>. Segregation creates and reinforces disparities in, among other areas, employment, education, income, wealth, and even public health. Margery A. Turner & Karina Fortuny, *Residential Segregation and Low-Income Working*

⁷ As New York’s Independent Budget Office observed, reform may be impossible “[w]ithout another court ruling or some other external prod.” IBO report, *supra*, at 12. Only after this litigation commenced did the City institute a committee to study property tax reform. See NYC Advisory Commission on Property Tax Reform, last accessed, Sept. 20, 2019 <https://www1.nyc.gov/site/propertytax-reform/about/about-the-property-tax-reform-commission.page>.

Families 3 (Urban Institute, Low-Income Working Families Paper No. 10, Feb. 2009); see generally Hope Landrine & Irma Corral, *Separate and Unequal: Residential Segregation and Black Health Disparities*, 19 *Ethnicity & Disease* 179 (2009).

Segregation exacerbates educational inequities and widens the achievement gap between minority and White students. The educational inequalities that residential segregation fosters are particularly striking – and particularly relevant to the Fair Housing Act. A sponsor of the Act noted in 1968 that “the soundest way to attack segregated education is to attack the segregated neighborhood.” 114 Cong. Rec. 2276 (1968). But almost five decades later, school segregation is still “tethered to residential segregation.” Paul M. Ong & Jordan Rickles, *The Continued Nexus Between School and Residential Segregation*, 6 *Afr.-Am. L. & Pol’y Rep.* 178, 179 (2004).

Nowhere is that truer than in New York City, which has some of “[t]he most extreme levels of” school segregation. Gary Orfield, et al., *E Pluribus . . . Separation: Deepening Double Segregation for More Students*, *Executive Summary* 10 (2012), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national/e-pluribus...separation-deepening-double-segregation-for-more-students/orfield_epluribus_revised_omplete_2012.pdf. Ninety-one percent of African-American students in the area

attend majority-minority schools. Almost 70% attend schools that are at least 90% minority, and one-third attend “apartheid schools” with 1% or less White enrollment. *Id.* at 19, 58. Now, as in 1968, these “high levels of racial isolation in schools” reflect “the racial isolation in our neighborhoods.” Marguerite L. Spencer et al., *The Benefits of Racial and Economic Integration in Our Education System: Why This Matters for Our Democracy* 4 (2009), http://www.kirwaninstitute.osu.edu/reports/2009/02_2009_EducationIntegrationBenefitsReport.pdf.

That segregation widens the achievement gap between African-American and White students, as courts have long warned. *See, e.g., Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954) (“Segregation of white and colored children in public schools has a detrimental effect upon the colored children.”). “The isolation of impoverished students of color contributes to an achievement gap” – which, “[g]iven the inequitable distribution of resources” among schools, “can more aptly be understood as an opportunity gap.” Spencer et al., *supra*, at 5. Segregation is associated with decreased high school and college graduation rates for African-American students. NYU Furman Ctr., *Black and Latino Segregation and Socioeconomic Outcomes* 1-2 (Sept. 2015); Spencer et al., *supra*, at 11. Conversely, studies have shown that school desegregation “significantly increased both educational and occupational attainments, college quality and adult earnings, reduced the probability of incarceration, and improved adult health status.” Rucker

C. Johnson, *Long-Run Impacts of School Desegregation & School Quality on Adult Attainments 2* (Nat'l Bureau of Econ. Research, Working Paper No. 16664, 2011); see Spencer et al., *supra*, at 10, 13-14.

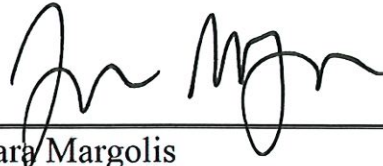
Moreover, as the U.S. Supreme Court has recognized, integrated schools serve to “promote[] ‘cross-racial understanding’” and “break down racial stereotypes,” benefiting society as a whole. *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). Racial integration “promotes cross-racial friendships, increases comfort levels, and positively impacts attitudes students from one racial group have toward students of other racial groups,” all benefits this Nation sorely needs. Spencer et al., *supra*, at 14 (footnotes omitted). Those are precisely the harms the Fair Housing Act was drafted to address. See *Inclusive Cmty. Project, Inc.*, 135 S. Ct. at 2516.

CONCLUSION

This Court should reverse the dismissal by the First Department of TENNY’s complaint and find that TENNY has sufficiently pleaded each of its claims against both New York City and New York State.

Dated: November 27, 2023
New York, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sara Margolis', written over a horizontal line.

Sara Margolis
MoloLamken LLP
430 Park Avenue
New York, NY 10022
Tel.: (212) 607-8172
smargolis@mololamken.com

*Attorney for Proposed Amicus
Curiae NAACP New York State
Conference*

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COMPLIANCE**

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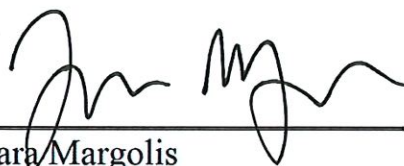
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Dated: November 27, 2023
New York, New York

Respectfully submitted,



Sara Margolis
MoloLamken LLP
430 Park Avenue
New York, NY 10022
Tel.: (212) 607-8172
smargolis@mololamken.com

*Attorney for Proposed Amicus
Curiae NAACP New York State
Conference*