To Be Argued By:
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Court of Appeals

STATE OF NEW YORK

TAX EQUITY NOW NY LLC,

Plaintiff-Appellant,

—against—

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.

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PRELIMINARY STATEMENT

Defendants do not dispute any of the fundamental problems with the City's property-tax system. They do not deny that properties in the same class, which are required to be assessed at a *uniform* percentage of value, instead are commonly assessed at wildly different amounts. They do not deny that the City's property-tax system disproportionately burdens minority residents. And they do not deny that properties' tax bills often bear *no* relationship to their respective market values. TENNY's 300-paragraph complaint spelled out these problems in detail. Those allegations—which must be taken as true at this early stage of the case—amply alleged violations of RPTL § 305(2), Article XVI, § 2 of the State Constitution, the Fair Housing Act ("FHA"), 42 U.S.C. § 3601 *et seq.*, and the Equal Protection and Due Process Clauses.

In response, the City protests that its unequal assessment of property within the same class is *required* by other state laws. Defendants argue that the FHA imposes a uniquely heightened pleading standard TENNY has not met. And, ultimately, the City insists that even if its inequitable property-tax system violates both state and federal law there is nothing the courts can do about it. Defendants are wrong at every step.

1. Section 305(2) requires the City to assess properties within each residential property class at "a uniform percentage of market value." Because there is no

dispute that the City fails to do so, the City is left to blame other state laws. The City insists that the Legislature expected RPTL § 1805's assessment caps to create disparities in properties' assessments, such that—despite its plain language—§ 305(2) should be read *not* to require uniform assessments. But this Court already squarely rejected the City's claim that the caps "hamstring [the City] from curing inequities within [a] class," noting that the City for years lowered the percentage of market value at which it assessed residential properties to bring assessed values in line with market values. *Matter of O'Shea v. Board of Assessors of Nassau County*, 8 N.Y.3d 249, 259 (2007).

The City's further reliance on RPTL § 581 to shield its systemic underassessment of the City's most valuable condos and co-ops is equally unavailing. True, § 581 requires the City to assess condos and co-ops as if they were rental apartments. But equally true, many of the City's condos and co-ops would not be rent-regulated if rented. Accordingly, as Supreme Court recognized (at R20), § 581 does *not* require the City to arbitrarily assess countless eight-figure condos and co-ops as if they were rent-regulated apartments—a practice that dramatically shifts the tax burden of wealthy condo and co-op owners to residents and owners of rental properties who can ill afford it.

Because §§ 1805 and 581 do not prevent the City from complying with § 305(2)'s express mandate to uniformly assess property, the City's failure to do so violates the law.

2. This Court likewise should reject Defendants' attempt to enfeeble the FHA. Defendants do not dispute that the City's property-tax system disparately harms minorities—by assessing and taxing properties in majority-minority neighborhoods at substantially higher rates and by increasing the cost and reducing the supply of rental property in which minority City residents disproportionately live. Defendants instead argue that the FHA does not provide a remedy. Courts, however—as well as the Federal *and State* Governments—have repeatedly recognized that the imposition of such disparate financial burdens on minority residents violates the FHA. While Defendants bizarrely contend that TENNY has failed to allege a causal connection between Defendants' policies and those results, Defendants themselves concede the connection: They repeatedly acknowledge that the City's administration of the RPTL causes the disparities of which TENNY complains and admit that the City's property-tax system drives up the cost of housing and discourages the production of rental housing. City Br. 3, 6, 30; State Br. 28; R158-59.

3. Finally, the City insists that even if its actions do violate state or federal law, the problem is a political one and the judiciary has no authority to do anything

about it. But when state and federal law is being violated, and New York's residents are being harmed, the courts have not only the authority but the obligation to act. TENNY has adequately alleged that the City's admitted and well-documented unequal property-tax treatment of its residents violates the law and harms TENNY's members and millions of New Yorkers. That harm will persist indefinitely unless this Court acts. The First Department's decision should be reversed.

ARGUMENT

I. TENNY ADEQUATELY PLEADED RPTL § 305(2) CLAIMS

RPTL § 305(2) requires the City to assess all real property in the same class "at a uniform percentage of value." Yet as TENNY has alleged, and Defendants do not seriously dispute, the City does *not* assess properties in Classes 1 and 2 uniformly. *See, e.g.*, Opening Br. 28-32; R125. Even the City's Independent Budget Office ("IBO"), on whose analysis the City relies (at 23), has acknowledged that the City does not assess properties uniformly.[1] The City's efforts to defend its unlawful policies are meritless.

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[1] *See* N.Y.C. Indep. Budget Office, *Considering Property Tax Reform: Will a Lower Target Assessment Ratio Ease Disparate Tax Burdens Among Owners of One- to Three-Family Homes?* 3 (Dec. 2018), https://ibo.nyc.ny.us/iboreports/considering-property-tax-reform-will-a-lower-target-assessment-ratio-ease-disparate-tax-burdens-among-owners-of-one-%20to-three-family-homes.pdf ("*Considering Reform*") (data showing that Class 1 properties have assessment ratios ranging from below 2% to above 5%).

A. The City's Interpretation Of RPTL § 305(2) Is Wrong

The City's response mischaracterizes both TENNY's claims and the meaning of § 305(2).

1. The City first engages in misdirection, arguing (at 19) that TENNY's § 305(2) claims are premised on disparities in properties' *effective tax rates* rather than assessment ratios. But that is simply false, as even a quick glance at TENNY's complaint (at R123-49) and opening brief (at 28-32) reveal. TENNY fully appreciates that § 305(2) requires only that *assessments*—the *starting point* for tax bills—be at a "uniform percentage of value."

The City likewise errs in suggesting (at 17) that it cannot comply both with state-law exemptions and abatements and with a straightforward application of § 305(2). One has nothing to do with the other. Exemptions reduce the amount of assessed value that is subject to tax (or taxable value); abatements reduce the tax bill directly. *See, e.g.*, N.Y.C. Dept. of Fin., *NYC Residential Property Taxes: Class One* 3 (2023), https://www1.nyc.gov/assets/finance/downloads/pdf/brochures/class_1_guide.pdf ("*Class 1 Guide*"). These provisions impact a property's tax bill without affecting its assessed value and thus play no part in the uniformity analysis. *See* RPTL § 502(3), (5); Opening Br. 24-25; R116.

2. The City next tries to reframe what § 305(2) requires, arguing (at 18) that it complies with § 305(2) by employing "a consistent assessment ratio within each

class—6% for Class One properties and 45% for Class Two." But the ratios to which it points are *target* assessment ratios. The statute and precedent do not authorize or even mention these targets; rather, they require properties to "*be assessed*"—*i.e.*, *actually* assessed—"at a uniform percentage of value." RPTL § 305(2) (emphasis added); *see Matter of Scarsdale Comm. for Fair Assessments v. Albanese*, 202 A.D.3d 966, 969 (2d Dept. 2022); Opening Br. 24-27. The IBO thus consistently (and correctly) distinguishes between the actual assessment ratios that § 305(2) requires to be uniform and the City's aspirational targets. *See, e.g.*, N.Y.C. Indep. Budget Office, *Stabilizing Revenue Collection During the Downturn: How Assessment Phase Ins and Caps Affect the City's Property Tax* 2 (Feb. 2011), https://www.ibo.nyc.ny.us/iboreports/taxstability2102011.pdf. And there is no dispute that, regardless of the City's targets, *actual* assessment ratios vary widely within Classes 1 and 2. *See* Opening Br. 28-32.

3. The City next seeks to excuse its noncompliance with § 305(2)'s uniform assessment requirement by insisting that two other statutory provisions—RPTL §§ 1805 and 581—nullify it. Not so.

a. This Court held in *O'Shea* that the caps in § 1805 do not prevent municipalities from assessing properties in a class at a uniform percentage of market value. *See Matter of O'Shea v. Board of Assessors of Nassau County*, 8 N.Y.3d 249, 259 (2007). Section 1805 was part of a package of reforms aimed "at protecting

residential taxpayers from tax increases caused by tax shifts from businesses to homeowners as a result of revaluation, *not tax increases driven by market forces*." *Id.* (emphasis added). So, the Court held, § 1805 does not "hamstring a special assessment unit from curing inequities within [a] class" by lowering the target assessment ratio to achieve uniformity. *Id.* On the contrary, the "settled understanding" of § 1805 is that target assessment ratios may be (and frequently have been) lowered to promote intraclass uniformity. *Id.*[2]

To be sure, as the City observes (at 22), *O'Shea* did not hold that § 305(2) required Nassau County to lower its target assessment ratio. In *O'Shea*, Nassau County was acting to comply with a settlement agreement that required it to "assess[] all ... residential property ... at a uniform percentage of value." 8 N.Y.3d at 257. Section 305(2) requires exactly the same of the City. *O'Shea* held that § 1805 did not prevent the county from lowering its assessment ratio to discharge its legal duty to "bring assessed values in line with market values." *Id.* at 261. Section 1805

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[2] The State observes (at 36) that the "distinct function" of § 1805 is "to limit year-to-year assessment increases on individual residential properties due to nonphysical factors, such as market conditions." But lowering target assessment ratios to promote intraclass uniformity *does* keep year-to-year assessment increases below the caps. *See* Opening Br. 15-16, 35. If the State is suggesting that § 1805 was meant to limit year-to-year *tax* increases due to "market conditions," its position conflicts with *O'Shea*, 8 N.Y.3d at 259.

logically cannot prevent the City from complying with § 305(2)'s equivalent statutory command.

The City suggests (at 23-24) that reducing target assessment ratios would "do nothing to reduce intra-class disparities." That is wrong, and distorts the IBO testimony on which the City relies. That testimony reaffirms what TENNY said in its opening brief (at 28-37): The City "control[s] the determination of the percentage of a property's market value that is subject to the property tax," there are widespread "differences in assessment ratio" from neighborhood to neighborhood, and reducing the targets would "narrow" those disparities. *Considering Reform* at 1, 3-5. Indeed, the IBO found that reducing the Class 1 target assessment ratio would decrease the property taxes for 90% of Class 1 properties in Staten Island and 80% of Class 1 properties in the Bronx. *Id.* at 6.

This testimony does observe that the "beneficial effect" of a one-time reduction of target assessment ratios could "diminish[] over time." *Id.* at 2. But it does not follow that creating uniformity today is "futile." City Br. 24. The City can lower assessment ratios as often as necessary, so it is irrelevant that the City might have to adjust its target assessment ratios again in the future to preserve uniformity. Indeed, the City did that for decades. *O'Shea*, 8 N.Y.3d at 257; R115-16.

b. The City's arguments with respect to RPTL § 581 are similarly unavailing. All § 581 requires is that the City assess a condo or co-op at a value "not exceeding

the assessment which would be placed upon such parcel" if "the parcel" were rented. RPTL § 581(1)(a); *see Matter of Greentree At Lynbrook Condominium No. 1 v. Board of Assessors of Vil. of Lynbrook*, 81 N.Y.2d 1036, 1039 (1993) (condo and co-op buildings should "be assessed as if they were conventional apartment houses" (citation omitted)). Nothing in § 581 authorizes or mandates the City's practice of valuing pre-1974 condos and co-ops as if they were rent-regulated apartments even when those properties, if rented, would *not* be subject to rent regulation. *See* Opening Br. 30-32; R133-35. The State's brief (at 29) confirms that this practice is a function of the City's own policies rather than § 581 itself.

Greentree, on which the City relies (at 36-37), provides it no support. There, this Court held that, when a condo or co-op building would be subject to rent regulation if rented, it should be assessed "as if [it were] rent stabilized." *Greentree*, 81 N.Y.2d at 1039. That condition was met for the buildings at issue in *Greentree* because "*[a]ll* rental apartment buildings in the Village of Lynbrook with at least six units [were] subject to rent regulation." *Id.* (emphasis added). But that is not true in the City. As TENNY alleged, many condos and co-ops, including many built before 1974, "do not and could not qualify for rent stabilization and are, in fact, sold (and rented) at much higher market values." R133. And the City concedes the same, acknowledging (at 35) that not all buildings of similar age or location are rent-regulated. The City nonetheless systematically assesses multi-million-dollar condos

and co-ops as if they were rent-regulated even though they would not remotely qualify for rent regulation if rented. As Supreme Court found, that practice finds no support in § 581 or *Greentree*, and exacerbates disparities within Class 2 in violation of § 305(2). *See* R20; *see also* Opening Br. 28-30.

B. Article XVI, § 2 Supports TENNY's Reading Of RPTL § 305(2)

As TENNY has explained (at 38-40), Article XVI, § 2 of the State Constitution supports reading § 305(2) to require actual uniformity of assessments. Article XVI, § 2 requires the Legislature to "provide for the supervision, review, and *equalization of assessments* for purposes of taxation." N.Y. Const. art. XVI, § 2 (emphasis added). Defendants' attempts to drain this constitutional provision of all meaning fail.

First, Defendants are wrong that Article XVI, § 2 requires only that the Legislature provide some "process" for reviewing assessments. State Br. 36; *see* City Br. 13-16. This Court has recognized that the Constitution requires more—"*mandat[ing]* that assessments within the various assessing units *must be equalized* for taxation purposes." *Foss v. City of Rochester*, 65 N.Y.2d 247, 259 (1985) (emphases added). After all, the Constitution ultimately requires the "*equalization* of assessments" in addition to both "supervision" and "review." N.Y. Const. art. XVI, § 2 (emphasis added).

The City asserts that Article XVI, § 2 allows the Legislature to do "as [it] may see fit," City Br. 14-15 (citation omitted), but it misreads statements by drafters at the 1938 Constitutional Convention. Most recognize that the Legislature has discretion in how to structure the *review process*, which TENNY does not deny. *Id.* at 15. Others recognize that the Legislature will supervise assessments "in the first instance," very much implying that courts play a role in ensuring that the Legislature is actually providing for the equalization of assessments. *Id.* (emphasis and citation omitted). And still others indicate that the drafters *did* "make it *mandatory* for the Legislature to provide for ... equalization of assessment." *Id.* (emphasis added) (citation omitted). Indeed, that is how this Court has long understood Article XVI, § 2. *See Foss*, 65 N.Y.2d at 259. Yet there can be no doubt that, as TENNY alleged, this mandate is far from satisfied.

Second, even on Defendants' cramped reading of Article XVI, § 2, the Legislature must at least provide a process to facilitate the equalization of assessments. Section 305(2) effectuates that "process" because it requires that property be assessed at a uniform percentage of its actual value. *See Matter of Krugman v. Board of Assessors of Vil. of Atl. Beach*, 141 A.D.2d 175, 183 (2d Dept. 1988); Opening Br. 38-40.

Third, Defendants' construction of §§ 305(2) and 1805(1) raises constitutional difficulties, even under their own reading of Article XVI, § 2. If the

Legislature used § 1805(1) to override § 305(2) and permit dramatic disparities, then those statutes would be incompatible with the Legislature's obligation to "provide for the ... equalization of assessments." As *O'Shea* made clear, there is no reason to adopt that constitutionally problematic interpretation of those statutes. *See, e.g.*, *Matter of Lorie C. v. St. Lawrence County Dept. of Social Servs.*, 49 N.Y.2d 161, 171 (1980) ("[A] statute should be construed so as to avoid doubts concerning its constitutionality.").

II. TENNY ADEQUATELY PLEADED FHA CLAIMS

TENNY also amply alleged FHA claims under 42 U.S.C. § 3604(a) and (b) by pleading in detail how the City's property-tax system discriminates against minority residents of the City, causing them to pay hundreds of millions of dollars more than their fair share of the property-tax burden. *See* Opening Br. 40-54. Defendants' attempt to defeat TENNY's FHA claims on the pleadings lack merit.

A. TENNY Adequately Alleged That Defendants' Policies Make Housing Unavailable Because Of Race

Defendants argue that TENNY has failed to adequately allege that their policies have the effect of "mak[ing] unavailable ... a dwelling ... because of race." 42 U.S.C. § 3604(a). That argument fails.

To begin with, Defendants grossly overstate TENNY's burden at this stage. They assert that, after the U.S. Supreme Court's decision in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519

(2015), TENNY must meet a heightened "robust causality requirement" at the pleading stage and prove how property taxes deprive minority residents of housing. City Br. 45, 47-48; *see* State Br. 39-40. But a plaintiff need not *prove* anything at the pleading stage. *See, e.g.*, *EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19 (2005). Defendants fail to identify a single case applying a heightened pleading standard to FHA claims, and the courts that have squarely addressed the issue have held that "[*Inclusive Communities*] did not alter the plausibility standard for pleading." *County of Cook v. HSBC N. Am. Holdings Inc.*, 314 F. Supp. 3d 950, 967 (N.D. Ill. 2018) (alteration in original) (quoting *Winfield v. City of New York*, No. 15CV5236, 2016 WL 6208564, at *5-6 (S.D.N.Y. Oct. 24, 2016)).[3] So TENNY need only "plead allegations that plausibly give rise to an inference that the challenged policy causes a disparate impact." *Id.* (citation omitted).

In any event, TENNY has amply met its burden to plead causation, robust or not, by alleging (1) that the City's property assessment and taxation policies lead to higher property taxes for minority residents; and (2) that those higher taxes increase

[3] The City provides no support for its bald assertion (at 46) that "courts in almost every Circuit" have applied a heightened pleading standard. The only case it mentions was dismissed for lack of standing and cited a *post-pleadings* discovery order from *Winfield*, which *rejected* a heightened pleading standard. *See Bldg. & Realty Inst. of Westchester & Putnam Counties, Inc. v. New York*, Nos. 19-CV-11285, 20-CV-364, 2021 WL 4198332, at *13 (S.D.N.Y. Sept. 14, 2021), *appeal filed by G-Max Mgt., Inc. v. New York*, No. 21-2448 (2d Cir. filed Sept. 28, 2021).

the cost of housing, making it harder for minority residents to buy property, rent property, and avoid foreclosure. *See* Opening Br. 42-54. Defendants essentially concede both points. As to (1), the City repeatedly admits that its policies disparately raise the tax burden on minority residents (although it attributes those policies to state law). *See* City Br. 6 ("The disparities of which Plaintiff principally complains are attributable to the application of two State statutes which the City administers."); *accord id.* at 3, 20, 24. As to (2), the State admits (at 28-29) that higher taxes "price[] [residents] out of their neighborhoods," while the City has acknowledged that its "'property tax system discourages the production of rental units,'" which disproportionately harms minority residents. R158-59 (quoting City of New York, *Housing New York: A Five-Borough, Ten-Year Plan* 26 (2014), https://a860-gpp.nyc.gov/downloads/nc580m69p).

Defendants contend that a disparate-impact plaintiff like TENNY must show how the City's property-tax system, "as opposed to other potential factors," causes housing to be unavailable to minority residents. City Br. 48; *see* State Br. 39.[4] But the "other potential factors" hypothesized—such as income, City Br. 48 & n.15—are present in many (if not all) FHA claims under § 3604(a), including, for example,

[4] The City (at 47-48 & n.14) also suggests that its property-tax system may not "have caused the alleged discrepancy" in taxation between majority-white and majority-minority neighborhoods. Whatever that means, the City elsewhere concedes (at 20) that the property-tax system "causes" those disparities.

those related to lending policies. Yet a defendant cannot escape liability for a disparate-impact claim for discriminatory lending policies just because the alleged housing disparity is affected by the plaintiff's low income *in addition to* the challenged policy. *See Ojo v. Farmers Group, Inc.*, 600 F.3d 1205, 1208 (9th Cir. 2010) (per curiam); *Hargraves v. Capital City Mtge. Corp.*, 140 F. Supp. 2d 7, 20 (D.D.C. 2000).[5] Defendants cannot defeat the admitted causal connection between the City's property-tax system and the disparate impact on housing availability by requiring TENNY, at the pleading stage, to negate every other possible influence.

The City (at 47) tries to capitalize on the fact that *Ojo* and *Hargraves* addressed lending policies rather than tax policies. But it does not even try to explain why discriminatory taxation should be viewed any differently. And, similarly, the City mischaracterizes the cases that denied dismissal of claims indistinguishable from TENNY's—or just ignores them altogether. *See* Opening Br. 44-45 (discussing *Coleman v. Seldin*, 181 Misc. 2d 219 (Sup. Ct., Nassau County 1999), and *Brighton Park Neighborhood Council v. Berrios*, No. 17 CH 16453, 2019 WL 4178606 (Ill. Cir. Ct. Feb. 7, 2019)).[6]

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[5] The City's arguments (at 49-51) regarding TENNY's perpetuation-of-segregation claim are similarly flawed because TENNY can plead such a claim even if the City's property-tax system may be one of multiple causes of segregation.

[6] Contrary to what the City says (at 52), *Coleman* did not "regard[] discriminatory intent." *Coleman* held that FHA plaintiffs "need allege only

The State's attempt to distinguish *Reyes v. Waples Mobile Home Park Limited Partnership*, 903 F.3d 415 (4th Cir. 2018), likewise fails. The State (at 40 n.12) suggests that the policies at issue in *Reyes* had a "more direct impact" on the availability of housing than the tax policies at issue in this case. But the causal link here is clear: Policies that substantially and disproportionally raise the cost of housing for minorities make it harder for those individuals to obtain and retain housing. Defendants do not, and cannot, deny that tax policies have such an effect. *See supra* at 14. And Defendants' suggestion that other factors could cause the same problem does not detract from the directness of either the relationship between higher taxes and higher housing costs or the relationship between higher housing costs and the unavailability of housing. TENNY has more than adequately pleaded its FHA claims.

B. Property Assessments And Taxes Are A Term Of The Sale Or Rental Of Housing

The City (at 51-53) argues that property assessments and taxes are not a "term[]" of the "sale or rental" of housing. 42 U.S.C. § 3604(b). The City is wrong, and its argument is astounding for all the ways it fails to address the statute, relevant precedent, and policy.

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discriminatory effect and need not show that the decision complained of was made with discriminatory intent." 181 Misc. 2d at 226.

1. As a textual matter, TENNY's argument is straightforward. "[I]t shall be unlawful ... [t]o discriminate against any person in the terms" or "conditions ... of sale or rental of a dwelling[] ... because of race." *Id.* In a "sale," the seller transfers the obligation to pay property taxes imposed on the property; the buyer assumes that obligation and typically prepays property taxes into escrow as a condition of closing. *See, e.g.*, RPTL §§ 304, 926(1); N.Y. State Bar Assn., *Residential Contract of Sale* ¶ 18 (2000), https://www2.nycbar.org/RealEstate/Forms/Residential_Contract_pdf.pdf. In a "rental," the renter assumes the obligation to pay property taxes that are passed through as part of the rent. *See* R137-38. Because these payments are necessary to obtain housing, they are "terms" of the "sale or rental" of housing within the meaning of § 3604(b). *See, e.g.*, *Georgia State Conference of the NAACP v. City of LaGrange*, 940 F.3d 627, 634 (11th Cir. 2019) (utility services fell within the scope of § 3604(b) because "it is common knowledge that in connection with buying or leasing a dwelling, a resident must obtain basic utility services").

The City has no answer to this textual analysis. Instead, it focuses on peripheral issues, and even there provides no well-reasoned justification.

For example, the City summarily dismisses (at 52) as "inapposite" precedents finding that homeowner's insurance is a term of the sale or rental of housing without providing a rationale for treating property taxes differently. If anything, the case is even stronger for property assessments and taxes. Not only do property taxes impact

the housing costs that a homeowner or renter must pay, but the obligation to pay them *always* attaches as a condition of property ownership or tenancy and transfers as a term of sale or renting (whereas homeowners are not necessarily required to purchase insurance nor does insurance transfer on sale). *See* Opening Br. 49.

Similarly, the City (at 51) wholly fails to engage with the position espoused by the State and Federal Governments, in similar litigation against Nassau County, that property taxes *are* a term of the sale or rental of housing. *See* Opening Br. 48-49. That position, which emphasized the relationship between property assessments, property taxes, and the mortgage payment that dictates whether someone can afford a home, *see* R657-58, remains sound today. And while the City mentions Nassau County Supreme Court's decision in that litigation, it does not respond to the court's "conclu[sion] that the FHA applies to the real property assessment policies, procedures and conditions practiced and imposed by the defendants." *Coleman*, 181 Misc. 2d at 236.

Finally, the City fails to grapple with the absurd consequences of its position. As TENNY noted (at 50), the City's position would apply to both disparate-treatment and disparate-impact claims under § 3604(b). So, if that position were adopted, the City would be free to impose different tax policies depending on, for example, whether property is sold to white people rather than Black people without discriminating in the "terms" of the sale of housing under the FHA. That would fly

in the face of the FHA, which must be "construed expansively" to "*end* discrimination." *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 935 (2d Cir.) (emphasis added), *affd.*, 488 U.S. 15 (1988).

2. To counter statutory text, precedent, and the considered litigating positions of the State and Federal Governments, the City (at 51-52) offers only a single line of conclusory dicta plucked from the First Department's decision in *Robinson v. City of New York*, 143 A.D.3d 641, 642 (1st Dept. 2016)—which the City inaccurately attributes to "this Court[]." But *Robinson* cannot bear the weight the City places on it. In *Robinson*, two renters claimed that the City's imposition of a higher effective tax rate on large rental properties as compared to other kinds of residential property caused a disparate racial impact and violated the FHA. 143 A.D.3d at 641. The First Department dismissed that challenge for lack of standing, noting that the plaintiffs had failed to allege that *they* were financially harmed by the City's property tax. *See id.* *Robinson* mentioned § 3604(b) only in passing and without substantively analyzing the statutory provision.

Moreover, TENNY's complaint has none of the deficiencies that concerned the *Robinson* court. There, the plaintiffs relied on "speculat[ion]" that the City's allegedly disproportionate taxation of rental properties "result[ed] in higher rents"; the court thus indicated that the plaintiffs could not show that the property-tax system had a "disparate impact *on them*." *Id.* at 641-42 (emphasis added). TENNY

has provided far more than speculation. TENNY's membership includes owners of rental and single-family property, and thus encompasses persons who indisputably are *directly* harmed by the City's discriminatory tax system. *See, e.g.*, R106-07, 675-77, 683-86. As to TENNY's members who are renters, TENNY has pointed to the *City's own admission*, post-dating the *Robinson* complaint, that "at least a portion of the property tax flows through to tenants in the form of higher rents." R210. Collectively, TENNY's allegations defeat any suggestion that its claim of discrimination in the terms and conditions of housing is mere speculation. R152-53.

III. TENNY ADEQUATELY PLEADED EQUAL-PROTECTION AND DUE-PROCESS CLAIMS

TENNY alleged equal-protection and due-process violations for largely the same reasons that it alleged violations of state and federal law: The City's policies lead to arbitrary and discriminatory tax assessments and burdens. *See* Opening Br. 54-60. Defendants' objections to these constitutional claims therefore overlap in significant part with their objections to TENNY's statutory claims, and fail for much the same reason. Only a few points merit further attention.

First, the City leans heavily on the rational-basis standard applicable to challenges to "complex tax laws." City Br. 12-13 (citation omitted); *see, e.g.*, *id*. at 26-27. But the rational-basis standard provides no support for City policies that *violate* state law. The City's argument is predicated on its view that §§ 1805 and 581 require the City to assess properties in the same class in a grossly disuniform

manner; properly understood, they require no such thing. *See* Opening Br. 38-40, 54-60; *supra* at 5-10. And the fact that state law itself imposes a uniformity requirement distinguishes this case from *Nordlinger v. Hahn*, 505 U.S. 1, 14-15 (1992), on which Defendants rely. *Compare* Opening Br. 56-57, *with* City Br. 26-27, 38-41, *and* State Br. 27-29. Indeed, this State's courts already have found that treating some properties in a class more favorably than others can violate equal protection. *See Foss*, 65 N.Y.2d at 259; *Scarsdale Comm.*, 202 A.D.3d at 970.

Second, while defending §§ 1805 and 581, the State (at 28-30) ignores that those statutes neither compel nor justify the City's unequal assessment of similarly valued properties. Contrary to what the State suggests, § 1805 does not "cap[] the increases to *tax burdens* for individual properties," State Br. 28 (emphasis added), but limits increases to *assessed value*—and can be given effect while also honoring § 305(2)'s uniformity requirement. *See supra* at 7 n.2. Similarly, while § 581 may require the City to disregard the "form of [condo and co-op] buildings' ownership," State Br. 30, it does not condone the City's practice of treating condo and co-op buildings like rent-regulated apartment buildings even when they would not qualify for rent regulation if rented, *see supra* at 8-10.

Third, Defendants provide no logical reason for taxing Class 2 at *five times* the rate of Class 1. R147. Even if class shares were enacted to "maintain the stability of relative property class tax burdens," State Br. 26 (citation omitted), they were

counterbalanced by provisions that would shrink the disparity in tax burden between Classes 1 and 2 over time, *see* Opening Br. 57-58. Yet, some four decades later, "disparities and inequities between each class's relative tax burden have widened rather than narrowed." R119. And as a result, a four-unit apartment building (in Class 2) could carry a significantly higher tax burden than a three-unit apartment building (in Class 1) with the exact same market value. Defendants cannot credibly claim that there is any rational connection between a property's market value and its tax burden; that the City's property-tax system meets its goal of fairly distributing the tax burden; or that the results it produces are anything but "artificial," *Foss*, 65 N.Y.2d at 257, "utterly unreasonable," and "arbitrary," *Ames Volkswagen v. State Tax Commn.*, 47 N.Y.2d 345, 349 (1979).

IV. DEFENDANTS' ATTEMPTS TO EVADE THE MERITS FAIL

A. The State Is A Proper Party

Just as Defendants' arguments on the merits fail, so too do their efforts to sidestep the merits. The State first insists (at 19-25) that it should not have been named as a defendant. That misses the mark.

To be sure, as TENNY alleged, the City is directly responsible for the inequitable, arbitrary, and discriminatory assessment and taxation of property within Classes 1 and 2. And, as TENNY also alleged, the City has the power to alleviate the most conspicuous intraclass disparities on its own while fully complying with

state law. *See, e.g.*, Opening Br. 33-38; *supra* at 5-10. For those reasons, TENNY primarily focuses on the City.

Although the City does not dispute that its property-tax system produces massive, unjustified disparities, it contends (at 3) that these "disparities ... result simply because the City is following State mandates." But if state law is responsible for these disparities, then §§ 1805 and 581 would be invalid under the State and Federal Constitutions and the FHA. Because the State is accountable for those statutes, it is an appropriate defendant. *See Cass v. State*, 58 N.Y.2d 460, 463 (1983); Opening Br. 39-60. "This type of alternative pleading is clearly permissible." *George Cohen Agency, Inc. v. Donald S. Perlman Agency, Inc.*, 51 N.Y.2d 358, 366 (1980); *see* CPLR 1002(b), 3014.

The State responds (at 23 n.6) that it "is not required to participate" as a defendant when "the constitutionality of a state statute is challenged." Fair enough; its participation may not be *required*. But this Court held in *Cass* that the State "is a *proper* party" to an action, like this one, seeking a declaratory judgment regarding the constitutionality of a state statute—and specifically reinstated the State as a defendant as a result. *See Cass*, 58 N.Y.2d at 462-63 (emphasis added). Curiously, the State cites *Cass* (at 23 n.6) for a different proposition: that the State was dismissed "on the merits." But that was because the Court found the law at issue constitutional and therefore granted judgment to *all* defendants. *See* 58 N.Y.2d at

463-64. The Court did not allow the State to avoid a merits determination, which is what the State seeks here.

Nor has TENNY "abandoned" any claims against the State. State Br. 19 (capitalization normalized). TENNY has pleaded—and defended—those claims in the alternative because the City has blamed state law for the myriad problems with its property-tax system. *See, e.g.*, Opening Br. 39-40; TENNY App. Div. Principal & Resp. Br. 55-58. Since the City continues to blame state law here (*e.g.*, at 19-20), TENNY's claims against the State remain, unless and until the City's actions are found exclusively responsible.

B. The Court Can Resolve TENNY's Federal Claims

The City, for its part, tries to evade responsibility in part by contending (at 27-28, 44 n.12) that principles animating the federal Tax Injunction Act ("TIA") preclude this Court from entertaining TENNY's federal claims. The First Department correctly disregarded this contention when the City raised it below.

The TIA prohibits federal courts from enjoining the collection of any state tax "where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341. Although the TIA does not apply in state court, the U.S. Supreme Court has drawn on the underlying "background principle against federal interference with state taxation" to find that "Congress did not authorize injunctive or declaratory relief under [42 U.S.C.] § 1983 in state tax cases when there is an

adequate remedy at law." *National Private Truck Council, Inc. v. Oklahoma Tax Commn.*, 515 U.S. 582, 588-89 (1995). The City's argument based on that principle, however, is both inconsequential and incorrect.

The City's argument is inconsequential because TENNY also brought its substantive federal claims in Supreme Court via CPLR 3001. R184-85. CPLR 3001 provides an independent mechanism for seeking a declaratory judgment as to the legality of the City's property-tax system under state and federal law. The City does not contend otherwise. Indeed, federal courts—including in *the City's own cases* (at 28-29)—have dismissed federal claims implicating New York taxes precisely because the plaintiffs could vindicate their federal rights through "a declaratory judgment action" in Supreme Court "under New York C.P.L.R. § 3001." *Long Is. Light. Co. v. Town of Brookhaven*, 889 F.2d 428, 431 (2d Cir. 1989); *see Terminello v. Vil. of Piermont*, No. 08 CV 01056, 2009 WL 3496615, at *2 (S.D.N.Y. Oct. 28, 2009); *United States v. County of Nassau*, 79 F. Supp. 2d 190, 196-97 (E.D.N.Y. 2000); *Trieu v. Urbach*, No. 98 CIV. 8278, 1999 WL 461316, at *5 (S.D.N.Y. July 7, 1999). TENNY *is* seeking a declaratory judgment from Supreme Court under CPLR 3001. So even if the City were right, TENNY would merely be limited to that relief, and none of its claims would be dismissed. *See Private Truck*, 515 U.S. at 592 ("[N]othing we say prevents a State from empowering its own courts to issue injunctions and declaratory judgments ....").

But the City is not right. Under *Private Truck*, state courts should not issue "injunctive or declaratory relief ... in state tax cases when there is an adequate remedy *at law*"—*i.e.*, money damages. 515 U.S. at 588 (emphasis added). "The intent of the Supreme Court was to hold that the equitable remedies of declaratory judgment and injunction ... would not be available where a monetary remedy is available under State law." *Tri-State Christian T.V., Inc. v. Dillenberg*, 180 Misc. 2d 417, 418 (Sup. Ct., Chautauqua County 1999), *affd.*, 275 A.D.2d 993 (4th Dept. 2000). Here, TENNY has no monetary remedy. It owns no property and thus cannot bring a suit for damages or refunds of property taxes under state law. As a result, *Private Truck* does not bar TENNY's suit.

Nor could TENNY's members seek refunds under Article 7 of the RPTL for the legal violations at issue. Members who rent apartments may not initiate Article 7 proceedings. *See Matter of Larchmont Pancake House v. Board of Assessors and/or the Assessor of the Town of Mamaroneck*, 33 N.Y.3d 228, 238-39 (2019). And, regardless, courts have made clear that Article 7 proceedings are unsuitable for cases, like this one, in which "the challenge is to the method employed in the assessment involving several properties rather than the overvaluation or undervaluation of specific properties." *Joon Mgt. One Corp. v. Town of Ramapo*, 142 A.D.3d 587, 588 (2d Dept. 2016); *see, e.g.*, *Matter of Dudley v. Kerwick*, 52 N.Y.2d 542, 549-50 (1981); *Krugman*, 141 A.D.2d at 180-81.

Ultimately, though, it does not matter whether TENNY's members could seek refunds in Article 7 proceedings. *Private Truck* held that injunctive or declaratory relief is appropriate notwithstanding the availability of individual legal remedies "if the 'enforcement of the tax'" would result in "'numerous suits between the same parties, involving the same issues of law or fact.'" 515 U.S. at 591 n.6 (citations omitted). Requiring TENNY's members repeatedly to pursue individual refunds on the basis of the same legal objections to the City's systematic practices would produce exactly that result. This Court can and should consider TENNY's federal claims.

C. This Case Is Unquestionably Appropriate For Judicial Review

Finally, in a brazen attempt to avoid judicial scrutiny, the City (at 54) urges the Court not to act because, it contends, this case raises "political questions" for the Legislature to resolve. But as both courts below recognized, this case involves legal—not policy—questions that courts are best positioned to resolve.

The City's own argument proves the point. The City (*id.*) embraces the notion that this case is about "the City's adherence to and administration of the[] tax laws." But whether the City is administering its property-tax system according to law is a quintessentially justiciable question, as cases like *Hellerstein* illustrate. *See Matter of Hellerstein v. Assessor of Town of Islip*, 37 N.Y.2d 1, 13-14 (1975) (holding that municipalities across the State were violating a state law requiring property to be

assessed at full value). So is the question whether state law, including state tax law, comports with constitutional guarantees. *See, e.g.*, *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 931 (2003) (holding that the system for funding schools violated the State Constitution); *Foss*, 65 N.Y.2d at 260-61 (holding that RPTL Article 19 violated equal protection).

The City (at 56-57) conflates the political-question doctrine and the standards by which certain claims are evaluated. It is true, for example, that courts construe the Equal Protection Clause to give legislatures latitude to make classifications that "in practice ... result[] in some inequality." *Williams v. Vermont*, 472 U.S. 14, 25 n.9 (1985) (citation omitted); *see* City Br. 11-13, 56-57. But courts use such standards to police the outer bounds of the policymaking space left to legislatures—"not in order to make policy but in order to assure the protection of constitutional rights." *Campaign for Fiscal Equity*, 100 N.Y.2d at 931. They are irrelevant to whether a case implicates nonjusticiable political questions.

That political reform could solve the problems with the City's property-tax system is also irrelevant. *See* City Br. 54-56. Many unlawful policies can be redressed by legislative action; that does not immunize them from challenge. Nor has this Court hesitated to act even when its decisions were likely (or expected) to provoke a legislative response. *See, e.g.*, *O'Shea*, 8 N.Y.3d at 253 (*Hellerstein* caused "six years of fits and starts, legislative moratoria and studies and task force

reports"); *Campaign for Fiscal Equity*, 100 N.Y.2d at 930 (recognizing that "[r]eforms to the current system of financing school funding and managing schools" would be necessary). That Defendants have legislative tools at their disposal does not insulate their current policies from challenge.

In the end, TENNY has done far more than "establish that the system for assessing real property taxes has generated much discussion, and criticism from many quarters, including by elected and appointed City officials." City Br. 57. TENNY has alleged claims based on concrete *legal* standards for which *the law* provides remedies. The fact that City and State leaders have for decades openly acknowledged the failings of the City's property-tax system—and have done nothing about them—merely highlights this Court's critical role in protecting the rights of New Yorkers. It does not permit the City to rebrand TENNY's claims as political questions in a transparent effort to insulate itself from judicial scrutiny for policies that violate the law.

CONCLUSION

The First Department's decision and order should be reversed, and the case should be remanded for further proceedings.

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Respectfully submitted,

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CERTIFICATION OF WORD COUNT

This brief complies with Section 500.13(c)(1) of the Rules of Practice of the New York Court of Appeals because the total number of words in the body of this brief is 6,989, excluding the portions exempted by Section 500.13(c)(3).