Appellate Division – Third Department Case No. CV-23-1255

New York Supreme Court
Appellate Division – Third Department

IN THE MATTER OF

PEOPLE OF THE STATE OF NEW YORK
By LETITIA JAMES, Attorney General of the State of New York

Petitioner-Appellant

– against –

COMMONS WEST, LLC, COLLEGETOWN PLAZA, LLC, CITYVIEW, LLC, COLLEGETOWN CENTER, LLC, COLLEGETOWN COURT, LLC, FANE ENTERPRISES, INC., and JASON H. FANE individually and d/b/a ITHACA RENTING COMPANY, and as the sole member of COMMONS WEST, LLC, COLLEGETOWN PLAZA, LLC, CITYVIEW, LLC, COLLEGETOWN CENTER, LLC, and COLLEGETOWN COURT, LLC, and as president, director and shareholder of FANE ENTERPRISES, INC.,

Respondents-Respondents.

BRIEF OF FAIR HOUSING ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER-APPELLANT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

INTRODUCTION

Amici curiae join this appeal to urge this Court to find that Exec. L. § 296 (5)(a)(1) (hereinafter NYSHRL) is not facially unconstitutional. The NYSHRL protects millions of New Yorkers from source of income discrimination, a basic legal safeguard to ensure equal access to housing. Respondents' constitutional argument is attenuated and hypothetical, rendering it unripe and nonjusticiable. Even if it were ripe, the text of the NYSHRL satisfies the Fourth Amendment, and the law cannot be facially unconstitutional because it is not unconstitutional in all its applications and the availability of administrative warrants and Article 78 pre-compliance review satisfies the Fourth Amendment. Thus, the lower court's ruling cannot stand.

INTEREST OF AMICI

Amici curiae are five regional nonprofit fair housing organizations operating in New York State. As part of their work, they receive and investigate housing discrimination complaints from renters with Housing Choice Vouchers (HCVs) and other rental subsidies protected by the NYSHRL as lawful sources of income. As such, amici have expertise in how source of income discrimination manifests and how rental subsidy programs operate within a climate of widespread source of income discrimination. This brief explains how such programs comply with the

Fourth Amendment during the preliminary inspection that occurs prior to signing a Housing Assistance Payments (HAP) contract with a landlord.[1]

The five amici are CNY Fair Housing, Inc. (CNY) based in Syracuse; the Fair Housing Justice Center (FHJC) in New York City; Housing Opportunities Made Equal, Inc. (HOME) in Buffalo; Long Island Housing Services, Inc. (LIHS); and Westchester Residential Opportunities, Inc. (WRO). Their shared mission is to eliminate housing discrimination and promote equal housing opportunities for all people. In furtherance of their shared mission, they investigate discrimination complaints and provide public education. Collectively, amici offer a statewide perspective on how the NYSHRL operates in the context of HCV programs.

Amici curiae have firsthand insight into how vouchers are administered and how housing discrimination undermines government-subsidized housing programs. Discrimination against people with rental subsidies is one of the most pervasive

[1] Some Housing Choice Voucher (HCV) administrators allow landlords to self-attest to the housing conditions during the pre-HAP contract process in lieu of an inspection. *See infra* note 9. In addition, there are alternative housing voucher programs that do not require inspections at all. For example, the Family Homelessness & Eviction Prevention Supplement (FHEPS) program in New York City does not require inspections when the unit is located in a newly constructed building available for initial occupancy. *See* N.Y. City Dep't Soc. Servs., Human Res. Admin., DSS-10j(E), at 1 (Jan. 13, 2025), www.nyc.gov/assets/hra/downloads/pdf/cityfheps-documents/DSS-10j.pdf. This represents one of the multiple constitutional applications of the challenged law, defeating the argument that it is facially unconstitutional.

forms of housing discrimination in New York State.[2] Complaints about source of income discrimination typically arise at the early stages of a housing search when a prospective renter is denied housing by a landlord after they disclose that they have a housing voucher.[3]

Amici rely heavily on the NYSHRL as the primary state law to eliminate housing discrimination, which is a persistent barrier to safe, affordable housing for people with lower incomes. Without such protections as a backstop, landlords may engage in wholesale discrimination simply because someone receives government assistance. Such discrimination is an indefensible barrier to scarce affordable housing, putting voucher holders at imminent risk of homelessness even though much, and in some instances, all of their rent would be paid directly to the landlord from a program administrator.

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[2] *See, e.g.*, 2024 FAIR HOUSING TRENDS REPORT, NATIONAL FAIR HOUSING ALLIANCE 6 (July 2024), https://nationalfairhousing.org/resource/2024-fair-housing-trends-report/ (compiling data on the prevalence of housing discrimination); FAIR HOUSING MATTERS IN NY, HOMES AND COMMUNITY RENEWAL 171-73 (Apr. 2024) (same).

[3] *See, e.g.*, Armen H. Merjian, *Second-Generation Source of Income Discrimination*, 2023 UTAH L. REV. 963, 964-67 (2023) (describing how source of income discrimination manifests).

PRELIMINARY STATEMENT

Amici curiae join this appeal in response to the lower court's erroneous holding that the NYSHRL is facially unconstitutional. This ruling is untenable for several reasons.

First, Respondents' constitutional challenge is unripe. Respondents have never been subject to or threatened with a warrantless search and have never been penalized for declining one. In the experience of amici over several decades, a warrantless search would never have been conducted since households with vouchers have a limited amount of time to secure housing or they risk losing their voucher, and HCV administrators often encourage their clients to consider renting from other landlords if one refuses to participate in the program.

Second, the NYSHRL satisfies Fourth Amendment scrutiny. The statute's text does not mention a search process and does not automatically penalize a landlord for refusing an inspection. *See Camara v. Mun. Ct. of City of S.F.*, 387 U.S. 523, 538 (1967).

Third, Respondents have not met the substantial burden of showing that the NYSHRL is unconstitutional in every conceivable application. In fact, the statute is constitutionally administered across New York State because an administrative warrant process that satisfies the Fourth Amendment is available to HCV administrators and because landlords have an adequate pre-compliance review

procedure available through Article 78. Thus, even if Respondents have a justiciable claim (they do not), and the Fourth Amendment is implicated (it is not), the NYSHRL is not facially unconstitutional and the lower court's ruling cannot stand.

Housing Choice Vouchers are in high demand but extremely limited supply. Securing a voucher typically takes several years, and only about twenty-five to thirty percent of applicants receive a voucher.[4] In one year, New York City received over 600,000 HCV applicants but only 200,000 were selected by random draw.[5] The demand for vouchers in Buffalo, NY is so acute that the waitlist is closed until at least 2026 and the waitlist in Syracuse has been closed since 2024.[6] For people desperate for housing, receiving a voucher is like winning the lottery. Even so, after that initial luck, prospective tenants must find a willing landlord to accept their vouchers in a mere 60-120 days.[7] This can be exasperating, if not impossible, when

[4] Benefits.com Advisors, *Stuck on a Section 8 Waiting List? Here's How to Get Priority*, BENEFITS.COM (Nov. 15, 2024), https://benefits.com/section-8/waiting-list/.

[5] Emily Rahhal, *200K people on NYC Section 8 housing voucher waitlist*, PIX11 (Aug. 1, 2024) https://pix11.com/news/local-news/200k-people-on-nyc-section-8-voucher-waitlist/.

[6] *Housing Choice Voucher Program*, BUFFALO MUNICIPAL HOUSING AUTHORITY, www.bmhahousing.com/220/Housing-Choice-Voucher-Program (last visited Apr. 30, 2025); *Housing Choice Voucher (Section 8) Program Waitlist*, SYRACUSE HOUSING AUTHORITY, https://syracusehousing.org/home/wait-list-section-8 (last visited August 11, 2025).

[7] Maya Miller, *What You Need to Know About How Section 8 Really Works*, PROPUBLICA (Jan. 9, 2020), www.propublica.org/article/what-you-need-to-know-about-how-section-8-really-works.

faced with rampant source of income discrimination. Many people come up short, losing their long-coveted vouchers despite their best efforts.[8]

Low-income voucher holders are often among marginalized and vulnerable groups that, in the experience of amici, are more likely to encounter other discrimination, housing instability, and homelessness at some point in their lives. For voucher holders, the stakes are incredibly high. The NYSHRL is a critical legal protection for all renters in New York, particularly the most vulnerable renters.

ARGUMENT

I. RESPONDENTS' CONSTITUTIONAL CHALLENGE IS UNRIPE BECAUSE THEY HAVE NOT SUFFERED A CONCRETE OR PARTICULARIZED INJURY

Respondents do not dispute that they have never been subject to—or even threatened with—a warrantless search. Even if the NYSHRL authorized warrantless searches (it does not), this case is not ripe for adjudication based on this fact alone. Ripeness is a threshold determination that prevents courts from entangling themselves in abstract disagreements by adjudicating disputes too early. *McKart v. United States*, 395 U.S. 185, 193 (1969). The case at hand is a textbook example of an unripe, hypothetical dispute. The constitutional challenge is too attenuated for judicial review.

[8] *Section 8 - Stability Voucher Program*, HOMES AND COMMUNITY RENEWAL, https://hcr.ny.gov/section-8-stability-voucher-program (last visited Apr. 30, 2025).

The New York Court of Appeals has consistently rejected as unripe arguments that are "contingent upon events which may not come to pass." *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 518 (1986) (quoting *In re N.Y. State Inspection, Sec. & Law Enf't Emps. v. Cuomo*, 64 N.Y.2d 233, 240 (1977)) (internal quotation marks omitted). The same is true for the U.S. Supreme Court. *See, e.g.*, *Texas v. United States*, 523 U.S. 296, 300 (1998); *Boyle v. Landry*, 401 U.S. 77, 81 (1971); *McKart*, 395 U.S. at 193.

"If the anticipated harm is insignificant, remote, or contingent, the controversy is not ripe." *Church of St. Paul & St. Andrew*, 67 N.Y.2d at 520. A claim may be unripe if it is based upon future events that may not occur as predicted or at all. *Texas*, 523 U.S. at 300. Likewise, speculation about possible future unconstitutional governmental actions does not present a ripe case or controversy. *See Boyle*, 401 U.S. at 81.

Courts have applied this ripeness standard to administrative inspections in New York. In *Cappon v. Carballada*, the Fourth Department rejected a constitutional challenge to a City of Rochester housing inspection law, holding that the Fourth Amendment claim was unripe because the challenging party never applied for the permit that would necessitate the inspection. 109 A.D.3d 1115, 1116 (4th Dep't 2013). Another petitioner challenged the same local statute in *Wirth v. City of Rochester*. The U.S. District Court for the Western District of New York

dismissed the claim, emphasizing that the petitioner lacked standing because a warrantless search was never conducted or threatened, and "any threat of future Fourth Amendment [harm was] speculative at best." 2020 U.S. Dist. LEXIS 180289, at *13 (W.D.N.Y. 2020).

The same ripeness standard applies here, warranting the same outcome. Respondents have failed to satisfy their burden of establishing that a warrantless inspection occurred or was imminent. No HCV administrator has conducted a warrantless inspection of Respondents' property or even requested one. Since no inspection was pending, Respondents have never declined a warrantless search or received a penalty for declining such a search (there is no automatic penalty). Importantly, in all likelihood, no search would have occurred. In the experience of amici, HCV administrators typically do not work with landlords who do not consent to inspections in the first instance. Instead, they often encourage renters to continue their search to find a willing landlord who will consent to an inspection. And since renters with newly issued vouchers have deadlines within which to use their vouchers and HCV renters seeking to move out of a current apartment must comply with lease deadlines, time is of the essence when searching for an apartment with a voucher. Consequently, voucher holders are likely to look for alternative options when faced with a landlord who will not consent to an inspection and those landlords are never subjected to nonconsensual warrantless searches. Even if a renter or

administrator reported a landlord who declines to participate in the HCV program to a regulatory agency, initiation of an administrative proceeding is not an injury. *In re Town of Riverhead v. Cent. Pine Barrens Joint Plan. & Pol'y Comm'n*, 71 A.D.3d 679, 681 (2d Dep't 2010). To this end, amici have searched case law, administrative complaints, and their own records for any instances in which a local HCV administrator attempted to conduct a warrantless search after a landlord refused to accept a voucher. They found none.

Respondents' argument is remote, attenuated, and contingent on facts that have not occurred. To illustrate the attenuation, this is the step-by-step process for obtaining and using a voucher at a specific property. Prior to an initial inspection required to sign the HAP contract, a prospective tenant must complete the following steps in collaboration with the HCV administrator:

(1) Complete the voucher application process.

(2) Wait to be selected for a voucher (often by waitlist or lottery).

(3) Search for and identify a specific available housing unit that fits the voucher program criteria, such as the monthly rental limit.

(4) Inform the HCV administrator of the specific housing unit that fits the voucher criteria, requesting to use the voucher there.

(5) Seek landlord consent for the HCV administrator to inspect the specific housing unit for basic habitability requirements (HCV administrator).[9]

(6) If the landlord does not consent to an inspection, the HCV administrator may counsel the voucher holder to move onto another landlord and the voucher holder may continue to look for other apartments.

Only after these steps would the HCV administrator engage in a non-criminal administrative search, designed to confirm that the unit is habitable. Hypothetically, for purposes of this brief, the administrator could seek an administrative warrant for the inspection at this stage.

In this case, Respondents were never asked to consent to an inspection because voucher holders never made it past Step 3 for Respondents' properties. Respondents turned them away based on their lawful source of income before they could ask the HCV administrator to request consent for an inspection. As such, no one took the necessary steps to trigger a warrantless search which, in amici's experience would likely never have occurred. Respondents have no "injury-in-fact," and their constitutional challenge is based on hypothetical and abstract events. For this reason, Respondents' constitutional claims are unripe and nonjusticiable.

[9] Not all HCV administrators require an inspection. For instance, the Buffalo Municipal Housing Authority (BMHA) allows participating landlords to attest to basic housing quality standards. *See* HOUSING QUALITY STANDARDS SELF-INSPECTION CHECKLIST, CVR ASSOCIATES, https://newyork.cvrinspections.com/Documents/HQS%20Self-Inspection%20Checklist.pdf (last visited May 8, 2025).

II. THE HUMAN RIGHTS LAW IS NOT FACIALLY UNCONSTITUTIONAL BECAUSE THE TEXT OF THE STATUTE DOES NOT REQUIRE WARRANTLESS SEARCHES

Respondents bear the substantial burden of proving that the NYSHRL is unconstitutional, which requires overcoming the "strong presumption of constitutionality" that courts assign to duly enacted statutes. *Stefanik v. Hochul*, 229 A.D.3d 79, 83 (3d Dep't 2024) *aff'd* 210 N.Y.S. 3d 661 (2024) (quoting *White v. Cuomo*, 38 N.Y.3d 209, 216 (2022)). A facial challenge must rest on the face of the law, not extrinsic facts. *Field Day, LLC v. County of Suffolk*, 463 F.3d 167, 174 (2d Cir. 2006) ("A 'facial challenge' to a statute considers only the text of the statute itself …." (citing *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 770 n.11 (1988)). The text of the NYSHRL does not require landlords to consent to searches and it does not punish landlords for denying a search. The NYSHRL's purpose and focus is to prohibit discrimination, including source of income discrimination, and the statute does not subject landlords to warrantless searches while accomplishing that mission.

The Fourth Amendment's prohibition on warrantless searches "does not apply … to situations in which voluntary consent has been obtained, either from the individual whose property is searched ... or from a third party who possesses common authority over the premises." *Illinois v. Rodriguez*, 497 U.S. 177, 181

(1990) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)); *United States v. Matlock*, 415 U.S. 164, 171 (1974).

Alternatively, "[t]he Fourth Amendment is satisfied if the authority to inspect is exercised reasonably and if judicial review is available before a person is ultimately required to submit to an inspection." *Glenwood TV, Inc. v. Ratner*, 103 A.D.2d 322, 329 (2d Dep't 1984). In the context of administrative inspections, the application and issuance of an administrative warrant to conduct the inspection constitutes adequate "judicial review" sufficient to satisfy Fourth Amendment scrutiny. *Camara*, 387 U.S. at 538 (holding that administrative warrants satisfy Fourth Amendment scrutiny); *Sokolov v. Village of Freeport*, 52 N.Y.2d 341, 348 (1981) (same).

Here, the NYSHRL satisfies Fourth Amendment scrutiny because it does not allow any HCV administrator to violate the Fourth Amendment by searching a landlord's property without consent or a warrant; it is silent about voucher program requirements, including inspections. Instead, the NYSHRL on its face simply protects vulnerable populations from source of income discrimination.

Respondents attempt to construe the NYSHRL as a coercive statute that gives them no choice but to consent to an inspection is wholly inconsistent with the statute's text. At no point does the NYSHRL statute state that a landlord must

consent to an inspection, nor does it state that an HCV administrator may conduct a warrantless search or impose any penalty if a landlord declines an inspection.

Amici agree with the lower court's recitation of the holding from the Court of Appeals in *Sokolov*: "laws which authorize inspections of residential rental properties without either the consent of the owner or a valid search warrant violate the Fourth Amendment." *People v. Commons West LLC*, 80 Misc. 3d 447, 451 (N.Y. Sup. Ct. 2023) (citing *Sokolov*, 52 N.Y.2d at 345-47). However, the lower court erred in its analysis as the ordinance at issue in *Sokolov* is highly distinguishable from the NYSHRL at issue here. For example, the text of the *Sokolov* ordinance provided that "no one [could] let or relet a residence rental property . . . without first obtaining a permit from the village. No permit [could] issue without an inspection of the premises." *Id.* at 343-44. The *Sokolov* ordinance mandated that owners immediately notify the village's buildings department when there was a vacancy, and the department then had to inspect the property within two business days. *Id.* at 344. Moreover, if the landlord did not consent to the warrantless inspection, they would be "subject to a fine of $250 per day" since the two-day requirement made it nearly impossible to obtain an administrative warrant in such a short time period. *See id.*

The NYSHRL is highly distinguishable. The NYSHRL does not impose any automatic fine or penalty for violations of its anti-discrimination provisions. And as explained above, it is silent about program requirements for rental subsidies like

vouchers. Importantly, the NYSHRL does not—explicitly or implicitly—require landlords to consent to warrantless searches. In the event an inspection is needed by some later effect of the statute, HCV administrators may give landlords the reasonable opportunity to consent to an inspection or refuse one without any automatic penalty (unlike *Sokolov* where the ordinance explicitly addressed requiring inspections and required a penalty for failure to consent to an inspection). If a landlord refuses an inspection, HCV administrators may constitutionally apply to a court to issue an administrative search warrant. (*See infra* Section III).

The lower court here held that a warrantless inspection would be "the *effect* of the source of income antidiscrimination statute," but that is incorrect. *Commons West*, 80 Misc. 3d at 451 (emphasis added). The effect of NYSHRL is not to "coerce property owners into consenting to warrantless inspections." *Id.* Rather, on its face (and in effect), it provides that source of income discrimination is unlawful and defines source of income to include rental vouchers.

It is impossible for the NYSHRL to be facially unconstitutional in the contorted manner the lower court has held. On its face, the NYSHRL does not implicate the Fourth Amendment because it makes no mention of an inspection requirement, an automatic penalty for denying an inspection, or inspections without consent. Thus, Respondents' constitutional claim doubly fails.

III. THE HUMAN RIGHTS LAW IS NOT FACIALLY UNCONSTITUTIONAL BECAUSE RESPONDENTS HAVE FAILED TO ESTABLISH THAT THE LAW IS IMPAIRED "IN EVERY CONCEIVABLE APPLICATION"

To prevail on a facial challenge, Respondents must establish that the NYSHRL is impaired "in every conceivable application." *Cohen v. State of New York*, 94 N.Y.2d 1, 8 (1999). The party challenging the statute must surmount a strong presumption of constitutionality "by proof beyond a reasonable doubt." *Moran Towing Corp. v. Urbach*, 99 N.Y.2d 443, 448 (2003) (internal quotations omitted). The challenging party must also meet the heavy burden of showing "that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment." *Cohen*, 94 N.Y.2d at 8 (internal citations omitted). Specifically, "the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987)[10]. Courts are not quick to strike down legislative enactments except "as a last unavoidable result after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible."

[10] The Supreme Court reaffirmed the high bar for challengers in *City of Los Angeles v. Patel*, 576 U.S. 409 (2015). Although *Patel* involved a successful challenge to a warrantless hotel inspection law, it did not dilute the *Salerno* standard. Rather, the Court explicitly applied *Salerno* and reiterated that a facial challenge requires invalidity across all applications where the statute confers authority and not just those most favorable to the challenger. Here, the existence of constitutional applications such as administrative search warrants and pre-compliance review through Article 78 forecloses a facial challenge.

Stefanik, 229 A.D.3d at 83 (quoting *White*, 38 N.Y.3d at 216)). Respondents fall short of their burden. They fail to account for the availability of administrative warrants to HCV administrators or the availability of Article 78 pre-compliance review to landlords. These procedures alone defeat Respondents' constitutional challenge because administrative warrants satisfy the Fourth Amendment and Article 78 provides adequate review before a landlord is subjected to any hypothetical search.

A. The availability of an administrative warrant process satisfies the Fourth Amendment

It is well established that administrative search warrants satisfy Fourth Amendment scrutiny. *Camara*, 387 U.S. at 538; *Sokolov*, 52 N.Y.2d at 348. Since local HCV administrators may obtain an administrative warrant for an initial inspection of an un-consenting landlord's unit in New York, the Respondents' Fourth Amendment challenge is defeated.

Administrative warrants pass Fourth Amendment muster because they incorporate the constitutional requirements of reasonableness and probable cause. *Camara*, 387 U.S. at 538. When assessing reasonableness, courts balance "the need to search against the invasion which the search entails." *Id.* at 537-38. "The test of probable cause required by the Fourth Amendment can take into account the nature of the search that is being sought." *Id.* at 538 (citations omitted). The Supreme Court illustrated that in the case of routine public safety inspections, probable cause may

be established by the minimal showing that the unit has gone a certain amount of time without an inspection. *Id.* This fact-specific, individualized inquiry further protects Fourth Amendment interests by preventing application of a generalized standard. New York courts have also adopted this framework. In *Sokolov*, the New York Court of Appeals confirmed that administrative warrants satisfy the Fourth Amendment.[11] Specifically, the Court of Appeals adopted a "flexible standard of reasonableness that takes into account the public need for effective enforcement of the particular regulation involved." 52 N.Y.2d at 348 (quoting *See v. City of Seattle*, 387 U.S. 541, 545 (1967)). It affirmed that "the strict standards attending the issuance of a warrant in criminal cases are *not* applicable to the issuance of a warrant authorizing an administrative inspection." *Id.* (emphasis added).

The Fourth Department's holding in *Cappon* also illustrates this point. *Cappon*, 109 A.D.3d at 1117. In *Cappon*, the city fined a landlord for violating a Rochester law that required landlords to obtain certificates of occupancy for rental units. The landlord claimed that the law violated his Fourth Amendment rights by making him consent to a warrantless search to comply with the law. The court

[11] Citing *Camara*, the *Sokolov* court articulated that in the case of administrative warrants, the agency's demand for access is measured in terms of probable cause and takes into account the public need for enforcement of regulations and that this flexible standard does not infringe on an individual's right to privacy. *See Sokolov*, 52 N.Y. 2d at 348; *see also Camara*, 387 U.S. at 538-39 (holding that the more flexible standard for administrative warrants does not lessen the overall protections of the Fourth Amendment).

rejected that argument based on two principles: First, the landlord's claim was unripe because he had never actually applied for a certificate of occupancy. *Id.* Second, the City of Rochester had a valid administrative warrant law. *Id.*; *see also Burns v. Carballada*, 101 A.D.3d 1610 (4th Dep't 2012) (upholding constitutionality under the same facts as *Cappon*); *Wisoff v. City of Schenectady*, 116 A.D.3d 1187, 1189 (3d Dep't 2014) (rejecting a constitutional challenge because "the inclusion of the warrant requirement is sufficient to safeguard plaintiff's constitutional rights").

Cappon is strikingly similar to the case at hand, factually and legally. In both cases, the landlord's claim is attenuated, and the statute is constitutionally administered when viewed in the context of statutory and constitutional safeguards. In *Cappon*, the Fourth Department held that the availability of an administrative warrant process was sufficient to overcome the constitutional challenge. The same is true here. There is nothing in the NYSHRL that overrides obtaining an administrative warrant, and state law is implicitly bound to constitutional strictures, meaning that local HCV administrators who want to inspect an apartment and do not have the landlord's consent, must obtain an administrative warrant prior to conducting any inspection.

Here, Respondents have not met their heavy burden of establishing the NYSHRL is impaired "in every conceivable application." *Cohen*, 94 N.Y.2d at 8. The availability of an administrative warrant to local HCV administrators satisfies

constitutional scrutiny. *Moran Towing Corp.*, 99 N.Y.2d at 448. Ultimately, the administrative warrant process available throughout the state allows this Court to reconcile the statute with the Fourth Amendment, thus avoiding any constitutional conflict. *Stefanik*, 229 A.D.3d at 83. Therefore, the NYSHRL is not facially unconstitutional.

B. Local HCV administrators in areas served by amici may seek administrative warrants by local statute

Using local administrative warrant processes, HCV administrators operating within the areas of New York State served by amici may obtain warrants prior to inspecting an apartment identified by a voucher holder to rent when a landlord does not consent. The existence of a local administrative warrant process nullifies any argument by Respondents that the NYSHRL is facially unconstitutional.

In Rochester, obtaining an administrative warrant is relatively straightforward. The City of Rochester City Charter sets forth the process for obtaining "judicial warrants" for inspections. *See* Rochester City Code § 1, L.L. No. 3. The local law provides that an application for an inspection warrant can be made to Rochester City Court (RCC), Monroe County Court (MCC), or New York State Supreme Court (NYS Supreme Court) by a "designated City officer or employee . . . authorized by New York State law . . . to enforce the property codes in the City." *Id.* Thus, a Rochester city agency administering an HCV program could apply itself, or through another city agency or city legal department, for an administrative

warrant under the authority of this local law. *See In re City of Rochester*, 90 A.D.3d at 1482.

At least two New York City ordinances provide that city agencies, such as the Department of Housing Preservation and Development ("HPD") that operates an HCV program, may obtain a court order or warrant for an administrative search. *See* N.Y.C. Admin. Code § 27-2123(a) ("A judge of any civil court of competent jurisdiction may, upon appropriate application by the [HPD] supported by an affidavit or affirmation, issue an order directing that access be provided to an officer or inspector of the department to any premises or part thereof, whenever an inspection of any premises or part therefore is required or authorized by any state or local law or regulation."); N.Y.C. Charter, Ch. 17, S. 398 ("If entry to a location or premises to be inspected pursuant to an agency's powers and duties is not gained on consent, or if circumstances call for entry without prior notice, the commissioner of such agency, or his or her authorized representative, may request the corporation counsel to make an application, ex parte, in any court of competent jurisdiction for an order directing the entry and inspection of such premises or location.").

The City of Buffalo code provides that where a city department is charged with enforcement of certain health provisions of the Buffalo code and requires an inspection, "[t]he department shall procure a search warrant upon refusal of reasonable access to any part of the premises by any person with control of the

premises." Buffalo City Code § 249-9 (search warrants). Likewise, in Westchester County, building commissioners and their designees are authorized to seek administrative warrants to conduct inspections regarding the health and safety of rental housing units. *See* White Plains Charter, Ch. 4-29, S. 4-29-10; *see also* Yonkers Charter, Ch. 58, Art. I, S. 58-6. Similarly, on Long Island, officials in the Towns of Hempstead and Brookhaven, for example, charged with administration and enforcement of rules governing rental units are authorized to make an application to any court of competent jurisdiction for a search warrant to inspect rental premises under certain circumstances. *See* Town of Hempstead Code, Part III, Ch. 99, Art. II, S. 99-21; Town of Brookhaven Code, Ch. 82, S. 82-9.

In assessing whether to grant an administrative warrant, the court evaluates the warrant request by assessing whether the application is reasonable and meets the probable cause standard. *Sokolov*, 52 N.Y.2d at 348. In doing so, the court weighs the needs for the HCV administrator's administrative search (*i.e.*, to ensure the rental unit satisfies basic habitability conditions) against the nature of the privacy interest at stake. *See id.* In these circumstances, a court considers the peaceful and minimally invasive nature of the search. *Id.* For HCV pre-lease inspections, inspectors perform minimally invasive searches following a standardized inspection checklist.[12]

[12] *See* U.S. DEP'T OF HOUS. AND URB. DEV., HOUSING CHOICE VOUCHER PROGRAM INSPECTION CHECKLIST (Apr. 2023), https://www.hud.gov/sites/dfiles/OCHCO/documents/52580.pdf.

Inspections are only conducted to ensure that a unit meets the housing quality standards of the rental assistance program, such as a working heating system in cold climates. In performing these inspections, the government, through HCV administrators, is ensuring the space meets basic health and safety standards for its residents. The strong governmental interest in the habitability of residential rental units, including but not limited to those subsidized by government programs, should meet the probable cause standard for an administrative warrant. Therefore, it would be reasonable for a court to issue an administrative warrant when requested for the purpose of conducting a preliminary inspection for an HCV program.

C. Article 78 provides adequate pre-compliance review before a search

The NYSHRL is valid under the Fourth Amendment because, even if an HCV administrator seeks to conduct an inspection, landlords may seek pre-compliance review using Article 78 procedures. The Second Circuit recently addressed this precise issue in the context of a state rent-regulation statute. *See Hudson Shore Assoc. Ltd. P'ship v. New York*, No. 24-1678, 2025 WL 1553004 (2d Cir. Jun. 2, 2025). There, a municipality was authorized by statute to regulate rents upon finding a vacancy rate among housing units of five percent or less. To calculate vacancy rates, the local government sent surveys to landlords requesting rent rolls, but the landlords often ignored the requests. In response, the statute was amended to authorize the local government to impose automatic civil penalties on uncooperative

landlords and presume from the lack of cooperation that they had zero vacancies ("Vacancy Provisions"). The landlords sued, arguing that the provision violated the Fourth Amendment because it authorized warrantless searches of landlord records. However, the Second Circuit held that the Vacancy Provisions were valid under the Fourth Amendment because landlords had adequate pre-compliance review under Article 78. The Court noted that "[w]arrantless administrative searches are permissible so long as their subjects have an opportunity for pre-compliance review, that is, an opportunity to challenge the search's reasonableness in front of a neutral decisionmaker before fac[ing] penalties for failing to comply." *Id.* at *5 (quoting *City of Los Angeles v. Patel*, 576 U.S. 409, 419-21 (2015) (cleaned up). Accordingly, the Court held that the searches authorized under the Vacancy Provisions were reasonable because landlords have adequate opportunity to obtain pre-compliance review under Article 78. *Id.*

In this case, Article 78 provides Respondents with adequate pre-compliance review because it provides access to a neutral decisionmaker through the New York Supreme Court where landlords can challenge the reasonableness of the requested inspection at issue. *See id.* at *7 (collecting cases where Article 78 has been used to challenge searches under the Fourth Amendment). Moreover, landlords can file an Article 78 petition as soon as the request for inspection is made. *See id.* (noting that landlords may file an Article 78 petition before any penalty is imposed). Here, there

is no penalty for refusing to consent to an inspection, so there is no concern that a penalty would be imposed before an Article 78 petition is adjudicated. This Court should thus refuse "to speculate about improbable imaginary situations in which a landlord could be penalized for noncompliance before being able to obtain Article 78 review." *Id.* at *7 (internal quotations omitted).

The fact that Article 78 allows landlords to obtain review in certain circumstances before undergoing an inspection is sufficient to defeat Respondents' claims here that the NYSHRL violates the Fourth Amendment. *Id.* at *8.

CONCLUSION

Given the foregoing reasons, Respondents' constitutional argument fails because it is unripe, the text of the NYSHRL satisfies the Fourth Amendment, and the statute is not facially unconstitutional because it is constitutional in multiple conceivable applications and procedures are available to ensure sufficient pre-compliance review. Therefore, this Court should reverse the trial court's order and judgment.

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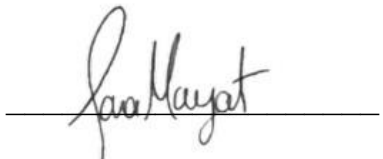

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