



The Public Advocate
for the City of New York

Letitia James – *Public Advocate*

1 CENTRE STREET
NEW YORK, NY 10007
TEL 212 669 4102
FAX 212 669 7740

WWW.PUBADVOCATE.NYC.GOV

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Laura Flyer, Esq.
Supervising Attorney
Law Enforcement Bureau
New York City Commission on Human Rights
100 Gold St., Suite 4600
New York, New York 10038
lflyer@cchr.nyc.gov

RE: *Jean Dorsey v. Stonehenge Partners Inc. et al.*
Complaint No. M-H-A-14-1030241

Dear Ms. Flyer:

Public Advocate Letitia James and Council Members Inez Barron, Margaret Chin, Costa Constantinides, Robert Cornegy, Laurie Cumbo, Mathieu Eugene, Corey Johnson, Ben Kallos, Andy King, Karen Koslowitz, Stephen Levin, Mark Levine, Darlene Mealy, Carlos Menchaca, Rosie Mendez, I Daneek Miller, Annabel Palma, Ydanis Rodriguez, Deborah Rose, Helen Rosenthal and Jumaane Williams ("*amici*") submit this Letter Brief in support of Jean Dorsey. Ms. Dorsey alleges that Respondents discriminated against her and her rent regulated neighbors by denying them access to a newly built exercise room in their building in violation of New York City's anti-discrimination laws. *Amici* are elected officials responsible for enacting legislation and overseeing executive agencies' compliance with City law.

INTERESTS OF AMICI

Public Advocate Letitia James

Letitia James is the Public Advocate for the City of New York. The Public Advocate is the second-highest ranking official in the City's government, elected by the electorate of all five boroughs of the City of New York. *See* New York City Charter §§ 10(a), 24(a). The Office of the Public Advocate serves as a direct link between City residents and its government, acting as a "watchdog" for New Yorkers by providing oversight of City agencies, investigating citizens' complaints about City services, making proposals to address perceived shortcomings or failures of those services, and, when appropriate, initiating actions in court. Among the City agencies

over which the Public Advocate's office has oversight is the New York City Commission on Human Rights ("CHR"), which enforces the City's human rights laws.

Since taking office in January 2014, the Office of the Public Advocate has received more than 3,100 complaints from City residents regarding City agencies and services, and a significant portion of those complaints concern housing related matters. As a result, the Public Advocate has a substantial interest in ensuring that our local civil rights laws are enforced to the fullest extent to protect New York City residents, particularly on behalf of seniors, who are more vulnerable to housing discrimination than other populations.

On or about February 2014, Ms. Dorsey and other rent regulated tenants of Stonehenge contacted the Office of the Public Advocate regarding Respondents' denying rent regulated tenants access to the development's exercise room. Since then, the Public Advocate has urged the CHR to investigate and act on Ms. Dorsey's complaint.

Council Member Inez Barron

Council Member Inez Barron served in the New York State Assembly for five years. During that time, she advocated for the rights of tenants and supported legislation that protected tenants and preserved housing for individuals living in rent stabilized units. She joined with former Council Member Charles Barron, Senator John Sampson and then Congressman Ed Towns to protect tenants in Starrett City in their fight against rent increases when the development's participation in the Mitchell-Lama program was about to end. She introduced legislation in the Assembly to guarantee that Starrett City would remain affordable for the next thirty years. Council Member Barron plans to reintroduce the Florence Rice bill, which is legislation that calls for providing information and resources to assist seniors and elders during court proceedings to prevent them from being evicted. She has also submitted legislation to protect tenants and businesses during rezonings. Council Member Barron has been a strong proponent of building "real" affordable housing that meets the needs of her constituents, and reflects the area median income.

Council Member Margaret Chin

New York City Council Member Margaret S. Chin was elected into office in 2010 and represents District 1 of lower Manhattan. With an extensive community organizing background, she has advocated for tenants' rights for decades. As Council Member, she has served on the Public Housing Committee and sponsored legislation to increase protections for tenants. Council Member Chin has fought for the rights for elderly and low-income tenants both in and outside of her district. Currently, she serves as Chair of the Aging Committee on the Council where she championed this year's increase on SCRIE's income requirement so that 24,000 more seniors living in rent-regulated units across the city are eligible for the benefit. During her testimony this year before the Rent Guidelines Board, Council Member Chin was a vocal proponent of a rent freeze, and helped secure a historically low increase. Council Member Chin continues to fight for rights and protection for tenants in the city, endeavoring to remove any policies—such as this one—that promote the segregation of rent stabilized or Section 8 tenants. Given her experience as a longtime advocate for tenants, Council Member Chin is interested in the interpretation of

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this complaint and would like to see it resolved in such a way that a new precedent is established to help prohibit this type of discrimination against rent-regulated tenants.

Council Member Costa Constantinides

Council Member Costa Constantinides was elected to represent Queens' District 22 in the New York City Council beginning in January 2014. He has been a strong advocate for tenants' rights and housing affordability. Constantinides is a member of the Council's Coalition to End Predatory Equity. He joined Council Members Torres, Williams and Garodnick in their call to ensure the continued affordability of housing in New York, irrespective of who owns the property. Constantinides is a co-sponsor of Council Member Kallos' bill calling for a moratorium on Section 8 Housing downsizing so that tenants are not made to relocate to smaller housing units that may not be a good fit for their families. Given his expertise and knowledge of housing laws, Constantinides is interested in the favorable resolution of this complaint.

Council Member Robert Cornegy

Council Member Robert E. Cornegy, Jr. represents the 36th Council District, including the vibrant communities of Bedford-Stuyvesant and Northern Crown Heights in the New York City Council. This district features one of the three Aging Improvement Districts in New York City and the only one in the borough of Brooklyn. Through this project and others, community advocates have identified affordable housing as one senior residents' greatest needs. Given this need and the plan to preserve and develop 200,000 units of affordable housing in New York City over the next decade, Council Member Cornegy has a significant interest in ensuring that the city's Human Rights Law protects senior residents' right to full participation in their residential and larger communities. He believes that the denial of this right will negatively impact senior citizens' sense of dignity, health and well-being, to the detriment of the community overall.

Council Member Laurie Cumbo

New York City Council Member Laurie Cumbo, who represents the 35th district in Brooklyn, has been a strong advocate for tenants' rights. From Fort Greene to Crown Heights, Council Member Cumbo represents an economically diverse population of New Yorkers. Within her first six months of assuming office in January 2014, Council Member Cumbo has met with several residents who have expressed their concerns regarding the unfair fight to avoid eviction by developers and landlords without proper legal counsel or representation. As the construction of new housing units continues across Brooklyn, tenants will need to become well-versed in their rights under New York City and State law. Council Member Cumbo has and will continue to support legislation that protects renters, particularly those in affordable housing, from discrimination and human rights violations of any kind. She has also hosted legal clinics to educate tenants about their rights and workshops on the Senior Citizens Rent Increase Exemption (SCRIE) and Disability Rent Increase Exemption (DRIE) programs. Given her robust support of efforts to preserve affordable housing and the diversity of neighborhoods across New York City, Council Member Cumbo is concerned with this complaint and its resolution.

Council Member Mathieu Eugene

Mathieu Eugene was elected in 2007 to represent Brooklyn's 40th District in the New York City Council, which includes the neighborhoods of Flatbush, East Flatbush, Ditmas Park, Prospect-Lefferts Gardens, Crown Heights, Midwood, and Kensington. He has been an advocate for fairness and tenants' rights even prior to serving on the City Council, including ten years he served as a member of Brooklyn's Community Board 14. In the Council, he has worked closely with not-for profit organizations and community groups that seek to protect the rights and living conditions of tenants throughout the City and to safeguard against discriminatory practices. Council Member Eugene has been strident in insisting that the housing rights of rent regulated tenants be protected.

Council Member Corey Johnson

Corey Johnson was elected to represent Manhattan District 3 in the New York City Council as of January 2014. He is a former Chair of Manhattan Community Board 4 and an active member of the Progressive Caucus' policy subcommittee and has been a strong advocate for tenants' rights before and since joining the council. Council Member Johnson is working alongside Council Member Mark Levine to craft legislation that will amend city law to prevent landlords from discriminating against rent stabilized tenants as compared to their market-rate peers by denying comparable access to amenities and other building features. Given his expertise and knowledge of housing laws, and in particular on city's discrimination laws, Johnson is interested in the favorable resolution of this complaint.

Council Member Ben Kallos

Council Member Ben Kallos (D-Manhattan) represents District 5, one of the largest and fastest growing populations of senior citizens in New York City. He is a vocal advocate for affordable housing and tenants' rights, particularly for our City's senior citizens. As the former Chief of Staff to Assembly Member Jonathan Bing, Chair of the Mitchell-Lama Subcommittee, he helped draft legislation to scale rent to the consumer price index. While in the City Council, he has been a leader who worked alongside the Housing Alliance Against Downsizing to oppose moving seniors from one bedroom units into studio apartments. He also authored a letter to the Rent Guidelines Board in support of a one year rent freeze which was co-signed by 26 members of the Council. Council Member Kallos strongly believes that seniors should receive the benefits of the communities they built; they should not be priced out of their neighborhoods or unfairly deprived of any amenities. He condemns any discrimination or inequitable treatment of affordable housing residents, including denial of services granted to those in market-rate units. Council Member Kallos firmly believes that New York City Human Rights Law must be interpreted to include and protect as many residents of New York City as possible and has great interest in the resolution of this issue.

Council Member Andy King

Councilmember Andy King was elected to serve and represent the 12th Council District of the Bronx. He is a member of the Civil Rights Committee and has served as a strong advocate

against bias and discrimination based on sex, race, and age, especially in the housing, employment and education realms. His district is home to one of the largest concentrated senior populations in the United States, Co-Op City. In fact, Co-Op City is the seat of the largest naturally occurring retirement community and cooperative residential development in the world, with over 50,000 residents living in 35 high-rise buildings. Before his tenure in the Council, he was an advocate for protecting and uplifting the New York City senior population. Because of his experiences, King is aware of, and vehemently opposed to, the overt and covert abuses that can occur to our city's most vulnerable population, especially in regards to age discrimination. Given his relationship with the senior community, Councilmember King is interested in the interpretation and resolution of this complaint.

Council Member Karen Koslowitz

Karen Koslowitz served in the New York City Council from 1991-2001. Ms. Koslowitz is currently serving in the Council having been re-elected in 2009 and 2013. For most of these years, the Council Member has served on both the Aging and the Housing and Buildings Committees. Her council district, number 29, has a relatively large population of seniors and rent regulated tenants. Given all these factors, Council Member Koslowitz is interested in the favorable resolution of this complaint.

Council Member Stephen Levin

Stephen Levin was elected to represent New York City Council District 33 in 2009 and was re-elected in 2013. As a former housing organizer and as an advocate for low-income tenants on the City Council, Council Member Levin has worked closely to ensure that tenants' rights are ensured and strengthened. Council Member Levin most recently supported a rent freeze for rent regulated tenants in New York City and has been active on a number of other housing issues throughout his career, including efforts against housing discrimination. Council Member Levin is interested in how this complaint is interpreted and the implications it has for New Yorkers throughout the City.

Council Member Mark Levine

Mark Levine was elected to represent Manhattan District 7 in the New York City Council as of January 2014. He is a member of the Council Committee on Housing and Buildings and has been a strong advocate for tenants' rights before and since joining the council. In that role, he has introduced legislation that will guarantee the right to counsel for low-income tenants in housing court/eviction proceedings, legislation that is aimed at protecting elderly and other vulnerable New York City tenants. Council Member Levine has also been vocal in his call for the Rent Guidelines Board to enact a rent freeze for rent-regulated tenants in 2014. He serves on the Progressive Caucus' policy subcommittee through which he is a leader on one of the top-tier Caucus priorities to guarantee the right to counsel for low-income tenants in housing court/eviction proceedings. Council Member Levine is working alongside Council Member Corey Johnson to craft legislation that will amend city law to prevent landlords from discriminating against rent stabilized tenants as compared to their market-rate peers by denying comparable access to amenities and other building features. Given his expertise and knowledge

of housing laws, and in particular on the city's discrimination laws, Levine is interested in the favorable resolution of this complaint.

Council Member Darlene Mealy

Council Member Mealy was elected to represent the 41st District in the fall of 2005, and was re-elected in 2009 and 2013. As a community activist and elected official, Council Member Mealy has spent her entire career as an advocate for equal treatment under the law. As the current chair of the Civil Rights committee, Council Member Mealy has helped to pass Local Law 9 which protects New York City interns from discrimination and harassment. She is also crafting legislation to improve the Human Rights Commission's reporting on civil rights investigations, as well as legislation to improve detection and prosecution of civil rights violations. Council Member Mealy has a keen interest in making sure that the Human Rights Law protects all New Yorkers, and strongly supports a favorable outcome for the tenant in this matter.

Council Member Carlos Menchaca

Carlos Menchaca was elected to represent Brooklyn District 38 in the New York City Council in the fall of 2013. He is the Chair of the Committee on Immigration, and has as a result, a vested interest in housing issues which disproportionately affect low-income, people of color—many of whom are immigrants. In his current role, Council Member Menchaca introduced legislation that would require a complete, and thorough, assessment and evaluation of the conditions of Brooklyn Housing Court. This resolution would ensure that as a result of the evaluation process, persons interacting with the borough's Housing Court will have access to a facility—and to services—that are up to par. Additionally, Council Member Menchaca submitted extensive testimony to the Rent Guidelines Board in support of the proposed 0% increase on regulated and unregulated leases in the city. In the 38th District, the Council Member continues to be a tireless advocate for affordable housing, in a climate where affordable housing is under tremendous pressure. He is invested in the protection of affordable housing units throughout the City, and in the success of community-focused services and programs that directly residents. As a result of all his work around housing, and because of his dedication to a City with more protections against discriminatory policies, Council Member Menchaca is committed to seeing that this complaint be addressed expeditiously, and that there be a resolution that is just.

Council Member Rosie Mendez

In 2005, Rosie Mendez was elected to the NYC Council to represent District 2. From 2006 through 2013, she was appointed the Chair of the Public Housing Committee and was a member of the Committee on Housing and Buildings. As the Councilwoman, she worked with staff to address rent overcharges and obtain rent rollbacks where possible. In 2013, she was elected to serve a third term in the City Council. She is the senior ranking member of the Committee on Housing and Buildings. Additionally, she was appointed to serve on the Speaker's Policy Working Group. As a Councilmember, she assists constituents with allegations of rent overcharges. As a member of the Policy Working Group, she selects topics to address holistically and strategically on a city-wide level. Housing and homelessness makes up a major part of her policy work which includes initiatives aimed at preventing tenant harassment,

regulating the abuse of MCI increases, and addressing landlords' failure to make repairs, collecting illegally high rents overcharges, and decreasing services. Given her expertise and knowledge of housing laws, Mendez is interested in the favorable resolution of this complaint.

Council Member I Daneek Miller

Council Member I Daneek Miller was elected in 2014 to represent the constituents in the 27th Council District, Southeast Queens, after a long career as a labor leader and negotiator in the Borough. As such, he has great compassion and understanding of the rights of all New Yorkers to a decent quality of life and the hearings in the committee he chairs -- Civil Service and Labor - - have focused on the problems of low wage workers dealing with the high cost of living. He believes in equity and justice for all age groups and has co-sponsored legislation that would guarantee the right of counsel to low-income tenants in housing court/eviction proceedings—a large number of whom are elderly. He has dealt with cases of employment, age and housing discrimination and certainly is supportive of the efforts of the Public Advocate in showing that the denial of rent regulated tenants from amenities at the Stonehenge Village complex in Manhattan has had a disproportionate impact on elderly tenants. He agrees that this class of tenancy should be protected against discrimination by the City's Human Rights Law.

Council Member Annabel Palma

Annabel Palma represents New York City Council District 18, which includes the Bronx neighborhoods of Castle Hill, Clason Point, Parkchester, and Soundview, and is home to working families and seniors, many of whom live in rent regulated and public housing. Over her more than ten years in public life, Council Member Palma has found that stable housing and robust services are essential ingredients to seniors leading healthy and meaningful lives. This is why she has, among other things, fought for funding to keep senior centers open, supported a measure to expand the rent increase exemption for seniors, and joined a coalition against predatory equity. Moreover, she has been extra vigilant about practices, like the one at issue here, that, intentionally or not, upset these ingredients. For these reasons, Council Member Palma has an interest in the resolution of this case.

Council Member Ydanis Rodriguez

Council Member Ydanis Rodriguez has long been an advocate for tenants' rights, before and after his time serving in the NYC Council. As a testament to this commitment, he kicked off his campaign for election to the council in 2009 at a dilapidated building, whose tenants suffered from horrible conditions. After winning election to the council, he helped to secure over \$20 million in renovations to this building, while maintaining affordability for the tenants. Council Member Rodriguez has persistently fought on behalf of tenants, not only helping them to understand their rights, but to empower them through education and annual town hall meetings with housing regulators. Recently, he intervened on behalf of tenants in Washington Heights, whose landlord had cut off both heat and electricity in the dead of winter, in an effort to expel them from the building. Council Member Rodriguez worked with Con Edison and HPD to get the services restored immediately, and joined the tenants in solidarity as they took their landlord to court for damages. He has fought every year while at the Council to ensure legal services are in place for low income tenants facing eviction, this year winning an expansion in funding for

these vital programs. Now on the housing committee, Council Member Rodriguez remains a key player on housing issues both in his district and across the city, and has supported key legislation to ensure tenants' rights are upheld. Council Member Rodriguez joins this complaint as a tireless supporter for tenants' rights and as someone with extensive experience standing up to negligent and harassing landlords across New York City.

Council Member Deborah Rose

Councilwoman Debi Rose was re-elected last fall to represent the North Shore of Staten Island, the 49th Council District. She is a Deputy Majority Leader, a member of the Council's Budget Negotiating Team, chairs the Council's Committee on Waterfronts, is a member of the Committee on Rules, Privileges and Elections, and also sits on the Education, Aging, Civil Rights, and Transportation Committees. She is a founding member of the Council's Progressive Caucus and also a member of the Black, Latino and Asian Caucus and the Women's Caucus. Councilwoman Rose has been a strong advocate in favor of affordable housing for working New Yorkers, both as a community activist prior to election and since she has been a member of the city council. The principle at issue here – that rent-stabilized tenants should have the same and equal access to building amenities as all other building tenants – is an important one that resonates for all tenants in New York City. Councilwoman Rose strongly believes that we cannot have a two-tier system where some tenants walk in the front door and have access to everything in the building, while other tenants figuratively “walk in the back door” by having access to only the most basic of services in the building. This is not the type of city we want to have – one of the “haves” and “have nots” – that this type of policy so blatantly illustrates. She is proud to support this litigation.

Council Member Helen Rosenthal

Helen Rosenthal has represented Manhattan District 6 in the New York City Council since January 2014. She is a member of the Council Committee on Housing and Buildings. Council Member Rosenthal serves as an appointed member of the Council Speaker's Budget Negotiating Taskforce which, among other initiatives, will develop strategies to address housing and homelessness by diverting revenue to city agencies, as well as partnering with nonprofits that have effectively protected tenants' legal rights. Prior to her election to the Council, Ms. Rosenthal was the chairperson of Manhattan Community Board 7 where she worked to preserve existing rent-regulated housing on the Upper West Side and negotiated additional affordable units in new developments. Council Member Rosenthal has deep and broad experience dealing with the issues of housing affordability, displacement, and rent regulation. In her first six months in office, she has worked quickly to introduce legislation to increase protections for tenants in housing court and to reduce the loss of subsidized housing. She has also publicly supported efforts to bolster enforcement actions by city agencies to target unprincipled property managers and owners.

Council Member Jumaane Williams

Council Member Jumaane D. Williams represents the 45th Councilmanic District in the borough of Brooklyn. He is also the chairman of the Council's Committee on Housing and Buildings. Part of Chairman Williams' legislative agenda, related to the committee, is to ensure that discrimination in housing is dismantled where it exists. This discrimination includes the sort alleged in the *Dorsey* complaint. As such, Williams is interested in the resolution of the complaint in this case.

BACKGROUND¹

Stonehenge Village is a rental housing complex located on 96th and 97th Street between Amsterdam and Columbus Avenues, consisting of three buildings owned by Respondents. The properties were part of the Westgate Housing Corporation (“Westgate”) and were constructed and financed through New York State Private Housing Finance Law, more commonly known as the Mitchell-Lama program. See Article 2 of the Private Hous. Fin. Law. Mitchell-Lama provided developers with low-interest government loans and real estate tax exemptions in exchange for the development of affordable rental and cooperative housing for moderate- and middle-income families. In March 1979, Westgate dissolved and was restructured as an entity known as KSLM.

In 1998, KSLM withdrew the buildings from the Mitchell-Lama program. The properties were then the subject of protracted litigation to determine their rent regulatory status, and whether rents could be increased to prevailing market rates under the “unique or peculiar provision” of the New York City Rent Stabilization Law. See RSL § 26-512(a). In *KSLM-Columbus v. DHCR*, 5 N.Y.3d 303 (2005), the Court of Appeals held that the developments would be rent stabilized and remanded to Division of Housing and Community Renewal (now “Homes and Community Renewal”) to determine the appropriate rents. The current owner, Respondents, purchased the development in 2005 and ultimately reached a settlement with the tenants. Stonehenge Village now has 165 market rate tenants and 252 rent regulated tenants. Ms. Dorsey is one of those rent regulated tenants. Answer ¶ 7.

Mitchell-Lama developments were, and continue to be, a significant source of safe and long-term housing for many thousands of elderly people in New York City. See Vera Prosper, *Aging in Place in Multifamily Housing*, New York State Office for the Aging.² Accordingly, many of the tenants who live in buildings that have exited the Mitchell-Lama program are over the age of 65. This is because most residents took up residence in the 1970s and 80s when the program began, and were never displaced as a direct result of the rent and eviction protections mandated by the program’s regulations.

¹The facts in this section were obtained from the Complainant and Respondents’ papers, as well as letters of support submitted by rent regulated tenants in support of Ms. Dorsey. Copies of the affidavits are submitted hereto as Exhibit A.

²*Cityscape: A Journal of Policy Development and Research*, Vol. 7 no. 1 (2004), U.S. Dept. of Housing and Urban Development, Office of Policy Development and Research.

On or about February 2014, Respondents built an exercise room in 120 West 97th Street, one of the buildings in the development. It is undisputed that rent-stabilized tenants are not allowed access. Answer ¶ 8. The main legal issue before the CHR is whether this exclusion is unlawful because it has a disparate and unjustified impact on older tenants.

ARGUMENT

A. THE COMPLAINT ESTABLISHES PROBABLE CAUSE THAT THE RESPONDENTS' POLICY VIOLATES THE NEW YORK CITY HUMAN RIGHTS LAW.

The New York City Human Rights Law (“NYC HRL”) prohibits discrimination based on age “in the terms, conditions or privileges of the sale, rental or lease of any [covered] housing accommodation ... or in the furnishing of facilities or services in connection therewith.” (*Emphasis added*), Admin. Code § 8-107(5)(2). A complaint to the CHR states probable cause sufficient to warrant a hearing “where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it more likely than not” that discriminatory conduct has occurred. Admin. Code, Rules of Practice § 1-51. “Discriminatory conduct” includes neutral practices that have a disparate impact on a protected class. Admin. Code § 8-107(17)(a)(1). Ms. Dorsey’s Complaint states facts sufficient to establish that the Respondents’ policy has a discriminatory impact on the older tenants of Stonehenge Village and Respondents have not set forth any valid defense.

1. The New York City Human Rights Law Supports Claims Based on Disparate Impact

The NYC HRL states that unlawful discrimination exists where a facially neutral policy or practice “results in a disparate impact to the detriment of any [protected] group.” Admin. Code § 8-107(17)(a)(1), *see also, Levin v. Yeshiva University*, 96 N.Y.2d 484, 491 (2001). Despite the unequivocal wording of the Law, Respondents argue that a “disparate impact analysis does not apply to cases of alleged housing discrimination.” Answer ¶15. Their argument seems to be based on a claim that the Supreme Court has docketed two cases that raise an issue concerning the availability of a disparate impact claim under the federal Fair Housing Amendments Act.

Unlike the NYC HRL, the Federal Fair Housing Amendments Act does not contain language creating a cause of action for disparate impact claims, but it does not bar those claims either. The Second Circuit has determined that disparate impact claims are cognizable under the FHAA despite the absence of clear language creating a cause of action. *See e.g., Ungar v. New York City Hous. Auth.*, 363 Fed. Appx. 53, 2010 U.S. App. LEXIS 1666 (2d. Cir. 2013); *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 934 (2d Cir. 1988). The Supreme Court may someday issue a decision that will overrule Second Circuit precedent, but it has not. And, even if it did, such a ruling would not render a disparate impact analysis unavailable under the NYC HRL.

2. *Based On the Respondent's Own Allegations, the Impact of Respondent's Policy On Older Tenants is Statistically Significant.*

To state a cause of action for disparate impact under the NYC HRL, the impact on the protected group must be statistically significant. Admin. Code § 8-107(17)(b). In her Complaint, Ms. Dorsey states that “only one market-rate tenant is over 65 years of age, while approximately 70-75% of rent-regulated tenants are over 65 years of age.” Compl. ¶9. In its responsive papers, the landlord states that there are “at least eight market rate tenants who are 65 years of age or more ... Conversely, at least one third of the rent regulated tenants are under the age of 65.” (Letter p. 3). Taking the landlords assertions as true, 8/165 (5%) market rate tenants are over sixty-five and 2/3 (66%) of the rent stabilized tenants are over 65.³ That is a statistical spread of 61% which is statistically significant.

Statistical significance has not been defined by the New York Courts under the NYC HRL, but an examination of comparable precedent is illustrative. In *Castaneda v. Partida*, 430 U.S. 482, 495, a jury selection challenge brought under the Equal Protection Clause, the Court found a difference of 40% sufficient to state a claim. *See also, U.S. v. Alvarado*, 923 F.2d 253 (2d Cir. 1990)(difference of 21% is statistically significant). In the employment context, the Second Circuit has adopted a presumption that a 20% disparity is statistically significant in the context of employment discrimination claims. *See e.g., Waisome v. Port Auth. of N.Y. and N.J.*, 948 F.2d 1370 (2d Cir. 1984).

Here we have a discrete group – the rent stabilized tenants of Stonehenge – and a policy that uniformly and neutrally deprives them of services. Ms. Dorsey’s claim of discrimination lies in the fact that this neutral policy has a disproportionate impact on elderly tenants, and the relevant comparison group to use to determine whether the affected group is disproportionately elderly, is the tenant group as a whole. Based on the Respondent’s own admissions, its policy has a disparate impact on older tenants.

Respondent justifies the difference by attributing it to the length of tenancy as distinct from the age of the occupant. Respondent’s assertion proves the claimant’s point: long-term, rent stabilized, tenants are more likely to be older tenants. It is therefore quite obvious and predictable that a facially neutral policy applied to rent stabilized tenants would have a statistically significant impact on older tenants. Given the development’s history and Respondents’ active role in shaping it, Respondents were fully aware that those tenants who are subject to stabilization are long-term tenants who more likely to be elderly.

The 61% difference in composition of the two comparable groups is statistically significant, giving rise to probable cause that the policy is discriminatory unless a valid justification has been advanced by the landlord and, in this case, it has not.

³ Ms. Dorsey asserts that the policy of excluding rent regulated tenants from the exercise room has had a disproportionate impact on tenants in two age groups: from 50-65 and over 65.

3. *The Landlord Has Not Articulated a Significant Business Objective for the Challenged Policy*

Respondents could avoid a *prima facie* finding of disparate impact discrimination by pleading and proving “as an affirmative defense that [the] policy bears a significant relationship to a significant business objective.” Respondents do not plead or prove a business justification in their papers, except to assert that their policy is not unlawful, which misses the point: the policy is unlawful if it has a unjustified discriminatory effect, which it does.

B. PUBLIC POLICY FAVORS PROTECTING ELDERLY TENANTS FROM HOUSING DISCRIMINATION UNDER THE NYC HUMAN RIGHTS LAW.

The elderly face special risks and danger to their well-being as a result of rapid development and gentrification in New York City. Older tenants have limited housing options because they are more likely to rely on a fixed income such as pensions and Social Security.⁴ New York has decreasing market-rate options for older tenants, despite Respondents’ assertion that tenants like Ms. Dorsey have a choice “to remain in [a] rent regulated unit.”⁵ The rising cost of housing means that older tenants cannot afford to escape rising housing costs, yet cannot secure affordable housing elsewhere.⁶

For older tenants, it is hard, if not impossible, to move to an unfamiliar neighborhood. The elderly often live alone and rely on well-developed social networks in their immediate neighborhood to assist them with everyday activities.⁷ Access to public transportation, limited mobility and the physical and emotional burden associated with moving often keep the elderly within their communities.⁸

Elderly rent stabilized tenants should not be penalized for making a choice that was never theirs to make. CHR should interpret the Law to effectuate its broad remedial purpose. *Amici* urge the CHR to use the full force of the law to require Respondents to treat rent stabilized tenants the same as their market-rate neighbors.

⁴Ana Petrovic, *The Elderly Facing Gentrification: Neglect, Invisibility, Entrapment and Loss*, 15 *Elder L.J.* 533 at 549.

⁵ See Kevin M. Cremin, *The Transition to Section 8 Housing: Will the Elderly Be Left Behind?* 18 *Yale L. & Pol’y Rev.* 405 (Discussing the desire of the elderly to “age-in-place” and a strong policy preference by Federal Housing Programs to encourage independent living by providing home or community based resources); <http://www.nytimes.com/2014/04/30/nyregion/older-new-yorkers-face-acute-pain-in-finding-homes.html>; “*The Growing Gap*” New York City Comptroller, April, 2014, available at: http://comptroller.nyc.gov/wp-content/uploads/documents/Growing_Gap.pdf (last accessed June 30, 2014) (Elderly tenants constitute a significant portion of low income households).

⁶ *Id.* at 567

⁷ *Id.* at 550

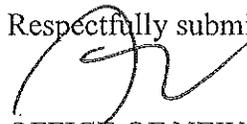
⁸ *Id.* at 550

CONCLUSION

For the foregoing reasons, Public Advocate Letitia James and Council Members Inez Barron, Margaret Chin, Costa Constantinides, Robert Cornegy, Laurie Cumbo, Mathieu Eugene, Corey Johnson, Ben Kallos, Andy King, Karen Koslowitz, Stephen Levin, Mark Levine, Darlene Mealy, Carlos Menchaca, Rosie Mendez, I Daneek Miller, Annabel Palma, Ydanis Rodriguez, Deborah Rose, Helen Rosenthal and Jumaane Williams respectfully request that Ms. Dorsey's complaint be granted in its entirety, as well as such other and further relief as is just and proper under the circumstances.

Dated: August 1, 2014

Respectfully submitted,



OFFICE OF NEW YORK CITY
PUBLIC ADVOCATE LETITIA JAMES
Jennifer Levy, General Counsel in Charge of Litigation
Chaumtoli Huq, Esq.
Yasmean Tamoor (Law intern)
One Centre St., 15th Floor
New York, NY 10007
(212) 669-2175
JLevy@pubadvocate.nyc.gov

cc: Jerold Goldberg, Attorney for Respondents
Marjorie Mesidor, Attorney for Complainant
Council Member Inez Barron
Council Member Margaret Chin
Council Member Costa Constantinides
Council Member Robert Cornegy
Council Member Laurie Cumbo
Council Member Mathieu Eugene
Council Member Ben Kallos
Council Member Andy King
Council Member Karen Koslowitz
Council Member Stephen Levin
Council Member Mark Levine
Council Member Darlene Mealy
Council Member Carlos Menchaca
Council Member Rosie Mendez
Council Member I Daneek Miller

Council Member Annabel Palma
Council Member Ydanis Rodriguez
Council Member Deborah Rose
Council Member Helen Rosenthal
Council Member Jumaane Williams