

No. 25-1187

---

---

In the Supreme Court of the United States

---

---

THE COALITION FOR FAIRNESS IN SOHO AND NOHO, INC.,  
ET AL.,

*Petitioners,*

v.

CITY OF NEW YORK, NEW YORK, ET AL.,

*Respondents.*

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF APPEALS OF NEW YORK

---

**BRIEF OF AMICI CURIAE RONNIE WOLF AND 43  
OTHER SOHO/NOHO ARTISTS IN SUPPORT OF  
PETITIONERS**

---

MATTHEW A. SCHWARTZ

*Counsel of Record*

BRANDYN J. RODGERSON

MATTHEW J. MARCHELLO

ALEXANDER NEWMAN

SULLIVAN & CROMWELL LLP

125 Broad Street

New York, NY 10004

(212) 558-4000

[schwartzmatthew@sullcrom.com](mailto:schwartzmatthew@sullcrom.com)

May 18, 2026

---

---

**TABLE OF CONTENTS**

STATEMENT OF INTEREST OF *AMICI CURIAE*..... 1

SUMMARY OF ARGUMENT ..... 3

ARGUMENT..... 5

I. Background on SoHo/NoHo Zoning..... 5

II. The Artists Have Rebuilt And Revitalized SoHo/NoHo, And The City Now Seeks To Target The Artists Using The Zoning Process ..... 8

    A. Artists Like *Amici* Built SoHo/NoHo Into What It Is Today Through Decades Of Hard Work And Sacrifice ..... 8

        1. Arrival in SoHo/NoHo ..... 9

        2. Certification as Artists..... 11

        3. Rebuilding SoHo/NoHo—Literally ..... 12

    B. The SNX Zoning Resolution Severely And Unfairly Restricts The Artists’ Ability To Sell Their Homes ..... 15

    C. The SNX Zoning Resolution Harms Artists And Suggestions Otherwise Should Be Rejected ..... 20

## II

CONCLUSION .....	24
APPENDIX A: List of 44 <i>Amici</i> .....	1a
APPENDIX B: SoHo/NoHo Through The Years ...	3a

III  
**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

<i>Armstrong v. United States</i> , 364 U.S. 40 (1960) .....	23
<i>Dolan v. City of Tigard</i> , 512 U.S. 374 (1994) .....	4
<i>Nollan v. Cal. Coastal Comm’n</i> , 483 U.S. 825 (1987) .....	4

**Statutes**

N.Y.C. Zoning Resol. § 12-10.....	6
N.Y.C. Zoning Resol. § 42-315.....	5
N.Y.C. Zoning Resol. § 143-00.....	7
N.Y.C. Zoning Resol. § 143-02.....	8
N.Y.C. Zoning Resol. § 143-13.....	7, 8
N.Y. Mult. Dwell. Law § 276.....	6
N.Y. Mult. Dwell. Law § 280.....	7, 19
N.Y. Mult. Dwell. Law § 285(3).....	15

**Other Authorities**

ENVISION SOHO/NOHO REPORT (2019), <a href="https://shorturl.at/hYXH4">https://shorturl.at/hYXH4</a> .....	5, 6, 7
--	---------

IV

N.Y.C. Dep't of Cultural Affairs, *Notice to Applicants Re: Artist Certification*, [https://www.nyc.gov/assets/dcla/downloads/pdf/artist\\_certification.pdf](https://www.nyc.gov/assets/dcla/downloads/pdf/artist_certification.pdf)..... 6

S. 9652, 2025–2026 Leg., Reg. Sess. (N.Y. 2026)..... 22

SoHo Artists Association, *SoHo Newsletters* (circa 1970), [https://sohomemory.org/pdf/soho\\_artists\\_association\\_newsletters.pdf](https://sohomemory.org/pdf/soho_artists_association_newsletters.pdf)..... 9, 10

SOHO BROADWAY INITIATIVE, A *Historical Perspective on SoHo Zoning* (Apr. 1, 2021), <https://SoHobroadway.org/a-historical-perspective-on-SoHo-zoning/>..... 5, 6

**STATEMENT OF INTEREST OF *AMICI CURIAE***

*Amici*<sup>1</sup> are 44 artists (“Artists”) who have built their lives in the SoHo and NoHo neighborhoods of New York City (“SoHo/NoHo”).<sup>2</sup> They are painters, photographers, musicians, sculptors, and designers. Some are native New Yorkers, while others came to New York in pursuit of the freedom to create, surrounded by likeminded and hard-working artists. Many purchased or rented lofts beginning in the 1970s, when SoHo/NoHo was in severe decline and real estate was cheap. They performed substantial renovations with their own hands and at their own expense—transforming derelict spaces into homes. They have raised their families there and are now enjoying their golden years there. And although most have not become wealthy from their work (at least not by New York standards), they have helped transform New York City into one of the world’s iconic art capitals.

Contrary to the City’s accusations throughout this case, *see* Appellants’ Opening Brief (“App. Br.”) at 6-7, *Coalition for Fairness in SoHo & NoHo, Inc. v. City of New York*, No. APL-2025-00028 (N.Y. Mar. 28, 2025),

---

<sup>1</sup> Pursuant to Rules 37.2 and 37.6 of this Court, *Amici* affirm that no counsel for a party authored this brief in whole or in part, and that no party, counsel for a party, or any person or entity other than *Amici*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of the brief, and affirm that counsel of record received the required 10 days’ notice.

<sup>2</sup> *Amici* are listed in Appendix A.

the Artists are not and have not lived “illegal[ly]” in their homes under current zoning laws—many have been certified by the City under the City’s Joint Living-Work Quarters for Artists (“JLWQA”) framework and have legally resided in their dwellings for the better part of six decades.

But the Artists now face the threat of significant harm imposed by the recently enacted New York City Special SoHo-NoHo Mixed Use District (“SNX Zoning Resolution”), a measure that is punitively targeted at them and that, if upheld, will impose an enormous monetary exaction on the Artists when they sell their homes, which for most of them (like most Americans) is their primary asset.

As residents and owners of JLWQA units that will be affected by the outcome of this case, the Artists have a strong interest in ensuring that their property is not unconstitutionally taken without just compensation. The core constitutional questions turn on the relationship between the City’s permitting fee and the purported impact of rezoning on artists. The Artists are uniquely positioned to help this Court understand the history of artists in SoHo/NoHo and how they will be affected by the City’s stripping of their right to sell their own property. Given that the City purports to be protecting local artists and sustaining SoHo/NoHo’s cultural legacy, it is all the more important for the Court to hear from those artists themselves.

Accordingly, *Amici* respectfully ask this Court to consider their stories before rendering its decision.

## SUMMARY OF ARGUMENT

Decades ago, most New Yorkers—including the city government—had written off SoHo/NoHo, allowing the neighborhoods to fall into disrepair. But *Amici* and other artists saw something else: an opportunity to rescue the nation’s forgotten architectural treasures and build a creative community that helped shift the center of the art world from Europe to New York, elevating the city into a global cultural capital. The rebirth of SoHo/NoHo demonstrates how the courage and investment of everyday Americans can transform neglected neighborhoods into vibrant cultural and economic engines. But now that SoHo/NoHo has become one of the most desirable real estate markets in the world, the City seeks to cash in on an opportunity it once ignored.

The City has rezoned SoHo/NoHo to allow for residential use and to phase out the JLWQA designation in favor of conversion to residential units. But the rezoning also unconstitutionally attempts to demand exactions from JLWQA owners: as a prerequisite to residential conversion, the Artists must pay an exorbitant fee costing hundreds of thousands of dollars per unit. This fee will supposedly go to a purported “arts fund” to compensate for the loss of artist housing, even though the money will not necessarily be spent on artist housing, or even on anything in SoHo/NoHo. Because the City is winding down the JLWQA certification process, there are no certified artists eligible to buy JLWQA lofts. As a result, unless a JLWQA is converted to a residential unit, no buyer can legally live there. Should the

Artists ever want to sell their homes, they will have little choice but to pay the City hundreds of thousands of dollars.

By abusing its zoning and permitting powers, the City has stripped artists of a basic property right—the ability to sell their homes—unless the Artists pay an enormous monetary fee. The Takings Clause does not permit the government to use the zoning process to extract payments from a small number of artists, forcing them to bear burdens that should rightfully be borne by society as a whole.

This case is a strong vehicle for review. It cleanly presents an important unresolved Takings Clause question: whether this Court's decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), apply to purely monetary exactions. Further, the circumstances of this case perfectly demonstrate the types of governmental abuses that *Nollan/Dolan* anticipated and sought to address. The City has invented a specious harm that the fee will supposedly mitigate—the loss of artist housing from the conversion of JLWQAs—even though the City's own policies have already made such housing effectively unavailable for future artists. Because the City has forbidden the creation of new JLWQAs and neglected the committee that certifies artists to live in existing JLWQAs, it is virtually impossible for new artists to live in JLWQAs. Nor will the money go towards mitigating these purported losses of artist housing in SoHo/NoHo; instead, it will go to an unrelated general arts fund for all of Lower Manhattan. Further, the City has demanded an unreasonably high fee knowing

that the Artists have little choice but to accept, because there is no financially reasonable alternative.

The question presented reaches far beyond two neighborhoods in New York. It asks whether any municipality's permitting processes must comport with the Takings Clause, or whether that municipality can transform the permitting process into nothing more than an abusive demand for money. This Court should grant the petition.

## ARGUMENT

### I. BACKGROUND ON SOHO/NOHO ZONING

Prior to the 1960s, SoHo/NoHo had been zoned for light manufacturing, a zoning classification that did not allow residential uses. *See* ENVISION SOHO/NOHO REPORT 36 (2019), <https://shorturl.at/hYXH4>. In 1971, following the “loss of industry across its manufacturing districts,” New York City’s City Planning Commission allowed artists to live in their workspaces by adopting “joint living-working quarters for artists” (“JLWQAs”) zoning regulations and rezoning SoHo/NoHo to the newly established M1-5A and M1-5B districts. *See* SOHO BROADWAY INITIATIVE, *A Historical Perspective on SoHo Zoning* (Apr. 1, 2021), <https://SoHobroadway.org/a-historical-perspective-on-SoHo-zoning/>. This zoning classification, unique in the City, allowed for spaces to be converted into JLWQAs intended to be occupied by artists. *See* N.Y.C. Zoning Resolution (“ZR”) § 42-315.

Historically, to legally reside in a JLWQA, an occupant had to be certified by the City’s Department of Cultural Affairs as a working “artist,” as defined

under the Multiple Dwelling Law (“MDL”). See ENVISION SOHO/NOHO REPORT at 30-31; see also ZR § 12-10; MDL § 276. An artist’s certification was—and remains—tied to the specific JLWQA in which the artist lived at the time of application. See N.Y.C. Dep’t of Cultural Affairs, *Notice to Applicants Re: Artist Certification*, [https://www.nyc.gov/assets/dcla/downloads/pdf/artist\\_certification.pdf](https://www.nyc.gov/assets/dcla/downloads/pdf/artist_certification.pdf). That means if a certified artist wanted to move to another JLWQA, the artist had to apply for certification all over again.

When the Artists moved into their JLWQAs in the 1970s and 1980s, the market for artists’ housing was active, with new JLWQA units regularly created to meet demand. At its peak in 1979, the Department of Cultural Affairs certified over 500 artists per year. See ENVISION SOHO/NOHO REPORT at 39. The JLWQA amendment ushered in an “intense cultural boom in SoHo and NoHo.” See SOHO BROADWAY INITIATIVE, *supra*. This artistic explosion led “[p]rominent gallery owners” and “world-famous artists” to “join[] the SoHo art community.” *Id.* The flourishing art community “attracted a new wave of residents, retailers, and office tenants,” fueling SoHo/NoHo’s transformation throughout the 1990s and early 2000s into “a major retail and office hub.” *Id.* Indeed, creative redevelopment worldwide is now often called “the SoHo effect”—a testament to the global model these artists created. Yet SoHo/NoHo remained “a manufacturing district without permitted ground floor retail or fully legalized residential use.” *Id.*

But while the certification process used to be straightforward, over time, it became nearly impossible to become certified. In 2017, for example,

the Department of Cultural Affairs issued six certifications in total. *See* ENVISION SOHO/NOHO REPORT at 39. In 2018, it issued just one. *Id.* To be sure, there have been piecemeal efforts over time that have permitted JLWQA occupancy under separate legal regimes. For example, in 1982, New York State enacted the “Loft Law,” codified in Article 7-C of the MDL, to address the widespread phenomenon of residential occupancy in former industrial buildings, including in SoHo/NoHo. *See id.* at 31; MDL § 280 *et seq.* That law established a process to permit “interim multiple dwellings” (“IMDs”)—*i.e.*, certain buildings occupied residentially and commercially, including buildings with JLWQA units—to be used for residential purposes. ENVISION SOHO/NOHO REPORT at 31. But already-legalized JLWQA buildings were excluded, and now must pay the conversion fee.

Instead of addressing the effective death of its artist certification process, on December 15, 2021, New York City amended the zoning code to add Section 143, creating the SNX Zoning Resolution. *See* ZR § 143-00. The rezoning permits general residential and retail uses as-of-right in SoHo/NoHo—except for existing JLWQA residents, who must convert their units to residential use before anyone who is not a certified artist can legally reside there, including, in the absence of their parents, the Artists’ own children. ZR § 143-13. But in order to apply to convert a JLWQA to a residence, the owner must pay a required contribution of \$100 per square foot of floor area (plus an adjustment for inflation, so now more than \$115). *Id.* A typical home in SoHo/NoHo is roughly 2,500 square feet, and would require a \$287,500 conversion fee. This money will purportedly go to the so-called

“SoHo-NoHo Arts Fund,” which will allegedly allocate funds to support arts programming, projects, organizations, and facilities that promote the arts within Lower Manhattan generally. ZR §§ 143-02, 143-13.

This extreme fee can only be reasonably understood as a taking. The City has, through its neglect of the certification process and the JLWQA system in general, dried up the market for JLWQAs. Because the City has created a market with no legal buyers, the Artists will now be forced to pay the City hundreds of thousands of dollars to regain the basic right to sell their homes.

## **II. THE ARTISTS HAVE REBUILT AND REVITALIZED SOHO/NOHO, AND THE CITY NOW SEEKS TO TARGET THE ARTISTS USING THE ZONING PROCESS.**

### **A. Artists Like *Amici* Built SoHo/NoHo Into What It Is Today Through Decades Of Hard Work And Sacrifice.**

SoHo/NoHo exists because *Amici* and other artists worked to make the neighborhood livable, desirable, and iconic, often while struggling to get by themselves. That story must be told. And in so doing, the Artists will dispel the City’s accusations, *see infra* Part II.C, that the Artists are rich, non-diverse, illegally squatting freeloaders. To illustrate their story, *Amici*’s brief includes an Appendix with pictures of their lives in SoHo/NoHo.

## 1. Arrival in SoHo/NoHo

When the first artists moved to SoHo/NoHo in the late 1960s and early 1970s, there were no bare necessities, let alone opulence. Artist Margo Margolis described the area as “desolate.”<sup>3</sup> See Appendix B at p. 7a (displaying SoHo/NoHo’s empty streets in the 1970s in front of Artist Zigi Ben-Haim’s loft). The once-bustling manufacturing neighborhood had become a declining industrial zone with aging and vacant buildings. Only a few businesses, mostly in textiles and garment manufacturing, remained. There were virtually no services for families—no parks, schools, supermarkets, or basic infrastructure—and no nightlife or fine dining, just the now-famous Fanelli Café and a few kosher luncheonettes that served the remaining garment workers on workdays.

At night and on the weekends, the neighborhood was unsafe. The streets, lined with trash and refuse put out by the textile industry, looked abandoned. See, e.g., SoHo Artists Association, *SoHo Newsletters*, at 11 (circa 1970), [https://sohomemory.org/pdf/soho\\_artists\\_association\\_newsletters.pdf](https://sohomemory.org/pdf/soho_artists_association_newsletters.pdf) (“One of SoHo’s biggest problems is—in a word—Garbage. Most of us have no place to put it because the City doesn’t collect from lofts. As a result we walk knee-deep in it[.]”). Criminals certainly treated it as such—on a Sunday trip to the hardware store, Margolis came across a body from what she and her neighbors believed to be

---

<sup>3</sup> All quotations from the Artists come from conversations or correspondence with counsel.

a mafia hit. To combat the “trend towards more rip-offs, more muggings, more rapes, and more assaults of all kinds on persons and property,” SoHo residents were encouraged by police to join civilian patrols and carry police whistles “to sound an alarm or call for assistance.” *See id.* at 69 (Nov. 14, 1971). And “when a whistle [wa]s heard,” residents were to “pile out to give help to whomsoever needs it.” *Id.*

But where the rest of the city saw urban blight, the Artists saw opportunity. As Ben-Haim put it, the area felt like a “secret waiting to be discovered.” *See, e.g.,* Appendix B at p. 8a (illustrating Mercer Street in the 1970s, outside Ben-Haim’s loft). With little industry to occupy the large, aging buildings of SoHo/NoHo, many buildings did not even earn enough money to cover taxes and maintenance fees. The Artists were able to rent large studio spaces cheaply. Margolis paid only \$300 for rent. But these spaces, while affordable on a young artist’s budget, were barely inhabitable and had few basic necessities. *See, e.g.,* Appendix B at p. 9a (illustrating the state of disrepair of these spaces in the 1970s). Ben-Haim described his loft as “freezing in the wintertime and hot in the summer.” The buildings had not been designed with residents in mind, so they lacked adequate wiring, plumbing, or kitchen space. Some even lacked rooms. *See, e.g.,* Appendix B at p. 6a (displaying an open loft with no demarcation between the bathroom and living space). Margolis’ studio had no buzzer system, so when others came to visit, she would have to throw the keys down to the street in a sock. But the Artists accepted these enormous risks and hardships because SoHo/NoHo offered what they needed most—space to live and work legally as artists.

## 2. Certification as Artists

Of course, living and working in SoHo/NoHo as an artist required more than just finding a space. The Artists also had to apply for, and received, certification as working artists, which was required to live legally in a JLWQA. The City's Department of Cultural Affairs took the certification process seriously, and the Artists had to submit photographic slides of their work and exhibition histories to a committee for certification. The committee was staffed with artists who had close ties to the community. Artist Elliott Barowitz served on the committee for fourteen years, from 1971 to 1985, and would meet with other members to make sure that genuine working artists could have a place to live and work in SoHo/NoHo. Barowitz has since served on the NYC Loft Board for over two decades, giving him an unparalleled perspective on the regulatory framework that the City now wields against the Artists.

At each committee monthly meeting, Barowitz and the other members would review twenty to thirty artists who had applied for certification, resulting in hundreds of artists moving to SoHo every year. And the artistic output of SoHo/NoHo flourished. Margolis painted and taught at the Tyler School of Art and Architecture at Temple University, showing her work at the Brooke Alexander Gallery and in group shows across the country. Ben-Haim started to create art that was inextricably tied to SoHo/NoHo, scavenging the scraps and trash left behind from SoHo/NoHo's manufacturing businesses and incorporating them into his pieces.

Contrary to the City's allegations in this case, the Artists did not "opportunistically tak[e] advantage of the City's challenges in enforcing JLVQA use restrictions" or unfairly receive "amnesty." App. Br. at 33. Most *Amici* have lived in SoHo/NoHo for decades legally as certified artists, and they know many more residents who were legitimate artists that did not receive certification due to the City's own later failure to provide an effective certification process. In any event, the notion that these artists were opportunists is entirely unsupported by the evidence. These artists accepted enormous personal and financial risks to live in what was an undesirable neighborhood, with rampant crime and garbage strewn about, buildings that were not designed for residential occupancy, and few stores or restaurants. As Ben-Haim recounted, it was "no place to raise a family." Rather, SoHo/NoHo was a destination about which cab drivers would ask, "Why are you taking me all the way downtown . . . just to rob me?"

### **3. Rebuilding SoHo/NoHo— Literally**

Given SoHo/NoHo's continuing dire financial situation, many landlords were on the verge of bankruptcy and looking to sell. The Artists pooled their meager funds to purchase buildings, and finally owned their studios and homes. The buildings were so undesirable that they only cost a few thousand dollars per person. In fact, the conditions were so poor that Ben-Haim's father-in-law once proclaimed upon seeing his living conditions, "You went to America for this?! Come home!" And to put this into perspective, this came after Ben-Haim's family fled Iraq due to

anti-Semitic persecution. When Ben-Haim offered a businessman friend the chance to purchase a loft, the friend dismissed it as too risky and a poor investment. Yet the artists' vision proved prescient—they saw the future of these neighborhoods long before developers or financiers did.

But purchasing a building was just the first step. The Artists still needed to make enormous investments and sacrifices to renovate their new homes. When Ben-Haim purchased his loft, it was occupied by squatters. He had day laborers help him clear out the assorted remains of what was once a garment factory, complete with the chicken bones left by the women who once worked there. Ben-Haim and his wife then moonlighted as architects and contractors to build their home. Margolis and the other artists in her building hauled lumber and sheetrock through the building themselves to construct living spaces. *See, e.g.*, Appendix B at p. 5a (showing artists building walls in these open spaces).

To afford the daunting task of reconstructing their spaces while continuing to make a living, the Artists learned to bargain and improvise. Margolis and her neighbors would go to the Bowery to buy secondhand plumbing supplies. Many of the Artists had little money, but survived by bartering their artworks. When the company Best Products wanted to build an art collection for its stores, Ben-Haim and Margolis asked for appliances in return. Nor was that an isolated occurrence: everything from renovations to medical services was paid for by exchanging art. This lifestyle is almost inherent to artists who make a living selling their work. It is not a glamorous life, and

there is little financial security. But without people like the Artists who prioritized artistic creation over comfort, SoHo/NoHo's world-famous artistic community would never have gotten off the ground.

Even as the neighborhood began to revive in the 1980s and 1990s, the Artists had to make important investments and sacrifices that led to further growth. The cast-iron and terracotta buildings of SoHo/NoHo are landmark structures, and it was the Artists who rescued these deteriorating landmarks from destruction, preserving an essential part of New York City's architectural heritage. At their own cost, the Artists repainted, replaced, and retiled the iconic facades and ancient vaulted sidewalks of buildings that had been battered by more than a century of rain, snow, and soot. Over the years, the Artists have spent millions of dollars on these buildings, not just because they are the Artists' homes, but because the Artists recognized that these buildings must be preserved for future generations to enjoy. And it is because of the Artists that these majestic buildings are today revered by people around the world, generating enormous economic value and tourism revenue for the City.

The Artists' commitment extended beyond their art to cultivating SoHo/NoHo's community. The Artists managed their buildings and created co-ops for other artists. Margolis created a co-op that continues to run her building to this day. And though it was not an easy place to raise children, the Artists raised their families alongside their neighbors. While the neighborhood lacked park space or nearby public schools, Barowitz, Margolis, and Ben-Haim all raised children in their JLWQAs, helping to further complete

SoHo/NoHo's almost unimaginable transformation from near-abandonment to a multi-generational community with strong roots.

Without the Artists having spent years constructing these homes and studios with their bare hands, there would be no SoHo/NoHo. The Artists profoundly enriched New York City economically, culturally, and architecturally. The City has failed to recognize the daunting task that they undertook. The City should celebrate this success and show these artists the recognition, gratitude, and protection they deserve—not cynically attack its residents as acting “opportunistically” or accuse them of not being “diverse” as it attempts to rezone a mecca for artists into luxury apartments. *See* App. Br. at 7, 33.

**B. The SNX Zoning Resolution Severely And Unfairly Restricts The Artists' Ability To Sell Their Homes.**

The City's new SNX Zoning Resolution now imposes a direct, arbitrary, and unjustifiable burden on the ability of a small group of artists to sell their homes right at the end of their lives. To be sure, JLWQA residents will be impacted in varying degrees. Some may choose to keep living in their units as JLWQAs. Others living in IMD-designated buildings will escape the newly imposed requirements. *See* MDL § 285(3) (exempting owners in IMDs from paying the conversion fee). But for the reasons below, the SNX Zoning Resolution is a *de facto* restriction on most Artists' ability to sell or otherwise pass their JLWQA units on to future residents, not a voluntary program that Artists are free to accept or decline.

Under the City's SNX Zoning Resolution, unless the current owner of a JLWQA happens to live in an IMD, they would need to do one of three things to sell or transfer their property, none of which is feasible.

*First*, the JLWQA owner could try to find a prospective new occupant who successfully applies to the Department of Cultural Affairs for certification as an artist. This option, however, is a phantom in 2026. For decades, the Artists could lawfully occupy and later sell their lofts to other certified artists. This expectation was reasonable and clear: so long as an incoming buyer met the artist certification condition, the unit remained compliant with the City's zoning requirements. The Artists and other community members were closely involved in the certification committee's work, helping to ensure that the system properly served artists' interests. But over time, the JLWQA system and certification process shifted dramatically, from a straightforward process designed to assist artists in securing housing to a procedural dead end, following the City's effective dissolution of the Department of Cultural Affairs committee that certifies new artists. *See supra* p. 6-7. Indeed, relying on its own failures, the City has even cited the broken certification process as one of the reasons SoHo/NoHo needed to be rezoned. *See App. Br.* at 54. The City's assurances that "[i]nterest in certifications may rebound," *see Appellants' Reply Brief* at 17, No. APL-2025-00028 (N.Y. Ct. App. June 30, 2025), and that it "stands ready" to certify new artists, *id.*, ring hollow when the original promise that a unit could pass from artist to artist has effectively disappeared.

Because the City has chosen to stop certifying new artists, the market for JLWQA properties has become illiquid, making it extremely difficult for the Artists to sell their homes.

*Second*, in light of this broken certification process, the Artists must turn to an alternative: pay enormous sums of money in order to convert their JLWQA unit to unrestricted residential use in order to sell or transfer their property. And while the law may protect family members already in continued occupancy, it does not permit non-occupant family members—including the Artists’ own children—to take over or move into the unit as a home.

But even this supposed “option” is, in practice, illusory. In order to even apply for conversion, the Artists must pay a non-refundable fee to the so-called “arts fund.” The actual numbers are astonishing. Consider a 2,500 sq. ft. apartment. At \$115 per square foot just to apply for conversion, a homeowner would have to pay \$287,500 *just for a chance* to sell what they already own. More than a quarter of a million dollars paid at the end of artists’ lives: far beyond what many working artists, let alone retired artists, can pay, and a sum that does not even guarantee that the City will approve the conversion. Complicating matters further, many of the Artists—like Margolis—live in co-ops, and conversion of co-ops cannot be done one unit at a time due to building-wide requirements codified under private co-op rules and regulations. Should an owner of a co-op unit wish to sell, the seller would have to force their neighbors and friends to go through the conversion process, and could end up personally responsible for a substantial conversion fee

if the cooperative demands it. Until and unless they do, their building's certificate of occupancy would not be valid, making it difficult or impossible to obtain mortgages and insurance. These private factors exacerbate the harm caused by the City's taking.

*Third*, the final “option”—which is again illusory—is that a JLWQA owner could sell the unit as-is, but the buyer would be unable to lawfully use the unit until the buyer paid the \$115 per square foot conversion fee and successfully renovated the unit (and, potentially, the entire building). It is hard to imagine any buyer of New York City real estate, with tens of thousands of options to choose from, purchasing a unit under those conditions. To the extent the City has relied on historical pricing data to suggest otherwise, that data predates the conversion fee and the effective cessation of new artist certifications and is therefore inapposite. *See* App. Br. at 51. And even if the Artists could find buyers willing to absorb the fee and subsequent conversion costs, which is not guaranteed based on the Artists' recent experiences, these buyers would discount their offer by at least the expected costs—and potentially much more to compensate for the legal uncertainty.

The idea that these costs can simply be recouped by the Artists—many of whom are senior citizens—through the sale value ignores these realities and the other real burdens placed on them, including the fear of being driven out of their homes and losing the equity value that they have built up over decades. Margolis is 76. Though Margolis hopes to be able to make art in her studio forever, she faces the threat of needing to pay roughly \$300,000 up front should her

financial situation change. Ben-Haim still lives and works in his unit. *See* Appendix B at p. 10a (showing Ben-Haim's JLWQA as of 2025). He too hopes to stay forever, but he recognizes that nobody can predict what the future has in store. These fees, in addition to the significant costs of actually converting the units, would be a real, substantial hardship for senior citizens facing rising costs across the board and would wipe out much of the value that the Artists have put into their spaces for the last 50 years.

That certain Artists will escape these extraordinary and unjustified costs by living in IMD-designated buildings only underscores the arbitrariness of the City's policy. There is no functional difference between a JLWQA in an IMD building and a non-IMD building: both are artist-occupied lofts in historic manufacturing buildings in SoHo/NoHo, and both have always had to comply with every applicable building code. Because the IMD designation did not yet exist when SoHo/NoHo's renewal began, many of the neighborhood's earliest artists do not live in IMD buildings. Indeed, the IMD designation was created to bring up to minimum standards for dwellings that did not already comply with them, thus excluding JLWQAs that, for example, were in co-op buildings that had already satisfied those safety standards and received a legal certificate of occupancy. *See* MDL § 280. This distinction reflects regulatory happenstance, not how these units are used or occupied. Converting a JLWQA in an IMD building would have exactly the same "impact" on artist housing as converting one in a non-IMD building. Even if the City were correct about that impact, it has chosen to remedy it by selectively

demanding enormous payments from a small set of artists to compensate for actions of a larger population.

Put differently, artists in similar circumstances—all having lived and worked in SoHo/NoHo JLVQA units for decades—face entirely different legal and financial conditions based solely on whether their building happened to qualify for IMD status. For instance, an artist who, like Margolis and Ben-Haim, continues to make art in his unit may, by virtue of residing in an IMD building, escape the roughly \$250,000 fee that he would otherwise be required to pay under the SNX Zoning Resolution if he decided to sell his unit—even to care for a spouse who requires medical attention. There is simply no justification for exempting some long-term residents while forcing others—indistinguishable in every material respect—to bear an enormous financial burden simply to sell the homes they built.

\* \* \*

Given the demise of the artist certification process, the only way for the Artists to preserve the reasonable value of their homes is for the City to eliminate the fees and conversion requirements under the SNX Zoning Resolution and allow the Artists to sell their homes as all other homeowners can.

**C. The SNX Zoning Resolution Harms Artists And Suggestions Otherwise Should Be Rejected.**

Throughout these proceedings, the City has advanced a series of claims about the Artists and the

JLWQA system that, as shown above and as *Amici* can attest, are false and should be rejected.

The City has repeatedly branded residents who live in the neighborhood as doing so only under an “amnesty,” characterizing them as freeloaders who have gotten rich off of a beneficial policy. *See, e.g.*, App. Br. at 10, 33. Nothing could be further from the truth for the Artists. As explained above, the Artists complied with the JLWQA regime, invested their own labor and capital to transform derelict industrial spaces into homes, and helped build SoHo/NoHo into the vibrant neighborhood it is today—all while the City did little to nothing to support them. The City has further tried to blame its own failures on the Artists, arguing that the “amnesty” it supposedly provided “may well be currently suppressing the number of artists who seek certification in the present term.” App. Br. at 54. But the decline in certifications is attributable to the City’s own effective dissolution of the certification process, not to any action by the Artists. The City cannot dismantle the system that Artists relied upon and then blame those same Artists for its collapse.

Further, the City has claimed that the Artists must pay the conversion “arts fund” fee because converting their JLWQA units to residential use will reduce housing available for artists. *See App. Br. at 40, 51.* This claim is also baseless. It is functionally impossible for a new artist to live in a JLWQA because the Department of Cultural Affairs no longer certifies artists. Converting an existing JLWQA therefore has no impact on artist housing. These units were already out of reach for other artists because of the City’s own

inaction, and the Artists should not bear an enormous fee to rectify the City’s own misfeasance. Indeed, as the City imposes the so-called “arts fund” fee on SoHo/NoHo residents, the New York State Legislature has moved in precisely the opposite direction, introducing legislation to remove legal barriers to new affordable artist housing in the City—reflecting a judgment that artist housing should be expanded, not taxed out of existence. S. 9652, 2025–2026 Leg., Reg. Sess. (N.Y. 2026).

In short, the City has spent these proceedings attacking the very people who built SoHo/NoHo, branding them as freeloaders, blaming them for the collapse of a system the City itself dismantled, and demanding they pay hundreds of thousands of dollars for the privilege of selling what they own. These are not wealthy speculators. They are aging artists, many now in their seventies and eighties, who transformed abandoned industrial spaces into homes and studios with their own hands and at their own expense. For decades, they relied on a functioning JMWQA system to live, work, and eventually pass on their homes. The City upended that system, and now seeks to force these residents—many well into their retirement years—to bear the entire financial burden of its own policy failures. That is precisely the kind of governmental overreach the Takings Clause was designed to prevent.

\* \* \*

These stories are typical of countless artists who have made SoHo/NoHo the world-class area that it is today. Many have created their lives’ work in these

JLWQAs. They have poured their money and labor into renovating and managing the buildings that now attract millions of tourists to SoHo/NoHo. They enriched New York City immeasurably through their courage, labor, imagination, and sacrifice. They deserve to enjoy the rest of their days secure in the knowledge that what they built will remain theirs. Yet in its submissions, the City has branded the Artists as non-artists and demanded they pay an enormous fee that applies only to them. Countless others purchased property in Manhattan in the 1970s and 1980s and saw those investments appreciate, often without putting in the blood, sweat, and tears that the Artists did. But the City has singled out artists in SoHo/NoHo, demanding that they, and they alone, must surrender the profits that so many others have realized. And these wrongful exactions would not be used for the benefit of SoHo/NoHo, or even for providing artists with housing and studio space. Instead, they will be used for an ill-defined “arts fund” that will allegedly pay for public art projects throughout lower Manhattan. It is a clear-cut example of “forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

**CONCLUSION**

For the foregoing reasons, this Court should grant the petition for a writ of *certiorari*.

Respectfully submitted,

MATTHEW A. SCHWARTZ

*Counsel of Record*

BRANDYN J. RODGERSON

MATTHEW J. MARCHELLO

ALEXANDER NEWMAN

SULLIVAN & CROMWELL LLP

125 Broad Street

New York, NY 10004

(212) 558-4000

schwartzmatthew@sullcrom.com

*Attorneys for Amici Curiae*

MAY 18, 2026

# **APPENDICES**

**TABLE OF APPENDICES**

APPENDIX A: LIST OF 44 *AMICI*..... 1a

APPENDIX B: SOHO/NOHO THROUGH THE  
YEARS ..... 3a

**APPENDIX A:  
LIST OF 44 *AMICI***

Alice Aycock  
Elliott Barowitz  
Leigh Behnke  
Zigi Ben-Haim  
Piers Luigi Consagra  
Jennifer Clifford Danner  
Lisa Dinhhofner  
Michele Oka Doner  
Whitney Dow  
Don Eddy  
Jackie Ferrara  
Richard Friedberg  
Wendy R. Friedman  
Cristos Gianakos  
Paul Giovanopoulos  
Catherine Gund  
John Keith  
Barbara Knight  
Ellen Kozak  
Joyce Kozloff  
Max Kozloff  
Diana Kurz  
David Lawrence  
Vered Leib  
Ann D. Levy  
Claudia Levy (Carr)  
Margo Margolis  
Susan Meisel  
Peter Reginato  
Nicolette Reim-Maus

2a

Dorothea Rockburne  
David Winship Row  
Andra Samelson  
Ben Schonzeit  
Linda Schrank  
Rhonda Roland Shearer  
Elise Siegel  
Alison Sky  
Neal Slavin  
Guy Story  
Paul Vidich  
James Welling  
Ronnie Wolf  
Paul Lee Zimet

3a

**APPENDIX B:  
SOHO/NOHO THROUGH THE YEARS**



Artists move into an unrenovated loft, 1976, *in* SoHo  
Memory Project (May 8, 2020),  
<https://sohomemory.org/soho-scrapbook/>.

4a



Putting up a new loft wall, *in* SoHo Memory Project (n.d.), <https://sohomemory.org/loft-renovation-first-wall-n-d/>.

5a



*Renovations at 498 Broome Street, ca. 1963, in SoHo  
Memory Project (May 19, 2012),  
<https://sohomemory.org/dorothy-koppelman/>.*

6a



*Raw Loft, in SoHo Memory Project (n.d.),  
<https://sohomemory.org/raw-loft/>.*

7a



Mercer Street in front of Ben-Haim's building, 1970s.  
Thornton Willis, Mercer Street Views 5, "Thornton  
Willis Soho Project, 1973-6"

8a



Ben-Haim's building on Mercer Street, 1970s  
Thornton Willis, Mercer Street Views 1, "Thornton  
Willis Soho Project, 1973-6"

9a



Ben-Haim's loft in its original state.

10a



Ben-Haim's studio, 2025. He continues to create art in his JLWQA.

11a



Barowitz's studio, 2025. He continues to create art in his JLWQA.