

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 *AMICUS CURIAE*
COUNCILMEMBER CHRISTOPHER
MARTE, IN SUPPORT OF PETITIONERS**

JILL L. FORSTER
KONADU AMOAKUH
PALLAS PARTNERS (US) LLP
75 Rockefeller Plaza
New York, NY 10019

MARK M. MURAKAMI
Counsel of Record
DAMON KEY LEONG
KUPCHAK HASTERT
1003 Bishop Street
Pauahi Tower, Suite 1600
Honolulu, HI 96813
(808) 531-8031
mmm@hawaiilawyer.com

Counsel for Amicus Curiae

121092



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INTEREST OF AMICUS CURIAE¹

The Honorable Christopher Marte is an elected official and member of the New York City Council, representing New York City Council District 1, which encompasses a diverse range of neighborhoods in Lower Manhattan, including Battery Park City, Chinatown, the Financial District, SoHo, and the Lower East Side. As an elected official committed to representing the interests of his community, Councilmember Marte submits this brief as amicus curiae in support of Petitioners in the matter of *Coalition for Fairness in Soho & NoHo, Inc., et al. v. City of New York, et al.*

Councilmember Marte was first elected to the New York City Council for District 1 in November 2021 and was re-elected in November 2023 and November 2025. Before the recent redistricting, his district encompassed most of SoHo and NoHo, in addition to Battery Park City, Chinatown, the Financial District, and the Lower East Side. The outcome of this litigation directly impacts Councilmember Marte's constituents, the residents of SoHo, and particularly the artists and long-term occupants of Joint Live Work Quarters for Artists ("JLWQA") units. Councilmember Marte can assist the Court by providing a perspective gained through his extensive community outreach and advocacy efforts on the harm caused by, and community concerns about, the 2021 SoHo/NoHo rezoning legislation and the imposition of the Arts Fund Fee (as defined herein).

1. Rule 37 disclosure: All parties were timely notified of Amicus' intent to file this brief. No part of this brief was authored by any party's counsel and no person, or entity, other than amicus funded its preparation and submission.

SUMMARY OF ARGUMENT

Amicus files this brief to draw this Court’s attention to the discriminatory and punitive impact of the 2021 SoHo/NoHo rezoning legislation being challenged by Petitioners. City Council Resolution No. 1889-2021 (the “2021 Rezoning”) rezoned the SoHo/NoHo neighborhoods of New York City in recognition of the neighborhoods’ shifts from manufacturing hubs to mixed-use environments with large residential populations. As part of the 2021 Rezoning, the City sought to end an outdated zoning designation—JLWQA units for “artist-only” live-work spaces—by banning the creation of new JLWQA units and essentially requiring owners of current JLWQA units to convert their homes into unrestricted residential use spaces. The City preconditioned this conversion on paying a punitive, discriminatory fee (the “Arts Fund Fee”),² more akin to a conveyance tax to the tune of six-figures. The Arts Fund Fee will cause JLWQA homeowners substantial financial harm not faced by any other homeowners in the City and force them to bankroll unarticulated public projects across lower Manhattan.

Under the 2021 Rezoning, if JLWQA homeowners want to sell, transfer, or bequeath their homes to anyone who has not been certified as an “artist” by the City, they must (i) personally pay for renovations to convert their home from an artist-only live-work space into an unrestricted residential use space; and (ii) as a precondition to conversion, pay a monetary “contribution”, the Arts Fund Fee, to purportedly support projects by

2. N.Y. City Zoning Res. § 143-13.

local artists and cultural organizations located across lower Manhattan south of 14th Street.³

Although the 2021 Rezoning appears, on its face, to present homeowners with a choice to avoid these costs by selling, transferring, or bequeathing their homes to a certified artist, City policy has rendered the artist certification process largely defunct, leaving homeowners with no practical choice but to pay the Arts Fund Fee and pay for conversion. At a cost of over \$115.76 per square foot, the average JLWQA owner would incur an Arts Fund Fee—calculated solely by unit size, without any consideration of a homeowner’s hardships—of approximately \$250,000.

The Arts Fund Fee imposes a discriminatory and significant financial burden on JLWQA homeowners. The City is targeting these homeowners solely because they live in JLWQA units in the SoHo and NoHo neighborhoods and subjecting them to a financial penalty that is not imposed on other similarly situated property owners across the City. Moreover, the City is forcing this small, financially-vulnerable group of homeowners to finance an Arts Fund meant to support all of lower Manhattan south of 14th Street—an area far larger than the neighborhoods of SoHo and NoHo alone.⁴ And the City is imposing

3. *Id.*

4. NEW YORK CITY DEP’T OF CITY PLANNING, SoHo/NoHo NEIGHBORHOOD PLAN: CITY PLANNING COMMISSION REVIEW SESSION, 66 (May 17, 2021), *available at* <https://www.nyc.gov/assets/planning/downloads/pdf/our-work/plans/manhattan/soho-noho-neighborhood-plan/cpc-presentation-051721.pdf>; NEW YORK DEP’T OF CITY PLANNING, SoHo/NoHo NEIGHBORHOOD PLAN POST-

this financial penalty in the face of overwhelming local opposition from politicians and residents alike.

JLWQA residents, as well as other constituents in Councilmember Marte's district, have expressed their valid concerns about the discriminatory effect and prohibitive costs of the Arts Fund Fee that JLWQA residents will be forced to bear because of an involuntary and unnecessary conversion of their JLWQA homes. These concerns include being unable to pass their homes to children or family members and having life savings eviscerated by arbitrary legislation that neither helps artists in these communities nor addresses the ability of artists to live in these communities. The financial strain imposed on JLWQA residents by the Arts Fund Fee and conversion costs associated with this legislation will, over time, erode the unique, artistic character of the SoHo/NoHo neighborhood.

This brief highlights the extraordinary harm and discriminatory impact of the Arts Fund Fee. This Court should grant the Petition and find the Arts Fund Fee unconstitutional.

HEARING FOLLOW-UP 12 (Sept. 20, 2021), *available at* https://media.villagepreservation.org/wp-content/uploads/2021/09/21082042/NYC-Planning-SoHo-NoHo-Neighborhood-Plan_Post-Hearing-Follow-up_2021-9-17.pdf; The Council of the City of New York, Resolution No. 1890 (2021), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5356907&GUID=FCFFA86F-D1FF-4F26-BE0E-9E3CA87FCC01&Options=ID|Text|&Search=>, at 23 (Resolution approving with modifications the decision of the City Planning Commission on Application No. N 210423 ZRM, for an amendment of the text of the Zoning Resolution (L.U. No. 919)).

ARGUMENT

The City’s 2021 Rezoning and imposition of the Arts Fund Fee ignores the valid concerns voiced by elected officials, community groups, and residents, including the very artists that the Arts Fund Fee is purportedly designed to support and protect. The Arts Fund Fee subjects a small group of residents in the SoHo and NoHo area—many of whom are elderly, lower-income and from diverse backgrounds—to substantial financial harm and discriminatory treatment, forcing them to pay what is practically a conveyance tax to fund vague projects across all of lower Manhattan without providing any clear assistance to certified artists. Councilmember Marte urges the Court to grant certiorari.

I. The Artist Certification Program is Largely Defunct

The JLVQA designation and artist certification program developed together as a way to legalize artists living and working in vacant buildings zoned for manufacturing use. In the late 1950’s and early 1960’s, as industries became more mechanized and modernized, the small floors of many loft buildings in areas like modern-day SoHo and NoHo were no longer suited for industrial uses.⁵ As manufacturers began vacating loft buildings,

5. Jay Facciolo, *Illegal Lofts in New York City: Have the Equities Been Balanced*, 14 *FORDHAM URB. L.J.* 559, 561–62 (1986), available at <https://ir.lawnet.fordham.edu/ulj/vol14/iss3/3>; ENVISION SoHo/NoHo: A SUMMARY OF FINDINGS & RECOMMENDATIONS (referred to hereinafter as the “ENVISION REPORT”), (Nov. 2019), available at <https://s3-us-west-1.amazonaws.com/ehq-production-us-california/7f5eff7c12a45e80fc3e56141c34fa3edc9bd99f/>

artists (and later non-artists) began moving into these buildings, searching a tight housing market for lower rents for larger spaces where they could reside and produce large-scale or intensive art.⁶

New York City’s Zoning Resolution legislation was passed in 1961 (the “Zoning Resolution”), creating zoning districts divided into residential, commercial, manufacturing, and special purpose districts.⁷ Under the 1961 legislation, residential use was restricted in the SoHo/NoHo neighborhoods, so the artists living in vacant manufacturing space were there illegally. Despite this, loft owners welcomed these new residents because they occupied space that was not otherwise rentable. When the New York City Department of Buildings (“DOB”) attempted to evict around 100 artists, resident artists banded together to advocate to legalize the already widespread use of loft buildings for artists’ live-work space.⁸

documents/attachments/000/006/859/original/Envision_SoHo_NoHo_Recommendations_Report_2019-11-19.pdf, at 30.

6. Facciolo, *Illegal Lofts*, *supra* note 5, at 562–63.

7. *Id.* at 563–65; Norman Marcus, *New York City Zoning—1961-1991: Turning Back the Clock—But With an Up-To-The-Minute Social Agenda*, 19 *FORDHAM URB. L.J.* 707, 707 (1992), available at: <https://ir.lawnet.fordham.edu/ulj/vol19/iss3/11>.

8. *See* Facciolo, *Illegal Lofts*, *supra* note 5, at 576 n. 91, 578–79; Louise Winchell, *M1-5 What? A Lofty History of Zoning in SoHo and NoHo*, *VILLAGE PRESERVATION BLOG* (Sept. 5, 2019), <https://www.villagepreservation.org/2019/09/05/m1-5-what-a-lofty-history-of-zoning-in-soho-and-noho/>.

As a result of these advocacy efforts, in 1964, Article 7-B of the New York State Multiple Dwelling Law (“MDL”) went into effect, which authorizes JLDQA units for “certified artists.”⁹ Article 7-B defined the artist certification process and assigned the Department of Cultural Affairs (“DCLA”) with the responsibility of determining who qualifies as a certified artist permitted to live in JLDQA units.¹⁰ In 1971, the City amended the Zoning Resolution to give effect to Article 7-B of the MDL by creating a new use group designated Use Group 17D for JLDQA units.¹¹

Throughout the 1970’s, when JLDQAs first became authorized, the DCLA certified hundreds of artists through its certification process.¹² By 1983, about one-third of households in the SoHo/NoHo neighborhoods were occupied by certified artists.¹³

9. The MDL is the law that governs construction, maintenance, and occupancy of apartments, hotels, and other multiple dwellings in New York City. Although Article 7-B was added to the MDL in 1964, it required supporting local zoning ordinances to take effect. The City did not enact the necessary local zoning ordinance until the 1971 amendment to the Zoning Resolution. *See Facciolo, Illegal Lofts, supra* note 5, at 581.

10. N.Y. Mult. Dwell. Law §§ 275–278; *see* CITY PLANNING COMMISSION REPORT (Dec. 22, 1986), *available at* <https://www.nyc.gov/assets/planning/download/pdf/about/cpc/870206.pdf>.

11. *See Facciolo, Illegal Lofts, supra* note 5, at 581–82; N.Y. City Zoning Res. § 42–14(d).

12. *See Facciolo, Illegal Lofts, supra* note 5, at 576, n. 91, 578–79; ENVISION REPORT, *supra* note 5, at 39 (showing number of artist certifications from 1971 through 2018).

13. ENVISION REPORT, *supra* note 5, at 39; Second Amended Petition at ¶ 89, *The Coalition for Fairness in Soho & Noho, Inc., et*

However, Article 7-B of the MDL authorizing JMWQA units for certified artists was passed as a quick fix to legalize the already widespread use of loft buildings for artists' live-work space and to prevent evictions. No other legislation or benefits applied to or were developed for certified artists, and the artist certification program has not been modernized in its over fifty-year history.

After the initial wave when JMWQA use was first authorized, artists had no incentive to obtain certification. It was therefore inevitable that the artist certification program would collapse. The City also engaged in a policy of non-enforcement of certified artist residency requirements.¹⁴ Further, the artist certification process is lengthy, opaque and burdensome with strict definitions and rules, and the City stopped consistently implementing and approving certification applications.¹⁵

Moreover, in the 1980's, the Interim Multiple Dwelling ("IMD") designation was created under Article 7-C of

al. v. City of New York, Index No. 151255/2022, 2023 WL 6535289 (N.Y. Sup. Ct. Oct. 06, 2023) (NYSCEF No. 115).

14. This policy included granting allowances for non-certified artist and non-artist residents to live in JMWQA units in the mid- and late-1980s. ENVISION REPORT, *supra* note 5, at 31.

15. New York State Assembly Memorandum in Support of Legislation, (revised May 16, 2022), *available at* https://assembly.state.ny.us/leg/?Actions=Y&Chamber%26nbspVideo%2FTranscript=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&LFIN=Y&Memo=Y&Summary=Y&Text=Y&blm_aid=66710&bn=A09675&default_fld=&leg_video=&term=2021 ("There are several reasons why a resident may lack certification as an artist, including overly stringent City requirements for what constitutes 'fine art' and, lack of responsiveness from DCLA.").

the MDL (the “Loft Law”) to legalize lofts in former manufacturing buildings.¹⁶ These units are functionally similar to JLWQAs, but do not require an artist occupant, effectively bypassing artis certification requirements.

For all these reasons, the artist certification process is largely defunct today.¹⁷ The number of artist certifications rapidly fell beginning in the 1990’s and, in recent years, the DCLA has only certified an average of 4 artists per year—a 99% decrease from the number of artists certified in the 1970’s and early 1980’s.¹⁸

The current JLWQA resident population is diverse and includes many of the artists who were certified in the initial wave of certification applications, now in their 70s and 80s and living on fixed, lower incomes.¹⁹

16. N.Y. Mult. Dwell. Law §§ 280–287.

17. ENVISION REPORT, *supra* note 5, at 39.

18. *Id.*; NYC DEP’T OF CITY PLANNING, SoHo/NoHo NEIGHBORHOOD PLAN AS APPROVED BY THE CITY PLANNING COMMISSION 18 (Oct. 20, 2021), *available at* <https://www.nyc.gov/assets/planning/downloads/pdf/our-work/plans/manhattan/soho-noho-neighborhood-plan/cpc-approved-presentation-102021.pdf> (showing number of artist certifications decline from over 500 in the 1970’s to close to zero in 2019); Clarence Hahn, et al., *Op-Ed: Mayor Adams Wants a “City of Yes.” But It Should Be A “Yes” for Equality*, AMNY (Sept. 10, 2024), *available at* <https://www.amny.com/oped/op-ed-city-of-yes-equality/>.

19. CB2’s July 27, 2021 Letter in Opposition to the City’s Proposed Plan to Rezone SoHo, NoHo and Chinatown (referred to hereinafter as the “CB2 Opposition”), attached to the CITY PLANNING COMMISSION REPORT (Oct. 20, 2021), *available at* <https://www.nyc.gov/assets/planning/download/pdf/about/cpc/210422.pdf>, at 64–72; ENVISION REPORT, *supra* note 5, at 39.

JLWQA residents also include working families, retirees, remaining kin of deceased certified artists, and individuals who inherited or purchased JLWQA units but were not able to obtain certification.²⁰

II. The 2021 Rezoning Legislation Ignored the Recommendations of a Years-Long Community-Planning Process and Local Opposition

Due to the City's largely defunct artist certification program, non-enforcement of certified artist residency requirements, and use of special permits, the SoHo/NoHo neighborhoods turned into de-facto residential areas, comprised of approximately 8,000 residents of diverse racial and economic backgrounds.²¹ To legalize this de-facto residential use, public officials and others sought to amend the outdated zoning provisions.

In 2015, the Manhattan Borough President and the local City Council Member for District 1 requested that the New York Department of City Planning ("DCP") initiate a study to rezone SoHo and NoHo.²² The letter called for several key issues to be examined, "through a robust public process," including the utility and functionality of JLWQAs in today's creative sector.²³ DCP, with the Manhattan Borough President and local City Council Member for District 1, began a series of technical studies

20. *Id.*

21. ENVISION REPORT, *supra* note 5, at 55–56.

22. CITY PLANNING COMMISSION REPORT, *supra* note 19, at 6.

23. *Id.*

that set a “baseline” for the community planning process.²⁴ The findings from these studies provided specific data confirming “the significant mismatch between the existing zoning and established land use patterns.”²⁵

In January 2019, DCP and local elected officials initiated a six-month Envision SoHo/NoHo public engagement process to rezone SoHo and NoHo and share the result of studies initiated in 2015.²⁶ A community planning process followed and culminated in a final report titled “Envision SoHo/NoHo: A Summary of Findings and Recommendations” (the “Envision Report”) issued in November 2019.²⁷ The advisory group recommended, among other things, an allowance for residents to have legal occupancy of JLWQA units in SoHo and NoHo without artist certification.²⁸

Despite the advisory group’s long public engagement process, virtually none of their recommendations were included in the final 2021 Rezoning legislation. Among other things, the legislation included the Arts Fund Fee, which was never contemplated by the advisory group.

During the City Planning Commission public hearing on September 2, 2021, speakers who testified in opposition

24. *Id.*

25. *Id.*

26. *Id.*

27. *See id.*; *see generally* ENVISION REPORT, *supra* note 5; *SoHo / NoHo Neighborhood Plan as Approved by the City Planning Commission*, *supra* note 18, at 24–35.

28. *Id.*

to the plan included Councilmember Marte (then, a candidate for City Council District 1), members of the Manhattan Community Board 2 (“CB2”)—the New York City community board encompassing the neighborhoods of Greenwich Village, West Village, South Village, NoHo, SoHo, Little Italy, NoLita, and a portion of Chinatown—and representatives of preservation, civic and community organizations, local residents, and long-time SoHo artists.²⁹

Councilmember Marte opposed the plan on the grounds that the plan (i) included no guarantee of housing, let alone affordable housing; (ii) provided no support for small businesses and, by incentivizing new development, would in fact contribute to the displacement of small businesses and residents; (iii) would exacerbate quality of life challenges, such as noise and traffic congestion, overcrowding of sidewalks, and inadequate refuse collection; and (iv) was racially motivated and would lead to less racial and income diversity in the SoHo/NoHo neighborhoods.³⁰

Several JLWQA residents expressed fears that the contribution to the Arts Fund would be a punitive tax on certified artists.³¹ The CB2 similarly raised concerns that the Arts Fund Fee was financially punitive, particularly to pioneering, legally conforming senior citizens who are aging-in-place,³² and an “ill-conceived” effort to create a

29. CITY PLANNING COMMISSION REPORT, *supra* note 19, at 39.

30. *Id.* at 39–42; *see also* CB2 Opposition, *supra* note 19.

31. CB2 Opposition, *supra* note 19.

32. *Id.*

non-city source for arts funding to distribute *beyond* the SoHo, NoHo and Chinatown proposed rezoning area.³³ The CB2 emphasized that DCP “provided no financial analysis to support [the Arts Fund Fee] despite repeated requests from CB2.”³⁴

When the plan was put to a vote in October 2021, CB2 voted overwhelmingly to reject the 2021 Rezoning plan in a vote of 36 to 1.³⁵ Despite the widespread and practically unanimous local opposition, the 2021 Rezoning, with the Arts Fund Fee requirement, was passed in late 2021.

III. The Arts Fund Fee is an Unconstitutional Exaction Upon Noho/Soho Loft Owners

A. The Conversion is Mandatory

Land use permit cases typically concern property owners voluntarily seeking a land use permit to benefit themselves. The exaction here is more onerous—and the City’s actions in imposing it more coercive—than the typical case because the conversion is legislatively mandated. The Arts Fund Fee is a precondition for obtaining a permit to convert JLWQA units to standard residential uses. The conversion itself is unnecessary (as all JLWQA units have satisfied health and safety requirements, received Certificates of Occupancy, and are fit for residential use) and simply serves as a pretext

33. *Id.*

34. *Id.*

35. CITY PLANNING COMMISSION REPORT, *supra* note 19, at 34; CB2 Opposition, *supra* note 19.

for collecting this fee.³⁶ The conversion and, thus, the Arts Fund Fee, is mandated for all JLWQA homeowners by the 2021 Rezoning. While Chapter 420 passed by the State (discussed below) allows current homeowners to remain in their JLWQA units, the City successfully lobbied for that protection to remain with the individual homeowner, rather than the home itself.³⁷ When current homeowners sell, transfer, or bequeath their home, the 2021 Rezoning ostensibly provides a choice between either converting the JLWQA and paying the Arts Fund Fee (a six-figure conveyance tax), or transferring the JLWQA to a certified artist.³⁸

This choice is an illusion because, as discussed above, the City's own policies have rendered the artist certification process obsolete, resulting in next to no artist certifications in recent years.³⁹ So homeowners are left with no option but to make a potentially devastating

36. Reply Affidavit of Ronnette Riley, RA, FAIA, FSARA in Support of Motion for Discovery at 1–6, *The Coalition for Fairness in Soho & Noho, Inc., et al. v. City of New York*, Index No. 151255/2022, 2023 WL 6535289 (N.Y. Sup. Ct. Oct. 06, 2023) (NYSCEF No. 97).

37. New York State Assembly Memorandum in Support of Legislation, (May 16, 2022), *available at* https://assembly.state.ny.us/leg/?Actions=Y&Chamber%26nbspVideo%2FTranscript=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&LFIN=Y&Memo=Y&Summary=Y&Text=Y&blm_aid=66710&bn=A09675&default_fid=&leg_video=&term=2021.

38. *Id.*

39. *Id.*; CB2 Opposition, *supra* note 19; *see also* Hahn, et al., *supra* note 18 (“Over time, the DCLA all but ceased certifying artists, and the number of artists certified dwindled from 400 to a mere four per year.”).

financial expenditure in the form of the Arts Fund Fee and conversion.

Moreover, the City created a lengthy, opaque certification process utilizing outdated criteria for qualifying as an artist.⁴⁰ Since certified artist status is only necessary for JLWQA occupancy and is tied to a specific JLWQA unit,⁴¹ certified artists outside of current JLWQA occupants are essentially non-existent, and all JLWQA homeowners—including the very certified artists that the Arts Fund Fee is purportedly designed to protect—must pay the Arts Fund Fee to sell, transfer, or bequeath their home.

B. The Arts Fund Fee Imposes a Grossly Disproportionate Burden on JLWQA Homeowners, Untethered to Any Impact of the Conversion

This mandatory Arts Fund Fee (and conversion costs) imposes a significant financial burden on JLWQA residents.⁴² The Arts Fund Fee is currently set at \$115.76 per square foot, adjusted annually for inflation.⁴³ The

40. *Id.*; CB2 Opposition, *supra* note 19.

41. Department of Cultural Affairs, Notice to Applicants Re: Artist Certification, NYC DCLA, https://www.nyc.gov/assets/dcla/downloads/pdf/artist_certification.pdf.

42. CB2 Opposition, *supra* note 19.

43. See N.Y.C. Zoning Res. § 143-13; *Rules for Special Areas: SoHo-NoHo Arts Fund*, NYC DEP'T OF CITY PLANNING, <https://www.nyc.gov/content/planning/pages/zoning/zoning-districts-guide/rules-for-special-areas#soho-noho> (last visited May 14, 2026).

average JLWQA home is about 2,200 square feet, which would incur a fee of approximately \$250,000, exclusive of actual conversion costs which can reach or exceed several hundred thousand dollars.⁴⁴ This staggering fee is calculated solely by unit size, without any consideration for a homeowner's income or any specific hardship.⁴⁵ The fee is also required upfront in full and is nonrefundable, regardless of whether the homeowner ultimately completes the conversion process.⁴⁶ Given the unlikelihood that buyers will purchase JLWQAs prior to conversion, this means that, as a practical matter, JLWQA homeowners will be forced pay the Arts Fund Fee out of pocket in advance of any sale—depleting residents' life savings.

In contrast, there is no societal burden imposed by the conversion. As noted above, the conversion is legislatively mandated and supports the objectives of the 2021 Rezoning to end outdated restrictions and ban JLWQAs. Yet, while residential use is broadly permitted under the

44. CB2 Opposition, *supra* note 19. These costs include those related to architectural and engineering fees, material and labor costs, zoning applications, legal representation, building code compliance, and temporary displacement during renovations. *The SoHo, NoHo & Chinatown Rezoning*, COALITION FOR FAIRNESS IN SoHo & NoHo, available at <https://sohonoho.org/rezoning>.

45. See N.Y.C. Zoning Res. § 143-13.

46. *The SoHo, NoHo & Chinatown Rezoning*, COALITION FOR FAIRNESS IN SoHo & NoHo, <https://sohonoho.org/rezoning> (last visited May 14, 2026). The City has provided no streamlined path for conversion, particularly for older pre-war buildings, and has conducted no analysis to ensure that compliance is feasible. Homeowners bear the full risk of delays or denial of approvals.

2021 Rezoning⁴⁷ and the creation of new JLWQA units is banned, owners of JLWQA units must pay to convert their units to residential uses.⁴⁸

Even if there were a societal burden from the conversion of JLWQAs in the SoHo and NoHo neighborhoods, the Arts Fund does not address the loss of the artist-restriction on these units or otherwise support affected artists.

Proceeds from the Arts Fund are not earmarked for initiatives within SoHo/NoHo, such as for affordable artist housing. Instead, the Fund serves the broader Manhattan area south of 14th Street—an area with approximately 300,000 residents.⁴⁹ This results in a disproportionate burden placed on fewer than 3,000 JLWQA households. Moreover, despite the stated intent of fostering local arts, the City has failed to articulate a clear implementation plan for the Arts Fund. The DCLA has not provided a formal application process, a transparent process for allocating contributions or evaluating project proposals,

47. For example, conversions of commercial spaces into residential use are permitted under the 2021 Rezoning, without triggering any fee, allowing corporate entities and big businesses to avoid the costs imposed on individual homeowners. *See, e.g.*, N.Y.C. Zoning Res. § 143-07.

48. *See* N.Y.C. Zoning Res. § 143-13.

49. NYC DEP'T OF CITY PLANNING, SoHo/NoHo NEIGHBORHOOD PLAN, CITY PLANNING COMMISSION REVIEW SESSION, (May 17, 2021), <https://www.nyc.gov/assets/planning/downloads/pdf/our-work/plans/manhattan/soho-noho-neighborhood-plan/cpe-presentation-051721.pdf>, at 66 (map showing area covered by Arts Fund).

or any assurances that SoHo/NoHo artists will benefit from the fund.⁵⁰

IV. The City Has Blocked Legislative Solutions to Flaws in the 2021 Rezoning and Local Opposition Remains

In 2022, in response to the 2021 Rezoning’s flaws, the New York State legislature passed Chapter 420 of the laws of 2022, which amended Section 276 of the MDL and provided a partial cure to the 2021 Rezoning by giving legal protection to homeowners living in JLWQA units prior to December 15, 2021.⁵¹ The City lobbied against Chapter 420 and succeeded in watering down the law’s protections so that the legalization of JLWQA units as residential remained with the individual JLWQA homeowner, rather than the home itself.⁵² As it stands, Chapter 420 fails to address transfers, sales, bequeathments, or successor interests.

Even before he took office in 2022, Councilmember Marte has spoken at numerous hearings, town hall meetings, and community forums specifically focused on the 2021 Rezoning and its impact on JLWQA residents.⁵³

50. CB2 Opposition, *supra* note 19 (“Payments into an undefined Arts Fund do not provide a long term sustainable model using one-time contributions and DCP provided no financial analysis to support this proposal despite repeated requests”).

51. N.Y. Mult. Dwell. Law § 276; Senate Bill S8793A, <https://www.nysenate.gov/legislation/bills/2021/S8793>.

52. *Id.*

53. *Council Member Marte Addresses Discriminatory Nature of Arts Fund Fee*, CITY MEETINGS NYC (Oct. 22, 2024),

His office maintains open lines of communication with JLWQA residents through regular email updates, social media engagement, and direct phone calls. Councilmember Marte also actively engages in individual case work, assisting residents with navigating the complex regulations and paperwork associated with the rezoning.

In 2024, Councilmember Marte provided testimony before the City Council and other relevant bodies, articulating the concerns of JLWQA residents.⁵⁴ He has also issued numerous public statements and press releases, drawing attention to the impact of the Arts Fund Fee and the 2021 Rezoning.⁵⁵

Councilmember Marte repeatedly pushed for increased oversight and additional guidance from the DOB and other city agencies responsible for implementing the 2021 Rezoning.⁵⁶ This includes successfully lobbying former Mayor Eric Adams to veto a bill that would have drastically increased fines against JLWQA homeowners who had not yet complied with the 2021 Rezoning

available at <https://citymeetings.nyc/meetings/new-york-city-council/2024-10-22-0930-am-subcommittee-on-zoning-and-franchises/chapter/council-member-marte-addresses-discriminatory-nature-of-arts-fund-fee/>.

54. *Id.*

55. *See, e.g., id.*; CITY PLANNING COMMISSION REPORT, *supra* note 19, at 39–42; CB2 Opposition, *supra* note 19.

56. Christopher Marte, Letter to NYC DOB: JLWQA Conversion Code Compliance (Feb. 17, 2023), *available at* <https://council.nyc.gov/christopher-marte/wp-content/uploads/sites/87/2023/02/CM-Marte-Letter-to-DOB-re-JLWQA-Conversion-Guidance-2023-02-17.pdf>.

requirements.⁵⁷ Councilmember Marte repeatedly pushed for increased oversight and additional guidance from the DOB and other city agencies responsible for implementing the 2021 Rezoning.⁵⁸ In response to a 2023 2-page bulletin issued by the DOB with insufficient guidance about the 2021 Rezoning’s conversion requirements, Councilmember Marte continues to urge these agencies to provide better guidance to the JLWQA homeowners of the SoHo/NoHo neighborhoods.

In light of the above and other concerns, residents, community groups, and elected officials, including Councilmember Marte, continue to be vocal critics of the 2021 Rezoning and the City’s handling of the rezoning process, including the lack of meaningful engagement and the disregard for community concerns.⁵⁹ Despite

57. Lincoln Anderson, *Adams Vetoes Chin’s Bill Hiking Fines for Soho/Noho Nonartist JLWQA Residents, Saying it Needs Work*, VILLAGE SUN (Jan. 14, 2022), <https://thevillagesun.com/adams-vetoes-chins-bill-hiking-fines-forsoho-noho-nonartist-jlwqa-residents-saying-it-needs-work> (Councilmember Marte stating: “This veto is a step forward for supporting the arts in Soho and Noho and creating an accessible housing stock”).

58. Christopher Marte, Letter to NYC DOB: JLWQA Conversion Code Compliance (Feb. 17, 2023, *available at* <https://council.nyc.gov/christopher-marte/wp-content/uploads/sites/87/2023/02/CM-Marte-Letter-to-DOB-re-JLWQA-Conversion-Guidance-2023-02-17.pdf>).

59. *See, e.g.*, CB2 Opposition, *supra* note 19; Press Release, Incoming and Past City Councilmembers for SoHo, NoHo, and Chinatown Urge Borough President, City Officials to Reject SoHo/NoHo Rezoning Plan, (Aug. 23, 2021), <https://media.villagepreservation.org/wp-content/uploads/2021/08/23173230/SoHo-NoHo-press-release-prior-to-Manhattan-BP-hearing-8-23-21.pdf>.

significant organizing, the City has consistently blocked attempts to reach a legislative solution that addresses these concerns.⁶⁰

Without removing the Arts Fund Fee requirement, long-term JLWQA residents in SoHo/NoHo will continue to face substantial and unequal financial penalties under the City’s 2021 Rezoning legislation, without any benefit to the certified artists that the fee is purportedly designed to protect.

CONCLUSION

For the foregoing reasons, Councilmember Christopher Marte respectfully requests that this Court grant certiorari.

Respectfully submitted,

JILL L. FORSTER
KONADU AMOAKUH
PALLAS PARTNERS (US) LLP
75 Rockefeller Plaza
New York, NY 10019

MARK M. MURAKAMI
Counsel of Record
DAMON KEY LEONG
KUPCHAK HASTERT
1003 Bishop Street
Pauahi Tower, Suite 1600
Honolulu, HI 96813
(808) 531-8031
mmm@hawaiilawyer.com

Counsel for Amicus Curiae

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60. See, e.g., CITY PLANNING COMMISSION REPORT, *supra* note 19, at 5–8 (“Background” discussing the Envision Report and the CB2’s objections to the 2021 Rezoning).