

Court of Appeals
of the
State of New York

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

Petitioner-Appellant,

— against —

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

Respondents-Respondents.

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

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DISCLOSURE STATEMENT PURSUANT TO RULE 500.1(f)

Pursuant to Court of Appeals Rule 500.1(f):

CNY Fair Housing, Inc. states that it is a nonprofit corporation with no parent corporation or subsidiaries.

The Fair Housing Justice Center, Inc. states that it is a nonprofit corporation with no parent corporation or subsidiaries.

Housing Opportunities Made Equal, Inc. states that it is a nonprofit corporation with no parent corporation or subsidiaries.

Long Island Housing Services states that it is a nonprofit corporation with no parent corporation or subsidiaries.

Westchester Residential Opportunities, Inc. states that it is a nonprofit corporation with no parent corporation and one controlled subsidiary, Birnam Wood Associates Ltd., also a nonprofit corporation.

Legal Assistance of West New York states that it is a nonprofit corporation with no parent corporation or subsidiaries.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
INTEREST OF AMICI.....	3
THE PRE-LEASE INSPECTION PROCESS.....	5
I. Housing Choice Vouchers.....	5
II. The Pre-Lease Inspection Process.....	7
ARGUMENT	9
I. THE NYSHRL IS NOT FACIALLY UNCONSTITUTIONAL BECAUSE THE TEXT OF THE STATUTE DOES NOT REQUIRE WARRANTLESS SEARCHES.....	9
II. THE NYSHRL IS NOT UNCONSTITUTIONAL IN ALL ITS APPLICATIONS	13
A. Tenant Consent to a Search Satisfies the Fourth Amendment.....	15
B. Availability of Administrative Warrants Satisfies the Fourth Amendment	16
C. Availability of Article 78 Precompliance Review Satisfies the Fourth Amendment.....	21
III. RESPONDENTS' CONSTITUTIONAL CHALLENGE IS NONJUSTICIABLE	24
A. Respondents Lack Standing.....	24
B. Respondents' Claim is Not Ripe.....	26
CONCLUSION.....	28

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>216 E. 29th St. Tr. v. City of New York</i> , 2025 WL 315380 (S.D.N.Y. Jan. 28, 2025), <i>aff'd</i> , No. 25-465-CV, 2025 WL 3264312 (2d Cir. Nov. 24, 2025)	10, 11
<i>Allstate Ins. Co. v. Serio</i> , 261 F.3d 143 (2d Cir. 2001).....	14
<i>AMSAT Cable Ltd. v. Cablevision of Conn.</i> , 6 F.3d 867 (2d Cir. 1993).....	26
<i>Boyle v. Landry</i> , 401 U.S. 77 (1971)	26
<i>Camara v. Municipal Court</i> , 387 U.S. 523 (1967)	16, 19, 20
<i>Cappon v. Carballada</i> , 109 A.D.3d 1115 (4th Dep’t 2013)	17, 26, 27
<i>Cherry v. Koch</i> , 126 A.D.2d 346.....	26
<i>Church of St. Paul & St. Andrew v. Barwick</i> , 67 N.Y.2d 510 (1986)	26
<i>City of Lakewood v. Plain Dealer Pub. Co.</i> , 486 U.S. 750 (1988)	9
<i>City of Los Angeles v. Patel</i> , 576 U.S. 409 (2015)	23
<i>Cohen v. State of New York</i> , 94 N.Y.2d 1 (1999)	20
<i>Cuomo v. N.Y. State Comm’n on Ethics & Lobbying in Gov’t</i> , 44 N.Y.3d 141 (2025)	9
<i>Field Day, LLC v. County of Suffolk</i> , 463 F.3d 167 (2d Cir. 2006).....	9
<i>Flynn v. City of Lincoln Park</i> , 2020 WL 344854 (E.D. Mich. 2020).....	25

<i>Geller v. Cuomo</i> , 476 F. Supp. 3d 1 (S.D.N.Y. 2020).....	11
<i>Hudson Shore Assocs. Ltd. P’ship v. New York</i> , 139 F.4th 99 (2d Cir. 2025).....	<i>passim</i>
<i>In re N.Y. State Inspection, Sec. & Law Enf’t Emps. v. Cuomo</i> , 64 N.Y.2d 233 (1977)	26
<i>Lujan v. Defs. Of Wildlife</i> , 504 U.S. 555 (1992)	24
<i>Lusk v. Vill. of Cold Spring</i> , 475 F.3d 480 (2d Cir. 2007).....	14
<i>Moran Towing Corp. v. Urbach</i> , 99 N.Y.2d 443 (2003)	13, 20
<i>N.Y. State Inspection, Sec. & Law Enf’t Emps. v. Cuomo</i> , 64 N.Y.2d 233 (1977)	26
<i>Nat’l Org. for Marriage, Inc. v. Walsh</i> , 714 F.3d 682 (2d Cir. 2013).....	26
<i>New York State Ass’n of Nurse Anesthetists v. Novello</i> , 2 N.Y.3d 207 (2004)	24
<i>People v Stuart</i> , 100 N.Y.2d 412 (2003)	9
<i>Ranco Sand and Stone Corp. v. Vecchio</i> , 27 N.Y.3d 92 (2016)	26
<i>Schneckloth v. Bustamonte</i> , 412 U.S. 218 (1973)	15-16
<i>See v. City of Seattle</i> , 387 U.S. 541 (1967)	16, 17
<i>Sokolov v. Village of Freeport</i> , 52 N.Y.2d 341 (1981)	12, 16
<i>Stefanik v. Hochul</i> , 229 A.D.3d 79 (3d Dep’t 2024).....	14
<i>Texas v. United States</i> , 523 U.S. 296 (1998)	26

<i>United States v. Salerno</i> , 481 U.S. 739 (1987)	9, 13
<i>Wash. State Grange v. Wash. State Republican Party</i> , 552 U.S. 442 (2008)	9, 13, 14
<i>White v. Cuomo</i> , 38 N.Y.3d 209 (2022)	14
<i>Whitfield v. City of New York</i> , 96 F.4th 504 (2d Cir. 2024).....	21
<i>Wirth v. City of Rochester</i> , 2020 WL 5814417 (W.D.N.Y. Sept. 30, 2020).....	25
<i>Wisoff v. City of Schenectady</i> , 116 A.D.3d 1187 (3d Dep’t 2014)	11, 17

Statutes & Other Authorities:

U.S. Const. Amend. IV	2, 5, 16, 28
Armen H. Merjian, <i>Second-Generation Source of Income Discrimination</i> , 2023 UTAH L. REV. 963 (2023)	4
Benefits.com Advisors, <i>Stuck on a Section 8 Waiting List?</i> <i>Here’s How to Get Priority</i> , BENEFITS.COM (Nov. 15, 2024)	6
Buffalo, N.Y. Code § 249-9.....	19
Emily Rahhal, <i>200K people on NYC Section 8 housing voucher waitlist</i> , PIX11 (Aug. 1, 2024)	6
<i>Fair Housing Matters In NY</i> , N.Y STATE HOMES AND COMTY. RENEWAL 171–73 (Apr. 2024)	4
<i>Frequently Asked Questions on Using a G704</i> , N.Y.C. DEP’T SOC. SERVS., HUMAN RES. ADMIN., DSS-10j(E) (Jan. 13, 2025)	5
<i>Housing Choice Voucher (Section 8) Program Waitlist</i> , SYRACUSE HOUSING AUTHORITY, (last visited Aug. 24, 2026)	6
<i>Housing Choice Voucher Program Page</i> , BUFFALO MUNICIPAL HOUSING AUTHORITY, (last visited Aug. 24, 2026).....	6

Lindsay Augustine et al., <i>2024 Fair Housing Trends Report</i> , NATIONAL FAIR HOUSING ALLIANCE, 6 (July 10, 2024)	4
Maya Miller, <i>What You Need to Know About How Section 8 Really Works</i> , PROPUBLICA (Jan. 9, 2020)	6
Meryl Finkel et al., <i>Study on Section 8 Voucher Success Rates</i> , U.S. DEP’T OF HOUS. & URBAN DEVELOP. (Nov. 2001)	15
N.Y. EXEC. LAW § 296(5)(a)(1).....	<i>passim</i>
N.Y. Exec. Law § 297	13
N.Y. Exec. Law § 297(4)(a)	13
N.Y. Exec. Law § 298.....	13
N.Y.C. Admin. Code § 27-2123(a).....	18
N.Y.C. Charter, Ch. 17, S. 398.....	18
N.Y. C.P.L.R. § 7803(3) (McKinney 2003).	22
New York City Human Rights Law § 8-107.....	10
<i>Section 8 - Stability Voucher Program</i> , NY HOMES AND COMMUNITY RENEWAL, (last visited Aug. 24, 2026)	6
Town of Brookhaven, N.Y. Code, Ch. 82, S. 82-9	19
Town of Hempstead, N.Y. Code, Part III, Ch. 99, Art. II, S. 99-21.....	19
Transcript of Motion Hearing, <i>Lucinda LC, et al. v. Jones</i> , Civil Case No. 1:26-CV- 00252, (E.D. Va. Apr. 10, 2026), Dkt. 43, <i>appeal docketed</i> , No. 26-01442 (4th Cir., June 16, 2026).....	11
U.S. DEP’T OF HOUS. AND URB. DEV., HOUSING CHOICE VOUCHER PROGRAM INSPECTIONCHECKLIST (Apr. 2023)	8, 20
White Plains Charter, Ch. 4-29, S. 4-29-10	19
Yonkers Charter, Ch. 58, Art. I, S. 58-6.....	19

INTRODUCTION

Amici curiae join this appeal to urge this Court to find that the New York State Human Rights Law, Exec. L. § 296 (5)(a)(1)¹ (hereinafter “NYSHRL”) is not facially unconstitutional. Respondents’ constitutional challenge is flawed for several reasons, each of which is independently sufficient to defeat Respondents’ claim.

First, the NYSHRL is not facially unconstitutional because the text of § 296 (5)(a)(1) does not require, authorize, or even mention searches, let alone warrantless searches, nor does it automatically penalize a landlord for refusing an inspection.

Second, Respondents fail to meet their heavy burden of demonstrating that the NYSHRL’s ban on discrimination against renters using a specific form of rental assistance called Section 8 or Housing Choice Vouchers (“HCV”) is

¹ N.Y. EXEC. LAW § 296 (5)(a)(1), the only section of the NYSHRL at issue in this appeal, provides:

It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the . . . lawful source of income . . . of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

unconstitutional in every conceivable application. Nor can they. There are numerous examples of constitutional applications. Existing tenants who are selected from a Section 8 voucher waitlist may consent to a pre-lease inspection of their unit for habitability. In this circumstance, the owner's Fourth Amendment interests are not implicated. Additional protections exist in New York State when pre-lease inspections may be accompanied by an administrative warrant or conducted after an objecting landlord has had an adequate opportunity to seek precompliance review of the requested inspection. Any of these constitutional applications are independently sufficient to defeat Respondents' facial challenge. The Constitution does not entitle Respondents to refuse *all* pre-lease inspections; it only prohibits *unreasonable* inspections. Inspections that proceed based on tenant consent, accompanied by an administrative warrant, or after a full and fair opportunity for precompliance review all satisfy the Fourth Amendment.

Finally, Respondents' constitutional challenge is not justiciable. Respondents lack standing because they have not been subject to or threatened with a warrantless search and have never been penalized for declining one. Similarly, Respondents' claim is not ripe because it is based on entirely hypothetical and attenuated circumstances that have not come to fruition. Moreover, in the experience of amici over several decades, the likelihood of a warrantless search of a landlord's property is virtually nonexistent because HCV

administrators typically do not work with uncooperative landlords, instead encouraging voucher holders to rent from landlords who readily consent to inspections to secure housing before the voucher deadline.

For millions of New Yorkers, the NYSHRL is a crucial protection from source of income discrimination and helps ensure equal access to housing.

Respondents' constitutional challenge is untenable and cannot stand.

INTEREST OF AMICI

Amici curiae are six regional nonprofit organizations with fair housing programs operating in New York State: CNY Fair Housing, Inc. (CNY) in Syracuse, the Fair Housing Justice Center (FHJC) in New York City, Housing Opportunities Made Equal, Inc. (HOME) in Buffalo, Long Island Housing Services, Inc. (LIHS), Westchester Residential Opportunities, Inc. (WRO), and Legal Assistance of West New York, Inc. (LawNY), a legal services provider for low-income New Yorkers located in Rochester and serving 14 upstate counties. Amici's shared mission is to eliminate housing discrimination and promote equal access to housing for all.

In furtherance of their shared mission, amici investigate housing discrimination complaints, provide public education, and offer other housing-related services. In particular, amici receive and investigate discrimination complaints from renters with HCVs and other forms of rental assistance protected

by the NYSHRL as lawful sources of income. Two amici organizations also operate housing counseling programs to assist voucher holders in locating rental units or using their vouchers to pay a portion of the rent for their current apartment or home. As such, amici curiae have extensive expertise in how rental subsidy programs operate amid widespread source of income discrimination and how individual HCV holders may be discriminated against by landlords at all stages of the rental process.

Collectively, amici curiae offer a statewide perspective on how the NYSHRL operates in the context of HCV programs. Amici curiae have firsthand insight into how HCVs are administered and how housing discrimination undermines government-subsidized housing programs. Source of income discrimination against people with rental subsidies is one of the most pervasive forms of housing discrimination in New York State.² Complaints about source of income discrimination typically arise at the early stages of a housing search when a prospective renter is denied housing by a landlord after they disclose that they have a housing voucher.³ For context to explain how § 296 (5)(a)(1) of the NYSHRL is

² See, e.g., Lindsay Augustine et al., *2024 Fair Housing Trends Report*, NATIONAL FAIR HOUSING ALLIANCE, 6 (July 10, 2024), <https://nationalfairhousing.org/resource/2024-fair-housing-trends-report/> (compiling data on the prevalence of housing discrimination); *Fair Housing Matters In NY*, N.Y. STATE HOMES AND COMTY. RENEWAL 171–73 (Apr. 2024), <https://hcr.ny.gov/system/files/documents/2024/04/2024-final-fair-housing-matters-ny.pdf> (same).

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

constitutional, this brief begins by describing how rental subsidy programs comply with the Fourth Amendment during the preliminary pre-lease Section 8 inspection that occurs prior to the landlord signing a Housing Assistance Payments (HAP) contract.⁴

Amici rely heavily on the NYSHRL as a critical law to combat source of income discrimination—a persistent barrier to safe, affordable housing for lower-income New Yorkers. Without the NYSHRL, landlords will continue to discriminate against voucher holders even though much, and in some instances, all of tenants’ rent would be paid directly to the landlord from an HCV administrator or other rental assistance program. Such discrimination is a virtually insurmountable obstacle to finding increasingly scarce affordable housing and puts voucher holders at imminent risk of homelessness.

THE PRE-LEASE INSPECTION PROCESS

I. Housing Choice Vouchers

Despite high demand, there is an extremely limited supply of HCVs across New York State. Securing a voucher can be a years-long process. Only 25–30

⁴ Some rental assistance programs do not require inspections under certain circumstances. For example, the Family Homelessness & Eviction Prevention Supplement (FHEPS) rental voucher program in New York City does not require inspections when the unit is located in a newly constructed building available for initial occupancy. *See Frequently Asked Questions on Using a G704*, N.Y.C. DEP’T SOC. SERVS., HUMAN RES. ADMIN., DSS-10j(E), at 1 (Jan. 13, 2025), www.nyc.gov/assets/hra/downloads/pdf/cityfheps-documents/DSS-10j.pdf. This and other similar rental assistance programs are examples of additional constitutional applications of the challenged law.

percent of applicants ultimately receive a voucher.⁵ In 2024, New York City received over 600,000 HCV applications, but selected only 200,000 by random draw.⁶ The demand for HCVs became so overwhelming in Buffalo that the waitlist was closed in 2022 and remains so for the time being.⁷ Similarly, in Syracuse, the waitlist has been closed since 2024.⁸

But even for renters fortunate enough to receive a voucher, the process of securing a suitable rental unit is not easy or guaranteed. Once selected, prospective tenants have only 60 to 120 days to find a landlord offering a unit for rent within Section 8 program rent limits and willing to accept their vouchers.⁹ This is a daunting and often impossible task, particularly when faced with rampant source of income discrimination from landlords hesitant or unwilling to rent to voucher holders. As a result, many people are unable to find a non-discriminating landlord and secure an apartment before the deadline.¹⁰ Those who do not find an apartment by their program's deadline lose their vouchers.

⁵ Benefits.com Advisors, *Stuck on a Section 8 Waiting List? Here's How to Get Priority*, BENEFITS.COM (Nov. 15, 2024), <https://benefits.com/section-8/waiting-list/>.

⁶ Emily Rahhal, *200K people on NYC Section 8 housing voucher waitlist*, PIX11 (Aug. 1, 2024) <https://pix11.com/news/local-news/200k-people-on-nyc-section-8-voucher-waitlist/>.

⁷ *Housing Choice Voucher Program Page*, BUFFALO MUNICIPAL HOUSING AUTHORITY, www.bmhahousing.com/220/Housing-Choice-Voucher-Program (last visited Aug. 24, 2026).

⁸ *Housing Choice Voucher (Section 8) Program Waitlist*, SYRACUSE HOUSING AUTHORITY, <https://syracusehousing.org/section8/> (last visited Aug. 24, 2026).

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

¹⁰ *Section 8 - Stability Voucher Program*, NY HOMES AND COMMUNITY RENEWAL, <https://hcr.ny.gov/section-8-stability-voucher-program> (last visited Aug. 24, 2026).

The NYSHRL is a critical legal protection for all renters in New York, especially the most vulnerable renters. Low-income voucher holders are often among marginalized and vulnerable groups that, in the experience of amici, are more likely to encounter other forms of illegal discrimination, housing instability, and homelessness at some point in their lives. As such, for these households, the NYSHRL often functions as a crucial backstop against housing discrimination.

II. The Pre-Lease Inspection Process

For most New Yorkers, obtaining a housing voucher is a pipe dream. For those lucky enough to get one, they must then complete multiple steps in a short timeframe of 60 to 120 days. First, voucher holders must find an available housing unit within Section 8 program rent limits and other voucher program criteria. Next, they must inform the HCV administrator of this unit and request to use the voucher there. Next, the voucher holder must request the landlord's consent for the HCV administrator to inspect the unit for basic habitability requirements. While some landlords may readily consent to such an inspection, others may not. In amici's experience, if a landlord refuses to participate, HCV administrators will often advise voucher holders to look for a different unit with a landlord who will consent to the initial inspection, given the tight program deadline.

In any event, the HCV administrator is required to conduct a physical inspection before a lease may be signed and an HCV renter may move into a unit.

This pre-lease inspection is designed to confirm that the unit is habitable by visually inspecting the presence of electricity, plumbing fixtures, door locks, fire detectors, and other similar features.¹¹ The pre-lease inspection does not involve searching a landlord's rental office, financial records, or units rented by other tenants. If the landlord does not consent to the inspection, then in many local areas, the HCV administrator may seek an administrative warrant to lawfully conduct this inspection. If an HCV administrator attempted to conduct a warrantless inspection without consent—a prospect amici have never seen in their service areas across New York State—the landlord may seek precompliance review under Article 78 in New York State court before any challenged search occurs.

In sum, prior to the execution of any lease or HAP contract, HCV administrators are typically required to conduct an initial inspection of a rental unit to confirm basic habitability requirements. This search may occur in one of three ways: (i) the current tenant may consent to the search; (ii) the HCV administrator may obtain an administrative warrant (or other precompliance review) to conduct the search; or (iii) the HCV administrator may conduct a warrantless search *after* the landlord has obtained precompliance review under Article 78 (or another legal mechanism).

¹¹ See U.S. DEP'T OF HOUS. AND URB. DEV., HOUSING CHOICE VOUCHER PROGRAM INSPECTIONCHECKLIST (Apr. 2023), <https://www.hud.gov/sites/dfiles/OCHCO/documents/52580.pdf>.

ARGUMENT

I. THE NYSHRL IS NOT FACIALLY UNCONSTITUTIONAL BECAUSE THE TEXT OF THE STATUTE DOES NOT REQUIRE WARRANTLESS SEARCHES

The Supreme Court has made clear that facial constitutional challenges are “the most difficult challenge[s] to mount successfully.” *United States v. Salerno*, 481 U.S. 739, 745 (1987); *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 452 (2008) (“[f]acial challenges are disfavored for several reasons[,]” for they “threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution.”). This is because “[d]uly enacted legislation is entitled to a strong presumption of constitutionality” that cannot be easily overcome. *Cuomo v. N.Y. State Comm’n on Ethics & Lobbying in Gov’t*, 44 N.Y.3d 141, 149 (2025) (citation omitted). As the words suggest, a facial challenge must rest on the *face* of the law, not on extrinsic facts. *See Field Day, LLC v. County of Suffolk*, 463 F.3d 167, 174 (2d Cir. 2006). Put differently, a facial challenge requires the Court to “examine the words of the statute on a cold page and without reference to the defendant’s conduct.” *People v. Stuart*, 100 N.Y.2d 412, 421 (2003); *see also Field Day*, 463 F.3d at 174 (“A ‘facial challenge’ to a statute considers only the text of the statute itself”) (citing *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 770 n.11 (1988)).

Respondents’ facial constitutional challenge to the NYSHRL fails because the text of the NYSHRL does not require or authorize warrantless searches. Indeed, the statute does not even mention a search or inspection process, let alone require a landlord to consent to one or penalize a landlord for refusing one. Respondents cannot point to any words in the statute authorizing the allegedly unconstitutional conduct they challenge. Instead, the NYSHRL simply prohibits discrimination against New Yorkers based on their protected class status, including their lawful source of income.

Courts routinely reject facial constitutional challenges where, as here, the statutory text does not implicate unconstitutional conduct. For example, in *216 E. 29th St. Tr. v. City of New York*, plaintiff brought a challenge to the New York City Human Rights Law, § 8-107, which, similar to the NYSHRL, makes it an “unlawful discriminatory practice” for a rental building owner to refuse to rent an apartment to a prospective tenant on the basis of, among other things, “any lawful source of income.” No. 24-CV-00595 (ER), 2025 WL 315380, at *8 (S.D.N.Y. Jan. 28, 2025), *aff’d*, No. 25-465-CV, 2025 WL 3264312 (2d Cir. Nov. 24, 2025). The court noted that any constitutional challenge would have to be an as-applied challenge. *Id.* The law “on its face d[id] not implicate the Fourth Amendment because it d[id] not require or even say anything about a search or seizure.” *Id.* So too here. The text of the NYSHRL does not—explicitly or implicitly—require

landlords to consent to warrantless searches. While Respondents insist that the ultimate impact of the NYSHRL results in allegedly unconstitutional inspections stemming from the later-signed HAP contract, such an attenuated and individualized application of the statute cannot support a facial constitutional challenge. *Id.* (“A law cannot be facially invalidated based on the particulars of a contract drafted by a non-party, or based on particular facts about the plaintiff.”); *Geller v. Cuomo*, 476 F. Supp. 3d 1, 13 (S.D.N.Y. 2020) (noting that courts “consider[] only the text of the [provision] itself, not its application to the particular circumstances of an individual” in a facial challenge) (citation omitted).

Similarly, in a recent challenge to Virginia’s source-of-income law, a federal court rejected a purported facial Fourth Amendment challenge because the “text of the . . . source of income provisions do not have anything to do with searches or the Fourth Amendment on its face.” Transcript of Motion Hearing, *Lucinda LC, et al. v. Jones*, Civil Case No. 1:26-CV- 00252, (E.D. Va. Apr. 10, 2026), Dkt. 43, at 35:13-23, *appeal docketed*, No. 26-01442 (4th Cir., June 16, 2026); *see also Wisoff v. City of Schenectady*, 116 A.D.3d 1187, 1189 (3d Dep’t 2014) (“nothing on the face of the [ordinance] suggests that a property owner’s refusal to consent to the underlying inspection constitutes a violation of the ordinance.”). Given that the text of the NYSHRL is similarly silent on the issue of housing inspections, with or without a warrant, Respondents’ facial challenge fails.

Respondents' reliance on *Sokolov v. Village of Freeport*, 52 N.Y.2d 341, 348 (1981) is misplaced. The text of the ordinance at issue in *Sokolov* provided that "no one [could] let or relet a residence rental property . . . without first obtaining a permit from the village, [and] [n]o permit [could] issue without an inspection of the premises." *Id.* at 343-44. Moreover, the *Sokolov* ordinance mandated that owners immediately notify the village's buildings department when there was a vacancy and required that the department inspect the property within two business days. *Id.* at 344. Finally, landlords who did not consent to the warrantless inspection would be "subject to a fine of \$250 per day" because the two-day inspection requirement prior to imposition of an automatic financial penalty made it nearly impossible to obtain an administrative warrant in such a short time. *See id.*

The NYSHRL is distinguishable from the *Sokolov* ordinance in key respects. The NYSHRL does not require landlords to consent to searches within any specified timeframe, nor does it impose any penalty on a landlord who refuses to consent to a search. Indeed, the NYSHRL does not impose any automatic fines or penalties for violations of its anti-discrimination provisions. And contrary to Respondents' suggestion, the mere threat of a civil lawsuit or administrative complaint by a voucher holder is not the type of coercive, automatic penalty sufficient to violate the Fourth Amendment. *See Hudson Shore Assocs. Ltd. P'ship*

v. New York, 139 F.4th 99, 111 (2d Cir. 2025). Instead, the NYSHRL is replete with procedural due process protections for anyone facing enforcement of the law.¹²

Despite Respondents’ strained reading of the NYSHRL, it does not, on its face, implicate the Fourth Amendment, because it does not authorize, or even mention, the possibility of any housing inspections, let alone impose automatic penalties for refusing them. Accordingly, Respondents’ facial constitutional challenge fails.

II. THE NYSHRL IS NOT UNCONSTITUTIONAL IN ALL ITS APPLICATIONS

To prevail on a facial challenge, Respondents must “establish[] that no set of circumstances exists under which the [a]ct would be valid, *i.e.*, that the law is unconstitutional in all of its applications.” *Wash. State Grange*, 552 U.S. at 449 (citation modified); *Salerno*, 481 U.S. at 745; *Moran Towing Corp. v. Urbach*, 99 N.Y.2d 443, 448 (2003) (explaining that the party “mounting a facial constitutional challenge bears the substantial burden of demonstrating that in any degree and in

¹² Section 297 of the NYSHRL details the precise requirements for claimants to assert an allegedly unlawful discriminatory practice under the statute and the resulting procedures that will be followed. *See* N.Y. Exec. Law § 297 (McKinney 2024). For example, the NYSHRL affords respondents the opportunity to answer the charges of any complaint and appear at a hearing, during which time all parties are allowed to “present testimony in person or by counsel and cross examine witnesses.” *Id.* § 297(4)(a). Moreover, respondents are entitled to seek judicial review of any final disposition of a complaint brought under the NYSHRL. *Id.* § 298.

every conceivable application, the law suffers wholesale constitutional impairment”) (citation modified). In evaluating a facial challenge, courts “look only to the bare ‘facial requirements’ of the statute at issue and decline invitations to “speculate about” improbable ‘imaginary cases.’” *Hudson Shore*, 139 F.4th at 107 (quoting *Wash. State Grange*, 552 U.S. at 450). Similarly, courts “take pains to give a statute a limiting construction in order to avoid a constitutional difficulty[.]” *Allstate Ins. Co. v. Serio*, 261 F.3d 143, 150 (2d Cir. 2001), and seek to endorse a “constitutionally sound reading so long as it is not ‘plainly contrary to the intent of the Legislature,’” *Hudson Shore*, 139 F.4th at 107 (quoting *Lusk v. Vill. of Cold Spring*, 475 F.3d 480, 496 (2d Cir. 2007)); *Stefanik v. Hochul*, 229 A.D.3d 79, 83 (3d Dep’t 2024) (alteration in original) (courts will only invalidate statutes as facially unconstitutional “as a last unavoidable result after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible”) (quoting *White v. Cuomo*, 38 N.Y.3d 209, 216 (2022)).

Facing this heavy burden, Respondents cannot demonstrate that the NYSHRL is facially unconstitutional in all its applications. Respondents fail to account for the numerous constitutional applications of § 296 (5)(a)(1), including in the event that (i) the current/existing tenant consents to a pre-lease inspection; (ii) the housing authority obtains an administrative warrant for the inspection; or

(iii) the landlord obtains precompliance review by a state court of a warrantless search through Article 78.

A. Tenant Consent to a Search Satisfies the Fourth Amendment

Tenants who receive notice from a Section 8 program that they have been awarded an HCV may decide to use the voucher to continue renting their current apartment or house. In this circumstance, the unit must be inspected by the HCV administrator before the voucher may be used, unless certain exceptions apply.¹³ These inspections take place prior to execution of a HAP contract with a landlord and may be conducted with consent from the current tenant occupying the unit, without implicating a landlord's Fourth Amendment rights. For example, in the event that a tenant receives a Section 8 voucher to use to pay a portion, or all, of the rent for an apartment they already occupy, the tenant themselves may arrange for an inspection of the unit and consent to entry by the program administrator. Similarly, tenants who rent single-family homes may consent to a property inspection. Indeed, nationwide, 21% of voucher holders use their vouchers to help subsidize the rent of the apartment or home they already occupy.¹⁴ A pre-lease inspection of a unit that proceeds on the current tenant's consent is a constitutional application of the NYSHRL. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 222,

¹³ *See supra* n.4.

¹⁴ Meryl Finkel et al., *Study on Section 8 Voucher Success Rates*, U.S. DEP'T OF HOUS. & URBAN DEVELOP. (Nov. 2001), https://www.huduser.gov/portal/publications/pdf/sec8success_1.pdf (last accessed Aug. 24, 2026).

(1973) (“It is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.”) (citation omitted).

B. Availability of Administrative Warrants Satisfies the Fourth Amendment

It is well-settled that administrative search warrants satisfy the Fourth Amendment because they incorporate the constitutional requirements of reasonableness and probable cause. *See Camara v. Municipal Court*, 387 U.S. 523, 538 (1967); *Sokolov*, 52 N.Y.2d at 348. When assessing reasonableness, courts balance “the need to search against the invasion which the search entails.” *Camara*, 387 U.S. at 537-38. “The test of probable cause required by the Fourth Amendment can take into account the nature of the search that is being sought.” *Id.* at 538 (citation modified). In the case of routine public safety inspections, such as the administrative inspections at issue in this case, probable cause may be established by the minimal showing that the unit has gone a certain amount of time without an inspection. *See id.*

This Court has confirmed that administrative search warrants satisfy the Fourth Amendment. *Sokolov*, 52 N.Y. 2d at 348. The Court adopted a “flexible standard of reasonableness that takes into account the public need for effective enforcement of the particular regulation involved.” *Id.* (quoting *See v. City of Seattle*, 387 U.S. 541, 545 (1967)). The Court has made clear that “the strict

standards attending the issuance of a warrant in criminal cases are not applicable to the issuance of a warrant authorizing an administrative inspection.” *Id.*; *see also Wisoff*, 116 A.D.3d at 1189 (rejecting a constitutional challenge because “the inclusion of the warrant requirement is sufficient to safeguard plaintiff’s constitutional rights”); *Cappon v. Carballada*, 109 A.D.3d 1115, 1117 (4th Dep’t 2013).

Here, there is nothing in the NYSHRL, the Section 8 regulations, or the HAP contract that precludes local HCV administrators who have not obtained consent from the landlord or current tenant from seeking administrative warrants to conduct pre-lease inspections of rental units. In amici’s experience, administrative warrants are never sought because landlords either consent to the requested pre-lease inspection or the prospective tenant moves on to search for a different apartment. Nevertheless, these warrant procedures exist in the event a landlord does not consent to an inspection. Local statutes in areas served by amici, including New York City, Buffalo, Westchester, and Long Island, set forth the procedures to obtain administrative warrants.¹⁵

For example, in New York City, city agencies that operate HCV programs, including the Department of Housing Preservation and Development (“HPD”),

¹⁵ In areas where local housing authorities have contracted with nonprofits to serve as the Section 8 program administrator, the nonprofit may ask the housing authority or applicable city agency to request an administrative warrant.

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

The Buffalo City Code also provides a process for administrative warrants to conduct inspections. Buffalo’s HCV administrator, Buffalo Municipal Housing Authority (BMHA), engages a contractor to manage its program. In the event a landlord does not consent to a pre-lease inspection, the contractor may ask BMHA to request that City officials seek an administrative warrant pursuant to the City Code. The Code provides that where a city department is charged with enforcement of certain health provisions of the Buffalo code and requires an

inspection, “[t]he department shall procure a search warrant upon refusal of reasonable access to any part of the premises by any person with control of the premises.” Buffalo, N.Y. Code § 249-9 (search warrants).

Likewise, in Westchester County, city building commissioners and their designees are authorized to seek administrative warrants to conduct inspections regarding the health and safety of rental housing units. *See* White Plains Charter, Ch. 4-29, S. 4-29-10; *see also* Yonkers Charter, Ch. 58, Art. I, S. 58-6.

Finally, on Long Island, officials charged with administration and enforcement of rules governing rental units, including in the Towns of Hempstead and Brookhaven, are authorized to make an application to any court of competent jurisdiction for a search warrant to inspect rental premises under certain circumstances. *See* Town of Hempstead, N.Y. Code, Part III, Ch. 99, Art. II, S. 99-21; Town of Brookhaven, N.Y. Code, Ch. 82, S. 82-9.

Administrative warrants sought pursuant to these local procedures are assessed by courts for reasonableness and probable cause. Specifically, courts will weigh the need for the HCV administrator’s pre-lease inspection—namely the need to ensure the rental unit satisfies basic habitability conditions—against the nature of the privacy interest at stake. *See Camara*, 387 U.S. at 536-37. In these circumstances, a court will consider the minimally invasive nature of pre-lease inspections, during which inspectors use a standardized inspection checklist that

simply seeks confirmation of, among other things, electricity and the presence of a stove, refrigerator, and sink in the unit to be rented.¹⁶ *See id.*

In weighing these factors, applications for administrative warrants to conduct pre-lease inspections are reasonable. These inspections are only conducted to ensure that a unit meets the housing quality standards of the rental assistance program, such as a working heating system in cold climates. In performing these inspections, the government, through HCV administrators, is ensuring that the space meets basic health and safety standards for its residents. The strong governmental interest in the habitability of residential rental units, including but not limited to those subsidized by government programs, meets the probable cause standard for an administrative warrant. Accordingly, lower courts are likely to issue administrative warrants sought for pre-lease inspections.

The administrative warrant processes available throughout New York State provide a procedure for local HCV administrators to obtain an administrative warrant for pre-lease inspections. This availability of an administrative warrant satisfies constitutional scrutiny, *Moran Towing Corp.*, 99 N.Y.2d at 448, and confirms that the NYSHRL is not impaired in “every conceivable application,” *Cohen v. State of New York*, 94 N.Y.2d 1, 8 (1999) (citation omitted).

¹⁶ *See* VOUCHER PROGRAM INSPECTION CHECKLIST, *supra* n.11.

C. Availability of Article 78 Precompliance Review Satisfies the Fourth Amendment

In the unlikely event that an HCV administrator either fails to (i) obtain consent from a current tenant to conduct a pre-lease inspection or (ii) obtain an administrative warrant to conduct the inspection, landlords may still challenge a warrantless administrative search of a unit by filing an Article 78 proceeding in New York State court.

It is well-settled that a warrant is not required to conduct an administrative search. *Hudson Shore*, 139 F.4th at 108. Instead, warrantless administrative searches—often defined as those implicating “special needs” that “make the warrant and probable-cause requirement impracticable, and where the primary purpose of the searches is distinguishable from the general interest in crime control”—are permissible so long as “their subjects have an opportunity for pre-compliance review, that is, an opportunity to challenge the search’s reasonableness in front of a neutral decisionmaker before fac[ing] penalties for failing to comply.” *Id.* (citation modified). Precompliance review may be obtained by filing an Article 78 proceeding in New York State court. Article 78 actions are “expedited summary procedure[s]” for the “speedy correction of improper action by a body or officer,” *Whitfield v. City of New York*, 96 F.4th 504, 520 (2d Cir. 2024), and offer relief against any administrative action that “was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an

abuse of discretion,” N.Y. C.P.L.R. § 7803(3) (McKinney 2003). Article 78 affords Respondents a range of equitable relief, including orders to cease or reverse the unlawful conduct. *Hudson Shore*, 139 F.4th at 110.

In this case, Article 78 provides Respondents with an opportunity to seek precompliance review by providing landlords access to a neutral decisionmaker to review the reasonableness of any requested warrantless inspection. Landlords may file an Article 78 proceeding as soon as a request for an inspection by an HCV administrator is made if they contend that the inspection is an unreasonable search. Moreover, a landlord will not face *any* penalty for refusing to allow an inspection to proceed before their Article 78 petition has been fully adjudicated. Accordingly, the opportunity for landlords to obtain precompliance review satisfies constitutional scrutiny.

The Second Circuit’s recent holding in *Hudson Shore* is instructive. In *Hudson Shore*, the challenged statute authorized a municipality to regulate rents upon finding a particular vacancy rate among housing units. 139 F.4th at 103. To calculate these vacancy rates, the local government sent surveys to landlords requesting their rent rolls. *Id.* The statute authorized the local government to impose civil penalties on landlords who failed to submit required surveys documenting the vacancy rates of their units. *Id.* The landlords sued, arguing that the statute violated the Fourth Amendment by authorizing warrantless searches of

landlord records. *Id.* at 107-08. The Second Circuit rejected the challenge, finding that because the landlords had adequate opportunity to obtain precompliance review under Article 78 before facing any penalties, the searches were not “per se unreasonable.” *Id.* at 109. The court rejected the landlords’ invitation to “speculate” about “improbable imaginary situations in which a landlord could be penalized for noncompliance before being able to obtain Article 78 review,” on the grounds that the landlords had not shown *any* likelihood that the local governments would demand immediate compliance. *Id.* at 110-11. Because Article 78 allowed the landlords to “at least [in] some circumstances, obtain review before being forced to choose between handing over their books or facing a penalty,” the landlords’ facial challenge to the provisions failed. *Id.* at 111.

Here too, Respondents have ample opportunity to challenge the reasonableness of any requested inspection before it takes place. Moreover, because there is no automatic monetary penalty for refusing to consent to an HCV administrator’s request for an inspection, there is no risk that a penalty would be imposed before an Article 78 petition is adjudicated. As in *Hudson Shore*, “[t]hat is enough to defeat any facial challenge to [the statute] under the Fourth Amendment.” *Id.* at 111; *contrast with City of Los Angeles v. Patel*, 576 U.S. 409, 421 (2015) (finding an ordinance that authorized warrantless administrative

searches and imposed penalties for failure to comply *without* the opportunity for precompliance review to be facially unconstitutional).

In sum, the opportunity for landlords to obtain precompliance review through Article 78 before facing any penalty or being subjected to a warrantless search defeats Respondents' facial constitutional challenge.

III. RESPONDENTS' CONSTITUTIONAL CHALLENGE IS NONJUSTICIABLE

Respondents do not contend that they have ever been subject to or threatened with a warrantless pre-lease inspection by a local housing voucher administrator. Accordingly, Respondents do not have standing to assert their counterclaim, nor is the claim ripe for adjudication. Respondents' claim should be dismissed on these grounds alone.

A. Respondents Lack Standing

"[S]tanding is, of course, a threshold requirement for a plaintiff seeking to challenge governmental action." *New York State Ass'n of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211 (2004). To establish standing, a plaintiff must show "injury in fact," meaning that the plaintiff will "actually be harmed by the challenged administrative action." *Id.*; *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560 (1992). Such an injury must be "more than conjectural" and cannot be purely hypothetical. *New York State Ass'n of Nurse Anesthetists*, 2 N.Y.3d at 211; *Lujan*, 504 U.S. at 560.

In this case, Respondents cannot allege any actual or imminent injury sufficient to confer standing. Despite their misguided concern about the likelihood of a warrantless inspection by a local housing voucher administrator—which, in amici experience has never happened absent landlord or tenant consent—Respondents cannot dispute that, to date, no warrantless inspection of their property ever occurred or was about to occur. This alone renders Respondents’ claims nonjusticiable. *See e.g., Wirth v. City of Rochester*, 2020 WL 5814417, at *5 (W.D.N.Y. Sept. 30, 2020). In *Wirth*, the court rejected a Fourth Amendment challenge to a City of Rochester housing inspection law on the grounds that no warrantless search was ever conducted or threatened. Because any “threat of future Fourth Amendment harm [was] speculative at best,” Plaintiff “failed to establish the injury necessary to support a Fourth Amendment claim.” *Id.* at *5-6 (citing *Flynn v. City of Lincoln Park*, 2020 WL 344854, at *4 (E.D. Mich. 2020) (“[B]ecause the plaintiffs’ property had not actually been inspected without their consent or warrant, ... [Landlord Plaintiffs] had [not] suffered any actual injury that could support an as-applied Fourth Amendment challenge. [T]hat same lack of risk of harm—past, present, or future—also bar[red] them from bringing a facial Fourth Amendment challenge.”)). Here too, Respondents improperly seek to manufacture a case or controversy without ever having suffered any harm or risk of harm.

B. Respondents' Claim is Not Ripe

“To be justiciable, a cause of action must be ripe—it must present ‘a real, substantial controversy, not a mere hypothetical question.’” *Nat’l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 687 (2d Cir. 2013) (quoting *AMSAT Cable Ltd. v. Cablevision of Conn.*, 6 F.3d 867, 872 (2d Cir. 1993)); *Ranco Sand and Stone Corp. v. Vecchio*, 27 N.Y.3d 92, (2016); *Cherry v. Koch*, 126 A.D.2d 346, 351 (“hypothetical future controversy [] is not yet ripe for adjudication.”). A claim may be unripe if it is based upon future events that may not occur as predicted or at all. *Texas v. United States*, 523 U.S. 296, 300 (1998). Likewise, speculation about possible future unconstitutional governmental actions is insufficient to satisfy the ripeness requirement. *See Boyle v. Landry*, 401 U.S. 77, 81 (1971). Respondents’ challenge is the epitome of an unripe dispute as it presents a set of speculative, hypothetical circumstances that have not yet occurred and are at no risk of occurring.

This Court has consistently deemed unripe arguments that are “contingent upon events which may not come to pass.” *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 518 (1986) (quoting *In re N.Y. State Inspection, Sec. & Law Enf’t Emps. v. Cuomo*, 64 N.Y.2d 233, 240 (1977)). Moreover, New York State courts have previously applied the ripeness doctrine to reject constitutional challenges to administrative inspections. For example, in *Cappon*, the Fourth

Department rejected a constitutional challenge to a Rochester housing inspection law, in part because the challenging party never actually applied for the permit that would necessitate the inspection. *See* 109 A.D.3d at 1116.

Respondents' challenge in this case should similarly be dismissed on ripeness grounds. Respondents ask the Court to evaluate a purely hypothetical scenario in which a warrantless inspection of their housing units has occurred or was about to occur. But in reality, Respondents cannot identify any HCV administrator who has ever conducted a pre-lease inspection of Respondents' property without consent. Given that no pre-lease inspection was, or has ever been requested here, Respondents have never been required to decide whether to consent to or decline a warrantless search.¹⁷ Indeed, no HCV administrator even *asked* Respondents to consent to a search because the voucher holders in this case were told Respondents would not accept vouchers at all. This was before the voucher holders would have asked the HCV administrator to contact Respondents to schedule an inspection. And before the administrator would have decided whether to seek an administrative warrant. Accordingly, Respondents'

¹⁷ Moreover, for the reasons noted above, even if Respondents *had* declined a warrantless search, they would not face any automatic penalty for doing so and would have the opportunity to challenge the reasonableness of the search through Article 78 or other precompliance review should the Section 8 administrator continue to seek an inspection.

constitutional claims are wholly attenuated and based on a set of hypothetical facts that never occurred.

This Court should dismiss Respondents' claim as nonjusticiable because Respondents lack standing and their claims are unripe for adjudication.

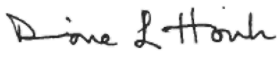
CONCLUSION

For the foregoing reasons, Respondents' facial constitutional challenge fails because the statutory text of § 296(5)(a)(1) of the NYSHRL satisfies the Fourth Amendment on its face, the statute is constitutional in multiple conceivable applications, and Respondents' claim is nonjusticiable. Therefore, this Court should reverse the Appellate Division's order.

Dated: August 27, 2026
New York, NY

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

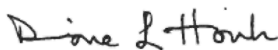
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Diane Houk

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ss.:

**AFFIDAVIT OF SERVICE
BY OVERNIGHT FEDERAL
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I, Tyrone Heath, 1702 Clay Avenue, Apt 11, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On August 27, 2026

deponent served the within: **BRIEF OF FAIR HOUSING ORGANIZATIONS AS
AMICI CURIAE IN SUPPORT OF PETITIONER-APPELLANT**

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the address(es) designated by said attorney(s) for that purpose by depositing **3** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on August 27, 2026



MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2030



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