



August 13, 2020

VIA ECF

The Honorable Ronnie Abrams
U.S. District Court for the Southern District of New York
Thurgood Marshall United States Court House
40 Foley Square
New York, NY 10007

Re: Motion for Leave to File *Amicus* Brief on Behalf of Volunteers of Legal Service in:
Melendez v. City of New York, No. 1:20-cv-05301

Your Honor:

In accordance with Rule 4(E) of Your Honor’s Individual Rules of Practice and Local Civil Rules 5.2(b) and 7.1(d), Volunteers of Legal Service respectfully moves for leave to file the attached *amicus curiae* brief in the above-captioned matter. Counsel for all parties to this action have consented to submission of this brief.

Volunteers of Legal Service (“VOLS”) is a non-profit organization established over thirty-five years ago to close the gap in civil legal services left by severe federal budgetary cuts. Consistent with this mission, VOLS provides pro bono legal representation to low-income New Yorkers with wide-ranging legal needs. As relevant here, for over twenty years the VOLS Microenterprise Project has assisted thousands of underserved low- and moderate-income small business owners and microentrepreneurs with pro bono legal services key to starting and operating a business—entity selection and formation, contract negotiation and drafting, and intellectual property protection, to name a few. In addition, as a member of the New York City Commercial Lease Assistance (“CLA”) Program for the past three years, the VOLS Microenterprise Project has directly represented small business tenants in the negotiation of commercial leases, many with personal guaranties, and in the resolution of commercial landlord-tenant disputes.

For many of our clients—predominantly lower-income women, immigrants, and people of color—starting a business represents a path out of poverty. As part of our efforts to make this dream a reality for them, the VOLS Microenterprise Project’s lawyers and non-lawyer staff work tirelessly to help small business owners overcome the myriad obstacles that stand in the way. Small businesses are indeed the backbone of the American economy, and the economic heart and soul of the City of New York, and yet, their voices often go unheard. That is why VOLS strives to amplify their voices to a level consistent with their importance to our economy. Moreover, that is why VOLS actively supported the Commercial Tenant Harassment Law and Guaranty Law challenged in the above-captioned case, which we believe are not only constitutional, but



critical to addressing the needs of a small business community on the brink. It is against this backdrop that we submit this Motion for Leave to File an *Amicus* Brief in Opposition to Plaintiffs’ Motion for Preliminary Injunctive and Declaratory Relief.

“There is no governing standard, rule or statute prescribing the procedure for obtaining leave to file an *amicus* brief in the district court,” and “[d]istrict courts have broad discretion to permit or deny an appearance as *amicus curiae* in a case.” *Automobile Club of New York v. Port Authority*, 2011 U.S. Dist. LEXIS 135391, at *5 (S.D.N.Y. Nov. 23, 2011). An *amicus* brief serves to “provide supplementary assistance to existing counsel and [to] insur[e] a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *Young Advocates for Fair Education v. Cuomo*, 2018 U.S. Dist. LEXIS 235431, at *2–3 (E.D.N.Y. Oct. 30, 2018) (internal quotations omitted). Courts in the Second Circuit have held that an *amicus* brief should normally be allowed when: (1) a party is not represented competently or represented at all; (2) the *amicus* has an interest in some other case that may be affected by the decision in the present case; or (3) the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. *Automobile Club*, 2011 U.S. Dist. LEXIS 135391, at *6.

VOLS has a strong interest in ensuring “a complete and plenary presentation of [the] difficult issues” raised in this case because any judicial ruling enjoining enforcement of the challenged laws will irreparably harm small business owners throughout New York City, including VOLS’ underserved and marginalized clients. Moreover, given its thirty-five-year commitment to serving the legal needs of New York City’s small business community, as well as its participation as one of three members in the New York City CLA Program serving small business tenants, VOLS unquestionably has “unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.”

To be sure, since March 20, 2020, when Governor Cuomo first issued Executive Order No. 202.8 requiring the closure of all non-essential businesses in the State of New York, the VOLS Microenterprise Project’s work has been focused almost entirely on responding to the legal issues presented by the current public health and economic crisis affecting small business owners, especially those relating to the inability of commercial tenants to meet rent obligations in light of halted revenue. For example, VOLS staff attorneys and its pro bono and community partners have continued to negotiate amicable resolutions of commercial landlord-tenant disputes, provide information and resources to help small business owners keep abreast of their rights, and advocate for relief for our small business clients. Since March 20, VOLS has served over 170 COVID-affected small businesses with over 220 distinct legal matters. Moreover, VOLS was one of the first to litigate a claim of commercial tenant harassment after the statute was first enacted in 2016. Through its work at the intersection of commercial law practice, public interest, and advocacy, VOLS has become perhaps uniquely familiar with the challenges facing New York City’s underserved small business community and the relief that they require in order to overcome those challenges, including the laws challenged in this case.

Importantly, VOLS comes to this Court as a friend. See *Young Advocates*, 2018 U.S. Dist. LEXIS 235431, at *2 (“*Amicus curiae*’ means, literally, ‘friend of the court.’”). We offer a



unique perspective on the issues presented in this case, which we believe will help this Court to reach a just decision, and in particular, one that takes into consideration the realities of the challenges facing New York City small business owners as a result of the ongoing public health and economic crisis. It is especially important for this Court to ensure a plenary presentation of these issues where, as here, Plaintiffs seek to enjoin enforcement of laws affecting a much broader population than those parties alone. While landlords and the City are well represented in this case, the small business community that will be affected by its result is notably absent. This Court should grant our Motion for Leave to File an *Amicus* Brief so that their voices do not go unheard.

For the foregoing reasons, VOLS respectfully requests that the Court grant it leave to file the attached *amicus* brief in opposition to Plaintiffs' Motion for Preliminary Injunctive and Declaratory Relief.

Respectfully submitted,

Application granted.

SO ORDERED.

A handwritten signature in blue ink, appearing to read "Ronnie Abrams", written over a horizontal line.

Ronnie Abrams, U.S.D.J.

8/14/2020

/s/ Arthur Kats

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