To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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CORLIES MANOR REALTY, LLC; KAHANA & CO., LLC; POK PORTFOLIO, LLC; PIE 468 MAIN, LLC; HAMILTON GARDEN ESTATES, LLC; HUDSON VALLEY PROPERTY OWNERS' ASSOCIATION, INC.,

Plaintiffs-Petitioners,

- against -

THE CITY OF POUGHKEEPSIE, NEW YORK; YVONNE FLOWERS, in her capacity as Mayor of the City of Poughkeepsie; THE COMMON COUNCIL OF THE CITY OF POUGHKEEPSIE; THE NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL; and COLLECTIVE FOR COMMUNTIY, CULTURE AND ENVIRONMENT, LLC,

Defendants-Respondents.

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DECISION & ORDER

Index No.: 2024/53504
Motion Seq.: 1

ACKER, J.[1]

The papers filed electronically as NYSCEF Docs. 1-76 were read on plaintiffs-petitioners' Order to Show Cause bringing on this motion for an Order:

(1) pursuant to CPLR 3001 and/or CPLR 7803(3), entering final judgment vacating, annulling and declaring null and void Resolution R-24-25 of the Common Council of the City of Poughkeepsie dated June 18, 2024, declaring a housing emergency under the Emergency Tenant Protection Act, and any and all acts in furtherance of rent stabilization in the City of Poughkeepsie pursuant thereto; and/or

(2) pursuant to CPLR 6311, entering a preliminary injunction against defendants-respondents pending final determination of this hybrid action, as follows: (a) directing that landlords in the City of Poughkeepsie shall not be required to register their rental properties with the New York State Division of Housing and Community Renewal pursuant to the Emergency Tenant Protection Act until further Order of this Court; (b) enjoining any Rent Guidelines Board that may be empaneled for the City of Poughkeepsie from enforcing any rent guideline orders pursuant to the Emergency Tenant Protection Act and any implementing resolution of the City of

[1] The Court expresses its gratitude to Referee David Evan Markus for his assistance in researching and drafting this Decision and Order.

Poughkeepsie; (c) enjoining the New York State Division of Housing and Community Renewal from enforcing any such Rent Guidelines Board orders that may be adopted; (d) providing that owners of housing accommodations subject to the Emergency Tenant Protection Act in the City of Poughkeepsie shall not be required to provide tenants with new or renewal leases; and (e) providing that all affected tenants in housing accommodations subject to the Emergency Tenant Protection in the City of Poughkeepsie shall have the right to continued occupancy as month-to-month tenants, notwithstanding the expiration of their prior lease or lack of a new lease; and for related relief.

Upon the foregoing papers, and all prior papers and proceedings, the motion brought on by this Order to Show Cause, and the underlying hybrid proceeding, are determined as follows:

New York's Emergency Tenant Protection Act of 1974 ("ETPA"), marking its 50th anniversary this year, establishes this State's public policy that municipalities can regulate the local rental housing market where housing insecurity threatens the basic life needs of New York communities and families. As New York State Comptroller Thomas P. DiNapoli recently reported, "[c]ost burdens are the primary driver of housing insecurity," and "New York consistently rates as one of the states with the highest cost burdens" for housing – with troubling impacts on physical and mental health, neighborhood vitality, child welfare and racial equity (DiNapoli, "New Yorkers in Need: The Housing Insecurity Crisis" [2024], *available at* https://www.osc.ny.gov/reports/new-yorkers-need-housing-insecurity-crisis [accessed Nov 13, 2024]). According to the Comptroller's analysis of federal data, the Mid-Hudson region experiences New York's second highest regional proportion of "renter share of cost-burdened households" (*id.*). This dynamic especially impacts the region's cities: the Comptroller reports that 44% of Mid-Hudson city households, compared to 33% of non-urbanized households, meet the federal housing-insecurity definition of spending more than 30% of monthly income on housing (*see id.*).

For legal and policy reasons, however, the ETPA does not regulate rent directly. Rather, reflecting the variable supply-and-demand dynamics of the rental housing market, the ETPA establishes and regulates a process for localities to consider rent stabilization where the vacancy rate falls to or below 5% for all of a locality's rental apartments, or a specified class of rental apartments, in buildings with six or more units. This 5% trigger represents the Legislature's balance of competing interests affecting the supply, quality and distribution of affordable rental housing. Under the ETPA, where a municipality undertakes or commissions a study of local

housing conditions and determines that they satisfy the ETPA trigger, the municipality may declare a housing emergency and set in motion a rent-stabilization process that continues until the local vacancy rate lifts above 5%. Substantive and procedural requirements govern the locality's emergency declaration – both generally to promote the rationality of government decisions, and specifically to ensure the proper targeting of rent stabilization measures to the Legislature's stated balance of competing housing policy interests.

Rent stabilization decisions, and affordable housing policy generally, can evoke public passions and spark pointed policy debates. When these matters ripen into legal challenges, the Judiciary's proper role is not to have its own substantive housing policy preferences much less impose them. In our democracy's horizontal and vertical separation of powers between the branches and levels of government, the Judiciary's limited function is to enforce duties and protect rights that the law establishes. These include the standards and methods by which a municipality declares an ETPA housing emergency and brings on a rent stabilization process – as compliance ultimately serves both renters and owners of rental apartments, and the broader public at large.

On this challenge to the City of Poughkeepsie's 2024 housing emergency declaration, principally at issue is a question of first impression about how municipalities conduct ETPA housing studies: does a December 2023 ETPA amendment requiring these studies to count zero vacancies for "nonrespondent" properties (ETPA § 3[f]; Uncons Laws § 8623[f]; L 2023, ch 698) apply to properties whose owners or agents answered an earlier survey in the same housing study? Based on well-established legal principles and subject to an exception inapplicable here, this Court's answer is no. Any other result would undermine the ETPA's intent concerning rent stabilization, invite substantial mischief and inefficiencies, and undermine the reliability and finality of ETPA vacancy studies on which the Legislature's careful market-shaping policy balance depends.

The housing study underlying the City of Poughkeepsie's 2024 emergency declaration misapplied this recent legislation, and was affected by numerous other legal defects, in ways that substantively changed the study's outcome. While the housing study prompted the City of Poughkeepsie to determine a local vacancy rate below the ETPA's 5% trigger, the study's data showed otherwise. As such, the declaration violated the ETPA and also was arbitrary and

capricious. Plaintiffs-petitioners therefore are entitled to CPLR 3001 declaratory judgment to that effect along with CPLR article 78 relief vacating the emergency declaration on this record.

The underlying issues of affordable housing and potential rent stabilization in the City of Poughkeepsie are remitted to the City and its elected representatives for further proceedings consistent with law.

Background

This hybrid CPLR 3001 declaratory judgment action and CPLR article 78 special proceeding challenges the determination by the City of Poughkeepsie ("City"), effectuated by Resolution R-24-25 of its Common Council dated June 18, 2024 ("Resolution"), that a housing emergency exists in the City pursuant to ETPA § 3 (Uncons Laws § 8623; L 1974, ch 576, § 3, *as amended*). The Resolution narrated the Common Council's finding – based on a 22-page vacancy analysis ("Vacancy Study") that it commissioned from the Collective for Community, Culture and Environment ("CCCE") – that there existed in the City as of November 1, 2023, a 4.03% apartment vacancy rate in buildings with six or more apartments initially constructed prior to January 1, 1974 (Resolution [NYSCEF 3], at 1; *see* Vacancy Study [NYSCEF 4]). CCCE reported this 4.03% vacancy rate to the City "after review of the information presented at the [Common Council's] public hearing" of May 7, 2024, including data from landlords in the City who challenged CCCE's draft Vacancy Study's initial 3.96% vacancy rate (*see id.*).

The Vacancy Study narrated that CCCE undertook its analysis pursuant to contract with the City dated October 9, 2023 (*see* CCCE Vacancy Study, at 1), using a multi-pronged approach of mailing paper surveys to landlords in the City; inviting responses by paper, telephone or dedicated website; and then following up by phone calls and a second vacancy survey to certain landlords that either did not respond or whose responses CCCE deemed to be unclear. CCCE calculated the vacancy rate "by dividing the number of [qualifying] vacant rental housing units available for rent on November 1, 2023," by the total number of qualifying rental units (*id.*, at 3). According to the CCCE's pre-hearing draft Vacancy Study, the City had 58 qualifying vacancies out of 1,464 commercial rental apartments as of November 1, 2023, yielding an initial vacancy rate of 3.96% (*see id.*).

At the Common Council's May 2024 public hearing on the matter, plaintiff-petitioner Hudson Valley Property Owners Association ("HVPOA"), an area landlord trade organization,

filed a written critique of the draft Vacancy Study based on HVPOA's analysis of CCCE's raw data, which the City supplied to HVPOA pursuant to Freedom of Information Law ("FOIL") requests. According to HVPOA's critique and the hearing testimony of HVPOA executive director Richard Lanzarone, CCCE's raw data showed a substantial undercount of qualifying vacancies compared to landlords' own vacancy responses to CCCE. After closing the public hearing, the Common Council determined to take no action at that time and return the matter to the public agenda after consideration of hearing testimony and written submissions.

At its further meeting on June 18, 2024, the Common Council adopted the Resolution, which expressly relied on the Vacancy Study – modestly revised to reflect a vacancy rate of 4.03% based on 59 (rather than 58) qualifying vacancies out of 1,465 (rather than 1,464) rental apartments – to conclude that the City's vacancy rate was below the ETPA's 5% trigger. On that basis, the Resolution, which annexed CCCE's final data as adjusted, declared an ETPA housing emergency in the City of Poughkeepsie. The Mayor signed the Resolution on June 24, 2024.

By hybrid verified complaint filed on July 26, 2024, owners of rental apartment buildings in the City, along with HVPOA, jointly allege that CCCE timely received landlord data, but wrongfully excluded, "dozens more vacancies than [it] reported in the Vacancy Study" (Compl-Pet, at ¶ 3), thereby artificially depressing the vacancy rate below the ETPA's 5% trigger. Much as HVPOA asserted at the Common Council's hearing, the hybrid complaint asserts based on CCCE's survey data that HVPOA obtained under FOIL, along with landlords' own documented vacancy reports to CCCE, that the City's true vacancy rate was above the ETPA 5% trigger. The hybrid complaint argues that the Resolution based on the CCCE Vacancy Study was arbitrary and capricious, affected by errors of law, and illegal under CPLR 7803(3). The owners and HVPOA also seek CPLR 3001 declaratory judgment that the Resolution violates the ETPA, and an injunction barring implementation of rent stabilization in the City based on the Resolution.

With their hybrid complaint, plaintiffs-petitioners filed a proposed Order to Show Cause bringing on a motion for final judgment or, in the alternative, a temporary restraining order and preliminary injunction against implementation of the Resolution. By Order dated July 31, 2024, this Court granted the Order to Show Cause to the extent of the proposed temporary restraining order and set down a briefing schedule (NYSCEF 39).

Defendants-respondents are the City, its Mayor and Common Council, the New York State Division of Housing and Community Renewal ("DHCR") that the ETPA vests with initial

implementation and enforcement powers until a rent stabilization board is empaneled (*see* ETPA § 6[a], Uncons Laws § 8626[a]), and CCCE.[2] DHCR filed a verified answer with general denials and a raft of objections in point of law, including that the hybrid complaint fails to state a claim on which relief can be granted as against DHCR and, in any event, that the allegations lack substantive merit (NYSCEF 48). CCCE filed a verified answer likewise asserting general denials and objections in point of law including that CCCE is not a proper defendant-respondent and that plaintiffs-petitioners lack standing (NYSCEF 50). The City, Mayor and Common Council jointly filed a verified answer asserting denials and objections in point of law including lack of standing, failure to exhaust administrative remedies and defense based on documentary evidence (NYSCEF 51).

All defendants-respondents oppose this Order to Show Cause.

Party Contentions

Plaintiffs-petitioners offer affidavits from four building representatives, each asserting that they responded to the CCCE survey by reporting vacancies that CCCE wrongly excluded from its Vacancy Report. CCCE and the Mayor did not make corrections that the owners timely requested at and/or soon after the Common Council's initial public hearing but before the City Council approved the challenged Resolution.

Djuro Lulaj attests that he sent CCCE survey responses as superintendent of several plaintiff-petitioner owners' buildings. For the rental building at 548 Main Street in the City of Poughkeepsie, Lulaj responded by mail that two vacant units were available for rent as of November 1, 2023. When he did not receive an acknowledgement that his survey was received, Lulaj completed a duplicate survey response online on December 18, 2023, indicating four vacancies then available. According to Lulaj, CCCE then sent him another vacancy questionnaire on January 24, 2024, to which he responded that there were five vacancies then available. Lulaj attests that all of his responses were accurate at the time he returned them, but

[2] The hybrid complaint recognizes that CCCE is "not a necessary party to this action because it served an advisory role only in the matters at issue herein, whereas the official governmental determination that is subject to review in this case was the City Council and Mayor's adoption of the Resolution. Nevertheless, CCCE is named herein in the event that it is determined that the judgment in this action would affect CCCE or its rights" (Compl-Pet, at ¶ 14).

nevertheless his second and third response should have reported two vacancies because the survey's purpose was to gauge vacancies available for rent "as of November 1, 2023" (*see* Lulaj Aff [NYSCEF], at ¶ 4). Lulaj contends that the CCCE Vacancy Report erroneously reported the property as having zero vacant units.

For the rental building at 2 Rose Street, Lulaj attests that he completed the CCCE survey by telephone on December 8, 2023, and reported four vacant units available for rent. As with the 548 Main Street property, Lulaj re-reported online on December 18, 2023, then by paper in response to the further survey of January 24, 2024 – in both instances reporting six vacancies available for rent. The Vacancy Report, however, reported 2 Rose Street as having zero vacant units (*see id.*, at ¶¶ 6-10). Lulaj attaches and authenticates his written responses (*see* NYSCEF 18-19). Lulaj continues that when he saw the Vacancy Report listing zero vacancies for 548 Main Street and 2 Rose Street, he sent the Mayor an email on May 3, 2024, reporting the errors and requesting correction (*see* Lulaj Aff, at ¶ 11), but that no corrections were made and the Resolution wrongly assumed zero vacancies for both properties (*see id.*). Lulaj attaches and authenticates his email to the Mayor (*see* NYSCEF 20).

Mordechai Grunsweig attests similarly as to the rental property at 98 Montgomery Street. He answered the CCCE survey by indicating one vacant unit as of November 1, 2023, but the CCCE Vacancy Report listed zero vacancies. Grunsweig avers that he emailed the Mayor about the error and requested correction, but no correction was made and the Resolution wrongly assumed zero vacancies for the property (*see* Grunsweig Aff [NYSCEF 21]), at ¶¶ 1-4). He attaches his written survey response and corrective email to the Mayor dated May 6, 2024 (NYSCEF 22-23).

Jonathan Lussow, owner of the rental property at 120 Cannon Street, attests that he answered CCCE's vacancy questionnaire on December 4, 2023, reporting that there was one vacancy available for rent as of November 1, 2023, but the Vacancy Report listed no vacancies for the building. Lussow continues that he emailed the Mayor requesting a correction, to no avail. He attaches and authenticates his email to the Mayor dated May 1, 2024 (*see* Lussow Aff [NYSCEF 24]; Exh 1 [NYSCEF 25]).

For the rental property at 94-96 S. Hamilton Street, Samuel Pollack attests that he never received initial contact offering an opportunity to participate in the vacancy survey (*see* Pollack Aff [NYSCEF 26], at ¶ 2), but after he saw the CCCE Vacancy Report list the property as having

zero vacancies available for rent, he emailed the Mayor that the property had eight rentable vacancies as of November 1, 2023, and asked for a correction (*see id.*, at ¶ 7). Pollack attaches and authenticates his email to the Mayor (*see id.*; NYSCEF 27). The Court notes that Pollack's email is dated July 16, 2024.

From the foregoing, plaintiffs-petitioners argue that the Vacancy Report, and thus the Resolution based on it, wrongly ignored these 16 vacancies, and that including them raises the true vacancy rate above the ETPA's 5% trigger. Additionally, they point to the City's FOIL return, which includes the CCCE's spreadsheet of data it collected during site visits in November and December 2023. Plaintiffs-petitioners assert that, according to those data, CCCE visited 460 Main Street and 94-96 S. Hamilton Street and found evidence of multiple vacancies at each of those properties, thus corroborating what their owners or agents reported for them (*see* Record, at 186-193), but nevertheless reported zero vacancies for those properties.

Plaintiffs-petitioners also allege that CCCE, while purporting to conduct a Citywide study rather than a representative sampling, failed to contact owners of 13 qualifying rental properties in the City comprising 135 units, for which CCCE reported zero vacancies at each of 187/189 Union, 641 Main Street, 639 Main Street, 66 Worral, 94-96 S. Hamilton St., 144 Mansion St., 46 N. Hamilton St., 3 College Ave., 43 Hooker Ave., 267 Mill St., 56 Pershing Ave., 211 Mill St., and 54-58 Smith Street – all in the City of Poughkeepsie (*see* Pl's Mem [NYSCEF 31], at 12). For this contention, plaintiffs-petitioners again point to the City's FOIL return, which included certified mail receipts allegedly showing that the vacancy survey never was delivered to any of these additional qualifying properties. Plaintiffs-petitioners further press that CCCE's telephonic, online and site-visit records obtained via FOIL indicate that CCCE did not contact those properties by those additional means. Plaintiffs-petitioners argue that while ETPA § 3(f) (Uncons Laws § 8623[f]) allows a locality or its agent to assume zero vacancies for a landlord that fails to respond to a survey in the first instance, the statute does not allow this assumption where the landlord does initially respond or where the locality fails to contact the landlord at all. Based on the foregoing, plaintiffs-petitioners conclude that the CCCE Vacancy Study, and thus also the Resolution, are both illegal based on their alleged violation of ETPA § 3(f), and also arbitrary and capricious.

For similar reasons, plaintiffs-petitioners argue that they are entitled to a preliminary injunction in that the foregoing demonstrates probability of success on the merits; the ETPA

scheme all but guarantees irreparable injury to the landlords if rent stabilization proceeds based on the allegedly errant Resolution; and the balance of equities supports injunctive relief by preserving the status quo and allowing existing tenants to continue in month-to-month leases. Plaintiffs-petitioners assert that they model their proposed injunctive relief on a similar injunction that issued in *Chadwick Gardens Assoc., LLC v City of Newburgh* (82 Misc 3d 1234 [Sup Ct Orange Co 2024]), a recent landlord challenge to an ETPA housing emergency declaration in which the Court found undercounting of vacancies and issued a preliminary injunction against rent stabilization on that basis.

In opposition, CCCE member Devyani Guha attests that CCCE modeled the subject study on another that CCCE recently conducted for the Village of Ossining (Westchester County) (*see Matter of PJB Equities, Inc. v Vil. of Ossining*, 226 AD3d 1030, 1031-32 [2d Dept 2024]). Guha describes CCCE's survey protocol of contacting "all eligible properties" in the city by certified mail; eliciting responses by mail, email or online form; making site visits to "all eligible properties" for visual inspection of "signs of occupancy or construction as well as communications with building superintendents and tenants, where available, to obtain information on vacancies"; and contacting 70% of study properties a second time in "an abundance of caution" (Guha Aff [NYSCEF 52], at ¶¶ 7-16). Guha specifically attests that CCCE mailed, called and visited each property that plaintiffs-petitioners assert CCCE had excluded, and cites as proof CCCE's survey notes from the City's FOIL return that plaintiffs-petitioners annexed to their hybrid complaint at the time of commencement.

As to 548 Main Street, Guha asserts that CCCE "fairly and reasonably" excluded Lulaj's three separate vacancy reports based on their internal inconsistency and City records allegedly listing fewer rentable apartments than Lulaj reported (Guha Aff, at ¶¶ 27). As to 558 Main Street, Guha states that CCCE reported zero vacancies because of that property's inconsistent questionnaire responses and then the lack of response to CCCE's second survey seeking to resolve the alleged inconsistencies. As to 98 Montgomery Street, Guha asserts that CCCE excluded this property's one reported vacancy because the owner allegedly told an unspecified CCCE examiner during a telephone survey that the unit was not "actually ready to rent on November 1, 2023" (*id.*, at ¶ 34); Guha annexes the call log, which reports a conversation on December 4, 2023. The log contains no detail, however, about unit unavailability or the parties to the alleged conversation.

As to 194 Main Street, Guha reports that CCCE's conversation with the property manager on or about January 5, 2024, indicated that the property had three vacant units as of November 1, 2023, rather than the five reported online, but "the property manager was unwilling to check if the units were available for rent on November 1, 2023" and CCCE received no response to its follow-up survey ostensibly to resolve this inconsistency. As to 2 Rose Street, Guha asserts that the written response of four rentable units out of six conflicted with CCCE's telephone survey on December 18, 2023, in which the superintendent reported six rentable units out of seven, and also conflicted with CCCE's follow-up survey to which the superintendent reported four rentable units out of seven. Due to this inconsistency, CCCE reported zero vacant units under what Guha terms "proper protocol" (*id.*, at ¶ 44). As to 7-9 South White Street, Guha narrated that CCCE deemed there to be a conflict between the two vacant units that the property administrator reported and CCCE's site-visit conversation with an unspecified tenant who allegedly stated that there was only one vacant unit, prompting CCCE to send a follow-up survey to which Guha allegedly received no response and recorded zero vacancies (*see id.*, at ¶ 48).

Concerning 166 Winnikee and 172 Winnikee, Guha reports that the property manager, who respectively reported two and three vacancies for those properties, had returned what CCCE deemed to be inconsistent questionnaire responses for other rental properties at 558 Main and 7-9 White. On that basis, CCCE sent follow-up surveys as to 166 and 172 Winnikee to which Guha claims CCCE received no response and therefore reported zero vacancies for them (*see* Guha Aff, at ¶¶ 49-56). As to 45 North Clinton Street, Guha attests that CCCE reported zero vacancies because the property owner, whose questionnaire response reported four vacancies, then orally attributed them to evictions stating that "evictions take a long time." The property owner did not return CCCE's follow-up survey to resolve the putative inconsistency as to whether the properties were, in fact, vacant (*see id.*, at ¶¶ 57-59). For 120 Cannon Street, Guha attested that CCCE's site visit found that the single vacancy reported for the property did not qualify because the property was under renovation and thus disqualified as unrentable (*see id.*, at ¶¶ 60-64). Similarly, for 460 Main Street, Guha attested that in CCCE's phone discussion with the owner on January 10, 2024, CCCE learned that the one unit reportedly vacant was unavailable for rent because it was "being fixed up" (*id.*, at ¶ 65).

For 94-96 Hamilton, Guha attested to inconsistencies between the number of vacancies that the owner reported and the "about 8 or 9" vacancies that an unspecified tenant estimated at a

site visit on November 10, 2023, as well as a discrepancy between the total number of units the owner reported and the City Assessor's unit roster, thus prompting CCCE to send a second questionnaire to which it received no response. Consistent with other properties for which CCCE received no response to its follow-up questionnaire, CCCE then reported zero vacancies for this property (*see* Guha Aff, at ¶¶ 66-72). As to 66 Worral Street, Guha conceded that CCCE's site visit of November 11, 2023, found two of the six mailboxes were labeled "vacant," but that this observation was insufficient to establish a vacancy and the owner never responded to any of CCCE's attempts to establish contact (*see id.*, at ¶¶ 73-76).

Based on all of the foregoing, CCCE asserts that it conducted its survey diligently and in good faith, consistent with the ETPA and particularly § 3(f), and therefore the challenged zero-vacancy reports were consistent with law.

The City defendants-respondents, relying on Guha's affidavit, argue that the CCCE Vacancy Study, and thus the Resolution based on it, were based on a commonsense approach to achieve precise data, and thus cannot be arbitrary and capricious as a matter of law. They assert that the ETPA does not require a precisely accurate and error-free vacancy study but rather a rational one undertaken in good faith, and that the CCCE protocol satisfies this requirement as a matter of law because it is identical to the Village of Ossining study that the Second Department ratified on recent CPLR article 78 challenge (*see Matter of PJB Equities, Inc. v Vil. of Ossining*, 226 AD3d 1030, 1031-1032 [2d Dept 2024]). They also argue that CCCE's records belie the inconsistencies that plaintiffs-petitioners allege from the CCCE data so they are not arbitrary and capricious but rather plainly supported by particularized data and explanations. They maintain that plaintiffs-petitioners "blatantly lie" about CCCE's allegedly absent or inadequate follow-up efforts with nonresponsive owners and/or the ostensibly inconsistent reports about properties (City Mem [NYSCEF 53], at 7). They further state that the plain language of ETPA § 3(f), by specifying that an owner not responding to a vacancy survey "shall be deemed to have zero vacancies" (ETPA § 3[f], McKinney's Cons Laws of NY § 8623[f]) – a statute recently upheld against due process challenge (*see Hudson Shore Assocs., L.P. v State of New York*, __ F Supp 3d __, 2024 WL 3212689 [NDNY, May 28, 2024], *appeal filed* Case No. 24-1678 [2d Cir 2024]) – gives CCCE both the right and duty to count those properties as having zero vacancies.

DHCR asserts that this Court's ratification of plaintiffs-petitioners' proposed temporary restraining order was overbroad to the public interest of ensuring notification of tenant rights

under the ETPA and therefore requiring landlords to register their buildings with DHCR with certain disclosures (*see* ETPA § 12-a; Uncons Laws § 8632-a). DHCR points to the recent legislation as proof of the State's public policy favoring ETPA building registration with DHCR (*see* L 2023, chs 698, 760). DHCR urges that the ETPA requirement of disclosing rent charged for the prior 36 months is necessary to DHCR enforcement of ETPA rent stabilization and the ETPA's bans on diminution of landlord services during rent stabilization, in the event that rent stabilization ultimately takes effect. Accordingly, DHCR asks this Court – if it continues any injunctive relief at all – to model any ongoing restraints on *Matter of Hudson Val. Prop. Owners Assn., Inc. v City of Kingston* (227 AD3d 1 [3d Dept 2024]), which required landlord registration pending final determination.

In reply, plaintiffs-petitioners argue that it is arbitrary and capricious to exclude vacancy reports based on unspecified and unattached City records, which allegedly show different numbers of overall apartments for reporting buildings than owners or their representatives had indicated in their survey responses. It is also arbitrary and capricious to report zero vacancies where owners or agents assert multiple vacancies but CCCE claims some basis to challenge fewer than all of them. Plaintiffs-petitioners also argue that it is arbitrary and capricious to send a follow-up survey after a positive response to a first questionnaire that reports one or more vacancies, and that it is both illegal under ETPA § 3(f), and arbitrary and capricious, then to report zero vacancies upon failure to receive a second positive response.

As to specific vacancy responses, plaintiffs-petitioners argue that CCCE's rejection of Lulaj's attested vacancies for 548 Main Street on grounds of unspecified City records allegedly stating a different number of building units is unlawful and irrational. In any event, they attach and authenticate the building's certificate of occupancy, whose stated number of apartments aligns with Lulaj's questionnaire responses. They also argue that CCCE and the City gave no reason for rejecting Lulaj's clarifying message to the Mayor that inconsistencies in his vacancy reports for 548 Main Street were due only to different vacancy dates. Accordingly, they conclude, this building's two vacancies were wrongly excluded.

As with 548 Main Street, plaintiffs-petitioners challenge CCCE's rejection of vacancy data based on alleged rent-roster inconsistency with unspecified City records, and also attach and authenticate the building's certificate of occupancy allegedly proving that the reported roster was correct. Thus, they argue, CCCE wrongly questioned the building's four vacancies in the first

instance, had no legitimate basis to send a follow-up questionnaire, and therefore had no cause to report zero vacancies based on failure to receive a second positive response.

As to 194 Main, plaintiffs-petitioners retort that CCCE's rejection of that property's five reported vacancies, on grounds that the superintendent later orally reported only three vacancies and was "unwilling to check if the units were available for rent on November 1, 2023," was wrongful because CCCE made no record of that conversation in its phone log and Guha does not indicate who from CCCE allegedly had that conversation. Moreover, they assert, CCCE's site-visit log indicates no disagreement with the superintendent's initial report. As such, they conclude, CCCE had no good-faith basis to send a follow-up questionnaire, much less default to zero vacancies for failure to receive a second positive response.

As to 2 Rose Street, plaintiffs-petitioners argue that CCCE's rejection of that property's four reported vacancies was inappropriate because the owner's representative consistently explained his original error in reporting six vacancies based on an incorrect date, and in any event neither CCCE nor the City responded to the pre-Resolution corrective email repeating this explanation.

For 7-9 White's two reported vacancies, plaintiffs-petitioners assert that CCCE's reliance on an unnamed tenant's alleged statement of fewer vacancies than the owner reported is entirely unsupported. They argue that because CCCE had no proper basis to question the property's reported vacancies, CCCE had no proper basis to send a second questionnaire and then default to zero vacancies for lack of a second positive response.

For 166 and 172 Winnikee, plaintiffs-petitioners argue that it was arbitrary and capricious for CCCE, lacking factual basis to dispute the owners' positive vacancy responses, nevertheless to do so merely because CCCE attributed to the owners one or more inconsistencies concerning the 558 Main and 7-9 White properties. In any event, they assert, those other-property responses were correct and therefore the vacancy reports for 166 and 172 Winnikee should have been credited. As with numerous other property reports, they also argue that ETPA § 3(f) did not allow CCCE to default to zero vacancies for the lack of a second positive response to a vacancy questionnaire.

As for 45 North Clinton, plaintiffs-petitioners contend that CCCE's rejection of the landlord's oral report of four vacancies was wrongful because CCCE had no proper basis to dispute whether the vacancies were effective November 1, 2023, but instead groundlessly

construed the landlord's report of evictions to suggest that the properties were not vacant on that date. They conclude CCCE had no proper basis to send the second survey, and in any event, ETPA § 3(f) did not allow CCCE to attribute zero vacancies given the prior positive response to the first survey.

For 460 Main, plaintiffs-petitioners assert that CCCE's rejection of this property's single vacancy was without basis in that CCCE's call log does not document the allegedly inconsistent conversation with the owner on January 10, 2024, or who from CCCE had the conversation, or record any specific comment about the unit's alleged unavailability due to repairs.

For 66 Worral, plaintiffs-petitioners take exception to CCCE's position that its site-visit observation of two unit mailboxes labeled "vacant" on November 11, 2023, had been insufficient for the owner to establish vacancy. They retort that CCCE deemed its other site observations sufficient to dispute vacancy or readiness to rent and that same standard ought to validate alleged vacancy reports where site visit observations support them.

For numerous properties, plaintiffs-petitioners also offer reply affidavits contesting Guha's factual claims. As to 98 Montgomery, plaintiffs-petitioners assert that CCCE's rejection of that property's one reported vacancy due to alleged unreadiness to rent was factually meritless because, as noted above, the call log ostensibly making a record of the alleged vacancy does not indicate one, and Guha does not indicate who from CCCE allegedly heard about the unit's unreadiness. They offer a reply affidavit from Grunsweig denying the statement about unit unreadiness that Guha attributes to him (*see* Grunsweig Reply Aff [NYSCEF 73]). They also argue that defendants-respondents fail to explain why they did not respond to Grunsweig's email to the Mayor requesting correction before the Common Council passed the Resolution adopting the CCCE's report of zero vacancies for the property.

As to 120 Cannon, plaintiffs-petitioners offer Lussow's reply affidavit disputing Guha's claim that, according to Lussow, the single vacancy he reported was not available on November 1, 2023, due to in-progress renovation (*see* Lussow Reply Aff [NYSCEF 74]). They underscore that neither CCCE's call log nor its site-visit record indicates any such comment and that Guha does not indicate who from CCCE allegedly heard this comment. They also argue that CCCE's site-visit record does not indicate any visit to this property and there is no record basis for Guha's allegation of site-visit observations disputing Lussow's vacancy report. Finally, for 94-96 Hamilton, plaintiffs-petitioners offer a reply affidavit from Pollack denying Guha's claim of

an inconsistent report and repeating his contention that there were eight rentable vacancies on November 1, 2023 (*see* Pollack Reply Aff [NYSCEF 72]).

Based on the foregoing, plaintiffs-petitioners argue that CCCE had no legitimate basis to send second questionnaires for properties whose owners or designees positively responded to the first surveys and that using ETPA § 3(f) to assign zero vacancies to those properties was illegal. They continue that had CCCE included the owners' vacancy reports for those properties, CCCE would have found not 59 vacancies but 84 vacancies as of November 1, 2023, yielding a City vacancy rate of 5.6% for which the ETPA does not allow a municipality to declare a housing emergency. Therefore, plaintiffs-petitioners conclude, the Resolution based on the Vacancy Study was both illegal under the ETPA and arbitrary and capricious as a matter of law.

The Statutory Landscape of ETPA Vacancy Studies

As no reported case yet has analyzed the scope or effect of ETPA § 3(f) that the parties so vigorously contest, this Court begins with that issue.

In 1974, the ETPA codified a comprehensive statutory basis for rent stabilization in New York City and the counties of Nassau, Rockland and Westchester (*see* L 1974, ch 576; *Gracecor Realty Co. v Hargrove*, 90 NY2d 350, 355 [1977]). As part of a comprehensive housing policy reform measure, the 2019 Legislature lifted the ETPA's geographic restriction (*see* L 2019, ch 36, pt G, § 3, *amending* ETPA § 14) and expanded statewide the ETPA's declared public policy:

> The legislature hereby finds and declares that a serious public emergency continues to exist in the housing of a considerable number of persons in the state of New York, that such emergency necessitates the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents; that there continues to exist in many areas of the state an acute shortage of housing accommodations caused by continued high demand, attributable in part to new household formations and decreased supply…; that a substantial number of persons residing in housing not presently subject to [rent stabilization laws] are being charged excessive and unwarranted rents and rent increases; that preventive action by the legislature continues to be imperative in order to prevent exaction of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare; that in order to prevent uncertainty, hardship and dislocation, the provisions of this act are necessary and designed to protect the public health, safety and

> general welfare; that the transition from regulation to a normal market of free bargaining between landlord and tenant, while the ultimate objective of state policy, must take place with due regard for such emergency; and that the policy herein expressed shall be subject to determination of the existence of a public emergency requiring the regulation of residential rents within any city, town or village by the local legislative body of such city, town or village.

(L 2019, ch 36, pt G, § 2, *amending* EPTA § 2).

To effectuate this policy, the Legislature invited municipalities statewide to examine their local housing vacancy rates – whether for all qualifying commercial apartments or a designated subset – and upon finding the local vacancy rate to be 5% or less, declare a housing emergency to that effect (*see* ETPA § 4[b]; Uncons Laws § 8624[b]; L 2019, ch 36, pt G, § 3). A locality declaring a housing emergency must do so by resolution after a public hearing (*see* ETPA § 3[c]; Uncons Laws §8623[c]). Such a resolution, consistent with the ETPA, triggers an annual rent-regulation process for subject apartments until the vacancy rate rises above 5% and the housing emergency thereby abates (*see* ETPA §§ 3-4; Uncons Laws §§ 8623-8624).

Perhaps unsurprisingly given the competing economic and other policy interests at stake, the conduct of vacancy studies has been the subject of repeated litigation. In 1986, the Second Department held that a municipality may assign zero vacancies to owners of housing that did not respond to the vacancy survey, without risking the study's legitimacy, where "a good faith study was made based on precise data obtained from a substantial majority of the [subject apartments]" (*Spring Val. Gardens Assocs. v Marrero*, 100 AD2d 93, 101 [2d Dept 1984], *affd* 68 NY2d 627 [1986]). The Second Department reasoned that "it would be anomalous to hold that [owners] who refused to cooperate with the statistical study should benefit from their stubborn and studied silence" by thwarting the prospect of rent stabilization, in derogation of the Legislature's stated public policy (*id.*). The *Marrero* standards for ETPA vacancy studies became the prevailing standards on CPLR article 78 challenge (*see e.g. PJB Equities*, 226 AD3d at 1031-32, *quoting Executive Towers at Lido, LLC v City of Long Beach*, 37 AD3d 650, 652 [2d Dept 2007], *lv denied* 9 NY3d 813 [2007]; *City of Kingston*, 227 AD3d at 6; *see also Kaplen v Town of Haverstraw*, 126 AD2d 606 [2d Dept 1987]; *Colonial Arms Apts. v Vil. of Mount Kisco*, 104 AD2d 964, 965 [2d Dept 1984], *app dismissed* 64 NY2d 948 [1985]). A vacancy study falls short of this standard where it "d[oes] not set forth collected data in an organized and coherent

format and ma[kes] no attempt to correlate the data in response to ... specific claims" objecting to study data or collection methods (*Executive Towers at Lido*, 37 AD3d at 652).

Decades after *Marrero*, concern about "stubborn and studied silence" to ETPA vacancy studies continued, prompting the 2023 Legislature to enact the zero-vacancy counting provision at issue here (*see* L 2023, ch 698, *adding* Uncons Laws § 8623[f]) ("Chapter 698"). In enacting Chapter 698, the Legislature determined that multiple municipalities had been "stymied by property owners who choose to not complete the surveys or deliberately manipulate data for the date or month of the survey," and that "many landlords ignored [survey] requests" for vacancy information (Senate Introducer Mem in Support, Bill Jacket, L 2023, ch 698, at 1). Based on these findings, the Legislature declared its purpose to "require owners ... to complete in a timely manner a survey distributed by a municipality to determine the vacancy rate in said municipality ... so as to "ensure that [localities] choos[ing] to undergo this opportunity are able to get accurate information" (*id.*). To these ends, Chapter 698 added ETPA § 3(e) to establish a civil penalty for any landlord that "refuses to participate in such vacancy survey" or supplies "knowingly and intentionally false vacancy information" (Uncons Laws § 8623[e]); and ETPA § 3(f) specifying that "[a] nonrespondent owner shall be deemed to have zero vacancies" (Uncons Laws § 8623[f]). In approving Chapter 698, the Governor concurred that its purpose was to authorize the imposition of "several penalties upon owners who refuse to participate in the survey or submit knowingly and intentionally false information" (Governor's Approval Mem 44, Bill Jacket, L 2023, ch 698).[3]

This Court's primary consideration in statutory interpretation is "to discern and give effect to the Legislature's intention" (*Anderson v Anderson*, 37 NY3d 444, 452 [2021], *quoting Rodriguez v City of New York*, 31 NY3d 312, 317 [2018]; *Avella v City of New York*, 29 NY3d 425, 434 [2017], *quoting Matter of Albany Law School v N.Y. State Off. of Mental Retardation & Dev. Disabilities*, 19 NY3d 106, 120 [2012]; *see Matter of Adirondack Wild: Friends of the Forest Pres. v N.Y. State Adirondack Park Agency*, 34 NY3d 184, 191 [2019], *quoting Samiento v World Yacht Inc.*, 10 NY3d 70, 77 [2008]). A statute's plain language generally is the "clearest

[3] Chapter 698 was not the last word on the "several penalties" to which the ETPA would expose "nonrespondent" property owners. Chapter 698 penalties originally included a civil fine up to $1,000.00 and/or denial of a rental permit or certificate of occupancy (*see* ETPA former § 3[e]; Uncons Laws former § 8623[e]). A chapter amendment reduced these penalties to only a $500.00 assessment but preserved the zero-vacancy instruction of § 3(f) (*see* L 2024, ch 100).

indicator of legislative intent" (*Regina Metro. Co., LLC v N.Y. State Div. of Hous. & Community Renewal*, 35 NY3d 332, 335 [2020]; *Lubonty v U.S. Bank, N.A.*, 34 NY3d 250, 255 [2019]; *Majewski v Broadalbin-Perth Cent. Sch. Dist.*, 91 NY2d 577, 583 [1998]). Where statutory language is unambiguous, courts must construe it "without resort to forced or unnatural interpretations" (*Castro v United Container Mach. Group, Inc.*, 96 NY2d 398, 401 [2001]; *Majewski*, 91 NY2d at 583) "to give effect to its plain meaning" (*James B. Nutter & Co. v County of Saratoga*, 39 NY3d 350, 355 [2023], *quoting Kuzmich v 50 Murray St. Acquisition LLC*, 34 NY3d 84, 91 [2019], *cert denied* 140 S Ct 904 [2020]; *Avella*, 29 NY3d at 434, *quoting Matter of DaimlerChrysler Corp. v Spitzer*, 7 NY3d 653, 660 [2006]; *see Wang v James*, 40 NY3d 497, 503 [2023]; *People ex rel. E.S. v Supt., Livingston Corr. Facility*, 40 NY3d 230, 235 [2023]).

CCCE and the City interpret the plain language of ETPA § 3(f) to be absolute and non-discretionary. On face value, a "nonrespondent owner shall be deemed to have zero vacancies" would appear to mean just that, the statute's "shall" instruction generally connoting a legislative purpose to fix an inflexible mandate (*see e.g. Smith v Spizzirri*, 601 US 472, 476 [2024], *quoting Lexecon, Inc. v Milberg Weiss Bershad Hynes & Lerach*, 523 US 26, 35 [1998]; *Matter of Haynie v Mahoney*, 48 NY2d 718, 718 [1979]; *People v Gowasky*, 244 NY 451, 466 [1927]; *McMillan v Krygier*, 197 AD3d 800, 801 [3d Dept 2021]; *Kardos v Ryan*, 28 AD3d 1050, 1051 [3d Dept 2006]; *but see Munro v State*, 223 NY 208 [1918]; *In re Military Parade Ground*, 60 NY [15 Sickels] 319, 323 [1875]). If so, then this zero-vacancy counting instruction would extend to any property that becomes "nonrespondent" by failing to respond to any single ETPA vacancy questionnaire, even if the property owner or agent already responded to a prior vacancy questionnaire in the same housing study.

CCCE apparently completed its City of Poughkeepsie housing study with this view of Chapter 698 very much in mind. Each of CCCE's second surveys referenced the statute and instructed recipients: "Your response should be sent to [email address redacted]. No response to such requests for information will be counted as the property having no vacancies" [*sic*] (Record [NYSCEF 6], at D394-D413). CCCE's argument to this Court repeatedly recites this disclaimer, ostensibly to underscore that this notification to second-questionnaire recipients of CCCE's intent to assign nonresponses a zero-vacancy rating under Chapter 698 evinced CCCE's good faith and reasonably invites CCCE (and this Court) to assume recipients' purposeful

noncompliance when they did not respond. On that basis, CCCE and the City attributed zero vacancies to nearly a dozen properties for which owners or their agents had sent CCCE positive vacancy responses to the initial questionnaire.

All of the City and CCCE's arguments defending the Vacancy Study assume the crystal clarity of Chapter 698 and its correct application. As plaintiffs-petitioners assert, however, the ETPA § 3(f) phrase "nonrespondent owner" reasonably invites a contrary interpretation, by which the statute's zero-vacancy counting instruction applies only to a property whose owner or agent is "nonrespondent" to the entirety of a housing study. In this view, a property whose owner or agent positively responded to a vacancy questionnaire cannot, by definition, be "nonrespondent" under § 3(f), and cannot become so by failing to positively answer a second questionnaire in that same study. If so, the zero-vacancy instruction then would not apply to those properties, and their initial responses would need to be credited and analyzed on their individual merits.

Both interpretations are plausible and reasonable. Nothing in ETPA § 3(f) itself specifies whether an "owner" must be "nonrespondent" to just the one vacancy survey, or the whole study, for the statute's zero-vacancy counting instruction to apply. As such, ETPA § 3(f) is facially ambiguous. Where a statute is ambiguous, courts must apply other well-settled canons of construction to discern legislative intent – the Legislature's purpose always being paramount (*see Anderson*, 37 NY3d at 452; *Rodriguez*, 31 NY3d at 317; *Avella*, 29 NY3d at 434; *Matter of Albany Law School*, 19 NY3d at 120). All interpretive canons relevant to this inquiry support plaintiffs-petitioners' contextual view of ETPA § 3(f) and compel against the sweeping application of Chapter 698 that the City and CCCE claim.

The first canon looks to what the Legislature expressly stated its intent to be in enacting the ambiguous statute. As noted above, the Legislature stated its goal in Chapter 698 to "require owners of property to complete in a timely manner *a survey* distributed by a municipality to determine [the] vacancy rate" (Senate Introducer Mem in Support, Bill Jacket, L 2023, ch 698, at 1 [emphasis added]). By its terms, the Legislature contemplated that "a survey" must be completed for each subject property – one survey, not multiple surveys for the same property. This single-response interpretation accords with how the Legislature framed its purpose to "ensure that [municipalities] … are able to *get accurate information*" (*id.* [emphasis added]). Put otherwise, where actual vacancy information has been received, it would be overbroad if not

counter-productive to the Legislature's information-forcing purpose to apply § 3(f) in a manner that automatically nullifies prior information actually received.

This proceeding's record makes this point plainly. For 10 properties that had returned positive vacancy responses to CCCE's first questionnaire, the record shows that CCCE claimed inconsistencies – whether based on its own data or other reasons. CCCE then sent those properties second questionnaires and, upon non-response, substituted zeros in place of whatever the first survey's reports or even CCCE's findings had been. The record thereby shows that CCCE issued the Vacancy Study under a consistent policy of automatically replacing actual information with non-information, ostensibly for the sake of obtaining "accurate information." CCCE does not argue – much less justify the view – that the Legislature intended ETPA § 3(f) to vitiate actual vacancy survey responses that a municipality or its agent already received in the same housing study.

The second interpretive canon concerns the pre-existing law that the ambiguous statute amended. For separation-of-powers reasons, courts must presume the Legislature "to be aware of the decisional … law in existence at the time of an enactment, and to have abrogated the common law only to the extent that the clear import of the language used in the statute requires" (*Simmons v Trans Express Inc.*, 37 NY3d 107, 114 [2021], *quoting Arbegast v Bd. of Ed. of S. New Berlin Cent. Sch.*, 65 NY2d 161, 169 [1985]). Where a later statutory amendment does not evince a "clear manifestation" to abrogate common law interpretation of the statute that the amendment alters, courts therefore must assume that the Legislature accepts that interpretation (*City of Kingston*, 227 AD3d 7 n2, *quoting Matter of Estate of Youngjohn v Berry Plastics Corp.*, 36 NY3d 595, 606-607 [2021]; *see Matter of Knight-Ridder Broadcasting v Greenberg*, 70 NY2d 151, 157 [1987]).

Marrero authorized ETPA housing studies to count zero vacancies for properties that returned no response at all, albeit specifically conditioned on "good faith" and "precise data." The City and CCCE, however, would construe Chapter 698 to limit *Marrero* and its progeny by dispensing with its now well-settled requirements of landlords' total nonresponse and study conductors' precise data. Similarly, where *Executive Towers at Lido* invalidated an ETPA housing-emergency declaration where the study entity made "no attempt to correlate the data in response to specific claims made by owners of the buildings at issue," the City and CCCE would construe Chapter 698 to obviate the need to undertake such correlation where a landlord, having

positively responded to a housing survey, rests on its first responses and does not answer a second survey in the same study. Where both *Executive Towers at Lido and PJB Equities* required a "common sense approach," the City and CCCE would construe Chapter 698 to remove all discretion and context. Nothing in Chapter 698 clearly seeks to abrogate these settled requirements. As such, construing Chapter 698 to achieve that result, as CCCE and the City press this Court to accept, would be impermissible as an incident of the separation of powers.

A third and related interpretive canon is to effectuate an ambiguous statute's remedial purpose. Statutory "amendments are to be viewed as remedial" when they are "designed to correct imperfections in the prior law, by giving relief to an aggrieved party" (*Asman v Ambach*, 64 NY2d 989, 991 [1985]; *Mackoff v Bluemke-Mackoff*, 222 AD3d 67, 200 NYS3d 396, 400 [2d Dept 2023]; *Matter of Mia S.*, 212 AD3d 17, 22 [2d Dept 2022], *lv dismissed* 39 NY3d 1118 [2023]). Where a statute is remedial, courts must construe it to effectuate the Legislature's remedial purpose (*see Mackinen v City of New York*, 30 NY3d 81, 88 [2017], *quoting Matter of Scanlan v Buffalo Pub. Sch. Sys.*, 90 NY2d 662, 667 [1997]; *People v Brown*, 25 NY2d 247, 251 [2015], *quoting* McKinney's Cons Laws of NY, Book 1, Statutes, § 321; *Asman*, 64 NY2d at 990; *Post v 120 E. End Ave. Corp.*, 62 NY2d 19, 24 [1984]). This directive serves the general principle that courts must construe a statute "in the light of conditions existing at the time of its passage" (*People v Litto*, 8 NY3d 692, 697 [2007], *quoting People v Koch*, 250 App Div 623, 624 [2d Dept 1937]; *see Colon v Martin*, 35 NY3d 75, 78 [2020], *quoting Riley v County of Broome*, 95 NY2d 455, 464 [2000]; *People v Broadway R.R. Co. of Brooklyn*, 126 NY 29, 37 [1891]).

The Legislature contemporaneously stated that its remedial purpose in Chapter 698 was to establish mechanisms and penalties to discourage uncooperative owners from thwarting a municipality's ETPA study, lest owner profit by their improper silence by inhibiting potential rent stabilization. As the Legislature framed the issue, "many landlords *ignored* [vacancy survey] *requests*" (Senate Introducer Mem in Support, Bill Jacket, L 2023, ch 698, at 1 [emphasis added]) – in the plural, connoting at minimum a best practice if not a mandate of making multiple attempts to obtain first responses. It was on precisely this circumstance of owners ignoring multiple vacancy surveys on which *Marrero* predicated the zero-survey counts the Second Department and Court of Appeals then upheld (*see Marrero*, 100 AD2d at 101, *affd* 68 NY2d at 627). A fair interpretation of the Legislature's intent in ETPA § 3(f) was to state a

zero-vacancy counting instruction for the same reason, lest "nonresponding" owners hide behind their "stubborn and studied silence" (*id.*). This ETPA purpose and corresponding corrective are plainly remedial and must be applied as such (*see McDermott v Pinto*, 101 AD2d 224, 225 [1st Dept 1984]). It would be far overbroad to this purpose, however, for ETPA § 3(f) automatically to discredit already cooperative owners' actual responses to a vacancy questionnaire – responses whose very existence belie any fair attribution of "stubborn and studied silence." The City and CCCE make no contrary argument, and nothing in this record, or in the legislative history of Chapter 698, reasonably supports one. Put simply, there is no remedial benefit to the wholesale and summary rejection of actual vacancy data under the guise of ETPA § 3(f).

The fourth interpretive canon weighs the ambiguous statute's statutory framework. It is hornbook law that courts cannot selectively cherry-pick portions of statutes but rather must construe statutory text "in context and in a manner that harmonizes the related provisions and renders them compatible" (*James B. Nutter & Co.*, 39 NY3d at 355 [2023], *quoting Matter of Koskider v Whitney*, 34 NY3d 48, 55 [2019]; *Regina Metropolitan Co.*, 35 NY3d at 335, *quoting Matter of M.B.*, 6 NY3d 437, 444 [2006] [collecting cases]). This mandate especially governs integrated statutory schemes – such as the ETPA – which courts must construe "as a whole, with its various sections considered together and with reference to each other" to vindicate their collective purpose and harmonize their legislative commands (*Tax Equity Now N.Y., LLC v City of New York*, 42 NY3d 1, 15 [2024], *quoting DHC Auto v Town of Mamaroneck*, 38 NY3d 278, 298 [2022]; *Matter of Anonymous v Molik*, 32 NY3d 30, 37 [2018]; *Matter of N.Y. County Lawyers Assn. v Bloomberg*, 19 NY3d 712, 721 [2012]; *see KSLM-Columbus Apts., Inc. v N.Y. State Div. of Housing & Community Renewal*, 5 NY3d 303 [2005] [construing ETPA sections in relation to each other]; *Zeitlin v N.Y. City Conciliation & Appeals Bd.*, 46 NY2d 992, 995 [1979] [same]). An "integrated statutory scheme … must be considered as a whole, with each component viewed in relation to the others" (*Matter of Johnson v City of New York*, 38 NY3d 431, 441 [2022] [internal citations omitted], *citing* McKinney's Cons Laws of NY, Book 1, Statutes § 97, comment at 213-214, 216 ["(W)ords, phrases, and sentences of a statutory section should be interpreted with reference to the scheme of the entire section . . . and the meaning of a single section may not be determined by splitting it up into several parts"]).

While the City and CCCE pointedly rely on ETPA § 3(f) alone, contextual construction requires this Court to interpret § 3(f) in light of § 3(e) that Chapter 698 simultaneously added. As relevant here, ETPA § 3(e) (Uncons Laws § 8623[e]), as amended, reads as follows:

> "A municipality may impose a civil penalty or fee of up to five hundred dollars on an owner or their agent if the owner or their agent refuses to participate in such vacancy survey and cooperate with the municipality or a designee in such vacancy survey, or submits knowingly and intentionally false vacancy information."

Construed in context, the "nonrespondent owner" of ETPA § 3(f) refers back to the § 3(e) predicate of an "owner or [its] agent [that] *refuses* to participate in such vacancy survey." An owner or designee that returns a positive questionnaire response, however, emphatically is not one that "refuses" to participate. Neither does CCCE's particular second questionnaire's reliance on cautionary language – that failure to respond to it would result in an automatic zero-vacancy designation – allow, much less require, a different result. Moreover, there is no allegation or record proof that any responsive owner or agent submitted "knowingly and intentionally false vacancy information." At most, CCCE and the City take the position that excluded owner responses were incorrect, a contention that does not bear scrutiny on this record – but even if it did, § 3(f) still would not authorize blanket substitution of those incorrect responses with mandatory zeros.

The fifth interpretive canon obliges courts to interpret statutes "to avoid an unreasonable or absurd application of the law" and especially avoid "inequitable and potentially absurd results" (*Lubonty*, 34 NY3d at 255, *quoting People v Garson*, 6 NY3d 604, 614 [2006]). While courts "normally accord statutes their plain meaning," courts "will not blindly apply the words of a statute to arrive at an unreasonable or absurd result" (*People v Santi*, 3 NY3d 234, 244 [2004], *quoting Williams v Williams,* 23 NY2d 592, 599 [1969]; *People v Graubard*, 214 AD3d 143, 148 [2d Dept 2023]; *Wilson v Board of Educ., Union Free Sch. Dist. No. 23*, 39 AD2d 965, 966 [2d Dept 1972]). "Adherence to the statutory letter will not be suffered to defeat the 'general purpose and manifest policy intended to be promoted'" (*Surace v Danna*, 248 NY 18, 21 [1928], *quoting Spencer v Myers*, 4 E.H. Smith [150 NY] 269, 275 [1898]). Therefore, where – as here – a "statute is so broadly drawn as to include the case before the court, yet reason and statutory purpose show it was obviously not intended to include that case, the court is justified in making an exception through implication" (*Williams*, 23 NY2d at 599, *following Matter of Meyer*, 209 NY 386, 389 [1913]).

Meyer went further, directing that courts not only are "justified" in acting, but also "must" act, to read into an overbroad statute an exception through implication when necessary to avert substantial injustice:

> "It is always presumed, in regard to a statute, that no unjust or unreasonable result was intended by the [L]egislature. Hence, if viewing a statute from the standpoint of the literal sense of its language, it works such a result, an obscurity of meaning exists, calling for judicial construction. Where a particular application of a statute in accordance with its apparent intention will occasion great inconvenience or produce inequality or injustice, another and more reasonable interpretation is to be sought.... The courts *must* in that event look to the act as a whole, to the subject with which it deals, to the reason and spirit of the enactment, and thereby determine the true legislative intention and purpose; and if such purpose is reasonably within the scope of the language used, it must be taken to be a part of the statute the same as if it were plainly expressed"

(*Meyer*, 209 NY at 389 [emphasis added], *following Holy Trinity Ch. v U.S.*, 143 US 457, 460 [1892]; *Murray v Gibson*, 56 US [15 How] 421 [1853]; *People ex rel. Wood v Lacombe*, 99 NY [54 Sickels] 43 [1885]).

This interpretive principle hails from the legal bedrock of this State. Long before *Meyer*, the Court of Appeals famously observed that, when necessary to fulfill the Judiciary's absurdity-avoidance mandate, "the letter of a legislative act is restrained by an equitable construction" to avert patent injustice not intended by the Legislature (*Riggs v Palmer*, 115 NY [70 Sickels] 506, 510 [1889] [reading into probate statute a public policy ban on a killer inheriting under the victim's will]). That approach traces to our Court of Appeals' founding era (*see Tracy v Troy & B.R. Co.*, 38 NY [11 Tiffany] 433, 437 [1868]) – and, as the Court repeatedly has recognized, far earlier still (*see id.*, *following* Smith's Commentaries on Statutes § 710 [1848];[4] *Riggs*, 115 NY at 511, *quoting* 1 Blackstone's Commentaries on the Laws of England 91 [1765]).[5]

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[4] "[W]here the strict letter of the law was contrary to its spirit or to equity, judges ought not so much to regard the proper or received signification of the words, as that meaning which appeared most consonant to the design of the law; ... keep[] constantly in view the mischiefs or defects which existed in the former laws on the same subject, the remedies which the statute has provided to cure them, how far those remedies are proper, and what sense appears the most consonant to the subject matter and most agreeable to equity" (Smith's § 710, *citing* Erskin, 1 Institute of the Law of Scotland § 52 [1785]).

[5] "If there arise out of [statutes] any absurd consequences manifestly contradictory to common reason, they are, with regard to those collateral consequences, void.... When some

It would be inequitable and absurd to construe ETPA § 3(f) to require summary substitution of actual vacancy data with non-data. Nothing about that practice reasonably could serve the Legislature's goal of housing study accuracy, and with it the careful targeting of affordable housing policy that the ETPA has sought to achieve for a half century. It also would be inequitable and absurd to construe ETPA § 3(f) to invite an ETPA vacancy study to repeatedly demand functionally the same responses from the same properties and then use any non-response as a sword to skew study outcome, rather than as a shield against owners' strategic manipulation by persistent silence or evasion.

These concerns for strategic manipulation are weighty and, on this record, by no means speculative. On defendants-respondents' interpretation of ETPA § 3(f), a municipality or its agent repeatedly could send identical surveys to the same initially responsive owner or agent for the same property – for any reason whether or not rational, whether or not such reason is based on objective evidence, and as many times as the municipality or agent might wish – then upon any nonresponse summarily assign zero vacancies to the property regardless of previous positive responses for the property. Even assuming good faith, the risk of irrationality and absurdity is potentially high where, as here, a subsequent survey seeks functionally the same information as a prior survey. To an owner or agent who cooperated with a prior survey and returned a positive response indicating vacancies, a later survey seeking the same information easily could appear redundant, particularly where, as here, the surveys follow each other reasonably close in time. Nothing in Chapter 698 or its history, context or purpose suggests that the Legislature intended this result. Certainly nothing contemplates the prospect of a subsequent questionnaire luring a previously responding owner or agent into complacency, believing that they already answered the survey, then having the nonresponse count as zero vacancies by operation of statutory fiat.

Even worse, this interpretation risks substantial mischief surely unintended by the Legislature – and this record demonstrates how. Repeatedly on this record, an owner responded positively to a vacancy survey, and even the City (via CCCE) determined that the property indeed did have qualifying vacancies albeit fewer than the property's questionnaire response had

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collateral matter arises out of the general words, and happen to be unreasonable, then the judges are in decency to conclude that the consequence was not foreseen by the parliament, and, therefore, they are at liberty to expound the statute by equity and only *quoad hoc* [with respect to that inequity] disregard it" (1 Blackstone's Commentaries on the Laws of England 91 [1765]).

indicated. Nevertheless the Vacancy Study recorded for those properties not this lesser number of vacancies but none at all – on the claimed authority of ETPA § 3(f). Nothing suggests the Legislature intended Chapter 698 to require a housing study to record even fewer vacancies than an ETPA housing survey conductor itself found. Reason, public policy and sheer fairness require otherwise.

Perhaps even more mischievous would be the invitation, under putative cover of § 3(f), for a municipality or other designee to send an owner repeat surveys absent a legitimate and particularized basis to do so. Again, the record raises the concern plainly. CCCE attests that it sent repeat surveys to properties, not because CCCE had particularized factual basis to doubt the accuracy of those properties' first positive questionnaire responses, but merely because CCCE claims it suspected the responding person's one or more *other* survey responses for *other* properties to suffer inconsistencies. Even had the record supported CCCE's contention that those other responses were incorrect, an ETPA housing survey policy, protocol or practice that a second survey must be sent after initial positive vacancy response because of the identity or other real or perceived characteristic of the person returning the initial questionnaire is patently irrational and fraught with the potential for abuse. Nothing in Chapter 698 or its history suggests that the Legislature would intend that result; and reason, public policy and fundamental fairness demand the opposite.

The foregoing does not suggest that ETPA § 3(f) never would allow a second survey within the same overall housing study. An initial survey response might be illegible or facially ambiguous, or the study conductor's own analysis might raise particular factual grounds as to the subject property that raise reasonable questions about the initial response's accuracy. Under those circumstances, and to vindicate the Legislature's intent for housing studies to generate and rely on objectively accurate information, it might well be reasonable for the study conductor to send a follow-up survey to specifically address the first response's alleged deficiencies and/or particular factual grounds on which the first response's vacancy report is called into question.

Accordingly, this Court holds that the zero-vacancy instruction of ETPA § 3(f) applies only where a property owner or agent, despite reasonable opportunity, (1) never positively responds to a vacancy questionnaire in a particular housing study; or (2) does not respond to a follow-up questionnaire that states with reasonable clarity the study conductor's factual basis to

believe that no qualifying vacancies exist, notwithstanding the owner or agent's initial response, and specifying the particular further information it seeks to resolve the dispute.

Where a follow-up survey arises from a factual dispute in which the study conductor preliminarily concludes that one or more qualifying vacancies in the subject property exist, albeit fewer than the number of vacancies that the owner or agent initially reported for that property, ETPA § 3(f) does not allow the study conductor to ignore both the initial response and/or its own preliminary findings. In that instance, if the owner or agent does not respond to a proper follow-up questionnaire, the survey conductor must draw conclusions reasonably based on all evidence collected, consistent with law, and cannot simply reject all data in favor of a zero-vacancy count.

The Court next applies this statutory interpretation, and the well-settled common law of ETPA housing study procedures, to the challenged CCCE Vacancy Study and the City's housing emergency declaration based on it.

CPLR Article 78 Analysis

While ordinarily a presumption of validity attaches to legislative enactments, no such presumption applies to municipal housing emergency declarations under the ETPA because the statute "requires the local legislative body to first make a particular factual finding" (*Marrero*, 68 NY2d at 629; *City of Kingston*, 227 AD3d at 6). "Nevertheless, because the issuance of an emergency declaration under the ETPA is a discretionary matter for a municipality" (*City of Kingston*, 227 AD3d at 6, *following Roslyn Garden Assoc. v Bd. of Trustees of Inc. Vil. of Roslyn*, 190 AD2d 722, 723 [2d Dept 1993]), challengers bear the CPLR 7803 burden to show that an ETPA emergency declaration was "affected by an error of law," was irrational, or was "arbitrary and capricious" (*see id.*; *Executive Towers at Lido*, 37 AD3d at 652).

An ETPA housing study need not be "perfect" to pass CPLR article 78 muster (*City of Kingston*, 227 AD3d at 8), much as a public entity's rational decision generally survives article 78 challenge even if court "would have reached a different result" (*Brookdale Physicians' Dialysis Assocs., Inc. v Dept. of Finance of City of N.Y.*, 41 NY3d 608, 616 [2024], *quoting Natasha W. v N.Y. State Off. of Children & Family Servs.*, 32 NY3d 982, 984 [2018]; *Matter of Wooley v N.Y. State Dept. of Correctional Servs.*, 15 NY3d 275, 280 [2010]; *see Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast,* 9 NY3d 219, 232 [2007]). Conversely, an ETPA housing study, like any other public entity decision, is vulnerable under the CPLR

7803 "arbitrary and capricious" standard where it lacks "sound basis in reason" or was "taken without regard to the facts" (*Natasha W.*, 32 NY3d at 984; *Matter of Wooley*, 15 NY3d at 280; *Matter of Pell v Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester Co.*, 34 NY2d 222, 231 [1974]).

For ETPA housing studies, these standards are mainly objective but also allow a subjective determination based on the record adduced on challenge. Objectively, an ETPA housing study must deliver "results that were based on precise data" (*City of Kingston*, 227 AD3d at 6; *see PJB Equities*, 226 AD3d at 1031-1032; *Executive Towers at Lido*, 37 AD3d at 652; *Marrero*, 100 AD2d at 101). The data must be obtained by "a commonsense approach" (*Colonial Arms Apts.*, 104 AD2d at 965, *quoting Marrero*, 100 AD2d at 104), and presented in an "organized and coherent format" (*City of Kingston*, 227 AD3d at 6; *Executive Towers at Lido*, 37 AD3d at 652). There also must be some rational response to challengers' "specific claims" disputing the data or the analysis (*id.*, at 8, *quoting Executive Towers at Lido*, 37 AD3d at 652; *cf. Colonial Arms Apts.*, 104 AD2d at 965). Subjectively, an ETPA housing study must be undertaken in "good faith" evidenced by the record (*see City of Kingston*, 227 AD3d at 7; *PJB Equities*, 226 AD3d at 1031-1032; *Executive Towers at Lido*, 37 AD3d at 652; *Marrero*, 100 AD2d at 98, 101).

Turning first to the "error of law" standard, the City (via CCCE) applied ETPA § 3(f) as a blanket policy to count zero vacancies instead of undertake reasoned analysis of the evidence concerning each property. As established above, this blanket policy was clear legal error. Moreover, this error was far from demonstrably harmless to the result. According to Guha's own affidavit, CCCE (and therefore the City) applied the statute to invalidated positive vacancy responses and instead count zero vacancies for each of 548 Main (two reported vacancies), 558 Main (four reported vacancies), 94-96 South Hamilton (eight reported vacancies), 149 Main (five reported vacancies), 7-9 South White (two reported vacancies), 166 Winnikee (two reported vacancies), 172 Winnikee (three reported vacancies) and 45 North Clinton (four reported vacancies). Assuming without deciding that the City should have counted these 30 reported vacancies and no additional others – review of CCCE's particular reasoning being impossible on this record because CCCE applied § 3(f) to replace any such reasoning – the record supported a finding of at least 89 qualifying rental vacancies (rather than the Vacancy Study's stated 59) out of 1,465 rental apartments as of November 1, 2023. This figure represents nearly a 50% increase

in potentially countable vacancies. This 50% difference between reported and apparently actual rentable vacancies establishes that the legal error was not episodic or minor, but rather "fatally tainted the conclusion that the vacancy rate" was below the ETPA's 5% threshold (*Marrero*, 100 AD2d at 99, *affd* 68 NY2d 627). Counting all of those additional vacancies, the City's true vacancy rate was 6.075% – above the ETPA's 5% trigger. On this basis alone, the Resolution was affected by an error of law under CPLR 7803 and cannot survive.

The repetition and effect of this legal error – its fatal taint of the results – also establishes that the Vacancy Study and thus the Resolution were not based on "precise data." As noted above, the ETPA § 3(f) error repeatedly led CCCE (and therefore the City) to proceed not based on positively reported vacancy data, or based on CCCE's observations of a smaller but still positive number of vacancies, but on administratively assigned zero counts that were mistaken as a matter of law. An improper administrative zero count creates the quintessence of non-data, not the "precise data" that ETPA case law requires.

The record also shows that CCCE's vacancy counting methodology fails the "commonsense approach" test. CCCE's own alleged observations demonstrated its apparent, if not actual, knowledge of numerous vacancies that CCCE nevertheless threw out under ETPA § 3(f). CCCE's second questionnaire also was not conducted reasonably. CCCE's second survey was merely a generic form that did not articulate, for any property, the specific reason CCCE was sending it. It did not specify any particularized basis to question the property's prior positive questionnaire response or elicit any information different from what the original questionnaire already elicited. As a result, CCCE's second questionnaire did not reasonably put recipients on notice to redress any particular alleged inaccuracy and was not reasonably calculated to obtain more accurate data than CCCE already received.

Even more, many of CCCE's choices of properties to receive second questionnaires were not based on reason backed by record support. For 166 Winnikee and 172 Winnikee, CCCE's stated basis to question those properties' positive vacancy responses was a belief that the responding agent had been inaccurate as to other properties – not anything about those properties or their vacancies and, in any event, a belief itself unfounded on this record. The irrationality of this approach is palpable: on this logic, had the same property representative answered the second questionnaire by returning the exact same responses as before, those responses could be no more reliable. Defendants-respondents offer no authority or reasoning for the proposition that

the mere identity of an otherwise lawful property representative is sufficient basis to discount that person's vacancy survey response, and this Court cannot fathom any.

For 548 Main Street and 558 Main Street, CCCE's stated reliance on unidentified City records to dispute the number of overall apartments reported, and thus impute inconsistencies to positive vacancy responses and bring on second questionnaires, was hearsay not cognizable in an ETPA study (*see Colonial Arms Apts.*, 104 AD2d at 965). An affidavit attesting to what a record states is hearsay without offering and authenticating the record: it is the "record itself, not the foundational affidavit, that serves as proof of the matter asserted" (*Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 206 [2d Dept 2019] [collecting cases]). Moreover, CCCE did not identify the City records in question, thus offering no basis to establish Guha's reliability as to what those records might have indicated. Indeed, Guha did not specify with particularity what those records said – only that they were different from what the owners had reported. As such, CCCE's rejection of these data was irrational, without record basis, and therefore arbitrary and capricious. In any event, plaintiffs-respondents submitted the properties' certificates of occupancy proving that the reported number of overall apartments was correct.

Likewise for 194 Main, 460 Main, 7-9 White, 98 Montgomery and 120 Cannon, CCCE's stated reliance on alleged conversations with a tenant or superintendent as grounds to dispute the initial positive vacancy responses was impermissible hearsay on this record. As plaintiffs-respondents aptly observe, CCCE's call log does not reflect the disconfirming conversations that Guha's affidavit alleges; nor does Guha's affidavit indicate who from CCCE allegedly had those conversations. While a witness generally can testify about matters within their personal knowledge by personal observation, or based on business records for which a proper CPLR 4518 foundation is established, here Guha established neither such predicate. As such, Guha's stated reasons to dispute those properties' positive data, and send second questionnaires on that basis, is not cognizable for ETPA purposes (*see Colonial Arms Apts.*, 104 AD2d at 965).

For multiple properties that returned positive questionnaire responses, CCCE (and thus the City) reported zero counts for reasons that are arbitrary and capricious for other reasons. For 2 Rose Street and 548 Main Street, CCCE stated no grounds to dispute the owners' explanation that inconsistent vacancy responses were due to incorrect dates. CCCE had no record basis to reject those positive responses. For 2 Rose Street, CCCE rejected not only the property's positive vacancy questionnaire but also CCCE's own finding of a lesser number of vacancies –

for no stated reason other than a general reference to "proper protocol." CCCE does not state how its survey protocol governed that situation or how such summary rejection of actual data was "proper" without reasoned analysis. CCCE's rejection of those data was arbitrary and capricious.

All of the foregoing depict not isolated imperfections in an otherwise fair and rigorous study, but rather systematic failures of logic and reason having the effect of suppressing the reported vacancy rate below the ETPA trigger. Much unlike in *City of Kingston*, where "the record le[ft] no doubt that [the study] *was* conducted in good faith and delivered results that were based upon precise data" (*City of Kingston*, 227 AD3d at 8 [emphasis original]), here the study's volume of legal errors, unexplained irregularities, unsupported explanations and illogical conclusions create substantial doubt as to this study's good faith (*see Executive Towers at Lido*, 37 AD3d at 652).

Ultimately, CCCE's Vacancy Study, for all its flaws, nevertheless might have supported a valid housing emergency Resolution had the City – whether itself or via CCCE – meaningfully responded to owners' "specific claims" disputing the data or the analysis, as *City of Kingston* and *Executive Towers at Lido* required. It did not. Except as to 94-96 S. Hamilton Street, for which the corrective email to the Mayor is dated after the Resolution, the record shows that owners or their agents emailed the Mayor re-submitting vacancy data and requesting corrections to the draft Vacancy Study well before the City enacted the Resolution. There is no record evidence that either CCCE or the City addressed their claims in any meaningful fashion.

For the above reasons, the Court is constrained to find that Resolution R-24-25 of the Common Council of the City of Poughkeepsie, dated June 18, 2024, was affected by errors of law, was irrational, and was arbitrary and capricious. Plaintiffs-petitioners therefore are entitled to CPLR 3001 declaratory judgment to that effect, CPLR article 78 relief vacating the Resolution as unlawful, and a permanent injunction against the City and DHCR implementing potential rent stabilization based on that Resolution. Injunctive relief as against CCCE is denied, however, and the hybrid complaint is dismissed as against CCCE, because CCCE is not a proper party to this proceeding – as the hybrid complaint itself all but concedes.

Conclusion

This Court ends much as it began. Affordable housing policy generally, and decisions about potential rent stabilization particularly, are vital concerns for the State and its localities. There is no question of the laudatory purpose of the ETPA. But the word "emergency" connotes that the situation is unique and caution must be exercised. Decisions to declare or end ETPA housing emergencies must be based on objective data and supported by reasoned analysis. The housing study on which the City of Poughkeepsie relied to declare its 2024 housing emergency fell short of these requirements.

It might be that the rental housing market in the City of Poughkeepsie meets the statutory criteria for a housing emergency. If the City continues to believe so, then the City is welcome to undertake a proper housing study consistent with law. If the City proceeds, the public interest would best be served by avoiding the kinds of factual, analytical and legal errors that the record demonstrates here.

The Court has considered the parties' remaining contentions and deems them to lack merit or to be moot in light of the foregoing. Accordingly it is hereby

ORDERED that the objections in point of law by the City of Poughkeepsie defendants-respondents and the New York State Division of Housing and Community Renewal are dismissed; and it is further

ORDERED that plaintiffs-petitioners are awarded judgment on their hybrid complaint as against defendants-respondents City of Poughkeepsie, its Mayor and Common Council, and the New York State Division of Housing and Community Renewal; and it is further

ORDERED that plaintiffs-petitioners are awarded declaratory judgment pursuant to CPLR 3001, and relief pursuant to CPLR article 78, that Resolution R-24-25 of the City of Poughkeepsie dated June 18, 2024, was affected by an error of law, was irrational, and was arbitrary and capricious, and therefore such Resolution is null and void; and it is further

ORDERED that a permanent injunction is entered against the City of Poughkeepsie, its Common Council and Mayor, and the New York State Division of Housing and Community Renewal enforcing, implementing or otherwise proceeding upon such Resolution; and it is further

ORDERED that any and all acts heretofore undertaken in furtherance of such Resolution are null and void; and it is further

ORDERED that a preliminary injunction is denied as moot; and it is further

ORDERED that this hybrid action is dismissed as against defendant-respondent Collective for Community, Culture and Environment; and it is further

ORDERED that all relief not specifically granted herein is denied.

The foregoing constitutes the Judgment, Decision and Order of this Court.

Dated: Poughkeepsie, New York
November 22, 2024

Christi J. Acker

CHRISTI J. ACKER, J.S.C.

To: All counsel via NYSCEF
Referee David Evan Markus