SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROBERT BENTKOWSKI, KAREN ENGEL, MICHELLE FEINMAN, NANCY LOSINNO, JOHN MIHOVICS, KAREN MILLER, ERICA RHINE, ELLEN RIESER, and BEVERLY ZIMMERMAN, on behalf of themselves and all others similarly situated, and THE NEW YORK CITY ORGANIZATION OF PUBLIC SERVICE RETIREES, INC,	:	Index No. 154962/2023 (Hon. Lyle E. Frank)
Petitioners-Plaintiffs,	:	**AFFIRMATION OF ALAN M. KLINGER IN SUPPORT OF MOTION TO INTERVENE AND IN OPPOSITION TO PETITION, OR, IN THE ALTERNATIVE, IN SUPPORT OF APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**
v.	:	
THE CITY OF NEW YORK; ERIC ADAMS, Mayor of the City of New York; THE CITY OF NEW YORK OFFICE OF LABOR RELATIONS; RENEE CAMPION, Commissioner of the Office of Labor Relations; THE NEW YORK CITY DEPARTMENT OF EDUCATION (a/k/a THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK); and DAVID C. BANKS, Chancellor of the New York City Department of Education,	:	
Respondents-Defendants.	:	

ALAN M. KLINGER, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following under penalty of perjury:

1. I am a member of the firm Stroock & Stroock & Lavan LLP, co-counsel for proposed Intervenor-Respondent-Defendant New York City Municipal Labor Committee

("MLC") in the above-captioned proceeding. I am duly admitted to practice before this Court and affirm[1] the following.

2. This proceeding, much like its predecessor, challenges changes to New York City's health benefits program made pursuant to collectively bargained agreements between MLC and the City. The challenged changes are but one component of a larger process engaged in by the City and MLC over many years to reimagine the Citywide benefits program Accordingly, MLC's interest in this proceeding and its outcome is plain and incontrovertible.

3. Petitioners' recitation of the prior proceedings involving retirees' challenges to the City's implementation of the prior Medicare Advantage Plan (the "Alliance MA Plan") underscores the need for MLC involvement in this proceeding. See NYC Org. of Pub. Serv. Retirees, Inc., et al. v. Campion, et al., Index No. 158815/2021. As this Court is aware, in 2021 MLC sought leave (1) to intervene in the prior proceedings brought by retirees challenging implementation of the Alliance MA Plan; or (2) in the alternative, for *amicus curiae* status—the latter of which the Court granted. Petitioners' new challenge once again compels MLC to defend its collectively bargained agreement with the City to provide a Medicare Advantage plan. As last time with the Alliance MA Plan, Petitioners' instant challenge to the Aetna MA Plan is a calculated effort to stop the procurement process and halt any changes to retiree benefits. This directly impacted MLC, its member unions, and the entire Citywide health bargaining process.

4. Despite Petitioners' characterization of events, they partially succeeded in those efforts not because of some ruling by this Court that implementation of a Medicare Advantage plan was unreasonable—to the contrary, this Court specifically found that the implementation of

[1] MLC's [Proposed] Verified Answer and Memorandum of Law in Opposition to the Verified Petition and Petitioner-Plaintiffs Motion for a Temporary Restraining Order and Preliminary Injunction are attached hereto as Exhibits A and B.

In the alternative, MLC requests leave to file an *amicus curiae* brief.

the prior Alliance MA Plan was lawful and could proceed—but rather because the extended delay and uncertainty resulted in the Alliance pulling out of the process.

5. Contrary to Petitioners' belated assertions of emergency, they were fully aware that promptly after the first bidder withdrew, MLC and the City commenced negotiations for a new Medicare Advantage plan with the second qualified bidder, Aetna.

6. Those negotiations resulted in a second, even better Medicare Advantage plan which MLC again voted overwhelmingly to approve.

7. Now Petitioners seek to make essentially the same claims, somewhat repackaged, that ask this Court to hold that federally approved and contracted Medicare Advantage plans are category unreasonable and cannot, under any circumstances, be offered to any public retirees in any configuration.

8. Despite Petitioners' claims that retirees are being stripped of their promised lifetime health benefits, *no one is losing their health insurance*. Instead, as the Court will see from the submissions before it—when Petitioners' unsupported claims of calamity are revealed as baseless as they are—the Aetna plan is a change in the vendor providing comprehensive retiree health and the structure of that healthcare plan, nothing more.

9. Fatal to Petitioners' arguments in this matter, however, is this Court's determination, affirmed on appeal, that the City could lawfully move forward with implementing a Medicare Advantage Plan, and that such plan complied with law. NYC Org. of Pub. Serv. Retirees, Inc., et al. v. Campion, et al., Index No. 158815/2021, NYSCEF No. 216 (N.Y. Sup. Ct. March. 3, 2022) (Frank, J.), aff'd Case No. 2022-01006, NYSCEF No. 40 (1st Dep't Nov. 22, 2022). This Court also explicitly determined—discussing the provision of the existing Senior Care plan—that the City is not obligated to provide more than one plan, though the cost of any

plan(s) provided to the retirees must be covered by the City unless those costs exceed the threshold in §12-126(b)(1) of the New York City Administrative Code. See id. at 3 ("Of course, none of this is to say that the [City] must give retirees an option of plans, nor that if the plan goes above the threshold discussed in NYC Admin. Code 12-126(b)(1) that the respondent could not pass along the cost above the threshold to the retiree. . . .")

10. The consequence of that determination (as Petitioners well knew because it was explicitly argued before this Court and the Appellate Division in the prior case) was to increase the cost and burden on the City of continuing to offer a choice of plans to retirees. This was a major shift in how the City and MLC had interpreted the Administrative Code and altered the costs of the optional plans. The predicted—and predictable—result of this so called "win" was the City's demand to offer only a single free plan in compliance with the explicit terms of this Court's prior order.

11. Dissatisfied with the consequences of that ruling, Petitioners use the same delay tactics to unwind an arduously crafted new-and-improved MA Plan with Aetna (the "Aetna MA Plan"), which took into careful consideration this Court's Decision & Order on Motion, dated March 3, 2022, and the First Department's opinion affirming same. The Aetna MA Plan is a single healthcare offering without any premium costs passed to retirees.

12. While not required by this Court's prior order, the Aetna MA Plan, as urged by MLC, improved upon the terms of the prior plan. Indeed, Aetna has advised that it has waived 85% of its typical prior authorization requirements for the Aetna MAP.

13. Petitioners blatantly attempt to mislead the Court when they repeatedly state that the limited prior authorization program is guaranteed for only two years. As has been explained time and again by MLC, the City, and Aetna, the agreement provides that the program is

guaranteed for the life of the agreement (five years, four months), with the parties to review its operations every two years for informational and educational purposes. Not a single change can be approved without the City's and, more importantly, MLC's consent.

14. Now, Petitioners seek to undo the Aetna MA Plan with meritless arguments that the New York Constitution, New York statute, the Human Rights Law, and common law require the City to provide them not just a robust medical hospital plan for life, but a specific plan provided by a specific provider in a specific design with no changes of any kind forever. No document Petitioners present, nor any statute they cite, guarantees such rigidity.

15. Moreover, the very health benefits and Administrative Code provisions that Petitioners rely upon did not manifest of their own accord. Carefully excised from Petitioners' allegations is the fact that it was the unions and MLC that negotiated for more than one plan and for the City's obligation to offer a premium-free plan to actives and retirees. It was MLC that negotiated, jointly oversaw, and administered the City health program for more than half a century—participating in oversight plan design changes, major structural changes, procurement of additional plans and benefits, and (most recently) the agreement to adopt a Medicare Advantage construct. It was pursuant to agreement with MLC that pre-65 retirees are able to enroll in the GHI-CBP plan premium-free, not any statutory requirement. MLC, not Petitioners, is party to the agreements under which all these benefits—including Medicare Advantage—are being provided.

16. Accordingly, MLC should be permitted to intervene in this proceeding, or in the alternative, to submit an amicus, to defend its agreement with the City and prevent history from repeating itself. Spending another year litigating the merits of the new agreement—which

plainly complies with this Court's directives—places the Aetna MA Plan, and the health benefits of all public-sector workers, in unnecessary jeopardy.

MLC'S INTERESTS IN THIS PROCEEDING

17. There can be no reasonable doubt that MLC and its 102 constituent unions—which have collectively negotiated and jointly administered the various Citywide health benefits available to active and retired New York City public employees and their dependents for more than half a century—are interested parties that have a real and substantial interest in the outcome of this proceeding.

18. It is MLC and its constituent unions that state and local law empowers to negotiate over mandatory subjects of bargaining, including retiree health benefits. Accordingly, MLC has decades of contractual agreements with the City of New York, giving it a role in the procurement process and allowing the City and MLC to leverage the collective market power of some one million covered lives to provide quality healthcare options that are responsive to the needs of active and retired public employees—all this, while still taking account of the increasing cost of healthcare, the availability of federal and other funding and discounts, the advent of new legal and contractual options, and the progress of medical care and facilities. See generally, [Proposed] Verified Answer ¶¶406-25.

19. While the right of retirees to health benefits—like the analogous right of active employees to such benefits—may arise under statute or contract, the specific structure of plans and options available has always been determined by collective bargaining. See id.

20. To that end, the City and MLC have historically worked closely together during various procurements to select health benefits providers and alter plan designs in an effort to protect City employee health benefits.

21. In a letter agreement, dated June 28, 2018, the City and MLC agreed to measures focused on preserving the quality of health care for active employees, retirees, and dependents (the "2018 Agreement"). The 2018 Agreement is attached to the [Proposed] Verified Answer as Exhibit 2. That public agreement specifically addressed future negotiations regarding retiree health benefits, and even more precisely the consideration of potentially switching to a Medicare Advantage ("MA") construct. See 2018 Agreement §5(b) (establishing a Tripartite Health Insurance Policy Committee ["Tripartite Committee"] of MLC and City Members to discuss "Medicare Advantage – adoption of a Medicare Advantage benchmark plan for retirees").

22. On July 14, 2021—following a Negotiated Acquisition which found Alliance and Aetna to be the most qualified insurers, and extensive negotiations between MLC and City—MLC members voted to adopt the Alliance MA Plan for the City's retirees that would be offered alongside the option to pay-up to remain in the current most popular Medigap plan, Senior Care.

23. Notwithstanding months of negotiations, on September 26, 2021, Petitioner Retirees Org., with a different selection of individual petitioners, challenged the Alliance MA Plan before this Court prior to implementation.

24. As this Court is aware, in 2021 the MLC sought leave (1) to intervene in that proceeding; or (2) in the alternative, for *amicus curiae* status—the latter of which the Court granted.

25. During the proceedings before the Supreme Court, MLC urged the City to address factually and in argument the import of the requirement that that health benefits be paid for up to full cost of H.I.P.-H.M.O. (i.e., the §12-126(b)(1) threshold) "on a category basis."

26. The City declined to do so before this Court, but later raised the argument before the First Department (which, as explained below, rejected the argument as raised for the first time on appeal and lacking factual development).

27. On March 3, 2022, this Court issued a decision approving the implementation of the Alliance MA Plan, but enjoining the City from charging-up for the Senior Care plan if it was offered, except where such plan rises above the H.I.P.-H.M.O. active plan threshold, as provided for in §12-126 of the Administrative Code. The Court reasoned that:

> ***Of course, none of this is to say that the [City] must give retirees an option of plans,*** nor that if the plan goes above the threshold discussed in NYC Admin. Code 12-126(b)(1) that the respondent could not pass along the cost above the threshold to the retiree; ***only that if there is to be an option of more than one plan***, that the respondent may not pass any cost of the prior plan to the retirees, as is the Court's understanding that the threshold is not crossed by the cost of the retirees' current health insurance plan.

NYC Org. of Pub. Serv. Retirees, Inc., et al. v. Campion, et al., Index No. 158815/2021, NYSCEF Doc. # 216 at 3 (N.Y. Sup. Ct. Mar. 3, 2022) (emphasis added), attached to the [Proposed] Verified Answer as Exhibit 5.

28. The First Department affirmed on November 22, 2022, but declined to address MLC's argument, raised by the City on appeal, regarding the meaning of "on a category basis." The First Department found that the argument involved factual questions that could not be determined on the record and required further evidence. The First Department's decision is attached to the [Proposed] Verified Answer as Exhibit 6.

29. In light of these rulings, MLC continued to work to try to preserve plan choice. To that end, MLC attempted to work with the City before the City Council to amend the Admin. Code to revert to MLC's and City's prior understanding that optional plans could be offered to retirees at a pay-up from the benchmark plan.

30. Petitioners thwarted that effort by stoking unwarranted public outrage, thereby ensuring that the City would no longer offer optional plans that cost more than the benchmark, premium-free plan.

31. Given the considerable delay caused by retirees' challenge to the Alliance MA Plan, Alliance abandoned the deal on July 15, 2022.

32. Arbitrator Martin Scheinman—who serves as the Impartial Chair of the Tripartite Health Insurance Policy Committee, consisting of City and MLC members banded together to assist in crafting a new City healthcare plan—presided over an arbitration between the City and MLC regarding an agreement to negotiate with the other qualified Negotiated Acquisition candidate, Aetna. Arbitrator Scheinman eventually "determined an MA plan should go forward to help alleviate the savings realization shortfall, that the MA plan be that of Aetna[.]" See Arbitrator Scheinman's December 15, 2022 Opinion and Award ([Proposed] Verified Answer, Exhibit 7) at 29. Arbitrator Scheinman stressed the imminent depletion of the Stabilization Fund given rising healthcare costs. See id. at 17. The Stabilization Fund is a fund jointly controlled by the City and MLC that provides significant assistance to MLC and City, providing a funding mechanism for various benefits, including the provision of a premium-free PPO plan to actives and pre-65 retirees. The Fund also provides support for union welfare funds serving actives and retirees, many of which provide prescription drug benefits. It also covers the cost of chemotherapy and other injectable drugs, and supports a widows' and orphans' benefit—hardly a "slush" fund as Petitioners claim. In absence of Fund resources, the City has paid directly for these benefits. Accordingly, any savings realized inure directly to City spending. The Arbitrator further stated: "circumstances have evolved to threaten the sustainability of robust premium free benefits for actives and retirees," and that "[f]ailure to have this agreement ratified shall result in

finding another revenue source which, inevitably, shall lead to premium contributions." Id. at 27, 30. As illustrated by Arbitrator Scheinman, if savings through an MA Plan are not realized, as one important component of an overhaul, then more painful changes may be needed elsewhere, including for pre-65 retirees.

33. In an effort to continue providing quality health care coverage, MLC worked with the City to negotiate an MA plan with Aetna that complied with this Court's March 3, 2022 Decision & Order, and took account of concerns raised in the prior proceeding.

34. The parties did so with an agreement to offer a single comprehensive plan where no premium costs are passed to retirees.

35. At the heart of the instant proceeding are Petitioners' categorical objections to any and all MA plans, no matter what the terms. Per agreement of the City and MLC, this new plan, which preserves and expands existing benefits, becomes effective September 2023.

36. Contrary to Petitioners' contentions, the Aetna MA Plan is robust, more expansive in its plan offerings than the Alliance MA Plan and, indeed, extends beyond other Aetna MA plans through its limitation of prior authorizations. It is also an eminently reasonable plan, with other Aetna MA plans having garnered significant support from public sector union workforces in other states. See Official Site of the State of New Jersey, Murphy Administration Announces Major Health Care Savings Agreement, Sept. 17, 2018, available at: https://nj.gov/governor/news/news/562018/approved/20180917a.shtml.

37. Neither the City, MLC nor Aetna has in any way attempted to obscure the changes—both improvements and differences between the new plan and Senior Care. In fact, side-by-side comparisons are publicly available, demonstrating the robustness of the new plan. See [Proposed] Verified Answer, Ex. 8.

38. A key improvement is that the Aetna plan has an out-of-pocket maximum of $1,500, whereas the prior Medicare/Senior Care construct does not. This means that any deductible, co-pay or other out-of-pocket cost caps out at $1,500/person. After that, the cost is fully covered. While Petitioners attempt to downplay this improvement by emphasizing co-pays and denying the existence of out-of-pocket costs under traditional Medicare, that is simply untrue. Traditional Medicare has an ever-increasing deductible. So does Senior Care. Other cost-sharing is also present. The out-of-pocket maximum guarantees that retirees will not suffer the allegedly crippling additional expenses that Petitioners inflate.

39. The same comparison charts plainly illustrate that Petitioners' argument, that the Aetna MA Plan offers a limited number of medical providers, is completely unfounded. See Petitioners' Memorandum of Law (Dkt. # 46) ("Pet.MOL") at 17 n.30. Over 95% of providers who accepted the Senior Care plan have indicated that they will accept the Aetna MAP, including providers in the Aetna MAP network (this includes over 1 million providers), and providers who are not contracted with, but have accepted payment from, Aetna, and others who have indicated that they will accept. See [Proposed] Verified Answer Ex. 8. This does not mean that the remainder will not accept the plan; rather, Aetna does not currently have matching information for those providers.

40. While MLC cannot address every baseless misconception raised about the Aetna MA Plan, Aetna has attempted to correct any misapprehensions by issuing a set of FAQs on June 9, 2023. See [Proposed] Verified Answer, Exs. 9-10. The most recent analysis shows 96.3% of providers who accepted Senior Care are either in network, have indicated that they will accept the Aetna MAP, have accepted payment from Aetna, or have indicated that they will accept Aetna MAP.

41. Petitioners also present some scenarios of people currently in complex treatment that are understandably worried about how to transition their care. However, at Petitioners' apparent urging (Petition ¶192), they do not appear to have utilized Aetna's Continuity of Care Transition service where a nurse case manager is assigned to assist with coordination the transition. See [Proposed] Verified Answer ¶448, Ex. 11.

42. In negotiating the MA plan the MLC continuously strove to minimize disruptions and smooth transitions as much as possible, but change always bring with it some disruption. The MLC's intent is to work with Aetna and the City to minimize it.

43. MLC has worked with the City and Aetna to increase coverage through various means, and strives to address all coverage concerns brought to Aetna's attention, and which will be raised in the future.

44. This reconfigured offering of retiree health plans is part of a larger effort by MLC and the City to modernize, preserve and improve the Citywide health benefit program for active employees and retirees. See [Proposed] Verified Answer ¶¶449-51.

45. While MLC and the City first applied their efforts to significant changes on the active side of the benefits offerings (leaving the retiree plans untouched for many years), that order of operations did not create any grandfathered right to have precisely the same plan offered by the same vendor in exactly the same way in perpetuity. Each renewed agreement between the City and its vendors brings consideration of benefits, costs and the potential that a better arrangement could result from testing the market. That is precisely what MLC and the City set out to do with regard to the procurement of the Aetna MA Plan, and is what the parties are currently engaged in with regard to the new active/pre-65 Preferred Provider Organization ("PPO") program.

46. As set forth in the accompanying [Proposed] Verified Answer, these procurement processes have always taken place against the backdrop of collective bargaining. See [Proposed] Verified Answer ¶¶423-25. That means that the selection of a vendor through the procurement process is not a guarantee of a contract. The selected vendor and plan need to be accepted by a vote of MLC members, as the Aetna MAP proposal overwhelmingly was here. Id. at ¶¶424-25. Accordingly, the ultimate acceptability of the proposed plan to MLC is of necessity a well-known consideration in any procurement process.

47. Petitioners would have this Court invalidate MLC-approved vendor and plan, again delaying or derailing implementation of collectively bargained-for changes to Citywide health benefit offerings based upon the erroneous notion that Petitioners' health benefits are never subject to change. These claims strike directly at MLC's ability to negotiate agreements in the best interest of its constituents, and are not supported by the series of incongruous—and, frankly, frivolous—constitutional, statutory, and common law legal arguments proffered by Petitioners.

48. MLC seeks to intervene or gain amicus status in this proceeding to defend its contractual and collective bargaining interests.

MLC SHOULD BE PERMITTED TO INTERVENE

49. "Pursuant to CPLR 7802(d), a court 'may allow other interested persons' to intervene in a special proceeding." Greater New York Health Care Facilities Ass'n v. DeBuono, 91 N.Y.2d 716, 720 (1998). Appellate Courts have consistently held that CPLR 7802(d) "grants the court broader power to allow intervention in an Article 78 proceeding than is provided pursuant to either CPLR 1012 or 1013 in an action." See Bernstein v. Feiner, 43 A.D.3d 1161, 1162 (2d Dept. 2007) (citations omitted). Even under CPLR 1012(a) and 1013, intervention is appropriate where "the intervenor has a real and substantial interest in the outcome of the

proceedings." Perl v. Aspromonte Realty Corp., 143 A.D.2d 824, 825 (2d Dept. 1988) (citations omitted). "Intervention is liberally allowed by courts" where proposed intervenors "have a bona fide interest in an issue involved in that action." Yuppie Puppy Pet Prods., Inc. v. St. Smart Realty, LLC, 77 A.D.3d 197, 201 (1st Dep't 2010). CPLR 7802(d) permits "interested persons" to intervene in an Article 78 proceeding.

50. Public sector unions have been permitted to intervene in lawsuits like this one where their members could be impacted by a decision on the City's benefits offerings under State law. In Lynch v. City of New York, the Court of Appeals considered whether Retirement and Social Security Law §480(b) requires the City to make increased pension contributions to firefighters and police officers appointed after a certain date. 23 N.Y.3d 757 (2014). The Captains Endowment Association and Uniformed Fire Officers Association successfully intervened in the suit given the possibility that their members could be adversely affected by the decision in the future. The judge allowed the unions to intervene, directing that they be added as a party and amending the caption on the complaint. Id. at 768 n.10.

51. Similarly, here, it requires no extended analysis to show that MLC—the bargaining representative for the impacted unions and their workforces—has a strong, immediate, and concrete interest in this proceeding that will not be adequately represented by the named parties.

52. *Interest In The Proceeding.* MLC has been a negotiating partner with regard to the changing Citywide health benefits program for the last half century. The at-issue procurement process and benefit changes are made pursuant to collectively bargained agreement between MLC and the City, making MLC's interest patently clear, as discussed above. Indeed, this Court previously found that the City is "was well within its right to work with the [MLC] to

change how retirees get their health insurance." NYC Org. of Pub. Serv. Retirees, Inc., et al. v. Campion, et al., Index No. 158815/2021, NYSCEF No. 216 ("Prior Decision") at 2 (N.Y. Sup. Ct. March. 3, 2022) (Frank, J.). The existence and nature of these agreements directly undermines several of Petitioners' claims.

53. *Inadequate Representation of Interests.* As demonstrated by the retirees' prior challenges to the Alliance MA Plan, MLC's interests will not be adequately represented absent intervention. The City and MLC and did not initially agree on the issues to raise, resulting in insufficient factual development of an issue which the City later raised on appeal. What could not have been known at the time the Court previously considered MLC's motion to intervene or, alternatively, to be granted amicus status, was that strategy decisions between City and MLC would diverge. While the City certainly shares MLC's interest in defending the Aetna MA Plan, the very nature of MLC-City collective bargaining relationship demonstrates that they each represent distinct interests with regard to Citywide health.

54. *MLC will be impacted by any judgment herein.* Should the Court enter judgment in Petitioners' favor, invalidating the Aetna MA Plan or some component thereof, MLC's chosen vendor and plan will be undone, directly impacting existing contractual obligations of both MLC and the City, as well as overall efforts to overhaul the entire City benefits program. That is precisely what occurred last time a small group of retirees challenged the Alliance MA Plan before this Court. Such a ruling will force MLC and the City to return to the table and craft new paths forward—for the second time—with the added challenge of having lost significant time and projected savings.

55. *Permissive Intervention or Amicus status.* Alternatively, the Court should permit MLC to intervene pursuant to CPLR 1013. Permissive intervention is proper when the party's

"claim or defense and the main action have a common question of law or fact," provided the intervention will not in the court's view "unduly delay the determination of the action or prejudice the substantial rights of any party." CPLR 1013. Here, MLC would provide the Court with relevant facts and perspectives based upon its unique role in the process.

56. *No Delay.* Granting MLC's motion for intervention and/or amicus status would not delay this proceeding. The instant motion was filed in a timely and expedited manner, foregoing a reply to ensure that this motion is submitted in advance of the June 21, 2023 return date for this proceeding. Indeed, Respondents' time to answer the Petition or otherwise move has not yet run, so there can be no finding that MLC involvement would cause undue delay.

57. New York courts have recognized repeatedly that liberal construction and application of the intervention sections of the CPLR is warranted, provided there is no undue delay, and that "intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings." See e.g., Bernstein, 43 A.D.3d at 1162 (citations omitted) (Property owners had substantial interest in outcome of Article 78 proceeding since petition, if successful, would affect property taxes property owners had to pay). The "substantial interest" of MLC in the outcome of these proceedings cannot be gainsaid.

58. MLC has complied with all CPLR requirements for intervention, and has attached hereto a [Proposed] Verified Answer and memorandum of law in opposition to the Petition and Petitioner's application for a preliminary injunction.

59. In the event this Court denies MLC's motion to intervene, MLC should be permitted to file an amicus brief setting forth its position.

60. For the foregoing reasons, MLC's motion to intervene or, alternatively, to be granted amicus status should be granted.

Dated: New York, New York
June 13, 2023

/s/ Alan M. Klinger
Alan M. Klinger

WORD COUNT CERTIFICATE

I hereby certify that this affirmation complies with Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court. This certificate certifies that the document complies with the word count limit. Compliance relied on the word count of the word-processing system used to prepare the document. The total number of the words in this affirmation, exclusive of the caption and signature block is 4,650 words.

Date: June 13, 2023

/s/ Alan M. Klinger
ALAN M. KLINGER