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To be Argued by:
ANDREW G. CELLI, JR.
(Time Requested: 15 Minutes)

New York Supreme Court
Appellate Division—Fourth Department

Docket No.: CA 20-00826

In the Matter of the Application of

ROCHESTER POLICE LOCUST CLUB, INC., MICHAEL MAZZEO and KEVIN SIZER,

Petitioners-Respondents,

– against –

CITY OF ROCHESTER and LOVELY A. WARREN, as Mayor of the City of Rochester,

Respondents-Respondents,

– and –

COUNCIL OF THE CITY OF ROCHESTER,

Respondent-Appellant,

– and –

THE MONROE COUNTY BOARD OF ELECTIONS,

Respondent.

REPLY BRIEF FOR RESPONDENT-APPELLANT

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PRELIMINARY STATEMENT

The Rochester Police Locust Club's ("RPLC")[1] brief—like the decision below—rests upon a flawed premise: that the Court of Appeals did not mean what it said. The RPLC urges this Court to accept the proposition that the Court of Appeals simply *misspoke* when it said—repeatedly—that localities like Rochester are "prohibited" from collectively bargaining over the disciplining of police officers; what the Court of Appeals *meant* to say, the RPLC argues, is that localities are "permitted, but not required" to collectively bargain these issues.

That is *not* what the Court of Appeals said, on three separate occasion, and, thus, this is not the law. Words matter. Here, the Court of Appeals' words are crystal clear.

So too is the Court of Appeals' *logic* in articulating the rule prohibiting bargaining over discipline. Although the RPLC ignores this history, in 1907, the State Legislature made an express policy determination—embodied in the 1907 Charter of the City of Rochester—that Rochester should control police discipline for itself. In 1967, the Legislature enacted the Taylor Law, which reflected the State's broad policy decision that, as to all categories of public employees, cities must bargain over issues of employee discipline. But the Taylor Law included a carve-out—and it too was important: cities that the Legislature had

[1] The term "RPLC" refers collectively to Petitioners-Respondents Rochester Police Locust Club, Inc., Michael Mazzeo, and Kevin Sizer.

already determined should control police discipline must retain responsibility over police discipline. To be sure, this carve-out was unenforced for many years. But, as the Court of Appeals would later explain and repeatedly reemphasize, the carve-out in the Taylor Law (along with the explicit grandfathering in Civil Service Law § 76) meant that the Legislature had *prohibited* municipalities like Rochester from abdicating their responsibility over discipline. Put another way, the Legislature made a policy choice to *forbid* municipalities from converting their state-delegated power to discipline police into a bargaining chip to be traded away in negotiations with police unions. Collective bargaining is fully appropriate—and the policy of the State—for *some* very important issues, such as pay, hours, and seniority; it is *not* an appropriate topic for the state-delegated power to discipline officers.

There is no dispute that, in 1907, the State Legislature expressly granted Rochester the power to discipline its police officers. And there is no dispute that the 1907 Charter—a state law—predates the 1967 Taylor Law, and was never repealed. Under controlling precedent, Rochester *cannot* collectively bargain over issues of police discipline. Rochester thus had every right to pass a Local Law—with overwhelming support of its citizenry—to ensure effective oversight of police officers.

ARGUMENT

I. BECAUSE ROCHESTER IS PROHIBITED FROM COLLECTIVELY BARGAINING POLICE DISCIPLINE, ITS 1985 LAW COULD NOT HAVE BOUND IT TO BARGAIN DISCIPLINE

A. The RPLC's Argument Ignores the Court of Appeals' Repeated Holding that Cities Like Rochester are Prohibited from Bargaining over Discipline

The RPLC concedes, as it must, that Rochester is among those municipalities where "the Legislature has expressly committed disciplinary authority over a police department to local officials." *Matter of Patrolmen's Benevolent Ass'n v. N.Y.S. Pub. Emp't Relations Bd.*, 6 N.Y.3d 563, 570 (2006) ("*NYC PBA*"); *see* Brief for Petitioners-Respondents, Dkt. 25 ("RPLC Br.") at 10-11 (at the time of passage of the Taylor Law, Rochester "had authority to impose police discipline using the City Charter provisions, without an obligation to negotiate the subject matter"); *id.* at 13 (City of Rochester's "discipline of police officers" was "entitled to the grandfathering provided by Civil Service Law § 76(4)"). All parties and the Supreme Court thus agree that Rochester was *not* required to bargain discipline notwithstanding the passage of the Taylor Law: for decades "the City of Rochester unquestionably possessed unfettered, exclusive authority to regulate matters of police discipline." R25.

This ends the inquiry. No Court of Appeals case has ever held that collective bargaining of police discipline is permissible notwithstanding a pre-Taylor Law grant of power to the locality to control such discipline. Where the

Legislature previously committed specific disciplinary authority to a locality, the Taylor Law simply does not apply—period. The Court of Appeals' reasoning is simple: the Taylor Law did *not* "impliedly repeal[]" the more "specific" legislative determination of a pre-1967 grant of authority. *City of Schenectady v. N.Y.S. Pub. Emp't Relations Bd.*, 30 N.Y.3d 109, 116-17 (2017) ("*Schenectady*"). And the result is clear: "collective bargaining over disciplinary matters is *prohibited*" and "discipline may *not* be a subject of collective bargaining," as the Court of Appeals held in *each* of the three governing cases. *NYC PBA*, 6 N.Y.3d at 570, 572 (emphases added); *see also* Opening Brief for Respondent-Appellant, Dkt. 5 ("Council Br.") at 26 & n.10 (citing three Court of Appeals decisions each holding that bargaining discipline is "prohibited," not simply not mandatory).

There is no wiggle room here: prohibited means prohibited. The prohibition on collective bargaining over discipline is consistent with a long line of case law holding, as a matter of state policy, that certain decisions cannot be surrendered to collective bargaining but instead remain the "ultimate responsibility" of the municipality. *NYC PBA*, 6 N.Y.3d at 572. Rochester, thus, "may not surrender, in collective bargaining agreements, [its] ultimate responsibility for deciding" police discipline, just as the Court of Appeals held that municipalities cannot "surrender, in collective bargaining," the "right to choose among police officers seeking promotion," the "ultimate responsibility for deciding

on teacher tenure," or the "right to inspect teachers' personnel files." *Id.* (citing cases).

The Court of Appeals precedent is clear that there are two categories of municipalities in this State: those *bound* to negotiate discipline under the Taylor Law (because there was no prior state statute), and those *prohibited* from negotiating discipline because the State had committed the "ultimate responsibility" of discipline to the locality. *Id.* The RPLC conjures a third category of municipality: localities that *choose* whether or not to collectively bargain discipline. Under this view, in 1985 Rochester made a "decision . . . to submit to State law governing police discipline." RPLC Br. at 12.

The problem with the RPLC's "third category" is that it doesn't exist: it is flatly inconsistent with the Court of Appeals' two-category typology, and it is contradicted by the express language of three Court of Appeals decisions. The import of the Court of Appeals' holdings *prohibiting* collective bargaining is that Rochester is not empowered to "choose" to waive its state-delegated powers. Whatever Rochester may have believed or said in 1985 when it suggested that police discipline was "subject to" the Civil Service Law, Rochester lacked the power to "submit" to state Civil Service Law or to "forfeit" its exclusive power over such discipline. RPLC Br. at 9, 11. Rochester could *not* simply agree to collectively bargain discipline, as the RPLC claims, *id.*, because the State had

"expressly committed disciplinary authority over a police department to local officials" in Rochester, *NYC PBA*, 6 N.Y.3d at 570.

Rochester is prohibited from bargaining over discipline because in enacting the Taylor Law, the State Legislature was balancing its *own* policy priorities, and not deferring to a *municipality's* policy preferences. To be sure, collectively bargaining was an important state priority as expressed in the Taylor Law. But there was a "competing policy" of the State which "favor[ed] strong disciplinary authority for those in charge of police forces," as expressed in the applicable prior state statute (here, the 1907 Charter). Because that 1907 state statute had specifically entrusted the locality with "official authority over the police," that "specific authority" from the State Legislature controlled, rather than the Legislature's "general" command of collective bargaining as enacted in the Taylor Law. *Schenectady*, 30 N.Y.3d at 115. The Legislature required that Rochester take "ultimate responsibility" for discipline and not "surrender" that responsibility "in collective bargaining agreements." *NYC PBA*, 6 N.Y.3d at 572. Rochester is thus "excluded from collective bargaining as a matter of policy" set by the State. *Id.*

To avoid the binding effect of the 1907 law, the RPLC claims that the 1907 law is not in "in force" because it was somehow repealed by Rochester in 1985. RPLC Br. at 10. That confuses the analysis—and it is factually incorrect to

boot. As the Court of Appeals has explained, the analysis focusses on the law "in force" in *1967*, when the Legislature passed the Taylor Law, because it seeks to understand the Legislature's *intent* when it passed the Taylor Law. *See Schenectady*, 30 N.Y.3d at 116-17 (state statute "has not been expressly repealed or superseded by the legislature nor was it implicitly repealed by the enactment of the Taylor Law in 1967"). Here, the 1907 law was—as of 1967, and still today—the last word from the State Legislature about police discipline in Rochester. Thus, the Taylor Law's "general command" about collective bargaining did not displace the "specific authority" the Legislature granted Rochester in 1907 to discipline its own officers. *Schenectady*, 30 N.Y.3d at 115.

Local Law No. 2—passed by the Council, approved by the Mayor,[2] supported by 75% of voters at referendum—is lawful.

B. Rochester Could Not "Forfeit" the State's Requirement that the Locality Must Control Police Discipline

The State's policy determination that Rochester should exercise disciplinary power over its own officers and could not surrender that power to collective bargaining further explains why Rochester could not "forfeit" its ability

[2] Consistent with her oath of office, the Mayor would only have approved Local Law No. 2 had she believed it lawful; if she believed otherwise, she would have vetoed it. Having approved the legislation, the Mayor's non-participation in this appeal—where the Mayor is well aware that the Council is vigorously litigating this matter—is entitled to no weight. The RPLC's claim otherwise (as its first argument, no less), is simply an attempt to distract the Court from the binding case law requiring reversal.

to control police discipline—through passage of the 1985 law or any other local act. RPLC Br. at 9.

As a preliminary matter, it is important to distinguish the *kind* of "grandfathering" created by the Taylor Law and Civil Service Law §§ 75 and 76 from "grandfathering" rules that arise in other contexts. "Grandfathering" can refer to statutes that outlaw a certain kind of conduct, but permit, as a matter of equity, preexisting conduct that would otherwise be forbidden to continue—all with the expectation that, over time, the disfavored conduct will slowly fade out of existence. That is not the type of grandfathering at issue here. Here, the Legislature "grandfathered" *its own statutes* that might otherwise be deemed repealed by the passage of the Taylor Law. In short, it expressly saved statutory authority—and the resulting power it bestowed on localities—from a sweeping new state policy favoring collective bargaining.

As the Court of Appeals has explained, local control over police discipline was not disfavored conduct at all, much less conduct that the Legislature sought to have fade away in favor of bargaining discipline.[3] To the contrary, when it enacted the Taylor Law, the Legislature chose to *favor and protect* the right and obligation of certain cities to exercise "strong disciplinary authority for those in charge of police forces" going forward—*without* the restrictions born of collective

[3] *See also* Council Br. at 23, 26 (explaining that, unlike CSL § 76(4), the Taylor Law does not contain explicit language referencing or "grandfathering" preexisting laws).

bargaining. *NYC PBA*, 6 N.Y.3d at 571. For cities—like Rochester—where the Legislature had specifically provided that those in "charge of [the] police" should control police discipline, that Legislative decision to prohibit collective bargaining was "a matter of policy" set by the State, which no locality has power to trump. *Id.* at 571, 572.

For this reason, the "grandfathering" concept that the RPLC seeks to import here—where preexisting, nonconforming conduct is allowed to continue as a matter of equity, in hopes it will die out on its own—simply does not apply. Far from encouraging cities like Rochester to adopt collective bargaining, as you would expect if the grandfathering was of the type the RPLC envisions, the Court of Appeals has made clear that such localities are prohibited from doing so.

C. The RPLC Misconstrues the MHRL's Grant of Authority

The Legislature's determination that Rochester cannot collectively bargain discipline is fully consistent with its grant of power to Rochester in the Municipal Home Rule Law ("MHRL") to decide *which* officer or body, *within* the municipality, may impose police discipline. The distinction is one of power.

When a city is required to collectively bargain discipline, it is *deprived* of the power to unilaterally decide how police officers should be disciplined. *See NYC PBA*, 6 N.Y.3d at 572. Instead, it must sit at the bargaining table with police unions and agree to a discipline system that the union finds

acceptable—or risk that an arbitration panel will unilaterally decide the contractual terms of discipline. Taylor Law § 209(4). In this scenario, the unions are empowered, and the elected local officials are disempowered. That is the very purpose of collective bargaining, but it also explains why bargaining over discipline for police officers—public employees who are entrusted with the power to arrest and use state-sanctioned violence—is fraught.

Under the Municipal Home Rule Law, in contrast, a municipality like Rochester is granted flexibility about *how to exercise* its power over discipline—i.e., by *which* local officials; it is not required to surrender its power altogether to the bargaining process. *See* Council Br. at 20 (detailing powers granted to cities in MHRL). Whether the Commissioner of Public Safety imposes police discipline (under the 1907 Charter) or, instead, whether a municipal board imposes that discipline (under Local Law No. 2), in either event it is the City, through its employees and boards, that is exercising the power to discipline its police officers.

The Court of Appeals' determination that the Taylor Law did not require (or permit) municipalities to surrender their pre-existing power and responsibility to discipline their officers is wholly consistent with the Legislature's separate determination that municipalities have home rule powers as to how to exercise any disciplinary power they possess.

Equally erroneous is the RPLC's claim that Rochester was somehow limited in its ability to pass Local Law No. 2 because the 1907 law does not envision a PAB. The RPLC cites no source for such limitation, and none exists. The Taylor Law does not apply at all for the reasons described above. And the Municipal Home Rule Law, passed after the 1907 Charter, expressly empowers cities to organize their own affairs, so long as they follow that law's procedures in doing so, which here Rochester did by submitting Local Law No. 2 to a public referendum. *See* Council Br. at 20 (detailing powers granted to cities in MHRL); *id.* at 21 (MHRL's limitations on municipalities, including referendum requirement, which Rochester complied with).

D. The 2019 Rochester City Council Can Revisit a Law Passed by its 1985 Predecessor

The RPLC claims that the 1985 Charter amendment, which was enacted by the 1985 Rochester City Council and approved by the 1985 Rochester mayor must control because to say otherwise would "wreak havoc." RPLC Br. at 15. This is an argument born of desperation. Subsequent legislatures regularly overturn the decisions of prior legislatures, whether because the new legislature disagrees with the prior legislature's policy preferences or because the new legislature believes the prior legislative act was unlawful. *See* Council Br. at 30-31. That is part of the normal democratic process and no havoc ensues. To rule otherwise is to install a regime of dead-head control where changes in

circumstances and views can never be reflected in changes in the law. This is anti-democratic and it is wrong.

Moreover, specifically in the police discipline context, CBAs contained bargained-for disciplinary provisions for years, yet the Court of Appeals in the *NYC PBA* line of cases then repeatedly held that such bargaining was prohibited and invalidated collectively-bargained disciplinary provisions.[4] No havoc ensured.

E. The Trial Court's Decision in City of Syracuse Is Erroneous and Distinguishable

The RPLC heavily relies on a recent trial court, non-binding decision, *City of Syracuse v. Syracuse Police Benevolent Association, Inc.*, 124 N.Y.S.3d 523 (Sup. Ct. Onondaga Cty. 2020); that case is both wrongly decided and distinguishable. It is wrong because it misstates the central question in these disputes, finding that "[t]he answer turns on the expressed intent of the *local* body." *Id.* at 531 (emphasis added). Not so. As detailed above and in the opening brief, the Court of Appeals has made clear that what matters in the discussion about the distribution of power is the intent of the State Legislature in granting

[4] *See Matter of Town of Wallkill v. Civil Serv. Emps. Ass'n., Inc. (Local 1000, AFSCME, AFL-CIO, Town of Wallkill Police Dep't Unit, Orange Cty. Local 836),* 19 N.Y.3d 1066, 1068 (2012) (CBA had been in place for a dozen years which had provided "police officers subject to discipline by the Town have the right to a hearing before a neutral arbitrator"; the Court of Appeals nonetheless held that "police discipline . . . is a prohibited subject of collective bargaining."); *NYC PBA,* 6 N.Y.3d at 571 (collective bargaining agreement "which prescribed detailed procedures," for police discipline yet the Court of Appeals held that article "of the collective bargaining agreement . . . invalid"); *Schenectady*, 30 N.Y.3d at 117 (same).

localities power, not the intent of local officials in receiving it.[5] Council Br. at 16-19, 26-27; *NYC PBA*, 6 N.Y.3d at 574 (citing pre-Taylor Law state statutes which "reflect the policy *of the State* that police discipline in New York City is subject to the Commissioner's authority" (emphasis added)). For that reason, the 1985 law in Rochester, just like the 1960 charter amendment in Syracuse, does not determine whether Rochester or Syracuse must collectively bargain discipline.

City of Syracuse is also distinguishable because, even if the Court looks to the "expressed intent of the local body," the Syracuse legislature's last word was to "require compliance with the Civil Service Law's collective bargaining provisions," 124 N.Y.S.3d at 531, 532, whereas Rochester's "expressed intent" was directly to the contrary—it passed Local Law No. 2, which was then supported by voters at referendum. *City of Syracuse* was not, as here, a challenge to the validity of a duly-enacted local law; Syracuse had sought to stay arbitration of alleged infractions by four police officers, arguing that under *NYC PBA* and its progeny, Syracuse's local legislation was invalid. Here, it is quite clear that Rochester, through its local body, seeks to control police discipline and "not

[5] The court in *City of Syracuse* may have been confused because the Court of Appeals cited the New York City Charter and the New York City Administrative Code, which might appear to be local legislation but, as the Court of Appeals stated, "[t]hough these two provisions are now New York City legislation, both were originally enacted as state statutes." *NYC PBA,* 6 N.Y.3d at 574.

surrender, in collective bargaining agreements, [its] ultimate responsibility for deciding" police discipline. *NYC PBA*, 6 N.Y.3d at 572 (citing cases).[6]

F. The RPLC Overstates the Effects of Upholding the Local Law

Having brought this action, the RPLC now argues that if Local Law No. 2 is not struck down, "every disciplinary action taken against a Rochester police officer pursuant to the Civil Service Law since 1985 has been invalid." RPLC Br. at 15. But the Council is not asking the Court to invalidate even *a single disciplinary action,* much less all previous ones. To the contrary, by its terms, Local Law No. 2 was drafted to apply to individual cases on a forward-looking basis only, "if and when" it was supported by the voters at referendum. R140, Local Law No. 2, Section 2. The Council further agreed to preserve the pre-Local Law No. 2 status quo as the Supreme Court considered this matter. R45. Not only has the Council never expressed *any* interest in invalidating prior disciplinary determinations, it likely has no standing to do so.

In any event, the consequences, if any, to prior disciplinary actions if Local Law No. 2 is upheld is not unique to Rochester. In all three of the Court of Appeals cases there had been a collective bargaining agreement governing discipline in place for years. Yet the Court of Appeals did not hesitate to hold the

[6] *City of Syracuse* is also factually distinct because the local law purporting to surrender the state-granted power to control police discipline was enacted in 1960, *before* passage of the Taylor Law (but after passage of Civil Service Law §§ 75 and 76). 124 N.Y.S.3d at 532.

agreements' disciplinary provisions invalid without questioning any impact on prior, concluded disciplinary determinations. *See supra* note 4.

G. The RPLC's Unconsolidated Law § 891 Analysis Ignores its Own Concession about the Chief's Role in Discipline

The RPLC's backup argument that Local Law No. 2 violates Unconsolidated Law § 891 ignores that the Chief's task in removing an officer where the PAB decides that removal is warranted is merely ministerial—which was the very basis of the RPLC's Petition. *See* Council Br. at 31-32 (citing R115, Petition ¶ 18). Nor can the RPLC rebut that Local Law No. 2 is consistent with Unconsolidated Law § 891, as they both provide the same due process protections. *Id*. at 32-33.

II. THE RPLC'S ALTERNATE BASES FOR AFFIRMANCE FAIL

As a last-ditch attempt to rescue the trial court's decision, the RPLC claims that the City Council cannot defend itself in the suit the RPLC brought, claiming estoppel and lack of standing. The trial court did not adopt either of these arguments. Neither can be used to preclude the City Council from *defending*, on the merits, the legality of its duly-enacted law.

A. The Court Should Reject the RPLC's Unfounded Estoppel Argument

Without citing any legal standard, the RPLC baldly asserts that the City Council should be estopped from "attempting to deny the applicability of

Civil Service Law § 75 and the validity of Article 20 of the [CBA]." RPLC Br. at 19.

Estoppel cannot "preclude a governmental entity from discharging its statutory duties or to compel ratification of prior erroneous implementation" of the law. *Parkview Assocs. v. City of N.Y.*, 71 N.Y.2d 274, 279 (1988). The fact that the City Council passed a law, in 1985—*19 years before the Court of Appeals first announced the legal principle that governs this case*—stating that the Civil Service Law governs police discipline cannot now preclude Rochester from correcting this error. This is black-letter law. "[E]stoppel may not be applied to preclude a State or municipal agency from discharging its statutory responsibility. . . . This is particularly true where, as here, the estoppel is sought to be applied to perpetuate . . . a misreading of constitutional and statutory requirements." *City of N. Y. v. City Civil Serv. Comm'n*, 60 N.Y.2d 436, 449 (1983).

Underscoring the absurdity of their estoppel argument, the RPLC relies on a single case in which the Court *declined* to estop a municipality in a similar circumstance. *Schenectady*, 30 N.Y.3d at 117. In *Schenectady*, the Court quickly dismissed the argument that Schenectady's position in judicial proceedings that pre-dated *NYC PBA* could judicially estop the city from later following the holding of *NYC PBA*. *Id.* The RPLC can point to no position taken by the City Council since *NYC PBA* concerning the applicability of Civil Service Law § 75 or

Article 20 of the CBA and so, as in *Schenectady*, their estoppel argument should be swiftly rejected.[7] Indeed, in each of the *NYC PBA* line of cases a collective bargaining agreement had already been negotiated by the municipality, yet in *none* of these cases did the Court of Appeals find that the mere existence of a collective bargaining agreement estop the municipality from arguing that police discipline could not be collectively bargained. *See id.*; *NYC PBA*, 6 N.Y.3d at 570-571; *Matter of Town of Wallkill v. Civil Serv. Emps. Ass'n., Inc. (Local 1000, AFSCME, AFL-CIO, Town of Wallkill Police Dep't Unit, Orange Cty. Local 836),* 19 N.Y.3d 1066, 1068 (2012).

Moreover, while the RPLC never specifies what *type* of estoppel it asserts should be imposed, in *Schenectady*, the police union had cited judicial estoppel. *Schenectady*, 30 N.Y.3d at 117 (emphasis added). But judicial estoppel clearly does not apply here. Judicial estoppel "provides that where a party assumes a position in a legal proceeding and succeeds in maintaining that position, that party may not subsequently assume a contrary position." *Reynolds v. Krebs*, 143 A.D.3d 1256, 1256 (4th Dep't 2016) (citation and internal quotation marks omitted). The City Council has not previously taken any position regarding the

[7] While the Court in *Schenectady* noted that Schenectady announced changes to its disciplinary process soon after *NYC PBA* came down, the Court made no suggestion (contrary to the suggestions of the RPLC) that estoppel could apply if Schenectady had not quickly announced a change in position. *Schenectady*, 30 N.Y.3d at 117.

applicability of the Civil Service Law and the CBA in in a legal proceeding, let alone has it ever "prevailed" on that position.

Finally, the RPLC's suggestion that the RPD's history of disciplining police officers and the City of Rochester's history of negotiations with the RPD could have an estoppel effect on the City Council is flatly wrong. The City Council has no role in the discipline of RPD members, is not a party to the CBA, and did not negotiate the procedures found therein. It is telling that the RPLC identifies "the City of Rochester"—not the City Council—as the entity that it argues had a "position that Civil Service Law § 75 and Article 20 of the CBA apply and govern police discipline." RPLC Br. at 30-31. The RPLC identifies no prior position espoused by the City Council on Civil Service Law § 75 or Article 20 of the CBA that it could be estopped from departing from—and there is none.

The City Council is not estopped from following Court of Appeals precedent.

B. The City Council Does Not Lack Standing to Defend its Local Law

The RPLC's final argument is that the City Council "lacks standing" to challenge Rochester's pre-Local Law No. 2 disciplinary procedures. The argument is nonsensical. This case arises out of the *RPLC's challenge* to Local Law No. 2, in which the RPLC named the City Council as a *respondent*. Standing

is a limitation on who can *bring suit and seek relief from the Court*; it is not a limitation on a defendant or respondent's ability to defend itself from suit.

Standing is a "core requirement that a court can act only when the rights of the party requesting relief are affected." *Soc'y of Plastics Indus., Inc. v. Cty. of Suffolk*, 77 N.Y.2d 761, 772 (1991); *see also N.Y.S. Ass'n of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211 (2004) ("Standing is, of course, a threshold requirement for a *plaintiff* seeking to challenge governmental action." (emphasis added)).[8]

Here, the RPLC asked the Court to adjudge Local Law No. 2 invalid. The City Council is defending the legality of the legislation it passed in a lawsuit in which it was named as a respondent. This not a challenge to the CBA nor to the Police Chief's application of Civil Service Law § 75. The City Council seeks no relief from the Court concerning the CBA or any actions of the Police Chief. The RPLC's standing argument cannot limit the City Council's ability to successfully defend Local Law No. 2.

[8] The only two cases concerning standing that the RPLC cites hold that a plaintiff must be a party to or beneficiary of a contract in order to have standing to bring a lawsuit enforcing contractual rights, and, as such, are inapposite. *See Babu v. Jack & George Murdich, Inc.*, 141 A.D.2d 593, 594 (2d Dep't 1988); *Salm v. Sammito*, 111 A.D.2d 844, 845, *aff'd*, 66 N.Y.2d 661 (1985).

CONCLUSION

For the foregoing reasons and the reasons stated in the Council of the City of Rochester's opening brief, the Court should reverse the Supreme Court's May 19 Order and Judgment.

Dated: August 24, 2020
New York, New York

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