Albany County Clerk's Index No. 907485/20
Appellate Division–Third Department Docket No. 533705

Court of Appeals

of the

State of New York

In the Matter of the Application of
LONG ISLAND PURE WATER, LTD.,

Petitioner-Appellant,

– against –

NEW YORK STATE DEPARTMENT OF HEALTH, MARY T. BASSETT, as Commissioner of Health of the State of New York, THE NEW YORK STATE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL and THE NEW YORK STATE DRINKING WATER QUALITY COUNCIL,

Respondents-Respondents.

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF MOTION FOR LEAVE TO APPEAL BY PETITIONER-APPELLANT LONG ISLAND PURE WATER, LTD.

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**(Pro Hac Vice* Admission Pending)

COURT OF APPEALS
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Respondents-Respondents.

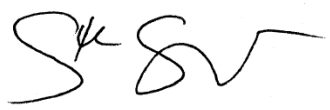
Notice of Motion for Leave to File *Amicus Curiae* Brief in Support of Petitioner-Appellant.

PLEASE TAKE NOTICE that upon affirmation of Steven A. Engel, Esq., an attorney duly admitted to practice law before the courts of the State of New York, dated December 23, 2022, and the accompanying proposed *amicus curiae* brief in support of the Appellant, the undersigned will move this Court on January 3, 2023, at 9:30 A.M., or as soon thereafter as counsel may be heard, at 20 Eagle Street, Albany, New York 1220, for an order pursuant to N.Y.C.R.R. § 500.23(a) (1) granting the Chamber of Commerce of the United States of America leave to appear as *amicus curiae* in the above-captioned action, (2) accepting the brief attached hereto as Exhibit A, and (3) granting such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to 22 N.Y.C.R.R. § 500.21(b), notice via overnight mail is provided at least nine (9) days prior to the return date of this Motion.

Dated: December 23, 2022.

DECHERT LLP



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Steven A. Engel

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To:

Clerk of the Court
New York Court of Appeals
20 Eagle Street
Albany, New York 12207

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Respondents-Respondents.

Affirmation in Support of Motion for Leave to File *Amicus Curiae* Brief in Support of Petitioner-Appellant.

Steven A. Engel, Esq., an attorney admitted to practice in the State of New York, hereby affirms under penalty of perjury:

1. I am a partner at the law firm of Dechert LLP and counsel for the Chamber of Commerce of the United States of America. I am familiar with the legal issues involved in this appeal. I submit this affirmation in support of the motion of the Chamber for leave to file the accompanying brief as *amicus curiae* in support of Long Island Pure Water's Motion for Leave to Appeal.

2. The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional

organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

3. The Chamber has a strong interest in ensuring that state agencies exercise their rulemaking authority responsibly and consistent with the procedural safeguards that the New York State Legislature has adopted, including those provided in the State Administrative Procedure Act ("SAPA"), to ensure that agencies make informed decisions that serve the public interest. The Chamber's members rely on these safeguards, and they have a strong interest in ensuring that regulated parties may exercise their statutory right to judicial review of unlawful rules.

4. In the attached brief, the Chamber explains why the Appellate Division's decision is incorrect and why it would harm the interests of Chamber members and other businesses in New York. The Appellate Division, Third Department, did not dispute that the petitioner's members had alleged cognizable economic harm from the challenged regulation, yet it applied New York's "zone of interest" test for standing in a manner that would allow the New York State Department of Health ("DOH") to avoid any judicial review of its compliance with SAPA.

5. Absent this Court's intervention, the Third Department's decision threatens to sow confusion across the business community in New York and to insulate defective rules from judicial review. The decision below risks severely curtailing the ability of Chamber members and others in the business community to challenge procedurally defective rules. The effect would be to impair or discourage business activity in New York.

6. The participation of *amicus curiae* would be particularly helpful to this Court. Both *amicus* and its members bring a broad range of perspectives and experiences to the issue. *Amicus* is well-suited to explain the effect that the Appellate Division's decision will have on the broader business community, and why this Court should intervene to prevent that effect.

7. No party's counsel contributed content to the accompanying brief or participated in the preparation of the brief in any other manner.

8. No person or entity other than *amicus* and its counsel have made any monetary contributions intended to fund the preparation or submission of this brief.

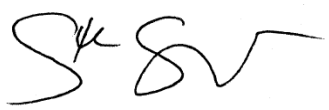
9. Counsel for the Petitioner-Appellant consents to the motion. Counsel for the Respondents-Respondents takes no position on the motion.

WHEREFORE, I respectfully request that this Court enter an order (1) granting the Chamber leave to submit the accompanying brief as *amicus curiae* in support of Long Island Pure Water's Motion for Leave to Appeal, (2) accepting

the brief that has been filed and served along with this motion, and (3) granting such other and further relief as this Court deems just and proper.

Dated: December 23, 2022.

Respectfully Submitted,



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STATEMENT UNDER RULE 500.1(f)

Pursuant to Rule 500.1(f) of this Court's Rules of Practice, the Chamber of Commerce of the United States of America ("Chamber") states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation. It is affiliated with the Center for International Private Enterprise and the United States Chamber of Commerce Foundation. Its subsidiaries include CC1, LLC; CC2, LLC; and Madison County Record, Inc.

Exhibit A – Proposed Brief

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INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber has a strong interest in ensuring that state agencies exercise their rulemaking authority responsibly and consistent with the procedural safeguards that the New York State Legislature has adopted, including those provided in the State Administrative Procedure Act ("SAPA"), to ensure that agencies make informed decisions that serve the public interest. The Chamber's members rely on these safeguards, and they have a strong interest in ensuring that parties with economic interests may exercise their statutory right to judicial review of unlawful rules that injure them.

Here, the Appellate Division, Third Department, agreed that the petitioner's members had established economic harm from the challenged regulation, yet it applied New York's "zone of interests" test for standing in a manner that would

allow the New York State Department of Health ("DOH") to avoid any judicial scrutiny of its compliance with SAPA. Absent this Court's intervention, the Third Department's decision threatens to sow confusion across the business community in this State and to insulate defective rules from judicial review.[1]

INTRODUCTION

The New York State Administrative Procedure Act stands as a bulwark against arbitrary, capricious, and otherwise unlawful agency action. SAPA "guarantees that the actions of administrative agencies conform with sound standards developed in this state and nation since their founding." SAPA § 100. To that end, SAPA requires agencies to comply with reasonable and appropriate procedures necessary to ensure rational decision-making, including "cost-benefit analysis," which this Court has described as "the essence of reasonable regulation." *N.Y. Statewide Coal. of Hisp. Chambers of Com. v. New York City Dep't of Health & Mental Hygiene*, 23 N.Y.3d 681, 697 (2014).

To ensure that agencies comply with SAPA's requirements, the statute expressly guarantees the right to judicial review. SAPA §§ 202(8), 205. Yet the

[1] Pursuant to 22 N.Y.C.R.R. § 500.23(a)(4)(iii), *amicus curiae* states that no party's counsel contributed content to this brief or participated in the preparation of this brief in any other manner, and no party, party's counsel, or other person or entity, other than *amicus curiae* and its counsel, contributed money that was intended to fund the preparation or submission of this brief.

judiciary's power to enforce SAPA's requirements would be little more than a paper promise if no party injured by a violation had standing to seek judicial redress.

In the decision below, the Third Department misread this Court's precedents to hold that the interests asserted by the members of Petitioner-Appellant Long Island Pure Water, Ltd. ("LIPW"), who had indisputably alleged economic injury directly flowing from the corrective actions that the state regulations require, nonetheless fell outside the "zone of interests" entitled to judicial review. *See Long Island Pure Water, Ltd. v. N.Y.S. Dep't of Health*, 209 A.D.3d 1128, 1130 (3d. Dep't 2022). The Third Department reached that conclusion by measuring petitioner's standing based entirely upon the zone of interests of the public-health statute upon which DOH premised its regulatory authority. In so doing, the Third Department ignored the Legislature's judgment that a statutory right to judicial review is available to enforce SAPA.

The Third Department's decision not only closes the courthouse door to LIPW, but it risks depriving a range of directly interested parties of the right to judicial review of potential SAPA violations. The decision warrants review because it directly conflicts with this Court's precedents, which have expressly recognized that the standing analysis must consider the zone of interests under SAPA. *See, e.g.*, *Ass'n for a Better Long Island, Inc. v. N.Y. State Dep't of Envtl. Conservation*, 23 N.Y.3d 1 (2014). The decision also qualifies for review because it presents a "novel"

issue of broad "public importance." 22 N.Y.C.R.R. § 500.22(b)(4). In conflict with New York public policy, the decision would insulate procedurally defective rules from any judicial review, an issue of particular concern given the Third Department's jurisdiction over the seat of state government, the locus of agency decision-making. The Chamber respectfully requests that the Court grant the petitioner's motion for leave to appeal and set aside the Appellate Division's flawed decision.

ARGUMENT

I. This Court Should Grant Review To Ensure That Litigants May Challenge Agency Actions That Violate the State Administrative Procedure Act.

The Third Department's decision deprives the petitioner of a right to judicial review expressly provided under SAPA. When the New York State Legislature imposed on the DOH the duty to consider the costs and benefits underlying new water-pollution standards, it plainly contemplated that the parties injured by a failure to appropriately consider costs would be entitled to judicial review. Because the Third Department's standing analysis would eliminate this entitlement in many cases, the Court should grant review to ensure that litigants have the opportunity to obtain their day in court.[2]

[2] The Chamber takes no position in this brief on Petitioner's separate argument for standing based on a theory of exposure to contaminants. This brief is limited to discussing standing based on economic injury—the substantially higher costs

A. The Appellate Division Misapplied New York Standing Doctrine.

The New York State Legislature requires administrative agencies to comply with the rulemaking procedures set forth in SAPA. *See* SAPA § 201. SAPA seeks to ensure that agencies exercise their delegated rulemaking authority rationally and in the public interest. As this Court has explained, "cost-benefit analysis is the essence of reasonable regulation," and an agency that ignores costs "would be acting irrationally." *N.Y. Statewide Coal. of Hisp. Chambers of Com.*, 23 N.Y.3d at 697. Therefore, several SAPA provisions expressly require agencies to consider the economic costs of new rules. Section 202-a(1) requires an agency to consider alternatives that avoid heaping "undue deleterious economic effects or overly burdensome impacts" on individuals or the economy. Section 202-a(3)(c) requires that an agency include a "statement detailing the projected costs of the rule" in a regulatory impact statement. And Section 202(5)(b) requires an agency to address comments describing cost projections that "differ[] significantly" from its own.

SAPA also provides that injured parties may turn to the courts to ensure compliance with its requirements. When a New York agency fails to substantially comply with the statute's rulemaking procedures, parties may seek judicial review of the agency's action. *See* SAPA § 202(8) ("A proceeding may be commenced to

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imposed on Petitioner's members because of the corrective actions that must be taken to comply with the regulations adopted by the New York DOH.

contest a rule on the grounds of noncompliance with the procedural requirements" in Sections 202, 202-a, and 202-b of SAPA); SAPA § 205 ("right to judicial review of rules"); *see also Ass'n for a Better Long Island*, 23 N.Y.3d at 7–8; *Schwartfigure v. Hartnett*, 83 N.Y.2d 296, 301 (1994) (recognizing standing to sue for "noncompliance" with SAPA).

While SAPA provides for judicial review, the petitioner still must demonstrate standing. In New York, "[s]tanding is a threshold determination, resting in part on policy considerations," that asks whether a party "should be allowed access to the courts to adjudicate the merits of a particular dispute." *Ass'n for a Better Long Island, Inc.*, 23 N.Y.3d at 6 (quotations omitted). To further its "policy not to render advisory opinions," this Court ensures that only parties with "some concrete interest" in the outcome of the action may seek redress. *Soc'y of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 772 (1991). As relevant here, a party may challenge a regulation if it has suffered an injury-in-fact that at least arguably "falls within the 'zone of interests,' or concerns, sought to be promoted or protected by the statutory provision under which the agency has acted." *Id.* at 773 (citations omitted); *see also Dairylea Coop. Inc. v. Walkley*, 38 N.Y.2d 6, 9 (1975).

Under this analysis, a party suffering an economic injury should have standing to challenge the agency's failure to conduct an appropriate cost-benefit analysis under SAPA. The provisions directing agencies to consider alternatives "avoid[ing]

undue deleterious economic effects," SAPA § 202-a(1), and to address comments that challenge the agency's "projected costs," *id.* § 202(5)(b), show that economic interests, and the avoidance of economic injury, count among the "concerns . . . sought to be promoted or protected by the statutory scheme," *Soc'y of Plastics Indus.*, 77 N.Y.2d at 772. And, as this Court has recognized, any rulemaking scheme designed to produce rational, nonarbitrary rules must in some way concern itself with costs. *See N.Y. Statewide Coal. of Hisp. Chambers of Com.*, 23 N.Y.3d at 697; *cf. Michigan v. Envtl. Prot. Agency*, 576 U.S. 743, 752 (2015) ("One would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits.").

Prior to the decision below, this Court had recognized that parties challenging rules that concretely burden them fell within SAPA's zone of interests. In *Association for a Better Long Island*, this Court held that property owners could maintain an action against a state agency for violating SAPA § 202-a(3)(c), which requires the preparation of a regulatory impact statement. The Court recognized that the regulation's impact on the petitioner's property represented a concrete injury "within the zone of interests protected by the procedural statutes." 23 N.Y.3d at 8. As the Court explained:

> The asserted statutory provisions set forth certain procedural steps to be followed when promulgating rules or regulations. The alleged violations, including the deprivation of an opportunity to be heard,

> constitute injuries to petitioners within the zone of interests sought to be protected by the statutes.

Id.

Despite this Court's clear holding, the Third Department rejected LIPW's standing in the decision below by treating SAPA as irrelevant to whether the petitioner had standing. Although LIPW had alleged a SAPA violation, the Appellate Division viewed the question of standing as turning exclusively on whether the economic injuries fell within the zone of interests of the New York Public Health Law, not SAPA. *See Long Island Pure Water, Ltd.*, 209 A.D.3d at 1130. The Appellate Division did not explain why it believed SAPA to be irrelevant to the question of standing to assert a claim *under* SAPA, nor did the court cite any relevant authority for that conclusion. The end result, however, was that under the Third Department's decision, many petitioners demonstrating an injury-in-fact based on an agency's imposition of an unlawful, unnecessarily costly rule would be left without their day in court. That decision conflicts with this Court's precedent.

B. The Appellate Division Erected An "Impenetrable Barrier" To Administrative Review Of A Class Of Defective Rules.

The decision below also risks immunizing an entire category of procedurally defective rules against judicial review. Such a result runs directly contrary to this Court's prior recognition of the public interest in ensuring the judicial review of unlawful action. In determining the prudential requirements of standing, the Court

has emphasized that the analysis "should not be heavy-handed." *Matter of Sun-Brite Car Wash v. Bd. of Zoning & Appeals of Town of N. Hempstead*, 69 N.Y.2d 406, 413 (1986). The Court thus does not apply the zone-of-interest test "in an overly restrictive manner where the result would be to completely shield a particular action from judicial review." *Ass'n for a Better Long Island, Inc.*, 23 N.Y.3d at 6.

In conducting its standing analysis, this Court has concluded that "economic costs" do not fall within the zone of interests of all state laws. *See, e.g.*, *Soc'y of Plastics Indus.*, 77 N.Y.2d at 777 ("Economic injury is not by itself within SEQRA's [the State Environmental Quality Review Act's] zone of interests."); *see also N.Y. Propane Gas Ass'n v. N.Y.S. Dep't of State*, 17 A.D.3d 915, 918 (3d Dep't 2005) (holding that costs imposed on liquified-petroleum-gas distributors are not within the zone of interests of the Uniform Fire Prevention and Building Code). Yet in reaching such a conclusion, the Court has also identified the other plaintiffs capable of challenging unlawful agency action.

Thus, in *Society of Plastics Industries*, the Court held that "economic costs" were not sufficient by themselves to challenge a SEQRA violation, but emphasized that there remained "a large pool of potential plaintiffs whose interests satisfy the policy goals of SEQRA and of the standing doctrine, with no compromise of the courts' commitment to the enforcement of SEQRA." *Soc'y of Plastics Indus.*, 77 N.Y.2d at 778; *see also N.Y. Propane Gas Ass'n*, 17 A.D.3d at 916–18 (reading the

Uniform Fire Prevention and Building Code as concerned with costs to "the construction industry," not to "purveyors of flammable materials").

In the decision below, the Third Department rejected the petitioners' standing without identifying what parties, if any, were better situated to challenge agency action in violation of SAPA's procedural safeguards. The court admitted that LIPW had alleged an economic injury from the DOH regulation, but it halted its analysis after concluding that economic costs did not count under the Public Health Law. *Long Island Pure Water, Ltd.*, 209 A.D.3d at 1130. In so doing, the court overlooked that LIPW had alleged a violation of SAPA, and that SAPA provided an independent right of judicial review. The Third Department neither explained why economic injury would fall outside the zone of interests of SAPA nor explained what other parties would likely have standing to challenge a violation.

The Third Department's exclusive focus on the Public Health Law, coupled with its incomplete analysis, risks insulating a massive class of procedurally defective rules from review. If the Third Department were correct that SAPA does not confer an independent basis for standing, then parties suffering an economic injury would have greater difficulty challenging unlawful agency action in violation of SAPA's cost-benefit requirements. To the extent that the Public Health Law is the exclusive source of standing here, and the "economic costs" of regulation do not count, then it is not clear that there would be any party at all who could challenge

the violations of SAPA's cost-benefit provisions. Such a result, particularly as applied to a rule that imposes massive involuntary costs on private parties, runs directly contrary to this Court's precedents and to the public policy of New York.

C. The Third Department Cited No Relevant Authority In Support Of Its Decision.

The Appellate Division's decision departs from this Court's precedents, while offering no relevant support for its contrary result. The court principally relied on *Society of Plastics Industry*, 77 N.Y.2d 761, but the Court there did not hold that economic injury would never fall within the zone of interests of a state procedural statute. In that case, the petitioner had challenged a county rule because of the failure to prepare the environmental impact statement required under SEQRA, a statute that is very different from SAPA. *Id.* at 766–67. The Court recognized that (in marked contrast with SAPA), SEQRA "contain[ed] no provision regarding judicial review" and found that the Legislature had made a deliberate choice not to incorporate a citizen-suit provision. *Id.* at 770. The Court concluded, under those circumstances, that "[e]conomic injury is not by itself within SEQRA's zone of interests." *Id.* at 777. Yet the Court emphasized that many other plaintiffs who could challenge SEQRA violations and thus, that this was not "a case where to deny standing to this plaintiff would be to insulate governmental action from scrutiny." *Id.* at 779.

This Court's holding in *Society of Plastics Industry* is thus entirely consistent with a finding that LIPW has standing in this case. Indeed, in *Association for a*

Better Long Island, the Court made clear that the kind of economic harms that do not fall within SEQRA's zone of interests are in fact sufficient under SAPA. In that case, the petitioner alleged violations of both SEQRA and SAPA. The Court reiterated that petitioners' alleged property injury would not fall within SEQRA's zone of interests, 23 N.Y.3d at 9, yet it found the injury sufficient to support standing for a SAPA violation. *See id.* at 8. Inexplicably, the Third Department did not consider *Association for a Better Long Island* at all, even though the case was cited and discussed in the parties' briefs before the court.

In addition to relying on *Society of Plastics*, the Third Department cited two of its own precedents, which had found plaintiffs to fall outside the zone of interests of two other statutes for standing purposes. *See N.Y. Propane Gas Ass'n*, 17 A.D.3d at 918; *N.Y.S. Ass'n of Criminal Defense Lawyers v. Kaye*, 269 A.D.2d 14, 17 (3d Dep't 2000), *aff'd on other grounds*, 96 N.Y.2d 512 (2001). Yet neither case addressed whether economic harm fell within SAPA's zone of interests, and the statutes at issue expressed nothing like SAPA's concern for economic harm.

Thus, in *N.Y. Propane Gas Association*, the court held that the Uniform Fire Prevention and Building Code ("UFC") was concerned with fire safety and construction costs. 17 A.D.3d at 918. Because the UFC was "silent on economic costs that may be incurred by purveyors of flammable materials," the costs imposed upon liquified-petroleum-gas distributors fell outside its zone of interests. *N.Y.*

Propane Gas Ass'n, 17 A.D.3d at 917–18. And in *New York State Association of Criminal Defense Lawyers*, the court held that public defenders' economic interests did not give them standing to challenge this Court's authority to set pay schedules for their work because "the protection of petitioner's pecuniary interests [were] not encompassed by the legislative purpose" of the Judiciary Law. 269 A.D.2d at 17. These analyses shed little light on whether economic injuries fall within the zone of interests of an administrative statute that explicitly commands agencies, for example, to "avoid undue deleterious *economic* effects." SAPA § 202-a(1) (emphasis added); *see also id.* §§ 202(5)(b), 202-a(3)(c).

Finally, the Third Department relied upon *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987), a case that did not involve standing or SAPA but does make clear the importance of judicial review of unlawful agency action. The Third Department quoted *Boreali* for the proposition that "the agency in this case has not been authorized to structure its decision making in a 'cost-benefit' model and, in fact, has not been given any legislative guidelines at all for determining how the competing concerns of public health and economic cost are to be weighed." *Id.* at 12 (citation omitted). In the quoted passage, the Court explained that the agency had exceeded its statutory authority in seeking to justify regulations based on cost-benefit analysis that the Legislature had *not* authorized.

By contrast here, the Legislature conferred on the DOH the authority to promulgate environmental regulations but made such authority contingent on compliance with SAPA's procedural safeguards, which require the agency to account for costs. *See, e.g.*, *N.Y. Statewide Coal. of Hisp. Chambers of Com.*, 23 N.Y.3d at 697. *Boreali* thus was a case where the Court did not hesitate to declare that the executive agency had failed to comply with the law. If anything, it requires the contrary result from the decision below.

II. The Appellate Division's Decision Threatens To Create Substantial Uncertainty And Harm To Businesses Operating In The State.

The Chamber has submitted this brief because the Appellate Division's decision injects uncertainty into New York's regulatory environment and, if allowed to stand, would deprive businesses of the ability to turn to the courts to challenge procedurally defective rules that cause economic harm.

First, there can be little doubt that this decision creates uncertainty. Under the Third Department's decision, a petitioner's economic injury is not sufficient to confer standing to challenge agency action in violation of SAPA's safeguards unless the injury also falls within the zone of interests of the agency's authorizing statute. But SAPA confers a right to judicial review that is independent of other statutes. *See* SAPA §§ 202(8), 205. And this Court has previously recognized standing for injury caused in violation of SAPA. *See Ass'n for a Better Long Island*, 23 N.Y.3d at 7–8; *see also Schwartfigure*, 83 N.Y.2d at 301 (recognizing standing to sue for

"noncompliance" with SAPA rulemaking procedures). After the Appellate Division's decision, New York businesses are left to guess which standing inquiry will apply if they bring an action to challenge a procedurally defective rule.

Second, the decision risks depriving New York businesses of the ability to challenge illegal agency rules. Administrative procedures are not mere paperwork formalities; they "infuse[] the administrative process with [a] degree of openness, explanation, and participatory democracy" that it would otherwise lack, which helps "negate[] the dangers of arbitrariness and irrationality in the formulation of rules." *Weyerhauser Co. v. Costle*, 590 F.2d 1011, 1027–28 (D.C. Cir. 1978) (quotations omitted) (considering SAPA's federal counterpart).

And they are perhaps most important to the New York business community. It is no secret that the economic burden of many agency regulations fall disproportionately on businesses, especially small ones. *See* U.S. Chamber of Com. Found., *Final Report: The Regulatory Impact on Small Business* 4, 18–25 (March 2017), https://www.uschamberfoundation.org/smallbizregs/assets/files/Small_Business_Regulation_Study.pdf. If state regulators disregard alternatives that avoid "undue deleterious economic effects," SAPA § 202-a, ignore cost-related public comments, *id.* § 202(5)(b), or fail to factor costs into a regulatory impact statement, *id.* § 202-a(3)(c), businesses in this state are likely to suffer a disproportionate share of the

harm. To ensure rational and appropriate regulation, businesses rely heavily on SAPA's procedural protections. But those protections mean little if businesses cannot seek judicial redress when an agency fails to comply with SAPA's safeguards and imposes economic harm.

The decision below deprives businesses of that vital access to the courts. By ignoring SAPA, the decision implies that an injured business may not establish standing and challenge a rule based on a violation of SAPA alone. Unable to get through the courthouse doors, businesses will be left to labor under illegal rules that harm them economically. And agencies, recognizing that the subjects of their rules have no judicial recourse, will have less of an incentive to comply with SAPA's procedures. Such a decision flouts the intention of the legislature, which sought to "*guarantee[]* that the actions of administrative agencies conform with sound standards," SAPA § 100 (emphasis added), and will harm the economy of this State.

III. This Case Provides A Suitable Vehicle For Review Of An Urgent Question.

This case presents a good opportunity for this Court to correct the Third Department's mistake and confirm that economically injured plaintiffs can argue standing under SAPA. The Appellate Division rested its decision entirely on its judgment that the economic injury did not fall within the zone of interests of the "enabling legislation," ignoring SAPA along the way. *Long Island Pure Water, Ltd.*, 209 A.D.3d at 1130. The Third Department's decision was incorrect. But to the

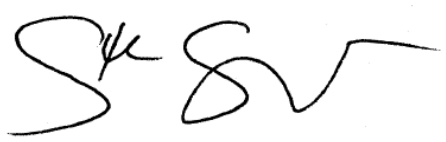
extent that there is any uncertainty over how the zone-of-interests test applies to claims for violation of SAPA, this case provides the Court with an opportunity to clarify the law and confirm that parties who suffer economic harm flowing from a regulation are the appropriate parties to ensure that the regulation complies with SAPA.

CONCLUSION

For the foregoing reasons, the Chamber respectfully requests that the Court grant LIPW's motion for leave to appeal.

Dated: December 23, 2022

Respectfully Submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 500.13(c)(1) of the Rules of Practice of the Court of Appeals of the State of New York, I hereby certify that, according to the word count of the word-processing system used to prepare this brief, the total word count for all printed text in the body of the brief exclusive of the material omitted under Rule 500.13(c)(3), is 3,796 words.

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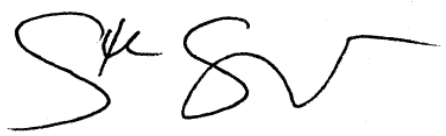
Dated: December 23, 2022.



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