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NEW YORK COURT OF APPEALS  
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In the Matter of the Application of NEW YORK CITY COALITION TO END LEAD POISONING, INC.; NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC.; NEW YORK STATE TENANTS & NEIGHBORS COALITION, INC.; MET COUNCIL, INC.; SINERGIA, INC.; ALIANZA DOMINICANA, INC.; CITY PROJECT, INC.; EAST NEW YORK UNITED FRONT, by its Chairperson, CHARLES BARRON; EL PUENTE OF WILLIAMSBURG, INC.; GREATER NEW YORK LABOR-RELIGION COALITION, INC.; MAKE THE ROAD BY WALKING, INC.; NEW YORK CITY ENVIRONMENTAL JUSTICE ALLIANCE, INC.; SOUTH BRONX COALITION FOR CLEAN AIR, INC.; QUEENS LEAGUE OF UNITED TENANTS, INC.; INOCENCIA NOLASCO, GRECIA MARIA VASQUEZ, and her minor child, KATHERINE FIGUERO by her next friend and mother, GRECIA MARIA VASQUEZ; CATHERINE RODRIGUEZ, and her minor  
(caption continued inside)

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**BRIEF OF AMICI CURIAE**

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**LEO ORRIS, M.D.,**

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**IRWIN SOLOMON, M.D.,**

**REBECCA G. SOLOMON, M.D.,**

**BAILUS WALKER, JR., Ph.D., M.P.H., and**

**MICHAEL WEITZMAN, M.D.,**

**IN SUPPORT OF PETITIONERS-PLAINTIFFS-APPELLANTS'**  
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PUERTO RICAN LEGAL DEFENSE AND  
EDUCATION FUND, INC.

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(caption continued)

children, DESTINY ALONSO, BIANCA RODRIGUEZ, and JOANNE MARRERO, by their best friend and mother, CATHERINE RODRIGUEZ; ANA GOMEZ, and her minor children, CHRISTIAN GOMEZ and STEPHANIE GOMEZ, by their next friend and mother, ANA GOMEZ; MARIA CELIA NOLASCO and her minor grandchildren JUSTIN AGRAMONTE and JUAN NOLASCO, JR., by their next friend and guardian, MARIA CELIA NOLASCO; and DAVID M. MONAHAN and JULIE MONAHAN, and their minor child IRIS EVE MONAHAN, by her next friends and parents, DAVID M. MONAHAN and JULIE MONAHAN,

Petitioners-Plaintiffs-Appellants,

for a Judgment pursuant to Article 78 and § 3001 of the CPLR,

-against-

PETER VALLONE, as Speaker of the New York City Council; THE NEW YORK CITY COUNCIL; RUDOLPH GIULIANI, as Mayor of the City of New York; and the CITY OF NEW YORK,

Respondents-Defendants-Respondents.  
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COURT OF APPEALS

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NEW YORK CITY COALITION TO END LEAD  
POISONING; et al.,

Petitioners-Plaintiffs-Appellants,

- against -

N.Y. County Clerk's  
Index No. 120911/99

PETER VALLONE, as Speaker of the New York City  
Council; et al.,

Respondents-Defendants-Respondents.

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BRIEF OF AMICI CURIAE CATHY FALVO, M.D.; NICK FARR, Esq.; H. JACK GEIGER, M.D., M.Sci. Hyg.; CHARLES GILBERT, Ph.D.; LYNN R. GOLDMAN, M.D.; PHILIP LANDRIGAN, M.D.; BRUCE LANPHEAR, M.D.; STEPHEN M. LEVIN, M.D.; MICHAEL McCALLEY, M.D., Ph.D.; IRVING H. MAUSS, M.D.; HERBERT NEEDLEMAN, M.D.; DAVID NEWMAN, M.A., M.S.; EDWARD OLMSTED, C.I.H., LEO ORRIS, M.D.; MARY LOUISE PATTERSON, M.D.; SERGIO PIOMELLI, M.D.; JOHN F. ROSEN, M.D.; MARTIN RUTSTEIN, Ph.D.; DON RYAN, M.U.R.P.; MONROE SCHNEIDER, M.D.; JOEL SHUFRO, Ph.D.; VICTOR W. SIDEL, M.D.; IRWIN SOLOMON, M.D.; REBECCA G. SOLOMON, M.D.; BAILUS WALKER, JR., Ph.D., M.P.H., and MICHAEL WEITZMAN, M.D., IN SUPPORT OF PETITIONERS-PLAINTIFFS-APPELLANTS

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The foregoing concerned scientists, researchers, physicians, and public health experts, appearing as amici curiae pursuant to permission granted by this Court, respectfully submit this brief in support of the petitioners-plaintiffs-appellants (herein “petitioners”) appeal to this Court from the March 26, 2002, decision and order of the Appellate Division, First Department, New York City Coalition to End Lead Poisoning (“NYCCELP”) v. Vallone, 293 A.D.2d 85 (1st Dep't 2002)(R3736).<sup>\*</sup> Amici urge reversal of the Appellate Division’s decision and order, and urge the reinstatement of the decision (R15b) and judgment (R16) of the IAS court invalidating Local Law 38 of 1999 (“LL 38”).

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\* Record References are indicated as (R\_).

Among the twenty-six amici are many of the leading experts on lead poisoning prevention, not only in New York City, but in the nation (including two past presidents of the American Public Health Association). All but one of them participated in the debate concerning Local Law 38 of 1999 (“LL 38”), with either testimony, written submissions to the City Council and Health Department, statements at City Hall press conferences, or submission of expert affidavits in this case.

While petitioners ably support their legal contentions on the merits, amici respectfully aver that their brief will be of special assistance to this Court in its understanding of these issues, and thus should be considered under 22 N.Y.C.R.R. § 500.11(e)(3).

In addition, not only were the same group of amici (now augmented by Drs. Levin, Patterson, and Weitzman) granted leave to file a brief in support of petitioners by the Appellate Division below, NYCCELP v. Vallone, 293 A.D.2d at 86, 96, but the Court of Appeals as well granted this group of amici leave and accepted their brief in support of the petitioners’ motion for leave to appeal to this Court. \* NYCCELP v. Vallone, N.Y.L.J. Nov. 25, 2002, at 18 col. 1.

Amici urge that this Court reverse the Appellate Division because childhood lead poisoning is a critical public health issue; the outcome of this Court's decision will have a profound impact on the lives of children in New York.

Any legislative policymaking with respect to childhood lead poisoning prevention that fails to analyze and address the issue of lead dust is fatally flawed. The negative declaration issued by the City Council completely failed to address lead dust. Compounding this error, the Appellate Division's

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\* On those briefs the amici were joined by Evelyn A. Mauss, Sc. D., who had also participated in the testimony in opposition to LL 38. Dr. Mauss, who worked in the field of lead poisoning prevention in New York City since the 1960s, died in January of this year.

decision unaccountably ignored entirely the issue of lead dust as well, even though this issue was brought to that court's attention not only in extensive briefing by petitioners (and addressed by the IAS court below (R15j)) but as well in the brief submitted to the Appellate Division below by the within amici.\*

Amici summarize in this brief current scientific knowledge about the hazards of lead-contaminated dust to children's health, the need for safeguards to control lead dust during paint repair, and the importance of clearance testing to ensure that lead dust hazards do not remain. In particular, amici wish to advise this Court that there is no basis in current science (nor in the record) for respondents-defendants-respondents' ("respondents") repeated assertions, made in no less than three different briefs to the Appellate Division and now two briefs to this Court, that clearance testing is unreliable, unachievable, prohibitively expensive, and unavailable. The science is wholly to the contrary, and respondents' arguments on this score demonstrate a profound misunderstanding of these issues and underscore the reason why a careful environmental analysis was needed.

#### **STATEMENT OF INTEREST OF AMICI CURIAE**

Amicus CATHY FALVO, M.D., was among a group of eleven New York City Physician Advocates who jointly wrote to respondent Speaker Vallone on May 25, 1999, (R223), calling on the Council leadership to provide them and the public the opportunity to participate in a thorough and open review of any proposed new legislation on lead paint. Unfortunately, as the IAS court noted, (R15m), they received no response. (R218). Dr. Falvo is also President of the New York City chapter of Physicians for Social Responsibility.

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\* A copy of that brief was annexed at Tab M to the petitioners' Motion For Leave to Appeal to this Court (Sept. 6, 2002).



Amicus NICK FARR, Esq., served as Executive Director of the National Center for Lead-Safe Housing (now known as the National Center for Healthy Housing) from its inception in 1992 until his retirement last year, and now serves on its Board. The National Center is nationally recognized for its research on sources and pathways of lead exposure in the residential environment and evaluating the effectiveness of a range of prevention and hazard control interventions. The National Center developed the United States Department of Housing and Urban Development's ("HUD") 1995 Technical Guidelines for the Evaluation and Control of Lead Hazards in Federally Assisted Housing and manages the national evaluation of HUD's lead hazard control grants program. Mr. Farr is nationally recognized in the fields of affordable housing policy and finance as well as lead safety. Mr. Farr wrote to respondent Speaker Vallone in June of 1999 regarding his concerns over the proposed Local Law 38, indicating his belief that the "existing regulations describ[ing] safe work practices ... are very reasonable and should be retained," (R595), and of the necessity for lead dust testing. He also testified before the New York City Council's housing and buildings committee hearing on proposed Local Law 38 on June 21, 1999. (R1512-61).

Amicus H. JACK GEIGER, M.D., M.Sci. Hyg., is an Arthur C. Logan Professor of Community Medicine (emeritus) at City University of New York Medical School, and a former national president of Physicians for Social Responsibility. Dr. Geiger as well was one of the eleven New York City Physician Advocates who jointly wrote to respondent Speaker Vallone on May 25, 1999, (R223) calling on the Council leadership to provide them and the public the opportunity to participate in a thorough and open review of any proposed new legislation on lead paint.

Amicus CHARLES GILBERT, Ph.D., M.Sc., is a toxicologist and epidemiologist, much of whose professional career for the last 25 years has been devoted to lead poisoning prevention, with continuous research into the sources, routes, and prevention of childhood lead exposure. He was Scientific Advisor for a Lead Hazard Education and Abatement Project funded by HUD, and has served on numerous national, state and local lead advisory committees including as Subject Matter Expert for the United States Environmental Protection Agency ("EPA") National Lead Certification Examination System. From 1978 up to the present he developed and taught lead inspection, abatement, and education courses. He drafted lead poisoning prevention regulations and bills for the States of Massachusetts and Connecticut. Dr. Gilbert's curriculum vitae is at (R361). Dr. Gilbert submitted an expert affidavit in this case (R339).

Amicus LYNN R. GOLDMAN, M.D., a pediatrician and epidemiologist, is a professor at the Johns Hopkins University Bloomberg School of Public Health where her areas of focus include environmental health policy and children's environmental health. Dr. Goldman is a recognized expert in multiple dimensions of childhood lead poisoning prevention. She founded a lead poisoning prevention program in California and served as its first director, and also served from as a member of the Centers for Disease Control and Prevention Advisory Committee on Childhood Lead Poisoning Prevention from 1990 to 1993. From 1993 to 1998, Dr. Goldman served as Assistant Administrator of the Environmental Protection Agency for the Office of Prevention, Pesticides and Toxic Substances, which included (among other things) oversight of all EPA activities related to protecting children from lead-based hazards in housing. Dr. Goldman is currently vice chairman of the Institute of Medicine Roundtable on Environmental Health Sciences. On June 9, 1999, amicus Goldman wrote to

respondent Speaker Vallone to convey her concerns that Local Law 38 would “not provide adequate protection to children because of the failure to require dust testing for the determination of a hazard.”

(R536)

Amicus PHILIP LANDRIGAN, M.D., is a pediatrician and Chair of the Department of Community and Preventive Medicine at the Mount Sinai School of Medicine. For more than 32 years, he has undertaken research into childhood lead poisoning and has led efforts nationally and locally to protect children against lead. He is the author of over 100 scientific papers. (R133-58) He has served since 1993 as Chair of the New York State Advisory Council on Lead Poisoning Prevention, created pursuant to New York Public Health Law § 1370-b. Dr. Landrigan wrote to Speaker Vallone on May 25, 1999 (R223) and June 29, 1999 (R118), testified at the hearing before the Mayor prior to the adoption of LL 38 (R2768-70) and submitted an expert affidavit in this case. (R111).

Amicus BRUCE LANPHEAR, M.D., is an Associate Professor of the Department of Pediatrics and the Director of the General Pediatric Research Fellowship Training Program at Children’s Hospital Medical Center and the University of Cincinnati. He has devoted much of his professional career to lead poisoning prevention, serving as the scientific consultant to the National Center for Lead-Safe Housing and chairing HUD’s Committee on Lead-Contaminated House Dust and Soil with Children’s Blood Lead Levels from 1995 to 1998. (R251). He has published original research and written extensively on lead poisoning, with a particular focus on lead-contaminated dust (R252) (his curriculum vitae is at (R259)). He wrote a letter to Health Commissioner Neal Cohen on June 14, 1999, to express his concerns pertaining to New York City lead poisoning prevention legislation (R538), and submitted an expert affidavit in this case. (R249).

Amicus STEPHEN M. LEVIN, M.D., has been the medical director of the Mount Sinai Irving J. Selikoff Center for Occupational and Environmental Medicine since 1987. He is a member of the faculty in the Department of Community and Preventive Medicine at the Mount Sinai School of Medicine, and he is active in the occupational medicine teaching program for medical students and residents. His research interests have focused on asbestos-related disease, other occupational lung diseases, and heavy metal toxicity. He has received funding from the National Institute of Occupational Safety and Health (NIOSH) to conduct studies of the health effects of exposure to lead, asbestos, and silica among construction workers in New York City. Dr. Levin has served as a consultant to the New York State, New Jersey, and New York City Departments of Health on the health hazards of environmental pollutants. In response to the events of September 11, 2001, Dr. Levin continues to devote his expertise to the evaluation and treatment of patients who have developed respiratory and psychological illnesses as a consequence of their exposures and experiences at or near the site of the World Trade Center (WTC) disaster. He is now Co-director of the WTC Worker and Volunteer Medical Screening Program, funded by the Center for Disease Control and Prevention, which will provide medical assessments, diagnostic referrals and occupational health education for over 8,500 workers and volunteers who performed rescue and recovery work at the WTC site.

Amicus IRVING H. MAUSS, M.D., Professor Emeritus of Clinical Pediatrics, Cornell University School of Medicine, is a board member of Physicians for Social Responsibility. In his practice, he has seen first-hand how young New York children suffer elevated lead levels unless every precaution is taken to remove lead paint from where it can become accessible to the children in residential housing; otherwise, the dangers to child health are immediate, profound, and devastating. He

has seen how lead poisoning's effects hamper all the skills critical for educational success. Dr. Mauss organized a joint letter of New York City Physician Advocates to respondent Speaker Vallone on May 25, 1999, (R223) calling on the Council leadership to provide them and the public the opportunity to participate in a thorough and open review of any proposed new legislation on lead paint. Dr. Mauss also submitted an expert affidavit in this case. (R216).

Amicus MICHAEL McCALLEY, M.D., Ph.D., was (until last year) a Professor and Vice Chairman of the Department of Community and Preventative Medicine at Mount Sinai School of Medicine; he is now a Professor of Public Health and Preventative Medicine at Oregon Health Sciences University. Dr. McCalley was one of the eleven New York City Physician Advocates who jointly wrote to respondent Speaker Vallone on May 25, 1999, (R223) calling on the Council leadership to provide them and the public the opportunity to participate in a thorough and open review of any proposed new legislation on lead paint.

Amicus HERBERT NEEDLEMAN, M.D., is a Professor of Pediatrics and Science at the University of Pittsburgh. He has conducted research on lead poisoning for 27 years, and has treated lead poisoned children since the late 1950s. (R191-215). He is the author of over 70 scientific papers. (R196-215). He wrote to Health Commissioner Cohen and Speaker Vallone on June 10, 1999, regarding his concerns about proposed lead legislation in New York (R552), joined with other physicians in a letter to Speaker Vallone regarding these concerns (R223), attended a press conference at City Hall on June 28, 1999, (R192) to speak out against Local Law 38, and submitted an expert affidavit in this case. (R190).

Amicus DAVID NEWMAN, M.A., M.S., holds a Master of Science degree in Environmental and Occupational Health Science, and is an Industrial Hygienist for the New York Committee for Occupational Safety and Health. Amicus Newman submitted an expert affidavit in this case (R181-88) concerning, among other things, the need for lead dust testing and the specialized techniques and training for lead dust cleanup.

Amicus EDWARD OLMSTED, C.I.H., is a Certified Industrial Hygienist, an Accredited Lead-based Paint Inspector, and a Licensed Asbestos Investigator. He provides consulting and teaching services related to occupational safety and health, including industrial safety, indoor air quality, and industrial hygiene for labor unions and governmental agencies, and has extensive experience in control of dust and vapors, and has taught graduate courses in industrial ventilation for contaminant control and industrial hygiene. Mr. Olmsted submitted an expert affidavit in this case (R232-41) concerning, among other things, the need for dust testing, and the fact that ordinary household cleaning is not effective to eliminate lead dust; his curriculum vitae is at (R243-45).

Amicus LEO ORRIS, M.D. is a Clinical Professor of Environmental Medicine at New York University School of Medicine. Dr. Orris was one of the eleven New York City Physician Advocates who jointly wrote to respondent Speaker Vallone on May 25, 1999, (R223) calling on the Council leadership to provide them and the public the opportunity to participate in a thorough and open review of any proposed new legislation on lead paint.

Amicus MARY LOUISE PATTERSON, M.D., is an Assistant Professor of Pediatrics at Cornell University Medical Center. Dr. Patterson as well was one of the eleven New York City Physician Advocates who jointly wrote to respondent Speaker Vallone on May 25, 1999, (R223)

calling on the Council leadership to provide them and the public the opportunity to participate in a thorough and open review of any proposed new legislation on lead paint

Amicus SERGIO PIOMELLI, M.D., is the James A. Wolff Professor of Pediatrics and Director of the Pediatric Hematology Clinic, College of Physicians & Surgeons, Columbia University, where he directs one of the largest childhood lead poisoning screening programs in New York City. He is a long time researcher in the field of lead poisoning, including the development of the erythrocyte porphyrin test used to screen millions of children. He wrote to Speaker Vallone regarding his concerns about proposals to weaken New York City's lead laws on June 14, 1999 (R558). He also participated in the June 28, 1999, City Hall Press conference of medical and technical experts on childhood lead poisoning calling upon the Council to reject the Local Law 38 and allow more time for public review of the effects of any new lead paint bill, (R757) at which he stated that a “watering down of [New York City's] excellent regulations will cause many children to suffer loss of brain function.” (R758).

Amicus JOHN ROSEN, M.D., is a Professor of Pediatrics at Albert Einstein College of Medicine and author of over 75 scientific articles on childhood lead poisoning. Dr. Rosen was twice Chair of the Centers for Disease Control and Prevention Advisory Committee on Lead Poisoning. In Campbell v. Metropolitan Property and Casualty Insurance Co., 239 F.3d 179 (2d. Cir. 2001), the Second Circuit extensively reviewed Dr. Rosen's qualifications, and agreed with the trial court's conclusion that he “seems to be a preeminent expert in the field relied on by all the relevant government agencies to establish the science for the policies that the government has adopted.” Id. at 186. Dr. Rosen submitted two expert affidavits in this case (R293, 3538) and testified before the City Council

(R603, 1593-97) and Mayor (R2755-56), and in addition wrote to the Commissioner of Health on June 14, 1999 (R567) with his concerns pertaining to LL 38.

Amicus MARTIN RUTSTEIN, Ph.D., has been, since 1970, a Professor of Geological Sciences at the State University of New York at New Paltz. He holds a doctorate in geology, with concentrations in experimental mineralogy, physical chemistry, and geochemistry from Brown University in 1969. A major portion of his professional career has been devoted to research concerning the detection and analysis of environmentally hazardous minerals, particularly lead and asbestos, and he has published extensively in this field. Dr. Rutstein submitted two expert affidavits (dated March 27, 2001 and April 20, 2001) to the Appellate Division in this appeal in response to the City's motion for a stay, specifically addressing lead hazard detection methodologies.

Amicus DON RYAN, M.U.R.P., has served as Executive Director of the Alliance To End Childhood Lead Poisoning since its founding in 1990. The Alliance has helped shift the national approach from belated reaction to already-poisoned children to strategies to make housing safe from lead hazards in the first place. Mr. Ryan has closely followed the evolution of federal lead-safety legislation and appropriations; HUD and EPA regulations, guidelines, standards and training courses; and state legislation and local ordinances related to lead poisoning prevention. Mr. Ryan chaired the Implementation Committee of the national Task Force on Lead-Based Paint Hazard Reduction and Financing, which developed recommendations on workable and protective benchmark standards for property maintenance and hazard control. Mr. Ryan serves on the board of directors of the National Center for Healthy Housing (formerly known as the National Center for Lead-Safe Housing) and has written a number of articles about protecting children from lead hazards in their homes. Mr. Ryan



wrote to respondent Speaker Vallone on June 6, 1999, (R591-93) regarding his concerns over the proposed Local Law 38, indicating his belief that “the only way to ensure safety from lead dust hazards is to sample and analyze lead in settled dust on floors and other surfaces.” (R591) (emphasis added). He also testified before the New York City Council’s housing and buildings committee hearing on proposed Local Law 38 on June 21, 1999 (R1528-60). After the bill was amended after the hearing, Mr. Ryan again wrote to respondent Vallone on June 23, 1999 (R739-40), calling attention to the lack of adequate dust testing even in the amended bill, and wrote to all the Council Members on June 30, 1999 (R763-64), reiterating these concerns.

Amicus MONROE SCHNEIDER, M.D., is Clinical Professor of Orthopedic Surgery and Rehabilitation at the State University of New York Health Sciences Center. Dr. Schneider was one of the eleven New York City Physician Advocates who jointly wrote to respondent Speaker Vallone on May 25, 1999, (R223) calling on the Council leadership to provide them and the public the opportunity to participate in a thorough and open review of any proposed new legislation on lead paint.

Amicus JOEL SHUFRO, Ph.D., has been for 24 years the Executive Director of the New York Committee on Occupational Safety and Health, a coalition of 250 local unions concerned with the rights of workers to safe and healthful workplaces. He serves on numerous boards in his field, including the Mount Sinai - Irving J. Selikoff Center for Occupational and Environmental Medicine, the Bellevue/New York University Occupational and Environmental Medicine Health Clinic, and the New York City Hazardous Substances Advisory Board. On June 29, 1999, Dr. Shufro wrote to Speaker Vallone (R760) to express the grave concerns of NYCOSH over the weakening of the work safety practices embodied in Local Law 38.

Amicus VICTOR W. SIDEL, M.D., is a Distinguished University Professor of Social Medicine at Montefiore Medical Center, Albert Einstein College of Medicine, in Bronx, New York, president of the Public Health Association of New York City, a past president the American Public Health Association, and one of the founders of the Physicians for Social Responsibility in 1961. Dr. Sidel was one of the New York City Physician Advocates who jointly wrote to respondent Speaker Vallone on May 25, 1999, (R223) calling on the Council leadership to provide them and the public the opportunity to participate in a thorough and open review of any proposed new legislation on lead paint; he wrote an additional letter to respondent Vallone on June 15, 1999, regarding his concerns. (R574).

Amicus IRWIN SOLOMON, M.D., is an Associate Clinical Professor of Psychiatry at the New York University School of Medicine. Dr. Solomon was one of the eleven New York City Physician Advocates who jointly wrote to respondent Speaker Vallone on May 25, 1999, (R223) calling on the Council leadership to provide them and the public the opportunity to participate in a thorough and open review of any proposed new legislation on lead paint.

Amicus REBECCA G. SOLOMON, M.D., is a faculty member of the New York Psychoanalytic Institute. Dr. Solomon as well was among the eleven New York City Physician Advocates who jointly wrote to respondent Speaker Vallone on May 25, 1999, (R223) calling on the Council leadership to provide them and the public the opportunity to participate in a thorough and open review of any proposed new legislation on lead paint.

Amicus BAILUS WALKER, Jr., Ph.D., M.P.H. is Associate Director and Professor of Environmental and Occupational Medicine at Howard University Cancer Center. For the past nine years, Dr. Walker has chaired the Alliance To End Childhood Lead Poisoning and tracked the

evolution of lead poisoning prevention policies at the international, national, state and local levels. Dr. Walker is past president of the American Public Health Association, past Commissioner of Public Health for the Commonwealth of Massachusetts, and a former professor of Environmental Health and Toxicology at the School of Public Health, State University of New York at Albany. Dr. Walker currently chairs the Committee on Toxicology of the National Academies of Science. Dr. Walker wrote to respondent Speaker Vallone on June 11, 1999 (R576-77) regarding the need, among other things, to include lead dust in the definition of “lead dust hazards” and for the necessity of lead dust clearance testing. He spoke at a press conference at City Hall June 14, 1999, (R633) and followed up with another letter on June 16, 1999, to respondent Mayor Giuliani on June 16, 1999 (R579-81) with the same concerns and questioning the lack of scientific basis for the proposal. In a third letter on June 23, 1999, to respondent Vallone, Dr. Walker noted that the revised bill was still inadequate concerning lead dust testing and the failure to define lead dust as a hazard. (R583-84).

Amicus MICHAEL WEITZMAN, MD, is currently the Executive Director of the American Academy of Pediatrics' Center for Child Health Research and Professor and Associate Chairman of Pediatrics at the University of Rochester School of Medicine and Dentistry, where he was formerly Director of the Division of General Pediatrics and Pediatrician-In-Chief at Rochester General Hospital. Prior to that, he was Director of Maternal and Child Health for the City of Boston and Director of General Pediatrics and the fellowship training program in Academic General Pediatrics at Boston City Hospital and Boston University School of Medicine. He has conducted research and written extensively on such diverse issues as childhood lead poisoning, chronic illness, passive and prenatal exposure to cigarette smoke, breast feeding, excessive school absences, the academic benefits of the

School Breakfast Program, and the epidemiology of children's mental health problems, health risk behaviors, school failure, and asthma. He has published over 150 original articles, chapters, books and abstracts of scholarly work, and he is co-editor of two pediatric textbooks. Dr. Weitzman also currently serves as chair of the Center for Disease Control's Childhood Lead Poisoning Prevention Advisory "Less than 10" workgroup and the National Advisory Committee of the Robert Wood Johnson Generalist Physician Faculty Scholars Program. Dr. Weitzman was the 1997 recipient of the Ambulatory Pediatric Association's Research Award, its most distinguished honor for scholarly achievement, for the Fellowship Training Program in Academic General Pediatrics, which he has directed for the past 10 years. He was also the 1998 recipient of that Association's Teaching Award.

**ARGUMENT:**

**LEAD-CONTAMINATED DUST IS A SERIOUS  
ENVIRONMENTAL HAZARD THAT MUST NOT BE  
IGNORED IN LOCAL LEGISLATURES'  
ENVIRONMENTAL ASSESSMENTS OR BY REVIEWING  
COURTS**

The issue before the Appellate Division below was whether the New York City Council and Mayor complied with the New York State Environmental Quality Review Act (“SEQRA”), N.Y. Environmental Conservation Law (“ECL”) § 8-0101 et seq., and the New York City Rules of Procedure for Environmental Quality Review (“CEQR”), 62 R.C.N.Y. § 5-01 et seq., when enacting LL 38.

The IAS court below had held that the Council’s negative declaration violated SEQRA because, among other things, it had not identified lead-contaminated dust as an issue of concern. The Appellate Division, in reversing the IAS court, completely ignored the issue of lead-contaminated dust

in its analysis of the potential adverse environmental consequences of LL 38, and validated the negative declaration without ever exploring whether the Council adequately reviewed the issue of lead-contaminated dust. To ignore lead dust is to ignore the

large body of evidence [that] shows that a common source of lead exposure for children today is lead-based paint hazards in older housing and the contaminated dust and soil it generates.... Poisoning from lead-based paint has affected millions of children since this problem was first recognized more than 100 years ago.

Children are exposed to lead from paint through two major pathways; either directly by eating paint child or indirectly by ingesting lead-contaminated house dust or soil through normal hand-to-mouth contact. Recent studies indicate that dust lead is the strongest predictor of childhood blood lead levels.

Jacobs, D., Clickner, R., Zhou, J., Viet, S., Marker, D., Rogers, J., Zeldin, D., Broene, P., Friedman, W., The Prevalence of Lead-Based Paint Hazards in U.S. Housing, 110 Environmental Health Perspectives (10) 599-606 (2002) (emphasis added, citations omitted).

Amici are alarmed that respondents have repeatedly asserted that they eliminated lead dust tests for most situations under LL 38 for the reasons that “the lack of universal acceptance of the scientific reliability” of dust clearance testing” Respondents’ Brief at 32; see also id., at 49, 68 (“clearance dust testing was not universally regarded as scientifically reliable”). There is no basis for this statement in current science, nor are amici aware of any contrary testimony by credentialed experts before the City Council.\* Amici are also alarmed by respondents’ repeatedly stated conclusion that

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\* Although amici brought this to the courts’ (and the respondents’) attention in their two prior amici curiae briefs, respondents continue to ignore the science and propound the same untenable assertion they made in four prior submissions, declaring that lead dust testing “was not uniformly regarded as scientifically reliable” in the respondents’ Affirmation in Opposition to Motion for Leave to Appeal (to the Court of Appeals) (September 20, 2002), at 28; as well as in their Opposition to Motion for Leave to Appeal to the Court of Appeals (to Appellate Division)(June 4, 2002), at 8; Appellate Brief to the Appellate Division (Aug. 6, 2001) at 57; and Reply Brief to the Appellate Division (October 11, 2001) at 11 (the later three documents were annexed to the petitioners' Motion For Leave to Appeal to this Court

(continued...)

lead dust could be simply “addressed by cleaning floors regularly with detergent.” Respondents’ Brief at 30.\*

Respondent's repetition of these statements, in no less than five submissions to this Court and the Appellate Division, underscore their failure to take a hard look at the issues as required by SEQRA, given that the body of peer-reviewed studies in the scientific literature demonstrate the contrary — both the necessity of lead dust clearance testing and its reliability. See, e.g., United States Environmental Protection Agency, *Lead Exposure Associated with Renovation and Remodeling*, EPA #747 R96007 (May 1997); United States Environmental Protection Agency, *Review of Studies Addressing Lead Abatement Effectiveness: Updated Edition*, EPA #747B 98001 (Dec. 1998); S. Dickson, E. Tohn, et al., *Achieving Dust Lead Clearance Standards after Lead Hazard Control Projects: an Evaluation of the Hud-recommended Cleaning Procedure and an Abbreviated Alternative*, 14 *Applied Occupational and Environmental Hygiene* 339-344 (1999); United States National Institute for Occupational Safety and Health, *Health Hazard Evaluation Report: HETA 99-0113-28533*, University of California at Berkeley (July 2001); Galke W, Clark S, Wilson J, Jacobs D, Succop P, Dixon S, Bornschein B, McLaine P, Chen M. *Evaluation of the HUD Lead Hazard Control Grant Program: Early Overall Findings*. 86 *Environmental Research* (2) 149-156 (2001); Lanphear, BP, Weitzman, M, Winter, NL,

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\* (...continued)

at Tabs O, H, and K, respectively); see also respondents’ Reply Brief to the Appellate Division at 13, 15, and Appellate Brief to the Appellate Division at 29; and further argued that lead dust testing was “problematic” id. at 59.

\* Likewise, respondents asserted in their previous court submissions their conclusion that lead dust could be simply “removed by regular washing of the floors with a detergent.” Respondents’ Affirmation in Opposition to Motion for Leave to Appeal (to the Court of Appeals) (September 20, 2002), at 29; Opposition to Motion for Leave to Appeal to the Court of Appeals (to Appellate Division)(June 4, 2002), at 10; Appellate Brief to the Appellate Division at 59; Reply Brief to the Appellate Division at 13.

Tanner, M, Yakir, B, Emond, M, and Matte, TD Lead-Contaminated House Dust and Urban Children's Blood Lead Levels, 86 Am. J. Public Health 1416-1421 (1996); Lanphear, BP, Durgood DA, Rust SW, Eberly S, Galke W. Environmental Exposures to Lead and Urban Children's Blood Levels, 76 Environmental Research 120-30 (1998); Lanphear, BP, Matte TD, Rogers J, Clickner RP, Dietz B, Bornschein RL, et al., The Contribution of Lead-Contaminated House Dust and Residential Soil to Children's Blood Lead Levels: a Pooled Analysis of 12 Epidemiologic Studies. 79 Environmental Research 51-68 (1998); 79: 51-68; Farfel, MR, and Chisolm, JJ. Health and Environmental Outcomes of Traditional and Modified Practices or Abatement of Residential Lead-based Paint, 80 Am. J. Public Health 1240-1245 (1990).

While respondents' briefs are given to asserting (without citation) reliance on scientific consensus, there is indeed a consensus — based on these and other studies — that lead-contaminated dust is the foremost pathway of children's exposure to lead in the U.S. and the best predictor of young children's blood lead levels. Lead-based paint that is deteriorated or disturbed is the major source of lead-contaminated dust. Projects that repair deteriorated lead-based paint frequently generate significant lead dust. Even trained lead abatement crews sometimes leave lead dust hazards behind.

Lead-contaminated dust can be invisible to the naked eye; surfaces that appear pristine can be severely contaminated. Thus, the scientific consensus is that lead dust sampling is the only reliable method to ensure that lead dust hazards are not left behind after projects that repair or disturb lead-based paint, especially since

only a small amount of lead-based paint is needed to produce very high lead dust lead levels. For example, if sanded and turned into contaminated dust that is spread across an average-size room, only 1 ft<sup>2</sup> [square foot] of paint at a lead concentration of 1 mg/cm<sup>2</sup> [milligrams per square centimeter] (the federal standard) is needed to produce

a settled dust lead level of 9,300 µg/ft<sup>2</sup> [micrograms per square foot], several orders of magnitude above the current dust lead standards [of 40 µg/ft<sup>2</sup> on floors].

Jacobs, D., Clickner, R., Zhou, J., Viet, S., Marker, D., Rogers, J., Zeldin, D., Broene, P., Friedman, W., The Prevalence of Lead-Based Paint Hazards in U.S. Housing, 110 Environmental Health Perspectives (10) 599-606 (2002) (citation omitted). Clearance dust sampling has been used effectively in public housing for more than a decade and is widely regarded as a reliable tool for ensuring lead safety.

For this reason, HUD has institutionalized requirements for clearance testing after work that repairs or disturbs lead-based paint in federally-assisted housing. 24 CFR § 35.1320(b)(2). The EPA has established national standards for dangerous levels of lead in dust on floors and window sills. 40 CFR § 745.65(b). HUD's national survey of the U.S. housing stock confirms that the federal lead dust standards are achievable. United States Department of Housing and Urban Development, National Survey of Lead and Allergens in Housing, Final Report, Volume I: Analysis of Lead Hazards, Revision 6.0 (April 18, 2001). Based on HUD's recent survey, fully 82% of US housing units meet the EPA standards for interior dust lead levels.

Moreover, HUD has estimated that the cost in multifamily dwellings for lead dust clearance testing in multi-family housing would be only \$60 for repair or rehabilitation work under \$5,000. United States Department of Housing and Urban Development, Office of Lead Hazard Control, Economic Analysis of the Final Rule on Lead-Based Paint: Requirements for Notification, Evaluation



and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, (Sept. 7, 1999) at 2-22.\*

Lastly, as to respondents' repeated conclusion that lead dust could be simply "addressed by cleaning floors regularly with detergent." Respondents' Brief at 30, scientific studies do not show that such measures will reduce lead dust to levels below regulatory concern. See Lanphear, et al., Primary Prevention of Childhood Lead Exposure: A Randomized Trial of Dust Control, 103 Pediatrics (4) 772-88 (April 1999); United States Department of Housing and Urban Development, Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, (1995, rev. 1997) at 15-5 ("previous studies have indicated that cleaning can be accomplished only with great care and skill ... some type of clearance is required for all forms of lead hazard control").

### CONCLUSION

For the above reasons, and those set forth in petitioners' brief, the Appellate Division's decision should be reversed and the IAS court's decision should be reinstated.

Dated: New York, N.Y.  
April 17, 2003

Respectfully Submitted,

PUERTO RICAN LEGAL DEFENSE AND EDUCATION  
FUND, INC.

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\* The cost of analyzing lead dust samples by an EPA-recognized laboratory is about \$10 per sample. When lead dust sample analysis is purchased in bulk, the cost can be \$5 per sample or less. A list of EPA- accredited labs through the National Lead Laboratory Accreditation Program (NLLAP), with prices, is available online at [www.leadshousing.org/html/lead\\_lab\\_listings.htm](http://www.leadshousing.org/html/lead_lab_listings.htm).

