UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK BANKERS ASSOCIATION, INC., Plaintiff, v. THE CITY OF NEW YORK, THE NEW YORK DEPARTMENT OF FINANCE, and THE COMMUNITY INVESTMENT ADVISORY BOARD, Defendants.	COMPLAINT DOCKET NO. 15-cv-_____

The New York Bankers Association, Inc. ("NYBA"), by and through its undersigned attorneys, Sullivan & Cromwell LLP, for its Complaint against Defendants The City of New York ("City"), the New York City Department of Finance ("Department of Finance"), and the Community Investment Advisory Board ("CIAB") alleges as follows:

PRELIMINARY STATEMENT

1. On behalf of its affected members, Plaintiff NYBA brings this challenge under the U.S. and New York State Constitutions to the validity of City Local Law Number 38 for the Year 2012 ("Local Law 38"). The New York City Council ("City Council") passed Local Law 38 (over then-Mayor Bloomberg's veto) with the stated objective of using the City's "enormous power" as a depository to "pressure banks" into changing their lending and other practices to meet City's "benchmarks and best practices."

2. Banks are among the most regulated businesses in the country. Under the United States' "dual banking system," either the states or the federal government or both have the

exclusive power to examine and to regulate banks and other depository institutions. As a result, municipal and local governments, such as the City, have no permissible role in examining or regulating bank activities. By empowering the City to serve as a bank regulator, and thereby adding a new level of bank regulation in the Nation's financial capital, including requirements that go beyond and conflict with federal and New York State ("State") law, Local Law 38 impermissibly conflicts with, and is preempted under, the U.S. and New York Constitutions. If allowed to stand, Local Law 38 will embolden other local governments to impose their own regulatory structures. In this State alone, nothing would stop Albany, Buffalo, Ithaca, Syracuse, Yonkers, Nassau, or Westchester from passing similar local laws, with different requirements, regulating banks.

3. Through this action, NYBA seeks (i) a declaration under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, that federal and State banking laws preempt Local Law 38, and (ii) a permanent injunction enjoining Defendants from enforcing Local Law 38. Within the last several weeks, Defendants have begun demanding that the banks holding City deposits ("Deposit Banks") provide information to the CIAB, including confidential information going beyond what banks provide to federal and State regulators. Because the CIAB has set a deadline of June 12 for Deposit Banks to produce this information, and has announced that it plans to publish widely an annual report evaluating the lending and other conduct of Deposit Banks as compared to the CIAB's own "best practices" and standards, which will focus on the City's local concerns and not take into account the variety of national and state objectives underlying federal and State banking law, including for banks operating in multiple states, NYBA now seeks immediate redress from this Court.

4. On October 11, 2013, NYBA filed a complaint in this Court challenging the constitutionality of Local Law 38. On the motion of the City Council, this Court, while recognizing that NYBA had raised "serious substantive claims," dismissed NYBA's complaint without prejudice, concluding that, as of October 11, 2013, NYBA's members' injuries were too "attenuated" and "conjectural" to establish Article III standing, because, in part, the Bloomberg Administration had refused to enforce and implement the law. *New York Bankers Ass'n, Inc.* v. *City of New York*, 2014 WL 4435427, at *8-14 (S.D.N.Y. Sept. 9, 2014) ("*NYBA*"). Specifically, this Court dismissed NYBA's challenge, noting that "the harms Plaintiff fears would only occur if (i) a new mayor were elected; (ii) that mayor wished to implement LL 38; (iii) the mayor appointed the CIAB members; (iv) the Comptroller and Speaker made their appointments to the CIAB; (v) the CIAB were convened; and (vi) the CIAB requested information from NYBA members." *Id.* at *11.

5. All of these events and more have now come to pass. Since NYBA filed its original complaint in this action on October 11, 2013, the City has taken aggressive steps to implement Local Law 38:

- On December 24, 2013, the City Department of Finance issued a Request for Information ("RFI") seeking information from vendors to help the CIAB implement Local Law 38 and collect information from Deposit Banks;

- On March 21, 2014, the City Law Department submitted a letter to this Court stating that the City has reversed its prior position that Local Law 38 was unconstitutional and now supports the validity of Local Law 38;

- On July 21, 2014, the Department of Finance issued a Request for Proposals ("RFP"), in which it sought bids from vendors to help the CIAB implement Local Law 38 and to set a schedule for collecting information from the Deposit Banks;

- In the fourth quarter of 2014, the City hired two employees to help to implement Local Law 38 (at a cost of $140,000 a year for those two employees alone);

- In September 2014, the City hired Econsult Solutions, Inc. ("Econsult"), an "economic consulting and litigation support firm" (Exhibit[1] ("Ex.") 1 (Econsult Bid at 8))—whose "practice focuses on employment discrimination, wage and hour claims, employment termination, human resource management and planning, personal injury and wrongful death actions, damage analysis, antitrust, intellectual property and securities and finance"[2]— to collect and to analyze data of Deposit Banks, to "produce a ranking of [Deposit Banks] in key banking categories related to the topics delineated in [Local Law 38] (Ex. 1 at 21), and to "narrate . . . how each [deposit bank] is meeting the needs identified" by the CIAB (*id.* at 31), at a cost to the City of $350,000;

- On December 18, 2014, Assistant Commissioner for the Department of Finance and City Treasurer Elaine Kloss—one of the senior City officials responsible for selecting Deposit Banks—sent a letter to City depository banks informing them that the City had hired Econsult, stating the City (via the CIAB) would soon be "request[ing] bank data" and "thank[ing]" the banks "in advance for [their] cooperation" (Ex. 2 (Responsible Bank Act Letter));

- On January 13, 2015, the CIAB—now fully formed, with all eight members required by Local Law 38—held an organizational hearing open to the public;

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1 All Exhibits are attached to this Complaint.

2 http://www.econsult.com/economic-expertise-in-litigation (last visited May 26, 2015).

- On February 2, 2015, a CIAB employee sent the Deposit Banks the "2015 re-designation notice" and a list of the documentation required for designation, thus directly and explicitly linking depository status to cooperation with the CIAB;

- From February 9, 2015 through February 18, 2015, the CIAB held public hearings in all five Boroughs;

- On April 30, 2015, the CIAB released its first needs assessment ("Needs Assessment"), which the CIAB described as a "comprehensive assessment of banking activities that can be shared among interested parties to impact public policy and to improve private lending behavior" (Ex. 3 (Needs Assessment at 3)), and "to determine if [residents'] needs are being met so that disadvantaged communities have fair access to . . . important financial products and services" (*id.* at ii);

- On May 13, 2015, the CIAB sent a letter to the City's Deposit Banks "requesting specific bank data" on a range of topics, including non-public information on how Deposit Banks "[a]ddress the key credit and financial services needs of small businesses," "[d]evelop and offer financial services and products that are most needed by low and moderate income individuals and communities," and engage in "mortgage assistance and foreclosure prevention" (Ex. 4 (Banking Information Request Letter at 1-2)); and

- The CIAB's first annual report ("Annual Report") is due to be issued in "late 2015" and will "explore[] . . . individual [Deposit Banks'] performance in meeting the banking needs of NYC residents and businesses." (Ex. 3 (Needs Assessment at iii).)

6. The forthcoming Annual Report mandated by Local Law 38 must (i) "specifically identify" any Deposit Bank that, in the CIAB's view, "fail[s] to provide [the] information" the CIAB requests, and (ii) state whether each Deposit Bank satisfies the CIAB's created standards

for meeting the "credit, financial, and banking services needs throughout the City." The report will then be sent to the City Banking Commission, which may consider it in "reviewing a bank's application for designation or redesignation as a deposit bank." The Banking Commission must then notify the City Council if it approves or denies any application to be a Deposit Bank.

7. As the text of Local Law 38 and its legislative history make clear, the City Council enacted this law—over former Mayor Michael Bloomberg's veto—because the City Council was convinced that federal laws promoting community development were unsatisfactory, and that the City needed to step in and regulate the activities of Deposit Banks in, among other things, providing "credit, financial and banking services needs throughout the City with a particular emphasis on low and moderate income individuals and communities." In passing Local Law 38, the City Council ignored objections from the Department of Finance, the New York State Department of Financial Services ("DFS") (and its predecessor, the New York State Banking Department ("NYSBD")), Mayor Bloomberg, and NYBA, all of whom pointed to multiple deficiencies, both legal and practical, with respect to Local Law 38, including that existing federal and State banking laws preempted this proposed law. Specifically, Local Law 38 violates the clear prohibition in federal law on local regulation of federally chartered depository institutions, which bars local laws and regulations, such as Local Law 38, that empower local authorities to collect information from, and supervise the banking activities of, such institutions. Local Law 38 conflicts with Congress's grant to the Office of the Comptroller of the Currency ("OCC") of sole "visitorial powers" (*i.e.*, powers to regulate through examination and supervision) over federal depository institutions and of the OCC's sole authority to determine how such banks may exercise their statutory banking powers. Local Law 38 also conflicts with

the federal Community Reinvestment Act ("Federal CRA") by imposing obligations on Deposit Banks above and beyond those contemplated by the Federal CRA, upsetting its balance between encouraging community development and burdening banks with excessive and patchwork regulation. Under the doctrine of "conflict preemption," any state or local law that conflicts with a valid federal statute or regulation is preempted. Accordingly, federal law preempts Local Law 38 as applied to national banks and federal savings associations.

8. Local Law 38 is preempted separately by New York State law, which occupies the entire field of banking law for State-chartered depository institutions. Through comprehensive laws and regulations, New York has defined the powers of New York State-chartered depository institutions and provided for their examination and regulation. Because Local Law 38 conflicts with New York State's policy of providing uniform statewide regulation of State-chartered financial institutions, Local Law 38 is preempted.

9. The City cannot escape the fact that Local Law 38 is preempted by federal and State law by now dressing up Local Law 38 as a simple exercise of the City's spending power as a consumer of financial services. Under Local Law 38, the CIAB "shall seek to collect" and "shall publish all information collected," including granular, confidential information, about such banks, such as data on bank foreclosures and mortgage modifications down to the census tract level. Local Law 38 § 1 subdivs. 3, 4, 5. These regulatory powers—which were adopted for the stated purpose of coercing banks into making changes to align with the City Council's local political concerns—are not relevant to the quality or pricing of the banking services that Deposit Banks provide to the City. To the contrary, the City itself has conceded that Local Law 38 will

cost money to implement and may end up hurting the City's ability to deposit its cash with banks.

10. As a result, through Local Law 38, the City will not be acting as a participant in the market for banking services, but as an examiner and regulator of Deposit Banks, with the power to threaten Deposit Banks with public criticism and loss of status as Deposit Banks if those banks do not respond to the CIAB's information "requests" or conform to the CIAB's subjective "benchmarks, best practices and recommendations." In short, Local Law 38 impermissibly empowers the CIAB to become a local bank regulator, with the power to regulate the activities of any federal or State bank that does, or wishes to do, deposit business with the City.

11. Accordingly, especially in light of the CIAB's May 13, 2015 demand for confidential banking information, the NYBA members that are Deposit Banks now indisputably face immediate injury. These NYBA members have determined that they imminently will: (i) need either to divert substantial time and money to try to satisfy the CIAB's (current and future) demands for information (including confidential, non-public information) and standards for "responsible banking" (thereby submitting themselves to unlawful regulation), or risk the reputational injury that comes with being specifically identified as unwilling to meet the CIAB's information demands (such as loss of business from current or potential customers and counterparties); (ii) face the reputational risk of being designated as failing to meet the CIAB's standards for "responsible banking"; and/or (iii) incur the economic harm of not being re-designated as Deposit Banks.

12. Already, one NYBA member bank, Cross County Savings Bank, has declined to reapply to be a Deposit Bank as a result of the enactment of Local Law 38 and its implications for current and applying Deposit Banks, including subjecting those banks to legal requirements beyond those imposed under federal and State law.

THE PARTIES

13. Plaintiff NYBA is an association of more than 140 community, regional, and money-center commercial banks and federal savings associations located in New York State. Its members have aggregate assets in excess of $9 trillion and employ more than 200,000 people in New York State, and 40 of its members are headquartered or have branch offices in New York City. NYBA members include national banks chartered pursuant to the National Bank Act ("NBA"), federal savings associations chartered pursuant to the Home Owners Loan Act ("HOLA"), and commercial and thrift depository institutions chartered pursuant to the New York Banking Law ("N.Y.B.L.").

14. Certain NYBA members have been designated by the City as Deposit Banks for the City. (Ex. 5 (New York City List of Deposit Banks).) Indeed, approximately two-thirds of the City's Deposit Banks are NYBA members (or their affiliates). (*Compare* Ex. 5 *with* Ex. 6 (List of NYBA Members).) Being a City Deposit Bank is valuable to these members, because they can, among other things, use the money the City deposits with them to make loans to individuals and businesses and receive interest on those loans.

15. By bringing this action, NYBA seeks to protect the interests of these Deposit Banks and its other members and to fulfill its mission of working to enhance the health and stature of New York State's banking industry, to support the communities, consumers, and

businesses New York State's banks serve, and to facilitate the efficient provision of financial services while encouraging the highest possible banking standards.

16. Defendant The City of New York is a municipality organized and existing under the laws of New York State. At all times relevant hereto, the City has been responsible for adopting and will be responsible for enforcing the legislation challenged in this case.

17. Defendant Department of Finance is the revenue service, taxation agency, and recorder of deeds for New York City. Within the Department of Finance are the Banking Commission and the CIAB.

18. Defendant CIAB is a board within and subject to the control of the Department of Finance.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

20. This Court is authorized to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

21. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b).

BACKGROUND

22. Local Law 38 was conceived after a November 23, 2010 hearing of the City Council's Committee on Finance ("Finance Committee"). During this hearing, Finance Committee Chair Domenic Recchia indicated that the City Council wanted information about "what [] work [banks] do in the community, how many loans they give out to small business . . . [and] how many mortgages they [have] modified." (Ex. 7 (Nov. 23, 2010 Hr'g Tr. at 20:20-21:3).) City Council member Lewis Fidler asked how New York City could use its "enormous

power . . . as a depository to force banks or to pressure banks into being more cooperative with [loan modifications]." (*Id.* at 26:10-12.) Mr. Fidler explained that "we want to use the power of [the City's] deposit to encourage banks to behave in a socially proper way." (*Id.* at 26:22-25.) Mr. Recchia ended the hearing by promising "to be creative and find[] ways that [New York City] could bring banks to the table." (*Id.* at 164:5-7.) At this hearing, Ms. Kloss, who then worked for Mayor Bloomberg, warned the City Council that the Banking Commission "is not a regulatory body" and "is not a regulator." (*Id.* at 25:19-20 & 26:14-15.)

23. In February 2011, the City Council introduced a bill titled "Introductory Number 485" ("Intro 485"), which, after amendment, was ultimately codified as Local Law 38. (Ex. 8.) This legislation was specifically intended to address, among other things, the City Council's view that the City, which deposits more than $6 billion into various banks designated by the City Banking Commission as Deposit Banks, was not taking sufficient steps to "incentivize and support responsible banking." (Ex. 9 (Mar. 7, 2011 Hr'g Tr. at 12:6-10 (statement of Albert Vann, City Council member and Chair of the Committee on Community Development)).)

24. During March 7, 2011 hearings before the City Council's Finance Committee and the Committee on Community Development on Intro 485, various committee members explained that the bill's objectives were:

- to encourage New York City banks to promote community development because, even though the NYSBD had identified a "long list of ways in which CRA reform needs to take place," "[t]here is no chance that the Republican House of Representatives is going to agree" to "CRA reform" (*id.* at 103:4-24 (statement of Brad Lander, City Council member));

- to allow "the taxpayers of New York [City] [to] see what these banks are doing for our communities . . . . We want to know exactly what they're doing . . . how many loans [] they [are] modifying in a year, how many small business loans they're giving out" (*id.* at 7:17-25 (statement of Domenic Recchia)); and

- to "require our banks to be supportive of stabilizing our community," because "we bailed out the banks through public dollars and now we can't even find out from these banks what they're doing in our communities, when they used our tax dollars to become whole" (*id.* at 27:18-24 (statement of Albert Vann)).

25. Thus, Intro 485 sought to regulate and to control the conduct of the City's depository institutions by "encouraging banks to be better citizens and participate in [the City's] affordable housing programs." (*Id.* at 45:16-18 (statement of Lewis Fidler).)

26. The legislative history demonstrates that this law reflected the City Council's legislative and political judgment about what banks "should" do with respect to their lending, foreclosure and other activities "throughout the City." The sponsors of Local Law 38 did not introduce this law to seek to advance the City's proprietary interest in improving the quality or pricing of services that Deposit Banks provide to the City and its agencies.

CITY AND STATE OPPOSITION TO LOCAL LAW 38 AND MAYOR BLOOMBERG'S VETO

27. As early as March 7, 2011, the City's Department of Finance, which was charged with enforcing Intro 485, expressed concerns about whether the bill was preempted by federal and State laws regulating Deposit Banks. Specifically, at the March 7, 2011 City Council hearing, Ms. Kloss explained that the proposed law would be difficult to implement, because "banks are [already] regulated by federal and state authorities with respect to the matters covered by the criteria in Intro 485." (*Id.* at 14:14-17.) Stressing that "the banking industry is already

very heavily regulated by the state and federal governments" (*id.* at 18:18-19), Ms. Kloss emphasized that the City already relied on ratings given to banks by federal regulators that were based on financial information reported by banks in assessing whether to conduct business with a particular bank (*id.* at 23:16-17). Ms. Kloss specifically warned that she believed that this proposed law was "preempted by federal and state law," (*id.* at 28:9), and that Local Law 38 "would require the creation of a new classification system for banks" (*id.* at 13:7-14:3).

28. During the March 7, 2011 hearing, Wendy Takahisa, the Director of the NYSBD's Community Reinvestment Division, also expressed reservations about the validity of Intro 485. Speaking on behalf of the Superintendent of Banks, Ms. Takahisa testified that all Deposit Banks impacted by the proposed law were already subject to examination under the Federal CRA or the New York State Community Reinvestment Act ("State CRA"), or both, and that the factors Intro 485 required the Commissioner of the Department of Finance to consider in rating Deposit Banks were already being considered by State bank examiners under the State CRA. (*Id.* at 77:13-82:24.)[3] Ms. Takahisa was also concerned about the City Council "increasing the regulatory burden on banks" (*id.* at 89:15-16) and counseled against "creating new tests for New York City banks" (*id.* at 84:13-18). Ms. Kloss added that "the banking industry is already very heavily regulated by the state and federal governments," and that "the federal government has already passed a law that requires rating banks['] community

[3] On information and belief, other than information directly impacting the deposit services and prices offered by the Deposit Banks, the Banking Commission has not previously considered information other than the federal and State CRA reports in determining which banks to designate as depositories.

reinvestment activities." (*Id.* at 16:25-20:6.) As Ms. Kloss noted, the proposed bill "is much, much broader than just looking at CRA ratings." (*Id.* at 58:23-25.)

29. Shortly after the introduction of Intro 485, NYBA also stated its opposition. NYBA questioned the subjectivity of the criteria that the CIAB would use in assessing Deposit Banks (Ex. 10 (NYBA Testimony at 2, 3)), and the disclosure requirements that the bill would impose on such banks (*id.* at 5-6). NYBA also highlighted the serious federal and State preemption concerns raised by Local Law 38, noting that "[i]t is well settled law that New York State has occupied the field of the business of banking for state-chartered banking institutions." (*Id.* at 5.) NYBA warned that Local Law 38 would require the CIAB to apply criteria intended to affect the types of financial products that banks offer, terms for restructured home loans and bank strategic plans, matters already subject to extensive regulation under State and federal law. (*Id.*)

The Department of Finance Warns that a Revised Version of Local Law 38 "Effectively Anoints the Department of Finance a Bank Regulator"

30. Following the March 7, 2011 hearing, Intro 485 was amended (becoming Introductory No. 485-A ("Intro 485-A")) to, among other things, remove the requirement that the Commissioner of the Department of Finance rate, or classify, Deposit Banks. Instead, the amended Intro 485 created the CIAB, which would "assess the needs of all of [the City's] communities for banking services and to evaluate how well those needs are being met." (Ex. 11 (Fin. Comm. Apr. 30, 2012 Hr'g Tr. at 5:12-15).)

31. On April 30, 2012, at a hearing of the City Council Finance Committee, Albert Vann described Intro 485-A as "a bill that aims to encourage the banks that receive city deposits to become more responsive and more accountable to New York City communities . . . . I think it

will ultimately achieve our goal of holding banks that receive city funds more responsible to the city and to our communities within the city." (*Id.* at 8:13-9:14.)

32. The amendments did not assuage the concerns expressed by, among others, the Department of Finance and NYBA. The Commissioner of the Department of Finance, David M. Frankel, submitted a written statement to the Finance Committee detailing the Department of Finance's continued opposition to the bill, observing that Intro 485-A, "by creating a new entity and empowering that entity with the responsibility not only to evaluate banks but also the needs of the City's communities, is ill-conceived, overreaching, and far too costly." (Ex. 12 (Frankel Testimony at 6).) Noting that the bill "effectively anoints the Department of Finance a banking regulator" notwithstanding the Department's—and the City's—lack of "expertise, resources or legal authority to step into the much broader role contemplated by this legislation," Commissioner Frankel warned that the bill "places the City at a competitive disadvantage to retain private banking functions and the tax revenues and jobs that come with them." (*Id.*)

33. Commissioner Frankel also noted that, in order to comply with Intro 485-A's requirement that the CIAB "consider how banks operate on a census tract level . . . the Banking Commission would have to consider voluminous data that the banks would have to submit to be approved for designation." (*Id.* at 10.) As a result of Local Law 38's onerous requirements, Commissioner Frankel warned that the City risked "decreasing competition and possibly causing increased fees and fewer options in terms of services and products available to the City." (*Id.*)

34. Moreover, Commissioner Frankel informed the Finance Committee that the City "Law Department has expressed concerns that the bill is preempted under state and federal law, and unlawfully impinges on the powers of the Mayor and the Banking Commission." (*Id.* at 11.)

35. Commissioner Frankel also warned that "Intro 485-A completely overhauls the mandated responsibilities of the Department of Finance with respect to the operations of the Banking Commission and the designation of the City's depository banks," (*id.* at 8), and that "[o]n both a policy and an operational level, this is a stark departure from the traditional role assigned to the Department of Finance and the Banking Commission" (*id.* at 10).

36. NYBA also reiterated its opposition to the amended Intro 485, citing many of the same concerns that it had with the original bill, including its belief that Intro 485-A was preempted by federal and State law. (Ex. 13 (NYBA Testimony at 2-3).)

The City Council Overrides Mayor Bloomberg's Veto in an Effort To "Go Beyond What the Community Reinvestment Acts Require that Banks Disclose"

37. On May 15, 2012, notwithstanding these concerns, the City Council passed Intro 485-A. In urging passage, City Council member Albert Vann stated that:

> We should know the banks that are providing credit to small businesses[,] we need to know who they are. If they are financing affordable housing, we need to know that, and if they are modifying mortgages to keep our constituents in their homes, we need to know that. To do nothing is [to] support[] irresponsible banking behavior and we've seen many examples of that in the past few years. Today we are taking an affirmative step to ensure, encourage and support responsible banking in our city.

(Ex. 14 (May 15, 2012 Hr'g Tr. (excerpted) at 45:6-14).)

38. City Council Speaker Christine Quinn emphasized that Intro 485-A would ensure that the City's Deposit Banks "act in a transparent way," and "help us add information *beyond what the community reinvestment acts require that banks disclose and will make information even included in the CRA transparent in a way that CRA is not.*" (*Id.* at 40:15-16; 40:24-41:4 (emphasis added).) Speaker Quinn contended that Intro 485-A would provide information "not at a city-wide level, not at a borough level, but at a real neighborhood level," (*id.* at 40:19-21)

and the CIAB would "do a plan for what our neighborhoods need around responsible banking" (*id.* at 41:8-9).

39. As Speaker Quinn put it, Intro 485-A, which became Local Law 38 upon passage, would "make the banking capital of the world the responsible banking capital of the world." (*Id.* at 40:11-12.)

40. On May 30, 2012, Mayor Bloomberg vetoed Intro 485-A, explaining that this law represented "a misguided attempt to influence banks . . . by overlaying extensive existing federal and State bank regulation with yet another layer of City regulation. The bill extends beyond the City's competence and legal authority and risks reducing the number of banks who are willing or able to do business in the City." (Ex. 15 (Mayor Veto Message at 1).)

41. In his veto message, the Mayor also stressed that Intro 485-A "serves no proprietary purpose but instead impermissibly uses the City's power to designate banks and deposit funds in order to pressure banks into adopting certain practices with respect to core banking matters such as lending to small businesses, addressing the credit needs of customers, handling foreclosure proceedings, and providing funding for housing." (*Id.* at 2.) He added that this legislation raised serious federal and State preemption concerns: "The bill also interferes with regulatory regimes established elsewhere in federal and State law, and gives the Board an improper measure of oversight over banks by authorizing the Board to obtain and examine bank records beyond those required by existing government regulators." (*Id.*)

42. On June 28, 2012, the City Council overrode Mayor Bloomberg's veto and enacted Intro 485-A, codified as Local Law 38. (Ex. 16 (June 28, 2012 Hr'g Tr. (excerpted) at 99:24-100:2).)

43. In urging the City Council to override Mayor Bloomberg's veto, Speaker Quinn spoke in support of the bill by stating that it would "allow us to actually create a benchmark, if you will, for what is the state of banking in our neighborhoods and what do we need to improve it." (*Id.* at 49:8-10.)

44. The provisions of Local Law 38 are codified in the new section 1524-A to Chapter 58 of the New York City Charter and took effect immediately upon enactment.

LOCAL LAW 38

45. Local Law 38 establishes the CIAB, which consists of eight members: (i) the Mayor or his designee; (ii) the Comptroller or his designee; (iii) the Speaker of the City Council or her designee; (iv) the Commissioner of the Department of Housing Preservation and Development; (v) the Commissioner of the Department of Finance; (vi) a member of a community-based organization "whose principal purpose is community and/or economic development, or consumer protection" designated by the Speaker; (vii) a representative of an organization or association that represents small business owners designated by the Speaker; and (viii) a representative of the City banking industry designated by the Mayor. Local Law 38 § 1 subdiv. 2. None of these individuals is required to have any experience or competence in bank regulation.

46. Under Local Law 38, by convening hearings in each Borough of the City, reviewing public comments, and considering data collected from Deposit Banks, the CIAB "shall . . . assess the credit, financial and banking services needs throughout the City with a particular emphasis on low and moderate income individuals and communities." *Id.* subdiv. 1(a).

47. Local Law 38 states the CIAB must publish a "needs assessment" and "annual report" on the Department of Finance's website. *Id.* subdiv 1. In developing its "needs assessment" and "annual report," Local Law 38 directs the CIAB to gather data and other information from the City's Deposit Banks (and the banks that seek to obtain that valuable status as an approved depository for some of the City's more than $6 billion in ongoing deposits). *Id.* subdiv. 3. Among other things, the CIAB is to collect the following information from Deposit Banks "at the census tract level" "regarding each deposit bank's efforts to:

a. address the key credit and financial services needs of small businesses;

b. develop and offer financial services and products that are most needed by low and moderate income individuals and communities throughout the city and provide physical branches;

c. provide funding, including construction and permanent loans and investments, for affordable housing and economic development projects in low and moderate income communities;

d. in the case of properties acquired by foreclosure and owned by the bank, reasonably address serious material and health and safety deficiencies in the maintenance and condition of the property;

e. conduct consumer outreach, settlement conferences, and similar actions relating to mortgage assistance and foreclosure prevention, and provide information, at the community district level to the board, relating to mortgage and foreclosure actions, including, but not limited to, total number of loans serviced and/or owned by the bank, total number of loans that are at least sixty days delinquent, total number of foreclosures commenced, total number of foreclosures prevented through loan modification, short sales, deeds in lieu of foreclosure or other mechanisms, total number of loan modifications applications, total number of

loan modifications made and denied, and bank owned properties donated or sold at a discount;

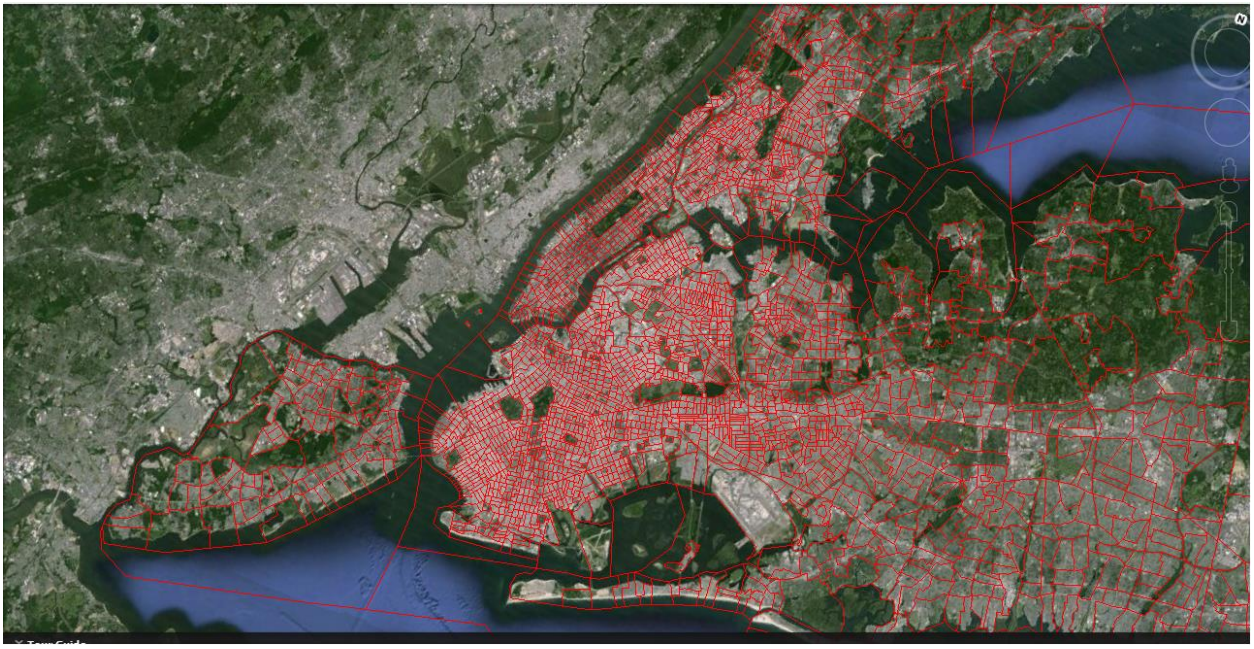
f. partner in the community development efforts of the city;

g. positively impact on the city and its communities through activities including, but not limited to, philanthropic work and charitable giving; and

h. plan for and articulate how the bank will respond to the credit, financial and banking services needs of the city identified by the needs assessment pursuant to paragraph a of subdivision 1 of this section, as applicable to the bank's type and size."

48. Local Law 38 does not authorize the CIAB to seek information from any banks or financial institutions other than City depositories.

49. Although Local Law 38 does not define the term "census tract level," the New York City Department of City Planning defines census tracts as "small statistical subdivisions of counties used by the U.S. Census Bureau. In New York City, there are 2,168 census tracts, which typically have a population of about 3,000-4,000 each, and an average land area of about 90 acres." (Ex. 17 (NYC Census Information at 2).) As of December 19, 2011, the census tracts in New York City appeared as follows:



50. By contrast, the Federal and State CRAs evaluate banks at the level of metropolitan regions, which represent larger geographic areas than census tracts. *See, e.g.*, 12 C.F.R. § 25.41(c) ("The assessment area(s) for a bank, other than a wholesale or limited purpose bank must consist generally of one or more [metropolitan statistical areas] or metropolitan divisions . . . or one or more contiguous political subdivisions, such as counties, cities or towns."); OCC, Federal Reserve, and FDIC, *Large Institution CRA Examination Procedures* 4 (2014) (noting that "assessment areas" must consist of "one or more [metropolitan statistical area or metropolitan divisions]). New York City is evaluated as part of the "New York–Jersey City–White Plains, NY–NJ Metropolitan Division." OMB Bulletin No. 13-01, *Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas* 42 (2013). Local Law 38 thus seeks information at a more granular level than the Federal CRA.

51. Local Law 38 requires the CIAB to collect non-public and inherently confidential information. Local Law 38 recognizes as much by providing that "the [CIAB] shall publish all information collected pursuant to paragraphs a through g [above], and *to the extent not deemed confidential or proprietary by the bank*, paragraph h." Local Law 38 § 1 subdiv. 5 (emphasis added).

52. Local Law 38 also requires the CIAB to seek to collect information directly from the banks themselves. The City acknowledged as much in the RFI and RFP. The City's RFI stated that:

- "There are currently 25 NYC Designated Banks [] *that will be required to respond* to this Bill" (Ex. 18 (RFI at 2) (emphasis added));
- "The first CIAB annual report must be provided to the Banking Commission . . . and published on [the Department of] Finance's website along with collected bank data" (*id.*);
- The City will "collect data from 25 Designated Banks" including "propriet[ary] information" (*id.* at 3); and
- The City will collect such "proprietary or confidential information" down to "the census tract level" (*id.* at 11).

The Department of Finance further asked applicants to "provide recommendations regarding the following," among other things:

> 3. Data gathering:
>
> a. How would you *collect data from 25 Designated Banks* and coordinate with [the Department of] Finance and the CIAB?
>
> b. What are industry best practices in *gathering such data from banks*?

c. How will you safeguard *propriet[ar]y information provided by banks*?

d. What tools (such as software and online platforms) will you use *to collect and analyze data from banks*?

(*Id.* at 3 (emphasis added).)

53. The City's RFP likewise confirmed that the City will "collect . . . data at the census tract level," data that the RFP concedes will be "proprietary or confidential." (Ex. 19 (RFP at 3).) The RFP also noted that the Annual Report would contain "data collected which has not been deemed confidential or proprietary by the bank[s]." (*Id.* at 10.)

54. After collecting this information, the CIAB must publish on the Department of Finance's website the information collected for "each deposit bank," including summaries of each bank's plan to address the needs identified by the CIAB's needs assessment and publish an annual report. Local Law 38 § 1 subdiv. 5. This annual report will "specifically identif[y] any Deposit Bank's failure to provide the information" requested by the CIAB. *Id.* subdiv. 1(b). A Deposit Bank that refuses to respond will thus be branded as non-compliant by the CIAB, and faces the reputational injury that arises from such a branding, as well as the risk of losing its status as a Deposit Bank.

55. With respect to those banks who do provide the requested information, Local Law 38 requires the CIAB to publish on the Department of Finance's website "all information collected" from Deposit Banks relating to the areas discussed in paragraph 47 above. In addition, the annual report will include "an evaluation of how each bank performed relative to the benchmarks and best practices applicable to such bank as established by the [CIAB]" and identify "areas where improvement is necessary." *Id.* Thus, even if Deposit Banks cooperate with the CIAB's information request, they face reputational injury if, in the CIAB's view, the

data the Deposit Banks provides does not meet the CIAB's local, subjective responsible banking standards. This reputational injury could cause NYBA members to lose customers and/or harm its business relationships with counterparties.

56. Under Local Law 38, the CIAB's annual report "may be considered by the banking commission in reviewing a bank's application for designation or redesignation as a deposit bank." *Id.* subdiv. 1(b). Thus, Deposit Banks risk losing their status as a Deposit Bank if either they do not provide the CIAB with the requested information or fail to satisfy the CIAB's standards for meeting the "credit, financial, and banking services needs throughout the City."

57. Local Law 38's public dissemination of banking data conflicts with Congress' and federal banking regulators' determinations about the extent to which reporting and public dissemination of information about an institution's community reinvestment activities is appropriate. *See, e.g.*, 12 U.S.C. § 2906(b)-(c) (Federal CRA evaluations and division into public section and confidential section); 12 C.F.R. §§ 25.42 (OCC regulation on data collection, reporting and disclosure under Federal CRA), 25.43 (OCC regulation on additional information to be made available to public under Federal CRA).

THE CITY IMPLEMENTS LOCAL LAW 38

58. On November 3, 2013, Bill de Blasio was elected as the Mayor of New York City.

59. On December 24, 2013, the City Department of Finance issued the RFI.

60. On January 1, 2014, Bill de Blasio was sworn in as the Mayor of New York City.

61. On March 21, 2014, the Law Department of The City of New York submitted a letter to this Court stating "that the City has reconsidered its position concerning the validity of

Local Law 38 of 2012 . . . and now supports its validity." (Ex. 20 (City March 21, 2014 Position Letter at 1).) The Law Department's letter also stated that the City "anticipate[s] that the Mayor will complete his appointments to the CIAB." (*Id.* at 5.)

62. In the fourth quarter of 2014, the City hired two employees to implement Local Law 38, Bashar Assana and Antonio Whitaker (Ex. 21 (Jan. 13, 2015 Hr'g Tr. ("CIAB Hr'g Tr.") at 8:13-16)), at a cost of $140,000 (Ex. 22 (DFS FY 2015 Budget at 2)).

63. The CIAB's eight members have all been appointed: Tracey Gardner (representing the Commissioner of Housing Preservation and Development), Jeffrey Shear (representing the Commissioner for the Department of Finance), Blondel Pinnock [4] (the representative of the City banking industry), Tanisha Edwards [5] (the City Council Speaker's appointment), Peter Hatch (representing Mayor de Blasio), Brian Cook (appointed by the City Comptroller), Christopher Kui (representing small business owners), and Bernell Grier (the representative of community development, housing, and consumer protection organizations).

The City Hires Econsult to Implement Local Law 38

64. In September 2014, the City hired Econsult to implement Local Law 38, and formally entered into a contract with Econsult in November 2014. (Ex. 21 (CIAB Hr'g Tr. at 7:24-3).) As part of its bid, Econsult noted that it would collect information from the City's Deposit Banks regarding their "outreach/marketing and management performance and incentives" in low, moderate, and high income neighborhoods, with an emphasis on "information

[4] Ms. Pinnock is a Chief Lending Officer and Senior Vice President at Carver Federal Savings Bank, which is neither a Deposit Bank nor a NYBA member.

[5] Ms. Edwards represented the City Council in connection with NYBA's previous challenge to Local Law 38. (*See generally* Ex. 23 (Aug. 19, 2014 Hr'g Tr.).)

on the management incentives of the branch managers and employees to determine how their behavior is incentivized." (Ex. 1 (Econsult Bid at 28-29).) Econsult also intends to collect and to analyze data of Deposit Banks, "produce a ranking of [Deposit Banks] in key banking categories related to the topics delineated in [Local Law 38] (*id.* at 21), and to "narrate . . . how each [Deposit Bank] is meeting the needs identified" by the CIAB (*id.* at 31). Econsult also expressed its hope that the implementation of Local Law 38 will lead to more "business lending and home mortgage lending . . . in moderate income neighborhoods." (*Id.* at 28.)

65. On December 18, 2014, Ms. Kloss (who remained the City Treasurer under the de Blasio Administration), on behalf of the Department of Finance, notified the City's Deposit Banks that "[t]he NYC Department of Finance has engaged the services of Econsult Solutions, Inc. to assist the CIAB with the preparation of the biennial banking needs assessment and annual report. In the coming weeks Michael Geffrard from LGR Group, LLC, which is a subcontractor of Econsult Solutions, Inc. will contact you to request bank data in connection with [Local Law 38]." (Ex. 2 (Responsible Banking Act Letter).) Ms. Kloss's letter was sent to the individual at each Deposit Bank responsible for maintaining the bank's relationship with the City, further evidencing that Local Law 38 is intended to pressure Deposit Banks to change their business practices to meet the City's policy objectives. Indeed, Ms. Kloss and her staff play an important role in deciding whether banks can become or remain City Deposit Banks, for she serves with the Commissioner of the Department of Finance, a member of the City Banking Commission along with the mayor and the City comptroller, N.Y.C. Charter § 1524, and "in [her] role as the City's Treasurer [she] also support[s] the New York City Banking Commission" (Ex. 7 (Nov. 23, 2010 Hr'g Tr. at 8:15-17)).

The CIAB Convenes and Holds Its Organizational Hearing

66. On January 13, 2015, the CIAB held a public organizational meeting and announced its plan to publish the Needs Assessment on April 9, 2015, and the Annual Report on November 9, 2015. (Ex. 21 (CIAB Hr'g Tr. at 24:25-25:9).)

67. At the January 13, 2015 hearing, Michael Geffrard, who is working with Econsult through its subcontractor the Management Consulting and Controls Group, stated that Econsult will "solicit . . . information" from the City's Deposit Banks "about how they can do things differently and better." (*Id.* at 12:18-21.)

68. Lee Huang, the Senior Vice President and Principal of Econsult, also stated that the City's Deposit Banks would "need to respond to some of our findings and recommendations." (*Id.* at 13:19-21.)

69. Confirming that Local Law 38 will go above and beyond State and federal banking laws, at the January 13, 2015 hearing, one CIAB member complained that one problem with the Federal CRA is that it "[is] relatively colorblind," and asked what Econsult would do to "look[] at race, gender, that type of information too in terms of where investments are being made." (*Id.* at 22:7-12.)

70. Since its organizational meeting, the CIAB has held five public hearings, one in each Borough, to identify community banking needs. The Association for Neighborhood and Housing Development, Inc. ("ANHD")—a proponent of Local Law 38 and an *amicus* in the previous action—advertised these meetings in a February 5, 2015 email, which stated that: "[Local Law 38] lets the city use the power of that money to hold banks accountable to better

meet the needs of our local communities. [Local Law 38] gives us a powerful tool to hold banks accountable and reward the best local bank reinvestment practices." (Ex. 24 (ANHD Email).)

The CIAB's Brooklyn Hearing

71. On February 9, 2015, the CIAB held the public hearing for the Borough of Brooklyn ("Brooklyn Hearing"). Ms. Kloss testified that the purpose of the Brooklyn Hearing (and the others) was for the CIAB "to hear from the public how New York City designated banks are meeting their local credit, financial, and banking needs throughout the city with special emphasis on low and moderate income individuals." (Ex. 25 (Brooklyn Hr'g Tr. at 2:22-3:1).)

72. At the hearing, Jamie Weisberg testified on behalf of the ANHD. Ms. Weisberg testified that the Local Law 38 "lets us use the power of our money to hold banks accountable." (*Id.* 9:8-10.) She also testified that "[b]anks need to be making credits," and that "[t]hey need to support small businesses with banking services." (*Id.* at 10:17:20.) Ms. Weisberg also testified that "not nearly enough money is being dedicated to neighborhood based community organizations." (*Id.* at 11:17-19.)

73. City Council member Darlene Mealy also testified at the Brooklyn Hearing. Council member Mealy testified as to her local goals, which were "to make sure that the banks in our neighborhood do give back to the community" because "we know the history of redlining." (*Id.* at 46:19-21.) Ms. Mealy also testified that:

> I'm looking forward to start working with banks in our neighborhood to make sure that they give back to the community in regards to maybe home equity lines of credit, credit cards . . . . If people don't have credit, you've got to start thinking about people coming back from incarceration. Let's try to get them credit cards of $200 to get them back into the community. So I'm looking forward to working with these banks and to make sure that everyone gets a fair share. And I had told my community if this conversation does not work with the banks and the community, then I'm

> asking them to take their money out of these banks in our neighborhood who is not being fair and giving back to the community.

(*Id.* at 46:21-47:14.)

74. Council member Mealy also testified that the CIAB should "talk one on one with some representatives from the bank [sic] and start thinking about sponsoring things like arts in our neighborhood," as this would "build the community up and show entrepreneurship with our young people that they can make films and win and become film artists." (*Id.* at 47:18-48:5.)

75. At the Brooklyn Hearing, Clifford Rosenthal, who previously worked at the Consumer Financial Protection Bureau (*id.* at 31:20-22), testified in support of Local Law 38 and thanked the CIAB "for going beyond what CRA does [sic] in establishing this board and . . . for coming here to testify today. It's really very encouraging" (*id.* at 32:16-19).

The CIAB's Staten Island Hearing

76. On February 10, 2015, the CIAB held the public hearing for the Borough of Staten Island ("Staten Island Hearing"). No one submitted written testimony or gave notice of intention to testify at the Staten Island Hearing. Therefore, CIAB member Jeffrey Shear asked Ms. Weisberg to testify again, and if "there [is] anything that you didn't get to say last night within your three minutes that you would like to say tonight?" (Ex. 26 (Staten Island Hr'g Tr. at 5:10-12).)

77. In response, Ms. Weisberg testified that "we need banks making responsible loans . . . . People need access to banks, access to mainstream financial institutions, and also to products that meet their needs." (*Id.* at 7:18-22).) Ms. Weisberg concluded by testifying that "it's really important that banks are acting responsibly. We know what happens when they don't. So thank you." (*Id.* at 8:23-25.)

78. The only other individual to testify at the Staten Island Hearing was City Council member Deborah Rose. Council member Rose testified that "every time it's budget time we get an opportunity, I get an opportunity to talk about how great the [banking] needs are on Staten Island, but tonight I'd like to talk about the banking inequities that we [have] seen in our, and I [have] experience[d] on the North Shore." (*Id.* at 9:21-10:1.) Council member Rose also declared that "we must address the locations of banks in my district," (*id.* at 10:11-12), and asked "if banks are not giving loans to the community then what is happening to the money that residents are depositing? The money should be flowing back into the community" (*id.* at 11:16-19). Council member Rose also raised concerns about "ever increasing bank fees" and "the ability to open a bank account." (*Id.* at 11:24-12-6.) She further testified that banks must do more to promote affordable housing, as "[p]eople who have proof of their credit worthiness and have funds should be able to buy a home and shouldn't . . . fall prey to predatory lenders." (*Id.* at 13:6-9.)

The CIAB's Bronx Hearing

79. On February 12, 2015, the CIAB held a public hearing for the Borough of Bronx ("Bronx Hearing"). Jim Buckley, an employee of the University Neighborhood Housing Program (Ex. 27 (Bronx Hr'g Tr. at 10:14-15)), testified that "the importance of the Federal Community Reinvestment Act cannot be emphasized in the return of bank investment to so many communities. The Responsible Banking Act is a positive and *logical next step for the City to take* in order to make banks more accountable" (*id.* at 10:22-11:3 (emphasis added)).

The CIAB's Manhattan Hearing and the City-Funded "Responsible Banking" Pamphlet

80. At the final public Borough hearing, held in Manhattan on February 18, 2015, a CIAB member encouraged attendees to "name names," and specifically identify those financial institutions with banking practices attendees found objectionable:

> I don't think you need to be vague about stating the name of the banks that you're dealing with and the issues that you may be encountering. Because that's the only way that the Committee can make recommendations. And remember, these banks hold deposits for the City of New York. And if they're not giving back and doing what they're supposed to do, we need to know that. So don't feel ashamed or afraid about saying the name of the bank that you're banking--or that you're encountering issues with.

(Ex. 28 (Feb. 18, 2015 CIAB Hr'g Tr. at 41:10-21).)

81. During the CIAB's organizational meeting and at the meetings held in the five Boroughs, ANHD handed out a pamphlet, funded in part by the City, describing Local Law 38 as an attempt to make "banks invest responsibly" and "to encourage banks seeking to hold city deposits to be more accountable to low- and moderate-income New Yorkers." (Ex. 29 (Responsible Banking Map at 3).) According to ANHD, Local Law 38 also will pressure banks to:

- "provide the services you need and can afford";
- have "bank employees [that] speak your language";
- address whether "your apartment building is in a bad condition";
- "help people become homeowners by offering loans and supporting first-time home buyer programs";
- "make grants to community organizations";

- ensure there are "enough jobs for people in your neighborhood"; and
- "offer services and make loans to small businesses."

(*Id.* at 2.) ANHD advertises that its pamphlet was funded by the "New York City Department of Cultural Affairs in partnership with the City Council" confirming that ANHD and the City are working hand-in-hand to promote the Council's policy objectives in passing Local Law 38. (*Id.* at 4.)

The CIAB Holds a Needs Assessment Hearing and Sends the Deposit Banks a Re-Designation Notice

82. On April 1, 2015, the CIAB held a hearing to preview the Needs Assessment. (Ex. 30 (Needs Assessment Hr'g Tr at 2:5-8).) The CIAB confirmed that it will use the Needs Assessment as a baseline to look at "how [] the individual designated banks [are] doing relative to the citywide averages, relative to the needs that have been expressed in the assessment." (*Id.* at 25:9-12.)

83. The CIAB also confirmed that it is "going to make some direct requests directly of the banks for information that is only *partially* publicly available." (*Id.* at 28:19-21 (emphasis added).) The CIAB stated that, through an "iterative process," it will be requesting information relating to, among other things, bank "economic development efforts, foreclosed properties, and outreach efforts." (*Id.* at 31:21-32:8.) The CIAB will also ask the City's Deposit Banks "to verify the data [it] ha[s] on them." (*Id.* at 32:3-4.)

84. On February 2, 2015, the City instructed Bashar Assana—one of two employees specifically hired to implement Local Law 38—to send the Deposit Banks the "2015 re-designation notice" and a list of the documentation required for designation. In sending out the notice, Mr. Assana described himself as being part of the "CIAB." (Ex. 31 (Redesignation E-

Mail).) Mr. Assana's role in sending out this letter is clearly an attempt by Defendants to tell Depository Banks that they must cooperate with the CIAB's information request and meet the CIAB's standards or risk losing their status as City depositories.

THE CITY RELEASES ITS NEEDS ASSESSMENT

85. On April 30, 2015, the CIAB released its Needs Assessment, which confirmed that the CIAB is attempting to use Local Law 38 to pursue the City's own local regulatory objectives ignoring the balancing between local and national goals achieved under federal and State law, including for banks operating in many states and localities. Indeed, the Needs Assessment expressly stated that its purpose is to "impact public policy and improve private lending behavior to address the gaps in access and resources that [it] identified." (Ex. 3 (Needs Assessment at 3).) The Needs Assessment, and its stated desire to "impact public policy," thus contradicts the City Council's claim before this Court that it was just a "learning tool for the City." (Ex. 23 (Aug. 19, 2014 Hr'g Tr. at 55:6).)

86. As part of its effort to "improve private lending behavior" beyond federal and State law, the Needs Assessment evaluated City banks based on the number of home loans, small business loans, and branch locations to see whether they were, in the CIAB's judgment, adequately serving "the needs of . . . low-income neighborhoods and other potentially vulnerable communities." (Ex. 3 (Needs Assessment at 15).)

87. The report also highlighted "the concerns, issues, and recommendations" it received from the public, "recommendations" that will be "further explored in the Annual Report." (*Id.* at 61.) These recommendations included: (1) providing lines of credit to individuals released from prison; (2) lowering "barriers to home mortgage lending" while

simultaneously ceasing "predatory lending"; and (3) increasing the "accessibility and convenience of bank locations." (*Id.* at 61-62.)

88. The "benchmarks and best practices" the City is establishing under Local Law 38 conflict with federal and State law, which has a larger, more diverse perspective. Under federal regulations, for example, national banks and federal savings associations may engage in a wide range of banking activities and have discretion, subject to federal law and regulations, as to (i) where they open branches, *e.g.*, 12 U.S.C. § 36; 12 C.F.R. § 5.30; (ii) how they engage in the business of residential mortgage lending, *e.g.*, 12 U.S.C. § 371; 12 C.F.R. §§ 34.1 *et seq.*, a practice that OCC regulations provide may be done "without regard to [certain] state law limitations," 12 C.F.R. § 34.4; and (iii) make public welfare investments, *e.g.*, 12 U.S.C. § 24; 12 C.F.R. §§ 24.1 *et seq.* The Needs Assessment and the CIAB's "benchmarks and best practices" confirm that Local Law 38 seeks to restrike the balance drawn by these regulations with respect to how banks engage in core banking activities, attempting to put the political agenda of each locality before the needs of the state or the nation as a whole.

89. The Federal CRA has also never mandated that financial institutions provide lines of credit to individuals released from jail, or required them to accept a City's "municipal ID . . . as sufficient proof of identity," or demand that they stop using "strict requirements . . . to evaluate credit worthiness, including credit history." (Ex. 3 (Needs Assessment at 63).) The Federal CRA also has never required financial institutions to disclose to the public information on "mortgage loan modifications" or the "servicing of distressed mortgages." (*Id.* at 68.)

90. Local Law 38's mandatory requirements also contradict the "flexibility" federal regulations afford financial institutions in conducting community reinvestment activities. *See*,

e.g., 71 Fed. Reg. 18614, 18616 (Apr. 12, 2006) ("The reason [the Office of Thrift Supervision] is making this revision is to encourage more community development activities in more areas . . . and to reduce burden by affording savings associations greater flexibility in serving their communities."); 70 Fed. Reg. 10023, 10028 (Mar. 2, 2005) (revising the Office of Thrift Supervision's rating system to "provide additional flexibility in assigning CRA ratings to encourage large retail savings associations to focus their community reinvestment efforts on the types of activities the communities they serve need, consistent with safe and sound operations").

91. For example, Local Law 38 also mandates that Deposit Banks "conduct consumer outreach, settlement conferences, and similar actions relating to mortgage assistance and foreclosure prevention, and provide information, at the community district level to the board, relating to mortgage and foreclosure actions . . . ." Local Law 38 § 1 subdiv. 3(e). The Federal CRA, by contrast, allows banks the option of "providing foreclosure prevention programs to low- or moderate-income homeowners who are facing foreclosure on their primary residence with the objective of providing affordable, sustainable, long-term loan modifications and restructurings" in order to gain credit under a "Service Test." 75 Fed. Reg. 11642, 11650-51 (Mar. 11, 2010). But it is not a requirement, and the Federal CRA imposes no "benchmarks" prescribing a certain number of foreclosure modifications.

92. The Needs Assessment also conceded that, to prepare the forthcoming Annual Report, the CIAB will be conducting an "examination of [Deposit Banks]." (Ex. 3 (Needs Assessment at 61).) The "examination" will involve a "specific exploration of individual [Deposit Banks'] performance in meeting the banking needs of NYC residents and businesses." (*Id.* at iii.) This process will involve gathering information about "what each [Deposit Bank] is

doing to serve low-income communities in NYC, identify[ing] areas of improvement, and rank[ing] the [Deposit Banks] based on their performance in the previous year." (*Id.* at 1-2.)

93. In conducting its "examination," the CIAB will be "interfac[ing]" with Deposit Banks as "part of the preparation of the Annual Report" to gather data about each bank's "policies, programs, and performance." (*Id.* at 2-3.) The Annual Report is intended to "directly and decisively comment on the lending performance or underlying motivations of individual banks or groups of banks as it relates to any disparities across communities throughout NYC." (*Id.* at 3.)

94. Finally, the Needs Assessment noted particular categories of information where the CIAB believes it will need to collect information not available under the Federal CRA, including:

- Depository banks at the census tract level;
- Multi-family loan portfolios;
- Mortgage loan modifications;
- Servicing of distressed mortgages;
- Foreclosure prevention initiatives; and
- Financial products for low to moderate-income residents.

(*Id.* at 68.) The Needs Assessment also noted that the CIAB "did not have access to many key pieces of information used by banks to make lending decisions on individual applications, such as credit score, debt load, wealth level, or loan-to-value ratio. As such, it is not able to directly and decisively comment on the lending performance or underlying motivations of individual banks or groups of banks as it relates to any disparities across communities throughout NYC." (*Id.* at 5.)

95. In summary, the Needs Assessment confirms that Local Law 38's information-gathering provisions and "benchmarks and best practices" conflict with, and therefore, are preempted by, federal and State law.

THE CIAB MAKES ITS INITIAL INFORMATION DEMANDS ON DEPOSIT BANKS

96. On May 13, 2015, the CIAB sent letters to the City's Deposit Banks "for the purpose of requesting specific bank data in connection with the RBA reporting act requirements." (Ex. 4 (Banking Information Request Letter at 1).) Like Ms. Kloss's December 18, 2014 letter, discussed *supra* ¶ 65, the letter was sent to the individual at each Deposit Bank responsible for maintaining the bank's relationship with the City (indicating that Local Law 38 is intended to pressure Deposit Banks to change their business practices to meet the City's policy objectives).

97. The letter noted that the CIAB had collected "preliminary data . . . from public sources relating to branch location, home lending and business loans" and asked the Deposit Bank recipients to "review the data . . . and confirm that it is correct," because "[t]his information will appear in the annual report." (*Id.*)

98. The CIAB's letter also asked Deposit Banks to provide information on "each Designated Bank's efforts to:

a. Address the key credit and financial services needs of small businesses;

b. Develop and offer financial services and products that are most needed by low and moderate income individuals and communities throughout the city and provide physical branches;

c. Provide funding, including construction and permanent loans and investments, for affordable housing and economic development projects in low and moderate income communities;

d. In the case of properties acquired by foreclosure and owned by the bank, reasonably address serious material and health and safety deficiencies in the maintenance and condition of the property;

e. Conduct consumer outreach, settlement conferences, and similar actions relating to mortgage assistance and foreclosure prevention, and provide information, at the community district level to the board, relating to mortgage and foreclosure actions, including, but not limited to, total number of loans serviced and/or owned by the bank, total number of loans that are at least sixty days delinquent, total number of foreclosures commenced, total number of foreclosures prevented through loan modification, short sales, deeds in lieu of foreclosure or other mechanisms, total number of loan modifications applications, total number of loan modifications made and denied, and bank owned properties donated or sold at a discount;

f. Partner in the community development efforts of the city;

g. Positively impact on the city and its communities through activities including, but not limited to, philanthropic work and charitable giving; and

h. Plan for and articulate how the bank will respond to the credit, financial and banking services needs of the city identified by the Needs Assessment report."

(*Id.* at 1-2.)

99. The CIAB's letter would unconstitutionally require Deposit Banks to generate and to produce to the CIAB significant amounts of non-public information (including confidential and proprietary information). Because the CIAB's initial request seeks information beyond the

information requests imposed under federal and State law, certain NYBA members that are Deposit Banks have determined that responding to the CIAB's request would require them to expend significant amounts of resources, including, for example, modifying their systems to collect and gather the necessary data; spending significant time gathering and analyzing the requested data at the "census tract" level; and hiring consultants to respond to the CIAB's requests.

100. In requesting this "data" by June 12, 2015, the CIAB's May 13 letter specifically invoked Local Law 38's directive that the CIAB "seek to collect and consider information," *see* Local Law 38 § 1 subdiv. 3, and noted that "[a]s delineated in Section 3 of [Local Law 38], the Annual Report must account for each [Deposit Bank's] efforts" to meet the CIAB's demands, including its initial demands for information (Ex. 4 (Banking Information Request Letter at 1)).

101. Accordingly, the May 13 letter undermines the City Council's prior representations to this Court that Local Law 38 would be implemented in a voluntary way that would not seek any non-public information from banks. Specifically, the City Council told the Court that:

- "[T]here is no provision nor sentence nor clause in Local Law 38 that requires the [CIAB] . . . to request information [from the Deposit Banks]" (Ex. 23 (Aug. 19, 2014 Hr'g Tr. at 21:18-21));
- Local Law 38 will not "mandate[] the banks to act in any way" (*id.* at 55:10-11); and
- The City Council was "not even sure if the [CIAB] will ever make a[n information] request to the banks" (*id.* at 68:20-21).

LOCAL LAW 38 IS A REGULATORY LAW THAT CONFLICTS WITH FEDERAL AND STATE BANKING LAWS

102. By its terms, Local Law 38 is plainly designed to regulate the conduct and activities of the City's Deposit Banks and prospective Deposit Banks, imposing requests above and beyond federal and State law by demanding Deposit Banks open new branches and offer new products to meet the City's demands. In order to achieve the City Council's policy goals of regulating the types of products and services banks offer "throughout the City," Local Law 38 requires banks to make various disclosures that have nothing to do with the City's role as a consumer of banking services. Banks that do not comply with these disclosure requirements will be "specifically identifie[d]" in the annual report published on the Department of Finance's website. Local Law 38 § 1 subdiv. 1(b); *see also id.* subdiv. 5. Further, Deposit Banks will be judged if they do not meet the "benchmarks and best practices . . . established by the [CIAB] pursuant to the needs assessment," even if they fully comply with all applicable federal and State banking law. *Id.* subdiv. 1(b). In addition, because the Annual Report "may be considered by the banking commission in reviewing a bank's application for designation or redesignation as a deposit bank," banks that do not comply with Local Law 38's disclosure provisions or fail to meet the CIAB's "benchmarks, best practices, and recommendations" are threatened with losing (or not gaining) the City's deposits. *See id.* subdiv. 1.

103. Unlike a proprietary law that narrowly focuses on improving the terms of the City's contracts with Deposit Banks, Local Law 38 uses the City's spending power to regulate—or more specifically, to alter—banks' conduct regarding, *e.g.*, services and products for low and moderate income communities and small businesses and loan modifications and foreclosures. The City Council enacted Local Law 38 to implement changes that it felt had "no chance" of

being implemented by the federal government. *See supra* ¶ 24 (quoting Ex. 9 (Mar. 7, 2011 Hr'g Tr. at 103:4-24)).

104. Indeed, confirming that the City Council did not pass Local Law 38 to enhance the City's power as a consumer of banking services on its own behalf, Mayor Bloomberg and the Department of Finance warned that this law actually will hurt the City's position as a consumer, because it can only result in a decrease in the number of banks with which the City can deposit its funds. (*See* Ex. 32 (Kloss Testimony at 2-3); Ex. 12 (Frankel Testimony at 9-10).) As City Treasurer Kloss advised the City Council, the City's banking needs are "very complex" and require "highly sophisticated banking services" that only a limited number of banks can provide. (Ex. 9 (Mar. 7, 2011 Hr'g Tr. at 42:11-15).) Ms. Kloss warned that "if one of these banks chose not to comply with [Local Law 38] . . . and we are not allowed to use them . . . it could pose a hazard to us." (*Id*. at 42:20-24.)

105. Unlike a typical consumer of deposit services, the City has spent approximately half a million dollars to implement Local Law 38, which does nothing to procure better pricing and deposit services for the City.

106. Moreover, laws that either brand entities in a negative light or stop or threaten to stop those entities' commercial relationships with the government are equivalent to direct regulations and, therefore, are subject to the same preemption standards, because they "serve[] plainly as a means of enforcing" a law. *See Wis. Dep't of Indus., Labor & Human Rels.* v. *Gould, Inc.*, 475 U.S. 282, 287 (1986). The text of Local Law 38 makes clear that the Annual Report will "include an evaluation of how each bank performed relative to the benchmarks and best practices . . . established by the [CIAB]" relating to the CIAB's perceived needs of the

City's residents. § 1 subdiv. 1(b). When a government imposes benchmarks and best practices unrelated to the services it receives, and threatens to remove money if a private actor does not meet such benchmarks and best practices, "[n]o other purpose [than regulation] could credibly be ascribed." *Gould*, 475 U.S. at 287.

107. Local Law 38 encourages residents to provide commentary on "individual banks," and to identify banks that are, allegedly, "not doing positive things for . . . the [C]ity." (Ex. 3 (Needs Assessment at 2).)

108. Even if Local Law 38 did not require the CIAB to "specifically identify" supposedly non-compliant banks, the City could not make an end-run around the federal and State constitutional preemption doctrines on the basis that the failure of a Deposit Bank to (i) provide the required information, or (ii) satisfy the CIAB's determination of what a bank must do to meet the "credit, financial, and banking services needs throughout the City" would not lead to an *automatic* loss of depository status. Although Local Law 38 does not mandate that non-compliant Deposit Banks lose their status as City depositories, the clear threat of such a loss and its economic consequences, either separately or together with the reputational injury caused by the prospective reputational injury, serves just as plainly as a means of enforcing the City's desired regulation of bank practices and policies. Indeed, the very purpose of Local Law 38 is "to force banks or to pressure banks into being more cooperative with [loan modification]" and "to use the power of [the City's] deposit to encourage banks to behave in a socially proper way." *See supra* ¶ 22 (quoting Ex. 7 (Nov. 23, 2010 Hr'g Tr. at 26:11-12, 26:24-25).)

109. The Needs Assessment is replete with language making clear that Local Law 38 grants the CIAB the power to regulate Deposit Banks beyond the scope of federal and State

banking laws, emphasizing that the CIAB will "examine" banks and on numerous occasions that the Annual Report will "evaluate" Deposit Banks. (*E.g.*, Ex. 3 (Needs Assessment at 1, 32, 70).) The City Council designed Local Law 38 to "impact public policy and improve private lending behavior" (*id.* at 3) and to address the City Council's stated belief that "state and federal CRA ratings actually provide very little meaningful information regarding a bank's community level of services" (Ex. 11 (Apr. 30, 2012 Hr'g Tr. at 4:6-8)). The Needs Assessment even states that the CIAB will conduct an "examination of [Deposit Banks]," which is nothing but an exercise of visitorial powers. (Ex. 3 (Needs Assessment at 61).)

110. Unlike federal banking regulations, Local Law 38 imposes requirements on Deposit Banks based on the CIAB's views without regard for banks' obligations to conduct their activities in a prudent manner deemed safe and sound by federal regulators. *See, e.g.*, 12 C.F.R. pt. 364 (FDIC regulations to monitor the "safety and soundness" of deposit institutions); 12 C.F.R. pt. 30 (OCC regulations to monitor the "safety and soundness" of national banks).

111. For instance, the Federal CRA explicitly states that it will "assess the institutions' record of meeting the credit needs of its entire community . . . *consistent with the safe and sound operation of such institution*." 12 U.S.C. § 2903(a)(1) (emphasis added). The Needs Assessment makes no mention of any such goal; rather, it imposes a range of demands on Deposit Banks, including, for example, providing "access to home mortgage loans" (Ex. 3 (Needs Assessment at 65-66)), without regard to whether it is fiscally prudent for banks to do so. And, as discussed *supra* ¶¶ 50, 88-90, Local Law 38 requires Deposit Banks to engage in conduct that is discretionary under the Federal CRA and to provide a level of detail that the CRA does not require.

COUNT I – DECLARATORY JUDGMENT
THE NATIONAL BANK ACT PREEMPTS LOCAL LAW 38

112. Plaintiff repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 111 as if fully set forth herein.

113. Certain members of NYBA, including some City depositories, are national banks chartered pursuant to the NBA, 12 U.S.C. §§ 1 *et seq.*

114. The NBA provides that "[n]o national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress." 12 U.S.C. § 484(a). Federal law grants the OCC exclusive power to exercise "visitorial powers" over national banks. *See id.* §§ 93a, 161. Pursuant to the NBA, the OCC defines "visitorial powers" to include: "inspecting or requiring the production of books or records of national banks;" "[e]xamination of a bank;" "[r]egulation and supervision of activities authorized or permitted pursuant to federal banking law;" and "[e]nforcing compliance with any applicable federal or state laws concerning those activities." 12 C.F.R. § 7.4000(a)(2).

115. The direct conflict between Local Law 38 and the NBA could not be clearer. The Needs Assessment and Annual Report explicitly provide for an "examination" of national banks in direct conflict with the exclusive examination powers, as mandated by the NBA, in the OCC. The entire approach of Local Law 38 is both to "inspect" and "requir[e] the production of books and records," again in direct contradiction of the NBA's exclusive assignment of this power to the OCC.

116. The City cannot pursue a regulatory objective using indirect means of coercion, such as threats of reputational injury or the loss of deposit bank status, as opposed to direct

coercion like a fine. The Supremacy Clause does not permit a party to regulate indirectly when it could not do so directly.

117. Moreover, Local Law 38 requires Deposit Banks to "plan for and articulate how [they] will respond to the credit, banking and financial services needs" of City residents as determined by the CIAB, as opposed to by the OCC. This requirement for a national bank to engage in this type of strategic planning and to subject itself to the CIAB's subjective evaluation of that strategic planning is another quintessential example of "[e]xamination of a bank" and "[r]egulation and supervision of activities authorized or permitted pursuant to federal banking law." The Supreme Court has consistently recognized that this power may be exercised only by the OCC. *See Cuomo* v. *ClearingHouse Ass'n, L.L.C.*, 557 U.S. 519, 530 (2009) (recognizing the "regime of exclusive administrative oversight by the [OCC]"); *Watters* v. *Wachovia Bank, N.A.*, 550 U.S. 1, 13 (2007) ("The NBA specifically vests exclusive authority to examine and inspect in [the] OCC.").

118. In addition, as applied to national banks, Local Law 38 cannot be interpreted in a manner that would avoid conflict with the NBA and OCC regulations that define the scope of national banks' powers.

119. The NBA and OCC regulations provide that national banks may exercise a wide variety of banking powers subject to federal law and OCC supervision, including, among others, opening branches, *e.g.*, 12 U.S.C. § 36, 12 C.F.R. § 5.30, taking deposits, *e.g.*, 12 U.S.C. § 24; 12 C.F.R. § 7.4007, charging account fees and making related disclosures, *e.g.*, 12 C.F.R. § 7.4002, engaging in the business of residential mortgage lending, *e.g.*, 12 U.S.C. § 371; 12 C.F.R. §§

34.1 *et seq*., and making public welfare investments, *e.g.*, 12 U.S.C. § 24; 12 C.F.R. §§ 24.1 *et seq*.

120. In many cases, OCC regulations expressly provide that these powers may be exercised without regard to state—and, by extension, local—banking regulation. Local Law 38 pressures Deposit Banks to "develop and offer financial services and products that are most needed by low and moderate income individuals and communities throughout the city and provide physical branches." Local Law 38 § 1 subdiv. 3(b). This provision conflicts with OCC regulations providing that national banks "may receive deposits and engage in any activity incidental to receiving deposits . . . without regard to state law limitations" concerning, among other things, "[c]hecking accounts," "[d]isclosure requirements," "[f]unds availability," or "[s]tate licensing or registration requirements." 12 C.F.R. § 7.4007(b).

121. In addition, OCC regulations provide that "national banks may make real estate loans . . . without regard to state law limitations" concerning a range of lending practices, including "[l]oan-to-value ratios," "[t]he terms of credit, including schedule for repayment of principal and interest . . . [and] the circumstances under which a loan may be called due and payable," "[t]he aggregate amount of funds that may be loaned upon security of real estate," "[d]isbursements and repayments," and "[r]ates of interest on loans," among other things. 12 C.F.R. § 34.4. But Local Law 38 improperly uses the City's power to direct more than $6 billion in deposits to pressure Deposit Banks to "address the key credit and financial services needs of small businesses" and offer new "financial services and products . . . [to] low and moderate income individuals." Local Law 38 § 1 subdiv. 3(a),(b). As a result, as applied to national banks

that receive City deposits, Local Law 38 authorizes the CIAB to impose the very burdens on Deposit Banks that OCC regulations prohibit.

122. For national banks that are designated, or seek to be designated, as Deposit Banks, Local Law 38 will limit their exercise of their federally granted powers under the NBA by pressuring such banks to allocate their capital, time, and other resources to those banking products and practices that the CIAB supports, or else again face public criticism by the CIAB and potential loss of Deposit Bank status. Because Local Law 38 conflicts with, and is preempted by, federal banking laws and regulations, Local Law 38 is invalid.

123. When Congress, from time to time, has adjusted the scope of non-federal regulation of national banks, it has done so in a manner that shows that Local Law 38 is impermissible. Most recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, § 1044(b)(1)(B) (2010) (codified at 12 U.S.C. § 25-b(1)(B)), amended the NBA to create the concept of non-preempted "state consumer financial law." Dodd-Frank Act § 1044. These non-preempted laws are limited to "state" laws[6] that "directly and specifically regulate[] the manner, content, or terms and conditions of any financial transaction . . . with respect to a consumer." Dodd-Frank Act § 5136C(a)(2), (b). Local Law 38, however, is not a state law, addresses consumer transactions only indirectly and is not specific to any financial transaction with a consumer—effectively the opposite in every respect of the type of consumer financial law for which Congress made room.

[6] Where Congress intends to refer to local or municipal laws, it explicitly does so, using language such as "municipal[] or local law." *E.g.*, Dodd-Frank Act § 210(q) ("Federal, State, county, municipal, or local law . . . .").

124. The City has moved rapidly to implement Local Law 38 against the Deposit Banks, which have a fear of imminent injury, because they must immediately either spend substantial resources to comply with an unconstitutional law and to submit to an unconstitutional regulatory scheme, or to refuse to comply and suffer reputational injury and/or risk losing deposit status. All Deposit Banks will be ranked by the City "based on their performance" in meeting the CIAB's demands (Ex. 3 (Needs Assessment, at 3)), which, as noted *supra* ¶¶ 11, 55 could harm banks' relationships with customers and counterparties. And, one bank already has suffered injury as a result of Local Law 38 by withdrawing as a Deposit Bank.

125. As Mayor Bloomberg recognized, Local Law 38 "extends beyond the City's competence and legal authority," conflicting with the National Bank Act's grant of exclusive oversight of national banks to the OCC. (Ex. 15 (Mayor Veto Message at 1).)

126. An actual and justiciable controversy exists between NYBA and Defendants over whether the NBA and OCC regulations, *e.g.*, 12 C.F.R. § 7.4007; 12 C.F.R. § 34.4; *see also supra* ¶¶ 114-123, preempt Local Law 38 as applied to national banks that are, or seek to become, City Deposit Banks. If Local Law 38 is upheld by this Court, NYBA members will be forced to risk potential loss of Deposit Bank status, expose themselves to reputational injury, and/or expend resources to comply with the Law's requirements. This Court's judgment on the legal validity of Local Law 38 will finalize the controversy and offer affected NYBA banks relief from this uncertainty.

COUNT II – DECLARATORY JUDGMENT
THE HOME OWNERS' LOAN ACT PREEMPTS LOCAL LAW 38

127. Plaintiff repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 126 as if fully set forth herein.

128. Certain NYBA members are federal savings associations chartered pursuant to the HOLA, 12 U.S.C. §§ 1461 *et seq.*

129. As with national banks, the HOLA and OCC regulations provide that federal savings associations may engage in a wide variety of banking activities subject to federal law and OCC supervision. *See*, *e.g.*, 12 U.S.C. §§ 1463(a) (examination authority of the OCC), 1464(a)-(c) (deposits, loans and investments), 1464(m) (branching); 12 C.F.R. §§ 145.92, 157.1 *et seq.*, 160.1 *et seq*., 165.1 *et seq*. (OCC regulations regarding the same).

130. Under the Dodd-Frank Act, Congress expressly provided that the NBA provisions relating to the exercise of visitorial powers "shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively," 12 U.S.C. § 1465(c), and that determinations of preemption of state (and, by extension, local) law under the HOLA "shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law," *id.* § 1465(a).

131. As a result, as applied to federal savings associations that are or seek to be designated as City Deposit Banks, Local Law 38 conflicts with and, thus, is preempted by the HOLA and OCC regulations, *e.g.*, 12 C.F.R. §§ 145.92, 157.1 *et seq.*, 160.1 *et seq.*, 165.1 *et seq*., for the same reasons that Local Law 38 is preempted as applied to national banks. Local Law 38 represents both the City's impermissible exercise of visitorial powers over federal savings associations that are or seek to become Deposit Banks and an impermissible limitation on those associations' exercise of their powers and, therefore, conflicts with the regulatory regime for federal savings associations.

132. The City has moved rapidly to implement Local Law 38 against the Deposit Banks, which have a fear of imminent injury, because they must immediately either spend substantial resources to comply with an unconstitutional law and submit to an unconstitutional regulatory scheme, or refuse to comply and suffer reputational injury and/or risk losing deposit status. Indeed, one bank already has suffered injury by withdrawing as a Deposit Bank as a result of Local Law 38.

133. As Mayor Bloomberg recognized, Local Law 38 "extends beyond the City's competence and legal authority," conflicting with the HOLA and the Dodd-Frank Act's grant of exclusive oversight of federal savings associations to the OCC. (Ex. 15 (Mayor Veto Message at 1).)

134. An actual and justiciable controversy exists between NYBA and Defendants over whether the HOLA and associated OCC regulations preempt Local Law 38 as applied to federal savings associations that are, or seek to become, City Deposit Banks. If Local Law 38 is upheld, NYBA members will be forced to risk potential loss of Deposit Bank status, expose themselves to reputational injury, and/or expend resources to comply with the Law's requirements. This Court's judgment on the legal validity of Local Law 38 will finalize the controversy and offer affected NYBA members relief from uncertainty.

COUNT III – DECLARATORY JUDGMENT
THE FEDERAL CRA PREEMPTS LOCAL LAW 38

135. Plaintiff repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 134 as if fully set forth herein.

136. NYBA members are FDIC-insured depository institutions subject to the Federal CRA, 12 U.S.C. §§ 2901 *et seq*.

137. The Federal CRA imposes a "continuing and affirmative obligation" on FDIC-insured depository institutions "to help meet the credit needs of the local communities." 12 U.S.C. § 2901(c). In other words, the Federal CRA has an inherently local focus and is aimed at assuring that banks serve their communities, particularly low and moderate income communities and small businesses.

138. Under the Federal CRA, in connection with examinations of an FDIC-insured depository institution, the OCC, the FDIC or the Federal Reserve, as applicable, must: (i) "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution;" (ii) "take such record into account in its evaluation of an application for a deposit facility" such as a new branch; and (iii) "prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods." 12 U.S.C. §§ 2901-03, 2906.

139. The OCC, the FDIC and the Federal Reserve have promulgated detailed and comprehensive regulations to implement the Federal CRA, which impose considerable recordkeeping requirements on insured depository institutions. *See* 12 C.F.R. §§ 25.42 (OCC regulation), 228.42 (Federal Reserve regulation), 345.42 (FDIC regulation). Such institutions face extensive Federal CRA examinations, which vary in frequency and content based on the size of the institution, and receive a composite score of their CRA performance, which is made public. *See, e.g.*, 12 U.S.C. §§ 2906, 2908; 12 C.F.R. §§ 25.21, 25.26, 25.28. Members of local communities, including government officials, can submit their views about an institution's Federal CRA performance to federal regulators. *See, e.g.*, 12 C.F.R. § 25.29.

140. Congress and the federal banking regulators have determined the extent to which reporting and public dissemination of information about an institution's community reinvestment activities is appropriate. *See, e.g.*, 12 U.S.C. § 2906(b)-(c) (Federal CRA evaluations and division into public section and confidential section); 12 C.F.R. §§ 25.42 (OCC regulation on data collection, reporting and disclosure under Federal CRA), 25.43 (OCC regulation on additional information to be made available to public under Federal CRA). By its terms, and in conflict with the Federal CRA and governing regulations, Local Law 38 would require reporting and public dissemination of different and additional information about Deposit Banks' community reinvestment activities.

141. Similarly, Congress and federal banking regulators have determined that considering a depository institution's community reinvestment activities as a factor, typically as a negative factor if the record is "unsatisfactory," when the institution applies to open new branches or make acquisitions is appropriate, but that more directly enforcing a mandate to engage in community reinvestment activities generally is not. "Congress has plainly spoken on the question of what enforcement tools are available to agencies under the CRA. The CRA provides for enforcement only in the application context . . . ." (Ex. 33 at 2 (Memorandum from Walter Dellinger, Assistant Att'y Gen. for the U.S. Dep't of Justice, to Eugene A. Ludwig, Comptroller of the Currency (Dec. 15, 1994)).) Local Law 38, on the other hand, through its threats of public criticism by the CIAB and potential loss of Deposit Bank status, would effectively serve as an enforcement mandate against Deposit Banks outside the application context, contrary to the goals of the Federal CRA.

142. Finally, while the Federal CRA requires banks to provide information for their assessment area, *e.g.*, 12 C.F.R. §§ 12.22-25, Local Law 38 requires deposit Banks to provide information at the "census tract level." § 1 subdiv. 3.

143. As a result, Local Law 38 would both impose additional and inconsistent requirements, and disrupt the careful balance of disclosures and incentives embodied in the Federal CRA. Such disruption will be an obstacle to the accomplishment and execution of one of Congress's primary purposes and objectives in connection with the Federal CRA, which was to achieve and maintain that careful balance of disclosures and incentives. Consequently, the Federal CRA conflicts with, and preempts, Local Law 38 as applied to FDIC-insured depository institutions and are designated, or seek to be designated, as City Deposit Banks.

144. The City has moved rapidly to implement Local Law 38 against the Deposit Banks, which have a fear of imminent injury, because they must immediately either spend substantial resources to comply with an unconstitutional law and submit to an unconstitutional regulatory scheme, or refuse to comply and suffer reputational injury and/or risk losing deposit status. Indeed, one bank already has suffered injury by withdrawing as a Deposit Bank as a result of Local Law 38.

145. As Mayor Bloomberg recognized, Local Law 38 "extends beyond the City's competence and legal authority," and it conflicts with the Federal Community Reinvestment Act's carefully calibrated incentive structure to promote community reinvestment. (Ex. 15 (Mayor Veto Message at 1).)

146. An actual and justiciable controversy exists between NYBA and Defendants over whether the Federal CRA and associated OCC, FDIC and Federal Reserve regulations preempt

Local Law 38 as applied to FDIC-insured depository institutions that are, or seek to become, City Deposit Banks. If Local Law 38 is upheld, NYBA members will be forced to risk potential loss of Deposit Bank status, expose themselves to reputational injury, and/or expend resources to comply with the Law's requirements. This Court's judgment on the legal validity of Local Law 38 will finalize that controversy and offer affected NYBA members relief from uncertainty.

COUNT IV – DECLARATORY JUDGMENT
NEW YORK STATE BANKING LAW PREEMPTS LOCAL LAW 38

147. Plaintiff repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 146 as if fully set forth herein.

148. Certain NYBA members are banks and other depository institutions chartered pursuant to the N.Y.B.L., §§ 1 *et seq.*

149. The N.Y.B.L. occupies the field of banking, including mortgage lending, for affected institutions, to the exclusion of any municipal regulation of banking activities. The N.Y.B.L. and its implementing regulations are comprehensive and detailed, covering many subjects including opening branches, *e.g.*, N.Y.B.L. §§ 105, 240, taking deposits, *e.g.*, N.Y.B.L. §§ 96, 234, charging account fees and making related disclosures, *e.g.*, 3 N.Y.C.R.R. Parts 9, 13, engaging in the business of residential mortgage lending, *e.g.*, N.Y.B.L. § 590; 3 N.Y.C.R.R. Parts 10, 39, 41, 79, 82, 84, and making public welfare investments, *e.g.*, N.Y.B.L. § 97.4-c; 3 N.Y.C.R.R. § 6.5. "In short, the Banking Law contains a comprehensive regulatory scheme which evidences the state's intent to occupy the field." *Mayor of N.Y.* v. *Council of N.Y.*, 4 Misc. 3d 151, 160 (N.Y. Sup. Ct. 2004).

150. Moreover, the New York State Legislature's determination that there should be uniformity in regulation of State-chartered financial institutions constitutes occupation of the

field. The State Legislature has expressly stated that it is "the policy of the state of New York that the business of all banking organizations shall be supervised and regulated through" the DFS, N.Y.B.L. § 10, and that "responsive, effective, innovative, state banking and insurance regulation is necessary to operate in a global, evolving and competitive market place," N.Y. Fin. Servs. Law § 101-a.

151. As a result, the City may not examine or regulate depository institutions chartered under New York State law that are or seek to be designated as City Deposit Banks. Therefore, Local Law 38 conflicts with, and is preempted by, New York State law as applied to these institutions, several of which are NYBA members.

152. Moreover, the State Legislature has enacted the State CRA as part of the N.Y.B.L. N.Y.B.L. § 28-b. Because the N.Y.B.L. occupies the field of banking law with respect to State-chartered depository institutions, the City's back-door attempt to enact its own community reinvestment act through Local Law 38 is preempted as applied to those institutions.

153. Even if the N.Y.B.L. did not occupy the field of State banking regulation, the N.Y.B.L. still would preempt Local Law 38, because Local Law 38 conflicts with the State CRA, which largely mirrors the Federal CRA. In evaluating applications for branch offices, mergers, asset purchases, ATM installations, and other actions, the DFS evaluates the State CRA performance of State-chartered banks. N.Y.B.L. § 28-b(3). The DFS does so by requiring that institutions file with the DFS copies of Federal CRA documents and by periodically conducting its own State CRA examinations. *Id.* The DFS has issued detailed, comprehensive regulations for administering the State CRA that reflect a carefully calibrated effort to harmonize with Federal CRA regulations. *See* 3 N.Y.C.R.R. Part 76.

154. By imposing what is effectively a City community reinvestment act on top of the State CRA, Local Law 38 conflicts with the State's goal of ensuring that the community reinvestment activities of State-chartered depository institutions are regulated uniformly across the State and in a manner that is substantially consistent with the Federal CRA. For this reason too, Local Law 38 conflicts specifically with the State CRA, as well as the N.Y.B.L. as a whole. Accordingly, the State CRA preempts Local Law 38.

155. The City has moved rapidly to implement Local Law 38 against the Deposit Banks, which have a fear of imminent injury, because they must immediately either spend substantial resources to comply with an unconstitutional law and submit to an unconstitutional regulatory scheme, or refuse to comply and suffer reputational injury and/or risk losing deposit status. Indeed, one bank already has suffered injury by withdrawing as a Deposit Bank as a result of Local Law 38.

156. As Mayor Bloomberg recognized, Local Law 38 "extends beyond the City's competence and legal authority," regulating in a field where the City is barred from acting by State law. (Ex. 15 (Mayor Veto Message at 1).)

157. An actual and justiciable controversy exists between NYBA and Defendants concerning whether the N.Y.B.L., including the State CRA, and associated DFS regulations preempt Local Law 38 as applied to FDIC-insured depository institutions regulated by New York State that are, or seek to become, City Deposit Banks. If Local Law 38 is upheld, NYBA members will be forced to risk potential loss of Deposit Bank status, expose themselves to reputational injury, and/or expend resources to comply with the Law's requirements. This

Court's judgment on the legal validity of Local Law 38 will finalize the controversy and offer NYBA members relief from uncertainty.

COUNT V – PERMANENT INJUNCTION

158. Plaintiff repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 157 as if fully set forth herein.

159. As demonstrated above, NYBA will be successful on the merits of its preemption claims.

160. NYBA members designated as Deposit Banks soon will be irreparably harmed without the entry of a permanent injunction enjoining the City from enforcing Local Law 38. Indeed, one bank already has suffered injury by withdrawing as a Deposit Bank as a result of Local Law 38.

161. There is no real hardship to Defendants from a permanent injunction because although Defendants would be prevented from implementing the City Council's preferred policy, Local Law 38 is unconstitutional because it conflicts with governing State and federal law and regulations.

162. NYBA has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands that judgment be entered in favor of Plaintiff and against Defendants as follows:

i. Declaring that Local Law 38 is invalid, without force and effect, and that affected banks are not required to abide by its terms;

ii. Declaring that federal law preempts Local Law 38;

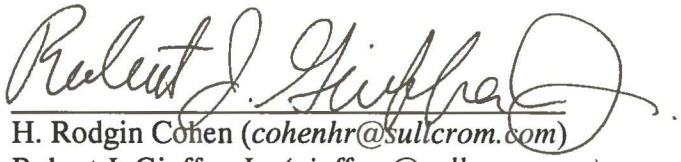
iii. Declaring that New York State law preempts Local Law 38;

iv. Permanently enjoining Defendants' operation and implementation of Local Law 38; and

v. Such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 26, 2015

SULLIVAN & CROMWELL LLP



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