AMERICAN CIVIL LIBERTIES UNION FOUNDATION
New Jersey

P.O. Box 32159
Newark, NJ 07102

Tel: 973-642-2086
Fax: 973-642-6523

info@aclu-nj.org
www.aclu-nj.org

EZRA D. ROSENBERG
Director of Appellate Advocacy

erosenberg@aclu-nj.org
973-854-1714

November 10, 2025

Joseph Orlando, Clerk
Appellate Division Clerk's Office
R.J. Hughes Justice Complex, 5th Floor
25 Market Street
P.O. Box 006
Trenton, New Jersey 08625

Re: ***Sun Property Management, Inc., et al. v. Borough of Seaside Heights, et al.***
Docket No. A-002683-23

Honorable Judges of the Appellate Division:

Pursuant to *Rule* 2:6-2(b), please accept this letter brief in lieu of a more formal submission on behalf of amicus curiae the American Civil Liberties Union of New Jersey ("ACLU-NJ") in the above-captioned matter.

TABLE OF CONTENTS

PRELIMINARY STATEMENT

New Jersey has a strong and unwavering policy in favor of the government's treating 18-, 19-, and 20-year-olds the same way as it treats 21-year-olds, subject only to legislatively enacted express exceptions. The state's mandate of equal treatment of all adults aged 18 and older applies both to the right to contract and to the use of public accommodations. Indeed, the New Jersey Legislature has expressly provided that the opportunity to use public accommodations free of age discrimination is a civil right and has further rendered it unlawful both to refuse to contract with someone on account of age and to compel anyone to so refuse. These express state policies provide the prism through which this Court must view Plaintiffs' claims. By alleging that the Borough of Seaside Heights' ordinance has discriminated between older and younger legal adults to the detriment of younger legal adults in the contracting for motel and hotel rooms and has compelled Plaintiffs to participate in that discrimination, Plaintiffs have adequately pleaded violations of the state constitutional guarantees of due process and equal protection, supporting their claims under the New Jersey' Civil Rights Act ("NJCRA") and its Law Against Discrimination ("LAD").

This is not to say that the Borough is without means to combat what it has described as excessive rowdiness at certain times of the year. New Jersey courts

have repeatedly provided examples of legitimate and constitutional instruments that municipalities might use to that end. These range from simply enforcing existing laws, such as anti-nuisance ordinances, to preventative actions such as enacting ordinances that reasonably limit the number of people per motel or hotel room. Indeed, the legitimate options available to the Borough underscore the unreasonableness of the Ordinance, further buttressing Plaintiffs' claims that age discrimination is not the appropriate vehicle.

Nor, of course, is discrimination on the basis of race or ethnicity. The Complaint in this action avers that the Ordinance's temporal scope, stretching from April 15 through June 30, unnecessarily included Cinco de Mayo and Juneteenth, and therefore impacts Black and Latino patrons discriminatorily. This claim is not susceptible to dismissal by way of a *Rule* 4:6-2(e) motion, and the Court should permit Plaintiffs to proceed with discovery on this claim also.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On August 16, 2023, the Borough of Seaside Heights ("the Borough") adopted Ordinance 2023-24 ("the Ordinance"), prohibiting the rental of any hotel or motel room to any person under the age of 21 during the period from April 15 through June 30. (Pa001a-002a)[1]. The Ordinance specified that the

[1] "Pa" refers to Plaintiffs' trial court Appendix. "Tr." refers to the transcript from the April 12, 2024, trial court motion hearing.

"primary occupant" of any rented room must be at least 21 years old, and that no other occupants may be under that age unless they were an "immediate family member or under legal guardianship" of the primary occupant. (Pa002a). The Ordinance placed responsibility for ensuring compliance with its terms on both the primary occupant and hotel or motel owner. *Id.* Violators of the Ordinance are subject to a mandatory fine and either a term of imprisonment or community service or both. *Id*.

The Ordinance was based on the Borough's finding that "during the months of April, May and June the Borough has experienced substantial numbers of unsupervised minors who rent rooms in the Borough to celebrate high school proms and graduations," which "create unlawful and unsafe conditions by engaging in violent and disorderly behavior" which the Borough has insufficient "manpower and financial resources" to deal with. (Pa001a).

On January 23, 2024, Plaintiffs, operators of motels within the Borough, filed this action. Alleging violations of the New Jersey Constitution, the NJCRA, and the LAD. The Honorable Francis R. Hodgson, Jr., A.J.S.C., granted the Borough's motion to dismiss on April 12, 2024. Much of the trial court's reasoning in support of its decision is indiscernible, but it appears that Judge Hodgson found that (1) the Ordinance did not violate the LAD because "[a]ge is a permissible basis by which places of accommodation . . . regulates guests"

and "owners are permitted to refuse" to rent "based upon age because age is also specifically absent from that prohibition" in the LAD (Tr. 36:24-37:19); (2) the Ordinance did not violate the NJCRA because the Borough identified a legitimate interest for its adoption (Tr. 39:15-43:17); and (3) the claim of racial discrimination must be dismissed because it is based on a need "to explore with the legislature why it passed the ordinance." (Tr. 44:2-11). Plaintiffs appealed, and after oral argument, this Court solicited amicus participation from the League of Municipalities and the ACLU of New Jersey.

ARGUMENT

I. Plaintiffs have standing to raise their claims.

Although Plaintiffs are not members of those groups whom they allege are subjected to age or race discrimination by the Borough, their right to standing to seek redress for its injuries caused by that discrimination under both the LAD and the NJCRA is clear. First, as set forth in more detail below, the LAD provides that the opportunity to make use of public accommodations is a "civil right," N.J.S.A. 10:5-4, and that it is unlawful for anyone to refuse to contract to or lease to or do business with any other person on the basis of age. N.J.S.A. 10:5-12(*l*). N.J.S.A. 10:5-12(e) of the LAD makes it an unlawful act of discrimination for any person to "compel or coerce the doing of any of the acts forbidden under this Act, or to attempt to do so" and N.J.S.A. 10:5-12(n) has

similar language, addressed specifically to section 10:5-12(*l*). Subjecting Plaintiffs, as owners of motels, with the threat of mandatory fines, and imprisonment or community service, for not fulfilling its "responsibility" under the Ordinance to discriminate on the basis of age in its renting of motel rooms is compulsion and coercion under any definition of those terms, and thus renders Plaintiffs an "aggrieved person" under N.J.S.A. 10:5-13. *See, e.g.*, *Oasis Therapeutic Life Ctrs., Inc. v. Wade*, 457 N.J. Super. 218, 228-29 (App. Div. 2018) (Property owner had standing to sue under the LAD challenging municipal action stopping its attempt to purchase property for use of individuals with autism, on grounds of discrimination against people with disabilities).

Similarly, as to Plaintiffs' claim under NJCRA, this Court has recognized the right of persons, including corporate entities, to assert injury caused by discrimination against others. *See, e.g.*, *United Prop. Owners Ass'n of Belmar v. Borough of Belmar*, 343 N.J. Super. 1, 50-51 (App. Div. 2001) (Property owner had standing to assert violation of due process rights of persons to whom they wanted to rent). As this Court explained in *Oasis*, the basis for standing in such cases is two-fold: (1) the economic damage resulting from the municipality's discriminatory conduct and (2) "the conduct directed toward it because of the benefits it provides to others in a protected class." 457 N.J. Super. at 228-29. That reasoning applies to Plaintiffs' claims here.

II. The opportunity for adults under the age of 21 to contract with public accommodations on the same basis as do adults aged 21 and older is a basic civil right.

As the Court observed in *C.V. by and through. C.V. v. Waterford Township Board of Education*, 255 N.J. 289, 307 (2023), based on findings as to the "grievous harm" caused by discrimination, N.J.S.A. 10:5-3, the Legislature enacted N.J.S.A. 10:5-4, which provides that:

> ***All persons shall have the opportunity*** to obtain employment, and ***to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation***, publicly assisted housing accommodation, and other real property ***without discrimination because of*** race, creed, color, national origin, ancestry, ***age***, marital status, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. ***This opportunity is recognized as and declared to be a civil right.***
>
> [N.J.S.A. 10:5-4 (emphasis added.)][2]

The Court has recognized that N.J.S.A. 10:5-4 represents "a major public policy of this state . . . as enshrined in the LAD," assuring freedom from all of the categories of discrimination set forth in that provision. *Alexander v. Seton Hall Univ.*, 204 N.J. 219, 227 (2010).

[2] A "place of public accommodation" includes a hotel or motel. N.J.S.A. 10:5-5(*l*).

In 1972, the Legislature enacted N.J.S.A. 9:17B-3, providing that, with the exception of certain matters irrelevant to this case, that every "person 18 or more years of age shall in all other matters and for all other purposes be deemed to be an adult . . . shall have the same legal capacity to act and the same powers and obligations as a person 21 or more years of age." This statute fulfilled the Legislature's previously stated intent to enact laws that extend "to persons 18 years of age and older the basic civil and contractual rights and obligations heretofore applicable only to persons 21 years of age or older, including the right to contract . . . ." N.J.S.A. 9:17B-1(a).

These two statutes, N.J.S.A. 10:5-4, declaring the opportunity to access public accommodations free from discrimination because of age to be a civil right, and N.J.S.A. 9:17B-1(a), declaring that 18-, 19-, and 20-year-olds are deemed to have the same legal standing as adults 21 years and older, provide the prism through which this Court should view Plaintiffs' claims under the New Jersey Civil Rights Act and the New Jersey Law Against Discrimination.[3]

---

[3] N.J.S.A. 10:5-4 may not by itself create a cause of action under the LAD under certain circumstances. *See Taxpayers Ass'n of Weymouth Twp., Inc. v. Weymouth Township*, 80 N.J. 6, 41 n.16 (1976). In the footnote, the Court addressed a "suggest[ion]" by plaintiffs that a zoning ordinance that permitted only persons 52 years of age and older to reside in trailers in the Township violated the LAD and N.J.S.A. 10:5-4 in particular. The Court recognized section 10:5-4 as a "broad declaration of principle," but rejected the notion that it supported a claim in itself because of the lack of "age" as a protected category in "particularized" provisions of the LAD, namely sections 10:5-12(f) through 12(k). *Id.* The

III. Plaintiffs have adequately pleaded equal protection and substantive due process violations in support of their claim under the New Jersey Civil Rights Act.

There is no dispute that the Ordinance differentiates between legal adults younger than 21 years of age and legal adults 21 years of age and older as to the right to contract for hotel or motel rooms during certain months. Plaintiffs' claim under the NJCRA is based on the allegation that this differentiation violates New Jersey's constitutional guarantees of substantive due process, equal protection, and procedural due process (on the basis of vagueness).[4]

A. The Complaint adequately pleads a violation of the state guarantee of substantive due process.

Article I, Paragraph 1 of the New Jersey Constitution provides: "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and

---

footnote appears to be dicta, because nothing in either the Supreme Court opinion or in the Appellate Division opinion in the case (*Taxpayers Ass'n of Weymouth Twp., Inc. v. Weymouth Township*, 125 N.J. Super. 376 (App. Div. 1973)) refers to an actual LAD claim by plaintiff, and amicus has not found any case that has cited *Taxpayers Ass'n of Weymouth Twp.* for that proposition. In any event, Plaintiffs in this case are not relying on section 10:5-4 as the basis for its LAD cause of action, and amicus' reference to it as applying a prism through which this Court should view not only Plaintiffs' constitutional claims but also their LAD claim is in order to provide the full statutory context for Plaintiffs' claim under N.J.S.A. 10:5-12(*l*), which was not considered by the Court in *Taxpayers Ass'n of Weymouth Twp.* and which does contain age as a protected category as discussed below.

[4] Amicus addresses Plaintiffs' constitutional claims under only the New Jersey Constitution, the protections of which are no less than those under the Federal Constitution.

liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." *N.J. Const.* art. 1, ¶ 1. When a government abridges these rights arbitrarily, substantive due process is violated. *State in the Int. of C.K.*, 233 N.J. 44, 73 (2018). Thus, laws such as the Ordinance must "reasonably relate to a legitimate legislative purpose and not impose arbitrary or discriminatory burdens on a class of individuals." *Id.* "Therefore, a statute that bears no rational relationship to a legitimate government goal and that arbitrarily deprives a person of a liberty interest or the right to pursue happiness is unconstitutional." *Id.*

In *Kirsch Holding Co. v. Borough of Manasquan*, 59 N.J. 241 (1971), the Supreme Court applied New Jersey's substantive due process guarantee to invalidate an ordinance under circumstances similar to those at bar. There, Manasquan and Belmar had passed zoning ordinances to limit "group rentals" to "families" consisting of groups related by blood or marriage or to certain groups "of a permanent and distinct domestic character" in order to prevent rentals to groups of "young unrelated adults," who supposedly partook in "uninhibited social conduct" similar to that which spurred the Ordinance in this case. 59 N.J. at 244-47. In striking down the ordinances, the Court explained:

> It is elementary that substantive due process demands that zoning regulations, like all police power legislation, must be reasonably exercised – the regulation must not be unreasonable, arbitrary or

> capricious, the means selected must have a real and substantial relation to the object sought to be attained, and the regulation or proscription must be reasonably calculated to meet the evil and not exceed the public need or substantially affect uses which do not partake of the offensive character of those which cause the problem sought to be ameliorated.
>
> [*Id.* at 251; *see also Gabe Collins Realty, Inc. v. City of Margate City*, 112 N.J. Super. 341, 349 (App. Div. 1970) (finding that similar ordinance "constitutes a sweepingly excessive restriction of property rights as against the problem sought to be dealt with, and in legal contemplation deprives plaintiffs of their property without due process.").]

Here, the Complaint pleads a claim even stronger than that in cases like *Kirsch Holding*. Not only does the Ordinance attempt to dictate who might occupy hotel and motel properties based on the "anti-social" behavior of unknown others, but also it does so in the face of a comprehensive state policy that all legal adults ages 18 and older must be treated the same unless subject to an express legislative exception, N.J.S.A. 9:17B-3, and that freedom from age discrimination in connection with the opportunity to use public accommodations is a civil right, N.J.S.A. 10:5-4.

That ordinances like the Borough's are unreasonable has been repeatedly found by our courts. As the Supreme Court has observed, "The courts of this state have consistently invalidated zoning ordinances intended 'to cure or prevent . . . anti-social conduct in dwelling situations.'" *Borough of Glassboro v. Vallorosi*, 117 N.J. 421, 426 (1990). As explained in *Kirsch Holding*:

> Ordinarily obnoxious personal behavior can best be dealt with officially by vigorous and persistent enforcement of general police power ordinances and criminal statutes . . . . [C]onsideration might quite properly be given to zoning or housing code provisions, which would have to be of general application, limiting the number of occupants in reasonable relation to available sleeping and bathroom facilities or requiring a minimum amount of habitable floor area per occupant.
>
> [59 N.J. at 253-54; *and see United Prop. Owners Ass'n of Belmar*, 343 N.J. Super. at 20-21 (upholding constitutionality of ordinance setting maximum occupancy standards for summer rentals).]

Further, that the state has adopted a policy of equal treatment for all adults when it comes to contracting and the opportunity to use public accommodations renders the Ordinance prima facie unreasonable, if not expressly preempted by state law and policy. *See, e.g.*, *N.J. State Policemen's Benevolent Ass'n of N.J., Inc. v. Town of Morristown*, 65 N.J. 160, 165 (1974) (ruling that N.J.S.A. 9:17B-1 to -4 superseded statute setting minimum age for employment as police officer at 21). "[W]hen a state statute has preempted a field by supplying a complete system of law on a subject, an ordinance dealing with the same subject is void." *Brunetti v. Borough of New Milford*, 68 N.J. 576, 601-03 (1975) (invalidating municipal ordinance which limited grounds for eviction because State had preempted municipality's power to act in that area), *quoted with approval in In re Ordinance 04-75*, 192 N.J. 446, 469 (2007). Indeed, state statutes "may serve to invalidate municipal ordinances even if the statute does not occupy an entire

field or facially conflict with local law." *Mack Paramus Co. v. Mayor of Borough of Paramus*, 103 N.J. 564, 574, 577 (1986) (finding no preemption of municipality's Sunday blue law ordinance where state statute "explicitly authorize[d] local regulation").

Against this body of law, Plaintiffs should be given the opportunity to prove that the Ordinance violated their right to substantive due process in the use of its property and their claim under the NJCRA should not have been dismissed.

B. The Complaint adequately states a claim for violation of the state guarantee of equal protection.

Similar to the substantive due process guarantee, the guarantee to equal protection under the law is implicit in Article I, Paragraph 1 of the New Jersey Constitution. *Jersey City United Against the New Ward Map v. Jersey City Ward Comm'n*, 261 N.J. 30, 60 (2025). The equal protection guarantee "protects against discriminatory governmental classifications of persons not related to some appropriate state interest." *Id.* (quoting *Brady v. N.J. Redistricting Comm'n*, 131 N.J. 594, 610-11 (1992). The purpose of New Jersey's equal protection guarantee is to "protect . . . those who should be treated alike." *Barone v. Dep't of Hum. Servs., Div. of Med. Assistance & Health Servs.*, 107 N.J. 355, 367 (1987); *N.J. State Bar Ass'n v. State*, 387 N.J. Super. 24, 41 (App. Div. 2006). The question for this Court is whether the Complaint adequately pled

sufficient facts to support a claim that all adults of legal age should be treated alike for purposes of renting hotel and motel rooms in the Borough.

To answer that question under the New Jersey Constitution, there is no need to decide whether the right in question is a "fundamental right," or whether age is a "suspect class," so as to determine whether "strict scrutiny," "intermediate scrutiny," or "rational basis" analysis applied, as would be the case under the Federal Constitution. *See, e.g.*, *United States v. Skrmetti*, 605 U.S. 495, 510-11 (2025). The New Jersey Constitution calls for a more "flexible balancing test." *Caviglia v. Royal Tours of Am.*, 178 N.J. 460, 479 (2004). Instead of deciding whether to apply a "rational basis" or "strict scrutiny" test, New Jersey's approach analyzes the nature of the right in question, the extent of the governmental restriction on the right, and "whether there is an appropriate governmental interest suitably furthered by the differential treatment involved." *Barone*, 107 N.J. at 368. (citation modified).

Using that approach, Plaintiffs' claims easily survive a motion to dismiss. First, the right to use public accommodations free of discrimination on the basis of age has been expressly recognized by the Legislature as a "civil right." N.J.S.A. 10:5-4. Second, the extent of the burden on that right is absolute on 18- to 20-year-olds if they want to rent a hotel or motel room from April 15 to June 30. Third, however "appropriate" may be the Borough's interest in preventing

rowdy behavior, that interest is not "suitably" furthered by the Ordinance for the same reasons that the Ordinance is not a reasonable approach to the perceived problem for purposes of substantive due process: the Ordinance is contrary to this state's comprehensive policy of treating all adults equally, regardless of age, unless the state dictates otherwise; and is overbroad in its application, necessarily bringing within its ambit those innocent of the alleged misconduct the Ordinance was supposedly designed to address. There are constitutional means at the Borough's disposal – such as rigorous enforcement of its existing disorderly persons and nuisance laws and reasonable occupancy restrictions that would not discriminate against one group of legal adults.

Plaintiffs have therefore adequately pleaded an equal protection claim and this Court should rule that claim may proceed.

C. The Complaint adequately states a claim for violation of the state due process protection against vague laws.

The due process guarantee incorporated in the New Jersey Constitution also protects against the imposition of sanctions based on vague and uncertain laws. *Betancourt v. Town of West New York*, 338 N.J. Super. 415, 422 (App. Div. 2001). The test for vagueness under the State Constitution is the same as under the Federal Constitution: are the words in the law sufficiently definite so that ordinary people can understand what they are and are not allowed to do? *Id.*

Unconstitutional "[v]agueness leaves people guessing about their obligations." *State v. Carter*, 247 N.J. 488, 518 (2021).

Here, the Ordinance contains two impermissibly vague terms: "immediate family member," which is one category of person described as being allowed in a hotel or motel room during the prescribed period, and "responsible for compliance," which is the term used to describe the hotel or motel owner's obligation under the Ordinance. The vagueness of these terms is demonstrated from how our Legislature deals with these concepts.

First, whenever the Legislature uses the term "immediate family member" in a statute, it defines it, demonstrating that the term is not self-defining. *See, e.g.*, N.J.S.A. 2C:20-31.1 (concerning internet posting of information); N.J.S.A. 30:4-3.12 (dealing with state psychiatric hospital employees); and N.J.S.A. 56:8-166.1 (dealing with internet disclosure of information).

Second, when the Legislature sees fit to impose liability on persons who undertake transactions with underaged individuals in violation of express statutory prohibitions against such transactions – such as the dispensing of alcohol to individuals under the age of 18 – it spells out the steps that may be taken by the vendor that would serve as a defense to liability, such as requesting valid identification of age. *See, e.g.*, N.J.S.A. 33:1-77. Nowhere in the Ordinance is such information provided, rendering it impossible for persons

such as Plaintiffs to comprehend the scope of its responsibilities under the Ordinance.

This Court should rule that Plaintiffs' vagueness claim may proceed.

IV. The Complaint adequately pleads LAD violations.

To establish an LAD claim, Plaintiffs must "show that the prohibited consideration . . . played a role in the decision making process and that it had a determinative influence on the outcome of that process." *Maiorino v. Schering-Plough Corp*, 302 N.J. Super. 323, 344 (App. Div. 1997) (quoting *Miller v. CIGNA Corp.*, 47 F.3d 586, 597 (3d Cir. 1995), quoted with approval, *Bergen Com. Bank. v. Sisler*, 157 N.J. 188, 198 (1999). That standard is easily met here as to both Plaintiffs' age and race discrimination claims.

A. The Complaint adequately pleads age discrimination.

The prohibited consideration is age and the Ordinance expressly states that it is directed at persons under the age of 21, who purportedly had been responsible for a laundry list of nefarious actions and that, therefore, the Borough is prohibiting a specific class of otherwise legal adults and only such legal adults from renting hotel and motel rooms during certain times. Discrimination on the basis of age could not be plainer.

The LAD clearly provides a cause of action for this sort of age discrimination: N.J.S.A. 10:5-12(*l*), which provides, in pertinent part, that it is an unlawful act under the LAD:

> ***[f]or any person to refuse to*** buy from, sell to, ***lease from or to,*** license, ***contract with***, or trade with, ***provide*** goods, ***services*** or information ***to, or otherwise do business with any other person on the basis of*** the race, creed, color, national origin, ancestry, ***age***, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, marital status, civil union status, domestic partnership status, liability for service in the Armed Forces of the United States, disability, nationality, or source of lawful income used for rental or mortgage payments of such other person or of such other person's family members, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers. (Emphasis added.)
>
> [N.J.S.A. 10:5-12(*l*).]

The facts of this case fully support applicability of section 10:5-12(*l*), because the Ordinance directs businesses like those operated by Plaintiffs from leasing to, contracting with, or doing business with legal adults under the age of 21. These facts distinguish this case from *C.V.*, where the Court stated that "the LAD does not prohibit age discrimination in places of public accommodation." 255 N.J. at 320. However, that observation was in the context of considering a motion for leave to amend a complaint alleging sexual harassment on a school bus, so as to add an age discrimination claim, and in that context the Court noted that N.J.S.A. 10:5-12(f) does not include "age" as a protected category. *Id.* Given the particular facts of *C.V.*, the Court had no need to consider N.J.S.A. 10:5-12(*l*), which would not have been applicable to the facts alleged in *C.V.*, but

which is decidedly applicable to the Ordinance's prohibition against allowing hotels and motels to lease to or contract with legal adults under the age of 21.[5]

Any doubt as to the applicability of section 10:5-12(*l*) to Plaintiffs' claims must be decided in favor of its application. The LAD is a remedial law that "must be liberally construed." *Savage v. Township of Neptune*, 257 N.J. 204, 215-16 (2024) (citation modified). As this Court explained in a case specifically touching upon 10:5-12(*l*), the entirety of the LAD must be liberally construed to pursue the statute's "overarching goal" of the "eradication 'of the cancer of discrimination.'" *Oasis*, 457 N.J. Super. at 229-30 (quoting *L.W. v. Toms River Reg'l Schs. Bd. of Educ.*, 189 N.J. 381, 399 (2007)). Reading the LAD as a whole, including the broad policy set forth in N.J.SA. 10:5-4, it is clear that section 10:5-12(*l*) provides a cause of action for claims arising out of the refusal to contract or lease with a person for the use of public accommodations such as hotels or motels because of age.

---

[5] Similarly, in *Taxpayers Ass'n of Weymouth Twp.*, described in footnote 2 above, the Court noted that sections 10:5-12(f) through 12(k) of the LAD did not support plaintiff's claim of age discrimination challenging an ordinance limiting residents of trailers to those over the age of 52 because those specific provisions did not include age as a protected category. 80 N.J. at 41 n.16. It did not consider, because it was inapplicable, section 10:5-12(*l*). Most importantly, the Court concluded that "[i]n view of the affirmative legislative policy of encouraging construction of housing for the aged . . . , we find the construction urged by plaintiffs implausible." *Id.* Here, as discussed above, the Ordinance conflicts with express and comprehensive state policy mandating treating 18-, 19-, and 20-year-olds as legal adults.

B. The Complaint adequately pleads race and ethnicity discrimination.

Plaintiffs' claim that the Ordinance discriminates on the basis of race and ethnicity is based on a factual averment that the Ordinance prohibits rentals by legal adults under the age of 21 during the weekends commemorating the holiday of Cinco de Mayo, which celebrates Mexican heritage, and the national holiday of Juneteenth, which commemorates the end of slavery in the United States and is considered a celebration of African American resilience. (Compl., ¶¶ 10-21, Count III). A complaint's pleadings are due broad deference at the motion to dismiss stage, "limited to examining the legal sufficiency of the facts alleged on the face of the complaint." *Green v. Morgan Props.*, 215 N.J. 431, 451 (2013) (citation modified). Here, according to the Complaint, the only offered justification in the Ordinance for its restrictions was the behavior by young adults during the prom weekend season. Yet, the Ordinance's restrictions begin earlier and end later than the vast majority of prom weekends.[6] Even if those holiday weekends could be considered "prom weekends," the impact of

[6] An unscientific survey of schools from municipalities within 60 miles of the Borough reveals that approximately 90% of such proms occurred after Cinco de Mayo weekend and before Juneteenth weekend in 2023, the year the Ordinance was adopted. (*See* amicus' Appendix.) Of course, this Court must review a motion to dismiss on the basis of the four corners of the Complaint, and amicus presents this simply as illustrative of the sort of evidence that might bear on Plaintiffs' claims if this Court allows the claims to proceed.

the Ordinance necessarily will be felt more heavily by Black and Latino adults aged 18, 19, and 20, providing a basis for Plaintiffs' LAD race discrimination claim. Contrary to the trial court's reasoning, there is no need for Plaintiff to plead intent or racial animus, as the LAD is not a fault or intent based statute. *Lehmann v. Toys 'R' Us, Inc.*, 132 N.J. 587, 604 (1993).

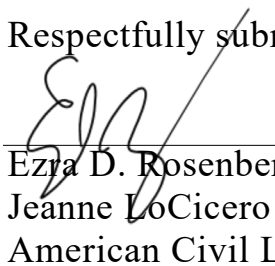
C. The Complaint adequately pleads violations of the LAD provisions prohibiting compelling or coercing anyone to violate the LAD.

Because the Ordinance threatens Plaintiffs with penalties, including the possibility of imprisonment for allowing legal adults under the age of 21 from contracting for motel and hotel rooms, it follows necessarily that Plaintiffs also have a cause of action under N.J.S.A. 10:5-12(n), prohibiting compelling or coercing anyone to violate N.J.S.A. 10:5-12(*l*), and under N.J.S.A. 10:5-12(e), which prohibits compelling or coercing anyone to violate any provision of the Act, which necessarily includes both N.J.S.A. 10:5-4 and 10:5-12(*l*).

CONCLUSION

For the reasons set forth above, this Court should reverse the trial court's grant of Defendants' motion to dismiss.

Respectfully submitted,



Ezra D. Rosenberg (012671974)
Jeanne LoCicero (024052000)
American Civil Liberties Union
of New Jersey Foundation
[redacted]

P.O. Box 32159
Newark, New Jersey 07102
(973) 854-1714
erosenberg@aclu-nj.org

Attorneys for amicus curiae
American Civil Liberties Union of New Jersey