

# 20-3366-CV

---

## United States Court of Appeals *for the* Second Circuit

---

COMMUNITY HOUSING IMPROVEMENT PROGRAM, RENT  
STABILIZATION ASSOCIATION OF N.Y.C., INC., CONSTANCE  
NUGENT-MILLER, MYCAK ASSOCIATES LLC, VERMYCK LLC,  
M&G MYCAK LLC, CINDY REALTY LLC, DANIELLE REALTY LLC,  
FOREST REALTY, LLC,

*Plaintiffs-Appellants,*

– v. –

CITY OF NEW YORK, RENT GUIDELINES BOARD, DAVID REISS,  
CECILIA JOZA, ALEX SCHWARZ, GERMAN TEJEDA, MAY YU, PATTI  
STONE, J. SCOTT WALSH, LEAH GOODRIDGE, SHEILA GARCIA,  
RUTHANNE VISNAUSKAS,

*Defendants-Appellees,*

N.Y. TENANTS AND NEIGHBORS (T&N), COMMUNITY VOICES  
HEARD (CVH), COALITION FOR THE HOMELESS,

*Intervenors.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

---

### **BRIEF FOR *AMICUS CURIAE* COMMUNITY SERVICE SOCIETY OF NEW YORK IN SUPPORT OF DEFENDANTS-APPELLEES**

---

MATTHEW J. CHACHÈRE  
ANDREW GOODMAN  
NORTHERN MANHATTAN  
IMPROVEMENT CORPORATION  
45 Wadsworth Avenue  
New York, New York 10033  
(212) 822-8300  
matthewchachere@nmic.org  
andrewgoodman@nmic.org

JARED A. LEVINE  
CROWELL & MORING LLP  
590 Madison Avenue, 20<sup>th</sup> Floor  
New York, New York 10022  
(212) 223-4000  
jalevine@crowell.com

*(Additional Counsel on Inside Cover)*

---

AMANDA SHAFER BERMAN  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 688-3451  
aberman@crowell.com

*Attorneys for Amicus Curiae Community Service Society of New York*

---

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* Community Service Society of New York makes the following disclosures:

1) For non-governmental corporate parties please list all parent corporations: None.

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock: None.

**TABLE OF CONTENTS**

CORPORATE DISCLOSURE STATEMENT .....i

INTRODUCTION ..... 1

INTEREST OF AMICUS CURIAE ..... 8

ARGUMENT ..... 9

I. RENT STABILIZED HOUSING BENEFITS HUNDREDS OF THOUSANDS OF LOW-INCOME FAMILIES AND HOUSEHOLDS OF COLOR.....9

II. ELIMINATING RENT STABILIZATION LAWS WOULD RESULT IN CATASTROPHIC DISPLACEMENT AND AN UNPRECEDENTED INCREASE IN HOMELESSNESS ..... 14

CONCLUSION.....23

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Heller v. Doe</i> , 509 U.S. 312 (1993).....	4
<i>Image Carrier Corp. v. Beame</i> , 567 F.2d 1197 (2d Cir. 1977) .....	7
<i>Landgraf v. USI Film Prods., Inc.</i> , 511 U.S. 244 (1994).....	7
<i>Lehnhausen v. Lake Shore Auto Parts Co., Inc.</i> , 410 U.S. 356 (1973).....	4
<i>Nordlinger v. Hahn</i> , 505 U.S. 1 (1992).....	7
<i>Thomas v. Sullivan</i> , 922 F.2d 132 (2d Cir. 1990) .....	4
<i>Williamson v. Lee Optical of Oklahoma, Inc.</i> , 348 U.S. 483 (1955).....	3
<b>Other Authorities</b>	
American Economic Review, “The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco: Dataset” (2019), available at <a href="https://doi.org/10.1257/aer.20181289">https://doi.org/10.1257/aer.20181289</a> .....	14
CSS, “A Guide to Rent Regulation in New York City” (Jan. 2019), available at <a href="https://www.cssny.org/publications/entry/rent-regulation-in-new-york-city">https://www.cssny.org/publications/entry/rent- regulation-in-new-york-city</a> .....	6, 14, 18
CSS, “Addressing the Eviction Epidemic - Analysis of 2017 Data” (Sept. 2018), available at <a href="https://www.cssny.org/news/entry/addressing-the-eviction-epidemic-2017-analysis">https://www.cssny.org/news/entry/addressing-the-eviction- epidemic-2017-analysis</a> .....	21

CSS, “The Geography of Rent Regulation and Legislative Districts” (Oct. 2014) available at <https://www.cssny.org/news/entry/the-geography-of-rent-regulation-in-new-york-city> .....13

CSS, “Making the Rent 2016” (May 2016), available at <https://www.cssny.org/publications/entry/making-the-rent-2016> .....5

CSS, “Our Fast Analysis of the 2017 New York City Housing And Vacancy Survey “(Aug. 2018), available at <https://www.cssny.org/news/entry/2017-hvs-fast-analysis> ..... 14

CSS, “Tenants at the Edge” (April 2018), available at <https://www.cssny.org/publications/entry/tenants-at-the-edge> ..... 16

CSS, “Testimony: NYC Needs a Rent Freeze” (May 2020), available at <https://www.cssny.org/news/entry/testimony-nyc-rgb-rent-freeze> ..... 16

CSS, “Where Have All the Affordable Rentals Gone?” (May 2019), available at <https://www.cssny.org/publications/entry/where-have-all-the-affordable-rentals-gone> ..... 15

HPD, “Sociodemographics of Rent Stabilized Tenants” (2018), available at <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/rent-regulation-memo-1.pdf> .....10, 11, 12

Right to the City, “Our Homes, Our Future” (Feb. 2019), available at [https://www.policylink.org/sites/default/files/OurHomesOurFuture\\_Web\\_08-02-19.pdf](https://www.policylink.org/sites/default/files/OurHomesOurFuture_Web_08-02-19.pdf)..... 15

Testimony of The Coalition for the Homeless before the NY State Assembly, January 2011, available at <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/07/TestimonyRentRegulationJan202011.pdf>.....3, 22

USC Dornsife, “Rent Matters: What are the Impacts of Rent Stabilization Measures?” (Oct. 2018), available at [https://dornsife.usc.edu/assets/sites/242/docs/Rent\\_Matters\\_PERE\\_Report\\_Final\\_02.pdf](https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Final_02.pdf) ..... 14

## **INTRODUCTION**

Amicus curiae Community Service Society of New York (“CSS”)<sup>1</sup> submits this brief to provide the Court with a data-driven analysis that corrects glaring inaccuracies in Appellants’ due process challenge to New York’s Rent Stabilization Law (“RSL”). The RSL provides vital protections for low-income tenants, and its elimination would expose several hundred thousand families — the vast majority households of color — to immediate risk of homelessness and long-term displacement from their communities.

Appellants’ due process claims are premised on a myopic vision of housing policy, one in which the sole object of legislative concern is to maximize the supply of apartments through constant turnover and rampant dislocation of tenants, without regard to any impact on the tenants themselves and their communities. In enacting the RSL and the amendments of the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”), New York’s elected representatives decidedly took the opposing view, choosing to prioritize the social utility of housing.

Legislators have spoken forcefully in favor of tenant protection laws. During the final Senate debate on the HSTPA, Senator Brian Kavanagh, Chair of the Standing Committee on Housing, emphatically reminded his fellow legislators that:

---

<sup>1</sup> All parties consented to the filing of this brief. No party’s counsel authored the brief in whole or in part, and no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief.

“New Yorkers have made one thing clear, and that is our state needs stronger laws to empower and protect tenants and halt the displacement that's ravaged many of our communities.”<sup>2</sup>

State Senator Zellnor Myrie added his voice in support of the HSTPA, noting that New York’s representatives have repeatedly passed and amended the RSL “[t]o stabilize a speculative housing market and to protect the people most affected by that speculation”: New York’s tenants.<sup>3</sup> Representing some of the most rapidly gentrifying neighborhoods in New York City, Senator Myrie explained that these laws are vital to address the concerns of his constituents, who have shared “horror story after horror story of tenants who saw the ground beneath them shift, the communities that they made attractive that they can no longer afford to live in. The tools of speculation. . . all used to get people out of their communities in the name of profit.”<sup>4</sup>

RSL protections provide vital social benefits by enabling families to establish long-term homes and empowering neighborhoods and communities to grow and flourish. As The Coalition for the Homeless, a leading voice of research and representation on behalf of homeless New Yorkers, has argued: “If the rent-regulated housing stock in New York continues to diminish, the homeless population will

---

<sup>2</sup> NY Senate Debate on Senate Bill S6448, June 14, 2019, at 5479 (herein “Senate Debate”).

<sup>3</sup> Statement of Sen. Zellnor Myrie, *id.* at 5523-24.

<sup>4</sup> *Id.* at 5524.



grow to unimagined levels. . . the outright elimination of the rent laws would lead to a wave of evictions and homelessness unseen in New York since the Great Depression.”<sup>5</sup>

Appellants and their allies represent New York’s landlords, one of the most economically and politically powerful groups in the State. In the underlying litigation, Appellants seek to promote their economic interests by asking a federal court to do what the law forbids — wade into policy judgments that are solely the prerogative of New York’s elected representatives.

But “[t]he day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be...out of harmony with a particular school of thought.” *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488 (1955). While New York’s landlords and their lobbyists may not share the New York State legislature’s goal of increasing tenant protection, their remedy is through the political process, not the courts.

Even at the pleading stage, the law bars Appellants from bringing their challenge to the RSL unless they can meet an incredibly heavy burden to categorically refute “every conceivable basis which might support it, whether or not

---

<sup>5</sup> Testimony of The Coalition for the Homeless before the NY State Assembly, January 2011, available at <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/07/TestimonyRentRegulationJan202011.pdf>.

the basis has a foundation in the record.” *Heller v. Doe*, 509 U.S. 312, 320-21 (1993) (quoting *Lehnhausen v. Lake Shore Auto Parts Co., Inc.*, 410 U.S. 356, 364 (1973); *Thomas v. Sullivan*, 922 F.2d 132, 136 (2d Cir. 1990) (plaintiffs must refute “any [and all] legitimate policy concerns on which the legislature might conceivably have relied.”).

Appellants have not met this heavy burden. Their briefing relies on a variety of misleading datapoints and misguided theories to suggest that a world without rent stabilization would ultimately improve the plight of New York’s low-income tenants. But even if there were merit to these arguments (and there is none), Appellants cannot dispute that their requested relief — the immediate elimination of New York’s rent stabilization laws — would result in an unprecedented wave of displacement and homelessness, needlessly exacerbating an existing housing crisis of historic proportions.

Appellants do not actually dispute that stabilizing rents, tenures and conditions of occupancy also stabilizes communities. By ensuring that rent levels cannot rise precipitously, and that tenants cannot be forced out of their homes without cause, rent stabilization enables tenants to make long-term plans and lay down roots in their communities. This, in turn, allows neighborhoods and communities — particularly low-income communities and communities of color who are the predominant beneficiaries of rent-stabilization protection — to grow and resist economic shocks that would otherwise lead to widespread dislocation.

These protections also empower communities to meaningfully navigate the housing market on an equal footing with property owners, by remedying the gross inequality of bargaining power between landlords and tenants. Knowing that they will be protected against sudden rent hikes, lease terminations, and reductions in services, tenants are empowered to file complaints when owners fail to maintain adequate housing standards, or to organize for the purpose of preserving those standards, without fear of reprisal. Since habitability standards and rent stabilization protections are enforced primarily through private actions by aggrieved tenants, community empowerment aided by the salutary effects of rent stabilization is essential to improving the quality of the housing stock.

Appellants decry the “[n]umerous RSL provisions [that] are wholly unrelated to rent levels.” CHIP Br. at 63. But many of these challenged provisions, and particularly the HSTPA amendments, proved necessary to disable or discourage landlords’ circumvention of rent-stabilization protections. Prior to the HSTPA, numerous provisions of the RSL (including “high rent vacancy deregulation” and “vacancy bonuses”<sup>6</sup>) made it profitable for landlords to aggressively harass and evict

---

<sup>6</sup> From 2011 to 2014, vacancy bonuses accounted for nearly half of all rent increases on rent-stabilized households. CSS, “Making the Rent 2016” (May 2016) at 22, available at <https://www.cssny.org/publications/entry/making-the-rent-2016>.

tenants or engage in deceptive tactics to force them out through schemes designed to remove their apartments from rent stabilization.<sup>7</sup>

Appellants seek to portray the RSL as an attack on small landlords, citing, for example, to the fact that “[a]n owner’s right to refuse to renew a lease to reclaim a unit for personal use is limited to only a single unit.” CHIP Br. at 24. In reality, however, rent stabilized housing is dominated by private equity firms and large portfolio owners, who have turned rent regulated housing into a “new global asset class,” by purchasing buildings from smaller landlords across the city.<sup>8</sup> These large property holders and investors previously weaponized rent law loopholes, developing sophisticated revenue generating strategies predicated on systematic rent increases above the annual rent guidelines.

Flaws in the prior regulatory scheme enabled such landlords to exert undue pressure on tenants, such as the right to revoke lower “preferential rents” upon lease expiration, thereby subjecting tenants to sharp rent increases at the landlord’s sole discretion. Meanwhile, some provisions, such as the excessive, permanent increases

---

<sup>7</sup> See Statement of Sen. Kavanagh, Senate Debate at 5481 (“We’re repealing many loopholes that have undermined the basic purposes of rent stabilization. We’re repealing ... the so-called vacancy bonus – an increase in the legal rate of 20 percent or more at each vacancy, which some of us think is more aptly named an eviction bonus. These provisions have caused rampant speculation centered around the financial benefits to landlords of displacing their tenants and rapidly increasing rents.”).

<sup>8</sup> CSS, “A Guide to Rent Regulation in New York City” (Jan. 2019) at 10, available at <https://www.cssny.org/publications/entry/rent-regulation-in-new-york-city> (herein “Rent Regulation in New York City”).

permitted for often-questionable “individual apartment improvements”<sup>9</sup> and the lack of any mechanism to verify such improvements, opened the door to outright fraud.<sup>10</sup>

In any event, this Court is not tasked with determining whether neighborhood stabilization and its attendant benefits are good things. Each of the policy goals set forth above has long been recognized as a legitimate legislative purpose, and they need no further defense here. *See, e.g., Nordlinger v. Hahn*, 505 U.S. 1, 12 (1992) (“the State has a legitimate interest in local neighborhood preservation, continuity and stability”); *Image Carrier Corp. v. Beame*, 567 F.2d 1197 (2d Cir. 1977) (promoting equality of bargaining power in employment a legitimate state interest); *Landgraf v. USI Film Prods., Inc.*, 511 U.S. 244, 267-68 (1994) (correcting mistakes, preventing circumvention, and giving statute comprehensive effect all “entirely benign and legitimate purposes.”).

---

<sup>9</sup> *See* Statement of Sen. Kavanagh, Senate Debate at 5496 (“Currently .... under the individual apartment improvement, in a small building they get 30 percent of the amount they spend each year indefinitely. We believe that that equates to a return on that investment of roughly 23 percent. A 23 percent annual return on the amount they're investing. That means that a landlord that chooses to spend \$40,000 on an apartment can get -- can raise the rent by \$1000 a month forever as a result of that work. And again, that equates to a return of about 23 percent. We do not believe that an unleveraged rate of return of 23 percent is necessary to secure funding for their buildings and the continued work they need to do.”).

<sup>10</sup> Rent Regulation in New York City at 33 (advocating changes to the RSL to “repeal the vacancy bonus, and reform Major Capital Improvement (MCI) and Individual Apartment Increases (IAI) processes, which drive up regulated rents above the annual rent guidelines, are highly susceptible to fraud, and, when combined with preferential rents and vacancy decontrol, encourage harassment and displacement”).

New York's RSL may not be perfect, but it unquestionably advances these important public interests. The data-driven analysis presented here further reveals the earthshattering disruption that would befall entire communities — again, predominantly low-income communities and communities of color — if those protections were abruptly withdrawn.

### **INTEREST OF AMICUS CURIAE**

The Community Service Society of New York (CSS) is an informed, independent, and unwavering voice for positive action on behalf of more than three million low-income New Yorkers. CSS, a nonprofit organization, draws on more than 175 years of excellence in addressing the root causes of economic disparity through research, advocacy, litigation, and innovative program models that strengthen and benefit all New Yorkers.

One of CSS's core research and advocacy areas is affordable housing. In New York City, median rents continue to far outpace median incomes, making housing less and less affordable for low-income families. Public resources for affordable housing are shrinking, even as the need expands. CSS works to reverse this trend by advocating for increased funding for public and affordable housing; strengthening opportunities for public housing residents; and connecting families faced with housing difficulties to resources and support.

## ARGUMENT

### **I. RENT STABILIZED HOUSING BENEFITS HUNDREDS OF THOUSANDS OF LOW-INCOME FAMILIES AND HOUSEHOLDS OF COLOR**

For decades, landlord trade groups and opponents of the RSL have sought to undermine tenant protections by promoting a disingenuous narrative that the RSL provides an undeserved windfall to “rich people living in rent-stabilized apartments.”<sup>11</sup> In this case, Appellants rely on this same misleading trope, pointing to bizarre anecdotes about “polo-playing multimillionaire[s]” and “Philip Morris executive[s]” to suggest that the “biggest beneficiaries of rent regulation in New York aren’t low-income tenants across New York City, but more affluent, white residents of Manhattan.” Compl. at ¶ 88-90.

But the plural of anecdote is not data. And Appellants’ misleading caricature of the New York housing market is wholly disconnected from the financial circumstances of the several hundred thousand low-income New York families who depend on rent regulated housing.

According to Lucy Joffe, Assistant Commissioner of Policy for the New York City Department of Housing Preservation (“HPD”): “Rent stabilized apartments are both the largest source of [affordable] housing in the city and provide critical tenant

---

<sup>11</sup> See Rent Regulation in New York City at 24.

protections that enable residents to remain in their homes and exercise the choice to stay in their neighborhoods.”<sup>12</sup>

As with any consumer protection program, rent regulation is open to everyone. But the *vast* majority of those who benefit from it are low-income and middle-income people. According to HPD, in 2016, the median income for New York City rent stabilized households was \$44,560, one third lower than the median income for private, non-regulated households, as reflected in the table<sup>13</sup> below:

	Renter-Occupied Units			
	Rent Stabilized		Private, Non-Regulated	
	Estimate	Margin of Error	Estimate	Margin of Error
Median Household Income	\$44,560	±\$2,062	\$67,000	±\$3,245
HUD Income Eligibility				
Below 30% HUD Income Limits	27%	±1.6%	19%	±1.3%
31%-50% HUD Income Limits	17%	±1.2%	13%	±1.3%
51%-80% HUD Income Limits	20%	±1.0%	17%	±1.2%
Above 80% HUD Income Limits	36%	±1.7%	52%	±1.5%
Households with at Least One				
Type of Public Assistance	29%	±1.6%	14%	±1.4%
Households Below the				
Poverty Line	20%	±1.3%	13%	±1.1%
<b>Total</b>	<b>946,514</b>		<b>879,995</b>	

Of the city’s 946,000 rent stabilized apartments, 189,000 units (20%) were occupied by families living below the poverty line. And more than 600,000 units (64%) were occupied by families who qualify under HUD classifications as low-income, very low-income, or extremely low-income.

<sup>12</sup> Public hearing on Rent-Regulated Housing held on May 2, 2019 by the NY Assembly Standing Committee on Housing (herein “Assembly Hearing”) at 24.

<sup>13</sup> HPD, “Sociodemographics of Rent Stabilized Tenants” (2018) at 4, available at <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/rent-regulation-memo-1.pdf> (herein “Sociodemographics of Rent Stabilized Tenants”).



Rent stabilization provides low-income New Yorkers with far more affordable housing than any other government program. In 2016, 64% of rent stabilized homes (roughly 600,000 units) were occupied by low-income, very low-income, or extremely low-income New York City residents. By contrast, public housing programs provided homes to only 185,000 households.<sup>14</sup>

Appellants resort to deeply misleading data points and hyperbole to suggest that rent stabilization “does not further any interest in providing housing to low- or middle-income<sup>15</sup> New Yorkers” (CHIP Br. at 5). For example, Appellants argue that a “substantial number of renters in rent-stabilized units earn more than \$200,000 a year” (CHIP Br. at 62). But Appellants’ Complaint pegs this number at only 37,177 units (Compl. ¶ 92), or less than 4% of all rent stabilized units.<sup>16</sup> And even this number is highly misleading because many of these “rent stabilized” units are actually highly unaffordable, newly constructed, high-rent luxury apartments which

---

<sup>14</sup> *Id.*

<sup>15</sup> Plaintiffs also fail to acknowledge that, in the context of New York’s extremely high cost of living, a family of four with an income of \$196,846 qualifies as “middle-income” under HUD’s classification. See <https://www.nychdc.com/find>.

<sup>16</sup> As Tom Waters of CSS noted during the May 2, 2019, Assembly Hearing on the HSTPA, critics who complain about the elimination of high rent deregulation fail to recognize that such deregulation never “direct[ed] an apartment to a lower-income person” but “simply [resulted in] another high-income person paying a very high rent.” And while critics of this change couch their concerns in a desire to help low-income tenants, they notably do not support the notion of “kick[ing] [rich tenants] out and then actually mak[ing] the landlord take the low-income person at the same rent as before.” Assembly Hearing at 163-4.

are only subject to temporary rent regulations under New York’s 421-a tax abatement program. As reported by the New York Times:

Traditional regulated apartments pushed into the free market have been replaced by apartments added through tax-break programs, which are often much more expensive. In 2016, the median legal rent of newly registered stabilized apartments was \$2,750 — roughly the median asking rent for all New York apartments. . . . In Brooklyn, the median rent of a newly stabilized apartment was almost \$3,300.<sup>17</sup>

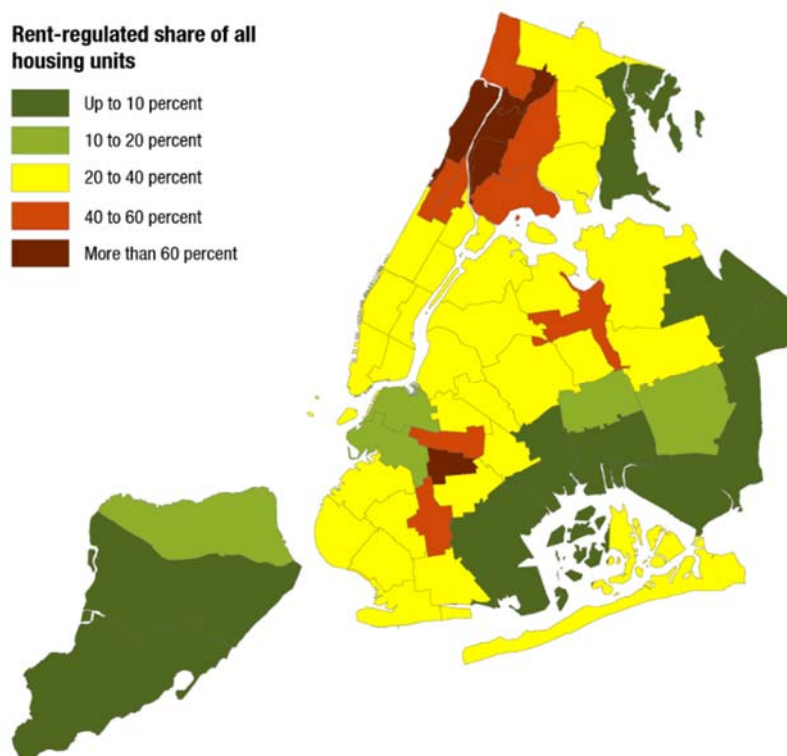
Appellants likewise engage in statistical gymnastics to disingenuously argue that “[r]ent-stabilized units serve disproportionately high shares of white renters.” Compl. at ¶ 113. According to HPD, 76% of households in rent stabilized housing are households of color, with a particularly high concentration among Hispanic households (42%), as reflected in the table<sup>18</sup> below:

	Tenants in Renter-Occupied Units			
	Rent Stabilized		Private, Non-Regulated	
	Estimate	Margin of Error	Estimate	Margin of Error
Race/Ethnicity				
White, non-Hispanic	24%	±1.5%	33%	±1.6%
Black, non-Hispanic	22%	±1.6%	19%	±1.6%
Hispanic	42%	±2.0%	28%	±2.0%
Asian, non-Hispanic	11%	±1.4%	17%	±1.4%
Other, non-Hispanic	1%	±0.5%	3%	±1.0%
Median Age	34	±2.0	31	±2.9
Educational Attainment				
Less than High School	21%	±1.1%	16%	±1.2%
High School Diploma	27%	±1.4%	22%	±1.0%
Some College	20%	±1.1%	18%	±1.0%
College Degree or Above	33%	±1.4%	43%	±1.5%
<b>Total</b>	<b>2,421,011</b>		<b>2,465,419</b>	

<sup>17</sup> See <https://www.nytimes.com/interactive/2018/05/20/nyregion/affordable-housing-nyc.html>

<sup>18</sup> Sociodemographics of Rent Stabilized Tenants at 2.

As reflected in the map<sup>19</sup> below, the most heavily rent-regulated areas of New York City are concentrated in central Brooklyn, western Queens, the West Bronx, and Upper Manhattan—essentially a ring around the historically high-rent areas of Manhattan below Harlem.



Overall, households of color occupy a greater share of rent-stabilized units than market-rate units. This pattern, which partly reflects the effect of 20 years of vacancy deregulation, results in a constituency for rent regulation that

<sup>19</sup> CSS, “The Geography of Rent Regulation and Legislative Districts” (Oct. 2014) available at <https://www.cssny.org/news/entry/the-geography-of-rent-regulation-in-new-york-city>. The map allocates apartments from the New York City Housing and Vacancy Survey’s (“HVS”) sub-borough areas into legislative districts in proportion with local population as measured in Census tracts in the 2010 Census.

disproportionately includes low-income people and people of color.<sup>20</sup> The geographical distribution of rent stabilized housing confirms that, contrary to Appellants' depiction, such housing is disproportionately located in low-income communities of color in Northern Manhattan, the Bronx, and Central Brooklyn.<sup>21</sup>

## **II. ELIMINATING RENT STABILIZATION LAWS WOULD RESULT IN CATASTROPHIC DISPLACEMENT AND AN UNPRECEDENTED INCREASE IN HOMELESSNESS**

The HSTPA was passed, in part, as a policy response to rising displacement and homelessness. In addition to being common sense, “[n]early every academic study finds that rent stabilization decreases tenant mobility and increases housing stability for rent-stabilized residents.”<sup>22</sup>

This conclusion is well supported by a review of New York’s rental market, where “[r]ent control is a main factor allowing the remaining low-income households in . . . gentrifying areas of New York City to continue living in their neighborhoods. Only 1 out of 15 poor renters who remain in gentrifying New York

---

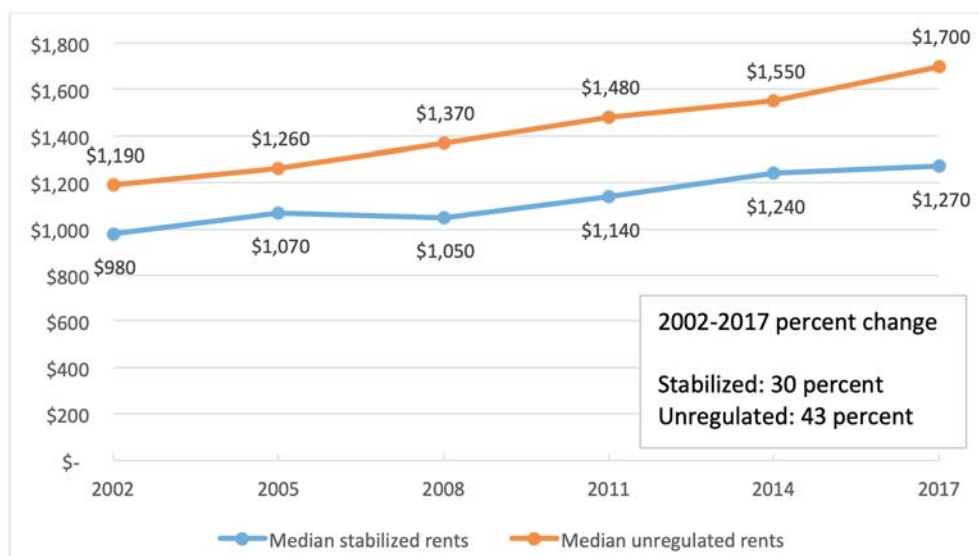
<sup>20</sup> Rent Regulation in New York City at 20-21.

<sup>21</sup> CSS, “Our Fast Analysis of the 2017 New York City Housing And Vacancy Survey “(Aug. 2018), available at <https://www.cssny.org/news/entry/2017-hvs-fast-analysis>.

<sup>22</sup> USC Dornsife, “Rent Matters: What are the Impacts of Rent Stabilization Measures?” (Oct. 2018) at 16, available at [https://dornsife.usc.edu/assets/sites/242/docs/Rent\\_Matters\\_PERE\\_Report\\_Final\\_02.pdf](https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Final_02.pdf). Even Appellants’ cited study criticizing rent regulation concluded “the effects of rent control on tenants are stronger for racial minorities, suggesting rent control helped prevent minority displacement from San Francisco.” American Economic Review, “The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco: Dataset” (2019), available at <https://doi.org/10.1257/aer.20181289>.

City neighborhoods rents in the unregulated market—48 percent live in stabilized units and the rest largely live in public housing.”<sup>23</sup>

Limiting annual rent increases is the central element of rent regulation, without which several hundred thousand New Yorkers would face extreme housing instability. While unregulated rents have risen dramatically since the early 2000s, as shown in the chart below,<sup>24</sup> the growth of stabilized rents has been comparatively moderate, thereby enabling a larger number of low-income tenants to remain in their homes.



<sup>23</sup> Right to the City, “Our Homes, Our Future” (Feb. 2019) at 26, available at [https://www.policylink.org/sites/default/files/OurHomesOurFuture\\_Web\\_08-02-19.pdf](https://www.policylink.org/sites/default/files/OurHomesOurFuture_Web_08-02-19.pdf).

<sup>24</sup> This chart reflects CSS’s analysis of 2002-2017 HVS data. See CSS, “Where Have All the Affordable Rentals Gone?” (May 2019) at 9, available at <https://www.cssny.org/publications/entry/where-have-all-the-affordable-rentals-gone>.

As noted by the late Thomas Waters, a CSS analyst and tireless advocate for low-income tenants: “[t]he major benefit of rent regulation for low-income people is the security against being displaced,” and “the difference in rents, doesn’t necessarily capture that.”<sup>25</sup> While sudden rent increases of any size can be difficult to absorb for tenants across income levels, even a seemingly “minimal” increase is catastrophic for low-income tenants. In recent years, approximately 175,000 households in rent stabilized housing were unable to afford even a \$25 increase in their monthly rent.<sup>26</sup>

Limited savings among low-income renters present a further barrier to moving, coupled with high rent burdens and other housing instability risk factors. In 2017, the baseline move-in costs for a New York City apartment renting at the median rate were about \$4,000 (three months of rent up front, including first and last month’s rent and security deposit). But 72 percent of low-income renters reported having less than \$1,000 in savings, meaning that the costs of signing a new lease would present a significant financial challenge for which Black and brown low-income renters are also disproportionately unprepared.<sup>27</sup>

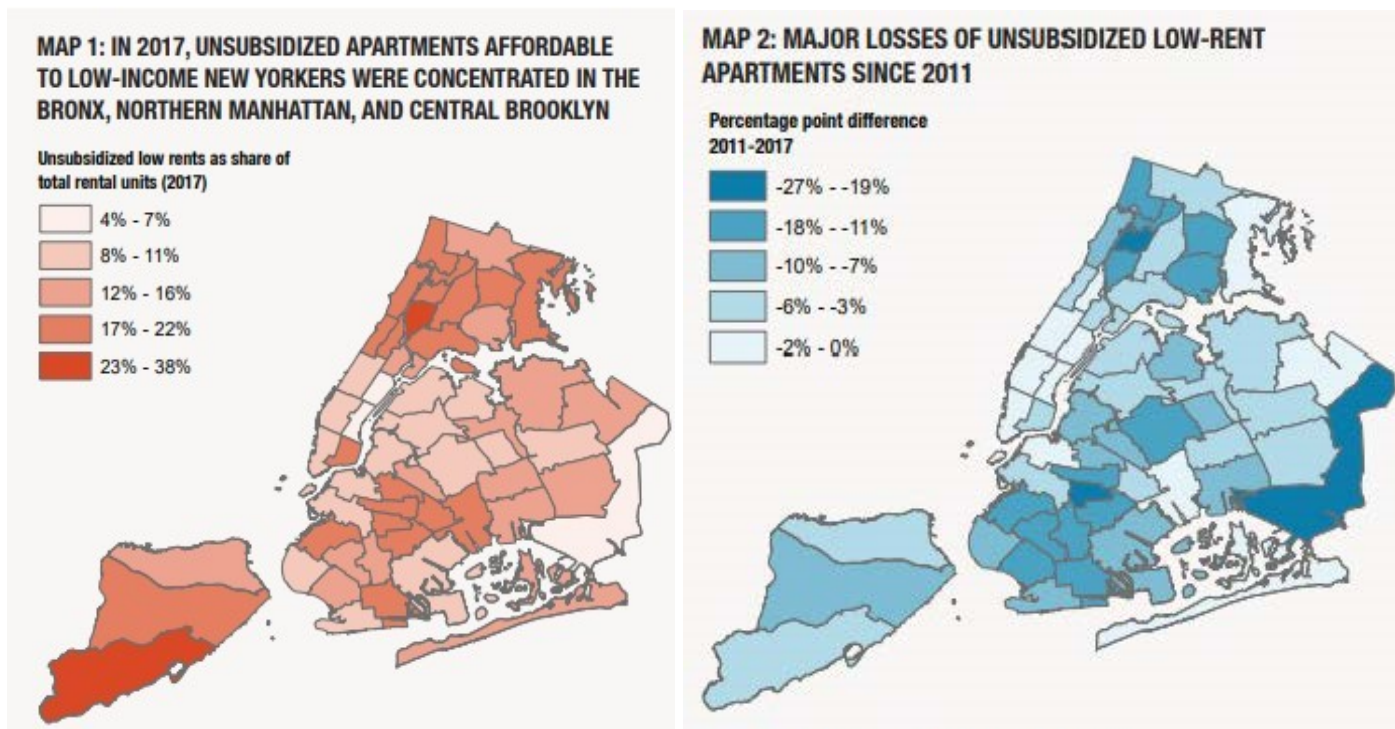
---

<sup>25</sup> <https://www.wsj.com/articles/wealthy-older-tenants-in-manhattan-get-biggest-boost-from-rent-regulations-11560344400>

<sup>26</sup> CSS, “Testimony: NYC Needs a Rent Freeze” (May 2020), available at <https://www.cssny.org/news/entry/testimony-nyc-rgb-rent-freeze>.

<sup>27</sup> CSS, “Tenants at the Edge” (April 2018) at 14-15, available at <https://www.cssny.org/publications/entry/tenants-at-the-edge>

Even as rent burdens continue to climb in both unregulated and regulated apartments, low-income New Yorkers often do not have a choice to leave and find another apartment. Waiting lists for public and subsidized housing — if they are open at all — are years, if not decades, long. And, as the two maps below based on CSS’s analysis of HVS data illustrate,<sup>28</sup> the share of unsubsidized low-rent apartments — those affordable to a low-income household — has fallen drastically from 21 percent to 14 percent between 2011 and 2017, from 445,000 to 300,000 units.



<sup>28</sup> Where Have All the Affordable Rentals Gone at 11.

By 2017, the loss of low-rent units had spread like wildfire through areas with a very high proportion of rent regulated units, including Inwood/Washington Heights, northwestern Bronx, as well as Morris Park and Parkchester. From 1994 to 2017, the city lost approximately 291,000 rent-stabilized units, mostly to vacancy deregulation.<sup>29</sup> The loss of rent regulated units in these areas has played a central role in driving the overall decline in the affordability of the rent stabilized housing stock throughout these markets.

The loss of low-rent units is even more widespread in Brooklyn. Crown Heights/Prospect Lefferts (which experienced the largest decline of low-rent units citywide) and Flatbush/Midwood saw major losses due to a decline in low-rent, stabilized units. Sunset Park, East Flatbush, and the southern Brooklyn neighborhoods of Sheepshead Bay/Homecrest and Bath Beach/Bensonhurst have a mix of low-density rentals as well as clusters of older rent stabilized apartment buildings. Here, too, the decline of low-rent units in these neighborhoods can be attributed in large part to the elimination of rent regulated units.<sup>30</sup>

In all of these areas, rent regulated units have predictably been replaced by high rent units, resulting in a permanent loss of affordable housing and adding

---

<sup>29</sup> Rent Regulation in New York City at 6.

<sup>30</sup> Where Have All the Affordable Rentals Gone at 11-12.



additional upward pricing pressure in the unregulated housing stock.<sup>31</sup> In 2011, the share of high-rent units was negligible in Bedford-Stuyvesant, Bushwick, and Crown Heights in Brooklyn; Astoria/Long Island City, Sunnyside, and Woodside in Queens; and Harlem and Washington Heights/Inwood in northern Manhattan. By 2017, however, high rent units represented about a tenth of each of these local rental submarkets. The semi-circle of neighborhoods directly adjacent to the city's luxury rental market core saw their share of high rent units increase by 5 to 12 percent between 2011 and 2017, as the city's high-priced rental market expanded further into Brooklyn and Queens.<sup>32</sup>

As a result of rapidly increasing rents, a growing number of low-income tenants who lack housing subsidies are paying more than half their income in rent in most parts of the city, not only in gentrifying neighborhoods in downtown Brooklyn and Upper Manhattan and historic high-income areas of Manhattan, but also in persistent poverty centers in central Brooklyn and central Bronx.

The perils facing low-income tenants are overwhelming. Half of low-income tenants in New York City already pay more than half of their income toward rent, a

---

<sup>31</sup> Rent Matters: What are the Impacts of Rent Stabilization Measures? (“Research on the removal of rent stabilization in Cambridge, Massachusetts, in the 1990s suggests that rents went up on both controlled and non-controlled units when rent regulation was removed, with tenants of previously stabilized units seeing a 40 percent increase in rent (Autor, Palmer, and Pathak 2012)”).

<sup>32</sup> Where Have All the Affordable Rentals Gone at 13.

top predictor for eviction and homelessness. A sudden large rent increase can push a low-income household over the edge.<sup>33</sup>

For this reason, homelessness prevention advocacy groups, including Voices of Community Activists & Leaders (VOCAL – NY), New Destiny Housing, and Citizens’ Committee for Children, have increasingly pointed to rent regulation as a tool for preventing homelessness. In a tight housing market, where the vacancy rate for apartments that rent for less than \$1,000 a month is just 2 percent, the right to a lease renewal becomes incredibly important to low-income tenants. While rent regulation cannot address all factors that drive homelessness, it helps low-income tenants stay in their homes, especially in gentrifying neighborhoods with rapidly rising unregulated rents.<sup>34</sup>

Appellants ask the Court to go to the extraordinary lengths of overturning the reasoned policy decisions of the legislature, and in doing so, to disregard the tragic circumstances facing low-income families in New York. Appellants even callously suggest that the legislature’s determination that a housing emergency exists in this State is arbitrary or irrational.

But the unfortunate reality is that we are in fact in such a state of emergency, which the pandemic has only exacerbated. This situation has far-reaching

---

<sup>33</sup> Rent Regulation in New York City at 18.

<sup>34</sup> Rent Regulation in New York City at 20.

consequences. For example, in New York City alone more than 100,000 public school students are homeless or lack permanent housing, a circumstance that, paired with dire educational and developmental outcomes, “condemns these kids to a life of poverty, homelessness and hardship.”<sup>35</sup> For hundreds of thousands of low-income parents, rent stabilization is critical to providing their children with housing stability and a meaningful opportunity to escape generational poverty.

The benefits of rent regulation directly contribute to slowing down the rate of evictions and homelessness in New York City. Landlords use the threat of eviction either as a retaliatory measure against tenants who are organizing, or to force tenants out of rent stabilized apartments, especially in gentrifying neighborhoods. The City’s Independent Budget Office’s analysis of 2002–2014 data shows that the largest share of family shelter entries (43 percent) was from rent regulated apartments. Strengthening rent regulations alongside assessing the impact of the city’s development policies on rents in low-income neighborhoods is central to stemming evictions.<sup>36</sup>

In 2011, the Senior Policy Analyst for The Coalition for the Homeless, Patrick Markee gave key testimony at a New York State Assembly hearing on the RSL.

---

<sup>35</sup> <https://www.nytimes.com/interactive/2020/09/09/magazine/homeless-students.html>

<sup>36</sup> CSS, “Addressing the Eviction Epidemic - Analysis of 2017 Data” (Sept. 2018), available at <https://www.cssny.org/news/entry/addressing-the-eviction-epidemic-2017-analysis>.

Representing a consensus among advocates for New York's most vulnerable residents, Mr. Markee's remarks encapsulated the terrible social cost that would result from granting Appellants the relief they seek in this litigation:

Simply put, the rent laws are essential to maintaining New York City's stock of affordable rental housing . . . most homeless New Yorkers once resided in rent-stabilized apartments. And when they leave shelters, most homeless New Yorkers will move into rent-stabilized apartments.

If the rent-regulated housing stock in New York continues to diminish, the homeless population will grow to unimaginable levels. . . the outright elimination of the rent laws would lead to a wave of evictions and homelessness unseen in New York since the Great Depression.<sup>37</sup>

Appellants' requested relief would result in devastating harm to New York's most vulnerable residents. For this reason, in addition to the controlling legal grounds cited by the trial court below, this Court should resoundingly deny Appellants' attempt to overturn the will of the legislature in enacting the RSL.

---

<sup>37</sup> Testimony of Coalition for the Homeless before the NY State Assembly, January 2011, available at <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/07/TestimonyRentRegulationJan202011.pdf>.

**CONCLUSION**

For the foregoing reasons, *amicus curiae* CSS respectfully urges this Court to affirm the decision of the district court.

Dated: April 23, 2021

Respectfully Submitted,

/s/ Matthew J. Chachère

Matthew J. Chachère  
Andrew Goodman  
NORTHERN MANHATTAN  
IMPROVEMENT CORPORATION  
45 Wadsworth Avenue  
New York, New York 10033  
(212) 822-8300  
matthewchachere@nmic.org  
andrewgoodman@nmic.org

Jared A. Levine  
CROWELL & MORING LLP  
590 Madison Avenue, 20<sup>th</sup> Floor  
New York, New York 10022  
(212) 223-4000  
jalevine@crowell.com

Amanda Shafer Berman  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 688-3451  
aberman@crowell.com

*Attorneys for Amicus Curiae*

**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Local Rules 29.1 (c) & 32.1 (1)(4)(A) because this brief contains 4,786 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 pt Times New Roman.

Dated: April 23, 2021

Respectfully Submitted,  
/s/ Matthew J. Chachère  
Matthew J. Chachère, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2021, an electronic copy of the foregoing brief was filed with the Clerk for the United States Court of Appeals for the Second Circuit using the CM/ECF system.

I further certify that all participants in the case are registered CM/ECF users and that service will accomplished via the CM/ECF system.

Dated: April 23, 2021

Respectfully Submitted,  
/s/ Matthew J. Chachère  
Matthew J. Chachère, Esq.