

# 20-3366-CV

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

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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.*

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

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**BRIEF FOR *AMICUS CURIAE* 1199SEIU UNITED  
HEALTHCARE WORKERS EAST IN SUPPORT  
OF APPELLEES AND INTERVENORS**

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**CORPORATE DISCLOSURE STATEMENT**

Amicus curiae herein, 1199SEIU United Healthcare Workers East (“1199”), through its undersigned counsel, submits this disclosure statement pursuant to Rules 26.1 and 29 of the Federal Rules of Appellate Procedure. 1199 is a non-stock, nonprofit corporation. It has no parent company, and no person or entity owns it or any part of it.

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## INTEREST OF AMICUS CURIAE<sup>1</sup>

1199SEIU United Healthcare Workers East (“1199”) is New York’s largest union of healthcare workers, representing more than 200,000 workers in New York City’s hospitals, nursing homes, clinics, home care agencies and pharmacies, many of whom are employed in low or very-low income jobs. 1199’s analysis of average incomes of its members<sup>2</sup> shows that home care workers had average annual earnings of \$26,415 and nursing home workers an average annual of \$44,736.<sup>3</sup> Further, a 2019 analysis showed that more than 52,000 of 1199’s members were living in buildings with rent-stabilized apartments. Of those, more than 12,000 were home care workers and nearly 6,000 were nursing home workers.

Amicus 1199 has a substantial interest in the outcome of this litigation. Were the rent-stabilization laws held to be unconstitutional, the consequence would be that large numbers of 1199’s members who live in rent-stabilized New York City apartments would be uprooted from their homes and potentially their jobs because

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<sup>1</sup> No portion of this brief was authored or funded by any party or counsel for any party, nor did any other person contribute money to fund this brief. All parties have consented to the filing of this brief.

<sup>2</sup> The home care worker analysis covered the 2019 calendar year; the nursing home worker analysis covered the period October 2020-September 2021.

<sup>3</sup> These numbers are at or below the US Department of Housing and Urban Development’s 2020 definition of low-income earnings, for a family of any size. *See New York City Area Median Income*, NYC HOUS. PRES. & DEV., <https://www1.nyc.gov/site/hpd/services-and-information/area-median-income.page> (last visited Apr. 17, 2021).

they cannot afford market rate rents. Both the workers, as well as their healthcare employers, would be damaged by the resulting instability.

### **ARGUMENT**

#### **I. THE EXPERIENCES OF 1199'S MEMBERS SHOW THAT THE RENT STABILIZATION LAWS ARE SERVING LEGITIMATE STATE INTERESTS OF HELPING PERSONS OF LOW AND MODERATE INCOME LIVE AND WORK IN NEW YORK CITY, THEREBY PROMOTING SOCIO-ECONOMIC DIVERSITY**

The District Court correctly concluded that the legislative intent of the Rent Stabilization Laws (“RSL”) was to “allow people of low and moderate income to remain in residence in NYC—and specific neighborhoods within—when they otherwise might not be able to.” *Cnty. Hous. Improvement Program v. City of New York*, 492 F. Supp. 3d 33, 52 (E.D.N.Y. 2020). The District Court also correctly held that “neighborhood stability and continuity” were valid grounds for government intervention. *Id.* (citing *Nordlinger v. Hahn*, 505 U.S. 1, 12, 112 S. Ct. 2326, 2333, 120 L. Ed. 2d 1 (1992)) (declaring that “the State has a legitimate interest in local neighborhood preservation, continuity, and stability”). The Supreme Court in *Nordlinger* held that “[t]he State therefore legitimately can decide to structure its tax system to discourage rapid turnover in ownership of homes and businesses, for example, in order to inhibit displacement of lower income families by the forces of gentrification or of established, “mom-and-pop” businesses by newer chain operations.” *Id.* The General Assembly’s legislative

finding upon enactment of the Emergency Tenant Protection Act of 1974 also recognized that, considering disruptive practices in the rental market, it was necessary for legislative action to “prevent uncertainty, hardship and dislocation.” N.Y. UNCONSOL. LAW § 8622 (McKinney 1974).

Amicus 1199 shows that the RSL provide opportunities for large numbers of its members to reside in New York City, near their places of work which they could not otherwise afford. Further, those laws allow them to maintain continuity of community they could not otherwise achieve. The experiences of these 1199 members show that the RSL are not arbitrary or irrational as Plaintiffs have argued, but rather, because those laws have allowed large numbers of low-wage workers to obtain and remain in apartments within New York City, the adoption of the RSL challenged in this litigation was consistent with the due process clause. The experiences of 1199’s members living in rent stabilized apartments (described below) provide multiple examples of how the RSL have operated in a manner consistent with one or more legitimate state interests and are, therefore, not unconstitutional. These 1199 members, most of whom are earning low to very low incomes, have been able to build stable lives and establish strong connections in their communities based upon apartment rentals subject to the RSL. The substantial number of 1199 members, earning wages that on average put them in the low-income or very-low-income range, regardless of family size, and living in

buildings with rent-stabilized apartments, show that a rational basis exists for the RSL. The District Court properly rejected Plaintiff's claims that the RSL were not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity. *See Cmty. Hous. Improvement Program*, 492 F. Supp. 3d at 51-52.

The experiences of several 1199 members living in rent-stabilized apartments are set out below, and demonstrate, on an individualized basis, how the RSL have allowed low income healthcare workers to hold jobs in New York City and live in New York City rental apartments that they could not afford if their only options were rentals on the open market. Not only have they found affordable rentals, they have been able to retain those rentals for significant time periods, thereby establishing connections with their communities that improve their quality of life and the character of their neighborhoods.

**A. Christine Dholichand, nursing home worker in Queens who walks home from work at 11 PM without fear for her safety**

Christine Dholichand is a Certified Nursing Assistant ("CNA") employed at the Holliswood Center for Rehabilitation and Healthcare in Hollis (Queens), New York. She has been on staff there since 2012 and lives in a rent-stabilized apartment within walking distance of her job. She has lived in her one-bedroom apartment with her husband and two children, aged 15 and 10 since 2016. Her husband is disabled and is not employed. Her current job provides take-home pay



of \$650 weekly. Her rent is currently \$1,435 per month. She cannot afford to pay more rent, considering her family's income and expenses. If she could, she would rent a two-bedroom apartment. In addition to being so close to her work, she is also very close to her children's school, enabling her to avoid significant transportation costs. The relatively low cost of the apartment is a great advantage.

The most significant advantage of this apartment, however, is that she feels safe living and working in this community. Having lived there since 2016, she knows people in her neighborhood—and they know and respect her. As a result, she feels comfortable, even when walking home from work at 11 P.M. She has not encountered any problems doing so. She even has a neighbor who watches her each night as she walks home from work, adding to her feelings of safety.

**B. Maria Bendana, home care employee living in Brooklyn for thirty-one years and supporting two children attending college**

Maria Bendana is currently working two home care jobs, one obtained through Family Home Care of Brooklyn and Queens (where she is working a permanent case) and the other through Effective Home Care, LLC (where she works temporarily on an as-needed basis). Her current annual income is approximately \$32,000. Maria has lived in her rent-stabilized apartment located near Sunset Park in Brooklyn for 31 years. She lives there with her husband and two of her children, aged 25 and 21. Her husband is employed as a deli worker at Key Food Supermarket; her two children are both in college.

Her current rent is \$1,021 per month. This lower-than-market rent is the major advantage of her apartment. Without it, she and her family would not be able to continue living in New York City. The apartment is a one bedroom but has a comfortable living room. Their income and living costs are such that she is presently working two jobs (a total of 76 hours per week) in order to cover expenses. She and her husband are paying college tuition for both children, and because of family illnesses in 2020, she was unable to work for five months. She and her husband also have expenses for children's clothing, and for the past fifteen years, she has been supporting her mother who is dependent upon this support.

There are many services in the Sunset Park community where she lives which she could not easily recreate if she had to move out of this apartment. For example, her church is 12 blocks away and there is shopping close by—some locations are as close as a block away, others within 2-4 blocks. Her doctor and pharmacy are nearby, as are multiple bus and train options. Subway stations are nearby on 4th Avenue, and there are convenient bus routes running on 3rd and 5th Avenues. Friends and family also live nearby; in fact, two members of her husband's family now live in the same building.

If she had to move from this apartment, she would greatly miss the family and community support that she has now. With this apartment, she sees family and

friends regularly, and most importantly, when there are problems, her community comes together to provide support.

**C. Opal Warmington, a nursing home worker living in a rent-stabilized apartment in the East Bronx who feels safe with the support of neighbors**

Opal Warmington has lived in her East Bronx rent-stabilized two-bedroom apartment for 10 years. This was her first apartment upon moving to the United States. For several years she lived there with her husband and daughter. She and her husband separated 4-5 years ago, and since that time she has maintained the apartment on her own income, living there with her daughter, who is now 19 years old. Current rent under her rent-stabilized lease is \$1,722 per month.

Ms. Warmington currently works two full-time jobs, at Goldcrest Nursing Home Care Center and Rebekah Rehab and Extended Care Center. Both jobs are in the Bronx. Her take-home pay from the Goldcrest job is approximately \$550 per week, and from Rebekah approximately \$1,115 every two weeks. While her rent is stabilized, she is not able to stay current on her rent without working a second job.

Although she has considered moving, market-rate rents are high for even a one-bedroom apartment. She has looked both in her neighborhood and elsewhere but has not found any apartment that she could afford if she were working only one of her two jobs. Also, this apartment offers her benefits that she cannot readily replace. Because she has lived here for ten years, she is familiar with the

neighborhood, she feels safe and most importantly, her neighbors in the apartment building know her. She feels comfortable leaving her daughter home alone because of the support her neighbors will provide in an emergency.

**D. Sherene Durrant, nursing home employee who escaped from unsafe living conditions to a safe, rent-stabilized apartment**

Sherene Durrant works at Bay Park Center for Nursing and Rehabilitation. She has been on staff there since 2016. Her take-home pay is approximately \$2,200 a month. Since 2013, she has lived in a studio apartment in the Bronx with her 11-year old son, not far from the Bronx River Parkway and Wakefield Avenue. She pays \$1,010 per month for her rent-stabilized apartment. She cannot afford to pay higher rent, considering her income and other expenses.

When she first moved here, she needed a roof over her head—she was leaving a domestic violence situation and needed to move on short notice. She located this safe apartment and has stayed for nearly eight years. There are other advantages beside safety—she can walk to work from her centrally located apartment. There are a lot of amenities nearby, including public transportation and her son’s school. Over the years, she has established connections with essential services in the community, including her doctor and clinics. Prior to her move, everything in her life was disrupted, and she was forced to start over again. She appreciates the stability that her apartment brings to her life. Not only can she manage her rent but feels that both she and her child are safe. If the rent were

higher, she is not confident she could keep the apartment. She has seen other advertised apartments, including studios, where the rent is higher and believes that rent stabilization makes it possible for her to maintain a stable home environment.

**E. Carmen Mackall, nursing home employee living in Corona (Queens) is able to continue living there because of limits upon increases in rent**

Carmen Mackall lives in a rent-stabilized apartment in Corona (Queens). She has lived there since 1972 when she was 7 years old. She lives alone and is responsible for paying the rent. Current rent under her lease is \$1,100 per month. She is employed by North Shore Child Guidance, a mental health clinic. Her current monthly take-home income is \$2,300.

Twelve years ago her apartment building converted from being a Mitchell-Lama building to being rent-stabilized. However, since that time many apartments in her building became subject to market rents which she simply cannot afford. A neighbor, for example, pays \$3,000 per month for a one-bedroom apartment the same size and layout as her apartment. Another neighbor living in a studio that is not rent-stabilized pays \$1,700 per month for a much smaller apartment.

Her apartment is close to transportation with a bus stop a block away, a train station three blocks away, and easy access to the Cross Island Parkway, Grand Central Parkway, Van Wyck Expressway and the Long Island Expressway. Nearby landmarks include Citi Field, Flushing Meadows Park and the Queens Botanical

Garden. Her building is well-maintained, and includes a secure parking lot, laundry, recreation room, and no bugs and no dirty stairways.

She and several other long-term residents continue to live in her apartment building. But the only way they have been able to do so is through the rent stabilization program. The market rents being charged for apartments in her building are not affordable given her income.

**F. Marie Etheart, nursing home employee in Brooklyn works while attending Kingsborough Community College to obtain her college degree**

Marie Etheart is employed at the Fairview Rehab and Nursing Center in Forest Hills. She has been on staff there for approximately 5 years and earns approximately \$40,000 annually. She has lived in her rent-stabilized apartment in Brooklyn for 8-9 years. While her landlord has not always provided the services that she would like, she cannot afford to live in a higher-priced apartment. Despite this negative aspect of her apartment, she has many positive connections to her immediate neighborhood. Several family members including two sisters, two uncles and four cousins live close enough that she can walk to them or they can walk to visit with her. Subway stations and bus routes are very convenient. She lives near two subway stations giving her easy access to the 2 and 5 trains, and the B & Q lines. There are also 4-5 bus lines nearby. Her church is across the street from her apartment and her doctor within walking distance.

Aside from working as a CNA, she also attends school at Kingsborough Community College. She has two more years before she will complete her degree. Her goal after college is to find a higher paying job and buy a home. She lives in her apartment with her husband, who is employed as a school bus driver, and her 8-year old son. Besides providing support for her immediate family, she and her husband continue to support other family members as well. She describes herself and her family as “living paycheck to paycheck,” and that the reduced rent they pay for their apartment is a must. She could not afford to live in New York City otherwise.

**G. Luz Maria Santiago, home care employee who has lived in her Brooklyn apartment for twenty-six years**

For the last 26 years, Luz Maria Santiago has lived in her current rent-stabilized two-bedroom apartment near Sunset Park in Brooklyn. She lives alone, having raised two boys by herself. Her sons are now married and living in Las Vegas and Staten Island. Her current rent is \$1,225 per month. Her income from her home care position is approximately \$23,400 annually. While the rent is stabilized, she is not able to stay current on her rent without working a second job. Last year she worked at the New York City Department of Parks & Recreation from July 6 to September 4, trying to earn additional money to pay off her debts. On more than one occasion she has needed to work a second job in order to bring

her payments current. For example, she also worked a second job at the New York City Parks Department in 2014.

Because this apartment has been her home for so long, her connections with the neighborhood are very strong and she would be very upset if the RSL were not in effect, given the risk that the rent would increase beyond the range she could afford even with a second job. This is where she raised her boys, and now her grandson stays with her when he comes for a visit. She feels strongly attached to the community—being within walking distance of her current patient, and many services, including a pharmacy, supermarket, hospital and subway station.

**H. Fatima Matos, home care employee living in the Bronx who brought her family back together upon rental of rent-stabilized apartment**

Fatima Matos has lived in her rent-stabilized apartment in the Bronx, a few blocks from Yankee Stadium, for seven years. She learned about the availability of this apartment from a co-worker and rented it in March 2014. Before this apartment, she was only able to afford to rent a single room (without a kitchen) and was unable to bring her family to the United States to join her. She suffered living without them and arranged for them join her as soon as possible after she secured rental of this apartment.

Her husband, who is not employed, and her three children, aged 29, 27, and 25, live with her now. Her children are in school, working on obtaining either bachelor's or master's degrees. Each of them works to pay their own tuition, as she



is unable to support them on her minimum wage income. Her annual earnings in the past two years have fluctuated, primarily because of COVID-19. While her monthly net take-home pay is usually around \$2,000, in 2020 it was higher because she picked up extra hours due to the several-month absence of a sick co-worker. In February 2021, on the other hand, she herself missed work because of COVID-19, and her net take-home pay for the month was approximately \$1,200. Her monthly rent is \$926, plus a \$16 water fee.

Being able to stay in this apartment is very important to Fatima. She cannot afford to move, given the higher rents for most comparable apartments. She has grown familiar with the neighborhood over time. There are important services within walking distance, including her doctor, a supermarket and shopping mall. Having these things nearby is very important to her quality of life.

**I. Elba Solis, home care employee who relocated her family from a one-room apartment to a two-bedroom that was affordable because rent-stabilized**

Elba Solis is a home care worker currently working jobs obtained through the Chinese American Planning Council (“CPC”) (where she works a permanent case) and Personal Touch Home Care of New York (“Personal Touch”) (where she regularly works two days per week and fills in on other cases as needed). She began working for both agencies in early 2014 and became an 1199 member.

She has lived in her current rent-stabilized apartment in the Bronx, near Flynn Playground since 2015. She has lived in this apartment with her two daughters, who are currently away at college but who come home on vacations and holidays. She is responsible for paying the monthly rent-stabilized amount of \$1,165.48. Her weekly take home pay from Personal Touch varies between \$241.50 and \$270, depending upon whether she works more than two days with fill-in work. Her bi-weekly take-home pay from CPC is \$1,532.58.

When she first moved to New York with her two daughters in 2014, she was not employed and paid \$700 per month to live in a one-room apartment (with access to kitchen area and bathroom). At the time, she applied for food stamps, and then started working for Personal Care. She learned about her current rent-stabilized two-bedroom apartment through the friend of a friend, who helped her fill out the paperwork for the apartment. She was very happy to move out of the one-room apartment. In addition to the size of her apartment, there are other benefits. She feels that it is in a good neighborhood; everything is close to her, including transportation, pharmacy, supermarket, department stores and Lincoln Hospital. She also has an aunt and brother living nearby. And because she has lived in her apartment for six years, she knows several of her neighbors and feels that she is part of a community.

If she did not have the protections of the RSL, she believes she could not afford a market-rate apartment in her neighborhood on her current income. Even with the lower-than-market rent she is now paying she is concerned that she may need to find a cheaper apartment. She has significant expenses in addition to her rent and normal costs of living, including providing \$150 in support every two weeks to each of her daughters while in college and sending her mother \$400 a month in support which she has been doing for about five years.

### **CONCLUSION**

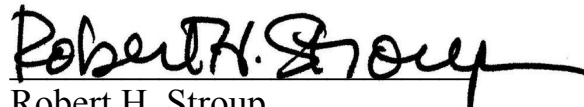
The experiences of 1199's members living in rent stabilized apartments in New York City demonstrate that the adoption of the RSL by Defendants was rationally related to legitimate state interests, including the prevention of excessive rent increases and the avoidance of tenant displacement as the District Court correctly so held:

The RSL was also intended to allow people of low and moderate income to remain in residence in New York City—and specific neighborhoods within—when they might otherwise might not be able to. *See* N.Y.C. Admin. Code § 26-501 (extending the RSL to prevent “uprooting long-time city residents from their communities”).

*Cnty. Hous. Improvement Program*, 492 F. Supp. 3d at 52. The Supreme Court has recognized such interests constitute a rational basis for such laws and the decision of the District Court rejecting Plaintiffs' claims should be affirmed.

Dated: April 23, 2021  
New York, New York

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## **CERTIFICATE OF COMPLIANCE**

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Dated: New York, New York  
April 23, 2021