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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 21-467(L), 21-558(Con)

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74 PINEHURST LLC, 141 WADSWORTH LLC,
177 WADSWORTH LLC, DINO PANAGOULIAS,
DIMOS PANAGOULIAS, VASILIKI PANAGOULIAS,
EIGHTY MULBERRY REALTY CORPORATION,

Plaintiffs-Appellants,

NEW YORK TENANTS AND NEIGHBORS; COMMUNITY
VOICES HEARD; COALITION FOR THE HOMELESS,

Intervenors,

v.

STATE OF NEW YORK, NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL, RUTHANNE VISNAUSKAS individually and in her official capacity as Commissioner of New York State Division of Housing and Community Renewal, CITY OF NEW YORK, NEW YORK CITY RENT GUIDELINES BOARD, DAVID REISS in his official capacity as Chair of the Rent Guidelines Board, ALEX SCHWARTZ in his official capacity as a Member of the Rent Guidelines Board, ARPIT GUPTA in his official capacity as a Member of the Rent Guidelines Board, CHRISTIAN GONZALEZ-RIVERA in his official capacity as a Member of the Rent Guidelines Board, CHRISTINA DEROSE in her official capacity as a Member of the Rent Guidelines Board, ROBERT EHRLICH in his official capacity as a Member of the Rent Guidelines Board, CHRISTINA SMYTH in her official capacity as a Member of the Rent Guidelines

Board, SHEILA GARCIA in her official capacity as a Member of the Rent Guidelines Board, and ADÁN SOLTREN, in his official capacity as a Member of the Rent Guidelines Board,[*]

Defendants-Appellees.

August Term 2021

Appeal from the United States District Court for the Eastern District of New York No. 19 Civ. 6447 (ERK), Eric R. Komitee, District Judge, Presiding. (Argued February 16, 2022; Decided February 6, 2023)

Before: CALABRESI, PARKER, and CARNEY, *Circuit Judges.*

Plaintiffs-Appellants, individuals who own apartment buildings in New York City subject to the relevant Rent Stabilization Law (RSL), appeal from a judgment of the United States District Court for the Eastern District of New York (Komitee, *J.*). The court dismissed the complaint pursuant to Rule 12(b)(6). Plaintiffs-Appellants alleged that the RSL, as amended in 2019, effected, both facially and as applied, an unconstitutional physical and regulatory taking. The district court held that Plaintiffs-Appellants failed to state claims for violations of the Takings Clause or of due process. We AFFIRM.

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[*] Several new members have been added to the Rent Guidelines Board since this case was filed and have thus been automatically substituted for the former members as the defendants in this case pursuant to Fed. R. App. P. 43(c)(2).

KEVIN KING (Mark W. Mosier, Ethan A. Sachs, Covington & Burling LLP, Washington D.C., Jonathan M. Sperling, S. Conrad Scott, Jordan S. Joachim, Covington & Burling LLP, New York, NY, *on the brief*), for *Plaintiffs-Appellants,*

ESTER MURDUKHAYEVA, *Deputy Solicitor General for the State of New York*, Letitia James, *Attorney General for the State of New York*, Barbara D. Underwood, *Solicitor General*, Steven C. Wu, *Deputy Solicitor General*, Caroline A. Olsen, *Assistant Solicitor General, Of Counsel*, New York, N.Y., for *Defendant-Appellee RuthAnne Visnauskas*,

CAITLIN J. HALLIGAN (Sean P. Baldwin, Michael Duke, Babak Ghafarzade, Sophie Lipman, *on the brief*, Selendy & Gay PLLC), for *Intervenors*,

CLAUDE S. PLATTON, *Assistant Corporation Counsel for the City of New York*, James E. Johnson, *Corporation Counsel for the City of New York*, Richard Dearing, Jesse A. Townsend, *Of Counsel*, New York, N.Y., for *Defendants-Appellees City of New York, Rent Guidelines Board, David Reiss, Arpit Gupta, Alex Schwarz, Christian Gonzalez-Rivera, Christina DeRose, Robert Ehrlich, Christina Smyth, Sheila Garcia, Adán Soltren, RuthAnne Visnauskas.*

BARRINGTON D. PARKER, Circuit Judge:

Plaintiffs-Appellants are trade associations of managing agents and owners of rental properties in New York City that include rent-stabilized units (collectively, "Pinehurst"). Plaintiffs-Appellants appeal from a judgment of the United States District Court for the Eastern District of New York (Komitee, *J.*) dismissing their complaint pursuant to Rule 12(b)(6). For the

reasons discussed, we affirm the judgment of the district court.

This case is related to *Community Housing Improvement Program, et al. v. City of New York et al.*, No. 20-3366-cv, __ F.4th __ (2d Cir. Feb. 3, 2023). They were decided in a consolidated opinion in the district court and heard concurrently at oral argument before our Court on February 16, 2022. Many of the issues in this case are addressed in our opinion in *Community Housing*. Accordingly, this opinion addresses in detail only those issues that are unique to this case, namely Pinehurst's claim that the RSL effects an as-applied physical and regulatory taking.

PROCEDURAL HISTORY

Five months after New York's Rent Stabilization Law ("RSL") was amended by the Housing Stability and Tenant Protection Act of 2019 (the "HSTPA"), Pinehurst sued seeking to have the RSL as amended declared unconstitutional. Pinehurst brought claims against the City of New York, the Rent Guidelines Board (as well as its chair and members), the State of New York, and the New York State Division of Housing and Community Renewal (as well as its commissioner). Pinehurst alleged that the amendments effected, facially and as applied, physical and regulatory takings in violation of the Takings Clause of the Fifth Amendment, and that they violated the Fourteenth Amendment's Due Process Clause. They further alleged that the state defendants were not shielded from liability by sovereign immunity.

The district court granted the motion to dismiss, concluding that no physical or regulatory taking had occurred and that the RSL did not violate Due Process. This appeal followed. We review *de novo* the district

court's dismissal for failure to state a claim, accepting all well-pleaded factual allegations as true and drawing all inferences in favor of the non-moving party. Fed. R. Civ. P. 12(b)(6); *Palin v. N.Y. Times Co.*, 940 F.3d 804, 809 (2d Cir. 2019).

DISCUSSION

I.

Pinehurst has leveled facial physical and regulatory taking challenges to the RSL. These claims fail for the same reasons we explain in *Community Housing*. To prevail on facial challenges, a plaintiff must "establish that no set of circumstances exists under which the [challenged] Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). In other words, the plaintiff must show that the statute "is unconstitutional in all of its applications." *Wash. State Grange v. Wash. State Rep. Party*, 552 U.S. 442, 449 (2008); *see generally Community Housing*, No. 20-3366-cv, __ F.4th __.[1] Facial challenges to the RSL have regularly been unsuccessful. *See Rent Stabilization Ass'n of the City of N.Y. v. Dinkins*, 5 F.3d 591, 595 (2d Cir. 1993); *W. 95 Hous. Corp. v. N.Y.C. Dep't of Hous. Pres. & Dev.*, 31 F. App'x 19, 21 (2d Cir. 2002). This case is no exception.

The Takings Clause of the Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amends. V, XIV, § 1. That requirement applies to all physical appropriations of property by the govern-

[1] As we further discuss in *Community Housing*, Pinehurst's contention that subsequent cases, including *United States v. Stevens*, have modified the standard for facial claims articulated in *Salerno*, is without merit. *See Community Housing*, slip op. at. 16–18, __ F.4th at __.

ment. *See Horne v. Dep't of Agriculture*, 576 U.S. 350, 360 (2015). When the government effects a physical appropriation of private property for itself or another—whether by law, regulation, or another means—a *per se* physical taking has occurred. *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021). The government may also effect a physical taking by granting a third party the right to invade property closed to the public. *See, e.g.*, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (holding that a statute requiring landlords to permit cable companies to install equipment on the landlords' properties constituted a *per se* physical taking). However, where—as here—property owners *voluntarily* invite third parties to use their properties, regulations of those properties are "readily distinguishable" from those that compel invasions of properties closed to the public. *Cedar Point*, 141 S. Ct. at 2077. As the Supreme Court made pellucid in *Yee v. City of Escondido*, when "a landowner decides to rent his land to tenants" the States "have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails." 503 U.S. 519, 528–29; *see also Loretto*, 458 U.S. at 440 ("This Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails."); *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934); *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242 (1922). The numerous cases that affirm the validity of rent control statutes are the necessary result of this long line of consistent authority. *See, e.g.*, *Bowles v. Willingham*, 321 U.S. 503 (1944); *Block v. Hirsh*, 256 U.S. 135 (1921).

Moreover, the RSL does not compel landlords "to refrain in perpetuity from terminating a tenancy." *Yee*, 503 U.S. at 528. Instead, the statute sets forth several bases on which a landlord may terminate a tenant's lease, such as for failing to pay rent, creating a nuisance, violating the lease, or using the property for illegal purposes. 9 NYCRR § 2524.3. *See Community Housing*, No. 20-3366-cv, slip. op at 23–24, __ F.4th at __ (collecting cases). In light of this well settled case law that affords municipalities considerable flexibility in addressing landlord-tenant relationships, we conclude that Pinehurst has not plausibly alleged that the RSL effects a taking in all of its applications and that it is thus facially unconstitutional.

All but one of the Pinehurst plaintiffs also claim that the rent stabilization scheme, as applied to their properties, works a physical taking. Pinehurst claims that landlords have been compelled to offer renewal leases to at least one tenant to whom they would not voluntarily lease an apartment, that successor rights force landlords to continue leasing to a deceased tenant's relatives, and that they have been prevented from reclaiming an apartment for personal use. Through these restrictions, Pinehurst contends, the RSL compels landlords, against their objections, to continue renting their properties to unwelcome tenants, thereby constituting an as-applied physical taking. We disagree.

Plaintiffs have not sufficiently pled that the RSL imposes, as applied, a physical taking. To begin, no plaintiff alleges that the RSL forces them to place their properties into the regulated housing market, and it is well-settled that once an owner "decides to rent his land to tenants, the government . . . may require the landowner to accept tenants he does not like." *Yee*, 503

U.S. at 526–28. *See also Heart of Atlanta Motel Inc. v. United States*, 379 U.S. 241, 259–60 (1964). Moreover, none of the Pinehurst plaintiffs who raise as-applied claims have alleged that they have exhausted all the mechanisms contemplated by the RSL that would allow a landlord to evict current tenants. Because, as pled, landlords may yet succeed in evicting current tenants, we cannot say that the RSL "compel[s] a landlord over objection to rent his property or to refrain in perpetuity from terminating a tenancy." *Yee*, 503 U.S. at 528. Without allegations that the RSL has compelled a physical invasion of the property of any of the plaintiffs raising an as-applied claim, Pinehurst has failed sufficiently to plead an as-applied physical taking.

II.

A.

We also reject Pinehurst's contention that the RSL effects, facially or as applied, a regulatory taking, which occurs when a regulation goes "too far" in restricting a landowner's ability to use his own property. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). The Court has "generally eschewed any set formula for determining how far is too far, choosing instead to engage in essentially ad hoc, factual inquiries . . . preferring to examine a number of factors rather than a simple mathematically precise formula." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 326 (2002) (internal quotation marks omitted). In determining whether a use restriction effects a regulatory taking, we apply the balancing test set forth in *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978), which considers, among other factors, a regulation's impact, its interference with reasonable investment-backed expectations, and the character of the government action.

Pinehurst's facial regulatory taking claim fails for the same reason as did the facial regulatory taking claim in *Community Housing*: it fails plausibly to allege that "no set of circumstances exists under which the [RSL] would be valid." *See Rent Stabilization Ass'n*, 5 F.3d at 595 (internal quotation marks omitted); *see also Community Housing*, No. 20-3366-cv, slip. op at 14, __ F. 4th at __. The economic impact of the RSL on the various landlords cannot be ascertained on a collective basis, as it necessarily varies among properties. Some landlords might have been harmed while others might not have been. It is not possible to generalize as to who was harmed, when, and to what extent. Furthermore, landlords who were not harmed would have no viable claims for relief. This variation necessarily means that Pinehurst cannot establish that the RSL can never be applied constitutionally. Accordingly, we affirm the district court's determination that Pinehurst's facial challenge fails.

B.

In addition to a facial regulatory takings challenge, some Pinehurst appellants brought as-applied challenges to the RSL. The City moved to dismiss these challenges, and the district court granted the motion on the grounds that "by the time these Plaintiffs invested, the RSL had been amended multiple times, and a reasonable investor would have understood it could change again." *Community Housing Improvement Program v. City of New York*, 492 F. Supp. 3d 33, 51 (E.D.N.Y. 2020). The district court was correct.

As a threshold matter, we turn to the Intervenors' argument that the as-applied regulatory takings claims are unripe because 74 Pinehurst LLC and 141 Wadsworth LLC failed to avail themselves of the remedial provisions in the RSL that permitted them to

apply for hardship exemptions. *See* N.Y.C. Admin. Code § 26-511(c)(6)–(6-a); 23 N.Y. Unconsol. Laws § 8626(d)(4)–(5). We agree. The Rent Guidelines Board has discretion to grant hardship exemptions to allow landlords to raise rents above the RSL's permitted rent increases based on various criteria, such as "a finding by the commissioner that such guideline increases are not sufficient to enable the owner to maintain an annual gross rent income for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such gross rent." N.Y.C. Admin. Code § 26-511(c)(6-a). Pinehurst does not allege that it has availed itself of any of the hardship exemptions.

The Supreme Court has made clear that "a plaintiff's failure to properly pursue administrative procedures may render a claim unripe if avenues still remain for the government to clarify or change its decision," including where the plaintiff has "an opportunity to seek a variance." *Pakdel v. City and County of San Francisco*, 141 S. Ct. 2226, 2231 (2021). While a property owner "has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it," *Knick v. Township of Scott*, 139 S. Ct. 2162, 2170 (2019), a claim that a regulation effects an as-applied taking cannot be properly adjudicated until there is "no question . . . about how the regulations at issue apply to the particular [property] in question," *Suitium v. Tahoe Regional Planning Agency*, 520 U.S. 725, 739 (1997); *see also Vill. Green at Sayville, LLC v. Town of Islip*, 43 F.4th 287, 294 (2d Cir. 2022). The claims in *Pakdel* were ripe because the plaintiffs had sought an exemption and there was "no question about the city's position" denying it. *Pakdel*, 141 S. Ct. at 2230. Here, by contrast, the as-applied challengers have not sought

exemptions. Instead, they speculate that the hardship provisions offer economic relief "in theory" but practically "result in few applications . . . being granted." Speculation of this sort is insufficient under *Pakdel*. Accordingly, we hold that Pinehurst's regulatory takings claims are unripe where, as here, the relevant parties have failed to pursue available administrative relief.

That said, even if the as-applied challengers' regulatory takings claims were ripe, these claims would nevertheless fail on the merits. *Penn Central* supplies the framework for considering regulatory takings claims. The case instructs courts to engage in a flexible, "ad hoc, factual inquiry "focused on "several factors that have particular significance." 438 U.S. at 124. Three of these factors are: (1) "[t]he economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) "the character of the governmental action." *Id.* Appellants have failed to sufficiently allege that the *Penn Central* factors establish that, as applied to them, the RSL is unconstitutional.[2]

1.

We turn first to the alleged economic impact of the RSL on 74 Pinehurst and 141 Wadsworth. The Complaint alleges that 74 Pinehurst's and 141 Wadsworth's Properties decreased in value "by 20 to 40 percent" after the 2019 amendments to the RSL. This allegation, though, does not insulate these parties from "the legion of cases that have upheld regulations

[2] The remaining plaintiffs either did not allege as-applied claims (177 Wadsworth LLC) or chose to voluntarily dismiss their as-applied claims with prejudice (Eight Mulberry Realty Corp. and the Panagoulias family). The latter's as-applied claims are not at issue in this appeal.

which severely diminished the value of commercial property." *Park Ave. Tower Assocs. v. City of New York*, 746 F.2d 135, 139–40 (2d Cir. 1984) (collecting cases rejecting takings claims under the *Penn Central* framework despite diminutions in value of 75 to 90 percent); *accord Pulte Home Corp. v. Montgomery County*, 909 F.3d 685, 696 (4th Cir. 2018) (no takings violation at 83 percent diminution); *MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 F.3d 1118, 1127 (9th Cir. 2013) (no takings violation at 81 percent diminution); *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 645 (1993) ("[M]ere diminution in the value of property, however serious, is insufficient to demonstrate a taking.").

Furthermore, the as-applied challengers have not plausibly alleged that the economic impact factor tilts in their favor. They allege that the RSL requires "below-market rates," that it locks in "preferential rents for the life of a tenancy," and that it "jeopardizes" the ability of 74 Pinehurst's and 141 Wadsworth's owners to refinance their mortgages in the future. We have repeatedly "rejected the notion that loss of profit—much less loss of a reasonable return—alone could constitute a taking." *Park Ave. Tower*, 746 F.2d at 139.

The as-applied challengers fail to allege any specific impact on profit or revenue, much less that the RSL has rendered any property unusable for permitted purposes or otherwise unmarketable. Their generalized allegations about being required to accept below-market and preferential rents are not sufficient.

Moreover, because neither 74 Pinehurst nor 141 Wadsworth have sought any hardship exemptions that, if approved, could limit the alleged loss of profit revenue, we cannot ascertain the economic impact of

the RSL. A hardship exemption or waiver may be designed, precisely, to balance out a regulation's potential detrimental impact on some landowners. The RSL's restrictions and exemptions operate as interconnected and complementary elements of the regulatory scheme. Since plaintiffs have not pursued any exemptions, we cannot assess whether the RSL does, in fact, lead to a gross positive or negative economic impact on them.

2.

Neither 74 Pinehurst nor 141 Wadsworth can show that the RSL thwarted their reasonable, investment backed expectations. The reasonableness of owners' expectations ensures that compensation is limited to those owners who can demonstrate that they bought their property in reliance on a state of affairs that did not include the challenged regulatory regime. *Allen v. Cuomo*, 100 F.3d 253, 262 (2d Cir. 1996). "[T]he critical time for considering investment-backed expectations is the time a property is acquired, not the time the challenged regulation is enacted." *Meriden Tr. & Safe Deposit Co. v. F.D.I.C.*, 62 F.3d 449, 454 (2d Cir. 1995). 141 Wadsworth acquired its building in 2003, while 74 Pinehurst purchased its property in 2008. The key question is whether, in 2003 and 2008, respectively, 141 Wadsworth or 74 Pinehurst could have expected the RSL to include the type of restrictions they now claim constitute a taking.

We agree with the district court and hold that any investor could reasonably expect limits on the use of rental properties, such as those as provided by the RSL.

The City's modern regime of rent regulations was introduced in 1969 and has since been amended several times. In 1971, for example, the State passed the

Emergency Tenant Protection Act ("ETPA"), which permits the City to renew the protections of the RSL when it declares a "housing emergency" based upon a set of statutory criteria. 23 N.Y. Unconsol. Law § 8623.a (McKinney). Later, in the 1980s, protections were extended to tenants' successors.[3] In 1993, the law was again amended to permit the deregulation of apartments that either housed high-income tenants or became vacant.[4] Recently, the RSL was amended by the HSTPA,[5] which was passed in "response to an ongoing housing shortage crisis, as evidenced by an extremely low vacancy rate" that caused tenants to "struggle to secure safe, affordable housing" and municipalities to "struggle to protect their regulated housing stock." Sponsor's Mem., 2019 N.Y. Laws ch. 36. Ever since 1969, some version of the RSL has impacted landlords' ability to raise rents, to decline to renew leases, and to evict tenants. Since its initial enactment, the legislature has adjusted the RSL, changing the provisions for rent increases, non-renewals of leases, and evictions. Regardless of the particular blend of features in place at those times, in both 2003 and 2008, a reasonable investor, like 74 Pinehurst and 141 Wadsworth, would have anticipated their rental properties would be subject to regulations, and that those regulations in the RSL could change yet again.

Importantly, over time, the RSL has been amended in ways that, at times, favored landlords, and, at other times, tenants. These varying changes mean that, on

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[3] 9 NYCRR 2520.6 (1987).

[4] *See generally Roberts v. Tishman Speyer Props.*, 918 N.E.2d 900, 902 (N.Y. 2009).

[5] 2019 N.Y. Laws ch. 36, available at https://perma.cc/TH4B5WNQ.

occasion, a savvy investor might receive a windfall because subsequent regulations reduced restrictions on rent-stabilized units. Other investors might suffer losses because regulations become tighter. Still others would receive returns that existed when they purchased their properties, because regulations remained essentially unchanged. All of this means that, for decades New York landlords have taken a calculated risk when they entered the rental market. In such circumstances, the fact that this risk then results in a loss does not constitute a taking.

The as-applied challengers further contend that the RSL, as amended in 2019, prevents them from earning a reasonable rate of return. But given the multiple past amendments to the RSL, and as discussed above, it would not have been reasonable for these individuals "to expect that the regulated rate [of rent increases] would track a given figure, or that the criteria for decontrol and rate increases would remain static." *Community Housing*, 492 F. Supp. 3d at 51. Both 74 Pinehurst LLC and 141 Wadsworth voluntarily elected to enter New York City's rental housing market, which has been subject to an ever-evolving scheme of rent regulation since at least World War II. Given that decision, they cannot claim that their reasonable expectations have been defeated when "the legislative scheme is buttressed by subsequent amendments to achieve the legislative end." *See Concrete Pipe & Prods. of Cal., Inc*, 508 U.S. at 645 (internal quotation marks omitted). Accordingly, we hold that the investment-backed expectations factor fails to support the as-applied regulatory takings challenge.

3.

As the last step in our *Penn Central* analysis, we consider the character of the regulation at issue. A

regulatory taking "may more readily be found when the interference with property can be characterized as a physical invasion by government." *Penn Central*, 438 U.S. at 124. The Supreme Court has instructed that in analyzing the "character" of the governmental action, courts should focus on the extent to which a regulation was "enacted solely for the benefit of private parties" as opposed to a legislative desire to serve "important public interests." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 485–86 (1987). The character of the government action in *Penn Central*, for example, cut against a finding that a taking had occurred because the law was part of a "comprehensive plan to preserve structures of historic or aesthetic interest" and applied to hundreds of sites. 438 U.S. at 132.

The character of the regulation does not change whether the challenge is as applied or facial. *Community Housing*, No. 20-3366-cv, slip op. at 31–33, __ F. 4th at __. There, we noted that the RSL is part of a comprehensive regulatory regime that governs nearly one million housing units in the City. *Id.* Like the broad public interests at issue in *Penn Central* itself, here, the legislature has determined that the RSL is necessary to prevent "serious threats to the public health, safety, and general welfare." N.Y.C. Admin. Code § 26-501. No one can seriously contend that these are not important public interests and courts are not in the business of second-guessing legislative determinations such as this one. The fact that the RSL affects landlords unevenly is of no moment. As the *Penn Central* Court noted, "[l]egislation designed to promote the general welfare commonly burdens some more than others." 438 U.S. at 133.

Because the balance of factors under *Penn Central* tilts strongly against the conclusion that the RSL

effects a regulatory taking as applied, we affirm the dismissal of that claim.[6]

III.

Next, we turn to Pinehurst's contention that the RSL violates due process. In *Community Housing* we held that it does not. *See Community Housing*, slip op. at 34–36, __ F. 4th at __. There, we held that the Due Process Clause cannot "do the work of the Takings Clause" because "where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 720–21 (2010) (cleaned up); *see also Albright v. Oliver*, 510 U.S. 266, 273 (1994); *Harmon v. Markus*, 412 F. App'x 420, 423 (2d Cir. 2011).

Furthermore, even if a due process challenge were available, it would be subject to rational basis review. *See Pennell v. City of San Jose*, 485 U.S. 1, 11–12 (1988). To survive under that standard, a law need only be "rationally related to legitimate government interests." *Washington v. Glucksberg*, 521 U. S. 702, 728 (1997). Rational basis review is typically easy to satisfy, because "[t]he Constitution presumes that, absent some reason to infer antipathy, even improvi-

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[6] Because Pinehurst's as-applied regulatory claims fail, their claims the RSL facially effects a regulatory taking also necessarily fail, as they cannot "establish that no set of circumstances exists under which the statute would be valid." *United States v. Decastro*, 682 F.3d 160, 163 (2d Cir. 2012) (internal quotation marks omitted). *See supra* at 5; *see also Community Housing*, No. 20-3366-cv, slip op. at 14, 26–34, __ F. 4th at __.

dent decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." *Vance v. Bradley*, 440 U.S. 93, 97 (1979).

When reviewing a statute under rational basis, accordingly, we consider two factors. *First*, "where there are plausible reasons for Congress' action, our inquiry is at an end." *See, e.g.*, *F.C.C. v. Breach Communications, Inc.*, 508 U.S. 307, 313–14 (internal quotation marks omitted). Rational basis review is not a mechanism for judges to second guess legislative judgments—even when, as here, they conflict with the opinions of some experts. *Second*, a law survives rational basis review if *any* of its justifications is valid. *See Preseault v. I.C.C.*, 494 U.S. 1, 18 (1990). Appellants' challenge does not succeed under this test.

Among other reasons, the RSL was enacted to permit low- and moderate-income people to reside in New York City—when they otherwise could not afford to do so. *See* N.Y.C. Admin. Code § 26-501. It is beyond dispute that neighborhood continuity and stability are valid bases for enacting a law. *See Nordlinger v. Hahn*, 505 U.S. 1, 12 (1992). Pinehurst's Due Process challenge thus fails.

IV.

Finally, we turn to sovereign immunity. Pinehurst argued in district court that the Takings Clause abrogated sovereign immunity such that their takings claims against the city and state were tenable. The district court disagreed, holding that sovereign immunity bars all of Pinehurst's due process and takings claims against the state defendants, except to the extent

they sought prospective relief against Commissioner Visnauskas in her official capacity.

On appeal, Appellants do not challenge the district court's determination that sovereign immunity bars their due process claims against the State and the New York Division of Housing and Community Renewal ("DHCR"). They challenge only the court's holding that sovereign immunity bars all their takings claims against the state defendants. We see no reason to disturb the district court's conclusions. Without a State's express waiver or an act by Congress under Section 5 of the Fourteenth Amendment, the Eleventh Amendment bars federal courts from adjudicating claims against a State, as well as its agencies and agents. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989). The Eleventh Amendment's so-called "jurisdictional bar" applies "regardless of the nature of the relief sought." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). The only exception exists for claims for prospective relief against state officials in their official capacities. *See Ex parte Young*, 209 U.S. 123, 159–60 (1908). The district court correctly held that sovereign immunity barred Plaintiffs-Appellants' takings claims against the State and DHCR, as well as the claims against Commissioner Visnauskas to the extent they sought monetary relief. We have previously rejected the argument that the Takings Clause abrogates sovereign immunity. *See Morabito v. New York*, 803 F. App'x 463, 465 (2d Cir. 2020). This decision accords with the overwhelming weight of authority among the circuits, which have consistently held that sovereign immunity trumps the Takings Clause where, as here, the state provides its own

remedy for an alleged violation.[7] Accordingly, we affirm the district court's holding with respect to Pinehurst's sovereign immunity argument.

CONCLUSION

For these reasons, we affirm the judgment of the district court.

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[7] *See Hutto v. South Carolina Ret. Sys.*, 773 F.3d 536, 552 (4th Cir. 2014) (holding "that the Eleventh Amendment bars Fifth Amendment taking claims against States in federal court when the State's courts remain open to adjudicate such claims"); *Bay Point Props., Inc. v. Mississippi Transp. Comm'n*, 937 F.3d 454, 456–57 (5th Cir. 2019) (same); *Ladd v. Marchbanks*, 971 F.3d 574, 579–80 (6th Cir. 2020) (same); *Seven Up Pete Venture v. Schweitzer*, 523 F.3d 948, 956 (9th Cir. 2008) (same); *Williams v. Utah Dep't of Corr.*, 928 F.3d 1209, 1213-14 (10th Cir. 2019) (same); *Harbert Int'l, Inc. v. James*, 157 F.3d 1271, 1277 (11th Cir. 1998) (same); *see also Citadel Corp. v. Puerto Rico Highway Auth.*, 695 F.2d 31, 34 (1st Cir. 1982) (holding that federal courts may not award monetary relief for a State taking); *Garrett v. Illinois*, 612 F.2d 1038, 1040 (7th Cir. 1980) (same).

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

19-cv-4087(EK)(RLM)

COMMUNITY HOUSING IMPROVEMENT PROGRAM, RENT STABILIZATION ASSOCIATION OF N.Y.C., INC., CONSTANCE NUGENT-MILLER, *et al*.,

Plaintiffs,

-against-

CITY OF NEW YORK, RENT GUIDELINES BOARD, DAVID REISS, CECILIA JOZA, ALEX SCHWARZ, GERMAN TEJEDA, MAY YU, *et al.*,

Defendants.

19-cv-6447(EK)(RLM)

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74 PINEHURST LLC, 141 WADSWORTH LLC, 177 WADSWORTH LLC, DINO PANAGOULIAS, DIMOS PANAGOULIAS, *et al.*,

Plaintiffs,

-against-

STATE OF NEW YORK, NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL, RUTHANNE VISNAUSKAS, *et al.*,

Defendants.

MEMORANDUM AND ORDER

ERIC KOMITEE, United States District Judge:

Rent regulations have now been the subject of almost a hundred years of case law, going back to Justice Holmes. That case law supports a broad conception of government power to regulate rents, including in ways that may diminish — even significantly — the value of landlords' property.

In 2019, the New York State legislature amended the state's rent-stabilization laws (RSL). As amended, the RSL now goes beyond previous incarnations of the New York statute in its limitations on rent increases, deregulation of units, and eviction of tenants in breach of lease agreements, among other subjects. Plaintiffs claim that in light of the 2019 amendments, the RSL (in its cumulative effect) is now unconstitutional.

This opinion concerns two cases. Plaintiffs in *Community Housing Improvement Program v. City of New York* (19-cv-4087) are various landlords and two landlord-advocacy groups, the Community Housing Improvement Program and the Rent Stabilization Association (the "CHIP Plaintiffs"). Plaintiffs in *74 Pinehurst LLC v. State of New York* (19-cv-6447) are landlords 74 Pinehurst LLC, Eighty Mulberry Realty Corporation, 141 Wadsworth LLC and 177 Wadsworth LLC, and members of the Panagoulias family (the "Pinehurst Plaintiffs"). Because of the significantly overlapping claims and issues of law in the two cases, the Court addresses them here in a single opinion.[1]

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[1] The Court does not, however, consolidate the cases. Accordingly, the Court issues a separate judgment in CHIP, as directed below.

Pursuant to 42 U.S.C. § 1983, Plaintiffs assert (a) a facial claim that the RSL violates the Takings Clause (as both a physical and a regulatory taking); (b) in the case of certain Pinehurst Plaintiffs, a claim that the RSL, as applied to them, violates the Takings Clause (as both a physical and a regulatory taking); (c) a facial claim that the RSL violates their due-process rights; and (d) a claim that the RSL violates the Contracts Clause, as applied to each Pinehurst Plaintiff.[2] They seek an order enjoining the continued enforcement of the RSL, as amended; a declaration that the amended law is unconstitutional (both on its face and as-applied); and monetary relief for the as-applied Plaintiffs' Takings and Contracts Clause claims.

Supreme Court and Second Circuit cases foreclose most of these challenges. No precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution, and even if the 2019 amendments go beyond prior regulations, "it is not for a lower court to reverse this tide," *Fed. Home Loan Mortg. Corp. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 83 F.3d 45, 47 (2d Cir. 1996) (*FHLMC*) — at least in response to the instant facial challenges. Accordingly, the Court grants Defendants' motions to dismiss the facial challenges under the Takings Clause, the as-applied claims alleging physical takings, the due-process claims, and the Contracts Clause claims — as to all Plaintiffs. The Court denies, at this stage, the motions to dismiss the as-applied regulatory-takings claims brought by certain Pinehurst Plaintiffs only. Those claims may face a "heavy burden," *see*

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[2] Each Pinehurst Plaintiff brings as-applied challenges under the Takings Clause and Contracts Clause except for 177 Wadsworth LLC, which only brings an as-applied claim under the Contracts Clause.

Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 493 (1987), but given their fact-intensive nature, it is a burden those Plaintiffs should be afforded an opportunity to carry, at least to the summary-judgment stage.

I. Background

New York City has been subject to rent regulation, in some form, since World War I. But the RSL is of more recent vintage. It traces its roots to 1969, when New York City passed the law that created the Rent Guidelines Board (RGB) — the body that, to this day, continues to set rents in New York City. Five years later, New York State passed its own statute, which amended the 1969 law. Together, these laws formed the blueprint for today's RSL. The State and City have amended the RSL repeatedly since its initial enactment, culminating with the amendments at issue here.

The 2019 amendments, enacted on June 14, 2019, made significant changes. Most notably, they:

- Cap the number of units landlords can recover for personal use at one unit per building (and only upon a showing of immediate and compelling necessity). N.Y. Reg. Sess. § 6458, Part I (2019).
- Repeal the "luxury decontrol" provisions, which allowed landlords, in certain circumstances, to decontrol a unit when the rent reached a specified value. *Id.* at Part D, § 5.
- Repeal the "vacancy" and "longevity" increase provisions, which allowed landlords to charge higher rents when certain units became vacant. *Id.* at Part B, §§ 1, 2.

- Repeal the "preferential rate" provisions, which allowed landlords who had been charging rates below the legal maximum to increase those rates when a lease ended. *Id.* at Part E.
- Reduce the value of capital improvements — called "individual apartment improvements" (IAI) and "major capital improvements" (MCI) — that landlords may pass on to tenants through rent increases. *Id.* at Part K, §§ 1, 2, 4, 11.
- Increase the fraction of tenant consent needed to convert a building to cooperative or condominium use. *Id.* at Part N.
- Extend, from six to twelve months, the period in which state housing courts may stay the eviction of breaching tenants. *Id.* at Part M, § 21.

II. Discussion

A. State Defendants' Eleventh Amendment Immunity

Before turning to Plaintiffs' constitutional claims, the Court must address certain defendants' assertion of immunity from suit. The "State Defendants" — the State of New York, the New York Division of Housing and Community Renewal (DHCR),[3] and DHCR Commissioner RuthAnne Visnauskas — argue that the Eleventh Amendment bars certain claims against them.[4] State Defendants' Motion to Dismiss

[3] The DHCR is the New York State agency charged with overseeing and administering the RSL.

[4] The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. Though the text does

for Lack of Jurisdiction in Part, ECF No. 67. The State Defendants did not raise the Eleventh Amendment defense until oral argument on their motion to dismiss for failure to state a claim — after the 12(b)(6) motions had been fully briefed. This omission is difficult to understand, to say the least; nevertheless, the Court must resolve these arguments, as they implicate its subject-matter jurisdiction. *See Dube v. State Univ. of N.Y.*, 900 F.2d 587, 594 (2d Cir. 1990); *see also* Fed. R. Civ. P. 12(h)(3).

The parties agree that sovereign immunity bars Plaintiffs' Due Process and Contracts Clause claims (with certain exceptions). Plaintiffs' Response to State Defendants' Motion to Dismiss for Lack of Jurisdiction in Part at 1, ECF No. 71. Therefore these claims cannot proceed against the State Defendants, except to the extent they seek declaratory relief against DHCR Commissioner Visnauskas (as explained below). The parties dispute, though, whether the Eleventh Amendment immunizes states against takings claims. *Id*.

There is an obvious tension between the Takings Clause and the Eleventh Amendment. The Eleventh Amendment provides the states with immunity against suit in federal court. Plaintiffs contend, however, that the Takings Clause's "self-executing" nature (meaning, its built-in provision of the "just compensation" remedy) overrides the states' immunity. In support, they cite several cases that have reached that conclusion (or related conclusions). *See, e.g.*, *Manning v. N.M Energy, Minerals & Nat. Res. Dep't*, 144 P.3d 87, 97-98 (N.M.

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not speak to suits against states by their *own* residents, the Supreme Court held in *Hans v. Louisiana*, 134 U.S. 1 (1890), that the amendment also generally precludes such actions in federal court.

2006) (holding that the State of New Mexico could not claim immunity from regulatory-takings claims because the "'just compensation' remedy found in the Takings Clause . . . abrogates state sovereign immunity"); *see also Hair v. United States*, 350 F.3d 1253, 1257 (Fed. Cir. 2003) (holding that the federal government cannot claim immunity from takings claims because the Takings Clause is "self-executing"); *Leistiko v. Sec'y of Army*, 922 F.Supp. 66, 73 (N.D. Ohio 1996) (same).

Despite the fact that the Eleventh Amendment and Takings Clause date back so long, neither the Supreme Court nor the Second Circuit has decisively resolved the conflict. The Second Circuit recently affirmed a decision that held the Eleventh Amendment to bar a takings claim, but in a nonprecedential summary order that did not analyze the question in detail. *Morabito v. New York*, 803 F. App'x 463, 464-65 (2d Cir. 2020) (summary order) (affirming because the Eleventh Amendment "generally bars suits in federal courts by private individuals against non-consenting states"), *aff'g* No. 6:17-cv-6853, 2018 WL 3023380 (W.D.N.Y. June 18, 2018). Thus the Court must reach the question squarely.

The overwhelming weight of authority among the circuits contradicts the cases cited by Plaintiffs, *supra*. These cases hold that sovereign immunity trumps the Takings Clause — at least where, as here, the state provides a remedy of its own for an alleged violation.[5] The reasoning of one such case, *Seven Up Pete Venture*

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[5] *See* N.Y. Const. art. I, § 7(a) ("Private property shall not be taken for public use without compensation."). No court has reached the ultimate question of whether the Takings Clause usurps the Eleventh Amendment when no remedy is available in the state courts. Given New York's express remedy, this Court need not reach that issue.

v. Schweitzer, 523 F.3d 948 (9th Cir. 2008), is instructive. In that case, the Ninth Circuit analogized the question of Takings Clause immunity to the Supreme Court's holding in *Reich v. Collins*, which concerned a tax-refund due-process claim. 513 U.S. 106 (1994). In *Reich*, the plaintiff sued the Georgia Department of Revenue and its commissioner in federal court to recover payments he had made pursuant to a tax provision later found unconstitutional. *Id.* at 108. The Supreme Court held that when states require payment of contested taxes up front, the Due Process Clause requires them to provide, in their own courts, a forum to recover those payments if the revenue provision in question is later held invalid — even if the Eleventh Amendment would bar the due-process claim in federal court. *Id.* at 109.

The Ninth Circuit in *Seven Up* reasoned that the Takings Clause, like the Due Process Clause, "can comfortably co-exist with the Eleventh Amendment immunity of the States," provided state courts make a "constitutionally enforced remedy" available. *Seven Up*, 523 F.3d at 954-55. *Seven Up*'s conclusion is consistent with the weight of circuit authority. *See Bay Point Props., Inc. v. Miss. Transp. Comm'n*, 937 F.3d 454, 456-57 (5th Cir. 2019) (holding that Eleventh Amendment barred takings claim in federal court, where plaintiff had already sued in state court but received less compensation than he sought); *Williams v. Utah Dep't of Corr.*, 928 F.3d 1209, 1213-14 (10th Cir. 2019) (holding that the Eleventh Amendment barred a federal takings claim against the State of Utah, after confirming that Utah offered a forum for the claim); *Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 552 (4th Cir. 2014) (concluding "that the Eleventh Amendment bars Fifth Amendment taking claims against States *in federal court* when the *State's courts*

remain open to adjudicate such claims"); *Jachetta v. United States*, 653 F.3d 898, 909-10 (9th Cir. 2011) (holding that the Eleventh Amendment barred claims brought against the state in federal court under the federal Takings Clause, but that the plaintiff could seek Supreme Court review if the state court declined to hear the claim); *DLX, Inc. v. Kentucky*, 381 F.3d 511, 526-28 (6th Cir. 2004) (holding that Eleventh Amendment immunity barred federal takings claim, but that state court "would have had to hear that federal claim"), *overruled on other grounds San Remo Hotel, L.P. v. City & Cnty. of San Francisco*, 545 U.S. 323 (2005).

These cases give effect to the Supreme Court's admonition that:

> [T]he sovereign immunity of the States neither derives from, nor is limited by, the terms of the Eleventh Amendment. Rather, as the Constitution's structure, its history, and the authoritative interpretations by this Court make clear, the States' immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today . . . .

Alden v. Maine, 527 U.S. 706, 713 (1999).

There are fleeting suggestions to the contrary in Supreme Court authority, but none of them compel the opposite conclusion. Most recently, in *Knick v. Twp. of Scott*, 139 S. Ct. at 2162 (2019), the Supreme Court cast doubt on the notion that the availability of state-law relief should determine whether federal courts may hear takings claims. *Id.* at 2169-71 (stating that the existence of a state-law remedy "cannot infringe or

restrict the property owner's federal constitutional claim," and that to hold otherwise would "hand[] authority over federal takings claims to state courts") (internal quotations omitted). Similarly, in *First English Evangelical Lutheran Church of Glendale v. Cnty. of Los Angeles*, 482 U.S. 304 (1987), the Supreme Court rejected an argument that, based on the "prohibitory nature of the Fifth Amendment, . . . combined with principles of sovereign immunity," the Takings Clause is merely a "limitation on the power of the Government to act," rather than a "remedial provision" that requires compensation. *Id.* at 316 n.9.[6]

But these cases do not control here. They establish, at most, that the Takings Clause can overcome *court-imposed* — rather than constitutional — restrictions on takings claims. *See Knick*, 139 S. Ct. 2167-68 (overruling *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), which had established court-imposed rule requiring plaintiffs to exhaust state remedies before bringing a takings claim in federal court); *First English*, 482 U.S. at 310-11 (invalidating state precedent that prevented plaintiffs from recovering compensation for damages incurred before a state court found there was a taking). Neither case had occasion to decide whether the Takings Clause overrides other constitutional provisions like the Eleventh Amendment. *Knick* and

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[6] Some have argued that this footnote proves the Takings Clause trumps sovereign immunity, insofar as it suggests sovereign immunity does not strip the Takings Clause of its remedial nature. *See, e.g.*, Eric Berger, *The Collision of the Takings and State Sovereign Immunity Doctrines,* 63 WASH. & LEE L. REV. 493 (2006). But that reading is far from obvious, and it would, in any event, be dictum (because the defendant in *First English* was a county, which cannot invoke sovereign immunity).

First English, therefore, do not compel the conclusion that the Takings Clause trumps sovereign immunity.

Accordingly, New York State, the DHCR,[7] and Commissioner Visnauskas (to the extent Plaintiffs seek monetary relief in her official capacity) will be dismissed from this litigation.

This holding may not have the profound impact that one might initially surmise. Plaintiffs may continue to seek prospective remedies — like an injunction — against state officials under *Ex Parte Young*, 209 U.S. 123 (1908), and New York State remains obligated (via its own consent) to pay just compensation for takings under the New York State Constitution. Moreover, the Eleventh Amendment does not affect Plaintiffs' claims for money damages against the City of New York, the RGB, or the members of the RGB.

Sovereign immunity also does not bar the remaining damages claims (for just compensation) against Commissioner Visnauskas in her individual capacity.[8] But

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[7] Sovereign immunity extends to state agencies like the DHCR as well, because they are an arm of the state. *See, e.g.*, *Schiavone v. N.Y. State Office of Rent Admin.*, No. 18-cv-130, 2018 WL 5777029, at *3-*4 (S.D.N.Y. Nov. 2, 2018) (Eleventh Amendment bars suit against DHCR); *Helgason v. Certain State of N.Y. Emps.*, No. 10-cv-5116, 2011 WL 4089913, at *7 (S.D.N.Y. June 24, 2011) (same) *report and recommendation adopted sub nom. Helgason v. Doe*, 2011 WL 4089943 (S.D.N.Y. Sept. 13, 2011); *Gray v. Internal Affairs Bureau*, 292 F. Supp. 2d 475, 476 (S.D.N.Y. 2003) (same).

[8] Moreover, the Eleventh Amendment does not bar Plaintiffs' Contracts Clause claims against Commissioner Visnauskas for declaratory relief (in her official capacity) or for damages (in her personal capacity). As explained below, those claims are dismissed on the merits, as are Plaintiffs' due-process claims against Commissioner Visnauskas for facial declaratory and injunctive relief.

to establish individual liability, Plaintiffs must allege that Commissioner Visnauskas was "personal[ly] involve[d]" in the alleged regulatory takings. *Grullon v. City of New Haven*, 720 F.3d 133, 138 (2d Cir. 2013). Although Plaintiffs allege that Commissioner Visnauskas is personally responsible for enforcing and implementing particular aspects of the RSL,[9] the core of their claims is that the *enactment* of the 2019 amendments, as a whole, violates the Constitution. Because they do not allege that Commissioner Visnauskas had any involvement at that broader stage, these claims must be dismissed under Rule 12(b)(6). *See Morabito*, 803 F. App'x at 466 (allegation that state official could "modify or abolish" the challenged regulation was inadequate); *Nassau & Suffolk Cnty. Taxi Owners Ass'n, Inc. v. New York*, 336 F. Supp. 3d 50, 70 (E.D.N.Y. 2018) (dismissing claim because plaintiffs did not allege that the officials were "involved in the creation or passage" of the challenged regulation). Commissioner Visnauskas is not completely dismissed from this action, however, because Plaintiffs' surviving claims against her for declaratory relief may proceed under *Ex Parte Young*.

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The Court turns next to Plaintiffs' substantive claims. Plaintiffs bring two types of challenge under the Takings Clause — they allege physical and regulatory takings. The CHIP Plaintiffs allege only

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[9] Plaintiffs allege that Commissioner Visnauskas was personally "charged with implementing and enforcing" certain provisions of the RSL, including the personal-use restrictions and the MCI and IAI provisions. Pinehurst Complaint at ¶¶ 68, 127, ECF No. 1 (Pinehurst Compl.) (citing N.Y.C. Admin. Code § 26-511(b) ("[N]o such amendments shall be promulgated except by action of the commissioner of the division of housing and community renewal").

facial challenges under both theories (*i.e.*, they claim that the face of the statute effectuates a physical and regulatory taking in all applications). Certain Pinehurst Plaintiffs also bring as-applied takings challenges with respect to specific properties under both theories.

B. Physical Taking: Facial and As-Applied Challenges

When a government authorizes "a permanent physical occupation" of property, a taking occurs. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982). Physical takings are characterized by a deprivation of the "entire bundle of property rights" in the affected property interest — "the rights to possess, use and dispose of" it. *See Horne v. Dep't of Agric.*, 576 U.S. 350, 361-62 (2015) (quoting *Loretto*, 458 U.S. at 435) (internal quotations omitted). Examples include the installation of physical items on buildings, *Loretto*, 458 U.S. at 438, and the seizure of control over private property, *Horne*, 576 U.S. at 361-62 (crops); *United States v. Pewee Coal Co.*, 341 U.S. 114, 115-17 (1951) (mines).

In this case, all Plaintiffs retain the first and third strands in *Horne*'s bundle of rights, *supra*: they continue to possess the property (in that they retain title), and they can dispose of it (by selling). *See Andrus v. Allard*, 444 U.S. 51, 65-66 (1979) ("[W]here an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking, because the aggregate must be viewed in its entirety."). The restrictions on their right to use the property as they see fit may be significant, but that is insufficient under the standards set forth by the Supreme Court and Second Circuit to make out a physical taking.

Recognizing as much in prior cases, the Second Circuit has held that "the RSL regulates land use rather than effecting a physical occupation." *W. 95 Hous. Corp. v. N.Y.C. Dep't of Hous. Pres. & Dev.*, 31 F. App'x 19, 21 (2d Cir. 2002) (summary order) (citing *Yee v. City of Escondido*, 503 U.S. 519, 523 (1992)). The Circuit has rejected physical-takings claims against the RSL on multiple occasions. *See Harmon v. Markus*, 412 F. App'x 420 (2d Cir. 2011) (summary order); *Greystone Hotel Co. v. City of New York*, 98-9116, 1999 U.S. App. LEXIS 14960 (2d Cir. June 23, 1999) (summary order); *FHLMC*, 83 F.3d at 47-48. The incremental effect of the 2019 amendments, while significant to investment value, personal use, unit deregulation, and eviction rights, is not so qualitatively different from what came before as to permit a different outcome.

Plaintiffs attempt to overcome these Second Circuit cases by arguing that they rest in part on reasoning that the Supreme Court has since disparaged in *Horne*. In *Harmon* and *FHLMC*, the Second Circuit had invoked what Plaintiffs here call the "acquiescence theory" — the notion that the landlords chose, voluntarily, to enter the rental real estate business, and that they can exit it if they choose. In *Horne*, decided subsequently, this strain of reasoning came under criticism. *See Horne*, 576 U.S. at 365 (rejecting argument that "raisin growers voluntarily choose to participate in the raisin market" and could leave the industry to escape regulation); *see also Loretto*, 458 U.S. at 439 n.17 (noting that "a landlord's ability to rent his property may not be conditioned on forfeiting the right to compensation for a physical occupation"). But *Horne's* rejection of "acquiescence" theory does not save Plaintiffs' physical-takings claim. Plaintiffs' argument fails not because they have acquiesced in the taking of their property, but because under cases

like *Loretto, Horne, Yee*, and others, no physical taking has occurred in the first place.

The Pinehurst Plaintiffs' as-applied physical challenges fail for the same reasons (to the extent they make them, which 177 Wadsworth LLC does not). No Plaintiff alleges that they have been deprived of title to their property, or that they have been deprived of the ability to sell the property if they choose. At most, these Plaintiffs allege that the manner in which they can remove apartments from stabilization — the so-called "off ramps" from the RSL regime — have been significantly limited.

Accordingly, the Court finds that Plaintiffs fail to state physical-taking allegations upon which relief can be granted, and dismisses these claims — both facial and as-applied — pursuant to Rule 12(b)(6).

C. Regulatory Taking – Facial Challenge

Like the physical-takings challenges, every regulatory-takings challenge to the RSL has been rejected by the Second Circuit. *See W. 95 Hous. Corp.*, 31 F. App'x 19 (summary order); *Greystone Hotel Co.*, 1999 U.S. App. LEXIS 14960 (summary order); *FHLMC*, 93 F.3d 45; *see also Rent Stabilization Ass'n v. Dinkins*, 5 F.3d 591, 595 (2d Cir. 1993) (construing plaintiff's facial attacks as as-applied challenges and dismissing them for lack of standing). Of course, it cannot be said that there is no such thing as a regulatory taking in the world of rent stabilization, and it remains eminently possible that at some point, the legislature will apply the proverbial straw that breaks the camel's back.[10] If

[10] The Supreme Court has spoken about the need for takings jurisprudence to redress this kind of incremental deprivation of property rights. *See, e.g., Lucas v. S.C. Coastal Council,* 505 U.S. 1003, 1014 (1992) ("If . . . the uses of private property were subject

they do, however, it is unlikely that the straw in question will be identified in the context of a facial challenge. In *Pennell v. City of San Jose*, 485 U.S. 1 (1988), for example, the Supreme Court rejected a regulatory-takings claim, noting that "we have found it particularly important in takings cases to adhere to our admonition that 'the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary.'" *Id.* at 10 (quoting *Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 294-95 (1981)); *see also Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978) (regulatory-takings analyses are "essentially ad hoc, factual inquiries"). The Second Circuit has repeatedly disparaged facial challenges to the RSL. *See W. 95 Hous. Corp.*, 31 F. App'x at 21 (the difficulty of regulatory-takings analysis "suggests that a widely applicable rent control regulation such as the RSL is not susceptible to facial constitutional analysis under the Takings Clause"); *Dinkins*, 5 F.3d at 595 (trade association's challenge was "simply not facial," despite plaintiff's having characterized it as such, and "the proper recourse is for the aggrieved individuals themselves to bring suit" on an as-applied basis). This is consistent with limitations on facial challenges generally. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 223 (1990) (noting that outside of the First Amendment context, "facial challenges to legislation are generally disfavored").

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to unbridled, uncompensated qualification under the police power, 'the natural tendency of human nature would be to extend the qualification more and more until at last private property disappeared.'") (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)).

In a facial challenge, Plaintiffs must demonstrate that "no set of circumstances exists under which [the RSL] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Put differently, such a claim fails if Defendants can identify any "possible set of . . . conditions" under which the RSL could be validly applied. *See Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 593 (1987).

The Supreme Court has identified two distinct strains of regulatory-takings analysis. The first applies in the case of a regulation that "denies all economically beneficial or productive use of land." *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001); *see also Lucas*, 505 U.S. at 1026 (applying the "categorical rule that total regulatory takings must be compensated"). This analysis is inapplicable here: Plaintiffs do not allege that they have been deprived of *all* economically viable use of their property.[11]

Even without rendering property worthless, a regulatory scheme may still effectuate a taking if it "goes

[11] Pinehurst Compl. at ¶ 216 ("The RSL thus results in a decrease of 50 percent or more of a unit's value. The 2019 Amendments exacerbate this decrease in value and have caused rent-stabilized apartments to lose 20 to 40 percent (or more) of their value prior to enactment of the 2019 Amendments."); *id.* at ¶ 97 (the 2019 amendments "have reduced the value of the rent-stabilized buildings owned by Plaintiffs 74 Pinehurst LLC, 141 Wadsworth LLC, [and] 177 Wadsworth LLC . . . by 20 to 40 percent"); *id.* at ¶ 232 (the RSL has "decreas[ed] the resale value of Plaintiffs' properties"); CHIP Complaint at ¶ 274, ECF No. 1 (CHIP Compl.) ("The RSL's regulatory burdens have dramatically reduced the market value of regulated properties, in some cases by over 50%"); *id.* at ¶ 298 ("[B]uildings where rent stabilized units account for almost 100% of the units can expect a price per square foot . . . of two-thirds less" than buildings where "0-20% of the units" are regulated).

too far," in Justice Holmes's words. *Mahon*, 260 U.S. at 415. In the current era, courts apply the three-factor test of *Penn Central* to determine whether a regulation that works a less-than-total destruction of value has gone too far. The factors are: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with reasonable investment-backed expectations; and (3) the character of the governmental action in question. *See Penn Central*, 438 U.S. at 124. In applying these factors, the ultimate question is "whether justice and fairness require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons." *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979) (internal quotations omitted). The Court considers the *Penn Central* factors as they apply, first, to Plaintiffs' facial challenge, and then to the as-applied regulatory challenges, which are discussed in a separate section, *infra*.

Simply to apply these "ad hoc" factors to the instant *facial* challenge is to recognize why the RSL is not generally susceptible to such review. The first factor — economic impact — obviously needs to be calculated on an owner-by-owner basis, and those calculations will vary significantly depending on when a property was purchased, what fraction of its units are rent-stabilized, what improvements the landlord has made, and many other metrics. At best, Plaintiffs can make vague allegations about the average diminution in value across regulated properties. *See, e.g.*, Transcript dated June 23, 2020 at 59:19-24, *Community Housing Improvement Program v. City of New York*, 19-cv-4087, ECF No. 86 ("[CHIP Plaintiffs' counsel]: . . . . At the complaint stage, we don't have to have developed all of our evidence, even our own evidence, with respect to

the economic impact.”).[12] This lack of clarity surely arises because the diminution in value will vary significantly from property to property — making it virtually impossible to show there is “no set of circumstances,” *Salerno*, 481 U.S. at 745, in which the RSL applies constitutionally.

The second *Penn Central* factor is the extent to which the regulation interferes with reasonable investment-backed expectations. “The purpose of the investment-backed expectation requirement is to limit recovery to owners who could demonstrate that they bought their property in reliance on a state of affairs that did not include the challenged regulatory regime.” *Allen v. Cuomo*, 100 F.3d 253, 262 (2d Cir. 1996) (internal quotations omitted). Accordingly, the nature of each landlord’s investment-backed expectations depends on when they invested in the property and what they expected at that time. *Meridien Tr. & Safe Deposit Co. v. FDIC*, 62 F.3d 449, 454 (2d Cir. 1995) (“[T]he critical time for considering investment-backed expectations is the time a property is acquired, not the time the challenged regulation is enacted.”). And the reasonableness of these expectations will of course vary based on the state of the law when the property was purchased, among other things. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005 (1984) (the expectation must be “reasonable,” which means it

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[12] *See also* Pinehurst Compl. at ¶ 94 (comparing the average “value per square foot” of regulated and unregulated buildings); *id.* at ¶ 101 (comparing landlords’ average “operating costs” and “permitted [rate] increases”); CHIP Compl. at ¶ 273 (regulated units charge “on average 40% lower than market-rate rents, and in some units 80% lower”); *id.* at ¶ 274 (“unregulated properties are typically worth 20% to 40% more” than regulated ones), *id.* at ¶ 284 (“the income from non-regulated units can be as much as 60-90% higher than regulated units”).

"must be more than a unilateral expectation or an abstract need") (internal quotations omitted); *see also Philip Morris, Inc. v. Reilly*, 312 F.3d 24, 36-37 (1st Cir. 2002) (courts "should recognize that not every investment deserves protection and that some investors inevitably will be disappointed").

Plaintiffs cannot make broadly applicable allegations about the investment-backed expectations of landlords state- or city-wide. Different landlords bought at different times, and their "reliance," such as it was, would have been on different incarnations of the RSL. *See Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 38 (2012) (noting that the reasonable investment-backed expectations analysis is "often informed by the law in force" at the time). Even those who bought at the same time would have done so with different expectations, including some the law still allows. Given this range of expectations — some reasonable, others not — Plaintiffs cannot allege that the RSL frustrates the reasonable investment-backed expectations of every landlord it affects.

Finally, *Penn Central*'s third factor considers the "character of the taking." *See Penn Central*, 438 U.S. at 124 ("A taking may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.") (internal citations omitted). But Plaintiffs cannot prevail without alleging the other two *Penn Central* factors at the facial level. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 540 (2005) ("[T]he *Penn Central* inquiry turns in large part, albeit not exclusively, upon the magnitude of a regulation's economic impact and the degree to which it interferes

with legitimate property interests."). Accordingly, Plaintiffs' facial regulatory-takings claim is dismissed.

D. Post-Breach Relief Provisions

The RSL provisions that provide the most substantial basis for a facial challenge, in this Court's estimation, are contained in New York's Real Property Actions and Proceedings Law (RPAPL) Sections 749 and 753. As amended in 2019, these provisions dictate that even after the RSL has operated to eliminate "unjust, unreasonable and oppressive rents," N.Y.C. Admin. Code § 26-501, the state housing courts may still stay (for up to twelve months) the eviction of a tenant who fails to pay the reduced rent, if eviction would cause the tenant "extreme hardship." RPAPL § 753. In making the hardship determination, "the [housing] court shall consider serious ill health, significant exacerbation of an ongoing condition, a child's enrollment in a local school, and any other extenuating life circumstances affecting the ability of the applicant or the applicant's family to relocate and maintain quality of life." *Id.*

These "post-breach relief" provisions are aimed at requiring particular property owners to alleviate the hardships of particular tenants — including hardships that may arise from circumstances separate and distinct from the dynamics of supply and demand in New York's rental housing market. That aim, while indisputably noble, nevertheless carries a "heightened risk that private property is being pressed into some form of public service," *Lucas*, 505 U.S. at 1018, and correspondingly puts more pressure on the "usual assumption that the legislature is simply adjusting the benefits and burdens of economic life" in a way that requires no recompense. *Id.* at 1017 (internal quotations omitted). Stated in terms of the current

case, it can be argued that in Sections 749 and 753, the New York State legislature is not "adjusting" the terms of a contract between landlord and tenant in a regulated market, but rather drafting a landlord who is no longer subject to *any enforceable contract* at all (because the tenant is in breach) to provide an additional benefit — of up to one year's housing — because of the specific tenant's life circumstances.

Neither the Supreme Court nor the Second Circuit has squarely considered a regulation like the post-breach relief provisions here, but the Supreme Court came closest in *Pennell*, which also involved a statute that called on landlords to provide additional benefits on the basis of tenant "hardship." 485 U.S. 1. The City of San Jose had adopted a rent-control ordinance listing seven factors that a "hearing officer" was required to consider in determining the rent that a particular landlord could charge. *Id*. at 9. The Court described the argument that the seventh factor — the "hardship" factor — worked a taking:

> [T]he Ordinance establishes the seven factors that a hearing officer is to take into account in determining the reasonable rent increase. The first six of these factors are all objective, and are related either to the landlord's costs of providing an adequate rental unit, or to the condition of the rental market. Application of these six standards results in a rent that is "reasonable" by reference to what appellants contend is the only legitimate purpose of rent control: the elimination of "excessive" rents caused by San Jose's housing shortage. When the hearing officer then takes into account "hardship to a tenant" pursuant to [the seventh factor] and reduces the rent below the

> objectively "reasonable" amount established by the first six factors, this additional reduction in the rent increase constitutes a "taking." This taking is impermissible because it does not serve the purpose of eliminating excessive rents — that objective has already been accomplished by considering the first six factors — instead, it serves only the purpose of providing assistance to "hardship tenants."

Id.

In response to this argument, Justice Scalia would have held that a facial taking occurred. He concluded that in any application of the "hardship" provision, the city would not be "'regulating' rents in the relevant sense of preventing rents that are excessive; rather, it [would be] using the occasion of rent regulation (accomplished by the rest of the Ordinance) to establish a welfare program privately funded by those landlords who happen to have 'hardship' tenants." *Id.* at 22 (Scalia, J., concurring in part and dissenting in part).

A broad majority of the Court, however, declined to reach the facial-takings question, on the basis that it would have been "premature" to do so without record evidence that the hardship provision had ever actually been relied on to reduce a proposed rent increase. *Id.* at 9-10. The majority noted that there was nothing in the law *requiring* the hearing officer to reduce rents on the basis of tenant hardship, and that the Court therefore lacked a "sufficiently concrete factual setting for the adjudication of the takings claim" presented. *Id.*

Applying *Pennell*'s reasoning, the facial challenge to the post-breach relief provisions here, too, must be deemed premature. Though Plaintiffs allege that

application of the post-breach relief provisions is "far from uncommon," CHIP Plaintiffs' Supplemental Memorandum of Law in Opposition to Defendants' and Intervenors' Motions to Dismiss at 11, ECF No. 87 (quoting *Elmsford Apartment Assocs. v. Cuomo*, 20-cv-4062, 2020 WL 3498456, at *4 (S.D.N.Y. June 29, 2020)), they do not argue that any named Plaintiff in this case has been harmed by application of these provisions.

And the parties do not agree on how the provisions are likely to work in practice. Plaintiffs contend that the statutory provision conditioning stays on the tenant depositing rent payments is illusory because the statute provides no "enforcement mechanism" to force tenants to pay, *see* Pinehurst Plaintiffs' Supplemental Brief in Opposition to Defendants' Motions to Dismiss at 3, ECF No. 65 ("Although the statute purports to require a deposit of one year's rent as a condition of the tenant's post-breach occupancy, the statute contains *no* enforcement mechanism through which a property owner can require the tenant to make that deposit."). Defendants argue, however, that state courts do, in fact, enforce this requirement in practice, *see, e.g.*, Pinehurst City Defendants' Supplemental Brief in Further Support of Their Motion to Dismiss the Complaint at 3, 5-7, ECF No. 68. Given these factual disputes, the Court must heed the *Pennell* majority's admonition to avoid decision until the provision is challenged in a "factual setting that makes such a decision necessary." 485 U.S. at 10 (quoting *Hodel*, 452 U.S. at 294-95).

E. Regulatory Taking – As-Applied Challenge

Even in bringing their as-applied challenges, the Pinehurst Plaintiffs (except 177 Wadsworth LLC) must "satisfy the heavy burden placed upon one

alleging a regulatory taking." *Keystone Bituminous Coal Ass'n*, 480 U.S. at 493. But taking their allegations as true, certain as-applied Plaintiffs have alleged enough to survive a motion to dismiss. Indeed, there are unanswered questions about virtually every aspect of their claims.

Applying the first *Penn Central* factor, each as-applied Plaintiff alleges that the 2019 amendments significantly diminished the value of their properties. While the extent of this diminution remains to be determined with precision, Plaintiffs 74 Pinehurst LLC and 141 Wadsworth LLC allege that the 2019 amendments reduced the value of their regulated properties by twenty to forty percent *beyond* the diminution already occasioned by the pre-2019 RSL. Pinehurst Compl. at ¶ 97. And Eighty Mulberry Realty Corporation and the Panagouliases allege that the 2019 amendments "significantly reduced the value" of their rent-stabilized apartments, *id.* at ¶ 96, which now rent for roughly half the rate of unregulated apartments in the same building (or less), *id.* at ¶ 106. These alleged economic impacts, though insufficient *on their own*,[13] are not so minimal to compel dismissal of the complaint at this stage.

But only two Plaintiffs (Eighty Mulberry Realty Corporation and the Panagouliases) adequately allege that the RSL violates their reasonable investment-backed expectations in its current cumulative effect.

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[13] *See Penn Central*, 438 U.S. at 131 (citing *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (75% diminution in value not a taking); *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (87.5% diminution; same conclusion)); *see also Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr.*, 508 U.S. 602, 645 (1993) ("[M]ere diminution in the value of property, however serious, is insufficient to demonstrate a taking.").

These Plaintiffs bought their properties at the dawn of the rent-stabilized era — either before the RSL was first enacted (Eighty Mulberry Realty Corporation, before 1950, *id.* at ¶ 17) or not long thereafter (the Panagouliases, in 1974, *id.* at ¶ 13). And they allege that the 2019 amendments not only frustrate their expectation to a reasonable rate of return, but also their expectation that some units would not be (or remain) regulated at all. *Id*. at ¶¶ 108-09.[14] The Panagouliases contend that the DHCR rejected their attempt to reclaim units for personal use, which effectively prevents them from using the property for other purposes. *Id.* at ¶¶ 63-64.[15] Although questions remain as to the nature and reasonableness of these expectations, it cannot be said, at this stage, that these

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[14] "The 2019 Amendments further undermine the investment-backed expectations of property owners, including Plaintiffs [the Panagouliases] and Plaintiff Eighty Mulberry [Realty] Corporation, by repealing the luxury- and high-income decontrol provisions described above . . . . Many property owners, including Plaintiffs [the Panagoluiases] and Plaintiff Eighty Mulberry Realty Corporation, undertook significant capital improvements, improving the quality of their units, with the expectation that the apartments could be converted to market-rate rentals under the luxury- and high-income decontrol provisions. Repeal of the luxury- and high-income decontrol provisions eliminated the only mechanisms to transition a rent-stabilized apartment into a market-rate rental unit. . . . The luxury and high-income decontrol provisions had been the law for over 25 years, and formed the backbone of property owners' reasonable investment-backed expectations that they could eventually charge market rents for their units." Pinehurst Compl. at ¶¶ 108-09.

[15] *Cf. Yee*, 503 U.S. at 528 (noting that those plaintiffs, unlike the Panagouliases, had failed to run the "gauntlet" of statutory procedures for changing the use of their property prior to bringing their takings claim). The Panagouliases also allege that they cannot put the property to commercial use due to zoning laws. *See* Pinehurst Compl. at ¶ 87.

allegations are inadequate. Discovery is needed to assess these claims.

The same is not true for the other as-applied Plaintiffs, 74 Pinehurst LLC and 141 Wadsworth LLC. Unlike Eighty Mulberry Realty Corporation and the Panagouliases, these Plaintiffs bought their properties under a different, and more mature, version of the RSL (as in effect in 2003 and 2008, respectively, *see id.* at ¶¶ 14-15).[16] By that point, the RSL had taken its basic shape and become a fixture of New York law.[17]

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[16] Whether the time of acquisition matters to the *Penn Central* inquiry appears to be subject to some debate among the Justices. *See Palazzolo*, 533 U.S. at 630 (*Penn Central* claims are "not barred by the mere fact that title was acquired after the effective date of the state-imposed restriction"); *id.* at 637 (Scalia, J., concurring) ("In my view, the fact that a restriction existed at the time the purchaser took title . . . should have no bearing upon the determination of whether the restriction is so substantial as to constitute a taking."). But for the moment, at least, the timing of purchase — even if not dispositive, in and of itself — remains at least significant, and the as-applied Plaintiffs here have very different purchase profiles in that regard. *See id.* at 633, 635 (O'Connor, J., concurring) (the *Palazzolo* majority's holding "does not mean that the timing of the regulation's enactment relative to the acquisition of title is immaterial to the *Penn Central* analysis," and "does not remove the regulatory backdrop against which an owner takes title to property from the purview of the *Penn Central* inquiry"); *1236 Hertel Ave. v. Calloway*, 761 F.3d 252, 266-67 (2d Cir. 2014) (dismissing, despite *Palazzolo*, a *Penn Central* claim because plaintiff acquired title after the challenged law became a "background principle of the State's law of property," which made his expectation that the law would not change unreasonable).

[17] There were some background rent-regulation laws when Eighty Mulberry Realty Corporation and the Panagouliases bought their properties as well. As stated above, some form of rent regulation has existed in New York City since World War I. But

Cf. CHIP Compl. at ¶ 303 (the RSL was "nominally established as a temporary measure").

74 Pinehurst LLC and 141 Wadsworth LLC argue that they did not reasonably expect operating costs to outpace rate increases. Pinehurst Compl. at ¶¶ 98, 101, 237. Nor, these Plaintiffs claim, did they expect the repeal of luxury decontrol or vacancy, longevity, and preferential-rate increases, *id.* at ¶¶ 102, 104, 114, 120, 124, or the reduction of recoverable IAIs and MCIs, *id.* at ¶¶ 138-42.

But by the time these Plaintiffs invested, the RSL had been amended multiple times, and a reasonable investor would have understood it could change again. Under the Second Circuit's case law, it would not have been reasonable, at that point, to expect that the regulated rate would track a given figure, or that the criteria for decontrol and rate increases would remain static. *See, e.g.*, *id.* at ¶¶ 22, 99-100 (RGB sets permissible rates annually based on the rent set under the RSL in 1974); *id.* at ¶ 38 (luxury-decontrol introduced in 1993); CHIP Compl. at ¶ 59 (vacancy and longevity increases introduced in 1997); Memorandum of Law in Support of Pinehurst State Defendants' Motion to Dismiss at 8, ECF No. 53 (luxury-decontrol amended in 1997). Because these Plaintiffs made their investments "against a backdrop of New York law" that suggested the RSL could change, *see 1236 Hertel Ave.*, 761 F.3d at 266-67, they cannot allege that the 2019 amendments violated their *reasonable* investment-backed expectations.

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these were very different regimes, and it is unclear whether and to what extent they applied to the properties at issue here.

Finally, analysis of the RSL's "character" should be determined after discovery, when the precise effects of the RSL on these Plaintiffs becomes clearer.

The claims brought by 74 Pinehurst LLC and 141 Wadsworth LLC are therefore dismissed, while the claims brought by Eighty Mulberry Realty Corporation and the Panagouliases may proceed.

F. Due Process

Nor do the 2019 amendments violate the Due Process Clause of the Fourteenth Amendment. Plaintiffs argue that the RSL is not "rationally related" to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity. Instead, they claim the law is counterproductive: it *perpetuates* New York's housing crisis, and fails to target the people it claims to serve. *See* CHIP Compl. at ¶¶ 70-155; Pinehurst Compl. at ¶¶ 159-88. The CHIP Plaintiffs also argue that New York City's triennial declaration of a "housing emergency" (which triggers the RSL) itself violates due process, because that decision is arbitrary and irrational. CHIP Compl. at ¶¶ 167-92.

In support, Plaintiffs allege that economists broadly agree that laws like the RSL do not work for their intended purpose, and indeed may do substantially more harm than good. As one Nobel Prize-winning economist, cited in the Pinehurst Plaintiffs' complaint, put it in discussing San Francisco's rent-stabilization scheme:

> The analysis of rent control is among the best-understood issues in all of economics, and — among economists, anyway — one of the least controversial. In 1992 a poll of the American Economic Association found 93 percent of its

> members agreeing that "a ceiling on rents reduces the quality and quantity of housing." Almost every freshman-level textbook contains a case study on rent control, using its known adverse side effects to illustrate the principles of supply and demand. Sky-high rents on uncontrolled apartments, because desperate renters have nowhere to go — and the absence of new apartment construction, despite those high rents, because landlords fear that controls will be extended? Predictable. . . . [S]urely it is worth knowing that the pathologies of San Francisco's housing market are right out of the textbook, that they are exactly what supply-and-demand analysis predicts.

Paul Krugman, *Reckonings; A Rent Affair*, N.Y. TIMES (June 7, 2000); *see also* Pinehurst Compl. at ¶ 160 (citing Krugman article).

But the Court is engaged in rational-basis review here, not strict scrutiny. *See Pennell*, 485 U.S. at 11-12 (considering whether a rent-control statute was "arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt"); see *also Lingle*, 544 U.S. at 545 ("[W]e have long eschewed . . . heightened scrutiny when addressing substantive due process challenges to government regulation"). And in that context, the Court is bound to defer to legislative judgments, even if economists would disagree. *See, e.g.*, *Lingle*, 544 U.S. at 544-45 (disapproving of district court's assessment of competing expert testimony on the benefits of Hawaii's rent-control statute, and stating: "The reasons for deference to legislative judgments about the need for, and likely effectiveness of, regulatory actions are by now well established . . . .").

Moreover, alleviating New York City's housing shortage is not the only justification of the RSL that the legislature offered. 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 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"). The Supreme Court has recognized neighborhood stability and continuity as a valid basis for government regulation. *See Nordlinger v. Hahn*, 505 U.S. 1, 12 (1992) ("[T]he State has a legitimate interest in local neighborhood preservation, continuity, and stability.") (citing *Village of Euclid*, 272 U.S. 365). And where, as here, there are multiple justifications offered for regulation, the statute in question must be upheld so long as any one is valid. *See Preseault v. I.C.C.*, 494 U.S. 1, 18 (1990) ("There is no requirement that a law serve more than one legitimate purpose."); *Thomas v. Sullivan*, 922 F.2d 132, 136 (2d Cir. 1990) (on rational-basis review, "we consider not only contemporaneous articulations of legislative purpose but also any legitimate policy concerns on which the legislature might conceivably have relied"). Accordingly, the due-process challenge is dismissed.

G. Contracts Clause

The Pinehurst Plaintiffs also claim that the 2019 amendments, as applied to each of them, violate the Contracts Clause of Article I by repealing the RSL's so-called "preferential rates" provision.[18] This provi-

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[18] The Contracts Clause prohibits states from "pass[ing] any . . . Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1.

sion allowed landlords to raise rents on an expiring lease to the maximum rate that would otherwise apply to the unit. While the preferential-rates provision existed, many landlords, including each of the Plaintiffs here, Pinehurst Compl. at ¶ 120, allegedly offered "preferential" leases to tenants (*i.e.*, leasing rates discounted below even what the RGB would permit). These landlords expected, prior to repeal, that they could raise rates significantly when a preferential lease term ended. The 2019 amendments, however, prevent Plaintiffs from doing so by limiting future rates to the amount charged at the time the 2019 amendments were enacted (plus annual increases). *See* N.Y. Reg. Sess. § 6458, Part E, § 2 (2019).

Plaintiffs claim this violates the Contracts Clause in two ways. First, they claim that it extends the duration of all Plaintiffs' expiring, preferential leases (since now they must not only renew the lease, but also at the same preferential rates). Second, 74 Pinehurst LLC claims that, as to it, the 2019 amendments also required the *retroactive* reduction of rent — the most important term in the lease — in two particular lease agreements that it had executed before the amendment passed.

Plaintiffs' first claim — that the 2019 amendments revise the duration of their expiring leases — is unavailing. As applied to future renewals, "[a] contract . . . cannot be impaired by a law in effect at the time the contract was made." *Harmon*, 412 F. App'x at 423. Future leases will be subject to the 2019 amendments from the onset. *See 2 Tudor City Place Assocs. v. 2 Tudor City Tenants Corp.*, 924 F.2d 1247, 1254 (2d Cir. 1991) ("Laws and statutes in existence at the time a contract is executed are considered a part

of the contract, as though they were expressly incorporated therein.”).

74 Pinehurst LLC, however, also alleges that the 2019 amendments revised the terms of two of its *already* executed leases. In resolving this claim, the Court must ask three questions: “(1) is the contractual impairment substantial and, if so, (2) does the law serve a legitimate public purpose such as remedy a general social or economic problem and, if such purpose is demonstrated, (3) are the means chosen to accomplish this purpose reasonable and necessary[?]” *Buffalo Teachers Fed’n v. Tobe*, 464 F.3d 362, 368 (2d Cir. 2006). As explained below, 74 Pinehurst LLC’s claim falters at stages two and three.

74 Pinehurst LLC adequately alleges that the 2019 amendments “substantially impair” its executed leases by affecting a critical term of their executed lease agreements — the monthly rent. *Cf. id.* at 368 (wage freeze substantially impaired unions’ labor contracts because compensation is “the most important element[] of a labor contract”). But 74 Pinehurst LLC cannot surmount the second and third steps of the Contracts Clause analysis. The legislative purposes behind the RSL are valid (as explained above). *See Sal Tinnerello & Sons, Inc. v. Town of Stonington*, 141 F.3d 46, 54 (2d Cir. 1998); *see also Marcus Brown Holding Co v. Feldman*, 256 U.S. 170, 198-99 (1921); *Brontel, Ltd. v. City of New York*, 571 F.Supp. 1065, 1072 (S.D.N.Y. 1983). And where, as here, the affected contract is between private parties, courts must “accord substantial deference” to the legislature’s conclusions about how to effectuate those purposes. *Buffalo Teachers*, 464 F.3d at 369; *see also Sanitation & Recycling Indus., Inc. v. City of New York*, 107 F.3d 985, 994 (2d Cir. 1997). For the reasons articulated above in

Section F (Due Process), the RSL passes muster under this deferential standard. 74 Pinehurst LLC's Contracts Clause claims are, therefore, dismissed.

III. Conclusion

For the reasons explained above, the Court grants Defendants' motions to dismiss all claims in *Community Housing Improvement Program v. City of New York* (19-cv-4087). The Court also grants Defendants' motions to dismiss all claims in *74 Pinehurst LLC v. State of New York* (19-cv-6447) except the as-applied regulatory-takings claims brought by Eighty Mulberry Realty Corporation and the Panagouliases. The Pinehurst Plaintiffs' claims against the State of New York and the DHCR are dismissed for lack of subject-matter jurisdiction, as are their claims for damages against DHCR Commissioner Visnauskas in her official capacity. The Clerk of Court is respectfully directed to enter judgment and close the action in *CHIP* (19-cv-4087), given that that action is now dismissed in its entirety.

SO ORDERED.

/s Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: Brooklyn, New York
September 30, 2020

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

19-cv-4087(EK)(RLM)

COMMUNITY HOUSING IMPROVEMENT PROGRAM, RENT STABILIZATION ASSOCIATION OF N.Y.C., INC., CONSTANCE NUGENT-MILLER, *et al.*,

Plaintiffs,

-against-

CITY OF NEW YORK, RENT GUIDELINES BOARD, DAVID REISS, CECILIA JOZA, ALEX SCHWARZ, GERMAN TEJEDA, MAY YU, *et al.*,

Defendants.

19-cv-6447(EK)(RLM)

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74 PINEHURST LLC, 141 WADSWORTH LLC, 177 WADSWORTH LLC, DINO PANAGOULIAS, DIMOS PANAGOULIAS, *et al.*,

Plaintiffs,

-against-

STATE OF NEW YORK, NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL, RUTHANNE VISNAUSKAS, *et al.*,

Defendants.

JUDGMENT

A Memorandum and Order of Honorable Eric Komitee, United States District Judge, having been filed on September 30, 2020, granting Defendants' motions to dismiss all claims in Community Housing Improvement Program v. City of New York (19-cv-4087); granting Defendants' motions to dismiss all claims in 74 Pinehurst LLC v. State of New York (19-cv-6447) except the as-applied regulatory-takings claims brought by Eighty Mulberry Realty Corporation and the Panagouliases; dismissing The Pinehurst Plaintiffs' claims against the State of New York and the DHCR for lack of subject-matter jurisdiction, as are their claims for damages against DHCR Commissioner Visnauskas in her official capacity; it is

ORDERED and ADJUDGED that Defendants' motions to dismiss all claims in Community Housing Improvement Program v. City of New York (19-cv-4087) is granted; that Defendants' motions to dismiss all claims in 74 Pinehurst LLC v. State of New York (19-cv-6447) is granted except the as-applied regulatory-takings claims brought by Eighty Mulberry Realty Corporation and the Panagouliases; and that the Pinehurst Plaintiffs' claims against the State of New York and the DHCR are dismissed for lack of subject-matter jurisdiction, as are their claims for damages against DHCR Commissioner Visnauskas in her official capacity.

Dated: Brooklyn, NY
September 30, 2020

Douglas C. Palmer
Clerk of Court

By: /s/Jalitza Poveda
Deputy Clerk

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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19-cv-6447(EK)(RLM)

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74 PINEHURST LLC, 141 WADSWORTH LLC, 177 WADSWORTH LLC, DINO PANAGOULIAS, DIMOS PANAGOULIAS, *et al.*,

Plaintiffs,

-against-

STATE OF NEW YORK, NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL, RUTHANNE VISNAUSKAS, *et al.*,

Defendants.

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MEMORANDUM AND ORDER

ERIC KOMITEE, United States District Judge:

After the Court dismissed all claims in this action except the as-applied regulatory-taking claims brought by Plaintiffs Eighty Mulberry Realty Corporation and Dino, Dimos, and Vasiliki Panagoulias, ECF No. 79, Plaintiffs moved for entry of final judgment under Rule 54(b) of the Federal Rules of Civil Procedure as to 177 Wadsworth LLC, the one Plaintiff in this action who did not raise as-applied takings claims. ECF 81. In the alternative, Plaintiffs seek entry of final judgment as to the facial claims brought by all Plaintiffs under the Takings and Due Process Clauses. *Id.* Plaintiffs argue that final judgment should be entered because the relevant claims raise identical issues to

the ones in CHIP's pending appeal. See No. 20-3366 (2d Cir.).

However, "the entry of a final judgment is generally appropriate only after all claims have been adjudicated." *Novick v. AXA Network*, 642 F.3d 304, 310 (2d Cir. 2011) (internal quotations omitted). Accordingly, the power to "enter [] a final judgment before the entire case is concluded" should "be exercised sparingly." *Harriscom Svenska AB v. Harris Corp.*, 947 F.2d 627, 629 (2d Cir. 1991). Plaintiffs chose to pursue a joint action, with 177 Wadsworth LLC bringing suit together with parties that raised as-applied takings claims. There is no "injustice" in enforcing the consequences of that decision, nor would there be meaningful gains to "judicial administration and efficiency" by allowing this action to be appealed in piecemeal fashion. *Hogan v. Consolidated Rail Corp.*, 961 F.2d 1021, 1025 (2d Cir. 1992) (internal quotations omitted).

Accordingly, Plaintiffs' motion for entry of judgment under Rule 54(b) is denied.

SO ORDERED.

s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: Brooklyn, New York
November 19, 2020

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

19-cv-6447(EK)(RLM)

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74 PINEHURST LLC, 141 WADSWORTH LLC, 177 WADSWORTH LLC, DINO PANAGOULIAS, DIMOS PANAGOULIAS, *et al.*,

Plaintiffs,

-against

STATE OF NEW YORK, NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL, RUTHANNE VISNAUSKAS, *et al.*,

Defendants.

JUDGMENT

A Memorandum and Order of Honorable Eric Komitee, United States District Judge, having been filed on September 30, 2020, granting Defendants' motions to dismiss all claims except the as-applied regulatory-takings claims brought by Eighty Mulberry Realty Corporation and the Panagouliases; dismissing the Pinehurst Plaintiffs' claims against the State of New York and the DHCR for lack of subject-matter jurisdiction, as well as their claims for damages against DHCR Commissioner Visnauskas in her official capacity, and a stipulation of voluntary dismissal having been executed by all parties with respect to the as-applied regulatory-takings claims brought by Eighty Mulberry Realty Corporation and the Panagouliases, it is

ORDERED and ADJUDGED that Judgment is entered in favor of Defendants the State of New York and the DHCR; Defendant DHCR Commissioner Visnauskas; Defendants the City of New York, New York City Rent Guidelines Board, David Reiss, Cecilia Joza, Alex Schwartz, German Tejada, May Yu, Patti Stone, J. Scott Walsh, Leah Goodridge, Sheila Garcia, in their official capacities as Chair and Members of the Rent Guidelines Board; and Intervenor Defendants N.Y. Tenants and Neighbors, Community Voices Heard, Coalition for the Homeless.

Dated: Brooklyn, NY
March 5, 2021

Douglas C. Palmer
Clerk of Court

By: /s/Jalitza Poveda
Deputy Clerk

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 20-3366-cv

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

Plaintiffs-Appellants,

NEW YORK TENANTS AND NEIGHBORS; COMMUNITY VOICES HEARD; COALITION FOR THE HOMELESS,

Intervenors,

v.

CITY OF NEW YORK; RENT GUIDELINES BOARD, DAVID REISS, ARPIT GUPTA, ALEX SCHWARZ, CHRISTIAN GONZALEZ-RIVERA, CHRISTINA DEROSE, ROBERT EHRLICH, CHRISTINA SMYTH, SHEILA GARCIA, ADÁN SOLTREN,[*]

Defendants-Appellees.

August Term 2021

[*] Several new members have been added to the Rent Guidelines Board since this case was filed and have thus been automatically substituted for the former members as the defendants in this case pursuant to Fed. R. App. P. 43(c)(2).

Appeal from the United States District Court for the Eastern District of New York No. 19 Civ. 4087 (ERK), Eric R. Komitee, District Judge, Presiding. (Argued February 16, 2022; Decided February 6, 2023)

Before: CALABRESI, PARKER, and CARNEY, *Circuit Judges.*

Plaintiffs-Appellants, individuals who own apartment buildings in New York City subject to the relevant Rent Stabilization Law (RSL), appeal from a judgment of the United States District Court for the Eastern District of New York (Komitee, *J*.). The court dismissed the complaint pursuant to Rule 12(b)(6). Plaintiffs-Appellants alleged that the RSL, as amended in 2019, effected, facially, an unconstitutional physical and regulatory taking. The District Court held that Plaintiffs-Appellants failed to state claims for violations of the Takings Clause. We AFFIRM.

ANDREW J. PINCUS (Timothy Bishop (Chicago), Reginald R. Goeke (Washington D.C.), Robert William Hamburg (New York City), *on the brief*), Mayer Brown LLP, for *Plaintiffs-Appellants*.

ESTER MURDUKHAYEVA, *Deputy Solicitor General for the State of New York*, Letitia James, *Attorney General for the State of New York*, Barbara D. Underwood, *Solicitor General*, Steven C. Wu, *Deputy Solicitor General*, Caroline A. Olsen, *Assistant Solicitor General, Of Counsel*, New York, N.Y., for *Defendant-Appellee RuthAnne Visnauskas,*

CLAUDE S. PLATTON, *Assistant Corporation Counsel for the City of New York*, James E. Johnson, *Corporation Counsel for the City of New York*, Richard Dearing, Jesse A. Townsend, *Of Counsel*, New York, N.Y., for

Defendants-Appellees City of New York, Rent Guidelines Board, David Reiss, Arpit Gupta, Alex Schwarz, Christian Gonzalez-Rivera, Christina DeRose, Robert Ehrlich, Christina Smyth, Sheila Garcia, Adán Soltren, RuthAnne Visnauskas,

CAITLIN J. HALLIGAN (Sean P. Baldwin, Michael Duke, Babak Ghafarzade, Sophie Lipman, *on the brief*, Selendy & Gay PLLC), for *Intervenors.*

BARRINGTON D. PARKER, Circuit Judge:

The New York City Rent Stabilization Law ("RSL") was first enacted in 1969 as part of a decades-long legislative effort to address the myriad problems resulting from a chronic shortage of affordable housing in the City. The RSL is designed to prevent excessive rent levels and to ensure that property owners can earn a reasonable return by, among other things, capping rent increases and limiting the legal grounds for evictions. Over time, however, the Legislature has amended the law in response to changing political and economic conditions. Sometimes the statute has provided stronger protections for tenants and at other times for property owners. The RSL was most recently amended by the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"). The constitutionality of this amendment and of the RSL as amended are the subject of this appeal.

The Appellants (the "Landlords") are individual property owners and not-for-profit trade associations whose members include managing agents and property owners of both rent-stabilized and non-rent-stabilized properties. They sued to invalidate the RSL and the HSTPA on the grounds that their provisions are unconstitutional because they, facially, effect a physical

as well as a regulatory taking in violation of the Fifth Amendment. The Landlords further claim that the RSL and New York City's 2018 emergency declaration triggering rent stabilization are irrational in violation of the Substantive Due Process Clause of the Fourteenth Amendment. The United States District Court for the Eastern District of New York (Komitee, *J.*) held that the RSL was constitutional and dismissed the Complaint. *See* FED. R. CIV. P. 12(b)(6). This appeal followed.

BACKGROUND

In an entirely unregulated market, rent levels are governed solely by the law of supply and demand.[1] *See* Brief for Nat'l Ass'n of Realtors as *Amicus Curiae* at 19. Such a market, however, can be unforgiving. It has little regard for the consequences it produces, whether they are inadequate returns on investment, exorbitant rents, housing shortages, deteriorating housing stock, or homelessness. To address these problems, the City, State, and federal governments have, over the past century, regulated the New York City rental market.

The City's first rent regulations were passed in response to severe housing shortages around the time of World War I.[2] The war caused new construction to fall and rents to soar.[3] In response, renters organized

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[1] The history of rent stabilization discussed here constitutes a matter of public record of which we are entitled to take judicial notice. *See Caha v. United States*, 152 U.S. 211, 222, (1894). Since this history is not part of the underlying Complaint, it does not form the basis of our Fed. R. 12(b)(6) analysis.

[2] Robert M. Fogelson, The Great Rent Wars: New York, 1917–1929 18 (2013).

[3] Robert W. De Forest & Lawrence Veiller, The Tenement House Problem 369 (1903); "Workmen Need Homes," *New York Times*, June 9, 1918 at R92.

rent strikes, and escalating confrontations between landlords and tenants ensued.[4] Ultimately, the State Legislature stepped in and passed the City's first rent control program in 1920, which capped rent increases and prevented evictions without cause.[5] The regime, which expired after ten years, was the subject of ongoing litigation.[6] The housing problems responsible for the legislation and the litigation abated somewhat as a consequence of a resurgence of housing construction in the mid-1920s.[7]

The next regime of rent control was enacted by the federal government. In 1942, President Franklin D. Roosevelt signed into law the Emergency Price Control Act (EPCA).[8] The EPCA was passed in response to inflationary pressures brought about in part by World War II and created a nationwide system of price controls. The law froze New York City rents at 1943 levels for several years until Congress allowed it to

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[4] *See e.g.,* Woman Accused of Calling Tenants in Apartment 'Scabs,'" *New York Times*, July 18, 1919 at 6; "20,000 Organize for Rent Strike," *New York Times*, April 24, 1920 at 1; "The Threatened Rent Strike," *New York Times*, April 28, 1920 at 10; "4,500 Bronx Tenants Go on Rent 'Strike,'" *New York Times,* Dec. 3, 1920 at 2.

[5] *See e.g.,* "Mayor Supports Rent Control Bill," *New York Times,* Mar. 11, 1920 at 17; "1,800 Go To Albany for Rent Fight," *New York Times*, Mar. 23, 1920 at 3; "Rent Laws in Practice," *New York Times*, April 9, 1920 at 12.

[6] *See, e.g.*, "Testing the Rent Laws," *New York Times*, Oct. 21, 1920 at 11.

[7] *See e.g.,* "Building Revival Breaking Records," *New York Times*, July 16, 1922 at R1. "Housing Crisis Over, Surplus of Homes, Realty Men Argue," *New York Times,* Oct. 18, 1923 at 1; *Final Report of the Joint Legislative Committee on Housing*, 1923 at Ch. 1-6.

[8] *See* 56 Stat. 23 (repealed 1947).

expire, replacing it with the Federal Housing and Rent Act of 1947.[9] Under that statute, buildings constructed after February 1, 1947, were exempted from controls while older buildings remained covered.

A few years later, Congress passed the 1949 Federal Housing Act, which permitted States to take control of rent regulation.[10] Then, in 1950, New York created the Temporary State Housing Rent Commission, which regulated landlord-tenant relationships—including over 2 million rental units in the City.[11] Those regulations touched upon, among other things, rent levels and legal grounds for evictions.

The City's modern regime of rent regulations was introduced in 1969 by the RSL. The RSL established the Rent Guidelines Board ("RGB")—an official body whose members represent the interests of landlords, tenants, and the public—which was charged with setting the amounts by which rents could be increased.[12] In carrying out this function, the RGB was obligated to consider the economic condition of the housing market, certain costs for which landlords were responsible, the returns generated to landlords, the housing supply, and increases to the cost of living.[13]

The RSL has been amended several times. In 1971, for example, the State passed the Emergency Tenant Protection Act ("ETPA"), which permits the City to renew the protections of the RSL when it declares a

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[9] Pub. L. No. 129, 80th Cong., 1st Sess. (June 30, 1946).

[10] Pub. L. No. 171, 81st Cong., 1st Sess. (July 15, 1949).

[11] Morton J. Schussheim, High Rent Housing and Rent Control in New York City (Apr. 1958).

[12] 23 N.Y. Unconsol. Laws § 26-510(a).

[13] 23 N.Y. Unconsol. Laws § 26-510(b).

"housing emergency" based upon a set of statutory criteria. N.Y. Unconsol. Law tit. 23 8623.a (McKinney). Later, in the 1980s, tenants' protections were extended to their successors.[14] In 1993, the law was again amended to permit the deregulation of apartments that either housed high-income tenants or became vacant.[15]

Recently, the RSL was amended by the HSTPA,[16] which was passed in "response to an ongoing housing shortage crisis, as evidenced by an extremely low vacancy rate" that caused tenants to "struggle to secure safe, affordable housing" and municipalities to "struggle to protect their regulated housing stock." Sponsor's Mem., 2019 N.Y. Laws ch. 36. The HSTPA limited landlords' capacity to charge excess rent attributed to major capital improvements and individual apartment improvements. *See* 2019 N.Y. Laws ch. 36, Part K. The law repealed vacancy decontrol and high-income decontrol, which had removed units from regulation when the rent or tenant's income reached a specified level. The law also repealed certain vacancy and longevity increases, which had permitted landlords to raise rents above the otherwise allowable amounts if a unit became vacant or if a tenant had remained in place for an extended period. *See id.*, Parts B & D. In addition, the law limits landlords to recovering one rent-stabilized unit per building for personal use upon a showing of necessity, with additional restrictions when the affected tenant is a senior citizen or disabled.

[14] 9 NYCRR 2520.6 (1987).

[15] *See generally Roberts v. Tishman Speyer Props.*, 13 N.Y.3d 270, 279 (2009).

[16] 2019 N.Y. Laws ch. 36, available at https://perma.cc/TH4B5WNQ.

See id., Part I. These amendments are the main subject of this appeal.

This regulatory regime has all along been the subject of sharp disagreements: landlords believed that their investment returns were too low and that they retained too little control over their properties while tenants believed that their rents were too high. Landlords in particular have consistently contended the regulations impeded their ability collect sufficient rents to fund required maintenance and improvements and to generate reasonable investment returns. Landlords have consistently contended that the RSL has failed to achieve its stated goal of increasing the availability of housing to low- and moderate-income residents.[17]

The Appellees, on the other hand, contend that the RSL did not go far enough to enable people of modest incomes to live in the City.[18] They further contend that in enacting the RSL, New York's elected representatives were well aware of the role that rent stabilized housing played in increasing the supply of apartments for low- and moderate-income residents and reducing community disruption resulting from frequent turnover, tenant dislocation, and eviction. These RSL protections, they argue, enable families to establish long-term homes and, in turn, allow neighborhoods to flourish.[19]

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[17] *See*, *e.g.*, Brief for Nat'l Apt. Ass'n and Nat'l Multifamily Hous. Council as *Amicus Curiae* 23.

[18] *See*, *e.g.,* Brief for Nat'l Hous. Law Project et al. as *Amicus Curiae* 12.

[19] The Appellees argue that "[i]f the rent-regulated housing stock in New York continues to diminish, the homeless population will grow to unimagined levels . . . [and the] elimination of the rent laws would lead to a wave of evictions and homelessness

The City contends that the vast majority of those who benefit from rent stabilization are low- and middle-income people. In 2016, the median income for rent stabilized households was $44,560, one third lower than the median income for private, non-regulated households.[20] 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. Eliminating rent stabilization, the Appellees contend, would undoubtedly result in a surge of homelessness. It would also result in a dynamic whereby large swaths of essential workers who help maintain our vibrant City, including police officers, teachers, healthcare workers, and emergency service personnel, would be unable to afford to live here.[21] *See generally* Brief of District Council 37 as

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unseen in New York since the Great Depression." Testimony of The Coalition for the Homeless before the NY State Assembly Committee on Housing, January 2011, available at https://www.coalitionforthehomeless.org/wp-content/uploads/2014/07/TestimonyRentRegulationJan202011.pdf.

[20] N.Y.C. Dep't of Hous. Pres. & Dev., Sociodemographics of Rent Stabilized Tenants 4 (2018), available at https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/rent-regulation-memo-1.pdf

[21] The City also argues that while sudden rent increases of any size can be difficult to absorb for tenants across income levels, even a minimal increase can be 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. The State and City Legislatures determined that the RSL helps guard against the dislocation of hundreds of thousands of New Yorkers. *See* Oksana Mironova, *Testimony: NYC Needs a Rent Freeze*, Cmty. Serv. Soc'y (May 5, 2020), available at https://www.cssny.org/news/entry/testimony-nyc-rgb-rent-freeze.

Amicus Curiae. Who has the better of these arguments is not an issue on this appeal.

Throughout its life, this regulatory regime has been the subject of continual attention in the State and City Legislatures. This is hardly surprising. Striking an appropriate balance between the sharply diverging interests of landlords and tenants involves negotiation and compromise over a very long list of complicated and difficult questions. Resolving such questions is a quintessential function of a legislature. At the end of the day, it is highly probable—indeed, virtually certain—that no interested party will be entirely satisfied by what the legislature does.

Rent regulation in the City has also been the subject of decades of litigation. Property owners have challenged New York rent control and stabilization regulations on a host of grounds, contending that it violates the Takings Clause, the Contracts Clause, the Equal Protection Clause, and the Due Process Clause. *See Harmon v. Markus*, 412 F. App'x 420 (2d Cir. 2011); *W. 95 Hous. Corp v. N.Y.C. Dep't of Hous. Pres. & Dev.*, 31 F. App'x 19 (2d Cir. 2002); *Fed. Home Loan Mortg. Corp. v. New York State Div. of Hous. & Cmty. Renewal*, 83 F.3d 45 (2d Cir. 1996); *Rent Stabilization Ass'n of City of New York v. Dinkins*, 5 F.3d 591 (2d Cir. 1993); *Greystone Hotel Co. v. City of New York*, 13 F. Supp. 2d 524 (S.D.N.Y. 1998); *Silberman v. Biderman*, 735 F. Supp. 1138 (E.D.N.Y. 1990); *Tonwal Realties, Inc. v. Beame*, 406 F. Supp. 363 (S.D.N.Y. 1976); *Somerset-Wilshire Apts., Inc. v. Lindsay*, 304 F.Supp. 273 (S.D.N.Y. 1969); *Rent Stabilization Ass'n of New York City, Inc. v. Higgins*, 83 N.Y.2d 156 (1993); *Teeval Co. v. Stern*, 301 N.Y. 34 (1950). Each of these challenges failed.

PROCEDURAL HISTORY

After the passage of the HSTPA, the Landlords sued the Appellees in the United States District Court for the Eastern District of New York. They alleged that the newly amended RSL effected, facially, a physical as well as a regulatory taking and that it violated the Fourteenth Amendment's Due Process Clause. While the Landlords initially raised facial and as-applied claims, the latter were abandoned. Therefore, the only claims that remain are facial challenges. A companion case, *74 Pinehurst LLC v. New York*, addresses as-applied claims brought by other landlords. An opinion deciding that case also issues today. The defendants moved under Rule 12(b)(6) to dismiss the Complaint, and Judge Komitee granted the motion in a thorough and well-reasoned opinion. The court held that a physical taking occurs when there is a deprivation of the "entire bundle of property rights" in the property interest in question. That bundle includes the "rights to possess, use and dispose of [the property]." *Community Housing Improvement Program v. City of New York*, 492 F. Supp. 3d 33, 43 (E.D.N.Y. 2020). The court reasoned that because the RSL restricts only the plaintiffs' right to use the property—but not to possess or dispose of it—the claims failed to make out a physical taking.

The court next turned to the substantial difficulties associated with facial regulatory takings challenges. It observed that the Landlords were unable to identify a case where a facial challenge to rent-control-related legislation had succeeded. The court acknowledged the possibility that the RSL could effect an as-applied regulatory taking, but noted that "it is unlikely that [it] will be identified in the context of a facial challenge." *Id.* at 45.

Next, applying factors set forth in *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978)—economic impact, interference with investment-backed expectations, and character of the governmental action—the court dismissed the facial regulatory takings claim. It reasoned that the Landlords had not demonstrated that the RSL was unconstitutional in all of its applications. This appeal followed. We review *de novo* the district court's dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

DISCUSSION

I

A

The Landlords have leveled a facial challenge to the RSL. To prevail on a facial challenge, the plaintiff must "establish that no set of circumstances exists under which the [challenged] Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). In other words, the plaintiff must show that the statute "is unconstitutional in all of its applications." *Wash. State Grange v. Wash. State Rep. Party*, 552 U.S. 442, 449 (2008). Facial challenges to the RSL have regularly fallen short of this high bar. *See, e.g.*, *Rent Stabilization Ass'n v. Dinkins*, 5 F.3d at 595; *W. 95 Hous. Corp.*, 31 F. App'x at 21. The Landlords suggest, however, that this is no longer the correct standard to apply to the facial challenges they bring. They contend that, instead of applying *Salerno*'s well-established standard, this Court should utilize one of two more lenient approaches to striking down statutes on a facial challenge. We disagree.

They first argue that because "'[t]he proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is

irrelevant,'" the facial challenge should focus on the law's effect on only those landlords who wish not to comply with its strictures. Appellants' Br. at 35 (quoting *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015)). A close reading of *Patel* makes clear that, when the Supreme Court referenced "the group for whom the law is a restriction," it meant those to whom the law *actually applies*, not those for whom it has no plausible application—that is, those for whom the law is "irrelevant." *Patel*, 576 U.S. at 419.

In *Patel*, the Supreme Court considered a facial challenge to a statute authorizing certain warrantless searches. *Id*. at 417. In response to the challenge, the City cited situations in which a warrant was not required under already established law: that is, "situations where police are responding to an emergency, where the subject of the search consents to the intrusion, and where police are acting under a court-ordered warrant." *Id*. at 417–18. It argued that those situations showed that a warrantless search was permissible in some circumstances, and so the new law permitting certain warrantless searches could not be "unconstitutional in all of its applications," as *Salerno* required. *Id.* The Court rejected this argument, reasoning that when faced with exigent circumstances or a court-ordered warrant, "the subject of the search must permit it to proceed irrespective of whether it is authorized by statute." *Id*. at 418–19. The Court distinguished the City's examples as "irrelevant to our analysis because they do not involve actual applications of the statute." *Id*. at 419. Thus, by defining the focus of a facial challenge as resting on its effect on those "for whom the law is a restriction," the Supreme Court merely clarified that facial challenges to a statute must establish its unconstitutionality in all "applications of the statute *in which it actually*

authorizes or prohibits conduct." *Id*. at 418 (emphasis added). The Court's decision in *Patel*, therefore, only clarified the scope of *Salerno*'s standard for facial challenges. It did not reject or relax the *Salerno* standard.

As a separate basis for avoiding the rigors of *Salerno*, the Landlords rely on *United States v. Stevens*, 559 U.S. 460 (2010), arguing that to succeed on their facial challenge, they need only establish *either* "'that no set of circumstances exists under which [the statute] would be valid, *or* that the statute lacks any plainly legitimate sweep.'" Appellants' Br. at 35 (quoting *Stevens*, 559 U.S. at 472) (emphasis in brief). The Landlords contend that, in its use of the phrase "plainly legitimate sweep," the *Stevens* Court held that a facial challenge in any legal domain can succeed by meeting either one of these two standards. Again, we are not persuaded.

In *Stevens*, a criminal defendant challenged the statute of his conviction—criminalizing the creation, sale, or possession of depictions of animal cruelty—as facially invalid under the First Amendment. 559 U.S. at 464–65, 467. But in assessing the challenge, the Supreme Court stated that the choice between the two standards under discussion (valid in "no set of circumstances" or "lacking any plainly legitimate sweep") was "a matter of dispute that we need not and do not address." *Id*. at 472. Thus, it did no more than recognize that "[i]n the First Amendment context," it has determined that "a law may be invalidated as overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" *Id*. at 472 (quoting *Wash. State Grange*, 552 U.S. at 449 n.6).

We understand *Stevens*, then, not as rejecting *Salerno*'s demanding standards for facial challenges generally, but as reinforcing the principles that (i) *Salerno* provides the prevailing standard for facial challenges to statutes outside the context of the First Amendment, and (ii) a different, more challenge-friendly standard has developed in the context of statutes affecting First Amendment rights. Neither *Stevens* nor any other case the Landlords cite has applied this relaxed standard outside of the First Amendment context, nor supports its extension beyond that setting. Indeed, in observing that "[f]acial challenges are disfavored for several reasons," the Supreme Court reminded us that "facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Wash. State Grange*, 552 U.S. at 451. Especially where, as here in the rent stabilization context, the regulatory regime at issue has both persisted and been adjusted over time, reflecting finely tuned, legislative judgments, we must exercise caution in entertaining facial challenges. Neither *Patel* nor *Stevens*, thus, lower the high bar the Landlords must satisfy to assert a facial challenge.

B

The Takings Clause of the Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amends. V, XIV, § 1. That requirement applies to all physical appropriations of property by the government. *See Horne v. Dep't of Agriculture*, 576 U.S. 350, 360 (2015). When the government effects a physical appropriation of private property for itself or another—whether by law, regulation, or another means—a

per se physical taking has occurred. *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021). Examples of physical takings include using eminent domain to condemn property, s*ee United States v. General Motors Corp.*, 323 U.S. 373, 374–75 (1945); taking possession of property without taking title to it, *see United States v. Pewee Coal Co.*, 341 U.S. 114, 115–17 (1951); and occupying property by, for example, building a dam that causes recurring flooding, s*ee United States v. Cress,* 243 U.S. 316, 327–28 (1917).

The Supreme Court has, over the years, considered various Takings Clause challenges to government actions. *See e.g., Griggs v. Allegheny Cnty., Pa.,* 369 U.S. 84 (1962); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23 (2012). In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), the Supreme Court considered a statute requiring landlords to permit cable companies to install equipment on the landlords' properties. The Court held that such a mandatory invasion amounted to a permanent physical occupation by a third party—the cable companies—of the landlords' properties and was therefore a *per se* physical taking. In addition, the Court concluded that such a physical occupation deprived landlords of the entire "bundle of rights" associated with owning property. *Id.* at 435.

A decade later, in *Yee v. City of Escondido*, 503 U.S. 519 (1992), the Court declined to apply to this logic to rent-control laws and rejected a Takings Clause challenge. *Yee* involved a mobile-home rent control ordinance that set rent at below-market rates. The Court held that the ordinance—even considered in conjunction with other state laws effectively permitting tenants to remain at will—was not a physical

taking. It reasoned that the statutes did not facially *require* landlords to rent their properties in perpetuity because evictions were permitted in some conditions, *id.* at 528, and because the "tenants were invited by petitioners, not forced upon them by the government," *id.* The Court further noted that States have wide latitude to regulate the landlord-tenant relationship, such as by placing "ceilings on the rents the landowner can charge or requiring the landowner to accept tenants he does not like." *Id.* at 529 (cleaned up).

In *Horne*, in contrast, the Court found that a physical taking had occurred. In that case the Court considered a challenge to a Department of Agriculture marketing order requiring raisin growers to hand over a percentage of their crop to the government. 576 U.S. at 350. The Court held that the statute effected a physical taking because raisins are physically transferred from the growers to the government and title is passed, thereby depriving owners of the entire bundle of rights to their property. *Id*. at 361. The Court also held that the government cannot condition a party's permission to engage in interstate commerce on complying with a regulation that effects a physical taking. *Id.* at 364–67.

Most recently, in *Cedar Point* the Court evaluated a regulation granting labor organizations the "right to take access" to an agricultural employer's property for up to 120 days a year to solicit support for unionization. 141 S. Ct. at 2069. The Court held that because the regulation granted a right to invade the grower's property it amounted to a *per se* physical taking. *Id.* at 2072. *Cedar Point*, however, emphasized that "[l]imitations on how a business generally open to the public may treat individuals . . . are readily distin-

guishable from regulations granting a right to invade property closed to the public." *Id.* at 2076–77.

Our court has also considered various Takings Clause challenges to regulations, including some to earlier versions of New York's RSL. *See, e.g., Southview Assocs., Ltd. v. Bongartz*, 980 F.2d 84, 94–95 (2d Cir. 1992) (finding that denying a land use permit did not constitute a physical taking); *Fed. Home Loan Mortg. Corp.,* 83 F.3d at 48 (finding application of rent stabilization laws to a previously exempt building did not violate the Takings Clause); *Harmon*, 412 F. App'x at 422 (holding City's rent stabilization law did not effect a permanent physical occupation of a landlords' property in violation of Takings Clause).

B

Applying these principles, we conclude that no provision of the RSL effects, facially, a physical occupation of the Landlords' properties. In *Cedar Point*, the Court held that the government may effect a physical occupation of property by granting a third party the right to invade "property closed to the public." 141 S. Ct. at 2077.[22] That has not occurred here. Rather, the Landlords voluntarily invited third parties to use their properties, and as the Court explained in *Cedar Point*, regulations concerning such

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[22] We reject Appellants' reliance on the Supreme Court's per curiam opinion in *Pakdel v. City and County of San Francisco*, 141 S. Ct. 2226 (2021). There, the district court had ruled on the merits of physical takings claims prior to the Supreme Court's ruling in *Cedar Point Nursery*, and therefore the Court in remanding the case merely stated that the Ninth Circuit "may give further consideration to these claims in light of [the] recent decision in *Cedar Point Nursery v. Hassid.*" 141 S. Ct. at 2229 n. 1. That directive is of no moment here.

properties are "readily distinguishable" from those compelling invasions of properties closed to the public. *Id.* As the Supreme Court made pellucid in *Yee*, when, as here, "a landowner decides to rent his land to tenants" the States "have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails." 503 U.S. at 528–29; *see also Loretto,* 458 U.S. at 440 ("This Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails."); *Home Building & Loan Ass'n v. Blaisdell,* 290 U.S. 398 (1934); *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242 (1922). The numerous cases that affirm the validity of rent control statutes are the necessary result of this long line of consistent authority. *See, e.g., Bowles v. Willingham*, 321 U.S. 503 (1944); *Block v. Hirsh*, 256 U.S. 135 (1921).

Nor does the RSL compel the Landlords "to refrain in perpetuity from terminating a tenancy." *Yee*, 503 U.S. at 528. The statute sets forth several grounds on which a landlord may terminate a lease. These include failing to pay rent, creating a nuisance, violating provisions of the lease, or using the property for illegal purposes. 9 NYCRR § 2524.3. It is well settled that limitations on the termination of a tenancy do not effect a taking so long as there is a possible route to an eviction. *Cf. Yee*, 503 U.S. at 528 (concluding that a statute requiring that evictions be given with 6- or 12-months' notice is not a compelled physical invasion in violation of the Takings Clause); *Harmon,* 412 F. App'x at 422 (finding New York's rental stabilization law at the time did not give rise to a physical taking partially because the landlords retained the right to

"evict an unsatisfactory tenant"); *Higgins*, 83 N.Y.2d at 172 (family succession amendments to rent control and rent stabilization regulations did not effect unconstitutional taking where owner's right to evict unsatisfactory tenant was not altered); *Elmsford Apartment Assocs., LLC v. Cuomo*, 469 F. Supp. 3d 148, 163 (S.D.N.Y. 2020) (finding that a temporary halt on evictions did not amount to a physical taking).[23]

All in all, as with previous versions, the RSL "regulates land use rather than effecting a physical occupation." *W. 95 Hous. Corp.*, 31 F. App'x at 21. The caselaw is exceptionally clear that legislatures enjoy broad authority to regulate land use without running afoul of the Fifth Amendment's bar on physical takings. *See Yee*, 503 U.S. at 527.

C

The Landlords contend that the RSL effects, facially, a physical taking because it requires them to offer tenants renewal leases, interferes with their ability to evict tenants and reclaim units for personal use, and allows tenancies to be transferred to successors. These provisions, according to the Landlords, amount to a permanent physical occupation compelled by the government.

We disagree. None of these provisions involve unconditional requirements imposed by the legislature. Landlords, instead, must adhere to these provisions only when certain conditions are met. Consider, for example, the statute's successorship provisions. No tenant enjoys an unfettered right to transfer tenancy

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[23] Because we conclude that the Landlords have not been deprived of their right to exclude, we agree with the District Court that they have not been deprived of their "entire bundle of rights" in their properties.

rights to a successor. Instead, the successor must meet a host of requirements, such as, for example, being a member of the tenant's family who has already lived in the apartment for two years. What is more, even assuming *arguendo* that the successorship provisions do unconditionally require landlords to rent to uninvited successors, that would deprive the Landlords only of the ability to decide *who* their incoming tenants are. That limitation, as the Supreme Court has recognized, has "nothing to do with whether [a law or regulation] causes a physical taking." *Id.* at 530–31.

Furthermore, none of the caselaw on which the Landlords rely lends any appreciable support to their contention that the RSL effects, facially, a physical taking. The Landlords' reliance on *Loretto, Horne,* and *Cedar Point*, their main authority, is misplaced for a common reason: None of them concerns a statute that regulates the landlord-tenant relationship, and none restricts—much less upends—the State's longstanding authority to regulate that relationship.[24]

Moreover, *Yee,* the only case on which the Landlords rely that does involve a statute regulating the landlord-tenant relationship, confirms our conclusion. *Yee*, as noted, involved a facial challenge to rent control statutes that limited owners' ability to terminate tenancies where the initial tenant had transferred her rights to another. 503 U.S. at 523–24. Like the Landlords here, the petitioners argued that the law effectively forced

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[24] Nor is the Landlords' position supported by their reliance on *Horne* for the proposition that the "voluntary participation in the market [cannot] excuse or absolve the government of liability for a taking." Like the District Court, we reject Appellants' claims not because we conclude that they have acquiesced in a physical taking, but because "no physical taking has occurred in the first place."

property owners to rent the property out to these individuals and prevented owners from changing the use of their property. The Court upheld the law because it merely limited—but did not bar—an owners' ability to do both of these things. *Id*. at 527–28. The same is true here.

II

The Landlords also mount a facial regulatory taking challenge to the RSL. Legislation effects a regulatory taking when it goes "too far" in restricting a landowner's ability to use his own property. *Horne*, 576 U.S. at 360; *Yee*, 503 U.S. at 529; *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). In determining whether a use restriction effects a taking, we apply the balancing test set out in *Penn Central Transp. Co. v. City of New York,* 438 U.S. 104 (1978), a case involving a challenge to New York City's historical preservation law, N.Y.C. Admin. Code, ch. 8–A, § 205–1.0 et seq. (1976).[25]

Penn Central instructs courts to engage in a flexible, "ad hoc, factual inquir[y]" focused on "several factors that have particular significance." 438 U.S. at 124. Three of them are: (1) "the economic impact of the regulation on the claimant," (2) "the extent to which

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[25] We are unpersuaded by the Landlords' argument that the appropriate standard under which to determine whether a taking has occurred comes from a dissent in *Pennell v. City of San Jose*, 485 U.S. 1 (1988). As we have noted, "Justice Scalia's [*Pennell*] dissent was just that; a majority of the Supreme Court has yet to adopt Justice Scalia's reasoning." *Garelick v. Sullivan*, 987 F.2d 913, 918 (2d Cir. 1993). This dissent, we have pointed out, is "in tension (if not conflict) with well established Fifth Amendment doctrine granting government broad power to determine the proper subjects of and purposes for regulatory schemes." *Id.* Accordingly, we decline to employ a test that has never been adopted by the Supreme Court.

the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action." *Id.* The Landlords assert that, taken together, these factors support their characterization of the RSL as a facial regulatory taking. We disagree.

As to the economic impact of the regulation, the Landlords contend that the RSL has a direct and substantial negative economic impact on rent-stabilized properties in New York City because stabilized rents are on average 25% lower than market rents and permissible rent increases are outpaced by increases in operating costs. In short, the Landlords contend that the RSL forces property owners to choose between making losing investments or letting their properties deteriorate. They allege that rent-stabilized properties are worth 25% to 50% less than similar properties with market-rate units.

The RSL may well have an appreciable economic impact on the profitability of some buildings subject to its provisions. When permissible rent increases are outpaced by operating cost increases, the result may be a reduction or, in some cases, the elimination of net operating income. We acknowledge that some property owners may be legitimately aggrieved by the diminished value of their rent-stabilized properties as compared with their market-rate units. Furthermore, we understand that many economists argue that rent control laws are an inefficient way of ensuring a supply of affordable housing. But while legislative judgments may take into account these varying policy perspectives, we are bound to follow the standard set forth for a facial regulatory taking under *Penn Central*. Appellants have simply not plausibly alleged that every owner of a rent-stabilized property has suffered

an adverse economic impact that would support their facial regulatory takings claims. Thus, Appellants did not plausibly allege the economic impact factor on a facial basis, and this factor thus weighs against the conclusion that the RSL effects a regulatory taking on its face.

Instead of alleging that every landlord has suffered an adverse economic impact, the Landlords principally rely on data purporting to show the average economic effects of the RSL. But these effects do not establish that the RSL can never be applied constitutionally, which is the requirement for a facial challenge. As the Supreme Court stated in *Concrete Pipe & Prods. of Cal.*, the "mere diminution in the value of property, however serious, is insufficient to demonstrate a taking." *Concrete Pipe & Prods. of Cal. v. Constr. Laborers Pension Tr.*, 508 U.S. 602, 645 (1993); *see also Park Ave. Tower Assocs. v. City of New York*, 746 F.2d 135, 139–40 (2d Cir. 1984) (collecting cases rejecting takings claims where property value declined by 75% to 90%). We therefore conclude that the economic impact factor of the *Penn Central* analysis does not support the Landlords.

With respect to the Landlords' investment-backed expectations, once again, we can assume *arguendo* that some property owners may have had their investment-backed expectations thwarted by the current iteration of the RSL. Thus, we may assume some property owners may not have expected, for example, that the 2019 RSL would eliminate the possibility of preferential rent increases or sunset provisions. However, the Landlords have failed to establish that the RSL interferes with *every* property owner's investment-backed expectations, which is

required on a facial challenge, because such expectations can be assessed only on a case-by-case basis.

Different landlords, who purchased properties at different times and under different RSL regimes, will necessarily have a range of differing expectations. Some may have been aggrieved by various provisions of the RSL, while others may not have been and, indeed, others may have seen the profitability of their investments rise. It is therefore impracticable to assess a class of owners' expectations without analysis on an individualized basis. Moreover, we must consider the reasonableness of alleged investment-backed expectations vis-à-vis those who can "demonstrate that they bought their property in reliance on a state of affairs that did not include the challenged regulatory regime." *Allen v. Cuomo*, 100 F.3d 253, 262 (2d Cir. 1996) (internal quotation marks omitted). We cannot make that analysis on a groupwide basis in a case where, as here, the challenged statute has been in place for half a century, and most, if not all, current landlords purchased their properties knowing they would be subject to the RSL. Given the RSL's ever-changing requirements, no property owner could reasonably expect the continuation of any particular combination of RSL provisions. As the New York Court of Appeals has noted, "no party doing business in a regulated environment like the New York City rental market can expect the RSL to remain static." *Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Cmty. Renewal*, 35 N.Y.3d 332, 369 (2020). Accordingly, we conclude that the investment-backed expectations factor does not support the contention that the RSL has effected, facially, a regulatory taking.

Turning to the character of the taking, a regulatory taking "may more readily be found when the interfer-

ence with property can be characterized as a physical invasion by government." *Penn Central*, 438 U.S. at 124. The Landlords argue that the RSL constitutes a physical invasion because it burdens property owners with non-removable tenants and, in so doing, eliminates landlords' rights to determine the use of their property or to use it themselves. They contend that the RSL confers a local public assistance benefit on tenants that is inappropriately funded by a subset of New York City building owners rather than the government.

We are not persuaded. The Supreme Court has instructed that in analyzing the "character" of the governmental action, courts should focus on the extent to which a regulation was "enacted solely for the benefit of private parties" as opposed to a legislative desire to serve "important public interests." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 485–86 (1987). The character of the government action in *Penn Central*, for example, cut against a finding of a taking because the law was part of a "comprehensive plan to preserve structures of historic or aesthetic interest" and applied to hundreds of sites. 438 U.S. at 132. In reaching this conclusion, the Court relied on the "judgment of the New York City Council that the preservation of landmarks benefits all New York citizens and all structures, both economically and by improving the quality of life in the city as a whole." *Id.* at 134.

Here too, the RSL is part of a comprehensive regulatory regime that governs nearly one million units. Like the broad public interests at issue in *Penn Central*, here, the legislature has determined that the RSL is necessary to prevent "serious threats to the public health, safety and general welfare." N.Y.C.

Admin. Code § 26-501. No one can seriously contend that these are not important public interests and courts are not in the business of second-guessing legislative determinations such as this one. The fact that the RSL affects landlords unevenly is of no moment because, as the *Penn Central* Court noted, "[l]egislation designed to promote the general welfare commonly burdens some more than others." 438 U.S. at 133. Accordingly, the character of the regulation does not support the conclusion that the RSL effects a regulatory taking.

Finally, the Landlords urge this Court to consider two additional, less commonly cited *Penn Central* factors that, they argue, tend to show that the RSL results in a regulatory taking: noxious use and a lack of a reciprocal advantage. Even assuming for the sake of argument that these factors apply, the claims fail.

First, the Landlords assert that because the RSL does not address a safety issue or "noxious use" of a property, this factor supports the conclusion that a regulatory taking has occurred. This argument relies on a logical fallacy that because noxious use laws typically do not constitute takings, the RSL must be a taking because it does not govern noxious use. We have never held that *only* regulations of noxious uses can survive takings challenges. Merely because the existence of noxious use regulation can overcome a takings challenge does not mean that, conversely, the lack of noxious use regulation supports a takings challenge. Accordingly, this factor does not support the Landlords' takings claim.

The Landlords' reliance on the "reciprocity of advantage" factor fares no better. Citing Justice Rehnquist's dissent in *Penn Central*, they argue that the RSL effects a regulatory taking because the Fifth

Amendment prohibits the placing of an inordinate share of a public burden on a private individual. With this argument, the Landlords urge us to read a dissent as providing us with governing law. We can't do that. As the legislature has found, the RSL provides reciprocity of advantage: the RSL results in significant state- and citywide benefits—including to landlords—by preventing tenant dislocation and preserving neighborhood stability. Although what specific value a particular landlord receives from these benefits may be hard to quantify, that difficulty does not render the RSL a taking. As the Court said in *Keystone Bituminous Coal Ass'n*, "[t]he Takings Clause has never been read to require the States or the courts to calculate whether a specific individual has suffered burdens under this generic rule in excess of the benefits received." 480 U.S. at 491 n.21. Accordingly, a supposed lack of a reciprocal advantage does not render the RSL a regulatory taking.

III

Finally, the Landlords contend that they have plausibly alleged that the RSL and the 2018 City Council emergency declaration violate the Due Process Clause of the Fourteenth Amendment. Again, we disagree. The Landlords argue that the RSL is not "rationally related" to alleviating the housing shortage, securing housing for low-income residents, addressing rent profiteering, or promoting neighborhood stability. To the contrary, the Landlords say, the law reduces the housing supply, secures housing for the wealthy, increases rent for uncontrolled units, and discriminates in favor of tenants over owners. Supporting their view, the Landlords, as we have seen, point to various economists who argue that the RSL, in several respects, causes more harm than good.

But as the Supreme Court has noted, the Due Process Clause cannot "do the work of the Takings Clause" because "where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 720–21 (2010) (cleaned up); *see Albright v. Oliver*, 510 U.S. 266, 273 (1994); *Harmon*, 412 F. App'x at 423. In any event, as the Court has noted, the liberties protected by due process "do not include economic liberties." *Stop the Beach*, 560 U.S. at 721.

Furthermore, even if a due process challenge were available, Appellants' arguments would still fail. In evaluating a due process challenge, we would conduct a rational-basis review, *see Pennell*, 485 U.S. at 11–12, which requires a law to be "rationally related to legitimate government interests," *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997). A rational basis review is not a mechanism for judges to second guess legislative judgment even when, as here, they may conflict in part with the opinions of some experts. *See, e.g.*, *F.C.C. v. Breach Communications, Inc.*, 508 U.S. 307, 313–14 (1993) ("Where there are plausible reasons for Congress' action, our inquiry is at an end.") (internal quotation marks omitted). Rather, it is a deferential standard that allows a law to survive if *any* of its justifications is valid. *See Preseault v. I.C.C.*, 494 U.S. 1, 18 (1990). Here, the RSL was primarily enacted to permit low- and moderate-income people to reside in New York City when they otherwise could not afford to do so. *See* N.Y.C. Admin. Code § 26-501. It is beyond dispute that neighborhood continuity and stability are valid bases

for enacting a law. *See Nordlinger v. Hahn*, 505 U.S. 1, 12 (1992). Appellants' Due Process challenge thus fails.

CONCLUSION

For these reasons, we AFFIRM the judgment of the District Court.

APPENDIX G

Relevant Statutory and Regulatory Provisions

McKinney's Consolidated Laws of
New York Annotated
Unconsolidated Laws (Refs & Annos)
Title 23. Rent Control
Chapter 4. Local Emergency Housing Rent Control
(Refs & Annos)

McK.Unconsol.Laws § 8601

§ 8601. Short title

Currentness

This section[1] shall be known and may be cited as the "local emergency housing rent control act".

[1] Section 1 of L.1962, c. 21; containing subdivisions set out herein as McK. Unconsol. Laws § 8601 et seq.

McKinney's Consolidated Laws of New York Annotated
Unconsolidated Laws (Refs & Annos)
Title 23. Rent Control
Chapter 4. Local Emergency Housing Rent Control (Refs & Annos)

McK.Unconsol.Laws § 8602

§ 8602. Legislative finding

Currentness

The legislature hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons in the state of New York which emergency was created by war, the effects of war and the aftermath of hostilities; that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents; that there continues to exist an acute shortage of dwellings; that unless residential rents and evictions continue to be regulated and controlled, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare; that to prevent such perils to health, safety and welfare, preventive action by the legislature continues to be imperative; that such action is necessary in order to prevent exactions of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health; that in order to prevent uncertainty, hardship and dislocation, the provisions of this section[1] are

[1] Section 1 of L.1962, c. 21; containing subdivisions set out herein as McK. Unconsol. Laws § 8601 et seq.

necessary and designed to protect the public health, safety and general welfare, that the transition from regulation to a normal market of free bargaining between landlord and tenant, while still the objective of state policy, must be administered with due regard for such emergency; and that the policy herein expressed should now be administered locally within cities having a population of one million or more by an agency of the city itself.

McKinney's Consolidated Laws of New York Annotated
Unconsolidated Laws (Refs & Annos)
Title 23. Rent Control
Chapter 4. Local Emergency Housing Rent Control (Refs & Annos)

McK.Unconsol.Laws § 8603

§ 8603. Local determination as to continuation of emergency

Effective: November 8, 2021 to January 1, 2040

Currentness

<[Eff. until Dec. 31, 2023, pursuant to L.2021, c. 597, § 2. See, also, § 8603, eff. Dec. 31, 2023.]>

The continuation, after May thirty-first, nineteen hundred sixty-seven, of the public emergency requiring the regulation and control of residential rents and evictions within cities having a population of one million or more shall be a matter for local determination within each such city. Any such determination shall be made by the local legislative body of such city on or before April first, nineteen hundred sixty-seven and at least once in every third year thereafter following a survey which the city shall cause to be made of the supply of housing accommodations within such city, the condition of such accommodations and the need for continuing the regulation and control of residential rents and evictions within such city, provided, however, that when the date by which such determination shall be made falls in a calendar year immediately following a calendar year during which a federal decennial census is conducted, such date shall be postponed by one year, and provided, further, that to ensure sufficient time to complete such survey in

the context of the COVID-19 pandemic, the date by which such determination shall be made by the local legislative body in calendar year 2022 shall be postponed until July 1, 2022. Such survey shall be submitted to such legislative body not less than thirty nor more than sixty days prior to the date of any such determination.

McKinney's Consolidated Laws of New York
Annotated
Unconsolidated Laws (Refs & Annos)
Title 23. Rent Control
Chapter 4. Local Emergency Housing Rent Control
(Refs & Annos)

McK.Unconsol.Laws § 8604

§ 8604. Establishment of city housing rent agency

Currentness

On or before April first, nineteen hundred sixty-two, the mayor of each city having a population of one million or more shall establish or designate an official, bureau, board, commission or agency of such city (referred to in this section as the "city housing rent agency") to administer the regulation and control of residential rents and evictions within such city unless such city, acting through its local legislative body, shall have enacted, prior to April first, nineteen hundred sixty-two, a local law or ordinance pursuant to subdivision five of this section,[1] prescribing a different method of establishing or designating a city housing rent agency and in such case such agency shall be established or designated in accordance with said local law or ordinance.

[1] McK. Unconsol. Laws § 8605.

McKinney's Consolidated Laws of New York
Annotated
Unconsolidated Laws (Refs & Annos)
Title 23. Rent Control
Chapter 4. Local Emergency Housing Rent Control
(Refs & Annos)

McK.Unconsol.Laws § 8605

§ 8605. Authority for local rent control legislation

Effective: June 14, 2019

Currentness

Each city having a population of one million or more, acting through its local legislative body, may adopt and amend local laws or ordinances in respect of the establishment or designation of a city housing rent agency. When it deems such action to be desirable or necessitated by local conditions in order to carry out the purposes of this section,[1] such city, except as hereinafter provided, acting through its local legislative body and not otherwise, may adopt and amend local laws or ordinances in respect of the regulation and control of residential rents, including but not limited to provision for the establishment and adjustment of maximum rents, the classification of housing accommodations, the regulation of evictions, and the enforcement of such local laws or ordinances. The validity of any such local laws or ordinances, and the rules or regulations promulgated in accordance therewith, shall not be affected by and need not be consistent with the state emergency housing rent control law[2] or with

[1] McK. Unconsol. Laws § 8601 et seq.

[2] McK. Unconsol. Laws § 8581 et seq.

rules and regulations of the state division of housing and community renewal.[3]

Notwithstanding any local law or ordinance, housing accommodations which became vacant on or after July first, nineteen hundred seventy-one or which hereafter become vacant shall be subject to the provisions of the emergency tenant protection act of nineteen seventy-four,[4] provided, however, that this provision shall not apply or become effective with respect to housing accommodations which, by local law or ordinance, are made directly subject to regulation and control by a city housing rent agency and such agency determines or finds that the housing accommodations became vacant because the landlord or any person acting on his behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including but not limited to, interruption or discontinuance of essential services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his use or occupancy of the housing accommodations. The removal of any housing accommodation from regulation and control of rents pursuant to the vacancy exemption provided for in this paragraph shall not constitute or operate as a ground for the subjection to more stringent regulation and control of any housing accommodation in such property or in any other property owned by the same landlord, notwithstanding any prior agreement to the contrary by the landlord. The vacancy exemption provided for in this paragraph shall not arise with respect to any rented plot or parcel of land

[3] 9 NYCRR Subtitle S, Chapter VII, Subchapters B and D, set out following McK. Unconsol. Laws § 8597.

[4] McK. Unconsol. Laws § 8621 et seq.

otherwise subject to the provisions of this act,[5] by reason of a transfer of title and possession occurring on or after July first, nineteen hundred seventy-one of a dwelling located on such plot or parcel and owned by the tenant where such transfer of title and possession is made to a member of the tenant's immediate family provided that the member of the tenant's immediate family occupies the dwelling with the tenant prior to the transfer of title and possession for a continuous period of two years.

The term "immediate family" shall include a husband, wife, son, daughter, stepson, stepdaughter, father, mother, father-in-law or mother-in-law.

Notwithstanding the foregoing, no local law or ordinance shall hereafter provide for the regulation and control of residential rents and eviction in respect of any housing accommodations which are (1) presently exempt from such regulation and control or (2) hereafter decontrolled either by operation of law or by a city housing rent agency, by order or otherwise. No housing accommodations presently subject to regulation and control pursuant to local laws or ordinances adopted or amended under authority of this subdivision[6] shall hereafter be by local law or ordinance or by rule or regulation which has not been theretofore approved by the state commissioner of housing and community renewal subjected to more stringent or restrictive provisions of regulation and control than those presently in effect.

Notwithstanding any other provision of law, on and after the effective date of this paragraph, a city having

[5] L.1962, c. 21.

[6] This section.

a population of one million or more shall not, either through its local legislative body or otherwise, adopt or amend local laws or ordinances with respect to the regulation and control of residential rents and eviction, including but not limited to provision for the establishment and adjustment of rents, the classification of housing accommodations, the regulation of evictions, and the enforcement of such local laws or ordinances, or otherwise adopt laws or ordinances pursuant to the provisions of this act,[5] the emergency tenant protection act of nineteen seventy-four,[4] the New York city rent and rehabilitation law[7] or the New York city rent stabilization law,[8] except to the extent that such city for the purpose of reviewing the continued need for the existing regulation and control of residential rents or to remove a classification of housing accommodation from such regulation and control adopts or amends local laws or ordinances pursuant to subdivision three of section one of this act,[9] section three of the emergency tenant protection act of nineteen seventy-four,[10] section 26-415 of the New York city rent and rehabilitation law,[11] and sections 26-502[12] and 26-520[13] of the New York city rent stabilization law of nineteen hundred sixty-nine.

Notwithstanding the foregoing, no local law or ordinance shall subject to such regulation and control any housing accommodation which is not occupied by the

[7] McK. Unconsol. Laws § 26-401 et seq.

[8] McK. Unconsol. Laws § 26-501 et seq.

[9] McK. Unconsol. Laws § 8603.

[10] McK. Unconsol. Laws § 8623.

[11] McK. Unconsol. Laws § 26-415.

[12] McK. Unconsol. Laws § 26-502.

[13] McK. Unconsol. Laws § 26-520.

tenant in possession as his or her primary residence; provided, however, that such housing accommodation not occupied by the tenant in possession as his or her primary residence shall continue to be subject to regulation and control as provided for herein unless the city housing rent agency issues an order decontrolling such accommodation, which the agency shall do upon application by the landlord whenever it is established by any facts and circumstances which, in the judgment of the agency, may have a bearing upon the question of residence, that the tenant maintains his or her primary residence at some place other than at such housing accommodation. For the purposes of determining primary residency, a tenant who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence.

McKinney's Consolidated Laws of New York Annotated
Unconsolidated Laws (Refs & Annos)
Title 23. Rent Control
Chapter 4. Local Emergency Housing Rent Control (Refs & Annos)

McK.Unconsol.Laws § 8606

§ 8606. Succession of city agency to state rent control functions within city

Currentness

All the functions and powers possessed by and all the obligations and duties of the temporary state housing rent commission and the state rent administrator under the provisions of the state emergency housing rent control law[1] and the rules and regulations of the commission thereunder,[2] insofar as they relate to the regulation and control of residential rents and evictions within a city having a population of one million or more, shall be transferred to the city housing rent agency of such city on May first, nineteen hundred sixty-two, subject to the provisions of any local laws, ordinances, rules or regulations adopted pursuant to this subdivision or subdivision five of this section.[3] On and after such date, and until the adoption of a local law or ordinance in respect of the regulation and control of residential rents within such city pursuant to subdivision five of this section, such city housing rent agency is hereby authorized and empowered, from time to time, to adopt, promulgate, amend or

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[1] McK. Unconsol. Laws § 8581 et seq.

[2] 9 NYCRR Subtitle S, Chapter VII, Subchapters B and D, set out following McK. Unconsol. Laws § 8597.

[3] McK. Unconsol. Laws § 8605.

rescind rules, regulations and orders under the state emergency housing rent control law and the validity of such rules, regulations and orders shall not be affected by and need not be consistent with the rules, regulations and orders of the temporary state housing rent commission under such law. All acts, orders, determinations, decisions, rules and regulations of the temporary state housing rent commission relating to the regulation and control of residential rents and eviction within such city which are in force at the time of such transfer shall continue in force and effect as acts, orders, determinations, decisions, rules and regulations of such city housing rent agency until duly modified, superseded or abrogated pursuant to such local laws, ordinances, rules or regulations.

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Chapter 4. Rent Stabilization [eff. Until April 1, 2024, Pursuant to Mck. Unconsol. Laws § 26-520.] (Refs & Annos)

McK.Unconsol.Laws § 26-501

§ 26-501. Findings and declaration of emergency

Currentness

<[Eff. until April 1, 2024, pursuant to McK. Unconsol. Laws § 26-520.]>

The council hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons within the city of New York and will continue to exist after April first, nineteen hundred seventy-four; that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents; that there continues to exist an acute shortage of dwellings which creates a special hardship to persons and families occupying rental housing; that the legislation enacted in nineteen hundred seventy-one by the state of New York, removing controls on housing accommodations as they become vacant, has resulted in sharp increases in rent levels in many instances; that the existing and proposed cuts in federal assistance to housing programs threaten a virtual end to the creation of new housing, thus prolonging the present emergency; that unless residential rents and evictions continue to be regulated and controlled, disruptive practices and abnormal conditions will produce serious threats to the public

health, safety and general welfare; that to prevent such perils to health, safety and welfare, preventive action by the council continues to be imperative; that such action is necessary in order to prevent exactions of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare; that the transition from regulation to a normal market of free bargaining between landlord and tenant, while still the objective of state and city policy, must be administered with due regard for such emergency; and that the policy herein expressed is now administered locally within the city of New York by an agency of the city itself, pursuant to the authority conferred by chapter twenty-one of the laws of nineteen hundred sixty-two.

The council further finds that, prior to the adoption of local laws sixteen and fifty-one of nineteen hundred sixty-nine, many owners of housing accommodations in multiple dwellings, not subject to the provisions of the city rent and rehabilitation law[1] enacted pursuant to said enabling authority either because they were constructed after nineteen hundred forty-seven or because they were decontrolled due to monthly rental of two hundred fifty dollars or more or for other reasons, were demanding exorbitant and unconscionable rent increases as a result of the aforesaid emergency, which led to a continuing restriction of available housing as evidenced by the nineteen hundred sixty-eight vacancy survey by the United States bureau of the census; that prior to the enactment of said local laws, such increases were being exacted under stress

[1] McK. Unconsol. Laws § 26-401 et seq.

of prevailing conditions of inflation and of an acute housing shortage resulting from a sharp decline in private residential construction brought about by a combination of local and national factors; that such increases and demands were causing severe hardship to tenants of such accommodations and were uprooting long-time city residents from their communities; that recent studies establish that the acute housing shortage continues to exist; that there has been a further decline in private residential construction due to existing and proposed cuts in federal assistance to housing programs; that unless such accommodations are subjected to reasonable rent and eviction limitations, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare; and that such conditions constitute a grave emergency.

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McK.Unconsol.Laws § 26-504

§ 26-504. Application

Effective: August 30, 2010

Currentness

<[Eff. until April 1, 2024, pursuant to McK. Unconsol. Laws § 26-520.]>

This law shall apply to:

a. Class A multiple dwellings not owned as a cooperative or as a condominium, except as provided in section three hundred fifty-two-eeee of the general business law, containing six or more dwelling units which:

(1) were completed after February first, nineteen hundred forty-seven, except dwelling units (a) owned or leased by, or financed by loans from, a public agency or public benefit corporation, (b) subject to rent regulation under the private housing finance law or any other state law, (c) aided by government insurance under any provision of the national housing act,[1] to the extent this chapter[2] or any regulation or order issued thereunder is inconsistent therewith,

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[1] 12 USCA § 1701 et seq.

[2] Chapter 4 of Title 26 of the Administrative Code of the City of New York.

or (d) located in a building for which a certificate of occupancy is obtained after March tenth, nineteen hundred sixty-nine; or (e) any class A multiple dwelling which on June first, nineteen hundred sixty-eight was and still is commonly regarded as a hotel, transient hotel or residential hotel, and which customarily provides hotel service such as maid service, furnishing and laundering of linen, telephone and bell boy service, secretarial or desk service and use and upkeep of furniture and fixtures, or (f) not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction, provided, however that no action or proceeding shall be commenced seeking to recover possession on the ground that a housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given thirty days notice to the tenant of his or her intention to commence such action or proceeding on such grounds. For the purposes of determining primary residency, a tenant who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence. For the purposes of this subparagraph where a housing accommodation is rented to a not-for-profit hospital for residential use, affiliated subtenants authorized to use such accommodations by such hospital shall be deemed to be tenants, or (g) became vacant on or after June thirtieth, nineteen hundred seventy-one, or become vacant, provided however, that this exemption shall not apply or become effective with respect to housing accommodations

which the commissioner determines or finds became vacant because the landlord or any person acting on his or her behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including but not limited to, interruption or discontinuance of essential services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his or her use or occupancy of the housing accommodations and provided further that any housing accommodations exempted by this paragraph shall be subject to this law to the extent provided in subdivision b of this section; or (2) were decontrolled by the city rent agency pursuant to section 26-414 of this title; or (3) are exempt from control by virtue of item one, two, six or seven of subparagraph (i) of paragraph two of subdivision e of section 26-403 of this title;[3] and

b. Other housing accommodations in class A or class B multiple dwellings made subject to this law pursuant to the emergency tenant protection act of nineteen seventy-four.[4]

c. Dwelling units in a building or structure receiving the benefits of section 11-243 or section 11-244 of the code or article eighteen of the private housing finance law, not owned as a cooperative or as a condominium, except as provided in section three hundred fifty-two-eeee of the general business law and not subject to chapter three of this title.[5] Upon the expiration or termination for any reason of the benefits of section

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[3] Title 26 of the Administrative Code of the City of New York.

[4] McK. Unconsol. Laws § 8621 et seq.

[5] Chapter 3 of Title 26 of the Administrative Code of the City of New York.

11-243 or section 11-244 of the code or article eighteen of the private housing finance law any such dwelling unit shall be subject to this chapter until the occurrence of the first vacancy of such unit after such benefits are no longer being received or if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefit period has included a notice in at least twelve point type informing such tenant that the unit shall become subject to deregulation upon the expiration of such tax benefit period and states the approximate date on which such tax benefit period is scheduled to expire, such dwelling unit shall be deregulated as of the end of the tax benefit period; provided, however, that if such dwelling unit would have been subject to this chapter[2] or the emergency tenant protection act of nineteen seventy-four[4] in the absence of this subdivision, such dwelling unit shall, upon the expiration of such benefits, continue to be subject to this chapter or the emergency tenant protection act of nineteen seventy-four to the same extent and in the same manner as if this subdivision had never applied thereto.

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McK.Unconsol.Laws § 26-510

§ 26-510. Rent guidelines board

Effective: June 14, 2019

Currentness

<[Eff. until April 1, 2024, pursuant to McK. Unconsol. Laws § 26-520.]>

a. There shall be a rent guidelines board to consist of nine members, appointed by the mayor. Two members shall be representative of tenants, two shall be representative of owners of property, and five shall be public members each of whom shall have had at least five years experience in either finance, economics or housing. One public member shall be designated by the mayor to serve as chairman and shall hold no other public office. No member, officer or employee of any municipal rent regulation agency or the state division of housing and community renewal and no person who owns or manages real estate covered by this law or who is an officer of any owner or tenant organization shall serve on a rent guidelines board. One public member, one member representative of tenants and one member representative of owners shall serve for a term ending two years from January first next succeeding the date of their appointment; one public member, one member representative of tenants and

one member representative of owners shall serve for terms ending three years from the January first next succeeding the date of their appointment and two public members shall serve for terms ending four years from January first next succeeding the dates of their appointment. The chairman shall serve at the pleasure of the mayor. Thereafter, all members shall continue in office until their successors have been appointed and qualified. The mayor shall fill any vacancy which may occur by reason of death, resignation or otherwise in a manner consistent with the original appointment. A member may be removed by the mayor for cause, but not without an opportunity to be heard in person or by counsel, in his or her defense, upon not less than ten days notice.

b. The rent guidelines board shall establish annual guidelines for rent adjustments, and in determining whether rents for housing accommodations subject to the emergency tenant protection act of nineteen seventy-four[1] or this law shall be adjusted shall consider, among other things (1) the economic condition of the residential real estate industry in the affected area including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) overall supply of housing accommodations and over-all vacancy rates, (2) relevant data from the current and projected cost of living indices for the affected area, (3) such other data as may be made available to it. Not later than July first of each year, the rent guidelines board shall file with the city clerk its findings for the

[1] McK. Unconsol. Laws § 8261 et seq., post.

preceding calendar year, and shall accompany such findings with a statement of the maximum rate or rates of rent adjustment, if any, for one or more classes of accommodations subject to this law, authorized for leases or other rental agreements commencing on the next succeeding October first or within the twelve months thereafter. Such findings and statement shall be published in the City Record. The rent guidelines board shall not establish annual guidelines for rent adjustments based on the current rental cost of a unit or on the amount of time that has elapsed since another rent increase was authorized pursuant to this title.

c. Such members shall be compensated on a per diem basis of one hundred dollars per day for no more than twenty-five days a year except that the chairman shall be compensated at one hundred twenty-five dollars a day for no more than fifty days a year. The chairman shall be chief administrative officer of the rent guidelines board and among his or her powers and duties he or she shall have the authority to employ, assign and supervise the employees of the rent guidelines board and enter into contracts for consultant services. The department of housing preservation and development shall cooperate with the rent guidelines board and may assign personnel and perform such services in connection with the duties of the rent guidelines board as may reasonably be required by the chairman.

d. Any housing accommodation covered by this law owned by a member in good standing of an association registered with the department of housing preservation and development pursuant to section 26-511 of this chapter[2] which becomes vacant for any reason,

[2] Chapter 4 of Title 26 of the Administrative Code of the City of New York.

other than harassment of the prior tenant, may be offered for rental at any price notwithstanding any guideline level established by the guidelines board for renewal leases, provided the offering price does not exceed the rental then authorized by the guidelines board for such dwelling unit plus five percent for a new lease not exceeding two years and a further five percent for a new lease having a minimum term of three years, until July first, nineteen hundred seventy, at which time the guidelines board shall determine what the rental for a vacancy shall be.

e. With respect to hotel dwelling units, covered by this law pursuant to section 26-506 of this chapter, the council, after receipt of a study from the rent guidelines board, shall establish a guideline for rent increases, irrespective of the limitations on amount of increase in subdivision d hereof, which guideline shall apply only to permanent tenants. A permanent tenant is an individual or family who at any time since May thirty-first, nineteen hundred sixty-eight, or hereafter, has continuously resided in the same hotel as a principal residence for a period of at least six months. On January first, nineteen hundred seventy-one and once annually each succeeding year the rent guidelines board shall cause a review to be made of the levels of fair rent increases provided under this subdivision and may establish different levels of fair rent increases for hotel dwelling units renting within different rental ranges based upon the board's consideration of conditions in the market for hotel accommodations and the economics of hotel real estate. Any hotel dwelling unit which is voluntarily vacated by the tenant thereof may be offered for rental at the guideline level for vacancies established by the rent guidelines board. If a hotel dwelling unit becomes vacant because the prior tenant was evicted therefrom,

there shall be no increase in the rental thereof except for such increases in rental that the prior tenant would have had to pay had he or she continued in occupancy.

g.[3] From September twenty-fifth, nineteen hundred sixty-nine until the rate of permissible increase is established by the council pursuant to subdivision e of this section, there shall not be collected from any permanent hotel tenant any rent increase in excess of ten percent over the rent payable for his or her dwelling unit on May thirty-first, nineteen hundred sixty-eight, except for hardship increases authorized by the conciliation and appeals board. Any owner who collects or permits any rent to be collected in excess of the amount authorized by this subdivision shall not be eligible to be a member in good standing of a hotel industry stabilization association.

h. The rent guidelines board prior to the annual adjustment of the level of fair rents provided for under subdivision b of this section for dwelling units and hotel dwelling units covered by this law, shall hold a public hearing or hearings for the purpose of collecting information relating to all factors set forth in subdivision b of this section. Notice of the date, time, location and summary of subject matter for the public hearing or hearings shall be published in the City Record daily for a period of not less than eight days and at least once in one or more newspapers of general circulation at least eight days immediately preceding each hearing date, at the expense of the city of New York, and the hearing shall be open for testimony from any individual, group, association or representative thereof who wants to testify.

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[3] No par. f has been enacted.

i. Maximum rates of rent adjustment shall not be established more than once annually for any housing accommodation within the board's jurisdiction. Once established, no such rate shall, within the one-year period, be adjusted by any surcharge, supplementary adjustment or other modification.

j. Notwithstanding any other provision of this law, the adjustment for vacancy leases covered by the provisions of this law shall be determined exclusively pursuant to this section. The rent guidelines board shall no longer promulgate adjustments for vacancy leases unless otherwise authorized by this chapter.

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McK.Unconsol.Laws § 26-511

§ 26-511. Real estate industry stabilization association

Effective: June 14, 2019

Currentness

<[Eff. until April 1, 2024, pursuant to McK. Unconsol. Laws § 26-520.]>

a. The real estate industry stabilization association registered with the department of housing preservation and development is hereby divested of all its powers and authority under this law.

b. The stabilization code[1] heretofore promulgated by such association, as approved by the department of housing preservation and development, is hereby continued to the extent that it is not inconsistent with law. Such code may be amended from time to time, provided, however, that no such amendments shall be promulgated except by action of the commissioner of the division of housing and community renewal and provided further, that prior to the adoption of any such amendments, the commissioner shall (i) submit the proposed amendments to the commissioner of the department of housing preservation and development and allow such commissioner thirty days to make com-

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[1] See now 9 NYCRR Part 2520 et seq., post.

ments or recommendations on the proposed amendments, (ii) review the comments or recommendations, if any, made pursuant to clause (i) of this subdivision and make any revisions to the proposed amendments which the commissioner of the division of housing and community renewal deems appropriate provided that any such review and revision shall be completed within thirty days of receipt of such comments or recommendations and (iii) thereafter hold a public hearing on the proposed amendments. No provision of such code shall impair or diminish any right or remedy granted to any party by this law or any other provision of law.

c. A code shall not be adopted hereunder unless it appears to the division of housing and community renewal that such code

(1) provides safeguards against unreasonably high rent increases and, in general, protects tenants and the public interest, and does not impose any industry wide schedule of rents or minimum rentals;

(2) requires owners not to exceed the level of lawful rents as provided by this law;

(3) provides for a cash refund or a credit, to be applied against future rent, in the amount of any rent overcharge collected by an owner and any penalties, costs, attorneys' fees and interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules for which the owner is assessed;

(4) includes provisions requiring owners to grant a one or two year vacancy or renewal lease at the option of the tenant except where a mortgage or mortgage commitment existing as of April first,

nineteen hundred sixty-nine, provides that the mortgagor shall not grant a one year lease;

(5) includes guidelines with respect to such additional rent and related matters as, for example, security deposits, advance rental payments, the use of escalator clauses in leases and provision for increase in rentals for garages and other ancillary facilities, so as to insure that the level of fair rent increase established under this law will not be subverted and made ineffective, provided further that notwithstanding any inconsistent provision of law, rule, regulation, contract, agreement, lease or other obligation, no owner, in addition to the authorized collection of rent, shall demand, receive or retain a security deposit or advance payment which exceeds the rent of one month for or in connection with the use or occupancy of a housing accommodation by (a) any tenant who is sixty-five years of age or older or (b) any tenant who is receiving disability retirement benefit or supplemental security income pursuant to the federal social security act[2] for any lease or lease renewal entered into after July 1, 2002;

(5-a) Repealed by L.2019, c. 36, pt. B, § 1, eff. June 14, 2019.

(6) provides criteria whereby the commissioner may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide (a) as to hardship applications, for a finding that the level of fair rent increase is not sufficient to enable the owner to maintain approximately the same average annual net income (which

[2] 42 USCA § 301 et seq.

shall be computed without regard to debt service, financing costs or management fees) for the three year period ending on or within six months of the date of an application pursuant to such criteria as compared with annual net income, which prevailed on the average over the period nineteen hundred sixty-eight through nineteen hundred seventy, or for the first three years of operation if the building was completed since nineteen hundred sixty-eight or for the first three fiscal years after a transfer of title to a new owner provided the new owner can establish to the satisfaction of the commissioner that he or she acquired title to the building as a result of a bona fide sale of the entire building and that the new owner is unable to obtain requisite records for the fiscal years nineteen hundred sixty-eight through nineteen hundred seventy despite diligent efforts to obtain same from predecessors in title and further provided that the new owner can provide financial data covering a minimum of six years under his or her continuous and uninterrupted operation of the building to meet the three year to three year comparative test periods herein provided; and (b) as to completed buildingwide major capital improvements, for a finding that such improvements are deemed depreciable under the Internal Revenue Code and that the cost is to be amortized over a twelve-year period for a building with thirty-five or fewer housing accommodations, or a twelve and one-half-year period for a building with more than thirty-five housing accommodations, for any determination issued by the division of housing and community renewal after the effective date of the the chapter of the laws of two thousand nineteen that amended this paragraph and shall be removed from the legal regulated rent thirty years from the

date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Where an application for a temporary major capital improvement increase has been filed, a tenant shall have sixty days from the date of mailing of a notice of a proceeding in which to answer or reply. The state division of housing and community renewal shall provide any responding tenant with the reasons for the division's approval or denial of such application. Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved or based upon cash purchase price exclusive of

interest or service charges. Notwithstanding anything to the contrary contained herein, no hardship increase granted pursuant to this paragraph shall, when added to the annual gross rents, as determined by the commissioner, exceed the sum of, (i) the annual operating expenses, (ii) an allowance for management services as determined by the commissioner, (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund which is operated under the supervision of the banking or insurance laws of the state of New York or the United States, and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for the purposes of this paragraph shall be six times the annual gross rent. The collection of any increase in the stabilized rent for any apartment pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the stabilized rent as established or set in future years;

(6-a) provides criteria whereby as an alternative to the hardship application provided under paragraph six of this subdivision owners of buildings acquired by the same owner or a related entity owned by the same principals three years prior to the date of application may apply to the division for increases in excess of the level of applicable guideline increases established under this law based on a

finding by the commissioner that such guideline increases are not sufficient to enable the owner to maintain an annual gross rent income for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such gross rent. For the purposes of this paragraph, operating expenses shall consist of the actual, reasonable, costs of fuel, labor, utilities, taxes, other than income or corporate franchise taxes, fees, permits, necessary contracted services and non-capital repairs, insurance, parts and supplies, management fees and other administrative costs and mortgage interest. For the purposes of this paragraph, mortgage interest shall be deemed to mean interest on a bona fide mortgage including an allocable portion of charges related thereto. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include; condition of the property, location of the property, the existing mortgage market at the time the mortgage is placed, the term of the mortgage, the amortization rate, the principal amount of the mortgage, security and other terms and conditions of the mortgage. The commissioner shall set a rental value for any unit occupied by the owner or a person related to the owner or unoccupied at the owner's choice for more than one month at the last regulated rent plus the minimum number of guidelines increases or, if no such regulated rent existed or is known, the commissioner shall impute a rent consistent with other rents in the building. The amount of hardship increase shall be such as may be required to maintain the annual gross rent income as provided by this paragraph. The division shall not grant a hardship application under this paragraph or paragraph six of this subdivision for a period of

three years subsequent to granting a hardship application under the provisions of this paragraph. The collection of any increase in the rent for any housing accommodation pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. No application shall be approved unless the owner's equity in such building exceeds five percent of: (i) the arms length purchase price of the property; (ii) the cost of any capital improvements for which the owner has not collected a surcharge; (iii) any repayment of principal of any mortgage or loan used to finance the purchase of the property or any capital improvements for which the owner has not collected a surcharge and (iv) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner. For the purposes of this paragraph, owner's equity shall mean the sum of (i) the purchase price of the property less the principal of any mortgage or loan used to finance the purchase of the property, (ii) the cost of any capital improvement for which the owner has not collected a surcharge less the principal of any mortgage or loan used to finance said improvement, (iii) any repayment of the principal of any mortgage or loan used to finance the purchase of the property or any capital improvement for which the owner has not collected a surcharge, and (iv) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner.

(7) establishes a fair and consistent formula for allocation of rental adjustment to be made upon granting of an increase by the commissioner;

(8) requires owners to maintain all services furnished by them on May thirty-first, nineteen hundred sixty-eight, or as otherwise provided by law, in connection with the leasing of the dwelling units covered by this law;

(9) provides that an owner shall not refuse to renew a lease except:

(a) where he or she intends in good faith to demolish the building and has obtained a permit therefor from the department of buildings; or

(b) where he or she seeks to recover possession of one dwelling unit because of immediate and compelling necessity for his or her own personal use and occupancy as his or her primary residence or for the use and occupancy of a member of his or her immediate family as his or her primary residence, provided however, that this subparagraph shall permit recovery of only one dwelling unit and shall not apply where a tenant or the spouse of a tenant lawfully occupying the dwelling unit is sixty-two years of age or older, has been a tenant in a dwelling unit in that building for fifteen years or more, or has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment, unless such owner offers to provide and if requested, provides an equivalent or superior

housing accommodation at the same or lower stabilized rent in a closely proximate area. The provisions of this subparagraph shall only permit one of the individual owners of any building to recover possession of one dwelling unit for his or her own personal use and/or for that of his or her immediate family. A dwelling unit recovered by an owner pursuant to this subparagraph shall not for a period of three years be rented, leased, subleased or assigned to any person other than a person for whose benefit recovery of the dwelling unit is permitted pursuant to this subparagraph or to the tenant in occupancy at the time of recovery under the same terms as the original lease; provided, however, that a tenant required to surrender a dwelling unit under this subparagraph shall have a cause of action in any court of competent jurisdiction for damages, declaratory, and injunctive relief against a landlord or purchaser of the premises who makes a fraudulent statement regarding a proposed use of the housing accommodation. In any action or proceeding brought pursuant to this subparagraph a prevailing tenant shall be entitled to recovery of actual damages, and reasonable attorneys' fees. This subparagraph shall not be deemed to establish or eliminate any claim that the former tenant of the dwelling unit may otherwise have against the owner. Any such rental, lease, sublease or assignment during such period to any other person may be subject to a penalty of a forfeiture of the right to any increases in residential rents in such building for a period of three years; or

(c) where the housing accommodation is owned by a hospital, convent, monastery, asylum, public institution, college, school dormitory or any

institution operated exclusively for charitable or educational purposes on a non¬profit basis and either:

(i) the tenant's initial tenancy commenced after the owner acquired the property and the owner requires the unit in connection with its charitable or educational purposes including, but not limited to, housing for affiliated persons; provided that with respect to any tenant whose right to occupancy commenced prior to July first, nineteen hundred seventy-eight pursuant to a written lease or written rental agreement and who did not receive notice at the time of the execution of the lease that his or her tenancy was subject to non-renewal, the institution shall not have the right to refuse to renew pursuant to this subparagraph; provided further that a tenant who was affiliated with the institution at the commencement of his or her tenancy and whose affiliation terminates during such tenancy shall not have the right to a renewal lease; or

(ii) the owner requires the unit for a non-residential use in connection with its charitable or educational purposes; or

(d) on specified grounds set forth in the code consistent with the purposes of this law; or

(e) where a tenant violates the provisions of paragraph twelve of this subdivision.

(9-a) provides that where an owner has submitted to and the attorney general has accepted for filing an offering plan to convert the building to cooperative or condominium ownership and the owner has presented the offering plan to the tenants in

occupancy, any renewal or vacancy lease may contain a provision that if a building is converted to cooperative or condominium ownership pursuant to an eviction plan, as provided in section three hundred fifty-two-eeee of the general business law, the lease may only be cancelled upon the expiration of three years after the plan has been declared effective, and upon ninety days notice to the tenant that such period has expired or will be expiring.

(10) specifically provides that if an owner fails to comply with any order of the commissioner or is found by the commissioner to have harassed a tenant to obtain vacancy of his or her housing accommodation, he or she shall, in addition to being subject to any other penalties or remedies permitted by law, be barred thereafter from applying for or collecting any further rent increase. The compliance by the owner with the order of the commissioner or the restoration of the tenant subject to harassment to the housing accommodation or compliance with such other remedy as shall be determined by the commissioner to be appropriate shall result in the prospective elimination of such sanctions;

(11) includes provisions which may be peculiarly applicable to hotels including specifically that no owner shall refuse to extend or renew a tenancy for the purpose of preventing a hotel tenant from becoming a permanent tenant; and

(12) permits subletting of units subject to this law pursuant to section two hundred twenty-six-b of the real property law provided that (a) the rental charged to the subtenant does not exceed the stabilized rent plus a ten percent surcharge payable to the tenant if the unit sublet was furnished with the tenant's furniture; (b) the tenant can establish

that at all times he or she has maintained the unit as his or her primary residence and intends to occupy it as such at the expiration of the sublease; (c) an owner may terminate the tenancy of a tenant who sublets or assigns contrary to the terms of this paragraph but no action or proceeding based on the non-primary residence of a tenant may be commenced prior to the expiration date of his or her lease; (d) where an apartment is sublet the prime tenant shall retain the right to a renewal lease and the rights and status of a tenant in occupancy as they relate to conversion to condominium or cooperative ownership; (e) where a tenant violates the provisions of subparagraph (a) of this paragraph the subtenant shall be entitled to damages of three times the overcharge and may also be awarded attorneys fees and interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules; (f) the tenant may not sublet the unit for more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease. The provisions of this subparagraph shall only apply to subleases commencing on and after July first, nineteen hundred eighty-three; (g) for the purposes of this paragraph only, the term of the proposed sublease may extend beyond the term of the tenant's lease. In such event, such sublease shall be subject to the tenant's right to a renewal lease. The subtenant shall have no right to a renewal lease. It shall be unreasonable for an owner to refuse to consent to a sublease solely because such sublease extends beyond the tenant's lease; and (h) notwithstanding the provisions of section two hundred twenty-six-b of the real

property law, a not-for-profit hospital shall have the right to sublet any housing accommodation leased by it to its affiliated personnel without requiring the landlord's consent to any such sublease and without being bound by the provisions of subparagraphs (b), (c) and (f) of this paragraph. Commencing with the effective date of this subparagraph, whenever a not-for-profit hospital executes a renewal lease for a housing accommodation, the legal regulated rent shall be increased by a sum equal to fifteen percent of the previous lease rental for such housing accommodation, hereinafter referred to as a vacancy surcharge, unless the landlord shall have received within the seven year period prior to the commencement date of such renewal lease any vacancy increases or vacancy surcharges allocable to the said housing accommodation. In the event the landlord shall have received any such vacancy increases or vacancy surcharges during such seven year period, the vacancy surcharge shall be reduced by the amount received by any such vacancy increase or vacancy surcharges.

(13) provides that an owner is entitled to a rent increase where there has been a substantial modification or increase of dwelling space, or installation of new equipment or improvements or new furniture or furnishings provided in or to a tenant's housing accommodation, on written informed tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required. The temporary increase in the legal regulated rent for the affected housing accommodation shall be one-one hundred sixty-eighth, in the case of a building with thirty-five or fewer housing accommodations or one-one hundred eightieth in the case of a building with more than thirty-five housing accom-

modations where such increase takes effect on or after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph, of the total actual cost incurred by the landlord in providing such reasonable and verifiable modification or increase in dwelling space, furniture, furnishings, or equipment, including the cost of installation but excluding finance charges and any costs that exceed reasonable costs established by rules and regulations promulgated by the division of housing and community renewal. Such rules and regulations shall include: (i) requirements for work to be done by licensed contractors and prohibit common ownership between the landlord and the contractor or vendor; and (ii) a requirement that the owner resolve within the dwelling space all outstanding hazardous or immediately hazardous violations of the Uniform Fire Prevention and Building Code (Uniform Code), New York City Fire Code, or New York City Building and Housing Maintenance Codes, if applicable. Provided further that an owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. Provided further that the recoverable costs incurred by the landlord, pursuant to this paragraph, shall be limited to an aggregate cost of fifteen thousand dollars that may be expended on no more than three separate individual apartment improvements in a fifteen year period beginning with the first individual apartment improvement on or after June fourteenth, two thousand nineteen. Provided further that increases to the legal regulated rent pursuant to this para-

graph shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board.

(14) where the amount of rent charged to and paid by the tenant is less than the legal regulated rent for the housing accommodation, the amount of rent for such housing accommodation which may be charged upon vacancy thereof, may, at the option of the owner, be based upon such previously established legal regulated rent, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law. For any tenant who is subject to a lease on or after the effective date of a chapter of the laws of two thousand nineteen which amended this paragraph, or is or was entitled to receive a renewal or vacancy lease on or after such date, upon renewal of such lease, the amount of rent for such housing accommodation that may be charged and paid shall be no more than the rent charged to and paid by the tenant prior to that renewal, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law. Provided, however, that for buildings that are subject to this statute by virtue of a regulatory agreement with a local government agency and which buildings receive federal project based rental assistance administered by the United States department of housing and urban development or a state or local section eight administering agency, where the rent set by the federal, state or local governmental agency is less than the legal regulated rent for the housing accommodation, the amount of rent for such housing accommodation which may be charged with the approval of such federal, state or local governmental agency upon

renewal or upon vacancy thereof, may be based upon such previously established legal regulated rent, as adjusted by the most recent applicable guidelines increases and other increases authorized by law; and further provided that such vacancy shall not be caused by the failure of the owner or an agent of the owner, to maintain the housing accommodation in compliance with the warranty of habitability set forth in subdivision one of section two hundred thirty-five-b of the real property law.

d. (1) Each owner subject to the rent stabilization law[3] shall furnish to each tenant signing a new or renewal lease, a rider describing the rights and duties of owners and tenants as provided for under the rent stabilization law of nineteen hundred sixty-nine. Such publication shall conform to the intent of section 5-702 of the general obligations law and shall be attached as an addendum to the lease. Upon the face of each lease, in bold print, shall appear the following: "Attached to this lease are the pertinent rules and regulations governing tenants and landlords' rights under the rent stabilization law of nineteen hundred sixty-nine".

(2) The rider shall be in a form promulgated by the commissioner in larger type than the lease and shall be utilized as provided in paragraph one of this subdivision.

e. Each owner of premises subject to the rent stabilization law shall furnish to each tenant signing a new or renewal lease, a copy of the fully executed new or renewal lease bearing the signatures of owner and tenant and the beginning and ending dates of the lease term, within thirty days from the owner's receipt of the new or renewal lease signed by the tenant.

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[3] This chapter.

Compilation of Codes, Rules and Regulations of the State of New York Title 9. Executive Department Subtitle S. Division of Housing and Community Renewal
Chapter VIII. Rent Stabilization Regulations
Subchapter B. Rent Stabilization Code
Part 2520. Scope (Refs & Annos)

9 NYCRR 2520.6

Section 2520.6. Definitions

Currentness

(a) Housing accommodation. That part of any building or structure, occupied or intended to be occupied by one or more individuals as a residence, home, dwelling unit or apartment, and all services, privileges, furnishings, furniture and facilities supplied in connection with the occupation thereof. The term housing accommodation will also apply to any plot or parcel of land which had been regulated pursuant to the City of Rent Law prior to July 1, 1971, and which became subject to the RSL after June 30, 1974.

(b) Hotel. Any Class A or Class B multiple dwelling which provides all of the services included in the rent as set forth in section 2521.3 of this Title.

(c) Rent. Consideration, charge, fee or other thing of value, including any bonus, benefit or gratuity demanded or received for, or in connection with, the use or occupation of housing accommodations or the transfer of a lease for such housing accommodations. Rent shall not include surcharges authorized pursuant to section 2522.10 of this Title.

(d) Tenant. Any person or persons named on a lease as lessee or lessees, or who is or are a party or parties

to a rental agreement and obligated to pay rent for the use or occupancy of a housing accommodation.

(e) Legal regulated rent. The rent charged on the base date set forth in subdivision (f) of this section, plus any subsequent lawful increases and adjustments.

(f) Base date. For the purpose of proceedings pursuant to sections 2522.3 and 2526.1 of this Title, base dateshall mean the date which is the most recent of:

(1) the date four years prior to the date of the filing of such appeal or complaint;

(2) the date on which the housing accommodation first became subject to the RSL; or

(3) April 1, 1984, for complaints filed on or before March 31, 1988 for housing accommodations for which initial registrations were required to be filed by June 30, 1984, and for which a timely challenge was not filed.

(g) Vacancy lease. The first lease or rental agreement for a housing accommodation that is entered into between an owner and a tenant.

(h) Renewal lease. Any extension of a tenant's lawful occupancy of a housing accommodation pursuant to section 2523.5 of this Title.

(i) Owner. A fee owner, lessor, sublessor, assignee, net lessee, or a proprietary lessee of a housing accommodation in a structure or premises owned by a cooperative corporation or association, or an owner of a condominium unit of the sponsor of such cooperative corporation or association or condominium development, or any other person or entity receiving or entitled to receive rent for the use or occupation of any housing accommodation, or an agent of any of the foregoing, but such agent shall only commence a

proceeding pursuant to section 2524.5 of this Title, in the name of such foregoing principals. Any separate entity that is owned, in whole or in part, by an entity that is considered an owner pursuant to this subdivision, and which provides only utility services shall itself not be considered an owner pursuant to this subdivision. Except as is otherwise provided in sections 2522.3 and 2526.1(f) of this Title, a court-appointed receiver shall be considered an owner pursuant to this subdivision.

(j) Permanent tenant. For housing accommodations located in hotels, an individual or such individual's family members residing with such individual, who have continuously resided in the same building as a principal residence for a period of at least six months. In addition, a hotel occupant who requests a lease of six months or more pursuant to section 2522.5(a)(2) of this Title, or who is in occupancy pursuant to a lease of six months or more shall be a permanent tenant even if actual occupancy is less than six months. Unless otherwise specified, reference in this Code to "tenant" shall include permanent tenant with respect to hotels.

(k) Subtenant or sublessee. Any person lawfully occupying the housing accommodation pursuant to an agreement with the tenant by authority of the lease or by virtue of rights afforded pursuant to section 226-b of the Real Property Law. Such person shall be entitled to all of the benefits of and be subject to all of the obligations of this Code except the right to renew, and the right to purchase upon conversion to cooperative or condominium ownership.

(l) Occupant. Any person occupying a housing accommodation as defined in and pursuant to section 235-f

of the Real Property Law. Such person shall not be considered a tenant for the purposes of this Code.

(m) Hotel occupant. Any person residing in a housing accommodation in a hotel who is not a permanent tenant. Such person shall not be considered a tenant for the purposes of this Code, but shall be entitled to become a permanent tenant as defined in subdivision (j) of this section, upon compliance with the procedure set forth in such subdivision.

(n) Immediate family. A spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the owner.

(o) Family member.

(1) A spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant.

(2) Any other person residing with the tenant or permanent tenant in the housing accommodation as a primary or principal residence, respectively, who can prove emotional and financial commitment, and interdependence between such person and the tenant or permanent tenant. Although no single factor shall be soley determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed, may include, without limitation, such factors as listed below. In no event would evidence of a sexual relationship between such persons be required or considered:

(i) longevity of the relationship;

(ii) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;

(iii) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

(iv) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

(v) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.;

(vi) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

(vii) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;

(viii) engaging in any other pattern of behavior, agreement, or other action which evidences the

intention of creating a long-term, emotionally committed relationship.

(p) Senior citizen. A person who is 62 years of age or older.

(q) Disabled person. Except as provided pursuant to section 2523.5(b)(4) of this Title (Renewal of Lease), a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent such person from engaging in any substantial gainful employment.

(r) Required services.

(1) That space and those services which the owner was maintaining or was required to maintain on the applicable base dates set forth below, and any additional space or services provided or required to be provided thereafter by applicable law. These may include, but are not limited to, the following: repairs, decorating and maintenance, the furnishing of light, heat, hot and cold water, elevator services, janitorial services and removal of refuse.

(2) For housing accommodations located in hotels in addition to the definition set forth in paragraph (1) of this subdivision, required services shall also include the services set forth in section 2521.3 of this Title, and any other services provided, or required to be provided by applicable law on the applicable base dates set forth below, including but not limited to telephone switchboard, bellhop, secretarial, and front desk services.

(3) Ancillary services. That space and those required services not contained within the individual housing accommodation which the owner was providing on the applicable base dates set forth below, and any additional space and services provided or required to be provided thereafter by applicable law. These may include, but are not limited to, garage facilities, laundry facilities, recreational facilities, and security. Such ancillary services are subject to the following provisions:

(i) No owner shall require a tenant or prospective tenant to lease, rent or pay for an ancillary service, other than security, as a condition of renting a housing accommodation.

(ii) Where an ancillary service is provided to a tenant pursuant to a lease or rental agreement separate and apart from the lease or rental agreement for the housing accommodation occupied by the tenant, the tenant shall not be required to renew such lease, or rental agreement, for the ancillary service upon the expiration of such lease or rental agreement.

(iii) Where an ancillary service is provided to a tenant pursuant to a lease or rental agreement for a housing accommodation, whether at a charge separate and apart from the rental of the housing accommodation, or included in the legal regulated rent, the tenant may be required to renew the rental term for the ancillary service upon the renewal of the lease for the housing accommodation. However, where the owner requires a tenant to continue such ancillary service, the owner may not unreasonably withhold consent to the tenant to sublet for the term of each renewal lease, the

space or other facility constituting the ancillary service.

(iv) For housing accommodations located in hotels, where telephone switchboard service is not provided or required to be provided pursuant to paragraph (2) of this subdivision, an owner shall not deny a permanent tenant permission to install a private telephone, provided that such installation shall not cause undue economic hardship to the owner, nor shall an owner cause the removal of a pay telephone from the premises.

(4) The base dates for required services shall be:

(i) for housing accommodations subject to the RSL on June 30, 1974, for building-wide and individual dwelling unit services: May 31, 1968;

(ii) for housing accommodations subject to the RSL pursuant to section 421-a of the Real Property Tax Law, for building-wide and individual dwelling unit services: the date of issuance of the initial Certificate of Occupancy;

(iii) for housing accommodations subject to the RSL on June 30, 1971, and exempted thereafter as a result of a vacancy prior to June 30, 1974, for building-wide services: May 31, 1968; for individual dwelling unit services: May 29, 1974;

(iv) for dwelling units which became subject to the RSL on July 1, 1974, pursuant to section 423 of the Real Property Tax Law, for building-wide and individual unit services: May 29, 1974, except that for housing accommodations in the Riverton Apartments at East 138th Street, Manhattan, which became subject to the RSL on July 1, 1974, pursuant to an initial legal regulated rent date of

June 30, 1973, for building-wide and individual dwelling unit services: June 30, 1973;

(v) for housing accommodations which are subject to this Code solely as a condition of receiving or continuing to receive benefits pursuant to section 11-243 (formerly J51-2.5) or 11-244 (formerly J51-5.0) of the Administrative Code of the City of New York, as amended, for building-wide and individual unit services: January 1, 1976, or the date of the issuance of a Certificate of Reasonable Cost, whichever is later;

(vi) for housing accommodations for which rents are established by governmental agencies pursuant to the PHFL, or which are first made subject to this Code pursuant to the PHFL, the building-wide and individual unit services which were required for approval in connection with the establishment of initial rents pursuant to the PHFL: the effective date of the initial rents;

(vii) for housing accommodations whose rentals were previously regulated under the PHFL or any other State or Federal law, other than the RSL or the City Rent Law: the date such regulation ends;

(viii) for housing accommodations contained in Class B multiple dwelling units, including single room occupancy facilities, rooming houses or rooming units made subject to the ETPA on June 4, 1981, for building-wide and individual dwelling unit services: June 4, 1981;

(ix) for housing accommodations which are first made subject to this Code pursuant to article 7-C of the MDL, for building-wide and individual dwelling unit services: the effective date of the initial rents established by the Loft Board;

(x) for all other housing accommodations not subject to the RSL on June 30, 1974, which become subject to the RSL on or after July 1, 1974 pursuant to the ETPA, for building-wide and individual dwelling unit services: May 29, 1974;

(xi) A service as defined in paragraph (3) of this subdivision for which there is or was a separate charge, shall not be subject to the provisions of this Code where no common ownership between the operator of such service and the owner exists or existed on the applicable base date, or at any time subsequent thereto, and such service is or was provided on the applicable base date and at all times thereafter by an independent contractor pursuant to a contract or agreement with the owner. Where, however, on the applicable base date or at any time subsequent thereto, there is or was a separate charge, and there is or was common ownership, directly or indirectly, between the operator of such service and the owner, or the service was provided by the owner, any increase, other than the charge provided in the initial agreement with a tenant to lease, rent or pay for such service, shall conform to the applicable rent guidelines rate. However, notwithstanding such common ownership, where such service was not provided primarily for the use of tenants in the building or building complex on the applicable base date or at any time subsequent thereto, such increases shall not be subject to any guidelines limitations.

(5) Each housing accommodation must be painted at least once every three years in compliance with title 27 of the Administrative Code of the City of New York (the Housing Maintenance Code). In no

event shall a tenant be required to pay a painting deposit or to contribute to the cost of the painting except to the extent the owner agrees to provide services in connection with the painting which are not required, and the tenant consents in writing to pay therefor. Any painting deposit previously required shall be returned to the tenant on renewal of his or her lease.

(s) Documents. Records, books, accounts, correspondence, memoranda and other documents, and copies, including microphotographic or electronically stored or transmitted copies, of any of the foregoing.

(t) Final order. A final order shall be an order of a rent administrator not appealed to the commissioner within the period authorized pursuant to section 2529.2 of this Title, or an order of the commissioner, unless such order remands the proceeding for further consideration.

(u) Primary residence. Although no single factor shall be solely determinative, evidence which may be considered in determining whether a housing accommodation subject to this Code is occupied as a primary residence shall include, without limitation, such factors as listed below:

(1) specification by an occupant of an address other than such housing accommodation as a place of residence on any tax return, motor vehicle registration, driver's license or other document filed with a public agency;

(2) use by an occupant of an address other than such housing accommodation as a voting address;

(3) occupancy of the housing accommodation for an aggregate of less than 183 days in the most recent

calendar year, except for temporary periods of relocation pursuant to section 2523.5(b)(2) of this Title; and

(4) subletting of the housing accommodation.

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9 NYCRR 2524.1

Section 2524.1. Restrictions on removal of tenant

Currentness

(a) As long as the tenant continues to pay the rent to which the owner is entitled, no tenant shall be denied a renewal lease or be removed from any housing accommodation by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, except on one or more of the grounds specified in this Code.

(b) It shall be unlawful for any person to remove or attempt to remove any tenant from any housing accommodation or to refuse to renew the lease or rental agreement for the use of such housing accommodation, because such tenant has taken, or proposes to take any action authorized or required by the RSL or this Code, or any order of the DHCR.

(c) No tenant of any housing accommodation shall be removed or evicted unless and until such removal or eviction has been authorized by a court of competent jurisdiction on a ground authorized in this Part or under the Real Property Actions and Proceedings Law.

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9 NYCRR 2524.3

Section 2524.3. Proceedings for eviction--wrongful acts of tenant

Currentness

Without the approval of the DHCR, an action or proceeding to recover possession of any housing accommodation may only be commenced after service of the notice required by section 2524.2 of this Part, upon one or more of the following grounds, wherein wrongful acts of the tenant are established as follows:

(a) The tenant is violating a substantial obligation of his or her tenancy other than the obligation to surrender possession of such housing accommodation, and has failed to cure such violation after written notice by the owner that the violations cease within 10 days; or the tenant has willfully violated such an obligation inflicting serious and substantial injury upon the owner within the three-month period immediately prior to the commencement of the proceeding. If the written notice by the owner that the violations cease within 10 days is served by mail, then five additional days, because of service by mail, shall be added, for a total of 15 days, before an action or proceeding to recover possession may be commenced after service of the notice required by section 2524.2 of this Part.

(b) The tenant is committing or permitting a nuisance in such housing accommodation or the building containing such housing accommodation; or is maliciously, or by reason of gross negligence, substantially damaging the housing accommodation; or the tenant engages in a persistent and continuing course of conduct evidencing an unwarrantable, unreasonable or unlawful use of the property to the annoyance, inconvenience, discomfort or damage of others, the primary purpose of which is intended to harass the owner or other tenants or occupants of the same or an adjacent building or structure by interfering substantially with their comfort or safety. The lawful exercise by a tenant of any rights pursuant to any law or regulation relating to occupancy of a housing accommodation, including the RSL or this Code, shall not be deemed an act of harassment or other ground for eviction pursuant to this subdivision.

(c) Occupancy of the housing accommodation by the tenant is illegal because of the requirements of law and the owner is subject to civil or criminal penalties therefor, or such occupancy is in violation of contracts with governmental agencies.

(d) The tenant is using or permitting such housing accommodation to be used for immoral or illegal purpose.

(e) The tenant has unreasonably refused the owner access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or authorized by the DHCR, or for the purpose of inspection or showing the housing accommodation to a prospective purchaser, mortgagee or prospective mortgagee, or other person having a legitimate interest therein; provided, however, that in the latter event such refusal shall not be a ground for removal or

eviction unless the tenant shall have been given at least five days' notice of the inspection or showing, to be arranged at the mutual convenience of the tenant and owner so as to enable the tenant to be present at the inspection or showing, and that such inspection or showing of the housing accommodation is not contrary to the provisions of the tenant's lease or rental agreement. If the notice of inspection or showing is served by mail, then the tenant shall be allowed five additional days to comply, for a total of 10 days because of service by mail, before such tenant's refusal to allow the owner access shall become a ground for removal or eviction.

(f) The tenant has refused, following notice pursuant to section 2523.5 of this Title, to renew an expiring lease in the manner prescribed in such notice at the legal regulated rent authorized under this Code and the RSL, and otherwise upon the same terms and conditions as the expiring lease. This subdivision does not apply to permanent hotel tenants, nor may a proceeding be commenced based on this ground prior to the expiration of the existing lease term.

(g) For housing accommodations in hotels, the tenant has refused, after at least 20 days' written notice, and an additional five days if the written notice is served by mail, to move to a substantially similar housing accommodation in the same building at the same legal regulated rent where there is a rehabilitation as set forth in section 2524.5(a)(3) of this Part, provided:

(1) that the owner has an approved plan to reconstruct, renovate or improve said housing accommodation or the building in which it is located;

(2) that the move is reasonably necessary to permit such reconstruction, renovation or improvement;

(3) that the owner moves the tenant's belongings to the other housing accommodation at the owner's cost and expense; and

(4) that the owner offers the tenant the right of reoccupancy of the reconstructed, renovated or improved housing accommodation at the same legal regulated rent unless such rent is otherwise provided for pursuant to section 2524.5(a)(3) of this Part.

(h) In the event of a sublet, an owner may terminate the tenancy of the tenant if the tenant is found to have violated the provisions of section 2525.6 of this Title.

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9 NYCRR 2524.4

Section 2524.4. Grounds for refusal to renew lease, or in hotels, discontinuing a hotel tenancy, without order of the DHCR

Currentness

The owner shall not be required to offer a renewal lease to a tenant, or in hotels, to continue a hotel tenancy, and may commence an action or proceeding to recover possession in a court of competent jurisdiction, upon the expiration of the existing lease term, if any, after serving the tenant with a notice as required pursuant to section 2524.2 of this Part, only on one or more of the following grounds:

(a) *Occupancy by owner or member of owner's immediate family.*

(1) An owner who seeks to recover possession of a housing accommodation for such owner's personal use and occupancy as his or her primary residence in the City of New York and/or for the use and occupancy of a member of his or her immediate family as his or her primary residence in the City of New York, except that tenants in a noneviction conversion plan pursuant to section 352-eeee of the General Business Law may not be evicted on this

ground on or after the date the conversion plan is declared effective.

(2) The provisions of this subdivision shall not apply where a tenant or the spouse of a tenant lawfully occupying the housing accommodation is a senior citizen or disabled person, as previously defined herein, unless the owner offers to provide and, if requested, provides an equivalent or superior housing accommodation at the same or lower regulated rent in a closely proximate area.

(3) The provisions of this subdivision shall only permit one of the individual owners of any building, whether such ownership is by joint tenancy, tenancy in common, or tenancy by the entirety to recover possession of one or more dwelling units for personal use and occupancy.

(4) No action or proceeding to recover possession pursuant to this subdivision shall be commenced in a court of competent jurisdiction unless the owner shall have served the tenant with a termination notice in accordance with section 2524.2(a), (b) and (c)(3) of this Part.

(5) The failure of the owner to utilize the housing accommodation for the purpose intended after the tenant vacates, or to continue in occupancy for a period of three years, may result in a forfeiture of the right to any increases in the legal regulated rent in the building in which such housing accommodation is contained for a period of three years, unless the owner offers and the tenant accepts reoccupancy of such housing accommodation on the same terms and conditions as existed at the time the tenant vacated, or the owner establishes to the satisfaction of the DHCR that circumstances changed after the

tenant vacated which prevented the owner from utilizing the housing accommodation for the purpose intended, and in such event, the housing accommodation may be rented at the appropriate guidelines without a vacancy allowance. This paragraph shall not eliminate or create any claim that the former tenant of the housing accommodation may or may not have against the owner.

(b) *Recovery by a not-for-profit institution.*

(1) The owner is a hospital, convent, monastery, asylum, public institution, college, school dormitory, or any institution operated exclusively for charitable or educational purposes on a nonprofit basis, and the owner, upon notice to the tenant in accordance with section 2524.2(c)(4) of this Part, requires the housing accommodation for its own use in connection with its charitable or educational purposes, and either:

(i) the tenant's initial tenancy commenced after the owner acquired the property, and the owner requires the housing accommodation in connection with its charitable or educational purposes, including but not limited to housing for affiliated persons; provided that the owner may not refuse to renew the lease of a tenant whose right to occupancy commenced prior to July 1, 1978 pursuant to a written lease or written rental agreement, and who did not receive notice at the time of the execution of the lease that the tenancy was subject to nonrenewal; provided further that a tenant who was affiliated with the owning institution at the commencement of his or her tenancy and whose affiliation terminates during such tenancy shall not have the right to a renewal lease; or

(ii) the owner requires the housing accommodation for a nonresidential use in connection with its charitable or educational purposes.

(2) In addition to such penalty provided in section 2526.2 of this Title, the failure of the owner without good cause to utilize or to continue to use the housing accommodation for the purpose intended after the tenant vacates, and for four years thereafter, shall result in a forfeiture of the right to any increases in the legal regulated rent for the housing accommodation involved for a four-year period following the recovery of the housing accommodation from the tenant.

(3) If an owner who recovers a housing accommodation pursuant to this subdivision, or any successor in interest, within four years after recovery of the housing accommodation from the tenant, utilizes such housing accommodation for purposes other than those permitted hereunder without good cause, then such owner or successor shall be liable to the removed tenant for three times the damages sustained on account of such removal, plus reasonable attorney's fees and costs as determined by a court of competent jurisdiction, provided that such tenant commences an action to recover such damages within three years from the date of recovery of the housing accommodation. The damages sustained by such tenant shall be the difference between the rent paid by such tenant for the recovered housing accommodation, and the rental value of a comparable rent-regulated housing accommodation, plus the reasonable costs of the removal of the tenant's property.

(c) *Primary residence*. The housing accommodation is not occupied by the tenant, not including subtenants

or occupants, as his or her primary residence, as determined by a court of competent jurisdiction; provided, however, that no action or proceeding shall be commenced seeking to recover possession on the ground that the housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given 30 days' notice to the tenant of his or her intention to commence such action or proceeding on such grounds. Such notice may be combined with the notice required by section 2524.2(c)(2) of this Title.

Compilation of Codes, Rules and Regulations of the State of New York
Title 9. Executive Department
Subtitle S. Division of Housing and Community Renewal
Chapter VIII. Rent Stabilization Regulations
Subchapter B. Rent Stabilization Code
Part 2524. Evictions (Refs & Annos)

9 NYCRR 2524.5

Section 2524.5. Grounds for refusal to renew lease or discontinue hotel tenancy and evict which require approval of the DHCR

Currentness

(a) The owner shall not be required to offer a renewal lease to a tenant or continue a hotel tenancy, and shall file on the prescribed form an application with the DHCR for authorization to commence an action or proceeding to recover possession in a court of competent jurisdiction after the expiration of the existing lease term, upon any one of the following grounds:

(1) Withdrawal from the rental market. The owner has established to the satisfaction of the DHCR after a hearing, that he or she seeks in good faith to withdraw any or all housing accommodations from both the housing and nonhousing rental market without any intent to rent or sell all or any part of the land or structure and:

(i) that he or she requires all or part of the housing accommodations or the land for his or her own use in connection with a business which he or she owns and operates; or

(ii) that substantial violations which constitute fire hazards or conditions dangerous or detrimental to the life or health of the tenants have

been filed against the structure containing the housing accommodations by governmental agencies having jurisdiction over such matters, and that the cost of removing such violations would substantially equal or exceed the assessed valuation of the structure.

(2) Demolition.

(i) The owner seeks to demolish the building. Until the owner has submitted proof of its financial ability to complete such undertaking to the DHCR, and plans for the undertaking have been approved by the appropriate city agency, an order approving such application shall not be issued.

(ii) Terms and conditions upon which orders issued pursuant this paragraph authorizing refusal to offer renewal leases may be based:

(*a*) The DHCR shall require an owner to pay all reasonable moving expenses and afford the tenant a reasonable period of time within which to vacate the housing accommodation. If the tenant vacates the housing accommodation on or before the date provided in the DHCR's final order, such tenant shall be entitled to receive all stipend benefits pursuant to clause (b) of this subparagraph. In addition, if the tenant vacates the housing accommodation prior to the required vacate date, the owner may also pay a stipend to the tenant that is larger than the stipend designated in a demolition stipend chart to be issued pursuant to an operational bulletin authorized by section 2527.11 of this Title. However, at no time shall an owner be required to pay a stipend in excess of the stipend set forth in such schedule. If the tenant does not vacate

the housing accommodation on or before the required vacate date, the stipend shall be reduced by one sixth of the total stipend for each month the tenant remains in occupancy after such vacate date.

(*b*) The order granting the owner's demolition application shall provide that the owner must either:

(*1*) relocate the tenant to a suitable housing accommodation, as defined in subparagraph (iii) of this paragraph, at the same or lower legal regulated rent in a closely proximate area, or in a new residential building if constructed on the site, in which case suitable interim housing shall be provided at no additional cost to the tenant; plus in addition to reasonable moving expenses, payment of a $5,000 stipend, provided the tenant vacates on or before the vacate date required by the final order;

(*2*) where an owner provides relocation of the tenant to a suitable housing accommodation at a rent in excess of that for the subject housing accommodation, in addition to the tenant's reasonable moving expenses, the owner may be required to pay the tenant a stipend equal to the difference in rent, at the commencement of the occupancy by the tenant of the new housing accommodation, between the subject housing accommodation and the housing accommodation to which the tenant is relocated, multiplied by 72 months, provided the tenant vacates on or before the vacate date required by the final order; or

(*3*) pay the tenant a stipend which shall be the difference between the tenant's current rent and an amount calculated using the demolition stipend chart, at a set sum per room per month multiplied by the actual number of rooms in the tenant's current housing accommodation, but no less than three rooms. This difference is to be multiplied by 72 months.

(*c*) Wherever a stipend would result in the tenant losing a subsidy or other governmental benefit which is income dependent, the tenant may elect to waive the stipend and have the owner at his or her own expense, relocate the tenant to a suitable housing accommodation at the same or lower legal regulated rent in a closely proximate area.

(*d*) In the event that the tenant dies prior to the issuance by the DHCR of a final order granting the owner's application, the owner shall not be required to pay such stipend to the estate of the deceased tenant.

(*e*) Where the order of the DHCR granting the owner's application is conditioned upon the owner's compliance with specified terms and conditions, if such terms and conditions have not been complied with, the order may be modified or revoked.

(*f*) Noncompliance by the owner with any term or condition of the administrator's or commissioner's order granting the owner's application shall be brought to the attention of the DHCR's compliance unit for appropriate action. The DHCR shall retain jurisdiction for this purpose

until all moving expenses, stipends, and relocation requirements have been met.

(iii) Comparable housing accommodations and relocation. In the event a comparable housing accommodation is offered by the owner, a tenant may file an objection with the DHCR challenging the suitability of a housing accommodation offered by the owner for relocation within 10 days after the owner identifies the housing accommodation and makes it available for the tenant to inspect and consider the suitability thereof. Within 30 days thereafter, the DHCR shall inspect the housing accommodation, on notice to both parties, in order to determine whether the offered housing accommodation is suitable. Such determination will be made by the DHCR as promptly as practicable thereafter. In the event that the DHCR determines that the housing accommodation is not suitable, the tenant shall be offered another housing accommodation, and shall have 10 days after it is made available by the owner for the tenant's inspection to consider its suitability. In the event that the DHCR determines that the housing accommodation is suitable, the tenant shall have 15 days thereafter within which to accept the housing accommodation. A tenant who refuses to accept relocation to any housing accommodation determined by the DHCR to be suitable shall lose the right to relocation by the owner, and to receive payment of moving expenses or any stipend. Suitable housing accommodations shall mean housing accommodations which are similar in size and features to the respective housing accommodations now occupied by the tenants. Such housing accommodations shall be freshly painted before the tenant takes occupancy,

and shall be provided with substantially the same required services and equipment the tenants received in their prior housing accommodations. The building containing such housing accommodations shall be free from violations of law recorded by the city agency having jurisdiction, which constitute fire hazards or conditions dangerous or detrimental to life or health, or which affect the maintenance of required services. The DHCR will consider housing accommodations proposed for relocation which are not presently subject to rent regulation, provided the owner submits a contractual agreement that places the tenant in a substantially similar housing accommodation at no additional rent for a period of six years, unless the tenant requests a shorter lease period in writing.

(3) Other grounds. The owner will eliminate inadequate, unsafe or unsanitary conditions and demolish or rehabilitate the dwelling unit pursuant to the provisions of article VIII, VIII-A, XIV, XV or XVIII of the PHFL, the Housing New York Program Act, or sections 8 and 17 of the U.S. Housing Act of 1937 (National Housing Act), on the condition that the owner:

(i) proves that it has a commitment for the required financing;

(ii) proves that any rehabilitation requires the temporary removal of the tenant; and

(iii) agrees to offer and will offer the tenants the right of first occupancy following any rehabilitation at an initial rent as determined pursuant to the applicable law and subject to any terms and conditions established pursuant to applicable law and regulations.

(b) *Election not to renew*. Once an application is filed under this section, with notification to all affected tenants, the owner may refuse to renew all tenants' leases until a determination of the owner's application is made by the DHCR. For the purposes of paragraph (a)(2) of this section, service of the application at any time shall be considered sufficient compliance with section 2524.2(c)(3) of this Part. If such application is denied, or withdrawn, prospective renewal leases must be offered to all affected tenants within such time and at such guidelines rates as directed in the DHCR order of denial or withdrawal.

(c) *Terms and conditions upon which orders authorizing refusal to offer renewal leases may be based*. Except as otherwise provided in paragraph (a)(2) of this section, the DHCR shall require an owner to pay all reasonable moving expenses and shall further condition the order upon the payment of a reasonable stipend and/or the relocation of the tenant by the owner to a suitable housing accommodation at the same or lower regulated rent in a closely proximate area. If no such housing accommodation is available at the same or lower regulated rent, the owner may be required to pay the difference in rent between the subject housing accommodation and the new housing accommodation to which the tenant is relocated for such period as the DHCR determines, commencing with the occupancy of the new housing accommodation by the tenant.

(d) Any order granting an application pursuant to this section shall not provide for a stay of eviction which exceeds one year. In addition, where the order of the DHCR is conditioned upon the owner's compliance with specified terms and conditions, if such terms and conditions have not been complied with, the order may be modified or revoked.

APPENDIX H

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

No. 19-cv-6447

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74 PINEHURST LLC; 141 WADSWORTH LLC;
177 WADSWORTH LLC; DINO PANAGOULIAS;
DIMOS PANAGOULIAS; VASILIKI PANAGOULIAS;
EIGHTY MULBERRY REALTY CORPORATION,

Plaintiffs,

v.

STATE OF NEW YORK; NEW YORK DIVISION OF
HOUSING AND COMMUNITY RENEWAL; RUTHANNE
VISNAUSKAS, individually and in her official capacity
as Commissioner of New York State Division of
Housing and Community Renewal; CITY OF
NEW YORK; NEW YORK CITY RENT GUIDELINES BOARD;
DAVID REISS, CECELIA JOZA, ALEX SCHWARTZ, GERMAN
TEJEDA, MAY YU, PATTI STONE, J. SCOTT WALSH,
LEAH GOODRIDGE, and SHEILA GARCIA, in their
official capacities as Chair and Members of the
Rent Guidelines Board,

Defendants.

November 14, 2019

COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND
JUST COMPENSATION

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Plaintiffs 74 Pinehurst LLC, 141 Wadsworth LLC, 177 Wadsworth LLC, Dino Panagoulias, Dimos Panagoulias, Vasiliki Panagoulias, and Eighty Mulberry Realty Corporation (collectively, "Plaintiffs") by their undersigned attorneys, bring this civil action for declaratory relief, injunctive relief, and just compensation, and allege as follows:

INTRODUCTION

1. This lawsuit presents facial and as-applied constitutional challenges to New York's Rent Stabilization Law ("RSL"), a collection of intertwined state and local laws that together govern nearly one million apartment units in New York City.

2. On June 14, 2019, New York enacted the Housing Stability and Tenant Protection Act of 2019, which made existing provisions of the RSL permanent and added or modified other features, also on a permanent basis. We refer to the Housing Stability and Tenant Protection Act, together with technical corrections signed into law on June 25, 2019, as the "2019 Amendments."

3. The 2019 Amendments made unprecedented changes to the RSL. Although New York law has authorized varying forms of rent stabilization for more than 50 years, the law has long taken a more balanced approach by seeking to protect tenants while *also* providing incentives for investment in rent-stabilized housing and preserving core attributes of property ownership. The 2019 Amendments upset that balance by imposing unparalleled new restrictions on property owners and depriving them of fundamental property rights. The end result is a regime in which tenants, not property owners, control who occupies the property,

how it is used, and who may be excluded from it. That scheme is unconstitutional.

4. The RSL, both facially and as applied to Plaintiffs, violates Plaintiffs' rights under the Fifth Amendment's Takings Clause by authorizing a permanent physical occupation of the apartments Plaintiffs own, and by effectively eliminating Plaintiffs' ability to use the apartments for any purpose other than rent-stabilized housing. The 2019 Amendments repealed property owners' longstanding right to deregulate rent-stabilized units when the legal rent reached a prescribed level, such that rent-stabilized apartments must now forever remain rent stabilized. Under the RSL, a tenant has the right to renew his or her lease in perpetuity, and to transfer the lease to family members and others—all without the property owner's consent. The RSL likewise prohibits owners from using rent-stabilized apartments for their own homes or other, non-rental purposes in all but the narrowest circumstances—and in many cases, not at all. In the rare instances where the RSL allows alternative use, owners must pay each tenant tens of thousands of dollars (or more) in stipends for the privilege.

5. As one sponsor of the 2019 Amendments explained, the purpose of these restrictions is "to ensure that rent-stabilized apartments remain stabilized." And as New York's highest court recently observed, the RSL "provide[s] a benefit *conferred by* the government through regulation" of "private owners of real property," even though it "do[es] not provide a benefit *paid for* by the government." *Santiago-Monteverde v. Pereira*, 22 N.E.3d 1012, 1016–17 (N.Y. 2014). The RSL thus singles out a class of citizens—owners of residential buildings constructed before 1974—and conscripts their property in the service of an off-budget public-

assistance program, forcing these owners "to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

6. The RSL, both facially and as applied to Plaintiffs, also inflicts a regulatory taking by negating Plaintiffs' reasonable, investment-backed expectations in the apartments they own. Collectively, Plaintiffs invested millions of dollars in those apartments at a time when the RSL did not exist or, at a minimum, provided mechanisms to remove units from rent stabilization, to recover the cost of capital improvements, and to earn a reasonable return on the capital invested. The 2019 Amendments eviscerated these safeguards—for example, by repealing provisions that removed vacant apartments from rent stabilization when the legal regulated rent exceeded $2,774. The 2019 Amendments likewise prohibit owners from recouping more than $15,000 in renovation costs for improvements to individual apartments in a 15-year period, even when the actual cost of the improvements is several times greater, and even when improvements are required to meet state or local code requirements. Together, these provisions radically alter the scope of Plaintiffs' property rights and significantly diminish the value of Plaintiffs' investments—demonstrating that the RSL "has gone too far" and must be invalidated. *Murr v. Wisconsin*, 137 S. Ct. 1933, 1950 (2017).

7. The RSL also violates the Contract Clause of the United States Constitution because it prohibits property owners, including Plaintiff 74 Pinehurst LLC, from enforcing otherwise valid rental contracts. Under the 2019 Amendments, property owners who previously agreed to special, often one-time rent reductions known as "preferential rent," and who later executed contracts

requiring a tenant to pay a higher rate (but still at or below the legal regulated rent), must disregard the new contract and charge the prior preferential rate instead, as adjusted only by the annual guidelines set by the Board. The result is a new, government-mandated relationship that neither party agreed to, and that substantially impairs Plaintiffs' ability to enforce the most important terms of their rental contracts.

8. Finally, the RSL violates the Due Process Clause of the Fourteenth Amendment because its onerous restrictions fail to advance the law's stated purposes. Although the RSL is purportedly designed to increase housing availability, assist low-income renters, and facilitate a transition to an open market for apartment housing, the law undermines each of those objectives. That failure is longstanding and well-documented: the RSL was enacted to address a temporary housing "emergency" a half-century ago, yet lawmakers have renewed and re-declared that emergency countless times since. These repeated renewals are necessary because the RSL's scheme is self-perpetuating: the law relies on low vacancy rates to justify comprehensive restrictions that in turn *keep* vacancy rates below an arbitrarily set five-percent emergency threshold. In short, the RSL creates and perpetuates a permanent "emergency" that is then invoked as the RSL's justification—all without producing any corresponding public benefit. That illogical scheme fails to meet the Due Process Clause's minimum requirement of rationality.

9. The 2019 Amendments do not serve constitutionally permissible purposes, and there is reason to think they were not intended to do so. One of the sponsors of the 2019 Amendments—a self-described Marxist—explained in the course of describing the 2019 Amend-

ments that land "doesn't truly belong to" those that "have the monetary resources to purchase it and, to put it really bluntly, to take it away from . . . the collective." That view is irreconcilable with the Constitution's bedrock protections for private property.

10. Plaintiffs seek declaratory relief, injunctive relief, and just compensation to remedy the RSL's constitutional violations. That relief can, and should, be fashioned to protect the interests of property owners and tenants alike, and that paves the way for New York to adopt a new framework that fully respects contractual rights, private property, and due process of law.

11. Although courts have turned aside some prior challenges to rent regulations, no court has addressed the 2019 Amendments' unprecedented restrictions, which impose what one legislator described as "the strongest tenant protections in history." Courts have not granted governments *carte blanche* to seize property under the guise of rent regulation, and the Constitution provides owners redress where, as here, the government oversteps its authority.

THE PARTIES

12. Plaintiff Dino Panagoulias is a resident of Long Island City, New York. Mr. Panagoulias is the manager of a residential apartment building located in Long Island City, New York. His parents, Plaintiffs Dimos and Vasiliki Panagoulias, are the owners of the building; Mr. Panagoulias has a personal stake in the building's financial success. The building is 89 years old and contains 10 apartments, six of which are stabilized pursuant to the RSL. Mr. Panagoulias grew up living in the building and continues to live there today with his family. As a result, he knows the

tenants—many of whom are longtime renters—well and considers them his extended family. Mr. Panagoulias has a full-time job separate from his duties as building manager, and does handyman work on the building in his spare time. Although Mr. Panagoulias has consistently sought to follow the rules while keeping the building up, his tenants in place, and his rents low, the new restrictions imposed by the 2019 Amendments make it difficult or impossible to achieve those goals.

13. Plaintiffs Dimos and Vasiliki Panagoulias are residents of Pennsylvania. Mr. and Mrs. Panagoulias emigrated from Greece to the United States in 1970 and 1967, respectively. They own the building managed by their son, Plaintiff Dino Panagoulias, described in the paragraph above. Plaintiffs Dimos and Vasiliki Panagoulias have owned this building since 1974.

14. Plaintiff 74 Pinehurst LLC is a limited liability company organized under the laws of New York. Plaintiff 74 Pinehurst LLC owns a residential apartment building in the Washington Heights neighborhood of New York, New York. The building contains 27 residential units, all of which are stabilized pursuant to the RSL. Plaintiff 74 Pinehurst LLC has owned this building since 2008.

15. Plaintiff 141 Wadsworth LLC is a limited liability company organized under the laws of New York. Plaintiff 141 Wadsworth LLC owns a residential apartment building in the Washington Heights neighborhood of New York, New York. The building contains 21 residential units, all of which are stabilized pursuant to the RSL. Plaintiff 141 Wadsworth LLC has owned this building since 2003.

16. Plaintiff 177 Wadsworth LLC is a limited liability company organized under the laws of New

York. Plaintiff 177 Wadsworth LLC owns a residential apartment building in the Washington Heights neighborhood of New York, New York. The building contains 14 residential units, all of which are stabilized pursuant to the RSL. Plaintiff 177 Wadsworth LLC has owned this building since 2007.

17. Plaintiff Eighty Mulberry Realty Corporation is a New York corporation. Plaintiff Eighty Mulberry Realty Corporation owns a residential apartment building in New York, New York. The building contains 33 units, 15 of which are stabilized pursuant to the RSL. Plaintiff Eighty Mulberry Realty Corporation has owned the building since at least 1950.

18. Defendant State of New York is the governmental body on whose behalf the RSL is enacted and enforced.

19. Defendant Division of Housing and Community Renewal ("DHCR") is a New York State agency charged with administering and enforcing the RSL.

20. Defendant RuthAnne Visnauskas is the Commissioner of the DHCR and is sued in her official and individual capacities. As Commissioner of the DHCR, Defendant Visnauskas is responsible for administration and enforcement of the RSL.

21. Defendant New York City is the government entity vested with authority to trigger application of the RSL to apartments in New York City and to establish regulations implementing the RSL's scheme.

22. Defendant New York City Rent Guidelines Board (the "Rent Guidelines Board," or "Board") is the agency required by the RSL to establish annually allowable rent adjustments for renewal leases for apartments subject to the RSL in New York City.

23. Defendant David Reiss is the Chair and Chief Administrative Officer of the Rent Guidelines Board, and is sued in his official capacity.

24. Defendants Cecilia Joza, Alex Schwarz, German Tejeda, May Yu, Patti Stone, J. Scott Walsh, Leah Goodridge, and Shelia Garcia are Members of the Rent Guidelines Board, and are sued in their official capacities.

JURISDICTION AND VENUE

25. This action is brought pursuant to 42 U.S.C. § 1983, *Ex parte Young*, 209 U.S. 123 (1908), the Contract Clause of the United States Constitution, the Takings Clause of the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment, and the Declaratory Judgment Act, 28 U.S.C. § 2201. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a).

26. This Court has personal jurisdiction over each Defendant in New York and in this judicial district because Defendants regularly transact business in this judicial district, and because the claims asserted in this action arise from Defendants' conduct in and actions relating to this judicial district.

27. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this action occurred, and will continue to occur, in this judicial district; because a substantial part of the property that is the subject of this action is situated in this judicial district; and because at least one Defendant resides in this judicial district.

LEGAL AND FACTUAL BACKGROUND

A. History of Rent Regulation in New York

28. Two separate systems of rent regulation apply to apartments in New York City: rent stabilization and rent control. The claims asserted in this suit address only the former regime, which governs nearly one million apartments, and do not challenge New York City's rent-control framework, which governs fewer than 25,000 apartments.

29. As amended and in effect at the time this Complaint is filed, New York's rent-stabilization laws are codified in Title 23 of the Unconsolidated Laws of New York and Title 26 of the New York City Code. Additional regulations issued under the Emergency Tenant Protection Act of 1974 ("ETPA"), as amended, are published in Chapter 249-B of the Unconsolidated Laws of New York and Title 9 of the New York Codes, Rules and Regulations. Parts M and N of the 2019 Amendments amend other New York laws regarding the procedures for evicting tenants who breach their lease agreements (Part M) and converting apartments to condominiums and co-ops (Part N). Throughout the remainder of this Complaint, Plaintiffs refer to these laws collectively as the "Rent Stabilization Law" or the "RSL."

30. Rent regulation in New York traces its roots to the 1920s, when the State adopted emergency housing laws restricting apartment owners to "reasonable" rent increases. In the years that followed, the State took steps to increase the housing supply, including by providing tax incentives for constructing new housing. Those incentives worked, and vacancy rates increased to a point that the State allowed the emergency housing laws to expire by 1929.

31. During and following World War II, the federal government and the State enacted rent regulations to prevent speculation and profiteering in the housing market. The federal laws expired in the 1950s, and the State slowly allowed units to become deregulated.

32. In 1969, New York City appointed the first Rent Guidelines Board to evaluate a self-regulation program proposed by a group representing owners of unregulated apartments. Following the owners' report and review by the Rent Guidelines Board, and pursuant to authority granted by a 1962 state statute, New York City enacted the predecessor to the modern-day RSL. New York City's 1969 law restricted the rents that property owners could charge tenants living in designated apartments. It also established a standing Rent Guidelines Board and charged the Board with establishing guidelines for rent increases within prescribed limitations. The maximum stabilized rents that property owners could charge came to be known as the legal regulated rent.

33. The 1969 law adopted by New York City was a "compromise solution" between rent control and an unregulated market. The law was intended to "permit a great deal of freedom for property owners to increase rents within reasonable limits and thus to enjoy quite profitable operations of their properties." *8200 Realty Corp. v. Lindsay*, 27 N.Y.2d 124, 136–37 (N.Y. 1970).

34. However, Governor Rockefeller explained that the 1969 law caused "all new private housing construction in the City . . . [to] ceas[e]" and that the law was a "major cause" of "fear on the part of investors and builders that new housing may in the future be made subject to rent regulation and control." Report of the New York State Temporary Commission on Rental Housing, Vol. 1 at 1-83 (Mar. 1980). Thus, in 1971, the

State "remov[ed] the City's power to take such action in the future," in part by preventing localities, including New York City, from enacting new rent regulations stricter than those in effect at the time. *See* N.Y. Unconsol. Law § 8605.

35. In 1974, the State enacted ETPA, which the 2019 Amendments modify. ETPA allows localities to declare a housing emergency and impose rent stabilization if vacancy rates are under five percent and additional statutory criteria are met. *See* N.Y. Unconsol. Law § 8623. ETPA further provides that a declaration of emergency must end once vacancy rates exceed five percent.

36. Pursuant to ETPA, the RSL applies to buildings with six or more units that were constructed prior to 1974 and are no longer subject to rent control. *See* 9 NYCRR § 2520.11; N.Y.C. Admin. Code § 26-504(a)(1).

37. Further legislation established incentives for property owners to improve and maintain rent-stabilized apartments, which by definition are situated in older buildings likely to require costly upkeep. This legislation authorized, among other things:

- rent increases of up to 20 percent after a unit became vacant, *see* N.Y.C. Admin. Code § 26-511-c(5-a) (repealed June 14, 2019);
- longevity increases, which allowed property owners, upon vacancy, to increase the rent for units that had been continuously occupied by the prior tenant for eight years, *see id.* (repealed June 14, 2019); and
- rent increases to recover the cost of major capital improvements (MCIs), large-scale projects such as replacement of a roof or boiler that

benefit all tenants in a given building, and individual apartment improvements (IAIs), upgrades to particular units, such as kitchen renovations or flooring replacements, *id.* § 26-511-c(6) (amended June 14, 2019).

38. In 1993, the State enacted "luxury decontrol" provisions that permitted rent-stabilized units to transition to market-rate rentals once the rent exceeded $2,000 per month (later increased to $2,700 per month, with further increases indexed to the Rent Guidelines Board's annual lease-renewal adjustments) and either (a) the unit became vacant or (b) the tenant's income exceeded $250,000 (later decreased to $200,000) in consecutive years. *See, e.g.*, N.Y.C. Admin. Code §§ 26-504.1, 26-504.2, and 26-504.3 (repealed June 14, 2019).

39. Through the interaction of the luxury decontrol provisions and the incentives described in paragraph 37 above, the RSL provided a pathway for rent-stabilized apartments to be deregulated and leased at market rates, in keeping with the RSL's purpose of facilitating a "transition from regulation to a normal market of free bargaining between landlord and tenant." N.Y. Unconsol. Law § 8622.

40. Prior to the 2019 Amendments, the RSL included sunset provisions, which required the State legislature periodically to reevaluate whether and to what extent rent stabilization remains necessary.

41. The RSL permits municipalities to trigger application of rent stabilization by declaring a "public emergency requiring the regulation of residential rents" based on a local vacancy rate of less than five percent. N.Y. Unconsol. Law § 8623(a). This provision directs that the municipality's determination "shall be made . . . on the basis of the supply of housing

accommodations within such city," "the condition of such accommodations," and "the need for regulating and controlling residential rents within such city." A municipality must revisit this determination every three years. *See id.* § 8603.

42. The State legislature provided no basis for its selection of a five-percent vacancy rate as the threshold for imposition of rent stabilization, and likewise has not revisited that threshold since 1974 to determine whether it remains appropriate in light of current market dynamics.

43. Rent stabilization applies in New York City because the City Council has made the required emergency determination every three years since 1974, including most recently in 2018.

44. As of 2017, there were 966,000 rent-stabilized units in New York City, representing about 44 percent of rental apartments in New York City.

45. Even before the 2019 Amendments, rent-stabilization laws were a source of, rather than a solution to, New York City's low vacancy rates. In 2017, for instance, the vacancy rate in non-stabilized apartments was 6.07 percent—above the 5 percent threshold for an emergency—but the vacancy rate in rent-stabilized units was a mere 2.06 percent, leading to a total vacancy rate of 3.63 percent—thus ensuring that the statutory threshold for an emergency remained satisfied. *See* NYC Dept. of Housing Preservation and Development, Selected Initial Findings of the 2017 York City Housing and Vacancy Survey, Table 6 (Feb. 9, 2018).

46. The RSL artificially depresses vacancy rates, including by providing a financial incentive for tenants to remain in a rent-stabilized apartment even when

the apartment is not well-suited to the tenant's housing needs. This incentive structure creates a feedback loop in which low vacancy rates are invoked as a purported justification for regulation that in turn depresses vacancy rates, perpetuating the emergency that the laws are supposedly designed to solve.

B. The Housing Stability and Tenant Protection Act of 2019

47. On June 14, 2019, New York enacted the 2019 Amendments. These amendments radically altered New York's rent-stabilization regime, narrowing property owners' rights in unprecedented ways and imposing new restrictions that make it difficult or impossible for property owners to earn a return on their investments.

48. Among other things, the 2019 Amendments:

a. Significantly Narrow Property Owners' Right to Reclaim Apartments for Personal Use. Prior to the 2019 Amendments, the RSL permitted property owners to reclaim multiple apartments—up to and including all apartments in a rent-stabilized building, *see Pultz v Economakis*, 10 N.Y. 3d 542, 548 (2008)—if the owner or an immediate family member demonstrated a good-faith intention to occupy the units as a primary residence. However, under the 2019 Amendments owners may reclaim only a single unit for personal or family use, and only if they show an "immediate and compelling necessity" for use of the apartment as their primary residence. N.Y. Reg. Sess. § 6458, Part I (2019) (hereinafter "Ch. 36 of the Laws of 2019"). Thus, an owner who occupies a rent-stabilized unit and seeks to reclaim another—for example, to accommodate a growing family or house an

elderly parent—is prohibited by law from recovering that second unit.

b. Eliminate Luxury- and High-Income Decontrol. As noted in Paragraph 38 above, prior to the 2019 Amendments the RSL provided a mechanism to deregulate luxury apartments when the legal regulated rent exceeded a prescribed threshold and additional criteria were satisfied. The 2019 Amendments repealed these decontrol provisions, and therefore removed the only option available to property owners to convert a rent-stabilized apartment into a market-based rental. *See id.*, Part D. As a result, rent-stabilized units are now stabilized in perpetuity.

c. Eliminate Vacancy and Longevity Increases. As described in Paragraph 37 above, prior to the 2019 Amendments the RSL permitted property owners to increase the legal regulated rent when an apartment became vacant and even more so if a prior tenancy exceeded eight years. The 2019 Amendments repeal these provisions, thereby eliminating two important ways in which property owners could increase legal regulated rents beyond the increases permitted by the Board, which have been minimal over the last six years. *See id.*, Part B, §§ 1, 2. In doing so, the 2019 Amendments substantially impair an owner's ability to earn a reasonable return on investment, and eliminate the upside necessary to provide a meaningful incentive to invest in rent-stabilized housing—a change that, in the long run, will harm tenants by reducing the quality and availability of affordable housing.

d. Significantly Reduce Cost Recovery and Incentives for Building and Unit Improvements.

As described in Paragraph 37 above, prior to 2019 the RSL provided incentives for property owners to make major capital improvements and individual apartment improvements by allowing owners to fully recoup the costs of those investments through rent adjustments. The 2019 Amendments enact severe cuts to these provisions and impose new limitations that, in most or all instances, will prevent property owners from recovering the full cost of improvements. *See id.*, Part K, §§ 1, 2, 4, 11. These changes, too, substantially impair an owner's ability to earn a return on investment, and will deter property owners from updating rent-stabilized apartments. The legislation will also harm tenants by reducing opportunities to rent apartments with modern amenities and forcing many renters to settle for apartments with outdated kitchens and appliances.

e. Lock-In Preferential Rents. Prior to the 2019 Amendments, the RSL permitted property owners to offer "preferential" rents below an apartment's legal regulated rent, while reserving the right to charge higher rates (up to and including the legal regulated rent) in subsequent lease terms. The 2019 Amendments eliminate that right and require owners to lock in a preferential rent for the duration of a tenancy even when prior leases expressly stated that the preferential rent was a onetime concession. *See id.*, Part E. Owners who agreed to preferential rents for a limited period with an express termination date are now bound to those terms for as long as a tenant chooses to stay.

f. Significantly Curtail Conversion to Condominiums or Co-Ops. Prior to the 2019 Amendments, New York law permitted owners to convert rent-stabilized apartments to co-ops or condominiums upon obtaining written purchase agreements for at least 15 percent of residential apartments offered for sale, either by existing tenants or purchasers who represented that they or one or more immediate family members intended to occupy the apartment being purchased (subject to additional conditions and exceptions not relevant here). Following enactment of the 2019 Amendments, however, property owners may convert rent-stabilized apartment buildings into co-ops or condominiums only if 51 percent of tenants agree to purchase units in the building. *See id.*, Part N. These provisions shift to tenants control over use of the building by effectively eliminating the possibility of condominium and co-op conversions.

C. The RSL's Unconstitutional Regulatory Scheme

49. Plaintiffs challenge the RSL as revised by the 2019 Amendments. In its present form, the RSL transfers core elements of property ownership from owners to tenants and forces owners to serve as caretakers of apartments that, as a practical matter, are now permanently conscripted into to the service of an off-budget public-assistance program. That regime is unprecedented and, as described in detail below, unconstitutional.

1. The RSL Prevents Property Owners From Using Their Own Rent-Stabilized Apartments.

50. As amended by Part I of the 2019 Amendments, the RSL prevents property owners from using and

occupying their own apartments, even for use as a primary residence or a home for immediate family members. These provisions provide that a property owner may reclaim an apartment for personal or family use—i.e., decline to renew a tenant's lease and take over possession of the apartment—only in extremely narrow circumstances.

51. *First*, only "natural persons," not corporations or other artificial entities, may recover rent-stabilized apartments for residential use, such that an owner may do so only by owning an apartment in his or her own name, or through a partnership. *See S&J Realty Corp. v. Korybut*, 555 N.Y.S. 2d 589, 591 (Civ. Ct. 1990) ("The application of [9 NYCRR §] 2524.4(a)(1) as set forth in the statue is clearly limited to an owner who is a natural person."); *1077 Manhattan Assocs., LLC v. Mendez*, 798 N.Y.S. 2d 714 (App. Div. 2004) (Housing Court "correctly determined that only a natural person and not a corporation can recover an apartment for personal use").

52. Corporations cannot recover apartments even where the principal of the corporation is the sole stockholder. *See Henrock Realty Corp. v. Tuck*, 52 A.D. 2d 871, 872 (N.Y. App. Div. 1976) ("A corporation, unlike an individual, cannot be viewed in a familial perspective, even though such corporation may consist of a sole shareholder.").

53. On information and belief, most rent-stabilized apartments are owned through limited-liability companies or other corporate forms as a means of limiting the owners' personal liability. Rent-stabilized apartments owned in this fashion cannot be recovered for personal or family residential use.

54. *Second*, when more than one person owns an apartment, either directly or through a partnership, only one of the owners may recover a rent-stabilized unit for personal or family residential use. *See* N.Y. Admin. Code § 26-511(c)(9)(b).

55. *Third*, an owner may recover *only one* unit for personal or family use. *See* Ch. 36 of the Laws of 2019, Part I, § 2. As a result, an owner who occupies one rent-stabilized unit as his or her home may not recover additional rent-stabilized units for use by parents, grandparents, children, or other family members, regardless of the property owner's circumstances or those of his or her family. And although the owner may recover that one unit for use by his or her "immediate family," that phrase encompasses many fewer individuals than the "family member[s]" who have succession rights with respect to a tenant's interest in a rent-stabilized unit. *Compare* 9 NYCRR § 2520.6(n) (defining "immediate family" as including "spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law"), *with id.* § 2520.6(o) (defining "family member" as including members of the immediate family plus "[a]ny other person residing with the tenant or permanent tenant in the housing accommodation as a primary or principal residence, respectively, who can prove emotional and financial commitment, and interdependence between such person and the tenant or permanent tenant"). Thus, the universe of relatives to whom tenants may pass their possessory interest is broader than the universe of relatives for whom an owner can enjoy a possessory interest in the owner's own property.

56. *Fourth*, a property owner may recover a rent-stabilized unit only if the owner uses it as his or her primary residence. *See* Ch. 36 of the Laws of 2019, Part I, § 1. Owners, or immediate family members, cannot use the apartments they own as second homes, vacation homes, or for any residential use other than as a primary residence. *See* 9 NYCRR § 2520.6(u).

57. *Fifth*, an owner may recover an apartment only by demonstrating to the satisfaction of DHCR and its Commissioner, Defendant RuthAnne Visnauskas, that the owner has an "immediate and compelling necessity" to use that single unit as his or her primary residence. *See* Ch. 36 of the Laws of 2019, Part I, § 2. That burden is especially difficult to meet: In the rent-*control* context, where the "immediate and compelling necessity" standard has long applied, New York courts have held that property owners must show an "air of urgency," "verging upon stark necessity." *Hammond v. Marcely*, 58 N.Y.S. 2d 565 (Mun. Ct. 1945). Thus, for example, courts have held that serious overcrowding in a property owner's current residence is not sufficient to satisfy the "immediate and compelling necessity" standard, *see, e.g.*, *Boland v. Beebe*, 62 N.Y.S. 2d 8, 12 (Mun. Ct. 1946), and that the property owner's financial hardship is not an "immediate and compelling necessity" but instead a "mere matter of convenience," *Zinke v. McGoldrick*, 141 N.Y.S. 2d 479, 480 (Sup. Ct. 1954).

58. *Sixth*, property owners must take additional steps before recovering a rent-stabilized apartment where the incumbent tenant is 62 years old or older or has an impairment resulting from "anatomical, physiological or psychological conditions" that "are expected to be permanent" and "prevent the tenant from engaging in any substantial gainful employment." N.Y.C.

Admin. Code § 26- 511(c)(9)(b); Ch. 36 of the Laws of 2019, Part I, § 1. In those circumstances, the property owner must "offe[r] to provide and if requested, provid[e] an equivalent or superior housing accommodation at the same or lower stabilized rent in a closely proximate area" as a precondition of recovering the unit for personal residential use. N.Y.C. Admin. Code § 26-511(c)(9)(b). If the property owner cannot meet these stringent requirements, for example due to the artificially low vacancy rate in rent-stabilized units caused by the RSL, the owner loses the right to regain possession of the apartment. The age, physical, and physiological conditions of the *property owner*, by contrast, play no role in determining whether a property owner may recover a rent-stabilized apartment under this provision—the circumstances of the tenant control.

59. *Seventh*, a property owner may not recover possession of a rent-stabilized apartment—even when all the preceding criteria are met—if the incumbent tenant has been living in the building "for fifteen years or more." Ch. 36 of the Laws of 2019, Part I, § 2. The RSL thus vests long-term tenants with superior rights to the owner with respect to use, occupancy, and leasing of an apartment. These tenure rights are not tailored to serve the RSL's stated purposes, but instead apply automatically, regardless of the tenant's age, income, disability status, or other characteristics.

60. *Eighth*, even when a property owner can recover a rent-stabilized apartment for use as his or her primary residence, for a period of three years from the date of recovery, the owner is prohibited from "rent[ing], leas[ing], subleas[ing] or assign[ing]" the apartment "to any person" other than the person for whose "benefit recovery of the dwelling unit is permitted"

or “the tenant in occupancy at the time of recovery under the same terms as the original lease.” N.Y.C. Admin. Code § 26-511(c)(9)(b). The restriction on subleasing applies to property owners even though a tenant would have the right to sublease the same apartment.

61. The RSL thus prevents property owners from reclaiming their own property, even when they desire to use it as a primary residence for themselves or their families. In this way, the RSL fundamentally deprives the owner of one of the core elements of property ownership—the right to “possess” and “use” one’s property. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982).

62. The RSL’s interference with property owners’ rights to possess and use their property has injured and will continue to injure Plaintiffs.

63. For example, the restrictions described above prevented Plaintiffs Dino, Dimos, and Vasiliki Panagoulias from occupying one of the rent-stabilized apartments they own. Approximately eight years ago, Plaintiff Dino Panagoulias applied to recover a two-bedroom rent-stabilized apartment in his family-owned building for use as a primary residence. Housing authorities rejected this application, citing Mr. Panagoulias’ failure to take possession of a different, one-bedroom apartment in the same building that had previously been available, notwithstanding that the one-bedroom apartment would not have met his family’s needs.

64. In addition, Maria Panagoulias, the sister of Plaintiff Dino Panagoulias and the daughter of Plaintiffs Dimos and Vasiliki Panagoulias, has considered occupying a rent-stabilized unit in her

family's building in Long Island City, New York, and remains interested in doing so because relocating to the building would allow her to be with family and live closer to her job. Due to the restrictions discussed above, however, that option is not available.

65. The RSL's restrictions also adversely affect Plaintiffs 74 Pinehurst LLC, 141 Wadsworth LLC, 177 Wadsworth LLC, and Eighty Mulberry Realty Corporation by prohibiting those entities, due to their ownership through the corporate form, from using and occupying rent-stabilized apartments in the buildings they own.

66. The RSL's restrictions deprive Plaintiffs of core property rights by limiting them to use and possession of at most one rent-stabilized apartment in each building, and by requiring that such use and possession be exclusively as a primary residence.

67. Each Plaintiff rents one or more rent-stabilized apartments to a tenant who is age 62 or older, is disabled or impaired within the meaning of N.Y.C. Admin. Code § 26-511(c)(9)(b) and Ch. 36 of the Laws of 2019, Part I, § 1, or who has lived in the apartment for fifteen years or longer. As a result, the RSL prohibits Plaintiffs from recovering possession of these apartments at all (in the case of long-term tenants) or permits Plaintiffs to do so only after providing the accommodations set forth in N.Y.C. Admin. Code § 26-511(c)(9)(b). In this respect, too, the RSL deprives Plaintiffs of core attributes of property ownership.

68. As Commissioner of DHCR, Defendant RuthAnne Visnauskas is charged with implementing and enforcing this unconstitutional scheme. *See* N.Y.C Admin. Code § 26-511(b) ("no such amendments shall be promulgated except by action of the commissioner of the

division of housing and community renewal"); *id.* § 26-511(c)(9)(b) (any code adopted by DHCR must include the personal-use limitations set out in Part I).

2. The RSL Prevents Property Owners From Exercising The Right To Exclude.

69. The RSL also deprives property owners of "the power to exclude," which "has traditionally been considered one of the most treasured strands in an owner's bundle of property rights." *Loretto*, 458 U.S. at 435. In particular, the RSL, including under regulations promulgated by DHCR and continued under Defendant RuthAnne Visnauskas, mandates that property owners must offer either a one- or two-year renewal each time a rent-stabilized tenant's lease ends. *See* N.Y. Unconsol. Law § 8623; 9 NYCCR § 2522.5(b). This renewal right has no endpoint, such that a tenant has the right to renew a lease for as long as he or she lives—i.e., a life estate.

70. The lease renewal must be "on the same terms and conditions as the expired lease, except where the owner can demonstrate that the change is necessary to comply with a specific requirement of law or regulation applicable to the building or to leases for housing accommodations subject to the RSL, or with the approval of the DHCR." 9 NYCRR § 2522.5(g)(1). The RSL thus freezes lease terms—often going back decades—and removes property owners' ability to change such terms even when the passage of time renders the terms unreasonable.

71. The RSL's lease-renewal rights extend beyond the original tenant to a broad range of individuals and family members, all of whom have statutory "succession" rights to take over a tenant's lease. *See id.* § 2520.6(o), § 2523.5(b). In particular, the RSL grants succession

rights to "any member" of the "tenant's family . . . who has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years, or where such person is a 'senior citizen,' or a 'disabled person' . . . for a period of no less than one year, immediately prior to the permanent vacating of the housing accommodation by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods." 9 NYCRR § 2523.5(b)(1). The statute further defines eligible "family" members as any "spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant." *Id.* § 2520.6(o). Additional persons entitled to succession rights include "[a]ny other person residing with the tenant or permanent tenant in the housing accommodation as a primary or principal residence, respectively, who can prove emotional and financial commitment, and interdependence between such person and the tenant or permanent tenant." *Id.*

72. Family members do not need to satisfy the two-year residency requirement if they fall within one of many exceptions, including if the individual "(i) is engaged in active military duty; (ii) is enrolled as a full-time student; (iii) is not in residence at the housing accommodation in accordance with a court order not involving any term or provision of the lease, and not involving any grounds specified in the Real Property Actions and Proceedings Law; (iv) is engaged in employment requiring temporary relocation from the housing accommodation; (v) is hospitalized for medical treatment; or (vi) has such other reasonable grounds that shall be determined by the DHCR upon application by such person." 9 NYCRR § 2523.5(b)(2).

73. A successor tenant need not acquire the property owner's consent to exercise these succession rights. As a consequence, property owners lack the right to select their tenants, and must allow strangers, their families, and other acquaintances to occupy and possess rent-stabilized apartments indefinitely.

74. In addition, tenants in rent-stabilized apartments have the right at any time to sublet their apartments for two out of any four years. *See* N.Y.C. Admin. Code § 26-511(c)(12)(f). A tenant who exercises this option retains the automatic right to renew his or her lease, even if the sublease extends beyond the lease's end, as long as the tenant "has maintained the unit as his or her primary residence and intends to occupy it as such at the expiration of the sublease." *Id.*

75. Under the RSL, the tenant's subleasing rights are broader than the property owner's rights. For example, a tenant may offer a sublet to any person he or she chooses (subject to the property owner's reasonable withholding of consent), whereas a property owner generally may rent an apartment only to the current occupant.

76. Property owners may decline to renew a lease or recover an apartment from an existing tenant only in narrow circumstances, most of which are in the tenant's control. In particular, a property owner may terminate a tenant's lease if the tenant fails to pay rent, violates a material obligation of the lease agreement, commits a nuisance, or uses the apartment for unlawful purposes. *See* 9 NYCRR § 2524.3. But these claims often cost tens of thousands of dollars to pursue, and even if the property owner wins on the merits, courts still offer tenants the opportunity to cure their breach, further cementing the tenant's perpetual lease. Under the 2019 Amendments, courts

may allow tenants to remain in an apartment for up to one year after the tenant has been determined by a court to be in breach of the lease, which is typically many months after the breach occurs. *See* N.Y. RPAPL § 753.

77. As a result of the RSL's lease-renewal, succession, and eviction provisions, as implemented and continued by DHCR and Defendant RuthAnne Visnauskas, property owners lack the ability to exclude others from their property in all but a handful of extreme circumstances, effectively depriving them of the right to exclude.

78. The RSL's transfer of property rights from owners to tenants is reflected in the large payments that rent-stabilized tenants routinely extract from property owners who wish to use their buildings for other purposes. For example, in 2015, two tenants in rent-stabilized apartments in Manhattan refused to vacate their units, thus blocking a major redevelopment project, until the owner paid them $25 million to move out. In another case, a family of four paying $1,500 for a rent-stabilized apartment in the Upper East Side obtained a buyout of $1,075,000. And a group of tenants living in Williamsburg, paying $1,800 a month, banded together and refused to be bought out until the property owner paid each person $188,000.

79. The RSL's lease-renewal and eviction restrictions injure Plaintiffs in several ways. For example, in or about 2010, Plaintiffs Dino, Dimos, and Vasiliki Panagoulias were required to offer a renewal lease to a tenant to whom they would not have voluntarily offered such a lease. Each of the other Plaintiffs has likewise been required on one or more instances to offer a renewal lease to tenants to whom they would not have voluntarily offered such a lease. Given the

number of rent-stabilized apartments owned by Plaintiffs, the RSL's intrusion on Plaintiffs' right to exclude will continue for as long as the challenged RSL provisions remain in effect.

80. Plaintiffs are likewise injured by the RSL's successorship provisions. For example, an elderly tenant living in a rent-stabilized apartment owned by Plaintiff Eighty Mulberry Realty Corporation passed away, at which point the tenant's children exercised succession rights with respect to the tenancy. These children, now well into adulthood, continue to live in the apartment. The successorship provisions have thus extended the period during which Plaintiff Eighty Mulberry Realty Corporation has been deprived of its rights to use and occupy the apartment, and to exclude others from occupying it.

3. The RSL Prevents Owners From Using Their Apartments For Purposes Other Than Rent-Stabilized Housing.

81. The RSL imposes additional restrictions that prevent property owners from using their apartments for purposes other than rent-stabilized housing. These restrictions demonstrate that the RSL's core function is, as supporters of the 2019 Amendments indicated, "to ensure that rent stabilized apartments remain rent stabilized" and "protect" New York City's "regulated housing stock."

82. The RSL generally requires that the owner of a rent-stabilized apartment must continue renting the apartment out to third parties.

83. There are four exceptions to that general rule, each of which is so narrow that it is of little or no practical value to property owners.

84. *First*, a property owner may remove an apartment building from rent stabilization—with the approval of DHCR—if the owner "seeks to demolish the building." 9 NYCRR § 2524.5(a)(2)(i). However, to exercise this option, the property owner must proceed through a wall of red tape *and* go out of pocket to both cover the costs of tenants' relocation and pay them an additional cash stipend: The owner must (1) submit to DHCR proof of financial ability to demolish the building and that the appropriate city agency has approved the plans for demolishing the building, *id.*; (2) serve each tenant with a termination notice at least 90 but not more than 150 days prior to the expiration of the tenant's lease term, *id.* § 2524.2(c)(3); (3) "pay all reasonable moving expenses" for tenants in the building and afford the tenants "a reasonable period of time within which to vacate the housing accommodation," *id.* § 2524.5(a)(2)(ii)(a); (4) "relocate the tenant[s] to a suitable housing accommodation . . . at the same or lower legal regulated rent in a closely proximate area, or in a new residential building if constructed on the site, in which case suitable interim housing shall be provided at no additional cost to the tenant[s]," *id.* § 2524.5(a)(2)(ii)(b); and (5) make a "payment of a $5,000 stipend" to the tenant, *id.* If the owner cannot find a suitable unit at the same or lower legal regulated rent, then the owner must "pay the tenant a stipend equal to the difference in rent, at the commencement of the occupancy by the tenant of the new housing accommodation, between the subject housing accommodation and the housing accommodation to which the tenant is relocated, *multiplied by 72 months*." *Id.* (emphasis added). And if the owner cannot find any suitable unit, then the owner must "pay the tenant a stipend" calculated based on a "demolition stipend chart, at a set sum per room per

month multiplied by the actual number of rooms in the tenant's current housing accommodation, but *no less than three rooms*" and then "*multiplied by 72 months*." *Id.* (emphasis added). These stipends often exceed tens of thousands of dollars and can range as high as $342,720. *See, e.g.*, N.Y. State Division of Housing and Community Renewal, Operational Bulletin 2009-1 at 6 (Feb. 10, 2009).

85. The cost associated with complying with the RSL's requirements for demolishing a building containing rent-stabilized apartments can exceed the value of the original building, the property owner's available capital, or both. Furthermore, these costs can dramatically increase if a single tenant challenges whether the owner has complied with the requirements set forth in the preceding paragraph, in which case the owner's costs include not only the cost of buying out the tenant, but also the costs of operating the building and servicing debt while the tenant holds out. In all events, requiring an owner to demolish its building in order to avoid the unconstitutional effects of the RSL is *itself* a taking.

86. *Second*, the RSL permits property owners to remove a building from rent stabilization—without demolishing it—if the property owner "establishe[s] to the satisfaction of the DHCR after a hearing, that he or she seeks in good faith to withdraw any or all housing accommodations from both the housing and nonhousing rental market without any intent to rent or sell all or any part of the land or structure" *and* that the owner requires the property for use in "connection with a business he or she owns and operates." *Id.* § 2524.5(a)(1). Property owners thus cannot use this provision to convert a rent-stabilized apartment building to commercial rental space, or to any use other

than a business that the property owner "owns and operates."

87. Zoning requirements further limit the practical value of this exception. On information and belief, the vast majority of rent-stabilized apartment buildings are in areas zoned for residential, rather than commercial use. Where applicable zoning requirements do not permit commercial use, a property owner is unable to make use of the personal-business-use exception. For example, the Certificate of Occupancy for the apartment building owned and operated by Plaintiffs Dino, Dimos, and Vasiliki Panagoulias permits two ground-level commercial occupancies, but requires all other space within the building to be used for residential, rather than commercial, purposes.

88. Running a business in a residential zone is highly restricted: A property owner is limited to using 25 percent of his or her residence, or 500 square feet, whichever is less, for the business, and New York City Zoning law excludes a host of professions, including real estate offices, from being operated out of the home. *See* Zoning Resolution of City of N.Y. § 12–10 (defining "home occupation").

89. Even a property owner who can satisfy the stringent requirements of § 2524.5(a)(1) must "pay all reasonable moving expenses," and either pay "a reasonable stipend" or relocate tenants to "a suitable housing accommodation at the same or lower regulated rent in a closely proximate area." 9 NYCRR § 2524.5(c). If such housing is unavailable, "the owner may be required to pay the difference in rent between the subject housing accommodation and the new housing accommodation to which the tenant is relocated for such period as the DHCR determines, commencing with the occupancy of the new housing

accommodation by the tenant." *Id.* These significant cost impositions further demonstrate the illusory character of the personal-business-use exception. And these compelled payments to departing tenants are themselves a taking.

90. *Third*, a property owner may convert a rent-stabilized apartment building into a co-op or condominium if at least 51 percent of tenants agree to purchase their units. *See* Ch. 36 of the Laws of 2019, Part N, § 1 (amending § 352-eeee(2)(c)). Tenants who do not want their units converted to condominiums are entitled to continue renting the units at the rent-stabilized rate after the co-op or condominium conversion takes place. *See id.* (amending § 352-eeee(2)(c)). By requiring property owners to obtain purchase agreements from a majority of tenants, the 2019 Amendments shift yet another core property right to tenants from property owners.

91. *Fourth*, a property owner may withdraw a building from the rent-stabilized housing market if the owner demonstrates to the satisfaction of the DHCR that the owner is withdrawing the units in good faith without any intent to rent or sell all or any part of the land or structure, the building presents a serious safety hazard, and the cost of repairs "would substantially equal or exceed the assessed valuation of the structure." 9 NYCRR § 2524.5(a)(1)(ii). However, if the cost of repairs is less than the value of the building, the owner is compelled by law to make the repairs and continue renting the apartments to third parties at the rent-stabilized rate.

92. As a consequence of these restrictions, the RSL prohibits property owners, including Plaintiffs, from retiring from the business of apartment leasing,

closing his or her building to tenants, or holding the property as a long-term investment.

4. The RSL Significantly Reduces the Value of Rent-Stabilized Apartments.

93. By drastically limiting rent increases, curtailing the ability of property owners to recoup their costs, and making it virtually impossible to leave the rental business, the RSL, as revised by the 2019 Amendments, reduces the value of rent-stabilized apartments, including the rent-stabilized apartments owned by Plaintiffs.

94. New York City's own financial data—compiled before the 2019 Amendments were enacted—confirms the dramatic difference in the value of regulated buildings compared to unregulated buildings. The approximate value per square foot of a rent-stabilized apartment building ranges from $57 to $126, whereas the value of unregulated buildings of equivalent age ranges from $135 to $244.

95. The 2019 Amendments have further widened the gulf in property values, as the Amendments serve only to further restrict the rights of property owners.

96. The 2019 Amendments have significantly reduced the value of the rent-stabilized apartments owned by Plaintiffs.

97. The significant new restrictions imposed by the 2019 Amendments have reduced the value of the rent-stabilized buildings owned by Plaintiffs 74 Pinehurst LLC, 141 Wadsworth LLC, 177 Wadsworth LLC, the 2019 Amendments by 20 to 40 percent.

5. The RSL Interferes With Property Owners' Investment-Backed Expectations.

98. The restrictions imposed by the RSL, as amended by the 2019 Amendments, unduly interfere

with property owners' reasonable investment-backed expectations, including by preventing property owners from earning a reasonable return on their investments. The RSL therefore inflicts an uncompensated regulatory taking, both facially and as applied to Plaintiffs.

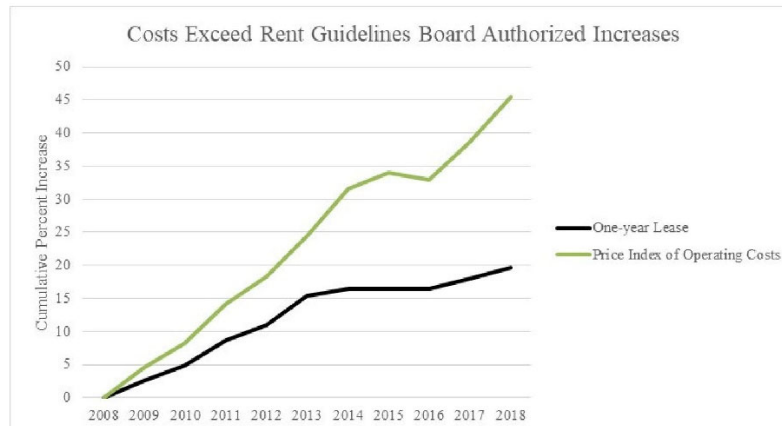
a) Rent Restrictions

99. The RSL sets a legal rent for each rent-stabilized apartment, which is the maximum amount that can be charged on a monthly basis in a lease for the apartment. The legal regulated rent is computed by adding increases—such as those set by the Rent Guidelines Board and other permitted increases that existed before the 2019 Amendments—to the initial legal regulated rent set under the RSL in 1974. *See* N.Y. Unconsol. Laws § 26-512(b); N.Y.C. Admin Code § 26-513.

100. Each year, the Rent Guidelines Board determines permissible adjustments to the legal rent. *See* N.Y.C. Admin. Code § 26-510(b). Property owners are prohibited from increasing the rent at a rate in excess of the Board-approved adjustment, unless otherwise permitted by law. *See* 9 NYCRR §§ 2522.1, 2522.5.

101. The increases approved by the Board in recent years have not kept pace with the cost of owning and maintaining rent-stabilized apartments, including the apartments owned by Plaintiffs. Since 2008, property owners' operating costs have increased by over 45 percent, but the Board's permitted increases have not yet reached 20 percent, *see* N.Y.C. Rent Guidelines Board, *2019 Income and Expense Study* (Apr. 4, 2019), https://www1.nyc.gov/assets/rentguidelinesboard/pdf/ie19.pdf; N.Y.C. Rent Guidelines Board, *Rent Guidelines Board Apartment Orders #1 through #51 (1969 to*

2020), https://www1.nyc.gov/assets/rentguidelinesboard/pdf/guidelines/aptorders.pdf:



102. Prior to enactment of the 2019 Amendments, the RSL provided property owners with tools—such as vacancy increases and luxury decontrol—to increase rents beyond the level authorized in annual Board-authorized adjustments and thereby offset the shortfall shown in the graph above. This system benefitted long-term tenants, too, because it provided meaningful incentives for property owners to invest in and improve rent-stabilized buildings over time. By repealing or substantially narrowing these critical components of the RSL, the 2019 Amendments eliminated property owners' ability to earn a reasonable return on their investments—and in many instances to cover their operating costs.

103. Defendants David Reiss, Cecelia Joza, Alex Schwarz, German Tejeda, May Yu, Patti Stone, J. Scott Walsh, Leah Goodridge, and Shelia Garcia, as Chair and Members of the Rent Guidelines Board, respectively, have limited the rent increases for rent-stabilized units, thus preventing Plaintiffs from

charging reasonable rates for their property, and from fully recovering their costs.

104. Prior to enactment of the 2019 Amendments, the RSL provided additional mechanisms for property owners to adjust the rent for rent-stabilized apartments, including provisions that authorized rent increases upon a vacancy and an even greater increase upon a vacancy following a tenancy exceeding eight years. The 2019 Amendments repealed these provisions, further interfering with property owners' investment-backed expectations.

105. The 2019 Amendments also eliminate the Rent Guidelines Board's discretion to increase the legal regulated rent based on a vacancy or the rental cost of a unit. *See* Ch. 36 of the Laws of 2019, Part C. As amended, the RSL provides that the Board "shall not establish annual guidelines for rent adjustments based on the current rental cost of a unit or on the amount of time that has elapsed since another rent increase was authorized pursuant to this title." *Id.* Part C, § 4.

106. These restrictions injure Plaintiffs by forcing them to lease the rent-stabilized apartments they own at substantially below-market rates. For example, the legal regulated rent for one-bedroom rent-stabilized apartments owned and operated by Plaintiffs Dino, Dimos, and Vasiliki Panagoulias is as low as $890 per month, whereas similar apartments *in the same building* not governed by the RSL rent for approximately $1700 per month. Plaintiff Eighty Mulberry Realty Corporation likewise leases its rent-stabilized apartments for approximately $400-$500 per month, whereas comparable unregulated apartments *in the same building* rent for between approximately $1900 and $2800 per month. There are similar disparities between the legal regu-

lated rent and market-rate rents for rent-stabilized apartments owned by Plaintiffs 74 Pinehurst LLC, 141 Wadsworth LLC, and 177 Wadsworth LLC.

107. Moreover, the reduction in property value caused by the 2019 Amendments jeopardizes the ability of Plaintiffs 74 Pinehurst LLC, 141 Wadsworth LLC, and 177 Wadsworth LLC to refinance their mortgages in the future.

b) *Elimination of Decontrol Mechanisms*

108. The 2019 Amendments further undermine the investment-backed expectations of property owners, including Plaintiffs Dino, Dimos, and Vasiliki Panagoulias and Plaintiff Eighty Mulberry Corporation, by repealing the luxury- and high-income decontrol provisions described above, which permitted owners to remove apartments from rent stabilization when (a) an apartment with a maximum legal rent of more than $2,774.76 became vacant or (b) such an apartment was occupied by a tenant who earned more than $200,000 in two consecutive years. Many property owners, including Plaintiffs Dino, Dimos, and Vasiliki Panagoulias and Plaintiff Eighty Mulberry Realty Corporation, undertook significant capital improvements, improving the quality of their units, with the expectation that the apartments could be converted to market-rate rentals under the luxury- and high-income decontrol provisions.

109. Repeal of the luxury- and high-income decontrol provisions eliminated the only mechanisms to transition a rent-stabilized apartment into a market-rate rental unit. Apartments subject to rent stabilization now must remain rent stabilized regardless of the monthly rent, the tenant's income, or other factors. The luxury- and high-income decontrol provisions had

been the law for over 25 years, and formed the backbone of property owners' reasonable investment-backed expectations that they could eventually charge market rents for their units. Property owners, including Plaintiffs Dino, Dimos, and Vasiliki Panagoulias and Plaintiff Eighty Mulberry Realty Corporation, thus purchased and invested in their units with that understanding. The 2019 Amendments undermine those expectations. *See* Testimony of Benjamin Dulchin, N.Y. Sen. Hearing (May 16, 2019), https://www.nysenate.gov/transcripts/public-hearing-05-16-19-brooklyn-rent-regulation-finaltxt. This change illustrates the conflict between the practical effects of the 2019 Amendments and the RSL's stated goal of facilitating a "transition from regulation to a normal market of free bargaining between landlord and tenant." N.Y. Unconsol. Law § 8622.

110. Eliminating the luxury- and high-income decontrol provisions will not increase the stock of affordable housing in New York City, but instead will permit high-income individuals to take advantage of rents at below-market rates. *Cf. Stahl Assocs. Co. v. State Div. of Hous. & Cmty. Renewal, Office of Rent Admin.*, 148 A.D.2d 258, 261 (N.Y. App. Div. 1989) (rent-regulated apartment possessed by individual who owned a home and a "vacation retreat," whose "children spen[t] the summer in Europe with his wife"; and whose "four cars [we]re registered in upstate New York"). As the Appellate Division, First Department recognized in *Noto v Bedford Apartments Co.*, 21 A.D.3d 762, 765 (N.Y. App. Div. 2005), the 1993 amendments establishing luxury- and high-income decontrol provisions were "an attempt to restore some rationality to a system which provides the bulk of its benefits to high income tenants" and a "recogni[tion] that there is no reason why public and private

resources should be expended to subsidize rents for [such] households." *Id.* (internal quotation marks omitted).

111. Plaintiffs Dino, Dimos, and Vasiliki Panagoulias and Eighty Mulberry Realty Corporation have been and will continue to be adversely affected by elimination of the decontrol provisions.

112. For example, before enactment of the 2019 Amendments, Plaintiffs Dino, Dimos, and Vasiliki Panagoulias utilized the RSL's decontrol provisions to deregulate four apartments in their building. These Plaintiffs would have continued to utilize the decontrol provisions to deregulate additional rent-stabilized apartments, including a three-bedroom apartment that likely would have been subject to luxury decontrol upon the unit's next vacancy. Due to the 2019 Amendments, that apartment will remain subject to the RSL.

113. Similarly, Plaintiff Eighty Mulberry Realty Corporation removed apartments from rent stabilization pursuant to the decontrol provisions prior to enactment of the 2019 Amendments, and planned to continue doing so. As a result of the 2019 Amendments, the 15 rent-stabilized apartments owned by Eighty Mulberry Realty Corporation will remain subject to the RSL.

c) *Lock-In of Preferential Rents*

114. The 2019 Amendments also frustrate the ability of property owners, including Plaintiffs, to earn a reasonable rate of return by requiring property owners to continue charging a reduced, "preferential" rent even after a lease expires.

115. As a way of enticing new tenants to rent an apartment or for other purposes, property owners frequently offer a preferential rate below the legal regulated rent. Prior to the 2019 Amendments, the RSL provided that the property owner could discontinue a preferential rent when a lease is renewed and instead charge any amount up to the legal regulated rent. Accordingly, a property owner's agreement to a preferential rent during one lease term did not deprive the property owner of flexibility to offer other rents (whether preferential or not) in future lease terms.

116. The 2019 Amendments strip property owners of that flexibility by locking in preferential rents for the life of a tenancy. Under the 2019 Amendments, the amount charged to an existing tenant may not exceed the rent charged prior to renewal, adjusted by the applicable Board-authorized increase. *See* Ch. 36 of the Laws of 2019, Part E, § 2.

117. The 2019 Amendments thus create a strong incentive for property owners not to grant preferential rents for new tenancies, and likewise benefit affluent tenants with the resources to pay non-preferential rents, rather than low-income individuals most in need of aid.

118. The 2019 Amendments lock in preferential rents (subject to increases at the discretion of the Rent Guidelines Board) regardless of the terms of past leases or the parties' course of dealing. Under Part E of the 2019 Amendments, where a tenant is "subject to a lease on or after the effective date" of the Amendments or where a tenant "is or was entitled to receive a renewal or vacancy lease on or after such date," "upon renewal of such lease," the rent "shall be no more than the rent charged to and paid by the tenant prior to that renewal" (subject to increases at

the discretion of the Rent Guidelines Board), unless the building is subject to a regulatory agreement with a local government agency, receives federal rental assistance, and the rents are set by a federal, state or local government agency. Ch. 36 of the Laws of 2019, Part E, § 2.

119. Accordingly, a property owner can no longer renew a tenant's lease at the legal regulated rent if the tenant's previous rent was at a lower, preferential rent. Property owners who offered preferential rents under the previous regime with the understanding that they could later raise rates up to the legal rent—or who included lease riders expressly stating that a preferential rent was valid only for a particular lease term—are now limited to the lower rate, subject only to increases at the discretion of the Rent Guidelines Board.

120. Prior to enactment of the 2019 Amendments, all Plaintiffs leased one or more rent-stabilized apartments to a tenant at a preferential rate. As a result of the 2019 Amendments, the preferential rate, rather than the legal regulated rent, must now serve as the basis for the rent for the duration of the tenancy—depriving Plaintiffs of significant income as a result.

121. The 2019 Amendments do not exempt already signed contracts. Thus, the RSL now forces property owners to reduce the rent for leases executed before the 2019 Amendments became effective on June 14, 2019, and which were operative on that date.

122. A Fact Sheet published by DHCR confirms that "tenants that were paying a preferential rent as of June 14, 2019, retain the preferential rent for the life of the tenancy." The Fact Sheet states that such a

tenant retains his or her preferential rent even if, before June 14, 2019, the tenant executed a lease renewal that eliminated or reduced the preferential rent. DHCR's Fact Sheet illustrates this point with an example:

> Ms. Sanchez has a lease with a preferential rent of $1,000, set to expire on 6/30/19. Ms. Sanchez signed a one year renewal lease on 4/30/2019 and returned it the same day. The renewal lease was effective 7/1/19. The renewal lease cited a legal regulated rent of $1,218 but ended the preferential rent which was $1,000.
>
> . . . On July 1, 2019, when Ms. Sanchez's one year renewal lease begins, the legal regulated rent will increase by 1.5% From $1,200 to $1,218 due to the annual rent guidelines board increase. However, the preferential rent will also increase by 1.5% to $1,015. **Ms. Sanchez will pay the $1,015 preferential rent.**

(emphasis in original).

123. Because lease renewal offers must by law be sent out months before a lease ends, many property owners and tenants executed leases beginning in July or August 2019 before the 2019 Amendments were enacted. Where the rental rate in these contracts exceeds a preferential rent in the preceding lease agreement as adjusted by the Rent Guidelines Board annual increase, the rent charged under the new lease must now be changed.

124. For example, in March 2019, a tenant of Plaintiff 74 Pinehurst LLC had a lease with a preferential rent that was due to expire on July 31,

2019. On March 21, 2019, Plaintiff 74 Pinehurst LLC sent the tenant an offer to renew the lease for one year at a higher (but still preferential) monthly rent. This amount represented an increase greater than the increase now permitted by the Board's guidelines. On May 11, 2019, the tenant signed the lease offer. Following the 2019 Amendments to the RSL, however, Plaintiff 74 Pinehurst LLC may charge only the preferential rent from the parties' preceding lease agreement as adjusted by the Board's guidelines, notwithstanding the parties' executed lease agreement for a higher amount.

125. Similarly, in May 2019, another tenant of Plaintiff 74 Pinehurst LLC had a lease with a preferential rent that was due to expire on August 31, 2019. On May 15, 2019, Plaintiff 74 Pinehurst LLC sent the tenant an offer to renew the lease for one year at a higher (but still preferential) monthly rate. This amount reflected an increase greater than the increase now permitted by the Board's guidelines. On June 10, 2019, the tenant signed the lease offer. Following the 2019 Amendments to the RSL, however, Plaintiff 74 Pinehurst LLC may charge only the preferential rent from the parties' preceding lease agreement as adjusted by the Board's guidelines, notwithstanding the parties' executed lease agreement for a higher amount.

126. The requirements for owners to continue charging preferential rents are implemented and enforced by DHCR and Defendant RuthAnne Visnauskas. *See* N.Y.C. Admin. Code § 26-511(b) ("no such amendments shall be promulgated except by action of the commissioner of the division of housing and community renewal"); *id.* § 26-511(c)(14) (code must incorporate requirements on charging preferential rent).

d) *Changes to MCI and IAI Rules*

127. The 2019 Amendments exacerbate the harms described above by curtailing property owners' ability to recover the costs of individual apartment improvements (IAIs) and major capital improvements (MCIs). These limitations are implemented by DHCR and Defendant RuthAnne Visnauskas. *See* N.Y.C. Admin. Code § 26-511(b) ("no such amendments shall be promulgated except by action of the commissioner of the division of housing and community renewal"); *id.* § 26-511(c)(6), (14) (code must incorporate limitations on MCIs and IAIs).

128. As amended, the RSL prohibits property owners from factoring more than $15,000 in IAIs into an apartment's rent over a period of 15 years. The $15,000 cap applies regardless of the actual cost of the improvements and regardless of whether the improvements were necessary to comply with legal requirements. Moreover, a property owner may recover no more than 1/180th of the total cost (up to $15,000) of the IAIs each month for buildings with more than 35 units, as opposed to 1/60th of the cost (without limitation) prior to enactment of the 2019 Amendments. For buildings with 35 or fewer units, property owners can now recover 1/168th of the total cost (up to $15,000) of IAIs each month, as opposed to 1/40th of the cost (without limitation) prior to enactment of the 2019 Amendments. *See* Ch. 36 of the Laws of 2019, Part K, § 2.

129. The 2019 Amendments further limit the "cost" that may be recovered by "excluding finance charges and any costs that exceed reasonable costs established by rules and regulations promulgated by the division of housing and community renewal." *Id*. Those rules and regulations, implemented by DHCR and Defendant RuthAnne Visnauskas, must include "(i) requirements

for work to be done by licensed contractors and prohibit common ownership between the landlord and the contractor or vendor" and "(ii) a requirement that the owner resolve within the dwelling space all outstanding hazardous or immediately hazardous violations." *Id.* In addition, property owners must obtain informed tenant consent to make IAIs to non-vacant units.

130. Property owners also must discontinue these modest increases after 30 years "inclusive of any increases granted by the rent guidelines board." *Id.*

131. The new, reduced cap for recovery of IAIs will not provide the revenue that property owners need to maintain their rent-stabilized units, which generally are located in aging, pre-1974 buildings and thus require constant upkeep and renovations. As owners of market-rate units continue to improve their stock, the restrictions adopted by the 2019 Amendments will only increase the disparity in quality between rent-stabilized and market-rate housing.

132. The 2019 Amendments also severely curtail property owners' ability to recover the cost of MCIs, such as roof replacements and installation of new boilers, heating and cooling systems, and electrical systems. Under Part K of the 2019 Amendments, a property owner may increase the monthly rent of a stabilized apartment by only 2 percent in any twelve-month period to recoup the cost of such improvements, down from 6 percent under the prior regime.

133. This limitation applies not only to future MCIs, but also retroactively to MCIs approved between June 16, 2012 and June 16, 2019, for renewal leases starting after June 14, 2019. *See id.*, Part K, § 4 (as amended June 16, 2019). This limitation further harms property

owners, as it can take years for DHCR to process and approve MCI applications. The 2019 Amendments also allow tenants to "answer or reply" to an application for an MCI increase, further slowing the process for MCI approvals. *Id.*

134. The Amendments have also lengthened the amortization period over which property owners may recoup their costs from 8 years to 12 years for buildings with 35 or fewer units and from 9 years to 12.5 years for buildings with more than 35 units. *See* Ch. 36 of the Laws of 2019, Part K, § 11.

135. As with charges to cover the cost of IAIs, rent increases for MCIs must be discontinued after 30 years inclusive of any increases granted by the rent guidelines board. *See id.*, Part K, § 4.

136. Moreover, these limitations are not applied to the *actual* costs that owners incur in MCIs. Instead DHCR, under Defendant RuthAnne Visnauskas, must promulgate rules that "establish a schedule of reasonable costs for major capital improvements, which shall set a ceiling for what can be recovered through a temporary major capital improvement increase." *Id.* Such "reasonable costs" do not take into account the specific circumstances of a building such as ancillary costs that owners encounter while making improvements. The 2019 Amendments require DHCR to "establish the criteria for eligibility of a temporary major capital improvement increase including the type of improvement, which shall be essential for the preservation, energy efficiency, functionality or infrastructure of the entire building, . . . but shall not be for operational costs or unnecessary cosmetic improvements," further limiting the costs that can be recovered. *Id.* Moreover, any improvements must "be depreciable pursuant to the Internal Revenue Service,"

must "directly or indirectly benefit all tenants" and cannot be for "work done in individual apartments that is otherwise not an improvement to an entire building." *Id.* No portion of MCI costs that are incurred but fall outside these parameters are recoverable.

137. The MCI and IAI rules also fail to account for credit losses or vacancies. For example, where a tenant does not pay his rent and the owner spends two years removing the tenant, the property owner has lost two of his 30 years for recovering the cost of an improvement. Nothing in the RSL permits the property owner to make up for those lost years. Similarly, if a unit is vacant during the 30-year recovery period, the corresponding proportion of the MCI or IAI is lost.

138. Property owners relied on prior law when making significant investments in rent-stabilized housing, based on rent rolls (i.e., a building's total rental income), decontrol mechanisms, and renovation-recapture provisions available under that regime. These features of the prior law provided property owners and investors with certainty that investments in rent-stabilized housing would yield a modest, but nevertheless reasonable and predictable return. The 2019 Amendments upset that framework and undercut the value of Plaintiffs' rent-stabilized apartments by substantially reducing rent rolls, eliminating decontrol mechanisms, and limiting property owners' ability to recapture the full cost of IAIs and MCIs.

139. For example, Plaintiff 141 Wadsworth LLC completed a major electrical improvement project in early 2019 and promptly filed an application with DHCR for rent increases on the basis of this MCI. The project cost approximately $80,000. At the time of the project and at the time of Plaintiff 141 Wadsworth LLC's filing of its application with DHCR, Plaintiff 141

Wadsworth LLC reasonably believed that it would be entitled to rent increases consistent with the rules that governed MCIs prior to the 2019 Amendments. DHCR, however, took no action on Plaintiff 141 Wadsworth LLC's application prior to June 14, 2019, and indeed, DHCR still has not acted on the application. Now, following the 2019 Amendments, Plaintiff 141 Wadsworth LLC cannot obtain the rent increases to which it reasonably believed it was entitled when it completed its MCI and filed its application with DHCR.

140. In addition, before the enactment of the 2019 Amendments, Plaintiff 177 Wadsworth undertook an extensive replacement of gas piping for the distribution of cooking gas used in the stoves in the units in its building. Plaintiff 177 Wadsworth's MCI application for this project remains pending and now will be governed by the MCI rules put in place by the 2019 Amendments, instead of the MCI rules that applied when Plaintiff 177 Wadsworth made the investment. Had Plaintiff 177 Wadsworth known that the MCI rules would radically change in the 2019 Amendments, it would not have undertaken the gas piping project, and instead would have installed electric stoves.

141. As another example, the 2019 Amendments have prevented Plaintiff Eighty Mulberry Realty Corporation from recovering investments made prior to the 2019 Amendments' enactment. Plaintiff Eighty Mulberry Realty Corporation began multiple renovations of stabilized units in April and May 2019, under the reasonable belief that once the renovations were complete, it would be entitled to rent increases consistent with the IAI rules in place before the 2019 Amendments. While the renovations were in progress, the 2019 Amendments were passed and went into effect. Now, following the 2019 Amendments, Plaintiff

Eighty Mulberry Realty Corporation cannot obtain the rent increases to which it reasonably believed it was entitled when it undertook the apartment renovations and has determined that it cannot recoup the costs of the renovations by renting out the renovated units indefinitely at the below-market rents mandated by the 2019 Amendments.

142. The 2019 Amendments likewise have prevented Plaintiffs from making investments in their properties that they would have made under prior law but now can no longer afford. For example, before the 2019 Amendments, Plaintiffs Dino, Dimos, and Vasiliki Panagoulias were planning on undertaking two MCIs for their building: (i) a front and rear brick-pointing project estimated to cost more than $75,000, and (ii) a project to repair or replace a portion of the roof of the building and to install a new drainage system to prevent rainwater from entering the building. Under current conditions, whenever the building experiences heavy rain, Plaintiff Dino Panagoulias must manually remove rainwater from the building's roof to ensure that the rainwater does not overwhelm the drainage system and enter the building's stairwell. Because of the restrictions on MCI-related rent increases imposed by the 2019 Amendments, Plaintiffs Dino, Dimos, and Vasiliki Panagoulias no longer can afford to undertake either of the MCI projects that they had planned for their building, and consequently they have not proceeded with those projects.

143. Plaintiffs similarly have dropped or cut back plans to undertake IAIs in their stabilized units as a result of the 2019 Amendments.

e) Changes to Eviction Procedures

144. In addition to the changes described above, the 2019 Amendments also significantly alter the procedures for evicting tenants who fail to pay rent or breach their leases in other ways, and for recovering unpaid rent from such tenants. *See* Ch. 36 of the Laws of 2019, Part M.

145. For example, as noted above, courts may allow tenants to remain in an apartment for up to one year after the tenant is determined by a court to be in breach of the lease, which typically occurs many months after the breach occurs. *See* N.Y. RPAPL § 753. In exercising this authority, the court must consider, among other things, the tenant's health, enrollment of any resident children in local schools, and "any other life extenuating circumstance affecting the ability" of the tenant(s) "to relocate and maintain [their] quality of life." *Id.*

146. The 2019 Amendments further provide that execution of a warrant of eviction is limited to the person (or persons) named, such that any person residing in an apartment other than the named parties—whether or not the person is lawfully entitled to occupy the unit—may not be evicted. *See* N.Y. RPAPL § 749.

147. In addition, the 2019 Amendments provide that a court shall vacate a warrant of eviction if a tenant makes payment at any time prior to execution, unless the property owner can show that the tenant withheld payment in bad faith. *See id.*

148. These provisions, together with the remainder of Part M of the 2019 Amendments, severely limit—and in many instances effectively render unavailable—property owners' ability to recover rent-stabilized

units from tenants who fail to pay any rent whatsoever or who otherwise violate the terms of their tenancies.

6. The RSL's Hardship Process Does Not Cure the Law's Constitutional Defects

149. The RSL's hardship exemption process, which is enforced and implemented by DHCR and Defendant RuthAnne Visnauskas, does not provide relief to property owners. That process provides, in theory, a mechanism for property owners to ask DHCR to increase rents above the legal regulated rent in two narrow situations, where the property owners suffer a "comparative" or "alternative" hardship.

150. DHCR's own Fact Sheet regarding the hardship process concedes that the process offers a remedy only in "unusual situation[s]." *See* N.Y. Division of Housing and Community Renewal, Fact Sheet #39 (June 2019), https://hcr.ny.gov/system/files/documents/2019/11/fact-sheet-39.pdf.

151. Under the comparative hardship test, the property owner must show that the legal regulated rent is "not sufficient to enable the owner to maintain approximately the same average annual net income (which shall be computed without regard to debt service, financing costs or management fees)" over a three-year period ending on, or within six months of, the date of the hardship application, as compared to either (1) the building's annual net income from 1968 to 1970 (for buildings constructed before 1968), (2) the building's annual net income from the first three years of operation (for buildings constructed after 1968), or (3) if title of the building has been transferred, the first three years of operation under the new owner, so long as there was (a) a bona fide transfer of the entire building, (b) the new owner cannot obtain the relevant

records from 1968 to 1970 despite diligent efforts, and (c) the owner has six years of financial data from his or her continuous and uninterrupted operation of the building. *See* N.Y. Admin. Code § 26-511(c)(6).

152. These requirements make the comparative hardship process a nullity. In general, property owners may obtain an increase only if their three-year annual net income is less than a similar period from 50 years ago. With no adjustment for inflation, apartments seldom generate less net income than in 1970. Furthermore, and critically, the application process excludes debt service, financing costs, and management fees, which are important parts of a property owner's costs. An owner's interest payments on a mortgage thus are not includable expenses. This feature alone renders the comparative hardship exemption *de facto* unavailable for many properties subject to a mortgage. And even if a hardship increase is granted, the resulting annual gross rents cannot exceed the sum of "(i) the annual operating expenses, (ii) an allowance for management services as determined by the commissioner, (iii) actual annual mortgage debt service (interest and amortization) . . ., and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness." N.Y.C. Admin. Code § 26-511(c)(6).

153. The rent-stabilized apartments owned by Plaintiffs 74 Pinehurst LLC, 141 Wadsworth LLC, 177 Wadsworth LLC are owned subject to mortgages and thus the comparative hardship exemption is *de facto* unavailable.

154. The alternative hardship exemption is equally unavailing. Only property owners who have owned their buildings for three years are eligible for the

exemption. *See* 9 NYCRR § 2522.4(c)(2)(x). Owners who purchase their buildings and immediately suffer losses as a result of rent regulation must suffer for three years before they may obtain relief under the alternative hardship process.

155. For a property owner to be eligible to receive the exemption, the property owner must show that the Rent Guidelines Board increases are "not sufficient to enable the owner to maintain an annual gross rent income for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such gross rent." N.Y.C. Admin. Code § 26-511(c)(6-a). Operating expenses "shall consist of the actual, reasonable, costs of fuel, labor, utilities, taxes, other than income or corporate franchise taxes, fees, permits, necessary contracted services and noncapital repairs, insurance, parts and supplies, management fees and other administrative costs and mortgage interest." *Id.* Capital improvement costs, a critical part of a building's expenses, are excluded. And an owner can only obtain an increase "as may be required to maintain" a five percent return, *id.*; but such a return—excluding capital improvement expenses—is not sufficient to maintain a profitable rental business.

156. Under both the comparative and alternative hardship processes, any increase in rent "shall not exceed six percent" with any "dollar excess above" six percent "to be spread forward in similar increments and added to the rent as established or set in future years." *Id.* § 26-511(c)(6), (6-a). If an owner requires more than a six percent rent increase to stay profitable, he cannot obtain such a return until some unspecified time in the future.

157. On information and belief, the restrictions on the comparative and alternative hardship processes result in few applications being filed, and even fewer being granted.

158. More fundamentally, the RSL's hardship process is incapable of providing relief other than increased rental rates. Thus, a property owner aggrieved by his or her inability to recover an apartment for personal use, by the inability to exclude tenants, or by restrictions preventing a building from being put to uses other than rent-stabilized housing, cannot obtain relief through the hardship process.

D. Rent-Stabilization Laws Are Economically Self-Defeating

159. Basic principles of supply and demand demonstrate that rent stabilization laws are counterproductive and consistently fail to generate more affordable housing. To the contrary, such laws lead to less and lower-quality housing.

160. As economist and *New York Times* columnist Paul Krugman wrote in 2000, "[t]he analysis of rent control is among the best-understood issues in all of economics, and—among economists, anyway—one of the least controversial." Paul Krugman, *Reckonings; A Rent Affair*, N.Y. Times (June 7, 2000). According to Krugman, rent regulation "[p]redictabl[y]" causes "[s]ky-high rents on uncontrolled apartments, because desperate renters have nowhere to go—and the absence of new apartment construction, despite those high rents, because [property owners] fear that controls will be extended." *Id.*

161. Studies have demonstrated, time and again, that rent regulation reduces the quality and quantity of housing. That consensus has existed since the

inception of economic research regarding rent controls more than 70 years ago. Rent regulation causes these harms because rent laws artificially limit the supply of rental housing.

162. A recent empirical study on the expansion of rent control in San Francisco in 1994 confirmed that "while rent control prevents displacement of incumbent renters in the short term, the lost rental housing supply likely drove up market rents in the long term, ultimately undermining the goals of the law." Rebecca Diamond, Tim McQuaide, & Franklin Qian, *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco* (Mar. 4, 2019), https://web.stanford.edu/~diamondr/DMQ.pdf (*Effects of Rent Control*). According to the study's lead researcher, Professor Rebecca Diamond of Stanford University, the San Francisco rent regulations "dramatically limited the supply of rental housing" and effectively told property owners, "It's much more profitable to cater to high-income housing taste than low-income housing tastes." Tanvi Misra, *Rent Control: a Reckoning*, CityLab (Jan. 19, 2018) (quoting Rebecca Diamond), https://www.citylab.com/equity/2018/01/rent-control-a-reckoning/551168/. In effect, the rent regulations functioned as "a transfer from future renters in the city to renters in 1994," when the law took effect, "dr[iving] up citywide rents, damaging housing affordability for future renters, and counteracting the stated claims of the law." *Effects of Rent Control*, *supra*, at 3, 24.

163. The 1994 study concluded that although rent regulation "appears to help current tenants in the short run, in the long run it decreases affordability, fuels gentrification, and creates negative spillovers on the surrounding neighborhood." The study similarly

concluded that "[f]orcing [property owners] to provide insurance to tenants against rent increases can ultimately be counterproductive." Rebecca Diamond, *What Does Economic Evidence Tell Us About the Effects of Rent Control?*, Brookings Inst. (Oct. 18, 2018), https://www.brookings.edu/research/what-does-economi c-evidence-tell-us-about-the-effects-of-rent-control/.

164. A study on the elimination of rent control in Cambridge, Massachusetts in the 1990s likewise confirmed that rent regulation "decreases the quantity of rental housing supplied and decreases unit quality." David P. Sims, *Out of Control: What Can We Learn from the end of Massachusetts Rent Control?*, 61 J. Urban Econ. 129, 130 (2007). The study determined that rent regulation primarily assisted groups other than low-income families, with a greater percentage of rent-controlled units occupied by tenants in the top half of income distribution than by those in the lowest quartile.

165. Studies of rent control and rent stabilization in New York City have produced similar results. For example, a landmark study of New York's rent control system in the late 1960s concluded that rent control is a "very poorly focused redistribution device" because "[t]here is nothing approaching equal treatment of equals among the beneficiaries of rent control." Edgar O. Olsen, *An Econometric Analysis of Rent Control*, 80 J. Pol. Econ. 6, 1096 (1972) (*Econometric Analysis*). Another study based on data from the late 1960s concluded that rent controls had "a large deleterious impact on rental structure quality, particularly in smaller buildings." Joseph Gyourko & Peter Linneman, *Rent Controls and Rental Housing Quality: A Note on the Effects New York City's Old Controls*, 27 J. Urban Econ. 398, 399 (1990). And a 1987 study concluded

that the "targeting" of both rent control and rent stabilization benefits "was poor." Peter Linneman, *The Effect of Rent Control on the Distribution of Income among New York City Renters*, 22 J. Urban Econ. 14, 15 (1987).

166. A 2003 study by the Harvard economist Edward Glaeser and his colleague, Erzo Luttmer, determined that rent regulation in New York City has resulted in the misallocation of a significant proportion of apartments, meaning that tenants' units were either larger or smaller than they would be in the absence of rent control and stabilization. The study concluded that "this misallocation of bedrooms leads to a loss in welfare which could be well over $500 million annually to the consumers of New York, before we even consider the social losses due to undersupply of housing." Due to the existing rent control laws, approximately 20 percent of the apartments in New York City were "in the wrong hands." Edward L. Glaeser & Erzo F.P. Luttmer, *The Misallocation of Housing Under Rent Control*, 93 Am. Econ. Rev. 1027 (2003).

167. Research demonstrates that by distorting the rental marketplace, rent regulation also drives up prices in uncontrolled units. A 1993 study by Steven B. Caudill, for example, concluded that rents in uncontrolled units in New York City were between 22 and 25 percent higher than they would be in the absence of New York's rent-stabilization and rent-control laws. Steven B. Caudill, *Estimating the Costs of Partial-Coverage Rent Controls: A Stochastic Frontier Approach*, 75 Rev. Econ. & Stat. 727, 731 (Nov. 1993).

168. Other studies have concluded that New York City's existing rent laws—perpetuated and expanded by the 2019 Amendments—leave lower-income tenants

worse off than if there had been no regulation at all. A 1999 paper determined that "due to the higher price in the unregulated market" for rental units driven by rent regulation, "on average, tenants in rent stabilized and 'old style' rent control units would be better off if controls had never been established," since they would have "faced a lower price of housing in the uncontrolled sector and would find units in the free sector that better fit their needs." Dirk K. Early, *Rent Control, Rental Housing Supply, and the Distribution of Tenant Benefits*, 48 *J. Urban Econ.* 185, 202 (2000).

169. Moreover, although the RSL applies only so long as the residential vacancy rate in New York City is below 5 percent, the regime itself causes and will continue to cause the vacancy rate to remain below 5 percent in perpetuity. By guaranteeing tenants and their heirs substantially below-market rents with unlimited rights of renewal and succession, the rent stabilization regime distorts choices and impedes ordinary unit turnover.

170. As noted above, New York City's most recently-published figures, for 2017, show that the vacancy rate for unregulated units is 6.07 percent. The vacancy rate for rent-stabilized units, however—which account for approximately 44 percent of all units in New York City—is 2.06 percent. And because the RSL now prevents rent-stabilized apartments from transitioning to market-rate rentals, the law ensures that regulated units, with their artificially low vacancy rates, will remain a significant enough percentage of the total housing stock in New York City to keep the overall vacancy rate at or below 5 percent. For this reason, the terms of the RSL itself ensure that the law's restrictions—and the constitutional violations that they inflict—are permanent.

E. The RSL Does Not Substantially Advance Its Stated Objectives.

171. As amended by the 2019 Amendments, the RSL is arbitrary and irrational, in violation of the Fourteenth Amendment's Due Process Clause, because it fails to substantially advance its stated purposes, and in many instances undermines those objectives.

172. The 2019 Amendments state that they seek to promote affordable housing for "working persons and families" who have lost "vital and irreplaceable affordable housing" due to "the deregulation of housing accommodations upon vacancy." Ch. 36 of the Laws of 2019, Part D, § 1. The Memorandum in Support of Legislation submitted with the bill in both the New York State Assembly and Senate justifies the bill as assisting the City of New York and surrounding counties in addressing their "struggle to protect their regulated housing stock, which provides and maintains affordable housing for millions of low and middle income tenants." N.Y. State Assembly, *Memorandum in Support of Legislation*, https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A08281&term=2019&Memo=Y.

173. Sponsors of the legislation in the Assembly and in the Senate have echoed these goals. State Assembly Speaker Carl Heastie, the sponsor of the 2019 Amendments, stated in a press release after the Amendments' passage that the legislation would "help keep families from being forced out of their homes and priced out of the communities they are a part of." News Release, Assembly Speaker Carl E. Heastie, *Assembly Passes Historic Affordable Housing Protections to Bring Stability to Tenants Across New York State* (Jun. 14, 2019), https://nyassembly.gov/Press/files/20190614a.php.

174. Another legislator, Assemblyman Steven Cymbrowitz, chair of the Assembly's Housing Committee, said the 2019 Amendments would allow lower-income citizens to remain in New York City. "It reaffirms our commitment to ensuring that New York state remains a welcoming place for everyone who wants to live here, not just the wealthy." Aidan Graham, *Political Leaders Celebrate Rent Law Agreement as a 'Historic' Victory for Tenants*, Brooklyn Paper (Jun. 14, 2019), https://www.brooklynpaper.com/stories/42/25/all-rent-law-agreement-2019-06-21- bk.html.

175. Another co-sponsor, Senator Gustavo Rivera, stated that "[w]ith this package, we are defending and preserving our already depleted affordable housing stock to ensure that more New Yorkers are not unfairly displaced from their homes." Press Release, New York State Senate Democratic Majority, *Senate Majority Passes Strongest Tenant Protections in State History* (Jun. 14, 2019), https://www.nysenate.gov/sites/default/files/press-release/attachment/06.14.19_housing_rent_regs passing_release.pdf.

176. As revised by the 2019 Amendments, however, the RSL will have the opposite effect: it will benefit the wealthiest tenants, decrease the supply of affordable housing, and reduce investment critical to maintaining existing rent-stabilized units. Basic economics instructs that property owners will not rent out units where the marginal cost of doing so is higher than the rent they can charge. As a result, property owners will withdraw such units from the rental market, which will further lower supply—all without affecting the five percent vacancy determination that triggers the emergency. The RSL thus undermines its own purposes.

177. According to expert analysis, in recent years, the RSL's largest beneficiaries have not been low-

income tenants but instead affluent residents of Manhattan. A recent analysis by the *Wall Street Journal*, for example, found that renters of rent-stabilized units in Manhattan receive a much greater discount from market rents, on average, than do those in working-class neighborhoods.

178. According to the *Wall Street Journal* analysis, "a typical renter with an income in the top quarter of all New York households" received a rent discount of 39 percent, whereas renters in the bottom quarter received only a 15 percent discount. Josh Barbanel, *Wealthy, Older Tenants in Manhattan Get Biggest Boost from Rent Regulations*, Wall Street J. (Jun. 12, 2019), https://www.wsj.com/articles/wealthy-older-tenants-in-manhattan-get-biggest-boost-from-rent-regulations-11560344400.

179. Analysts indicate that the 2019 Amendments will only deepen the housing inequality inherent in New York's rent-stabilization laws. According to Stijn van Nieuwerburgh, a professor of Real Estate at Columbia University's Graduate School of Business, the "new law . . . does not address the misallocation of housing present in the current system," in which "many" rent-stabilized units "are taken up by affluent households" whose "incomes have risen since they moved in, often decades earlier." Stijn van Nieuwerburgh, *How New Rent Regulation Reforms Will Help Many of the Wrong Tenants*, N.Y. Daily News (June 18, 2019). Indeed, nearly 28,000 rent-stabilized units in New York are occupied by households who earn more than $200,000 per year. Sean Campion, Citizens Budget Commission, *Reconsidering Rent Regulation Reforms* (Jan. 30, 2019), https://cbcny.org/research/reconsidering-rent-regulation-reforms.

180. The *Wall Street Journal* study, meanwhile, notes that in 2017, nearly 18,500 tenants in older buildings had rents above the threshold that triggered decontrol under the previous version of the rent laws ($2,774 per month) with median incomes of $150,000 per year and average incomes of $210,000 per year. Under the 2019 Amendments, all of those tenants will be able to retain their rent-stabilized apartments.

181. A recent report by the Citizens Budget Commission explains that "[e]nding high-rent vacancy decontrol will disproportionately benefit higher-income households," because, when these units become vacant, they "will continue to . . . be rented by households of similar economic status" rather than low-income renters. Over the last three years, the Commission found, "middle- and upper- income households have accounted for 60 percent of households who moved into stabilized units with rents of $2,000 per month."

182. The Citizens Budget Commission report also anticipates that ending luxury- and high-income decontrol will not increase the number of affordable units; instead, it will maintain an existing stock of higher-rent stabilized housing that only wealthier households can afford—thereby "doing little to address the rent burdens faced by the lowest-income households."

183. By eliminating the only provisions that invoke any means testing, the 2019 Amendments again undermine the stated purposes of the RSL.

184. Moreover, as a result of the RSL, both the State and New York City will lose income that otherwise would be generated by real estate tax revenue. In 2010, the Citizens Budget Committee estimated that the City loses $283 million in property tax revenue per year due to rent regulation. Citizens

Budget Commission, *Rent Regulation: Beyond the Rhetoric* (Jun. 2010), https://cbcny.org/sites/default/files/REPORT_RentReg_06022010.pdf. That revenue could be used to subsidize housing costs for low-income residents rather than forcing landlords to provide a public benefit to tenants without regard to income or wealth.

185. According to the Citizens Budget Committee, restrictions on unit and building improvements—a central feature of the 2019 Amendments—will "exacerbate the comparatively poorer condition of rent stabilized units," which "report 80 percent more maintenance deficiencies on average than market-rate units." That problem will only deepen as the aging stock of rent-stabilized units require increasingly extensive renovations to remain livable. The Real Estate Board of New York estimates that within five years, "approximately 414,000 units could be financially distressed" such that their owners will not "be able to afford any investment beyond basic maintenance, taxes, and utilities." Testimony of the Real Estate Board of New York Before the Assembly Standing Committee on Housing Regarding Rent Regulated Housing, REBNY News Room (May 2, 2019).

186. There are more effective alternatives to New York's rent-stabilization regime. One scholar, for example, argued over fifty years ago that "unrestricted cash grants or vouchers for particular goods would permit more equal treatment of equally situated families" than rent regulation. *See Econometric Analysis*, *supra*, at 1096. Adapting zoning laws to encourage new building of housing would also reduce price increases and make more units available to low-income individuals and families. In August 2018, researchers at New York University's Furman Center—

including the newly appointed New York City Deputy Mayor of Housing and Economic Development—concluded "from both theory and empirical evidence, that adding new homes moderates price increases and therefore makes housing more affordable to low- and moderate-income families." Vicki Been, Ingrid Gould Ellen, & Katherine O'Regan, *Supply Skepticism: Housing Supply and Affordability*, NYU Furman Center, at 1 (Aug. 20, 2018), http://furmancenter.org/files/Supply_Skepticism_-_Final.pdf. Such methods are better suited than rent stabilization to advance the goal of increasing affordable housing.

187. Indeed, New York tacitly acknowledges that the costs of providing affordable housing should be borne by the government. For instance, New York City has implemented the Senior Citizen Rent Increase Exemption ("SCRIE") and Disability Rent Increase Exemption ("DRIE") programs. *See* N.Y.C. Admin. Code § 26-509. Under those programs, individuals living in rent stabilized apartments who either have disabilities or are 62 years or older, and fall under certain income thresholds, may apply to have their rents frozen at the existing rate at the time of application to the programs. Under those programs, any rent increases in the regulated rent are paid by the City, rather than tenants, to property owners in the form of a property tax credit. *See id.* § 26-509(c).

188. The SCRIE and DRIE programs demonstrate that the cost of providing housing subsidies can, and should, be the burden of the government. In the RSL, however, the government has forced property owners to bear those costs. And, by eliminating many of the ways that property owners can increase rents, the RSL also allows the government to avoid paying out credits under the SCRIE and DRIE programs, thus shifting to

property owners costs that the City otherwise would bear.

CLAIMS FOR RELIEF

COUNT ONE: Facial Physical Taking Without Just Compensation
Fifth and Fourteenth Amendments - 42 U.S.C. § 1983
(On Behalf of All Plaintiffs)
(Against State of New York, City of New York, Division of Housing and Community Renewal, and RuthAnne Visnauskas)

189. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

190. The Fifth Amendment to the Constitution of the United States provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V.

191. The Fifth Amendment's prohibition on taking private property for public use without just compensation applies to the States through the Fourteenth Amendment to the Constitution of the United States.

192. The Rent Stabilization Law, as amended by the 2019 Amendments, requires property owners to continue renting their property at government-regulated rents even if they object to doing so, and prevents them from exiting the rental business. Such an evisceration of property rights is a taking and requires just compensation.

193. Taken together, the provisions of the RSL as a whole and on their face effect a physical taking by depriving Plaintiffs of core aspects of property ownership, including the right to exclude others from their apartments, the right to possess and use those apartments for their own enjoyment, and the right to

dispose of their property for purposes other than rent-stabilized housing.

194. New York Compilation of Code, Rules, and Regulations, Title 9, § 2522.5, on its face effects a physical taking by requiring property owners, including Plaintiffs, to continually offer renewal leases to tenants in rent-stabilized units, resulting in a permanent physical occupation.

195. New York Compilation of Code, Rules, and Regulations, Title 9, § 2524.5, on its face effects a physical taking by depriving property owners, including Plaintiffs, of the right to use their property for purposes other than rent-stabilized housing.

196. Part I of the 2019 Amendments on its face effects a physical taking by depriving property owners, including Plaintiffs, of the right to possess, use and enjoy their property for personal use.

197. The RSL does not provide Plaintiffs just compensation for these takings.

198. Defendants State of New York, City of New York, Division of Housing and Community Renewal, and RuthAnne Visnauskas, acting under color of New York law, have caused and will continue to cause, the constitutional violations described in this Count.

199. Defendant RuthAnne Visnauskas has participated directly in the constitutional violation in this Count by enforcing the RSL against Plaintiffs. In addition, Defendant Visnauskas has created and continued policies and customs causing the unconstitutional practices in this Count through her implementation and enforcement of the RSL.

200. Absent declaratory relief, just compensation, or injunctive relief, Plaintiffs will suffer irreparable

harm caused by deprivation of their constitutional rights.

COUNT TWO: As-Applied Physical Taking
Without Just Compensation
Fifth and Fourteenth Amendments - 42 U.S.C. § 1983
(On Behalf of All Plaintiffs Other Than
177 Wadsworth LLC)
(Against State of New York, City of New York,
Division of Housing and Community Renewal, and
RuthAnne Visnauskas)

201. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

202. The Fifth Amendment to the Constitution of the United States provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V.

203. The Fifth Amendment's prohibition on taking private property for public use without just compensation applies to the States through the Fourteenth Amendment to the Constitution of the United States.

204. The RSL, as amended by the 2019 Amendments, requires property owners to continue renting their property at government-regulated rates even if they object to doing so, and prevents them from exiting the rental business in perpetuity. Such an evisceration of property rights is a taking and requires just compensation.

205. Taken together, the provisions of the RSL as a whole, as applied to Plaintiffs, effect a physical taking by depriving Plaintiffs of core aspects of property ownership, including the right to exclude others from their apartments, the right to possess and use those apartments for their own enjoyment, and the right to

dispose of their property for purposes other than rent-stabilized housing.

206. New York Compilation of Code, Rules, and Regulations, Title 9, § 2522.5, as applied to Plaintiffs, effects a physical taking by requiring property owners, including Plaintiffs, to continually offer renewal leases to tenants in rent-stabilized units, resulting in a permanent physical occupation.

207. New York Compilation of Code, Rules, and Regulations, Title 9, § 2524.5, as applied to Plaintiffs, effects a physical taking by depriving property owners, including Plaintiffs, of the right to use their property for purposes other than rent-stabilized housing.

208. Part I of the 2019 Amendments, as applied to Plaintiffs, effects a physical taking by depriving property owners, including Plaintiffs, of the right to possess, use and enjoy their property for personal use.

209. The RSL does not provide Plaintiffs just compensation for these takings.

210. Defendants State of New York, City of New York, Division of Housing and Community Renewal, and RuthAnne Visnauskas, acting under color of New York law, have caused and will continue to cause, the constitutional violations described in this Count.

211. Defendant RuthAnne Visnauskas has participated directly in the constitutional violation in this Count by enforcing the RSL against Plaintiffs. In addition, Defendant Visnauskas has adopted and continued policies and customs causing the unconstitutional practices in this Count through her implementation and enforcement of the RSL.

212. Absent declaratory relief, just compensation, or injunctive relief, Plaintiffs will suffer irreparable

harm caused by deprivation of their constitutional rights.

COUNT THREE: Facial Regulatory Taking
Without Just Compensation
Fifth and Fourteenth Amendments - 42 U.S.C. § 1983
(On Behalf of All Plaintiffs)
(Against All Defendants)

213. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

214. In addition to authorizing an uncompensated physical occupation of Plaintiffs' property, the RSL, as amended by the 2019 Amendments, also constitutes a regulatory taking. In this regard, the mere enactment of the 2019 Amendments inflicts an uncompensated taking by denying property owners, including Plaintiffs, of an economically viable use of their apartments.

215. The RSL inflicts a regulatory taking because it imposes a severe burden on private property rights.

216. The RSL causes property owners, including Plaintiffs, significant economic harm. Even before the 2019 Amendments, the approximate value per square foot of a rent-stabilized apartment building ranged from $57 to $126, whereas the value of unregulated buildings of equivalent age ranged from $135 to $244. The RSL thus results in a decrease of 50 percent or more of a unit's value. The 2019 Amendments exacerbate this decrease in value and have caused rent-stabilized apartments to lose 20 to 40 percent (or more) of their value prior to enactment of the 2019 Amendments.

217. The RSL drastically reduces property owners' ability to earn a reasonable rate of return, and thus further destroys the value of their investment. The

2019 Amendments repealed the luxury- and high-income decontrol provisions, the two paths property owners had to obtain market rents for their current rent-stabilized units. The 2019 Amendments also restrict property owners' ability to recover the costs of IAIs and MCIs by curtailing the availability of those basic cost recovery measures.

218. Under the 2019 Amendments, property owners are required to continue charging reduced "preferential" rents, which are less than the legal regulated rent, even after a lease expires, and even when a lease rider expressly provides that a preferential rent is valid only for a specific lease term. Such property owners are now locked into rates below the legal regulated rent, thus hindering their ability to earn a reasonable return.

219. The RSL likewise undermines the reasonable, investment-backed expectations of property owners, including Plaintiffs, who undertook significant capital investments to improve the quality of their buildings and units on the reasonable belief that New York's rent regulations would preserve their ability to earn a reasonable rate of return on these investments. The 2019 Amendments facially prevent that outcome and impair the ability of property owners to refinance their mortgages in the future.

220. The character of the government action under RSL is functionally equivalent to a direct appropriation of private property. In effect, the RSL converts the apartments it governs, on a permanent basis, into public housing stock used to provide social-welfare benefits to tenants.

221. The RSL is also facially invalid because it requires property owners to lease apartments at rents "below what would otherwise be a 'reasonable rent.'"

Pennell v. City of San Jose, 485 U.S. 1, 21 (1988) (Scalia, J., concurring in part and dissenting in part). By requiring property owners to subsidize tenant rents without regard to the reasonableness of those rents, and without providing corresponding benefits to property owners, the RSL unlawfully forces property owners "to bear public burdens which, in all fairness and justice, should be borne by the public as a whole," *Penn Central*, 438 U.S. at 123, and "us[es] the occasion of rent regulation . . . to establish a welfare program privately funded by" property owners," *Pennell*, 485 U.S. at 22 (Scalia, J., concurring in part and dissenting in part).

222. Once a property owner "is receiving only a reasonable return, he can no longer be regarded as a 'cause' of exorbitantly priced housing; nor is he any longer reaping distinctively high profits from the housing shortage." *Id*. at 21. As a result, property owners may not be constitutionally targeted as the remedy for such a societal problem, at their own expense, where they are not the root cause.

223. And even if the problems the RSL attempts to fix are caused by property owners as a class, such issues are "not remotely attributable to the *particular* landlords that the [RSL] singles out"—owners of residential buildings constructed before 1974 or otherwise subject to the RSL. *See id.* (emphasis in original).

224. Defendants, acting under color of New York law, have caused and will continue to cause, the constitutional violations described in this Count.

225. Each Defendant sued in his or her individual capacity has participated directly in causing the uncompensated taking of Plaintiffs' property or imple-

mented and continued policies causing the uncompensated taking of Plaintiffs' property.

226. Defendants David Reiss, Cecelia Joza, Alex Schwarz, German Tejeda, May Yu, Patti Stone, J. Scott Walsh, Leah Goodridge, and Shelia Garcia, as Chair and Members of the Rent Guidelines Board, respectively, have caused the uncompensated taking property by restricting rent increases for rent-stabilized apartments to levels that fail to keep up with the operating costs of those apartments.

227. Defendant RuthAnne Visnauskas has participated directly in the constitutional violation in this Count by enforcing the RSL against property owners, including Plaintiffs. In addition, Defendant Visnauskas has created and continued policies and customs causing the unconstitutional practices in this Count through her implementation and enforcement of the RSL.

228. Absent declaratory relief, just compensation, or injunctive relief, Plaintiffs will suffer irreparable harm caused by deprivation of their constitutional rights.

COUNT FOUR: As-Applied Regulatory Taking
Without Just Compensation
Fifth and Fourteenth Amendments - 42 U.S.C. § 1983
(On Behalf of All Plaintiffs Other Than
177 Wadsworth LLC)
(Against All Defendants)

229. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

230. In addition to authorizing an uncompensated physical occupation of Plaintiffs' property, the RSL, as amended by the 2019 Amendments, also constitutes a regulatory taking as applied to Plaintiffs 74 Pinehurst

LLC, 141 Wadsworth LLC, Dino Panagoulias, Dimos Panagoulias, Vasiliki Panagoulias, and Eighty Mulberry Realty Corporation.

231. The RSL inflicts a regulatory taking because it imposes a severe burden on private property rights.

232. The RSL has caused and will continue to cause Plaintiffs significant economic harm, including by (i) making it substantially more difficult, in light of existing tax burdens and onerous regulatory requirements, to comply with all applicable laws and regulations while also making ends meet; (ii) decreasing the resale value of Plaintiffs' properties; (iii) making preferential rents permanent, even when tenants agreed to higher rents before the 2019 Amendments were enacted, and even when lease agreements expressly stated that a preferential rent is valid only for a specific lease term; and (iv) depriving Plaintiffs of the rights to use and possess the apartments they own, and to exclude others from occupying and using those apartments.

233. The RSL likewise undermines Plaintiffs' reasonable, investment-backed expectations by precluding Plaintiffs from fully recovering the cost of improvements to their apartments, including improvements mandated by law or undertaken prior to enactment of the 2019 Amendments.

234. For example, Plaintiff 141 Wadsworth LLC undertook significant capital investments to improve the quality of its units on the reasonable belief that New York's rent regulations would preserve its ability to recover and earn a reasonable rate of return on these investments. The 2019 Amendments, as applied, prevent that outcome. Likewise, the 2019 Amendments have reduced the value of the rent-stabilized apartments owned by Plaintiffs 74 Pinehurst LLC and 141

Wadsworth LLC by 20 to 40 percent, jeopardizing the ability of these Plaintiffs to refinance their mortgages in the future.

235. The 2019 Amendments also have prevented and continue to prevent Plaintiffs Dino, Dimos, and Vasiliki Panagoulias from making improvements to their properties that they would have made under prior law but now can no longer afford.

236. The 2019 Amendments prevent Plaintiff Eighty Mulberry Realty Corporation from fully recouping the cost of improvements to rent-stabilized apartments undertaken before enactment of the 2019 Amendments, and have made it uneconomical to undertake similar improvements in the future.

237. The rent increases authorized by the Board and its members have not kept pace with Plaintiffs' operating expenses, further undermining Plaintiffs' investment-backed expectations.

238. Individually and collectively, the RSL's restrictions result in confiscatory rents that are "below what would otherwise be a 'reasonable rent.'" *Pennell*, 485 U.S. at 21 (Scalia, J., concurring in part and dissenting in part), and prevent Plaintiffs from earning a reasonable rate of return on the rent-stabilized apartments they own.

239. The character of the government action under RSL is functionally equivalent to a direct appropriation of private property. In effect, the RSL converts the apartments it governs, on a permanent basis, into public housing stock used to provide social-welfare benefits to tenants.

240. By requiring Plaintiffs to subsidize tenant rents without regard to the reasonableness of those

rents, and without providing corresponding benefits to Plaintiffs, the RSL unlawfully forces Plaintiffs "to bear public burdens which, in all fairness and justice, should be borne by the public as a whole," *Penn Central*, 438 U.S. at 123, and "us[es] the occasion of rent regulation . . . to establish a welfare program privately funded by" property owners, *Pennell*, 485 U.S. at 22 (Scalia, J., concurring in part and dissenting in part).

241. Even if the problems the RSL attempts to fix are caused by property owners as a class, such issues are "not remotely attributable to" Plaintiffs. *Id.*

242. Defendants, acting under color of New York law, have caused and will continue to cause, the constitutional violations described in this Count.

243. Each Defendant sued in his or her individual capacity has participated directly in causing the uncompensated taking of Plaintiffs' property or implemented and continued policies causing the uncompensated taking of Plaintiffs' property.

244. Defendants David Reiss, Cecelia Joza, Alex Schwarz, German Tejeda, May Yu, Patti Stone, J. Scott Walsh, Leah Goodridge, and Shelia Garcia, as Chair and Members of the Rent Guidelines Board, respectively, have caused the uncompensated taking property by restricting rent increases for rent-stabilized apartments to levels that fail to keep up with the operating costs of those apartments.

245. Defendant RuthAnne Visnauskas has participated directly in the constitutional violation in this Count by enforcing the RSL against Plaintiffs. In addition, Defendant Visnauskas has created and continued policies and customs causing the unconstitutional

practices in this Count through her implementation and enforcement of the RSL.

246. Absent declaratory relief, just compensation, or injunctive relief, Plaintiffs will suffer irreparable harm caused by deprivation of their constitutional rights.

COUNT FIVE: Violation of Contract Clause
U.S. Constitution, Article I - 42 U.S.C. § 1983
(On Behalf of All Plaintiffs)
(Against State of New York, City of New York, Division of Housing and Community Renewal, and RuthAnne Visnauskas)

247. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

248. The Contract Clause of the United States Constitution provides that no State shall pass any "Law impairing the Obligation of Contracts." U.S. Const. art. I, cl. 10.

249. As applied to Plaintiffs, the RSL, as amended by the 2019 Amendments, violates the Contract Clause because it substantially impairs Plaintiffs' existing apartment-rental contracts, and such impairment does not reasonably advance a significant and legitimate public purpose. The RSL causes this violation by, among other things, prohibiting Plaintiff 74 Pinehurst LLC from charging monthly rents authorized by rental contracts executed before June 14, 2019, and by requiring all Plaintiffs to base future leases on preferential rents in effect or otherwise applicable on or after the date on which the 2019 Amendments were enacted, even where lease agreements expressly stated that a preferential rent applied only to a specific lease term.

250. In March 2019, a tenant of Plaintiff 74 Pinehurst LLC had a lease with a preferential rent that was due to expire on July 31, 2019. On March 21, 2019, Plaintiff 74 Pinehurst LLC sent the tenant an offer to renew the lease for one year at a higher (but still preferential) monthly rent. This amount represented an increase greater than the increase now permitted by the Board's guidelines. On May 11, 2019, the tenant signed the lease offer. That lease agreement remains in effect. Following enactment of the 2019 Amendments, however, Plaintiff 74 Pinehurst LLC may charge only the preferential rent from the parties' preceding lease agreement as adjusted by the Board's guidelines, notwithstanding the parties' executed lease agreement for a higher amount.

251. Similarly, in May 2019, another tenant of Plaintiff 74 Pinehurst LLC had a lease with a preferential rent that was due to expire on August 31, 2019. On May 15, 2019, Plaintiff 74 Pinehurst LLC sent the tenant an offer to renew the lease for one year at a higher (but still preferential) monthly rate. This amount reflected an increase greater than the increase now permitted by the Board's guidelines. On June 10, 2019, the tenant signed the lease offer. That lease agreement remains in effect. Following enactment of the 2019 Amendments, however, Plaintiff 74 Pinehurst LLC may charge only the preferential rent from the parties' preceding lease agreement as adjusted by the Board's guidelines, notwithstanding the parties' executed lease agreement for a higher amount.

252. Nearly 270,000 apartment units may be affected in the same way.

253. The two most important terms of a lease are the monthly rent and the term, i.e., duration for which it will be paid. The 2019 Amendments mandate

changes to both of these key contractual terms. Part E of the 2019 Amendments requires property owners, including Plaintiff 74 Pinehurst LLC, to change the monthly rent on contracts already signed and executed, where such rent is in excess of the preferential rent charged under prior lease agreements (plus any increase authorized by the Board). Accordingly, the law requires Plaintiff 74 Pinehurst LLC to charge a lower monthly rent than the rent provided in signed, executed, and operative lease agreements because the agreed-upon rent exceeds the preferential rent charged under the parties' prior lease agreements as adjusted by the Board's guidelines.

254. This government-mandated change to one of the two most important terms of each lease agreement—the monthly rent—is a substantial impairment of Plaintiff 74 Pinehurst LLC's lease contracts, which were executed before the 2019 Amendments were enacted, and which remain in effect.

255. The RSL's substantial impairment of Plaintiff 74 Pinehurst LLC's contracts does not reasonably advance a significant and legitimate public purpose.

256. The RSL also violates the Contract Clause by extending the term of preferential-rent leases and thus mandating a change to the other most important term of a lease.

257. The RSL requires property owners, including Plaintiffs, to continually renew leases based on the preferential rent of the previous lease, thereby extending the term of such contracts beyond that to which the parties agreed.

258. Because tenants have a right to renewal, the RSL forces property owners, including Plaintiffs, to continue renting their property at preferential rates in

perpetuity, substantially impairing their contractual rights.

259. By forcing property owners, including Plaintiffs, to offer lower rents than previously agreed to, the 2019 Amendments will not advance the RSL's stated objectives, as property owners will be less likely to offer such lower rents if they are unable to increase those rents to the legal regulated rent in the future. That incentive will only benefit affluent tenants with the resources to pay non-preferential rents.

260. Defendants State of New York, City of New York, Division of Housing and Community Renewal, and RuthAnne Visnauskas, acting under color of New York law, have caused and will continue to cause, the constitutional violations described in this Count.

261. Defendant Visnauskas has participated directly in the constitutional violation described in this Count by enforcing the RSL against Plaintiff 74 Pinehurst LLC. In addition Defendant Visnauskas has created and continued policies and customs causing the unconstitutional practices in this Count through her implementation and enforcement of the RSL.

262. Absent declaratory or injunctive relief, Plaintiffs will suffer irreparable harm caused by deprivation of its constitutional rights.

COUNT SIX: Violation of Due Process
Fourteenth Amendment - 42 U.S.C. § 1983
(On Behalf of All Plaintiffs)
(Against All Defendants)

263. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

264. The Due Process Clause of the Fourteenth Amendment to the Constitution provides that no state

shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

265. Defendants have caused, and will continue to cause, Plaintiffs to be deprived of their property without due process of law because the RSL, as amended by the 2019 Amendments, fails to substantially advance legitimate governmental interests.

266. The RSL purports to promote the legitimate public purpose of preserving and providing affordable housing for lower-income individuals and households. However, the RSL does not further that purpose, and in fact undermines it.

267. The RSL protects and advances the interests of the wealthiest rent-stabilized tenants, diminishes the availability of affordable units for low-income renters, and degrades the existing stock of rent-stabilized units by discouraging vital investments in infrastructure.

268. In addition, one of the key goals of the RSL is to provide for "transition from regulation to a normal market of free bargaining between landlord and tenant," N.Y. Unconsol. Law § 8622. However, the RSL undermines rather than advances that objective.

269. The 2019 Amendments eliminated the sole decontrol mechanisms by which rent-stabilized apartments could be transitioned from regulation to market-rate rentals. Indeed, preventing that transition was one of the 2019 Amendments' goals; as one of the 2019 Amendments' sponsors indicated, the legislation was designed "to ensure that rent-stabilized apartments remain stabilized." The RSL therefore fails to substantially advance—and indeed directly undercuts—one of its own stated goals.

270. In addition, the RSL is irrational because it is predicated on a five percent "emergency" vacancy rate that is caused and perpetuated by the RSL's restrictions.

271. The RSL thus subjects Plaintiffs to a deprivation of rights guaranteed to them by the Constitution.

272. In the absence of declaratory or injunctive relief, Plaintiffs will continue to be irreparably harmed.

273. Defendants, acting under color of New York law, have caused and will continue to cause, the constitutional violations described in this Count.

274. Each Defendant sued in his or her individual capacity has participated directly in the constitutional violation described in this Count.

275. Defendant RuthAnne Visnauskas has participated directly in the constitutional violation in this Count by enforcing the RSL against Plaintiffs. In addition, Defendant Visnauskas has created and continued policies and customs causing the unconstitutional practices in this Count through her implementation and enforcement of the RSL.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court to enter judgment in Plaintiffs' favor and against Defendants and to:

A. Declare that the Rent Stabilization Law, as amended by the 2019 Amendments, violates the Takings Clause of the Fifth Amendment of the United States Constitution, both facially and as applied to Plaintiffs 74 Pinehurst LLC, 141 Wadsworth LLC, Dino Panagoulias, Dimos Panagoulias, Vasiliki Panagoulias, and Eighty Mulberry Realty Corporation;

B. Declare that the Rent Stabilization Law, as amended by the 2019 Amendments, violates the Contract Clause of Article I of the United States Constitution, as applied to Plaintiffs;

C. Declare that the Rent Stabilization Law, as amended by the 2019 Amendments, violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

D. Permanently enjoin Defendants from enforcing, or exercising any authority under, the provisions of the Rent Stabilization Law as amended by the 2019 Amendments;

E. Award just compensation for Defendants' taking of Plaintiffs' property in violation of the Fifth Amendment of the Constitution;

F. Award damages or restitution for Defendants' violation of Plaintiffs' rights under the Contract Clause of Article I of the Constitution;

G. Award prejudgment interest at the maximum rate allowable by law;

H. Award Plaintiffs their reasonable attorneys' fees, experts' fees, and other costs and expenses, *see, e.g.*, 42 U.S.C. § 1988; and

I. Award any other relief that the Court deems just and proper.

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