

Nos. 22-1095, 22-1130

IN THE
Supreme Court of the United States
COMMUNITY HOUSING IMPROVEMENT PROGRAM, ET AL.,
Petitioners,
v.
CITY OF NEW YORK, NEW YORK, ET AL.,
Respondents.

74 PINEHURST LLC, ET AL.,
Petitioners,
v.
NEW YORK, ET AL.,
Respondents.

**On Petitions for Writs of Certiorari to the
United States Court of Appeals
for the Second Circuit**

**BRIEF FOR *AMICI CURIAE* NATIONAL
APARTMENT ASSOCIATION, NATIONAL
ASSOCIATION OF HOME BUILDERS,
NATIONAL ASSOCIATION OF REALTORS®,
AND MORTGAGE BANKERS ASSOCIATION
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Amicus curiae National Apartment Association (NAA) is the leading voice and preeminent resource for the rental housing industry. As a federation of 141 affiliated apartment associations, NAA encompasses over 89,000 members representing more than 11 million apartment homes. NAA emphasizes integrity, accountability, collaboration, inclusivity, and innovation, and believes that rental housing is a valuable partner in every community. In addition to providing professional development, education, and credentialing, NAA and its network of affiliated apartment associations seek the fair governmental treatment of multifamily housing organizations, including advocating the interests of the rental housing business community at large in legal cases of national concern.

Amicus curiae National Association of Home Builders (NAHB) is a Washington, D.C.-based trade association whose mission is to enhance the climate for housing and the building industry. One of NAHB's chief goals is to provide and expand opportunities for all people to have safe, decent, and affordable housing. Founded in 1942, NAHB is a federation of more than 700 state and local associations. About one-third of NAHB's approximately 140,000 members are home builders or remodelers, constructing about 80 percent

¹ Counsel of record for all parties received timely notice of *amici*'s intent to file this brief as required by Rule 37. No counsel for a party authored this brief in whole or in part, and no person other than *amici*, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

of all homes built in the United States. NAHB is a vigilant advocate for property rights and a guardian against economic misunderstanding in the nation's courts. It frequently participates as a party litigant and *amicus curiae* to protect its members' constitutional and statutory rights and business interests.

Amicus curiae the National Association of REALTORS® (NAR) is a national trade association, representing over 1.5 million members, including its institutes, societies, and councils involved in all aspects of residential and commercial real estate. Members are residential and commercial brokers, salespeople, property managers, appraisers, counselors, and others engaged in the real estate industry. Members belong to one or more of the approximately 1,200 local and 54 state and territory associations of REALTORS®, and support private property rights, including the right to own, use, and transfer real property. REALTORS® adhere to a strict Code of Ethics, setting them apart from other real estate professionals for their commitment to ethical real estate business practices.

Amicus curiae Mortgage Bankers Association (MBA) is a national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance

employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field.

Amici are interested in this case because rent-control measures have a significant impact on private-property rights, the supply of affordable housing, and the real estate industry as a whole, which in turn significantly affect their members' businesses. New York's Rent Stabilization Law (RSL) imposes onerous restrictions on the ability of New York City's rental-property owners to recover possession of their properties. The 2019 Amendments to the RSL, which impose additional burdens on property owners, are part of a recent trend by all levels of government to adopt or enhance laws infringing private property rights. *Amici* file this brief to provide additional information to the Court about this trend and the adverse effects of rent-control laws like the RSL.

SUMMARY OF ARGUMENT

The Takings Clause guarantees that "private property" shall not "be taken for public use, without just compensation." U.S. Const., amend. V. This constitutional provision "shield[s] against the arbitrary use of governmental power" exercised to deprive citizens of vested property interests, *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980), and ensures that the cost of public

programs is “borne by the public as a whole,” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

Yet governments up and down our federalist system are continually finding ways to encroach upon private-property rights. Rather than protect private property, governments have conscripted property owners into serving the state without compensation. These intrusive and unconstitutional actions include eviction moratoria and draconian rent-control regimes that purport to divest property owners of long-recognized property interests. Adoption of such laws has accelerated in recent years. *See, e.g., Alabama Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 141 S. Ct. 2485 (2021). In light of this trend, it is critical that the Court intervene to provide guidance to lower courts assessing challenges to burgeoning restrictions on private property.

New York’s RSL demonstrates the harmful effects of misguided housing policies that restrict private-property rights. Simply put, rent-control laws like the RSL exacerbate housing supply and affordability problems by reducing the quantity of available housing. They also reduce housing quality, decrease consumer mobility and entry into the housing market, and provide an inequitable solution to issues of housing affordability. Prohibiting governments from imposing unconstitutional burdens on rental-property owners will ultimately improve housing affordability and quality nationwide, in contrast to the broken status quo in New York and elsewhere that works against those objectives.

Rent control has negative effects not only on the housing market, but on property owners in particular,

who are required “alone to bear [the] public burdens” of misguided housing policies. *Armstrong*, 364 U. S. at 49. The records in these cases are chock full of examples of how the RSL has made it difficult for property owners to possess and enjoy their own properties—even for personal uses. These difficulties inevitably fall hardest on individual “mom and pop” property owners with the fewest resources. The RSL thus forces property owners to make a “far greater contribution” to public projects than the Constitution permits. *Tyler v. Hennepin Cnty.*, No. 22-166, 2023 WL 3632754, at *8 (U.S. May 25, 2023). This Court should grant certiorari and reverse.

ARGUMENT

I. GOVERNMENT RESTRICTIONS ON PRIVATE PROPERTY ARE EXPLODING NATIONWIDE.

New York’s RSL is one of the most draconian rent-control laws in the country. For more than half a century, New York has forced property owners to subsidize the State’s misguided housing policies. Until recently, the RSL could be seen as a remnant of discredited housing policies from decades past. No longer. Governments at the federal, state, and local levels have moved aggressively over the past several years to encroach on private property rights without even a thought of the Takings Clause.

Eviction Moratoria. The Court is familiar with one of the most egregious recent examples: During the pandemic, the federal government and dozens of states imposed moratoria on residential evictions. *See Alabama Ass’n of Realtors*, 141 S. Ct. 2485; *Chrysafris v. Marks*, 141 S. Ct. 2482 (2021). Under the federal eviction moratorium, the Centers for Disease Control

and Prevention (CDC) ordered that “a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory actions shall not evict any covered person”—even those who had “violat[ed]” their “contractual obligation[s]” by failing to provide a “timely payment of rent.” 85 Fed. Reg. 55,292, 55,294, 55,296 (Sept. 4, 2020).

The CDC’s eviction moratorium put “millions of landlords across the country ... at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery.” *Alabama Ass’n of Realtors*, 141 S. Ct. at 2489. “And preventing them from evicting tenants who breach their leases intrude[d] on one of the most fundamental elements of property ownership—the right to exclude.” *Id.*

In addition to the federal government, forty-three states and the District of Columbia imposed some type of eviction moratoria during the pandemic,² some of which were held to be unconstitutional takings. Minnesota’s moratorium, for example, similarly obligated property owners to indefinitely permit tenants to remain in place over the owner’s objection. *Heights Apts., LLC v. Walz*, 30 F.4th 720, 724 (8th Cir. 2022). Following this Court’s reasoning in *Alabama Association of Realtors*, the Eighth Circuit held that the property owners had plausibly alleged a taking because Minnesota had “deprived [property owners] of [their] right to exclude existing tenants without compensation.” *Id.* at 733. As the Petitioners explain, the Eighth Circuit’s ruling conflicts with the Second

² Jonathan Stempel & David Shepardson, *Judge puts hold on ruling voiding U.S. moratorium on evicting renters*, Associated Press (May 6, 2021), <https://perma.cc/C84A-R2DU>.

Circuit’s analysis in this case. CHIP Pet. 22; Pinehurst Pet. 16–18, 26–29.³

Some local jurisdictions’ eviction moratoria remain in effect to this day. For example, the City of Oakland, California, will not phase out its COVID-19 eviction moratorium until this summer.⁴ Eviction moratoria in other jurisdictions, such as the City of Los Angeles and Los Angeles County, did not expire until this year.⁵ There is ongoing litigation in the Ninth Circuit over various takings challenges to eviction moratoria on the West Coast. *See, e.g., El Papel, LLC v. City of Seattle*, No. 22-35656 (9th Cir. argued Apr. 10, 2023); *see also Darby Dev. Co. v. United States*, No. 22-1929 (Fed. Cir.) (takings challenge to CDC eviction moratorium).

Rent Control. Though more enduring than the COVID-19 eviction moratoria, various rent-control regimes around the country pose similar—and more subversive—threats to property owners. “Rent control statutes come in all types, shapes and sizes.”⁶ Some peg the allowable rent to historic rents, while others limit the increases permitted within particular time

³ “CHIP Pet.” refers to the Petition in Case No. 22-1095. “Pinehurst Pet.” refers to the Petition in Case No. 22-1130.

⁴ *Oakland Eviction Moratorium Phase-Out*, City of Oakland (May 3, 2023), <https://perma.cc/G2N4-BX56>.

⁵ *COVID-19 Renter Protections*, City of Los Angeles Housing Dep’t (May 24, 2023), <https://perma.cc/YSZ5-6LWL>; *About L.A. County’s COVID-19 Tenant Protections Resolution*, Los Angeles County Dep’t of Consumer & Business Affairs, <https://perma.cc/YF7Q-M7PD>.

⁶ Richard A. Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 Brook. L. Rev. 741, 742 (1988).

periods.⁷ But for all of their differences, the regimes uniformly interfere with property owners' ability to use, control, and profit from their properties.

New York's rent-control regime is particularly disconcerting. The purpose of New York's RSL, as with all other rent-control laws, is to stabilize costs and improve housing conditions. But, consistent with trends around the country, New York amended the RSL in 2019 to make it *more* difficult for property owners to recover properties from tenants, to decontrol units, and to recoup costs of improvements. *See* CHIP Pet. 5-7; Pinehurst Pet. 5-7. These restrictions make it nearly impossible for property owners to decline to renew the leases for tenants in rent-stabilized apartments, or to recover their properties for other uses—including personal uses.

Rent control is not just a problem in the Empire State. Oregon recently adopted the first statewide rent-control regime in 2019, which capped annual rent increases and imposed new limits on the rights of property owners to evict tenants. *See* 2019 Or. Laws Ch. 1 (S.B. 608).⁸ This innovation was followed shortly thereafter by California, which imposed similar restrictions. *See* 2019 Cal. Legis. Serv. Ch. 597 (A.B. 1482).⁹ Numerous other states are considering adopting statewide rent control, including Arizona,

⁷ *See id.*; Val Werness, Legal Research Center, Inc., *Rent Controls* 7–9 (2017) (describing various regimes).

⁸ *See also* Mihir Zaveri, *Oregon to Become First State to Impose Statewide Rent Control*, N.Y. Times (Feb. 26, 2019).

⁹ *See also* Conor Dougherty & Luis Ferré-Sadurní, *California Approves Statewide Rent Control to Ease Housing Crisis*, N.Y. Times (Nov. 4, 2019).

Connecticut, Hawaii, New Jersey, New Mexico, Rhode Island, and South Carolina.¹⁰

Additionally, over 200 local governments around the country have adopted their own rent-control laws.¹¹ For example, rent-controlled units in San Francisco are subject to strict caps on allowable annual rent increases, which rarely exceed 2.5% and are sometimes less than 1%.¹² Moreover, San Franciscan property owners must permit their tenants to continually renew their leases unless the property owner can establish that “just cause” exists for non-renewal.¹³ Although the majority of states currently preempt rent control at the local level, *see, e.g.*, Laws of Florida, Ch. 2023-17 (S.B. 102), legislatures in nine of those states are considering repealing their preemption laws to allow municipalities to impose rent control.¹⁴

This debate over rent control has even migrated to Washington, D.C., where Congress has considered national rent-control legislation and prominent elected officials have endorsed a nationwide rent-

¹⁰ Ben Harrold, *Rent Control Marches Onward in 2023*, NAA (Mar. 15, 2023), <https://perma.cc/8KYS-3ZBA>.

¹¹ *Rent Control: Policy Issue*, NAA, <https://perma.cc/W9KH-Y5AX>.

¹² *Allowable Annual Rent Increases*, San Francisco Residential Rent Stabilization and Arbitration Board, <https://perma.cc/F5N6-EZS9>.

¹³ *Overview of Just Cause Evictions*, City and County of San Francisco (Feb. 2020), <https://perma.cc/6AES-P6BX>.

¹⁴ Harrold, *supra* n.10.

control program.¹⁵ In response to these legislative prompts, President Biden released a “Renters Bill of Rights” setting forth his agenda to cap housing costs at no more than 30 percent of household income and encouraging federal agencies to work toward the implementation of various national rent-control policies.¹⁶ For example, the White House announced that the Federal Trade Commission would “explore ways to expand the use of its authority” into rental market practices.¹⁷ The Federal Housing Finance Agency (FHFA) instructed Fannie Mae and Freddie Mac to consider potential policies to further regulate the rental housing market.¹⁸ These steps evince a concerning expansion of the federal government’s efforts to infringe property rights. And if implemented, these policies threaten to further undermine pathways to home ownership—a proven and

¹⁵ H.R. 5072, 116th Cong. (2019); Letter from Senator Elizabeth Warren, Representative Jamaal Bowman, and 48 other members of Congress to Joseph R. Biden, President of the United States (Jan. 9, 2023), <https://perma.cc/9S5R-LYB3> (urging the President to order federal agencies to enact national rent control policies).

¹⁶ *The White House Blueprint for a Renters Bill of Rights* (Jan. 2023), <https://perma.cc/U59R-3SZM>.

¹⁷ *Id.* at 6.

¹⁸ *FHFA to Request Input on Multifamily Tenant Protections*, FHFA, <https://perma.cc/P3LZ-8GER>.

significant source of generational wealth—by incentivizing and effectively subsidizing renting.¹⁹

II. RENT-CONTROL LAWS UNDERMINE THEIR PURPORTED GOAL OF PROMOTING HOUSING AFFORDABILITY AND HAVE A SIGNIFICANT NEGATIVE IMPACT ON HOUSING MARKETS.

Far from advancing housing affordability, rent-control laws such as the RSL generate a host of negative consequences in housing markets by discouraging both the construction of new housing units and the maintenance of existing ones. Economists almost universally agree that rent control creates more problems than it solves because it: (1) shrinks the quantity of available housing (thereby exacerbating existing housing shortages and affordability problems); (2) diminishes the quality of available housing; (3) reduces consumer mobility and entry into the housing market; and (4) offers an inequitable solution to housing affordability issues.²⁰

A. Rent Control Reduces the Quantity of Available Housing.

As in any other market, prices in the housing market respond to supply and demand. Rents and home prices tend to increase in the short-term when demand outstrips supply. Over time, however, higher rents encourage new investment in rental housing,

¹⁹ See generally Scholastica (Gay) Cororaton, *Single-Family Homeowners Typically Accumulated \$225,000 in Housing Wealth Over 10 Years*, NAR: Economists' Outlook (Jan. 7, 2022), <https://perma.cc/4PXC-Y4L5>.

²⁰ See R.M. Alston, J.R. Kearl, & M.B. Vaughan, *Is There a Consensus Among Economists in the 1990s?*, 82 Am. Econ. Rev. 203 (1992).

which yields “new construction, rehabilitation of existing units, and conversion of buildings from nonresidential to residential use,” and helps eliminate the housing shortage.²¹ Artificially capping rents sends a false message that no such investment is necessary, thereby shrinking the housing supply.²²

Because it reduces the profitability of rental housing, rent control “direct[s] investment capital out of the rental market and into other more profitable markets.”²³ Indeed, 87.5% of developers in a recent survey indicated that they avoid building in jurisdictions with rent control.²⁴ This results not only in a decline of construction of new housing, but the conversion of existing rental units to other uses.²⁵ In short, rent control “perpetuates the very problem it was designed to address: a housing shortage.”²⁶

Numerous studies demonstrate this real-world impact. For example, the number of rental units decreased in Cambridge (8%) and Brookline (12%), Massachusetts, during the 1980s after those cities imposed rent-control measures.²⁷ Meanwhile, in

²¹ Werness, *supra* n.7, at 94.

²² *Id.*

²³ National Multifamily Housing Council (NMHC), *The High Cost of Rent Control*, <https://perma.cc/FZ7Z-29ZC>.

²⁴ NMHC, *Cost of Regulations Report* (June 9, 2022), <https://perma.cc/N9PH-T2H7>.

²⁵ NMHC, *supra* n.23.

²⁶ Peter D. Salins, *Rent Control's Last Gasp*, *City Journal* (Winter 1997).

²⁷ Rolf Goetze, *Rent Control: Affordable Housing for the Privileged, Not the Poor* 7 (1994).

neighboring Boston, “which had a less restrictive form of rent control,” rental housing stock “declined by just 2 percent.”²⁸ “But in virtually all other Boston area communities without rent control ... the rental housing stock increased.”²⁹

Similarly, the number of rental units decreased in Berkeley (14%) and Santa Monica (8%), California, between 1978 and 1990 after those cities imposed rent control, while the rental supply rose in nearby cities during the same period.³⁰ A recent study of the San Francisco housing market found that rent control reduced the rental supply of small multi-family housing by 15%, which ultimately led to rent increases and increased gentrification.³¹

In St. Paul, Minnesota, apartment construction slowed by more than 80% after the city adopted rent control in 2021.³² Apartment transaction volume in the city fell 50.3% in 2022, while apartment transaction volume in neighboring Minneapolis—

²⁸ *Id.*

²⁹ *Id.*

³⁰ St. John & Associates, *Rent Control in Perspective: Impacts on Citizens and Housing in Berkeley and Santa Monica Twelve Years Later*, Pacific Legal Foundation (1993).

³¹ Rebecca Diamond, Tim McQuade, & Franklin Qian, *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco*, 109 *Am. Econ. Rev.* 3365 (2019).

³² Frederick Melo, *Apartment construction slows by more than 80 percent in St. Paul*, Pioneer Press (Apr. 4, 2022), <https://perma.cc/B6A2-WD3B>.

which did not impose rent control—*grew* over that same time period.³³

The New York RSL has had a similar impact. Despite ample zoning capacity for development of rental units, buildings where over 75% of the units are rent-stabilized have a significantly higher share of their zoned capacity available for development than buildings with no rent-stabilized units. CHIP Pet.App. 128a. Such buildings have approximately 20 percent of their zoned capacity available, while buildings without rent-stabilized units tend to *exceed* their zoned capacity. *Id.* This disparity in development demonstrates that the RSL contributes significantly to the underdevelopment of rental properties and housing supply problems.

It is not hard to see why. The RSL reduces revenue from buildings that could be reinvested into further development and restricts owners' ability to demolish and rebuild their buildings to provide additional rental units. CHIP Pet.App. 127a. Moreover, the RSL's limitations on an owner's right to recover units create substantial barriers to redeveloping a building, because stabilized tenants (and their successors) can leverage their rights to extract outsized buyout payments in exchange for vacating the premises. CHIP Pet.App. 129a. The 2019 Amendments to the RSL make the problem worse by eliminating two decontrol provisions, jettisoning two bases for rent increases, and capping the amount recoverable for

³³ CBRE, *Impact of Rent Control on Housing Investment in Minneapolis & St. Paul* (Jan. 2023), <https://perma.cc/QVQ8-GD4C>.

making improvements to rental units. CHIP Pet.App. 130a-131a.

Because rent control worsens, rather than ameliorates, housing scarcity, rent-control laws tend to contribute to greater rent increases in the unregulated market. One study concluded that rents in uncontrolled units in New York City were between 22% and 25% higher than they would be in the absence of the RSL.³⁴ Similarly, in Los Angeles, after two years of rent controls, “uncontrolled rents had risen an average of 46.2 percent,” a larger increase “than would have occurred in the absence of rent controls.”³⁵ In San Francisco, an expansion of rent control “was directly responsible for a 5.1 percent citywide rent increase from 1995 to 2012, adding up to an extra \$2.9 billion cost.”³⁶

B. Rent Control Reduces the Quality of Available Housing.

Rent control also deteriorates the quality of existing housing. Less rent revenue means less money available to devote to maintenance and repair. This has obvious negative effects on tenants in rent-controlled housing, because property owners lack the incentive to properly maintain units (above the

³⁴ Steven B. Caudill, *Estimating the Costs of Partial-Coverage Rent Controls: A Stochastic Frontier Approach*, 75 *Rev. Econ. & Stat.* 727 (1993).

³⁵ George Fallis & Lawrence B. Smith, *Uncontrolled Prices in a Controlled Market: The Case of Rent Controls*, 74 *Am. Econ. Rev.* 193, 199 (1984).

³⁶ Prasanna Rajasekaran et al., *Rent Control: What Does the Research Tell Us about the Effectiveness of Location Action?*, *Urb. Inst.* 5 (Jan. 2019).

minimum required to make them habitable) and provide amenities or services to tenants.³⁷

A 1985 nationwide study concluded that “rent controls were associated with a 7.1 percent decrease in quality during 1974, and with a 13.5 percent decrease in 1977.”³⁸ “The results were similar,” the study noted, “if the analysis is restricted to a low income subsample,” indicating that any “favorable distributional effects may be partially offset by quality deterioration.”³⁹

City-specific studies tell the same story. One study estimated that a Los Angeles rent-control law caused so much deterioration that it offset 63 percent of the benefit to consumers of lowered rent.⁴⁰ Data from Boston showed that “rent control ... appear[ed] to reduce the maintenance performed on rental units,”⁴¹ with one 1985 case study estimating that “landlords spent almost \$50 less per year on each unit of controlled buildings” compared to uncontrolled units

³⁷ Norm Miller, *California Rent Controls: Good Intentions with Disastrous Consequences*, Univ. of San Diego News Center (May 16, 2018), <https://perma.cc/CYG6-DD4C>.

³⁸ David L. Mengle, *The Effect of Second Generation Rent Controls on the Quality of Rental Housing* 14 (Fed. Res. Bank of Richmond Working Paper No. 85-5 1985).

³⁹ *Id.*

⁴⁰ C.P. Rydell et al., *The Impact of Rent Control on the Los Angeles Housing Market* 55–59, The Rand Corporation (1981).

⁴¹ David P. Sims, *Out of Control: What Can We Learn from the End of Massachusetts Rent Control?*, 61 *J. Urb. Econ.* 129, 144 (2007).

in the city.⁴² A 1990 study of New York City likewise concluded that “a change in the rent control status of the building’s apartments from uncontrolled to controlled reduces the probability of the building being in sound condition.”⁴³ And separate studies of New York’s rental market found that controlled units had less maintenance, were of lower quality, and had more deterioration than uncontrolled units.”⁴⁴

The 2019 Amendments to the RSL compound the law’s negative effect on housing quality. The Amendments drastically reduced the amount owners could recover via rent increases for making Major Capital Improvements to their properties as well as for making individual apartment improvements. CHIP Pet.App. 108a-109a. The obvious consequence of these changes is that owners have less incentive and ability to make improvements to their rental properties.

A recent survey of housing providers and developers confirms these findings. According to the survey, 71% of housing providers agree that rent control negatively impacts development and investment plans.⁴⁵ “Rent control deters investment and development in part because it limits the ability

⁴² Peter Navarro, *Rent Control in Cambridge, Mass.*, 78 Pub. Int. 83, 92 (Winter 1985).

⁴³ Joseph Gyourko & Peter Linneman, *Rent Controls and Rental Housing Quality*, 27 J. Urb. Econ. 398, 405 (1990).

⁴⁴ Navarro, *supra* n.42, at 92.

⁴⁵ Mary Donovan & Nam Pham, *Examining the Unintended Consequences of Rent Control Policies in Cities Across America 2*, NAA (Mar. 2023), <https://perma.cc/AY7K-7N6B>.

to keep pace with operational costs and generate revenue while also signaling a higher risk of future policy restrictions.”⁴⁶ Moreover, “[r]ising business costs make it even more difficult for housing providers to sustain operations under rent control policies.”⁴⁷ While housing providers absorb the increased costs of essential maintenance, 61% of providers have had or expect to defer nonessential maintenance or improvements because of rent-control policies.⁴⁸

C. Rent Control Reduces Consumer Mobility and Entry.

Tenants in rent-controlled units understandably are reluctant to give up their housing subsidy and thus are less willing to move or pursue homeownership, even when doing so may be in their best interest.

One study concluded that rent control in New York City tripled the expected duration of a tenant’s residence.⁴⁹ The researchers found that “the ‘average’ rent control tenant would choose to remain in his or her residence about 18 years longer than an otherwise identical tenant in an identical residence which was not rent controlled.”⁵⁰ And renters often remain in apartments that do not suit their needs in order to continue receiving this benefit. One study

⁴⁶ *Id.*

⁴⁷ *Id.* at 4.

⁴⁸ *Id.*

⁴⁹ Richard W. Ault et al., *The Effect of Long-Term Rent Control on Tenant Mobility*, 35 *J. Urban Econ.* 140 (1994).

⁵⁰ *Id.* at 156.

demonstrated that “21 percent of New York apartment renters live in apartments with more or fewer rooms than they would if they were living in a free market city.”⁵¹ This situation contributes to the RSL’s tendency to create long-term, multi-generational occupants of owners’ properties. See Pinehurst Pet.App. 193a.

This phenomenon is not confined to the Big Apple. A study of San Francisco’s housing market concluded that rent control limited renters’ mobility by 20% and lowered displacement from San Francisco.⁵² This reduced mobility “can be particularly costly to families whose job opportunities are geographically or otherwise limited and who may have to travel long distances to reach those jobs available to them.”⁵³ This can also cause spillover effects in the community, such as increased traffic congestion and demand for city services.⁵⁴

In a study of rent control in Los Angeles, researchers “found a clear ‘trend toward declining mobility of renter households under rent control,’ as measured by the percentage of renters.”⁵⁵ Likewise, researchers have found that rent-controlled tenants in the District of Columbia move less frequently than

⁵¹ Edward L. Glaeser & Erzo F.P. Luttmer, *The Misallocation of Housing under Rent Control*, 93 J. Urban Econ. 1027, 1028-29 (2003).

⁵² Diamond et al., *supra* n.31.

⁵³ NMHC, *supra* n.23.

⁵⁴ *Id.*

⁵⁵ Navarro, *supra* n.42 at 94.

tenants of other units, contributing to low overall rates of residential mobility.⁵⁶

Additionally, rent control erects barriers to entry into the housing market. As explained above, rent control has the effect of exacerbating housing scarcity and raising rents for unregulated apartments. Consequently, in many rent-controlled communities, prospective consumers must pay substantial finder's fees or other payments to current consumers to obtain a rental unit.⁵⁷ Some communities have developed a housing "gray-market," where units are passed among friends or family members.⁵⁸ These barriers to entry disproportionately affect low-income and young people.⁵⁹

D. Rent Control Is Not an Equitable Solution to the Housing Affordability Problem.

Contrary to its proponents' intentions, rent control frequently benefits the wealthy while doing little to help the poor. The RSL is a particularly egregious example of this phenomenon. The statute lacks any means testing, financial qualification, or other requirement that rent-stabilized apartments be rented to low-income families. CHIP Pet.App. 115a-116a. And because the RSL effectively requires owners to perpetually renew leases, property owners

⁵⁶ See Lisa Sturtevant, *The Impacts of Rent Control: A Research Review & Synthesis* 12, NMHC Res. Found. (May 2018).

⁵⁷ NMHC, *supra* n.23.

⁵⁸ *Id.*

⁵⁹ *Id.*

have an incentive to choose tenants with higher incomes and better credit. *Id.*

Examples abound of wealthy New Yorkers living in rent-stabilized apartments. For example, a polo-playing multimillionaire whose family owned a 300-acre estate lived in a rent-stabilized apartment for several years.⁶⁰ A former executive with a home in the Berkshires lived in a rent-stabilized apartment for nearly 20 years.⁶¹ A former magazine editor and her husband who owned a photo agency lived in a rent-stabilized unit in the Upper West Side for 27 years while also owning a cottage on a 7-acre property upstate.⁶²

Studies confirm that a large number of high-income households occupy rent-stabilized apartments. One study found that, in 2010, there were an estimated 22,642 rent-stabilized households in New York that had incomes of over \$199,000, and 2,300 rent-stabilized households with incomes of over \$500,000. CHIP Pet.App. 117a. In 2017, there were 37,177 rent-stabilized units occupied by households with incomes of at least \$200,000 and 6,034 with incomes of at least \$500,000. *Id.* The Citizens Budget Commission found that “rent-controlled households with incomes greater than \$75,000 received nearly twice the average

⁶⁰ James Fanelli, *Rent-Stabilized Apartments Are Being Occupied by Millionaires, Records Show*, DNAInfo (Apr. 30, 2014), <https://perma.cc/C465-LYKR>.

⁶¹ *Id.*

⁶² *Id.*

subsidy of rent-controlled households with incomes below \$10,000.”⁶³

Other jurisdictions have seen this misallocation of resources as well. One study revealed that 26% of rent-controlled units in Boston were occupied by tenants with incomes in the bottom quartile of the population, while 30% of rent-controlled units were occupied by tenants in the top half of income distribution.⁶⁴ In Los Angeles, “only 48 percent of the households under rent control were occupied by low income tenants, while the remaining 52 percent were occupied by the middle and upper income brackets.”⁶⁵ In Berkeley and Santa Monica, “the beneficiaries of rent control are ‘predominantly white, well-educated, young, professionally employed, and affluent,’” and rent control “substantially increased the disposable income of these tenants while ‘exacerbating’ the problems of low-income families.”⁶⁶

Perhaps most troubling, the data shows that rent control perpetuates racial inequity in the U.S. housing marketplace. Rent control “opens the door to discrimination based on other factors” by “eliminating rents as the basis of choosing among a pool of potential consumers.”⁶⁷ One study found that, in New York City, “Blacks and Puerto Ricans in the controlled sector received lower benefits than their white

⁶³ NMHC, *supra* n.23.

⁶⁴ Sims, *supra* n.41.

⁶⁵ Navarro, *supra* n.42, at 97.

⁶⁶ *Rent Control Hurts Low-Income Families & Increases Costs For All Renters* 6, Ctr. for Cal. Real Estate (Jan. 2018).

⁶⁷ NMHC, *supra* n.23.

counterparts.”⁶⁸ Another study concluded that “white families receive larger benefits than do similar minority families.”⁶⁹ In Massachusetts, Hispanics and African-Americans “accounted for a quarter of the population in cities with rent control,” but “just twelve percent of the population in rent-controlled units.”⁷⁰ “In Berkeley, African-American populations declined while they rose in surrounding Alameda County following the enactment of rent control.”⁷¹

Rent control may cause property owners to “allocate apartments on the basis of tenant characteristics,” *i.e.*, select “tenants who resemble the existing stock of tenants,” which “will tend to exacerbate segregation, at least in richer communities.”⁷² As one study found, “when rent control is imposed on declining cities, it seems to make them more, not less segregated.”⁷³

III. NEW YORK’S RSL HAS HAD A DEVASTATING IMPACT ON PROPERTY OWNERS.

Not only does New York’s RSL reflect poor housing policies, it also unjustly forces property owners “alone to bear public burdens which, in all fairness and justice, should be borne by the public as

⁶⁸ Joseph Gyourko & Peter Linneman, *Equity & Efficiency Aspects of Rent Control: An Empirical Study of New York City*, 26 J. Urban Econ. 54, 73 (1989).

⁶⁹ Ault, *supra* n.49, at 38.

⁷⁰ Rajasekaran *et al.*, *supra* n.36, at 7.

⁷¹ *Rent Control Hurts Low-Income Families & Increases Costs For All Renters*, *supra* n.66, at 6.

⁷² Edward L. Glaeser, *Does Rent Control Reduce Segregation?*, 10 Swedish Econ. Pol’y Rev. 179, 187 (2003).

⁷³ *Id.* at 199.

a whole.” *Armstrong*, 364 U.S. at 49. Because tenants’ ability to pay is a part of the metric that the Rent Guidelines Board must consider when setting rent increases for stabilized units, New York is essentially forcing property owners to privately subsidize what should be a publicly funded housing assistance program. CHIP Pet. 27-28. The amount of this subsidy has grown substantially over the past 20 years, as owners’ operating costs have increased at twice the rate of allowable rent increases. *Id.* at 190a-192a. Owners’ net operating income is therefore decreasing year over year and could be eliminated entirely in the future. *Id.*

The records in these cases are filled with examples of the RSL’s negative impacts on property owners. In the CHIP case, Petitioner Constance Nugent-Miller was unable to reclaim possession of her first-floor apartment despite severe leg pain that makes it difficult to walk up to her second-floor apartment. *Id.* at 167a-169a. Another petitioner has housed three generations of a tenant family in a rent-stabilized unit since 1975 at what is now half the market rental value. *Id.* at 159a-160a. A family purchased a building with the intent of combining several units into their new home, only to have the 2019 Amendments thwart their plan and tank the value of their investment. *Id.* at 169a-170a. Another property owner has housed a tenant for four decades at a rent far below market levels and has been unable to evict the tenant despite numerous complaints about the foul odors emitting from the dogs kept in her apartment. *Id.* at 131a-132a. When the unit becomes vacant, it will be more economical to keep the unit vacant rather than make

the necessary repairs and rent it out again at a rent-stabilized level. *Id.* at 132a.

Petitioners in the Pinehurst case—the Panagoulis family—have twice been unable to recover their own property for personal use due to the RSL. In 1974, Dimos and Vasiliki Panagoulis bought a 10-unit apartment building in Long Island City after moving to the United States from Greece. Pinehurst Pet.App. 170a-171a. They raised their family in the building and own it today. *Id.* Their son, Dino, lives there with his family and manages the apartment in his spare time. *Id.* Dino knows the tenants well and considers them his extended family. *Id.* Around 2011, Dino applied to New York housing regulators for permission to recover a two-bedroom rent-stabilized apartment for use as his family’s home. *Id.* at 187a. But the regulators rejected his application, concluding that, if Dino needed an apartment, he could have taken possession of a different, one-bedroom apartment that had previously been available, even though that smaller apartment would not have suited his family’s needs. *Id.* The family ran into a similar problem when Dino’s sister, Maria, attempted to move back into the apartment building in 2019. *Id.* at 187a-188a. Due to the RSL’s restrictions on recovering rent-stabilized apartments, the Panagouliases have not been able to set one aside for her. *Id.*

The burdens imposed by the RSL, and rent control generally, inevitably fall most heavily on smaller “mom and pop” property owners. *See Alabama Ass’n of Realtors*, 141 S. Ct. at 2489 (noting that “many landlords have modest means”). Individuals, as opposed to businesses, own the vast majority of the nation’s rental properties. Specifically, individuals

own 14.6 million of the nearly 20 million rental properties in the United States—nearly 75 percent.⁷⁴ Roughly a third of these individual owners are from low- to moderate-income households, and property income constitutes up to 20 percent of their total household income.⁷⁵ For many such owners, property-related expenses consume over half of their property income.⁷⁶ Unlike some larger corporate owners, these individuals have fewer resources to withstand prolonged periods without adequate rental income.⁷⁷ Black and Hispanic property owners are more likely to have lower incomes, own fewer rental properties, have mortgages on those properties, and provide housing to less affluent tenants.⁷⁸

In short, rental-property owners, particularly individual “mom and pop” owners, must make a “far greater contribution” to promote New York’s housing policies than they reasonably owe. *Tyler*, 2023 WL 3632754, at *8. Under the protections of the Takings Clause, rental-property owners “must render unto Caesar what is Caesar’s, but no more.” *Id.* New York’s

⁷⁴ Kristen Broady et al., *An Eviction Moratorium Without Rental Assistance Hurts Smaller Landlords, Too*, Brookings Inst. (Sept. 21, 2020), <https://perma.cc/FLF4-2RK7>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Laurie Goodman & Jung Hyun Choi, *Black and Hispanic Landlords Are Facing Great Financial Struggles Because of the COVID-19 Pandemic. They Also Support Their Tenants at Higher Rates*, Urban Inst. (Sept. 4, 2020), <https://perma.cc/LDX2-SH9G>.

RSL goes too far in forcing property owners to bear the brunt of the State's misguided housing policies.

CONCLUSION

This Court should grant certiorari and reverse.

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