UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SMALL PROPERTY OWNERS OF NEW YORK, INC. *et al.*,

Plaintiffs,

v.

THE CITY OF NEW YORK *et al.*,

Defendants.

Case No. 1:25-cv-09425-JPC

BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF REALTORS, NEW YORK STATE ASSOCIATION OF REALTORS, NATIONAL APARTMENT ASSOCIATION, NATIONAL ASSOCIATION OF HOME BUILDERS, AND NATIONAL MULTIFAMILY HOUSING COUNCIL IN SUPPORT OF PLAINTIFFS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, *Amici Curiae* National Association of REALTORS®, New York State Association of REALTORS®, National Apartment Association, National Association of Home Builders, and National Multifamily Housing Council state that they have no corporate parents, and no publicly traded company owns 10% or more of their stock.

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INTEREST OF *AMICI CURIAE*[*]

The National Association of REALTORS® (NAR) is a national trade association representing over 1.4 million members, including NAR's institutes, societies, and councils involved in all aspects of the residential and commercial real estate industries. 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.

The New York State Association of REALTORS® (NYSAR) is a state trade organization representing over 60,000 of New York's real estate professionals. NYSAR provides a forum for professional development among its members and provides education and advocacy to the public and government for the purpose of promoting the right to sell, buy, own, and develop real property.

The National Apartment Association (NAA) serves as the leading voice and preeminent resource through advocacy, education and collaboration on behalf of the rental housing industry. As a federation of 139 state and local affiliates, NAA encompasses nearly 113,000 members representing over 13.5 million apartment homes. NAA believes that rental housing is a valuable partner in every community that emphasizes integrity, accountability, collaboration, responsibility, inclusivity, and

[*] No counsel for any party authored this brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel contributed money that was intended to fund the preparation or submission of this brief.

innovation. NAA and its network of affiliated apartment associations work to ensure that public policy does not impede but promotes the ability of rental housing owners to provide housing to over 40 million American households.

The 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 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. As property owners, NAHB's members are concerned with all issues involving the Takings Clause. NAHB therefore frequently participates as a party litigant and *amicus curiae* to protect its members' constitutional and statutory rights and business interests.

Based in Washington, D.C., the National Multifamily Housing Council (NMHC) is where rental housing providers and suppliers come together to help meet America's housing needs by creating inclusive and resilient communities where people build their lives. NMHC provides a forum for leadership and advocacy that seeks solutions to America's housing challenges and promotes thriving rental housing communities for the one-third of American households that rent, with over 21 million U.S. households living in an apartment home (a building with five or more units).

Amici are interested in this case because New York's Rent Stabilization Law denies many of New York City's rental-property owners—including Plaintiffs and *amici*'s members—all economically beneficial use of their own property. Allowing Plaintiffs' as-applied takings claims under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), to proceed would enable *amici*'s members to likewise pursue just compensation. For purposes of this brief, *amici* address only whether Plaintiffs have stated as-applied total regulatory takings claims under *Lucas*.

PRELIMINARY STATEMENT

Owning property means little if one cannot *use* it. That has been understood for quite some time. *See* 1 Edward Coke, Institutes, ch. 1, § 1 (1st Am. Ed. 1812) ("[F]or what is the land but the profits thereof[?]"). So when the government forces its citizens "to sacrifice *all* economically beneficial uses" of their property "in the name of the common good," the Takings Clause demands that it provide just compensation. *Lucas*, 505 U.S. at 1019.

Yet in an effort to house New York City's residents, Defendants have compelled many apartment owners to let their units gather dust. In 1974, New York passed its Rent Stabilization Law, which caps the rent for vacant apartments in pre-1974 buildings in some emergency circumstances. N.Y. Unconsol. Law. § 8623(a) (1974). While those limits were never meant to be permanent, New York City has made them so by perpetually declaring a housing emergency. And in recent years, New York has saddled owners with even more onerous burdens, making it harder for them to recover properties, decontrol units, and recoup improvement costs.

"Today, about one million apartments"—roughly 40% of the City's housing supply—fall under this regime. Jen Sidorova, *Unintended Consequences of Rent Control*, Reason (Dec. 26, 2024). Under this framework, property owners must rent out vacant units at the same rate charged to the last tenant, plus a minor adjustment permitted by the City. 9 N.Y.C.R.R. § 2522.8. Last year, the City limited owners to a 3% increase for one-year leases and 4.5% for two-year leases. City of New York, *Rent Increases*. And this year, the Mayor wants to prevent owners from raising rents at all. Mihir Zaveri, *Mamdani Promised to Freeze the Rent. Now the Fight Begins.*, N.Y. Times (Mar. 26, 2026). Unsurprisingly, the capped rates for many units have fallen far below not only market value but even the amount needed to defray basic operating costs. Thousands of owners like Plaintiffs and their members therefore must choose between mothballing their units and operating in the red. Basic economics permits only one answer, which helps explain why somewhere between 20,000 and 60,000 units covered by the Rent Stabilization Law remain vacant today. Sidorova, *supra*.

The Takings Clause prevents Defendants from placing apartment owners in this bind. New York may either "rescind its regulation" or "pay compensation" for the owner's inability to use the property for any economic purpose. *Lucas*, 505 U.S. at 1030 & n.17. But it cannot require "'individual property owners'" to shoulder a regulatory "'burden[] which, in all fairness and justice, should be borne by the public as a whole.'" *Sheetz v. County of El Dorado*, 601 U.S. 267, 273-74 (2024). All Plaintiffs ask from this Court is to relieve them of that weight.

Remarkably, Defendants denounce that request as a "radical" theory that must be dismissed before any discovery can take place. ECF 73 at 14. But Plaintiffs' position flows directly from Supreme Court precedent, which is why Defendants resort to stacking the analytical deck by urging an examination of the "buildings" as a whole rather than the vacant "apartments" within them. *Id.* at 26. No one, however, seriously claims that New York could seize—even temporarily—an apartment without paying for it just because the owner could still rent out *other* units. A law forcing owners to leave an apartment economically idle—to the harm of property owners and prospective tenants alike—is no different.

In short, Defendants' requirement that certain apartment owners leave their units unoccupied neither aligns with the Constitution nor aids the City's many renters. This Court should deny their motions to dismiss.

ARGUMENT

I. The Rent Stabilization Law takes property without compensation.

All agree that if the Rent Stabilization Law leaves an owner of a property "without economically beneficial or productive options for its use," it has effected "a *per se* taking" requiring just compensation. ECF 75 at 27 (quoting *Lucas*, 505 U.S. at 1018). The only dispute is whether the Law has done so here. And that is not a hard question: By capping rents at levels far below what is needed to bring vacant units up to code, the Law gives Plaintiffs only one choice—leave them empty. That is no different from a ban on renting those apartments at all. Either way, the units have been taken—even if Plaintiffs can rent out *other* ones in the same building.

A. The Rent Stabilization Law prevents Plaintiffs from putting their vacant units to any economically beneficial uses.

1. The Takings Clause—applicable to the States through the Fourteenth Amendment—guarantees "private property" shall not "be taken for public use, without just compensation." U.S. Const., amend. V; *see Chicago, Burlington & Quincy Ry. v. Chicago*, 166 U.S. 226, 234-35 (1897). In doing so, it helps "preserve freedom, for property ownership empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them." *Murr v. Wisconsin*, 582 U.S. 383, 394 (2017).

To that end, the Takings Clause establishes "a clear and categorical obligation" to provide just compensation whenever a government "physically acquires private property for a public use"—whether it uses "eminent domain to formally condemn" it, "physically takes possession of property without acquiring title to it," or "occupies property" such as "by recurring flooding" from a dam. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147-48 (2021). That duty exists regardless of the "duration" or "size" of the taking—factors bearing "only on the amount of compensation." *Id.* at 153.

The Constitution's "protection against physical appropriations of private property" could not "be meaningfully enforced," however, if "the uses of private property" were left to the government's "unbridled, uncompensated qualification under the police power." *Lucas*, 505 U.S. at 1014. Without any constitutional limits on laws restricting how an owner uses his property, "the natural tendency of human nature would be to extend the qualification more and more until at last private property disappeared." *Id.* (cleaned up).

To prevent the Takings Clause from becoming a parchment promise, the Supreme Court has therefore scrutinized whether "use restrictions" can also effect a taking. *Cedar Point*, 594 U.S. at 149. In answering that question, it typically employs the multifactor test developed in *Penn Central Transportation Co. v. New York City*, 483 U.S. 104 (1978).

But not always. When a law "denies an owner economically viable use" of his property, the same "categorical" duty to provide just compensation for physical takings applies. *Lucas*, 505 U.S. at 1016 (cleaned up). That makes sense. From an owner's perspective, a law requiring him "to leave his property economically idle" is the "equivalent of a physical appropriation." *Id.* at 1016, 1019. And when a use limit is "so onerous that its effect is tantamount to a direct appropriation," the Constitution demands just compensation. *Lingle v. Chevron USA, Inc.*, 544 U.S. 528, 537 (2005).

2. The Rent Stabilization Law nevertheless makes renting out Plaintiffs' vacant units "economically infeasible." ECF 1 ¶¶ 179, 210, 249. Take the units owned by the Lulgjurajs—two brothers who, having immigrated here as children and gotten their start as a doorman and building superintendent, now own a few apartment buildings. *Id.* ¶¶ 137-41. One of the units in those buildings has been lying vacant since 2019. *Id.* ¶¶ 144-45. To make the "legally necessary repairs" to bring this apartment up to code, the Lulgjurajs would have to incur costs that "far exceed $100,000," even by "conservative estimates." *Id.* ¶¶ 159-60. Yet the Law forbids them from renting that unit at anything higher than approximately $710 per month. *Id.* ¶ 146. It would therefore take well over a decade for the Lulgjurajs to break even on the repairs.

And that is to say nothing of the general "costs and liabilities that come from renting any apartment." *Id.* ¶ 158. Among other things, owners must pay property taxes and insurance, account for utilities and heating, and perform maintenance. For rent-stabilized units, these costs have increased at rates outpacing inflation: "Between 2020 and 2024, insurance costs rose by 224%, real estate taxes rose by 118% and water and sewer costs rose by 115%." Shimon Shkury, *Unraveling the Aftershocks of Rent Stabilization in New York City's Multifamily Market*, Forbes (June 5, 2024); *see* N.Y.C. Rent Guidelines Bd., 2025 Price Index of Operating Costs 4-5 (Apr. 17, 2025). That harms their owners' ability to make a profit. From 2018 to 2023 alone, the "total real operating expenditures" of rent-stabilized units increased by 14 percent while their "[t]otal real revenue" from those units "declined by about 8 percent." NYU Furman Center, *Data Brief: Government-Subsidized, Income-Restricted Rent-Stabilized Properties* (Feb. 17, 2026). Unsurprisingly, the number of rent-stabilized properties "with operating and maintenance costs exceeding gross income" has steadily risen over the past decade. Shkury, *Unravelling the Aftershocks*, *supra*.

Because it "does not make sense to put" that unit on the market as a matter of basic economics, ECF 1 ¶ 143, the Rent Stabilization Law has left the Lulgjurajs "without economically beneficial or productive options" for the unit's use. *Lucas*, 505 U.S. at 1018. Rather, the only financially responsible use of the vacant apartment—indeed, the only way for them to avoid taking a significant loss—is for it to remain empty. Because the Lulgjurajs lack any economically viable way to rent the vacant apartments under the Law, the Takings Clause guarantees them compensation. *Id.*

3. Defendants do not deny that the Rent Stabilization Law ensures these specific "apartments cannot profitably be renovated or relet." ECF 73 at 32. Instead, they brush this aside with the remark that the Law does not "actually prevent Plaintiffs from leasing their vacant apartments." ECF 75 at 27-28; *see* ECF 73 at 32 (similar). But that is beside the point. A law that *functionally* denies an owner all economically viable uses of his property is the same as one that *formally* does so.

Take *Vulcan Materials Co. v. City of Tehuacana*, 369 F.3d 882 (5th Cir. 2004). There, the district court held that a law that "merely prohibited the mining of limestone by using blasting and heavy machinery" did not effect a total regulatory taking because the property owner could acquire the mineral in other ways. *Id.* at 887 n.3. As it observed, "the Egyptian Pyramids were built without the use of explosives or heavy machinery." *Id.* The Fifth Circuit reversed, explaining that because other forms of mining were not economically feasible, the law "effectively prohibits all mining of limestone"—and hence deprived the owner "of all value of its property." *Id.* at 891; *see id.* at 887 n.3. After all, *Lucas* would mean little if "land use" limits today were measured by the practices "of the ancient Egyptians." *Id.* at 887 n.3.

Similarly, the Supreme Court of Nevada recognized a *per se* regulatory taking when Las Vegas refused to rezone a golf course for residential use. *City of Las Vegas v. 180 Land Co., LLC*, 546 P.3d 1239, 1244 (Nev. 2024). Even though its owners "could no longer make a profit operating the golf course," *id.*, the City shot down each proposal they submitted for an alternative use of the land, leaving them with no "viable alternatives … to reap economic benefit from" their property. *Id.* at 1253.

Closer to home, *DM Arbor Court, Ltd. v. City of Houston*, 150 F.4th 418 (5th Cir. 2025), held that the application of a Houston ordinance to an apartment complex constituted a *Lucas* taking in light of economic realities. *Id.* at 426. Specifically, Houston refused to let the owner redevelop the complex in the wake of a hurricane unless it elevated all the buildings above the flood level. *Id.* at 421-22. The elevation project, however, would cost the owner around $40 million—twice the complex's value before it was flooded and 40 to 80 times its value after the City's decision. *Id.* at 424. So even though the owner was "technically free to redevelop" the complex if it undertook the elevation project, "any such high-dollar redevelopment was an economic pipe dream." *Id.* at 426. Instead, "the property's highest use" was "to sit idle," triggering a categorical duty to provide just compensation. *Id.* The situation here is precisely the same.

4. Defendants' other arguments are likewise irrelevant. For instance, Defendants say Second Circuit caselaw controls this case, but no precedential Second Circuit opinion resolves an as-applied *Lucas* challenge to rent stabilization. New York emphasizes also that the Law lets Plaintiffs make "personal use" of their "vacant units." ECF 73 at 32. But that was equally true in *Lucas*. As the principal dissent observed, the challenged ban on residential construction on beachfront lots likewise let the plaintiff "picnic, swim, camp in a tent, or live on the property in a moveable trailer." 505 U.S. at 1044 (Blackmun, J., dissenting). The Court nevertheless recognized a taking because the law barred the only "economically beneficial uses" of the land. *Id.* at 1019 (majority). That a "property retains 'residual' value"—such as the ability to employ it for personal use—is "immaterial." *DM Arbor*, 150 F.4th at 424 n.4.

By the same token, it makes no difference that the Rent Stabilization Law "places no limits on the owners' rights to sell their buildings." ECF 73 at 21. Again, the same was true in *Lucas*. *See* 505 U.S. at 1065 n.3 (Stevens, J., dissenting) (claiming the owner's beachfront property "is far from 'valueless'" because he "may sell his land to his neighbors as a buffer"). And again, it made no difference. *See id.* at 1019 & n.8 (majority). Understandably so: "When there are no underlying economic uses" of the property itself, "it is unreasonable to define land *use* as including the sale of the land." *Lost Tree Vill. Corp. v. United States*, 787 F.3d 1111, 1117 (Fed. Cir. 2015); *accord Nekrilov v. City of Jersey City*, 45 F.4th 662, 671 n.3 (3d Cir. 2022). Put another way, "[s]aying that a property's only remaining use is to hope for" its future sale is "the same as saying the property must remain idle today," and "[t]hat is a categorical taking under *Lucas*." *DM Arbor*, 150 F.4th at 425. "[S]peculating about a sale" of Plaintiffs' units in the future is therefore no answer to the fact that Defendants have effectively taken them now—especially as the sale of a property without any economically viable use will only result in "fire sale prices." *Id.* at 425.

B. Defendants cannot obscure the takings here by focusing on the apartment buildings as a whole.

Faced with the fact that the Rent Stabilization Law forces Plaintiffs to leave some of their units economically idle, Defendants ultimately shift the level of generality, insisting that the Constitution cares only whether New York "deprives Plaintiffs' buildings, rather than any single apartment, of all economic value." ECF 73 at 31. In other words, so long as Plaintiffs can profitably rent at least some units in their buildings, New York can compel them to let the others cobweb over in perpetuity.

The Takings Clause says otherwise. To be sure, in determining whether there has been a "deprivation of all economically feasible use," courts must first identify "the property interest against which the loss of value is to be measured"—here, the buildings or the vacant apartments themselves. *Lucas*, 505 U.S. at 1016 n.7 (cleaned up). And to be sure, claimants cannot circularly "defin[e] the property interest taken" as "the portion of property targeted by the challenged regulation" and call it a day. *Murr*, 582 U.S. at 396 (cleaned up). That is why the owners of Grand Central Terminal could not show a categorical taking of their "air rights" in *Penn Central* based on a denial of a permit to build an office tower above the station. 438 U.S. at 130.

But nothing of the sort is going on here. Dividing an apartment building into individual units can be described as many things, but "artificial" is not one of them. *Murr*, 582 U.S. at 396. To the contrary, it is *Defendants* who seek to "improperly … fortify" themselves against a takings claim through the strained "consolidation" of "individual holdings" into a single set. *Id.* at 397. Each of the three factors the Supreme Court uses in this area make that clear. *See id.* at 397-99.

1. Start with how "state and local law" itself "bound[s] or divide[s]" the property—a consideration due "substantial weight" in the analysis. *Id.* Here, the Rent Stabilization Law applies to Plaintiffs' properties on a unit-by-unit basis, regulating rent increases for each apartment separately. *See, e.g.*, ECF 73 at 14-17. Contrast that with "the state and local regulations" in *Murr*, which "merged" the two lots in question "for a specific and legitimate purpose," thereby supporting a "reasonable expectation" that they would "be treated as a single property." 582 U.S.at 402-03.

While Defendants note that *other* state and local regulations treat the building as the relevant property in areas such as "mortgage financing, property taxes, [and] zoning," that has little bearing on the analysis here. ECF 73 at 17. For purposes of defining the property taken through a use restriction, the ultimate question is "whether reasonable expectations about property ownership would lead a landowner to anticipate that his holdings would be treated as one parcel," especially for purposes of "restrictions affecting … use" of the property. *Murr*, 582 U.S. at 397-98. And a law regulating rent is more relevant to an owner's reasonable expectations about the government's treatment of property designed for lease than how the building is financed, taxed, or zoned.

2. The second consideration—"the physical characteristics of the landowner's property"—likewise cuts in favor of a unit-by-unit analysis. *Id.* at 398. Take the "physical relationship" between the "distinguishable tracts": Each apartment consists of a complete and independent living space, designed to be occupied by a single set of inhabitants and to meet all of their housing needs. *Id.* Inhabitants of one unit have no reason to enter any of the other units, nor are they permitted to do so without consent. And few apartment-building owners would have any conceivable reason to use all of the units in a building—separate yet often nearly identical living spaces—for their own personal enjoyment. The Lulgjurajs, for instance, are unlikely to use both of their vacant units—sitting on separate floors—for "an enhanced, larger residential improvement." *Id.* at 405; *see* ECF 1 ¶¶ 143-56.

Against all this, Defendants insist that "all units within each building are 'contiguous.'" ECF 77 at 23. But as a factual matter, that is just wrong: Few, if any, ordinary speakers of the English language would describe a unit on the top floor of say, "a thirty-unit building," ECF 1 ¶ 141, to be "contiguous" with another apartment near the bottom. Instead, cobbling together disparate units in a single building into a unified whole only calls to mind the lower court's approach in *Penn Central* of evaluating "the diminution in a particular parcel's value … in light of total value of the takings claimant's other holdings in the vicinity"—something the Supreme Court called an "extreme" and "unsupportable" position. *Lucas*, 505 U.S. at 1016 n.7.

3. Last, "the effect" of the "burdened" property "on the value of other holdings" confirms a unit-by-unit analysis is warranted. *Murr*, 582 U.S. at 398. Sometimes, it makes sense to treat two properties as one if a "use restriction" could "increase" the "market value" of the two combined, such as when "development restraints for one" lot "protect the unobstructed skyline views of another." *Id.* at 398-99. Here, by contrast, even Defendants admit that "vacant apartments" pose a variety of "risks" to "occupied apartments." ECF 73 at 32. The loss of value from the Rent Stabilization Law is therefore only *exacerbated*, not "tempered." *Murr*, 582 U.S. at 398.

Defendants barely engage with this factor, at most noting that "Plaintiffs purchased each building in a single transaction," ECF 73 at 29, and that the Law offers "hardship exemptions from rent limits based on revenues generated by the building as a whole," ECF 77 at 24. But those are *non sequiturs*. This part of the *Murr* inquiry asks whether a law's harms to one parcel are "mitigated" by its offsetting "benefits"

to another. 582 U.S. at 403. Yet rather than explain how forcing some apartments to lay desolate benefits the ones that remain occupied, Defendants at most assert that the effects of the Rent Stabilization Law will be diluted by Plaintiffs' unburdened units. But that *dilution*—rather than *mitigation*—of the Law's effects only confirms that a unit-by-unit approach is the right one. *See id.* at 399.

* * *

Adopting Defendants' building-by-building analysis would only provide a recipe for government abuse. If New York City required Plaintiffs to reserve an apartment in each building for "government offices," it would still have to pay them even though they could rent out the remaining units. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 439 n.17 (1982). Yet under Defendants' view of the law, if the City required Plaintiffs to reserve an apartment in each building for the dust bunnies, the existence of the other units would make all the difference. This Court should make clear the Takings Clause is not so easily evaded.

II. The Rent Stabilization Law significantly harms New York's housing market.

With no foothold in the law, Defendants ultimately invoke policy concerns, warning that a ruling for Plaintiffs would cause the City's apartments to become "out of reach for all but the most affluent tenants." ECF 73 at 14; *see* ECF 77 at 9 (claiming the Law's caps on rents for vacant units are "critical" to shield "existing tenants from being forced out of their apartments"). But the Takings Clause protects "private property" from "being pressed into some form of public service under the guise of mitigating serious public harm," so these policy points go nowhere. *Lucas*, 505 U.S. at 1018.

In any event, Defendants' effective commandeering of Plaintiffs' apartments *only exacerbates* the City's housing problems. By leaving apartment owners with little choice but to withdraw units from the market, New York's Rent Stabilization Law only shrinks the quantity of available housing (thereby exacerbating existing housing shortages and affordability problems); reduces consumer mobility and entry into the housing market; and diminishes the quality of available housing.

A. The Rent Stabilization Law reduces the quantity of available housing.

As in any other market, prices in the housing market respond to supply and demand. Rents tend to increase in the short-term when demand outstrips supply. Over time, however, higher rents encourage new investment in rental housing, which yields "new construction, rehabilitation of existing units, and conversion of buildings from nonresidential to residential use," and thus ultimately help eliminate the housing shortage. Val Werness, *Rent Controls*, Legal Rsch. Ctr. 94 (2017).

Artificially capping rents, by contrast, sends a false message that no such investment is necessary, thereby shrinking the housing supply. *Id.* Developers are less inclined to construct new housing in a rent-controlled market, as opposed to "other more profitable" jurisdictions. NMHC, *The High Cost of Rent Control*. Indeed, 87.5% of developers in a recent survey indicated that they avoid building in jurisdictions with rent control. NMHC, *Cost of Regulations Report* (June 9, 2022). This results not only in a decline of construction of new housing, but the conversion of existing rental units to other uses. NMHC, *High Cost*, *supra*.

Worsening the housing shortage, many owners (like Plaintiffs) cannot afford to continue renting out stabilized units. "In the Bronx, over 12% of pre-1974 rent-stabilized units are now operating at a loss," with some "teetering on the edge of foreclosure" and others "quietly being sold, converted to condos, or withdrawn from the rental market altogether." Sam Zickar, *What the Numbers Say About Rent Control*, No Labels (Aug. 4, 2025). Owners like Plaintiffs have withdrawn an estimated 20,000 to 60,000 units rather than take the hit. Sidorova, *supra*; Shimon Shkury, *One Million Reasons Rents Are High in New York City*, Forbes (Nov. 25, 2024). In short, rent control "perpetuates the very problem it was designed to address: a housing shortage." Peter D. Salins, *Rent Control's Last Gasp*, City J. (Winter 1997).

The deleterious effects of rent control on the City's housing supply are well documented. In the years immediately after the Rent Stabilization Law took effect, "more units were *abandoned* each year by landlords than were built," coinciding with a drop in the City's population "from 8 million to 7 million." Raymond C. Niles, *The Perpetual Tragedy of New York's Rent Control*, Daily Economy (June 30, 2022). And after the Law's most recent amendments came into play, "[b]uilding permit activity … declined by 27%." Beau Bressler, *Does Strengthening Rent Control Reduce Housing Quality? Evidence from New York City* (Feb. 22, 2026).

This case highlights the problem. Without the Rent Stabilization Law, Plaintiffs alone would put several additional units on the market. As is, their best option is to leave those apartments mothballed.

Indeed, even though around "1.8 billion square feet of unused development rights in residential zones" is available to "accommodate more than a million units of housing," the City's housing development is moving at a snail's pace. Mun. Art Soc'y of N.Y., *Accidental Skyline: Air Rights*. In fact, a recent report issued by the Real Estate Board of New York concluded that "without the creation of significant new incentive programs," the City will unlikely meet its goal of "producing 500,000 new units of housing by 2034." Real Estate Bd. of N.Y., *REBNY Issues New Report on the State of Housing Production in New York City* (Dec. 23, 2025). One would think that letting Plaintiffs put their vacant units on the market would be a good place to start.

B. The Rent Stabilization Law lowers consumer mobility and entry.

Suppressing the number of units on the market has additional downstream consequences. Ironically, rent-control regimes tend to contribute to greater rent increases in the unregulated market, with rents in uncontrolled units rising faster in New York City than elsewhere in the country. Shkury, *One Million Reasons*, *supra*. In the fourth quarter of last year, "the median asking rent for all rental properties listed on Realtor.com in New York City was $3,585"—6.6% higher than rents the previous year. Jiayi Xu & Danielle Hale, *New York City Rental Report 2025Q4: Rising Rents, Frozen Market—NYC's Rental Crisis Is About More Than Price*, Realtor.com (Feb. 4, 2026). 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 Rent Stabilization Law. Steven B. Caudill, *Estimating the Costs of Partial-Coverage Rent Controls: A Stochastic Frontier Approach*, 75 Rev. Econ. & Stat. 727 (1993).

Understandably, tenants in rent-controlled units are reluctant to give up their housing subsidy and therefore are less willing to move or pursue homeownership. In fact, one analysis found that rent control in New York tripled the expected duration of a tenant's residence. Richard W. Ault *et al.*, *The Effect of Long-Term Rent Control on Tenant Mobility*, 35 J. Urban Econ. 140 (1994). The researchers determined 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." *Id.* at 156. Recent census data bear this out, revealing that "[o]nly 94,000 (24%) of rent-stabilized tenants had moved (either in or out) in the [previous] year, compared to 221,000 (57%) of market-rate tenants." Howard Husock, *Why Rent Regulation Remains So Hard to Undo in NYC*, AEI (Dec. 29, 2024). The result is essentially a "housing blockade for newcomers or households with kids who need more bedrooms." *Id.*

As the data suggest, renters often remain in apartments that do not suit their needs in order to continue receiving this benefit. Another study 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." Edward L. Glaeser & Erzo F.P. Luttmer, *The Misallocation of Housing under Rent Control*, 93 J. Urban Econ. 1027, 1028-29 (2003). "This misallocation can lead to empty-nest households living in family-sized apartments and young families crammed into small studios." Rebecca Diamond, *What Does Economic Evidence Tell Us About the Effects of Rent Control?*, Brookings (Oct. 18, 2018).

When rent-stabilized tenants hold onto their units for decades, they effectively shut out the individuals who would most benefit from low rents: low-income and young applicants. The Rent Stabilization Law lacks any means testing, financial qualification, or other requirement that rent-stabilized apartments be rented to low-income families. And because the Law effectively requires owners to perpetually renew leases, they have an incentive to choose tenants with higher incomes and better credit. According to census data, nearly a third of long-term rent-stabilized tenants reported incomes above $100,000 a year. Husock, *supra*.

Unsurprisingly, examples of wealthy New Yorkers living in rent-stabilized apartments abound. Congressman Charles Rangel paid "less than half the market rate" for "four rent-stabilized apartments at … a luxury development in Harlem," one of which he used as a campaign office. Jovana Rizzo, *Rangel Not Only Famous Rent-Stabilized Tenant*, Real Deal (July 15, 2008). Actress Mia Farrow infamously paid $2,900 per month for an 11-room apartment overlooking Central Park which she inherited from her family. *Id.* A polo-playing multimillionaire whose family owned a 300-acre estate lived in a rent-stabilized apartment for several years. James Fanelli, *Rent-Stabilized Apartments Are Being Occupied by Millionaires, Records Show*, DNAInfo (Apr. 30, 2014). 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 seven-acre property upstate. *Id.* And so on. This is hardly the result that rent-control advocates tout.

C. The Rent Stabilization Law reduces the quality of available housing.

Rent control also deteriorates the quality of housing that is available. Less rent revenue means less money available to devote to maintenance and repair; indeed, Plaintiffs here have opted to remove their units from the rental market because they cannot afford to make the necessary fixes. That is not unusual: by one estimate, New York has "at least 10,000 of such 'ghost apartments'" because their owners cannot recoup their costs. Husock, *supra*. The tenants in units that remain on the market suffer the consequences, as property owners lack the incentive to properly maintain units above the minimum required to make them habitable and provide amenities or services to tenants. One nationwide study concluded that "rent controls were associated with a 7.1% decrease in quality during 1974, and with a 13.5% decrease in 1977." 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).

New York City-specific data bear this out. As a recent documentary highlighted, many rent-stabilized units are substandard; pictured below are a kitchen in a rent-stabilized Upper West Side apartment and a combined bathroom/kitchen in a Chinatown unit (photos taken from Sidorova, *supra*):

These pictures are unsurprising. A 1990 study found that "a change in the rent control status of the building's apartments from uncontrolled to controlled" in New York "reduces the probability of the building being in sound condition." Joseph Gyourko & Peter Linneman, *Rent Controls and Rental Housing Quality*, 27 J. Urb. Econ. 398, 405 (1990). Things have not changed since. A 2019 analysis agreed rent control was harming "housing quality" because "landlords are less incentivized to improve/maintain a unit" if the tenants have a fixed rent. Benjamin W. Schweitzer *et al.*, *An Analysis of the Impact of Rent Control on New York City Housing*, JSM (2019).

In fact, a study released this year found that in the wake of the Law's most recent changes, "landlords reduced both routine maintenance and capital investments," such that "immediately hazardous violations increased by 37%, or approximately 23,000 additional violations per year, tenant complaints increased by 12%, and violations took 34% longer to resolve." Bressler, *supra*, at 1. And 65 to 85 percent of "Housing Code violations in rent-stabilized buildings" stay "unresolved" for over a year. Ctr. for N.Y.C. Affairs, *New York's Housing Is Falling Apart. Here's How to Stop That.* (Jan. 11, 2023). Even the rats have taken notice: Per one recent study, rent-controlled units in New York can boast "376,000 reports of rodents" as "compared to 240,000 in market-rate units." Husock, *supra*. And "pre-1974 stabilized units," such as those owned by Plaintiffs, are in "the worst condition of all privately owned rental units," with "an average of 1.76 maintenance deficiencies"—over 79% worse than market-rate units. N.Y.C. Rent Guidelines Bd., *How NYC Can Better Track the Condition of Rent Stabilized Housing* (May 22, 2025) (testimony of Sean Campion).

Housing providers and developers confirm the link between rent control and deteriorating quality. According to a 2023 survey, 71% of housing providers agree rent control negatively impacts development and investment plans. Mary Donovan & Nam Pham, *Examining the Unintended Consequences of Rent Control Policies in Cities Across America*, NAA 2 (Mar. 2023). "Rent control deters investment and development in part because it limits the ability to keep pace with operational costs and generate revenue while also signaling a higher risk of future policy restrictions." *Id.* Moreover, "[r]ising business costs make it even more difficult for housing providers to sustain operations under rent control policies." *Id.* at 4. 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. *Id.*

* * *

In sum, New York's Rent Stabilization Law drives property owners and units out of the market altogether, leaving tenants with fewer and poorer options. So far from "fatally undermin[ing]" tenant protections, allowing Plaintiffs' as-applied categorical-takings claims to proceed would be a modest first step in fixing the City's housing woes. ECF 73 at 3.

CONCLUSION

The Court should deny Defendants' motions to dismiss.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the word-count limitation of Rule 7.1(c) of the Joint Local Rules of the United States District Courts for the Southern and Eastern Districts of New York. Excluding the parts exempted by Rule 7.1(c), the brief contains 6254 words, as determined by the word-count function of Microsoft Word.

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