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July 15, 2019
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HOUSING GROUPS SUE OVER NEW YORK'S RENT STABILIZATION LAW
CHIP, RSA and Property Owners Charge Law is Unconstitutional

New York, NY… Community Housing Improvement Program (CHIP), The Rent Stabilization Association of NYC (RSA) and individual property owners, filed a lawsuit today challenging the constitutionality of the New York Rent Stabilization Law (RSL) and actions by the City of New York under that law. The suit charges that the overly burdensome regulatory scheme violates the Due Process and Takings clauses of the United States Constitution. The suit was filed in the United States District Court for the Eastern District of New York. The plaintiffs are seeking declaratory and injunctive relief against future enforcement of the rent stabilization scheme, which will not only halt the deprivation of the constitutional rights of property owners but will force the government to get serious about real policy solutions to address the causes of housing unaffordability, such as increasing development of rental properties and having more units available to rent. The plaintiffs are neither seeking damages nor compensation for Defendants' violation of their constitutional rights.

"Even before the draconian effects of the 2019 amendments, the New York Rent Stabilization Law was antiquated, inefficient and unlawful. It does not promote socio-economic or racial diversity and in fact, it does not in any way target its relief to low-income populations," said **CHIP Executive Director Jay Martin**. "The law actually makes New York's affordable housing shortage worse by preventing the construction of new apartments, and improvements to existing apartments in properties subject to the law – leading to a lower quality of housing for almost 50% of New York's housing stock."

"These laws have been exacerbating New York City's affordable housing crisis for decades by making market-rate apartments more expensive for the millions of New Yorkers who don't live in or can't find rent-stabilized apartments and it allows wealthy New Yorkers to benefit unfairly from rent stabilization while penalizing low and middle-income New Yorkers," said **RSA President Joseph Strasburg**. "The law is not constitutional and punishes hard working tenants and small landlords alike. Allowing it to continue to harm New York is no longer acceptable."

The RSL, first enacted in 1969 and revised numerous times – most recently last month – has, in over 50 years, never achieved the objectives claimed by its proponents, which include providing affordable housing to low income families, ameliorating the city's housing crisis and maintaining socio-economic and racial diversity in the city. The suit will also alleviate New York's constrained housing market and will force New York City and State governments to adopt fairer and more efficient means of providing housing to those most in need.

The more than 120-page complaint explains in detail the reasons why the RSL violates the Constitution.

"Because of the RSL, I was forced to watch my terminally ill husband walk up the steps to our second-floor home. To better care for him and his serious cardiac issues, I asked for a first-floor apartment in our building. My request was refused," said **Plaintiff Constance Nugent-Miller, a New York City property owner**. "I've since become disabled myself and I've tried to move, only to be denied in housing court yet again. New York's

lawmakers and my own elected representatives have no interest in fairness, so I am looking forward to finally getting justice through the federal court system."

The lawsuit filed Monday evening details three major ways that the RSL violates the Constitution. First, it violates the federal Constitution's Fourteenth Amendment guarantee of Due Process. The RSL does not in any way target its relief to low-income populations. There is no financial qualification standard at all for retaining or obtaining a rent stabilized unit. Rather, stabilized units are awarded to those who have the good fortune to either find an available stabilized unit or to have a relationship with someone who resides in one. As frequent news reports demonstrate, and studies confirm, hundreds of thousands of stabilized units are rented by New Yorkers who can afford to pay market rents—and the percentage of low-income families living in RSL units is only marginally greater than those living in market-rate units, which further demonstrates that the RSL's benefits are not focused on low-income individuals and families. And the 2019 Amendments eliminated a provision in pre-2019 law that decontrolled an apartment once the rent exceeded $2774 per month and the tenant's income was $200,000 or greater. This expansion, and the program's other characteristics, makes clear the RSL is in no way rationally related to providing affordable housing for low-income individuals or families.

For similar reasons, according to reports from the Urban Institute and the NYU Furman Center, the RSL is not rationally related to promoting socio-economic or racial diversity: the law's benefits are not in any way targeted to promoting such diversity.

Moreover, the RSL is not rationally related to decreasing the housing shortage in New York. The law has had the opposite effect, operating only to further reduce the availability of vacant apartments. Rent stabilization effectively prevents property owners from redeveloping properties to create additional apartments by constructing replacement buildings making full use of permissible zoning density. The RSL also incentivizes tenants to stay in units, even if the units are no longer appropriately sized for the tenants' needs. The result is reduced turn-over and availability of apartments in New York, exaggerating the very condition—low vacancy rates—the law was purportedly intended to address.

The vacancy rate has remained below 5% City-wide for the entire 50 years the RSL has been in effect—a vacancy rate similar to most other major metropolitan areas around the country —confirming the lack of any rational relationship between the RSL and alleviation of a housing shortage.

Separately, and also violating Due Process, is the New York City Council's reflexive declaration of a housing emergency every three years for the past 50 years, most recently in 2018. Those arbitrary and irrational emergency determinations are made without any meaningful support for or analysis of whether a housing emergency actually exists that would be ameliorated by "regulating and controlling residential rents."

Second, the RSL effects a physical taking of the property subject to rent stabilization regulation in violation of the Taking Clause of the Fifth Amendment to the U.S. Constitution. The RSL deprives property owners of their core rights to exclude others from their property and to possess, use, and dispose of their property. Through the RSL, the government mandates the continued, indefinite occupation of rental properties by tenants. That physical taking without compensation is a per se violation of the federal Constitution's Takings Clause.

Physical occupation accomplished by regulation, as much as by direct seizure, violates the federal Constitution.

Further exemplifying the physical nature of the taking is the change to the conversion rules. Property owners used to be able to convert buildings into cooperatives or condominiums by obtaining purchase agreements for 15% or more of the units from any bona fide purchasers, including but not limited to the tenants, as long as the conversion would not result in the eviction of any tenants. The 2019 Amendments now require purchase agreements for 51% of the units only from tenants and no other potential purchasers for a non-eviction plan. That effectively transfers from the property owner to the tenants the power to decide whether to dispose of the property through a co-op or condo conversion.

Finally, the RSL is an uncompensated regulatory taking of private property, further violating the Constitution's Taking Clause. The RSL has a significant adverse economic effect on property values. A study assessing the impact of the law prior to the 2019 Amendments found buildings with predominantly rent-stabilized units have 50% of the value of buildings with predominantly market-rate units. Even the City's property assessment guidelines concede unregulated properties have a significantly greater value than regulated properties. The 2019 Amendments will further increase the economic burden on regulated properties, because they—among other things—impose restrictions on recovering the cost of improvements that by their express terms prevent owners from recovering anything close to the real cost of those improvements—even improvements required by law to, for example, comply with the City's housing code. Recovery for improvements to individual apartments, for example, is limited to $15,000, even if the actual cost was two, three, or four times that amount.

The New York Court of Appeals has authoritatively determined "a tenant's rights under a rent-stabilized lease are a local public assistance benefit … the rent-stabilization laws do not provide a benefit paid for by the government, they do provide a benefit conferred by the government through regulation aimed at a population that the government deems in need of protection." Because the RSL is basically a public assistance benefit program paid for by a discrete group of property owners, who themselves receive no benefit at all from the program, the facts weight heavily in favor of a finding of a taking. The core principle of the Takings Clause is to prevent government from forcing some people alone to bear public burdens which in all fairness and justice should be borne by the public as a whole.

"New York's Rent Stabilization Law clearly violates the United States Constitution. The RSL 'solution' of forcing some property owners to subsidize housing costs for some tenants is arbitrary and irrational. It does not in any way target its benefits to people with limited means and it is constraining rather than expanding the supply of apartments in New York. Irrational government action violates the Fourteenth Amendment's Due Process Clause," said **Andrew J. Pincus of Mayer Brown, lead counsel for the Plaintiffs**. "Furthermore, the RSL's real-world effects are to take property without compensation, in violation of the federal Constitution's Takings Clause. Recourse to federal court is the only way to reform the system and increase available housing for all New Yorkers.

About the Community Housing Improvement Program (CHIP)

Community Housing Improvement Program (CHIP) is an association of about 4,000 responsible owners and managers of over 400,000 rent-stabilized rental property across all five boroughs in New York City. CHIP empowers property owners to provide quality, affordable housing and to build thriving communities.

CHIP members are long-term property holders who are deeply invested in the communities in which they live and work and employ tens of thousands of New Yorkers directly and indirectly through their small businesses. CHIP envisions a New York where building owners are free to provide housing they are proud of to residents who are proud to live there.

About the Rent Stabilization Association of N.Y.C. (RSA)

The RSA (Rent Stabilization Association of N.Y.C., Inc.) is the largest trade association in New York City exclusively dedicated to protecting and serving the interests of the residential housing industry. The RSA represents 25,000 property owners and agents responsible for approximately one million units of housing. RSA's members range from owners of one or two, small family buildings to professional managers of large multi-family complexes. Our broad representation has allowed us to develop a powerful base for our lobbying programs and the resources to provide a wide assortment of products and services to our members.

For more information, please visit UnlawfulRentRegs.com.

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