

## TESTIMONY IN OPPOSITION S 3082 / A 5573

The Rent Stabilization Association of New York City represents 25,000 diverse owners and managers who collectively manage more than one million apartments in every neighborhood and community throughout New York City. We thank the Committees for giving us the opportunity to submit this testimony in opposition to S3082/A5573, which would create a new system of rent control in housing throughout the state. New York State already has an opt in available for municipalities to adopt rent regulation. This bill mandates rent regulation on a statewide basis without the necessity of local approval. This bill not only regulates rent, it eviscerates an owner's right to control and contract for the lease of their property by creating non-means tested permanent tenancies that severely limit an owner's right to use and occupy their property.

Eviction without good cause, or "good cause eviction", or "right to renew" are misnomers used to camouflage a significant diminution of property rights. There are categorically no legal evictions in New York without just cause – in this sense, New York has always had good cause evictions. Eviction of a residential tenant is governed by a statutory process, which requires a court order to proceed. There are procedures built into the judicial eviction process that ensure tenant rights are protected. It is a class A misdemeanor to evict a tenant from their leased premises without a court order. Unlawful eviction as a crime. In addition to these judicial protections, New York City provides legal representation for tenants.

S3082/A5573 would create a new system of rent controls that implements a permanent tenancy for almost every tenant in the state not currently regulated without regard or consideration for the tenant's income or affluence. An owner would be forced to renew a tenant's lease and would be limited to minimal rent increases set by this statute when the lease expires. It would provide a tenant with a life tenancy, allowing them to rent an apartment or home until they die or decide to move, barring non-payment, nuisance or violation of a substantial lease obligation. A lease term would no longer be effective or legally significant. An owner no longer would be able to lease a property for a prescribed period of time. A tenant would not be required to vacate after their lease has expired, nor could they be removed for holding over. The terms of the lease would not be enforceable through eviction unless determined to be a substantial violation. A private owner would lose control of their property under this new regulatory scheme, while retaining all the obligations under the lease. There is no reciprocal benefit to the owner for the loss of their property right. The tenant would not be required to accept any additional responsibilities, and a property owner would be further burdened by a one-sided relationship that, once commenced, could only be terminated by the tenant. Eliminating an owner's ability to not renew a lease would require owners to undergo lengthy and expensive litigation in order to prove that a particular tenant is objectionable, hindering the owner's ability to ensure the other tenants of the building enjoy a good quality of life. This unintended consequence of the bill would ultimately lead to the decline of whole buildings and neighborhoods, as property owners would have virtually no ability to exercise any control over their own buildings.

Adding economic insult to property rights injury, this permanent tenancy also comes with a limitation on the amount an owner would be able to increase the rent, i.e., rent control. There is a rebuttable presumption that a rent increase is unreasonable if an annual increase exceeds three percent or 1 ½ times the annual percentage of change in the consumer price index. The issue of an unreasonable rent increase would be raised in the context of a failure to pay rent by the tenant or an objection by the tenant to any increase in an offered lease renewal; courts would become the de facto rent-setting body. The bill places the burden on the owner of rebutting the presumption that any rent in excess of the cap is unreasonable. There is no parallel to this burden for any other businesses. This would put property owners at a significant economic disadvantage with each passing year, as they not only fail to realize economic return from their property, but also struggle to meet operational costs such as property taxes, heating, oil, and water bills, which are not limited by an annual cap and, when not paid or provided, are grounds for administrative and criminal penalties against the owner. It would deter renovation of the property, both internally and externally, leading to dilapidation of housing and neighborhoods in a way that has already been seen with rent regulated buildings in New York City. This approach would also paralyze the court system with trials determining rent reasonableness.

Proponents of S3082/A5573 argue that it provides housing stability by combatting gentrification since tenants are not subject to lease non-renewal, and that lease non-renewal together with a cap on rent increases provides rent regulation protections for tenants, resulting in a decline in eviction and eviction filings. These objectives come at great costs, however, to society as a whole.

Any positive outcomes for tenants would come at the expense of the owner. The cost of protecting tenants from market rents would be transferred to owners. This is rent control. If the state and the municipalities want to provide rental subsidies to support tenants who are unable to afford market rents, then they should do so. However, by instead choosing to limit fair market rents, the government is removing the responsibility to subsidize housing from itself and placing that burden squarely on the private sector. This bill purposefully applies a sledge hammer to the private rental market where a scalpel would work. Rental subsidies provide housing stability for those that need the assistance, but this policy would punish property owners merely for owning property, decrease the housing stock, and disincentivize renovation and revitalization – the opposite of what the bill purports to do.

Rent control fails to address the rent gap for low-income individuals and families. It is economically inefficient because there is no means test. The benefit of the rent cap extends to all tenants irrespective of their income levels. This results in an irrational cost shift to private owners which protects the one percent at the expense of small owners. Most egregious is that the tenant who does not need the assistance receives the largest subsidy based on their higher rent obligation, typically in Manhattan and “Brownstone Brooklyn.” There is no rationale policy argument to sustain the application of rent control to all income levels.

The erosion of the owner’s property rights has consequences. Property values will be negatively impacted. Owners will not be able to sell the property for its true value or to convert the property to another commercial use. This impacts not only development opportunities and housing creation, but also financing options and opportunities for sale of the property. The limitation on lease renewal will also impact the ability to repair or rehabilitate units. Tenants will be incentivized to

hold on to their units because of the rent cap. There is no incentive to right size their units based on changes in the size of the family. The housing stock in general will suffer from stagnation and disinvestment and not be upgraded.

Permanent tenancies create a significant, potentially unconstitutional, imbalance in the landlord-tenant relationship. In order to recover a rental unit for improvement or development, an owner will be required to pay a tenant to obtain a voluntary surrender of a unit. Eviction without just cause ignores the current legal and procedural protections available to tenants in terms of notice, discovery and right to a jury trial. In addition, tenants have defenses for eviction including warranty of habitability, retaliation, unconscionable lease clauses, and harassment. Tenants also have a reciprocal right to attorneys' fees if they prevail in any action. Eviction without just cause only increases tenants' arsenal by enabling a tenant to bring an action for monetary damages. It effectively transfers many benefits of ownership to the tenant without any of the responsibilities.

These rent controls and permanent tenancies negatively impacts the viability of small owners, who are the major providers of rental housing. The inability to clearly establish a fixed ending to a lease will effectively prevent an owner from selling their property to access capital for retirement or unforeseen circumstances. Small owners need flexibility with their properties to respond to monetary needs. The suppression of rents has the most significant impact on small owners with fewer units. Small owners will not have the income and scale to respond to rent control. The lack of control over their rental properties will hamper small owner's ability to provide affordable housing in their communities throughout the state. Ultimately small owners will be forced to sell to larger owners with the scale to operate. Ownership of rental real estate has provided investment opportunities to enable small owners particularly from immigrant or minority communities to improve their financial situation. This opportunity will be foreclosed by this legislation.

Those who suffer the impacts of this proposal go well beyond the individual owners. As is well documented, with rent controls tenants make housing choices divorced from market conditions. This, in turn, limits tenant mobility and reduces opportunities for new entrants to the housing market.

But not only will there be fewer existing housing opportunities, future options forever will be thwarted. Fewer properties will ever come to market. Rents under eviction without good cause do not support the borrowing or construction costs needed to build new housing units without huge subsidies from government. As New York grapples with a housing shortage and looks to rezone neighborhoods to create denser communities and more affordable housing units, this bill will strangle those aspirations. This proposal effectively halts housing creation because individual permanent tenancies supersede greater housing policy needs. Rather than curing housing scarcity, this bill would exacerbate the lack of affordable housing.

It, too, will hurt localities with the resulting reduction in the value of real property. Property tax collection from the rental market would be reduced as a result of decreased property valuation due to lifetime tenancies and rent caps. Inevitably, significant increases in taxes for non-rental properties would be required in order to maintain tax revenues.

In New York City, Nassau County and Westchester County tax increases would need to be absorbed by all other taxpayers – individual homeowners and commercial and non-rental coop and condo properties - in order to close the enormous property tax gap that would result from

this legislation. Further, in apartment buildings with both regulated and unregulated apartments, the unregulated rents would no longer be able to subsidize building operations for all tenants because rents for the unregulated units would now be capped by this bill. This will have significant impacts on ability of owners to maintain and upgrade housing and individual tenants.

Should localities determine that rental caps and permanent tenancies are needed there are ways to achieve that without a statewide mandate. The Housing Stability and Prevention Action (HSTPA) enacted in 2019 authorized municipalities throughout the State to adopt the rent regulatory system that has been in place for decades in New York City and certain other municipalities in Nassau, Rockland and Westchester counties. Some localities have pursued this option and undertaken surveys to determine if conditions are met.

This bill circumvents these local options and instead effectively mandates the adoption of a statewide system and does not allow local legislatures to make decisions based on local conditions. This bill commandeers local decision making, the functions of local legislatures and local choice and instead establishes a one-size fits all housing policy for the whole of New York State.

In summary, this bill would cause a radical departure from existing law creating a permanent tenancy for all tenants without means testing, diminish the property rights of owners, require the courts to determine reasonable rents, remove housing policy from local control, and render the most basic of lease provisions void. Setting aside the glaring and obvious constitutional claims that would defeat this legislation upon judicial review, no public policy rationale justifies voiding contracts entered into in good faith and to bind owners to perpetual tenancies.

Its impacts would cause:

1. Decrease in tax revenues. As property values are reduced and there will be fewer sales transactions.
2. Stifled development of rental properties. As market-rate housing will cease to exist and investment returns are severely curtailed.
3. Deterioration of housing stock. Reduced income will result in decreased maintenance and funds provided by market-rate rentals in buildings with both subsidized and non-subsidized units will no longer be available for to maintain and upgrade buildings.
4. Decrease of available units. Permitting tenants to stay in perpetuity will result in fewer housing options for new/incoming tenants.
5. Neighborhood stagnation. Limiting the flow of new tenants into a neighborhood and disincentivizing sales as well as renovation of properties will lead to neighborhood stagnation.
6. Owners to subsidize rents of all tenants, irrespective of income.
7. Senior citizens and disabled owners housing needs subordinated to renters. No ability to claim a unit for a family member or caregiver in order for a senior or disabled owner to live at home.
8. Market shift from small to large owners. Due to scale larger owners may be better able to operate with income limitations.

9. Reduction in the ability to create more housing units in existing structures. By limiting the ability to redevelop existing residential sites, the creation of new housing units is blocked.
10. Protections accorded to non-primary residences and for subletters. No requirement for a primary residence and subletters who never entered into a lease or contract with the property owner are covered.
11. Cooperative and condominium buildings operations to be limited. The ability of boards or management companies to raise maintenance fees as necessary or to otherwise terminate leases/subleases in furtherance of their appropriate business judgment.
12. Courts to become the entity charged with establishing rent increases.
13. Application of a one-size fits all housing policy to New York State. Eliminates local control of housing policy.
14. Infringement on constitutionally-protected property rights.