No. 23-1148

IN THE

Supreme Court of the United States

G-MAX MANAGEMENT, INC., ET AL.,
Petitioners,

v.

STATE OF NEW YORK, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR *AMICUS CURIAE* NATIONAL ASSOCIATION OF REALTORS® IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

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.

NAR regularly files *amicus* briefs in cases, like this one, that raise significant concerns for the real estate industry. As a general matter, rent-control measures have a significant effect on private-property rights, the supply of affordable housing, and the real estate industry as a whole. And more specifically, New York's Rent Stabilization Law (RSL) imposes onerous restrictions on the ability of rental-property owners in New York City to recover possession of their properties.

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[1] Counsel of record for all parties received timely notice of *amicus*'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 *amicus*, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

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. NAR files 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 "private property" shall not "be taken for public use, without just compensation." U.S. Const., amend. V. It thus "stands as a shield against the arbitrary use of governmental power" to deprive citizens of vested property interests, *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980), and ensures 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 property rights. Rather than protect private property, governments have conscripted property owners into serving the state without compensation. These unconstitutional actions include eviction moratoria and draconian rent-control regimes that seek to divest property owners of long-recognized property interests. Adoption of such measures has only accelerated in recent years. *See, e.g.*, *Alabama Ass'n of Realtors v. HHS*, 594 U.S. 758 (2021).

This case is just one example. 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 problems with housing supply by shrinking the quantity of available housing. They also decrease housing quality, reduce consumer mobility and entry into the housing market, and worsen housing affordability. Applying the Takings Clause to prohibit 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 undermines those objectives.

Rent control imposes negative effects on the housing market and on property owners who are required "alone to bear [the] public burdens" of misguided housing policies. *Armstrong*, 364 U.S. at 49. The record in this case is 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 burdens inevitably fall hardest on individual "mom and pop" property owners with the fewest resources to spare. The RSL thus forces property owners to make a "far greater contribution" to public projects than the Constitution permits. *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 647 (2023).

This Court should countenance such arrangements no longer. "The constitutionality of regimes" like the RSL present "an important and pressing question" on which "the Courts of Appeals have taken different approaches." *74 Pinehurst LLC v. New York*, Nos. 22-1130 & 22-1170, 2024 WL 674658, at *1 (U.S. Feb. 20, 2024) (Thomas, J., statement respecting denials of certiorari). And as "[t]here are roughly one million rental apartments affected in New York City alone," petitions from property owners will likely persist until this Court resolves the question. This is the case in which to do so.

ARGUMENT

I. GOVERNMENT RESTRICTIONS ON PRIVATE PROPERTY ARE EXPLODING NATIONWIDE.

New York's RSL is among the most draconian rent-control laws in the country, forcing property owners to subsidize the Empire State's misguided housing policies. Until recently, the RSL might have been 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 COVID-19 pandemic, the Centers for Disease Control and Prevention (CDC) imposed a moratorium on residential evictions. *Alabama Ass'n of Realtors*, 594 U.S. 758. This federal eviction moratorium decreed that "a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, 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. 55292, 55294, 55296 (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*, 594 U.S. at 765. "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.*

Beyond the federal government, 43 states and the District of Columbia imposed their own eviction moratoria during the pandemic. *See, e.g.*, *Chrysafis v. Marks*, 141 S. Ct. 2482 (2021) (New York).[2] For many jurisdictions, the eviction moratoria long outlasted the pandemic. Oakland and Los Angeles, for example, did not phase out their COVID-19 eviction protocols until well into 2023.[3]

These eviction moratoria exacted huge costs from property owners. Minnesota's, for instance, 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). But following this Court's reasoning in *Alabama Association of Realtors*, the Eighth Circuit held the moratorium gave rise "to a plausible *per se* physical takings claim" because Minnesota had "deprived" property owners] of their "right to exclude existing tenants without compensation." *Id.* at 733. As petitioners explain, the Eighth Circuit's ruling conflicts with the Second Circuit's analysis in this case. Pet. 13-15; *see 74 Pinehurst LLC*, 2024 WL 674658, at *1 (Thomas, J., statement respecting denials of certiorari) (discussing circuit conflict).

[2] J. Stempel & D. Shepardson, *Judge Puts Hold on Ruling Voiding U.S. Moratorium on Evicting Renters*, REUTERS (May 6, 2021), https://perma.cc/C84A-R2DU.

[3] City of Oakland, *Oakland Eviction Moratorium Phase-Out* (May 3, 2023), https://perma.cc/G2N4-BX56; City of L.A. Housing Dep't, *COVID-19 Renter Protections* (May 24, 2023), https://perma.cc/YSZ5-6LWL; L.A. Cnty. Dep't of Consumer & Bus. Affairs, *About L.A. County's COVID-19 Tenant Protections Resolution*, https://perma.cc/YF7Q-M7PD.

Rent control. Though more enduring than pandemic 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."[4] Some peg the allowable rent to historic rents, while others limit the increases permitted within particular periods.[5] 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 troubling. The object of New York's RSL, as with other rent-control laws, is to stabilize costs and improve housing conditions. But consistent with trends across the country, New York amended the RSL in 2019 to make it *more* difficult for property owners to recover properties from tenants, decontrol units, and recoup improvement costs. *See* Pet. 5-9. These restrictions make it nearly impossible for property owners to decline lease renewals 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 adopted the first statewide rent-control regime in 2019, which capped annual rent increases and imposed new limits on the eviction rights of property owners. *See* 2019 Or. Laws Ch. 1 (S.B. 608).[6]

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[4] R. Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 741, 742 (1988).

[5] *See id.*; V. Werness, *Rent Controls* 7-9, LEGAL RSCH. CTR., INC. (2017) (describing various regimes).

[6] M. Zaveri, *Oregon to Become First State To Impose Statewide Rent Control*, N.Y. TIMES (Feb. 26, 2019).

California followed suit soon thereafter and imposed similar restrictions. *See* 2019 Cal. Legis. Serv. Ch. 597 (A.B. 1482).[7] Numerous other states are considering statewide rent-control measures, including Arizona, Connecticut, Hawaii, New Jersey, New Mexico, Rhode Island, and South Carolina.[8]

In addition, over 200 local governments around the country have adopted their own rent-control laws.[9] In San Francisco, for example, rent-controlled units are subject to strict caps on annual rent increases, which rarely exceed 2.5% and are sometimes under 1%.[10] San Franciscans who rent out their properties also must permit their tenants to perpetually renew their leases unless the property owner can establish "just cause."[11] And while many 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 them are considering repeals that would give localities free rein in this area.[12]

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[7] C. Dougherty & L. Ferré-Sadurní, *California Approves Statewide Rent Control To Ease Housing Crisis*, N.Y. TIMES (Sept. 11, 2019; updated Nov. 4, 2019).

[8] B. Harrold, *Rent Control Marches Onward in 2023*, National Apartment Association (NAA) (Mar. 7, 2023; updated Mar. 15, 2023), https://perma.cc/8KYS-3ZBA.

[9] NAA, *Rent Control: Policy Issue*, https://perma.cc/W9KH-Y5AX.

[10] S.F. Residential Rent Stabilization & Arbitration Bd., *Allowable Annual Rent Increases*, https://perma.cc/F5N6-EZS9.

[11] City & County of San Francisco, *Overview of Just Cause Evictions* (Feb. 2020), https://perma.cc/6AES-P6BX.

[12] Harrold, *supra* n.8.

Rent control even has been entertained at the national level. Congress has considered federal rent-control legislation and prominent officials have endorsed a nationwide rent-control program.[13] For his part, President Biden released a "Renters Bill of Rights" setting forth an agenda to cap housing costs at 30 percent of household income and encouraging agencies to work toward implementing national rent-control policies.[14] The White House also announced that the Federal Trade Commission would "explore ways to expand the use of its authority" into rental-market practices.[15] And the Federal Housing Finance Agency (FHFA) directed Fannie Mae and Freddie Mac to propose policies to regulate the rental market even further.[16] If implemented, these measures would only undermine pathways to home ownership—a proven source of generational wealth—by incentivizing and effectively subsidizing perpetual renting.[17]

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[13] H.R. 5072, 116th Cong. (2019); Letter from Senator Warren et al. 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).

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

[15] *Id.* at 6.

[16] FHFA, *FHFA to Request Input on Multifamily Tenant Protections* (Apr. 13, 2023), https://perma.cc/P3LZ-8GER.

[17] *See* S. 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.

II. RENT-CONTROL LAWS UNDERMINE HOUSING AFFORDABILITY AND HARM 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 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; (2) diminishes the quality of available housing; (3) reduces consumer mobility and entry into the housing market; and (4) helps the rich while harming the poor when it comes to housing affordability.[18]

A. Rent control reduces the quantity of available housing.

As in any other market, prices for housing 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, which yields "new construction, rehabilitation of existing units, and conversion of buildings from nonresidential to residential use," which in turn helps address housing shortages.[19] Artificially capping rents sends a false market signal that no such investment is necessary, thereby shrinking the housing supply.[20]

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[18] *See* R. Alston et al., *Is There a Consensus Among Economists in the 1990s?*, 82 AM. ECON. REV. 203 (1992).

[19] Werness, *supra* n.5, at 94.

[20] *Id.*

Because it reduces the profitability of rental housing, rent control moves "investment capital out of the rental market and into other more profitable markets."[21] Indeed, 87.5% of developers in a recent survey noted that they avoid building in jurisdictions with rent control.[22] This results in both a decline of construction of new housing, and an increase in the conversion of existing rental units to other uses.[23] Rent control, in other words, "perpetuates the very problem it was designed to address: a housing shortage."[24]

Numerous studies confirm rent control's pernicious effects. In Massachusetts, for example, the number of rental units in Cambridge (8%) and Brookline (12%) decreased during the 1980s after those cities imposed rent-control measures.[25] Meanwhile, in neighboring Boston, "which had a less restrictive form of rent control," rental-housing stock "declined by just 2 percent."[26] "But in virtually all other Boston area communities without rent control … the rental housing stock increased."[27]

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

[22] NMHC, *Cost of Regulations Report* (June 9, 2022), https://perma.cc/N9PH-T2H7.

[23] NMHC, *supra* n.21.

[24] P. Salins, *Rent Control's Last Gasp*, CITY JOURNAL (Winter 1997).

[25] R. Goetze, *Rent Control: Affordable Housing for the Privileged, Not the Poor* 7 (1994).

[26] *Id.*

[27] *Id.*

Similarly, in California, the number of rental units decreased in Berkeley (14%) and Santa Monica (8%) between 1978 and 1990 after those cities imposed rent control, while the rental supply rose in nearby cities during the same period.[28] A recent study of the San Francisco housing market likewise found that rent control reduced the rental supply of small multi-family housing by 15%, which ultimately led to rent increases and increased gentrification.[29]

This problem is not confined to the coasts. In St. Paul, Minnesota, apartment construction slowed by more than 80% after the city adopted rent control in 2021.[30] Apartment transaction volume in the city fell 50.3% in 2022, while apartment transaction volume in neighboring Minneapolis—which did not impose rent control—*grew* over the same period.[31]

The New York RSL has had a similar effect. In 2017, the overall vacancy rate in New York City was 3.63%. Pet. App. 154a. The vacancy rate for non-regulated units, however, was 6.07%—nearly triple that of rent-controlled units (2.06%). *Id.*

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[28] St. John & Associates, *Rent Control in Perspective: Impacts on Citizens and Housing in Berkeley and Santa Monica Twelve Years Later*, PAC. LEGAL FOUND. (1993).

[29] R. Diamond et al., *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco*, 109 AM. ECON. REV. 3365, 3393 (2019).

[30] F. Melo, *Apartment Construction Slows by More Than 80 Percent in St. Paul*, PIONEER PRESS (Apr. 4, 2022; updated Apr. 6, 2022), https://perma.cc/B6A2-WD3B.

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

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. Pet. App. 276a. Moreover, the RSL's limits 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. *See* Pet. 6-9. The 2019 amendments to the RSL made the problem worse by scrapping two decontrol provisions, jettisoning two bases for rent increases, and capping the amount recoverable for making improvements. Pet. 5-9. Following these amendments, the number of vacant units in New York City has only decreased, with the economic infeasibility of improving units as the most cited reason for continued vacancies.[32]

Because rent-control laws worsen housing scarcity, they tend to contribute to greater rent increases in the unregulated market. One study found 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.[33] Similarly, in Los Angeles, after two years of rent controls, "uncontrolled rents had risen an average of 46.2 percent," a larger spike "than would

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[32] Real Estate Board of N.Y. (REBNY), *New Report Highlights Disastrous Effects of 2019 'Housing Stability and Tenant Protection Act' on NYC Rent-Stabilized Housing Stock* (Feb. 29, 2024), https://perma.cc/JUW2-PKRS.

[33] S. Caudill, *Estimating the Costs of Partial-Coverage Rent Controls: A Stochastic Frontier Approach*, 75 REV. ECON. & STAT. 727 (1993).

have occurred in the absence of rent controls."[34] In San Francisco, an expansion of rent control led to "a 5.1 percent citywide rent increase from 1995 to 2012, adding up to an extra $2.9 billion cost."[35]

B. Rent control reduces the quality of available housing.

Rent control also deteriorates the quality of existing housing. Less rent revenue means less funds available for 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 minimum required to make them habitable) and provide amenities or services.[36] One nationwide study found that "rent controls were associated with a 7.1% decrease in quality during 1974, and with a 13.5% decrease in 1977."[37] And it produced similar results even when "restricted to a low income subsample," indicating that any "favorable distributional effects may be partially offset by quality deterioration."[38]

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[34] G. Fallis & L. Smith, *Uncontrolled Prices in a Controlled Market: The Case of Rent Controls*, 74 AM. ECON. REV. 193, 199 (1984).

[35] P. Rajasekaran et al., *Rent Control: What Does the Research Tell Us about the Effectiveness of Location Action?*, URB. INST. 5 (Jan. 2019).

[36] N. Miller, *California Rent Controls: Good Intentions with Disastrous Consequences*, UNIV. OF SAN DIEGO NEWS CTR. (May 16, 2018), https://perma.cc/CYG6-DD4C.

[37] D. Mengle, *The Effect of Second Generation Rent Controls on the Quality of Rental Housing*, Fed. Res. Bank of Richmond Working Paper No. 85-5, at 14 (1985).

[38] *Id.*

City-specific studies tell the same story. One estimated that a Los Angeles rent-control law caused so much deterioration that it offset 63% of the benefit to consumers of lowered rent.[39] Data from Boston showed that "rent control … appear[ed] to reduce the maintenance performed on rental units,"[40] with one case study estimating that "landlords spent almost $50 less per year on each unit of controlled buildings" compared to uncontrolled units.[41] A study of New York City likewise found 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."[42] And separate analyses of New York's rental market concluded that "controlled units had less maintenance, were of lower quality, and had more deterioration than uncontrolled units."[43]

The 2019 amendments to the RSL compound the law's negative effect on housing quality. The amendments drastically reduced the amount owners can recover via rent increases for major capital improvements or individual apartment improvements. Pet. App. 161a-65a. The obvious consequence of these

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[39] C.P. Rydell et al., *The Impact of Rent Control on the Los Angeles Housing Market* 55-59, THE RAND CORPORATION (1981).

[40] D. Sims, *Out of Control: What Can We Learn from the End of Massachusetts Rent Control?*, 61 J. URB. ECON. 129, 144 (2007).

[41] P. Navarro, *Rent Control in Cambridge, Mass.*, 78 PUB. INT. 83, 92 (Winter 1985).

[42] J. Gyourko & P. Linneman, *Rent Controls and Rental Housing Quality*, 27 J. URB. ECON. 398, 405 (1990).

[43] Navarro, *supra* n.41, at 92.

changes is that owners have less incentive and ability to make improvements to their rental properties. Indeed, since the 2019 amendments, annual filings for major capital improvements and individual apartment improvements have plummeted by 45% and 77% respectively, notwithstanding the obvious need for these projects in many buildings.[44]

A recent survey of housing providers and developers confirms these findings. According to the survey, 71% of providers agree that rent control harms development and investment plans.[45] "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."[46] "Rising business costs," moreover, "make it even more difficult for housing providers to sustain operations under rent control policies."[47] While 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]

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[44] REBNY, *supra* n.32.

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

[46] *Id.*

[47] *Id.* at 4.

[48] *Id.*

C. Rent control reduces consumer mobility and entry.

Tenants in rent-controlled units understandably are reluctant to give up their housing subsidy. They are therefore less willing to move or buy a home, 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 stay in dwellings that do not suit their needs to continue getting this benefit. One study revealed 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 contributes to the RSL's tendency to create long-term, multi-generational occupants of owners' properties. *See* Pet. App. 152a.

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%.[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

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[49] R. Ault et al., *The Effect of Long-Term Rent Control on Tenant Mobility*, 35 J. URB. ECON. 140 (1994).

[50] *Id.* at 156.

[51] E. Glaeser & E. Luttmer, *The Misallocation of Housing under Rent Control*, 93 J. URB. ECON. 1027, 1028-29 (2003).

[52] Diamond, *supra* n.29.

distances to reach those jobs."[53] It can also cause spillover effects in the community, such as increases in traffic congestion and demand for city services.[54] In a study of rent control in Los Angeles, researchers similarly "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 tenants in rent-controlled units in the District of Columbia move less frequently than other tenants, contributing to low overall rates of residential mobility.[56]

Additionally, rent control erects barriers to entry into the housing market. Because rent control exacerbates housing scarcity and raises rents for unregulated apartments, prospective consumers in many rent-controlled communities must fork over substantial finder's fees or other payments to current consumers in order 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 young people and those with low incomes.[59]

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[53] NMHC, *supra* n.21.

[54] *Id.*

[55] Navarro, *supra* n.41 at 94.

[56] *See* L. Sturtevant, *The Impacts of Rent Control: A Research Review & Synthesis* 12, NMHC RES. FOUND. (May 2018).

[57] NMHC, *supra* n.21.

[58] *Id.*

[59] *Id.*

D. Rent control is not a solution to the housing affordability problem.

To top it off, rent control frequently benefits the wealthy while doing little to help the poor with respect to housing affordability. The RSL is a particularly egregious example, as it lacks any means testing, financial qualification, or other requirement that stabilized apartments be rented to families with low incomes. Pet. App. 154a, 204a-05a. And because the RSL effectively requires owners to perpetually renew leases, property owners have an incentive to choose tenants with higher incomes and better credit. *Id.*

Examples of wealthy New Yorkers living in rent-stabilized apartments abound. Take the polo-playing multimillionaire whose family owned a 300-acre estate who enjoyed a rent-stabilized apartment for several years.[60] Or the former executive with a second home in the Berkshires who dwelt in a rent-stabilized apartment for nearly two decades.[61] Or the former magazine editor who lived in a rent-stabilized unit in the Upper West Side for 27 years while also owning a cottage on a 7-acre property outside New York City.[62] Or the couple with a multimillion-dollar home in the Hamptons who also rented an apartment in lower Manhattan for $931 a month.[63] The list could go on.

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[60] J. Fanelli, *Rent-Stabilized Apartments Are Being Occupied by Millionaires, Records Show*, DNAINFO (Apr. 30, 2014), https://perma.cc/C465-LYKR.

[61] *Id.*

[62] *Id.*

[63] C. Britschgi, *Rent Control for the Rich*, REASON (Jan. 9, 2024), https://perma.cc/LY6P-322Z.

Studies confirm that a large number of high-income households occupy rent-stabilized apartments. One found that there were roughly 22,640 rent-stabilized households in New York with incomes over $199,000, and 2,300 rent-stabilized households with incomes over $500,000.[64] Another concluded that in New York City, "rent-controlled households with incomes greater than $75,000 received nearly twice the average subsidy of rent-controlled households with incomes below $10,000."[65]

New York is not alone. In Boston, one study found that only 26% of rent-controlled units were occupied by tenants with incomes in the bottom quartile of the population, while 30% of rent-controlled units were enjoyed by tenants in the top half of income distribution.[66] 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."[67] And in Berkeley and Santa Monica, "the beneficiaries of rent control are 'predominantly white, well-educated, young, professionally employed, and affluent,'" who enjoy substantially increased "disposable income" from these policies.[68]

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[64] S. Lazzaro, *Millionaires Are Ruining Rent-Stabilization for the Rest of Us*, N.Y. OBSERVER (Apr. 30, 2014), https://perma.cc/QK9S-KAH7.

[65] NMHC, *supra* n.21.

[66] Sims, *supra* n.40.

[67] Navarro, *supra* n.41, at 97.

[68] *Rent Control Hurts Low-Income Families & Increases Costs For All Renters* 6, CTR. FOR CAL. REAL ESTATE (Jan. 2018).

Rent control also "opens the door to discrimination" by "eliminating rents as the basis of choosing among a pool of potential consumers."[69] Property owners of rent-controlled units may instead choose to "allocate apartments on the basis of tenant characteristics"—*i.e.*, choose "tenants who resemble the existing stock of tenants," which "will tend to exacerbate segregation, at least in richer communities."[70] And "when rent control is imposed on declining cities, it seems to make them more, not less segregated."[71] Case studies confirm all this. "In Berkeley, African-American populations declined while they rose in surrounding Alameda County following the enactment of rent control."[72] A study in Massachusetts likewise found that "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."[73] And in New York City, "Blacks and Puerto Ricans in the controlled sector received lower benefits than their white counterparts."[74]

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[69] NMHC, *supra* n.21.

[70] E. Glaeser, *Does Rent Control Reduce Segregation?*, 10 SWEDISH ECON. POL'Y REV. 179, 187 (2003).

[71] *Id.* at 199.

[72] *Rent Control Hurts Low-Income Families & Increases Costs For All Renters*, *supra* n.68, at 6.

[73] Rajasekaran *et al.*, *supra* n.35, at 7.

[74] J. Gyourko & P. Linneman, *Equity & Efficiency Aspects of Rent Control: An Empirical Study of New York City*, 26 J. URB. ECON. 54, 73 (1989); *see also* Ault, *supra* n.49, at 38 (concluding that "white families receive larger benefits than do similar minority families").

III. New York's RSL has had a devastating impact on property owners.

New York's RSL not only reflects poor housing policies, but also forces property owners "alone to bear public burdens which, in all fairness and justice, should be borne by the public as 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 essentially forces property owners to privately subsidize what would otherwise be a publicly funded housing assistance program. Pet. 20. The size of this subsidy has grown substantially over the past 20 years, as owners' operating costs have increased. From 2014 to 2017, allowable rents for rent-stabilized buildings rose only by 2.6%.[75] The cost of maintaining rent-stabilized apartment buildings meanwhile shot up by 6.2% between 2016 and 2017.[76] If current trends hold, operating profits could be completely eliminated entirely in the future. *Id.*

The record in this case is replete with examples of the RSL's negative impacts on property owners, thereby facilitating "a clear understanding of how New York City regulations coordinate to completely bar landlords from evicting tenants." *74 Pinehurst LLC*, 2024 WL 674658, at *1 (Thomas, J., statement respecting denials of certiorari); *see* Pet. 26-28.

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[75] N.Y.C. Dep't of Housing Preservation & Development, *Selected Initial Findings of the 2017 New York City Housing and Vacancy Survey* 21 (Feb. 9, 2018), https://perma.cc/2DZ4-7G3P.

[76] New York City Rent Guidelines Board, *2017 Price Index of Operating Costs* 4 (Apr. 13, 2017), https://perma.cc/5L5X-YJPL.

Petitioners Ordway and Guerrieri, for example, have been unable to reclaim possession of a rent-stabilized unit in *their own* apartment building for *their own* personal dwelling. Pet. App. 189a-93a. Their efforts to reclaim their apartment from their tenant—an affluent businessman and professional athlete—have been thwarted by the 2019 amendments, which prohibit them from reclaiming a dwelling unit without an "immediate and compelling necessity." *Id.* at 191a-92a. Under that burdensome standard, Ordway and Guerrieri have been barred from their own property by one with no need for a rent-stabilized unit in the first place. *Id.* New York law thus transfers the "right to exclude" from owner to occupant, even though it "is 'one of the most treasured' rights of property ownership." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021); *see* Pet. App. 192a-93a.

The RSL's minimal permitted rent increases and strict limits on recoupment for unit improvements have forced some petitioners to take deteriorating units off the market. *See* Pet. App. 184a, 194a-98a. Meanwhile, other petitioners have been prevented from exiting the rental market and converting their apartment buildings into condominiums or co-ops. *See, e.g.*, *id.* at 171a, 182a-83a, 195a-96a. That is because the 2019 amendments offer current tenants a collective veto over any such decisions. *Id.* at 206a-07a. So even though the right to "dispose of" property has always been a core part of property ownership, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982), New York forces apartment owners to continue renting their units to tenants in perpetuity unless they decide to either go elsewhere, or bless the property owners' desire to transition to a new use.

The burdens imposed by the RSL, and rent control generally, fall most heavily on smaller "mom and pop" property owners. Individuals, rather than 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 country—nearly 75%.[77] Moreover, roughly a third of these individual owners are from low- to moderate-income households, and property income makes up to a fifth of their total household income.[78] For many such owners, property-related expenses consume over half of their property income.[79] Unlike some larger corporate owners, these individuals have fewer resources to withstand prolonged periods without adequate rental income.[80] *See Alabama Ass'n of Realtors*, 594 U.S. at 765 (noting that "many landlords have modest means").

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*, 598 U.S. at 647. Under the protections of the Takings Clause, however, rental-property owners "must render unto Caesar what is Caesar's, but no more." *Id.* New York's RSL goes too far in forcing property owners to bear the brunt of the Empire State's misguided housing policies.

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[77] K. Broady et al., *An Eviction Moratorium Without Rental Assistance Hurts Smaller Landlords, Too*, BROOKINGS INST. (Sept. 21, 2020), https://perma.cc/FLF4-2RK7.

[78] *Id.*

[79] *Id.*

[80] *Id.*

CONCLUSION

This Court should grant certiorari and reverse.

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Respectfully submitted,

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