It's the End of the World as We Know It (and I Feel Fine): Rent Regulation in New York City and the Unanswered Questions of Market and Society

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Rent control has its flaws, but it does more good than harm. It protects working-class people from the worst excesses of the marketplace, and it assures that some middle-class people can still afford to live in the city. It guarantees that New York won't become a two-tiered society, affordable only to the very rich and, for those lucky enough to live in government-subsidized housing, the very poor. No one has yet figured out a better way—short of massive federal direct subsidies to tenants or nonprofit community developers—to enable average New Yorkers to stay in the city.

"[R]ent control appears to be the most efficient technique presently known to destroy a city—except for bombing," Swedish economist Assar Lindbeck observed in a 1972 book. Rent control is a big cause of [New York City's] financial mess, a huge cause of its notorious housing scarcity and a neat illustration of its political unreality. Ending it would be a big step toward unleashing a construction boom and boosting [the city's] economy to offset destructive tax increases.

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1. R.E.M., It's the End of the World As We Know It (And I Feel Fine), on Document (Capitol 1987).
For the more than one million rent-regulated apartments in New York City,\textsuperscript{4} the salvos above are more than entertaining reading. Instead, these comments are indicative of the debate that rages in newspapers and academic publications, while successive state legislative sessions in New York continue to engage in clandestine lawmakers.\textsuperscript{5} At the end of the most recent rent regulation battle, the New York state legislature gave the tenants and landlords of New York City an eight-year extension of rent regulation laws.\textsuperscript{6} The renewal essentially left the most contentious issues untouched, but made a few changes.\textsuperscript{7} In what was categorized as "the most potentially far reaching feature of the new legislation," the state legislature "sharply limit[ed] the ability of the New York City Council to alter rent regulation in the city."\textsuperscript{8} By prohibiting almost all action by local government, the state legislature stifled the debate that would naturally arise in conjunction with a local issue of such great importance to city residents and their elected leaders.\textsuperscript{9} It is unlikely that this foreclosing of local debate was an unintended side effect: The eight-year extension is the longest such extension in the history of the law, and with no possibility of debate at the city level, the status quo will be preserved during that period.\textsuperscript{10}

During the next eight years, any discussion or debate revolving around rent regulation will exist purely in theory, lacking the urgency that a renewal deadline creates.\textsuperscript{11} The next eight years, however, might also be thought of as a reprieve that provides an opportunity for

\textsuperscript{4} New York City Rent Guidelines Board, Housing NYC: Rents, Markets and Trends 2003, at 106-07 (2003) [hereinafter 2003 Housing NYC]. As of the 2000 census, there were just over one million rent stabilized units, and just under sixty thousand rent controlled apartments in New York City. Id.

\textsuperscript{5} Elizabeth Kolbert, Accountants in the Sky: To Make Sense of Albany, You Have to Turn Everything on Its Head, New Yorker, May 19, 2003, at 38 (describing how the Governor and majority leaders of the House and Assembly have total control over the lawmaking process). The article stated that "if a bill is of any significance it is [the majority leaders] who determine, independently of the committees, whether or not it will advance. The same is true once a bill gets to the floor. In Albany, except under total-eclipse-of-the-sun-like circumstances, votes have only one possible result." Id.


\textsuperscript{7} Id. The changes in the law address the issues of so-called "preferential rents," high-rent deregulation, and state versus local regulatory power. Id.; see infra text accompanying notes 147-56.

\textsuperscript{8} Estis & Turkel, supra note 6.

\textsuperscript{9} The original law removing local power over rent control is known as the Urstadt Law. 1971 N.Y. Laws 372. See infra notes 92-96 and accompanying text.

\textsuperscript{10} Clifford J. Levy, Experts See Initial Impact of Rent Law as Minimal, N.Y. Times, June 22, 2003, at A27 ("The new law extends the rent regulations for eight years, which is longer than previous [extensions] did.").

\textsuperscript{11} Id. ("Tenant groups described [the eight year extension] as a defeat, saying that it is all but impossible to reopen the debate on the luxury-decontrol provisions in the Legislature if the law is not about to expire.").
debate. But debate is not an end in itself; particularly if, as in the past, 
rent regulation debates ask—and attempt to answer—the wrong 
questions. The origin of this misplaced focus rests squarely on the 
rent regulation laws themselves. The laws make arbitrary distinctions 
between seemingly like-situated tenants, creating categories of haves 
and have-nots in a system where the size of a building is more 
important than the financial status of the tenant. In such an 
environment, the debate revolves solely around the current laws— 
regulation versus free market—and fails to ask the pivotal questions 
of what society thinks a housing market should look like. Currently, 
rent regulation fuels a culture of "rental envy," where those outside 
the system liken themselves to the victims of official corruption. In a 
system like New York's, where need plays almost no part in 
determining who receives the benefit of rent regulation, it is 
understandable when those outside the system feel slighted.

The arbitrary inequities created by the current system provide 
abundant ammunition to those who oppose any government 
regulation in the market. Noted housing economists present detailed 
empirical data proving that the repeal of rent regulation would

12. For example, much of the anti-regulation literature makes very detailed 
arguments about the inequities of the current regulatory system, but refuses to ask 
whether potential outcomes in an unregulated market would be unacceptable to 
society. See infra note 336.

8625(a)(4)(a) (McKinney Supp. 2004) (excepting from regulation housing 
accommodations "in a building containing fewer than six dwelling units"); id. § 
8625(a)(5) (excepting from regulation any housing accommodation "in buildings 
completed or... substantially rehabilitated as family units on or after January first, 
nineteen hundred seventy-four"); see infra notes 104-06 and accompanying text.

14. For example, society could debate the value of: economic diversity within a 
community; protections against unilateral evictions; protection of certain classes of 
tenants, such as the elderly, handicapped, and poor. The public debate almost never 
dresses these points, but revolves around issues of equity and accuracy of focus. 
When properly presented, questions of societal values should lead naturally to 
questions of how much society is willing to pay, and who should bear the cost. The 
question is not government regulation versus a free market. The question is whether 
the current housing market provides what society values, and if it cannot, what can?

15. Letter to the Editor, Rent Control as an Urban Elixir, N.Y. Times, Jan. 19, 
2004, at A18 (describing how a rent controlled tenant's well-to-do children can 
unfairly inherit the apartment, while the landlord's children must pay exorbitant rents 
to remain in Manhattan). It should be noted that the letter appears to be incorrect. If 
the tenant's children do not live with the tenant for two continuous years, the laws do 
not grant succession rights. See infra note 18.

16. The only income qualification under the current system occurs when an 
apartment reaches the legal rent of $2,000. See N.Y.C. Admin. Code §§ 26- 
403(e)(j) (Supp. 2003) (applying to rent control), 26-504.1 (applying to rent 
stabilization). If the rent surpasses this threshold, and the household income is in 
excess of $175,000 per year for each of the two preceding calendar years, then the 
apartment becomes deregulated. Id. §§ 26-403.1(c)(2), 26-504.3(c)(2). The laws 
define income as "the federal adjusted gross income as reported on the New York 
state income tax return." Id. §§ 26-403.1(a), 26-504.3(a).
increase investment in housing.\(^7\) Yet, assuming that such an increase in investment would actually occur, such studies fail to address the question of whether increased housing investment furthers the goals of society.\(^8\) One can hardly blame the opponents of government regulation. Why would they address problems not addressed by the law itself? It is much easier to portray the choice as all or nothing, rent regulation versus a free market—this is exactly what proponents of rent regulation do so effectively.\(^9\)

In opposition, proponents of rent regulation fight a losing battle. They are attempting to protect rent laws that benefit a smaller and smaller constituency, while opponents of regulation bombard those outside the system with the message that rent regulations are a giveaway to an undeserving few.\(^\text{20}\) The current rent regulation law may not further the tenant advocates’ self-proclaimed goals.\(^1\) It is very difficult to defend a program that is rife with inequities. The fact that the current program pits tenants against each other amplifies the

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18. Even otherwise liberal commentators fall into this trap. See Nicholas D. Kristof, Editorial, Learning From China, N.Y. Times, July 1, 2003, at A23 (accepting without question the conclusions of two studies commissioned by the libertarian (i.e. anti-regulation) Manhattan Institute). The article argues that rents would fall after deregulation, stating that “[i]f prices were freed, then retirees who spent most of their time in Florida would give up their artificially cheap three-bedroom apartments, and there would be a surge of both vacancies and new construction.” Id. A reader of the New York Times would assume two things from this argument. First, that rich tenants may live in rent regulated apartments, and second, that tenants often maintain rent regulated apartments as secondary dwellings. Both practices are specifically forbidden by statute. See N.Y.C. Admin. Code §§ 26-403.1(c)(2) (1992) (allowing for deregulation of apartments occupied by high income tenants), 26-403(c)(2)(h)(i)(10) (exempting from rent control “[h]ousing accommodations not occupied by the tenant . . . as his or her primary residence”). Another common misconception is that tenants may leave rent regulated apartments to their heirs, while still maintaining the apartment’s protected status. This is only true in limited circumstances to close family members or those who can prove emotional and financial commitment and interdependence with the tenant. N.Y. Comp. Codes R. & Regs. tit. 9, § 2204.6(d)(3)(i) (2003). In either case, the succession rights are limited to those who can prove that they have resided in the apartment as a primary residence for at least two continuous years (one year for senior citizens or disabled persons). Id. § 2204.6(d)(1). While unlawful abuse of the regulations almost certainly occurs, it is misleading when commentators attack laws as unfair while relying on examples that clearly fall outside what the laws allow. See infra note 164.

19. See, e.g., Peter D. Salins & Gerard C.S. Mildner, Scarcity By Design: The Legacy of New York City’s Housing Policies 120-21 (1992) (“Only if we allow the prices and rents of New York’s housing stock to be set naturally by the market will housing in New York be rationally, efficiently, and, for the first time in forty years, fairly distributed.”).


21. See supra text accompanying note 2.
problem, because the arbitrary benefits of the law create arbitrary
divisions among tenants.\textsuperscript{22} The slow paring of protections occurring in
earnest since 1993\textsuperscript{23} evidences the futility of clinging stubbornly to rent
regulations as they exist, particularly in a system that ignores the
neediest tenants.\textsuperscript{24}

Already, opponents and proponents of rent regulation are
speculating how the next eight years will unfold. The tenant
advocates see the next eight years as a straightjacket on attempts to
roll back the systematic weakening of the law.\textsuperscript{25} Their opponents
expect that in eight years, the declining number of tenants protected
under regulation will translate into a tenant movement too weak to
fight what they hope will be a total repeal of rent regulation in New
York.\textsuperscript{26}

In light of the important issues that will arise in the statutorily
imposed waiting period, this Note undertakes to illuminate issues that
traditionally have not received the appropriate level of attention.
Instead of relying on the traditional argument of government
regulation versus a free market, this Note frames the argument in
terms of societal values. Part I of this Note presents the existing
regulatory framework in an historical context. Then, in Part II, this
Note explains the arguments made for and against rent regulations in

\textsuperscript{22} For example, because the law does not apply to buildings with fewer than six
units, the laws could provide protection to a single tenant who makes $150,000 a year
and lives in a two-bedroom apartment costing less than $2,000 per month, while
denying benefits to a family of four living earning $35,000 per year living in a similarly
sized apartment on the same block.

\textsuperscript{23} In 1993, the state instituted measures that allowed for decontrol of vacant
units renting for more than $2,000, as well as occupied units where the household
income level exceeded $250,000 per year. \textit{See infra} text accompanying note 119. In
1997, this high-income decontrol threshold was lowered to $175,000 per year,
landlords were granted large vacancy bonuses, and succession rights to family
members living in the apartment (but whose names were not on the lease) were
curtailed. \textit{See infra} note 126 and accompanying text. In 2003, the law allowed owners
to rent increases not on the actual “preferential” rent (where an owner voluntarily
charges less than the legally allowable rent), but on what a landlord could have legally
charged. It also allowed total deregulation when this phantom rent reached the
$2,000 threshold, even though the landlord never actually charged $2,000 (and even if
the landlord never charges $2,000 in the future). \textit{See infra} text accompanying notes
151-56.

\textsuperscript{24} In recent years, the media has been almost unanimous in its depiction of rent
regulations as protecting a privileged few, while needier tenants are left to pay for
undersupplied, overpriced apartments on the open market. Whether or not this
description is accurate, the perception is gaining strength. \textit{See} Gurian, \textit{supra} note 20
(manuscript at 11-12, on file with author). The article reports that in 1997, the
editorial boards of all the major New York newspapers were “unanimous in respect to
one thing: rent regulation had to go.” \textit{Id.} (manuscript at 1, on file with author).

\textsuperscript{25} David W. Chen, \textit{Bit by Bit}, Government Eases Its Grip on Rents in New York,
N.Y. Times, Nov. 19, 2003, at B1 (quoting a tenant advocate as saying that “the real
estate strategy is that when tenants come back in eight years, [we] will be smaller and
less powerful, and they will likely at that point say, ‘Let it expire’
”).

\textsuperscript{26} \textit{Id.}
light of a model simplifying rent regulation to a matching tax and subsidy. Most importantly, this Note looks to several possible underlying justifications for government regulation in the housing market. After identifying goals that society might value, the Note attempts to determine whether a free market regime is the only equitable way of meeting such goals, or whether it is possible that properly crafted government regulations might provide a more desirable housing market. Part III concludes that truly productive debate requires that the discourse shift away from the obvious inequities among tenants under the current laws, and towards a goal-oriented debate of societal values. Only when society identifies these goals (such as economic diversity and eviction protections, to name only two) can society ask the important questions: Will an unregulated market achieve these goals? If regulations are required, whom should they benefit and who should pay?

Finally, this Note proposes that a rent regulation system akin to the New York City’s Senior Citizens Rent Increase Exemption program (“SCRIE”) would better serve society in reaching certain objectives, and suggests that an expansion of SCRIE could achieve the goal of protecting the neediest tenants while removing disincentives towards real estate investment.

I. NEW YORK CITY’S RENT REGULATION SYSTEM

Rent regulation in New York City is a complicated mix of state and local laws. Before commencing with an analysis of rent regulations, it is helpful to know just how New York’s current rent regulation regime came about. At one time or another, New York City has been subject to rent regulations enacted from the federal, state, and municipal governments. Understanding the history of these interactions provides important insight into the current debate.


28. New York City serves as the focus of this Note. However, there are many other municipalities in the United States and abroad that employ some form of rent regulation. However, much of the literature focuses on the experience in New York, providing a source of research far richer than would be available for other locations.

29. Many commentators refer to rent regulations generically as “rent control.” As discussed below, in New York, rent control is a term of art, referring only to a specific class of rental units. In fact, most rent regulated units in New York fall under rent stabilization, which also describes a specific class of rental units. To avoid confusion, this Note will refer generically to rent regulation, and specifically to either rent control or stabilization.

30. See infra Part I.B. for a detailed analysis of the present interaction between state and local rent laws.

A. The History of Rent Regulation

While the rent regulations currently in force have a direct lineage to the federal rent laws of the Second World War, New York's first attempt at rent regulation actually occurred in the 1920s. This early phase of rent regulation—while lacking a direct provenance—provides insight into early attempts at answering questions of equity and incentive that continue to arise, and yields surprising empirical data relating to rent regulations and housing construction.

1. The 1920s: New York’s First Attempt at Rent Regulation

Rent regulation in New York City has roots as early as 1920, when the fear of communism was a powerful influence on politics. During this time, legislation was enacted that allowed tenants “to legally challenge ‘unjust, unreasonable and oppressive’ rent hikes.” These laws, known as the April Laws, placed the burden of proof on the tenant when the rent hike was 25 percent or less. In practice, this requirement turned out to be an impossible burden, and as one judge noted: “I do not know of a single tenant who has been able to establish that the 25 percent was unreasonable. You see, the figures are all in the possession of the landlord and it is impossible.”

32. See infra Part I.A.2.
33. See infra Part I.A.1.
34. See infra notes 47-48 and accompanying text.
35. See Salins & Mildner, supra note 19, at 52-53.
36. W. Dennis Keating, Rent Regulation in New York City: A Protracted Saga, in Rent Control: Regulation and the Housing Market 151, 152 (W. Dennis Keating et al. eds., 1998) (stating that rent regulations first appeared during “the politically charged atmosphere of the post-World War I ‘Red Scare’”); see also Joseph A. Spencer, New York City Tenant Organizations and the Post-World War I Housing Crisis, in The Tenant Movement in New York City, 1904-1984, at 51, 64 (Ronald Lawson ed., 1986) (reciting one judge’s assessment of aggressive landlord evictions as “causing serious distress, which made tenants ‘easy prey for agitators who are Bolsheviks and other forms of radicals’”).
37. Robin Reisig, Rent Regulation, Gotham Gazette, Mar. 9, 2003, available at www.gothamgazette.com/article/issueoftheweek/20030309/200/305. The law provided that municipal judges could grant stays of eviction, extended written leases without specific durations until October 1, 1920, and made it the landlord’s burden to show the court that a tenant was “‘objectionable’ when such charges were made as the grounds for summary eviction.” Spencer, supra note 36, at 72; see also Keating, supra note 36, at 152 (“For the first time, tenants gained the right to defend themselves in court, based upon the presumption that a rent increase of 25 percent or more was ‘unjust, unreasonable, and oppressive.’”); see also September Jarrett, Rent Regulation in New York City: A Briefing Book, app. B (1993), available at http://tenant.net/Oversight/Briefing/appendb.html (“[T]enants could go to court to challenge rent increases as excessive.”).
38. Spencer, supra note 36, at 72.
39. Id.
40. Id. at 73; see Keating, supra note 36, at 152 (noting that the April Rent Laws moved the “administrative responsibility [to] the hands of the state judicial system rather than the city of New York”).
Landlords easily exploited this loophole by refraining from any rent increase in excess of twenty-five percent.\footnote{41} But the April Laws contained an even more serious defect, in that all written leases of unspecified duration would expire on October 1. Landlords were under no obligation to renew these leases, and therefore began notifying such tenants months in advance to move on September 30—since new tenants were not covered by the rent laws and could be charged much higher rents. The city faced the prospect of sixty thousand evictions from this provision alone.\footnote{42}

On September 27, 1920, just three days before mass evictions threatened chaos, the state legislature passed the Emergency Rent Laws.\footnote{43} Most importantly, the Emergency Laws quelled fears of mass eviction by making it extremely difficult for landlords to refuse to renew leases that expired on October 1.\footnote{44} The law also did away with the 25 percent requirement, gave judges discretion in determining the reasonableness of rent increases, and placed the burden of proof on the landlord to show that the rent increase was reasonable.\footnote{45} These changes made large rent increases and evictions more difficult to achieve, and some tenant groups went so far as to declare victory.\footnote{46}

The years following the enactment of the Emergency Rent Laws witnessed a remarkable occurrence: apartment construction in New York City skyrocketed, with the number of new buildings reaching over 4,600 in 1927, compared with only 95 in 1919.\footnote{47} By as early as 1927, this increase in housing supply caused the vacancy rate to rise above 5 percent, a rate generally considered necessary for a healthy rental housing market.\footnote{48} Under these changing conditions, the

\footnote{41. Spencer, \textit{supra} note 36, at 72-73. The setting of the twenty-five percent or lower figure resulted in a situation where "[t]housands [of tenants] received demands for 25 percent increases." \textit{Id.} at 73.}

\footnote{42. \textit{Id.} (internal citation omitted). Even judges spoke out, warning of "thousands of stays of eviction which would soon come due, thousands of tenants denied lease renewals, and ever-increasing court calendars." \textit{Id.} at 74.}

\footnote{43. 1920 N.Y. Laws 942-44; see Keating, \textit{supra} note 36, at 152 (noting that a "glut of [eviction] cases, in fact, was one of the factors that led to the passage of the Emergency Rent Laws"); Spencer, \textit{supra} note 36, at 75.}

\footnote{44. Spencer, \textit{supra} note 36, at 75.}

\footnote{45. \textit{Id.} The law required landlords to submit to judges "a bill of particulars setting forth figures as to gross income and expenses," and restricted the ability of landlords to deny renewal to those leases set to expire on October 1 under the April Rent Laws. \textit{Id.}}

\footnote{46. \textit{Id.} at 75-76 (noting that "several thousand members of [a tenant group] held a victory parade in which they carried signs reading No More Moving and Victory Is Ours").}

\footnote{47. \textit{Id.} at 83 tbl.2.1. This gain in apartment buildings translated into an increase in 1927 of almost 80,000 individual units, compared to just over 1,600 in 1919. \textit{Id.}}

\footnote{48. \textit{Id.} at 83. In 1920, the year the Emergency Rent Laws passed, the vacancy rate stood at a minuscule .36 percent. \textit{Id.} at 84 tbl.2.2. The 1920s saw vacancy rates as low as .15 percent in 1921, before rising steadily to 7.76 percent in 1928. \textit{Id. But see Salins}}
legislature slowly weakened the Emergency Rent Laws, finally allowing them to expire in 1928-29. At this time, there was an unofficial consensus that the housing emergency had ended. After a failed attempt by the New York City Board of Aldermen to institute local rent control, in the “fall of 1929, for the first time in nearly a decade, New York City tenants were without rent control.”

New York’s first attempt at rent regulations lasted only nine years. It is unlikely that after more than a decade of unregulated rents, anyone would have expected the next phase of rent regulation to come not from City Hall or Albany, but from Washington D.C.

2. World War II and Beyond: 1942-1961

The federal government passed the Emergency Price Control Act of 1942 (“EPCA”) as an attempt to prevent wartime profiteering in many important sectors, including “defense area housing.” Administration of the EPCA fell to the Price Administrator within the Office of Price Administration (“OPA”). The Price Administrator could, “by regulation or order establish such maximum price... as in his judgment will be generally fair and equitable and will effectuate the purposes of [the EPCA].” Initially, the OPA & Mildner, supra note 19, at 56 (attributing the increasing vacancy rates on the phase-out of controls).

49. Spencer, supra note 36, at 80-86. The legislature annually renewed the laws without significant opposition through February 1926. Id. at 80-81. The 1926 renewal contained the first weakening of the laws, as it exempted all apartments renting for more than twenty dollars per room per month. Id. at 82. This trend continued the following year, with the 1927 extension “limited to existing tenancies in apartments renting at less than fifteen dollars per room per month.” Id. at 85. In March of 1928, political wrangling between Governor Smith and the state legislature forced the governor to sign a final extension of the rent laws against the recommendation of his own State Board of Housing. Id. at 85-86. This extension continued “controls on apartments renting for fifteen dollars per room until December 31, 1928, and controls on apartments renting for less than ten dollars or less until June 15, 1929.” Id.

50. Id. at 86 (“[M]ost observers acknowledged, even if indirectly, that the postwar crisis was over.”).

51. Id.; see also Keating, supra note 36, at 152 (“As the Great Depression began, rent control ended in New York City.”); Jarrett, supra note 37 (stating that “[t]he first wave of rent regulation was brief in tenure; it was completely phased out by 1929”).


54. Id. § 2(a). Section 2(b) refers to the “stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area.”
refused to institute a rent ceiling in New York City.\textsuperscript{55} Increasing civil unrest and political pressure forced the OPA to act. On November 1, 1943, the OPA froze New York City rents retroactively to their March 1, 1943 levels.\textsuperscript{56}

After the war, political wrangling between President Truman and congressional Republicans resulted in extensions of federal rent regulations.\textsuperscript{57} As early as 1944, Congress made clear that a transition out of federal price controls was the ultimate goal.\textsuperscript{58} In 1946, Congress amended the EPCA, declaring a policy to terminate controls as quickly as possible, but “in no event later than June 30, 1947.”\textsuperscript{59} In 1947, Congress allowed the EPCA to expire, replacing it with the Housing and Rent Act of 1947 (“1947 Act”).\textsuperscript{60} The 1947 Act lifted controls on all housing built after February 1, 1947, while continuing to extend controls on existing housing.\textsuperscript{61} Congress granted the states the power to administer these controls, and New York passed the Emergency Housing Rent Law (“EHRL”), creating the State Housing Commission to temporarily administer rent control at the state level.\textsuperscript{62}

As the post-war shortages continued to lessen, Congress passed legislation in 1949 allowing individual states to terminate federal rent control when they could prove either that they had a suitable state system in place, or that the housing emergency necessitating rent control no longer existed.\textsuperscript{64} Congress extended this provision until

\textsuperscript{55} Keating, \textit{supra} note 36, at 154 (stating that the OPA believed “the city’s rental vacancy rate was too high to justify rent control”).

\textsuperscript{56} Id.

\textsuperscript{57} See, e.g., Price Control Extension Act of 1946, ch. 671, 60 Stat. 664. This final extension to the EPCA stated strongly that the ultimate goal of the extensions was to create a smooth transition to total decontrol. \textit{Id.} § 1A(a)(1) (stating the goal as “making possible a successful transition to a peacetime economy of maximum employment, production, and purchasing power under a system of free enterprise”).

\textsuperscript{58} Stabilization Extension Act of 1944, ch. 325, 58 Stat. 632, § 2(b). While it is clear from the 1944 Act that price gouging and inflation were still a concern, Congress for the first time allowed for previously controlled defense area housing to be decontrolled where an emergency is no longer found to exist. \textit{Id.}

\textsuperscript{59} Price Control Extension Act of 1946, ch. 671, 60 Stat. 664, § 1A(b).

\textsuperscript{60} Housing and Rent Act of 1947, ch. 163, 61 Stat. 193. The statute declares that its purpose is to “terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations.” \textit{Id.} § 201(b).

\textsuperscript{61} \textit{Id.} § 202(c)(3)(A). In New York, February 1, 1947 remains the critical date in determining eligibility of a rental unit for rent control. The 1947 Act also contained additional changes. \textit{See} Rent Regulation After 50, \textit{supra} note 52, at 3; Keating, \textit{supra} note 36, at 154 (noting that the 1947 Act weakened federal controls “by allowing 15 percent rent increases for vacated apartments and, when tenants voluntarily agreed, authorizing landlord hardship rent increases, exempting new construction, and ending OPA review of evictions”); Schwartz, \textit{supra} note 52, at 141-43.

\textsuperscript{62} N.Y. Unconsol. Law § 8583 (McKinney Supp. 2004); \textit{see also} Keating, \textit{supra} note 36, at 154.

\textsuperscript{63} Housing and Rent Act of 1949, ch. 42, 63 Stat. 18, § 204(j)(1)-(2); \textit{see also} Rent Regulation After 50, \textit{supra} note 52, at 3 (noting that the 1949 legislation gave the states the “authority to assume administrative control of rent regulation and the power to continue, eliminate or modify the Federal System”).
1953, when, in its final extension of federal rent control legislation, it set July 1, 1953 as a deadline allowing local governments to pass their own laws extending rent controls.64

Most municipalities in the country allowed the federal controls to expire without extending the regulations locally.65 In 1961, New York City stood alone as the only location in the country continuing to maintain a rent control regime.66 Even those major cities that did extend controls did so only temporarily. New York State, however, maintained its state system of rent control under the EHRC.67 This state rent control was similar to the federal counterpart, as it applied to all buildings built before February 1, 1947.68 A base date of March 1, 1950 was set, and all rent increases were barred for a period of six months.69 This system remained in force for more than a decade, during which time moderate but steady decontrols allowed for increases in rents while exempting additional classes of housing accommodation.70


After more than a decade of moderate decontrols, the next major chapter in the history of rent regulation occurred in the 1960s.71 In 1962, the State Legislature ended state rent control, while granting New York City the power to enact local rent regulations.72 New York City promptly passed the Local Emergency Housing Rent Control Act,73 which continued Rent Control under the administration of the local housing agency.74 The most important local action came in 1969, when New York City enacted the Rent Stabilization Law of 1969 ("RSL").75 The RSL created the system of Rent Stabilization, and for

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64. Salins & Mildner, supra note 19, at 57.
65. Id. at 57-58 (noting that eight major cities allowed their rent control extensions to expire in the period between 1953 and 1961); see also Keating, supra note 36, at 154.
66. Salins & Mildner, supra note 19, at 58. Salins and Mildner also note that New York City remained the only place in the country with rent control until "the great inflation of the late 1960s and 1970s." Id.
67. Emergency Housing Rent Control Law, N.Y. Unconsol. Law § 8582(2)(g); see also Reisig, supra note 37.
68. Jarrett, supra note 37; Reisig, supra note 37.
70. This occurred through a combination of decontrol measures that included removing vacant units in one and two-family houses after April 1, 1953, and removing units that were considered "luxury" units in 1958. Rent Regulation After 50, supra note 52, at 4; see also Keating, supra note 36, at 155.
71. The total number of rent controlled units had dropped from 2.5 million in 1950 to 1.8 million in 1961. Rent Regulation After 50, supra note 52, at 3-4.
72. Jarrett, supra note 37.
74. Jarrett, supra note 37. In 1962, this law applied to over 1.8 million apartments in New York City. Id.
the first time included buildings constructed after February 1, 1947.76 Unlike rent control, rent stabilization uses leases rather than statutes to regulate rents.77

In order for leases to effectively regulate rents, the RSL required landlords to grant tenants renewal leases, and tenants were “obligated to renew if they want[ed] to remain in occupancy.”78 Designed to be less onerous to landlords, rent stabilization also provided for an automatic means of adjusting rents.79 It also created the Rent Guidelines Board (“RGB”), which had the power to set rent increases to be applied to any lease renewed during the following year.80 To determine the rent increases for renewal leases, the RGB relies on the Price Index of Operating Costs (“PIOC”).81 The PIOC uses a complicated formula that measures the annual changes in operating costs.82 The RGB also determines a “‘core’ PIOC,” which attempts to measure “long-term inflationary trends” by excluding “the erratic changes in fuel oil, natural gas and electricity costs.”83

Neither the PIOC nor the core PIOC is the absolute determination of rent increase amounts. The PIOC numbers instead inform another formula, the Commensurate Rent Adjustment (“CRA”), which includes not only operating costs, but also revenues and inflation.84 This formula combines these factors “into a single measure indicating how much rents would have to change for net operating income (NOI) . . . to remain constant.”85 There is considerable debate over how to calculate the commensurate rent adjustment, so much so that the RGB included three different methodologies in its 2003 PIOC report.86 Not surprisingly, this lack of internal consensus results in the

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76. Reisig, supra note 37. Rent Stabilization applied to approximately 400,000 units that had been previously exempt from Rent Control. Jarrett, supra note 37.
77. 74A N.Y. Jur. 2d Landlord & Tenant § 413 (1999).
78. Jarrett, supra note 37. The ETPA allowed the tenant the choice of one-, two-, and three-year renewal leases. Id.
79. Rent Regulation After 50, supra note 52, at 5.
80. N.Y.C. Admin. Code § 26-510. In New York City, there are nine members on the RGB, all appointed by the mayor. Jarrett, supra note 37. Two members represent the tenant’s interests, two represent landlord’s interests, and five members represent the general public. Id.
81. 2003 Housing NYC, supra note 4, at 11-20.
82. See id. at 11-12. The PIOC measures annual changes in the cost of taxes, labor, fuel, utilities, contractor services, administration, insurance, parts and supplies, and equipment replacement. Id. at 12. Each of these categories is broken down into subcategories, each weighted to reflect the category’s importance. Id. at 91. Additionally, there is a different weighting system for buildings built before and after 1947, one example being that fuel costs are given more weight in pre-1947 buildings. Id. at 12, 96.
83. Id. at 12.
84. Id. at 20-21.
85. Id. at 20.
86. Id. at 20-21. The methodologies are: 1) net revenue formula; 2) CPI-adjusted NOI formula; 3) traditional formula. As the report states: All of these methods have their limitations. The “traditional” commensurate
RGB declaring that “[e]ach of these formulae may be best thought of as a starting point for deliberations. The other [RGB Research] and testimony to the Board can be used to modify the various estimates depending on these other considerations.” In fact, the one- and two-year renewal lease rent increases do not resemble the various commensurate rent adjustment figures released by the RGB.


The 1970s brought a period of upheaval and uncertainty in New York City’s rent regulation regime. In 1971, the State Legislature passed laws that phased out all rent regulations statewide. The law established vacancy decontrol of all units under rent control or rent stabilization. By the end of 1973, 300,000 rent controlled units and approximately 88,000 rent stabilized units were deregulated.

In addition, the legislature passed the “Urstadt Law.” At the time, the threat of complete deregulation overshadowed the passage of the Urstadt Law, but its lasting implications soon became apparent. The Urstadt Law forbids any municipality in New York from enacting rent regulations more stringent than those passed by the State

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Id. at 21. Also, the adjustment for estimated vacancy increase “assumes both that vacancy increases are charged and collected, and that turnover rates are constant across the City.” Id. Finally, “the traditional method differs from the other formulas in that it uses both the PIÖC’s actual change in costs as well as the PROJECTED change in costs . . . which may not end up being an accurate estimate of owner’s costs.” Id.

87. Id. at 22.

88. For example, the RGB’s final adjustment for one- and two-year leases was 5.5% and 8.5% respectively. Robert Ingrassia, Landlords Win Big Raise: Lease Leaps, Within Bounds, Daily News (New York), May 6, 2003, at 2 (listing the final one- and two-year rent adjustments for the previous twenty years). The five formulae calculated by the RGB yield very different percentages: traditional: 10.4%, 12.6%; net revenue: 15%, 20%; net revenue with vacancy adjustment: 12%, 16%; CPI-adjusted NOI: 16%, 23%; CPI-adjusted NOI with vacancy adjustment: 13.5%, 18%. 2003 Housing NYC, supra note 4, at 21. In 2002, the tables were turned, as the RGB’s final adjustment for one- and two-year leases was 2% and 4% respectively, while each of the formulae yielded negative or zero percentage increases. Ingrassia, supra; N.Y. City Rent Guidelines Board, Housing NYC: Rents, Markets and Trends 2002, at 22 (2002) [hereinafter 2002 Housing NYC].

89. 1971 N.Y. Laws 371; see also Jarrett, supra note 37.
90. Jarrett, supra note 37.
91. Rent Regulation After 50, supra note 52, at 6.
92. 1971 N.Y. Laws 372; see also Jarrett, supra note 37.
Legislature. Hence, after the passage of the Urstadt Law, New York City can only weaken state rent regulation laws, not strengthen them. The Urstadt Law effectively shifted New York City's power to regulate its own rental housing to Albany.

5. The Emergency Tenant Protection Act of 1974

Inflationary pressures caused rents in New York City to increase dramatically in the year following vacancy decontrol. In response, Governor Nelson Rockefeller created the Temporary State Commission on Living Costs and the Economy of the State of New York, and charged the commission to research and make recommendations on the future of vacancy decontrol. After finding that vacancy decontrol caused dramatic increases in rents, the Commission recommended the retroactive repeal of vacancy decontrol. This finding overlapped with the increased ability of the tenant's movement to lobby at a statewide level, as required by the Urstadt Law. Additionally, the resignation of Governor Rockefeller in 1973 changed the political landscape. Rockefeller's replacement, Governor Malcolm Wilson, was "relatively unknown, [and] had to face the voters a year later." Governor Wilson's office worked secretly with the New York State Tenant's Legislative Coalition ("NYSTLC") towards an agreement to strengthen rent

94. 1971 N.Y. Laws 372. The passage of this law followed the successful modification of the local Rent Control Law in 1970. The modification created a Minimum Base Rent ("MBR") formula that set an "economic rent" for the over 1.3 million units then under Rent Control. Ronald Lawson & Reuben B. Johnson III, Tenant Responses to the Urban Housing Crisis, 1970-1984, in The Tenant Movement in New York City, 1904-1984, at 209, 211 (Ronald Lawson ed., 1986). The MBR was phased in, with an initial 15 percent increase, and subsequent 7.5 percent increases until the rent equaled the MBR. Before the city, under Mayor John V. Lindsay could even implement the MBR, however, "Reform Democrat political clubs began a campaign to . . . [add an] MBR repeal referendum . . . to the election ballot." Id. at 212-13. Apparently the mere threat of repeal sent the real estate lobby to Albany in 1971, where Governor Nelson Rockefeller argued successfully for both vacancy decontrol and the abrogation of home rule provisions relating to rent regulations. Governor Rockefeller relied on the argument that "no New York City administration could ever administer rent control fairly or implement modifications in the law because 'irresponsible' politicians and the huge bloc of tenant votes would eventually combine to repeal any changes." Id. at 213.

95. This restriction even applies to those laws that only apply to New York City, either explicitly or implicitly. See 1971 N.Y. Laws 372.
96. Webber, supra note 93.
97. Rent Regulation After 50, supra note 52, at 6.
98. Id.
99. Id. The Committee found "that vacancy decontrol resulted in average rent increases of 52% in decontrolled apartments and 19% in previously stabilized units in New York City, while operating costs increased by 7.9%." Id.
100. Lawson & Johnson, supra note 94, at 218-20.
101. Id. at 218.
The secret soon leaked, and "when the agreement was revealed to the leaders of the state senate and assembly, they revolted and it unraveled." The State Legislature ultimately responded with a compromise law: the Emergency Tenant Protection Act of 1974 ("ETPA"). The EPTA allowed municipalities to declare a housing emergency where vacancy rates were less than five percent. In New York City, units that had never been under rent regulation came under the Rent Stabilization system, and stabilized units that had deregulated under the 1971 law were re-regulated.

6. The Senior Citizen Rent Increase Exemption

In 1972, the state legislature passed legislation enabling local governments to provide rent increase exemptions for low-income elderly and disabled tenants of rent regulated housing. New York City enacted local ordinances applying to elderly tenants who resided in rent controlled and rent stabilized apartments. Qualifying tenants must be sixty-two years or older, have a household income not exceeding $24,000 per year, and must be paying one-third or more of their annual income in rent. Owners of rental property where tenants receive a rent increase exemption receive property tax abatements equal to the rent they cannot collect from the tenant. In this way, the legislature has determined that society as a whole, not individual owners, should bear the cost of protecting low-income elderly tenants.

7. Return to State Administration: 1983 Omnibus Housing Act

In 1983, another significant change in the rental housing laws occurred. The 1983 Omnibus Housing Act amended the ETPA, removing local administration of all rent regulation to a single state

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102. Id. at 219.
103. Id.
105. Id. § 8623(a).
106. Jarrett, supra note 37. Those units previously under Rent Control were not affected; they were either decontrolled or converted to rent stabilization when they became vacant.
109. Id. § 26-509(b).
110. For a discussion on how the SCRIE program could be expanded, see infra Part III.
111. N.Y.C. Admin. Code §§ 26-405(m)(2)(i)-(ii) (1992), 26-509(b)(2)(i)-(ii). New York City Local Law 67 of 2003 raised the income level to $24,000. The amount of the exemption is an amount that will reduce the rent payment to one-third of the tenant's income. Id. §§ 26-405(m)(9), 26-509(b)(9).
112. N.Y. Real Prop. Tax Law § 467-b(2).
agency, the New York State Division of Housing and Community Renewal ("DHCR").114 This effectively removed all power regarding rent regulations from New York City. The Omnibus Housing Act required that all rent stabilized apartments be registered with the DHCR, which eliminated the existing self-policing mechanism that landlords had applied.115

8. Rent Regulation Reform Act of 1993

The Rent Regulation Reform Act of 1993116 is important primarily because it instituted luxury decontrol.117 Luxury decontrol under this law has two components. First, if a unit had a legal rent of more than $2,000 per month, when that unit became vacant, it would become deregulated upon application by the landlord.118 Second, even if the unit is not vacant and the rent reaches $2,000 per month, if the tenant’s "combined household income [exceeded] $250,000 in each of the two immediately preceding years," the apartment is deregulated upon application by the landlord.119

9. Rent Regulation Reform Act of 1997

The most recent major legislative battle over rent regulation laws occurred in 1997.120 With the laws supporting rent regulations due to expire on June 15, 1997, the first shot had been fired across the bow as early as December 1996 by State Senator Joseph Bruno, the Senate Majority Leader.121 In an address to a group of powerful property owners, Senator Bruno called for the complete abolition of rent regulation in New York State.122 Senator Bruno’s statement "transformed an insider’s game—fought with campaign contributions, backroom lobbying and arcane legislative maneuvers—into a media
spectacle, a holy war." This "holy war" was waged early and hard. By as early as April of 1997, the tenant's lobby, under the State Democratic Party, had produced television commercials that accused Republicans Pataki and D'Amato "of being the real culprits behind the rent fight." In the end, the intense pressure that was sparked by Senator Bruno's comments resulted in a deal between Democratic Majority Leader Sheldon Silver of the State Assembly and Governor Pataki, resulting in the Rent Regulation Reform Act of 1997 ("1997 Act").

The 1997 Act reduced the income vacancy threshold from $250,000 to $175,000, and reduced the class of immediate family eligible for succession rights. Most importantly, the 1997 Act allows owners to collect a sizable "vacancy bonus." In addition, the 1997 Act allowed landlords special increases for low rent apartments. These rent increases drastically decrease the amount of time required to achieve the $2,000 vacancy decontrol threshold.

The slow decay of regulations continued in December of 2000, when the DHCR amended the Rent Stabilization Code. The changes

123. Id.
124. Id.
125. Id. While many reports had Senator Bruno seething at the compromise bill, a later report alleged that he intentionally took "a radical position to frighten tenants and Democrats into accepting vacancy decontrol—which the Governor would propose as a compromise just before the June 15 deadline." Id. The report also quoted Senator Bruno as saying "I knew I had to go as far to the right as I could to get [Speaker Silver] to vacancy decontrol . . . . Vacancy decontrol was always the bottom line." Id. Whether or not this is true, or an after-the-fact ploy to save face is beside the point. This statement validates the cries of the tenant lobby that came shortly after the law passed that this law "chipped away a lot," and that the 1997 law was "better than what we were faced with, which is vacancy decontrol." Merle English, Tenants Groups Split Over Rent Deal, Newsday (New York), June 17, 1997, at A25. It is important to note that in this context "vacancy decontrol" refers to a situation where all apartments would be deregulated immediately upon vacancy. The "vacancy decontrol" actually passed in the law is more appropriately termed, "high rent vacancy decontrol," because the rent must be $2,000 per month before decontrol may occur. See, e.g., 1997 N.Y. Laws 116, §§ 7, 7-a, 12, 15; see infra text accompanying notes 184-85.

126. See, e.g., 1997 N.Y. Laws 116, § 21 (change to eligible family members), §§ 7-b, 8, 9, 10, 11, 13, 14, 16 (lowering of income threshold to $175,000).
127. Id. § 19; see Warren A. Estis & Jeffrey Turkel, The New York Rent Regulation Reform Act of 1997 § 2.03 (1997) (displaying how the new law could result in rent increases of as much as 42.8%).
128. 1997 N.Y. Laws 116, § 19. This provision amended the Rent Stabilization Law of 1969, adding § 26-511(5-a) to the administrative code. Id. For apartments renting for less than $300 per month, the amendment grants an additional $100 increase to the rent to the standard vacancy bonus. Id. For apartments renting between $300 and $500 per month, the standard vacancy bonus is augmented to grant a total vacancy bonus of $100. Id.; see also Estis & Turkel, supra note 127, § 2.04.
gave landlords new powers of eviction and increased methods of raising the rent on vacant units.130

10. 2003 Rent Law Extensions

June 15, 2003, the expiration date for the rent laws, loomed, but there was no repeat of the months of fierce public debate that accompanied the 1997 Act. When the renewal of the rent laws finally came to the fore in early June, the two sides rallied around the issue of vacancy decontrol.131 Proponents of rent regulation ultimately wanted the repeal of vacancy decontrol tied to a rent threshold of $2,000, but had at least hoped for an increase in the rental amount triggering the vacancy decontrol.132

Opponents of rent regulation felt that 2003 was “as good a time as ever to advocate the eventual phasing out of New York’s 60-year-old rent regulation system, given the Republican hold over both the Senate and the governor’s mansion.”133 In the alternative, opponents argued for a lowering of the vacancy decontrol threshold,134 and a lowering of the high-income decontrol threshold from the current $175,000 income level.135

Before this backdrop, the two sides failed to reach a compromise as the June 15th deadline approached.136 In fact, the deadline came and passed, with the legislature passing emergency one-day extensions of the rent laws for four consecutive days.137 As the final deadline passed at midnight of June 19th, the State Senate “introduced and passed a

130. See Reisig, supra note 37.

133. Chen & Hu, supra note 131.
134. Hu, supra note 132 (“[In opposition to increasing the vacancy decontrol threshold], opponents of rent regulations have proposed lowering the threshold to $1,500.”).
135. Chen & Hu, supra note 131 (stating that “many landlords would like to see both [vacancy decontrol and high-income thresholds] lowered” arguing that “[i]t’s hard to understand how the Assembly thinks people who make $150,000 a year are rich enough to pay higher income taxes, but needy enough to deserve rent control” (quotation omitted)).
136. Id. (hypothesizing that “Albany, having already squeezed out a difficult budget, may not have the political stomach to do more than just extend the current laws without any alterations”).
137. 2003 N.Y. Laws 70 (extending to midnight, June 16th); 2003 N.Y. Laws 71 (extending to midnight, June 17th); 2003 N.Y. Laws 72 (extending to midnight, June 18th); 2003 N.Y. Laws 73 (extending to midnight, June 19th).
The rent regulation bill to extend the rent laws shortly after they expired just after midnight. This last-minute "surprise move" introduced a bill that one Democratic senator called "a declaration of nuclear war on rent-regulated tenants in New York." Hyperbole aside, the Senate bill granted none of the concessions that tenant groups wanted, provided landlords with increased power of deregulation, and "sharply limited the ability of the New York City Council to alter rent regulation in the city." With the passage of this bill, "the Senate Republicans hastily dispatched it to the Assembly and filed out at daybreak to adjourn for the summer. [Senate Majority Leader] Bruno, who had vowed to end the legislative session on Thursday, said he was done talking and would not revisit the issue." One might guess that such a threat must be empty, that there is some procedure in place to resolve conflicting bills. As with many other aspects of the New York legislative process, common sense is a poor guide. With no official procedure in place to force the two houses to the bargaining table:

Assembly Democrats were left with a difficult choice. They could accept a bill that could deregulate thousands of apartments whose rents creep up beyond the $2,000 mark—more than 300,000 apartments over the next decade, according to estimates by tenant organizers. Or they could allow the rent law, which technically expired at 12:01 a.m. [June 20th], to fade away entirely.

Faced with such choices, the Assembly blinked first and passed the Senate bill almost twenty hours after the existing laws had expired. Democratic legislators, unwilling to call Senator Bruno's bluff, refused to gamble that they could force the Republican leadership back to the table.

The resulting extension of the rent laws lasts eight years and makes changes described as "minimal." As described above, the "most potentially far reaching feature of the new legislation" is the strict
limitation set on local governments to affect rent regulation laws.\textsuperscript{148} Since the provision applies only to cities having a population of one million or more, it applies only to New York City.\textsuperscript{149} Under this new provision, "the City Council's power is limited to [i] extending, or declining to extend, rent regulation, and [ii] amending the rent regulatory statutes to deregulate particular classes of housing accommodation. Any other kind of substantive amendment . . . is no longer permitted."\textsuperscript{150}

In addition, the new law makes clear that if the landlord provides a "preferential rent," or one below the rent legally allowable, the landlord may, upon renewal or vacancy, base any increase in rent on the legally regulated rent, not the preferential rent.\textsuperscript{151} For example, in a Rent Stabilized apartment, a tenant could select a one-year lease at a rent of $1,700 per month, and at the end of that year the landlord would be entitled to the increase as determined by the Rent Guidelines Board. If that increase were 4.5 percent, then the landlord would be entitled to charge the tenant $1,776.50.\textsuperscript{152} If the landlord instead keeps the rent at $1,700 per month, the new provision clarifies that any renewal or vacancy increase allowable by regulation is added to the legally allowable rent ($1,776.50) not the preferential rent ($1,700).\textsuperscript{153} This becomes especially important when, as here, the $2,000 decontrol threshold is implicated. If the tenant moved out, and the new tenant chooses a one-year lease, the landlord would be entitled to a 17 percent vacancy allowance.\textsuperscript{154} If the seventeen percent were added to the preferential rent ($1,700), the new rent would be only $1,989 per month. However, by basing this calculus on the legally allowable rent ($1,776.50), the new rent would exceed $2,000.

\textsuperscript{148} Estis \& Turkel, supra note 6.

\textsuperscript{149} In fact, no other city even comes close. Buffalo, New York's second largest city, has a population of just over 292,000. Nelson A. Rockefeller Inst. of Gov't, New York State Statistical Yearbook 10 (28th ed. 2003).

\textsuperscript{150} Estis \& Turkel, supra note 6.

\textsuperscript{151} Id. This applies not only to increases in rent upon lease renewal or vacancy, but also to the $2,000 threshold for high rent vacancy decontrol and high rent high income decontrol. Id.

\textsuperscript{152} Currently, the Rent Guidelines Board allows for a 4.5 percent increase for one-year lease renewals, and a 7.5 percent increase for two-year lease renewals. N.Y.C. Rent Guidelines Board, 2003 Apartment \& Loft Order #35 (June 19, 2003) [hereinafter 2003 RGB Order], available at http://www.housingnyc.com/guidelines/orders/order35.html.


\textsuperscript{154} Rent Stabilization Law of 1969, N.Y.C. Admin. Code § 26-511(e)(5-a) (Supp. 2003). The vacancy allowance is seventeen percent because under the statute, the allowance is determined by subtracting the difference between the RGB's one- and two-year renewal lease allowances from twenty percent. Id. Currently, the difference is three percent, resulting in a seventeen percent increase. See 2003 RGB Order, supra note 152. For a detailed example of calculating vacancy increases, see infra notes 207-08.
and the apartment could be permanently deregulated. In addition, the new law makes clear that the apartment is excluded from rent regulation laws "regardless of whether the next tenant in occupancy or any subsequent tenant in occupancy actually is charged or pays less than two thousand dollars a month." The history of rent regulation reveals that opponents have one goal: permanent deregulation of all regulated units. While they have seemingly abandoned the strategy of complete repeal advanced in 1997, the current attempts at deregulation are more clandestine. At least there was a debate in 1997, however misguided. The 2003 extension resembled a poker game rather than a debate that could conceivably affect the fortunes of over a million New York City apartments.

B. The Current State of Rent Regulation Laws in New York City

In light of the complicated history of rent regulation in New York City, the current state of the law may be difficult to ascertain. As explained in the history of rent regulation, New York City operates under the parallel systems of rent control and rent stabilization. Furthermore, the history reveals that both types of rent regulation must be enabled at the state level, and promulgated at the local level. While both rent control and stabilization share common elements, the differences are significant, making a separate overview helpful.

1. Rent Control in New York City

The New York state legislature allows New York City to promulgate local rent control through the Local Emergency Housing Rent Control Act. The DHCR is in charge of administering rent control in New York City, as well as promulgating rent and eviction regulations.

155. 2003 N.Y. Laws 82, §§ 3, 6. This change in the law is a codification of Missionary Sisters of the Sacred Heart v. DHCR, 724 N.Y.S.2d 742 (App. Div. 2001), which overruled the existing DHCR practice of using the preferential rent as the basis for all future increases.

156. 2003 N.Y. Laws 82, §§ 2, 5, 6-a.

157. See supra Part II.A.


159. N.Y. Unconsol. Law §§ 8601-8617.


In general, rent controlled apartments must be in buildings of three or more units constructed on or before February 1, 1947, and tenants must have occupied their apartment continuously since at least July 1, 1971. The number of rent control units in New York is constantly decreasing, as no new units may be added to the system.

Under rent control, the maximum rent is determined by statute, through the Maximum Base Rent formula. This formula allows a landlord to increase monthly rent charges in order to recoup the costs of owning the building. In addition, hardship increases may be allowed in specific circumstances, including when there is substantial rehabilitation to the building, and to recover the cost of major capital improvements.

Rent and Eviction Regulations are in many instances identical to the language found in the city’s administrative code, which in turn closely models the state enabling statute. This redundancy occurs because the city’s rent laws must fall within the limits of the state enabling statute, and the city must renew its rent regulation code independently of the state enabling statute. Once the city renews, the state DHCR promulgates regulations according to the mandates of the city’s administrative code. As the nearly identical text evidences, the administrative code (and thus the regulations) generally reach as far as the state enabling statutes allow. See New York Landlord-Tenant Law: 2004 Tanbook 433-34 (2003).

163. Id. § 26-403(e)(2)(i)(9). There are many classes of housing accommodations specifically exempt from rent control, including most owner occupied units and those owned by the federal, state, or city government. N.Y. Comp. Codes R. & Regs. tit. 9, § 2200.2(f)(11) (exempting owner occupied units rented after April 1, 1953), 2200.2(f)(6) (exempting government owned units). For a complete list of exempt housing accommodations, see id. § 2200.2(f).
164. 3A N.Y. Practice Guide: Real Estate § 26.02(1)(a) (2003). The number of rent controlled units in New York City currently stands at under 60,000 units. 2003 Housing NYC, supra note 4, at 107. For perspective, this number is down from over 1.2 million in 1970, and 102,000 in 1993. Keating, supra note 36, at 158. In limited circumstances, a family member may succeed the rent controlled tenant of record. First, the succeeding tenant must be a family member as defined by the statute. N.Y. Comp. Codes R. & Regs. tit. 9, § 2204.6(d)(3) (defining family member as the tenant’s spouse, child, step-child, parent, step-parent, sibling, grandparent, grandchild, parent-in-law, or child-in-law, or “any other person in the housing accommodation as a primary residence who can prove emotional and financial commitment, and interdependence between such person and the tenant”). Second, the family member must reside in the apartment, as their primary residence, for a period of no less than two consecutive years (one year if the tenant is a senior citizen or is disabled) immediately preceding the death or vacating of the apartment by the original tenant. Id. § 2204.6(d)(1). This succession right is limited to one generation, after which the landlord is entitled to significant vacancy increases. N.Y.C. Admin. Code § 26-403.2 (Supp. 2003) (referring to “each second subsequent succession”).
165. N.Y. Comp. Codes R. & Regs. tit. 9, § 2201.4.
166. Id. The Maximum Base Rent formula is incredibly complex. First, a Maximum Gross Building Rental (“MGBR”), taking into account expenses such as: real estate taxes; water and sewer charges; operating and maintenance expenses; vacancy and collection losses (capped at one percent of the MGBR); and return on capital. Id. § 2201.4(b)(1)-(5). Then, the MGBR is apportioned among all housing units in the building, according to such factors as how many rooms are in each unit, and on which floor the apartment is located. Id. § 2201.4(e)(1), (3).
167. N.Y. Comp. Codes R. & Regs. tit. 9, § 2202.4(b)-(c). There are many more
Rent control also provides significant protection against eviction. However, there are specific cases where a rent controlled tenant may be evicted. These include where a tenant willfully violates an obligation of tenancy, commits or allows nuisance, uses the unit for illegal or immoral purposes, or (where such a lease exists) refuses to renew a lease for a period of less than one year under the same terms and conditions.

Subject to the succession provisions, when a rent controlled apartment becomes vacant, it is subject to rent stabilization, or, if it does not meet the requirements of rent stabilization, it is deregulated entirely. In addition, a landlord may apply for deregulation if the apartment's legal rent is $2,000 per month or more, and the tenant's annual household income exceeds $175,000 for each of the two previous years. If the rent reaches the $2,000 per month level, the landlord may require the tenant to submit an income certification form, verifying the annual income level. Also, if a rent controlled apartment becomes vacant, and the maximum legal rent exceeds $2,000, instead of remaining regulated under rent stabilization, the unit is deregulated.

Finally, if the DHCR determines that a class of housing has a vacancy rate of five percent or more, it is required by statute to schedule for the "orderly decontrol" of that class of housing.

instances where a rent increase is allowed. For example, if the tenant is illegally subletting the apartment, a rent increase may be granted. See id. § 2202.4-2202.13 for a complete list of grounds for an increase in rent.

168. Id. §§ 2204.1-2204.9.

169. Id. § 2204.2(a)(1), (2), (4), (5). The landlord may also evict when occupancy of the apartment subjects the landlord to criminal or civil penalties, and when the tenant refuses to allow the landlord access to make necessary repairs or improvements. Id. § 2204.2(a)(2), (6).

170. See supra note 18.

171. N.Y. Unconsol. Law § 8605 (McKinney Supp. 2004) (subjecting housing accommodations that become vacant after July 1, 1971 to the ETPA). One reason that a rent controlled unit may not be subject to rent stabilization occurs when the apartment in question is found in a building with more than two units (minimum for rent control), but fewer than six units (minimum for rent stabilization). Compare N.Y.C. Admin. Code § 26-403(2)(i)(4) (1992), with id. § 26-504(a).


175. N.Y. Comp. Codes R. & Regs. tit. 9, § 2211.3; N.Y.C. Admin. Code § 26-403(e)(2)(k) (Supp. 2003). This determination makes logical sense, because the apartment would be eligible for deregulation under the rent stabilization system as well. N.Y. Comp. Codes R. & Regs. tit. 9, § 2520.11(s).

176. N.Y.C. Admin. Code § 26-414 (1992). The code requires that the decontrol schedule take into account "preventing uncertainty, hardship and dislocation," and requires that the DHCR hold a public hearing. Id.
Under these deregulation measures, the stock of rent controlled apartments has rapidly decreased. It is not difficult to foresee a time when New York City returns to a single-tiered rent regulation system.

2. Rent Stabilization in New York City

Rent stabilization is enabled at the state level by the Emergency Tenant Protection Act of 1974. As with rent control, the state DHCR administers rent stabilization, promulgating regulations known as the Rent Stabilization Code.

Rent stabilization applies to buildings with six or more units built between February 1, 1947, and January 1, 1974. Unlike rent control, the relationship between landlord and tenant under rent stabilization is governed by lease, and landlords are required to register all rent stabilized units with the DHCR.

As with rent control, high rent vacancy deregulation applies: if an apartment’s legal rent is at least $2,000 and the unit becomes vacant, it is deregulated upon application by the landlord. In addition, the landlord may also petition for deregulation if the tenant’s annual household income is more than $175,000, and the legal rent is $2,000.

In addition, New York State law provides tax abatements as incentives for rehabilitation and construction of rental housing. The so-called J-51 program provides for local tax abatement when the owner renovates or rehabilitates existing structures. The 421-a

177. See supra note 164.
178. Rent control was the sole form of rent regulation in New York City from 1942 to 1969. See supra Part I.A.2-3.
180. N.Y. Comp. Codes R. & Regs. tit. 9, § 2520.5(j).
181. Id. §§ 2520-2531.
182. See id. § 2520.11 (referencing the Rent Stabilization Law, N.Y.C. Admin. Code § 26-504(a)(1), which sets the February 1, 1947 date); id. § 2520.11(e). Certain classes of buildings are exempt. See, e.g., id. § 2520.11(a) (exempting units that are subject to rent control), 2520.11(b) (exempting units owned by the federal, state, or local government), 2520.11(g) (exempting transient hotels), 2520.11(j) (exempting units used for charitable purposes).
185. Id. § 26-504.2. Note that this applies whether or not the landlord actually charges the maximum legal rent. Id. § 26-504.2(a) (Supp. 2003); see also text accompanying note 156.
188. The program covering rehabilitation under § 11-243 is known as the “J-51” program, because it was originally codified as § J-51 of the city code. See N.Y.C. Admin. Code R. & Regs. tit. 9, § 2520.11(o) (2003).
189. N.Y.C. Admin. Code § 11-243 to -244.
program provides tax abatements for construction of new rental housing.\textsuperscript{190} In return for these tax breaks, the owners of the buildings agree to place the units under rent stabilization, including those units that would not be independently eligible.\textsuperscript{191} Since 1994, these programs have added over 21,000 additional units to the rent stabilization system.\textsuperscript{192}

Rent increases are handled quite differently under rent stabilization than under rent control. First, the statute establishes a base rent, upon which all future rent increases are based.\textsuperscript{193} Once the base rent is set, the RGB determines additional rent adjustments.\textsuperscript{194} Under the law, tenants have the choice of either a one- or two-year renewal lease.\textsuperscript{195} Once a year, the RGB determines the percentage rent increases allowed under each type of lease, and for each class of housing.\textsuperscript{196}

Rent stabilization also allows for increases in rent to recoup expenses for major capital improvements.\textsuperscript{197} A major capital improvement must benefit all tenants, unless the landlord can show that a "similar component" did not require improvement in individual apartments.\textsuperscript{198} Once the rent adjustment has been approved by the

\textsuperscript{190} N.Y. Real Prop. Tax Law § 421-a. The 421-a program also requires that the owners set aside at least 20\% of the new units for low and moderate income housing. See id. § 421-a(2)(a)(ii)(C)(b), (2)(a)(iii)(D)(b).

\textsuperscript{191} Id. § 421-a(2)(f); N.Y.C Admin. Code § 11-243(i)(1), 11-244(d)(ii). Both the 421-a and J-51 programs are incredibly complicated. The important factors of both are that owners voluntarily agree to enter the rent stabilization system for the period when they receive tax abatements. See 2002 Housing NYC, supra note 88, at 66-68, 69-70. These units are exempt from high rent vacancy deregulation, meaning that the units must remain under rent stabilization even if the rent is over $2,000 and the unit is vacant. N.Y. Comp. Codes R. & Regs. tit. 9, § 2520.11(r)(5)(i). In addition, both programs are exempt from high-income, high rent decontrol as well, meaning even where the rent is at least $2,000, and the tenants income is $175,000, the unit remains under rent stabilization for as long as the owner receives the tax abatements. Id. § 2520.11(s)(2)(i).

\textsuperscript{192} 2003 Housing NYC, supra note 4, at 78.

\textsuperscript{193} N.Y.C. Admin. Code § 26-512(b) (1993). Because of the vacancy deregulations that occurred from 1971 to 1973, see supra Part I.A.4., this determination can be quite complicated. See N.Y.C. Admin. Code § 26-512(b)(1)-(4) (explaining the base rent for each possible outcome). The landlord or the tenant may challenge the base rent. Id. § 26-513.

\textsuperscript{194} Id. § 26-510. The RGB comprises nine members, all appointed by the mayor: two tenant representatives; two landlord representatives; and five public representatives with at least five years experience in finance, economics, or housing. Id. § 26-510(a).

\textsuperscript{195} Id. § 26-511(c)(4).

\textsuperscript{196} Id. § 26-510(b). For an example of the most recent guidelines, see 2003 RGB Order, supra note 152. Once the RGB sets these guidelines, they may not be altered or reestablished within a one-year period. N.Y.C. Admin. Code § 26-510(i).

\textsuperscript{197} N.Y.C. Admin. Code § 26-511(c)(6)(b); see also N.Y. Comp. Codes R. & Regs. tit. 9, § 2522.4 (2003).

\textsuperscript{198} N.Y. Comp. Codes R. & Regs. tit. 9, § 2522.4(a)(2)(i)(c). The major capital improvement must also be depreciable under the Internal Revenue Code, and be for the "operation, preservation, and maintenance of the structure." Id. §
DHCR, the total is divided among the total housing accommodations based on their size.\textsuperscript{199} This monthly rent increase is limited to 1/84 of the cost, meaning that the owner could potentially recover the entire amount after seven years.\textsuperscript{200}

The landlord may also petition for rent increases when improvements are made to individual apartments.\textsuperscript{201} However, this provision requires the consent of the tenant while the unit is occupied.\textsuperscript{202} When the unit becomes vacant, however, no such consent is needed,\textsuperscript{203} and the landlord may make improvements and increase the rent by 1/40th of the cost.\textsuperscript{204} This increase is permanent; it is not rolled back after forty months.\textsuperscript{205}

When an apartment becomes vacant (assuming its legal rent is below $2,000), the landlord is entitled to rent increases beyond the renewal lease increases determined by the RGB.\textsuperscript{206} These provisions call for significant increases when an apartment becomes vacant, as much as twenty percent for two-year leases.\textsuperscript{207} If no vacancy has occurred within the last eight years, the landlord is entitled to a vacancy bonus on top of the standard increase.\textsuperscript{208} Special low-rent vacancy increases allow for additional increases where the legal rent is below $500 per month.\textsuperscript{209}

\footnotesize
\begin{itemize}
\item 2522.4(a)(2)(i)(a)-(b). Additionally, the item being replaced must have reached the end of its useful life as defined by the regulations. See id. § 2522.4(a)(2)(i)(d).
\item 199. Id. § 2522.4(a)(12).
\item 200. Id. § 2522.4(a)(4). For each apartment, the maximum increase granted for a major capital improvement is capped at six percent per year, an amount that can be taken each year until the total amount is recovered. Id. § 2522.4(a)(8).
\item 201. Id. § 2522.4(a)(1).
\item 202. Id.
\item 203. Id.
\item 204. Id. § 2522.4(a)(4).
\item 205. See 2003 Housing NYC, supra note 4, at 141.
\item 207. Id. For a one-year lease, the vacancy bonus is twenty percent of the previous lease, minus the difference between the one- and two- year RGB renewal lease guidelines for that year. Id. For example, a one-year vacancy lease in effect March 1, 2004 would garner a 17 percent vacancy bonus, because the difference between the one- and two-year renewal guidelines is three percent. See 2003 RGB Order, supra note 152.
\item 208. N.Y.C. Admin. Code § 26-511(c)(5-a). For example, if the apartment’s previous legal rent was $1,000 per month, and it had not been vacated for twenty years, the resulting increase would be substantial. If the new tenant chose a two-year lease, the standard twenty percent increase would apply, increasing the legal rent to $1,200. The additional vacancy bonus is calculated by multiplying the number of years since the last vacancy (twenty) by .6%. The result is twelve percent, making the total vacancy increase thirty-two percent for a new rent of $1,320 per month. This increase is in addition to the increases allowed for major capital improvements and recoupable improvements made to the individual apartment.
\item 209. Id. If the legal rent is less then $300, then the standard vacancy is increased by $100, on top of all other increases allowed in this section. Id. If the rent is more than $300, but less than $500, the total rent increase is augmented by a sum needed to make the increase no less than $100. Id.; see also Michael Finnegan, Experts: Rent
These provisions have allowed rent stabilized rents to increase rapidly, and as an increasing number of apartments reach the $2,000 threshold, the total number of rent stabilized units continues to drop, with some evidence that the pace is accelerating. In trying to understand how rent regulations became so politically vulnerable, it is important first to understand what rent control is in terms of its costs and benefits, and where those costs and benefits fall. Part II undertakes this analysis.

II. ANALYZING RENT REGULATION

As the history of rent control portrays, the divisions between the opposing sides are contentious and long-standing. There is a fundamental difference between the opposing sides, existing at the most basic level. Opponents of rent regulation believe that a housing market unfettered by government regulations will provide the most equitable outcome. Supporters of rent regulation, however, believe that the market is incapable of protecting against certain outcomes that society might deem undesirable.

Before looking to the core arguments, it is helpful to look at the process of rent regulation itself. Specifically, breaking down rent regulation into its constituent parts provides a framework of cost and benefit that aids both sides of the argument.

A. A Tax-Subsidy Model of Rent Regulation

It is possible to recast rent control as a traditional government-spending program. In essence, rent regulation can be seen as a tax on landlords coupled with a matching subsidy to the tenant. For example, imagine a rent regulated apartment with a rent of $800 per month. Further imagine that the same apartment were to rent for $1000 on the free housing market. The tax levied on the landlord is the difference between the regulated rent and what the landlord could have received in an unregulated market ($200). The subsidy is exactly the same amount, representing the difference between what the tenant pays under regulation, and what he would have to pay in an unregulated market.

Deal Slams Door on Poor, Daily News (New York), June 18, 1997, at 8 (displaying how the low-rent vacancy allowances especially harm the poorest tenants).

210. See Barbanel, supra note 129 (reporting that because of current rent levels, there is the potential for deregulation of over sixty percent of Manhattan’s stabilized apartments after potential vacancy and improvement increases).

211. The tax-subsidy model employed in this section is derived from a similar model employed to analyze the minimum wage. See Daniel Shaviro, The Minimum Wage, The Earned Income Tax Credit, and Optimal Subsidy Policy, 64 U. Chi. L. Rev. 405, 411-417 (1997). As with Professor Shaviro’s analysis, it is true that this recasting of rent regulation is not an attempt to “capture[ ] its ‘true’ form,” but rather, it acts as a “clean separation of cost and benefit [that] is analytically useful.” Id. at 415.

212. See id. at 414.
unregulated market. In this triangular structure, the $200 moves from the landlord, through the government, and to the tenant.

If one assumes for the moment that there is nothing outside the triangle, then the questions of who pays and who benefits are obvious: the landlord pays and the tenant benefits. Even this oversimplified model, however, raises important normative questions of equity and efficiency. Should the landlord be paying the tax? Should all tenants receive the subsidy? If not, what should the eligibility criteria be? And finally, what exactly is the subsidy subsidizing?

These questions are further complicated when the self-imposed limitations of the tax-subsidy model are relaxed. Under the model, the landlord may pay the tax to the government, but there is a likelihood that the landlord will attempt to shift this burden. This shifting can be as simple as the landlord charging "key money" to the tenant to make up the difference, but is often much more complicated. In addition, the shifting of burden can potentially affect parties outside the immediate landlord-tenant relationship.

For example, the current rent regulation system benefits only those tenants within the system. If rents in the unregulated market increase due to decreases in supply or reduced mobility, then some of the burden of the tax shifts to those outside parties.

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213. Id.

214. See id. (describing the minimum wage as "identical, at first approximation, to that which would have resulted had the government levied a . . . tax on the employer, and paid an [equal] subsidy to the employee").

215. This assumption is unrealistic by design, allowing for a starting point before taking a more in-depth look into these two questions.

216. The twin goals of equity and efficiency are the cornerstone of the present debate. See, e.g., supra note 19.

217. This analysis looks into the incidence of the tax. Incidence comes in two types: nominal and real. Nominal incidence is defined as who actually pays out the tax. When the bearer of the nominal incidence shifts the burden to another party, the party that bears this cost is said to bear the real incidence of the tax. See, e.g., David F. Bradford, Untangling the Income Tax 135-36 (1986) (describing the difference between nominal incidence and real incidence as "who pays the bills rather than who actually bears the burden"); Richard A. Musgrave & Peggy B. Musgrave, Public Finance in Theory and Practice 237 (5th ed. 1989) (using the terms statutory incidence and economic incidence as analogous to nominal and real incidence, describing how the shifting of the tax burden "may lead to a final distribution of the burden, or economic incidence, which differs greatly from the initial distribution of liabilities or statutory incidence").

218. Key money describes a situation where the landlord is only able to charge a tenant a fixed rent, but adds an additional fee (which is not categorized as rent), such as significant payment in order for the tenant to receive the key to the housing unit. It is a clear example of the landlord shifting the burden of the "tax" to the tenant, thereby placing the real incidence on the tenant. See infra note 266.

219. See infra text accompanying note 259.

220. Only approximately half of the tenants in New York live in rent regulated apartments. See 2003 Housing NYC, supra note 4, at 106-07.

221. See infra text accompanying note 259. Professor Shaviro makes this argument in the minimum wage analysis, where he argues that a minimum wage might be
The question of who bears the real incidence of the rent regulation tax naturally follows. Again, the true burden of the tax is more complicated. Those tenants who are within regulated housing—the "producer's cartel"—benefit from the subsidy it provides.\(^{222}\) This benefit is most obvious under rent control, which does not allow additional tenants to enter the system.\(^{223}\) Under Rent Stabilization, there is also a producer's cartel created by the existence of high rent, high income deregulation.\(^{224}\) The earlier a rent regulated tenant entered the apartment, the longer it will take to exceed the rent cap where the tenant must prove an income below the statutory limit.\(^{225}\) It is this rent "sweet spot" below $2,000 that could conceivably create a situation where a wealthy movie star or television personality could pay regulated rents.\(^{226}\) But this situation would most likely occur only if the wealthy tenant resided in the apartment for many years.\(^{227}\)

In the minimum wage analysis, the reduction of low-wage hours available resulted in either a reduction in hours worked, or a reduction in total jobs.\(^{228}\) In the rent regulation system, many argue that the tax burden shifts to those tenants outside the system, where

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\(^{222}\) See supra note 220.

\(^{223}\) See supra note 164 and accompanying text.

\(^{224}\) See supra notes 172-75 and accompanying text (rent control); supra notes 185-86 and accompanying text (rent stabilization).

\(^{225}\) For example, if a tenant rents at $1,200 and renews every two years at a six percent increase, it will take eighteen years for the rent to reach the $2,000 threshold. It is only at this point that the tenant is required to prove that their federal adjusted gross income is below $175,000 in each of the two preceding years. Prior to the regulated rent reaching $2,000, there is no inquiry into the income level of the tenant. See supra notes 172-73 and accompanying text (rent control); supra note 186 and accompanying text (rent stabilization).

\(^{226}\) John Tierney, At the Intersection of Supply and Demand, N.Y. Times, May 4, 1997, §6 (Magazine), at 38. However, most of the examples given in the article are actually subject to decontrol or deregulation, as they rent for more than $2,000 a month. For the sake of argument, if Alistair Cooke's federal AGI is less than $175,000 (the cap was $250,000 at the time of the article), then under the law, there is nothing illegal about him paying just over $2,000 for his luxury apartment. See id. The article instead points to the problem of using income as a measure of ability to pay. See infra note 235.

\(^{227}\) The problem is amplified if the tenant occupies a rent controlled apartment, because while these units are subject to the same high rent, high income decontrol, the initial rents were generally much lower and subsequent increases less than those apartments under rent stabilization.

\(^{228}\) See supra note 221.
housing is more expensive for a host of reasons.\textsuperscript{229} If landlords are shifting the tax they pay on regulated units to those outside the rent regulation system, then the regulation has artificially inflated prices in the housing market.\textsuperscript{230} This shifting of the tax burden from the receiver of the subsidy to an outside party is at the heart of the tax/subsidy analysis. The outside party could very well be those with the least ability to absorb the artificial increase.\textsuperscript{231}

Compounding the problem is an almost complete lack of any means testing for the recipients of the subsidy. As stated above, for any rent regulated apartment renting for under $2,000, there is no restriction on the wealth of the tenant receiving the subsidy.\textsuperscript{232} If Mia Farrow had moved into her eleven room apartment a decade earlier, perhaps the addition of high rent, high income decontrol in 1993 would not have affected her apartment.\textsuperscript{233} Even where apartments reach the $2,000 threshold, the definition of “high income” includes only those with federal AGIs of over $175,000 for the two preceding years.\textsuperscript{234} Using federal AGI as a measure of wealth is burdened with the same distortions and inaccuracies that accompany the Federal Income Tax system.\textsuperscript{235} Just as the teenager of wealthy parents can earn the

\bibitem{229} See infra Part II.B.1. for a detailed discussion of the argument that rent regulation actually increases rents for most tenants.
\bibitem{230} For example, if a regulated apartment would garner an additional $100 in rent in the unregulated market, many argue that landlords shift this cost to tenants in other apartments.
\bibitem{231} Tierney, supra note 226. The author continues:

"The best way to help the poor is for society as a whole to provide aid directly and insure more housing is built," says Anthony Downs, an economist at the Brookings Institution who has published surveys of rent-regulation research and is a prominent advocate of more low-income housing. "Rent control is basically immoral and unjustified because it imposes a social burden on landlords without providing much help for most of the poor. It provides short-term benefits to the few, many of whom are not poor at all, while creating immense long-term problems." Because they're at the bottom of the housing ladder, the poor suffer the most when rent regulation produces a shortage.

Id.
\bibitem{232} There is also no differentiation between apartments of different sizes, or those in different neighborhoods. A three-bedroom apartment renting for $1,500 is appreciably different from a one-bedroom renting for the same price. There are obviously vast differences in similar apartments in different neighborhoods, especially in a city like New York that has boroughs as different as Brooklyn and Staten Island connected only by a single bridge.
\bibitem{233} Tierney, supra note 226. Mia Farrow's apartment overlooking Central Park had fallen under rent regulation—she paid less than $2,300 per month. Id. This is especially true in the case of a rent controlled apartment, for the reasons discussed above. See supra note 227. Also, if a neighborhood undergoes a rapid increase in rents, a few years can make an enormous difference in how long it may take for the apartment to reach $2,000.
\bibitem{234} N.Y.C. Admin. Code § 26-504.1, 26-504.3(b), 26-504.3(c)(1)-(2) (Supp. 2003).
\bibitem{235} See Ann L. Alsott, The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform, 108 Harv. L. Rev. 533, 571 (1995) (arguing that the definition of income under the Internal Revenue Code “excludes certain fringe benefits,
minimum wage, a tenant who has wealth but little income can maintain residence in a rent regulated apartment.\textsuperscript{236}

Empirical data confirms the fear that those who need the subsidies most are not receiving them while those who may not need them as much are. In the 2002 Housing and Vacancy Study, census figures revealed that the median gross income for tenants in rent controlled apartments was $20,120, significantly lower than $31,000, the median income of all renters.\textsuperscript{237} In addition, the ratio of rent to gross income was 27.3\%, the highest among all rental categories.\textsuperscript{238} In 2002, 27\% of all rent controlled households paid more than 50\% of their gross incomes in rent, compared to 22.8\% for all households.\textsuperscript{239} The implication is that the poorest rental households, conceivably those most in need, are getting a smaller subsidy than those that are less poor.\textsuperscript{240} This observation makes the incidence of the tax more complicated. Not only is the tax being shifted from the landlord to the tenant, but within the tenant group, poor tenants are paying a higher portion of the tax than those with higher income levels.

There is also a problem of which apartments rent regulations legally target. Rent control applies to buildings with three or more units,\textsuperscript{241} and rent stabilization applies to apartments in buildings with six or more total units.\textsuperscript{242} The initial impetus for this limitation is unclear, but the result is that a portion of rental housing has never been subject to rent regulation exclusively because of the size of the building in which it resides.\textsuperscript{243} This complete lack of a targeted subsidy further

\textsuperscript{236} Some (but not all) tenant organizations argue that the high income measurement is a compromise meant to maintain the rent subsidy not for the current tenant with an AGI just below $175,000, but for any future tenant who might not be as wealthy. But this ignores the fact that the tenant could conceivably never pass on the benefit to a needy tenant, and also that a wealthy tenant is receiving a subsidy that could be targeted to those more in need.

\textsuperscript{237} 2003 Housing NYC, supra note 4, at 114-15.

\textsuperscript{238} Id. The median ratio among all renters was 26.4\%. Id.

\textsuperscript{239} Id. at 117.

\textsuperscript{240} As discussed above, this inequity may have some basis in the rent increases allowed under the 1997 Act, where landlords were allowed a vacancy increase of $100 for apartments legally renting for under $300. N.Y.C. Admin. Code § 26-511(c)(5-a) (Supp. 2003); see Finnegan, supra note 209 (citing a computer analysis by Michael Schill, director of New York University School of Law's Center for Real Estate and Urban Policy, that stated that "the proposed [1997] changes would 'redistribute' income from poor tenants to higher-income renters... because the poor tend to move the most, seeking apartments that will cost more [due to vacancy bonuses for all apartments renting for $300 or less"]).


\textsuperscript{242} Id. § 26-504(a).

\textsuperscript{243} This problem is especially pressing in neighborhoods like Park Slope in Brooklyn where there is a large number of brownstones with fewer than six multiple dwellings. Unfortunately, most empirical data focuses on geographical areas that are
undermines the stated goal of rent regulations in New York to provide affordable housing.244

B. Claims of Destruction and Despair: The Rent Regulation Arguments

The amount of ink spilled by opponents of rent regulation is staggering.245 In response, the output of proponents of rent regulation is also substantial.246 The attack against rent regulation, at one time too large. It would be interesting to compare two neighborhoods with similar demographics, but differing in the number of units generally found in the housing stock. By comparing similar neighborhoods, one predominantly regulated, the other not, a study of this type could attempt to isolate the impacts of rent regulations.

244. See, e.g., supra text accompanying note 2.


advanced primarily by economists and libertarians, has steadily gained influence and favor among the mainstream press. The arguments are strikingly uniform, and cluster around claims that rent regulations result in: reduced levels of new construction; the deterioration of existing housing; reduced property tax revenue; increased costs of administration; reduced consumer mobility; and increased costs to enter the housing market. It has even been reported that the tension between landlord and tenant created by rent regulation led to murder!

Each claim underlies a basic belief that the regulation of rental housing causes, rather than alleviates, the problem of affordable housing in New York City. In this way, opponents of rent regulation argue that they are fighting for the tenants of New York City as well as the property owners.

1. Arguments Against Rent Regulations

One of the core claims of opponents of rent regulation is that such regulations create a disincentive for new housing construction. The claim is essentially that because landlords are unable to make as much profit on their investment, they will not invest in new housing. This "artificial" interference with basic market forces in turn lowers the supply of rental housing stock, which in turn results in increased prices for all rental housing. Harkening back to the rent regulation model, this argument is an example of how a theoretical tax on landlords (making it more expensive to build housing) is shifted to tenants in increased rental housing prices.


247. See Gurian, supra note 20 (manuscript at 1, on file with author).
248. See, e.g., Kristof, supra note 18; Henry Olsen, supra note 245; Salins, supra note 245; Tucker, supra note 245.
249. Salins & Mildner, supra note 19, at 17-19, 30-31; Tucker, supra note 245.
250. High Cost, supra note 245.
251. Id.
252. Salins & Mildner, supra note 19, at 28-30; Basu & Emerson, supra note 245, at 959; High Cost, supra note 245.
253. Block, supra note 245.
255. High Cost, supra note 245 ("By forcing rents below the market price, rent control reduces the profitability of rental housing, directing investment capital out of the rental market and into other more profitable markets. Construction declines and existing rental housing is converted to other uses."); see also Tucker, supra note 245.
256. Salins & Mildner, supra note 19, at 28; Tucker, supra note 245.
257. See supra Part II.A.
Opponents also argue that the housing shortages exacerbated by rent regulation lead to a decrease in tenant mobility. They argue that because “[t]he primary beneficiaries of rent [regulation] are those consumers lucky enough to find themselves in a [regulated] unit,” these tenants are reluctant “to part with the [rent] subsidy.” Under this argument, the incidence of the tax on the landlord is shifted not to the existing tenants, but tenants outside the system lacking the vested benefits of rent regulations.

In addition, opponents argue that a reduction in the profitability of rental housing “can lead to a drop in the quality...of existing rental stock...[when] providers faced with declining revenues [are] forced to substantially reduce maintenance and repair of existing housing.” They further argue that the burdens of the increased prices and poor-quality housing fall primarily on the poorest tenants, and the benefits accrue to wealthier tenants. In effect, opponents argue that the poorest tenants are subsidizing upper- and middle-class tenants. They also claim that in a tight housing market, poor tenants are competing with wealthier tenants for the same apartments. In addition, poor tenants tend to move more than wealthier tenants, resulting in more frequent vacancies occurring in the lowest income housing.

Additionally, when supply is constricted by the above factors, a “gray-market” in rental housing develops. A “gray-market” occurs when the scarcity of rental housing forces new entrants into paying significant entry costs. Opponents of rent regulation contend that

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258. High Cost, supra note 245 (“Consumers who would otherwise move to smaller or larger homes or closer to their jobs do not do so because they do not want to lose the subsidy.”); see also This is Your City... This is Your City On Rent Control, Newsday (New York), Apr. 13, 1997, at G1 (“Rent-controlled apartments are handed down through families like heirlooms. People tend to hang onto them whether they need the space or not.”). See supra note 18 for a discussion of the often misunderstood succession rights of rent-controlled tenants.

259. See supra Part II.A.

260. High Cost, supra note 245; see also Kristof, supra note 18.

261. Pollakowski, Who Really Benefits, supra note 245; see also Henry Olsen, supra note 245.


263. High Cost, supra note 245. Some opponents have argued that the reduction in the supply of housing also leads to an increase in homelessness due to the overall increase in prices caused by the excess demand. William Tucker, Where Do The Homeless Come From?, Nat’l Rev., Sept. 25, 1987, at 32. But see Early & Olsen, supra note 245, at 797 (finding that while rent control can increase homelessness through reduced supply and increased prices, these effects are offset by other factors that decrease homelessness).

264. Finnegan, supra note 209 (stating that “the poor tend to move the most, seeking apartments that will cost more” due to a $100 charge allowed “for units that previously rented for $300 or less”).

265. High Cost, supra note 245.

266. Id. These costs can include finder’s fees, bribes, or so-called “key money,” requiring the tenant to pay a substantial fee to get a copy of the key. These costs are
poor families, single consumers, and young people entering the market are especially hard-hit by these costs." This is another example of how the incidence of the tax on the landlord is shifted to multiple classes of tenants.

A final argument made is that devalued rental lowers municipal tax revenues. Coupled with the administrative costs associated with regulating rents, they argue that the rent regulation system burdens state and local budgets. Opponents contend that these costs are significant and often "outweigh[] any short-term benefits of rent regulation.

In these ways, opponents argue, rent regulation aggravates the very problem it was designed to cure. Instead of providing more affordable housing for those who need it, it protects the well-off tenant at the expense of poor tenants and new entrants into the market. They insist that a return to an unregulated housing market is the only solution to the current problem, and that deregulation will spawn a construction boom in rental housing, increasing supply, and lowering prices at every price level. As noted scholar William Tucker declared:

also increased by the "gray-market" practice of passing along vacant units to friends and family members, further amplifying the shortage of housing. Id.

267. Id.; see also Salins & Mildner, supra note 19, at 10-15 (describing how rent control helps the rich and not the poor, and precludes young professionals from renting).

268. High Cost, supra note 245 (stating that reduction occurs "both in absolute terms and relative to the increase in property values in unregulated markets").

269. Id. (listing administrative costs such as registering the property, collecting detailed information, and providing systems for "determining rents and hearing complaints and appeals").

270. Id.

271. Rent regulation opponents cite an array of studies in support of their contentions. See Pollakowski, Who Really Benefits, supra note 245, at 13 (concluding through the analysis of census data that "tenants in low- and moderate-income areas receive little or no benefit from rent stabilization, while tenants in more affluent locations are effectively subsidized for a substantial portion of their rent"); Tucker, supra note 245 (comparing the price distribution of available rental units in cities with regulations and without, and concluding that rent regulation, "meant to assist poorer residents, harms far more citizens than it helps, benefits the better-off, and limits the freedom of all citizens"); Basu & Emerson, supra note 245 (concluding from a complicated economic model that the "removal of rent control laws can not only increase efficiency in the rental market, but can also lead to a general lowering of rents, making all tenants better off"). There are many more studies on rent control, but the preceding is a sufficient sampling of the types found, and the conclusions reached.

272. Tucker, supra note 245 ("The goal in getting rid of rent [regulation] should be to allow the curve of housing prices to return to the elegant symmetry of the free market."); see also Salins & Mildner, supra note 19, at 120-21; Bartely, supra note 245; Henry Olsen, supra note 245. But see Basu & Emerson, supra note 245, at 959 (cautioning against using their model to conclude "that the optimal policy solution [would be] to free the rental housing market of all government restrictions," as the government must institute some "limits on the range of contracts allowed").

273. See Salins & Mildner, supra note 19, at 130 (describing a hypothetical future
Rent control is a disease of the mind that soon becomes a disease of the market. Those cities that resist infection—merely by having a healthy tolerance for the rights of others—are rewarded with a normal competitive housing market in which housing is available at every price level. Those cities that succumb to the disease of rent control are doomed to never-ending, house-to-house warfare over an ever-diminishing supply of unaffordable housing. Public policy creates its own rewards.\textsuperscript{274}

It is clear from such dire pronouncements that the opponents of rent regulation view the rent regulation battle as having only one positive outcome: returning New York City's housing to the free market.\textsuperscript{275}

2. Arguments in Favor of Rent Regulation

Proponents of rent regulation are quick to point out that the current laws do not deter new rental housing construction.\textsuperscript{276}

The problem with the proposition that rent regulation reduced new construction was that it ignored the state of the law: the fact was that all new construction had for years been exempt from any type of rent regulation. Any developer was permitted to construct a new residential building, and charge whatever that developer wanted to charge.\textsuperscript{277}

\footnotesize{hosing market without regulation as providing “ease with which an apartment... could be found, ... and the reasonableness of rents and prices”); Salins, \textit{supra} note 245; Tucker, \textit{supra} note 245. Opponents of rent regulation point to the recent deregulation of rental housing in Massachusetts, specifically looking at Cambridge. One study estimated that housing investment increased by twenty percent over what could have been expected under rent regulation. Pollakowki, Cambridge, \textit{supra} note 17, at 1. The report, analogizing the Cambridge housing market to New York City’s, concludes that a similar investment boom would occur in New York, leading to “significant improvements in housing quality.” \textit{Id.} at 5; see also Bartley, \textit{supra} note 245 (reporting that “Cambridge deregulation was followed by a boom in housing investment” and that “pent-up housing demand is an ‘ace in the hole’ in reviving the city”); Kristof, \textit{supra} note 18 (reporting that after deregulation, “Cambridge enjoyed a housing boom that improved the quality and availability of housing”); Henry Olsen, \textit{supra} note 245 (“Housing investment in formerly rent-controlled buildings rose by about 20 percent, [in] both high- and low-income neighborhoods.”).}

\textsuperscript{274} Tucker, \textit{supra} note 245; see also Salins & Mildner, \textit{supra} note 19, at 122 (concluding that “any discrepancy between natural and regulated rent creates serious distortions in the housing market, and massive misallocations of the housing stock”).

\textsuperscript{275} Salins & Mildner, \textit{supra} note 19, at 122 (“Let there be no mistaking it: the path to a healthy housing market must involve the eventual end of the city’s system of price controls. We are not talking about revising or reforming[,] ... but rather their total elimination, as well as strong legislative barriers to their reimposition.”).

\textsuperscript{276} Mandel, \textit{supra} note 246, at 1269-70.

\textsuperscript{277} Gurian, \textit{supra} note 20 (manuscript at 12, on file with author). Professor Gurian also correctly points out that many private developers enter freely into ten to twenty years of rent stabilization in exchange for tax subsidies. \textit{Id.} (manuscript at 11-12, on file with author). Under the 421-a Tax Incentive Program, the state granted initial benefits to over 4,900 units in 2002. 2003 Housing NYC, \textit{supra} note 4, at 137, tbl.G.6.
They also point to the fact that comparisons of "cities with rent control to similar cities without it reveal comparable new rental housing construction rates," a fact that undermines the opponents claim that rent control causes less construction.278

Proponents of rent regulation continue their attack on the very idea that an increase in the supply of high-end apartments would filter down, "whereby wealthy renters move up to newer and fancier buildings, leaving the other apartments for the middle class and the poor."279 This argument assumes that there is sufficient room in New York City for supply to increase to meet demand, a contention which may or may not be true.280 In fact, one economist states that rent regulations that allow for rent increases to meet operating costs "may even increase the supply of rental housing."281 The explanation is simple. If rent regulation laws increase the price of housing in the unregulated market (as opponents of rent regulation repeatedly contend), then this should provide incentive towards investment in new construction.282

Proponents also dispute the contention that rent regulation laws are the source of decreased maintenance and increased abandonment.283 They point out that rent stabilization allows landlords to recoup investments in the maintenance of their property through legal rent increases.284 In addition, these rent increases are permanent, meaning that they remain even after the landlord has been reimbursed for the investment.285 This system creates enormous incentives for landlords to maintain and invest in their buildings.286 Empirical data also

278. Peter Dreier, The Case Against the Case Against Rent Regulation, Shelterforce Online (July/Aug. 1997), available at http://www.nhi.org/online/issues/94/dreier.html. The article goes on to point out that "[t]he city's biggest ... housing boom occurred from 1947 to 1966, when strict controls covered most existing apartments." Id.; see also Keating, supra note 246, at 1229 ("Empirical evidence indicates that the level of new construction does not necessarily vary between similar rent controlled and non-rent controlled jurisdictions."); Mandel, supra note 246, at 1273 (stating that "apartment construction in New Jersey cities without rent control dropped by 88 percent over the same period" where in New Jersey cities with rent control, the decrease was only 52 percent, compared to a nationwide drop of 77 percent).
279. Dreier, supra note 278.
280. Mandel, supra note 246, at 1269.
281. Id.
282. Id. at 1270 ("[C]ommon sense tells us that if the rents on new apartments go up, there will be more incentives for builders to construct new apartments."). If this expected increase in supply does not in fact result, that may be an indication that the market has hit a supply ceiling.
283. See, e.g., Rent Study, supra note 246.
284. See supra text accompanying notes 193-209.
285. For example, a landlord can increase the rent by 1/40th the cost of any approved capital improvement, but the increase does not expire after forty months, even though the landlord has theoretically recouped the cost of the improvement.
286. The threshold for vacancy and luxury decontrol provides even more incentive for building improvements, because landlords can shorten the time needed to reach a legal rent of $2,000. See supra text accompanying notes 197-203.
evidences that the abandonment of buildings "is concentrated in poor neighborhoods—as it is in St. Louis, Cleveland, Detroit and other cities that never had rent control."287 This last point is important. One of the primary criticisms of the anti-regulation attack is that it assumes a causal relationship between rent regulation and negative results when a host of other causes may exist.288 As Professor Gurian stated:

Among the questions that might have been asked about the reduction in construction was the role of the federal government in subsidizing suburban expansion while disinvesting in cities, the role of massive out-migration of whites from New York... and the impact of neighborhood change, the role of New York City's fiscal crisis in the mid-1970s, and the rise in construction costs. [The study] looked at none of these...289

This is not to say that rent regulation proponents completely disavow any relationship between regulations and construction, but rather they acknowledge that the housing market is affected by many variables other than rent regulations.290 Anti-regulation attacks very rarely make such a concession.291

Not surprisingly, supporters of rent regulation dispute the contention that a "free market" would produce the most equitable outcome.292 They point to studies of their own that show that the rental housing markets are not competitive, and thus would not respond to increases in supply as some economists suggest.293

287. Dreier, supra note 278.
288. For example, many commentators support their claim that rent regulations lead to a reduction in new construction by pointing out that the number of buildings constructed in New York City has declined over time. Salins, supra note 245.
289. Gurian, supra note 20 (manuscript at 15, on file with author); see also Dreier, supra note 278 and accompanying text. This point is further driven home when looking to the data from the rent regulations of the 1920s, which show an incredible increase in construction after the passage of the laws. See supra Part I.A.1.
290. Gurian, supra note 20 (manuscript at 15, on file with author) (criticizing a report for making such an assumption without answering the question of "whether the reduction in construction was entirely caused by rent regulation, whether the reduction merely coincided with stringent rent regulation, or whether the reduction was partially caused by rent regulation").
291. This type of causal relationship is most often assumed with respect to construction, but it is also found when discussing abandonment of buildings, Dreier, supra note 278 and accompanying text, and homelessness, Early & Olsen, supra note 245, at 812 (concluding that while "rent control does increase homelessness [by decreasing the rental vacancy rate,... these effects of rent control are more than offset by other effects that decrease homelessness"). See also Arnott, Revisionism, supra note 246, at 116 (pointing to other factors, such as increases in poverty, homelessness, deinstitutionalization of the mentally ill, and substance abuse whose effects on homelessness "are a quantum level more important").
Evidence suggests that Chicago—a city held up as an example of what New York could be without rent regulation—suffers serious rental housing shortages.

At the very least, proponents argue that there is conflicting evidence over the causes of affordable housing that opponents tie solely to rent regulation, and that it is far from certain that deregulation would solve New York’s housing problems.

After studying empirical data from around the country, the authors concluded:

Counter to conventional economic expectations, rents are not found to be lower in places that have experienced relatively favorable supply conditions. On the contrary, vacancy rate is unrelated to rents, whereas rents are slightly higher . . . in places with a large percentage of their rental housing stock recently constructed . . . . These results strongly suggest that policies simply aimed at increasing the rental housing stock will not guarantee lower rents.

Epstein, Reply, supra note 245, at 1286 (“If the prices could move freely, then we should quickly see the forms of competition found even in Chicago, where in slack times tenants often get substantial concessions, including a free month’s rent or special repairs.”).

Metropolitan Planning Counsel, For Rent: Housing Options in the Chicago Region 47 (Nov. 1999) (concluding that Chicago’s “rental inventory is shrinking, rent increases are exceeding the consumer price index, and the overall market, as measured by the 4.2 percent vacancy rate, is tight”), available at http://www.metroplanning.org/cmainimages/RRMA.pdf. The report admits that in a free market, constrained supply should lead to an increase in the housing stock. Id. at 33. It blames the failure of a market response on prohibitive zoning codes, high property taxes, and high land costs. Id.

The reports about Cambridge, Massachusetts after deregulation exemplify this dichotomy. Opponents point to Cambridge as an example of how deregulation is the answer to ills of rent regulation. See supra note 148 and accompanying text. Proponents of rent regulation point to the fact that rents in Cambridge have increased significantly, and it is the poorest tenants that have been affected the most. Stephen Gray, Committee for Cambridge Rent Control, A New Rent Control for Cambridge (Spring 2003). One report identifies that a tenant would need an income of over $73,000 to afford the median rent on a two bedroom apartment in Cambridge, which is especially distressing when nearly two-thirds of residents earn less than $50,000. Id. at 3. In addition, the report states that rents have not dropped during the current economic downturn, and that the housing boom promised has not materialized. Id. at 5-6. In opposition, there is the Pollakowski study on Cambridge. Pollakowski, Cambridge, supra note 17. Perhaps because it is so new, there is currently no published criticism of the study. In that study, Pollakowski argued that investment in housing increased by twenty percent, in neighborhoods of all income levels. Id. at 1. What is not addressed is how this investment translates into rent levels for tenants. It may be probable that investment improves the quality of rental housing. However, the important question is: for whom? It is deceptive to imply that an increase in investment in less affluent neighborhoods will benefit those tenants already residing there. It is possible (even probable, given the documented rent increases) that the benefits are going to new entrants into the neighborhood, or that poor tenants are being forced to shoulder an even higher rent burden. See Gray, supra, at 4, 7 (showing that forty percent of renters with household incomes in the lowest third pay over seventy-five percent of their household income on rent, and that while Cambridge’s population is growing, the number of families is declining).
III. A PROPOSAL FOR DEBATE AND STRUCTURAL CHANGE

Part II of this Note presented the arguments for and against rent regulation in light of a model simplifying rent regulation to a matching tax and subsidy. Part III moves beyond the traditional debate and proposes a solution that protects the neediest tenants while removing disincentives toward real estate investment. Within the traditional debate, opponents of rent regulation argue that regulations result in fewer apartments, poor physical conditions, and that they ultimately lead to higher rents, especially for the poorest tenants. On the other hand, proponents of rent regulation argue that without it, middle and lower income tenants would increasingly be priced out of the city, resulting in a homogeneity that is inapposite to the very idea of what a city is.

With such dire predictions coming from all fronts, it is no wonder that politicians on both sides have been hesitant to strengthen the existing laws. These next eight years provide a pivotal time for public dialogue that is critical to the future of not only New York City, but the very idea of what a city should be.

Society must determine what it values. Rent regulation laws are about more than just rents. They provide protections against unilateral evictions and they purport to provide affordable housing and protect against displacement due to gentrification. But in the face of overwhelming criticism, the state legislature has consistently weakened these laws. It is time for the tenant movement to stop being so conservative, and to move the debate towards fundamental reform that the press and the public can support.

First, however, tenant advocates must admit that the laws as written do not protect the poorest tenants, and are full of arbitrary distinctions that provide ample ammunition for the dismantling of rent regulations. When the tenant movement takes this step, it can begin to advocate for reform that will provide an alternative to the

297. See supra discussion Part II.B.1.
298. See supra discussion Part II.B.2.
299. See supra Parts I.A.8-10.
300. See supra notes 168-69 and accompanying text.
301. See Lisa Chamberlain, Exploding the Gentrification Myth: Columbia Prof’s Surprising Findings, N.Y. Observer, Nov. 17, 2003, at 13. This article deals with a Columbia University study’s controversial findings that the belief that gentrification forces low income tenants to move is a myth. Id. Interestingly, the study cites rent regulation as being an important factor in protecting low-income residents from market rent pressures. Id.
302. See generally supra Part I.A.
303. The cost of inaction is substantial, because the number of protected tenants is shrinking rapidly. See Chen, supra note 25 (noting that 115,000 of Manhattan’s 206,000 rent stabilized apartments rent for more than $1,000, placing them “within reach of deregulation over the next several years”).
304. See supra note 13 and accompanying text.
free-market litany dominating the debate. More importantly, if proponents of rent regulation present regulation reforms aimed at eliminating the inequities of the current laws, their opponents will no longer occupy the moral high-ground they have usurped as defenders of tenants. Most would be forced to reveal their true intentions: that they do not believe in any tenant protections at all; that they have no trepidation about economically homogenous communities (and the racial and ethnic homogeneity that this homogeneity implies); and that they believe that rental property is a commodity whose primary purpose is to provide economic return to the landlord, not a home for the tenant.

Rent regulation opponents may argue convincingly that the current laws produce inequitable outcomes—this is obvious. But they fail to provide any normative evidence about whether a free-market housing regime will provide the best outcome for what New York should be. They believe in a "market theology," and conclude that "the values of the market trump[] all others." In other words rent regulation opponents cannot guarantee that the housing market resulting from market forces would be acceptable to New Yorkers. Laws could be drafted that target only classes of tenants that society has determined are deserving of rental subsidies. The current laws have hampered tenant advocates for too long; it is time to move on and begin advocating for regulations that actually protect tenants in need.

It is possible to protect tenants, while at the same time removing the

305. See Gurian, supra note 20 (manuscript at 1, on file with author).
306. Id. (manuscript at 2-3, on file with author) (arguing that anti-regulation forces adopted a “market populist” argument, specifically that the typical landlord was a small owner struggling to make a profit, and the typical tenant was a wealthy exploiter of the system”).
307. See Epstein, Rent Control, supra note 245, at 772. Professor Epstein favor[s] an open society in which persons must purchase what they want from the owner of resources, and not plan and scheme to get the state to operate on their behalf. The cant about communitarian ideals offers a convenient cloak to allow the ‘haves’ to exclude those unlucky enough not to have gotten there first.
308. See supra text accompanying notes 13-15.
309. Gurian, supra note 20 (manuscript at 2, on file with author).
310. Id. (manuscript at 66, on file with author).
311. For example, even the most ardent opponents of rent regulation admit that the current laws protect tenants in gentrifying neighborhoods from drastic spikes in rent. See generally Pollakowski, Who Really Benefits, supra note 245. If New Yorkers believe that New York neighborhoods should not share the economic segregation of the surrounding suburbs, then even its opponents have shown that rent regulation is an effective method of maintaining diversity. See Chamberlain, supra note 301 (discussing the results of a report showing that rent regulations are an important factor in protecting tenants from displacement”).
312. The question of who “needs” the subsidy is answered by a joint inquiry into what society values (i.e., what types of tenants should be protected from market forces and market failures) and a pragmatic inquiry into the cost of such a subsidy.
disincentives that opponents claim are so damaging under the current system. For example, the SCRIE program currently allows for rent increase exemptions for senior citizens with matching tax abatements for property owners. SCRIE provides an exemption of rent increases in regulated apartments to tenants sixty-two years and older who meet certain eligibility requirements. SCRIE is a perfect example of a situation where society has determined that it places value on a goal: protecting low-income elderly tenants from rent increases. But the beauty of this program is that it provides a matching tax abatement to the owner of the rental property.

Consider the tax-subsidy model used to analyze the current rent regulation system. Under SCRIE, instead of the tax being paid by the landlord, there would no longer be a tax on the landlord, and more importantly, the shifting of the burden that resulted from this tax would no longer occur. Instead, the determination of the tax burden would occur where it rightly belongs: in the state legislature.

The state legislature could decide that the goals of providing security of tenancy and affordable rental housing should be borne equally by all taxpayers. The legislature could just as easily find that there should be some targeting of this burden.

313. See supra Part II.B.1.
315. Id. § 26-509(b)(2)(i)-(ii).
316. SCRIE's cost in forgone tax revenues was recently estimated at $76.7 million annually, for approximately 44,000 households. On Redetermination of the Senior Citizen Rent Increase Exemption in the Event of a Permanent Reduction in Income: Hearings Before the City Council Committee on Aging, N.Y. City Council Comm. on Aging (June 16, 2003) (testimony of Theresa J. Devine, Senior Economist), available at http://www.ibo.nyc.ny.us/iboreports/SCRIEjune2003testi.pdf. A recent report estimated that the cost to the city of increasing SCRIE's income threshold from $20,000 to $24,000 would be $1.8 million annually. N.Y. City Council Committee On Aging, Committee Report of the Human Services Division, 2003 Int. No. 539 (Oct. 20, 2003), available at http://www.council.nyc.ny.us/attachments/59116.htm. The bill being debated eventually became a law on November 17, 2003, increasing the income limit of SCIRE to $24,000 per year. 2003 Local Law 67 (New York City, Nov. 17, 2003).
317. See supra notes 111-12 and accompanying text.
318. See discussion supra Part II.A.
319. See supra notes 217-21 and accompanying text.
320. The problems of political representation—especially in a state like New York, see, e.g., Kolbert, supra note 5,—while important for any discussion of change through the political process, are far beyond the scope of this Note.
321. There are many costs like this—specific to a particular geographic region or class of citizen—that society bears equally. Presumably, the achievement of such goals better society as a whole more than the cost incurred. For example, the SCRIE program's cost is born by all taxpayers in the amount of forgone property taxes. The benefit goes only to those poor, elderly residents who qualify for the program. The question of whether such an incidence is equitable has been decided through the legislative process.
322. For example, a shift to this system would provide a windfall to property owners of regulated units because they paid a price commensurate with the rental...
A program like SCRIE could be expanded to include all tenants who show need, both inside and outside what is currently deemed "regulated." There would, of course, have to be some practical consideration of the maximum benefits allowed, but that is a political consideration. Amazingly, this type of means-tested rent regulation was suggested by economist Peter Salins, an outspoken opponent of rent regulations. It was rejected out of hand as being too expensive in terms of property revenues lost. This criticism ignores something that rent regulation opponents have been preaching for years: removing the disincentives to owners (i.e. lifting the tax) would result in a market-induced housing boom. According to rent regulation opponents, if we remove the disincentives for investing in rental housing, then there should be an increase in supply followed by a corresponding lowering of prices. In essence, this would move rent regulation away from being "apartment based" and toward a "tenant based" system. This shift would theoretically alleviate the perceived problem of mobility that opponents of rent regulation contend leads to gray-market dealings and side-payments.

Some may argue that the administrative costs of such a system would be exorbitant. However, the costs would conceivably be offset by a variety of factors. First, rent regulation opponents claim that rental property is currently undervalued, leading to significant lost property taxes. In addition, opponents repeatedly state that there are wealthy tenants enjoying the benefit of rent regulations. But the question of cost is one that should be tied to the inquiry into

income provided under the current system. If the government were to provide tax abatement, the value of the property would rise to a level not contemplated in the purchase price. The state could impose a one-time surcharge on these owners, returning some of the windfall to the state in order to fund the cost of a targeted regulation program.

This would include removing some of the arcane provisions of the current laws such as applying only to buildings with more than six units. It could also institute a sliding scale of benefits based on the size of the family and the size of the apartment.

Any need-based program will create a group of winners and losers, but it can be assumed that such a class of tenants already exists (for example those living in buildings with fewer than 6 units are already "losers" in the sense that they are unprotected regardless of need). In the very least, a need-based program must be built upon an equitable foundation where it is plain to all why those who receive the benefit deserve it.

Salins & Mildner, supra note 19, at 113.

Id.

See supra note 273 and accompanying text.

Id.

See supra notes 258-59 and accompanying text.

Salins & Mildner, supra note 19, at 113.

See supra notes 268-70 and accompanying text.

See supra note 271 and accompanying text. Under the present laws, this could mean a tenant whose household adjusted gross income is less than $175,000, but higher than a threshold amount above which society feels that rent regulation benefits are not warranted.
societal values and goals. The current system is relatively easy to administer, but that simplicity comes at a cost—a lack of accuracy regarding who should get the benefits of the subsidy provided. If a goal is valued by society, there is going to be an administrative cost. The question is not whether these costs are unwanted per se, but whether they are too costly in relation to the goals that they help propagate. If society allows simplicity of administration to become an end in and of itself, then society must be willing to accept the outcome of the simple-to-administer free market, regardless of the outcomes it produces.

In the resulting debate, tenant advocates would be in a position to present a proposal that addresses all of the shortcomings of the existing laws, and finally force the opponents to answer questions about the potential outcomes of a free-market housing regime. For years, most opponents of rent regulation have presented themselves as protectors of tenants, in that they were working to provide an increased housing supply, with lower prices for all. By proposing regulations that rectify the inequities of rent regulation, the opponents of rent regulation would have to show that an unregulated housing market could provide the desired outcomes. Ultimately, the opponents would have to show their hand, and reveal that they believe in any outcome, so long as it is a result of market forces.

At this stage in the process, the debate would finally focus on what outcomes New Yorkers desire in a housing market. Tenant advocates could argue for fair, targeted regulations, while the anti-regulation forces could argue that the only fair outcome is determined by the free market. Both sides will have to advocate to the public, arguing that their proposal will provide the most desirable outcomes. Once the debate reaches this point, whatever is decided will finally be the product of informed public choice between equitable regulations and a free-market housing regime.

333. Imagine a system where only three-bedroom apartments are regulated because research shows that families generally live there. This system could be administered very cheaply, but it probably would not provide the desired benefit of assisting families that live in rental housing.
334. See supra note 273 and accompanying text.
335. Chen, supra note 25.
336. See Salins & Mildner, supra note 19, at 130 (admitting that deregulation would result in a “housing price structure that would make housing somewhat more expensive for most New York households and a great deal more expensive in particular market niches”).
337. Id.; see also Epstein, Reply, supra note 245, at 773 (“There is simply no standard of social welfare that justifies the operation of the rent control statutes in any form.”).
The next eight years can be a time of tremendous promise for both supporters and opponents of rent regulation. If both sides begin a debate not over the inadequacies of the present laws, but on their vision of what a city should be, a tremendous amount of progress is possible. There is room to protect tenants from market uncertainties while still correcting some of the most glaring inequities of the current law. In turn, legislators must be willing to move beyond the political dealings so starkly obvious in the 2003 renewal. The mantra surrounding the rent regulation debate cannot remain: "Offer me solutions, offer me alternatives and I decline."  
