

TESTIMONY OF THE LEGAL AID SOCIETY
CONCERNING PRESERVING RENT REGULATED HOUSING

New York State Assembly
Standing Committee on Housing

January 20, 2011

The Legal Aid Society

The Legal Aid Society is the oldest and largest program in the nation providing direct legal services to low-income families and individuals. The mission of the Society's Civil Practice is to improve the lives of low-income New Yorkers by helping vulnerable families and individuals to obtain and maintain the basic necessities of life — housing, health care, food and subsistence income or self-sufficiency. The Society's legal assistance focuses on enhancing individual, family and community stability by resolving a full range of legal problems in the areas of immigration, domestic violence and family law, employment, housing and public benefits, foreclosure prevention, elder law, tax, community economic development, health law and consumer law.

The Society achieves its mission in a number of ways. Through a network of 10 neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects, the Civil Practice provides free direct legal assistance in more than 30,000 individual legal matters annually. In addition, the Civil Practice represents low-income New Yorkers in law reform litigation which benefits some 2 million families and individuals each year. Overall, combining individual representation with law reform litigation, advocacy and neighborhood initiatives, the Society successfully provides as many low-income New Yorkers as possible with access to justice. In addition to direct legal services, the Society provides extensive back-up support and technical assistance for community organizations in all five boroughs of the City, "know your rights" trainings for community residents, and community education sessions on complex legal issues affecting low-income communities. When it is the most efficient and cost-effective way to help clients, the Society provides legal representation to groups of clients with common legal problems, including those referred by elected officials. Finally, the Society also

operates an extensive pro bono program through which over 1,000 volunteers provide more than 50,000 hours of free legal assistance to low-income New Yorkers annually.

The Legal Aid Society welcomes this opportunity to testify before the New York State Assembly Standing Committee on Housing concerning the loss of affordable rental housing in New York City. We appreciate the leadership of Chair Vito Lopez on these critical issues. Additionally, we would like to take the opportunity to thank this Committee and its leader Chair Lopez for the enactment of laws which extended rent and eviction protection to loft tenants in Brooklyn and Queens among other important tenant legislation.

Introduction

The primary purpose of rent regulation in New York City and the suburban counties has been to eliminate abnormal rents in an overheated market. Indeed, the Rent Stabilization Law's stated goal is to protect "public health, safety, and welfare...and to prevent exactions of unjust, unreasonable, and oppressive rents and rental agreements." Rent Stabilization can only exist during a housing emergency which is defined by law as a market where the vacancy rate has fallen below 5 percent. New York City first declared an emergency in 1974. This emergency has endured throughout the years but the crisis which had been chronic has become acute. Because the vacancy rate is so low, tenants cannot move and exercise market power. The Rent Stabilization Law was meant to – and has acted to – approximate the workings of a market where both parties have the power to negotiate contracts.

On June 15, 2011, the Emergency Tenant Protection Act expires. If the State does not act, millions of New Yorkers will be at risk of "unjust, unreasonable and oppressive rents" and will face "uncertainty, hardship and dislocation." Without rent regulation, programs that the State has created to protect our elderly residents and residents with disabilities, such as SCRIE (the rent increase exemption law for senior citizens) and DRIE (the rent increase exemption law for persons with disabilities), will become meaningless, and elderly New Yorkers and New Yorkers with disabilities will be threatened with eviction and homelessness.

However, the laws must be not only extended, they must be strengthened. We strongly support A2674, the Omnibus Rent Regulation bill. While we support every section of this bill, our testimony will focus on our top priorities: 1) the ETPA must be extended; 2) Vacancy

Decontrol must be repealed; and 3) as New York City continues to hemorrhage affordable apartments when federal and State subsidized projects privatize, rent protections must be extended to these apartments. We would like to thank Chair Lopez for including this last priority in the Omnibus bill.

Who Lives in Rent Regulated Housing?

Rent stabilization primarily serves low-income people, people of color, and immigrants.¹

- The median household income for rent-stabilized tenants is \$34,000 a year, compared to \$42,000 for the City as a whole, \$44,000 for unregulated tenants, and \$66,000 for homeowners.
- 21 percent of rent-stabilized tenants living in poverty, and 22 percent have incomes from 100 to 200 percent of the federal poverty line.
- 60 percent of rent-stabilized tenants have household incomes below the New York City median of \$42,000 a year.
- 22 percent of rent-stabilized tenants are Black, 32 percent are Latino, and 8 percent are Asian.
- 55 percent of rent-stabilized tenants are immigrants or born in Puerto Rico.
- Low rent apartments are predominantly occupied by low-income tenants.²
- The median household income for tenants in rent-stabilized apartments with rents below \$600 a month is \$20,000 a year.
- 32 percent of rent-stabilized tenants with rents below \$600 a month living in poverty, and 27 percent have incomes from 100 to 200 percent of the federal poverty line.
- 81 percent of rent-stabilized tenants with rents below \$600 a month have household incomes below the New York City median of \$42,000 a year.
- The median household income for rent-stabilized tenants with rents below \$1,200 a month is \$30,000 a year.
- 23 percent of rent-stabilized tenants with rents below \$1,200 a month are living in poverty, and 25 percent have incomes from 100 to 200 percent of the federal poverty line.
- 66 percent of rent-stabilized tenants with rents below \$1,200 a month have household incomes below the New York City median of \$42,000 a year.

¹ Email from Tom Waters, Community Service Society to Ellen Davidson.

² Email from Tom Waters, Community Service Society to Ellen Davidson

Declining Affordability of Housing

New York City is facing an acute shortage of affordable housing. In the last twenty years, the State has enacted laws which have contributed to the loss of affordable housing. Since the passage of vacancy decontrol, automatic vacancy increases and the preferential rent amendments, landlords have been give an incentive to harass tenants or commit massive fraud to create vacant apartments that can be deregulated with higher rents. In the face of fewer rental opportunities and higher prices, New York City renters are suffering from a growing disparity between what they can afford and their actual rent. Unfortunately, the trend towards declining rent affordability is only going to continue as the recovery from the Great Recession appear to be a jobless recovery. Tenants in New York State face an increasingly dire situation and the loss of Rent Stabilization would be catastrophic for this State.

Housing-related Hardships and Related Social Costs on the Rise

The rate of housing-related hardships³ among low-income renters has been increasing in recent years.⁴ New Yorkers are increasingly relying on unconventional living arrangements; nearly 15,000 residents live in households of 3 or more roommates unrelated to the head of household.⁵ High housing cost burdens and concentrated poverty are also associated with a range of more serious social harms, including higher arrest rates, poorer nutrition and health, higher financial burdens for local governments, greater educational failure, higher teenage pregnancy rates, more costly basic consumer goods, and greater difficulty maintaining steady jobs.⁶ In addition, those suffering from high housing cost burdens are more likely to be evicted and more likely to experience homelessness.⁷

Effect of Stagnant Low-Income Wages and Increasing Prices on Residents

³ These hardships include the “lesser” hardships of rent/mortgage arrears and utility cut-offs and the “severe” hardships of doubling up and using shelters.

⁴ Victor Bach & Tom Waters, Community Service Society, *Making the Rent*, May 2008, 24.

⁵ Cara Buckley, “In New York, Breaking the Law on Roommates,” *The New York Times*, March 10, 2010.

⁶ Margery Austin Turner, *Current Rental Housing Market Challenges and the Need for a New Federal Policy Response: Statement before the Committee on Appropriations, Subcommittee on Transportation, HUD, and Related Agencies, US House of Representatives*, 5; Douglas Rice and Barbara Sard, Center on Budget and Policy Priorities, *The Effects of the Federal Budget Squeeze on Low-Income Housing Assistance*, 2.

⁷ Douglas Rice and Barbara Sard, Center on Budget and Policy Priorities, February 1, 2007, *The Effects of the Federal Budget Squeeze on Low-Income Housing Assistance*, 2.

Wages have not kept up with living costs, creating enormous pressure on households to somehow meet the cost of necessities other than rent. Nominal wages declined by 8.3 percent and real wages declined by 9.0 percent in 2009,⁸ but prices for consumer goods in the New York metropolitan area increased 0.4 percent.⁹ Earnings for low-end earners have declined; among low-income residents, the median wage and salary income dropped from \$15,000 in 2008 to \$14,000 in 2009.¹⁰ New York City residents must pay increased rates for Con Edison and increased transportation costs for fare increases implemented by the Metropolitan Transportation Authority (MTA).¹¹ These price hikes in the midst of a recession signal continued economic difficulty for the residents of New York City, especially low-income New Yorkers who are already struggling to survive.

Growing Problem of Homeless Families

The scarcity of affordable housing, rising rents, and the increasing cost of living have contributed to record use of the City's shelters. In 2009, for example, an average of 35,915 children and adults slept in the shelters each night, a 7 percent increase over 2008.¹² Since 2008, the overall homeless shelter population has risen an alarming 9 percent.¹³ Even more distressing is the 10.1 percent increase in the number of homeless families with children in the shelters each night.¹⁴ This increase has been caused by an upsurge in the number of new homeless families entering the shelters. The number of individuals entering the shelter system increased for the second consecutive year, a 17 percent increase averaging 1,725 new persons each month.¹⁵ More than 10,300 families with nearly 16,550 children are homeless.¹⁶

Increased Displacement Pressure from Landlords Despite Profits

⁸ NYC Rent Guidelines Board, *2010 Income and Affordability Study*, 6.

⁹ *Id.* at 4.

¹⁰ Victor Bach & Tom Waters, Community Service Society, *Making the Rent, 2008 to 2010*, New York City Rent Guidelines Board Hearing, April 30, 2010, at 5.

¹¹ Patrick McGeehan, "Average Con Edison Bill to Rise by \$10 Over 3 Years," *New York Times*, March 25, 2010. Michael A. Grynbaum, "Despite Bad News, Subway Chief Hopes to Hold Line on Fare," *New York Times*, Feb. 24, 2010.

¹² NYC Rent Guidelines Board, *2010 Income and Affordability Study*, 12.

¹³ NYC Rent Guidelines Board, *2010 Income and Affordability Study*, 13.

¹⁴ NYC Rent Guidelines Board, *2009 Income and Affordability Study*, 13.

¹⁵ NYC Rent Guidelines Board, *2010 Income and Affordability Study*, 13.

¹⁶ Coalition for the Homeless, *State of the Homeless 2010: How Governor Paterson's Budget Will Make New York's Historic Homelessness Crisis Even Worse*, 7-8.

In rent stabilized buildings, from 2007 to 2008, operating costs and total landlord income increased by comparable amounts--6.4 percent and 6.2 percent, respectively.¹⁷ In 2008, the Price Index of Operating Costs (which measures the cost of goods and services used to operate and maintain New York City apartments) rose by only 4 percent.¹⁸ Net operating income grew by 5.8 percent from 2007-2008 and has been increasing for four consecutive years.¹⁹ On average, landlords of rent-stabilized buildings retain a monthly average of \$339 per rent-stabilized unit as pre-tax profit or for use in financing the building and improvements, equivalent to an estimated annual mean of \$186,000 per building.²⁰ In Manhattan, profit from rent-stabilized apartments is an even higher \$582 per month.²¹ Even after adjusting for inflation, landlords' net operating income has increased 9.3 percent from 1990 to 2008.

Despite landlords' solid profit margin, landlords continue to apply pressure in an effort to displace tenants. Both harassment and rent overcharge complaints to the State Division of Housing and Community Renewal (DHCR) increased substantially in 2008: harassment complaints were up 31 percent to 344 and rent overcharge complaints were up 20 percent to 1,038.²² In addition, fear of displacement runs high; a third of Black and Hispanic renters, 22 percent of White and 25 percent of Asian renters express concern that they will be forced out of their neighborhoods over the next two years.²³

Declining Availability of Housing

Unfortunately for New York renters, declining affordability is coupled with declining availability. The net vacancy rate of units available for rent was 2.91 percent in 2008, significantly below the 5.0 percent threshold that legally defines a housing emergency.²⁴ The number of vacant units affordable to low-income New Yorkers is even more meager. In 2008, the vacancy rate for all units with rents between \$500 and \$799 was only 1.5, and for apartments with rents between \$800 and \$999 only 2.2 percent were vacant. The vacancy rate for rent-stabilized units was even more troubling, measuring just 2.14 percent,²⁵ while the rate for units

¹⁷ NYC Rent Guidelines Board, *2010 Income and Expense Study*, 3.

¹⁸ NYC Rent Guidelines Board, *2009 Price Index of Operating Costs*, 3.

¹⁹ *Id.*

²⁰ NYC Rent Guidelines Board, *2010 Income and Expense Study*, 8.

²¹ *Id.*

²² *Daily News*, June 4, 2008, "Stabilized Apartments Down, Frets Up," Adam Lisberg, 7 (quoting Leslie Torres, state Deputy Commissioner for Rent Administration).

²³ Victor Bach & Tom Waters, Community Service Society, *Making the Rent Summary*, May 2008, iii.

²⁴ NYC Rent Guidelines Board, *2010 Income and Affordability Study*, 7.

²⁵ *Id.*

with monthly rents of less than \$799 was 1.5 percent.²⁶ The decrease in the availability of affordable vacant units is exacerbated by the loss of at least 16,838 rent-stabilized housing units in 2008, primarily due to vacancy deregulation.²⁷ Units that remain available are increasingly out of the range of low-income New Yorkers. From 2005 to 2008, the number of apartments renting for less than \$1,000 per month fell by over 80,000, and the number renting for less than \$800 per month fell by nearly 55,000.²⁸ Overall, from 2002 to 2008, there has been a 16.4 percent loss in rental apartments that low-income households can afford.²⁹ Raising rents would only accelerate the loss of increasingly scarce housing affordable to low-income New Yorkers.

The scarcity of available rent-stabilized housing is a part of an overall decline in the availability of affordable housing. Conversion of single room occupancy buildings into housing no longer affordable to low-income people continues; in 2009, 117 buildings applied for the requisite Certificate of No Harassment. Furthermore, the steady decrease in Mitchell-Lama units has accelerated, with at least 42,000 lost to buyouts since 1985.³⁰ There remain only 95,000 such units left in the City today.³¹

Applicants for public or federally subsidized housing face similar shortages. Indeed, 135,491 applicants are on the waiting list for public housing in New York City.³² The New York City Housing Authority (NYCHA) accepted only emergency applicants into the Section 8 program from May 15, 2007 to December 10, 2009, and stopped processing voucher applications altogether in December 2009.³³ There are 125,403 families on the waiting list for Section 8 vouchers.³⁴

This combination of market forces and governmental decisions has worked together to have a devastating effect on low- and moderate-income New Yorkers. The declining number of vacant units available for rent, the fact that housing expansion has not kept pace with population

²⁶ *Id.*

²⁷ NYC Rent Guidelines Board, *Changes to the Rent Stabilized Housing Stock in New York City in 2008*, 9, 13.

²⁸ Coalition for the Homeless, *State of the Homeless 2010: How Governor Paterson's Budget Will Make New York's Historic Homelessness Crisis Even Worse*, 14.

²⁹ *Id.*

³⁰ NYC Rent Guidelines Board, *2010 Housing Supply Report*, 8.

³¹ NYC Rent Guidelines Board, *2010 Housing Supply Report*, 8.

³² New York City Housing Authority "Fact Sheet", available at <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml>. Data accessed January 2011.

³³ New York City Housing Authority, "Section 8 Assistance," available at <http://www.nyc.gov/html/nycha/html/section8/section8.shtml>. Data accessed June 2010.

³⁴ New York City Housing Authority "Fact Sheet", available at <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml>. Data accessed January 2011.

growth,³⁵ and the Section 8 crisis have all contributed to the scarcity of available affordable housing.

Extend the Emergency Tenant Protect Act

In light of the continuing housing emergency in the midst of the greatest economic crisis since the Great Depression, the State must extend the Emergency Tenant Protection Act. In Section 2 of the ETPA, the Legislature found that

a serious public emergency continues to exist in the housing of a considerable number of persons in State of New York . . . there continues to exist in many areas of the state an acute shortage of housing accommodations caused by high demand, attributable in part to new household formations and decreased supply, in large measure attributable to reduced availability of federal subsidies and increased costs of construction and other inflationary factors.

The Legislature further found

preventive action by the legislature continues to be imperative in order to prevent exaction of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to public health, safety and general welfare; that in order to prevent uncertainty, hardship and dislocation, the provisions of this act are necessary. . . .

These words are as true today as they were in 1974 when the ETPA was enacted. For all these reasons, we urge this Committee to extend the Emergency Tenant Protection Act.

Repeal of Vacancy Decontrol Provisions

Further, the Vacancy Decontrol provision must be repealed in order to preserve the affordable housing stock. In 1993, the State amended the rent regulation laws to permit landlords to deregulate an apartment when the rent is \$2000 and the apartment is empty. Since that time, it has been the goal of many landlords to increase the rent of apartments to over \$2000 and to empty apartments. Often, landlords accomplish this by committing massive fraud and by harassing their tenants until they leave. Once a landlord empties an apartment, he can take advantage of lax oversight and opportunities in the law to significantly raise rents. A landlord needs only to claim that he has made improvements to the apartment, which result in a

³⁵ Margery Austin Turner, *Current Rental Housing Market Challenges and the Need for a New Federal Policy Response: Statement before the Committee on Appropriations, Subcommittee on Transportation, HUD, and Related Agencies, US House of Representatives*, 2.

permanent increase to the legal regulated rent of one-fortieth of the costs of the improvements. Landlords are not required to seek approval from DHCR to ensure that these improvements have actually been made and that the alleged costs are accurate. This lack of any oversight has led to many landlords exaggerating the costs and illegally raising rents. It does not matter whether the market will bear a \$2000 rent; the next tenant loses all the crucial tenure protections provided by rent stabilization, such as a right to a lease renewal and the prohibition against eviction for causes other than those explicitly stated in the Rent Stabilization Law and Code. It has become easier and easier to reach the magic number of \$2000. It is essential that this incentive be removed from the system. Vacancy Decontrol has led to tenant harassment, landlord fraud, displacement of tenants, and destabilization of neighborhoods. Repealing Vacancy Decontrol must be the first step towards protecting our shrinking affordable housing stock. We strongly support the repeal of Vacancy Decontrol.

Extend Rent Protections to Mitchell-Lama and Section 8 tenants

In this time of economic crisis, we again urge this Committee to pass protections for tenants in buildings whose owners buy out of the Mitchell-Lama program. We strongly support the effort to extend rent regulations to former Mitchell-Lama buildings. We believe extending rent regulations to former Mitchell-Lama buildings would both protect tenants and preserve Mitchell-Lama housing. We strongly appreciate that this has been added to the Omnibus bill.

Conclusion

Thank you for the opportunity to testify before the Assembly's Standing Committee on Housing today. This is a time of grave crisis in this State and this City. We were facing a dire lack in affordable housing in New York City even before this financial crisis hit. Before the record loss of jobs, New Yorkers were struggling to pay their rents. Over the past year, we have reached record levels of family homelessness. According to the prior testimony before Congress of Margery Austin Turner of The Urban Institute, "In general, the lack of affordable housing stands in the way of economic productivity and undermines the fundamental premise that full-time workers should be able to achieve a decent standard of living for themselves and their families."³⁶

³⁶ Margery Austin Turner, *Current Rental Housing Market Challenges and the Need for a New Federal Policy Response: Statement before the Committee on Appropriations, Subcommittee on Transportation, HUD, and Related Agencies, US House of Representatives*, 6.

Without affordable housing, New York City will not recover. We hope that the State will do all that is within its power to address the serious threats to affordable housing in New York State.

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