

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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DEBORAH PUSATERE, ROSSWORKS LLC, JOHN  
C. THOMAS, JR., GUS LAZIDES and GGJ  
CORPORATION,

Hon. Christina L. Ryba

Plaintiffs,

INDEX NO. 909653-21

-against-

THE CITY OF ALBANY, KATHY M. SHEEHAN in  
her capacity as Mayor of the City of Albany, THE  
COMMON COUNCIL OF THE CITY OF ALBANY,  
and the ALBANY CITY COURT,

Defendants.

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**BRIEF OF *AMICUS CURIAE***  
**LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK,**  
**COMMUNITY VOICES HEARD, UNITED**  
**TENANTS OF ALBANY, & FOR THE MANY**

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**STATEMENT OF INTEREST OF AMICI CURIAE**

*Amici curiae* are non-profit organizations that represent low-income tenants throughout the state of New York who are protected by local Good Cause Eviction laws in Albany and in the Hudson Valley. *Amici* have a special interest and substantial expertise regarding evictions and low-income tenants in Albany and the Hudson Valley.

**Legal Aid Society of Northeastern New York (LASNNY)** is a federally funded legal services provider of civil legal services for low-income clients in sixteen counties throughout Upstate and Northern New York, whose service area includes the City of Albany and who has substantial expertise in eviction defense.

**Community Voices Heard (CVH)** is a member-led organization founded in 1994 and principally comprised of women of color and low-income families in New York State. Through grassroots organizing, leadership development, policy changes, and creating new models of direct democracy, CVH seeks to create a truly equitable New York State. CVH works with tenants, tenant associations and tenant unions in New York City, Westchester County and the Hudson Valley to fight back against displacement and to win improvements in living conditions.

**United Tenants of Albany (UTA)** is a four decade old community based nonprofit organization that provides counseling and advice for Albany tenants in landlord tenant mediations and in eviction court proceedings. UTA responds to more than 5000 requests for information about housing and evictions annually. Staff responds to questions on housing law, counsels tenants and assists tenants with mediations between landlords and tenants. Staff accompanies unrepresented tenants to court proceedings.

**For the Many (FTM)** is building a grassroots movement of everyday people to transform New York so that it works for all of us - no matter what we look like, where we come from, or

how much money we have. We bring people together across race, age, and language to fight for laws and win elections that put the power back in our hands. We work with thousands of tenants and homeowners to advocate for affordable and secure housing, and have helped enact Good Cause legislation in a number of cities in New York.

### PRELIMINARY STATEMENT

*Amici* submit this brief in opposition to Plaintiffs' motion for summary judgment and to provide the Court with background on the devastating impact of evictions without cause, the current housing crisis in New York State, and the ways that good cause eviction legislation will provide a measure of stability to tenants in a housing market that is overwhelmingly stacked against them. Good cause eviction legislation is essential because it prevents needless evictions and the cascading problems that result from eviction, countering the host of forces that currently favor landlords in the rental market while allowing landlords to continue renting their properties to tenants they have freely chosen.

Albany City Code § 30-324 *et seq.* (the "Good Cause Eviction Law" or the "Law") prohibits covered landlords from evicting tenants without good cause. The Good Cause Eviction Law provides a number of bases constituting good cause for eviction, including nonpayment of rent, substantial lease violations, criminal activity, creating a nuisance or damaging the property, and the owner's personal use of the property.<sup>1</sup> The law also requires a landlord to establish good cause for raising the rent more than 5 percent annually; in this instance, good cause may include the state of the housing market and improvements made to the unit.<sup>2</sup> Owner-occupied properties with three or fewer units, subletted properties, properties in which the tenant occupies as an incident to employment and properties covered by separate good cause requirements are exempt from the Law.<sup>3</sup>

Given the lengthy, statutorily-protected grounds landlord may use as a basis for eviction, and the carve-outs for small, owner-occupied buildings, the primary effect of the Good Cause

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<sup>1</sup> Albany City Code §30-328.

<sup>2</sup> Albany City Code §30-328(A)(1).

<sup>3</sup> Albany City Code §30-326.

Eviction Law is to protect good tenants and not objectionable tenants. The Law represents a critical step towards protecting the housing, and therefore the health and welfare, of tenants during an unprecedented public health and economic crisis, while maintaining the ability of landlords to use and control their property.

Plaintiffs' motion for summary judgment fails on several grounds. First, the Law does not conflict with the procedural rules in the Real Property Actions and Proceedings Law (RPAPL) and the Real Property Law (RPL). The Good Cause Eviction Law applies to conduct prior to the expiration of a tenancy, providing grounds upon which the tenancy may be lawfully terminated; in contrast, the RPAPL operates only after expiration of a tenant's term, while the RPL provides procedures for termination of a tenancy and not the grounds upon which the termination is based. As the Law applies solely to activity outside the scope of state procedural law, it is not preempted by existing statutes. Next, the Good Cause Eviction Law is not rent control and bears little resemblance to New York State's rent regulatory schemes, which place far greater obligations on landlords and provide deeper protection for tenants. For example, owners of rent stabilized housing must file annual registrations, including the rent charged in each housing unit, with the State, and may be subject to penalties for failure to provide required services. Rent increases are limited to annual caps set by a local rent guidelines board and landlords may only increase the rent based on improvements in accordance with a statutory formula. The Good Cause Eviction Law creates no such obligations for property owners, requiring only that owners show good cause to evict.

Next, the Good Cause Eviction Law is neither a physical taking nor a regulatory taking. The Law does not compel physical occupation of the property, as required to prove a physical taking, and it provides many bases upon which a landlord may seek eviction. Any argument that

the Law constitutes a regulatory taking fails under the application of the factors set forth in *Penn Central Transp. Co. v New York City*, 438 U.S. 104 [1973] as the Law does not give rise to a “physical invasion” of the property. Finally, Plaintiffs’ Contract Clause claim fails because, even if existing contracts are affected by its application, the Good Cause Eviction Statute serves the significant and legitimate interest of keeping tenants housed – a legitimate use of the City of Albany’s police powers to address a public health crisis.

### **ARGUMENT**

#### **I. Evictions Without Good Cause Leave Tenants Vulnerable to Homelessness and a Host of Other Collateral Consequences**

Absent the Good Cause Eviction Law, tenants living in otherwise-unregulated housing are vulnerable to the whims of their landlords, who do not need to demonstrate a reason for evicting them. Tenants can do everything right, live somewhere for one year or twenty years yet be subject to eviction at the landlord’s whim -- and the only requirement for landlords is that they provide 30 to 90 days’ notice that the tenancy is not being renewed.<sup>4</sup> For this reason, it is in the tenant’s interest to remain silent in the face of housing conditions that threaten their health and safety, harassment, and discrimination. It is impossible for tenants to assert their rights without risking eviction.

Once in housing court, tenants can be evicted with quickly, particularly for the vast majority who do not have lawyers. Eviction courts are empowered to make summary determinations based on written submissions.<sup>5</sup> As most tenants are unrepresented, they are not equipped to convince the court of a triable issue of fact or negotiate balanced settlement offers.

The collateral consequences of eviction are well-known. Evicted individuals must quickly find new housing and often move into poor quality housing, family members’ homes, or

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<sup>4</sup> RPL § 226-C(2)

<sup>5</sup> C.P.L.R. § 409b

become homeless. Municipalities and the State bear enormous costs in the form of providing shelter, social services, and other services to homeless individuals; in Westchester County alone, the costs for homeless shelters funded through just the Continuum of Care program is over seventeen million dollars.<sup>6</sup> Between the years 2014 and 2020, New York City's total spending for homeless services increased by 138 percent to a total of \$3.5 billion.<sup>7</sup> When people are evicted, neighborhoods disintegrate and are destabilized, and community relationships devolve.<sup>8</sup>

Eviction also imposes high costs to individuals and society through adverse health outcomes. Evicted individuals have reduced access to medical care<sup>9</sup> and experience poorer health and higher mortality.<sup>10</sup> These negative health outcomes can endure for years after an eviction.<sup>11</sup> Children are particularly impacted by eviction, as lack of regular, stable housing and homelessness can negatively affect their physical, social, emotional, and cognitive development.<sup>12</sup>

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<sup>6</sup> *Westchester County Housing Needs Assessment*, 110-111 (2019),

<https://homes.westchestergov.com/images/stories/HNA/1125fullrep.pdf>

<sup>7</sup> Office of the New York City Comptroller, *Comptroller Stringer Releases Agency Watch List Report on Citywide Homelessness Spending*, Mar. 17, 2021,

<https://comptroller.nyc.gov/newsroom/comptroller-stringer-releases-agency-watch-list-report-on-citywide-homelessness-spending/#:~:text=Homelessness%20Services%20shows%3A->

, Total%20spending%20for%20homeless%20services%20grew%20by%20138%20percent%20between, a%20total%20of%20\$243.5%20billion.

<sup>8</sup> Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 *Soc. Forces* 295, 296 (2015).

<sup>9</sup> See Linda M. Niccolai, Kim M. Blankenship & Danya E. Keene, *Eviction From Renter-Occupied Households and Rates of Sexually Transmitted Infections: a County-Level Ecological Analysis*, 46 *Sexually Transmitted Diseases* 63, 66 (2019),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6289707/>

<sup>10</sup> Hugo Vásquez-Vera, Laia Palència, Ingrid Magna, Carlos Mena, Jaime Neira, & Carme Borrell, *The Threat of Home Eviction and Its Effects on Health Through the Equity Lens: A Systemic Review*, 175 *J. Soc. Sci. & Med.* 199, 202-05 (2017).

<sup>11</sup> *Losing Your Home is Bad for Your Health: Short- and Medium-Term Health Effects of Eviction on Young Adults*, *Hous. Pol'y Debate*, Oct. 2020, 1-21.

<sup>12</sup> Marci McCoy-Roth, Bonnie B. Mackintosh & David Murphey, *When the Bough Breaks: The Effects of Homelessness on Young Children*, 3 *Child Trends* 1, 2 (2012), <https://www.childtrends.org/wp-content/uploads/2012/02/2012-08EffectHomelessnessChildren.pdf>

## II. Due to High Rent Costs in the City of Albany, Displaced People and Families Will Have Difficulty Finding New Housing

Once a landlord displaces an individual or family, they must find new affordable housing.

This, however, is particularly challenging for people with low or moderate incomes.

Low-income tenants in Albany already struggle to pay their rents. Fifty five percent of Albany renters pay more than thirty percent of their income toward their rent.<sup>13</sup> Forty four percent of Albany renters have incomes under \$25,000 annually.<sup>14</sup> In the Capital District, seventy six percent of low-income tenants pay more than thirty percent of their income towards their rents.<sup>15</sup>

The American Community Survey allows an analysis of the City of Albany by ZIP code, income, and rent burden. Looking at the seven non-SUNY Zip codes in the City of Albany and focusing on households earning less than \$50,000, on average 82 percent of households earning less than \$10,000 annually were rent burdened and 75 percent of those households were severely rent burdened<sup>16</sup> Similarly, an average of 82 percent of households earning between \$10,000 and \$20,000 annually were rent burdened, with 67 percent of them severely rent burdened. In the \$20,000 to \$35,000 income bracket, an average of 81 percent of households were rent burdened, although only 29 percent of these households were severely rent burdened. Finally, on average

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<sup>13</sup> Tom Waters, *Rental Housing in Urban New York: A State wide Crisis*, Community Service Society, 2019 [https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Rental\\_Housing\\_in\\_Urban\\_New\\_York\\_A\\_Statewide\\_Crisis\\_WEB.pdf](https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Rental_Housing_in_Urban_New_York_A_Statewide_Crisis_WEB.pdf)

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> American Community Survey Table B25074, "Household Income by Gross Rent as a Percentage of Household Income in the Past 12 Months," <https://data.census.gov/cedsci/table?q=B25074&g=860XX00US12202,12203,12206,12207,12208,12209,12210> (last accessed 17 Mar. 2022). The data presented here omit ZIP Codes 12204 and 12205, which are partially located outside the City of Albany, and ZIP Code 12222 which is made up almost entirely of students.

37 percent of households earning between \$35,000 and \$50,000 are rent burdened, with only about 7 percent of these households severely rent burdened.

From 2020 into 2022, news stories about rent spikes throughout the state and the country have abounded.<sup>17</sup> The United State Department of Housing and Urban Development publishes annual Fair Market Rents for localities across the country. Fair Market Rent is defined as rent in the 40<sup>th</sup> percentile for a given area.<sup>18</sup> As of late March 2022 the average Fair Market Rent for a two-bedroom rental in the nine ZIP codes discussed above was \$1,788.33.<sup>19</sup> In other words, a two-bedroom rental which is at the 40<sup>th</sup> percentile of rent would (on average) require 65 percent of the total household income for a low-income family of four within the seven Albany ZIP codes discussed above. In 2019 that figure was \$1,084.44—meaning that rents *at the fortieth percentile* in the City of Albany have increased sixty-five percent since 2019.<sup>20</sup>

Moving, of course, requires more than the rent: it requires people to find the costs of moving, such as transportation and a truck rental, and to pay a security deposit which will generally be equal to the first month's rent. A family of four who is able to find a two-bedroom apartment at fair market value must therefore be able to pay \$3,576 as security deposit and first month's rent, in addition to moving costs, before so much as moving into a new home. For the

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<sup>17</sup> Sara Rizzo, *Rent up 22% in New York State, 34% in NYC Since Start of 2021, Report Says* December 2021, Pix11

<https://pix11.com/news/local-news/rent-up-22-in-new-york-state-34-in-nyc-since-start-of-2021-report-says/>; Abba Bhattarai, *Rents Are Up More Than 30 Percent in Some Cities, Forcing Millions to Find Another Place to Live* Washington Post, January 30, 2022,

<https://www.washingtonpost.com/business/2022/01/30/rent-inflation-housing/>; Carla Rognar, *Rochester Renters Face Steep Rent Increases*, 13WHAM, February 7, 2022, <https://13wham.com/news/local/rochester-renters-face-steep-rent-increases>

<sup>18</sup> “Fair Market Rents (40<sup>th</sup> Percentile Rents),” Housing and Urban Development (HUD) Office of Policy Development and Research, *available at* <https://www.huduser.gov/portal/datasets/fmr.html> (last accessed 20 Mar. 2022).

<sup>19</sup> “FY22 Small Area FMRs,” *available at* [https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022\\_code/2022summary\\_sa.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/2022summary_sa.odn) (last accessed 20 Mar. 2022).

<sup>20</sup> *Id.*

hypothetical low-income family of four, \$3,576 is equal to about eleven percent of their annual income. As more fully discussed below evictions within the City of Albany disproportionately take place within communities of color, where the median income is far lower. While that same \$3,576 is about the same proportion—eleven percent—of median income in West Hill, in Arbor Hill, it represents about 13 percent of the median household income. In the South End, it would require 19 percent of the median household income. Again, this represents only a security deposit and first month's rent for a property at the fortieth percentile in the city of Albany; it does not account for moving costs, pet fees, or any other costs associated with moving.

Even where low-income tenants find new housing after an eviction, the moving costs result in a setback for the tenant family for years to come.

### **III. Albany's Communities of Color Are Disproportionately Victims of and Burdened by Evictions.**

In 2019, approximately 68 percent of evictions (again, both nonpayment and holdover) took place in three neighborhoods: Arbor Hill, West Hill, and the South End. 81 percent of Arbor Hill residents are Black, 3 percent are Hispanic, and 6 percent are more than one race.<sup>21</sup> In West Hill, 69 percent of residents are Black, 10 percent are Hispanic, and 3 percent identify as more than one race.<sup>22</sup> Finally, 73 percent of residents of the South End are Black, 14 percent are Hispanic, and 6 percent identify as more than one race.<sup>23</sup> In other words, well over half of the evictions which take place in the City of Albany occur in neighborhoods where 80-93 percent of the residents are not white. Thus, the majority of tenants evicted in holdover evictions are Black, Hispanic, or multiracial.

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<sup>21</sup> "Map of Race and Ethnicity by Neighborhood in Albany," available at <https://statisticalatlas.com/place/New-York/Albany/Race-and-Ethnicity#data-map/neighborhood> (last accessed 3 Apr. 2022).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

In Albany, as throughout New York State and the United States, there is a chasm between the median income of white and BIPOC households. The median income of non-Hispanic white households in Albany is \$54,500, or 129 percent of the median city income; the median income of Non Hispanic white households is \$53,500, or 126 percent of the median city income.<sup>24</sup> The median incomes of Black, Hispanic, and mixed-race households are all \$28,600, or just 68 percent of the median city income.<sup>25</sup> This inequity is apparent on the neighborhood level also. In Arbor Hill, the median household income is \$28,097.<sup>26</sup> In West Hill, the median household income is \$32,762.<sup>27</sup> And in the South End, the median household income is just \$18,936.<sup>28</sup>

Without the Good Cause Eviction Law the combination of poverty, unaffordable housing, and high eviction rates means that these households, communities, and neighborhoods are particularly vulnerable when their leases end, and it means that they are highly unlikely to be able to find affordable housing to replace their lost homes. This law is an important step towards ameliorating the long-term effects of redlining and systemic racism in the most vulnerable neighborhoods of Albany.

#### **IV. In The Midst of a Statewide Housing Crisis Brought on by Policies and Market Forces Overwhelmingly Favoring Landlords, the Rate of Eviction Filings Is Increasing**

New York State is currently in the midst of a housing crisis shaped by market forces and public policy that favor property owners over tenants, and tenants' inability to find affordable housing after an eviction increases the chances of their becoming homeless. The affordable

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<sup>24</sup> "Median Household Income by Race, Albany" Table 8, *available at* <https://statisticalatlas.com/place/New-York/Albany/Household-Income> (last accessed 12 Apr. 2022).

<sup>25</sup> *Id.*

<sup>26</sup> "Map of Household Income by Neighborhood in Albany," *available at* <https://statisticalatlas.com/place/New-York/Albany/Household-Income#data-map/neighborhood> (last accessed 3 Apr. 2022).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

housing crisis predated the COVID-19 pandemic but has been accelerated by it. In the Hudson Valley, an influx of New York City residents moving to the region during the pandemic has increased demand for rental housing and raised median sale prices. For example, in Ulster County, the median sales price for single family homes increased 28.6 percent between July 2020 and July 2021.<sup>29</sup> The county's vacancy rate in 2020 was only 1.81 percent for non-subsidized housing, half of what it was in 2019 (3.51 percent).<sup>30</sup> In non-subsidized apartments, rents increased between 8.6 percent and 11.2 percent in 2020, depending on the number of bedrooms, and rents have skyrocketed by 24 to 30 percent since 2016 (depending on the number of bedrooms).<sup>31</sup>

In New York City, many neighborhoods saw a decrease in asking rents at the start of the pandemic. Two years later, rents are rebounding dramatically, rising 33 percent between January 2021 and January 2022, representing an increase at nearly double the national rate.<sup>32</sup> Increasing rental prices are not limited to wealthy renters in Manhattan: 43 percent of tenants who subsist on wages below the federal poverty line experienced rent increases in 2021, compared to 26 percent of higher-income tenants.<sup>33</sup> This surge reflects the tremendous market pressure in low-income communities of color as 49 percent of low-income Asian tenants and 41 percent of low-

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<sup>29</sup> Sean Lahman, *How is Ulster County's Real Estate Market? Home Prices Rose in July* Poughkeepsie Journal, Nov. 10, 2021, <https://www.poughkeepsiejournal.com/story/news/2021/11/10/gda-average-home-prices-ulster-county-ny/49329943/>,

<sup>30</sup> Burt Samuelson, *Ulster County Housing Survey 2020*, June 2021, at 1, [https://ulstercountyny.gov/sites/default/files/documents/planning/2020\\_Rental\\_Housing\\_Report.pdf](https://ulstercountyny.gov/sites/default/files/documents/planning/2020_Rental_Housing_Report.pdf)

<sup>31</sup> *Id.* at 6

<sup>32</sup> Mihir Zaveri, *Rents are Roaring Back in New York City*, N.Y. Times, March 7, 2022, <https://www.nytimes.com/2022/03/07/nyregion/nyc-rent-surge.html>

<sup>33</sup> Oksana Mironova & Samuel Stein, *Unheard Third 2021*, The Community Service Society of New York, Jan. 2022, 2, [https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Eviction\\_Pressure\\_V2.pdf](https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Eviction_Pressure_V2.pdf).

income Black and Latinx tenants experienced rent increases, compared to 32 percent of low-income white tenants.<sup>34</sup>

Tenants continue to face discrimination based on factors such as their race,<sup>35</sup> receipt of public assistance rental subsidies,<sup>36</sup> and criminal histories.<sup>37</sup> People of color are also more likely to experience economic hardship that makes rent unaffordable.<sup>38</sup> Potential renters are subject to financial requirements such as high income thresholds or credit scores that create a barrier to being able to rent. The chances of finding affordable housing after an eviction are therefore low, and people of color are disproportionately impacted.

While in 2021, eviction filings were low because of state and federal eviction moratoriums and the availability of rent assistance and other types of pandemic-related financial assistance such as unemployment benefits,<sup>39</sup> with the end of the eviction moratorium, evictions are once again increasing. Legal Service organizations have seen an increase in holdover evictions since the beginning of the pandemic as rising home prices created an incentive for landlords to evict longstanding tenants to prepare their properties for sale, and the inflated rental market inspired them to evict in order to try their hand at raising rents. Court data supports our anecdotal experience. In Kingston City Court, for example, according to information received

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<sup>34</sup> *Id.* at 3.

<sup>35</sup> Peter Christensen, Ignacio Sarmiento-Barbieri, and Christopher Timmins, *Racial Discrimination and Housing Outcomes in the United States Rental Market*, NBER Working Paper Series, Working Paper 29516 (2021), [https://www.nber.org/system/files/working\\_papers/w29516/w29516.pdf](https://www.nber.org/system/files/working_papers/w29516/w29516.pdf)

<sup>36</sup> Michelle Phillips, *Housing Bias: New York Crackdown on Steering, Source of Income Discrimination; Best Practices*, National Law Review, (2021), <https://www.natlawreview.com/article/housing-bias-new-york-crackdown-steering-source-income-discrimination-best-practices>

<sup>37</sup> *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, 1-2 (2016), [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

<sup>38</sup> Andrew Aurand, et al., *Out of Reach, the High Cost of Housing* (2021), [https://nlihc.org/sites/default/files/oor/2021/OOR\\_2021\\_Mini-Book.pdf](https://nlihc.org/sites/default/files/oor/2021/OOR_2021_Mini-Book.pdf)

<sup>39</sup> Peter Hepburn, Olivia Jin, Joe Fish, Emily Lemmerman, Anne Kat Alexander & Matthew Desmond, *Preliminary Analysis: Eviction Filing Patterns in 2021*, Mar. 2022, <https://evictionlab.org/us-eviction-filing-patterns-2021/>

from the Office of Court Administration by LSHV in response to a FOIL request, between March 2019 through March 2020, holdovers represented 25 percent of the evictions filed; in the first quarter of 2022 they were 38 percent of evictions. Poughkeepsie saw an increase in the percentage of holdovers from five percent in the year before the pandemic to 22 percent in the first quarter of 2022, and Mt. Vernon experienced an increase from 10 to 22 percent. During the pandemic, the rate of holdover filings skyrocketed, reflecting that even during the eviction moratorium that created disincentives for landlords to file nonpayment evictions, they preferred to forego the opportunity to recover arrears in order to evict tenants through holdovers. In 2021, a full 61 percent of evictions filed in Kingston were holdovers; in Poughkeepsie 24 percent were, and in Mt. Vernon 19 percent were holdovers, all large increases from pre-pandemic levels.<sup>45</sup> In New York City, there were 214,000 active eviction cases as of December 2021, of which 192,000 were non-payment proceedings.<sup>40</sup> Since the expiration of New York's eviction moratorium on January 15, 2022, filings have increased, particularly in communities of color.<sup>41</sup>

Given the state of the housing and rental market and the highly favorable conditions for landlords over renters, there is not enough affordable housing for evicted tenants to rent after being evicted. Low-income tenants facing holdovers are in dire straits – pressured to leave their homes because their landlord is selling their property but having absolutely nowhere else to move. Whatever little rental units are available are being put on the market at historically high rents, which most of our clients cannot afford. Tenants with Section 8 vouchers are unable to find affordable housing, since rents exceed the payment standards for the program, and they risk both becoming homeless and losing their vouchers. The current state of the housing market

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<sup>40</sup> Miranova & Stein, 6.

<sup>41</sup> Eviction Lab, *Eviction Tracking: New York, New York*, <https://evictionlab.org/eviction-tracking/new-york-ny/> (last accessed: April 4, 2022).

therefore incentivizes evictions without cause and can leave tenants homeless once they are evicted because of the limited availability of affordable housing.

**V. Good Cause Eviction Laws Are a Step Toward Leveling the Playing Field Between Landlords and Tenants and Prevent Homelessness**

Good cause eviction laws are widely recognized as a means of addressing the housing crisis and stabilizing neighborhoods. According to the Community Service Society, over half of renters throughout the state will benefit from good cause eviction laws,<sup>42</sup> and in Albany County, as well as in most of the counties in LSHV's service area, approximately two thirds of renters will benefit.<sup>43</sup> An independent report commissioned by the City of Newburgh in response to its housing crisis recommended instituting good cause eviction laws as a means of addressing the crisis.<sup>44</sup>

Jurisdictions outside of New York that instituted good cause eviction laws have seen a decrease in the numbers of evictions filed. In California, a study of cities with good cause laws found that there were statistically significant differences in their rates of eviction compared with cities without these protections, with fewer evictions filed and completed.<sup>45</sup> Good cause eviction laws therefore have a marked impact on promoting housing stability and help even the playing field between landlords and tenants. Requiring good cause for evictions is a small step toward allowing tenants to counter the host of ways that the rental market is stacked against them. A

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<sup>42</sup> Kate Ham, *Good Cause Legislation Would Protect 1.6 Million Households, Nearly 50% of Tenants Statewide*, Sept. 29, 2001, <https://www.cssny.org/news/entry/good-cause-eviction-legislation-protect-rental-households-tenants>

<sup>43</sup> Id.

<sup>44</sup> Greg Maher et al., *Newburgh Housing Report Working Paper II: Housing Policy Framework*, June 4, 2021, <https://www.cityofnewburgh-ny.gov/DocumentCenter/View/1631/Newburgh-Housing-Policy-Framework> at 35

<sup>45</sup> Julieta Cuellar, *Effect of Just Cause Eviction Ordinances on Evictions in Four California Cities*, *Journal of Public and International Affairs*, <https://jpi.princeton.edu/news/effect-just-cause-eviction-ordinances-eviction-four-california-cities>

statewide good cause eviction statute would protect about half of New York State’s households – about 1.6 million households – from sudden eviction, including over 50 percent of renters in counties outside of New York City.<sup>46</sup> By preventing landlords from evicting tenants for no reason, tenants are afforded a measure of housing stability, individuals are not subject to the widespread negative impacts of eviction, and the state is spared the costs of countering these impacts.

**VI. The Good Cause Eviction Law is not Preempted by the RPAPL nor the RPL**

Neither the Real Property Actions and Proceedings Law (“RPAPL”) nor the Real Property Law (“RPL”) preempt the Good Cause Eviction Law. These laws provide procedures that landlords can use to terminate tenancies, when permitted, and then initiate a summary proceeding to evict the tenant.

Article 7 of the New York Real Property Actions and Proceedings Law (RPAPL) authorizes the use of summary proceedings to recover possession of real property. N.Y. Real Prop. Acts. Law § Ch. 81, art. 7 (McKinney 2021). RPAPL § 711 is the general state law that governs evictions in the landlord-tenant context. In addition to ensuring the right to a summary proceeding, RPAPL § 711(1) permits the initiation of a summary proceeding “after the expiration of a tenant’s term.” N.Y. Real Prop. Acts. Law § 711 (McKinney 2021). “After” is notable because it indicates that RPAPL § 711(1) is only operative once a tenant’s term has expired. The State Legislature does not define expiration, nor does the text of the statute explain what causes a term to expire. See N.Y. Real Prop. Acts. Law § 711 (McKinney 2021). Albany’s Good Cause Eviction law defines the grounds for the “expiration of a tenant’s term” and thus is not in conflict with RPAPL § 711 because the law operates prior to the expiration of a tenant’s

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<sup>46</sup> Kate Ham, Community Service Society, *Good Cause Eviction Legislation would protect 1.6 million Households, Nearly 50% of Tenants Statewide*, September 2021

term, rather than after expiration (“after” being the period governed by RPAPL § 711). Courts have upheld local laws that define terms in Article 7 of the RPAPL, even in cases where these local laws narrow the available grounds for eviction. *Rose Towers Realty v. Aviv*, 121 Misc. 2d 1016 [Queens Cty. Civ. Ct. 1983].

Similarly, the Real Property Law does not preempt Albany’s Good Cause Eviction law. RPL §226-c, RPL §228, and RPL §232-c regulate the procedure for terminating a tenancy when otherwise permitted by law, rather than the grounds upon which termination may be based.

Therefore, neither the RPAPL nor the RPL preempt Albany’s Good Cause Eviction law.

#### **VII. The Good Cause Eviction Law is not Rent Control**

Contrary to Plaintiff’s contention, Local Law F is not rent control. Indeed, it bears little relation to New York State’s two systems of rent regulation: rent stabilization and rent control. The Emergency Tenant Protection Act of 1974 (ETPA) [L 1974, ch 574] and the Housing Stability and Tenant Protection Act of 2019 (HSTPA) [L 2019, ch 36] authorize any locality in New York State to enact rent stabilization where the locality determines it has a vacancy rate of less than five percent in a class of housing accommodations and declares an emergency.

Covered apartments are then subject to wide ranging reporting requirements, restrictions, and oversight. Owners must file initial and annual registrations with DHCR including the rent charged (ETPA §12-a). They must offer lease renewals for one or two years at the tenant’s option (ETPA §10). Owners can be hauled before New York State Homes and Community Renewal (HCR) at any time through a formalized tenant complaint process (ETPA §12). They are subject to substantial penalties for failing to provide required services, reducing the services initially offered, or failing to make repairs including rent reductions and prohibitions on rent increases until services are restored (ETPA §7). Additionally, occupants of the apartment who

are qualified family members have the right to take over the lease when the original tenant leaves (9 NYCRR § 2523.5).

Most notably, rent increases under Rent Stabilization are strictly limited to the following: increases set annually by a local rent guidelines board which may be applied to both vacancy leases<sup>47</sup> and renewal leases; increases permitted by a statutory formula for building-wide improvements after application and approval from HCR; increases permitted by a statutory formula for improvements in individual apartment subject to random audit; and increases based on hardship or substantial rehabilitation authorized after application and approval from HCR (ETPA §6). All but one of these increases are outside the discretion of the owner and must be authorized by the local rent guidelines board or HCR (*Id.*). Even where the owner may act independently, the increase is still subject to random audit (ETPA §10-b). Further, owners who willfully charge rents in excess of these authorized increases are liable for treble damages (ETPA §12(a)(1)(b)(ii)).

There are no such restrictions or penalties in the Albany good cause eviction law (Albany City Code §30-328(A)(1)). Owners are free to set an initial rent they believe is appropriate based on the individual circumstances of their property without interference from any independent governing body or state agency. Once that initial rent is set at market rent, the Law establishes a presumption that subsequent increases of five percent are sufficient to reflect normal market changes. If the tenant fails to pay an increase of more than five percent, and a court case ensues, the owner will be subject to a rebuttable presumption that the increase was

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<sup>47</sup> The Housing Stability and Tenant Protection Act of 2019 (chapter 36 of Laws of 2019) eliminated statutory vacancy increases that authorized owners to take between five percent and twenty percent increases between tenancies, with some exceptions. However, owners are still permitted to add the annually adjusted one or two year increases set by the local rent guidelines board to initial leases so long as they have not already increased the rent in the past guideline year, which starts on October 1st. Emergency Tenant Protection Act of 1974 (ETPA) [L 1974, ch 574, sec 10, §4(a-2), as amended].

unconscionable. However, the Court will consider the following in its determination: (1) the affordability of the increase to the tenant; (2) improvements made to the unit or common areas; (3) retaliatory motives; (4) significant market changes; (5) the condition of the unit or common areas; and importantly, (5) any other factor the court finds relevant. Owners will have a full and fair opportunity to demonstrate the reasonableness of their rent increases over five percent. Essentially, owners are allowed to charge any amount that is justified by “market changes” but are prohibited from charging increases that are out of step with the market in order to circumvent the statute’s good cause eviction protections and force tenants out.

In comparison to the heavily regulated rent stabilization statutory scheme, Albany’s Good Cause eviction law is a relatively light form of regulation.

#### **VIII. The Good Cause Eviction Law Is Not a Taking**

Plaintiffs’ facial challenge under the Taking Clause must fail because the Good Cause eviction law is neither a physical taking nor a regulatory taking.

Plaintiffs’ challenge is entirely facial. In New York, “legislative enactments enjoy a strong presumption of constitutionality ... [and] parties challenging a duly enacted statute face the initial burden of demonstrating the statute's invalidity ‘beyond a reasonable doubt.’ Moreover, courts must avoid, if possible, interpreting a presumptively valid statute in a way that will needlessly render it unconstitutional” (*LaValle v Hayden*, 98 NY2d 155, 161 [2002])(citations omitted). The Court of Appeals adopted the *Salerno* test in *Moran Towing Corp v Urbach*, requiring a challenger to establish that there is no circumstance under which the law would be valid<sup>48</sup>. (*Moran Towing Corp. v Urbach*, 99 NY2d 443, 787 NE2d 624 [2003],

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<sup>48</sup> In *Overstock.com, Inc. v. New York State Dep't of Tax'n & Fin.*, 20 N.Y.3d 586 [2013], the Court of Appeals held that there were two tests courts could use, however, the *Salerno* test was less stringent. As Plaintiffs cannot demonstrate that they meet the *Salerno* test, there’s no need to consider the second stricter test.

citing *United States v Salerno*, 481 US 739, 745 [1987]; see also *New York State United Tchrs. ex rel. Iannuzzi v State*, 46 Misc3d 250, 993 NYS2d 475 [Sup Ct, Albany County 2014], *affd sub nom. State United Tchrs., ex rel. Magee v State*, 140 AD3d 90, 31 NYS3d 618 [2016]).

#### A. Plaintiffs' Physical Takings Challenge Fails

The Good Cause Eviction law does not constitute a physical taking because landlords voluntarily rent out their units and thus the law does not compel physical occupation.<sup>49</sup> (see *Yee v City of Escondido*, 503 US 519, 527–29 [1992]). “The government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land” (*Yee*, 503 U.S. at 527). When landlords open their property to tenants, they invite physical occupation. Regulating the terms of tenancies that landlords seek out does not *compel* physical occupation (*Id.* at 529 “When a landowner decides to rent his land to tenants, the government may place ceilings on the rents the landowner can charge or require the landowner to accept tenants he does not like without automatically having to pay compensation.” (citations omitted)). “It is the forced occupation, not the identities of the new tenants or the terms of the leases, which deprives the owners of their possessory interests and results in physical takings” (*Rent Stabilization Ass’n of N.Y.C. v Higgins* (“*RSA*”), 83 NY2d 156, 172 [1993] (alterations and citations omitted)).

The Good Cause Eviction law allows numerous avenues for landlords to evict tenants, including nonpayment of rent, breach of lease, nuisance and owner use. These pathways to

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<sup>49</sup> Plaintiffs cite to *Seawall Assocs. v City of New York*, 74 NY2d 92, 101 [1989] but *Seawall* does not require a finding that the Good Cause Eviction law is a taking. The challenged law in *Seawall* required owners to renovate and rent vacant apartment units, and Courts have expressly distinguished laws like this one where restrictions were imposed on “existing tenancies where the owners voluntarily put their properties to use for residential housing” (*id.* at 105). The Second Circuit twice cited *Seawall* to *reject* taking claims against the Rent Stabilization Law, a much more restrictive regulatory scheme (see *Fed. Home Loan Mortg. Corp. v N.Y. State Div. of Hous. & Cmty. Renewal* (“*FHL*”), 83 F3d 45, 48 [2d Cir 1996]; *Greystone Hotel Co. v City of New York*, 1999 U.S. App. LEXIS 14960, at \*4 [2d Cir 1999]).

repossession mean the Good Cause Eviction law is subject only to regulatory taking analysis because the it does not impose “*absolute* exclusivity of ... occupation” or “*absolute* deprivation of the owner’s right to use and exclude others from the property” (*Southview Assocs. Ltd. v Bongartz*, 980 F2d 84, 93 [2d Cir 1992]). Such conditional occupations are “subject to a more complex balancing process”—that is, regulatory taking analysis—“to determine whether they are a taking. The rationale is evident: they do not absolutely dispossess the owner of his rights to use, and exclude others from, his property” (*Loretto v Teleprompter Manhattan CATV Corp.*, 458 US 419, at 435 n.12 [1982]; *see also Yee*, 503 US at 527–28 (regulatory, not physical taking analysis applied because, among other reasons, the challenged law allowed owners to eventually change the use of their land)).

If the Good Cause Eviction law were repealed today, tenants would still occupy most, if not all, of Plaintiffs’ rental accommodations. Plaintiffs do not assert in their complaint that they wish to evict their current tenants. They simply believe the law would make it more difficult to raise the rent and they may want sometime in the future to remove their current tenants without giving a reason why. Since Good Cause Eviction does not compel a use not already chosen by landlords, it does not have the character of a physical taking. Certainly Plaintiffs have failed to show that it constitutes a physical taking in its application *to every property*, as is required for a facial challenge (*Wash. State Grange v Wash. State Republican Party*, 552 US 442, 449 [2008]). The Court need go no further.

### **B. Plaintiffs’ Regulatory Taking Challenge Fails**

Plaintiffs’ facial challenge to the Good Cause Eviction law claiming a regulatory taking fails no better.

The Court of Appeals has held that to determine whether a regulation is proper or goes “too far” a court must consider the factors identified in *Penn Central Transp. Co. v. New York City*, 438 US 104 [1973] (*Matter of Smith v Town of Mendon*, 4 NY3d 1, 10 [2004]). Plaintiffs do not even attempt to address the *Penn Central* factors – indeed, they say nothing whatever about the economic impact of the Good Cause eviction law, the starting point for all regulatory takings analysis. Instead, Plaintiffs ignore *Smith*, and assert that New York State courts use the older “substantially advances” test.<sup>50</sup> However, in *Consumers Union of U.S. Inc. v State*, 5 NY 3d 327, 357 [2005], the Court of Appeals explicitly cited *Lingle v Chevron U.S.A., Inc.*, 544 US 528, 542 [2005] for the proposition that the “‘substantially advance legitimate state interests’ test ...is not a valid method of identifying regulatory takings.”

The Second Circuit has applied *Penn Central*'s analysis to uphold the Rent Stabilization Law, a much more restrictive regulatory scheme, holding that the RSL has the character of a land-use regulation, not a taking (*Rent Stabilization Ass'n of N.Y.C. v Dinkins*, 5 F.3d 591, 594–95 [2d Cir 1993]; *FHL*, 83 F3d at 48; *W. 95 Hous. Corp v N.Y.C. Dept of Hous. Pres. & Dev.*, 31 F. App'x 19, 21 [2d Cir 2002]). Where, as here, a regulation does not effect “a physical invasion” but “instead merely affects property interests through ‘some public program adjusting the benefits and burdens of economic life to promote the common good,’” it does not amount to a taking (*Lingle*, 544 US at 539 quoting *Penn Cent.*, 438 US at 124). Because Plaintiffs do not attempt to satisfy the *Penn Central* factors necessary for a regulatory takings analysis, their claim fails.

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<sup>50</sup> However, even under the “substantially advances” test, Plaintiffs claim would fail. In *RSA v. Higgins*, the Court of Appeals upheld a law under the “substantially advances” test which required landlords to offer leases to family members of tenants who had vacated or had died. *RSA v. Higgins* 83 N.Y.2d 156, 174 (1993). The Court rejected the argument that this regulation created perpetual tenancies. *Id.* At 172.

### IX. Plaintiffs' Contracts Clause Claim Should Be Dismissed

Plaintiffs' Contract Clause claim is also baseless. To succeed on this challenge, Plaintiffs must show that the Good Cause Eviction law causes "a substantial impairment of a contractual relationship" and is not "justified by 'a significant and legitimate public purpose'" (*CFCU Cmty. Credit Union v Hayward*, 552 F3d 253, 267 [2d Cir 2009] (citation omitted)). Plaintiffs' Contract Clause claims fail because even if the Law substantially impairs existing contracts, the Law appropriately and reasonably serves significant and legitimate interests: keeping tenants in their homes. Plaintiffs cannot legitimately contest these goals' significance and legitimacy (*see Pennell v City of San Jose*, 485 US 1, at 14 n.8 [1988]; *Nordlinger v Hahn*, 505 US 1, 12 [1992]). Nor can they contest that "substantial deference is accorded to the legislature's judgments as to the necessity and reasonableness of a particular measure" (*Buffalo Teachers Fed'n v Tobe*, 464 F.3d 362, 369 [2d Cir 2006]).

Plaintiffs' motion for summary judgment acknowledges that there are no facts in dispute, and therefore adopts the factual allegations in the City's answer. The City of Albany in its answer explains that the purpose of the Good Cause Eviction law is the public housing crisis caused by evictions. Evicted individuals face devastating economic and social consequences. See Respondent's Answer ¶¶ 12-18, Evictions impact a family's health and children's economic attainment. See Respondent's Answer ¶¶ 19-25.

The City of Albany used its police powers to address a public health crisis impacting its citizens. Because the City "is not a party to the impaired contract" and the legislature's reasoning is explicit, these "legislative judgment[s]" are due "significant deference" (*Donohue v Paterson*, 715 F. Supp. 2d 306, 323 [ND NY 2010]). Indeed, courts have held that the stricter provisions of the ETPA and Rent Stabilization Law do not unconstitutionally impair lease contracts (*Freeport*

*Randall Co. v Herman*, 83 AD2d 812, 441 NYS2d 826 [1981], *affd* 56 NY2d 832, 438 NE2d 99 [1982] (“an impairment of contract may be constitutional if it is reasonable and necessary to serve an important and legitimate purpose for the general welfare”); *cf. Farrell v Drew*, 19 NY2d 486, 493, 227 NE2d 824 [1967] (“the protective power of the State be treated as ‘an implied condition of every contract.’”). Plaintiffs contract clause claims therefore fail.

### CONCLUSION

*Amici* respectfully submit that the Plaintiffs’ motion for summary judgment should be denied.

Respectfully submitted,

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**CERTIFICATION OF WORD COUNT**

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court, I hereby certify that the foregoing memorandum of law contains 6,895 words, exclusive of the caption, table of contents, table of authorities, and signature block, and therefore complies with the word count limit under Rule 202.8-b.

s/Ellen Davidson

Ellen Davidson