SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

KENILWORTH HOLDINGS LLC, 21-45 23RD ST. LLC, 39-12 62ND ST. LLC, 42-59 BOWNE ST. LLC, 1369 COLLEGE LLC, 593 PARK PLACE MANAGEMENT INC., 43RD STREET ASSOCIATES LLC, Petitioners-Plaintiffs, -against- NEW YORK CITY RENT GUIDELINES BOARD, Respondent-Defendant.	Index No. 453580/2026

BRIEF OF AMICUS CURIAE MANHATTAN INSTITUTE IN SUPPORT OF PETITIONERS-PLAINTIFFS

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Manhattan Institute for Policy Research (MI) is a nonprofit public-policy research organization incorporated in New York and based in New York City. For nearly five decades, MI and its flagship publication, *City Journal*, have published research and commentary on New York City government and the policies needed to sustain a safe, prosperous, and affordable city. MI fellows, including Eric Kober, Arpit Gupta, Nicole Gelinas, John Ketcham, Daniel Golliher, Jarrett Dieterle, and others, have written extensively on rent control, housing production, land-use regulation, property taxation, public housing, and more.

Over the last six years, that research has focused increasingly on the consequences of rent stabilization. Since the passage of the Housing Stability and Tenant Protection Act (HSTPA), MI fellows have explained how the law has made it more difficult for owners to maintain an aging stabilized housing stock, leading to worse living conditions for tenants and higher rents for market-rate rental units.

MI fellows—in particular, NYU Professor Arpit Gupta, a member of the Rent Guidelines Board—have also written recently about the likely effects of a rent freeze, including how it would jeopardize the financial viability of the most heavily stabilized buildings, reduce funds available for improvements, and increase the risk that taxpayers would eventually be asked to rescue properties made uneconomic through regulation.

MI seeks to help the Court understand how HSTPA has changed the economic circumstances against which Order No. 58 should be judged and how a rent freeze will predictably worsen living conditions for stabilized tenants and harm New York City's broader housing market.

PRELIMINARY STATEMENT

The hard rent controls imposed by the Housing Stability and Tenant Protection Act of 2019 disrupted the economic balance necessary to preserve an aging housing stock while protecting tenants from sudden displacement. HSTPA eliminated vacancy allowances and high-rent deregulation, sharply curtailed rent increases tied to apartment and building improvements, and made the Rent Guidelines Board's annual adjustment the principal remaining mechanism for keeping regulated rents connected to rising costs.

Among the law's many harmful consequences, the Division of Housing and Community Renewal recently estimated that 57,000 stabilized apartments are vacant. David Brand, *57,000 Rent-Stabilized Apartments Sat Empty in NYC, Housing Agency Says*, Gothamist (June 5, 2026). HSTPA makes many stabilized units uneconomical to rehabilitate and return to the market. When regulated revenue cannot support maintenance and capital work, owners defer repairs, reduce investment, and leave apartments vacant rather than rehabilitate them. Stabilized tenants face deteriorating living conditions, while prospective renters face fewer available apartments and greater competition in the unregulated market.

Order No. 58, if allowed to stand, will only accelerate these harmful trends. The freeze will further reduce the resources available to preserve the buildings already under the greatest financial and physical strain. The freeze will also worsen the scarcity that drives New York's housing-affordability crisis. By widening the gap between regulated and market rents, it will give incumbent tenants an even stronger incentive to remain in place, suppress turnover, and direct still more demand into the limited unregulated stock. The immediate benefit will accrue to current stabilized tenants, whose eligibility is not means-tested, while prospective tenants and other renters bear the resulting shortage and higher market rents.

As a quasi-legislative body, the Board is required to make decisions based on a range of factual considerations. N.Y.C. Admin. Code § 26-510(b). Its research reported that operating costs rose 5.3% in the most recent measured year and were projected to rise another 4.1%. NYC Rent Guidelines Board, 2026 Price Index of Operating Costs 3 (2026). Bronx buildings suffered a slight decrease in net operating income (NOI), and pre-1974 buildings with 100% stabilized units in the borough saw NOI plummet by 7.7%. NYC Rent Guidelines Board, 2026 Income and Expense Study 33 (2026). Yet Order No. 58 permits no increase for either one-year or two-year leases.

The Board's determinations ordinarily receive substantial deference, but such deference presupposes the exercise of independent judgment, which the evidence suggests was absent here. The Board majority, appointed by Mayor Mamdani, adopted the precise outcome he repeatedly promised on the campaign trail, despite its own findings concerning rising costs and distress in heavily stabilized buildings. Worse, the Board failed to provide an adequate written explanation justifying a 0% increase.

The Court should, therefore, annul Order No. 58 and remand the matter to the Board for a new determination accompanied by an adequate written rationale justifying its decision based on a reasoned consideration of the evidence and statutory factors.

ARGUMENT

I. A RENT FREEZE WOULD ACCELERATE DISINVESTMENT AND LEAD TO POORER LIVING CONDITIONS FOR STABILIZED TENANTS

Before 2019, rent stabilization broadly reconciled two competing objectives through what economists call "second-generation" rent regulation. *See, e.g.*, Arpit Gupta, *The High Cost of New York's Rent Freeze*, City Journal (June 26, 2026). Guaranteed lease renewals and Board-approved rent increases protected tenants from sudden displacement, while allowing rents to grow enough over time to support investment in and maintenance of privately owned regulated housing.

Beginning in 1993, the state legislature introduced two mechanisms that allowed certain high-rent apartments to exit stabilization. *See* Eric Kober, *It Won't End Well*, City Journal (Summer 2019). "Vacancy decontrol" applied when a vacant apartment's legal regulated rent exceeded $2,000 per month; "luxury decontrol" applied when an apartment renting for over $2,000 per month was occupied by tenants whose combined annual income exceeded $250,000. *Id.* In 1997, the legislature increased vacancy allowances and made both forms of decontrol more broadly available. It further revised the law in 2003 to permit owners, upon lease renewal, to increase preferential rents by more than the percentage authorized by the Board, provided that the resulting rent did not exceed the apartment's legal regulated rent. Together, these provisions allowed regulated rents to adjust toward market conditions and helped buildings generate sufficient capital for maintenance and repairs. *Id.*

HSTPA disrupted that balance. By eliminating or sharply restricting the principal mechanisms through which regulated rents could reflect rising costs and capital investment, the law pushed New York toward a "first-generation" system of hard rent controls, in which rents remain fixed even as the costs of operating and maintaining housing continue to rise. Gupta, *supra.* HSTPA eliminated vacancy allowances and nearly all forms of decontrol. It sharply restricted the rent increases available after owners renovate apartments or undertake major building improvements. *See, e.g.*, NYS Dep't of Homes & Community Renewal, Guide to Rent Increases for Rent Stabilized Apartments: Fact Sheet #26 2–3 (2026).

In eliminating most avenues for owners to recover rising maintenance and rehabilitation costs, HSTPA made deteriorating housing conditions a predictable consequence. *See* Eric Kober, *It Won't End Well*, *supra* ("These limited allowances will probably not meet the needs of many buildings. As the buildings deteriorate, tenants and the city's enforcement arms will try to force improvements, but landlords can't be forced to make investments that don't yield returns.").

The consequences are most serious in older buildings with low rents and few or no market-rate units, as such buildings cannot use higher rents from market-rate apartments to offset losses on regulated units. *See, e.g.*, Eric Kober, *Why Are New York City's Affordable Housing Units Falling Apart?*, City Journal (July 1, 2025).

These buildings nonetheless require periodic capital improvements and ongoing repairs, which have grown costlier over time.

HSTPA also weakened the economic incentive to improve vacant apartments. A substantial apartment rehabilitation may cost far more than the law allows an owner to recover through increased rent. When the legal rent cannot support the cost of the work, the apartment is far likelier to remain vacant, even in a city with a vanishingly low vacancy rate of 1.4%. *See, e.g.*, Nicole Gelinas, *Why Are Many New York Apartments Empty? Rent Laws.*, N.Y. Times (Feb. 17, 2026) ("It makes no economic sense for the property owners to invest the necessary capital to make these apartments livable because of changes the New York State Legislature made to rent regulation laws in 2019."). In fact, the New York State Division of Housing and Community Renewal estimated recently that approximately 57,000 registered rent-stabilized apartments are vacant. Brand, *supra*. Rehabilitation that cannot produce an economically rational return will not occur, worsening the city's housing shortage.

HSTPA has worsened the conditions of pre-1974 stabilized buildings. This deterioration is especially acute in low-rent areas of the city, where buildings are often older, rents were already low when HSTPA's restrictions took effect, and owners lack the ability to cross-subsidize regulated apartments with market-rate units. In 2015, buildings with at least 90% stabilized units had, on average, slightly more than 20 Class C (immediately hazardous) violations per 1,000 residential units; by 2025, that figure had roughly tripled. NYU Furman Center, *Data Brief: Legacy 90%+ Rent-Stabilized Properties*, (Feb. 19, 2026) (Figure 9).

A rent freeze should therefore be understood as a severe constraint imposed on a system that already lacks a mechanism to support adequate maintenance and capital investment. Before HSTPA, an annual Board adjustment operated alongside other mechanisms for recovering vacancy, renovation, and capital costs. Since HSTPA, the annual adjustment has become the principal means by which regulated revenue can keep pace with inflation and rising expenses—even if the permitted increase is inadequate to maintain buildings. *See* Eric Kober, *A Predictable Crisis*, City Journal (Feb. 13, 2024) ("In summary, the 2019 legislation was all about keeping tenants in place—and was indifferent both to housing maintenance and the workforce needs of an economically vibrant city.").

A higher interest-rate environment also amplifies the risk of disinvestment in housing. When major building systems fail, owners must often borrow to finance the necessary capital improvements. *See, e.g.*, John Ketcham & Daniel Golliher, *Yes, Freezing the Rent Is Still Bad Economics*, City Journal Substack (July 22, 2026). When regulated revenue becomes incapable of supporting debt service, access to capital becomes more difficult, discouraging building and apartment renovations. Debt financing can also improve building conditions because lenders, seeking to protect their collateral, often require measures like adequate reserves, regular inspections, and proper maintenance. *Id.*

HSTPA's inflexibility, combined with rising interest rates and the continuing cost of preserving an aging housing stock, magnifies the prospective damage of a rent freeze. If Order No. 58 is upheld, the Board could repeat the same approach in successive years, including throughout the four-year freeze proposed by Mayor Mamdani and beyond.

An extended freeze would rapidly erode the resources available for maintenance and investment, placing the habitability of the stabilized stock at grave risk. Stabilized tenants would not enjoy the same apartment at the same rent. Instead, a rent freeze forces them to accept worse living conditions for the same rent.

The Board's failure to explain how the foregoing conditions could be reconciled with a zero-percent adjustment suggests that it did not rationally weigh the factors required under law.

II. NEW YORK'S HOUSING UNAFFORDABILITY IS PRIMARILY CAUSED BY A LACK OF NEW HOUSING SUPPLY, WHICH A RENT FREEZE WOULD WORSEN

New York's housing-affordability crisis is fundamentally driven by scarcity, but HSTPA and a rent freeze compound the shortage by discouraging turnover in rent-regulated units. Restrictive zoning, high construction costs, protracted and expensive rezonings, inclusionary-housing mandates, and a property-tax system that penalizes large rental buildings have prevented housing supply from keeping pace with demand. *See, e.g.*, Eric Kober, A Constructive Land-Use, Housing, and Economic Development Agenda for Mayor Mamdani, Manhattan Inst. 1–3 (2025). In a healthier market, ample new construction would give renters more choices and allow older apartments to become relatively less expensive as they compete with newer housing. New York has constrained that process, leaving both old and new apartments scarce and therefore expensive.

New York's post-2019 rent regulation system has made this problem worse by impairing the price signal that encourages property to be put to the highest and best use. *Id.* at 2 ("Housing demand is inflated by rent regulation, which, by suppressing rents, squashes the price signal that would induce some households to move to cheaper housing or to cheaper parts of the country."). As stabilized rents fall further below market rents, regulated tenants have a strong incentive to remain in their units, which reduces the inventory available on the market. *See* Eric Kober, A Predictable Crisis, City Journal (Feb. 13, 2024) ("Households that enjoy regulated, below-market rents tend to stay put, and those units rarely become available to anyone else."). Data from the 2023 Housing and Vacancy Survey show that stabilized tenants remained in the same unit for an average of eight years, whereas unregulated renters remained for an average of only three years. Matthew Murphy et al., *Understanding Different Segments of New York City's Rent-Stabilized Housing Stock*, NYU Furman Ctr. (2026).

As a result, rent stabilization diverts housing demand to the unregulated market, where tenants compete for a limited number of available apartments and drive rents higher. Worse, the larger the gap between regulated and market rents, the more valuable it becomes for an incumbent tenant to remain in place, creating a vicious cycle that pushes market rents higher still. In the words of MI senior fellow Arpit Gupta, New York's housing market is "effectively breathing with only one lung." Gupta, *supra*.

And because rent-stabilized units are not restricted to low-income households, the system protects incumbents without necessarily directing the greatest benefits to households with the greatest need. Those fortunate enough to live in a rent-stabilized unit receive an enormous windfall thanks to a system "that privileges insiders but forces outsiders to pay exorbitant rents." *Id.* The haphazard and irrational nature of this system effectively allocates below-market housing according to luck and connections rather than need. A rent freeze would only amplify these disparities by widening the gap between regulated and market rents.

III. THIS COURT SHOULD NOT DEFER TO AN UNEXPLAINED DETERMINATION AT ODDS WITH THE BOARD'S OWN FINDINGS

The Board's determinations ordinarily receive substantial deference. But deference presupposes that the Board exercised the independent judgment entrusted to it. Where sufficient evidence shows that the outcome was predetermined rather than reached through a good-faith consideration of the statutory factors, due process does not require a court to defer to the resulting decision. As the Court of Appeals has stated, "an impartial decision maker is a core guarantee of due process," and bias can take many forms, "including advance knowledge of facts, personal interest, animosity, favoritism and prejudgment." *1616 Second Ave. Rest., Inc. v. New York State Liquor Auth.*, 75 N.Y.2d 158, 161 (1990).

Mayor Mamdani made repeated and explicit promises to freeze stabilized rents, as recounted by Petitioners-Plaintiffs and the Intervenors supporting them. Indeed, he vowed to make good on his promise by "only appointing those who understand that landlords are doing just fine." Renee Anderson, *Zohran Mamdani*

Ran on a Promise to Freeze Rent. Here's How NYC's Mayor Can Control the Rates., CBS News N.Y. (Nov. 7, 2025).

The Board, while free to afford greater weight to tenant concerns, was not free to ignore the other economic factors, particularly without explaining why a 0% increase remained reasonable despite the circumstances identified in the Board's research. Limitless deference would render provisions of the Administrative Code effectively precatory. N.Y.C. Admin. Code § 26-510(b) requires the Board to consider specified economic evidence before setting annual rent adjustments. The statute protects members (other than the chair) from removal except for cause, indicating a statutory plan designed to insulate the Board from undue political influence. *See* N.Y.C. Admin. Code § 26-510(a). Those provisions would mean little if a mayor could secure a predetermined result through the appointment process and courts were then obligated to defer to it.

The Board and Intervenors supporting it invoke the Board's broad discretion, but under Article 78, arbitrary action "is without sound basis in reason and is generally taken without regard to the facts." *Matter of Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974). That deference is particularly unwarranted here because the Board failed to provide an adequate written explanation justifying its decision in light of the available evidence and testimony.

CONCLUSION

For the foregoing reasons and those stated by Petitioners-Plaintiffs and the Intervenors supporting them, *amicus* respectfully requests that, at a minimum, the

Court annul Order No. 58 and remand the matter to the Rent Guidelines Board for a new determination with a written justification demonstrating that the Board rationally weighed the statutory factors and the economic evidence in the record.

Dated: September 9, 2026

Respectfully submitted,

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CERTIFICATION

I, Cameron Macdonald, affirm under CPLR 2106 that:

This document is being filed by me. I certify under Court Rule 202.8-b that this document has 2,718 words as defined by the rule and complies with the word count.

Dated: September 9, 2026
New York, New York

/s/ *Cameron Macdonald*
Cameron Macdonald