

CONCRETE THOUGHTS

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Q: Will the Supreme Court Hear the Harmon Case?

A: Uncertain, but if it does, expect New York's rent regulation law's to be turned upside down

For years, many participants in the multifamily industry in New York have been looking for a way to phase out rent regulation in the city. This has been a nearly impossible task given that, from Staten Island to Queens, the issue has always been a political third rail.

Many years ago, a prominent and high-ranking state senator suggested that vacancy decontrol would be good policy because it wouldn't displace any existing tenants and would simply allow owners to take rents in vacated units to market levels. In the weeks following his proclamation, he received political opposition and several death threats, and quickly abandoned his position.

Today, we have candidates running for mayor who will not even touch the issue and, in fact, want to make rent regulation even more tenant favorable. At fund-raisers, I often ask whether the food-stamp program should be administered by randomly handing out food stamps to folks

exiting Grand Central Terminal or Penn Station. Candidates look at me like I am crazy and tell me so. Then I ask them why they support handing out a public subsidy like rent welfare (what rent regulation really is) in the same random fashion?



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Shouldn't tenants have to qualify for this public subsidy through a means-testing program? While this may seem like a rational position, every one of the mayoral candidates simply says, "No," without further clarification. One city councilwoman who shall remain nameless even suggested during a recent fund-raising event, "Why don't we means test landlords?"

After losing in state and federal courts, today there is an appeal which the plaintiffs are hoping to get in front of the U.S. Supreme Court.

Jean and James Harmon own, and live in, a small six-unit walk-up brownstone apartment building in Manhattan containing three rent-regulated apartments. The regulated tenants pay rents

about 59 percent below current market levels and the Harmons, who would like to use this space for their own purposes, are unable to. One of the Harmons' tenants pays less than \$1,000 per month for her apartment and owns a home in the Hamptons.

I have read the petition for writ of certiorari in this case and Mr. Harmon, who is an attorney and will be representing himself, does a comprehensive job of making arguments why the case should be heard in front of the Supreme Court. The basis of his position is that rent regulation is unconstitutional.

Mr. Harmon's papers eloquently respond to, and rebut, each of the reasons why the state and federal courts ruled against him previously. The decision of the district court in the second circuit found no merit in the Harmons' claim seeking injunctive and declaratory relief, going so far as to tell the Harmons that they could "sell or demolish their home if they wanted to 'easily escape' rent stabilization." This statement confirms the court's ignorance of the realities of the

Rent Stabilization Law (RSL).

The RSL takes leaseholds from the Harmons and gives the tenants permanent position from a tenure perspective with succession rights allowing them to pass on their RSL interests to others. This alone demonstrates that the RSL is not about affordable housing, as most New York politicians espouse, but all about luck. It is a racket in which property owners and market-rate tenants always lose, and that is a matter of common knowledge.

A big part of the case revolves around the fact that rent control and rent stabilization are supposed to be "temporary emergency responses." The argument is that this cannot be temporary when it is a given that rent regulation will be a perpetual scenario. "Temporary" means that which is to last for a time only, as to distinguish it from perpetual or indefinite in its duration. Temporary is the opposite of permanent. Clearly, rent regulation is not addressing a temporary emergency.

Unless the Supreme Court intervenes, unconstitutional appropriation of private property will

continue without just recourse and without end. The Harmons seek review for this court to decide a constitutional question of national importance that is not yet decided, and to reaffirm the principle that possession is the unyielding test for a physical taking, even under a rent-control regime.

Within two or three months, the Supreme Court will decide if it will hear the case. If it does, and if it decides in the Harmons' favor, it will not directly impact rent regulation statewide, but it would be a decision that would prompt an avalanche of litigation from other multifamily owners that could lead to an orderly elimination of rent regulation through a negotiated vacancy decontrol policy and/or means testing that would restore some equity to an inequitable system.

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