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83 Walker Street  
New York NY 10013

Senator Brian Kavanagh  
250 Broadway  
New York NY 10007

January 14, 2022

Re: Good Cause Eviction Bill S3082

Dear Senator,

I own property within your district, am a member of the Small Property Owners of NY (SPONY) and herewith submit my testimony into the public record against S3082 "Good Cause Eviction".

The number of failings within S3082 are numerous, and many have been addressed at length before so I will concentrate on issues which have received less attention.

S3082 is a form of Universal Rent Control, and the rationale of "Rebuttable Presumption" as an affirmative remedy for economic redress is fallacious. S3082 establishes a maximum cap of 3% per Annum increase or 1.5X the increase in CPI whichever is greater, but establishes that if the owner needs to increase the rent beyond those caps due to increased expenses, they have to prove their rationale of increased expense in court under a format described as "rebuttable presumption". This is a problem, and further problems manifest within this problem.

First, it is a cap on rents, despite all assertions to the contrary. If it is prima facie statutorily illegal to exceed the base percentage numbers in rent increase without entering a court of law to contest it, that is the definition of a cap irrespective of semantics. A price cap is by extension a definition of an effort at price control, ergo S3082 is a Rent Control.

Second it places an unfair burden on the owner. The owner is presumed guilty until proven innocent in the "Rebuttable Presumption" format. Every increase of the owner's expense that might cause them to need to exceed the cap needs to be adjudicated in a court of law, line by line. When a grocer sells an apple, we do not ask the grocer to justify the increase in fuel for trucking, or the farmer for labor, or the chemical company for raw materials for insecticide and fertilizers to produce the apple, we simply pay more for the apple when the grocer demands it. Or we do not buy apples. Imagine the effect on apple production and availability if every increase in that chain of production was required to be justified in court.

3rd, if the cost of adjudication is factored into every “rebuttable presumption” case the real legal cost of securing an increase should in fairness be added to the cost of the increase. Legal fees for “rebutting the presumption” need to be recoverable within the framework of the increase or the cost of “rebutting the presumption” will in many cases exceed the actual cost of the desired necessary percentage base rent increase.

4th, even if the legal fees were recoverable within the ‘rebuttable presumption’, *the initial legal fees expended within the process prior to any theoretical “rebuttable presumption” recovery act as a de facto bar to recovery, and thus attenuate or completely nullify its effect as a remedy.*

5<sup>th</sup>, The courts in NY and most specifically within NYC are legendarily pro tenant, so arguing that the Courts are a remedy for every financial short fall an owner experiences under a Good Cause Rent Control cap is a reasonable remedy for fair and equitable resolution is at least worthy of critical reconsideration, and at worst specious.

Finally, much argument took place during the January 7<sup>th</sup> Senate hearing as to the meaning of the bill and whether it represented a price cap on earnings, constituted default Rent Control and the role of “rebuttable presumption” as a remedy. Irrespective of your perspective on the definitions and interpretations, if two teams of educated lawyers have 180 degrees opposite interpretations of the same law, it is a very clear indication that the law is not well written and ambiguous. This deficiency needs addressing.

S3082 is in my opinion a fundamentally unjust and flawed bill, and should not be made into law.

Sincerely,

Eric Dillenberger