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

TAX EQUITY NOW NY LLC,

Plaintiff,

-against-

CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF FINANCE; STATE OF NEW YORK; and NEW YORK OFFICE OF REAL PROPERTY TAX SERVICES,

Defendants.

Index No. _____

Date Purchased: April 25, 2017

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys an answer to the complaint in this action within 20 days after the service of this summons, exclusive of the date of the summons, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer or appear, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. Venue is proper in this county pursuant to New York Civil Practice Law & Rules ("CPLR") CPLR §§ 503 and 504. Defendant City of New York is a domestic municipal corporation within the State of New York. Defendant New York City Department of Finance is an instrumentality of the City of New York with its principal office at One Centre Street, New York, New York 10007. Defendant State of New York with its office of the Attorney General at 120 Broadway, New York, New York 10271. Defendant New York State Office of Real Property Tax Services is a division within the

New York State Department of Taxation and Finance, an instrumentality of the State of New York, with its principal office at New York State Department of Taxation and Finance, Office of Real Property Tax Services, W.A. Harriman State Campus - Building 8A, Albany, New York 12227. Venue is also appropriate because Plaintiff Tax Equity Now NY LLC, is a New York association with its principal place of business in New York, New York.

Dated: New York, New York
April 25, 2017

LATHAM & WATKINS LLP

By: _____

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COMPLAINT

Plaintiff Tax Equity Now NY LLC, by its undersigned attorneys, Latham & Watkins LLP, alleges for its Complaint as follows:

NATURE OF THE ACTION

1. For over two decades, New York City's political leaders and independent analysts have acknowledged, repeatedly, that the City's property tax system is fundamentally unfair and inequitable, imposing substantially unequal tax bills on similarly valued properties that bear little relationship to properties' actual market values.

2. "The city's tax set-up is widely acknowledged to be irrational, unjust and absurdly complex . . . ." Dana Rubinstein, *An Indescribable System, Threatened*, POLITICO, Apr. 2, 2014 [Exhibit A]. As numerous City Council officials have explained, "the current system is rife with inequalities, with properties of similar value having very different tax bills." Michael Howard Saul, *New York Council Proposes to Overhaul Property Taxes: New Commission Would Make System More Equitable*, WALL ST. J., Apr. 23, 2014 [Exhibit B]. Mayor de Blasio recently acknowledged the same, acknowledging that "there are obvious inequities in [the property tax

system]." Anna Sanders, *De Blasio Will Reform Property Tax System Only If He's Re-Elected*, SILive.com, Apr. 19, 2017 [Exhibit C]. The City's own Department of Finance, which is responsible for the property tax system's administration, likewise has criticized the system as a source of profound "unfairness and inequity." Yoav Gonen, *New Finance Commish: City Property-Tax System Needs Change*, N.Y. POST, Apr. 9, 2014 [Exhibit D].

3. The City's property tax system is not merely inequitable and antiquated, it is *unlawful*. It violates core state and federal constitutional and statutory mandates that require that property taxes be imposed "uniform[ly] within [each property] class," and reflect a "fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc." *Allied Corp. v. Camillus*, 80 N.Y.2d 351, 356 (1992); *Foss v. Rochester*, 65 N.Y.2d 247, 256 (1984).

4. New York City's property tax system brazenly violates these fundamental legal requirements, systematically imposing disparate tax obligations on similarly situated property owners, and shifting the City's tax burden from favored to disfavored groups, rather than on the basis of any rational or equitable connection to their properties' actual market values.

5. *First*, the City's property tax system imposes wildly unequal tax burdens upon similarly valued properties within the same property class in violation of article XVI, section 2 of the New York Constitution and section 305(2) of the Real Property Tax Law – which require equalization and uniformity of assessments within each property class – as well as state and federal equal protection guarantees. *See, e.g.*, *Foss*, 65 N.Y.2d at 259; *Allegheny Pittsburgh Coal Co. v. County Com.*, 488 U.S. 336, 345 (1989).

6. Although the Court of Appeals has made clear that "[t]he integrity of any system of taxation, and particularly real property taxation, rests upon the premise that similarly situated

taxpayers pay the same share of the tax burden," *Foss*, 65 N.Y.2d at 254, the City's own Independent Budget Office has acknowledged that the City's property tax system "guarantees that similar properties will face widely different tax burdens depending on where they are located in the city." George Sweeting, Deputy Dir., New York City Indep. Budget Off., Testimony to the New York State Assembly Comm. on Real Property Taxation (Jan. 2016) [Exhibit E]. Even *identically* valued single-family homes in different neighborhoods within the same borough may be taxed at rates *400% or more apart*. *See id.*; Gonen [Exhibit D], *supra* ¶ 2 (recognizing "[e]qually situated people" within the same class are "treated differently").

7. Meanwhile, multi-million dollar homes in some neighborhoods are taxed at similar or even lower rates than far less valuable homes in other neighborhoods. *See, e.g.*, Greg B. Smith, *New York City Property Tax System Favors the Rich, Hits Lower Classes Harder, News Investigation Finds*, N.Y. DAILY NEWS, Sept. 28, 2013 [Exhibit F] (comparing $6,900 tax bill imposed on $462,000 home with $6,200 tax bill imposed on $2.5 million home). Thus, "[o]wners of million-dollar homes in Park Slope . . . pay less than owners of more modest properties in Canarsie or Bedford-Stuyvesant." Dana Rubinstein & Sally Goldenberg, *The Council's Vanishing Property Tax Commission*, POLITICO, Dec. 8, 2014 [Exhibit G]. Even the head of the City's own Department of Finance has "acknowledged that homeowners with high-valued units sometimes pay far less in taxes than those with modestly priced homes." Gonen [Exhibit D], *supra* ¶ 2.

8. New York City's property tax system also imposes flagrantly unequal tax burdens between and among cooperatives, condominiums, and rental apartments – notwithstanding that all are grouped within a single property class and required to be *uniformly* assessed. *See* N.Y. REAL PROP. TAX LAW ("RPTL") § 1802(1) (McKinney 2010).

9. As the well-respected Furman Center for Real Estate & Urban Policy at New York University (the "Furman Center") recently explained, New York City's property tax system not only "generate[s] enormous and persistent disparities in the taxes paid by condo and co-op owners across neighborhoods," but also provides for "radically different tax treatment of equally valuable properties, depending on the use of the property and the form in which it is owned." *See* FURMAN CENTER, SHIFTING THE BURDEN: EXAMINING THE UNDERTAXATION OF SOME OF THE MOST VALUABLE PROPERTIES IN NEW YORK CITY 5 (2013), *available at* http://furmancenter.org/files/FurmanCenter_ShiftingtheBurden.pdf; FURMAN CENTER, STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS 2011 8 (2011), *available at* http://furmancenter.org/files/sotc/SOC_2011.pdf.

10. In particular, reflecting decades of politically driven choices benefiting the owners of cooperatives and condominiums at the expense of rental property owners and their tenants, the City's property tax system pervasively undervalues cooperatives and condominiums, and unlawfully shifts their share of the City's property tax burden to rental property owners within the same property class, who in turn typically pass along those higher tax burdens to their renters. *See, e.g.*, STATE OF NYC'S HOUSING, *supra* ¶ 9, at 4; Ben Hallman, *New York Property Taxes Unfair to Renters, New Evidence Shows*, HUFFINGTON POST, May 8, 2012 [Exhibit H].

11. Relying on an interpretation of the Real Property Tax Law that cannot be reconciled with New York's constitutional requirements, the City refuses to tax cooperatives or condominiums based on their actual market value. The City instead taxes them based on artificial and often nonsensical comparisons with the income generated by similarly aged rental properties – even though the income from such (often nonexistent) comparative rental units would be artificially constrained by rent regulation, while the actual market value of cooperatives

and condominiums is not. Under this framework, the City will value some $4,500 per square foot cooperatives as if they were rent-regulated apartments worth $188 per square foot. *See* SHIFTING THE BURDEN, *supra* ¶ 9, at 2.

12. The resulting inequities are staggering. The Furman Center recently identified dozens of individual cooperative *units* that were sold in 2012 for a greater amount than the invented value that (for purposes of taxation) the Department of Finance assigned to the entire *building*. *See id.* at 4. Such property owners therefore enjoy a far lower effective tax rate than that imposed on others within the same class. In one Upper East Side building, the Department of Finance in 2012 valued all 66 units in the building together at $41 million, even though *just one* of those units sold for $54 million. *See id.* at 4. Similarly, the Department of Finance valued an entire 68-unit building at 960 Fifth Avenue at only $48.5 million, even though one unit sold in May 2014 for $70 million – resulting in an effective tax burden of just *.06%* of the sales price for that unit. The average renter within the same property class bears the expense of an effective tax rate over *66 times* higher. *See* STATE OF NYC'S HOUSING, *supra* ¶ 9, at 11.

13. The unequal burdens imposed on condominiums and cooperatives compared to rental properties are further exacerbated by an abatement program through which the taxes applicable to condominiums and cooperatives – but not rental properties – are reduced by up to 28 percent, widening the gap between the relative tax burden imposed on condominiums and cooperatives on the one hand, and rental apartments on the other.

14. The persistent undervaluation of some of the most valuable cooperative and condominium properties in the City results in massive under-taxation of some of the City's wealthiest citizens, and ultimately shifts the burden to renters, who can ill-afford to subsidize their more affluent neighbors.

15. That favoritism is problematic not only because it violates state and federal constitutional mandates that require members of the same property class to be treated equally, but because it is deeply inequitable and regressive, hurting those who can least afford to be heavily taxed: Renters have the lowest median income of any group of residential unit occupants, yet rental property owners and (by extension) their tenants pay the highest effective tax rate in the City.

16. As the Furman Center has explained, "[t]he burden of the undervaluation of co-ops and condos therefore falls on families already struggling to afford housing in New York City. Tenants . . . are also much more likely to be black or Hispanic and to have children than co-op and condo owners, so the burden of undervaluation may threaten the city's ability to attract and retain a diverse range of households." SHIFTING THE BURDEN, *supra* ¶ 9, at 7. Not only are co-op and condo owners (who are predominately white) treated preferentially to renters (who are predominantly black and Hispanic), the market values of co-ops and condos in predominately white neighborhoods receive more favorable tax treatment than similar co-ops and condos in predominately minority neighborhoods. *See* Rubinstein [Exhibit A], *supra* ¶ 2. In the end, the City's property tax system imposes the lowest Class Two tax rate on those most able to afford it – co-op and condo owners in rapidly appreciating, predominately white neighborhoods. Counterintuitively and irrationally, the City's property tax system therefore forces its least wealthy residents, living in less gentrified, predominantly minority neighborhoods, to subsidize multi-million dollar co-ops and condos elsewhere in the City.

17. *Second*, the City's property tax system is unlawful because it imposes arbitrary tax burdens that bear no rational or equitable relationship to a property's market value, in violation of state and federal due process and equal protection guarantees, as well as the

longstanding state law requirement that property taxation reflect a "fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc." *Allied Corp.*, 80 N.Y.2d at 356.

18. New York City property is valued and taxed pursuant to a muddle of assessment caps, state laws, and politically driven City policies aptly described by one New York University law professor as "a morass of indecipherable and indefensible legal lunacy." Rubinstein [Exhibit A], *supra* ¶ 2.

19. Notwithstanding the requirements of state law, the City's property tax scheme makes no attempt, rationally and neutrally, to determine each property's "fair and realistic" market value or to require each property owner to "contribute equitably to the public fisc." Instead, properties are taxed at artificial and largely arbitrary effective rates fundamentally divorced from the actual value of real property in the City. This results in drastic and unjustifiable interclass and intraclass disparities that discriminate based on neighborhood, wealth, race, and political power.

20. As the City's own Department of Finance has acknowledged, the core rules that drive taxation in New York City today were not designed to promote fair or accurate assessment of a property's market value. Instead, they were expressly designed to "codif[y] historical *inequities* in assessment practices." Michael Hyman, First Deputy Comm'r, New York City Dep't of Fin., Written Testimony Before the N.Y. State Assemb. Standing Comm. on Real Prop. Taxation 6 (Jan. 22, 2013) [Exhibit I] (emphasis added). Because the rules reflect longstanding political "rationales to protect groups of [favored] property owners," *id.* at 3, at the cost of others, and value "properties by methods that are artificial and not used by property owners when they

buy and sell," *id.* at 4, the City's tax system imposes systematically arbitrary and inequitable tax burdens bearing no rational relationship to a property's true market value.

21. The tax disparities are glaring among New York City's property classes – one, two, or three-family homes ("Class One"); other larger residential properties such as cooperatives, condominiums and rental apartment complexes ("Class Two"); utilities ("Class Three"); and commercial properties ("Class Four"). Based on the Finance Department's market values, although Class One properties now make up nearly 47% of the market value of all properties in New York City, they pay less than 15% of the taxes. Class Four commercial properties, in contrast, now make up only 26% of Finance Department market value yet pay almost 42% of the taxes. "Class 3 utilities [similarly] pay a higher percentage of the tax levy than their market value share." *See New York City's Real Prop. Taxation System: Public Hearing Before the N.Y. State Assemb. Standing Comm. on Real Prop. Taxation*, 55:21-24 (Jan. 22, 2016) (statement of Michael Hyman, First Deputy Comm'r, New York City Dep't of Fin.) [Exhibit J]. Meanwhile, "rental properties . . . pay a higher effective tax rate than owner-occupied properties" and "a higher tax rate than co-ops and condos." *Id.* [Exhibit J], at 32:5-8, 41:5-6.

22. Absurdities abound. "[H]igh-end properties tend to pay probably *lower* effective tax rates than low-end properties," such that "the highest value properties in the city [are] probably being subsidized by everyone else." *Id.* [Exhibit J], at 31:18-20, 53:2-4 (emphasis added). Winners under the City's property tax system pay, on million-dollar homes in neighborhoods like Park Slope or Carroll Gardens, a small fraction of the tax rate paid by the tenants of $800/month studio apartment rentals in the Bronx. *See* Rubinstein [Exhibit A], *supra* ¶ 2.

23. This shifting of the tax burden away from wealthier homeowners and onto the backs of less wealthy property owners and renters bears no rational relationship to actual property values. There is no legitimate justification – let alone one comporting with New York's constitutional requirements – for the gaping and growing disparities between a property's market value and tax bill.

24. *Third*, the unlawful practices described above impose disproportionate and lopsided financial burdens on racial minorities, while perpetuating longstanding patterns of segregation within the City – all in violation of the Fair Housing Act.

25. The City's unequal allocation of the property tax burden over-assesses Class 1 properties in majority-minority and super-majority (over 60%) minority districts by $1.9 *billion* per year, forcing residents in those districts to pay $376 million more in taxes ($844/year for the average property owner) than they would if they were assessed at the same rate and paid the same effective tax rate as homeowners in majority-white districts. Similarly, minorities constitute 72% of those community planning districts whose Class 2 properties are most disadvantaged by the City's property tax system, while whites constitute a majority of those of those community planning districts that are most advantaged. Such results disproportionately harm minorities in New York City and perpetuate segregation by discouraging mobility into or away from many of the City's most segregated neighborhoods – which are likewise among those most disadvantaged by the current property tax system.

26. These results unabashedly violate core requirements of state and federal law. They are anathema to due process and equal protection. They are the product of a fundamentally flawed property tax system almost universally condemned as unjust, irrational, and systematically discriminatory: "a crazy quilt constructed with little obvious rationale." Howard

Husock, *It's Time to Fix New York City's Insane Property Taxes*, N.Y. POST, Jan. 28, 2016, [Exhibit K].

27. It is no wonder, therefore, that when the present system was proposed, it was denounced by the State Board of Equalization and Assessment (the predecessor to today's Office of Real Property Tax Services) as a "dangerous piece of legislation" that violated guarantees of equal protection and due process and would "institutionalize discriminatory assessment practices against all property owners." Letter from Robert L. Beebe, N.Y. State Bd. of Equalization and Assessment, to Hugh L. Carey, Governor, State of N.Y., RE: Senate Bill No. 7000-A, at 1-2 (Nov. 5, 1981) [Exhibit L]. Its rejection was likewise urged by the sitting Governor, then Lieutenant Governor Mario Cuomo, the State Comptroller, the New York State Association of Counties, the New York Conference of Mayors and Municipal Officials, the New York AFL-CIO, the League of Women Voters of New York State, the Citizens Budget Commission, and others.

28. Although, as the present City Council speaker recently put it, "[w]e all know the property-tax system is unfair," Greg David, *Disputed Tax Break Should Never Have Been Necessary*, CRAIN'S NEW YORK: GREG DAVID ON NEW YORK (May 8, 2016, 12:01 AM) [Exhibit M], calls for political reform over the last three decades have fallen on deaf ears because elected officials have deemed the political costs of fixing the City's broken property tax system too high. *See, e.g. id.* ("[A] few high-ranking officials in the Bloomberg administration wanted to attempt property-tax reform, but the mayor never was willing to take on the issue. After all, the only way to do that would be to raise taxes on homeowners to benefit renters."); Sally Goldenberg & Gloria Pazmino, *Mark-Viverito on the Fading Priority of Property Tax Reform*, POLITICO, Feb. 26, 2016 [Exhibit N] ("Two members of the [property tax] task force who would speak only on

background said they believed the de Blasio administration pushed Mark-Viverito to shy away from focusing on property taxes. . . '[A]ny mayor would be hesitant to take that on, especially the year before an election.'"); Ruth Ford, *Why Property Tax Reform Keeps Stalling*, HABITAT MAG., Mar. 22, 2016 [Exhibit O] (noting admission by Manhattan Borough President that property tax reform efforts are uncommon because reform is "just too political"); Anna Sanders [Exhibit C], *supra* ¶ 2 (Mayor de Blasio explaining that it would be "[o]bviously the most controversial thing you could possibly imagine, if you open up the entire property tax system in New York City, shine a light on it and talk about how to restructure it and to be more fair."); NEW YORK CITY INDEP. BUDGET OFF., TWENTY-FIVE YEARS AFTER S7000A: HOW PROPERTY TAX BURDENS HAVE SHIFTED IN NEW YORK CITY 12 (2006) [hereinafter IBO REPORT], http://www.ibo.nyc.ny.us/iboreports/propertytax120506.pdf ("Without another court ruling or some other external prod, [reform] is not a minefield many legislators in Albany, or City Hall, appear ready to brave."); Hyman Test. [Exhibit J], at 29:13-30:18 (noting "part of the problem" making reform difficult is that "reform is going to produce winners and losers").

29. In short, as the Chairwoman of the New York City Council's Housing Committee recently put it, "[t]he whole tax assessment system is broken . . . . Everybody knows it and nobody is doing anything about it." Lois Weiss et al., *City Property-Tax Bills Soar Amid Surging Real Estate Market*, N.Y. POST, Jan. 16, 2015 [Exhibit P].

30. New York's courts historically have acted to strike down longstanding and unlawful inequalities within the property tax system when New York's political leaders have failed to address them. *See Hellerstein v. Assessor of Islip*, 37 N.Y.2d 1 (1975) (directing township to modify assessment practices that for decades had violated the RPTL). As the Court of Appeals has explained, "plain and clear provisions of a Constitution . . . must not be

smothered by the accumulation of customs or violations." *Id.* at 10 (quoting *Wendell v. Lavin*, 246 N.Y. 115, 120 (1927)).

31. For too long, City and State leaders have allocated the City's tax burden in an irrational and unjust manner that flagrantly violates the requirements of state and federal law. New York City's arbitrary, inequitable, and unlawful property tax system can and should be declared invalid – not to alter the overall amount of taxes that the City collects, but to ensure that the way in which it collects those taxes is equitable, nondiscriminatory, and lawful.

32. Accordingly, Plaintiff seeks a declaration that the City's property tax system violates article XVI of the New York Constitution, the Equal Protection and Due Process Clauses of the New York and United States Constitution, Section 305(2) of the New York Real Property Tax Law, and the federal Fair Housing Act, as well as a permanent injunction against the unlawful and discriminatory exaction of property taxes in New York City.

THE PARTIES

33. Plaintiff Tax Equity Now NY LLC ("TENNY") is an association committed to pursuing legal and political reform to address the inequity and illegality of New York City's property tax system. Members of TENNY include owners and renters of real property – including single-family homes, condominiums, cooperatives, and rental properties – who are harmed by New York City's property tax system, including residents of all five boroughs whose properties are taxed at arbitrary and disproportionate rates compared to other property owners within and outside their property class elsewhere in New York City. In addition, TENNY members include organizations dedicated to securing equal treatment and economic justice for minority residents of New York City, such as the Black Institute, whose members include minority homeowners and renters harmed as a result of the fact that the City's property tax system imposes disproportionate financial burdens on minority residents, discriminates against

minority-majority neighborhoods in which members live, and perpetuates segregation within the City. TENNY has dedicated substantial financial resources to researching, identifying, and publicizing the unfairness and illegality of New York City's property tax system.

34. Defendant the City of New York (the "City") is a domestic municipal corporation located within the State of New York.

35. Defendant New York City Department of Finance ("the Department of Finance") is an instrumentality of the City of New York, established and organized pursuant to Chapter 58 of the New York City Charter. Its principal office is located in the County of New York at One Centre Street, New York, New York 10007.

36. Defendant State of New York is a political body organized under the New York State Constitution.

37. Defendant New York State Office of Real Property Tax Services is a division within the New York State Department of Taxation and Finance, an instrumentality of the State of New York. Its principal office is located at New York State Department of Taxation and Finance, Office of Real Property Tax Services**,** W.A. Harriman State Campus - Building 8A Albany, NY 12227.[1]

JURISDICTION AND VENUE

38. This court has jurisdiction over this action pursuant to CPLR § 3001.

39. Venue properly lies in New York County pursuant to CPLR § 504.

[1] Defendants City of New York and the New York City Department of Finance are collectively referred to on occasion as "the City" or "the City Defendants." Defendants New York State Office of Real Property Tax Services and the State of New York are collectively referred to on occasion as "the State" or "the State Defendants."

BACKGROUND

I. The City's Property Tax System

40. In most jurisdictions, the taxation of real property is transparent, equitable, and straightforward: the market value of real property is assessed and a uniform tax is imposed. New York City's convoluted property tax system is the opposite: opaque, unfair, and byzantine.

41. New York City's property tax system today is the product of a labyrinthine interplay of state and local laws and policy choices resulting in the unequal, irrational, and racially discriminatory assessment and taxation of New York City's residents.

42. For more than 200 years, New York municipalities assessed real property at a fraction of full value. Over time, residential properties gradually became assessed at a lower percentage of current market value than commercial properties, and the burden of real property taxation shifted disproportionately from owners of residential properties to owners of commercial properties. A de facto dual system of taxation developed.

43. In 1975, in *Hellerstein v. Assessor of Islip*, 37 N.Y.2d 1 (1975), the Court of Appeals held that former section 306 of the Real Property Tax Law required that all property be assessed at full value and that fractional assessments were, therefore, invalid. In response, the State Legislature repealed former section 306 and added a new section 305 that permits fractional assessment at a *uniform* percentage of value or, for New York City and Nassau County, at a uniform percentage within each of four – and only four – statutorily defined classes.

44. The Legislature contemporaneously divided assessable properties in New York City and Nassau County into four classes, N.Y. REAL PROP. TAX LAW § 1802, as follows:

> Class One: One-, two-, and three-family homes and condominium buildings that were built as condominiums and have three or fewer units.
>
> Class Two: All other property that is primarily residential, such as cooperatives and larger condominiums.

Class Three: Property, with equipment, owned by a gas, telephone, or electric company.

Class Four: All other property such as office buildings, factory buildings, and vacant land that is not zoned residential.

45. Property taxes are now calculated within each class by the City pursuant to a multi-step, patchwork process that varies among and within classes and results in the inequitable and substantially artificial valuation and taxation of property throughout the City.

46. **Step One: Calculate The Market Value.** After categorizing a property into its appropriate tax class, the Department of Finance each year calculates the market value of the property using one of three approaches: (1) Comparable Sales Approach; (2) Income Approach; or (3) Cost Approach.

47. Under the Comparable Sales Approach, the value of a parcel is determined by using recent sales of similar properties as a benchmark. Under the Income Approach, the value of a parcel is determined by capitalizing actual rental income. Finally, the Cost Approach assesses the value of a property based on the cost of reproducing the construction on the parcel and adding its land value. The Cost Approach is used generally for unique new construction for which there is no clear comparison, and certain special purpose properties (i.e. churches, museums, etc.).

48. New York's courts have explained that "commonly the most accurate standard is provided by the sales prices of comparable properties located within the same or similar competitive area in which a parcel being assessed is located." *Merrick Holding Corp. v. Bd. of Assessors*, 45 N.Y.2d 538, 542 (1978). Where there exists an "absence of sufficiently reliable market data," however, "alternative methods, such as income capitalization or, where necessary, reproduction cost, may be employed." *Id*. The approach chosen is supposed "to assure that, in providing for public needs, the share reasonably to be borne by a particular property owner is

based on an equitable proportioning of the fair value of his property vis-à-vis the fair value of all other taxable properties in the same tax jurisdiction." *Id.* at 544.

49. Although the Comparable Sales Approach is recognized to be the most accurate instrument for measuring market value of owner-occupied residential property, and the one utilized by the City for establishing the market value of most Class One property, the City has interpreted state law to preclude it from using that approach to value condominiums and cooperatives.[2] Instead, the City assesses those properties under the Income Approach, arbitrarily valuing condominiums and cooperatives not by the actual market value at which the properties could be bought or sold, but rather based on a fictional guesstimate of what a comparable property could charge for rent.

50. The Department of Finance frequently deems older condominiums and cooperatives "comparable" to older rental properties that are subject to rent stabilization. Because rent stabilization artificially limits the income affected properties can generate, condominiums and cooperatives compared to rent-stabilized properties are often assigned a market value dramatically different from their real market value, resulting in their systematic undervaluation and undertaxation relative to other property. *See infra* at ¶ 125.

51. **Step Two: Determine The Assessment Ratio.** The next steps facilitate calculating the "assessed value" for each property in New York City. The assessed value of a

[2] RPTL section 581 provides that cooperatives and condominiums with at least four units (*i.e.*, those in Class Two) should be assessed "at a sum not exceeding the assessment which would be placed upon such parcel were the parcel not owned or leased by a cooperative . . . or on a condominium basis." In other words, it mandates that cooperatives and condominiums not be over-assessed as compared to other types of apartment buildings. In the City's view, section 581 precludes the City from utilizing the Comparable Sales Approach to valuing condominiums and cooperatives. Section 581 is discussed in more detail, *infra*, at ¶¶ 118-19, *et seq.*

property is calculated based on the property's market value, an assessment ratio set annually by the Department of Finance, and certain assessment rules set by state law.

52. As relevant here, the assessment rules limit the amount by which the assessed value of a property may change from year to year. *See* RPTL § 1805(1)-(2). For Class One properties, a property's assessed value cannot increase more than 6% per year and 20% in 5 years. For Class Two properties, if the number of units in a property's building is 10 or fewer, a property's assessed value cannot change more than 8% per year and 30% in 5 years. These "assessment caps," however, do not apply to new construction or improvements. State law also imposes no limit on the amount by which the assessed value of a Class Two property in a building with 11 or more units may increase annually.

53. Within Classes Two and Four, changes in assessed value are phased-in over a five-year period. During each year, the assessed value on which taxes are based may take into account 20% of the change in assessed value occurring during the prior year. During that five-year adjustment period, the property's assessed value is considered its "transitional assessed value."

54. The assessed value used by the Department of Finance to calculate the taxes imposed on property owners within Class Two and Four is the lower of a property's assessed value or transitional assessed value.

55. To the extent that the Department of Finance does not change the assessment ratio as required by law, the assessment caps can introduce disparities into the relationship between a property's market value and its assessed value, such that owners of properties with similar market values encounter wildly different tax burdens.

56. To appreciate assessment caps' practical impact, consider the following example. Suppose that in year one, two new Class One properties are each valued at $100,000. Assume that the City maintains an assessment ratio of 6%. Each property in year one would have an assessed value of $6,000 – the market value of each property multiplied by the 6% assessment ratio.

57. Now imagine that in year two, Property A appreciates 15% to a market value of $115,000, while Property B only appreciates 6% to $106,000. Assume that the assessment ratio remains constant at 6%. If there were no assessment cap, the assessed value of each property would rise in proportion to the amount by which that property's market value appreciated. Property A's year two assessed value would increase 15% from $6,000 to $6,900, reflecting an assessed value equivalent to Property A's year two market value ($115,000) multiplied by the 6% assessment ratio. ($115,000 X 6% = $6,900). Meanwhile, Property B's year two assessed value would increase 6% from $6,000 to $6,360, reflecting an assessed value equivalent to Property B's year two market value ($106,000) multiplied by the 6% assessment ratio. ($106,000 X 6% = $6,360). In such a scenario, each property would be assessed at a uniform rate as compared to its actual market value such that each property owner would ultimately bear a relative tax burden proportionate to the market value of her property.

58. The assessment caps, however, limit the extent to which the assessed value of a property can rise as its market value appreciates, with the result that more rapidly appreciating properties are taxed at lower effective rates. The 6% assessment cap, for instance, prevents the assessed value of a property from increasing by more than 6% annually. As a result, in the example above, in which each property has an assessed value of $6,000 in year one, the assessed value of each property can rise at most by 6% or $360 in year two (year one assessed value of

$6,000 X the 6% assessment cap = $360). Even though Property A is more valuable than Property B in year two, having increased in market value by 15% rather than 6%, both properties would for taxation purposes be assigned the same assessed value – $6,360. If both properties continue to appreciate at the same rates described above for ten years, and the Department of Finance does not alter the assessment ratio, Property A would appreciate to nearly twice the market value of Property B, but the Department of Finance would continue to assign an identical assessed value to both properties. That would lead to grossly inequitable results, leading the owner of Property A to pay a much lower effective tax rate (*i.e.*, a property's tax as a share of its market value) than Property B.

59. Adjusting the assessment ratio can reduce or prevent that inequality and promote uniform assessment and taxation. By lowering the assessment ratio, the City could reduce the sharp disparities that otherwise emerge under New York City's property tax system as different properties' market values appreciate at different rates.

60. Consider again two new Class One properties that are each valued at $100,000 in year one. Assume that the City's assessment ratio is 6%. Each property in year one would again have an assessed value of $6,000 – the market value of each property multiplied by the 6% assessment ratio.

61. Now suppose that in year two Property A again appreciates 15% to a market value of $115,000, while Property B only appreciates 6% to $106,000. As explained, if the assessment cap remains at 6%, the assessed value of Property A would rise only from $6,000 to $6,360 (Property A's year one assessed value of $6,000 X the 6% assessment cap = $360). Even though Property A is now more valuable than Property B, both properties would be assigned the same assessed value.

62. Reducing the assessment ratio would prevent that unequal result. Suppose that the City reduced the assessment ratio from 6% to 5% in year two. Now, Property A would be assigned an assessed value of $5,750 in year two (Property A's $115,000 year two market value multiplied by a 5% assessment ratio), while Property B would be assigned an assessed value of $5,300 (Property B's $106,000 year two market value multiplied by a 5% assessment ratio).

63. As a result, the properties' year two assessed values would now equitably reflect that the market value of both properties appreciated at different rates. In year two, as in year one, the two properties would be assessed at the same uniform *rate* as compared to their actual market value. As a result, each property owner would ultimately bear a consistent tax burden proportionate to the market value of her property. That is what the law requires.

64. Importantly, the assessment caps restrict only the amount by which a property's *assessed value* may increase in a year, not the amount by which the ultimate tax imposed by the City may increase or decrease. Reducing the assessment ratio need not result in lower tax revenue, therefore, because the City could simply increase the tax rate, *see infra* at ¶ 86, so that the overall revenue generated by the property tax remains constant. The primary effect of reducing the assessment ratio is thus not to alter the amount of revenue generated by the property tax, but to ensure that it is distributed equitably, as required by law.

65. The City is legally obligated by RPTL section 738 and N.Y.C. Admin. Code § 11-212, among other provisions, to adjust the assessment ratio or level of assessment within each class to reflect the market, and to ensure that assessments are uniform within each tax class and that the resulting taxes are equalized.

66. By adjusting the assessment ratio or level of assessment, other jurisdictions have worked to maintain and promote a uniform rate of taxation consistent with the requirements of

state and federal law. Indeed, Nassau County, the only other New York State jurisdiction with the same rules as the City, has done just that. *See O'Shea v. Bd. of Assessors*, 8 N.Y.3d 249 (2007). Nassau County has regularly lowered the assessment ratio for Class One and Class Two properties in the years since the current real property tax statute was enacted to maintain uniformity in accordance with the requirements of state law. For example, the assessment ratio for Class One in Nassau County, which was 6.2% in 1985/86, has been adjusted downward numerous times since, and is now 0.25%, while formal tax rates have increased to ensure that the overall levy remains consistent. *See id.* (noting that Nassau County halved the assessment ratio while doubling the tax rate, such that those who were "paying less than [thei]r equitable share of the residential portion of the tax levy" were made to bear a fairer share). The assessment ratio for Class Two in Nassau County, which was 10% in 1985/86, is currently 1%. It too has been adjusted downward numerous times since the statute was implemented to maintain the legally-required class uniformity.

67. As the Court of Appeals explained in *O'Shea*, the result of Nassau County's actions has been to "bring assessed values in line with market values . . . in order to reduce accumulated and significant tax disparities between poorer and more affluent residential areas, without changing the tax burden of the residential class as a whole." 8 N.Y.3d at 261.

68. Like Nassau County, the City has lowered the assessment ratio in the past to comply with the law's uniformity requirement. After the State Legislature enacted the current system in response to *Hellerstein*, the Class One assessment ratio was about 25%. It was lowered to 18% in 1985, and then to 12% in 1989. In 1992, the ratio was lowered to 8%, and then in 2004 to the current 6% ratio. Although the City should have continued, when and as necessary, to lower the assessment ratio to ensure uniformity, the City has consistently and

consciously shirked their responsibility to set assessment ratios in a manner that provides for uniform assessment and taxation within each class. Instead, the City has sat idly by and allowed gross disparities to develop in the valuation and taxation of properties within and between property classes, boroughs, and neighborhoods.

69. **Step Three: Calculate The Assessed Value.** Once the City sets the assessment ratio, the assessed value of each property is calculated as set forth above: a property's market value is multiplied by the assessment ratio set by the Department of Finance, and adjusted to ensure compliance with the assessment caps set by state law.

70. **Step Four: Apply The Exemptions.** A property's assessed value is further adjusted by any applicable property tax exemptions to determine its "taxable assessed value." The City and New York State offer several exemptions to individual owners that reduce the assessed value of a property – not unlike the effect of an IRS-permitted deduction on one's personal taxes. A property's ultimate *taxable* assessed value may therefore be (and often is) less than its assessed value.

71. **Step Five: Set The Tax Rate.** The City Council sets the tax rate to be applied against each property's taxable assessed value to determine a property's tax.

72. The City Council first determines its target real property tax revenue or yield – the overall amount of money it needs to raise from property taxes – by subtracting all other revenues it expects from its budget for the following year. It then determines the actual "levy," which includes the amount of revenue targeted by the City in addition to a reserve to cover the cost for uncollectible amounts, including for people who will not or cannot pay their taxes or who may be entitled to refunds. Thus, for fiscal year 2017, the City imposed a property tax levy of $25.8 billion, reserved almost $1.8 billion, and hopes to yield revenue of more than $24 billion.

73. The City Council next must ensure that its levy complies with article VIII, section 10 of the New York Constitution, which provides that New York City may impose a property tax for operating expenses[3] of no more than 2.5% of the average total market value of all property in the City over a five-year period, as estimated by New York State.[4]

74. Finally, and importantly, the City Council must determine the tax rate to be imposed on property within each class – a determination highly dependent on the overall share of the tax burden allocated by the City to property owners within each class.

75. The process by which the City Council determines how much of its tax burden to allocate to property owners within each class is highly political and largely arbitrary, bearing no rational relationship to the City's responsibility to impose taxes according to a "fair and realistic value of the property involved." *Allied Corp.*, 80 N.Y.2d at 356.

76. Under S-7000A – the bill enacted in response to the *Hellerstein* decision in 1981 – the allocation of the City's tax burden among different tax classes was supposed over time to track the relative distribution of property market value among each class.

77. The drafters of S-7000A envisioned that each property class would continue at first to bear roughly the same proportion of the overall tax burden as it had in the past. NEW YORK DIVISION OF THE BUDGET REPORT ON 7000-A (Nov. 10, 1981) [Exhibit Q]. Then, to alleviate existing disparities and accommodate future alterations in the profile of New York City real estate, the drafters envisioned that existing inequities in the City's tax system would be

[3] The portion of the property tax levy that is used to pay for debt that the City incurs is not limited.

[4] The State separately estimates the total market value of all property in New York City, which may (and does) differ from the City's assessment of the total market value of all property in New York City. The state's calculation determines the denominator used by the City Council when determining the constitutional limit with respect to the amount it may raise through the property tax in a given year.

ameliorated through continual and gradual changes over time in the percentage of the overall tax burden that each class paid.

78. S-7000A authorized the New York City Council to increase or decrease the share of the tax burden allocated to each property class by up to 5% of its existing share per year. *See O'Shea*, 8 N.Y.3d 249, 254 (2007) ("In general, article 18 authorized a special assessing unit to fix class shares using the tax roll for the 1981-82 levy, with leeway to increase or decrease shares in subsequent years up to five percent to accommodate changes in the roll or new construction . . . ."). In other words, if the share of New York City's tax burden apportioned to Class One properties in Year One was 10%, the share of the tax burden allocated to properties in Class One could grow by no more than 0.5% in Year Two (5% of 10%).

79. The Legislature envisioned that the City Council would modify each class's share of the tax burden so as to track changes in each class's share of property value, with the expectation that any existing disparity in 1981 would shrink over time and perhaps even eventually disappear. The City Council took the opposite tack, however. Although Class One properties steadily (and, at times, dramatically) increased in value relative to other property classes, the City Council did not increase Class One's share of the tax burden to match. Instead, prioritizing the interests of homeowners at the expense of other residents, the City Council each year shifted the burden *away* from Class One property owners by as much as the 5% maximum permitted by state law.

80. In 1989, the State Legislature attempted to address the increasingly inequitable and arbitrary treatment of taxpayers outside Class One by revoking the City Council's discretionary authority to adjust each class's share of the City's tax burden.

81. Present-day RPTL section 1803-a now *requires* the City Council to adjust the percentage of the tax burden paid by each class each year in accordance with changes in the relative value of each class.

82. The intent of this requirement, like the intent of the original requirement authorizing adjustments to class shares, was that each class's relative share of the tax burden would, over time, reflect each class's relative share of the overall property value in the City. Had this been accomplished, intraclass disparities might remain, but the disparity between each class's market value and the share of taxes that each class plays would have shrunk over time and eventually would have disappeared.

83. In practice, however, City officials and state legislators have enacted annual legislation preventing the tax burden from shifting as intended. As a result, dramatic disparities persist between each class' relative market value and the share of the City's tax burden that it bears.

84. In 2009 and 2010, for example, the Legislature eliminated the City's ability to change the allocation of the tax burden among the four classes. Upon information and belief, the City Council and the Mayor at the time requested these statutory amendments in order to keep the share of taxes paid by Class One property owners from rising, even though those homeowners already enjoyed effective tax rates far lower than owners of other properties. In most other years, the Legislature has enacted legislation authorizing only minor adjustments to each class's share of the tax burden for the same reason.

85. As a result, disparities and inequities between each class's relative tax burden have widened rather than narrowed over the last three decades. Today, taxpayers in Classes Two, Three, and Four largely subsidize Class One taxpayers, and each class bears a total share of

the City's tax burden that is wholly divorced from any sort of reasoned or equitable relationship to each class's relative share of New York City's overall property market value.

Class	2017 Share of Total Market Value	2017 Class Share of Tax Burden
1	46.6%	14.9%
2	24.1%	37.3%
3	3.0%	6.0%
4	26.2%	41.8%

86. Once the City has determined the share of the total property tax allocated to each class, the tax levy, and the assessed value of property within each class, calculating the "tax rate" becomes a matter of mathematics. Each class is allocated a share of the City's desired tax levy according to its "class share," as calculated above. Applying that class share to the overall levy determines the amount of taxes that the City must raise from each class. That goal is then divided by the total taxable assessed value of all property within that class to determine the tax rate that must be imposed on each class. At present, tax rates range from 10.574% of assessed value for Class Four to 19.991% of assessed value for Class One.[5]

87. **Step Six: Determine The Tax Bill, Subtract Any Abatements.** After a property's market value is calculated, the assessment ratio determined, the assessment caps and other rules applied, the exemptions accounted for, the class share constraints employed, the levy calculated, and the tax rate determined, the abatements applicable to that property must be identified. Only then can the tax bill and resultant effective tax rate attributable to any one property be determined.

[5] Taxes as a percentage of full value are considerably lower for Class One, despite the slightly higher tax rate, because the assessed value on which the tax rate is applied is so much lower (6% of full value, as opposed to 45% of full value).

88. Unlike exemptions, which are akin to income tax deductions, abatements are akin to income tax credits: they result in a dollar for dollar reduction of the tax burden imposed on a particular property.

89. A selective abatement favoring condominium and cooperative owners has addressed certain perceived disparities between the effective tax rates imposed on certain properties while exacerbating others. Created in 1996, the Cooperative and Condominium Property Tax Abatement Program has substantially reduced many cooperative and condominium owners' tax burden relative to the owners (and, consequently, the renters) of other Class Two properties.

90. Although this abatement was intended to be a temporary patchwork fix, the City has effectively converted it into a permanent benefit.

91. As the City's own Independent Budget Office has recognized, "'fixes' such as the co-op and condo tax abatement ha[ve] *added* to the disparities and complexities of the property tax system in New York City." IBO REPORT, *supra* ¶ 28, at 12 (emphasis added).

92. The Independent Budget Office has "documented major shortcomings with the abatement." *Id.* at 34. In particular, the abatement "does nothing to standardize assessments for co-ops and condos so that the disparities caused by the differences in the extent of the section 581 discount persist. Simply abating an equal percentage of unequal tax burdens does nothing to fix the disparities among apartment owners." *Id.* The abatement also exacerbates existing geographic disparities in the allocation of the City's tax burden. And in many cases, the rough justice of the abatement has only reversed inequities between Class One and Class Two taxpayers, "provid[ing] a benefit that is larger than what is needed to remove the difference in tax treatment between Class 1 and Class 2." *Id.*

93. Because the abatement favors condominium and cooperative owners, who are more likely to be white, relative to renters, who are more likely to be minorities, the abatement imposes racially disparate tax burdens, effectively requiring minorities to bear a disproportionate share of the tax burden imposed within Class Two.

94. The tortuous and contrived process by which New York City's residents' properties are assessed and taxed results in massive disparities between and within classes. Although those unequal and unlawful results are the product of both state and local action and inaction, neither the City nor the State has acted to fix the key drivers of disparity and inequality within New York City's property tax system.

95. That New York City's property tax system produces unfair and unlawful results would come as no surprise to those who bore witness to its creation.

96. New York's then-sitting Governor *vetoed* the legislation underpinning the current property tax system, explaining that "it does not provide for a fair, equitable and reasonable system of real property taxation." *N.Y. State Assembly S-7000A Veto Override Debate*, at 13,545 (Dec. 3, 1981) (message from Hugh L. Carey, Governor, State of N.Y.) [Exhibit R].

97. New York's State Board of Equalization and Assessment (today the State Board of Real Property Services), likewise denounced that legislation when it was proposed, because it would impose "an apparently unconstitutional, highly confusing, incredibly complex 'system' designed for the preservation of the *status quo*" that "fails to satisfy both Federal and State constitutional equal protection provisions" and "appear[s] to run afoul of the Federal and State guarantees of due process of law." Letter and Memorandum from Robert L. Beebe, N.Y. State Bd. of Equalization and Assessment, to Hugh L. Carey, Governor, State of N.Y., RE: Senate Bill No. 7000-A [Exhibit L], at 6, 43, 44.

98. The Board further explained that "the result of [the property tax system ultimately put into law] would be to protect those property owners who are currently benefited by inequitable assessment," enshrining a property tax system that would "not only institutionalize the existing inordinate disparity [among properties] but exacerbate it." *Id.* [Exhibit L] at 6, 24.

99. As set out in the next section, those predictions have proven accurate.

II. The City's Broken Property Tax System Produces Unjust and Arbitrary Outcomes

A. The City's Property Tax System Causes Widespread Disparities Among Similarly Situated Property Owners Within The Same Property Class

100. As the Court of Appeals has explained, New York's Constitution "mandates that assessments within the various assessing units must be equalized for taxation purposes." *Foss*, 65 N.Y.2d at 259 (citing N.Y. CONST. art. XVI, § 2). The creation of distinct property classes within the City is permissible only to the extent that "the taxes imposed are *uniform* within the class." *Id.* at 256 (emphasis added); *see also Hellerstein*, 37 N.Y.2d at 8 ("[A]n assessment . . . above the average rate [presents] a rather obvious violation of equal protection."). Likewise, pursuant to section 11-212 of the City Administrative Code, the City's Commissioner of Finance is directed to fix the valuations of properties throughout the City so as to "establish a just and equal relation between the valuations of property in each borough and throughout the entire city."

101. As the City's own Independent Budget Office has acknowledged, however, the City's property tax system "guarantees that similar properties will face widely different tax burdens depending on where they are located in city." *See* Sweeting Testimony [Exhibit E], *supra* ¶ 6. The City's imposition of substantially disparate burdens on similarly situated properties within the same class flagrantly violates federal, state, and local law requirements.

1. Unequal Assessments Within Class One

102. Contrary to the requirement that assessments within Class One be uniform, tax burdens vary wildly within the class, even on properties appraised at exactly the same value.

103. By virtue of the assessment caps and the City's steadfast failure to equalize the taxation of property by reducing assessment ratios within each class, properties of similar market value are frequently assessed and taxed at dramatically different effective rates that produce illogical and inequitable results, including the imposition of *higher* tax burdens on *lower*-valued Class One properties in certain City neighborhoods and *lower* tax burdens on *higher*-valued properties in other City neighborhoods.

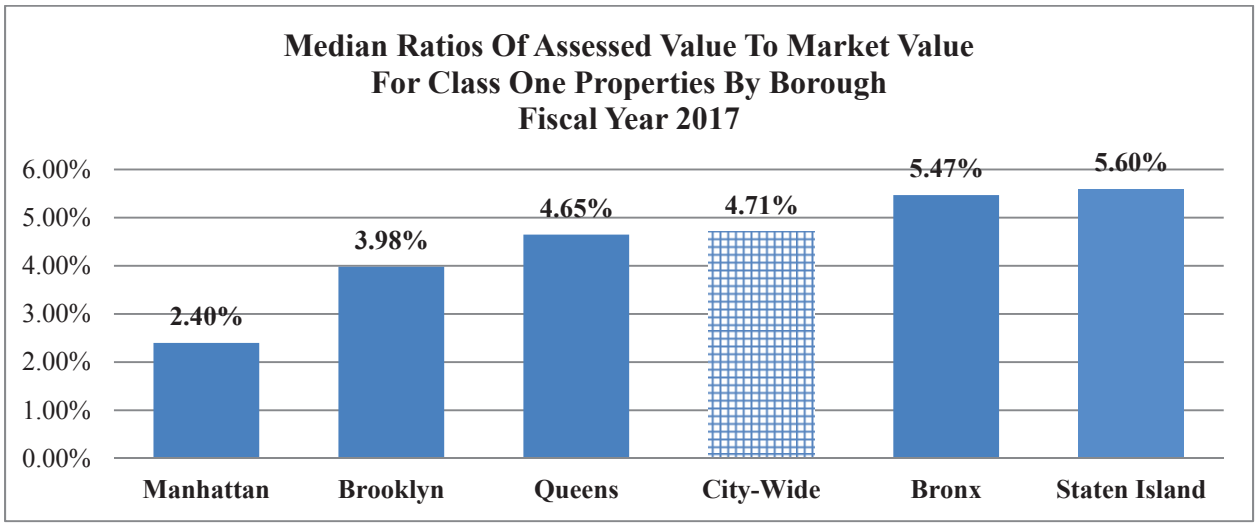
104. These inequalities are exacerbated by the differing treatment accorded older and newer properties. Homes that existed when S-7000A took effect in 1981 were automatically assigned their then-assessed values, which locked in preexisting disparities. Meanwhile, properties built after 1981 were assessed anew. Because of assessment caps, and the inapplicability of assessment caps to new construction, two comparably valued properties even within the same neighborhood will experience substantially different tax burdens depending purely on when those properties were built.

105. The City's policy and practice of treating renovations and improvements differently from other increases in property value further aggravates these disparities. While the caps constrain the amount by which a property's assessed value may otherwise increase, the caps are inapplicable to renovations and improvements. As a result, two identical homes located next door to one another, each of which made the exact same improvements at different times over the last 20 years, may bear significantly different tax burdens.

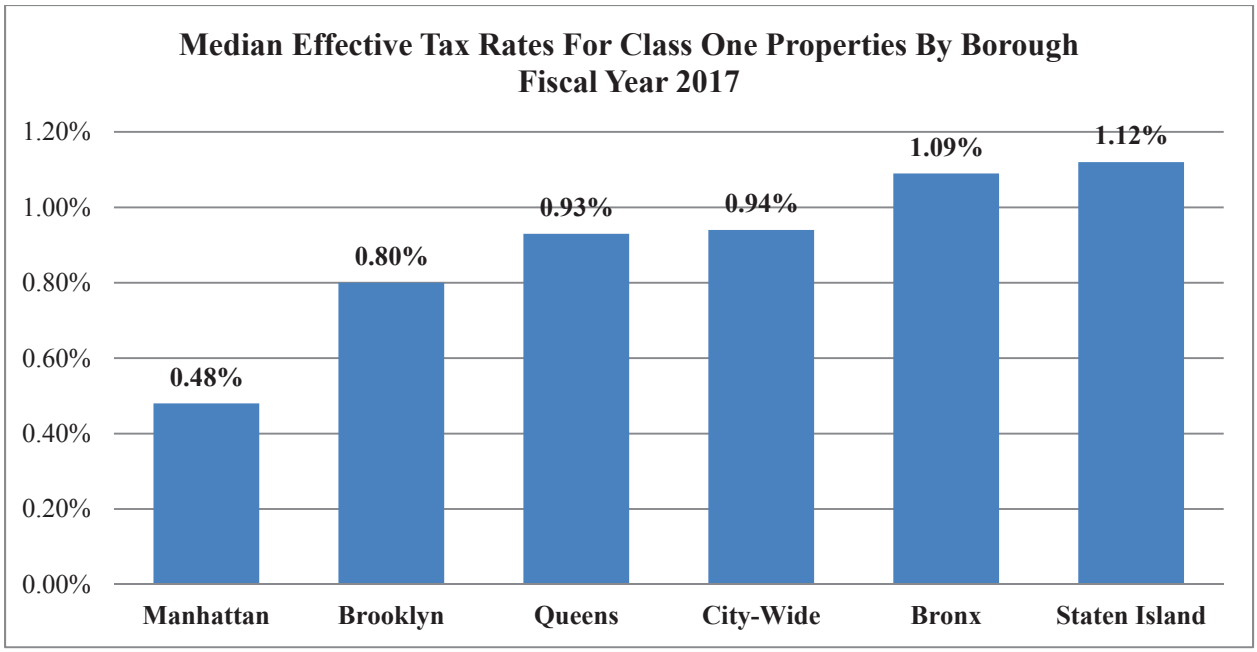
106. The above policies and practices result in systemic inequities between the taxation of properties in different locations and of different ages throughout the City.

107. By any measure, the New York City Class One coefficient of dispersion,[6] a widely accepted measure of assessment uniformity and equity, exceeds acceptable norms in virtually every borough and community.

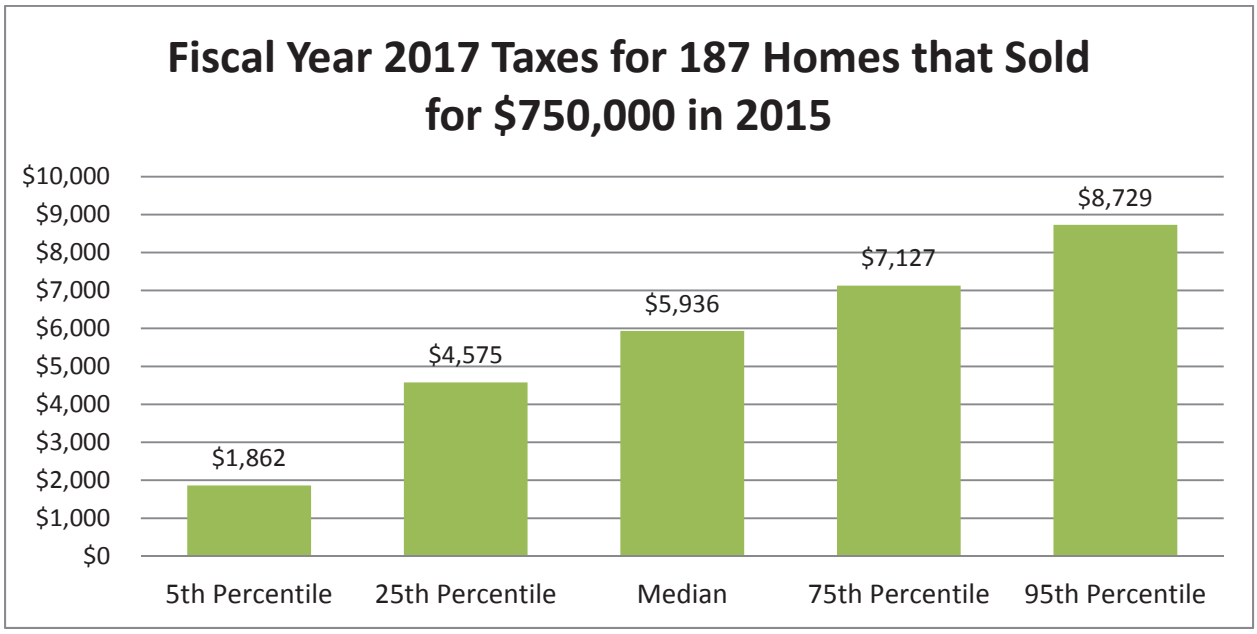
108. The geographic disparities resulting from the City's property tax system are staggering. Effective tax rates in some boroughs or neighborhoods are several times those imposed elsewhere in the City. For example, the average owner of a home on Staten Island pays more than *double* the effective tax rate paid by the owner of a home in Manhattan. Homeowners in Brooklyn, Queens, and the Bronx are also over-taxed in comparison to those in Manhattan.

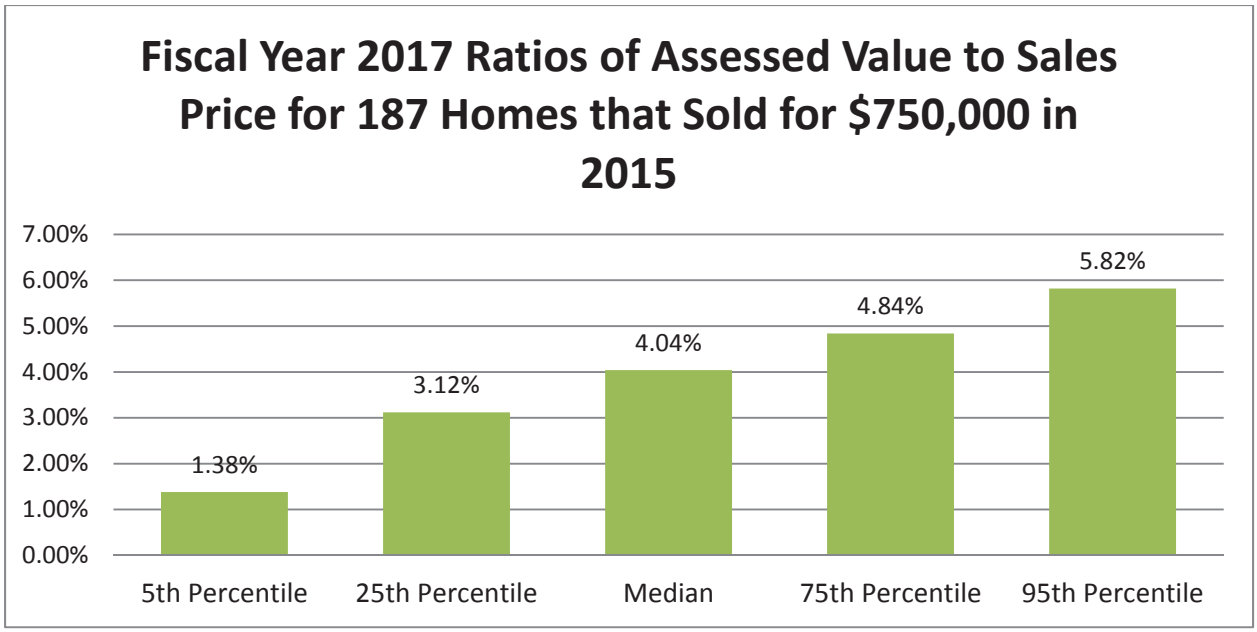


[6] The coefficient of dispersion is a tool used to calculate assessment uniformity for a property group. Roughly speaking, the coefficient of dispersion examines the magnitude by which property assessment ratios deviate from the median ratio in the assessing jurisdiction.

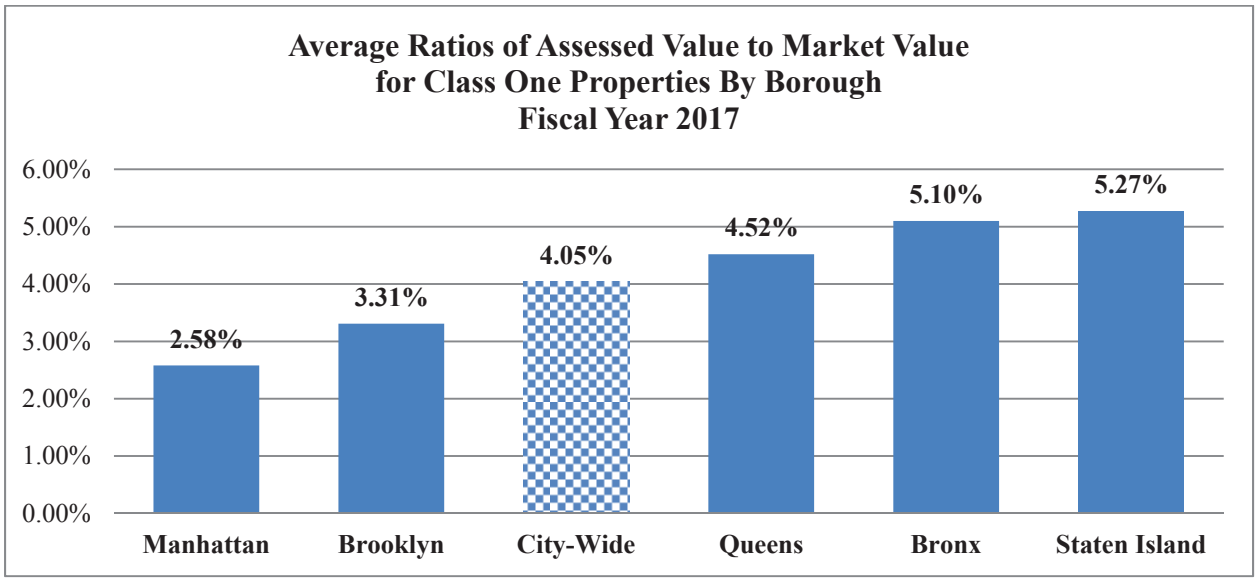


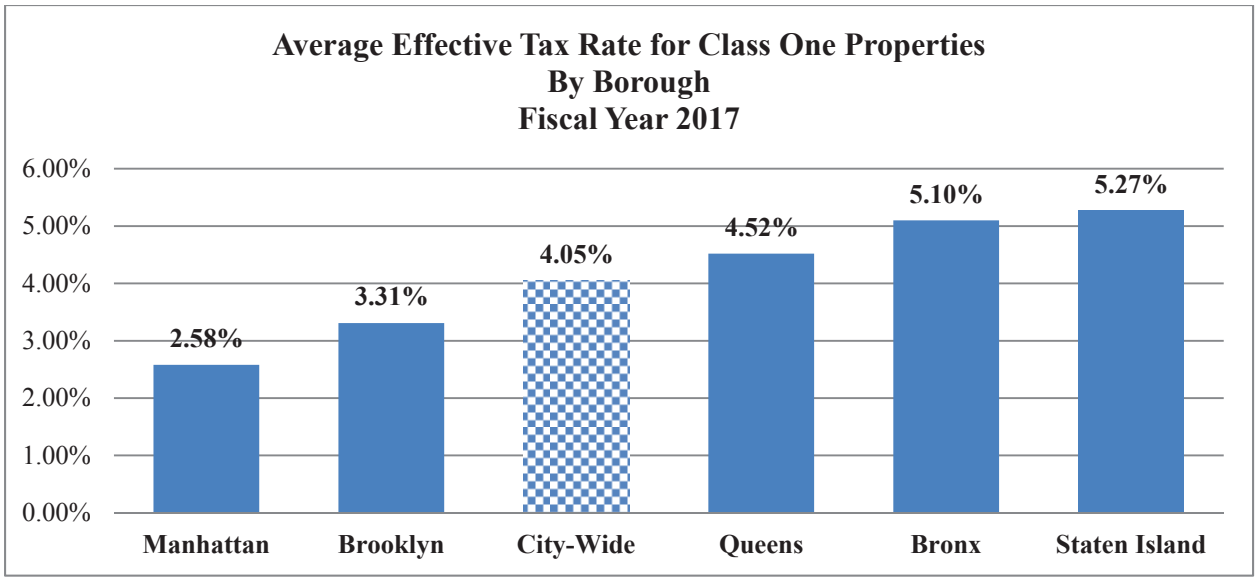
109. Properties selling for identical prices are assessed at substantially different values and, thus, pay substantially different taxes. For example in 2015, 187 Class One properties sold for $750,000. Despite the uniform sales price, the Department of Finance valued the properties for as little as $457,300, to as much as $970,500. Taxes ranged from a low of just under $1,900 to a high of over $8,700.





110. The disparities are equally large when comparing the average (rather than median) ratios of assessed value to market value, or effective tax rate paid within different boroughs.





111. The City's tax system produces dramatic inequalities *within* each borough as well. For example, in 2015, 82 of the homes that sold for $750,000 were in Queens. For Fiscal Year 2017, the Department of Finance assigned a market value to those homes ranging from a low of $591,000 to a high of $896,000. The assessed values for the properties ranged from 3.3% to 5.5% of their market value, such that homeowners within the same borough – who purchased homes for an identical amount – pay tax burdens that differ dramatically, from a low of $4,331 to as much as $8,259.

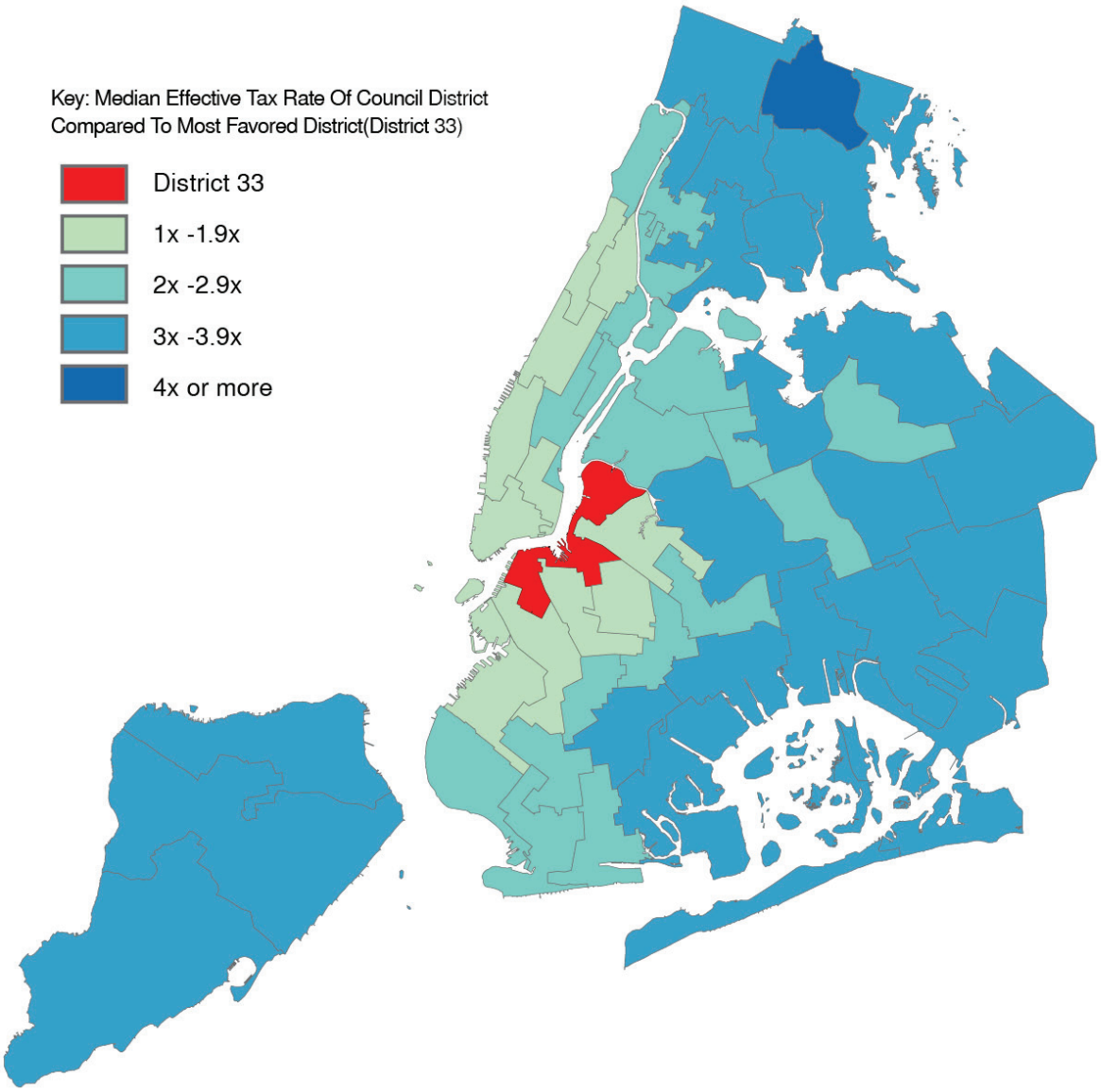
112. The same disparities exist elsewhere. In 2015, 90 of the homes that sold for $750,000 were in Brooklyn. In Fiscal Year 2017, the Department of Finance nonetheless assigned those homes market values ranging from $360,000 to a high of more than $1.1 million, and assessed values that varied wildly from 1.3% to 6.0% of their sales price. As a result, homeowners within the same borough, purchasing homes for the same price, paid property taxes ranging from $1,600 to a high of $9,200.

113. In practice, the City's policies and practices are also deeply regressive, benefitting wealthier taxpayers in quickly appreciating neighborhoods at the expense of less wealthy

taxpayers in slower-appreciating neighborhoods. For instance, properties in Flatlands/Canarsie, a less wealthy, 74% minority district, are assessed on average at a little less than 5.0% of value. By contrast, properties in Park Slope/Carroll Gardens – which is wealthier and 63% white – are assessed on average at only 1.5% of market value. The City thereby imposes over triple the effective tax rate on properties in Flatlands/Canarsie as compared to properties in Park Slope/Carroll Gardens.

114. As the map below makes clear, the City's policies and practices create wild disparities in the effective tax rates imposed on Class 1 properties throughout the City. Counterintuitively, however, many of the wealthiest and most coveted addresses in the City enjoy the *lowest* effective tax rates, while their share of the tax burden is shifted to less wealthy neighborhoods in which properties are less valuable.

Median Effective Tax Rate For Class One Properties By City Council District As Compared to Most Favored Council District



New York City Department of Finance FY'2017 Assessment Roll, New York City FY'2017 Tax Fixing Resolution, and Independent Analysis of Council District, Taxes, and effective Tax Rates

115. Individual homeowners, of course, face effective tax rates that are much higher and much lower than the average rates experienced within a borough, council district, or neighborhood, producing dramatic disparities when the biggest "winners" within the system are compared to the biggest "losers."

116. As the foregoing examples illustrate, the City's property tax system creates dramatic and systematic disparities in the assessment and taxation of similarly situated Class One properties between and within different boroughs throughout the City.

2. Unequal Assessments Within Class Two

117. Although New York law requires that taxes be imposed uniformly within Class Two, the City's policies and practices also unlawfully promote the systematically unequal and largely arbitrary taxation of Class Two properties.

118. The most dramatic systemic disparities within Class Two stem from the City's interpretation and application of RPTL section 581(1)(a). That law provides that cooperatives and condominiums with at least four units (*i.e.*, those in Class Two) should be assessed "at a sum not exceeding the assessment which would be placed upon such parcel" were it "not owned or leased by a cooperative corporation or on a condominium basis."

119. The City "interprets this provision to mean that co-op buildings and condo buildings with at least four units should be valued by the Department of Finance (DOF) as if they were rental properties." SHIFTING THE BURDEN, *supra* ¶ 9, at 2. In effect, the City understands RPTL section 581 to prohibit it from using a comparable sales approach, leading the City instead to apply an income approach that values condominiums and cooperatives based on what a comparable rental building would generate. As the City's own Independent Budget Office has

explained, "[u]sing the income approach almost always results in a lower value than if sales prices were used." IBO REPORT, *supra* ¶ 28, at 17.

120. For several reasons, that practice results in dramatic disparities in the effective tax rates imposed on different properties within Class Two. First, because the comparable rental buildings on which the City relies for its assessment and taxation of cooperatives and condominiums built prior to 1974 largely are *rent-regulated* apartments, the income from which shares no rational relationship to the market value of older cooperatives and condominiums. As a result, most older Class Two cooperatives and condominiums are grossly undervalued and undertaxed relative to their true market value and to rental properties within Class Two.

121. Second, even for properties built after 1974, condominiums and cooperatives systematically receive more favorable tax treatment compared to rental properties. No doubt owing to their greater organization and political power over the years, the owners of condominiums and cooperatives benefit from lower effective tax rates not only because of the City's refusal to apply a more accurate comparable sales approach to property valuation, but also because of assessment caps and abatements that benefit cooperative and condominium owners, but not the owners of rental property.

122. Third, regardless of the age of the properties, the Department of Finance's application of the income approach to condominiums and cooperatives, in practice, has proven arbitrary and inadequate, resulting in unreasoned and irrational disparities between different properties bearing little relationship to their actual market value.

123. Finally, the City's failure to adjust the assessment ratio for Class Two property has exacerbated the disparities introduced by the assessment caps for many properties within the class, resulting in effective tax rates that vary wildly by property to property across different

neighborhoods – just as in Class One. The City's failure to adjust the assessment ratio results in particularly egregious disparities in Class Two because Class Two properties in buildings with less than 10 units are subject to an assessment cap, while those in buildings with 11 or more units are not. *See* RPTL 1805(2). Although a reduction of the assessment ratio would help to address those disparities, *see O'Shea*, 8 N.Y.3d at 258, the City has consistently failed to take that step.

124. For all these reasons, the City overwhelmingly flunks its legal responsibility to uniformly value and tax properties within Class Two.

(i) The City's Approach To Valuing Pre-1974 Cooperatives And Condominiums Introduces Dramatic Disparities

125. As a matter of Department of Finance policy, all cooperative and condominium units constructed before 1974 – a category that includes 98% of cooperative apartments in the City – are valued under the income approach by comparison to rental properties that were built before 1974. Because of the City's rent stabilization laws, this effectively means that older cooperatives and condominiums are compared to buildings whose income is suppressed by rent stabilization, even though those cooperative and condominium units do not and could not qualify for rent stabilization and are, in fact, sold (and rented) at much higher market values.

126. This causes large disparities in the valuation of and effective tax rates applicable to condominiums and cooperatives depending on whether they were built before or after 1973. While the rent charged by a 1973 apartment will have remained artificially suppressed by rent stabilization for four decades, a similar property built one year later has always been free to charge market rates. Although that distinction does not, in reality, impact the value of cooperatives or condominiums, which are not subject to rent stabilization and are bought and sold on the market no differently from a Class One property, it drives significant and arbitrary differences in how those properties are valued under the City's approach. As such, the City's

approach leads to property from 1973 or earlier being valued at a far more modest price even though such property might well share a similar market value to nearly identical property built after in 1974 or later.

127. The Department of Finance's policy ensures that cooperatives and condominiums built before 1974 not only enjoy assessed values and effective tax rates dramatically lower than similarly appraised properties built in 1974 or later, but also that they are taxed at rates bearing no rational relationship to their actual market value. For instance, according to the Elliman Report – a leading New York real estate market resource – more than 5,000 condominium units sold between January and December 2014 in Manhattan at an average sales price of almost $1,600 per square foot. *See* ELLIMAN REPORT, MANHATTAN DECADE: 2005-2014 (2015), at 10 http://www.millersamuel.com/files/2015/02/Manhattan_10YR_2014.pdf. But under Department of Finance guidelines, such properties are compared for purposes of the income approach to rental buildings whose market value is roughly only $304 per square foot.

128. Compounding the arbitrariness of this approach is that it is no longer easy to find rent-stabilized rental buildings. Many rental buildings converted to cooperatives in the 1980s and are no longer regulated. Accordingly, many condominiums and cooperatives lack *any* reasonable comparator. *See, e.g.*, SHIFTING THE BURDEN, *supra* ¶ 9, at 2 ("Section 581 places DOF in the difficult position of having to find rental properties that are comparable, for example, to highly prized buildings on Central Park. Quite simply, many of these sorts of buildings are not comparable to any rental properties in the city. Few, if any, rental buildings attract tenants as wealthy as people who buy luxury pre-war co-ops."). The Department of Finance thus often values older cooperatives and condominiums – often among the most valuable properties in the

City – to rental buildings that are not in any sense comparable, and in many instances are located in different boroughs.[7]

129. As a result, the City's valuation of older condominium and cooperative properties is wholly detached from their market value and systematically "result[s] in the severe and persistent undervaluation of some of the most valuable co-op and condo properties in the city." *Id.* at 1.

(ii) The City's Discriminatory Treatment Of Rental Properties

130. As the Furman Center has explained, one of the "most significant inequalities in the system [is] the favorable treatment given to . . . Class 2 condos and co-ops relative to large rental buildings." STATE OF NYC'S HOUSING, *supra* ¶ 9, at 24. Many cooperatives and condominiums are the beneficiaries of the systemic, gross undervaluation discussed above, whereas rental buildings are not. In addition, among other things, cooperatives and condominiums are the beneficiaries of assessment caps and abatements that large rental properties do not receive.

131. Annual assessment increases for Class Two properties with fewer than eleven residential units – those that bear the closest physical resemblance to Class One properties – are capped at 8% for any one year, and 30% for any five-year period. RPTL § 1805(2).

132. These assessment caps engender the same inequalities across boroughs and neighborhoods as they do for Class One properties, ensuring that older properties in faster appreciating neighborhoods are assessed and taxed at a lower effective rate than other properties

[7] Making such comparisons even more arbitrary is that *if* such cooperatives and condominiums were, in fact, rental apartment buildings, such "apartments" would be so valuable that the they would long ago have been deregulated. Nonetheless, the Department of Finance regularly values such properties as if they were rent-regulated apartments. Such valuations bear no rational relationship to the property's actual market value.

of identical market value. *See* IBO REPORT, *supra* ¶ 28, at 32 (noting that "[c]oops and condos also face wide differences in tax burdens").

133. The Legislature also has provided that condominium and cooperative owners (members of Class Two) who own no more than three dwelling units are entitled to a partial abatement of their property taxes, where one unit is the owner's primary residence. For dwelling units in buildings where the average unit assessed value is greater than $60,000, the abatement is 17.5%. For units in buildings where the average assessment is between $55,000 and $60,000, the abatement is 22.5%. In buildings where the average assessment is between $50,000 and $55,000, the abatement is 25.2%. Finally, for units in buildings where the average unit assessed value is less than $50,000, the abatement is 28.1%. RPTL § 1805(2)(d).

134. Collectively, these practices cause renters to be significantly disfavored in comparison to owners of residential properties. And because the share of the tax levy collected from each class in a given year is fixed, the significant undervaluation of cooperatives and condominiums shifts the effective tax burden from those properties to other properties in the same class. In the case of Class Two, the burden falls on the owners of rental property and their tenants.

135. According to the Independent Budget Office's 2007 study of the property tax system, the effective tax rate imposed on condominiums and cooperatives was only 0.68%, *see* IBO REPORT, *supra* ¶ 28, at 19 tbl.2, while the effective tax rate imposed on elevator rentals was 3.72% and that imposed on walk-up rentals was 4.21%. *See id.* at 37 tbl.10. In other words, rental property is taxed at roughly 5-6 times the effective tax rates of the average condominium or cooperative property in New York City, irrationally and arbitrarily forcing those New Yorkers

who generally can least afford housing within the City to subsidize their wealthier neighbors. Those same disparities persist today.

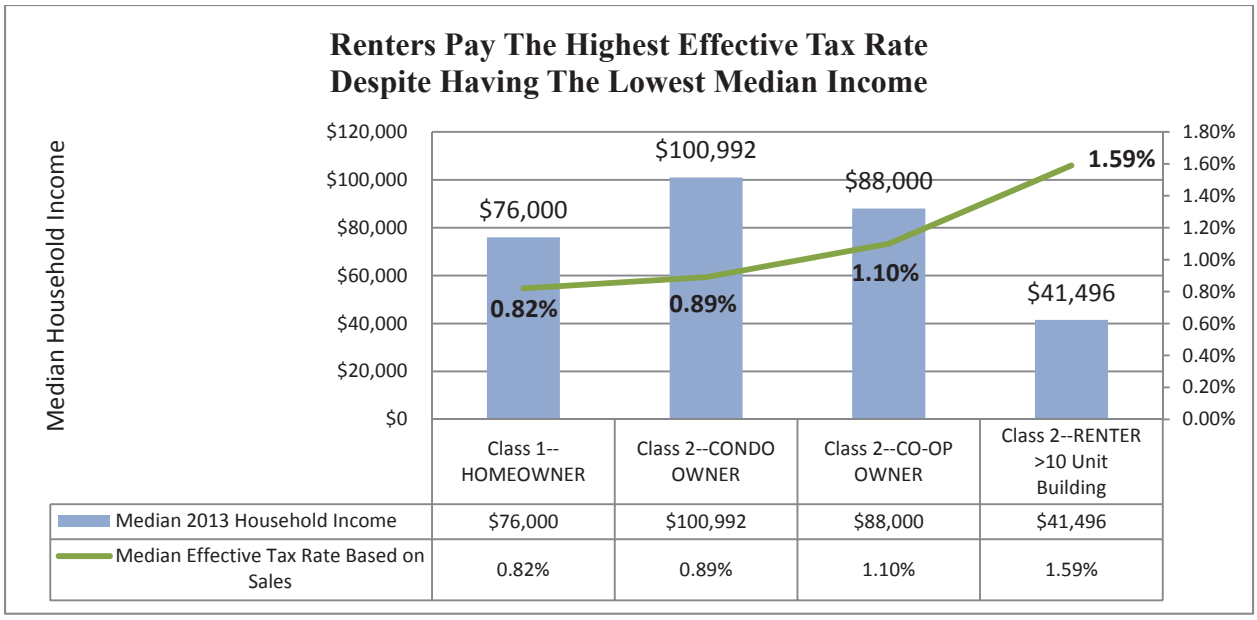
136. The City's discrimination against renters is not only unconstitutional and incompatible with the requirement of uniformity within each class, but also unfair and retrogressive, imposing the greatest costs on those who can least afford to pay. Renters have the lowest median income of any group of residential unit occupants, yet the owners of rental property pay the highest effective tax rate of all residential property.

137. Those higher rates are passed on to renters as a matter of law and practice. By statute, renters pay property taxes as part of their rent. *See* RPTL § 304(2) ("Where real property in whole or part is rented for residential purposes pursuant to a lease, . . . a renter has an interest in the real property and is subject to [the relevant provisions of] this chapter, or laws of any municipality covering the levy and collection of taxes and the enforcement of collection of delinquent taxes, whichever is governing. . . . The owner of real property, or his designated agent, is obligated to apply the first money received each month from the renter to taxes due on the real property under his ownership."); *see also id*. § 304(4) & (5). Renters also bear the burden of property taxes in practice. As the Furman Center has explained, owners of rental property pass along a substantial portion of property taxes through rent to their tenants. *See* STATE OF NYC'S HOUSING, *supra* ¶ 9, at 4. Indeed, the formula used by the City's own Rent Guidelines Board treats changes in taxes as justifying commensurate changes in rents. And that accords with the strong correlation between rising rents across the city and the rising fraction of that rent that is dedicated to a property's tax bill.

Year	2002	2005	2008	2011	2014
Mean Market Rate Rent	832	956	1119	1280	1446
Mean Rent Stabilized Rent	795	908	1008	1137	1317
Mean Monthly Property Taxes	159	229	268	349	405

New York City Rent Guidelines Board: FY 1995-2016, Housing NYC: Rents, Markets and Trends

138. As a result of State law and City policy, including its interpretation and application of RPTL section 581, New York City's property tax system imposes a dramatically unequal tax burden on renters compared to other residential property owners.



(iii) The City's Failure To Value Class Two Properties Fairly And Uniformly Using The Income Approach

139. The City's uneven allocation of property tax burdens among Class Two properties is exacerbated by well-recognized flaws in the City's methodology for valuing properties according to the income approach. It is frequently difficult or impossible to identify a reasonably "comparable" property. Individual assessors often compound that problem by failing to select appropriate comparable properties. The Department of Finance selects different capitalization rates for similarly situated properties without reason. Collectively, these failures further aggravate the disparities and inequalities that would otherwise exist.

140. First, the manner in which the Department of Finance identifies comparable property for purposes of assessing the income that a condominium or cooperative would generate if it was *not* an owner-occupied property promotes arbitrary results.

141. The Department of Finance requires assessors to select rental buildings as "comparables," even when no rental property closely matches a given cooperative or condominium in age, size, and location, or when reference to the building's age results in the use

of entirely incomparable rent-regulated "comparables." In practice, as the Furman Center has noted, *see* SHIFTING THE BURDEN, *supra* ¶ 9, it is commonplace that particularly valuable condominiums and cooperatives have no real ready comparator in the City. As a result, assessors are often forced by the City's policies to employ buildings in less affluent neighborhoods, of different sizes, and/or of different ages to generate income figures. Because assessors often end up using inferior, lower-priced rentals as comparables, this results in the systematic undervaluation of cooperatives and condominiums in every neighborhood, and within every size and age range. Indeed, in its response to the recent audit of Class Two valuations by the Office of the Comptroller, the Department of Finance acknowledged that rental apartment comparables are "often not available" in a given neighborhood, and that, as a result "[p]roperties from other neighborhoods must be used" even if the value of those properties from other neighborhoods is often substantially different. *See* JOHN C. LIU, COMPTROLLER, CITY OF NEW YORK, AUDIT REPORT ON THE VALUATION OF CLASS 2 PROPERTIES BY THE NEW YORK CITY DEP'T OF FIN. 15 (Apr. 12, 2012), https://comptroller.nyc.gov/wp-content/uploads/documents/FN11_130.pdf.

142. The Comptroller's financial audit of the Department of Finance's valuation of Class Two properties found that "the use of inconsistent criteria to determine the market values of Class 2 residential properties resulted in large fluctuations in market values" that "significantly affected some properties' tax liability." *Id.* at 2. The audit found, moreover, that the Department of Finance "did not properly follow its own Property Valuation Guidelines when selecting comparable properties," *id.* at 2, within Class Two cooperatives and condominiums, and that for many properties, the estimated income for the property used by the Department of Finance "did not correspond with any of the comparable properties' income reported in [the

Department's] records" and were usually "significantly lower" – typically resulting in mass under-valuation of cooperatives and condominiums. *Id.* at 13. In fact, the auditors were often "not able to find any information that would support [Finance's] basis for such valuation." *Id.* at 14.

143. In addition, the audit concluded that in many instances, Finance had selected inappropriate properties to use as comparables for calculating property values of cooperatives and condominiums. For example, Finance assessed the value of a cooperative building in Brooklyn by comparing it to a parking lot; it compared a cooperative in Staten Island to an adult care facility; and it assessed a cooperative in Alphabet City by comparing it to a rental property in Washington Heights.

144. The audit further revealed that Finance often was not even following its own assessment guidelines when valuing cooperatives and condominiums, because a significant number of cooperatives were "under-valued based on their income." *Id.* at 8. It provided the example of a property located in Kips Bay, Manhattan (317 East 18th Street, Block 924, Lot 13), where the comparable rental property selected by Finance to assess the market value of the cooperative property indicated gross income of $27.07 (331 East 14th Street), $37.58 (217 East 22nd Street), and $45.22 (231 East 14th Street), and corresponding market values of $125.94, $181.56, and $262.76 per square foot, respectively. *See id.* at 14. Had Finance based its estimates of gross income for the subject property on even the lowest values of comparable properties, the market value of this cooperative would have been $1.8 million. *See id.* Yet Finance valued the 30-unit building at only $641,000 in Fiscal Year 2012 using an income estimate of $19 per square foot, or approximately one-third of the lowest valuation possible based on the comparable properties selected by Finance itself. *See id.* Despite the audit's

findings, Finance did nothing to correct the value for that year. Instead, Finance changed the comparable rental properties seemingly to justify its earlier low value and increased the market value modestly to $705,000 for the 30-unit building. And this was not an isolated example. The audit found 130 properties where the income used by Finance to estimate market values was "significantly lower" than the value of any of the comparable properties selected by Finance. *See id.* at 14-15.

145. The audit also concluded that Finance "did not conduct adequate reviews to ensure that the properties' market value information on the Tentative Assessment Roll was accurate," and that Finance "did not have a process in place to analyze [comparable property] reports and ensure that the errors in determining property market values were corrected and that the corresponding adjustments were made in a timely manner." *Id.* at 16-17.

146. These arbitrary valuations and practices further sever the connection between any individual property's assessment or taxation and its actual market value. No legitimate government interest justifies these practices.

147. The windfall provided to condominium and cooperative owners as a result of all these practices is illustrated by the following chart tracking the enormous disparity between the actual average sales price for cooperative and condominium properties within the City over the last fifteen years, as compared to the average value that the Department of Finance assigns those properties for the purpose of taxation.

Sales Year	Douglas Elliman Average Sales Price		Finance Fiscal Year	Finance Average Market Value (Fiscal Year Where Sales Prices Would Have Been Used for Valuation Purposes)		Finance Average Market Values as % of Elliman Average Sales Price	
	Co-ops	Condos		Co-ops	Condos	Co-ops	Condos
2001	$674,765	$1,022,255	2003	$116,507	$153,487	17.3%	15.0%
2002	$664,364	$1,065,012	2004	$124,660	$174,174	18.8%	16.4%
2003	$744,239	$1,051,993	2005	$122,397	$183,334	16.4%	17.4%
2004	$846,595	$1,240,939	2006	$111,252	$173,893	13.1%	14.0%
2005	$1,017,347	$1,479,608	2007	$126,442	$214,543	12.4%	14.5%
2006	$1,114,737	$1,481,377	2008	$134,419	$225,507	12.1%	15.2%
2007	$1,134,954	$1,552,495	2009	$159,326	$223,081	14.0%	14.4%
2008	$1,259,725	$1,858,408	2010	$163,941	$223,542	13.0%	12.0%
2009	$1,030,630	$1,698,889	2011	$167,856	$236,233	16.3%	13.9%
2010	$1,177,425	$1,714,655	2012	$169,007	$240,596	14.4%	14.0%
2011	$1,147,561	$1,709,414	2013	$194,005	$265,212	16.9%	15.5%
2012	$1,153,695	$1,792,874	2014	$199,180	$267,735	17.3%	14.9%
2013	$1,130,846	$1,924,487	2015	$209,960	$280,668	18.6%	14.6%
2014	$1,484,885	$2,072,237	2016	$229,917	$300,923	15.5%	14.5%
2015	$1,350,393	$2,462,490	2017	$224,867	$337,618	16.7%	13.7%
Average	**$1,041,555**	**$1,547,475**	**Average**	**$159,205**	**$225,923**	**15.3%**	**14.6%**

148. In sum, the City's policies and practices result in widespread variation in the assessment and taxation of similarly situated properties within Class Two in violation of state and federal law.

B. The City's Property Tax System Does Not Assess And Tax Property At Levels Rationally Related To A "Fair And Realistic Value" Of The Property Involved

149. For all the reasons set forth above, New York City's property tax system is unlawful not only because it fails to provide for uniform assessments within each class, but because properties throughout the system are assessed and taxed at amounts bearing no rational basis to their market value.

150. As New York's courts have made clear, "the ultimate purpose of valuation . . . is to arrive at a fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc." *Allied Corp.*, 80 N.Y.2d at 356. In order to be "acceptable," the methodology for valuation must be "fair and nondiscriminating." *Id.*

151. For all the reasons outlined above, however, New York's property tax system is neither fair, nor nondiscriminatory. Rather, it discriminates in countless ways for arbitrary or politically driven reasons having nothing to do with a property's value or requirements for city services. The City's tax system therefore violates the requirements of due process because properties throughout the system within and between classes are assessed and taxed at amounts bearing no rational relationship to the City's obligation to ensure a "fair and realistic value of the property involved." *See id.*

152. As New York's courts have recognized, "it is 'market value' which provides the most reliable valuation for assessment purposes." *Great Atlantic & Pacific Tea Co. v. Kiernan*, 42 N.Y.2d 236, 239 (1977).

153. Under the City's arcane property tax system, however, most properties are assessed and taxed at effective rates bearing little rational relationship to their own market value, let alone to the effective rate at which other properties within their neighborhood, borough, or City are taxed.

154. Assessment caps artificially suppress the assessed value of over 95% of New York's homes in artificial ways that vary haphazardly based on impermissible factors, such as a property's location within the City. They similarly introduce widespread disparities in the assessment of Class Two properties with 10 units or less.

155. The City and State's steadfast refusal to allow each class's share of the tax burden to reflect its share of the City's property value – as the Legislature originally intended – further results in a fundamentally inequitable disconnect between a property's market value and its tax burden.

156. Although Class One properties have appreciated in value more than any other class over the last three decades, producing tremendous value for homeowners, those property owners have not borne their fair share of the tax burden. To begin with, in 10 of the last 16 years, the State Legislature – often at the City's behest – has permitted each class's share of the City's tax burden to be adjusted only by 2% or less, even though the share of the City's market value attributable to Class One property has increased by significantly more than 2% annually during that time.

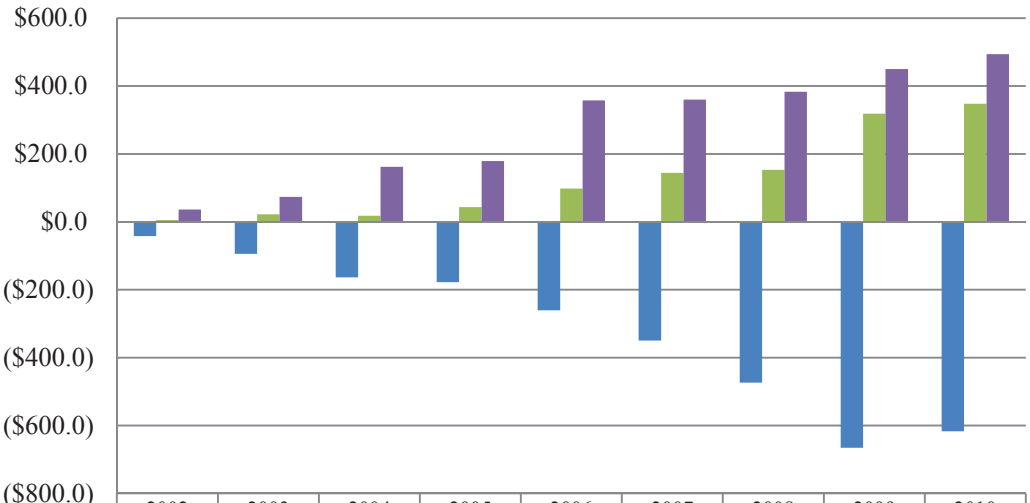
157. As explained *supra* at ¶ 79, following the enactment of S-7000A, the City Council's initially shifted the tax burden away from Class One taxpayers; as a result, the overall share of the tax burden assigned to Class One taxpayers had declined to only roughly 10% by 1989, when the State legislature finally acted to prevent the City Council from continuing to benefit homeowners at the expense of other taxpayers. The share of the tax burden allocated to Class One taxpayers has since been permitted to grow only at a glacial annual pace from that 10% starting point, notwithstanding the dramatic growth in the market value of Class One properties during that time. As a result, disparities and inequalities in interclass valuation have only widened over time.

158. Class One property owners thus enjoy a windfall: although their property values have appreciated more quickly than those of other property classes, their overall share of the City's property tax burden has remained roughly identical. And the faster that their property

values have appreciated, the more their relative tax burden has shrunk. For instance, suppose that all Class One property was worth $1 billion in 2000, and $3 billion in 2010, while all other property was worth $1 billion in 2000 and $2 billion in 2010. If Class One's share of its tax burden remained relatively constant over that time, as it has in practice, property owners outside Class One would be forced to pay a roughly similar fraction of the City's tax burden in 2010 as in 2000, even though their properties now would account for a substantially smaller fraction of the market value in the city.

159. From 2002 to 2010 alone, commercial and utility owners were forced to bear an additional $2.5 billion in taxes as a result of that phenomenon, most of those dollars went to subsidize the taxes of Class One property owners.

From 2002 through 2010 alone, Commercial and Utility Owners' Taxes Have Increased a Total of $2.5 Billion as a Result of Class Share Shift

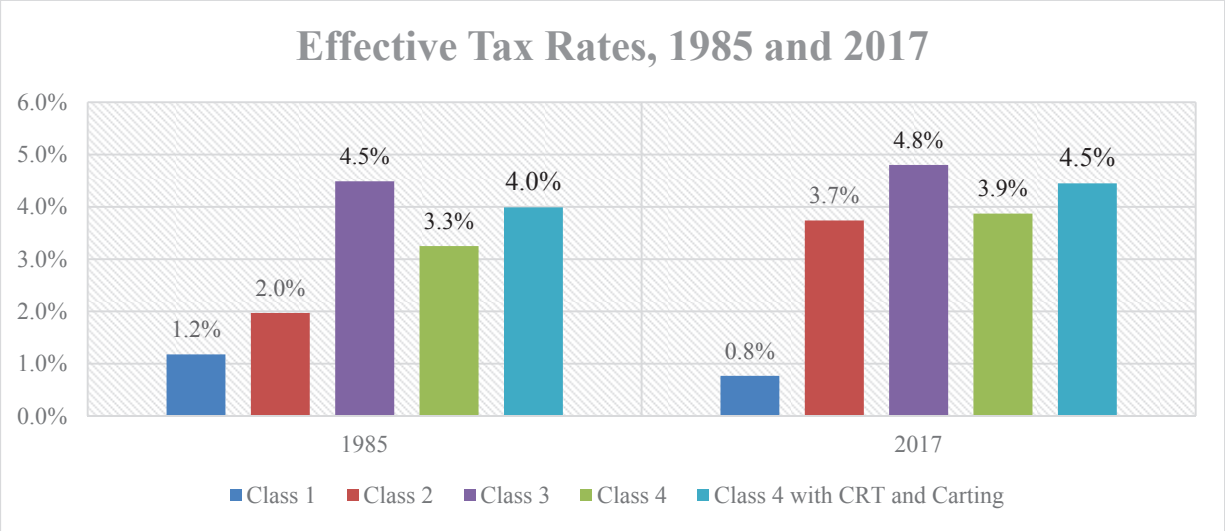


	2002	2003	2004	2005	2006	2007	2008	2009	2010
Class One	($41.8)	($94.2)	($163.8)	($177.6)	($260.9)	($349.6)	($473.7)	($665.7)	($616.9)
Class Three	$5.4	$22.3	$18.1	$43.5	$98.3	$144.1	$153.2	$318.7	$348.1
Class Four	$36.5	$73.6	$162.4	$179.3	$357.7	$360.1	$383.3	$450.1	$494.1

160. This shifting of the tax burden away from homeowners and onto the backs of other property owners bears no rational relationship to actual property values.

161. When S-7000A was enacted in the early 1980s, the effective tax rate for homeowners compared to that of other property owners was much closer than it is today, with larger residential properties such as cooperatives, condominiums and rental apartment complexes (Class Two), for example, paying an effective tax rate only 1.7 times higher than one, two, and three-family homeowners (Class One). In Fiscal Year 2017, Class Two larger residential properties will pay an effective tax rate 4.8 times higher than Class One homeowners. Class Four commercial property owners will pay a rate that is 5 times higher; and Class Three utilities will pay an effective tax rate that is 6.2 times higher.

162. Class One, as a result of these annual amendments and caps on property appreciation, pays less than its "fair share" of property taxes since its effective tax rate (taxes divided by Finance's market value estimates) is substantially lower than that of the other classes and less than it was when the S-7000A law was implemented by the City. In 2017, for example, based on Finance's market values, the effective tax rate for Class One properties is 0.77%. In comparison, the effective tax rate for Class Two properties is 3.74%; the effective tax rate for Class Three properties is 4.8%; and the effective tax rate for Class Four properties is 3.87%.



163. That growing disparity is particularly unjustifiable as between owner-occupied property in Class One and owner-occupied property in Class Two, as to which the primary distinction lies in their shape: Class One properties tend to be stacked side-by-side (horizontally), like a traditional one- or two-family home, while Class Two properties tend to be stacked on top of one another (vertically), like a multi-story cooperative building. Even if such physical distinctions could justify some differences in taxation, it is hard to credit a rational basis for valuing each property by different methods, imposing *substantially* different effective tax rates, and subjecting each kind of property to different caps and abatements.

164. These differences result, without any rational basis, in some condominiums and cooperatives being taxed more heavily than, and others being taxed more lightly than, Class One properties with the same market value.

165. In the aggregate, while Class One properties comprise almost 47% of the market value of all properties in New York City in 2017 as determined by the Finance Department (close to double their 27% share of market value in 1985), they continue to pay less than 15% of the taxes (roughly equivalent to the 13% they paid in 1985). Class Four commercial properties, in contrast, now comprise only 26% of total market value (down from 32% in 1985) yet still pay almost 42% of the taxes (roughly equivalent to the 43% they paid in 1985). Similarly, while Class Three properties now comprise just 3% of market value, they pay 6% of the taxes.

166. "A State may divide different kinds of property into classes and assign to each class a different tax burden," but only "so long as those divisions and burdens are reasonable." *Allegheny Pittsburgh Coal Co. v. Cty. Comm'n*, 488 U.S. 336, 344 (1989). Here, the immense and inexplicably deepening disparity in property tax burdens from class to class is manifestly not reasonable.

167. More fundamentally, the individual disparities between the valuation and taxation of *individual* properties is barely explicable, let alone founded on some rational methodology intended to fairly and realistically value property throughout the City.

168. These practices and others result in an irrational and arbitrary taxation scheme in New York City. In a September 2014 report, the Council on State Taxation gave the State of New York a grade of "F" on the equality of its assessments, specifically citing, *inter alia*, the immense disparities imposed by New York City's property tax system.

169. There is no legitimate justification for the gaping, growing, uneven, and ultimately arbitrary disparities that exist between the valuations of properties throughout the City and their market values. Although New York law is clear that "true market value" remains "the ultimate basis, if determinable, for assessment," *G.R.F., Inc. v. Bd. of Assessors*, 41 N.Y.2d 512, 515 (1977), New York's system for assessing property results in the imposition of unequal tax burdens bearing little rational relationship to that touchstone.

III. The Inequities of the Property Tax System Disparately Impact Racial Minorities and Perpetuate Segregation

A. New York City's Property Tax System Imposes a Disparate Impact on Racial Minorities

170. New York City's property tax system systematically disfavors racial minorities with respect to both Class 1 and Class 2 properties.

171. First, the substantial inequities discussed above impose a disparate impact on racial minority owners of Class 1 property, leading to over $1.9 billion per year of over-assessments in majority-minority and super-majority (over 60%) minority districts.

172. While Class 1 properties in community districts that are super-majority-white are assessed on average at only 3.63% of their market value, properties in community districts that are majority-minority are assessed on average at 4.34% of their market value, or almost 20%

higher. In dollar terms, this means that the more than 446,000 homeowners in majority-minority community districts are being over-assessed by $1.9 billion a year compared to homeowners in super-majority-white districts, and as a result pay $376 million more in taxes ($844/year for the average property owner) than they would if they were assessed at the same rate and paid the same effective tax rate as homeowners in majority-white districts.

173. Over 825,000 African-Americans live in the 15 community planning districts whose Class 1 property owners pay the highest effective tax rate under the City's property tax system, while only 376,000 African-Americans live in the 15 community planning districts that pay the lowest effective tax rate. The median effective tax rate imposed on property owners in the 15 most disfavored Class 1 community planning districts is over 265% that imposed on property owners in the favored districts.

174. This overassessment of properties in minority neighborhoods contributes to a higher rate of foreclosure, and a higher incidence of illegal occupancies and rooming houses in those communities. *See, e.g.*, Michael Powell & Janet Roberts, *Minorities Affected Most as New York Foreclosures Rise*, N.Y. TIMES, May 15, 2009 [Exhibit S]; Office of Senate Majority Coalition Leader Jeffrey D. Klein & Assemblywoman Helene Weinstein, Assembly Judiciary Chair, Foreclosure's Persistent Threat to New York City and its Minority Communities (June 6, 2014) [Exhibit T]; Vicki Been & Allegra Glashausser, *Tenants: Innocent Victims of the Nation's Foreclosure Crisis*, 2 ALBANY GOV'T LAW REV. 1, 25 (2009) ("Vacant properties often become run-down, and are at risk for vandalism, neglect, and illegal occupancy, which can cause the value of the property to decline, and put downward pressure on property values of the surrounding community.").

175. The City is well aware of the racially disparate impact of its property tax system. *See* Sweeting Testimony [Exhibit E], *supra* ¶ 6 (testimony from the City's own Independent Budget Office acknowledging that, for example, "the owner of a $500,000 house in Park Slope [a 63% white district] would pay about $1,241 [in property taxes] while the owner of a $500,000 house in Canarsie [a 74% minority district] would pay $5,462"). Numerous studies, news articles, and taxpayer complaints have raised this issue to no avail. *See supra* ¶ 16. And the City is undoubtedly well aware that Nassau County faced litigation from private citizens and the United States Department of Justice as a result of actions that similarly produced a racially disparate impact. *See* Complaint at 6, *United States v. County of Nassau*, 79 F. Supp. 2d 190 (E.D.N.Y. 1999) (No. 99-cv-3334) [Exhibit U] (alleging violation of Fair Housing Act because "Nassau County's tax assessment methodology disproportionately burdens owners of Class I residential properties in areas of the County where African-American and Latino ("minority") residents are concentrated"). The City and State nonetheless have allowed systemic inequality to fester, imposing through New York City's property tax system greater burdens on minority property owners.

176. The differential treatment of neighborhoods is also evident with respect to the taxation of Class 2 property.

177. Non-whites constitute only 45% of the population in the 15 community planning districts in which Class 2 property is taxed at the lowest effective tax rates. By contrast, non-whites constitute 72% of the 15 community planning districts in which Class 2 properties are taxed at the highest effective tax rates. The median effective tax rate imposed on property owners in the 15 most disfavored Class 2 community planning districts is over 275% that imposed on property owners in the favored districts.

178. Owners of rental properties and their tenants are likewise systematically disfavored compared to owners of cooperatives and condominiums, with similar racially disparate impacts. Indeed, according to the IBO, condo owners pay an effective tax rate of $0.68 per $100 of market value, while renters in walkup buildings pay $4.50, or nearly seven times that amount. Sweeting Testimony [Exhibit E], *supra* ¶ 6.

179. The significantly higher property tax burden on rental apartment properties is typically "passed on to the renters either in the form of higher rents or in cutbacks to building maintenance and repairs." STATE OF NYC'S HOUSING, *supra* ¶ 9, at 4; *see also* FISCAL POLICY INST., POLICY BRIEF: PROPERTY TAX RELIEF 2 (2015), http://fiscalpolicy.org/policy-brief-property-tax-relief-circuit-breaker ("[L]andlords generally pass on a substantial share of their property taxes in the form of higher rent."); Assemblyman Dan Quart, New York City Property Taxes, An Unbalanced Burden, http://nyassembly.gov/member_files/073/20150413/index.pdf ("While renters do not directly pay property taxes, the incidence of the tax likely falls primarily on the renter, not the landlord.").

180. New York's City's property tax is particularly likely to be passed on to the City's most vulnerable renters. "When residential rental property is in short supply, landlords are more likely to pass their property taxes on to renters in the form of higher rents." INSTITUTE ON TAXATION AND ECONOMIC POLICY: THE ITEP GUIDE TO FAIR STATE AND LOCAL TAXES 28 (2011), *available at* http://www.itep.org/pdf/guide4.pdf. As the City has acknowledged, "New York City's shortage of affordable housing has reached a crisis point." CITY OF NEW YORK, HOUSING NEW YORK, A FIVE-BOROUGH, TEN-YEAR PLAN, at 5 (2014) (hereinafter "NYC HOUSING PLAN"). "In 2011, there were about one million Extremely Low Income and Very Low Income households but there were only 425,000 rental units affordable to those households." *Id.*

at 18. Other characteristics of New York City's rental housing market similarly increase the likelihood that property taxes imposed on rental properties are passed through to and ultimately paid by tenants. *See* Josh Barro, *If You Live in New York and You Rent, You're Paying a Huge Tax You Don't Even Know About*, BUS. INSIDER, June 28, 2013 [Exhibit V].

181. The dramatically higher property tax burden imposed on rental properties disproportionately affects racial minorities. In every borough, minorities constitute a majority of renters; in Brooklyn, the Bronx, and Staten Island, minorities constitute over two-thirds of renters. By contrast, nearly 60% of condominium owners and 67% of cooperative owners are white, as illustrated on the following chart:

Race By Household and Property Type By Borough

	Renters		Conventional Homes		Private Cooperatives		Condominiums	
	White	Non-White	White	Non-White	White	Non-White	White	Non-White
Manhattan	41.3%	58.7%	48.6%	51.4%	70.0%	30.0%	68.3%	31.7%
Bronx	6.6%	93.4%	20.8%	79.2%	42.7%	57.3%	7.4%	92.6%
Brooklyn	32.5%	67.5%	39.1%	60.9%	58.3%	41.7%	55.0%	45.0%
Queens	21.4%	78.6%	28.7%	71.3%	46.8%	53.2%	36.4%	63.6%
Staten Island	43.0%	57.0%	71.4%	28.6%	58.4%	41.6%	77.4%	22.6%
City-Wide	**35.6%**	**64.4%**	**47.7%**	**52.3%**	**67.0%**	**33.0%**	**59.7%**	**40.3%**

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182. These racial disparities are further exacerbated by the City's choice to afford significant abatements to owners of cooperatives and condominiums that are not available to the rental property owners or tenants. Because the majority of cooperative and condominium owners are white, while the majority of tenants are minorities, this abatement unequally and unlawfully forces minority taxpayers to subsidize their whiter (and wealthier) neighbors.

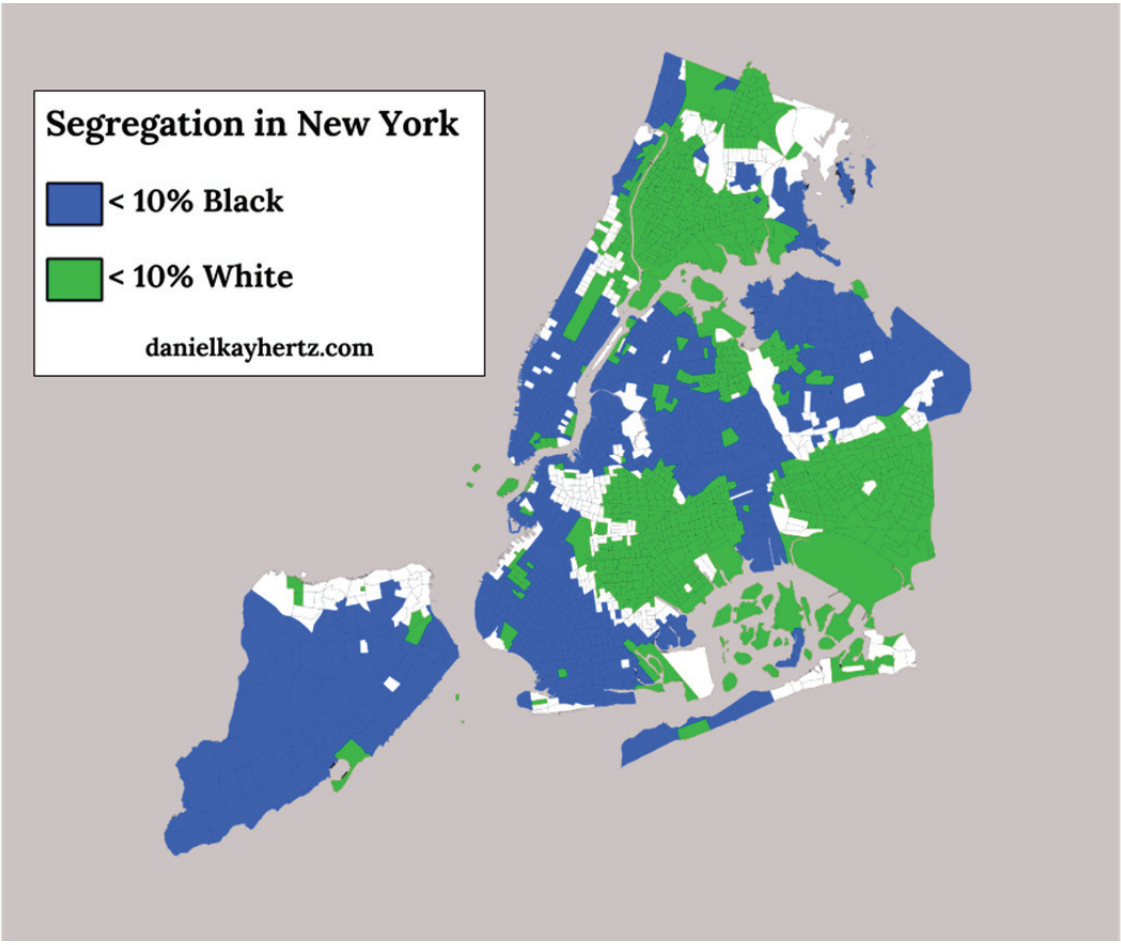
B. New York City's Property Tax System Perpetuates Segregation

183. Although New York City is home to individuals of every conceivable racial and ethnic background, many of its neighborhoods remain subject to longstanding and pervasive segregation.

184. Although no one racial group makes up more than a third of the city's population, the City recently acknowledged that "nearly half of the city's neighborhoods remain dominated by a single racial or ethnic group." NYC HOUSING PLAN, *supra* ¶ 180, at 26. "In dozens of neighborhoods, a single racial or ethnic group predominates [even] at rates of 70 percent to nearly 90 percent in areas like Washington Heights in Manhattan, Tottenville on Staten Island and East Flatbush in Brooklyn." Mireya Navarro, *Segregation Issue Complicates de Blasio's Housing Push*, N.Y. TIMES, Apr. 14, 2016 [Exhibit W].

185. Segregation is particularly pronounced between white and black New Yorkers. "Blacks and whites are the most isolated from other races. Vast sections of southeast Queens and central Brooklyn are nearly all black, while parts of Staten Island, the Upper East Side in Manhattan, and Orthodox areas in Brooklyn are nearly all white." *Id.* Indeed, New York City ranks as the second most segregated metropolitan area in the country. *See* Lolly Bowean, *Segregation Declines in Chicago, but City Still Ranks High, Census Data Show*, CHI. TRIB., Jan. 4, 2016 [Exhibit X]; WILLIAM H. FREY, NEW RACIAL SEGREGATION MEASURES FOR LARGE METROPOLITAN AREAS: ANALYSIS OF THE 1990-2010 DECENNIAL CENSUSES, BROOKINGS INSTITUTION AND UNIVERSITY OF MICHIGAN SOCIAL SCIENCE DATA ANALYSIS NETWORK, *available at* www.psc.isr.umich.edu/dis/census/segregation2010.html.

186. As illustrated by the map below, the overwhelming majority of New York City's neighborhoods either are less than 10% white or less than 10% black. *See also* John Del Signore, *Maps Reveal A Starkly Segregated NYC*, GOTHAMIST, Apr. 15, 2014 [Exhibit Y].



187. The City's segregation harms New Yorkers by depriving them of the benefits of diversity and economic opportunity. As the City itself has acknowledged, "[the] lack of diversity in many neighborhoods means that some families do not have access to the education, jobs, and other opportunities others enjoy." NYC HOUSING PLAN, *supra* ¶ 180, at 26.

188. In several important respects, New York City's property tax system perpetuates existing segregation by suppressing household mobility out of or into segregated neighborhoods.

189. First, New York City's property tax system imposes a disproportionate tax burden on rental properties, making it harder for rental households to save the funds necessary to move to new housing elsewhere within the City. Because many rental households are concentrated in segregated neighborhoods, the disproportionate burden imposed on rental properties reinforces existing patterns of segregation.

190. A substantial majority of New York City residents – 66% – live in rental property. U.S. Census Bureau, 2014 New York City Housing and Vacancy Survey, Series VIIB – Table 83.

191. Affordable rental housing within the City is largely concentrated in poorer, non-white majority neighborhoods. *See, e.g.*, Laura Kusisto, *City Housing Rules Examined*, WALL ST. J., Feb. 19, 2015 [Exhibit Z] ("In New York City, the high cost of land means that affordable housing often is built in predominantly minority areas, where land is cheaper."). For instance, while the population of the 10 community planning districts exhibiting the highest median rental price from 2010-2014 is 64% white and only 6% black, the population of the 10 community planning districts exhibiting the lowest median rental price from 2010-2014 is 80% *non-white* and almost 470% more African-American.

192. Rental households face a substantial financial burden due to the high cost of rental housing in New York City. Nearly *55 percent* of the City's rental households are rent-burdened (spending more than 30 percent of their incomes on housing costs). NYC HOUSING PLAN, *supra* ¶ 180, at 5. Moreover, more than 30 percent of all rental households in the City of New York are

"severely rent-burdened," spending more than 50 percent of their income on housing. *Id.*[8] The share of households which are rent-burdened increased by more than 11 percent between 2000 and 2012. *Id.*

193. Thus, as the City recently acknowledged, "most New Yorkers . . . have to spend an unacceptably high share of their income just to put a roof over their heads, which means having too little left over for other basic needs." *Id.* Because such households have little money available even to purchase basic necessities, it is nearly impossible for many such households to save sufficient money to obtain different housing elsewhere in the City.

194. By taxing rental properties at a far greater rate than other forms of property, New York City's property tax system exacerbates the burden imposed on rental households, subjecting them to an unequal burden that they can ill afford to pay. As the City's own Independent Budget Office recently acknowledged, the City, on average, taxes rental properties at between 4.5 to 6 *times* the effective tax rate of Class 1 properties, taxing rental properties with elevators at $3.60/$100 of value and rental walkups at $4.83/$100, while taxing Class 1 properties at only $.77/$100. The City taxes rental properties at an even higher multiple of the effective tax rate imposed on condominiums, even though rental properties and condominiums are both within the same property class. That striking disparity imposes substantial and unequal burdens on majority-minority areas.

195. That burden is amplified by the distribution of the tax burden on rental properties across different neighborhoods. As noted *supra* at ¶ 177, non-whites constitute 72% of the 15 community planning districts in which Class 2 properties are taxed at the highest effective tax

[8] Other estimates have suggested that the typical New York rental household spends as much as *two-thirds* of its income on rent. *See* NBC New York, *Typical NYC Household Spends 2/3 Of Income on Rent: Study* (last visited Apr. 24, 2017) [Exhibit AA].

rates, but only 45% of the population in the 15 community planning districts in which Class 2 property is taxed at the lowest effective tax rates.

196. That, in turn, perpetuates pervasive patterns of segregation within the City. Particularly within the segregated, largely minority neighborhoods where affordable housing is concentrated, the City's property tax system suppresses household mobility, preventing households from saving the money necessary to buy a home or even move to a vacant apartment elsewhere in the City.

197. Minorities thus bear a doubly disproportionate burden – not only do minorities represent a disproportionate share of renters in New York City, but they are disproportionately represented in neighborhoods in which rental properties are taxed at a higher relative rate. That disparate impact makes it all the more difficult for minority households in segregated areas of the City to save the money necessary to make it possible and economical to become homeowners or move to properties elsewhere in the City.[9]

198. Other features of New York City's property tax system likewise make it more difficult for rental households to obtain the affordable housing necessary to permit that household to save the money needed to become homeowners or move to less segregated areas within the City. As the City has admitted, "[New York City's] property tax system discourages the production of rental units and encourages conversion of units to cooperatives or

[9] Other City policies, such as rent regulation, reinforce the barriers on mobility by imposing substantial financial costs on rental households seeking to exit segregated neighborhoods to other rental housing elsewhere in the City. Over 47% of the City's rental housing is rent stabilized or rent controlled. FURMAN CENTER, PROFILE OF RENT-STABILIZED UNITS AND TENANTS IN NEW YORK CITY 2 (2014). Rent stabilization, therefore, further discourages household mobility by imposing a disproportionate financial burden on households relocating from their existing rent regulated apartment to a vacant apartment for which the asking price is controlled only by the market. The median rent of an apartment rented at market price in New York City is nearly 30% more than the median rent of a rent regulated apartment.

condominiums at a time when homeownership is out of reach of most families due to high costs and limited access to credit." NYC HOUSING PLAN, *supra* ¶ 180, at 26; *see also id.* ("[T]he government certainly bears part of the blame" for the lack of affordable rental housing in the City.).

199. The City's property tax system also reinforces existing patterns of segregation within Class 1 housing throughout the City.

200. Many of the community planning districts that experience the highest property tax rates are among the most segregated areas in the City, whether or not the dominant group is white, black, or Hispanic. For instance, the median effective tax rate in East Flatbush, Brooklyn, where the population is 87% black and 1% white, is 350% that of Park Slope/Carroll Gardens. Likewise, the median effective tax rate in Tottenville/Great Kills, Staten Island, which is 84% white and only 1% black, is over *400%* that of Park Slope/Carroll Gardens. The effective tax rate imposed on Parkchester/Soundview in the Bronx, which is 95% non-white and 57% Hispanic, is nearly identical to that in Tottenville.

201. In each of those heavily segregated neighborhoods, the disproportionate burden imposed by the City's tax system on homeowners discourages mobility into and out from those neighborhoods. As is common sense, academic studies have established that in deciding whether to stay or move, homeowners are responsive to the relative financial burdens imposed by a jurisdiction's property tax system on the property choices at issue. *See, e.g.*, Arthur O'Sullivan et al., *Property Taxes, Mobility, and Home Ownership*, 37 J. OF URB. ECON. 1, 107–29 (1995); Nada Wasi and Michelle J. White, *Property Tax Limitations and Mobility: Lock-in Effect of California's Proposition 13*, Brookings-Wharton Papers on Urban Affairs, vol 2005(1), 59-88 (2005).

202. That effect materializes in several ways. First, by imposing a higher relative effective tax rate on properties within particular neighborhoods, the City discourages prospective homeowners from moving into those neighborhoods, in which the overall cost to own a home is *more* than the cost to own a similarly valuable home elsewhere in the City. Second, because the higher effective tax rate applicable to such neighborhoods imposes an unequal financial burden on residents of those neighborhoods, it constrains their ability to save the money necessary to obtain housing in other, potentially more attractive and integrated areas elsewhere in the City.

203. Finally, the property tax system creates little incentive for "outsiders" of greater relative means to move into less expensive, segregated neighborhoods with an eye towards building new construction or improving existing housing. Because the assessment caps do not constrain the taxes imposed on new construction and improvements, it would cost a homeowner more to build a $1,000,000 home or execute substantial improvements on an existing home, as compared simply to acquiring a pre-existing $1,000,000 home in a different neighborhood that is taxed at an artificially low rate due to the assessment caps.

204. For all these reasons, New York's property tax system suppresses mobility from or to some of its most segregated neighborhoods, in violation of the Fair Housing Act.

CAUSES OF ACTION

i. AS AND FOR A FIRST CAUSE OF ACTION

For Declaratory and Injunctive Relief Against the City Defendants (New York Constitution, Article XVI, Section 2 as Applied to Class One)

205. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 204 above as if set forth in full herein.

206. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

207. Article XVI, section 2 of the New York Constitution requires the "equalization of assessments for purposes of taxation." As the Court of Appeals has found, "the Constitution mandates that assessments within the various assessing units must be equalized for taxation purposes." *Foss*, 65 N.Y.2d at 259.

208. The City's application of its property tax system to Class One violates this constitutional requirement because the City taxes different parcels of real property within the Class at wildly different percentages of value, in a manner that the City's Independent Budget Office itself has acknowledged "guarantees that similar properties will face widely different tax burdens depending on where they are located in the city." *See* Sweeting Testimony [Exhibit E], *supra* ¶ 6. The head of the City's Department of Finance likewise has "acknowledged that homeowners with high-valued units sometimes pay far less in taxes than those with modestly priced homes." Gonen [Exhibit D], *supra* ¶ 2.

209. The City could avoid or minimize these disparities, while still applying assessment caps required by state law, by lowering Class One's assessment ratio. Doing so would lower the assessed values of all properties and thereby ensure the uniformity within Class One that is required by law. The New York Court of Appeals has expressly indicated that lowering the assessment ratio is a permissible means of achieving the uniformity of assessment required by law. *See Matter of O'Shea*, 8 N.Y.3d at 256-61.

210. Lowering Class One's assessment ratio would not require the City to accept lower tax revenues. The City could ensure that its taxation scheme yielded the same amount of money by raising the tax rate.

211. Rather than fulfill its constitutional responsibility to assess and tax its residents uniformly within Class One, the City's tax system imposes dramatic disparities such that two

properties that would sell for identical prices may be assessed at substantially different values. As a result, their owners frequently pay substantially different taxes. It is even commonplace for higher-appraised homes to be taxed at lower amounts in some neighborhoods than lower-appraised homes taxed at in other neighborhoods or sometimes down the street.

212. The City's application of assessment caps, its exclusion of new construction and improvements from those caps, its differential treatment of properties built prior to or after 1981, and its failure to maintain an assessment ratio that promotes equalization of the tax burden within Class One results in the substantially disparate assessment and taxation of similarly situated properties within Class One, in violation of section 2 of article XVI of the New York Constitution.

ii. AS AND FOR A SECOND CAUSE OF ACTION

For Declaratory and Injunctive Relief Against the City Defendants (Real Property Tax Law, Section 305(2) as Applied to Class One)

213. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 212 above as if set forth in full herein.

214. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

215. RPTL section 305(2) provides that "[a]ll real property in each assessing unit shall be assessed at a uniform percentage of value." As the Court of Appeals has found, RPTL section 305(2) provides that real property within each of New York City's four classes is "to be assessed at the same percentage of full value." *41 Kew Gardens Rd. Assocs. v. Tyburski*, 70 N.Y.2d 325, 330 (1987).

216. The City's application of its property tax system to Class One violates this statutory requirement because the City taxes different parcels of real property within the Class at

wildly different percentages of value, in a manner that the City's Independent Budget Office itself has acknowledged "guarantees that similar properties will face widely different tax burdens depending on where they are located in the city." *See* Sweeting Testimony [Exhibit E], *supra* ¶ 6. The head of the City's Department of Finance likewise has "acknowledged that homeowners with high-valued units sometimes pay far less in taxes than those with modestly priced homes." Gonen [Exhibit D], *supra* ¶ 2.

217. The City could avoid or minimize these disparities, while still applying assessment caps required by state law, by lowering Class One's assessment ratio. Doing so would lower the assessed values of all properties and thereby prevent the caps from producing such dramatic disparities throughout the City. The New York Court of Appeals has expressly indicated that lowering the assessment ratio is a permissible means of achieving the uniformity of assessment required by law. *See Matter of O'Shea*, 8 N.Y.3d at 256-61.

218. Lowering Class One's assessment ratio would not require the City to accept lower tax revenues. The City could ensure that its taxation scheme yielded the same amount of money by raising the tax rate.

219. Rather than fulfill its statutory responsibility to assess and tax its residents uniformly within Class One, the City's tax system imposes dramatic disparities such that two properties that would sell for identical prices may be assessed at substantially different values. As a result, their owners frequently pay substantially different taxes. It is even commonplace for higher-appraised homes to be taxed at lower amounts in some neighborhoods than lower-appraised homes taxed at in other neighborhoods or sometimes down the street.

220. The City's application of assessment caps, exclusion of new construction and improvements from those caps, differential treatment of properties built prior to or after 1981,

and failure to maintain an assessment ratio that promotes equalization of the tax burden within Class One results in the substantially disparate assessment and taxation of similarly situated properties within Class One, and therefore violates RPTL section 305(2).

iii. AS AND FOR A THIRD CAUSE OF ACTION

For Declaratory and Injunctive Relief Against the City Defendants (Federal Equal Protection Clause as Applied to Class One)

221. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 220 above as if set forth in full herein.

222. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

223. 42 U.S.C. § 1983 provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

224. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. 14, § 1.

225. The City's application of its property tax system to Class One violates this constitutional requirement because the City taxes different parcels of real property within the Class at wildly different percentages of value, in a manner that the City's Independent Budget Office itself has acknowledged "guarantees that similar properties will face widely different tax burdens depending on where they are located in the city." *See* Sweeting Testimony [Exhibit E],

supra ¶ 6. The head of the City's Department of Finance likewise has "acknowledged that homeowners with high-valued units sometimes pay far less in taxes than those with modestly priced homes." Gonen [Exhibit D], *supra* ¶ 2.

226. The City could avoid or minimize these disparities, while still applying assessment caps required by state law, by lowering Class One's assessment ratio. Doing so would lower the assessed values of all properties and thereby prevent the caps from producing as dramatic disparities throughout the City. The New York Court of Appeals has expressly indicated that lowering the assessment ratio is a permissible means of achieving the uniformity of assessment required by law. *See Matter of O'Shea*, 8 N.Y.3d at 256-61.

227. Lowering Class One's assessment ratio would not require the City to accept lower tax revenues. The City could ensure that its taxation scheme yielded the same amount of money by raising the tax rate.

228. Rather than fulfill its constitutional responsibility to assess and tax its residents uniformly within Class One, the City's tax system imposes dramatic disparities such that two properties that would sell for identical prices may be assessed at substantially different values. As a result, their owners frequently pay substantially different taxes. It is even commonplace for higher-appraised homes to be taxed at lower amounts in some neighborhoods than lower-appraised homes taxed at in other neighborhoods or sometimes down the street.

229. The City's application of assessment caps, exclusion of new construction and improvements from those caps, differential treatment of properties built prior to or after 1981, and failure to maintain an assessment ratio that promotes equalization of the tax burden within Class One results in the substantially disparate assessment and taxation of similarly situated properties within Class One.

230. Although New York law provides that "true market value" is the basis for assessment, *G.R.F., Inc.*, 41 N.Y.2d at 515, the City's system of assessing and taxing Class One properties is not rationally related to that goal. To the contrary, the City's tax system impermissibly discriminates against similarly situated property owners within the same class based on factors that are impermissible under state law, such as the property's location or age, in violation of the federal Equal Protection Clause.

iv. AS AND FOR A FOURTH CAUSE OF ACTION

For Declaratory and Injunctive Relief Against the City Defendants (State Equal Protection Clause as Applied to Class One)

231. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 230 above as if set forth in full herein.

232. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

233. The Equal Protection Clause of the New York Constitution provides that "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof." N.Y. CONST. art. I, § 11.

234. The City's application of its property tax system to Class One violates this constitutional requirement because the City taxes different parcels of real property within the Class at wildly different percentages of value, in a manner that the City's Independent Budget Office itself has acknowledged "guarantees that similar properties will face widely different tax burdens depending on where they are located in the city." *See* Sweeting Testimony [Exhibit E], *supra* ¶ 6. The head of the City's Department of Finance likewise has "acknowledged that homeowners with high-valued units sometimes pay far less in taxes than those with modestly priced homes." Gonen [Exhibit D], *supra* ¶ 2.

235. The City could avoid or minimize these disparities, while still applying assessment caps required by state law, by lowering Class One's assessment ratio. Doing so would lower the assessed values of all properties and thereby prevent the caps from producing as dramatic disparities throughout the City. The New York Court of Appeals has expressly indicated lowering the assessment ratio is a permissible means of achieving the uniformity of assessment required by law. *See Matter of O'Shea*, 8 N.Y.3d at 256-61.

236. Lowering Class One's assessment ratio would not require the City to accept lower tax revenues. The City could ensure that its taxation scheme yielded the same amount of money by raising the tax rate.

237. Rather than fulfill its constitutional responsibility to assess and tax its residents uniformly within Class One, the City's tax system imposes dramatic disparities such that two properties that would sell for identical prices may be assessed at substantially different values. As a result, their owners frequently pay substantially different taxes. It is even commonplace for higher-appraised homes to be taxed at lower amounts in some neighborhoods than lower-appraised homes taxed at in other neighborhoods or sometimes down the street.

238. The City's application of assessment caps, exclusion of new construction and improvements from those caps, differential treatment of properties built prior to or after 1981, and failure to maintain an assessment ratio that promotes equalization of the tax burden within Class One results in the substantially disparate assessment and taxation of similarly situated properties within Class One.

239. Although New York law provides that "true market value" is the basis for assessment, *G.R.F., Inc.*, 41 N.Y.2d at 515, the City's system of assessing and taxing Class One properties is not rationally related to that goal. To the contrary, the City's tax system

impermissibly discriminates against similarly situated property owners within the same class based on factors that are impermissible under state law, such as the property's location or age, in violation of the state Equal Protection Clause.

v. AS AND FOR A FIFTH CAUSE OF ACTION

For Declaratory and Injunctive Relief Against All Defendants (New York Constitution, Article XVI, Section 2 as Applied to Class Two)

240. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 239 above as if set forth in full herein.

241. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

242. Article XVI, section 2 of the New York Constitution requires the "equalization of assessments for purposes of taxation." As the Court of Appeals has found, "the Constitution mandates that assessments within the various assessing units must be equalized for taxation purposes." *Foss*, 65 N.Y.2d at 259.

243. New York City's property tax system, as applied to Class Two, violates this constitutional requirement because the City's property tax system provides for "[r]adically different tax treatment of equally valuable properties, depending on the use of the property and the form in which it is owned," and "generate[s] enormous and persistent disparities in the taxes paid by condo and co-op owners" – and owners of rental property – "across neighborhoods." STATE OF NYC'S HOUSING, *supra* ¶ 9, at 8; *see* SHIFTING THE BURDEN, *supra* ¶ 9 , at 5.

244. RPTL section 581 and/or the City's interpretation thereof, the differential treatment of smaller and larger Class 2 Property by RPTL section 1805(2), the City's discriminatory treatment of rental property owners and their tenants, its differential treatment of cooperatives and condominiums prior to and after January 1, 1974, its inequitable abatements for

favored property owners, its application of assessment caps, and its failure to maintain an assessment ratio that promotes equalization of the tax burden within Class Two results in the substantially disparate assessment and taxation of similarly situated properties within Class Two.

245. These results violate the requirements of section 2 of article XVI of New York Constitution.

vi. AS AND FOR A SIXTH CAUSE OF ACTION

For Declaratory and Injunctive Relief Against All Defendants (Real Property Tax Law, Section 305(2) as Applied to Class Two)

246. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 245 above as if set forth in full herein.

247. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

248. RPTL section 305(2) provides that "[a]ll real property in each assessing unit shall be assessed at a uniform percentage of value." As the Court of Appeals has found, RPTL section 305(2) provides that real property within each of New York City's four classes is "to be assessed at the same percentage of full value." *41 Kew Gardens Rd. Assocs.*, 70 N.Y.2d at 330.

249. New York City's property tax system, as applied to Class Two, violates this statutory requirement because the City's property tax system provides for "[r]adically different tax treatment of equally valuable properties, depending on the use of the property and the form in which it is owned," and "generate[s] enormous and persistent disparities in the taxes paid by condo and co-op owners" – and owners of rental property – "across neighborhoods." STATE OF NYC'S HOUSING, *supra* ¶ 9, at 8; *see* SHIFTING THE BURDEN, *supra* ¶ 9, at 5.

250. RPTL section 581 and/or the City's interpretation thereof, the differential treatment of smaller and larger Class 2 Property by RPTL section 1805(2), the City's

discriminatory treatment of rental property owners and their tenants, its differential treatment of cooperatives and condominiums prior to and after January 1, 1974, its inequitable abatements for favored property owners, its application of assessment caps, and its failure to maintain an assessment ratio that promotes equalization of the tax burden within Class Two results in the substantially disparate assessment and taxation of similarly situated properties within Class Two.

251. These results violates RPTL section 305(2).

vii. AS AND FOR A SEVENTH CAUSE OF ACTION

For Declaratory and Injunctive Relief Against All Defendants (Federal Equal Protection Clause as Applied to Class Two)

252. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 251 above as if set forth in full herein.

253. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

254. 42 U.S.C. § 1983 provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

255. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

256. New York City's property tax system, as applied to Class Two, violates this constitutional requirement because the City's property tax system provides for "[r]adically

different tax treatment of equally valuable properties, depending on the use of the property and the form in which it is owned," and "generate[s] enormous and persistent disparities in the taxes paid by condo and co-op owners" – and owners of rental property – "across neighborhoods." STATE OF NYC'S HOUSING, *supra* ¶ 9, at 8; *see* SHIFTING THE BURDEN, *supra* ¶ 9, at 5.

257. RPTL section 581 and/or the City's interpretation thereof, the differential treatment of smaller and larger Class 2 Property by RPTL section 1805(2), the City's discriminatory treatment of rental property owners and their tenants, its differential treatment of cooperatives and condominiums prior to and after January 1, 1974, its inequitable abatements for favored property owners, its application of assessment caps, and its failure to maintain an assessment ratio that promotes equalization of the tax burden within Class Two results in the substantially disparate assessment and taxation of similarly situated properties within Class Two.

258. Although New York law provides that "true market value" is the basis for assessment, *G.R.F., Inc.*, 41 N.Y.2d at 515, the City's system of assessing and taxing Class Two properties is not rationally related to that goal. To the contrary, the City's tax system impermissibly discriminates against property owners within the same class in violation of the federal Equal Protection Clause.

viii. AS AND FOR AN EIGHTH CAUSE OF ACTION

For Declaratory and Injunctive Relief Against All Defendants (State Equal Protection Clause as Applied to Class Two)

259. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 258 above as if set forth in full herein.

260. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

261. The Equal Protection Clause of the New York Constitution provides that "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof." N.Y. CONST. art. I, § 11. The Clause prohibits statutory tax classifications that are "palpably arbitrary" or reflect "invidious discrimination." *Burrows v. Bd. of Assessors*, 64 N.Y.2d 33, 36 (1984).

262. New York City arbitrarily taxes residential properties using fictitious assessments that bear no rational relationship to fair market value. Instead, New York City's property tax system wildly discriminates among properties that have similar values.

263. New York City's property tax system, as applied to Class Two, violates this constitutional requirement because the City's property tax system provides for "[r]adically different tax treatment of equally valuable properties, depending on the use of the property and the form in which it is owned," and "generate[s] enormous and persistent disparities in the taxes paid by condo and co-op owners" – and owners of rental property – "across neighborhoods." STATE OF NYC'S HOUSING, *supra* ¶ 9, at 8; *see* SHIFTING THE BURDEN, *supra* ¶ 9, at 5.

264. RPTL section 581 and/or the City's interpretation thereof, the differential treatment of smaller and larger Class 2 Property by RPTL section 1805(2), the City's discriminatory treatment of rental property owners and their tenants, its differential treatment of cooperatives and condominiums prior to and after January 1, 1974, its inequitable abatements for favored property owners, its application of assessment caps, and its failure to maintain an assessment ratio that promotes equalization of the tax burden within Class Two results in the substantially disparate assessment and taxation of similarly situated properties within Class Two.

265. Although New York law provides that "true market value" is the basis for assessment, *G.R.F., Inc.*, 41 N.Y.2d at 515, the City's system of assessing and taxing Class Two

properties is not rationally related to that goal. To the contrary, the City's tax system impermissibly discriminates against property owners within the same class based on impermissible factors such as the location or age of their property, in violation of the state Equal Protection Clause.

ix. AS AND FOR A NINTH CAUSE OF ACTION
For Declaratory and Injunctive Relief Against All Defendants (Federal Due Process Clause)

266. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 265 above as if set forth in full herein.

267. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

268. 42 U.S.C. § 1983 provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

269. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property without due process of law." U.S. CONST. amend. XIV, § 1.

270. Under New York law, "property must be assessed at market value." *Allied Corp.*, 80 N.Y.2d at 356; *see also G.R.F., Inc.*, 41 N.Y.2d at 515 (noting the ultimate touchstone of real property taxation remains "true market value"). The assessment and taxation of real property must reflect "fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc." *Allied Corp.*, 80 N.Y.2d at 356. And in order to be

"acceptable," the methodology for valuation must be "fair and nondiscriminating." *Id.* The assessment and taxation of property at "arbitrary" rates in light of those standards violates the Due Process Clause. *See Schulz v. New York State Legislature*, 230 A.D.2d 578, 583 (1997) ("arbitrary" taxation of property impermissible under the Due Process Clause).

271. Under New York City's system of property taxation, however, similarly valued properties throughout the system are arbitrarily assessed and taxed at amounts bearing no rational basis to their true market value or to any fair and realistic value of the property involved. Instead, New York City's property tax system wildly discriminates against properties that have similar values.

272. The arbitrary and unequal treatment of similarly valued properties throughout the City is driven by political protectionism for favored property owners, reflecting longstanding political "rationales to protect groups of [favored] property owners." Hyman Written Test. [Exhibit I], *supra* ¶ 20, at 3. It discriminates against renters and others with less historical political power, and does not further a legitimate state interest.

273. Accordingly, it violates the Due Process Clause of the U.S. Constitution.

x. AS AND FOR A TENTH CAUSE OF ACTION
For Declaratory and Injunctive Relief Against All Defendants (State Due Process Clause)

274. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 273 above as if set forth in full herein.

275. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

276. The Due Process Clause of the New York Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law." N.Y. CONST. art. I, § 6.

277. Under New York law, "property must be assessed at market value." *Allied Corp.*, 80 N.Y.2d at 356; *see also G.R.F., Inc.*, 41 N.Y.2d at 515 (noting the ultimate touchstone of real property taxation remains "true market value"). The assessment and taxation of real property must reflect "fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc." *Allied Corp.*, 80 N.Y.2d at 356. And in order to be "acceptable," the methodology for valuation must be "fair and nondiscriminating." *Id.* The assessment and taxation of property at "arbitrary" rates in light of those standards violates the Due Process Clause. *See Schulz v. New York State Legislature*, 230 A.D.2d 578 (1997) ("arbitrary" taxation of property impermissible under the Due Process Clause).

278. As a result of state and local law and policy, however, New York City's system of property taxation arbitrarily assesses and taxes similarly valued properties throughout the system at amounts bearing no rational basis to their true market value or to any fair and realistic value of the property involved. Instead, New York City's property tax system wildly discriminates against properties that have similar values.

279. The arbitrary and unequal treatment of similarly valued properties throughout the City is driven by political protectionism for favored property owners, reflecting longstanding political "rationales to protect groups of [favored] property owners." Hyman Written Test. [Exhibit I], *supra* ¶ 20, at 3. It discriminates against renters and others with less historical political power, and does not further a legitimate state interest.

280. Accordingly, it violates the Due Process Clause of the New York Constitution.

xi. AS AND FOR A ELEVENTH CAUSE OF ACTION
For Declaratory and Injunctive Relief Against All Defendants (Federal Equal Protection Clause – Properties In Different Property Classes)

281. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 280 above as if set forth in full herein.

282. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

283. 42 U.S.C. § 1983 provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

284. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. Any scheme for classifying and taxing property must "proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. [Rather, it] 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.'" *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 527 (1959) (quoting *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)).

285. Under New York law, the assessment and taxation of real property must reflect "fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc." *Allied Corp.*, 80 N.Y.2d at 356. And in order to "acceptable," the methodology for valuation must be "fair and nondiscriminating." *Id.* The ultimate touchstone of real property taxation remains "true market value." *G.R.F., Inc.*, 41 N.Y.2d at 515.

286. Under New York City's system of property taxation, however, similarly valued properties throughout the system are arbitrarily assessed and taxed at amounts bearing no rational relationship to their true market value or to any fair and realistic value of the property

involved. Instead, New York City's property tax system wildly discriminates against properties that have similar values.

287. In almost every year since 1989, the New York City Council has enacted a Home Rule message asking the State Legislature to amend the RPTL so as to eliminate or reduce the City's otherwise mandatory obligation to redistribute the property tax burden within the City so that each class bears its fair share of that burden.

288. Rather than permit the share of the tax burden allocated to each class to be adjusted by up to 5%, the State Legislature has acceded to the City Council's wishes and enacted annual amendments to RPTL § 1803-a(1) that, in effect, protect Class One taxpayers from paying their fair share of the tax burden. This annual manipulation process prevents Class One's share from growing in proportion to Class One's ever-increasing share of total market value.

289. This interwoven series of City and State enactments constitutes a single, continuing policy through which City and State actors have colluded to manipulate and distort the property-tax system so as to grossly and unconstitutionally privilege the interests of Class One over and above the interests of the other three Classes. This policy has perpetuated and aggravated dramatic disparities between the Classes' relative shares of the property tax burden. The effective tax rate for Class One properties is now 0.77%. In comparison, the effective tax rate for Class Two properties is 3.74%; the effective tax rate for Class Three properties is 4.80%; and the effective tax rate for Class Four properties is 3.87%.

290. The arbitrary and unequal treatment of similarly valued properties throughout the City reflects longstanding political "rationales to protect groups of [favored] property owners." *See* Hyman Written Test. [Exhibit I], *supra* ¶ 20, at 3. It discriminates against renters and others with less historical political power, and does not further a legitimate state interest.

291. Nor does it bear any rational relationship to the state's stated purpose to ensure that the assessment and taxation of real property reflects the "fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc." *Allied Corp.*, 80 N.Y.2d at 356.

292. Accordingly, it violates the Equal Protection Clause of the U.S. Constitution.

xii. AS AND FOR A TWELFTH CAUSE OF ACTION
For Declaratory and Injunctive Relief Against All Defendants (State Equal Protection Clause – Properties In Different Classes)

293. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 292 above as if set forth in full herein.

294. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

295. The Equal Protection Clause of the New York Constitution provides that "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof." N.Y. CONST. art. I, § 11. The Clause prohibits statutory tax classifications that are "palpably arbitrary" or reflect "invidious discrimination." *Burrows v. Bd. of Assessors for Town of Chatham*, 64 N.Y.2d 33, 36 (1984). On that basis, courts have struck down provisions of the RPTL that resulted in "the disparate treatment of similarly situated [taxpayers]." *Id.*

296. Under New York law, the assessment and taxation of real property must reflect "fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc." *Allied Corp.*, 80 N.Y.2d at 356. And in order to "acceptable," the methodology for valuation must be "fair and nondiscriminating." *Id.* The ultimate touchstone of real property taxation remains "true market value." *G.R.F., Inc.*, 41 N.Y.2d at 515.

297. Under New York City's system of property taxation, however, similarly valued properties throughout the system are arbitrarily assessed and taxed at amounts bearing no

rational relationship to their true market value or to any fair and realistic value of the property involved. Instead, New York City's property tax system wildly discriminates against properties that have similar values.

298. In almost every year since 1989, the New York City Council has enacted a Home Rule message asking the State Legislature to amend the RPTL so as to eliminate or reduce the City's otherwise mandatory obligation to redistribute the property tax burden within the City so that each class bears its fair share of that burden.

299. Rather than permit the share of the tax burden allocated to each class to be adjusted by up to 5%, the State Legislature has acceded to the City Council's wishes and enacted annual amendments to RPTL § 1803-a(1) that, in effect, protect Class One taxpayers from paying their fair share of the tax burden. This annual manipulation process prevents Class One's share from growing in proportion to Class One's ever-increasing share of total market value.

300. This interwoven series of City and State enactments constitutes a single, continuing policy through which City and State actors have colluded to manipulate and distort the property-tax system so as to grossly and unconstitutionally privilege the interests of Class One over and above the interests of the other three Classes. This policy has perpetuated and aggravated dramatic disparities between the Classes' relative shares of the property tax burden. The effective tax rate for Class One properties is now 0.77%. In comparison, the effective tax rate for Class Two properties is 3.74%; the effective tax rate for Class Three properties is 4.80%; and the effective tax rate for Class Four properties is 3.87%.

301. The arbitrary and unequal treatment of similarly valued properties throughout the City is driven by political protectionism for favored property owners, reflecting longstanding political "rationales to protect groups of [favored] property owners." Hyman Written Test.

[Exhibit I], *supra* ¶ 20, at 3. It discriminates against renters and others with less historical political power, and does not further a legitimate state interest.

302. Nor does it bear any rational relationship to the state's stated purpose to ensure that the assessment and taxation of real property reflects the "fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc." *Allied Corp.*, 80 N.Y.2d at 356.

303. Accordingly, it violates the Equal Protection Clause of the New York Constitution.

xiii. AS AND FOR A THIRTEENTH CAUSE OF ACTION
For Declaratory and Injunctive Relief Against All Defendants (Violation of Real Property Tax Law 1802)

304. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 303 above as if set forth in full herein.

305. RPTL section 1802(1) provides that there shall be four and only four property classes within New York City.

306. In practice, however, the City's property tax system creates innumerable subclasses, assessing and taxing similarly valued property differently based on their age, location, number of units, form of use and more.

307. The de facto creation of additional subclasses not authorized by state law violates RPTL section 1802.

xiv. AS AND FOR A FOURTEENTH CAUSE OF ACTION
For Declaratory and Injunctive Relief Against All Defendants (Federal Fair Housing Act Violations for Disparities Within Class One)

308. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 307 above as if set forth in full herein.

309. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

310. The anomalies of the property-tax system that State law creates for the City, as implemented by City policy, systematically and disparately affect racial minority homeowners within Class One in both majority-minority (over 50%) and super-majority (over 60%) minority districts. Owners of Class One properties within these districts are paying a dramatically higher effective tax rate than owners of Class One properties within other community districts.

311. While properties in community districts that are majority-white are assessed at a rate of only 3.73%, properties in community districts that are majority-minority are assessed at a rate that is 13% higher (4.23%). In dollar terms, this means that the almost 508,000 homeowners in majority-minority community districts are being over-assessed by more than $1.6 billion compared to those who own properties in majority-white districts.

312. For properties in community districts that are super-majority (over 60%) non-white versus super-majority (over 60%) white, the disparate impact of the City's policies is even greater. Class One homes in districts that are super-majority white are assessed at a rate of only 3.63% of market value, while Class One properties in super-majority non-white districts are assessed at a rate that is 20% higher (4.34%). In dollar terms, this means that the approximately 446,000 homeowners in super-majority minority districts are being over-assessed by almost $1.9 billion in comparison to homeowners in super-majority white districts.

313. This disparity appears to result from the higher likelihood that a majority-white district will comprise properties that have experienced more rapid and substantial appreciation, as compared to a majority-minority district. Where properties have rapidly and substantially appreciated, the assessment caps protect property owners from increases in property assessments

that parallel the increase in market value. Accordingly, assessment caps benefit property owners whose property has rapidly increased in value.

314. The City and State are or should be aware that New York City's property tax system imposes racially discriminatory impact upon the owners of Class One real property in New York City, thereby inhibiting the ability of minority residents to buy, own, and rent such dwellings.

315. The disparity recounted imposes a disproportionate burden on the purchase, ownership, and renting of Class One real property by racial minorities as compared to whites. This disparate financial impact violates the federal Fair Housing Act, 42 U.S.C. 3601 *et seq*.

xv. AS AND FOR A FIFTEENTH CAUSE OF ACTION
For Declaratory and Injunctive Relief Against All Defendants (Federal Fair Housing Act Violations for Disparities Within Class Two)

316. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 315 above as if set forth in full herein.

317. A present and actual controversy between the parties exists, requiring this Court to adjudicate their respective rights and duties.

318. The federal Fair Housing Act prohibits all practices that "make unavailable or deny . . . a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a). The statute prohibits not only intentional discrimination on the basis of race, but also purportedly race-blind housing practices that "'have a disproportionately adverse effect on minorities' and are otherwise unjustified by a legitimate rationale." *See Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2513, 2525 (2015) (quoting *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009)).

319. The anomalies of the City's property-tax system are the product of state and local law and policy, and result in the owners of rental buildings, who have not obtained the benefit of

assessment caps or any of the other special deals applicable to other residential occupants and whose properties are not wildly undervalued, paying a higher effective tax rate than condominium and cooperative owners.

320. The City's property-tax policy favors Class 2 owner-occupied housing as against Class 2 rental housing, causing rental-property owners to pay a higher effective tax rate than condominium and cooperative owners.

321. The owners of rental buildings pass along a substantial portion of property taxes to their renters, either in the form of increases in rent or in cutbacks to building maintenance and repairs. Thus, renters bear the brunt of the disparity in the property-tax burdens between rental-building owners and condominium and cooperative owners.

322. The City's preferential tax treatment of owner-occupied housing also discourages the construction and renovation of new residential units for rent, restraining the quantity of rental housing available to New Yorkers.

323. This disparity falls more heavily on members of racial minority groups. While more than 64% of renters are racial minorities, only a little more than 40% of condominium owners and 33% of cooperative owners are racial minorities.

324. The City and State are or should be aware that New York City's property tax system discriminates against rental units, and that this discrimination particularly burdens racial minorities as they search for affordable housing in New York. This disparate impact violates the federal Fair Housing Act, 42 U.S.C. § 3604(a).

xiv. AS AND FOR A SIXTEENTH CAUSE OF ACTION
For Declaratory and Injunctive Relief Against All Defendants (Federal Fair Housing Act Violations for Perpetuating Segregation)

325. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 324 above as if set forth in full herein.

326. Under the Fair Housing Act, an action that "perpetuates segregation and thereby prevents interracial association . . . will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups." *Suffolk Hous. Servs. v. Brookhaven*, 109 A.D.2d 323, 335 (1985), *aff'd* 70 N.Y.2d 122 (1987).

327. Many of New York City's neighborhoods remain subject to longstanding and pervasive segregation. Segregation is particularly pronounced between white and black New Yorkers.

328. The inequities of New York City's property tax system disproportionately burden renters and minority-majority neighborhoods, exacerbating the financial burden imposed upon those populations and constraining household mobility. That, in turn, promotes and reinforces existing patterns of segregation.

329. The higher effective tax rates imposed on many of New York's segregated neighborhoods relative to others in the City likewise suppresses movement from and to those neighborhoods, thereby perpetuating existing segregation.

330. By perpetuating segregation, New York City's property tax system violates the federal Fair Housing Act, 42 U.S.C. § 3604(a).

DEMAND FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. Declaring and adjudging, pursuant to C.P.L.R. § 3001 and 42 U.S.C. §§ 1983, 1988, 3613(a) & 3613(c)(1), that Defendants' real property valuation and assessment laws, regulations, policies and practices, the resulting real property taxation system, and the real property taxes actually imposed and collected from Plaintiff:

a. violate section 2 of article XVI of the New York Constitution, and, therefore, are invalid and unenforceable;

b. violate section 305(2) of the RPTL, and, therefore, are invalid and unenforceable;

c. violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and, therefore, are invalid and unenforceable;

d. violate the Equal Protection Clause of the New York Constitution, and, therefore, are invalid and unenforceable;

e. violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution and, therefore, are invalid and unenforceable;

f. violate the Due Process Clause of the New York Constitution, and, therefore, are invalid and unenforceable;

g. violate RPTL section 1802, and, therefore, are invalid and unenforceable;

h. violate the federal Fair Housing Act, and, therefore, are invalid and unenforceable;

2. Entering a permanent injunction against the unlawful assessment and collection of property taxes within New York City;

3. Awarding Plaintiff the costs, disbursements, expert fees, and attorneys' fees incurred in this proceeding, pursuant to C.P.L.R. §§ 8101–8605 and 42 U.S.C. §§ 1988 & 3613(c)(2); and

4. Granting such other and further relief, legal or equitable, as the Court deems just and proper.

Dated: New York, New York
April 25, 2017

Respectfully Submitted,

LATHAM & WATKINS LLP

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