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State Senator Liz Krueger
211 East 43rd Street
New York, New York 10017

Re: Memorandum in Opposition to S5763-B

Dear Sen. Krueger:

I am writing on behalf of our clients and as a member of the tenant bar to express our strong opposition to S5763B, a bill which seeks to eviscerate the Court of Appeals decision *Roberts v. Tishman Speyer Properties,* 13 N.Y.3d 270 (2009).

The bill would allow owners who have already benefited from violating the law to reap further benefits, decrease the number of rent stabilized tenants during a housing emergency, and "lock in" unlawful inflated rents.

This firm represents tenants at London Terrace Gardens, Lenox Terrace, Clermont York and 350 East 52nd Street. , as well as several individual tenants who, like the tenants at Stuyvesant Town and Peter Cooper Village, reside in apartments that were unlawfully deregulated while owners received J-51 tax benefits. We have commenced class actions on behalf of tenants at those buildings whose apartments the Legislature had decided in 1997 must be treated as rent stabilized. Our clients instead were subject to market rents and leases with no right of renewal, violating the *quid pro quo* in the law.

The holding of the Court of Appeals in *Roberts* has been repeatedly upheld. *Gerard v. Clermont York Associates,* 89 A.D.3d 497 (1st Dept. 2011); *Gersten v. 56 7th Avenue LLC,* 88

A.D.3d 189 (1st Dept. 2011); *Dugan v. London Terrace Gardens,* 2011 NY Slip Op. 31661(U) (Sup. Ct. N.Y. Co., Billings, J.); *Gudz v. Jemrock Realty,* 2011 NY Slip Op. 31647(U) (Sup. Ct. N.Y. Co., Rakower, J.). Tenants throughout the city have been provided rent stabilized leases, had overcharges refunded and had their rents adjusted in light of the decision. As a matter of law and public policy *Roberts* was correctly decided. There is no basis for amending the Rent Stabilization Law in a manner which would reduce the number of rent stabilized apartments during a housing emergency and provide owners an additional windfall as a result of their unlawful actions.

The Introducers Memorandum states in the "Justification" section that owners face "unacceptable burdens" and that the current state of the law will "undermine the financial well-being of many buildings." There is no basis for these claims. In fact, owners have already benefited immensely from not following the law, deregulating thousands of rent stabilized apartments and charging market rents.

The sponsors also express a concern for both "clarity" and for preventing tenants from receiving a windfall. There is no reason to take from the courts their proper role in clarifying any uncertainties in the law. The courts have already begun to do so (see, e.g., cases cited above). Furthermore, the Rent Stabilization Law already sets forth guidelines on how to set rents and refund overcharges. No additional legislation is needed for "clarity."

The specific provisions of the bill would reduce the number of rent-stabilized apartments at a time of a housing emergency, reward owners for their unlawful actions, deprive tenants of rent refunds in cases where they have been overcharged and force tenants from their homes.

The provisions of the bill that permit owners to repay the J-51 benefits so as to be able to deregulate apartments fly in the face of decades of settled law which has never permitted such a waiver of benefits as a way to avoid rent regulation. As the Court of Appeals properly found, these benefits were provided with the explicit condition that housing accommodations in such buildings remain rent stabilized. What owners seek to do with this legislation is rewrite the bargain that was made at the time they applied for the J-51 benefits, a bargain which the Court of Appeals found was clearly set forth in the law.

The "base date" provisions of the bill are especially egregious in that they are contrary to the well-established "four year rule" for rent overcharges. Since 1983 tenants have been barred from collecting rent overcharges going back more than four years from the date on which they file a complaint. L. 1983, ch. 403. There is no basis to make an exception to the four-year rule in *Roberts* cases. The real estate lobby, after benefiting for years from the four-year rule, now wants to circumvent it by setting base dates for the purpose of insuring that owners can reap the benefit of having set unlawful rents.

The October 22, 2005 base date (for owners who do not repay the benefits) would allow owners in some cases to go back more than four years and include in the rent the cost of improvements which they had not included in the market rents.

The October 22, 2009 base date would permit owners to "lock in" inflated market rents regardless of the prior rent stabilized rent. In fact, any base date will ultimately allow owners to "lock-in" unlawful market rents unless the courts or the DHCR adopts a "default" formula to prevent owners from reaping a windfall.

The provision allowing owners to collect all rent increases since the base date is

another measure that runs contrary to the Rent Stabilization Law. The law is unambiguous that where an owner has failed to properly register an apartment or provide a proper rent stabilized lease, the owner is not permitted to collect rent increases. RSL 26-517(e)..

The entire rationale of the bill is flawed in that the owners are not in need of any "relief" from the Legislature.

First of all, owners have already reaped the benefit of the DHCR's misapplication of the law for 15 years and collected millions of dollars in overcharges that will never be recovered. Prior to *Roberts,* tens of thousands of apartments were deregulated which will never be recaptured. In most of those apartments unlawful rents have already been locked-in and will never be rolled back because of the four-year rule and the fact that tenant have vacated. .

Second, as stated above, there is simply no evidence that the *Roberts* decision has caused financial calamity or in any significant way undermined the real estate market. The purpose of the bill is not to avoid financial stress but to further enrich owners at the expense of tenants.

Third, as discussed in the *Roberts* decision itself and subsequent decisions, the ruling was not only not unexpected but DHCR's misinterpretation of the law had been the result of aggressive real estate lobbying.

Therefore, there is no need for a legislative "remedy". We strongly oppose the bill and urge the Senate to reject it. The Court of Appeals has spoken and explicitly stated that the issues not resolved in its decision should be decided in subsequent court cases. The Court did not, as it sometimes does, invite the Legislature to act The Legislature should respect, honor and adhere to this ruling.

Members of our firm would be happy to testify in the event the Senate or Assembly decides to hold hearings on these issues.

Yours,

David Hershey-Webb