
IN THE
STATE OF NEW YORK

Court of Appeals

— 0 —

MIGUEL BRASCHI,

Plaintiff-Appellant,

vs.

STAHL ASSOCIATES COMPANY,

Defendant-Respondent.

**BRIEF *AMICI CURIAE* OF FAMILY SERVICE AMERICA,
INSTITUTE FOR THE STUDY OF HUMAN
RESOURCES, BAR ASSOCIATION FOR HUMAN
RIGHTS OF GREATER NEW YORK, Right Reverend
PAUL MOORE, Bishop of New York, RIVERSIDE
CHURCH OFFICE OF PEACE AND SOCIAL JUSTICE,
Reverend FORREST CHURCH of Unitarian Church of
All Souls and Rabbi BALFOUR BRICKNER of Stephen
Wise Free Synagogue**

HODGSON, RUSS, ANDREWS,
WOODS & GOODYEAR
(Attention: WILLIAM H. GARDNER)
Attorneys for Movants
1800 One M & T Plaza
Buffalo, New York 14203
(716) 856-4000

On the Brief:

THOMAS F. COLEMAN*

Co-Counsel

Post Office Box 65756
Los Angeles, California 90065
(213) 258-8955

JAY M. KOHORN*

Of Counsel

*Admitted to practice law in
the State of California



CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF AMICI CURIAE 1

STATEMENT OF THE CASE 7

The Undisputed Facts Show That the Braschi-Blanchard Household Was a Functioning Family Unit 7

A Preliminary Injunction Issued to Protect Braschi, as a Family Survivor, from Forced Eviction ... 8

The Appellate Division Set Aside the Injunction 9

The Question Presented on Appeal Involves the Definition of "Family" in a Rent Control Context 10

SUMMARY OF ARGUMENT 11

ARGUMENT 14

I. THE LEGAL CONTEXT: NEW YORK PUBLIC POLICY REQUIRES FLEXIBILITY IN DEFINING "FAMILY" 14

(a) Flexibility in Defining "Family" is an Integral Part of American Jurisprudence 16

(b) Judicial and Legislative Precedents in the State of New York Define "Family" in an Inclusive Manner 17

(c) The New York State Constitution Sometimes Requires Inclusive Definitions of "Family" 19

(d) New York City Public Policies Favor Inclusive Definitions of "Family" 22

II. THE FACTUAL CONTEXT: THE DEMOGRAPHICS OF NEW YORK CITY REFLECT GREAT VARIETY IN THE PERSONAL CHARACTERISTICS OF CITY RESIDENTS AND TREMENDOUS DIVERSITY IN THEIR FAMILY RELATIONSHIPS 24

(a) New York is a City of Many Minorities 25

(b) The Dominant Household Type Involves Adult Renters with Diverse Family Relationships 26

(c) An Extreme Housing Shortage Necessitates Rent Control Laws; Such Laws Protect, in Large Measure, Elderly and Low-Income Renters 27

III.	BY DEFINING "FAMILY" IN AN INCLUSIVE MANNER WITHIN THE RENT CONTROL CONTEXT, THIS COURT CAN FURTHER LEGISLATIVE INTENT, ADVANCE PUBLIC POLICY, REMOVE CONSTITUTIONAL DOUBTS, AND AVOID UNJUST CONSEQUENCES	30
	(a) General Rules of Construction Indicate That an Inclusive Definition of "Family" is Appropriate in the Rent Control Context ...	31
	(b) The Whole Statutory and Regulatory Scheme Governing Rent Control and Eviction in New York City is Relevant to a Proper Interpretation of the Eviction Regulation Protecting "Family" Survivors	35
	(c) Cases Interpreting the Eviction Regulations Demonstrate that Protections for Family Survivors Are Not Limited to Relationships Based on Blood, Marriage, or Adoption	41
IV.	A CASE-BY-CASE APPROACH, UTILIZING DEFINITIONAL CRITERIA FROM ZONING PRECEDENTS, SHOULD BE USED TO DETERMINE IF NONRELATIVES ARE ENTITLED TO PROTECTION UNDER THE FAMILY SURVIVOR REGULATION ...	52
	(a) Applying the Rules of Construction	52
	(b) Avoiding Objectionable Consequences	54
	(c) Removing Constitutional Doubts	58
	(d) Adapting the Zoning Approach	62
	CONCLUSION	63
TABLES:		
	Table 1: Profile of the General Population of the City of New York	65
	Table 2: Characteristics of Households in the City of New York	66
	Table 3: Marital Status of Adults in the City of New York	67
	Table 4: Cohabitation Status of Adults in the City of New York	68
	Table 5: Some State Statutes Defining "Family"	69

TABLE OF AUTHORITIES

Cases:

Albany v. Kirby, 36 N.Y.2d 526 (1975)	34
Baddour v. City of Long Beach, 279 N.Y. 167 (1938)	19
Brashi v. Stahl Associates, 531 N.Y.S.2d 562 (App. Div., First Dept., 1988)	9,49
Brown v. County of San Joaquin, 601 F.Supp. 653 (U.S.D.C., E.D. Cal., 1985)	58
Capital Newspapers v. Whalen, 69 N.Y.2d 246 (1987)	32
City of White Plains v. Ferraioli, 34 N.Y.2d 300 (1976)	20,63
Collins v. Next West Management Inc., 137 Misc.2d 632 (Supreme Court, N.Y. Co., 1987)	51
Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)	61
Crane Neck Association v. New York City/Long Island County Services Group, 61 N.Y.2d 154 (1984)	20,63
East Four-Forty Associates v. Ewell, 138 Misc.2d 235 (Supreme Court, App. Term, 1988)	51
Fineway Supermarkets v. State Liquor Authority, 48 N.Y.2d 464 (1979)	44
Group House v. Board of Zoning & Appeals, 45 N.Y.2d 266 (1978)	20,63
Herzog v. Joy, 53 N.Y.2d 821 (1981)	45
In re Estate of Comparetto, 352 N.Y.S.2d 136 (Surrogate's Court, Nassau Co., 1974)	18
In re Keegen's Estate, 37 N.Y.S.2d 368 (Surrogate's Court, Westchester Co., 1942)	18
In re Lorie C., 49 N.Y.2d 161 (1980)	34,58
In re Pluto's Cave, 68 N.Y.2d 791 (1986)	34

Cases: (cont.)

In re Robert Paul P., 63 N.Y.2d 233 (1984)	9,49
In re Teft's Will, 130 N.Y.S.2d 192 (Surrogate's Court, Westchester Co., 1954)	18
Klee v. Klee, 93 N.Y.S. 588 (Sup. Ct., App. Term, 1905)	17
Koppelman v. O'Keefe, Supreme Court, First Department, Appellate Term, NYLJ, Sept. 28, 1988, p. 17	50
Kraut v. Morgan & Brother Manhattan Storage Co., 38 N.Y.2d 445	33
Lehr v. Robertson, 463 U.S. 248	61
Lepow v. Gress, NYLJ, July 2, 1984, p. 14, col. 1	50
Maresca v. Cuomo, 64 N.Y.2d 242	61
Marvin v. Marvin, 18 Cal.3d 660 (1976)	56
McCord v. Pichel, 315 N.Y.S.2d 717 (Supreme Ct., App. Div., Third Dept., 1970)	18
McMinn v. Town of Oyster Bay, 66 N.Y.2d 544 (1985)	21,61,63
Morone v. Morone, 50 N.Y.2d 481 (1980)	57
New York v. Uplinger, 104 S.Ct. 2332	3
N.Y.C.H.A. v. Nesmith, 419 N.Y.S.2d 39, 100 Misc.2d 414 (1979)	23
N.Y.C.H.A. v. Shephard, 114 Misc.2d 873, 452 N.Y.S.2d 785 (N.Y. Civil Court, Kings Co., 1982) ..	23
Park South Associates v. Daniels, 121 Misc.2d 933, 469 N.Y.S.2d 319 (Civil Court, N.Y. Co., 1983)	47
Park West Village v. Lewis, 62 N.Y.2d 431	53
People v. Groff, 71 N.Y.2d 101	33
People v. Harkins, 49 Misc.2d 673, 268 N.Y.S.2d 482 (1966)	53

Cases: (cont.)

People v. Hasse, 57 Misc.2d 59, 291 N.Y.S.2d 53 (Dist. Ct., Suffolk Co., 1968)	52
People v. Liberta, 64 N.Y.2d 152	61
People v. Onofre, 51 N.Y.2d 476	3
People v. Uplinger, 447 N.E.2d 62	3
People v. Whitehead, 124 N.Y.S.2d 189 (N.Y. City Magistrate's Court, 1953)	18
Roberts v. Unites States Jaycees, 468 U.S. 609	59
Sabor v. Lavine, 42 N.Y.2d 1068	52
Safford v. Village of Sands Point, 102 N.Y.S.2d 910, 913 (Sup. Ct., Special Term, 1951) ..	17
Schultz v. Boy Scouts of America, 65 N.Y.2d 189	33
Smith v. Org. of Foster Families, 431 U.S. 816 (1977) ...	55,60
Spenser v. Spenser, 128 Misc. 298, 488 N.Y.S.2d 565 567 (N.Y. Family Ct., Queens Co., 1985)	56
Stanley v. Illinois, 405 U.S. 645	60
Sullivan v. Brevard Associates, 66 N.Y.2d 489 (1985)	40,43,51
Trafelet v. Thompson, 594 F.2d 623 (Seventh Cir., 1979)..	61
Town of Henrietta v. Fairchild, 279 N.Y.S.2d 992, 53 Misc.2d 862	17
Two Associates v. Brown, 131 Misc.2d 986 (Supreme Court, N.Y. Co., 1986)	51
Zimmerman v. Burton, 107 Misc. 401, 434 N.Y.S.2d 127 (Civil Court, N.Y. Co., 1980)	46
2-4 Realty Associates v. Pitman, 137 Misc.2d 898, 523 N.Y.S.2d 7 (Civil Court, N.Y. Co., 1987)	48,63
829 Seventh Ave. v. Reider, 67 N.Y.2d 930 (1986)	45,62

New York Constitution:

Article I, Section 6 21

State Statutes:

Civil Rights Law:

Section 18-b(6) 71

Correctons Law:

Section 148-a(1)(b) 70

Executive Law:

Section 621(4) 71

Section 292(12) 71

Mental Hygiene Law:

Section 41.34(5)(f) 71

Multiple Dwelling Law:

Section 4(5) 71

Multiple Residence Law:

Section 4(14) 71

Public Housing Law:

Sections 30, 37, 156 23

Real Property Law:

Section 235-f 39,51

Social Services Law:

Section 2(22) 70

Section 49(2) 70

Section 459-a(2) 70

Section 481-c(2) 70

State Regulations:

State Rent and Eviction Regulations:

Section 2204.6(a) 44
Section 2204.6(d) 8
Section 2520.6(n) 43

New York City Ordinances:

Administrative Code of the City of New York:

Title 8, Section 8-102(12) 22
Title 26, Sections 26-401 et. seq. 30,41
Title 27, Section 27-232 22
Title 27, Section 27-2004(4) 22

New York City Regulations:

New York City Housing Authority Management Manual:

Section 1(c) 23

Other Authorities:

Books:

Joseph Rasch, "Rent Control and Rent Stabilization,"
New York Landlord and Tenant 35-37,42

Periodicals:

Gayyellow Pages: The National Edition (1989) 25

Treatises:

"Family," 35 Corpus Juris Secundum 935 16
McKinney's Cons. Laws of N.Y., Book 1, "Statutes".. 31-35

Reports:

"Demographic Profile: A Portrait of New York City from the 1980 Census", Department of City Planning, City of New York (December 1983) 65

"Socioeconomic Profile: A Portrait of New York City from the 1980 Census," Department of City Planning, City of New York (April 1986) 65-66

1980 Census of Population, Part 34, General Social and Economic Characteristics of New York, Table 183 [for Bronx, Kings, Queens, New York, and Richmond Counties] (July, 1983) 65-67

"Census Bureau User's Guide," (PHC 80-R1; Part B Glossary - November 1982) 67

Stegman, Michael A., "Housing and Vacancy Report: New York City, 1987," A Report Prepared for the City of New York, Department of Housing Preservation and Development (April 1988) 26-29

Strengthening Families: A Model for Community Action, Final Report of the Los Angeles City Task Force on Family Diversity (May 1988) 14,15

Memoranda:

Memoranda of Legislative Representative of the City of New York, "Memoranda to Laws of New York, 1985 Regular Session, p. 2319 40

INTEREST OF AMICI CURIAE

Family Service America is the headquarters' organization of a private, nonprofit, voluntary movement dedicated to strengthening family life. Founded in 1911, Family Service America (FSA) has a network of 290 local member agencies throughout the United States and Canada, making it the largest service network in North America specifically oriented to family services. FSA membership includes accredited sectarian and nonsectarian organizations.

Among its functions as the headquarters' organization, Family Service America establishes policies to help member agencies develop their programs effectively. In January 1988, Family Service America issued the following statement of "**Family Definition:**"

American family life reflects America's heritage of cultural and ethnic diversity. Family Service America recognizes pluralism of family form. Family Service America views the family primarily in terms of its status as a functional group rather than in terms of its form. Well functioning families are both a building block for and a support to the larger society. Such families provide emotional, physical and economic mutual aid to their members, assisting family members in both survival and well-being. Ideally, such families are characterized by intimacy, intensity, continuity and commitment among their members.

All FSA member agencies provide counseling services to help individuals and families cope with personal problems. Most member agencies also offer educational programs on family topics, such as parenting skills, couple communication, and coping with divorce. Many agencies also engage in advocacy activities on behalf of families and healthy family life. Each year, FSA member agencies, with the assistance of 11,000 professional staff

and more than 10,000 volunteers, serve more than 3,200,000 people, many of whom reside in New York City.

Family Service America has joined on this brief because it believes that unnecessarily rigid definitions of families avoid recognition of the flexibility with which human beings make these essential primary relationships. Family Service America believes that the strength of families is related to this flexibility. Insistence on rigid definitions can distort family relations and lead to dysfunctional relationships.

The **Institute for the Study of Human Resources** is a nonprofit corporation organized under the laws of the State of California. The Institute, established in 1964, is an operating foundation with federal tax-exempt status. The Institute sponsors research and educational projects designed to assist all persons in achieving their fullest potential in our society. Three of its projects uniquely qualify the Institute to participate in this appeal as a friend of this Court.

Through its Domestic Partners Equity Fund, the Institute conducts ongoing research into the rights of domestic partners (opposite-sex and same-sex unmarried couples who cohabit in stable and significant family relationships). Through this project, the Institute has developed a comprehensive syllabus which is used as a course outline and reference manual for a class on "Rights of Domestic Partners" at the University of Southern California Law Center.

Through its Family Diversity Project, the Institute provides consulting services to government agencies and private industry on demographics as well as social, economic, and legal issues affecting contemporary families in the United States. The Institute provided the staffing for the Los Angeles

City Task Force on Family Diversity, a two-year research project studying the status of families throughout the nation. The co-chairs and staff of the Family Diversity Task Force recently participated in a forum sponsored by the Bar Association of the City of New York entitled "Family Diversity: a Focus for Legal and Social Change."

Through its Amicus Brief Fund, the Institute conducts legal research and coordinates the filing of friend-of-the-court briefs in selected appellate cases. For example, in New York v. Uplinger, 104 S.Ct. 2332 (1984), the Amicus Brief Fund sponsored an amici curiae brief before the United States Supreme Court in support of opinions issued by this Court protecting the privacy rights of unmarried couples in People v. Uplinger, 447 N.E.2d 62 (1983) and People v. Onofre, 51 N.Y.2d 476 (1980).

The Institute has engaged in extensive research concerning public policy and the definition of "family" in New York from both a legal and a demographic perspective. This brief applies the results of that research to the particular issues presented in this appeal.

The Institute is concerned about the implications of how this Court interprets "family" as that term is used in the regulatory scheme involved in this case. The Institute believes that statutory construction should be consistent with America's legal tradition of flexibility in defining family.

The **Bar Association for Human Rights of Greater New York** is a professional association of more than 400 men and women dedicated to the improvement of the law as it affects the lives of lesbians and gay men in New York and elsewhere. Many of its members are practitioners who represent clients faced with the very issue presented in this appeal, or with analogous issues arising under the rent stabilization law. Several of its

members, including the association's president, personally have experienced or are experiencing similar problems. Also, many of the association's members with private law practices provide legal services to persons with AIDS who have encountered forced evictions in the wake of illness and death. Accordingly, the Bar Association is concerned that this Court respect the diversity of family relationships in New York City by adopting an inclusive definition of family in the context of rent control laws and regulations governing the eviction of family survivors.

Other organizations located in New York City are concerned about the impact of this case on persons with whom they are affiliated or to whom they provide services. Therefore, they join with Family Service America, the Institute for the Study of Human Resources, and the Bar Association for Human Rights of Greater New York in urging this Court to construe the family survivor regulation in an inclusive manner.

The need to educate the public about this disease and the problems it causes so many is as great as the fear and panic are prevalent. In October, 1985, the Diocese of New York at its annual convention, recognizing the need for adequate hospital care and housing, and foreseeing the discrimination that AIDS patients and their loved ones would suffer, called upon its members to repudiate any and all discriminatory statements or actions which condemn or reject persons with AIDS or endanger their human rights or the rights of their loved ones.

The responsibility for creating and nurturing an atmosphere in which we can cool-handedly combat this tragedy lies with each of us: our Churches, our governments, our media and, most expressly, with our judiciary. We must not allow our courtrooms to be used as weapons to further discriminate against our own citizens, our gay brothers and sisters, who are already suffering so much discrimination. Gay persons do not have the option of marriage available to them. Should they not, therefore, be accorded in cases such as this one, where were they married there would be no contest, the same privileges accorded to heterosexual life partners? Can our courts find it reasonable to evict such a person from his home and still insist they are meeting their responsibility to reject prejudice?

For these reasons, I strongly support the Amicus Brief to be filed in [this case].

Riverside Church Office of Peace and Social Justice recognizes same-sex unions as family relationships and supports the filing of this brief as one attempt to eliminate discrimination on the basis of sexual orientation.

Reverend Forrester Church is the Minister of the Unitarian Church of All Souls of New York City. He supports the filing of this brief because he is concerned with the civil rights of all people.

Rabbi Balfour Brickner of the Steven Wise Free Synagogue in New York City is deeply concerned with the civil rights and housing issues involved in this case. He recognizes the special problems faced by lesbian women, gay men, and their life partners and other family members. He is also extremely aware and sympathetic of the special housing and health problems of persons with AIDS and their loved ones.

The parties to the present appeal confront a specific and defined fact situation about which this Court has been asked to rule. However, as amici demonstrate within, this Court's decision will have much broader ramifications. If this Court were to view the definition of family from a narrow perspective, many classes of families would be adversely affected. In addition to the adverse consequences to same-sex couples, amici urge this Court to consider the impact a narrow perspective would have on foster families, step-families, and opposite-sex domestic partners, as well as racial and ethnic minorities, seniors, and persons with disabilities.

Because of their strong desire to avoid such adverse consequences, the above-named religious leaders join with Family Service America, the Institute for the Study of Human Resources, and the Bar Association for Human Rights of Greater New York in urging this Court to construe the family survivor regulation in an inclusive manner.

STATEMENT OF THE CASE

The Undisputed Facts Show That the Braschi-Blanchard Household Was a Functioning Family Unit

Miguel Braschi and Leslie Blanchard lived together as gay life partners for 10 years in an apartment located at 405 E. 54th Street in New York City.¹ The apartment lease was under Blanchard's name. Blanchard died in September 1986. Braschi has continued to live in the apartment.

During the 10 years they were life partners, Braschi and Blanchard had an exclusive relationship, i.e., they committed themselves to a permanent relationship of love, responsibility, and monogamy. They presented themselves to the world as a couple. They commingled their finances, maintaining a common household budget and a joint savings account. Braschi was named as the beneficiary of Blanchard's life insurance policy and was the principal beneficiary of Blanchard's estate. As evidence of the closeness of their relationship, Blanchard executed a general power of attorney in Braschi's favor in June 1986 when his illness started.

Soon after Blanchard's death, the landlord, Stahl Associates Company ("Stahl") gave notice to Braschi to vacate the apartment. Braschi was told to move out by January 31, 1987. Braschi protested, contending that the apartment is and always has been for the past 10 years his home. Braschi asserted that Stahl, who always knew that Braschi lived in the apartment, had never before questioned his occupancy of the apartment.

1. The summary of facts is taken from the opinion and order of Supreme Court Justice Harold J. Baer Jr. issued on March 18, 1987, Index No. 2194/87.

**A Preliminary Injunction Issued to Protect Braschi,
a Family Survivor, from Forced Eviction**

Braschi filed the instant lawsuit in the Supreme Court, New York County, seeking a preliminary injunction to prevent Stahl from evicting him. Braschi submitted several affidavits outlining his gay life partner relationship with Blanchard. Stahl argued against the issuance of a preliminary injunction, claiming that Braschi was not a member of Blanchard's "family" and therefore was not protected from eviction under Section 2204.6(d) of the State Rent and Eviction Regulations for New York City.²

On March 18, 1987, Justice Harold J. Baer Jr. issued a decision and order granting a preliminary injunction as requested by Braschi. Justice Baer found that Braschi and Blanchard had lived together in a "meaningful, close and loving relationship" which should be considered as a family unit within the meaning of the Rent Control Law and the applicable Rent and Eviction Regulations which protect family members who lived with the deceased tenant.

The Appellate Division Set Aside the Injunction

Stahl appealed Justice Baer's decision to the Appellate Division of the

2. Section 2204.6(d) reads: "No occupant of housing accommodations shall be evicted under this section where the occupant is either the surviving spouse of the deceased or some other member of the deceased tenant's family who has been living with the tenant."

Supreme Court, First Department.³ The Appellate Division unanimously reversed, ruling that, as a matter of law, the the motion for a preliminary injunction was improperly granted.⁴ In support of its decision, the Appellate Division ruled:⁵

While plaintiff has set forth sufficient proof that he and the deceased lived as a couple for 10 years and had a long-term relationship marked by love and fidelity for each other, he did not sustain his burden of proving the likelihood of success on the merits of his argument that as the gay life partner of the deceased he is one of the classes of individuals designated by Section 2204.6(d) as entitled to remain in an apartment after the death of the tenant of record.

The Appellate Division found that Braschi had not persuasively demonstrated that the family-survivor clause of Section 2204.6(d) was intended to grant legal status and recognition to "nontraditional family relationships." Accordingly, the Appellate Division interpreted that clause as affording protection only to "surviving spouses and family members with traditional, legally recognized family relationships."⁶

3. Appeal No. 33853N.

4. Braschi v. Stahl Associates Co., 531 N.Y.S.2d 562 (App. Div., First Dept., 1988).

5. *Ibid.*

6. The Appellate Division relied, in part, on In re Robert Paul P., 63 N.Y.2d 233 (1984), as authority for its decision. As argued within, amici will show that the Appellate Division misinterpreted the import of Robert Paul P. In that case, this Court merely held that homosexual cohabitants could not formalize their relationship through an adult adoption proceeding. The Court found that the Legislature had not contemplated adoption proceedings being used as a method to formalize an ongoing sexual relationship between two adults into a relationship of parent and child. In Robert Paul P., this Court was not called upon to decide, nor did it express an opinion about, the unformalized family status of cohabiting couples. Nowhere in that decision did this Court hold that unmarried cohabitants could not be considered family members. Such a judicial pronouncement would have been inconsistent with a wide range of statutes defining "family" in a manner to include such couples. (See Table 5, *infra*, at p. 70).

**The Question Presented on Appeal Involves the
Definition of "Family" in a Rent Control Context**

The general issue presented to this Court for decision is whether the order of the Appellate Division, which reversed the order of the Supreme Court, was properly made.⁷ In reality, however, two substantive questions, one legal and the other factual, are presented for resolution:

(1) What is the definition of "family" as that term is used in laws and regulations preventing eviction of family survivors living in rent-controlled apartments in the City of New York? Specifically, should the term be construed to include relationships other than those based on blood, marriage, or adoption?

(2) Was a sufficient showing made to demonstrate that Braschi was a member of Blanchard's family within the meaning of the family survivor regulation applicable to rent-controlled apartments, under a proper construction of the regulation?

Amici have attempted to assist this Court in answering the former question since it is the only legal issue presented for resolution by this Court in this appeal. The latter question is essentially factual in nature and already has been decided favorably to appellant Braschi by the Supreme Court on the motion for preliminary injunction. Of course, the final determination of all factual questions are reserved for any trial that may occur on remand.

7. This question was certified by the Appellate Division in an order entered November 12, 1988, wherein Braschi was granted leave to appeal to this Court.

SUMMARY OF ARGUMENT

In the Context of the City's Rent Control Law, Courts Should Determine Who is Factually a "Family" on a Case-by-Case Basis

Specifying who fits into the concept of "family" is not an insignificant task. However, it has been done; models exist from legislative, judicial, and administrative branches of government. Of course, in construing the meaning of words in legislation, legislative intent is the first referent.

Legislative intent is reflected in the legislature's decision specifically to define and restrict the term "family" in some contexts, and to leave the term undefined and open to a case-by-case determination in other appropriate legal settings. This type of case-by-case factual evaluation is within the particular skill and ability of the courts. And in the context of New York City's rent control law, such fact-finding expertise is especially appropriate.

This Court should not feel it is being asked to create a new arbitrary definition of "family." That would result in judicial legislation. Rather, given an implicit legislative mandate for a case-by-case determination (see page 53, *infra*), this Court is urged simply to adopt reasonable principles to guide fact finders who must ascertain whether specific real life relationships fit into the concept of "family" to the extent that they should come within the protection of the rent control law and eviction regulations.

**Both Public Policy and Reality Support an
Inclusive Approach to the Concept of Family**

A restrictive or underinclusive definition of "family" will, in the context of rent control, harm the very people the regulatory scheme was designed to help, including many elderly and low-income renters. (See pages 27, 54-57, *infra.*) And the harm is not trivial; it goes to the basic need for shelter and a home. Rent control, after all, has been a response to the extreme housing shortage in New York City, and was designed to ensure that residents would not be driven away or into homelessness by increasingly inflated rental costs.

Those in need of protection reflect the normative reality of pluralism and diversity of "family" forms in New York, which includes but is by no means limited to the ideological "nuclear" family. (See pages 25-27, *infra.*)

**An Inclusive Approach to the Concept of Family
Avoids Serious Constitutional Questions**

An ideological definition of "family" limited to relationships based on blood, marriage, or adoption, and excluding entire classes of real families such as foster families, step-families, and long-term domestic partnerships, would raise grave questions regarding several constitutional principles, including equal protection, due process, and associational rights. (See pages 58-62, *infra.*)

Criteria based on the way families actually exist and function in the real world would avoid a constitutional confrontation. Such criteria are found in various New York cases (see pages 20-21, *infra.*) and include that members: (a) live together in a single housekeeping unit; (b) have a

relationship that has the generic character of a family unit as a relatively permanent household; and (c) either have a traditional family structure or are functionally equivalent to a more traditionally defined family.

Under such criteria, evidence of "family" status would consider and depend on such factors as length of relationship; level of commitment and support among household members; and manifestations of the intentions of the members to be a family. Of course, persons fitting the traditional blood-marriage-adoption definition of family could enjoy the benefit of a presumption of family status in this legal context if they make a showing of a permanent or ongoing household membership.

* * *

While the present fact situation leaves no doubt that the Braschi-Blanchard household was a functioning family unit, (see facts at page 7, supra), any criteria developed by this Court will have a serious far-reaching effect. The purpose of this brief is to present demographic and other information that can assist the Court in developing criteria based on reality, avoiding constitutional conflict and unjust consequences.

ARGUMENT

I

THE LEGAL CONTEXT: NEW YORK PUBLIC POLICY REQUIRES FLEXIBILITY IN DEFINING FAMILY

The definition of "family" was once taken for granted. Our experience neatly coincided with our intellectual understanding. Family was then an unambiguous term which usually referred to so-called "nuclear" relationships, i.e., a household with a husband as wage-earner, a wife as homemaker, and minor children. Sometimes family was also used in reference to extended kinship networks. In any event, there was little anxiety about the meaning of family, since most families were not only cut from the same social pattern but they were internally homogeneous in other significant ways, such as race, religion, and ethnic background.

Today, the picture has changed dramatically.⁸ Nuclear families are now the exception. Contemporary families are amazingly diverse. As a result, family terminology has become complex. People refer to mixed marriages, childless couples, step-families, blended families, binuclear families, interracial families, cross-cultural families, dual-career families, DINKS (dual income, no kids), adoptive families, foster families, single-parent families, extended families, and domestic partners.

Society is experiencing an uneasy tension between our present

8. For an analysis of changing family demographics in the United States, see: "American Families," Strengthening Families: A Model for Community Action, Final Report of the Los Angeles City Task Force on Family Diversity (May 1988), at pp. 1-7, hereinafter "Family Diversity Report."

experience of family and outmoded social dogma. The nuclear family -- once a normative reality -- now is just one variation on a very diverse spectrum of family relationships. While still perceived as an ideal for many, the nuclear family as the standard truth is now a myth.

The definition of family, like the definition of any term, is a function of the perspective of the definer, the context in which the term is used, and the user's purpose in employing the term. A layperson, a theologian, a sociologist, and a psychologist each may have a different understanding of the term "family," and yet each may be correct from his or her own perspective.

Although these perspectives may each have special value when used in various social, religious, or social service contexts, in a legal context the term "family" should be defined from a **secular perspective** and be based on sound precedents reflecting the **reality** of contemporary family living arrangements.⁹

Amici have examined the definition of family in American jurisprudence, in general, and in New York law, in particular. The following summary provides a broad legal context within which this Court may address the specific issues at hand, namely, how to define "family" as that term is used in the city rent control law and eviction regulations.

9. See Family Diversity Report, *supra*, note 29, especially "Public Policy and the Definition of Family," at pp. 18-23.

I(a)

**Flexibility in Defining "Family" Is An
Integral Part of American Jurisprudence**

In American jurisprudence the word "family" is one of great flexibility and is capable of many different meanings according to the context in which it is used.¹⁰ In some contexts it may refer to members of a person's household, while in others it may refer to his or her bloodline. Whether it is used in a narrow or a broad manner is generally dependent on the intention of the parties or legislative body using the term.

Sometimes the term "family" is used in a restricted sense, and refers to a father, a mother, and their children, whether living together or not. Other times it is used in an enlarged sense and refers to persons who are of the same lineage.¹¹

However, in its ordinary and primary sense, the word "family" usually signifies a collection of persons as a single group, living together under one roof, as a unit of permanent and domestic character. Legal or moral interdependency among household members, and a degree of permanence or continuity of commitment, are characteristics that distinguish mere roommates from family members. Unless the context manifests a different intention, family is usually construed in this primary sense.¹²

10. See: "Family," 35 Corpus Juris Secundum 935-945.

11. Ibid.

12. Ibid.

I(b)

**Judicial and Legislative Precedents
In the State of New York Define
Family in an Inclusive Manner**

Judicial Definitions. New York case law is consistent with traditional American jurisprudence to the extent that both recognize "family" as a term of great flexibility.¹³ Nearly 38 years ago, the definition of "family," as it has been construed by New York courts, was explained as follows:¹⁴

Our "family" is derived from the Latin familia. Originally the word meant servant or slave. Now its accepted definition is "a collective body of persons living together in one house, under the same management and head, subsisting in common, and directing their attention to a common object, the promotion of their mutual interests and social happiness." Then again, "as used in statutes of descent, the word is usually construed to mean those who have the blood of the ancestor." Another, "All those persons constituting members of the same household." (See Ballentine's Law Dictionary, p. 488). "Household" means "Persons who dwell together as a family." (P. 597).

Basically, judicial precedents in New York recognize that the term family is generally used with one of three meanings intended:¹⁵ (1) the whole body of persons who form one common household; or (2) parents with their children, whether they live together or not; or (3) the whole group of persons closely related by blood.

As a matter of statutory construction, the meaning of "family" to be

13. Klee v. Klee, 93 N.Y.S. 588, 590 (Sup. Ct., App. Term, 1905).

14. Safford v. Village of Sands Point, 102 N.Y.S.2d 910, 913 (Sup. Ct., Special Term, 1951).

15. Town of Henrietta v. Fairchild, 279 N.Y.S.2d 992, 997, 53 Misc.2d 862.

adopted in any given context depends on the scope and purview of the statute involved, its express or apparent purpose, and the drafter's intent.¹⁶

In making this determination, a court should not close its eyes to surrounding social conditions.¹⁷

Similar considerations guide courts when they construe the term "family" in a nonstatutory context. For example, when an individual makes reference to "family" in a will or in a contract, courts will often look to extrinsic facts or surrounding circumstances because they shed light on the drafter's intent.¹⁸

Legislative Definitions. The New York State Legislature has used the term "family" in a wide variety of statutes. Sometimes the term "family" is specifically defined, other times the definition is left to the courts as a matter of statutory construction.¹⁹

It is noteworthy that when the Legislature has specifically defined "family" in a statute, the term has often been given an inclusive meaning.

16. Ibid.

17. People v. Whitehead, 124 N.Y.S.2d 189, 193 (N.Y. City Magistrate's Court, 1953).

18. In re Keegen's Estate, 37 N.Y.S.2d 368, 370 (Surrogate's Court, Westchester Co., 1942); In re Teft's Will, 130 N.Y.S.2d 192, 194 (Surrogate's Court, Westchester Co., 1954); McCord v. Pichel, 315 N.Y.S.2d 717, 719 (Supreme Ct., App. Div., Third Dept., 1970).

19. The Legislature is aware of the myriad of questions which may arise when a term such as "family" is used in a statute without further definition. If it wants to avoid a case-by-case adjudication and limit the scope of the protected class, it sometimes uses more restrictive language and avoids using the term "family" altogether. For example, under the former Surrogate's Court Act, Section 200 (the predecessor to Estates, Powers, and Trusts Law Section 5-3.1), specified property was set aside for the immediate use of family survivors only in case of decedent's "having a family." To avoid litigation over the definition of the term "family" in this context, the current statute replaced "having a family" with "surviving spouse or minor children." In re Estate of Comparetto, 352 N.Y.S.2d 136, 138 (Surrogate's Court, Nassau Co., 1974).

In other words, the Legislature usually has not restricted the definition of family to relationships based on blood, marriage, or adoption. Sharing a common household seems to be the generic theme running through most legislatively created definitions of family.²⁰

Statutory definitions of family demonstrate a legislative awareness that families are not limited to persons related by blood, marriage, or adoption. In fact, the New York Legislature has very often adhered to definitional criteria linked more to cohabitation status than to traditional kinship. Had the Appellate Division been aware of this, it would not have cited "legislative intent" as support for its narrow view of the definition of family.

I(c)

The New York State Constitution Sometimes Requires Inclusive Definitions of Family

The Constitution of the State of New York does not define family. However, for at least 50 years, this Court has been grappling with constitutional issues regarding the definition of that term.²¹ More recently, a majority of this Court has repeatedly held that the due process clause of the New York Constitution sometimes requires that members of a relatively permanent household be considered a "family" even though they are not related by blood, marriage, or adoption.

20. See Table 5, "Some New York Statutes Defining 'Family'," *infra*, at p. 70.

21. See Baddour v. City of Long Beach, 279 N.Y. 167, 178-179 (1938), in which three members of this Court opined that a zoning ordinance would be unconstitutional if it defined family by a requirement that household members must be united by particular relationships.

In City of White Plains v. Ferraioli,²² this Court held that a group home consisting of a married couple and their two children, together with 10 foster children, was a family for zoning purposes, even though the household in question did not fit the definition of family employed by the applicable ordinance. This Court ruled that a group home must be considered a family so long as it "bears the **generic character** of a family unit as a **relatively permanent household**" and "is not a framework for transients or transient living."²³

Two years later, in Group House v. Board of Zoning & Appeals,²⁴ this Court amplified on its holding in White Plains by declaring a group home to be a family for zoning purposes because it was the "**functional equivalent**" of a more traditionally defined family unit. Additionally, this Court noted that whether or not a particular household fits those criteria is essentially a factual question.

More recently, in Crane Neck Association v. New York City/Long Island County Services Group,²⁵ this Court distinguished a community residence for eight severely retarded adults from the group homes involved in its previous decisions. The residential care facility was held not to be a single-family, within the meaning of a restrictive covenant, because it did not fit the "expanded definitions of 'family'" established by prior cases. The most significant distinguishing factor was the presence of a large complement of nonresident professional attendants in this residence.

22. 34 N.Y.2d 300 (1976), at pp. 305-306.

23. Ibid. (Emphasis added.)

24. 45 N.Y.2d 266 (1978), at pp. 272-275 (Emphasis added).

25. 61 N.Y.2d 154 (1984), at pp. 159-160.

Finally, in McMinn v. Town of Oyster Bay,²⁶ this Court announced that the expanded definition of family adopted in its previous decisions had a foundation in the due process clause (Art. I, Sec. 6) of the state Constitution. The definition used in Oyster Bay's single-family zoning ordinance was declared facially unconstitutional because it was too limited. This Court explained that the state Constitution required unrelated persons to be considered a family if their living arrangement fit the criteria set forth in Group House and White Plains.

Criteria for an Inclusive Definition. In some contexts, the due process clause of the New York Constitution requires unrelated persons to be considered a "family" if: (1) they live together in a single housekeeping unit, (2) their relationship bears the generic character of a family unit as a relatively permanent household; and (3) they engage in activities which are functionally equivalent to a more traditionally defined family.

As argued within, the term "family" in the rent-control law and eviction regulations must be construed in an inclusive manner so as to avoid constitutional conflict and unjust consequences. The definitional criteria employed in the zoning context provides a ready answer to the definitional question in the rent control context. Using this approach is desirable because it not only builds on sound legal precedents but it also respects the diversity of family structures in New York City.

26. 66 N.Y.2d 544 (1985), at pp. 547-552.

I(d)

**New York City's Public Policies
Favor Inclusive Definitions of Family**

When it comes to definitions of family, local laws of the City of New York reflect a policy of inclusion. In this respect, city policy is consistent with that of the State of New York -- neither supports rigid or restrictive definitions of family.

The city's Building Code defines family as a single person, or any number of persons related by blood or marriage who live together and maintain a common household, or "a group of not more than four individuals, not necessarily related by blood or marriage, and maintaining a common household."²⁷

The city's Housing Maintenance Code provides a similar definition, except that unrelated individuals are limited to three in number.²⁸ A common household is deemed to exist if every member of the family has access to all parts of the dwelling unit. Foster children lawfully living with the family in accordance with the provisions of the social services law are considered members of the family.

The city's Civil Rights Code defines family as a person occupying a dwelling and maintaining a household, or "two or more persons occupying a dwelling, living together and maintaining a common household."²⁹ Up to four roomers, boarders, or lodgers are permitted to live with a family.

27. Administrative Code of the City of New York, Title 27, Section 27-232.

28. Administrative Code of the City of New York, Title 27, Section 27-2004(4).

29. Administrative Code of the City of New York, Title 8, Section 8-102(12).

Roomers, boarders, or lodgers, are defined as persons, other than employees, who pay a consideration for living in the household.

The New York City Public Housing Authority is authorized by law to set standards and regulations as to who may occupy its apartments.³⁰ The housing authority defines family as "two or more persons who have been living together as a cohesive family group."³¹ If an occupant is deemed a family member, he is entitled to remain in possession of the apartment when the primary tenant dies.³² A nonrelative is not considered a member of the tenant's family if he or she has not "lived regularly" as a member of the family group.³³

These authorities demonstrate that the City of New York does not limit its definitions of family to persons related by blood, marriage, or adoption. Under city law, unrelated persons are deemed a family in many regulatory contexts as long as they regularly live together in a common household as a cohesive group. In this respect, the city laws acknowledge that which is revealed by city demographics: city residents have diverse personal characteristics and have a wide assortment of living arrangements.³⁴ As one variation in the midst of such diversity, the Braschi-Blanchard household should be respected as a legitimate family unit.

30. Public Housing Law, Sections 30, 37, 156. N.Y.C.H.A. v. Nesmith, 419 N.Y.S.2d 39, 100 Misc.2d 414 (1979).

31. N.Y.C.H.A. Management Manual Section 1(c).

32. N.Y.C.H.A. v. Shephard, 114 Misc.2d 873, 452 N.Y.S.2d 785, 787 (N.Y. Civil Court, Kings Co., 1982).

33. Ibid.

34. See Tables 1-4, *infra*.

II

THE FACTUAL CONTEXT: NEW YORK CITY DEMOGRAPHICS REFLECT GREAT VARIETY IN THE PERSONAL CHARACTERISTICS OF CITY RESIDENTS AND TREMENDOUS DIVERSITY IN THEIR FAMILY RELATIONSHIPS

The specific legal issue in this case involves the definition of "family" in a particular factual context, i.e., whether an unmarried cohabitor has the right to remain living in a rent-controlled apartment, as a surviving "family" member, when the primary tenant dies.

Amici believe that this specific legal issue should not be decided in a factual vacuum. The interests of the individual litigants, as well as the interests of society, are best served if the legal result of this case has a foundation in reality rather than myth.

The law should be applied in specific cases with a full awareness of the types of family relationships that actually exist and a general understanding of the psychological value of these relationships to the individuals involved as well as their sociological value to society. In other words, public policy is not advanced when decisions are premised on inaccurate assumptions or outmoded stereotypes.

Amici have examined population and household characteristics for the City of New York. The tremendous diversity reflected by summaries of the city's population profile and household characteristics suggests that public policy is best served by maintaining some degree of flexibility in the definition of family so that the definition is reasonable and appropriate to different specific legal contexts.

II(a)

New York is a City of Minorities

Minority Status.³⁵ The City of New York is home to more than 7 million residents. The city's population is very diverse. As the following statistics demonstrate, New York could be described as a city of minorities. Census statistics from 1980 show that nearly one-fourth of all residents are foreign born. Seniors comprise about 13% of the population. Twenty-five percent of city residents are children. About 15% of the adult population is disabled. Racial and ethnic minorities constitute nearly one-half of the city's general population. Gays and lesbians also constitute a cognizable minority group in the city.³⁶

Marital Status.³⁷ Less than half of all adults living in the city are married. More than one-third have never been married. The rest are either separated, divorced, or widowed.

Cohabitation Status.³⁸ Adults who reside in the city have a variety of living arrangements. Forty-three percent live with a spouse.

35. See Table 1, *infra*, at p. 65.

36. Although the number of lesbians and gay men residing in New York City is difficult to estimate, an inference can be drawn that the gay community in the city is large from the fact that a national directory of gay and lesbian organizations and businesses contains hundreds of listings for New York City, including accommodations, AIDS support services, substance abuse services, libraries, bookstores, educational projects, bars, restaurants, discos, business and professional associations, churches, legal services, political organizations, and a variety of gay-owned businesses. (See Gayyellow Pages: The National Edition (1989), "New York City Area," pp. 177-204.)

37. See Table 3, *infra*, at p. 67.

38. See Table 4, *infra*, at p. 68.

More than one-fourth live with adult relatives in households where no children are present. Sixteen percent of all adults live alone. Six percent are single-parents living with their minor children. Seven percent of all adults live with other unrelated adults.

II(b)

The Dominant Household Type Involves Adult Renters With Diverse Family Relationships³⁹

General Profile. The City of New York City contains more than 2.7 million households, of which more than 75% are rental units. New York City is characterized by households consisting largely of adults. Less than 30% of city households, whether owner-occupied or rented, contain a person under 18 years-old.⁴⁰

Multiple-Occupant Households. A significant number of city households (33%) consist of persons living alone. Multiple-occupant households (77%) represent a broad spectrum of relationships. Married couples without children constitute 35% of such households; those with children make up another 29%. Single parents living with minor children comprise 16% of multiple-occupant households. Unrelated occupants reside in 11% of such housing units.⁴¹ Adult blood relatives account for 9% of

39. See Table 2, *infra*, at p. 66.

40. Stegman, Michael A., "Housing and Vacancy Report: New York City, 1987," A Report Prepared for the City of New York, Department of Housing Preservation and Development (April 1988).

41. "Unrelated" is a term used by the Census Bureau to signify persons not related by blood, marriage, or adoption. The census considers such persons "nonfamily" even though they may have lived together for many years in a family-type setting, have assumed mutual obligations of support, and consider themselves to be a family unit.

these households. About one-percent of multiple-occupant households include foster families.

II(c)

A Housing Emergency Necessitates Rent Control Laws; In Large Measure, Such Laws Protect Elderly and Low-Income Renters⁴²

New York City rent control and rent stabilization laws exist because the rental market in the city is extremely tight. As of 1987, only 2.46% of nondilapidated rental units were vacant and available for rent.⁴³ Various laws regulating residential rents in New York City define a housing shortage as a vacancy rate below five percent.⁴⁴

"Controlled" units are those rentals subject to the provisions of the Rent Control Law and Regulations which have jurisdiction over occupied private rental units in existence before February 1, 1947, or substantially rehabilitated prior to January 1, 1974. All increases in rent for these units are set and must be approved by the New York State Division of Housing and Community Renewal.⁴⁵

Under law, all rent controlled apartments that are voluntarily vacated after June 30, 1971, are no longer subject to the jurisdiction of the Rent Control Law. If the unit is in a building with fewer than six units, it becomes decontrolled upon a voluntary vacancy; if the building has six units

42. Stegman, *supra*, note 40.

43. *Id.*, at p. 42.

44. *Ibid.*

45. *Id.*, at p. 236.

or more, it becomes rent stabilized.⁴⁶ If a unit is decontrolled, rents can be raised to any level. If it becomes stabilized, the rent can be increased to market levels, with further increases being subject to annual guidelines issued by the Rent Guidelines Board.⁴⁷

Because of their generally advanced age, tenants in rent-controlled apartments tend to have lower incomes than those in other rental units.⁴⁸ Incomes of tenants in controlled apartments fell 7% from 1983-1986, while occupants in all other control categories saw substantial gains.⁴⁹

The number of rent-controlled units has declined sharply in recent years, from 285,733 units in 1981 to 155,361 units in 1987, for a net decrease of 46%.⁵⁰ Of the remaining units that are controlled, the overwhelming majority (86%) are concentrated in the boroughs of Brooklyn, Manhattan, and Queens.⁵¹

As of 1987, only 8% of rental units in New York City were subject to rent control.⁵² Apparently, two reasons account for the sharp decline in the number of controlled units.⁵³ A significant number of these units have been converted to owner-occupied condominiums or cooperatives. Also,

46. Ibid.

47. Id., at p. 80.

48. Id., at p. 115.

49. Ibid.

50. Id., at p. 36.

51. Id., at p. 37.

52. Id., at p. 36.

53. Id., at p. 190.

voluntary vacancies due to death are occurring more frequently as elderly residents, many of whom live alone, make up an increasing share of the remaining rent-controlled households.

Rents for units that were controlled during 1984 to 1987 rose only 17%.⁵⁴ In contrast, however, rents for units changing from a "controlled" to a "stabilized" or to a "decontrolled" status during that timeframe increased by 120% or more.⁵⁵

Currently, about 11% of all two-person rental units consist of persons who are not related by blood, marriage, or adoption.⁵⁶ Many other multiple-occupant households contain persons not related to the primary tenant. In fact, many of these households are families despite the lack of blood, marital, or adoptive ties. Foster families reside in some of these households.

As the judicial decisions summarized within demonstrate, many occupants of rent-controlled apartments, while not related to each other by blood, marriage or adoption, nonetheless have lived together for a significant period of time, have assumed mutual obligations for each other's welfare, and consider themselves to be a family unit. The members of these households have functioned as families, considered themselves to be families, and should be respected as such by the law.

54. Id., at p. 68.

55. Id., at p. 80

56. Id., at p. 142.

III

BY DEFINING "FAMILY" IN AN INCLUSIVE MANNER WITHIN THE RENT CONTROL CONTEXT, THIS COURT CAN FURTHER LEGISLATIVE INTENT, ADVANCE PUBLIC POLICY, REMOVE CONSTITUTIONAL DOUBTS AND AVOID UNJUST CONSEQUENCES

The primary legal question before this Court involves the definition of "family" as that term is used in applicable laws and regulations preventing the eviction of family survivors living in rent-controlled apartments in the City of New York. An ancillary question also must be decided, namely, should the term be construed to include relationships other than those based on blood, marriage, or adoption?

The current New York City "Rent and Rehabilitation Law," (referred to as the "city's rent control law") uses the term "family" in several of its provisions.⁵⁷ "Family" is also used in the Rent and Eviction Regulations for the City of New York (hereinafter referred to as the "city's eviction regulations").⁵⁸ However, neither the rent control law nor the eviction regulations defines "family."

As explained above, New York law recognizes that "family" is a term of great flexibility and that its meaning may vary according to the context in which it is used. Therefore, the failure to define "family" in the context of rent control evictions leaves the definition open to judicial construction.

57. Administrative Code of the City of New York, Title 26, Sections 26-401 et. seq., as recodified by L.1985, c. 907, Section 1 (effective September 1, 1986).

58. Regulations of the State of New York, Division of Housing and Community Renewal, Subtitle S, Subchapter D, Sections 2200 et. seq. (effective January 7, 1985).

III(a)

General Rules of Construction Indicate That an Inclusive Definition of "Family" is Appropriate in the Rent Control Context

"Construction" is the process of determining the proper meaning of provisions contained in statutes or other written instruments.⁵⁹ The process of construction presupposes some doubt or ambiguity. Where construction of a law is required, it may be reached by reasoning from extraneous connected circumstances, laws, or writings, bearing on the same or connected matter.⁶⁰ In construing the term "family" in the present case, this Court may be aided by the family and household demographics for the City of New York, as well as definitions of family used in state law or in city law in other contexts.

If the intent of the lawmaking body is not clear, a court in construing a statute will apply established canons of construction, the purpose of which is to discover the true intention of the law.⁶¹ Since the decision in this case is primarily a matter of judicial construction of the term "family," it may be helpful to review a few of the relevant canons of construction.

Intent of the Law. The primary consideration of the courts is to ascertain and give effect to the intention of the legislative body that passed the law in question.⁶² Therefore, it is the duty of courts to adopt a

59. McKinney's Cons. Laws of N.Y., Book 1, Statutes, Section 71, p. 138.

60. Id., p. 139.

61. Id., Section 91, p. 173.

62. Id., Section 92, p. 176.

construction that will bring it into harmony with legislative intent. As argued within, the deliberate failure to define "family" in the rent control law or the eviction regulations reflects an intent to adopt a common law approach which allows for a case-by-case determination of the family status of particular relationships.⁶³

Aids to Construction. All available aids to statutory construction should be explored in determining the meaning of a law.⁶⁴ The history of a statute is relevant to the process of construction.⁶⁵ The circumstances which prompted its enactment may be studied.⁶⁶ Courts may also consider general facts of common knowledge or public notoriety.⁶⁷ That construction is to be preferred which furthers the object, spirit, and purpose of the statute.⁶⁸ Many of these aids have been employed throughout this brief in an attempt to assist this Court in determining the appropriate interpretation to be given the family survivor regulation.

Public Policy. Courts are guided by public policy when they construe uncertain or ambiguous legislation.⁶⁹ The public policy of the State of New York is found in the state Constitution, statutes, and judicial

63. See "Applying the Rules of Construction," *infra*, pp. 52-54.

64. McKinney's, *supra*, p. 184.

65. *Id.*, Section 124, p. 251.

66. *Id.*, Section 95, p. 200.

67. *Id.*, Section 120, p. 242.

68. *Id.*, Section 96, p. 205.

69. *Id.*, Section 126, p. 262; Capital Newspapers v. Whalen, 69 N.Y.2d 246, 252 (1987).

decisions.⁷⁰ In reaching decisions, courts take into consideration any significant shifts in public policy.⁷¹ As argued within, statutory flexibility and constitutional considerations dictate that an expansive definition of family be adopted in the context of rent control litigation.⁷²

Avoiding Objectionable Consequences. It is a fundamental rule that when a court is construing ambiguous terminology, an interpretation which would cause objectionable consequences should be avoided.⁷³ Although consequences may not alter statutes, they are an important clue as to their meaning, so that courts are not bound to close their eyes to the consequences of an interpretation.⁷⁴ Among the consequences to be avoided, if reasonably possible, is a construction which is contrary to reason or which renders a statute inequitable or unconstitutional.⁷⁵ If a fair construction can be found which furthers legislative intent, and does not work a hardship or injustice, it must necessarily be adopted.⁷⁶ As argued within, a narrow definition of family will adversely affect several classes of people, e.g., foster families, step-families, same-sex couples, unmarried opposite-sex couples, racial and ethnic minorities, people with disabilities,

70. Schultz v. Boy Scouts of America, 65 N.Y.2d 189, 202; Kraut v. Morgan & Brother Manhattan Storage Co., 38 N.Y.2d 445, 452.

71. People v. Groff, 71 N.Y.2d 101, 108-109.

72. See "Applying the Rules of Construction," *infra*, pp. 52-54; "Removing Constitutional Doubts," pp. 58-62.

73. McKinney's, *supra*, Section 141, pp. 280-281.

74. *Ibid.*

75. *Id.*, p. 282.

76. *Id.*, Section 146, pp. 297-299.

and seniors.⁷⁷ If the family survivor regulation is construed in a reasonable manner, such negative impact need not occur.

Avoiding Constitutional Doubts. Where the constitutionality of a law may be rendered doubtful, courts will first determine if there is a reasonable construction which will avoid the constitutional question.⁷⁸ Not only should statutes be construed to avoid the conclusion that they are unconstitutional, but also to avoid any serious doubts in that regard.⁷⁹ As argued within, a definition of family limited to blood, marital, and adoptive relationships would cause serious friction with several constitutional provisions, e.g., freedom of intimate association, substantive due process, and equal protection.⁸⁰ Such constitutional conflict is avoidable if an expansive definition, such as that employed in the single-family zoning cases, is used in the rent control context.⁸¹

Use of Distinct Terms. Sometimes the meaning of a term can be ascertained by comparing it to other terms used in an individual statute or in the larger statutory scheme. When different terms are used in statutes which relate to the same or cognate subjects, it is reasonable to assume that a distinction between them is intended.⁸² A review of relevant

77. See "Avoiding Objectionable Consequences," *infra*, pp. 54-58.

78. *Id.*, Section 150, p. 151.

79. *Id.*, p. 324; *In re Lorie C.*, 49 N.Y.2d 161, 171 (1980).

80. See "Removing Constitutional Doubts," *infra*, pp. 58-62.

81. See "Criteria for an Inclusive Definition," *supra*, p. 21; "Adapting the Zoning Approach," *infra*, pp. 62-63.

82. *Albany v. Kirby*, 36 N.Y.2d 526, 530 (1975); *In re Pluto's Cave*, 68 N.Y.2d 791, 793 (1986).

provisions shows that, in addition to the undefined term "family," the rent control regulatory scheme uses distinct terms with specific meanings, such as "immediate family," "relative" "household member," and "occupant." The specific definitions attached to these terms demonstrates that "family" encompasses a narrower class of of persons than "household members" or "occupants" and a more inclusive class of persons than "relatives" or "immediate family." In other words, merely occupying a rental unit with the primary tenant is insufficient to qualify one as a family member, although one need not be a spouse, blood relative, or "in law" to be considered "family."

III(b)

The Whole Statutory and Regulatory Scheme Governing Rent Control and Eviction in New York City is Relevant to a Proper Interpretation of the Eviction Regulations Protecting "Family" Survivors⁸³

Courts should use all available aids to statutory construction, including statutory history and an analysis of statutes pertaining to cognate subjects, in the process of interpreting a statute or regulation.⁸⁴ Therefore, to assist the Court in performing its interpretive function, amici have summarized New York's regulatory scheme on rent control.

83. For a comprehensive summary of rent control and rent stabilization laws and regulations for the State of New York and the City of New York, see: Joseph Rasch, "Rent Control and Rent Stabilization," New York Landlord and Tenant, (hereinafter referred to as "Rasch").

84. McKinney's, *supra*, Section 124, p. 251.

State Enabling Act. The City of New York adopted its rent control scheme more than 25 years ago. The state enabling act, otherwise known as the Local Emergency Housing Rent Control Act, became law on February 17, 1962.⁸⁵

The state enabling act declared that local administration of rent control was appropriate for cities having a population of more than one million. Its passage terminated regulation of rent-controlled apartments in the City of New York by state housing agencies. The act envisioned that larger cities would create local agencies to administer rent control and evictions. In order for local rent control to continue, such cities would have to certify, every three years, the existence of a public emergency requiring such control.

Subsequent amendments to the act specify that local rent control laws and eviction regulations adopted by cities, such as New York, did not have to be consistent with state laws applicable to smaller regions.⁸⁶

The state enabling act does not use or define the term "family." However, as presently worded, it does refer to "immediate family" in connection with vacancy exemptions. In this context, the term "immediate family" is defined to include "a husband, wife, son, daughter, stepson, stepdaughter, father, mother, father-in-law, or mother-in-law."⁸⁷

Original City Rent Control Law. Pursuant to the authority vested in it by the state enabling act, the New York City Council adopted a

85. L.1962, ch. 21.

86. As am L.1971, ch. 371.

87. L.1974, ch. 576, section 2; L.1980, ch. 69, section 2; Rasch, supplement, p. 26.

residential rent control law, effective May 1, 1962.⁸⁸ The following terms and definitions have been used in the city's rent control law:

- * **Immediate Family** (no definition given);⁸⁹
- * **Family Units** (no definition given);⁹⁰
- * **Family Occupancy** (no definition given);⁹¹
- * **Household** (no definition given);⁹²
- * **Related Persons** is defined as being limited to "the tenant and a parent, grandparent, child, stepchild, grandchild, brother or sister of the tenant or of the tenant's spouse, or the spouse of any of the foregoing who customarily occupied the housing accommodations," or the tenant's spouse or an unmarried child or grandchild who temporarily resided elsewhere because of attendance at school or the armed forces.⁹³
- * **Tenant** is defined as a "tenant, subtenant, lessee, sublessee, or other person entitled to the possession or to the use or occupancy of any housing accommodation."⁹⁴
- * **Occupant** (no definition given);⁹⁵

Amendments to the City's Rent Control Law. Until 1981, all amendments to the New York City Rent Control Law were effectuated by

88. Administrative Code of the City of New York, Title Y, Sections Y51-1.0 et seq.; Rasch, pp. 343-414.

89. Rasch, pp. 347, 371, 388; supplement, pp. 28, 44 .

90. Rasch, p. 349.

91. Rasch, pp. 349-352.

92. Rasch, pp. 353, 383, 384; supplement, p. 39.

93. Local Law 1964, No 13; Rasch, p. 354.

94. Rasch, p. 355.

95. Rasch, p. 410.

the City Council.⁹⁶ Beginning with 1982, both the state Legislature and the City Council have amended various sections of the city's rent control law.⁹⁷

Emergency Tenant Protection Act of 1983. A major revision of New York's hybrid system of state/local regulation of rent control of apartments in the City of New York occurred in 1983.⁹⁸ All existing systems of regulation of rents and evictions were placed under the administration of a single state agency.⁹⁹ As long as the City of New York continued to declare a public housing emergency every three years, the state Division of Housing and Community Renewal was given authority to enforce the city's Rent Control Law as well as its Rent Stabilization Law.¹⁰⁰ The state division was officially designated as the "city rent agency" within the meaning of the Administrative Code of the City of New York.¹⁰¹ The law directed that employees of the division of rent control and other relevant divisions of the city's department of housing preservation and development would be hired by the state division.¹⁰² All rules and regulations of city rent agencies were ordered to be continued as regulations of the state

96. Rasch, pp. 343-414; supplement, pp. 28-48.

97. For state amendments, see: L.1982, ch. 555; L.1983, ch. 403; L.1984, ch. 234. For city amendments, see: Local Law 1982, No. 68; Local Law 1983, No. 44; Local Law 1985, No. 63.

98. L.1983, ch. 403; see Laws of New York, 1983 Regular Session, pp. 698-744.

99. Id., pp. 698-699.

100. Id., p. 700.

101. Id., p. 705.

102. Id., pp. 719-722.

division until duly modified or abrogated by the state division.¹⁰³

Roommate Law. The so-called "Roommate Law" was one portion of the Emergency Tenant Protection Act of 1983. In it, the Legislature expressed its intention to strengthen protections for unrelated tenants who live together for reasons of economy, safety, and companionship.¹⁰⁴ The "Roommate Law" restricted the right of a landlord to limit the occupancy of an apartment to a tenant and his or her "immediate family."¹⁰⁵ It applied to all apartments, including those not subject to rent control or rent stabilization. By its express terms, this new statute was not intended to impair the existing rights of persons residing in a household accommodation on its effective date.¹⁰⁶

The "Roommate Law" specifically makes a distinction between a tenant and an occupant. Under this statute, a mere "occupant" is entitled to live with a tenant despite any objections by the landlord. However, the statute does not, in and of itself, confer on a mere "occupant" any right to continued occupancy in the event the tenant vacates the premises.¹⁰⁷ It is noteworthy that, under the "Roommate Law," a person occupying a rental unit is deemed a "tenant" and not a mere "occupant" if he or she either is a

103. *Id.*, pp. 722-725.

104. *Id.*, section 2. When he signed the bill into law, Governor Mario Cuomo noted that its provisions afforded a number of crucial protections that either had been absent from the law or restricted by court rulings. In this regard, the governor specifically mentioned that the bill would restrict evictions of unrelated occupants. See "Memoranda" to Ch. 403, dated June 30, 1983.

105. Real Property Law, Section 235-f, added by L.1983, ch. 403, sec. 39.

106. Real Property Law, Section 235-f(6).

107. *Ibid.*

party to the rental agreement or is a statutory tenant pursuant to the city's rent and rehabilitation law (rent control law) or other specified statutes.¹⁰⁸

There are at least two reasons why the passage of the "Roommate Law" does not restrict Mr. Braschi's right to continue living in his rent-controlled apartment. First, Mr. Braschi is a statutory tenant, not a mere occupant, because he is "entitled to occupy" his rental unit as a surviving "family" member pursuant to the city's rent control law and rent eviction regulations.¹⁰⁹ Secondly, Braschi had been living in the apartment for several years when the "Roommate Law" was adopted. It expressly was not intended to abrogate any existing rights of persons already occupying apartments on its effective date.

Recodification of the City Administrative Code. In 1985, the New York Legislature repealed and reenacted the Administrative Code of the City of New York.¹¹⁰ The purpose of this enactment was to reorganize the code by subject matter rather than agency and to renumber its provisions to make them more accessible and easier to use.¹¹¹ The Legislature expressly provided that the recodification was not intended to

108. Id., Section 235-f(1).

109. A "family" survivor living in a rent-controlled apartment is entitled to continue occupancy when the primary tenant dies. The same does not hold true for family survivors living in rent-stabilized apartments. Sullivan v. Brevard Associates, 66 N.Y.2d 489 (1985).

110. L.1985, ch. 907.

111. See "Memoranda of Legislative Representative of the City of New York," Memoranda to Laws of New York, 1985 Regular Session, p. 2319.

create any substantive changes in the existing city codes.¹¹² No existing right or remedy was impaired by reason of the recodification.¹¹³ There are 27 titles in the new code. Chapter 3 of Title 26 contains the New York City Rent Control Law¹¹⁴ Chapter 3 of Title 26 also contains the New York City Rent Stabilization Code.¹¹⁵

III(c)

Cases Interpreting Eviction Regulations Demonstrate that Protections for Family Survivors are Not Limited to Relationships Based on Blood, Marriage or Adoption

Rent and Eviction Regulations for New York City. As mentioned above, pursuant to the Emergency Tenant Protection Act of 1983, the administration of rent control and rent stabilization in New York City was transferred from local agencies to the state Division of Housing and Community Renewal.¹¹⁶ The Division was designated as the "city rent agency." Existing regulations remained in effect, and the Division was given authority to modify the regulations as necessary.¹¹⁷

When the Emergency Tenant Protection Act became effective, the city had a comprehensive set of existing regulations governing rents, evictions,

112. Administrative Code of the City of New York, Section 1-102. Ibid.

113. Id., Section 1-108.

114. Sections 26-401 to 26-415.

115. Sections 26-501 to 26-520.

116. L.1983, ch. 403.

117. Ibid.

and rehabilitation, which remained operative as regulations of the state Division.¹¹⁸ Those regulations used the following terms and definitions:

* **Immediate Family** is defined as including only a son, daughter, grandson, granddaughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law, grandfather, grandmother, stepfather, or stepmother.¹¹⁹

* **Related Persons** is defined as being limited to "a parent, grandparent, child, step-child, grandchild, brother or sister of the tenant or of the tenant's spouse or of the spouse of any of the foregoing who customarily occupied the housing accommodation," plus any unmarried child or grandchild of the tenant who temporarily resided elsewhere because of attending school or the armed services.¹²⁰

* **Tenant** is defined as a "tenant, subtenant, lessee, sublessee, or other person entitled to the possession or the use or occupancy of any housing accommodation." The term "tenant" shall not include persons occupying servants' rooms.¹²¹

* **Occupant** (no definition given).¹²²

* **Single Family Occupancy** (no definition given).¹²³

* **Head of Household** is defined as the person who customarily pays the rent (or his spouse, if older).¹²⁴

* **Member of Household** is defined as any person permanently residing in the housing accommodation who is not a bona fide roomer, boarder, or a sub-tenant.¹²⁵

118. Rasch, pp. 415-550; supplement, pp. 48-64.

119. Rasch, pp. 505, 421, 439, 470 (definition appears at underlined page).

120. Id., at pp. 427, 428, 430.

121. Id., at pp. 437, 510.

122. Id., at pp. 439, 470, 515.

123. Id., at pp. 440, 444.

124. Id., at p. 482.

125. Rasch, supplement, at p. 57; main volume at pp. 482, 483.

* Family (no definition given).¹²⁶

As it relates to terms and definitions, it is important to distinguish between the rent control law and rent eviction regulations on the one hand, and the rent stabilization law and rent stabilization regulations on the other. The instant case involves eviction from a rent-controlled apartment, not from a rent-stabilized apartment. The definitions of terms used within the rent control law and eviction regulations and those used in connection with the rent stabilization law and regulations do not necessarily apply to each other.¹²⁷ Therefore, the rent control law and eviction regulations, and eviction cases arising thereunder, should guide this Court's decision in the instant case. The rent stabilization law and regulatory scheme, and related eviction cases, are distinguishable and have little, if any, bearing on the outcome here.¹²⁸

126. Id., at p. 516.

127. Sullivan v. Brevard Associates, 66 N.Y.2d 489. This case emphasizes the fact that tenants in rent controlled apartments are deliberately given more protection than those living in rent stabilized apartments. Therefore, terms used in the rent control context may be defined more favorably to the tenant than those in the rent stabilization context

128. The Administrative Code of the City of New York governing rent stabilization does not define the terms "family," "immediate family" or "tenant." (See Title 26, Sections 26-501 to 26-520). City rent stabilization regulations, in effect when administration of rent stabilization was transferred from city agencies to the state Division, did not define "family" but they did define "immediate family" as including a husband, wife, son, daughter, stepson, stepdaughter, father, mother, father-in-law, or mother-in-law. (See Section 54(b) of the Code of Rent Stabilization Association of New York City, Inc., found at Rasch, p. 195).

In 1987, the state Division amended the rent stabilization regulations to modify the term "immediate family" to exclude some relationships, e.g., father-in-law or mother-in-law, and to include others e.g., stepfather, stepmother, grandparents, and grandchildren. (See Administrative Code Section 2520.6(n)). The exclusion or inclusion of relationships, at the whim of an administrative agency, certainly appears to be (continued on next page)

One section of the city's rent and eviction regulations, in effect for more than two decades, authorizes eviction of occupants who remain in a housing unit when a tenant's rental agreement has expired or terminated and the tenant no longer uses the housing unit as his dwelling.¹²⁹ This regulation remains in force and effect today, without change, as a regulation of the state Division.¹³⁰ A related regulation, previously in effect as a local regulation and now in effect as a regulation of the state Division, prohibits eviction of occupants who are surviving "family" members who have been living with the primary tenant when the primary tenant dies.¹³¹ Under this regulation, Mr. Braschi is protected against eviction because he was a member of Mr. Blanchard's family who had been living with him at the time of his death. Neither the rent and eviction regulations, nor the rent control law, define the term "family." The dispute in this case primarily concerns the definition of the term family as it is used arbitrary and capricious.

Also in 1987, in the context of rent stabilization regulations, the state Division defined the term "family member" for the first time. Its new administrative definition lists only the following relationships: nieces, nephews, aunts, uncles, and certain "in-laws," in addition to those relationships mentioned in its definition of "immediate family" members. Since the term "family" member had never been defined before by either the rent control law and eviction regulations or the rent stabilization law or stabilization regulations, it appears that the state Division pulled their new rent-stabilized definition of "family member" out of thin air. This administrative definition is without statutory foundation and appears inappropriately underinclusive. Accordingly, the agency's definition of "family" member is entitled to no weight in this Court. Harbolic v. Berber, 43 N.Y.2d 102, 109 (1977); Fineway Supermarkets v. State Liquor Authority, 48 N.Y.2d 464, 468 (1979).

129. N.Y.City Rent and Eviction Regulations, Section 56(a) found at Rasch, p. 515.

130. Section 2204.6(a), Rent and Eviction Regulations -- New York City (effective January 7, 1985).

131. Former Section 56(d); now Section 2204.6(d).

in this regulation, which reads:¹³²

No occupant of housing accommodations shall be evicted under this section where the occupant is either the surviving spouse of the deceased tenant or some other member of the deceased tenant's family who has been living with the tenant.

Case Law on Eviction of Surviving Family Members. Several New York cases, including two decisions issued by this Court, have interpreted the meaning and scope of the regulation (referred to herein as "family survivor regulation," formerly section 56(d), now section 2204.6(d)) protecting members of the primary tenant's family from eviction when the primary tenant has moved out or died.

In Herzog v. Joy,¹³³ this Court affirmed a decision of the Appellate Division of the Supreme Court which had ruled that two sisters were "family members" within the meaning of the family survivor regulation.¹³⁴ Although the two sisters had lived together for a while before one of them moved out, the Appellate Division noted that the protections of the family survivor regulation had been extended to those family members who lived with a voluntary vacated primary tenant. This Court held that the sister who remained was entitled to possession by virtue of her relationship to, and contemporary occupancy of the apartment with the sister who had been the original tenant.

Just three years ago, in 829 Seventh Ave. v. Reider,¹³⁵ this Court

132. Ibid.

133. 53 N.Y.2d 821 (1981).

134. 74 AD2d 372 (App. Div., First Dept., 1980).

135. 67 N.Y.2d 930 (1986).

expressly interpreted the family survivor regulation. The case involved a woman who periodically lived with her grandmother. The grandmother was a statutory tenant in a rent-controlled apartment in Manhattan. When the grandmother died, the landlord instituted a holdover proceeding in which he sought to evict the granddaughter. The granddaughter claimed that, pursuant to the family survivor regulation, she was entitled to remain in possession. This court interpreted the regulation as follows:¹³⁶

Section 56(d) [now Section 2204.6(d)], by its own terms, protects only members of a deceased tenant's family. Thus, the "living with" requirement must be read to mean living with such statutory tenant in a family unit, which in turn connotes an arrangement of, whatever duration, bearing some indicia of permanence or continuity. (Goodhue House Co. v. Bernstein, NYLJ, Dec. 7, 1981, p. 14., col. 3). [emphasis added]

This Court held that the granddaughter was not a surviving family member within the meaning of the regulation because the uncontradicted facts (e.g., failure to put her name on the mailbox, maintaining her telephone number at another apartment, failing to advise the doorman or landlord of her cooccupancy with her grandmother) were indicia of transience or temporary occupancy.

Until the instant case, this Court has not had occasion to decide whether persons who are not related by blood, marriage, or adoption, may be considered a "family" unit within the meaning of the family survivor regulation. The lower courts of New York have been split on the issue.

In Zimmerman v. Burton,¹³⁷ Judge Margaret Taylor ruled that an

136. Id., at pp. 932-933.

137. 107 Misc. 401, 434 N.Y.S.2d 127 (Civil Court, N.Y. Co., 1980).

unmarried couple who lived together for 20 years in a rent-controlled apartment qualified as family members within the meaning of the family survivor regulation. Judge Taylor suggested that the intention of the couple to have an exclusive and permanent relationship, along with evidence of constant cohabitation for a significant period of time, were sufficient indicia of a family unit. She noted that although the lack of a marriage license prevented the woman from being considered the decedent's surviving "spouse," it did not disqualify her from being considered a surviving member of his "family."

In Park South Associates v. Daniels,¹³⁸ Judge David B. Saxe reached the opposite conclusion. In that case a female survivor had lived with the male tenant of record for 25 years prior to his death in 1983, at the age of 89. The couple had never been lawfully married to each other. Citing the so-called "roommate law," Judge Saxe ruled that the survivor was a mere "occupant" who did not acquire any right to remain in the apartment once the primary tenant vacated.

The "roommate law" was misinterpreted in this case. As explained above, it was intended to expand, not abrogate, the existing rights of persons living in rental units. Furthermore, it was not intended to restrict the right of statutory tenants, i.e., persons entitled to occupancy, under existing rent control laws. In reality, the survivor in Daniels should have been acknowledged as a statutory tenant by virtue of her longstanding family relationship with the decedent.

138. 121 Misc.2d 933, 469 N.Y.S.2d 319 (Civil Court, N.Y. Co., 1983).

In 2-4 Realty Associates v. Pitman,¹³⁹ Judge Alice Schlesinger wrote a comprehensive opinion explaining the history, intent, and proper application of the family survivor regulation to relationships not based on blood, marriage, or adoption. In this case, Jimmie Hendrix and his biological mother, Annette Baxter, lived for more than 15 years in a rent-controlled apartment with the primary tenant, Henry Pitman. Baxter and Pitman were not formally married. Pitman never adopted Hendrix. However, despite the lack of marriage or adoption certificates, the trio lived together as a close-knit family until Pitman died in 1986 at the age of 93. Judge Schlesinger, noting the distinction between rent control law and rent stabilization law on the rights of family survivors, ruled that Hendrix and Baxter were members of Pitman's family who were entitled to continue living in the apartment after his death. She observed that unformalized relationships were not uncommon among Black families in America. Relying on this Court's series of zoning cases, she held that the relationships in this case were functionally equivalent to a more traditionally defined family and thus qualified for protection under the family survivor regulation.

Based on expert testimony, Judge Schlesinger cited several criteria to identify a family by its functions:¹⁴⁰

- * **Longevity** of the relationship;
- * **Commitment** (spiritual or moral) among the members;
- * **Interdependency and Support** (financial, emotional, daily services) among the members;

139. 137 Misc.2d 898, 523 N.Y.S.2d 7 (Civil Court, N.Y. Co., 1987).

140. Id., p. 9 (paraphrased from language in opinion).

* **Intention** of the members to be a family, e.g., the manner in which they defined themselves or hold themselves out to the community as a family, or the existence of a shared history, such as the taking and preserving of family photos;

In the instant case, Justice Baer, in issuing a preliminary injunction to prevent Mr. Braschi from being evicted, ruled that Braschi was a de facto family member of decedent. Although the Appellate Division did not take exception to the factual findings of Justice Baer, it reversed his decision.¹⁴¹

The Appellate Division specifically found that Braschi had set forth sufficient facts to establish that he and Blanchard had lived as a couple for 10 years in a long-term relationship marked by love and fidelity for each other. However, in an opinion reversing the order granting the preliminary injunction, the court ruled that, as a matter of law, the couple's relationship did not fall within any of the classes of individual's covered by the family survivor regulation.

As a legal basis for its opinion, the Appellate Division cited In re Adoption of Robert Paul P.,¹⁴² In a nonsequitor, the Appellate Division concluded that because Braschi and Blanchard could not become formal family members (i.e., spouses or parent and child) through a legalized marriage or through an adult adoption, therefore Braschi was somehow precluded from being a member of Blanchard's family in any regard.

Even a cursory glance at the numerous legislative definitions of family

141. Braschi v. Stahl Associates Co., 531 N.Y.S.2d 562 (App. Div., First Dept., 1988).

142. 63 N.Y.2d 233 (1984). See fn. 6, supra, for an explanation of the holding of this decision

reviewed above demonstrates that public policy often recognizes an unmarried couple living together in a common household as a family unit.¹⁴³ Simply put, public policy does not require a relationship to be "formalized" (i.e., authenticated with a birth certificate, marriage certificate, or adoption decree) before it can be considered a family unit. Accordingly, amici urge this Court to reject the rationale of the Appellate Division since it is not supported by sound reasoning or public policy.

Koppelman v. O'Keefe is the latest judicial pronouncement on this issue.¹⁴⁴ There, Expedito Cruz and Lawrence O'Keefe had resided together in a rent-controlled apartment in New York City since 1976. The landlord initiated a holdover proceeding to evict O'Keefe after Cruz, the primary tenant, died. The Civil Court granted a summary judgment for O'Keefe. The Appellate Term reversed, relying on an earlier case in which the court had ruled that unmarried "heterosexual life partners" did not fall within the protections of the family survivor regulation.¹⁴⁵ The court suggested that the resolution of these cases should be left to the Legislature and not the judiciary.

Amici contend that the Appellate Term's rationale is defective in several respects. First, it failed to recognize that the judiciary, not the Legislature, has the primary obligation to perform the functions involved in these cases, i.e., construction of statutes (e.g., which relationships are covered by the term "family" in the regulation) and adjudication of facts

143. See Table 5, *infra*, p. 70.

144. Supreme Court, First Department, Appellate Term, NYLJ, Sept. 28, 1988, p. 17.

145. Lepow v. Gress, NYLJ, July 2, 1984, p. 14, col. 1.

(e.g., does a particular relationship have indicia of a traditionally defined family or its functional equivalent). Second, the decision ignored this Court's ruling in 829 Seventh Ave. Co. v. Reider which gave an expansive interpretation to the term "family" in this regulation.¹⁴⁶ Third, it misinterpreted the effect of the so-called "Roommate Law."¹⁴⁷

As many of these cases demonstrate, several sound judicial precedents support a holding in this case that Braschi was a surviving member of the Braschi-Blanchard family unit.

It should be noted that other cases have dealt with the succession rights of surviving family members in rent-stabilized apartments.¹⁴⁸ These decisions are not reviewed here because they are not instructive on the definition of family in laws and regulations affecting rent-controlled apartments.¹⁴⁹ Including these cases here would confuse, rather than clarify, matters.

146. 67 N.Y.2d 930, 932-933.

147. See text accompanying footnotes 104-109, 138, supra, for a discussion of how RPL 235-f(6) has not restricted or abrogated the succession rights of family survivors living in rent-controlled apartments.

148. Two Associates v. Brown, 131 Misc.2d 986 (Supreme Court, N.Y. Co., 1986); Collins v. Next West Management Inc., 137 Misc.2d 632 (Supreme Court, N.Y. Co., 1987); East Four-Forty Associates v. Ewell, 138 Misc.2d 235 (Supreme Court, App. Term, 1988).

149. For the distinction between definitions applicable to the two regulatory schemes, see Sullivan v. Brevard, 66 N.Y.2d 489 (1985), in which this Court noted that rent control laws were intended to afford more protections to tenants than rent stabilization laws.

IV

A CASE-BY-CASE APPROACH, UTILIZING DEFINITIONAL CRITERIA FROM ZONING PRECEDENTS, SHOULD BE USED TO DETERMINE IF NONRELATIVES ARE ENTITLED TO PROTECTION UNDER THE FAMILY SURVIVOR REGULATION

The resolution of this case, as well as future cases, is a judicial function which can be accomplished as a two-step process. First, this Court should authoritatively construe the term "family" by formulating reasonably objective criteria to identify which traditional family units and functional equivalents come within the class of relationships protected by the family survivor regulation. A plethora of legislative and judicial precedents exist to guide this Court in formulating such criteria in the context of this case. The definitional criteria formulated in single-family zoning precedents are particularly appropriate. Then, in this and future cases, trial courts can perform their normal factfinding role by deciding whether or not particular survivors fall within those criteria.

Applying the Rules of Construction. The term "family" is not defined in the family survivor regulation nor is it defined in the rent control law. Its meaning, therefore, must be determined by reference to general usage, decisions construing "family" in other statutes, and the broad remedial purpose of the rent-control scheme as a whole.¹⁵⁰

A statute or a regulation with a humanitarian purpose should be interpreted and enforced in a reasonable and humane manner in accord with its manifest intent and purpose.¹⁵¹ The rent control law and the family

150. People v. Hasse, 57 Misc.2d 59, 291 N.Y.S.2d 53, 55 (Dist. Ct., Suffolk Co., 1968).

151. Sabor v. Lavine, 42 N.Y.2d 1068, 1069.

survivor regulation evidence a legislative recognition of the plight of tenants residing in New York City caused by an acute shortage of residential housing. In view of the remedial purposes underlying this regulatory scheme, the family survivor regulation should not be given a restrictive construction.¹⁵²

Of course, legislative intent is the primary consideration of a court in the process of judicial construction. Comparing the family survivor regulation with other statutes and regulations is revealing on this score. When a legislative body intends to limit the definition of "family" to particular relationships, a specific definition is adopted.¹⁵³ Failure to give a specific definition suggests that a common law case-by-case determination is intended.¹⁵⁴ The fact that many of the terms used in the regulatory scheme have been given distinct meanings is indicative of legislative intent. A fair interpretation of these terms suggests that "family" member is broader in its meaning than "immediate family" or "relative" -- terms which have been given restrictive definitions. It would also be reasonable to conclude that merely being an "occupant" or a "household member" would not, per se, qualify a survivor as a member of the decedent's family. A family relationship is based on more than two people occupying the same living quarters. Amici contend that the definitional criteria formulated by this Court in the zoning cases are indicative of what else is required.

152. Cf. Park West Village v. Lewis, 62 N.Y.2d 431, 436-437.

153. See Table 5, *infra*, at p. 70.

154. People v. Harkins, 49 Misc.2d 673, 268 N.Y.S.2d 482, 484 (1966).

Judicial construction should be consistent with, and promote, public policy.¹⁵⁵ A review of codes of the City of New York and the statutes of the State of New York indicate that, with respect to the definition of family, the city and the state both have a policy of flexibility and inclusion. Judicial precedents are generally in accord.

Avoiding Objectionable Consequences. In the process of interpreting ambiguous terminology, courts attempt to avoid objectionable consequences, if reasonably possible.¹⁵⁶ A restrictive interpretation of the term "family" in this case would obviously have a negative and unjust impact on thousands of same-sex couples living in New York City. However, family demographics and judicial experience indicate that other contemporary family forms and minority groups would be adversely affected as well. For example, foster families, step-families, and unmarried opposite-sex couples (especially disabled and elderly couples) would directly suffer from a restrictive interpretation.

Foster families comprise about one percent of multiple-occupant households in New York City.¹⁵⁷ The United States Supreme Court has refused to dismiss a foster family as a "mere collection of unrelated individuals," noting that in many cases a foster family fulfills the same socializing function as a biological family. The Supreme Court has acknowledged that a foster family often becomes the psychological or de

155. See "Public Policy," supra, at pp. 32-33.

156. See "Avoiding Objectionable Consequences," supra, at p. 33.

157. See Table Two, infra, p. 66

facto family of a foster child:¹⁵⁸

[T]he importance of the family relationship, to the individuals involved and to society, stems from the emotional attachments that derive from the intimacy of daily association . . . as well as from the fact of blood relationship. No one would seriously dispute that a deeply loving and interdependent relationship between an adult and a child in his or her care may exist even in the absence of a blood relationship.

Many children spend several years in a foster family. In fact, in New York City, the median time spent in foster care is over four years.¹⁵⁹ Any adverse consequences suffered by foster families as a result of a restrictive interpretation of the term "family" will have a disparate impact on racial and ethnic minorities. More than 75% of children in foster care in New York City are Black or Hispanic.¹⁶⁰ It is likely that many long-term foster placements involve troubled teenagers who have been pushed out or who ran away from their biological parents. No doubt, many of these foster teens continue to live with their foster parents after they become 18 years-old. To have such relationships excluded from the protection of the family survivor regulation would be irrational and unjust. Any reasonable construction of the regulation should acknowledge a foster child as a member of the foster parent's family.

With skyrocketing divorce rates, the number of step-families or so-called "blended families" is on the rise. One national study of families has estimated that about 18% of family units involve couples in their second

158. Smith v. Org. of Foster Families, 431 U.S. 816, 844-845 (1977).

159. *Id.*, at p. 836.

160. *Id.*, at p. 834.

marriage.¹⁶¹ A significant number of these families undoubtedly include children from previous marriages. Thus, the number of step-families is potentially quite large. As a practical matter, these de facto parents play an important part in the life of their step-children. They discipline them, function as family members in social situations, and serve as adult role models.¹⁶² Exclusion of these relationships from the protection of the family survivor regulation would be arbitrary.

Unrelated adult cohabitants account for about 11% of multiple-occupant households in New York City. Many of them, to be sure, are merely "roommates." However, many are living in long-term, albeit nonmarital, family relationships. These couples should not be stereotyped. There are a variety of reasons why they live together without the benefit of marriage.¹⁶³ For young couples, "trial marriages" may be prompted by fear of making a wrong decision, a fear perhaps justified by the high divorce rates. Long periods, sometimes years, of cohabitation may provide an answer for divorcees trying to avoid renewing old mistakes. In lower socioeconomic groups, the difficulty and expense of dissolving a former marriage often leads couples to spend years in nonmarital relationships.¹⁶⁴ Many unmarried couples may also incorrectly believe that the doctrine of common law marriage prevails in this state and thus that they are in fact

161. Phillip Morris Family Survey, conducted by Louis Harris and Associates (1987).

162. Spenser v. Spenser, 128 Misc. 298, 488 N.Y.S.2d 565, 567 (N.Y. Family Ct., Queens Co., 1985).

163. Marvin v. Marvin, 18 Cal.3d 660, 676.

164. *Ibid.*

married.¹⁶⁵

For elderly widows and widowers, unmarried cohabitation may be a matter of economic survival, since remarriage can trigger the loss of marital survivor benefits.¹⁶⁶ Economic disincentives or so-called "marriage penalties" prevent many disabled couples from marrying.¹⁶⁷ Significant segments of the population would be adversely affected by a definition of "family" that excludes these elderly or disabled unmarried couples, since about 15% of adults in New York City are disabled and 13% are 65 years of age or older.¹⁶⁸

Just as living arrangements have changed over the years, so has public policy. Unmarried couples living together in long-term relationships, or so-called domestic partnerships, fit the definition of "family" used in many New York statutes.¹⁶⁹ With an ever increasing number of unmarried couples, societal attitudes about such relationships have changed. Such an attitudinal change is reflected by adjustments in judicial terminology describing unmarried couples.¹⁷⁰ As argued below, by adapting the definitional approach from the zoning context to the rent-control survivor context, adverse consequences to domestic partnerships can be avoided.

165. Ibid.

166. See "Marriage Penalties," Strengthening Families: A Model for Community Action, Final Report of the Task Force on Family Diversity, (May, 1988), p. 84.

167. Ibid.

168. See Table 1, *infra*, p. 65.

169. See Table 5, *infra*, at p. 70.

170. For example, this Court has refused to refer to such relationships as "meretricious." Morone v. Morone, 50 N.Y.2d 481, 486, fn. 2 (1980).

Amici caution that, in the process of deciding which families qualify for protection under the family survivor regulation, form should not triumph over substance. The touchstone of protectible family rights should not rest on artificial legal distinctions or even simple biology, but instead should find its foundation in the reality of family life.¹⁷¹ Current household demographics for the City of New York demonstrate that diversity is the primary characteristic of the city's families.

Using the expanded definition of "family" recognized by this Court in the zoning cases not only will avoid adverse consequences by supporting families as they actually exist, it will also be consistent with a legislative intent to use a common law, case-by-case determination of "family" status in the context of rent-control litigation. This intent is evidenced by the fact that family is not defined in the rent control law or eviction regulations. It also bears repeating that, when a specific definition of family is intended, it is spelled out in the law.

Removing Constitutional Doubts. If reasonably possible, courts should attempt to resolve litigation without resort to constitutional adjudications. In construing a statute, courts should adopt an interpretation that avoids any serious doubt regarding its constitutionality.¹⁷² A construction of the family survivor regulation that excludes entire classes of relationships from its protection, e.g., foster families, step-families, or domestic partners (unmarried couples living in

171. Brown v. County of San Joaquin, 601 F.Supp. 653, 664 (U.S.D.C., E.D. Cal., 1985).

172. In re Lorie C., 49 N.Y.2d 161, 171 (1980).

long-term family relationships), would cast serious constitutional doubt on the statutory scheme. Accordingly, this Court should avoid this constitutional confrontation by construing the regulation in a flexible and expansive manner. To do so will not only avoid the pitfalls inherent in a definition that conclusively presumes such relationships to be nonfamilies, but also will give affirmative recognition to the associational rights of individuals to freely choose the family structure that best satisfies their own needs.

Choices to enter into and maintain intimate human relationships are protected by the freedom of association.¹⁷³ In this respect, freedom of association receives constitutional protection as a fundamental element of personal liberty.¹⁷⁴ Protecting the formation and maintenance of highly personal relationships not only reflects the realization that individuals draw much of their emotional enrichment from close ties with others but also safeguards the individual's right to define his or her own identity.¹⁷⁵ Family relationships fall within the zone of protection of the freedom of association because, by their very nature, they involve deep attachments and commitments to the necessarily few other individuals with whom one shares distinctly personal aspects of one's life as well as a special community of thoughts, experiences, and beliefs.¹⁷⁶ The application of constitutional protections to families is not dependent on the existence of a biological tie

173. Roberts v. Unites States Jaycees, 468 U.S. 609, 617-618.

174. *Ibid.*

175. *Id.*, at pp. 618-619.

176. *Id.*, at pp. 619-620.

or a marriage ceremony.¹⁷⁷ A definition of "family" that excludes foster families, step-families, or domestic partners would create unnecessary friction with the constitutional rights of New Yorkers who live in such family units.

Furthermore, adopting a definition of family limited to relationships based on blood, marriage, or adoption would be tantamount to creating a conclusive presumption that all other intimate and long-term relationships are not families. Such a presumption would make it impossible for many household members to receive protection under the family survivor regulation, even in the face of proof of the most positive character that the survivor and the decedent had a relationship that was the functional equivalent of a more traditionally defined family. Although such a narrow definition may be administratively or judicially efficient, the Constitution recognizes higher values than speed and efficiency.¹⁷⁸ Procedure by presumption is always cheaper and easier than individualized determination. However, where the procedure forecloses a review of the real issues and when it explicitly disdains present realities to past formalities, it needlessly risks running roughshod over interests important to the parties in the relationship under judicial scrutiny.¹⁷⁹

In a decision following Stanley v. Illinois, the United States Supreme Court has explained that the conclusive presumption declared unconstitutional in Stanley was void because it focused on technicalities and

177. Smith v. Org. of Foster Families, *supra*, at pp. 843, 845, fn. 53.

178. Stanley v. Illinois, 405 U.S. 645, 656-657.

179. *Id.*, at pp. 656-657.

made the actual relationship between family members completely irrelevant.¹⁸⁰ In this case, restricting the definition of family to relationships based on blood, marriage, or adoption, would create the same unconstitutional effect.

Although the vice of a conclusive presumption is often viewed as a matter of substantive due process, an issue not expressly argued below, the issue of equal protection was presented both in the trial court and in the Appellate Division. This Court, consistent with a large body of constitutional law, has considered the doctrine of conclusive presumptions as coextensive with the equal protection clause.¹⁸¹ Therefore, the issue has been preserved in the equal protection context. However, regardless of the source of its constitutional infirmity, this Court has not looked favorably upon statutory interpretations creating conclusive presumptions.¹⁸²

An interpretation of the family survivor regulation excluding entire classes of de facto families would be constitutionally underinclusive and therefore violate both the due process clause and the equal protection clause of the New York Constitution. Whichever constitutional defects would be created by such a construction, the constitutional remedy would be the same, i.e., interpreting the regulation in a more inclusive manner.¹⁸³

Amici urge this Court to avoid an interpretation of the family survivor

180. Lehr v. Robertson, 463 U.S. 248, 258.

181. Maresca v. Cuomo, 64 N.Y.2d 242, 253; Trafelet v. Thompson, 594 F.2d 623, 630 (Seventh Cir., 1979).

182. Cornell University v. Bagnardi, 68 N.Y.2d 583, 594 (1986).

183. People v. Liberta, 64 N.Y.2d 152, 170-172 (equal protection); McMinn v. Town of Oyster Bay, 66 N.Y.2d 544, 547, 550.

regulation that would arbitrarily exclude a wide variety and a large number of New York's families.

Adapting the Zoning Approach. Fortunately, this Court has established an unbroken line of precedents, spanning more than 12 years, in which a functional approach has been used to recognize families.¹⁸⁴ The definitional approach utilized in the zoning cases is comfortably adaptable to rent control family survivor cases. Such an adaptation is appropriate because it would (1) support a legislative intent to protect family survivors from forced eviction upon the death of a primary tenant, (2) be consistent with public policies favoring flexibility and inclusion in the definition of family, (3) avoid hardships and unjust consequences, and (4) remove the constitutional cloud surrounding a definition limited to relationships based on blood, marriage, or adoption.

Amici urge this Court to interpret the family survivor regulation as protecting traditionally defined family relationships as well as de facto family units.

A family survivor in "traditional" classification should be required to show proof of a relationship to the primary tenant based on blood, marriage, or adoption, as well as proof that the survivor has been an ongoing member of the household in question. Some indicia of permanence or continuity would satisfy the latter requirement.¹⁸⁵

A family survivor in the "de facto" classification should be required to

184. *Infra*, pp. 19-21.

185. These criteria are essentially based on 829 Seventh Avenue v. Reider, 67 N.Y.2d 930 (1986).

show proof that he or she has been an ongoing member of the household in question, the household has operated as a single housekeeping unit, it has had the generic character of a family unit, and household activities have been functionally equivalent to a more traditionally defined family.¹⁸⁶ Indicia of functional equivalency would include the longevity of the relationship, the level of commitment, support, and interdependency among household members, as well as the intention of members to be a family unit.¹⁸⁷

CONCLUSION

This brief has attempted to assist this Court in answering the basic legal questions presented in this appeal, namely, should the definition of family include relationships not based on blood, marriage, or adoption, and, if so, what definition of family should be used to identify family survivors?

The facts and arguments presented within provide the following answers to these questions. As it is used in the family survivor regulation, the term "family" should be construed to include relationships beyond those based on blood, marriage, or adoption. A functional definition of family, adapted from the approach used by this Court in the single-family zoning cases, should be employed in rent control cases.

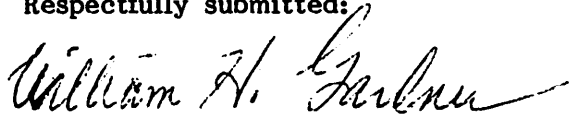
186. These criteria are essentially based on this Court's single-family zoning decisions in White Plains, Group House, Oyster Bay, and Crane Neck, supra, pp. 19-21.

187. 2-4 Realty Associates v. Pittman, 137 Misc.2d 898, 523 N.Y.S.2d 7, 9 (Civil Ct., N.Y. Co., 1987). These criteria are remarkably similar to the functional definition of family used by family service providers. (See "Interest of Amici," supra, p. 1). The criteria also respect the reality of family diversity in New York City (See Tables 1-4, infra, pp. 66-69).

Finally, it should be noted that sufficient facts were established in the trial court to warrant the issuance of a preliminary injunction preventing the eviction of Mr. Braschi as a surviving family member of Mr. Blanchard's household. On remand, if the landlord desires to contest the matter further, the case could proceed to a trial on the merits. A final judgment would be based on factual determinations made by the trial court within the legal guidelines established by this Court's authoritative construction of the family survivor regulation.

Dated: January 17, 1989

Respectfully submitted:



HODGSON, RUSS, ANDREWS,
WOODS & GOODYEAR

by WILLIAM H. GARDNER,
Partner and Attorney of
Record for Amici Curiae

THOMAS F. COLEMAN*
Co-Counsel
for Amici Curiae

JAY M. KOHORN*
Of Counsel

* Admitted to the Bar in California

TABLE 1

**PROFILE OF THE GENERAL POPULATION
OF THE CITY OF NEW YORK¹**

TOTAL POPULATION	7,071,639
Foreign Born.....	1,670,269 (24%)
Children (Under 18).....	1,765,467 (25%)
Seniors (65 and Up).....	951,732 (13%)
Disabled Adults ²	820,928 (15%)
Racial/Ethnic Group:	
White (Non-Hispanic)..	3,668,945 (52%)
Black (Non-Hispanic)..	1,694,127 (24%)
Hispanic.....	1,406,024 (20%)
Asian.....	225,862 (3%)
Other.....	68,098 (1%)

1. Sources: Demographic Profile: A Portrait of New York City from the 1980 Census, Department of City Planning, City of New York (December 1983); Socioeconomic Profile: A Portrait of New York City from the 1980 Census, Department of City Planning, City of New York (April 1986).

2. Source: 1980 Census of Population, Part 34, General Social and Economic Characteristics of New York, Table 183 [for Bronx, Kings, Queens, New York, and Richmond Counties] (July, 1983). This figure represents the percentage of the adult population only.

TABLE 2

CHARACTERISTICS OF HOUSEHOLDS

IN THE CITY OF NEW YORK¹

TOTAL PERSONS LIVING IN HOUSEHOLDS	6,948,332
TOTAL OCCUPIED HOUSING UNITS	2,788,530
Renter-Occupied Units	2,136,425 (77%)
Owner-Occupied Units	652,105 (23%)
One-Person Households	912,345 (33%)
Multiple-Occupant Households	1,876,185 (67%)
RELATIONSHIP OF RESIDENTS IN MULTIPLE-OCCUPANT HOUSEHOLDS:	
Multiple-Occupant Households	1,876,185 (100%)
Unrelated Occupants ²	204,625 (11%) ³
Married Couples Living Together	1,203,135 (64%) ³
[With Own Children Present	535,581 29%]
[Without Own Children Present ...	667,554 35%]
Single-Parent with Minors Present ..	307,709 (16%)
Adult Blood-Relatives ⁴	160,716 (9%)
Foster-Family Households ⁵	19,041 (1%)

1. Sources: Demographic Profile: A Portrait of New York City from the 1980 Census, Department of City Planning, City of New York (December 1983); Socioeconomic Profile: A Portrait of New York City from the 1980 Census, Department of City Planning, City of New York (April 1986).

2. Includes households in which all or some of the occupants are not related by blood, marriage, or adoption to the primary householder.

3. See fn. 2 on "Table 3" for explanation.

4. Includes adults living with parents, adult siblings, or other adult relatives.

5. Source: New York State Department of Social Services, Bureau of Data Management (December 31, 1985). This figure overlaps with other categories since foster children live with married couples, single-parents, and unrelated adults.

TABLE 3

**MARITAL STATUS OF ADULTS
IN THE CITY OF NEW YORK¹**

PERSONS 15 YEARS OF AGE AND OVER	5,647,335 (100%)
Single	1,902,263 (33.7%)
Married ²	2,578,466 (45.6%)
Separated	302,900 (5.3%)
Divorced	316,004 (5.7%)
Widowed	547,702 (9.7%)

1. Source: 1980 Census of Population, Part 34, General Population Characteristics of New York, Table 49, [for Bronx, Kings, Queens, New York, and Richmond Counties] (July, 1983). For marital status purposes, an adult is defined as a person who is at least 15 years-old. Marital status is defined as the respondent's current status at the time of the census count.

2. The number of persons listed as married may be considerably overstated because couples who live together (unmarried couples, persons in real or ostensible common law marriages, etc.) are allowed to report the marital status they consider the most appropriate, even though their relationship may not be recognized as a lawful marriage under New York laws. As a result, the number of cohabiting unmarried couples may be significantly higher than shown in "Table 2." For an explanation of census terms, see: "Census Bureau User's Guide" (PHC 80-R1; Part B Glossary - November 1982).

TABLE 4

**COHABITATION STATUS OF ADULTS
IN THE CITY OF NEW YORK¹**

PERSONS 16 YEARS-OLD AND OVER	5,538,851
Living Alone	912,345 (16%)
Living With Spouse ²	2,406,270 (43%)
Living With Own Minor Children And With No Spouse Present	307,709 (6%)
Living With Unrelated Adult ²	365,460 (7%)
Living With Relatives Other ³ Than Spouse or Minor Children ³	1,547,067 (28%)

1. Sources: Demographic Profile: A Portrait of New York City from the 1980 Census, Department of City Planning, City of New York (December 1983); Socioeconomic Profile: A Portrait of New York City from the 1980 Census, Department of City Planning, City of New York (April 1986). For this purpose, an adult is defined as a person who is at least 16 years-old.

2. The number of persons listed as living with a spouse may be overstated. Those listed as living with an unrelated adult may be understated. For an explanation, see fn. 2 on "Table 3."

3. Includes persons living with parents, siblings, or other relatives.

TABLE 5

SOME NEW YORK STATUTES DEFINING "FAMILY"

* **Social Services Law.** "A family type home for adults shall mean an adult care facility established and operated for the purpose of providing long-term residential care and personal care and/or supervision to four or fewer adult persons unrelated to the operator." (Social Services Law, Section 2(22))

* **Children and Family Trust Fund Act.** "'Family or household members' shall mean persons related by consanguinity or affinity or unrelated persons who are continually or at regular intervals living or in the past continually or at regular intervals lived in the same household, including victims of persons accused of having committed domestic violence." (Social Services Law, Section 481-c(2))

* **Domestic Violence Prevention Act.** "'Family or household members' mean the following individuals: (a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another regardless of whether they still reside in the same household; (d) persons who have a child in common regardless of whether such persons are married or have lived together at any time; (e) unrelated persons who are continually or at regular intervals living in the same household or who have lived in the past continually or at regular intervals have lived in the same household; or (f) any other category of individuals deemed to be a victim of domestic violence as defined by the department in regulation." (Social Services Law, Section 459-a(2))

* **Homeless Rehousing Assistance Program.** "'Family' shall mean two or more persons, including at least one who shall be twenty-one years of age or younger and pregnant women, who: (a) constitute a household for purposes of aid to dependent children, emergency assistance to needy families with children, home relief, or supplemental security income benefits." (Social Services Law, Section 49(2))

* **Corrections Law.** "'Family member' means any person related to a victim within the third degree of consanguinity or affinity or any person residing in the same household with a victim." (Corrections Law, Section 148-a(1)(b))

TABLE 5
(continued)

SOME NEW YORK STATUTES DEFINING "FAMILY"

* **Mental Hygiene Law.** "A community residence, established pursuant to this section and family care homes shall be deemed a family unit, for the purposes of local laws and ordinances." (Mental Hygiene Law, Section 41.34(5)(f))

* **Crime Victim Compensation Act.** "'Family,' when used with reference to a person, shall mean: (a) any person related to such person within the third degree of consanguinity or affinity, (b) any person maintaining a sexual relationship with such person, or (3) any person residing in the same household with such person." (Executive Law, Section 621(4))

* **Equal Rights to Publicly-Aided Housing.** "The term 'family,' as used herein, means either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers, or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers, or lodgers. A 'boarder,' 'roomer,' or 'lodger' residing with a family means a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident to employment therein." (Civil Rights Law, Section 18-b(6))

* **Human Rights Law.** This law defines family the same as the Equal Rights to Publicly-Aided Housing Act. (Executive Law, Section 292(12))

* **Multiple Dwelling Law.** In this law, family is defined the same as the Equal Rights to Publicly-Aided Housing Act. (Multiple Dwelling Law, Section 4(5))

* **Multiple Residence Law.** In this law, family is defined as "one or more persons with whom there may not be more than four borders, roomers, or lodgers all living together in a common household." Boarders, roomers, and lodgers are defined in the same manner as the Human Rights Law and the Equal Rights to Publicly-Aided Housing Act. (Multiple Residence Law, Section 4(14))