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March 23, 1998

Question 9, Protected Tenants, Expiring Use

To the Cambridge City Council:

The Housing and Development Committee has scheduled a hearing for April 1 at 5:00 PM regarding the Atlantic Study on "impacts of the end of Rent Control" and "affordable housing efforts over the next two years." Public discussion of the Study so far has unavoidably reflected attitudes toward rent control itself. The following pages are intended to supply background which has been missing from these discussions.

The material comprises three topics.

1. **The Question 9 vote.** Don't believe the hype about a "mandate."
2. **Protected Tenants.** A lot of low income tenants weren't.
3. **Expiring-use protections** are rent control, and why we need to say so.

The City Council has no chance of meeting its stated housing goals through the initiatives it has taken so far.

The **real estate transfer tax** has recently lost referenda in Haverhill and on Cape Cod. Our chances have receded even further.

The City is spending **millions in property tax revenues** to help some hundreds of households remain in Cambridge. This may not even add to the total "affordable" housing stock, if residents are drawn out of their old homes, which may then go to high rent newcomers. **Inclusionary zoning** especially has this drawback. It even encourages overall "gentrification" by intensifying luxury housing development.

The Legislature hasn't granted any petitions for **expiring-use protections**. The fact that tenants in two of the buildings have won grants toward resident ownership has actually reduced the petition's chances further by reducing the number of people directly affected.

Whatever its ambiguities, the Atlantic Study leaves no doubt that a substantial percentage of former rent control tenants are still renting in Cambridge. Thus the social transformation we have seen in the past few years has much farther to go. Thus too, there is a political basis for fighting to reverse that transformation.

This can't be done without regulation. The City Council's stated housing goals cannot be met just by spending taxpayers' money.

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1. Question 9.

Question 9 had legal force only to wipe out the rent control laws that were on the books in November, 1994. It did not touch the State Legislature's power to make new rent laws because it was not a constitutional amendment. .

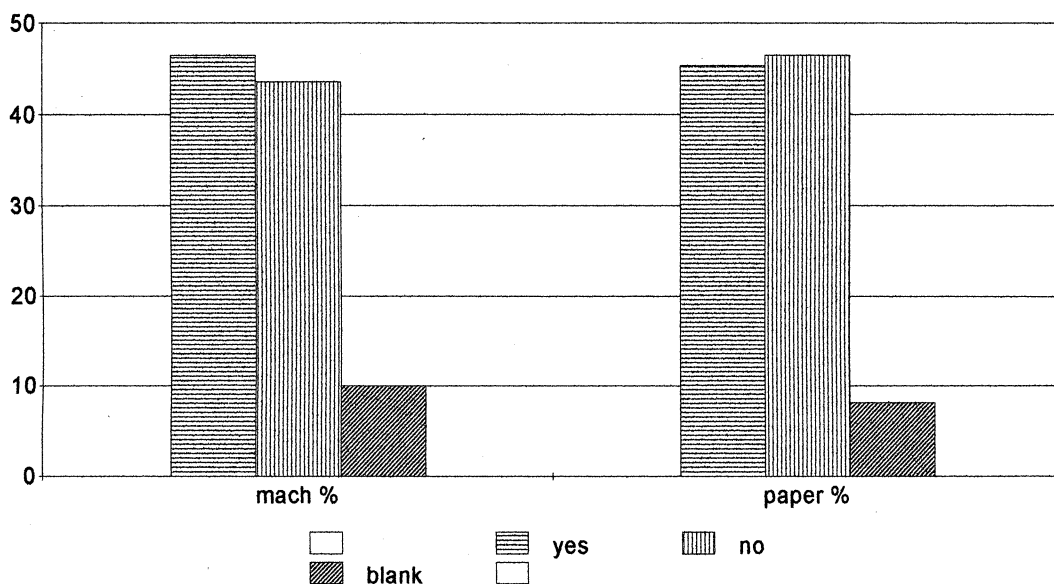
More important than the campaign's 10-1 funding advantage, Question 9 had the statewide organizational framework of the real estate industry. A long-running statewide anti-rent control media campaign gave Question 9 *several years'* head start. The statewide campaign against Question 9 began only *nine weeks* before the election.

Despite its overwhelming organizational advantages, Question 9 won by an official **plurality of 46-44%**. To interpret this as a death blow to rent control flies in the face of logic.

But even this result was corrupted by the absence of the usual summaries of ballot questions on the 1994 voting machines. It's safe to say that a lot of voters didn't know what they were voting on. This is very important for a close vote like Question 9.

In the case of Question 9, the consequences were not random. We know this because 148 cities and towns, *40 percent of the municipalities in the State, voted on paper ballots*. In the paper ballot totals, there were 24% fewer blanks, 2% fewer "yes," and 7% more "no" votes: **where everyone had a chance to read the questions, Question 9 lost.**

QUESTION 9 - paper ballots voted NO

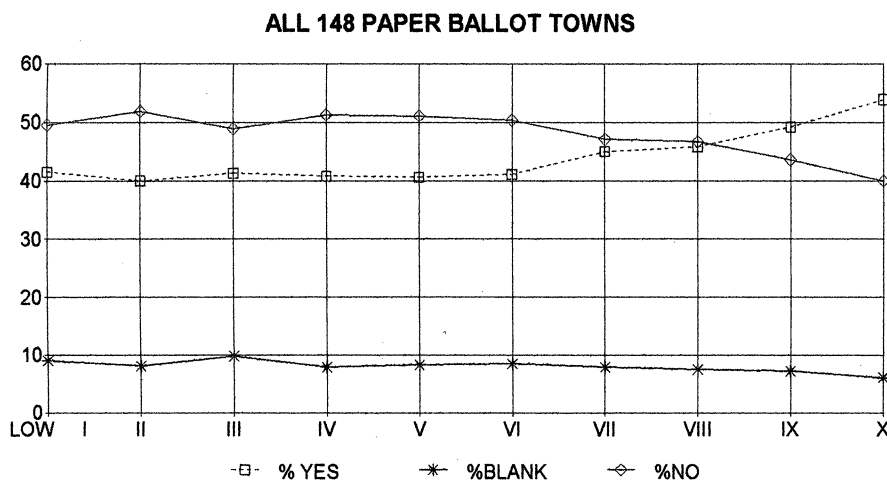
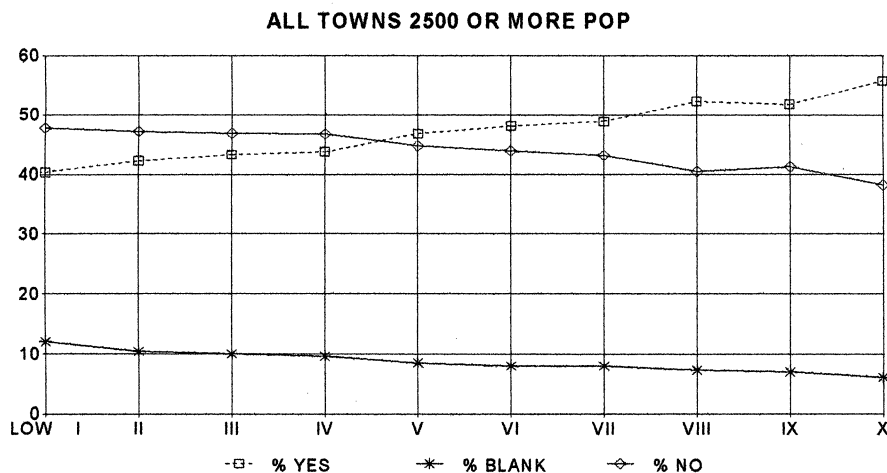


Out of a background of confusion and indifference, one clear tendency emerges: **the higher a town or city's Median Household Income, the higher the vote for Question 9.** It should be noted that lower income citizens are less likely to vote, and the 1994 state election was no exception; also that there are many low income residents who aren't citizens. The voting pattern thus understates the perceived interests of lower-income people, which implies it understated opposition to Question 9.

The two charts below reveal the same essential voting pattern of lower income opposition, and higher income support, for Question 9. But there is a striking difference, consistent with the essential voting pattern, showing that the confusion in the voting machines was greater among those more likely to vote "no" on Question 9.

In the combined results of machine and paper ballot voting, the lower income 40% votes no, the middle and upper income 60% votes yes. (top chart)

In the results of paper ballot voting only, the lower and middle income 70-80% votes no, while only the upper income 20% votes yes. (bottom chart)



KEY TO CHARTS. The populations for each chart were arrayed from lowest to highest Median Household Income according to the 1990 Census. They were then grouped into ten roughly equal fractiles. The percentages of YES, NO, and BLANK ballots cast for Q.9 in the members of each fractile were averaged, and the results graphed. **The top chart** leaves out 73 towns of less than 2500 population in order to more closely track the general result. (These small towns cast fewer than 2% of the total votes and included about half the paper ballot municipalities.)

The bottom chart includes all paper ballot constituencies, about half of which are also included in the populations of the first chart. The Median Household Income ranges in the corresponding fractiles of the two charts are of course not strictly comparable. For example, Chart 1 fractile I is \$20,500-\$28,300 and for Chart 2 fractile I is \$18,300-\$29,400. Chart 1/X is \$63,800-\$95,100, Chart 2/X is \$55,200-\$93,900. The complete breakdown is given in my pamphlet, *Secret of Question 9*, p.4. **Sources:** *Massachusetts Municipal Profiles*, Information Publishers, 1995; *Massachusetts Voting Equipment*, Mass. State Election Office, Feb 1995; *Question No. 9 Prohibiting Rent Control*, pp 540, 548 Mass. State Election Office, 1995.

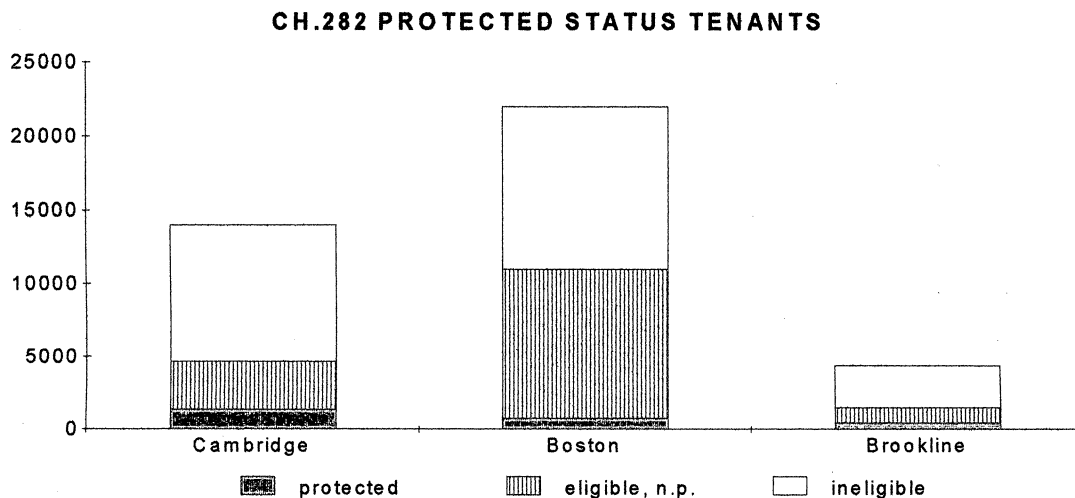
2. The Protected Tenants.

Question 9 was enjoined from abruptly shutting down rent control administrations January 1, 1995, pending a voters' lawsuit (*Tobias v. Connolly*) against the 1994 ballot procedure. Both Question 9 and the lawsuit were rendered moot by a new law, written by professional real estate lobbyists: Chapter 282, the "protected tenants" law.

SPOA emphatically opposed Ch.282. Jon Maddox pointed out that 1/3 of the rent controlled tenants in Brookline and Cambridge, and 1/2 of Boston's, would qualify for "protected status." However, Ch. 282 required eligible tenants to *apply* for protection. The lobbyists expected that only the active minority among low income tenants would do so. They were right.

Boston (1990 median household income 15% lower than Cambridge's) should have had the highest proportion of protected tenants. Yet in the phaseout, Boston had only 738 protected households (out of an original 22,000 controlled apartments), while Cambridge had around 1350 (out of 14,000), and Brookline 420 (out of 4400). If Maddox' 1995 statistics were correct, only about 1/3 of eligible Cambridge households - and about 1/14 of Boston's - ever got protected status!

The relatively small number of "protected tenants" has given the political opponents of regulation another way of minimizing public awareness of the numbers of low-income private market tenants, while avoiding the policy question of the role of rent control in maintaining the urban middle-income (including working class) population.



In this chart, the bars represent the number of households covered by full rent controls in 1994 (not including the "decontrolled" but partly regulated units peculiar to Boston). The striped sections in the middle of each bar represent the households which, according to statistics used by Jon Maddox in January 1995, qualified for Ch.282 "Protected Status," but which never obtained it. Sources: Maddox, *Cambridge Tab*, 1/17/95; protected tenants, *Banker & Tradesman*,

The Rental Housing Association urged its 750 members (who control 100,000 Boston area apartments) to moderate rent increases for existing tenants in formerly controlled buildings. The *Atlantic Marketing* post-rent control survey of Cambridge confirms that many have done so. One might say that a policy of **selective mercy complements a general atmosphere of intimidation** in the "hot" rental market.

3. Expiring Use Petition.

The Cambridge City Council has petitioned the State Legislature to allow local rent control for "expiring-use" buildings in cases where they lose HUD protection. But by **denying that this is rent control in any form, advocates have obscured legal and political reality and undermined chances for protecting the expiring-use tenants.**

The legal problem. The Cranston-Gonzalez Affordable Housing Act (1990) allows federally assisted landlords to escape regulation by pre-paying their mortgages. Title V: Preservation of Affordable Housing, Subtitle B, Sec.232, "Preemption of State and Local Laws" subsection (b), sets out the limits of local intervention.

"This section shall not prevent the establishment, continuing in effect, or by any law or regulation of any State or political subdivision of a State not inconsistent with the provisions of this subtitle and relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent that such law is of general applicability to both housing receiving Federal assistance and nonassisted housing."
(104 Stat. 4274. *my emphasis*)

A 1994 HUD memo citing the Congressional Conference Report on this Section, warned that it "would preempt State and local laws that target only prepayment projects for special treatment." (*David R Cooper, Assistant General Counsel, Multifamily Mortgage Division, GHM, 2/24/94 p.5.*) Yet this is precisely the point of the Cambridge home rule petition.

A leading real estate lobbyist says, "If this were approved by the Legislature, we would immediately initiate a legal challenge. But we don't have to go down that road. It's crystal clear that there's a federal preemption...." (Edwin Shanahan, GBREB, *Banker and Tradesman*, 2/24/97 p.12)

There is no doubt that expiring-use tenants could be legally shielded under the umbrella of a general rent control ordinance.

The political problem. Real estate lobbyists have made it clear that they oppose expiring-use tenant protections like any other kind of rent control. But the expiring-use tenants have few *active* supporters because their petition directly affects only themselves. Their cause has not been tied to the interests of other tenants. This can be understood in relation to the Question 9 myth and the specific origins of the expiring-use petition.

The Boston-based HUD Tenants Alliance interpreted a clause in Question 9, exempting "*publicly owned housing, publicly subsidized housing, federally assisted housing, or mobile homes,*" in the light of Boston's special history of extending rent and eviction controls to protect HUD tenants.

In 1988, the Boston City Council enacted a special ordinance to cover "government-involved" housing in case it came off State or Federal regulation. The wording of Question 9 sounded to the Boston HUD tenants like a loophole for this

ordinance. Noting that the real estate lobbyists eliminated this wording in Ch.282, they even asked the Boston City Council to petition Beacon Hill "to codify Question 9 in its entirety." (Peter Catalano, *Boston Globe* op ed, 10/19/96, p.15)

This approach was adopted by the Cambridge Expiring Use Committee/EFZ, and by the Cambridge City Council majority. Resolution #24 of 2/12/96 stated, "The great majority of tenants in these buildings are "means-tested"...All the owners .. are large real estate investors... Question 9 exempted HUD-assisted buildings from its reach... " (Triantafillou, Born, Davis, Reeves, Duehay).

Mr Jon Maddox, author of Question 9, denies that the "exemption" was ever intended to apply to the buildings once HUD assistance came to an end. The "exemption clause" simply acknowledged that HUD regulations could not be overridden by a State referendum, and protected Question 9 from a legal challenge on that ground.

Mr Max Kargman, one of Question 9's biggest financial supporters, owned no rent controlled property, but was the State's largest expiring-use landlord.

Consnet Communication #19 S-212

A communicatino was received from
Bill Cunningham, transmitting
a letter regarding three topics:
Question 9, Protected Tenants
and Expiring Use.

In City Council March 30, 1998

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